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United States Senate

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

April 11, 2006

The Honorable Samuel W. Bodman
Secretary
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Dear Secretary Bodman:

I am writing to urge the Department of Energy (DoE) to perform a comprehensive evaluation of the Department's small business program and to put in place a plan to meet its small business utilization goals for prime contracting. In particular, I urge you to implement the recommendations made by the Government Accountability Office (GAO) in the April 2006 report titled, "DoE Contracting: Improved Program Management Could Help Achieve Small Business Goal."

The GAO report states, "DoE has not defined the concrete steps necessary to enable it to achieve its prime contracting goal and does not collect sufficient information to effectively assess its small business program efforts, identify problems, and implement changes that could further increase small business prime contracting."

While the DoE is the largest civilian contracting agency in the federal government, approximately \$22.8 billion in annual awards, it consistently has the lowest small business utilization achievement of any major agency. Part of this poor performance is because of its contract award structure. In 2005, approximately 87 percent of its procurement dollars were awarded to large facility management contractors, up from 80 percent in 2004. The remaining 13 percent of DoE's prime contract dollars were awarded to non-facility management contractors, and 4.15 percent of the total dollars were awarded to small firms. The GAO found that even this minimal achievement is endangered because the non-facility management contracts represent a declining share of total DoE procurements.

DoE's growing dependence on facility management contractors is making it increasingly difficult for the agency to meet its small business prime contracting goal as well as making it more difficult for non-facility management firms to compete for DoE contracts. On May 18, 2004, the GAO testified before the Senate Committee on Energy and Natural Resources regarding the ability of DoE to meet its small business goals. In her testimony, GAO Natural Resources and Environment Director Robin Nazzaro stated, "DoE's plan for achieving its near term small business prime contracting goals focuses primarily on directing more of the dollars not associated with facility management contracts to small businesses."¹ It is now clear that, due to the shrinking percentage of

¹ GAO-04-738T

contract dollars being awarded to non-facility management contractors, this strategy alone is not enough to effectively level the playing field for small businesses attempting to gain access to DoE contracts.

The trend of DoE's reliance on facility management contractors is a sign that procurement oversight is moving in the wrong direction, away from full transparency, cost savings through competition, and greater opportunities for small firms. The GAO has addressed the lack of DoE oversight of facility management contractors and the impact on small businesses on numerous occasions over the tenure of this Administration. The GAO has continued to highlight the need for contract reform, increased competition, risk reduction, schedule acceleration, and performance improvement by DoE contractors. Unfortunately, the DoE has been ineffective in its oversight of facility management prime contracts as well as the subcontracts they award.

In March 2005, the GAO released a report that concluded, "two major deficiencies – the lack of contracting criteria for major projects and the lack of reviews of the project management terms in major project contracts- have resulted in questionable DoE contracting decisions that limit its ability to effectively control costs and schedule performance." The report continues by pointing out, "since 1990, [the GAO has] designated DoE's contract management – broadly defined to include contract administration and project management- as a high risk area for fraud, waste, abuse, and mismanagement because of the department's history of inadequate management oversight and failure to hold its contractors accountable."²

The trend towards more work being included under facility management contracts also runs counter to bipartisan initiatives to prevent the unnecessary bundling of federal projects into large contracts unable to be performed by small, and in some cases, mid-sized firms. Congress has continued to reiterate its intent to enhance competition, reduce performance risk through effective oversight, and encourage cost savings by breaking out contracts and avoiding unnecessary bundling.

The response often received when concerns are raised about the lack of prime contract opportunities at DoE is that there are tremendous subcontracting opportunities through the facility management contractors, also known as Management and Operations (M&O) contractors. However, the GAO has documented significant shortfalls in subcontracting goal achievement, subcontract oversight, and problems inherent in relying solely upon subcontracts as a tool to create opportunities for small firms.

On May 13, 2005, the GAO released a report finding, "DoE has not taken adequate steps to address the problems with the small business subcontracting data reported by its facility management contractors, resulting in a lack of assurances that facility management contractors are providing maximum practicable opportunities for small business subcontracting." The GAO found that data on small business subcontracting was frequently overstated, data reported by facility management contractors was not

² GAO-05-123 p. 39

useful, and DoE oversight of subcontracting achievement by their prime contractors was inadequate.³

As subcontractors to large facility management contractors, small businesses must often compete for firm fixed price or fixed unit price subcontracts. According to the GAO, many of the prime contractors are performing under cost reimbursable, incentive fee contracts (cost plus contracts) which have been shown to increase costs for the federal government because DoE project managers simply adjust cost baselines when the large prime contractors over-run the original cost estimate⁴. Meanwhile, these same prime contractors often shift cost-overruns and risk to small business subcontractors through the award of hundreds of small, narrow scope niche subcontracts under firm fixed price subcontracts, most often to the lowest bidder. With a variable cost prime contract and fixed price subcontract structure, the cost increases found in many of these facility management contracts result from prime contractors applying their own overhead, general and administrative burden, and fees to fixed price subcontracts that already include performance-based fees. Clearly, relying on subcontracting as the primary tool for small business participation is not meeting the needs of the Agency or the intent of Congress for a diverse supplier base or cost savings in federal contracts that comes from competition.

