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Kerry, Snowe Seek to Halt Elimination of Small Business Contracts at GSA

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This week, Senators John Kerry (D-Mass.) and Olympia J. Snowe (R-Maine), Chairman and Ranking Member of the Committee on Small Business and Entrepreneurship, called on the General Services Administration (GSA) to postpone implementing a policy that could have a detrimental impact on many small businesses until a study evaluating the proposal could be completed. Five months after a bipartisan group of members requested that the GSA halt plans to eliminate some small business contracts, the GSA is preparing to drop office supplies from its Global Supply Stock Program. Currently, nearly 80 percent of government office supply purchases through this program are directed to small businesses.

“Eliminating contracts that small businesses successfully competed to win, without a full understanding of the negative impacts, is unacceptable,” said Senator Kerry. “Despite a bipartisan effort to fix this situation, the Bush Administration appears determined to cut small businesses out of the picture.”

“It is crucial that we fully understand how the GSA’s removal of office supplies from the Stock Program will impact small businesses,” said Senator Snowe. “Currently, 80 percent of the Stock Program’s office supply procurements are directed to small businesses suppliers. I am concerned that the elimination of these contracts could have a detrimental impact on our nation’s small

enterprises. Every avenue must be explored to ensure that small businesses are not faced with further barriers in accessing government contracts.”

Senators Kerry and Snowe also asked the Government Accountability Office (GAO) to review the consequences given that the Stock Program’s office products create a vital and readily accessible resource to all government agencies for their various supply needs in times of emergency.

In July, Senators Kerry and Snowe were joined by Senator Johnny Isakson (R-Ga.), and the Chair and Ranking Member of the House Small Business Committee, Nydia Velazquez (D-N.Y.) and Steve Chabot (R-Ohio) in urging the GSA to re-evaluate their proposal.

Following are the text of the letters Kerry and Snowe sent to the GSA and GAO:

Ms. Lurita Doan
GSA Administrator
U.S. General Services Administration
1800 F Street, N.W.
Washington, DC 20405-0002

Dear Administrator Doan:

It has been brought to our attention that the General Services Administration (GSA) has not adequately addressed the concerns we raised in our letter of July 6, 2007 and is still actively working to eliminate office supplies from the Stock Program. We were especially disappointed to learn that GSA plans to issue a new solicitation in the next few weeks to outsource these products to a private vendor.

Before GSA moves forward, we request that a temporary halt be placed on this effort until Congress has had a chance to review this issue in greater detail. We’re concerned that outsourcing these office supplies will have a devastating effect on the small businesses currently supplying these products. We are also alarmed about the impact the elimination of the Stock Program will have on our Nation’s emergency readiness capabilities. Having office supplies readily available is important to our ability to react quickly to disasters. Before GSA eliminates any items from the Stock Program, we would like to fully understand all the consequences of this action.

We are also requesting that the Government Accountability Office (GAO) perform a study of this issue and report back to us as quickly as possible on their findings. We have reviewed past GAO reports on office supplies and the Stock Program but believe that a current GAO review is needed before GSA takes any further steps to terminate the program. We request that you take no further action toward eliminating office supplies or any other items from the Stock Program until we have had adequate time to review the GAO’s findings.

Thank you for your cooperation with this request. We look forward to working with you to strengthen the Stock Program and give our small businesses a level playing field in the federal procurement arena.

The Honorable David M. Walker
Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Walker:

We have been informed that the General Services Administration (GSA) will eliminate office supplies from its Global Supply Stock Program as part of the strategic sourcing initiative recently established by the Office of Management and Budget. As Chairman and Ranking Member of the Senate Committee on Small Business and Entrepreneurship, we are concerned about this development because the Stock Program has experienced high levels of small business participation. In addition, due to this program, multiple small businesses currently provide office products to supply depots across the nation for stockpiling in the event of a major disaster.

In light of our concerns, we request that the Government Accountability Office evaluate:

- The extent to which small businesses will continue to have opportunities for large scale participation in federal office supply contract awards if the GSA eliminates office supplies from its Global Supply Stock Program, and
- How elimination of GSA's Global Supply Stock Program would affect our country's ability to react quickly to major disasters.

We recognize that the changes contemplated by the GSA, as part of the strategic sourcing initiative are being developed to speed up the acquisition process and save taxpayer funds, and we would welcome your evaluation of whether such efficiencies are likely to be realized. Regardless, we think it is imperative that you assist Congressional review of this matter in greater detail and consider potential detrimental economic impacts to small businesses before GSA terminates office supplies from the Stock Program.

