



# **Small Business Procurement: Programs and Perils**

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**September 26, 2017**

# Background

- The Government has a goal of spending 23% of its procurement dollars in small business (SB) Programs. 15 U.S.C. § 644(g).
- In FY 2016, the Government spent almost \$100 billion through SB vehicles.

**Learning Outcome: This course should equip you with the knowledge to identify, develop and pursue small business contracting violations.**

# What is a small business?

- North American Industry Classification System (NAICS)
- Title 13 C.F.R. Part 121
- Industry Will Use One of Two Metrics:
  - Annual Receipts
  - Employees



# NAICS Tables

## SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
-------------	---------------------------	---------------------------------------	---------------------------------------

### Sector 11—Agriculture, Forestry, Fishing and Hunting

#### Subsector 111—Crop Production

111110 .....	Soybean Farming .....	\$0.75	.....
111120 .....	Oilseed (except Soybean) Farming .....	\$0.75	.....
111130 .....	Dry Pea and Bean Farming .....	\$0.75	.....
111140 .....	Wheat Farming .....	\$0.75	.....
111150 .....	Corn Farming .....	\$0.75	.....
111160 .....	Rice Farming .....	\$0.75	.....

### Sector 21—Mining, Quarrying, and Oil and Gas Extraction

#### Subsector 211—Oil and Gas Extraction

211111 .....	Crude Petroleum and Natural Gas Extraction .....	.....	500
211112 .....	Natural Gas Liquid Extraction .....	.....	500

#### Subsector 212—Mining (except Oil and Gas)

212111 .....	Bituminous Coal and Lignite Surface Mining .....	.....	500
212112 .....	Bituminous Coal Underground Mining .....	.....	500
212113 .....	Anthracite Mining .....	.....	500
212210 .....	Iron Ore Mining .....	.....	500
212221 .....	Gold Ore Mining .....	.....	500

# A Company's size includes affiliates.

- Affiliation exists where an entity controls or has the power to control another, or a third party controls both.
- If companies are affiliated, their receipts or employees are combined
- After combining affiliated companies, is the small business still small?

# Companies

Megasuperduperbig  
Corp.

Biggie, Ltd.

Large, Inc.

Mini 1

Mini 2

Mini 3



# People

Daddy Warbucks

```
graph TD; A[Daddy Warbucks] --> B[ Holding Corp 1 ]; A --> C[ Holding Corp 2 ]; B --> D[ Sub 1 ]; B --> E[ Sub 2 ]; C --> F[ Sub 3 ]
```

Holding Corp 1

Holding Corp 2

Sub 1


Sub 2

Sub 3

**Affiliation Case Study:**  
**U.S. ex rel. Colangelo v.**  
**En Pointe Gov., Inc., et al.**

- Several companies affiliated through common ownership
- Subsidiary submitted GovK bids.

Department of Justice

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FOR IMMEDIATE RELEASE

Wednesday, July 6, 2016

**Information Technology Companies  
Misrepresentations Relating to Small Business  
Payments**

**\$5.8 Million**

En Pointe Gov. Inc., En Pointe Technologies Inc., En Pointe Technologies Sales Inc., Dominguez East Holdings LLC and Din Global Corp., all of Gardena, California, have agreed to resolve allegations that they violated the False Claims Act by falsely certifying that En Pointe Gov. Inc. was a small business in order to obtain contracts set aside for small businesses and underreporting sales under a General Services Administration (GSA) contract to avoid the payment of fees, the Department of Justice announced today. Under the settlement agreement, the companies have agreed to pay slightly more than \$5.8 million. En Pointe Gov. Inc. is now known as Modern Gov IT Inc.; En Pointe

# Affiliation Case Study

United States ex rel. Ameliorate Partners,  
LLP v. ADS Tactical, Inc., et al.

- ADS → Defense contracting firm; 400 employees
- ADS owner selects disadvantaged individuals to set up front companies
- Front companies win the contract; ADS does the work (provides employees/equipment)



**Department of Justice**

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, August 10, 2017

**Defense Contractor ADS Inc. Agrees to Pay \$16 Million to Settle  
False Claims Act Allegations Concerning  
Small Business Contracts**

Virginia Beach, Virginia-based contractor ADS Inc. and its subsidiaries have agreed to pay the United States \$16 million to settle allegations that they violated the False Claims Act by knowingly conspiring with and causing purported small businesses to submit false claims for payment in connection with fraudulently obtained small business contracts, the Department of Justice announced today. The settlement further resolves allegations that ADS engaged in improper bid rigging relating to certain of the fraudulently obtained contracts. The settlement with ADS ranks as one of the largest recoveries involving alleged fraud in connection with small business contracting eligibility.

