

United States Senate
WASHINGTON, DC 20510

April 26, 2011

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

It has come to our attention that your Administration may issue an Executive Order (EO) requiring federal agencies to collect information about the campaign contributions and other political expenditures of prospective contractors before awarding any federal contract. We have reviewed a purported draft of the EO and are greatly concerned with its content. Supposedly to advance the goal of keeping politics out of the contracting process, the draft EO would make political considerations a part of every federal contract offer. We urge you not to issue the draft EO.

The draft EO would require federal contractors to furnish, with each contract proposal, information about activities protected by the First Amendment, including political activities occurring years before any contract negotiations commence. Details regarding political expenditures made by contractors' directors or officers and any affiliates or subsidiaries, as well as contributions made to "third party entities" expected to "use those contributions to make independent expenditures or electioneering communications," would also have to be provided to contracting officers. We are concerned that the requirement to provide such information to every contracting agency as part of every contract proposal could have a chilling effect on the First Amendment rights of individuals to contribute to the political causes or candidates of their choice. Political activity would obviously be chilled if prospective contractors have to fear that their livelihood could be threatened if the causes they support are disfavored by the Administration. No White House should be able to review your political party affiliation or the causes you support before deciding if you are worthy of a government contract. And no Americans should have to worry about whether their political activities or support will affect their ability to get or keep a federal contract or their job.

In addition to our First Amendment concerns, the fact that the EO would require such information to be submitted directly to contracting agencies creates, at the very least, the appearance that contract award decisions could be predicated on—or influenced by—political

contributions or considerations. Contrary to the EO's stated goal of eliminating "the undue influence of factors extraneous to the underlying merits of contracting decision making, such as political activity or political favoritism," injecting such information into every contract offer could be perceived as *including* political contributions as a factor that is considered in the awarding of federal contracts.

Given similarities between the draft EO and some provisions of the DISCLOSE Act, which was rejected by the Senate in its current form, we are also concerned that the EO may be an effort to circumvent Congress. At least one commentator, former Federal Election Commissioner Hans von Spakovsky, has already criticized the draft EO as an attempt by your Administration "to implement—by executive fiat—portions of the DISCLOSE Act."

Given these concerns, we request that you reconsider the EO and provide us with answers to the following questions:

1. How would information regarding political contributions of potential federal contractors be used in making decisions about who wins a federal contract? If it is not intended to factor into the decision-making process, what then is the rationale for using the government contracting process as a mechanism for collecting political contribution information unrelated to government contracts? How would the EO's implementation "ensure the integrity of the federal contracting system to produce the most economical and efficient results for the American people?" What specific economic savings or efficiencies are you projecting?
2. To what degree would political appointees be involved in the contract award process? Would political appointees have access to information about the political contributions of each potential contractor? What measures would be taken to ensure the political contributions of potential contractors would not be considered in picking contract winners and losers?
3. Please provide any legal or other analysis you have conducted to determine that requiring two years' worth of information about political contributions from potential contractors prior to awarding contracts would not chill the First Amendment rights of these contractors.
4. Please provide the analysis you have conducted to show that requiring such information from companies bidding on government contracts would not intimidate or deter companies from competing, thereby reducing the number of competitors to politically "approved" companies, and thus raising the ultimate price paid on contracts by the taxpayers. Please provide the quantitative or other empirical evidence you have gathered to ensure that requiring the collection of this political information would not deter companies from entering the federal marketplace.

5. The draft EO would mandate these additional reporting requirements only for federal contractors. Does the Administration intend to extend these requirements to unions who enter into cooperative agreements or contracts with the federal government? To federal grantees? If not, what is the rationale for not including these entities?
6. Should you decide to issue the EO, are you prepared to disclose all materials pertinent to that decision (including records of meetings, emails, internal memoranda, etc.)? Will the Administration disclose how it came to this decision to compel these disclosures?

To ensure that taxpayers receive the best value for federal contracts, government procurements must be conducted in a manner that ensures a fair process. Your proposed EO does not appear to advance that goal.

Sincerely,

Bill McClell Laura M Collins

United States Senator

United States Senator

Laura Alexander Chuck Grassley

United States Senator

United States Senator

John Cornyn

United States Senator

Tommy

United States Senator

Pat Roberts Mike Johanns

United States Senator

United States Senator

Sayby Chavkin Tim Wirth

United States Senator

United States Senator

Michael B. Eni Jeff Sessions

United States Senator

United States Senator

Kelly P. Brown John Barrasso

United States Senator

United States Senator

Mark R. Warner L.G. Hatch

United States Senator

United States Senator

Lyndee Faye Weaver Tom Cotton

United States Senator

United States Senator

Mark E. Robitelli Tim Wirth

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

United States Senator

Tom Coburn

United States Senator

Olympic Sevens

United States Senator

Ray Bennett

United States Senator

Ras Portman

United States Senator

Ray Bailey Hutchison

United States Senator

Ron Johnson

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Kelly Ayotte

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