



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

OFFICE OF THE CHIEF COUNSEL FOR ADVOCACY

April 13, 2005

Via Facsimile and E-Mail

The Honorable Olympia Snowe
Chair, Committee on Small Business and
Entrepreneurship
United States Senate
Washington, DC 20510

**RE: Office of Advocacy Position on Section 6023 of H.R. 1268, the Iraq/Afghanistan
Emergency Supplemental Appropriations Act for 2005**

Madame Chair:

Thank you for your letter requesting the Office of Advocacy's position on the proposed section 6023 of H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005. This proposed section would allow subcontracts awarded by the Department of Energy (DOE) to be considered as part of its 23 percent small business contract goal. It is my position that this section would be harmful to the small business contracting community.

Prior to my appointment to this position as Chief Counsel, the Office of Advocacy was involved in efforts between the small business community, Congress, Small Business Administration (SBA) and the Office of Federal Procurement Policy (OFPP) to change the manner in which DOE was counting its small business contract awards. As a result of this collective effort in 2000, OFPP issued guidance to DOE and SBA that brought DOE's small business goal methodology more in line with the rest of the federal agencies. Since 2000 DOE has been required to count only direct awards to small business as part of its 23 percent goal. DOE has been making an effort to achieve this goal and the Office of Advocacy has commended DOE in several forums on its efforts to implement better programs to achieve its 23 percent small business goal.

The proposed Section 6023 is a step backwards in trying to get DOE to become more compliant with statutory and regulatory requirements in its award of direct prime contracts to small business. In fact, a review of past congressional hearing records going back to the early 1980s shows that DOE has been less than diligent in its contracting with small businesses. However, the 2000 OFPP guidance to SBA and DOE was a step in the right direction. DOE has made progress in meeting its 23 percent goal. In FY 2004, DOE awards of prime contracts to small business represented a 76 percent increase from the \$511 million prime contract dollars awarded in FY 2001.



As I travel across the United States I have been approached on numerous occasions by small business subcontractors who are frustrated by their inability to find a level playing field to compete as primes for federal contracts. Some of these contractors are not being paid in a timely manner by their primes and the procuring agencies are taking a hands-off approach. The proposed section 6023 does nothing to address this. Prior to the OFPP guidance in 2000, DOE awarded more than a majority of its contracts to small business as subcontractors. If DOE is permitted to combine prime and subcontracting numbers to reach its goal of 23 percent, the majority of their small businesses will likely be subcontractors and could face prompt payment problems and other issues that DOE is not willing to correct because of a reluctance to influence the prime/sub contractors' relationships.

From a broader perspective, Section 6023 creates a bad precedent, likely to be followed by other agencies and departments. This Administration has achieved progress in helping small business access the federal procurement system. In fact, President Bush's Small Business Agenda, announced in March of 2002, included his commitment to improve the access of small businesses to government contracts.

The President's strategy is working, as federal agencies met their statutory goal by awarding 23.6 percent of prime contracts to small business in FY 2003. Section 6023 sets a precedent that moves federal contracting in the opposite direction.

For these reasons, the Office of Advocacy opposes the proposed section 6023 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005. Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office, so the views expressed in this letter do not necessarily reflect the views of the SBA or of the Administration.

Thank you for this opportunity to share our views on this proposed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. M. Sullivan', written over a light blue horizontal line.

Thomas M. Sullivan
Chief Counsel for Advocacy

cc: The Honorable John F. Kerry, Ranking Member

OLYMPIA J. SNOWE, MAINE, CHAIR
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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

April 13, 2005

BY FACSIMILE (202)205-6928

ORIGINAL BY U.S. MAIL

The Honorable Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration
409 3rd Street S.W.
Washington, D.C. 20416

Dear Mr. Sullivan:

The Senate is currently considering H.R. 1268, the Iraq/Afghanistan Emergency Supplemental Appropriations Act for 2005. H.R. 1268, as reported by the Senate Appropriations Committee, contains a provision (Section 6023) that would amend the Small Business Act to permit the Department of Energy (DOE) to count subcontracts awarded by its Management and Operations (M&O) contractors and other large prime contractors towards their small business prime contracting goal. Furthermore, Section 6023 would cap the total agency small business prime contracting and subcontracting goals at 23 percent.

Since 1991, the Senate Committee on Small Business and Entrepreneurship has been of the view that the DOE must comply with the provisions of the Small Business Act and related acquisition regulations with regard to the proper counting of its prime contracts and subcontracts, and that the DOE must make every effort to meet the government-wide goal of 23% small business utilization in prime contracts.

We ask that you formally comment on the policies of Section 6023 and the effect this legislation would have on the ability for small businesses to compete for prime contracting dollars at the Department of Energy and throughout the Federal government.

Given the urgency of this important matter, your prompt response is greatly appreciated.

Thank you.

Sincerely,


OLYMPIA J. SNOWE
Chair


JOHN F. KERRY
Ranking Member