

Fake Cert Leads to Big Settlement

Written by Nick Sanders

Friday, 16 October 2015 00:00



File this story in the “Captain Obvious” folder. There’s nothing earth-shattering about this one. But it serves as a good example of how a false certification can lead to big troubles.

The story comes to us—as so many do—courtesy of the U.S. Department of Justice [press release](#).

From that source, we learn that UFC Aerospace and its former President (Doug Davis) settled a civil fraud lawsuit filed against them by the U.S. Government (as intervenor). The suit alleged that UFC and its then-President engaged in “fraudulent conduct in violation of the Small Business Act, 15 U.S.C. § 632(n), in order to secure numerous lucrative defense subcontracts with government contractors.” More specifically, the complaint alleged that “UFC falsely certified to government contractors that UFC was a woman-owned small business (‘WOSB’) when UFC at no point met either requirement for WOSB status under the Small Business Act. Specifically, no women were majority owners of UFC or managed or controlled UFC’s management and daily business operations.”

According to the DOJ press release –

UFC began claiming WOSB status at least beginning in late 2001, by representing to contractors UFC knew were doing work with the federal government that it was a WOSB. UFC falsely relied on the purported ownership interest of the wives of the actual owners, John Davis and Douglas Davis, to make these representations. UFC continued to represent that it was a WOSB at various times until 2011, and earned millions of dollars on the contracts procured with those representations. UFC did so because it understood that this status mattered both to the contractors and to the Government, and it believed that it was obtaining a competitive advantage by claiming to be a WOSB. However, at no time during the entire time period from

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2001 to 2011 did UFC ever qualify under the Small Business Act as a WOSB. The only ownership interest that the wives of John and Douglas Davis had in UFC was through trusts that were entirely controlled by John and Douglas Davis, and under which the women were entitled to a maximum of only 5% of the trusts' assets. Moreover, neither woman controlled or managed the company at any time. In fact, neither woman had company email accounts, attended management meetings, or spent regular time in the office during the relevant time period.

How big was the settlement that Davis and UFC negotiated with the DoJ? "In the settlement ... UFC and DAVIS admitted and accepted responsibility for the fact that UFC never qualified for WOSB credit under the Small Business Act **and will pay the Government \$20,015,956.92.**" (Emphasis added.)

\$20 million for a false certification should serve as a definite warning to those entities who scheme to win Federal contracts and subcontracts under false pretenses. Indeed, the DOJ press release contained the following statement—

SBA Inspector General Peggy E. Gustafson said: 'This settlement sends an important message that falsely certifying a company's status as a Woman Owned Small Business is unacceptable and bears a significant consequence. We will continue to aggressively pursue parties that wrongfully obtain both prime and subcontracting opportunities for small businesses that are legitimately owned and controlled by women. I want to thank the U.S. Department of Justice for its dedication to reaching a settlement in this case.'

This story should also serve as a warning to prime contractors who may be willing to turn a blind eye towards potential subcontractors that may be in the "right" socioeconomic category and to which a contract award would enable meeting commitments made in Small Business Plans. The socioeconomic status of an entity should not – and must not – be the overriding criterion used to make source selection decisions. Yes, it is the responsibility of the subcontractor to accurately complete Reps and Certs, and there is no regulatory obligation that compels a prime to audit potential subcontractors to confirm the accuracy of those Reps and Certs. However, the prime cannot act with reckless disregard either. The prime cannot knowingly or negligently make a subcontract award based on false pretenses. Moreover, when there is corruption in the source evaluation and selection process, we need to carefully examine the course of dealings between the prime's buyer and the subcontractor in order to identify whether there were any violations of the company's business conduct policy (e.g., bribes or kick-backs) in the procurement. Given all that, in our view, the unnamed prime contractor in this story dodged a bullet.

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Consider our assertion regarding the duties and responsibilities of the prime contractor when designing internal controls over subcontractor evaluations and selection decisions. And consider the consequences for UFC Aerospace when thinking about winning new contract awards through false or intentionally inaccurate Reps and Certs.