



Fraud and Abuse Against Small Businesses Exposed

Prominent Crusader brings charges to demonstrate widespread discriminatory and illegal practices

SAINT AUGUSTINE, FL – JULY 21th, 2009 - The contracting abusive practice referred to as 'size misrepresentation,' "*the biggest problem facing SBA*"¹ has been brought to the limelight once again. An Air Force contract to Unisen, Inc., "*the fastest-growing privately-held fitness equipment company in the world...(with) 500-plus employees*"² was successfully challenged by Raul Espinosa, a prominent small business advocate. In 2005, Espinosa exposed contracting abusive practices at the Air Force, which had cost his company over \$3M.³ It was Espinosa's third attempt - in six years – to convince SBA that Unisen had misrepresented its size to bid on contracts reserved for small businesses.

Size Protests Don't Work

Espinosa had filed Size protests against Unisen in 2004 and in 2006, but the Size Protest process does not deter, does not prevent and does not punish companies, which break the law. "*The current size protest process is broken and in need of revamping. Its benefits are only illusionary,*" said Espinosa who in 2005 founded The Fairness in Procurement Alliance (FPA), after winning a similar battle. His victory⁴ against a 'front' for Precor, a multi-national business, did not punish the culprit, but it drove home the point that "*Size Protests Do Not Work as Congress Intended.*" The end-result of that effort, however, was a purging of the CCR database and *The Umbrella Initiative*,⁵ an entrepreneur-government partnership concept touted by many advocates and academicians as a major solution to the problem, because it eliminates loopholes, enhances contracting opportunities, protects the territory and attracts small businesses into government contracting.

"*The FPA White Paper on Size Protests*"⁶ describes how size protests are ignored by Federal Agencies; mishandled by bureaucrats; trounced by corporate attorneys and how the SBA decisions are powerless." Espinosa added, "*Winning a size protest, is no guarantee to get back the contract.*"

Size Misrepresentation is Widespread

Thanks to Congressional transparency and oversight, it is now possible to uncover firms for size misrepresentation, a fraudulent offence punishable by fines, jail sentences and debarment. According to Paul Murphy, CEO of Eagle Eye⁷, "*In FY 2008 alone, a total of 47 multi billion-dollar firms were officially listed as small businesses in the government's main contract database.*" He added, "*These 47 firms accounted for over \$3 billion of the government's contracts reserved for small businesses given out in FY08.*"⁸

"*In excess of \$100 Billion of Federal contracts reserved for small businesses are being taken – illegally – by large businesses which have misrepresented their size,*" said Lloyd Chapman, President of the American Small Business League (ASBL).⁹ Chapman successfully articulated the problem on CNBC News on May 30th, 2009 during a debate with a representative from the US Chamber of Commerce.¹⁰ – MORE --

¹ SBA OFFICE OF INSPECTOR GENERAL REPORT 5-15: - [HTTP://WWW.SBA.GOV/IDC/GROUPS/PUBLIC/DOCUMENTS/SBA/OIG_GCDB_05-15.PDF](http://www.sba.gov/idc/groups/public/documents/sba/oig_gcdb_05-15.pdf)

² Unisen's self-description of their business on their website. - <http://www.startrac.com/us-en/About>

³ Air Force Contracting Abuse Against Small Businesses.- <http://www.acquisition.gov/comp/aap/documents/Raul%20Espinosa%20102605.pdf>

⁴ OHA Confirms Inefficiencies of Size Protests - <http://www.prweb.com/releases/2005/10/prweb302024.htm>

⁵ The Umbrella Initiative. - <http://www.docstoc.com/docs/3683947/The-FPA-UNF-Umbrella-Initiative>

⁶ White Paper on Size Protests - <https://console.prweb.com/prfiles/2008/10/03/162468/TheSizeProtestSystemMustbeFixed.pdf>

⁷ The Eagle Eye Report Confirming Contracting Abuse - <http://www.sba.gov/advo/press/04-41.html>

⁸ List of 47 Multi-billion Corporations Listed as Small in FY08. – Private File to be turned over to SBA OIG, GAO and DoJ

⁹ NY Times article on the subject, <http://www.nytimes.com/2006/07/06/business/06sba.html>

¹⁰ CNBC highlights debates issue.. - <http://www.youtube.com/watch?v=ZWtLshGVEss>

One of Obama's promises during his Presidential campaign was to end this contracting abusive practice when elected. He said, *"It is time to end the diversion of federal small business contracts to corporate giants."*¹¹

The Unethical Role of 'End-User Justifications'¹²

The case against Unisen also demonstrated how *'unfair justifications'* are commonly used to discriminate against small and disadvantaged businesses and how difficult and expensive it is to regain the contract one fights for, even if you had won a protest.¹³ Espinosa has turned over ten cases of this type of abuse to the SBA IG¹⁴ and has been challenging the Army at the Armed Services Board of Contracts and Appeals on a case over the same type of abusive practice for over a year.

