

REVIEW OF SELECTED SMALL BUSINESS PROCUREMENTS

REPORT NUMBER 5-16

MARCH 8, 2005

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**U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416**

ADVISORY REPORT
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Contracting and Business Development

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SUBJECT: Review of Selected Small Business Procurements

In a letter dated February 19, 2003, the Office of Inspector General (OIG) informed the Chair of the United States Senate Committee on Small Business and Entrepreneurship that we would review the propriety of small business certifications and whether certain contractors who received small business contracts were indeed small. The review stemmed from complaints made by a member of the small business community. Our review did not include procurements by the Small Business Administration (SBA). This report presents the results of our review and is being forwarded to the Chairs and Ranking Members of the Senate Committee on Small Business and Entrepreneurship and the House of Representatives Committee on Small Business.

BACKGROUND

The Federal Acquisition Streamlining Act of 1994 (FASA) codified the authority of agencies to enter into task or delivery order contracts, known as multiple award contracts (MAC), with multiple firms for the same or similar products. The Clinger-Cohen Act of 1996 provided for the use of multi-agency contracts and government-wide acquisition contracts (GWAC). The use of these contracts can speed up the procurement process as agencies can order services and supplies on a regular basis without having to establish new contracts for each order. Companies can be listed as small businesses on these contracts if they self-certify that they are small. Ordering from firms that are classified as small on MACs assists agencies in meeting their small business procurement goals.

In its May 2003 report, “Reporting of Small Business Contract Awards Does Not Reflect Current Business Size,” the Government Accountability Office (GAO) found that companies no longer considered small were reported in the Federal Procurement Data System (FPDS) as receiving small business contracts. GAO determined the primary reason for large companies being reported as small businesses on these contracts was due to regulations that allowed a company to be considered small over the life of a MAC, which can be up to 20 years, even if the company had grown into a large business, merged with another company, or been acquired by a large company. As a result, an order placed against a MAC would be reported as a small business award, even if the business was no longer small at the time of the order.

The General Services Administration (GSA) now requires companies receiving Federal Supply Schedule Multiple Award Schedule (FSS MAS) Program contracts and all other multiple award-type contracts to re-certify their business size when the government exercises options to extend such contracts, which generally occurs every 5 years. This change will reduce the amount of time large businesses will be able to receive contracts intended for small businesses. Additionally, SBA issued a Final Rule (effective December 21, 2004) requiring a new size self-certification when contracts are novated due to the contractor being purchased by another company in order for the agency to count subsequent award options or orders from the contract towards its small business goals.

Starting in September 2002, we received complaints stating that large businesses were obtaining contracts intended for small businesses. The initial complaints focused on four companies. According to FPDS, from October 1, 2000 through June 30, 2002, two of the four companies were awarded a total of seven new¹ small business set-aside contracts. Additionally, the four companies collectively received orders under seven MACs. A subsequent complaint received during the course of the audit focused on a MAC awarded to a fifth company. All five companies were large businesses at the time of the complaints.

OBJECTIVES AND SCOPE

Our review objectives were to determine if certain large companies 1) were improperly awarded new small business set-aside contracts, and 2) met the small business size standards when they were originally awarded MACs.

To accomplish objective one, we reviewed FPDS data for the four companies included in the initial complaints to identify all new contracts reported as small business set-asides from Fiscal Year (FY) 2001 through the third quarter of FY 2002. We obtained information from the procuring agencies for the seven identified new small business set-aside contracts to determine if improper certifications were made to obtain

¹ “New” is used to differentiate from modifications to existing contracts or orders stemming from multiple award contracts.

these contracts. We also requested a size determination from SBA's Office of Government Contracting (GC Office) for one of the set-aside contracts.

To accomplish objective two, we reviewed copies of the certifications and representations made by each of the five companies to determine the small business status of the MACs, specifically FSS MAS contracts and GWACs. We spoke with GSA officials and appropriate company officials, as necessary. We obtained documentation to support the size certifications from each company and obtained size determinations from SBA's GC Office for two of the eight MACs.

