

OLYMPIA J. SNOWE, MAINE, CHAIR
JOHN F. KERRY, MASSACHUSETTS, RANKING MEMBER
CHRISTOPHER S. BOND, MISSOURI
CONRAD BURNS, MONTANA
GEORGE ALLEN, VIRGINIA
NORM COLEMAN, MINNESOTA
JOHN THUNE, SOUTH DAKOTA
JOHNNY ISAKSON, GEORGIA
DAVID VITTER, LOUISIANA
MICHAEL ENZI, WYOMING
JOHN CORNYN, TEXAS

CARL LEVIN, MICHIGAN
TOM HARKIN, IOWA
JOSEPH I. LIEBERMAN, CONNECTICUT
MARY LANDRIEU, LOUISIANA
MARIA CANTWELL, WASHINGTON
EVAN BAYH, INDIANA
MARK PRYOR, ARKANSAS

WESTON J. COULAM, REPUBLICAN STAFF DIRECTOR
NAOMI BAUM, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510-6350

March 23, 2006

Mr. R. David Paulison
Acting Director
Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

Dear Acting Director Paulison:

I am writing to express my concern about the Administration's lack of commitment to ensuring small business participation in the rebuilding of the Gulf Coast region. On November 3, 2005, in response to pressure from Congress, FEMA and the Small Business Administration announced plans to compete 15 contracts with five-year terms and a value of up to \$100 million each for relief, recovery, and rebuilding after Hurricanes Katrina and Rita. The contracts were to be structured as Indefinite Delivery, Indefinite Quantity (IDIQ) contracts targeted for local, small and small disadvantaged firms. To date, these contracts have not been awarded.

It was my understanding that these small business contracts were being competed from the \$1.5 billion in no-bid contracts originally awarded to large firms immediately following the disaster. However, in his testimony before the Senate Committee on Small Business and Entrepreneurship on November 8, 2005, Gregory Rothwell, Chief Procurement Officer for the Department of Homeland Security, clarified that these small business awards would be in addition to the large no-bid contracts. Instead of immediately interrupting the work being performed by the large contractors, the no-bid contracts, which gained national attention due to the firms' close political connections to the White House, were to be performed by these firms on a short-term basis and re-competed over approximately 120 days. This would have resulted in a target award date of March 8, 2006, for the new, openly competed contracts. However, these large no-bid contracts have still not been re-competed.

It is now my understanding that the current IDIQ contract awarded to these four large firms has exceeded the \$1.5 billion originally awarded and, instead of meeting the 120-day timeline for re-competition, these firms will perform these contracts until further notice. While FEMA officials have informed my staff that they expect these contracts to be re-competed in time for the beginning of the next hurricane season on June 1, the request for proposals (RFP) has yet to be released. Short response times and rapid contract awards are the kinds of procedural and management challenges that limit the effectiveness of competition, even among the largest federal contractors. As GAO noted in its March 16, 2006 report, three of the four contractors working on these no-bid

contractors were noted for poor acquisition outcomes due to a lack of effective “acquisition planning, management processes, and sufficient number of capable people.” On October 7, 2005, you were quoted in *The Washington Post* stating, “I’ve been in public service a long time, and I’ve never been a fan of no-bid contracts.” At that time you pledged to re-bid the contracts. I am concerned that more than five months later, and so close to the start of a new hurricane season, re-bidding has yet to begin.

With regard to the small business contracts, Mr. Rothwell assured the Committee, “We are competing the requirement, which is a requirement for about \$1.5 billion worth of work that will be awarded to about 15 companies, eight of which would be 8(a) firms, small disadvantaged firms, the other seven of which would be small businesses.” To the disappointment of the members of the Committee and the small business community, Mr. Rothwell stated that the process would take upwards of 100 days and would be completed “sometime in February.” It is an even greater disappointment that as of March 23, 2006, the small business contracts have yet to be awarded. I understand there has been an overwhelming response to the request for proposals, but that should embolden FEMA’s efforts to award these contracts to qualified candidates in a timely manner, not leave Gulf Coast rebuilding held up by red tape.

When asked about the lack of subcontracting opportunities made available to small and local firms, Mr. Rothwell pointed to the 40 percent subcontracting goal implemented by the Administration. When asked about consequences for large prime contractors that fail to meet these subcontracting goals, Mr. Rothwell stated that they were “working with our legal department to see if we can do that...looking at something more disciplined than just the goal concept. In federal procurement, we are not allowed to do penalties. We are supposed to do something that is actually more of a liquidated damages thing, but we are looking at that.” To date, I am unaware of any specific actions taken by the Department of Homeland Security to ensure that large prime contractors in the region are meeting their subcontracting goals.

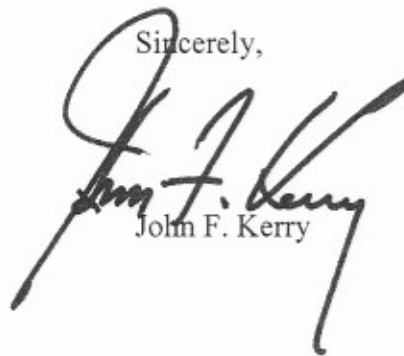
I strongly urge FEMA to take immediate action on the following issues, as Mr. Rothwell assured the Committee the Agency was doing at our November 8, 2005 hearing. These three actions would have a direct and significant impact on the ability of small businesses in the region, and throughout the nation, to help rejuvenate the economy of the Gulf Coast region:

- Award the 15 prime contracts of approximately \$100 million each, valued at approximately \$1.5 billion, to small businesses;
- Re-compete the \$1.5 billion in no-bid contracts awarded to the “big four” contractors and require a substantial small business subcontracting plan for any large company competing for the award; and
- Implement and strongly enforce a policy, which includes the utilization of liquidated damages, to hold prime contractors accountable for failing to meet their subcontracting goals.

The need for small and local businesses to actively participate in the redevelopment of the hurricane affected region can not be understated, nor should it be forgotten. In the months following the hurricanes, both Congress and the Administration committed to rebuilding the region. Both promised that local and small businesses would not be left out of the relief and rebuilding efforts. As billions of dollars flow into the region for debris removal and reconstruction, small and local businesses must receive a greater share of contract awards and dollars. We cannot allow administrative delays to continue to be a barrier to small business development in the region. Excuses don't help small businesses make payroll.

I hope to continue working with you to ensure small businesses are receiving their fair share of reconstruction contracts. However, FEMA must act quickly to level the playing field for small businesses seeking prime and subcontracting opportunities in the region. I look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Kerry". The signature is stylized with a large initial "J" and a long, sweeping underline that extends to the right and then loops back down.

John F. Kerry