SBA Releases '06 List Ranking Small Firms Receiving Most Federal Contract Dollars

The Small Business Administration recently released a list showing that 26 of the 100 small businesses that received the highest amount of funding under government contracts in 2006 are now identified as "other than small" in the Central Contractor Registration.

Sixteen of those companies have outgrown the size standard identifying them as small, nine of the firms have been purchased, and one was merged with another company as part of a joint venture, according to the list released Nov. 30. Four other firms on the list were miscoded in the small business procurement database, with three incorrectly listed as "other than small." The fourth, Dyncorp, never represented itself as a small business, but received a contract for computer system design services that apparently was miscoded as small.

The small business list also shows that 12 of the top 100 recipients of federal contracts in 2006 were Alaska Native Corporations, eight of which also were classified as having outgrown the size standard. The revised status of firms on the SBA list comes on the heels of recent steps to address concerns that small business contracts were actually awarded to contractors that were not small.

SBA last June implemented a new rule requiring small businesses holding long-term federal contracts to re-certify their size before the beginning of the sixth contract year and before any options are exercised extending the contract beyond that period. Under the rule, if a company is no longer small, the contract continues but the federal government can no longer count it as a small business contract.

Earlier, in October 2006, SBA and the Office of Federal Procurement Policy directed federal agencies to check the accuracy of data on small business contracts. The FY 2005 and 2006 data have since been "scrubbed" to correct inaccuracies due to miscoding and other data errors. The 14-month review of 11 million contract actions for those two fiscal years was completed last June and resulted in the removal of \$4.6 billion in incorrectly coded contracts from the database, SBA said in releasing the latest list. Federal agencies will have to make up the difference by awarding new contracts to small businesses in order to meet their contracting targets, according to the agency.

A goaling report for FY 2006 released by SBA Aug. 17 showed that \$77.7 billion in federal contracts were awarded to small businesses that year, \$2.7 billion more than the previous fiscal year. The \$77.7 billion represents 22.8 percent of contracts, which is shy of the 23 percent governmentwide small business procurement goal

New Government Web Site Features Searchable Database of Federal Contracts

The Office of Management and Budget Dec. 13 launched a new Web site that includes a searchable online database of all government contracts, offering the public what government transparency advocates hail as a "Google" for federal spending. The new Web site (www.USASpending.gov) allows users to track government contracts and grants with information including the name of recipient, the amount of the contract, purpose of the contract, and the congressional district of the entity receiving the contract.

With the introduction of the Web site, OMB Director Jim Nussle said, "Information on how taxpayers' hard-earned money is being spent in Washington will just be a mouse-click away." He added, "This sort of transparency breeds accountability among those entrusted with spending the public's money." The new Web site comes as a result of legislation enacted by Congress in 2006, the Federal Funding Accountability and Transparency Act, which required the government to establish a Web site reporting detailed information on all government transactions that exceed \$25,000. OMB initially launched such a Web site in interim form (www.FederalSpending.gov) last February.

In building the Web site, OMB worked with OMB Watch, a government watchdog group promoting transparency, which had already created its own Web site (www.FedSpending.org) containing many of the features mandated by the legislation. Sponsors of the Transparency Act included Sens. Tom Coburn (R-Okla.), Barack Obama (D-Ill.), John McCain (R-Arizona), and Tom Carper (D-Del.), as well as Reps. Roy Blunt (R-Mo.) and Tom Davis (R-Va.).

Nussle said the Web site remains a "work in progress" and noted that OMB will continue to work with agencies and members of the public to ensure the site is user-friendly and efficient. OMB Watch applauded the new OMB Web site, but noted that it has challenged OMB and Congress to expand the federal spending information to include content about contract awards and data on contractor and grantee performance and their compliance with laws and regulations.

The new OMB Web site is: www.USASpending.gov. The OMB Watch Web site is: www.FedSpending.org.

Senate Small Business Panel Asks SBA For Progress Report at January Hearing

In advance of a hearing to be held in late January, Sens. John Kerry (D-Mass) and Olympia Snowe (R-Maine), the chair and ranking member of the Senate Small Business and Entrepreneurship Committee, have asked the Bush administration for updates on the federal government's progress in meeting small business contracting goals, implementing the women-owned small business program, and making regulatory changes to certain small business set-aside programs.