# Limitations on Subcontracting

- SB programs generally require the small business to perform a certain amount of the contract.
  - Prime contractor must perform set % of the work (old rule); or
  - May not pay more than a certain % of contract value to subcontractors (new rule – Post 2013 NDAA).

# LOS Changes

- The 2013 NDAA mandated a new method of calculating limitation on subcontracting. Pub. L. 112-239 § 1651.
- The SBA has promulgated a rule that implements these changes effective June 30, 2016. 81 Fed. Reg. 34243 (May 31, 2016)
- FAR Rule to follow (FAR Case 2016-011). . . .

# The Programs

1. Small Business
2. 8(a) Business Development (8(a)BD)
3. HUBZone
4. Woman Owned Small Business (WOSB)
5. Service Disabled Veteran Owned Small Business (SDVO)
6. Subcontracting

# Small Business [Self-Certification]

- Contractor must be small for the contract's NAICS code.

# 8(a) BD [SBA Certification]

- Small Business
- Unconditionally Owned and Controlled by one or more Disadvantaged Individuals
- Of Good Character
- Citizens of, and residing in, the USA
- Potential for Success

13 C.F.R. Part 124

# LB&B Associates, Inc.

- Qui Tam case alleging disadvantaged owner was a figurehead.
- Material reviewed included company newsletters and internal correspondence



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Monday, July 6, 2015

## **LB&B Associates Inc. Agrees to Pay \$7.8 Million to Resolve Allegations of False Claims Related to Small Business Contracts**

LB&B Associates Inc. and its principals, Lily A. Brandon and F. Edward Brandon, have agreed to pay the government \$7.8 million to resolve allegations that they made false statements to obtain contracts through the Small Business Administration's (SBA's) 8(a) Business Development Program for Small Disadvantaged Businesses, the Justice Department announced today. LB&B is a North Carolina corporation headquartered in Columbia, Maryland.

"The purpose of the 8(a) Program is to assist small disadvantaged businesses to compete in the American economy," said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Department of Justice's Civil Division. "The Justice Department is committed to making sure that those who participate in 8(a) contracts do so honestly and fairly."

# HUBZone

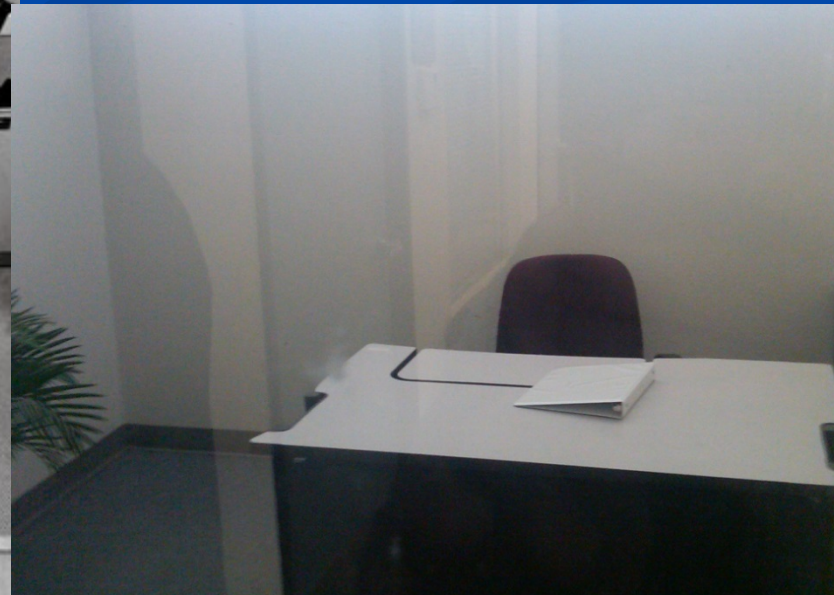
## [SBA Certification]

- Small business
- At least 51% owned and controlled by citizen or designated entity;
- Principal office in a HUBZone;
- At least 35% of employees reside within a HUBZone;

(13 C.F.R. § 126.200)

# HUBZone Principal Office

- Where most of the employees work most of the time.
- Exclude Job-Site Employees



# Case Study: Lusk/ Commonwealth

- Incumbent contractor, (Incumbent) a large business, learned its valuable contract was going to be a HUBZone Set-Aside when next bid.
- Incumbent set-up a HUBZone company (the Front).
- The Front won the set-aside contract.