The illegality of the FAR Exemptions

There is language on the Federal Acquisition Regulations (FAR) which illegally exempt small businesses from the statutory provisions of the Small Business Act. Over the last decade, \$640B in Federal Contracts have been diverted, illegally, away from small businesses.¹⁵ *"Bureaucrats could solve the abuses, but they have been unwilling to let entrepreneurs help them with out-of-the-box solutions," Espinosa added.*

Espinosa has convinced the Office of Advocacy to pursue the removal of the 'foreign exemptions'¹⁶ which would allow \$20 Billion in contracts to be considered for the statutory small business reservation. He is also attempting to convince GAO, again, to rule on the statutory priority of small businesses on a protest riddled with contracting abusive practices¹⁷ which the Air Force is attempting to suppress. A GAO ruling would release an additional \$44 Billion for the same statutory reservation. In 2007, Espinosa persuaded GAO to request a Legal Opinion from SBA and such Opinion declared the GSA Exemption illegal,¹⁸ however, the action has not convinced the FAR Council they had been wrong and need to establish the statutory priority of small businesses over all Federal programs as Congress originally intended. Sen. John Kerry and Sen. Olympia Snowe, of the Senate Committee on Small Business and Entrepreneurship, have confirmed, *"the unambiguous Congressional intent (is) that the Act govern all procurements...Executive departments do not have the discretion to interpret the law in a manner inconsistent with its plain language."*¹⁹

*"The time has come to bring justice to size protests; to put an end to the reported procurement abusive practices of the past and to identify more contract opportunities for small and minority businesses, said Roger Campos, President of the Minority Business Round Table (MBRT) and a Member of the National SBA Advisory Committee. He added, "Bureaucrats have a responsibility to make up for the billions which continue to be credited, unfairly, to the statutory reservation as the SBA IG has confirmed,"*²⁰ said Campos.

"Without the enforcement of the existing laws, the benefits of the current size protest system will continue to be only illusionary," said Anthony Robinson, MBELDEF President. He added, *"We support Espinosa's efforts to fight contracting abuse, to conceive clever solutions that eradicate them and to attract more small businesses."*

"One of the goals of The Umbrella Initiative is to double the number of legitimate small businesses doing business with the government by 2020" said Espinosa. *"FPA can do it provided we are allowed to partner with an outreach network such as the Small Business Development Centers (SBDC)."* he added.

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The Fairness in Procurement Alliance (FPA) represents the procurement priorities of a constituency of 10 million disadvantaged businesses. Its mission is to bring fairness to public procurements so that small and disadvantaged businesses can both compete and prosper at the federal, state and local levels.

¹¹ Obama's promise on the subject. - http://www.barackobama.com/2008/02/26/the_american_small_business_le.php

¹² Procurement Advisory describes the endemic abuse. - <http://www.prweb.com/prfiles/2008/08/31/162468/FPAAdvisoryUnfairJustifications.pdf>

¹³ Demands for Contract After Victory.- <http://www.docstoc.com/docs/8678743/Demands-for-Contract-Taken-Away-Thru-Fraud-and-Abuse>

¹⁴ Ten Cases of Abusive practices turned over to the SBA OIG - <http://www.prweb.com/releases/2008/09/prweb1113164.htm>

¹⁵ \$640 Billion in Contracts Diverted away from Sm. Biz. - <http://www.prweb.com/releases/2007/09/prweb553578.htm>

¹⁶ Office of Advocacy Targets Foreign Exemptions- <http://www.docstoc.com/docs/4736098/Advocacy-Targets-Foreign-Exemption-For-Removal>

¹⁷ Espinosa's arguments on a GAO protest - <http://www.docstoc.com/docs/8670423/Arguing-for-a-Ruling-on-Contracting-Abuse>

¹⁸ The SBA historic ruling declaring the GSA Schedule illegal. - http://www.fpaportal.org/FPA/PressDocs/SBA_Opinion.pdf

¹⁹ Excerpts from a January 12th, 2005 letter to Former Secretary Powell confirming the statutory priority of small business.

²⁰ Out of the Box Solutions - <https://console.prweb.com/prfiles/2008/10/03/162468/BlundersandAbusesEditorial.pdf>