

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

VIA FACSIMILE – (202) 208-5533

May 12, 2014

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240-0001

Dear Secretary Jewell:

On April 16, 2013, I wrote to you regarding the significant changes made to the Small Business Act by the National Defense Authorization Act of 2013, Public Law 112-239. Specifically, I drew your attention to significant changes made to the organization and duties of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at federal agencies. At that time, I requested assurances that the Department of the Interior (DOI) was aware of the changes and that the DOI was implementing the necessary changes to comply with the law. On June 16, 2013, I received a response from Rhea Suh, Assistant Secretary for Policy, Management and Budget, stating that:

We are aware of the changes to Section 15(k) of the Small Business Act. We have been and continue to be in compliance with the requirement that our Director of Small Business Programs reports to the Secretary or Deputy Secretary. We are in the process of evaluating how the other requirements of P.L. 112-239 impact our organization, regulations and processes, and our budget.

Given this strong avowal of compliance from Assistant Secretary Suh, DOI's Job Announcement Number OS-14-SES-1096764 posted to USAJobs.gov on April 15, 2015 is troubling. As currently advertised this announcement for a new OSDBU Director demonstrates a blatant disregard for the clear language of the Small Business Act and belies Ms. Suh's previous letter. Specifically, the announcement reflects a violation of the law in three ways, enumerated below.

1. Experiential Requirements

Section 15(k) of Small Business Act requires that:

[the]management of each [OSDBU] shall be vested in an officer or employee of such agency, with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 8, 15 or 44 of this Act.

This change to the law was made to ensure that the individuals entrusted with managing small business programs within each agency had certain core competencies which are necessary to be effective in their roles. However, the job announcement fails to mention any of these requirements. Thus, an individual lacking the statutorily mandated experiential requirements could be hired under this announcement.

2. Reporting Relationship

Furthermore, Section 15(k)(3) of the Small Business Act was amended by Public Law 112-239 to state that the OSDBU Director “(3) shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary’s designee.” Unfortunately, the Department’s job announcement directly contradicts this requirement, instead asserting that “[t]his position is a direct report to the Assistant Secretary – Policy, Management and Budget, who is the Director of Small and Disadvantaged Business Utilization and receives administrative guidance and support from the Deputy Assistant Secretary – Business, Finance, Performance and Acquisition.”

Lest the Department attempt to argue that Assistant Secretary Suh is actually filling the position established by Section 15(k) of the Small Business Act, allow me to remind you that Section 15(k)(15), the Director “shall carry out exclusively the duties enumerated in this Act, and shall, while the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection.” Ms. Suh, according to the DOI website, “oversees the human capital, fiscal, business and budgetary management of the Department of Interior, with a \$12 billion budget and more than 70,000 employees. She also provides policy leadership for Secretarial initiatives on land conservation, sustainability, international issues, youth engagement and employment and

diversity. Assistant Secretary Suh serves as Chief Financial Officer (CFO), Chief Human Capital Officer, and the designated agency official responsible for small and disadvantaged business utilization.” (emphasis added).

Given the plain language of the Small Business Act, no one individual may serve as CFO, Chief Human Capital Officer, and as OSDDBU Director. Therefore, despite Assistant Secretary Suh’s assertion that DOI “continue[s] to be in compliance with the requirement that our Director of Small Business Programs reports to the Secretary or Deputy Secretary,” her own official biography demonstrates that the DOI is not in compliance.

3. Description of Responsibilities

Finally, as previously mentioned, the 2013 change to the Small Business Act specified that the OSDDBU Director “shall carry out exclusively the duties enumerated in this Act.” The Small Business Act provides very specific responsibilities for the OSDDBU Director, such as the implementation and execution of duties under Sections 8 and 15 of the Small Business Act, reviewing solicitations involving contract bundling and consolidation, assisting small businesses with payment issues, reviewing agency insourcing decisions that affect small businesses, advising on acquisition strategies and market research, receiving unsolicited proposals, and providing training. However, the job description published does not mention contract bundling – the top concern of small businesses. Likewise, it is silent on payment issues and training. It briefly references consolidation and strategic sourcing, but primarily focuses on negotiating the small business scorecard goals with SBA. Simply put, the job description does not reflect a full understanding of the statutory requirements for this position.

While I understand that the DOI met all but one of its FY 2012 small business goals, I sincerely hope that DOI does not believe that this excuses the Department from following the law – a law signed by President Obama over sixteen months ago. The goals established by the Small Business Act are meant to be a floor rather than a ceiling. Congress clearly believed that by elevating the OSDDBU to be a direct report to you, with no other roles or duties except to be an advocate for small business opportunities, the DOI and other agencies would be able to increase the use of small businesses as prime contractors and subcontractors. In doing so, we would succeed in creating more jobs, encouraging innovation, and lowering prices by increasing competition. This would be a success for the Department, taxpayers, and small businesses alike.

Given that no agency or department is above the law, I am hereby requesting that you personally notify me within 30 days of the changes you are making to bring the DOI into compliance with the law. I anticipate that this will require ensuring that the Office of Small and Disadvantaged Business Utilization is independent of the Office of Policy, Management and Budget and the Office of Business, Finance, Performance and Acquisition. Furthermore, I expect that this will require that you cancel the current job announcement and repost a job listing responsive to the aforementioned concerns.

Should the Department fail to take the necessary corrective actions, the Committee on Small Business may hold a hearing to further examine this issue.

If you have any questions regarding my expectations, please contact Emily Murphy, Senior Counsel to the Committee, at (202) 225-5821.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sam Graves", with a long horizontal flourish extending to the right.

Sam Graves
Chairman

cc: Sarah Neimeyer, Director of Congressional and Legislative Affairs, Department of the Interior