SUMMARY

Although FPDS data identified seven new small business set-aside contracts awarded to two of the four companies that were the subject of the initial complaints, we could only document that one of the seven was actually a new small business set-aside contract. For this contract, the company improperly certified as a small business. Regarding the remaining six contracts, FPDS data was inaccurate or could not be confirmed because the procuring agency no longer had complete records.

Two of the eight MACs we reviewed were awarded to companies that were not small at the time they certified they were small, while the remaining six MACs were awarded to small companies. For one of the two MACs awarded to a company that was not small, the company made statements in its offer to obtain the award that showed that it was other than small. The second MAC was awarded based on a false certification that the company was a small business manufacturer and regular dealer.

This report contains no recommendations. It is being provided for your information.

One Small Business Set-Aside Contract Was Improperly Awarded

FPDS data identified seven new small business set-aside contracts awarded to two companies. However, we could only confirm that one of the seven contracts was actually a new small business set-aside, and in that instance, the company made an improper small business self-certification to receive the contract. For the remaining six contracts, FPDS data was inaccurate or could not be confirmed.

Concerning the contract with the improper small business self-certification, we requested a size determination from the SBA's GC Office, which determined that the company was not small at the time it so certified. This matter is still under review.

Through inquiries with the procuring agencies, we found that we could not confirm that the remaining six contracts identified in FPDS as new small business set-aside contracts were, in fact, new small business set-aside contracts. According to a procuring agency official, two of the six were orders from two GWACs. For three of the

remaining four contracts, the procuring agency no longer had its procurement files, but we were advised that other listings maintained by the agency reflected that they were not small business set-asides. For the fourth contract, the procuring agency could not provide any record of award of the contract.

Multiple Award Contracts Issued Based on Improper Certifications

For one of the eight MACs we reviewed, the company receiving the award improperly self-certified as a small business to obtain the contract. At the time of its self-certification, however, the company in question clearly stated in its offer that it was an affiliate of a known large company. Applying SBA's size regulations to this case, the company's affiliation with a large company should have precluded it from being small for Federal contracts. Thus, GSA should not have classified this MAC as a small business contract. Moreover, during our review, the company could not provide documentation to support its small business status. As a result of our audit work, the company directed GSA to change its status from small to large for this FSS MAS contract. We are providing a copy of this report to the GSA Office of Inspector General for possible review.

A second MAC was awarded based on a false certification. The company receiving the award self-certified that it was a small business, a manufacturer and regular dealer. However, SBA concluded in a size determination that an affiliate of the company was the actual manufacturer and that the company, as a non-manufacturer, must meet the small business size standard for non-manufacturers. The company and its affiliates also exceeded the small business size standard for a regular dealer. This matter is still under review.

The other six MACs reviewed were awarded properly and the corresponding companies were small at the time they certified they were small, which was between 1995 and 1997. To reach this conclusion for five of the MACs, we reviewed documentation that supported the companies' size at the time of their initial certification. These companies were clearly small at the time of their awards based on size standard regulations established by SBA. To determine if the sixth MAC was properly awarded, we requested a size determination from SBA's GC Office because the company's size status was questionable at the time of its self-certification and outside expertise was needed to assist in our review. SBA's GC Office concluded that the company was small at the time of the award and, accordingly, we conclude that the MAC was properly awarded.

The OIG addressed the issue of companies with MACs being considered small for lengthy time periods in Report # 5-14, "SBA Small Business Procurement Awards Are Not Always Going to Small Businesses," issued February 24, 2005.

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The findings included in this report are the conclusions of the Office of Inspector General's Auditing Division. Should you or your staff have any questions, please contact Robert G. Hultberg, Director, Business Development Programs Group at (202) 205-[FOIA Ex. 2].

Attachment

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