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United States Senate

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

April 16, 2007

The Honorable Robert C. Byrd
Chairman
The Honorable Thad Cochran
Ranking Member
Committee on Appropriations
United States Senate
Washington, DC 20510

RE: Provisions in emergency supplemental that threaten small business participation
in Federal contracts

Dear Chairman Byrd and Ranking Member Cochran,

As Chairman and Ranking Member of the Senate Committee on Small Business and Entrepreneurship, we write to express our deep concerns about certain government contracting provisions contained in Title V of the "U.S. Troop Readiness, Veterans' Health, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (H.R. 1591), as passed by the U.S. House of Representatives. Specifically, we are concerned with the language of Sections 5001 and 5002 of H.R. 1591.

This language, while well-intentioned, has the potential to summarily invalidate all Federal contracting set-aside programs and preferences for small business concerns established by the Small Business Act of 1953, the Small Business Innovation Development Act of 1982, and the Small Business Technology Transfer Act of 1992. Furthermore, small businesses that prevail without set-asides and preferences in head-to-head competitions against large corporations would be required to bear the full financial risk of Federal contracting projects. As a result, small businesses could effectively be driven out of the Federal procurement process. At stake here is nothing less than the loss of \$80 billion in Federal contracts currently received each year by small businesses all across America.

Section 5001 of H.R. 1591 requires all Federal agencies with over \$1 billion in contracts to establish plans to promote "competitive procedures" for government contracts. Read literally, this language discards small business set-asides and preferences which promote competition by restricting suitable opportunities to small business concerns. As a result, Section 5001 would force small businesses to bid directly against large, entrenched, multi-billion dollar corporations that have traditionally received Federal government contracts.

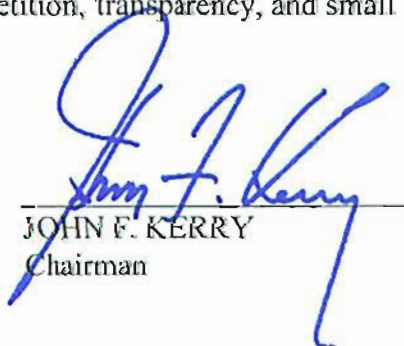
For over 50 years, Congress has countered industrial concentration and promoted competition by creating contracting set-aside programs, goals, and preferences that stimulate the productive capacity of small business concerns. As stated in Section 2 of the Small Business Act, 15 U.S.C. § 631(a), “[i]t is the declared policy of the Congress that the Government should aid, counsel, assist, and protect ... the interests of small-business concerns in order to preserve free competitive enterprise, [and] to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government ... be placed with small-business enterprises.”

Congress has authorized set-aside contracts under restricted competition, or even sole source procedures, for numerous groups, including small businesses; small disadvantaged businesses; Native American, Native Hawaiian, and Native Alaskan businesses; Section 8(a)-certified companies; Historically Underutilized Business Zone (HUBZone) small businesses; women-owned small businesses; small businesses owned by veterans and service-disabled veterans; small hi-tech businesses under the Small Business Innovation Research program; and small business-research institution partnerships under the Small Business Technology Transfer program. Section 5001 puts all these small business groups at the risk of losing their hard-won contracting opportunities.

Additionally, Section 5002 of H.R. 1591 requires Federal agencies with over \$1 billion a year in government contracts to minimize the use of cost-reimbursement contracts in favor of fixed-price contracts. We understand that this language is aimed at protecting taxpayers against inflated costs on large-scale Federal projects. However, we are very concerned that fixed-price contracts may put undue financial pressures on small business concerns working on new or risky projects to advance our national interests. We believe that, in fairness, small businesses should be able to recover their costs in appropriate circumstances.

Most importantly, procurement reform affecting small businesses falls within the jurisdiction of the Small Business Committees in the Senate and the House, neither of which considered the contracting reform language included in Title V. Accordingly, we strongly object to the inclusion of these provisions into the Conference Report for the Emergency Supplemental bill and ask that you remove this language in conference. All contracts awarded pursuant to the Small Business Act, the Small Business Innovation Development Act, the Small Business Technology Transfer Act, and implementing regulations, must be fully exempt from Section 5001 and 5002. We look forward to working together with all relevant committees to improve competition, transparency, and small business participation in the Federal contracting system.

Sincerely,



JOHN F. KERRY
Chairman



OLYMPIA J. SNOWE
Ranking Member