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Part IV

Department of Labor

Office of the Secretary

Secretary's Order 2-2010; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 2–2010

Subject: Small and Disadvantaged Business Utilization Program.

1. *Purpose.* To define the authority and assign responsibilities for the administration of the small and disadvantaged business utilization program in the Department of Labor.

2. *Authority and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; the Small Business Act (15 U.S.C. 631 *et seq.*), including section 15(k) (15 U.S.C. 644(k)); the Historically Underutilized Business Zone Act of 1997 (15 U.S.C. 631 note); the Regulatory Flexibility Act (*see* 5 U.S.C. 601 *et seq.*); the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) (*see* 5 U.S.C. 601 *et seq.* and 15 U.S.C. 657); 44 U.S.C. 3506(i); Executive Order 12432, “Minority Business Enterprise Development” (July 14, 1983); Executive Order 12928, “Promoting Procurement with Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions” (September 16, 1994); Executive Order 13230, “President’s Advisory Commission on Educational Excellence for Hispanic Americans” (October 12, 2001); Executive Order 13256, “President’s Board of Advisors on Historically Black Colleges and Universities” (February 12, 2002), as amended and continued by Executive Order 13511; Executive Order 13270, “Tribal Colleges and Universities” (July 3, 2002) as amended and continued by Executive Order 13511; and Executive Order 13515, “Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs” (October 14, 2009).

B. *Directives Affected.*

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary’s Order, unless otherwise expressly so provided in this or another Order.

(2) Secretary’s Order 4–2002 is superseded and cancelled.

3. *Background.* This Secretary’s Order is issued concurrently with the realignment of the Department’s small business-related functions under the Assistant Secretary for Administration and Management. The goal of this realignment is to better integrate small business outreach and small business procurement with the overall DOL procurement function—to make the

appropriate use of small business services part of DOL’s “standard operating procedure.”

4. *Director of the Small and Disadvantaged Business Utilization Program.* The Assistant Secretary for Administration and Management is hereby appointed to serve as the Director of the Small and Disadvantaged Business Utilization program for the Department (the “Director”). The Director is vested with the management of the Department’s Small and Disadvantaged Business Utilization program and will have responsibility for overseeing the activities of that program as set forth in paragraph 5 below. The Director is responsible only to, and will report directly to, the Secretary.

5. *Delegation of Authority and Assignment of Responsibilities to the Director of the Small and Disadvantaged Business Utilization Program.*

A. *The Director of the Small and Disadvantaged Business Utilization Program* will have the following duties, which are assigned to the Director by Section 15(k) of the Small Business Act, 15 U.S.C. 644(k):

(1) Be responsible for implementing and executing the functions and duties under 15 U.S.C. 644 and 15 U.S.C. 637 which relate to the Department, and cooperating, and consulting on a regular basis, with the Small Business Administration (“SBA”) with respect to carrying out such functions and duties;

(2) Identifying proposed solicitations that involve significant bundling of contract requirements, and work with acquisition staff and the SBA to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(3) Assisting small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from the Department or a contractor, in conformity with chapter 39 of title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or the Department’s acquisition regulations;

(4) Exercising supervisory authority over agency personnel to the extent that the functions and duties of such personnel relate to functions and duties under 15 U.S.C. 644 and 15 U.S.C. 637;

(5) Assigning a small business technical adviser to each office to which

an SBA procurement center representative is assigned—

(a) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

(b) whose principal duty shall be to assist the SBA procurement center representative in his duties and functions relating to 15 U.S.C. 644 and 15 U.S.C. 637;

(6) Recommending to contracting officers whether a particular contract requirement should be awarded pursuant to 15 U.S.C. 644(a) or 15 U.S.C. 637(a). Such recommendations shall be made with due regard to the requirements of subsection 15 USC 644(m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.

B. *The Director of the Small and Disadvantaged Business Utilization Program* is delegated authority and assigned responsibility for the following additional activities relating to small business concerns:

(1) Ensuring that the Department fulfills its responsibility to provide procurement opportunities for small business concerns, small disadvantaged businesses, women-owned small businesses, Historically Underutilized Business Zone (HUBZone) businesses, and businesses owned by service-disabled veterans, including:

(a) Establishing Departmental and agency goals, in cooperation with agencies and in accordance with 15 U.S.C. 644, for the participation by such entities in appropriate procurement actions;

(b) Consulting with the SBA as necessary and preparing the annual plan and annual report from the Secretary to the SBA Administrator on participation of small entities in procurement actions by the Department;

(c) Conducting outreach programs, seminars, and similar initiatives for such entities and acting as the Department’s liaison to such entities for program procurement activities;

(d) Providing training regarding utilization of small and disadvantaged businesses to DOL employees whose duties and functions relate to procurement; and

(e) Ensuring the Department’s compliance with the procurement and property disposal requirements of 15 U.S.C. 637(b).

