



U.S. Small Business Administration
Washington, D.C. 20416

**OFFICE OF
INSPECTOR GENERAL**

February 9, 2005

Honorable John F. Kerry
Ranking Member
Committee on Small Business and Entrepreneurship
SR-428A Russell Senate Office Building
Washington, DC 20510-6350

Dear Senator Kerry:

This is in response to your letter of January 25, 2005, raising certain questions relating to the Small Business Administration (SBA) Office of Advocacy report, *Analysis of Type of Business Coding for the Top 1000 Contractors Receiving Small Business Awards in FY 2002* released in December 2004. We have been working on similar issues for several years. Before responding to your questions, I will recap the results of the work by the Government Accountability Office (GAO) and my office on these issues.

We have concluded that the principal reasons for agencies classifying awards made to large businesses as small business awards fall into the following three areas:

1. Companies, which receive multi-year contracts, certify their small business size status when they respond to a solicitation. For contracts through the General Services Administration's (GSA) Multiple Awards Schedule (MAS) Program and other GSA multiple award contracts (MAC), these small business certifications are valid until contract renewal (i.e., up to 5 years), even if the company outgrows its small business status. For all other contracts containing option years, including Government-Wide Acquisition Contracts (GWAC), the procuring office is not required to have the contractor re-certify its small business status when exercising each option. Thus, the contractor retains its small business status for the life of the contract (e.g., 20 years) even if it outgrows its small business status.
2. Another problem with the MAS Program is that GSA classifies a company as small for the contract even though the company may not be small for all of the contract's goods or services. Thus, agencies may obtain small business credit for using a firm classified as small even if the firm is not small for all of the procured goods or services. This is contrary to SBA regulations, which require that a contractor meet the size standard for each product or service for which it submits an offer (13 CFR§121.407).



3. Large companies also improperly receive small business contracts due to errors by contracting personnel and failures to enforce small business contracting procedures. For example, contracting personnel do not always require companies to self-certify their size when responding to a solicitation. Instead, to determine size status, they inappropriately rely on governmental databases with (possibly inaccurate) small business information. Moreover, contracting personnel, possibly due to a lack of familiarity with small business procedures, have made other errors in accepting size self-certifications. Non-compliance with small business contracting procedures permits large companies to obtain small business contracts.

We believe more frequent size re-certifications are needed, such as annual re-certifications, for multi-year awards to preclude agencies from claiming that they are procuring from a small business when, in fact, they are procuring from a large business.

As a result of your questions, we obtained and reviewed the data used to prepare the report from Eagle Eye Publishers, Inc., as well as information from other sources, to answer your questions. Our responses to your questions are provided below:

1. Were any of the 44 firms included in the report listed on the CCR [Central Contractor Registration] database as small entities?

Answer: Yes, based on data supplied by Eagle Eye Publishers, Inc., 12 of the entities contained at least one division or subsidiary classified as a small business, a small disadvantaged business and/or an 8(a) company in CCR as of April 2003. As of February 7, 2005, only one of the 43 entities (we could not check one entity because it was a "Classified Domestic Contractor") had a division or subsidiary with an active CCR profile that listed the entity as a small business. We are continuing to review this particular listing.

2. Is there any evidence that these firms were ever removed from the database because they were inaccurately listed as small? If so, is there any evidence that these firms re-registered with either the PRO-Net or CCR databases as a small firm, following this removal?

Answer: Based on information provided by an SBA official, SBA removed two of the entities from PRO-Net (presently the Dynamic Small Business Search portion of CCR, which is maintained by SBA) because they were inaccurately listed as small. As of February 2005, neither was listed as small in CCR.

3. In any of the contracts awarded to these firms, were there any instances of a company inaccurately qualifying itself as a small firm prior to the awarding of the contract?

Answer: Based on data supplied by Eagle Eye Publishers, Inc., there were almost 1,400 small business contracts awarded to the 44 entities (or at least to their subsidiaries or divisions). At this time, we have not reviewed the individual contracts to determine

whether there have been any misrepresentations. To determine any instances of a company inaccurately qualifying itself as a small firm prior to the awarding of the contract, we would have to (1) determine which procurement office awarded each contract; (2) obtain each contract file; (3) determine which company, i.e., the parent company or an acquired subsidiary, certified as small; (4) determine when it certified as small; (5) determine the relevant North American Industrial Classification System (NAICS) code; (6) obtain financial or employee data from each company and each of its affiliates for each time period covered by each certification, and (7) calculate whether each company was small when it certified.

Over the past several years, both GAO and my office have found very few instances where a large company falsely certified it was small. As I discussed above, the primary reasons for this problem do not appear to be false certifications. The review of all 1,400 contracts would be an enormous undertaking, one well beyond the resource limits of my office, with a low probability of finding misrepresentations. We would be glad to discuss alternative approaches with your office.

4. If these companies were found to have misrepresented themselves as small firms in order to receive Federal contracts, will your office find them in violation of the Small Business Act and utilize the penalties afforded in section 16(d) and recommend criminal action?

Answer: Our office has, and will, investigate any valid allegation of size misrepresentation. If the investigation finds misrepresentation, we have, and will, present the matter to the cognizant authorities for appropriate enforcement actions.

My staff has answered your questions to the best of our ability, given the relatively short time frame and limitations of the data used in the Office of Advocacy study. Should you or staff have any questions or want to discuss this matter further, please call me or Peter McClintock, Deputy Inspector General, at (202) 205-6586.

Sincerely,



Harold Damelin
Inspector General

Cc: Honorable Olympia Snowe
Chair, Committee on Small Business and Entrepreneurship