

PTAC Link

PROCUREMENT TECHNICAL ASSISTANCE CENTER – CONNECTING BUYERS & SUPPLIERS

Progress Through Regional Cooperation In The Alleghenies

Issue No.
12-14

In This Issue

[Doing Business with Penn State](#)

[JPMorgan Says Gov. Purchase Cards not Hacked](#)

[Two Outreach Events by the Southern Alleghenies PTAC](#)

[Small-Business Contracting on the Rise](#)


Tis' the Season

We here at the Southern Alleghenies PTAC wish all of our clients and stakeholders a warm and happy holiday season. We also look forward to serving you in 2015! Happy Holidays!

Sincerely,
James, Brandon & Gloria



**Learning About Doing Business
with the Nittany Lion**

Southern Alleghenies PTAC's mission is to educate businesses and related

8(a) Program: Is The SBA "Searching For Reasons To Deny" Women?

The SBA's course of conduct in reviewing the 8(a) applications of companies owned by women "gives the distinct impression that the SBA is simply searching for reasons to deny every claim" of social disadvantage made by women applicants.

These strong words come from a recent SBA Office of Hearings and Appeals decision, in which OHA again overturned the SBA's denial of a woman-owned business's 8(a) application.

SBA OHA's decision in [Matter of Ironwood Commercial Builders, Inc., SBA No. BDPE-532 \(2014\)](#) involved the 8(a) application of Ironwood Builders, Inc., a company owned by Nancy Brinkerhoff. Ironwood applied to the 8(a) program in February 2012.

The SBA denied Ironwood's initial 8(a) application, then denied Ironwood's request for reconsideration. Both the initial and final denial letters stated that Ironwood had been denied, in part, because it had not demonstrated the Ms. Brinkerhoff was socially disadvantaged. Ironwood then filed an appeal with OHA, challenging the SBA's decision.

OHA wrote that under the 8(a) program regulations, an 8(a) applicant must prove social disadvantage by a "preponderance of the evidence" standard. Under this standard, "an applicant is not required to convince the fact-finder that an incident was motivated by bias." Instead, "the applicant must only present evidence sufficient to lead the fact-finder to conclude that it is more likely than not that bias was a factor."

In Ironwood's case, however, the SBA's denial letters were "littered with evidence" that the SBA ignored the appropriate standard of review, and instead applied a much stricter legal standard: the so-called "clear and convincing evidence" test. OHA gave several

stakeholders on all aspects of government contracting. During the month of December, we had the pleasure of holding our final event of the year to the benefit of businesses in the region.

"Doing Business with Penn State University" brought several PTACs from the center of the state, and numerous clients to State College for an upper-level course in government contracting presented by Duane Bullock and Vernon Davis of Penn State.



Attendees learned about how PSU purchases products and services, finding business opportunities, and other contracting and purchasing issues at the University. As with the Federal Contracting MBA presentation in October, we were fortunate to co-sponsor this event with the SEDA-COG PTAC in Lewistown, PA.



The PTAC at Southern Alleghenies is happy to either present or host educational events such as Doing Business with Penn State, because of the benefit to companies and the region. If you have a suggestion for an outreach event, please send us an email at ptac@sapdc.org, or call (814) 949-6550.

New Year, New Changes

The PTAC at Southern Alleghenies has been on a test program for a portion of its funding since October 2013. One aspect of the test program is the client satisfaction surveys

examples of the SBA's failure to apply the correct standard.

For instance, Ms. Brinkerhoff alleged that her high school guidance counselor discouraged her from entering a particular program because the program was "too physical" for women. The counselor steered Ms. Brinkerhoff toward a career as a telephone operator or child care provider because they were "more appropriate" for a woman.

