

FAIRNESS IN SET-ASIDE PROCUREMENT COALITION (FSAPC)

The coalition first came together in June 2005 as a loose alliance of 14 minority and small business advocacy groups¹ to support a 'size protest' test case (SIZ-2005-05-09-22) against a large business which had allegedly been committing fraud by misrepresenting its affiliation to win 'set-aside contracts'. The test case was brought up by Raul Espinosa, CEO of FitNet, a purchasing/consulting group in Florida. Its main purpose was to demonstrate that the current 'size protest system' does not deliver justice when one wins the case. Espinosa kept the alliance together so it could influence public procurements by identifying anti-small business regulations and practices and by proposing initiatives and solutions to end procurement abuse of small and minority businesses.

¹ <http://www.prweb.com/releases/2005/10/prweb302024.htm>

The FSAPC has been credited with conceiving such initiatives as the 'Free Universal Access' (FUA); the 'Contracting Abuse Resolution Board' (CARB) and the 'Small Business Set-Aside Alliance' (SBSAA). Additionally, FSAPC has launched educational efforts – at both the federal and state level - to educate the procurement community about the abuses committed under the camouflage of 'brand-name or equal' procurements. At the urging of leading advocates in the small and minority communities, the FSAPC has agreed to represent ALL the 'procurement priorities' of 20 national organizations including all the minority national chambers of commerce (including women); ASBL and most of the minority trade groups involved with government contracting. These organizations, combined, represent the interest of more than 10 million businesses. FSAPC intends to expand its influence by also addressing set-aside procurements at the state and municipal levels (including schools and universities).

The purpose of the FSAPC is to bring attention to contracting abuse on set-aside solicitations; to educate the procurement community about issues of concern and to make recommendations that strengthen 'set-aside programs' so that they can achieve their intended results.

PROCUREMENT PRIORITIES TO END PROCUREMENT ABUSE AND LEVEL THE PLAYING FIELD

- 1. Call for Federal Agencies to stop the practice of bundling contracts and/or using language/criteria meant to exclude small and minority businesses. This includes preventing awards to any Fortune 1000 firms from being reported as a 'set-aside award.' Empower SBA to appeal contract bundling/criteria decisions and/or reports to the OFPP for clarification and action.**
- 2. Call for a GAO investigation and/or the involvement of the Armed Services Board of Contract Appeals into the Air Force allegedly abusive set-aside contracting practices which have included negotiating in bad faith and/or unfairly disqualifying small businesses in brand-name or equal solicitations.**
- 3. Recommend that the SBA Office of Government Contracting overhaul the entire Government Contracting Set-Aside Protest System. Fair settlement options such as those offered by the Contracting Abuse Resolution Board (CARB) initiative need to be considered to bring justice to small businesses which win their cases.**
- 4. Recommend for the SBA to establish new ethical standards – based on either the debarment of violators or on the QUI-TAM statute (or both) – to prevent/discourage fraud in the government set-aside program.**
- 5. Recommend that the Office of Advocacy fund a study (by private industry) aimed at reviewing and recommending language to strengthen all the references to small and minority businesses on both the FAR and DFAR. Such study shall include transparency in the contracting process aimed at identifying all contracting dollars going to small and minority businesses.**
- 6. Suggest for the SBA Government Contracting Office strengthen its own CCR database by weeding out unethically 'self-certified small businesses who purposely fail to include their independent contractors, sales force, consultants and/or affiliates in their current count of employees and, in addition, hide their gross sales – often in the \$20 + million – solely to qualify for set-aside contracts.**
- 7. Recommend that the SBA Office of Government Contracting does not release its size standards revision recommendations without first incorporating dispute resolution elements, penalties and their enforcement into its final recommendations. Involvement and coordination by the IG and the Justice Department is crucial to effectively enforce the mandate of Congress.**
- 8. Recommend that the Office of Federal Procurement Policy (OFPP) issue a memorandum making end-users accountable and subject to disciplinary action for unjust 'award-recommendations' which end up as protests. Include 'lost of funding' as a penalty for entities reported for such practices.**
- 9. Recommend to Congress to increase the small and minority business share of federal contracts to 30% and increase the threshold for small companies being the first choice for prime contracts to \$1 Million.**

