

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MEMORANDUM

July 28, 2008

To: Members of the Committee on Oversight and Government Reform

Fr: Majority Staff, Committee on Oversight and Government Reform

Re: SBA IG Finds Blackwater May Have Misrepresented Small Business Status

On March 10, 2008, Chairman Waxman wrote to the Small Business Administration (SBA) requesting that the agency investigate whether Blackwater Worldwide, a company that has received more than a billion dollars in government contracts since the start of the war in Iraq, improperly obtained contracts intended for small businesses.¹ As detailed in a memorandum attached to that letter, it appeared that Blackwater incorrectly categorized many of its security personnel as “independent contractors” rather than “employees” in order to qualify for small business set asides.

In response to Chairman Waxman’s request, on March 14, 2008, Small Business Administrator Steven Preston requested that the SBA Inspector General investigate the matter.² Today the SBA IG released a report concluding that Blackwater may have misrepresented its small business status in order to obtain 39 contracts worth more than \$100 million.³

I. Inspector General Questions Blackwater’s Small Business Status

The report released today by the SBA IG finds: “Blackwater or its affiliates obtained ... a total of 39 contracts that were set aside for small businesses even though the bidder may not have met SBA’s criteria to be considered a small business.”

¹ Letter from Henry A. Waxman, Chairman, House Oversight and Government Reform Committee, to Steven Preston, Administrator, Small Business Administration (Mar. 10, 2008).

² Letter from Steven Preston, Administrator, Small Business Administration, to Eric Thorson, Inspector General, Small Business Administration (Mar. 14, 2008).

³ Office of Inspector General, Small Business Administration, *Size Determination for Affiliate of Blackwater Worldwide* (July 25, 2008).

As the SBA IG report explains, “The key issue in this decision was whether personnel hired by Blackwater to provide security services for the Department of State (DOS) and other agencies were Blackwater employees ... or independent contractors.” In claiming it was a small business, Blackwater argued that 1,000 security personnel it provided under the State Department’s \$1.2 billion Worldwide Personal Protective Service (WPPS) contract were independent contractors.

The SBA IG reports that Blackwater claimed that it “had little or no knowledge of the activities of the security personnel performing the contract and exercised little or no supervision over these personnel once they were deployed.”

The SBA IG report concludes that these assertions were incorrect. The SBA IG report states: “Our review of the WPPS Statement of Work indicates that it contained a number of provisions that appeared to be inconsistent with SBA’s conclusion that Blackwater did not have knowledge about the actions of the personnel once they were deployed.”

The SBA IG report explains:

Blackwater was required to do more than merely hire and train the security professionals and provide them to the DOS. The contract provisions discussed above indicate that Blackwater was required to work with the DOS in establishing shift schedules; provide a wide variety of reports to DOS about ongoing mission and performance issues; and ensure compliance with performance and standards of conduct issues by security personnel. ... The provisions of the WPPS contract required Blackwater to provide a large number of supervisory positions to oversee the security personnel.

The SBA IG report also questions whether Blackwater met the revenue limitations for 32 small business contracts that restricted revenues of the contractor. Blackwater won 31 small-business contracts that had a revenue limitation of \$6.5 million and one contract that had limitation of \$750,000. Yet since 2002, Blackwater has received over \$1 billion in federal contracts. In 2006 alone, Blackwater received over \$500 million in federal contracts.⁴

II. Inspector General Questions SBA Small Business Determination

The SBA IG report also raises questions about a decision on November 2, 2006, by an SBA field office known as Area III that concluded that Blackwater’s security personnel under the State Department contract were “independent contractors.”

The SBA IG report explains that the SBA field office received several protests from companies challenging Blackwater’s small business status during bidding for a Navy contract in October 2006. In response, Blackwater argued that “over 1,000 additional personnel were hired to provide security services under the WPPS and other contracts, but claimed that these individuals were independent contractors, not Blackwater employees.” According to the SBA IG report, on November 2, 2006, “the SBA Area III Office agreed.”

⁴ Eagle Eye Inc., *Eagle Eye Federal Prime Contracts Database* (compiling data from the Federal Procurement Data System).

The SBA IG report finds several problems with this small business size determination. First, it finds that “SBA did not adequately explain its reasons for concluding that the security personnel on the DOS contract were independent contractors.”

Second, the SBA IG report finds that “SBA also apparently relied on Blackwater’s claims that it had no knowledge of the activities of the security personnel once they were deployed.” The SBA IG report finds that the field office “apparently did not consider certain contractual terms that appear to be inconsistent with the Agency’s conclusion.”

Finally, the SBA IG report finds that the field office failed to consider Blackwater’s own contract with its security personnel, which states that Blackwater is an “employer” for purposes of the Defense Base Act. As the SBA IG report states, “Blackwater was considered to be the employer of the security personnel on the WPPS contract for purposes of the Defense Base Act,” but “SBA did not appear to consider this information when it rendered its size determination.”

For these reasons, the SBA IG recommended that “SBA may want to examine its size decision to confirm whether it made the proper finding and determine whether it is appropriate for Blackwater affiliates to continue receiving small business set aside contracts.”

III. Inspector General Warns of Possible Misrepresentations by Blackwater

In addition to the findings described above, the SBA IG report raises serious concerns about whether Blackwater made false statements about its small business status to the federal agencies that awarded these contracts. Of the 39 contracts reviewed, 38 were awarded by the Defense Department and one was awarded by the Department of Veterans Affairs.

The SBA IG report states that these small business contracts “could have involved potential misrepresentations by Blackwater.” The SBA IG report states that Blackwater “obtained a total of 33 contracts during Fiscal Years 2005 through 2007, totaling \$2,188,620, which may have involved misrepresentations to obtain the contract.” The report also finds that “it is possible that misrepresentations took place” on the remaining six contracts, totaling \$107,311,356.

The Small Business Act states that misrepresenting a business as a “small business concern” in order to win a federal contract is a criminal offense punishable by a \$500,000 fine and up to ten years in prison.⁵ The Act also states that a company found to have made false statements is “subject to suspension and debarment ... on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract.”⁶

Because of these concerns, the SBA IG referred these cases to the Inspectors General of the Department of Defense and Veterans Affairs for further investigation.

⁵ Small Business Act, 15 U.S.C. § 645(d).

⁶ *Id.*