In its denial letters, the SBA postulated that because Ms. Brinkerhoff suffered from Myasthenia gravis (a form of muscular dystrophy), the guidance counselor's actions may have been motivated by Ms. Brinkerhoff's disease rather than her gender. OHA wrote that the SBA's explanation was "at odds with the evidence" an constituted impermissible speculation: *A claim may properly be disregarded if there is evidence of a non-discriminatory explanation in the Record. Here, however, there is not evidence that the guidance counselor was influenced by Ms. Brinkerhoff's medical condition. Indeed, there is no evidence that he was even aware of her diagnosis. The SBA's suggestion that his comments were perhaps motivated by concern over Ms. Brinkerhoff's physical limitations is therefore pure speculation. The SBA cannot base its determination on hypothetical theories. It therefore also cannot condemn a petitioner for failing to address or disprove those theories.*

In another instance, Ms. Brinkerhoff stated that after Ironwood completed Phase I of a construction project, the contractor's owner, Tony DiGiorgio, told Ms. Brinkerhoff that "as a woman, I don't think you are suitable to complete the second phase of this project."

In its denial letter, the SBA referred to this incident as "unfortunate," but stated that because Ironwood was awarded Phase I, it was "not clear" that gender bias was the reason why Ironwood was denied the opportunity to perform Phase II. OHA strongly disagreed:

This outcome flies directly in the face of the evidence. Mr. DiGiorgio's motivation is not in question. The claim is not based on hearsay or conjecture. According to the PES and the corroborating letter, Mr. DiGiorgio told Ms. Brinkerhoff, to her face, that her gender was the reason Petitioner would not get the contract for Phase II. This is a rare, direct admission of bias. The SBA cannot merely wave it away as an "unfortunate" incident. It is far more than unfortunate. It is unambiguous evidence of gender-motivated discrimination. The SBA has no reason to question the credibility of this claim, and does not even attempt to do so. Instead, it minimizes the evidence while demanding tangential information about who else bid on Phase II, what Phase II entailed, and who ultimately won the contract. The SBA never bothers to explain how this information is relevant or why it would be more persuasive than the direct evidence of bias.

OHA also analyzed several other claims made by Ms.

and contracting data, which all of you received in mid-November. Due to reporting changes, we will be surveying all clients on a quarterly basis on their contracting data, and a portion of our clients will get the satisfaction surveys each quarter. We understand that many of you have filled out the survey request recently, but we promise that it will only happen once a year from now on!

We at the PTAC understand that these surveys can be time-consuming, but it does give us an idea of how we are doing to serve our clients. It also gives us ideas on outreach events that we can bring in for the benefits of clients. The PTAC will be in touch with its clients with more details in the coming weeks.

Become a PTAC Client

To take advantage of the services and resources provided by The PTAC at SAP&DC, complete the [New Client Sign-Up form](#).

Quick Links

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Brinkerhoff, and the SBA's corresponding denials. OHA found "at a minimum, nine separate claims of social disadvantage that were either analyzed improperly or ignored entirely." OHA wrote that the SBA's "determined skepticism in the face of direct evidence is pointedly inconsistent with the application of the preponderance standard," which is supposed to govern 8(a) application evaluation. OHA then offered a strongly-worded summary of its opinion:

Here, the SBA demanded that Petitioner disprove the SBA's hypothetical alternate explanations. It assumed facts not in evidence, ignored evidence, and rejected claims for lacking irrelevant evidence. In doing so, the SBA imposed an evidentiary burden on Petitioner well in excess of that required by the regulations. The Court has previously observed the SBA's tendency to place determinative weight on any evidence that happens to be missing. It did so again throughout these Determination Letters. This course of conduct give the distinct impression that the SBA is simply searching for reasons to deny every claim. If so, this is not the product of a "fair and impartial mind," but rather one that is actively antagonistic to the petitioner's goals. There is no justification for this position.

OHA granted Ironwood's appeal and remanded the matter to the SBA, with instructions to issue a new determination by October 23, 2014.

Longtime *SmallGovCon* readers know that we have been down this road before. Earlier this year, OHA chided the SBA for seeming to require that a woman provide "[smoking gun" evidence of gender bias](#). And in a series of decisions in late 2012 and early 2013, OHA [sustained several similar appeals](#), leading me to question whether the SBA's process for evaluating social disadvantage was fundamentally flawed.

It is very troubling--to say the least--that the same problems OHA has identified in previous decisions keep cropping up. By the time a federal administrative judge questions whether the SBA is "simply searching for reasons to deny" women applicants, the SBA should be taking every step internally to make sure that women applicants (and other applicants who must prove their social disadvantage) are given a fair shake.