# Red Flags?

- The Front:
  - Was co-located with another business
  - Did not have a legitimate lease
  - Borrowed employees from the Incumbent
  - Borrowed equipment from the Incumbent
- Incumbent paid a receptionist from the co-located business to answer phones for the Front.



# Remedies

- Criminal conviction of party certifying company location
- Debarment of individual certifying company location
- False Claims Act settlement \$6.25 million
  - Incumbent did not admit liability.

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2012

**Kentucky-Based Defense Contractors  
That They Submitted False Statements**

**\$6.25 Million**

ns  
all

**Businesses**

Kentucky-based Lusk Mechanical Contractors and Commonwealth Technologies, and their owners, Harry Lusk and Wendell Goodman, have agreed to pay \$6.25 million to resolve allegations that they submitted false statements to the Small Business Administration and false claims to the Army, the Justice Department announced today.



# WOSB [SBA, Third Party or Self-Certification]

- A small business as defined by SBA regulations at 13 C.F.R. § 121; and
- Not less than 51% unconditionally and directly owned by one or more women who are U.S. citizens
- Economic Disadvantage WOSB Additional Program (EDWOSB)
- Will Be SBA or Third Party Cert only

# SDVO [Self-Certification]

## Small Business SDVO Program:

- Applies to all contracts, other than those procured by VA under separate SDVOSB program (38 C.F.R. Part 74).
- Contractor must qualify as “small” (Size Always Matters)
- Firm must be at least 51% unconditionally and directly owned and controlled by one or more service-disabled veterans.

# Case Study: Hayner Hoyt

- Hayner Hoyt (HH) establishes 229 Constructors (229) as an SDVO by installing a HH warehouse employee as the head of 229
- HH Officers take on Key Officer Positions with 229
- Emails to the Service Disabled Vet are Auto-Forwarded to HH Officers
- Emails to/from Bonding Company

# Hayner Hoyt, cont'd

## ■ Violations: Control, Affiliation

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Monday, March 14, 2016

### **The Hayner Hoyt Corporation *\$5 Million* False Claims Act**

***Government Contractor and Several Individuals Admit That They Violated Laws Designed to Enhance Contracting Opportunities for Our Nation's Service-Disabled Veterans***

Syracuse-based Hayner Hoyt Corporation has agreed to pay \$5 million, plus interest, to resolve allegations that its chairman and chief executive officer, Gary Thurston, its president, Jeremy Thurston, employees, Ralph Bennett and Steve Benedict and Hayner Hoyt affiliates LeMoyné Interiors and Doyner Inc., engaged in conduct designed to exploit contracting opportunities reserved for service-disabled veterans.

## ■ Administrative Agreement reached

# Subcontracting

## [Self or SBA Cert]

- Purpose: To provide the maximum practicable subcontracting opportunities for small business concerns
- Application: To contracts awarded to non-small businesses >\$650,000 or \$1.5 million (for construction of a public facility.
- All programs have goals
- Citations: 15 U.S.C. § 637(d); 13 C.F.R. § 125.3; FAR § 19.7, 52.219-9

# Case Study: UFC Aerospace

- UFC certified to Lockheed/Boeing that it was Woman-Owned.
- Lockheed/Boeing certified to Air Force that it was awarding subcontracting dollars to WOSBs
- Qui Tam investigation reveals Doug and John Davis control Trusts which own UFC
  - Power to Remove Wife and Daughter “Owners”
  - Emails reveal no control/decision-making by women

# Case Study: UFC Aerospace (continued)

- Violations:
  - Control of Firm by non-Woman Owner
- Result: \$20 Million Settlement (S.D.N.Y.)
- Administrative Agreement reached



FOR IMMEDIATE RELEASE

Thursday, October 8, 2015

## **Manhattan U.S. Attorney Files And Settles Civil Fraud Lawsuit Against UFC Aerospace And Douglas B. Davis For Engaging In Fraudulent Conduct In Violation Of The Small Business Act**

**UFC and Davis Admit that UFC Was Never a “Woman-Owned Small Business” and**

Preet Bharara, the United States Attorney for the Southern District of New York, Melvin F. Williams,

SBA”), Peggy E. Gustafson, SBA

of the Northeast Field Office of the

that the United States has filed, and

ACE LLC (“UFC”) and DOUGLAS B.

# \$20,015,956.92.

DAVIS, the former president of UFC, for engaging 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. As alleged in the amended complaint-in-intervention, 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. UFC made these misrepresentations, as the amended complaint-in-intervention alleges, because it believed that WOSB status provided a competitive advantage in obtaining contracts that it knew were funded by the United States government, and the government contractors in turn made representations to the government regarding its WOSB hiring. In the settlement, approved in Manhattan federal court by U.S. District Judge William H. Pauley III, 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.



