



GTSI Settlement Could Mark Crackdown on Contracting Abuses

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The U.S. Small Business Administration has announced a tough settlement with GTSI Corp., one of the nation's largest government contractors. GTSI, which had been accused of improperly obtaining contracts that are meant for small businesses, avoided a one-year suspension from new work for the federal government. But two of its top executives are stepping down, three others are suspended, and the company has agreed to immediately cease working as a subcontractor to small businesses serving as prime contractors.

The SBA has taken strong action here, both in bringing the charges earlier this month and in forcing this settlement. But it's actually the SBA's tough enforcement stance in this case that's unusual, not the questionable practice itself.

GTSI was accused of getting contracts set aside for small businesses by putting forth smaller companies as supposed prime contractors when GTSI itself actually took the lead role in the work. GTSI, a Beltway giant that received \$540 million in federal contract awards in 2009, isn't exactly what Congress had in mind when it enacted preferences for small businesses.

Anyone who follows government contract awards knows that this type of activity represents business as usual in the contracting game. Our law firm has represented several small businesses owned by service-disabled veterans that have lost lucrative business opportunities to phony "small" or phony "service-disabled" small businesses, so we have seen this practice up close.

Federal programs created to help small and disadvantaged businesses are constantly being abused by companies that aren't eligible. The use of small businesses as fronts and the setting up of phony service-disabled companies are just two of the many types of finagling that go on. Companies will hold out a woman or minority member as president or CEO, in name only, in order to bid on and win contracts set aside for woman-owned or minority-owned businesses. Other contractors will set up temporary office space in economically



depressed areas in order to land contracts set aside for companies headquartered in historically underdeveloped areas.

These maneuvers and others like them fly in the face of the public policies underlying the government's programs designed to aid small and disadvantaged businesses. They also violate federal laws and regulations that require, for example, financial and operational control by the woman or minority president or CEO who is being described as the company's leader.

The problem has been that government agencies, including the SBA, simply do not actively seek out or weed out fraud and abuse. Instead, the government relies on industry self-regulation, hoping that other companies will police their competitors and will notify the government through status protests whenever a company wins a government set-aside under false pretenses. (A status protest is a mechanism by which a company that bid on but lost a government set-aside may file a protest with the contracting agency.)

The system worked in this case. The government first learned about GTSI's actions when a New Mexico-based woman-owned small business, Wildflower International Ltd, protested the Department of Homeland Security's award in 2008 of a small business set-aside contract to MultiMaxArray, Inc. Wildflower contended that MultiMaxArray was nothing more than a front for GTSI. The government's investigation followed.

But this type of self-policing rarely works to effectively root out bad actors. When a protest shows that a company is not qualified, the government may cancel the contract, but it seldom takes the next, much tougher, step, which is to suspend or debar the company from bidding on future contracts. As a result, the bad actor simply moves on to new contract opportunities. Some companies even jump from one set-aside opportunity to the next, holding themselves out as woman-owned, then minority-owned, then veteran-owned, and so forth, transforming their status like a chameleon changes colors, pending the next lucrative opportunity.

GTSI is a good example of how a company may maneuver its way through the government contracting process unscathed while repeatedly being called out as a bad actor. According to American Small Business League President Lloyd Chapman, the SBA Office of Inspector General recommended GTSI for debarment more than five years ago for acts similar to



those that were alleged this month. Yet the SBA did not act until now –billions of dollars in government contracts later.

After SBA Administrator Karen Mills announced the action against GTSI on October 1, she stated that her agency “has no tolerance for fraud, waste and abuse in any of our programs.” Writing in the Huffington Post, Chapman replied that the SBA “has helped large businesses hijack federal small business contracts every day” that Mills has been in office and said that 60 of the top 100 recipients of federal small business contracts are actually large businesses.

Still, perhaps it’s now a good time to hope that SBA’s action against GTSI signals a new, tougher stance in ridding government set-aside programs of bad actors. Perhaps those set-asides will then be more readily accessible by those they were intended for in the first place.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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