

TEXT OF FPA PETITION TO OFFICE OF ADVOCACY TO RESCIND THE EXEMPTIONS, REFORM SIZE PROTESTS AND BRING NEUTRALITY TO REVERSE AUCTIONS

September 14th, 2007

I am writing this petition on behalf of ***The Fairness in Procurement Alliance (FPA)*** and its Think Tank at the University of North Florida, **FPA** represents the procurement priorities of ALL of the groups for whom Congress created the set-aside program – a constituency of 10 million small businesses.

FPA is herewith asking the Office of Advocacy – in accordance with its new '***Regulatory Review and Reform Initiative***' (R3) - to address critical regulations which have been affecting small and minority businesses. **FPA** has alleged that:

- 1.) the so called 'set-aside exemptions' [**FAR 8.404(a); FAR 8.405 and FAR 19.000(b)**] are unlawful and discriminatory towards small businesses and they must be rescinded;
- 2.) the FAR does not adequately address the unique requirements and processes of '*auctions and reverse auctions*,' which – in the opinion of many advocates – appear to be the future of government procurement and
- 3.) the SBA size protest system – as demonstrated by the results of size protest SIZ-2005-05-09-22) - does not deliver justice to small businesses when they win their cases and the system must be overhauled.

Allegations # 1 and # 2 are currently the subject of a GAO protest (**B-309911**) test case which I initiated. In that protest, (refer to the attachment) I have claimed that the 'exemptions' are inconsistent with the 'set-aside statutory provisions of the Small Business Act and applicable law and therefore they are unlawful and unenforceable. The SBA, in a historic Legal Opinion, (copy attached) has confirmed my allegations.

Allegation #3 involves claims that the size-protest system – due in part to the lack of adequate staffing and training - has become a bureaucratic process to justify procurement actions on the part of the government without regards to the rights of the small businesses which complaint and/or allege contracting abuse. In short, the allegations on the protests are NOT adequately investigated and the violations are seldom prosecuted. Furthermore, when a small business prevail, it cannot either collect the award nor receive due compensation for their effort. In short, the system – as it is - is discriminatory, abusive and a waste of taxpayers money!

Regarding the 'set-aside exemptions:' FPA has alleged that these regulations have no exemption mandate in their authorities (as far as set-asides) and no statutory mandate to exclude federal contracts from the statutory 'set-asides' provisions of the Act and yet, the government has allowed them to exclude \$64 Billion in annual contracts – for over a decade - from small businesses. That is \$640 Billion in contracts, which – by statute – should have gone to small businesses!

SBA revealed, last month, after public pressure from **FPA** and the Advocacy community to make the government contract data transparent that the three Federal Agencies (DOD, GSA and State Department) which have specifically benefited directly from these 'exemptions' had failed – for the second straight year - to meet their own 'set-aside goals.'

Almost four year ago, on October 17th, 2003, Sen. Olympia Snowe, then Chair of the Senate Committee on Small Business and Entrepreneurship, wrote to the SBA Administrator, Hector Barreto, specifically asking SBA to take action on the 'exemptions,' but SBA has not.

In that letter, Sen. Snowe said, *"I am concerned that small businesses may not have a fair opportunity to compete for these overseas Federal contracting opportunities."* She added, *"I appreciate the efforts by you and your staff to reduce this barrier to small business participation in overseas Federal contracting opportunities and to bring about a successful conclusion to this challenge."*

FPA has gone on record challenging the 'exemptions' and its efforts are described on the following link:

<http://www.prweb.com/releases/2007/05/prweb525536.htm>

FPA requests are in line with its new '**Regulatory Review and Reform Initiative (R3)**'. Please acknowledge and advice of your decision.

Thank you for the opportunity to make a difference.



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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.