ACQUISITION REFORM WORKING GROUP

Aerospace Industries Association * American Council of Engineering Companies * American Council of Independent Laboratories * AeA * Contract Services Association * Electronic Industries Alliance * Information Technology Association of America * National Defense Industrial Association * Professional Services Council * U.S. Chamber of Commerce

April 2, 2007

The Honorable Robert Byrd
The Honorable Thad Cochran
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Chairman Byrd and Ranking Member Cochran:

On behalf of the thousands of member companies of the 10 associations in the Acquisition Reform Working Group (ARWG), we write in opposition to Section 569 of the Senate-passed Emergency Supplemental (H.R. 1591) that provides for an automatic debarment of federal contractors. This section prohibits future contracts for up to 10 years for any company found to have knowingly violated Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. §1324a(e)). We agree that companies should not hire illegal workers and we support the criminal penalties already in place to deter and enforce such behavior. However, we strongly disagree with the concept of utilizing the federal procurement process as the primary enforcement mechanism for such violations.

Suspension and debarment are serious executive branch actions with dramatic consequences for companies. The existing debarment and suspension rules contain well established and defined decision making criteria and due process safeguards, as described in the Federal Acquisition Regulations (FAR) Part 9. The debarment process is intended to avoid any punitive nature and FAR 9.402(b) specifically states that the "serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment." Section 569 is intended solely to punish violators, which is contradictory to the express objectives of the debarment process.

The changes provided for in Section 569 are unnecessary and risk damaging a responsible and tested system. FAR 9.406 already grants a federal agency the authority to debar a business for a wide range of improper conduct, such as certain civil judgments and commission of fraud and criminal offenses. All employment violations of the Immigration and Nationality Act, such as Section 274A(e) violations, are already expressly covered under the current debarment procedures at FAR 9.406-2(b)(2), which provides that the government may debar:

> "A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286)."

Moreover, we have a concern that Section 569 includes a prohibition on judicial review of the debarment action. The FAR already prohibits judicial review of the underlying decision that a contractor is not in compliance with the employment provisions of the Immigration and Nationality Act. That language, however, does not preclude judicial review of the subsequent debarment decision. Debarment has serious consequences for a contractor and they should be afforded due process before being denied government contracts.

We urge you to oppose the inclusion of Section 569 of Senate-passed H.R. 1591 in the final version of the bill.