# Small Business Fraud

A structure for analysis

# Two Big Buckets:

Front Company  
(Pass-Through)

Unqualified Firm



# Bucket 1 – Front Company

- On its face, the Company qualifies for the program
- Case comes out of contract performance issues

# What type of violations?

- Actionable false statements often in bids and invoices
- Percentage of work violations (“Limitations on Subcontracting”)
- Note -- Company may have other legitimate contracts.
- Watch for “Puppet Master” scenario

# Bucket 2 – Unqualified Firm

- Does not meet program requirements (Affiliation/Control)
  - Some companies are never qualified
  - Some companies lose qualification
- False Statements/Certifications in Program Documents
- All contracts potentially actionable when not qualified



# Case Study -- SISC

- Owner of Contractor, who was not a U.S. Citizen, purchased falsified naturalization papers and then used those papers to obtain a U.S. Passport.
- Owner presented the U.S. Passport to the 8(a) office in Contractor's application for the 8(a) program.
- Contractor won more than \$3 Million in 8(a) set-aside contracts.

# Remedies from SISC

- Pre-Indictment Suspension – Owner and Contractor
- Criminal Conviction (plea agreement established key facts) – Owner
- Debarment Based on Conviction and Admissions – Owner and Contractor
- DOJ Accepted FCA Case (On hold while defendant out of country)
- Contract Claim Denial

# What type of violations?

- Fraud in the inducement
- Misrepresentations
  - Watch material times
  - Look for Government Knowledge of the violation

# Key Databases

# The System for Award Management

- sam.gov
- Excellent source of contracting (and grantee) information.
- Merged Several previous databases
  - Online Representations and Certification (ORCA)
  - Excluded Parties List System (EPLS)
  - Central Contractor Registry (CCR)



USER NAME

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PASSWORD

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LOG IN

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HOME

SEARCH RECORDS

DATA ACCESS

GENERAL INFO

HELP

#### CREATE USER ACCOUNT

Your CCR username will not work in SAM. You will need a new SAM User Account to register or update your entity records. You will also need to create a SAM User Account if you are a government official and need to create Exclusions or search for FOUO information.

Create User Account

#### REGISTER/UPDATE ENTITY

You can register your Entity (business, individual, or government agency) to do business with the Federal Government. If you are interested in registering or updating your Entity, you must first create a user account.

Register/Update Entity

**New!**

Use the SAM Status Tracker to:

Check Status

#### SEARCH RECORDS

All entity records from CCR/FedReg and ORCA and exclusion records from EPLS, active or expired, were moved to SAM. You can search these records and new ones created in SAM. If you are a government user logged in with your SAM user account, you will automatically have access to FOUO information.

Search Records

#### WHAT IS SAM?

Need Help?

The **System for Award Management (SAM)** is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is NO fee to register for this site. Entities may register at no cost directly from this page. User guides and webinars are available under the Help tab.

# USA Spending

- [USAspending.gov](http://USAspending.gov)
- Covers contracts, subcontracts, grants loans and other assistance
- Good first look at spending



NOTE: You must click [here](#) for very important D&B information.



Search Data by Keyword Search Site



Enter Keyword

Go

[Advanced Data Search](#)



## WHAT IS USASPENDING.GOV?

USAspending.gov is the publicly accessible, searchable website mandated by the Federal Funding Accountability and Transparency Act of 2006 to give the American public access to information on how their tax dollars are spent. [Learn More...](#)

### OVERVIEW OF AWARDS - FY 2017

The federal agencies distribute funding through federal contracts, grants, loans, and other financial assistance. See the [Overview of Awards by Fiscal Year](#) trend graph for spending by all Fiscal Years.



\*See explanation in [Glossary](#)

[Text View of Overview of Awards](#)

# ADVANCED DATA SEARCH

Fiscal Year and Spending Type are required selections; you may select multiple filters in every category. Search results display up to 1,000,000 transactions; however, you can download all transactions. The downloaded zip file contains spreadsheets for each Spending Type selected. Sub-award data for all Spending Types is in a separate spreadsheet.

In the Search Results, click on Recipient Name to go to the Recipient Profile; click on the Award ID to see the Award Summary; click on header to sort the columns.

## - SEARCH CRITERIA

Submit

Reset

\* Please select at least three criteria below. Spending Type and Fiscal Year are required (\*) fields.

