

**UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP**

**Testimony of
Dale P. Rentrop, Jr., President of Tiger Tugz, LLC**

Thursday, September 15, 2011

Thank you, Chairwoman Landrieu and members of the Committee on Small Business for inviting me to testify today on issues pertaining to the impact of government and it's contractual relations with small business entities.

I am here today to describe my experiences with regards to working my tugboats on USACE contracted projects.

We are here today to gain understanding on how small business can help rebuild their own community post disasters.

I have had two (2) experiences working on USACE (Corps.) projects. The first of which, on or about 2006, involved a Tiger Tugz chartered tug who was working for a contractor to the Corps. This business was not on a contractual basis. My tug worked to gather barges prior to commencement of the project. Very little of the project details were communicated to Tiger Tugz by the contractor. Tiger Tugz was paid for the 1st months work but not paid on the final invoice which totaled \$120,000.00. Upon further investigation I found that the contractor's corporation was recently set up and was formed to take advantage of this contract. The "contractor" is no longer in business and cannot be reached.

The second project working for the Corps, New Orleans District involved the transportation of earthen clay from Port Bienville, MS to Michoud Slip, New Orleans. The transported clay was to be used to rebuild the levee protection system around New Orleans East area.

Contractual entities: Prime Contractor
 1st Tier Subcontractor (Project Management)
 Tiger Tugz, LLC, 2nd Tier Subcontractor (Marine Transporter)
 2nd Tier Subcontractor (Offloader)

Project Mobilization

On or around January 4, 2010, Tiger Tugz was instructed to mobilize project equipment to the project loading site in Port Bienville, MS for inspection of equipment and to begin the work. Our equipment remained on site and ready for operation until the beginning of the project on March 6, 2010. I have invoiced for a total of \$439,717.70 and to this date have received \$0.00 in payment.

Movement of Earthen Clay

Tiger Tugz hauled clay from March 6, 2010 until June 4, 2010. I have invoiced a total of \$557,110.38 in project tonnage plus fuel costs and have been paid \$195,343.20, leaving a total of \$311,897.81 outstanding. The prime contractor was paid by the Corps. Tiger Tugz was not paid for delivered tonnage.

Project Barges

Tiger Tugz supplied twenty (20) inland hopper barges for the project with which to transport the clay. I don't own the barges, they were chartered from a barge vendor to which I still owe some

\$38,000.00. Upon the return of these barges they must be cleaned and surveyed to determine damages if any. The barges were stored (fleeted), cleaned, repaired and returned to their owner. I was not contractually responsible for these charges, but as the 1st tier contractor was not paid either, the responsibility fell to my company. I owe approximately \$133,303.80 in project barge related charges to my vendor.

Tiger Tugz also chartered to the project two (2) inland deck barges. The deck barges were used as platforms for the excavators to offload the barges as dockside offloading not an option. The barges sustained approximately \$214,000.00 in damages. Tiger Tugz is being made responsible for this barge damage although we did nothing to damage the barges.

Terminations

The 1st tier subcontractor was terminated by the prime contractor on or about June 3, 2010. The prime contractor then approached Tiger Tugz to remain on the project on a day rate basis billable directly to the prime contractor. Our invoices total \$149,879.28 of which not a single cent has been paid.

Tiger Tugz departed the project on June 13, 2010 due to non payment of invoices. Small businesses cannot continue to operate without under this contract without being paid.

The Corps terminated the marine portion of the project for convenience on or about August 5, 2010.

Amounts Due

The project owes Tiger Tugz, \$1,469,763.47.

Classification of Corp Contract

The Corp elected to classify my portion of the levee building contract as a supply contract and not a construction or civil contract. The project involved excavating earthen clay, transporting the clay to the loading dock with dump trucks, loading the barges with excavators, transporting the clay with tug and barge to the offload site, offloading the barges with excavators into dump trucks, dumping the clay into a "stockpile" area.

Does this explanation describe and fit into the profile of a typical governmental supply contract?

As I understand, governmental supply contracts do not require the prime contractor to submit a bond. Tiered subcontractors have no recourse or bond to lien in the event of non-payment. As a 2nd tier subcontractor, I was not made privy to such contractual information.

Prime Contractor

The prime contractor is a company that was started following Hurricane Katrina. It is my belief that was formed to acquire government contracts to supply clay to the levee re-building effort. The prime contractor has little, if any, contracting experience and owns no equipment.

Settlement Proposal

Tiger Tugz has and is submitting a Standard Form 1436 Settlement Proposal through 1st tier and prime contractor to the Corps. The Settlement Proposal deadline was initially July 15, 2010. the prime contractor arbitrarily got an extension from the Corps until December 15, 2010. Lower tier subs had no correspondence prior to this request.

