

Another Case Alleged of Large Business Using Small Business as a Front

Written by Nick Sanders
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Readers may remember the [sad case](#) of GTSI, who was suspended by the General Services Administration because “GTSI was an active participant in a scheme that resulted in contracts set-aside for small businesses being awarded to ineligible contractors and with contracts not being performed in accordance with applicable law, regulations and contract terms.” This resulted in (among other things) the CEO and general counsel being terminated, the departure of “many” employees, and the appointment of an “independent monitor.” GTSI was subsequently acquired by Unicom Systems, who is “seeking to move past the SBA suspension,” according to [this WaPo article](#).

Today’s article discusses Health Net, Inc. Health Net “is among the United States of America’s largest publicly traded managed health care company” (according to Wikipedia). Among its operating divisions, Health Net Federal Services (HNFS) manages the TRICARE North Region for the Department of Defense. Health Net provided “claims re-pricing” services for the Department of Veterans Affairs (DVA).

We are not experts in this area, but the Veterans’ Affairs Office of the Inspector General (VAOIG) defined “claims re-pricing” as follows—

Claims re-pricing is the process of comparing VA allowable rates based on fees charged by non-VA health care providers to rates that the contractor may have established with health care providers who are a part of their network. If the network rates are lower than the VA allowable rates, the contractor re-prices the claim and calculates the potential savings. The re-pricing contractor, ETS, then receives a percentage of the potential savings as a fee under the contract.

Health Net and the Department of Veterans Affairs (VA) had a re-pricing contract in place from

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1999 to about 2007/2008, at which time the VA awarded five re-pricing contracts under a set-aside program for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Enterprise Technology Solutions, LLC (ETS) eventually performed (as prime contractor) *all five* of those SDVOSB re-pricing contracts. As the VAOIG wrote—

To be eligible for award as an SDVOSB, an offeror must represent in good faith that it is an SDVOSB at the time of its written representation. After the contract was awarded, the contractor must continue to represent that it is compliant with the size limitations established by the SBA for the assigned NAICS code.

In addition, ETS' contracts contained the typical Limitation on Subcontracting language that required that the SDVOSB prime contractor must perform at least 51 percent of the work. That language ostensibly prevents a Small Business (or, in this case, a SDVOSB) from acting as a sham "front" for a large business. According to [this VAOIG report](#), that intent did not come to fruition in this particular case. The VAOIG found that ETS used Health Net as a subcontractor in both of its re-pricing contracts and (more to the point) ETS was not performing *any* of the re-pricing work and was, instead, subcontracting 100 percent of the work to Health Net. With the full knowledge of the VA personnel responsible for administering the contracts.

The VAOIG also concluded that the VA had never performed sufficient market research to determine whether or not there were any SDVOSBs that could perform the re-pricing work, before establishing SDVOSB set-asides. Instead, "Health Net encouraged the owner of ETS (Mr. Donald Neilson, a former VA employee) to start ETS as an SDVOSB concern, which allowed Health Net to increase business by subcontracting with an SDVOSB that obtained the contract through a small business set-aside. ... ETS's sole function was to use its SDVOSB status to obtain the contract on behalf of Health Net."

In addition to the foregoing, the VAOIG also reported—

During our review we attempted to determine if VA actually received any cost savings as a result of the re-pricing work by ETS. As stated earlier, the COTR had no information whether the potential savings identified by ETS were actually realized by VA. We visited the fee office in Perry Point, MD and reviewed selected individual claims to determine if VA realized any savings due to the ETS re-pricing. Under the current regulations, when no contract is present with the provider, VA pays the lower of the Medicare rate, the rate from the re-pricer (Health Net), or billed charges. The only time VA would recognize savings by a re-pricer like Health Net would be when their rate is lower than the Medicare or actual billed rate. Our review of fee claims for four patients for a one month period at Perry Point, MD found no instances where

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ETS's rate was less than the Medicare rate; in fact, it was substantially higher than the Medicare rate....

Unsurprisingly, the VAOIG recommended that ETS' re-pricing contracts be terminated for default.

Some folks think Health Net should be suspended or debarred for its role in this matter. Over at POGO, they [explore](#) why that's not likely to happen any time soon. To sum up POGO's position, Health Net gains advantage from its position as a large DOD contractor, makes large contributions to campaigns and spends lots of money on lobbyists, and has the habit of hiring former Government employees—all of which POGO alleges insulates Health Net from facing the full consequences of its misbehavior.

Well, the same could be said for many upon many large Government contractors. And while it is rare that a large defense contractor is fully penalized for its misbehavior, in our experience that has less to do with the factors POGO recites, and more to do with spending lots of money on really good attorneys. But maybe that's just us.

For its part, according to [NextGov](#), Health Net released a statement that stated it believed that the VAOIG findings were "inaccurate." We shall see.