Further, with only 13 percent of contract dollars at DoE being awarded to non-facility management contractors in 2005, and a trend towards more dollars being spent through these large prime contractors, targeting non-facility management contracts as a source for small business competition is not enough. More procurement activities need to be broken out from existing facility management contracts and there needs to be a greater emphasis on new procurement activities being competed among small firms. With only a 4.15 percent small business utilization rate, it is clear that the current level of outreach and breaking-out contracts is simply not working.

The supply of capable firms seeking opportunities to be prime contractors is sufficient to meet the needs of the agency, but what seems to be missing is the will of the management team at the DoE to breakout these contracts. In its "FY 2005 Strategic Plan for Small Business" the DoE's Office of Small Disadvantaged Business Utilization, Office of Economic Impact and Diversity (OEID), determined that there was a possibility of breaking out procurement activities from facility management contracts because their studies indicate that "small businesses are already doing the work as subcontractors and because there is an adequate supply of small business firms who can do the work."⁵ Further, in a March 22, 2005 letter to Secretary Bodman, then SBA Associate Deputy Administrator for Government Contracting and Business Development Allegra McCullough pointed out that SBA had assigned a new Procurement Center Representative (PCR) to work closely with DoE managers. Although this was a positive step, clearly this was not enough. Given the need for greater emphasis on breaking out

³ GAO-05-459 p. 4

⁴ GAO-05-123 p. 31

⁵ U.S. Department of Energy Office of Small Disadvantaged Business Utilization (OSDBU) FY 2005 Strategic Plan for Small Business, released April 21, 2005.

procurement activities from large facility management contracts, I strongly urge the DoE to request four additional PCRs be assigned to DoE major procurement centers with the primary duty of recommending the breakout of activities able to be performed by small and local firms.

Finally, the DoE management also needs to place a greater emphasis on incorporating capable small businesses into mission relevant activities. In its April 2006 report, the GAO found that a large portion of the 13 percent of contracts awarded to non-facility management contractors were for “legal services and facility design and construction activities.”⁶ Small businesses are growing in size, sophistication, capabilities, and capacity every day and have much to offer in high tech, research and development and energy industries. Limiting small firm participation to non-core services excludes some of the most inventive and technologically advanced firms in helping the DoE meet its primary objectives.

The DoE must work with the SBA to re-examine its current efforts, along with all outstanding MOUs, and develop a comprehensive, effective strategy for increasing opportunities for small business because it is clear that while minimal progress has been made, the status quo is simply not meeting the goals set by both agencies. Implementing the following recommendations would greatly assist the DoE in meeting its small business goals and would address the concerns raised by the GAO:

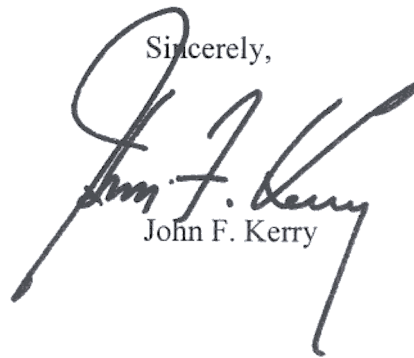
- Request that SBA Administrator Barreto assign four additional Procurement Center Representatives (PCRs) to the Department of Energy to assist in the breakout of procurement activities for small business participation;
- Direct all facility management contractors to develop and report a strategy, in coordination with the Office of Small Disadvantaged Business Utilization (OSDBU), to increase small business participation in research and development, and core DoE activities;
 - Direct the DoE procurement workforce to organize new task orders as competitive contracts instead of simply incorporating them into pre-existing facility management contracts; and
 - Develop a strategy to collect sufficient information on the successes and shortfalls in your current small business program so the Department can identify problems and implement changes that could further increase small business prime contracting.

It is evident by the minor increases in number and contract dollars being awarded to small firms, as described by the GAO, that some steps have been taken to move the Department in the right direction. However, a greater level of data collection, analysis and a stronger commitment to an effective strategy is necessary if the Department is to improve its small business record.

⁶ GAO-06-501 p. 2.

I hope to continue working with you to ensure that small businesses receive a greater share of contract dollars awarded at the DoE and that they are afforded the greatest opportunity to play a more significant role in the Department's core mission. These firms can offer the cost savings and technical innovation that is so greatly needed to meet the Department's needs. Please respond by Friday, April 28, 2006 with the details of what specific actions the DoE will take to implement the above recommendations. 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 "K".

John F. Kerry