Search Data by Keyword

Enter Keyword

Spending Type \*

Contracts  Grants  Loans  Other Financial Assistance

Fiscal Year \*

FY-2017  
 FY-2016  
 FY-2015  
 FY-2014

Amount

View All



Award ID

Search Within

States/Territories  Foreign

# Dynamic Small Business Search (DSBS)

- [http://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](http://web.sba.gov/pro-net/search/dsp_dsbs.cfm)
- SBA Database of small businesses
- Identifies servicing office and other concerns.
- Allows you to run queries based on type of business and location.

# DSBS



DSBS

[Skip Navigation](#) [Accessibility Options](#)

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[DSBS](#) [Quick Market Search](#) [TM OnLine](#)

Read

Welcome to the Dynamic Small Business Search

**of any of the data included, other than certifications relating to 8(a) Business Development, HUBZone or Small Disadvantaged Business status. The SBA strongly recommends that contracting officers diligently review a bidder's small business self-certification before awarding a contract.**

## Location of Profile

States:

- (any state)
- AL - Alabama
- AK - Alaska
- AA - American Atlantic (APO/FPO)
- AE - American Europe (APO/FPO)
- AP - American Pacific (APO/FPO)
- AS - American Samoa
- AZ - Arizona
- AR - Arkansas
- CA - California

Searching within a State:

*(Requires exactly one state from the State list at left.)*

Congressional District: [Help](#)

County:  [Lookup](#) [Help](#)

[\(How to make multiple selections.\)](#)

Area Code or Phone Number Initial Fragment

Metropolitan Statistical Area [Help](#)

SBA Servicing Office [Help](#)

Zip Code or Zip Code Initial Fragment

## Government Certifications

### 8(a) Certified or 8(a) Joint Venture:

- Required (Active Certifications only)
- Required (Active Certifications and Previously Certified)
- Required (Previously Certified only)

### Small Disadvantaged Business:

- Required (Active Certifications only)
- Required (Active Certifications and Previously Certified)
- Required (Previously Certified only)

# DSBS, Continued

## Searching for a specific profile

CAGE Code:  [Help](#)

DUNS Numbers:  [Help](#)

8(a) Case Number:

(Note: Searching by name is slower than other criteria.)

Company Name or Trade Name:

- Do "sounds like" matching
- Do "first letters" matching
- Do "contains" matching

# Federal Procurement Data System

- [fpds.gov](http://fpds.gov)
- Database of most Federal government contracting actions.
- Account-based access, but public
- Adhoc search function allows you to design an output spreadsheet



# Federal Procurement Data System - Next Generation

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## Login

Log-In:

Password:

[Log In](#)

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- » You must click [here](#) for very Important D&B Information

## Registration

- » [Register](#)
- » [Who Should Register?](#)

## ezSearch

Google-like search to help you find federal contracts...

ezSearch contains procurement data as well as additional NASA data (for example, financial assistance actions).

### NIA Code for Hurricane Harvey (H17H)



A new National Interest Action value 'Hurricane Harvey 2017' has been added to track the relief contracts.

For Web Portal users the value 'Hurricane Harvey 2017' is available for selection in the National Interest Action field drop-down. The Contract Writing systems shall use the code 'H17H' when creating/updating documents through Business Services.

National Interest Action value 'Hurricane Harvey 2017' is valid from 08/28/2017 to 06/30/2018.

Contracts reported against 'Hurricane Harvey 2017' are available in the National Interest Action report

### Upgrade to TLS 1.2 and SHA2 for FPDS Integrators



Transport Layer Security (TLS) 1.0 was removed from FPDS-NG production on February 20, 2016. In accordance with the National Institute of Standards & Technology (NIST) Policy on Hash Functions, we also upgraded the FPDS-NG system to support SHA-2 SSL certificates. All systems will need to install a copy of the new certificate(s) in their server's trusted certificate store to allow communication. Questions regarding the upgrade should be directed to the Federal Service Desk at [www.fsd.gov](http://www.fsd.gov), or (866) 606-8220.

### October is CYBER SECURITY



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## ezSearch BETA



For more information about FPDS [click here](#)

To submit comments, please [click here](#)

# One last thing . . .

For small business contracts --

“ . . . there shall be a presumption of loss to the United States based on the total amount expended on the contract . . . . ”

15 U.S.C. § 632(w)(1).

See also 13 C.F.R. §§ 121.108(a), 121.411(d), 124.521(a), 124.1015(a), 125.29(a), 126.900(a), and 127.700(a)

# Contact Information

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