



Bureaucracy Blunders Unveil Potential for Change

By Raul Espinosa

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-aside policy. 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.

A number of women's groups had lambasted the Small Business Administration (SBA) for delaying the implementation of a procurement program – mandated by Congress - intended to boost the number of women-owned small firms that receive federal contracts. The SBA took 13 years to come up with a plan, so bizarre, that it would have limited the set-aside contracts to four industries. Women own roughly 30 percent of all companies in the United States, but in FY FY2006 they received \$11.61 billion or 3.41%, well short of the 5 percent Congress wants them to have on a procurement budget which now is over \$400 Billion. On July 10th, 2008 the Senate Appropriations Committee stopped the SBA implementation of their proposed plan.

Too much bureaucracy to solve business issues has lead to a long line of poor decisions, unnecessary delays and bias rulings including justifying the government's own mistakes by claiming miscoding of contracts such that billions of dollars earmarked for small businesses has gone to Fortune 500 companies. When even the Administrator of the Office of Federal Procurement Policy (OFPP) joins this bureaucracy insanity by ignoring his own statutory mandate on the case of the 'FAR Exemptions'. . . it is time for Congress to hold hearings on the illegal FAR Exemptions, as I have requested, so important policy changes can be made and entrepreneurial out-of-the-box solutions can be considered.

Claiming that the Fairness in Procurement Alliance (FPA) whistle blower request for a statutory ruling on the 'consistency of the FAR exemptions with the FAR and applicable law' "*falls outside the scope of section 25(C)(4)(A) because this section does not cover review of a legal opinion*" is bureaucracy at its finest hour! In fact, the SBA legal opinion of September 4th, 2007 - the OFPP Administrator referred to - had demonstrated the illegality of the exemptions and why the Administrator – by statute – has not only a responsibility, but a duty to eliminate their influence in excluding small businesses on two separate procurement segments: the GSA Schedules and 'foreign procurements.'

Had the OFPP Administrator done his job - as prescribed in the statute that created his office - and ruled that the 'FAR Exemptions' were NOT consistent with the FAR and applicable law, as many Members of Congress were expecting, there would be in excess of \$60 Billion in available set-aside contracts with which to level the playing field.

Too much bureaucracy and red tape combined with a poorly educated contracting community, stand on the way of progress! Simplicity and out-of-the-box entrepreneurship solutions are the answer.

The basic point I am making is that bureaucrats, again, took an unnecessary and wasteful amount of time (10 years) to challenge the legality of the 'FAR exemptions.' By avoiding a ruling on those illegal regulations now, the OFPP Administrator has indicated his intention to maintain the status quo and allow the procurement abuses to continue which would not only waste billions in taxpayers dollars but allow for 'large businesses' to continue to monopolize federal procurements.

Public reports have estimated that over the last decade, these illegal FAR exemptions have diverted \$640 billion in contracts away from the statutory rights of small businesses.

Is there an entrepreneurship answer to this debacle? Absolutely! An out-of-the-box solution has been staring at the bureaucrats right in front of on their faces and, sadly to say, they have not used it. I am referring to Public Law 95-507.

Executive Order 11458¹, which dates back to 1969, made the expansion of procurement opportunities for women already possible. Those provisions were incorporated into P.L 95-507, formally enacted in 1978. P.L. 95-507 stipulates, "*It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small businesses, small disadvantaged businesses and women-owned businesses.*"

P.L. 95-507 formally established the Small Business Disadvantaged (SBD) Program which IS and has always been the perfect vehicle for bureaucrats to have used to accommodate the 1994 Congressional mandate which would have given women-owned businesses the 5 percent share of Federal contracts Congress wanted. Why bureaucrats took 13 years and never looked outside-of-the-box for the solution bedazzles all of us working on an entrepreneurial solution referred to as the 'umbrella initiative.'

What bureaucrats should be concerned with is to stop large businesses from monopolizing public procurements. Large businesses have managed to unfairly and unethically secure contracts earmarked for small businesses without fear of legal reprisal.

Currently, even if a small business protests a set-aside award to a large business and wins, there are no assurances of getting the contract back or gaining any benefits or compensation for the effort -- and that is simply not only unfair, but un-American. I clearly proved that point when, in 2005, I challenged a large business alleged 'front' and won the case (SIZ-2005-05-09-22), but got nothing for the effort!

