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Trust in Government Procurement at Crisis Level Simple Solution to Solve Women Procurement Dilemma Offered

SAINT AUGUSTINE, FL , JANUARY 30, 2008. - The OFPP Administrator position to avoid issuing a statutory ruling on the 'consistency of the FAR Exemptions' with the FAR and applicable law' claiming that the Fairness in Procurement Alliance's (FPA) *"request falls outside the scope of section 25(c)(4)(A) because this section does not cover review of a legal opinion."* has inspired FPA founder, Raul Espinosa, to reject the OFPP 'non-answer' position and demand a Congressional Oversight hearing on the subject. *"At a Senate Hearing today, FPA offered a simple entrepreneurial solution to replace the proposed bizarre ruling on the women set-aside procurement to demonstrate how entrepreneurs can help avoid a crisis,"* he said.

Espinosa, Founder of FPA, a coalition representing the procurement interests of 10 million small businesses, has been leading the small business advocacy effort to level the procurement playing field by freeing up – as per the statute - \$60 billion in annual Federal procurements for small and disadvantaged businesses. In his letter to OFPP, he said, *"your response did not address my request and is not acceptable. I would, again, request you to issue the required 'ruling' and respect my rights – granted to me by the statute that created your office."*

Espinosa had asked Bob Coakley, who had served as the staff lead on the Governmental Affairs Committee for Senator Chiles of Florida - the father of the Office of Federal Procurement Policy Act, and the author of Section 421 (C) (4) and (5) - whether the OFFP response should be considered responsive to the Congress' intent to enable citizens to inquire whether procurement regulations were consistent with the FAR. Mr. Coakley said, *"The OFPP Administrator did not address whether the procurement regulation FPA inquired about was consistent with the FAR and applicable law."* He added, *"his non-answer, when matched up with the Congressional intent supporting his statutory responsibility, amounts to an abrogation of his responsibility under the law."*

The FAR Exemptions have been responsible for the diversion of \$640 Billion dollars in Federal contracts away from the statutory rights of small businesses over the last decade. A SBA legal opinion, prompted also by Espinosa, had declared the GSA exemption illegal. An additional SBA legal opinion on the 'foreign exemptions,' promised to Espinosa by the SBA General Counsel, is expected soon in like fashion.

"The Federal Government is speeding toward a procurement policy crisis because bureaucrats seldom think of out-of-the-box solutions. This is particularly true when it comes to procurement set-asides policy," Espinosa said. He added, *"They too often are merely interested in the promulgation of their own views even if it means bashing their own experts and disobeying statutory mandates."*

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The OFPP Administrator had confirmed that the FAR exemptions *“exempt individual orders under GSA Schedules and overseas procurements from certain **mandatory** small business preferences programs, while preserving agency discretion to consider small businesses in these orders and procurements.”* Borden Hallows, Esq., Director of FPA's Legal arm said, *“Such ‘agency discretion’ has no statutory grounds and the Administrator is required, by statute, to remove it from the FAR.”*

Both Senator John Kerry and Senator Olympia Snowe, Chairman and Ranking Member of the Senate Committee of Small Business and Entrepreneurship have gone on record, on a letter to Secretary of State Powell dated January 15th, 2005, stating *“the unambiguous Congressional intent (is) that the Act govern all procurements...”* They went on to say, *“Executive Departments do not have the discretion to interpret the law in a matter inconsistent with its plain language.”* As far as the ‘foreign exemptions, they added,, *“we urge... to clearly commit to compliance with the Small Business Act in all procurements regardless of the place of performance and to modify its regulations accordingly.”*

Mr. Hallows claims Mr. Denett has disregarded his duties and offered a ‘personal opinion,’ saying, *“I am not convinced that these regulations should be revised.”* Hallows added, *“Such attitude disregards the Congressional mandate and is absolutely preposterous. “*

Espinosa added, *“What Mr. Denett should have done was to seek Legal Opinions from GAO , the Office of Advocacy and the Department of Justice, if necessary, to ascertain the consistency of the FAR Exemptions with applicable law.”*

Too much bureaucracy to solve business issues has lead to a long line of poor decisions, unnecessary delays and bias rulings including the recent blunder on the handling of the women-set-asides mandate, which took 13 years to develop. Espinosa relied on the January 30th Senate Hearing to demonstrate through a simple idea how entrepreneurial thinking can help bureaucrats avoid a procurement crisis.

This OFPP blunder, and the plight of women-owned businesses are clear indications that that everyone, small businesses, bureaucrats, and elected officials would be far better off by supporting a creative non-partisan and entrepreneur-driven private initiative making its way through the system. This initiative will transform and add value, nurture, and enhance procurement opportunities for small and disadvantaged businesses including women-owned businesses

This joint effort between the Fairness in Procurement Alliance (FPA) and the University of North Florida (UNF) would be formally announced soon. With the private umbrella initiative in place, procurement set-aside programs will be not only respected, but protected. The Center will contain a legal unit to both defend the statutory rights of small businesses, prevent their abuse and facilitate the litigation of their cases, an opportunity they never had. The umbrella initiative would avert a procurement crisis that would otherwise occur by relying on bureaucrats - until hell freezes over - for the solutions.



The mission of the Fairness in Procurement Alliance (FPA) is to bring fairness to public procurements so that small and disadvantaged businesses can both compete and prosper at the federal, state and local levels. FPA activities are aimed at protecting and enhancing ‘set-aside programs’ so they can meet their intended result

To access the filings and documents on the cases against the FAR Exemptions, go to

<http://www.fpaportal.org/FPA/NewsAndPress.aspx>