In a Dec. 5 letter to SBA Administrator Steven Preston, Kerry and Snowe listed these and a number of issues that were raised this year in oversight hearings that they plan to follow up early next year. Some of the areas of concern, including the need to update the set-aside programs for small disadvantaged businesses, firms owned by socially and/or economically disadvantaged individuals, and small businesses located in low-income, high-unemployment areas, are addressed in legislation (S. 2300) introduced by the two senators Nov. 1 and approved unanimously by the committee Nov. 7.

Kerry and Snowe both are critics of the administration's record with respect to steering federal contracts to small businesses, the failure of government agencies to meet statutory goals for awarding contracts to small businesses, and the lack of progress in implementing the women-owned small business program, which was called for in legislation enacted seven years ago. Among the provisions in their bill is one that would require SBA to implement the women-owned small business program within 90 days.

In a statement announcing plans for the oversight hearing next month, Kerry credited Preston with "taking steps to turn his agency around," while adding that the committee "will be persistent" in working to get improved small business programs "off the ground without further delay." Kerry last May called on SBA to immediately implement the set-aside program to provide women-owned small businesses improved procurement opportunities.

"I am keenly interested to learn of actions the SBA is taking with respect to, among other issues, the final implementation of the Women's Contracting Set-Aside program," Snowe said in the statement.

Small Businesses Lead U.S. Growth: Report Documents Small Firms' Significant Economic Impacts in 2006

Small businesses continued to lead growth in the U.S. economy in 2006, according to a report issued today by the Office of Advocacy of the U.S. Small Business Administration.

"Today's report shows that overall, small firms continue to drive a resilient U.S. economy," said Advocacy Chief Economist Chad Moutray. "In releasing this annual small business research report, we are pleased also to showcase new research by economists in the field of small business and entrepreneurship."

Moutray released the report at a December 19 meeting of the Rotary Club of Washington, DC. The study, *The Small Business Economy: A Report to the President for 2007*, is the Office of Advocacy's annual report on the state of small business in America.

The report reviews the economic environment for small businesses in the year 2006, including the financial and federal procurement marketplaces. New research focuses on minority- and veteran-owned businesses, social entrepreneurship, and pre-venture planning. Other chapters and appendices provide data on small business and an update on Office of Advocacy initiatives.

The Office of Advocacy, the “small business watchdog” of the federal government, examines the role and status of small business in the economy and independently represents the views of small business to federal agencies, Congress, and the President. It is the source for small business statistics presented in user-friendly formats, and it funds research into small business issues.

For more information and a complete copy of the report, visit the Office of Advocacy website at www.sba.gov/advo.

Centech Failed to Comply With Subcontracting Limitation, Rescission Proper

The U.S. Court of Federal Claims Dec. 13 upheld the Air Force's rescission of a contract award to the Centech Group following a determination by the Government Accountability Office that the small business failed to comply with the limitation on subcontracting imposed by statute and the solicitation (*The Centech Group Inc. v. United States, et al.*, Fed. Cl., No. 07-513C, 12/13/07).

The court rejected Centech's contention that compliance with the Limitations on Subcontracting (LOS) Clause--which requires that at least 50 percent of a contract's personnel costs be expended on employees of the small business prime contractor--was not required to be evaluated as a condition for award under the original solicitation, but instead should have been examined after award, once the Air Force defined its actual requirements and the costs of labor to be performed by the prime contractor and its subcontractors could be determined.

Centech's proposal, on its face, violated both the Small Business Act and the LOS clause because Centech did not offer to expend 50 percent of the personnel costs on its own employees, the court said. The Small Business Administration's later determination that Centech would meet the 50 percent mandate during performance does not alter this fact.

However, because the Air Force erroneously notified offerors that they could comply with the LOS clause collectively with their subcontractor small businesses, Centech may be entitled to recover some of its bid and proposal preparation costs if it can demonstrate that such costs were wasted, the court added. Noting that the Air Force does not expect to make a new award determination until April, the court remanded the matter to the Air Force pending that determination.

In its decision on the merits, the court refused to reinstate the original award and held that the Air Force was justified in following GAO's recommendation. The court pointed out that the Small Business Act states that a concern may not be awarded a contract as a small business unless it agrees that at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

Because Centech's proposal did not do that, it violated the Small Business Act, which "makes the prime contractor's agreement to perform 50 percent of the labor costs itself a prerequisite to obtaining the award," the court said.

IG to Review DHS Assessments Of Contractor Responsibility This Year

The Department of Homeland Security's Office Inspector General is planning to assess whether the agency is taking sufficient steps to ensure companies it does business with are eligible for federal contracts.

