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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

March 31, 2006

The Honorable Hector V. Barreto
Administrator
Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

Dear Administrator Barreto:

I am writing to let you know of my deep concerns regarding the conclusions of the March 16, 2006 Audit Report from the Small Business Administration (SBA) Inspector General (IG) that the SBA has not been providing sufficient oversight to the 8(a) Business Development program. It is imperative that the SBA take immediate action to restore integrity to the 8(a) program by ensuring vigorous oversight of federal agency compliance with regulations that govern the 8(a) Business Development (BD) program.

In 1998, the SBA entered into a series of Memoranda of Understanding (MOU) with major procuring agencies and delegated authority, including contract regulation authority, to the agencies. However, according to the IG report, "SBA has the authority to conduct surveillance reviews at the procuring agencies to ensure that procuring activities have followed the proper procedures in executing 8(a) BD contracts..." Further, the SBA has the "ultimate responsibility for ensuring that 8(a) BD companies comply with all applicable 8(a) BD program regulations." Unfortunately, during its audit, the IG found no evidence that SBA had performed any oversight of the 26 agencies to ensure that the agencies were monitoring company compliance with 8(a) regulations.

This is yet another example of the lack of effective leadership at the SBA and what seems to be a complete unwillingness of the Agency to fulfill its responsibility to oversee major procuring agencies. In case after case, independent auditors, whether it be the GAO or SBA's own IG, continue to find significant failures in SBA oversight. It is not difficult to make the connection between the numerous shortfalls in SBA oversight and the overall decline of funding and staffing at the agency during the tenure of this Administration. Contrary to assurances made at the March 9, 2006 budget hearing before the Senate Committee on Small Business and Entrepreneurship, the SBA is not "doing more with less." Through numerous reports over the past two years, we continue to find significant and pernicious shortfalls in SBA's oversight of the programs and policies intended to promote greater opportunities for small firms.

On December 28, 2004, the Office of Advocacy at the SBA released an independent report citing that 44 companies listed as small in the Federal Procurement Data Center database were found to be "other than small." The study further estimated that over \$2 billion of federal contracts reported as being awarded to small firms were actually given

to 44 firms, 39 of which were found to be large. This report raised significant doubts about the reliability of procedures used by the SBA and its ability to monitor the federal government's small business goals effectively.

On May 18, 2005, the IG reported that the SBA had failed to define program and participant successes in the SBA Mentor Protégé program. The IG also found that program performance was not being measured by the Agency. The Mentor-Protégé Program is intended to enhance the capability of 8(a) participants to compete more successfully for contracts by encouraging business-to-business relationships between the 8(a) participants and larger, successful, and experienced federal contractors. However, with limited program oversight, the SBA is unable to measure its performance and is incapable of ensuring its efficacy.

On May 20, 2005, the Inspector General of the SBA released a report stating that they found "significant problems with the SBA's ability to obtain and track bundlings." The IG report also found that "the SBA was not reviewing the majority of procurements reported by agencies as bundled. Eighty seven percent of the reported potential bundlings, with a value of at least \$384 million, we identified during the survey were not reviewed by SBA." In response to my letter inquiring about the actions SBA has taken to implement the recommendations made by the IG, the SBA responded by stating that many of the contracts included in the IG report were not "new definitive contracts" and therefore should not be considered bundled contracts. In other words, since contracting officers chose to get around awarding new contracts by giving work to existing contractors, these awards should not be considered bundling. Instead of carrying out its duty by performing the proper contract reviews and holding the agencies accountable, the SBA chose to justify continued efforts by agencies to use regulatory loopholes and circumvent small businesses as federal contractors.

In the March 16th report, the IG reported that none of the agencies it contacted, "had procedures or other guidance that would detect if companies were not complying with [8(a)] regulations" even though all of them were operating under an MOU with the SBA. The SBA has ultimate responsibility, but failed to perform the oversight necessary to ensure that companies are compliant with programmatic rules. According to the IG, no reviews were conducted by SBA or the contracting agency. Therefore, violations were left undetected. In fact, the IG found that one company with 13 contracts of a combined value of \$2 million, violated subcontracting limitations, out-of-state work requirements, and even falsified payroll records. Allowing such brazen abuse of program rules and regulations, without even the most nominal levels of oversight from the agency, is nothing less than gross negligence and a dereliction of oversight duties on behalf of the SBA.

It is the SBA's duty to advocate on behalf of the nation's small firms. A key element of this advocacy is performing oversight of federal agencies and how they implement small business law, which includes monitoring the companies participating in SBA programs. By not performing this oversight duty and allowing rule violations to go undetected, the SBA has allowed companies to undermine the integrity of one of its key programs.

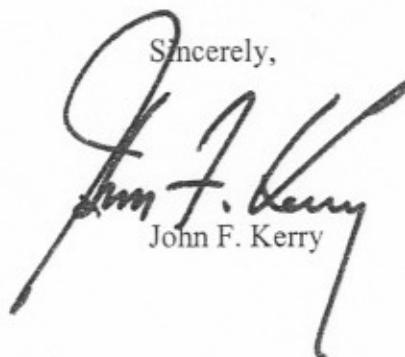
The SBA must develop a proactive solution to the challenge this current lack of oversight creates for the integrity of the 8(a) program. For over three decades, this essential business development program has assisted countless firms in creating hundreds of thousands of jobs, billions in tax revenue, and has played a direct role in the creation of a diverse supplier base for the federal government. An effective level of oversight must be maintained to ensure that violators are identified and held accountable for their actions. The SBA cannot allow inaction by procuring agencies or within its own ranks to undermine its cornerstone business development program.

In your capacity as the Administrator of the SBA and the designated advocate for small businesses throughout the country, I strongly urge you to do the following:

- Immediately recommend that the 8(a) participant found in the report to have violated numerous regulations of the program be disbarred and, if the IG finds grounds for a legal referral, send this case to the Department of Justice for criminal action.
- Direct the Associate Administrator of Government Contracting and Business Development (GCBD) to work with the IG to develop a comprehensive strategy for auditing existing 8(a) participants for similar violations.
- As recommended by the IG, direct the Associate Administrator of GCBD to revise the current MOU with the 26 major procuring agencies to require the monitoring of 8(a) BD compliance with specific contract and Federal Acquisition Regulation requirements.
- Direct the Associate Administrator of GCBD to provide an annual report to your office, the Senate Committee on Small Business and Entrepreneurship, and the House Small Business Committee detailing the surveillance reviews conducted by the GCBD office to ensure that agencies are performing the proper level of oversight necessary.

Please respond by Thursday, April 13, 2006 with the details of what specific actions the SBA plans to take to address the current shortfall in oversight and how the Agency plans to comply with the above request. It would also be helpful for your office to include details of what additional resources, if any, are needed by the Agency to ensure that a proper level of oversight can be consistently maintained. I look forward to your prompt response.

Sincerely,



John F. Kerry