

Congress of the United States
Washington, DC 20515

March 18, 2015

The Honorable Ash Carter
Secretary of Defense
The Pentagon

Dear Secretary Carter:

The 2015 Consolidated and Further Appropriations Act includes a requirement for the Department of Defense (DOD) to study the scrutiny and negative impacts that Section 811 of the National Defense Authorization Act for Fiscal Year 2010 has cast upon Native community-owned contractors. We write to remind the DOD of the importance of this study, and our interest in the findings of this report.

Section 811 requires a justification and approval (J&A) for all direct awards greater than \$20 million awarded through the Small Business Administration's (SBA) 8(a) Business Development Program. Native community-owned contractors and Community Development Corporations are the only entities that can receive these awards. The measure was intended as a "good governance" provision and does not prohibit or discourage the awarding of such contracts, so long as the award is justified and approved by the appropriate personnel.

However, there have been reports, including from the Government Accountability Office, that indicate Section 811 has been improperly interpreted and, or improperly implemented¹. Examples of this include arbitrary "caps" on the value of contracts that an agency will award, or the requirement of a significantly higher approval than is otherwise required by the Federal Acquisition Regulation. It is our concern that the implementation of Section 811 has unnecessarily and negatively impacted Native community-owned contractors. Furthermore, some companies report that the provision has been used to avoid working with these companies altogether, out of fear of political scrutiny, even when a contract award may be justified.

It is imperative that the integrity of our federal acquisition system is maintained. Agencies and Congress must not only exercise diligent oversight of contractors, but also ensure that agencies, members of Congress, and others are not influencing decisions by acquisition officials because of political reasons. This includes directing contracts towards or away from certain contractors based on anything other than performance capabilities and cost.

This is an important report, and we urge you to undertake it with diligence and speed. The findings of the report will guide Congress in revising Section 811. We welcome

¹ See GAO-14-721R, *DOD's Implementation of Justifications for 8(a) Sole-Source Contracts*, GAO; GAO-13-118 *Slow Start to Implementation of Justifications for 8(a) Sole-Source Contracts*.

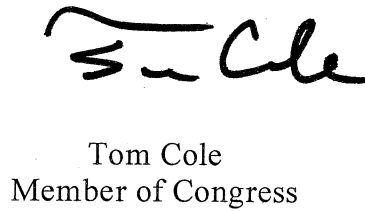
recommendations from DOD about what changes may be needed to address the findings of the report.

We look forward to hearing from you.

Respectfully,



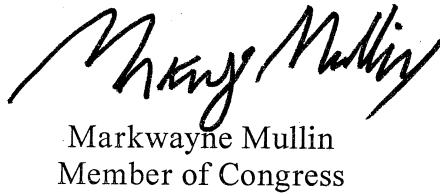
Don Young
Member of Congress



Tom Cole
Member of Congress



Betty McCollum
Member of Congress



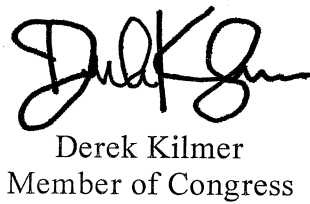
Markwayne Mullin
Member of Congress



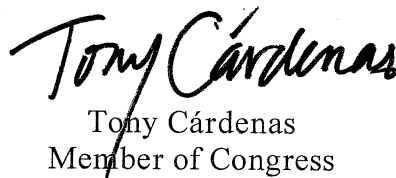
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