

Congress of the United States
House of Representatives
Washington, DC 20515-3302

AGRICULTURE
GENERAL FARM COMMODITIES AND
RISK MANAGEMENT

SMALL BUSINESS
(CHAIR) SUBCOMMITTEE ON
HEALTHCARE AND TECHNOLOGY

SUBCOMMITTEE ON
AGRICULTURE, ENERGY AND TRADE

FOREIGN AFFAIRS
SUBCOMMITTEE ON THE MIDDLE EAST
AND SOUTH ASIA

SUBCOMMITTEE ON TERRORISM,
NONPROLIFERATION, AND TRADE

December 14, 2011

Mr. Daniel Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Ave SW
Cohen Building, Room 5250
Washington, DC 20201-0003

Dear Inspector General Levinson:

The Committee on Small Business, on which I serve, is required by the Rules of the House to study and investigate all types of issues facing small businesses. This jurisdiction extends to matters concerning small businesses procurements. As Chair of the Committee's Healthcare and Technology Subcommittee, I'm very focused on the integrity of the procurement process making certain that it affords small businesses a fair opportunity to compete for government contracts. Therefore, I was very concerned to learn of a potential impropriety regarding the procurement of a smallpox treatment.

In 2009, the Department of Health and Human Services (HHS) originally issued this smallpox Request for Proposal (RFP) as a small business set-aside. At that time, there were at least two competitive offerors that HHS said were in the competitive range, including Siga Technologies Inc. (Siga). During the competition, one offeror raised the issue of whether Siga was indeed a small business. In July 2009, the protest was found to be premature. However, this protest served to put Siga on notice that there were questions regarding its small business size status.

When HHS announced that Siga was the successful offeror in October 2010, the other offeror refiled its size protest. At that time, the Small Business Administration (SBA) found that Siga had falsely claimed small business status. However, even though Siga had previously been put on notice that its size status was questioned, there were no repercussions. Further, the Federal Procurement Data System (FPDS) indicates Siga has received \$80 million in contracts as a small business, plus grants, dating back to 2004. How can a business claim to be small for so long without being detected?

The government contracting process is undermined if larger companies are masquerading as small businesses to game the system. President Obama has been very vocal about abuses of the contracting process by companies that fraudulently claim small business size status to win a contract. Because of the important policy concerns involved with

businesses misrepresenting themselves to the government, FAR 9.104 requires that the government only do business with contractors that “[h]ave a satisfactory record of integrity and business ethics.”

Instead of questioning whether Siga still met the requirements of FAR 9.104, referring Siga for a suspension or debarment, or pursuing a Civil False Claims Act case, HHS issued a sole source contract award to other than small business – originally worth up to \$2.8 billion. Now it has come to light that the government may be paying triple digit profits for Siga’s smallpox treatment, even though the government funded much of the research and development costs for the antiviral drugs. Further, questions have been raised as to whether the treatment will ever be approved by the Food and Drug Administration.

What kind of message does that send to the contractor community when a company that appears to have abused the contracting process and falsely certified as a small business is rewarded with a \$2.8 billion sole-source contract award and astronomical profits? I’m concerned this will discourage legitimate small businesses from engaging in the government contracting process, and will encourage larger businesses to continue abusing the small business programs. .

For the purpose of protecting the integrity of the small business programs and the health care procurement process, which my subcommittee oversees, I feel obligated to ask questions and demand more information. Towards that end, I ask you to investigate the alleged procurement abuses listed above. Please contact Mitchell Vakerics of my staff if you have any questions.

Sincerely,



Renee Ellmers
Chairwoman
Subcommittee on Healthcare and Technology
House Committee on Small Business

RE/AW