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OFFICE OF THE INSPECTOR GENERAL
NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE

To: *for* Chief, D14 [redacted]

Date: 12 August 2015

From: [redacted]

Subject: [redacted] False Statements

File No: IV-15-0012

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(b) (6)

Precedence: Routine

Purpose: To provide a summary report of investigation and recommend that the case be closed.

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Details:

I. (U) Background

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(U//FOUO) On 5 September 2014, the OIG received a referral from the NSA Office of Security regarding contractor employee [redacted]. During a security interview and polygraph examination on [redacted] [redacted] disclosed that [redacted] [redacted] an NSA contractor, misrepresented its qualifications for a special federal program administered by the Small Business Administration (SBA). The program, 8a Business Development (BD), requires the participant company to be 51 percent directly and unconditionally owned by one or more socially and economically disadvantaged individuals who are citizens of the United States. The benefits of the program include favorable consideration for sole-source contracts.

(U//FOUO) In order to meet the criteria for the program, [redacted] reported to the SBA in its application in 2005- 2006 that partner [redacted] presumably a qualifying socially and economically disadvantaged individual, owns 51 percent of the company when in fact he owns only 40 percent. According to [redacted] the true ownership breakdown of the company among three partners is [redacted] owning 40 percent, [redacted] owning 40 percent, and [redacted] owning the remaining 20 percent.

(U//FOUO) The SBA awarded [redacted] its 8a BD certification on 2 February 2006. The company exited the program on 2 February 2015 under SBA's 9-year limitation for the program. During this period, [redacted] secured approximately [redacted] contracts with the NSA worth approximately [redacted].

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(U//FOUO) The OIG conducted this investigation with assistance from DCIS Special Agent [redacted] and SBA OIG Investigators [redacted] and [redacted]. On 27 May 2015, Agent [redacted] informed NSA OIG that SBA OIG did not intend to investigate the matter further, following the outcome of a meeting with [redacted] attorneys. According to [redacted] the facts were too "murky" and prosecution was unlikely.

(U//FOUO) On [redacted] Leo J. Wise, Assistant United States Attorney for the District of Maryland, declined to accept the case for criminal prosecution.

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II. (U) Issue(s)

(U//FOUO) Did [redacted] misrepresent its ownership information to the SBA to meet the requirements of the 8a BD program and, thereby, receive favorable consideration for contracts with the NSA?

III. (U) Applicable Standard(s)

- (U) 18 U.S.C. § 1001 — Statements or Entries Generally
 - (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive ... branch of the Government of the United States, knowingly and willfully—
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
 shall be fined under this title, imprisoned not more than 5 years or ... both.
- (U) Federal Acquisition Regulations (FAR), Subpart 19.802 - "Selecting Concerns for the 8a Program"
 - Selecting concerns for 8a Program is the responsibility of the SBA and is based on criteria established in 13 CFR 124.101-112.
- (U) 13 CFR 124.101 – What are the basic requirements a concern must meet for the 8(a) BD program?
 - Generally, a concern meets the basic requirements . . . if it is a small business which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success.
- (U) 13 CFR 124.105 – What does it mean to be unconditionally owned by one or more disadvantaged individuals?
 - An applicant or Participant must be at least 51 percent unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, except for concerns owned by

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Indian tribes Alaska Native Corporations, Native Hawaiians Organizations, or Community Development Corporations (CDCs). . . .

- (U) 13 CFR 124.103 – Who is socially disadvantaged?
 . . .
 (b) Members of designated groups. (1) There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives, Islands or Nepal)...
 . . .
- (U) 13 CFR 124.104 - Who is economically disadvantaged?
 (a) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
 . . .
- (U) 31 U.S.C. § 3802 – False Claims and Statements; liability
 (a) . . . (2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that –
 (A) the person knows or has reason to know—
 (i) asserts a material fact which is false, fictitious, or fraudulent; or
 (ii) (I) omits a material fact; and
 (II) is false, fictitious, or fraudulent as a result of such omission;
 (B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and
 (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,
 shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such statement.
- (U) Federal Acquisition Regulation, Part 3 – Improper Business Practices and Personal Conflicts of Interest, Subpart 3.1 – Safeguards

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3.101-1 Standards of Conduct, General.

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.

- (U) Federal Acquisition Regulation, Part 3 – Improper Business Practices and Personal Conflicts of Interest, Subpart 3.10 – Contractor Code of Business Ethics and Conduct

3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

IV. (U) Investigative Activity

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A. (U) Document Review

(U//~~FOUO~~) SBA Letters. On 3 February 2015, [redacted] from the NSA Office of Small Business Programs, Directorate of Acquisitions, provided the OIG copies of [redacted] letters provided by the SBA to the NSA for each contractual requirement awarded to [redacted] under the 8a BD Program. In part, the letters certify that [redacted] is 8a BD certified and, "...acceptance of this requirement for the 8a BD Program will have no adverse impact on an individual small business, a group of small businesses located in a specific geographical location, or other small business programs." These letters demonstrate that for each contract awarded to [redacted] under the 8a BD program, the SBA certified to the NSA that the company was in fact an 8a BD company and that its selection for a particular requirement did not adversely prejudice any similarly situated companies. A sample letter is at Appendix A.

