

October 13, 2010

The Honorable Susan Tsui Grundmann
U.S. Merit Systems Protections Board
1615 M Street NW
Washington, DC 20419

RE: Small Business Contracting Program Parity

Dear Secretary Grundmann,

As you may know, on September 27, 2010, President Obama signed the *Small Business Jobs Act of 2010* (P.L. 111-240) into law. This historic legislation provides our nation's 29 million small businesses with much needed support and incentives to help them grow and create jobs. In particular, the legislation extends nearly \$12 billion in tax cuts, creates a \$30 billion Small Business Lending Fund that utilizes healthy community banks as a conduit to increase lending to small businesses, and strengthens the Small Business Administration's (SBA) core counseling, exporting, and lending programs. Further, this legislation includes a number of critical improvements to the Federal government's small business contracting and procurement programs, including the establishment of parity amongst small business set-aside programs.

Specifically, section 1347 of the legislation both reiterates and clarifies Congressional intent that Federal small business set-aside programs— including the 8(a), Historically Underutilized Business Zone (HUBZone), Service Disabled Veteran-owned small business (SDVOSB), and the newly implemented Women-owned small business (WOSB) programs— should be placed on equal footing, with no one program receiving priority over another. Currently, existing statute allows contracting officers' discretion when choosing to award a federal contract to a small business participating in these programs. However, misinterpretation of Congressional intent by the courts as well as recent decisions by the Government Accountability Office (GAO) have forced contracting officers to give priority to small businesses participating in the HUBZone program when awarding federal contracts. These decisions have had a negative and detrimental effect on the ability of small businesses participating in other contracting set-aside programs to effectively compete for and win federal contracts.

To ensure that all small businesses—regardless of the particular set-aside program they are participating in—receive a fair shot at winning federal contracts, it is imperative that your agency closely follow and enforce SBA’s parity policy and regulations within your own contracting programs. That is, before setting aside a contract for small business, federal contracting officers may choose with discretion among SBA’s procurement and business development programs, without giving one program preference over another.

I hope that your agency begins implementing the provisions of the legislation, especially the Small Business Contracting Parity provision, according to Congressional intent. If you have any questions regarding the legislation and specifically, Section 1347, please feel free to contact Krystal Brumfield or John High on my staff at (202) 224- 5175.

With warmest regards, I am

Sincerely,

A handwritten signature in blue ink that reads "Mary L. Landrieu". The signature is written in a cursive, flowing style.

Mary L. Landrieu
Chair