

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Government Management, Organization, and Procurement Subcommittee Hearing

September 26th, 2007

“Federal Contracting: Removing Hurdles for Minority-Owned Small Businesses”

Statement by

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Chairman Towns, ranking member Cong. Bilbray, distinguished Committee member, As Founder of the Fairness in Procurement Alliance (FPA), ¹ I was pleased to learn of this hearing about removing abusive practices for minority businesses in government contracting. It is very unfortunate that Congress has not heard of the bias that does exist, in government contracting, not only against minorities and women, but against small businesses in general. I trust that my testimony will shed light into the need to improve the efficiency and operations of the federal procurement system.

My company, for example, has lost over \$3M over solicitations, which reeked with bias and/or endemic contracting abuse practices. I have reported these practices – in a well-documented report ² - to the Air Force with absolutely no success and no follow-up. Dozens of associates, whom I have counseled, have suffered worse experiences than mine, but they are unwilling to speak up, frankly, for fear or retaliatory actions against their companies. Even though the Government claims there are penalties for the violations, nobody is enforcing them so. . . what good are they?

I was so determined to demonstrate this bias and abuse that I brought up (and won) in 2005 – at considerable expense - a size protest test case ³ for the sole purpose of demonstrating that ‘size protests’ do not bring justice to small businesses when they win their cases and the ‘protest system’ needs to be overhauled. Again, no progress has been made on that front either. And. . . there’s more.

GAO is currently reviewing my mammoth test case protest ⁴ challenging the legality of the so call ‘FAR exemptions.’ These ‘exemptions’ have illegally, diverted \$640

¹ <http://www.prweb.com/prfiles/2007/09/13/162468/WHATISFAIRNESSINPROCUREMENTALLIANCE.pdf>

² <http://ww1.prweb.com/prfiles/2005/10/24/302024/AFContractingAbuseReport.pdf>

³ <http://www.prweb.com/releases/2005/10/prweb302024.htm>

⁴ <http://www.prweb.com/prfiles/2007/09/13/162468/FitNetProtestB309911.pdf>

Billion worth of Federal contracts away from small businesses ⁵ over the last decade! I have documented - with the full support of the trade groups ⁶, which represent our constituency of 10 million small businesses, that these FAR exemptions have no statutory basis nor authority to exempt small businesses on contracts from \$3,000 to \$100,000.

In spite of having numerous Members of Congress confirmed the allegations, and demand investigations ⁷, as my Congressman, John Mica, has, regulators have continued – through these ‘exemptions’ - to influence the procurement community and damage the rights of small businesses to access contracts Congress intended – by statute – for the small businesses to have. The regulators’ actions, have been worse than 9/11 and Katrina combined !

In spite of a very recent (Sept. 4th) historic SBA ruling ⁸ which has received little, if any, media attention, confirming the illegality of these exemptions, the government, specifically GSA, is now attempting to prevent GAO from ruling on this mammoth protest claiming that (get a hold of this one). . . “I am not an interested party” due to the same illegal FAR exemptions, I am challenging. How arrogant can the government be?

Using a whistle blower statute, I wrote the OFPP Administrator ⁹ requesting him to ‘determine the *consistency or inconsistency of the FAR exemptions with applicable law*’ to help OFPP rescind the exemptions, but I am yet to receive even an acknowledgement of my request.

I have also appealed to the Office of Advocacy ¹⁰ for an opinion which would support the SBA’s historic position, but there has been unexpected silence from them as well. I am beginning to feel that government officials are, purposely, avoiding having to deal with this huge abusive issue.

Attorneys who have read the GSA opinion – in defense of these ‘exemptions’ - have acknowledged that GSA's entire opinion justifying the exemptions is not based on any statute nor authority, but on the fact that the ‘exemptions’ have had tenure (i.e., the principle of stare decisis.) In laymen's terms, they have been in force for a long time and – in the eyes of the government - have been assumed to be OK. In other words, no matter how abusive and destructive these regulations have been, it is OK – so the government has assumed - for small businesses to be abused and discriminated against.

⁵ <http://www.prweb.com/releases/2007/9/prweb553578.htm>

⁶ <http://www.prweb.com/prfiles/2007/09/13/162468/VIPQUOTES.pdf>

⁷ <http://www.prweb.com/prfiles/2007/09/13/162468/CongMicaLetters.pdf>

⁸ <http://www.prweb.com/prfiles/2007/09/13/162468/SBAOpinion.pdf>

⁹ <http://www.prweb.com/prfiles/2007/09/13/162468/FPAPETITIONTOOFPP.pdf>

¹⁰ <http://www.prweb.com/prfiles/2007/09/13/162468/FPAPETITIONTOADVOCACY.PDF>

Let's face it, these 'FAR exemptions' were written solely to promote and market a government procurement vehicle. . . at our expense! No, these regulations are unethical, unfair and very damaging and the small business community says. . . no mas!

The 'exemptions' are '*discrimination a-la-1950s style.*' Supporting the 'exemptions' is like defending 'segregation in the 50s' because it was assumed, at the time, that 'discriminating against a race' was OK since there was no enforcement of the laws that prohibited such practices! Come on. . . who are the regulators kidding! As an elected official, I urge you to speak up, your views and opinion do count. YOU can make a difference!

Let me leave you with the wise words of one of our own, Hank Wilfong, President of NASDB, who said, "The struggle continues, until we succeed-and we shall..."



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The mission of FPA is to bring fairness to public procurements so that small and minority 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 achieve their intended results.