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10. **Support legislative and FAR Council changes that strengthen FAR Part 19 while lowering the preferred status of GSA Contract holders (FAR Part 8) to both open competition and level the playing field in ALL government solicitations. Remove all exemption to the \$100,000 set-aside threshold and by no means exempt procurements on the GSA Schedule from that policy**
11. **Recommend that the GSA amend ALL Federal Schedule contracts to permit small businesses -reselling commodities on the Federal Schedule to the government - to purchase such commodities at prices below the GSA schedule without causing a GSA contract violation.**
12. **Suggest for the Office of Advocacy to take a more active role at both exploring and pursuing the solutions recommended by the small business advocates to solve what their IG claims is the biggest challenge facing SBA in FY 2007 – the abuse of small businesses in federal contracting.**
13. **Seek additional small and minority business advocacy groups to join the FSAPC to help bring attention to procurement abuse and to assist educate both procurement regulators and officials on the solutions..**
14. **Suggest for the Office of Advocacy to support the principles contained on the Free Universal Access (FUA) initiative which promotes FREE access to ALL public solicitations and discourages the requirements for fees for such access..**
15. **Support amending regulations and/or the Small Business Act to allow commodities purchased by the military or by US agencies located abroad to be subject to the same ‘set-aside restrictions’ that govern ALL government purchases. As long as the purchase is to be made from a US firm; the delivery is to be made in the continental US and/or the shipment is to be made to a depot/consignee for foreign shipment, such purchase shall be eligible for a ‘set-aside.’**
16. **Suggest for the Advocacy Office to fund a study, which would consider the feasibility of transferring, to private industry, government procurement programs and/or services which might be combined with existing private services and permit those expanded services to become self-supporting at a great saving to taxpayers. These private service include access to solicitations, capital, legal services and certification.**
17. **Recommend that the SBA Administrator appoint an Advisory Committee of Government Procurement specialists to advise GCBD on ways to implement procurement changes involving small businesses across the government.**
18. **Suggest that the SBA meet with members of the advocacy community about ‘re-inventing’ its own mission and about modernize the 8(a) program by, among other things, increasing the net worth threshold to no less than \$750,000 and to take into consideration the capital needs of each industry.**
19. **Recommend for SBA to implement the women’s federal procurement program (PL 106-554) and abolish giving special preferential treatment to Alaskan Native Corporations over other participants in the program.**
20. **Recommend to Congress to amend the Small Business Act by specifying that all small businesses re-certify on-line on an annual basis and by requiring the inclusion of a price evaluation adjustment extension for DOD and all federal agencies until such time the procurement allocations become accurate.**

Comments by Prominent Small Business Advocates to Public Testimony by the FSAPC Founder and Chair Alerting Government Officials of the Priorities of the Coalition Members

“Raul Espinosa’s testimony targets the integrity of the government’s small business development programs. To continue in the present course, without implementing his recommendations, is to allow large companies to effectively conspire with the government in lynching the type of companies the Small Business Act intends to protect.” Anthony Robinson, **President of MBELDEF** www.mbeldef.org

“Opening government procurement to small businesses rests with enhancing their access to the contracts, modernizing the system and simplifying the bidding processes. Government has an obligation to abide by and to enforce its own rules in this arena. Raul Espinosa’s testimony has shed light on a contracting system that is in need of both an upgrade and of a lot of reform.” Karen Kerrigan, **President, Small Business & Entrepreneurship Council** www.sbecouncil.org

“Raul’s testimony sheds light on the abuses that have been allowed to transpire for decades without any punishment. For small businesses to succeed in government contracting, the government must be held accountable for enforcing its own regulations which it has miserably failed to do.” Lloyd Chapman **President, American Small Business League (ASBL)** www.asbl.com

“Raul Espinosa’s efforts, to incorporate ethical and disciplinary standards in government contracting and to also involve the private sector into taking responsibility for part of the solution, is very commendable. Some of our members have benefited at one point from the contracts targeted for small and disadvantaged businesses, but now they are all ineligible for those contracts. What we want is to stop the fraud and the abuse so that other minority firms can gain access to those same contracts and grow their business.” Roger Campos, **President, Minority Business Round Table (MBRT)** www.mbrt.net