"When an agency becomes aware of a contractor's poor performance, it should take action that may lead to suspension or debarment," the OIG said in its performance plan for FY 2008. However, while DHS "spends more than one-third of its budget through contracts ..., it took not one suspension or debarment action" in either fiscal year 2005 or 2006, according to the OIG.

The upcoming review, which will be conducted by OIG's Office of Audits, will assess the extent to which DHS is complying with applicable federal and DHS policies, procedures, and internal controls to ensure that it is not contracting with companies that have been suspended or debarred or are otherwise ineligible for new federal contracts. It also will examine whether the agency is taking appropriate measures "to address performance or conduct problems with contractors, up to and including debarment," according to the plan.

DHS's assessments of contractor responsibility, particularly the degree to which it examines contractor past performance, were criticized at a House Homeland Security Committee hearing last April. Recommendations for improvement raised at that hearing included reviewing the agency's use of the suspension and debarment system and whether it has been applied to large contractors with repeated histories of misconduct. The Government Accountability Office reported last February that DHS continues to be a "high-risk" agency and that its acquisition systems will require continued attention to help prevent waste, fraud, and abuse.

The OIG's review of DHS assessments of contractor responsibility is just one of a number of examinations of agency acquisition practices expected for this year, according to the performance plan. The Federal Emergency Management Agency will continue to be subject to scrutiny due to the contracting problems revealed by its poor response following Hurricane Katrina's destruction of the Gulf Coast region in August 2005. Upcoming OIG audits of FEMA will include assessments of

whether FEMA has improved both its acquisition workforce and its overall acquisition process--"from requirements identification through closeout of the final contract action"--according to the plan. The OIG also will review FEMA's execution of interagency agreements with other federal agencies to obtain goods and services for disaster work that is expected to last more than 60 days.

According to the OIG, FEMA has implemented a number of important changes in the acquisition area, but concerns remain as to "whether significant policy changes have been properly documented, and if staff has been informed and trained so that there is effective and efficient implementation of these policies in the field." In light of these concerns, the IG plans to audit 10 disaster contracts that are unrelated to the Gulf Coast region to determine whether FEMA has improved its ability to manage disaster contracts and better protect against waste, fraud, and abuse. Audits originally planned for FY 2007 that have been carried over for performance in FY 2008 include examinations of FEMA's:

- pre-disaster readiness contracts;
- multilayered disaster contracts; and
- debris removal program.

The FY 2008 performance plan for the DHS OIG is available at:

http://www.dhs.gov/xoig/assets/OIG_APP_FY08.pdf.

Legislative

Bill Number	Sponsor	Description	Action
H.R. 2764	Lowey	To provide FY 2008 appropriations for the departments of Agriculture, Commerce, Justice, State, Energy, Homeland Security, Interior, Labor, Health and Human Services, Veterans Affairs, Transportation, and Housing and Urban Development	Passed by Senate 76-17 12/18/07; passed by House 272-142 12/19/07
H.R. 4253	Altmire	To improve and expand small business programs for veterans of the Armed Forces and military reservists	Passed by House 407-2 12/6/07; passed by Senate by unanimous consent 12/19/07
H.R. 4854	Berman	To amend the False Claims Act to address judicial opinions restricting application of the law and to strengthen incentives for whistleblowers to act when they discover fraud against the government	Introduced 12/19/07; referred to Judiciary

H.R. 4881	Ellsworth	To prohibit the award of contracts above the simplified acquisition threshold unless the prospective contractor certifies in writing to the contracting agency that it has no seriously delinquent tax debts	Introduced 12/19/07; referred to Oversight & Government Reform
H.J.Res. 72	Obey	To make further appropriations for FY 2008 through Dec. 31, 2007	Passed by House by voice vote and by Senate by unanimous consent 12/19/07
S. 274	Akaka	To strengthen protections for federal employees who blow the whistle on government waste, fraud, and abuse	Passed by Senate 12/19/07
S. 863	Sessions	To amend Title 18 of the U.S. Code with respect to fraud in connection with major disaster or emergency funds	Passed by Senate by unanimous consent 12/14/07; passed by House under suspension of the rules 12/19/07
S. 924	Cantwell	To reform the Coast Guard's Deepwater fleet modernization program	Passed by Senate 12/19/07 by unanimous consent
S. 2488	Leahy	To update the Freedom of Information Act to promote accessibility, accountability, and openness in government	Passed by House by voice vote 12/18/07
S. 2519	Obama	To prohibit the award of contracts above the simplified acquisition threshold unless the prospective contractor certifies in writing to the contracting agency that it has no seriously delinquent tax debts	Introduced 12/19/07; referred to Homeland Security & Governmental Affairs