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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

May 18, 2000

The Honorable Aida Alvarez
Administrator, Small Business Administration
409 Third Street SW
Washington, DC 20416

Dear Administrator Alvarez:

At my request, the General Accounting Office (GAO) prepared a study focusing primarily on contract bundling. Consolidating multiple contract requirements in a manner that makes small business participation unlikely or impossible is one of the most direct and harmful challenges to small business today. It undermines the goal set in § 2 of the Small Business Act, that "a fair proportion" of Federal procurement dollars be awarded to small business.

We have only begun the war against bundling, and GAO was not able to assess the state of the battle. GAO did find two areas in which the battle plan is proving to be weak: inadequate collection of intelligence data, and insufficient troops deployed to the battlefield. I write to urge your immediate attention to these weaknesses.

Need for Improved Data Collection. The title of the GAO report summarizes the problem of inadequate information: "Limited Information Available on Contract Bundling's Extent and Effects." As in any war, a lack of intelligence data can undermine the overall effort, so I find this troubling.

Recall that three years ago, in our last Small Business Reauthorization Act, we sought to overcome this problem. Section 414 of that Act directed that the Federal Procurement Data System begin collecting data on bundling. Collecting data systematically on the problem is vital to overcome the complaint usually raised by bundling advocates, that bundling does not present real challenges to small business and that the concerns we keep hearing are merely anecdotal.

Three years after passage of the FPDS mandate, the data still are unavailable. As a result, GAO had no real database to draw upon to assess bundling's prevalence and impact. It appears that the remaining obstacle preventing collection of FPDS data is the Small Business Administration's (SBA) on-going failure to issue final regulations on bundling.

Section 417(b) of the Small Business Reauthorization Act of 1997 directed that final regulations be published not later than 270 days after enactment, or not later than August 29, 1998. It is now 898 days after enactment, and the clock is still ticking.

SBA did issue an interim rule on October 25, 1999, to take effect December 27, 1999. This fails to meet the statutory mandate, however. Although such rules are often called "interim final rules" as a colloquial phrase, that is not a technically accurate term. SBA clearly expects to issue a further rule, which will be the final rule.

This is more than a green-eyeshade technicality on compliance with statutory mandates. This has real implications for the anti-bundling cause. As long as SBA does not publish a final rule, FPDS will not revise its data collection to capture these important bundling data. Given the cost of modifying software--and the related time delays from de-bugging the software, during which time computer systems invariably fail--it is understandable that the Federal Procurement Data Center would want a final rule before proceeding. It would be better to make the necessary modifications once, under a final rule, than twice, under an interim and then a final rule.

Undoubtedly SBA would like to have the benefit of FPDS data to design a better rule. However, FPDS data will not become available till a final rule is published. SBA is caught in the middle of a paradox.

SBA should seriously consider refraining from further delay and publish a final rule. Sometimes, the most important step is simply to get started. Please advise me of any technical issues that are impeding publication of a final rule.

Need for Sufficient Personnel and Resources. Once rules are published, SBA needs to ensure they are carried out. The anti-bundling legislation passed in 1997 assumes a major role for SBA's Procurement Center Representatives (PCRs). In the fight against bundling, we need to deploy enough troops in the field.

GAO's report notes that over 2000 Federal procurement centers have no PCR covering their activities. In fact, the number of PCRs has declined by 34% from 1993 to 1999. If this trend is not reversed, most instances of bundling will go unchallenged.

Recent information from SBA suggests an increase in PCRs may be underway. If so, that is an encouraging development. I would appreciate further details on SBA's plans to increase PCR staffing and on the status of implementing those plans.

However, increasing the number of PCRs is not enough by itself. PCRs must have sufficient resources to do the work imposed on them by legislation and by regulation, and they must be fully trained. Finally, SBA must exercise continuous oversight to ensure their responsibilities are carried out.

The GAO report contains troubling information on those questions. I was particularly struck by the experience of a PCR in Fort Worth, Texas, who is responsible for covering the

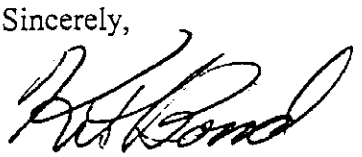
Johnson Space Center in Houston. She had been unable to review contracts at the Johnson Space Center, because she had enough travel funds to visit the site once a year for only half a day. If PCRs are not provided the resources they need to do their work, it will not matter how many PCRs have been hired.

Second, SBA must provide adequate training to the staff. PCRs are indispensable monitors of proposed bundling and valuable sources of alternative procurement strategies to overcome bundling. They will be able to carry out those roles only if they know their responsibilities and options. Training in their statutory and regulatory obligations is essential, and detailed procurement knowledge is necessary to create small-business-friendly alternatives to bundling. I was disturbed by GAO's finding that PCRs have received only a 20 minute training session as part of a three-day conference, and SBA does not know if all the PCRs even attended. Please let me know what your plans are to ensure systematic training for all PCRs and especially for new PCRs being hired.

Last, SBA must monitor the performance of all PCRs. Like employees in all workplaces, some will prove to be more effective employees than others. Some will be self-directed and self-motivated, and some will need additional direction and guidance. You as Administrator are ultimately accountable for managing the effectiveness of your employees. GAO suggests possible lapses in PCR effectiveness that need your attention: specifically, SBA has identified 42 possible cases of bundling whose outcomes are still unresolved. Two of those cases are at least 21 months old. This means valuable opportunities are being lost. It is not enough to identify possible instances of bundling and then forget about them. PCRs must follow through on pending procurements, identify alternatives, and track outcomes. I would appreciate hearing your plans to monitor the PCRs in carrying out their responsibilities. Please also provide me with a status report on the 42 unresolved bundling cases cited above and any other pending cases.

GAO has given us some good information to strengthen our forces in the battle against bundling, even though limited information exists for GAO to draw broader conclusions. I look forward to your response on the issues raised here, and I would appreciate having your response not later than June 5, 2000. If you have questions about this letter, please contact Cordell Smith of my Small Business Committee staff on (202)224-3594.

Sincerely,



Christopher S. Bond
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