Article posted courtesy of Steven Koprince

GAO says SBA needs to monitor WOSB certifiers and improve annual eligibility examinations

Note: This was a controversial topic at the Association for Procurement Technical Assistance Centers (APTAC) conference this November in Washington, D.C. This is a good summary of the

issue and background. - JFG

In a November 7, 2014 report the U.S. Government Accountability Office (GAO) found that the SBA performs minimal oversight of third-party certifiers of women-owned small businesses and has yet to develop procedures that provide reasonable assurance that only eligible businesses obtain contracts set-aside for women-owned small businesses.

Background

Businesses have two options to certify their eligibility for the federal government's women-owned small business (WOSB) program. Whether self-certifying at no cost or using the fee-based services of an approved third-party certifier, businesses must attest that they are a WOSB or an economically disadvantaged women-owned small business (EDWOSB). Businesses also must submit documents supporting their attestation to a repository the Small Business Administration (SBA) maintains (required documents vary depending on certification type), and, if they obtain a third-party certification, to the certifier.

Findings

In its examination of the certification process, the GAO found that:

- SBA generally has not reviewed certifier performance or developed or implemented procedures for such reviews, including determining whether certifiers inform businesses of the no-cost self-certification option, a requirement in the agency's agreement with certifiers.
- SBA also has not completed or implemented procedures to review the monthly reports that third-party certifiers must submit.

In its report, the GAO says that without ongoing monitoring and oversight of the activities and performance of third-party certifiers, the SBA cannot reasonably assure that certifiers fulfill the requirements of the agreement.

This finding is bolstered by the fact that, in 2012 and 2013, the SBA found that more than 40 percent of businesses (that previously received contracts) it examined for program eligibility should not have attested they were WOSBs or EDWOSBs at the time of the SBA's review. SBA officials speculated about possible reasons for the results, including businesses not providing adequate documentation or becoming ineligible after contracts were awarded, but the SBA has not assessed the results of the examinations to determine the actual reasons for the high numbers of businesses found ineligible. The SBA also has not completed or implemented procedures to conduct eligibility examinations. According to federal

standards for internal control, agencies should have documented procedures, conduct monitoring, and ensure that any review findings and deficiencies are resolved promptly. As a result of inadequate monitoring and controls, potentially ineligible businesses may continue to incorrectly certify themselves as WOSBs, increasing the risk that they may receive contracts for which they are not eligible.

The GAO finds that the WOSB program has had a limited effect on federal contracting opportunities available to WOSBs. Set-aside contracts under the program represent less than 1 percent of all federal contract obligations to women-owned small businesses. The Departments of Defense and Homeland Security and the General Services Administration collectively accounted for the majority of the \$228.9 million in set-aside obligations awarded under the program between April 2011 and May 2014. Contracting officers, business owners, and industry advocates with whom GAO spoke identified challenges to program use and suggested potential changes that might increase program use, including allowing sole-source contracts rather than requiring at least two businesses to compete and expanding the list of 330 industries in which WOSBs and EDWOSBs were eligible for set-aside.

A summary of the GAO's report can be downloaded at: <http://www.gao.gov/assets/670/666430.pdf>

*Article posted courtesy of
The Georgia Tech Procurement Assistance Center
(GT PAC)*

About Us

The PTAC at SAP&DC is an economic development entity that bridges the gap between supplier and buyer in the government marketplace. The PTAC stands ready to support businesses in the Alleghenies region in their pursuit to secure contracts with local, state and/or federal government agencies nationwide by:

- Identifying niche government markets and specific contract opportunities
- Assisting with bid and proposal preparation
- Preparing the required vendor registrations
- Navigating your company through the requirements and procedures of government contracting
- Enhancing competition by obtaining applicable socio-economic certifications
- Providing guidance to ensure successful post-award contract performance

Due to the generous support of our Commonwealth and Federal funding partners, services provided by the PTAC are free of charge.

Whether you are an experienced contractor or new to the government marketplace, the PTAC will provide one-on-one counseling utilizing the following program resources to increase your share of contact awards.

PTAC Resources

- Electronic Bid Matching for products and services
- Military/Commercial specifications and standards
- Past procurement information and pricing histories
- State and Federal regulations guidance
- Professional training and outreach events
- Quality assurance and packaging guidance

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