The 2nd tier subcontractor (Offloader), had recently submitted a Settlement Proposal directly to the Corps. The Corps summarily dismissed the application. The Corps either does not or refuses to recognize 1st or 2nd tier subcontractors as contractors on this project.

Settlement

The Corps refuses to recognize 1st and 2nd tier subcontractors that worked on this project. The Corps will not assist us in requiring the prime contractor to pay what is owed. The prime contractor has been paid and is keeping the money. There are no discussion between prime contractor and subs.

Subcontractors have written and submitted Settlement Proposals to the prime contractor which should be included in their submission to the Corps. What assurance do we have that our Settlement Proposals will even be submitted to the Corps? NONE.

If and / or when a settlement is reached, how will we know? Will the Corps report to the subs? NO, as proven, in writing, by their lack of consideration in recognizing our existence.

If the Corps pays the prime contractor any settlement amounts, will the prime pay the subs? I doubt it....as proven by their current business conduct and lack of payment.

Will the Corps require the prime contractor to pay the subs before getting their own settlement? No. The Corps has continued to pay the prime contractor with full knowledge of the fact that the prime is not paying subs and the refusal to be involved in prime to subcontractor relations.

What hope do we have that we will ever be paid for work that we provided to rebuilding the levees around New Orleans, LA? Only the hope I have is that our US Government, Senate, or the USACE intervene in this process to make sure that the settlement payments be channeled to their proper destination. Without your intervention in this matter, more of the same will, no doubt, prevail.

For your information, the Corps currently has a similar Settlement Proposal in consideration that is reported to be eight (8) years in waiting.

Contacting of Governmental Officials

In efforts to bring attention to this situation, I have written letters and received responses back from Sen. Melancon's office, Sen. Vitter's office, Rep. Joseph Cao's office, United States Army Corps. of Engineers- Carrie Wakumoto and Commander Fleming, and the Inspector General of USACE.

I thank the committee and it's members for providing this forum and for the opportunity to testify regarding my experiences in dealing with the USACE.

Perhaps my testimony can be a catalyst which leads to more small business contracting opportunities with our government and bring about a change in USACE practices regarding the contracting of small businesses.

Pre-Project and Post Project Employment

At the beginning of the project Tiger Tugz owned and operated four (4) inland tug boats and the fifth new build tug was due to be completed. Tiger Tugz employed approximately thirty two people and planned to employ six (6) additional persons upon the completion of the new tug. On this day, Tiger Tugz operates three (3) tugs and employs 16 people and is on the verge of filing for bankruptcy protection.

Impact on my Small Business

Downsizing of my small business is due, in large part, to my participation in this government contract and the fact that we cannot get paid. I have had to liquidate assets and lay off employees in efforts to remain in business. My company is being forced to absorb these contract related losses but still pay the expenses incurred in the execution of this project.

As a result of doing business with the Army Corps of Engineers and it's chosen prime contractor, my business has an outstanding debt of \$652,582.00, owed to 13 companies, in project related expenses. This amount does not take into consideration amounts I have paid during the past year.

Summary

When choosing to contract myself to a prime contractor on a government project I had no idea at how little protection and oversight is provided by the Corps and government. I had faith that under the scrutiny of the government that fairness would prevail.

Small businesses need to count on the fact that when they work on a government contract that they will be paid for their work. All small businesses have employee payroll to meet on a weekly basis. Employees count on us to provide pay with which they provide for their families.

This evolution has had a profound impact not only on my business but to all of the vendors that counted on Tiger Tugz to pay what is owed. The damage caused by non-payment on a government contract is not narrow of focus but spreads out like a spider's web and effect the entire supply chain.

Closing Remarks

My ability to supply marine transportation services to the government will not survive past today if you don't help me resolve this issue now.

I thank you for the opportunity to describe my experience in dealing with the corps. I understand that many small businesses may have had similar experiences. Damage has been done to small businesses, but it is not too late to reverse that damage. We are damaged by disasters and fight on towards recovery. We do not expect to be damaged by our own government while working on re-building project like the New Orleans levees.

I ask that you contact the USACE and require that they accept our settlement proposals in a reasonable amount of time, and to follow the payments through the prime contractor to see that they get into the hands of the companies and hard working people that earned that pay.

When the US Federal government and it's operating arms knowingly allows a prime contractor, which is operating under a government contract, to fail to pay their subcontractors is basically issuing a "permission slip" to all other prime contractors in the future to conduct business in this same manner.

President Obama in his Job Creation speech the other night said, and I quote, "We will see that government contracts get paid a lot faster."

Let not the governments working relationship with small businesses in the community be financially destructive to employers of the people.

Thank you for you time this morning. I will be happy to answer any questions the Committee might have.