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June 5, 2007

Mr. Brian D. Miller
Inspector General
U.S. General Services Administration
1800 F Street, N.W.
Room 5340
Washington, D.C. 20405

Dear Inspector General Miller,

I am writing to request that you audit the contract extension awarded by the General Services Administration (GSA) to the Sun Microsystems Corporation on September 9, 2006. This particular contract has received much scrutiny in Congress and the media over the past few months. It has also been the subject of pre- and post-award audits by your office.

Those audits and a subsequent complaint filed by the Department of Justice both indicate that Sun allegedly defrauded from the U.S. Government significant sums of money in the form of unreported commercial discounts and improper pricing. Despite this information, which GSA officials were aware of as early as 2004 and possibly before then, GSA continued negotiations with Sun to renew this contract. Fortunately, the contracting officers recognized that Sun needed to be dealt with differently on the pending extension. These contracting officers dug in their heels and sought to protect the government by seeking a very strong price reduction clause (PRC). The PRC would be the first line of defense for ensuring that the government received the most favored customer prices, provided Sun submitted accurate and timely information as required by the contract. The PRC sought by these contracting officers would give the U.S. Government discounts equivalent to the best discounts given to Sun's commercial customers. This would have been a true win for the American Taxpayer, again provided Sun complied with the provisions in the contract.

As you are no doubt aware, the two previous contracting officers [Caldwell and Butterfield] were removed for various reasons, including one who was said to be "too stressed" or incapable of negotiating the latest deal. The adopted GSA tactic gave Sun Microsystems the PRC that it wanted. As a result, the PRC that was included in the award last September is based on discounts given to all commercial customers – not just the ones receiving the best discounts.

In regard to support services - a major portion of any Information Technology (IT) related contract - the PRC was based on only five "similar" tracking commercial customers. This was despite audit information provided by your office that over 250 other commercial customers received greater discounts than the five tracking customers provided by Sun, and that five was too few a number for fair comparisons.

I recently received information from the GSA IT Acquisition Center pertaining to the latest contract extension. It appears to show that the PRC clauses have resulted in price reductions on a few products and an overall 1% discount increase for support services. However, it appears that the government has actually bought few of the items covered by the new data either before or after the PRC was triggered. Based on this data, GSA claims the PRC is working and saving the government money. However, this data appears to be inconclusive and the savings appear to be only a fraction of the savings that would have been realized under the proposals put forward by the two contracting officers removed in 2006 just prior to the last award.

Therefore, I request that your office conduct a full and thorough audit of the current Sun Microsystems contract's PRC. This audit should include an examination of the complete Sun database for sales for the period in question and attempt to evaluate actual savings or losses, if applicable, to the government as a result of the PRC for products and services. This data should then be compared to the PRC that was being sought by the previous contracting officer (before August 31, 2006) for savings that would have been realized by the government had that PRC been successfully negotiated.

Secondly, I request that you look into modifications to this contract that have created new product "categories" and the customer sales information that the discounts for these new categories was derived from. Of particular concern is the newly created category "E," that according to the IT Acquisition Center, contains "new servers". The discount for this category is considerably less than the other product categories, yet servers are a large part of Sun's sales to the Federal government. I ask you to determine which product category these "new servers" would have been in, provided category "E" had not been created.

And third, I request that your office complete a full investigation of Sun's compliance with the corrective action plan that was implemented on or about June 2006. This investigation should determine if Sun is meeting all the requirements set forth in this plan, and if not, indicate what corrective actions need to be implemented by Sun to begin compliance.

Inspector General Miller, I believe that you are fully aware of my concerns regarding this contract. If the government is getting a fair deal in this contract, then I want to know it. If not, then Congress needs to understand the full scope of the problem. And consistent with your responsibilities under the IG Act, you need to recommend appropriate corrective action to prevent such problems from arising in the future.

These requests all deal with how Sun is doing business with the government today, and therefore should not interfere with any ongoing judicial action related to Sun's business practices before September 9, 2006. If you encounter resistance by Sun Microsystems or GSA, including delaying timely submission of requested information, please report it to my office immediately. Any additional questions or concerns about this requested investigation can be directed to Charlie Murphy or Nick Steen of my staff.

I respectfully request that this work be given priority and that you provide me a preliminary report within 30 days and periodic reports thereafter.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Chuck Grassley". The signature is written in a cursive, slightly slanted style. The first name "Chuck" is written in a larger, more prominent script than the last name "Grassley".

Charles E. Grassley
Ranking Member