Clearly, there is an obvious need to fix the procurement system, including its contracting vehicles or create a new mechanism, which would isolate set-aside contracts, bring more small businesses into the competition and thus prevent the continuation of the abuses and the bureaucratic blunders of the past. The 110th Congress has passed countless bills to bring both oversight and transparency to public procurements. I say, let's continue the progress!

The plight of women-owned businesses and the recent OFPP position on the FAR Exemptions case are clear indications that everyone, small businesses, bureaucrats, and elected officials would be far better off by supporting a creative non-partisan and entrepreneur-driven private initiative to transform and add value, nurture, and enhance procurement opportunities for small and disadvantaged businesses including women-owned businesses.

¹ <http://www.presidency.ucsb.edu/ws/index.php?pid=60475>

A joint effort between the Fairness in Procurement Alliance (FPA) and the University of North Florida (UNF) would create a mega small business procurement center as an umbrella of private businesses (with academicians and attorneys as well) responsible for the delivery of essential services and benefits to small and disadvantaged businesses all over the country. The activities of this mega center would be unprecedented because these services would be using the latest technologies to integrate a multitude of existing services into one. Most importantly, the mega Center will be in the hands of entrepreneurs as opposed to bureaucrats and. . . it would have the oversight and transparency, Congress demands.

This new partnership would allow State and local governments *with 'procurement set-aside programs'* – that are in compliance with Federal statutes - to take advantage of this far reaching effort and save taxpayers dollars at the State and municipal level while helping their local small businesses in the process.

This entrepreneur initiative would be accomplished by eliminating constitutionality issues and duplicative efforts; by enhancing the marketing of the services; and by integrating established services to maximize the benefit of a combined mega effort.

This mega Center would transform countless individual efforts into one essential service to empower and track small and disadvantaged businesses and their progress through the system to make sure they are securing a fair share of public contracts not only at the federal level, but at the municipal and state level as well. Yes, we want these small businesses to grow – and not remain small – which is what the bureaucrat rules encourage. Procurement set-asides are about opportunities and, when groups end-up having it, they move out of the program so that other small business groups can compete in a level playing field.

With the private umbrella initiative in place, procurement set-aside programs at the state and local government will be better protected from the challenges they have unfairly received when they have been linked to race. Finally, with the inclusion of a legal unit in its mix to both defend their statutory rights, prevent their abuse and facilitate the litigation of their cases - an opportunity they never had – this Mega Center would avert a procurement crisis that would otherwise occur by relying on bureaucrats, until hell freezes over, for the solutions.



Raul Espinosa is the Founder and Spokesperson for the Fairness in Procurement Alliance. The FPA mission 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 represents the procurement priorities of a constituency of 10 million small and disadvantaged businesses. Its mission 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 was founded in 2005 as a loose coalition of 14 minority and small business advocacy groups which came together to support a 'size protest' test case (SIZ- 2005-05-09-22) filed against a company which had misrepresented its affiliation with a large business to unlawfully secure 'set-aside contracts'. The victory resulted in a purging of the CCR database and the establishment of new regulations on reporting small business status. The Coalition, which at the time was called, *Fairness in Set-Aside Procurement Coalition (FSAPC)*, stayed together and developed plans to conduct academic research, offer trainings and influence public procurement policy. FPA has been successful at identifying regulations and practices that require changes, at publishing reports on contracting abuse and at proposing initiatives and solutions addressing ending procurement abuse against small and disadvantaged businesses. FPA has been credited with conceiving such initiatives as the '*Free Universal Access*' (FUA); the '*Contracting Abuse Resolution Board*' (CARB) and the '*umbrella initiative*' described above. Additionally, FPA produced a report detailing '*Contracting Abuse by the Air Force*' involving set-asides. FPA has also launched successful educational efforts aimed at creating awareness - within the procurement community - about the statutory rights of small and disadvantaged businesses (i.e., accelerated payments of their invoices) and about the abuses committed under the camouflage of '*brand-name or equal procurements*' including '*end-user unjust and unethical justification*.' Currently, FPA is leading an effort - by trade organizations and small business advocates - to eliminate the influence of the '*FAR Exemptions*.' These are alleged illegal regulations which have diverted \$640 Billion in Federal contracts away from small businesses over the last decade.