



Maria Contreras-Sweet
Director, U.S. Small Business Administration
409 3rd St SW
Washington, D.C. 20416

December 14, 2015

Dear Director Contreras-Sweet,

My name is Abby Lawlor and I am writing on behalf of UNITE HERE Local 8, the hospitality workers' union of the Pacific Northwest. As a result of an ongoing labor dispute between Local 8 members involving TrueBlue Director Craig Tall, I recently became aware that this large and profitable corporation has been actively seeking out customers and contracts that would allow it to directly benefit from the work of your agency. We are challenging the SBA's direct and indirect support of TrueBlue in the hopes that any past misapplication of small business regulations that may have allowed the company access to federal small business contracts and associated dollars will be corrected.

Founded in 1987, TrueBlue is now, by its own description, "the nation's largest industrial staffing company and a leading supplier of specialized workforce solutions."ⁱ TrueBlue's wholly-owned subsidiary companies include Labor Ready, Spartan, CLP, Centerline, and TrueBlue Energy & Industrial. In FY 2014, TrueBlue reported \$2.2 billion in revenue and employed 750,000 workers in service of 135,000 customers.ⁱⁱ TrueBlue is publically traded on the New York Stock Exchange. Last year, the company claimed \$12 million in federal tax credits, accounting for a reduction in their effective tax rate of 15%.ⁱⁱⁱ

Recent reports from the SBA Office of the Inspector General highlight ongoing issues with large businesses obtaining preferential contracting treatment and other supports designed to target emerging small businesses. According to the October 15, 2014 report, "Procurement flaws allow large firms to obtain small business awards, and for agencies to count contracts performed by large firms towards their small business goals."^{iv} The report states, "Previous OIG audits and other government studies have shown widespread misreporting by procuring agencies, since many contracts that were reported as having gone to small firms have actually been performed by larger companies. While some contractors may misrepresent or erroneously calculate their size, most of the incorrect reporting results from errors made by Government contracting personnel, including misapplication of small business contracting rules."^v

The cumulative impact of these errors is significant, and means not only that the federal government is over-reporting its support to small businesses, but also that preferential access to government resources is being directed in part towards established and highly profitable large businesses instead of small businesses in genuine need of additional support.

TrueBlue is bald-faced in its pursuit of small business contracts through subsidiaries PlaneTechs and CLP. On its corporate website, PlaneTechs advertises that it is rated as a small business for DOD and Government opportunities under NAICS 336411 (airline manufacturing), where the size threshold is 1,500 employees.^{vi} Yet PlaneTechs boasts a network of more than 120,000 aviation mechanics and technicians, claiming “PlaneTechs is backed by the resources of one of the best known staffing corporations in the world.”^{vii} PlaneTechs says it “provides more people working on more platforms, in more places than any other contractor company in the U.S.”^{viii} Simply put, PlaneTechs is not a small business.

But PlaneTechs’ treatment as a small business under NAICS Code 336411 is not the only way in which TrueBlue profits from the SBA’s support for small businesses. TrueBlue’s skilled trades staffing arm CLP claims that it has received “confirmation from the U.S. Small Business Administration that Section(8)a contractors can fulfil the ‘self performance’ requirement of their contracts when they partner with CLP, and use our skilled tradespeople on their jobsites.” They also claim “confirmation that a May 2010 SBA regulation change confers HUBZone eligibility for employees obtained through temporary staffing firms.”^{ix}

According to CLP: “SBA has provided us with a detailed opinion letter regarding Business Development Procedural Notice No. 8000-63. It states that, ‘The employees of the 8(a) BD participant that are co-employed by a PEO (Professional Employer Organization) arrangement will be deemed employees of the participant for the purposes of applying subcontractor limitations,’ with the caveat that “the following information is not legal advice. It is for informational purposes only and intended to convey information received by CLP from the SBA. Please seek the advice of counsel and/or guidance from your local SBA office to determine the applicability of the SBA opinion letter to your individual situation, before acting or relying on any statement contained herein.”^x

Troublingly, the SBA could not provide Local 8 with either the detailed opinion letter or Business Development Procedural Notice No. 8000-63, noting that the stated procedural notice did not follow SBA’s numbering convention and could not be located under any predictable numeric variation.^{xi} SBA Program Analyst Melinda Edwards provided written confirmation that “After extensive research, there are no records found on any such Procedural Notice.”^{xii}

Whether or not the cited procedural notice and related opinion letter were ever provided to CLP, the company is clearly marketing itself to take advantage of small business contracting opportunities. As outlined by CLP, small businesses can claim CLP employees as their own for the purposes of fulfilling SBA requirements (8(a) and HUBZone). Despite this, CLP is not considered the recipient or even a joint recipient of the contract. Thus, the totality of CLP’s employee count does not disqualify the small business customer from receiving the contract.

Under this construction, otherwise small businesses that partner with CLP are having it both ways: avoiding the costs of hiring their own employees and taking advantage of the resources of a much larger company without the total employment of this larger company coming to bear on its size status determination. But who really profits is TrueBlue, an already successful large business.

Either CLP employees should not count towards self-performance or HUBZone requirements for small businesses, or the use of such employees must disqualify these small businesses from SBA

contracts due to the joint nature of employment between the small business and CLP. It is worth noting that a recent NLRB decision has established much broader definitions of joint employment than had previously been in practice. SBA's policies, opinion letters, and practices may need to be updated to reflect this evolving definition of joint employment.

In conclusion, I would ask that your Administration cease to offer preferential access to government procurement opportunities to TrueBlue on the basis that its subsidiary PlaneTechs is somehow a "small business." In addition, please clarify your policies surrounding joint employment to ensure that small businesses are not being used to front small business contracts for billion-dollar companies like TrueBlue. Small businesses should be awarded small business contracts on the basis of their own performance and their own direct employment, not as a conduit for funneling money into an already highly-profitable big business already receiving significant federal tax credits. Lastly, I would ask that your administration request that CLP remove any erroneous references to SBA notices and opinion letters from its company website and to cease advertising its services to designated small businesses.

Sincerely,

Abby Lawlor

UNITE HERE Local 8

CC:

SBA Regional Directors

SBA District Directors

U.S. House of Representatives Small Business Committee

U.S. Senate Small Business and Entrepreneurship Committee

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- ⁱ http://www.trueblue.com/images/files/TB%20Fact%20Sheet_Print.pdf
- ⁱⁱ 2014 Annual Report
- ⁱⁱⁱ 2014 Annual Report pg 67.
- ^{iv} https://www.sba.gov/sites/default/files/oig/SBA%20OIG%20Report%2015-01%20-%20FY%202015%20Management%20Challenges_0.pdf
- ^v https://www.sba.gov/sites/default/files/oig/SBA%20OIG%20Report%2015-01%20-%20FY%202015%20Management%20Challenges_0.pdf
- ^{vi} https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf
- ^{vii} <http://www.planetechs.com/about-us>
- ^{viii} <http://www.planetechs.com/about-us>
- ^{ix} <http://www.clp.com/Compliance-and-Stimulus-Projects>
- ^x <http://www.clp.com/Compliance-and-Stimulus-Projects>
- ^{xi} Telephone conversation with SBA Staff November 13, 2015.
- ^{xii} Email from SBA Staff, November 13, 2015.