(2) Ensuring that small business specialists are appointed throughout the Department, and are trained in performing their duties.

(3) Publishing information required by Sections 8 and 15 of the Small Business Act.

(4) Coordinating and consulting, as appropriate, with other DOL agencies in fulfilling the above responsibilities.

(5) Appointing a point of contact to act as liaison between the Department and small business concerns and notifying the SBA of such point of contact, all in accordance with the Small Business Paperwork Relief Act of 2002.

(6) Performing any additional or similar duties which may be assigned by law or by the Secretary.

6. Delegation of Authority and Assignment of Responsibilities to Other Departmental Officials

A. The Assistant Secretary for Administration and Management (the "ASAM").

(1) The ASAM is delegated authority and assigned responsibility for the following SBREFA compliance and related matters:

(a) Acting as the Department's ombudsman to small businesses, including responding to inquiries or complaints arising under SBREFA and coordinating with the relevant enforcement agencies within the Department to respond to such inquiries and complaints.

(b) Serving as the Department's liaison with the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman (the "National Ombudsman") and providing, in coordination with the Department's enforcement agencies, the Department's response and other input related to the SBA Ombudsman's Regulatory Fairness Recommendations Report to Congress (known as the National Ombudsman's Report to Congress.)

(2) The ASAM is delegated authority and assigned responsibility for the following activities in support of minority serving institutions:

(a) Acting as the Department's liaison to minority businesses and institutions; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under Executive Orders 12432 and 12928, including efforts to increase the involvement of minority businesses in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the Department of Commerce's Minority Business Development Agency.

(b) Acting as the Department's liaison to Tribal Colleges and Universities; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under EO

13270, as amended by EO 13511, including efforts to increase the involvement of Tribal Colleges and Universities in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Board of Advisors on Tribal Colleges and Universities and the White House Initiative on Tribal Colleges and Universities.

(c) Acting as the Department's liaison to Asian Americans and Pacific Islanders as related to: Planning, coordinating, monitoring, evaluating, and reporting on the Department's activities under EO 13515, including efforts to increase the involvement of Asian Americans and Pacific Islanders in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Advisory Commission on Asian Americans and Pacific Islanders and the White House Initiative on Asian Americans and Pacific Islanders.

(d) Acting as the Department's liaison to Hispanic Americans as related to: Planning, coordinating, monitoring, evaluating, and reporting on the Department's activities under EO 13230, including efforts to increase the involvement of Hispanic Americans in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Advisory Commission on Educational Excellence for Hispanic Americans and the White House Initiative on Educational Excellence for Hispanic Americans.

(e) Acting as the Department's liaison to HBCUs; planning, coordinating, monitoring, evaluating, and reporting on the Department's related activities under Executive Orders 12928 and 13256, including efforts to increase the participation of HBCUs in the Department's programs and plans; coordination of related memoranda of understanding; and service as the Department's liaison to the President's Board of Advisors on HBCUs and the White House Initiative on HBCUs.

B. The Assistant Secretary for Employment and Training is responsible for ensuring that small business-related informational materials are made available via the public workforce system—One Stop Career Centers—in order to provide advisory services to small/disadvantaged businesses at the local level, including:

(1) Helping entrepreneurs understand how to qualify as a small/disadvantaged business in the Federal sector via links

or information that can be obtained via Web sites.

(2) Providing information on navigating government processes in order to help businesses understand how to successfully bid on and win government contracting opportunities.

(3) Linking small/disadvantaged businesses to Federal contracting opportunities via Web sites.

(4) Providing information and/or links to information relating to business planning, staffing, financing, etc.

C. The Solicitor of Labor is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order.

D. DOL Agency Heads are responsible for:

(1) Developing Agency annual acquisition plans, and annual small and disadvantaged business utilization plans, consistent with Agency responsibilities.

(2) Developing Agency minority institution activity plans, consistent with Agency responsibilities, to promote the objectives of Executive Orders 12432, 12928, 13230, 13256, 13270 and 13515 or similar laws.

(3) Conferring with Agency program and procurement officials to establish Agency monetary procurement goals, minority institution commitments, minority business development plans, and ensuring that Agency program and procurement officials cooperate to achieve these objectives.

(4) Ensuring that reports concerning degree of achievement of the above objectives are accurate and submitted in a timely manner.

7. Reservations of Authority and Responsibility.

A. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary, as is the submission of the Department's annual plan and annual report to the SBA on participation by small business concerns, small disadvantaged businesses, women-owned small businesses, HUBZone businesses, and businesses owned by service-disabled veterans, in the Department's procurement actions.

B. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 4–06 (February 21, 2006).

8. Effective Date. This Order is effective immediately.

Dated: March 4, 2010.

Hilda L. Solis,

Secretary of Labor.

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