(U//~~FOUO~~) SBA [redacted] profile. The profile reflects [redacted] 8a BD status from 2 February 2006 until 2 February 2015. The profile is at Appendix B.

B. (U) Interviews

1. (U//~~FOUO~~) [redacted] was interviewed on 10 March 2015 and provided the following sworn testimony.

(U//~~FOUO~~) In 2003, [redacted] along with [redacted] and [redacted] were employees of the [redacted]. Around 2003-2004, they decided to begin their own company called [redacted] but remained employees of [redacted]. During this time, [redacted] met with representatives of the Small Business Administration to discuss special federal programs for minority or women-owned businesses.

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(U//FOUO) In 2005, [redacted] managers identified a potential conflict of interest with [redacted] work and [redacted] and [redacted] resigned from the company to work solely for [redacted]. In February 2006, [redacted] was approved by the SBA for its 8a Business Development (BD) program. (Appendix B). All submissions to the SBA including periodic re-certification documentation were true and correct. Throughout [redacted] enrollment in the 8a BD program, [redacted] a qualifying socially and economically disadvantaged individual, has owned 51% of the company despite what he told NSA Security in 2014.

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(U//FOUO) During the security interview, [redacted] stated that [redacted] actually only owned 40% because it "popped into his mind" during the confusion and stress caused by the polygraph. He further explained that at one time, prior to the company's entry into the 8a BD program, the ownership ratio was in fact [redacted] and [redacted] each owning 40% when [redacted] joined the company at 20%. However, during the time they were a part of the 8a BD Program they met the SBA's ownership criteria.

2. (U//FOUO) Attorneys [redacted] and [redacted] of [redacted] provided the following information on 27 May 2015 on behalf of their client, [redacted].

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(U//FOUO) In the 2003, [redacted] was originally formed on essentially equal terms between two partners, [redacted] (51%) and [redacted] (49%). Shortly thereafter, [redacted] was invited into the company at a 20% ownership share. Upon entry into the SBA's 8a BD Program in 2006, the ownership ratio was [redacted] 51%; [redacted] 29%; and [redacted] 20%, which comports with eligibility requirements.

(U//FOUO) At the end of each year, [redacted] writes a personal check as a gift to [redacted] so that they have equal shares of the profit at 40% each with the remaining 20% allocated to [redacted]. [redacted] is not required to provide the gift to [redacted] but he does so because he and [redacted] were the original founders of the company on equal terms and he believes it's the "right thing to do." All financial documents including tax returns provided to the SBA are true, correct, and certified by their Certified Public Accountant (CPA).

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(U//FOUO) [redacted] has given yearly monetary gifts to [redacted] in the following amounts:

2007	[redacted]
2008	[redacted]
2009	[redacted]
2010	[redacted]
2011	[redacted]

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2012 [redacted] (b) (6)
2013 [redacted]

(U//~~FOUO~~) He has not provided a gift for 2014 because the company is amending its tax return for that year.

(U//~~FOUO~~) According to [redacted] and [redacted] is clearly the majority owner of [redacted] because, as the president of the company, he makes all the business decisions. He approves the business plans, provides the strategies, approves all contract terms and negotiations, and appoints the department heads within the business.

V. (U) Analysis

(U//~~FOUO~~) The Federal Acquisition Regulations (FAR), Subpart 19.802, "Selecting Concerns for the 8a Program" assigns responsibility for selecting concerns for the 8a Program to the SBA based on criteria established in 13 CFR 124.101-112.

(U//~~FOUO~~) The SBA awarded [redacted] its 8a BD certification on 2 February 2006. Despite evidence that suggests that [redacted] may not have had 51 percent unconditional ownership of [redacted] and may have misrepresented its ownership information to gain 8a BD status, the SBA has indicated that it does not intend to investigate the matter further. SBA determined, in accordance with established criteria, that the company was eligible for 8a status, and SBA does not plan to investigate or readdress that determination. Because the determination of 8a eligibility belongs to the SBA, the NSA-OIG is unable to establish whether the company misrepresented its ownership information to the SBA to meet the requirements of the 8a BD program and, thereby, receive favorable consideration for contracts with the NSA.

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VI. (U) Conclusion

(U//~~FOUO~~) Unsubstantiated. Based on the evidence in this case, the OIG did not find a preponderance of evidence that [redacted] misrepresented its ownership information to the SBA to meet the requirements of the 8a BD program and, thereby, received favorable consideration for contracts with the NSA.

VII. (U) Recommendation

(U//~~FOUO~~) In accordance with the information contained herein, this case should be closed.

Enclosures:
SBA Letter
SBA Profile [redacted]

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