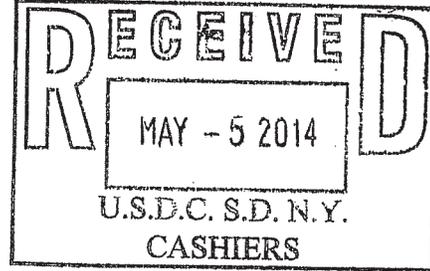


JUDGE SWAIN

14 CV 3250

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 MORETRENCH AMERICAN CORPORATION, :
 :
 Defendant. :
-----X

14 Civ. ____
COMPLAINT
JURY TRIAL DEMANDED

Plaintiff United States of America (the "United States" or the "Government"), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges as follows:

INTRODUCTION

1. The United States files this civil complaint to recover damages and penalties from Defendant Moretrench American Corporation ("Moretrench" or "Defendant") under the False Claims Act and common law arising from Defendant's false representations that work on a federally-funded construction project had been performed by a disadvantaged business enterprise ("DBE"). Rather than hire a disadvantaged business to perform actual work on the project as required by United States Department of Transportation ("DOT") regulations designed to ensure

the participation of DBEs in DOT-assisted contracts, Defendant fraudulently used a disadvantaged business enterprise that performed no commercially useful function in order to obtain a subcontract worth millions of dollars for dewatering (i.e., groundwater removal) on the World Trade Center hub train station construction project (the “HUB Project”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345, over the remaining claims pursuant to 28 U.S.C. § 1345, and over all claims pursuant to the Court’s general equitable jurisdiction.

3. Venue lies in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and 1391(c), because Defendant conducts business within this District.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant Moretrench is one of the largest dewatering contractors in the country, and has an office in this District in Yonkers, New York.

BACKGROUND

The Regulatory Framework

6. The DOT regulations entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” are intended to provide opportunities for businesses owned by socially and economically disadvantaged individuals, such as minorities and/or women, possessing the required skills to perform work on construction projects funded, at least in part, by the federal government. The regulations are codified at 49 C.F.R., Part 26 (the “DBE Regulations”). They are designed to “ensure

nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs."

7. The DBE Regulations require that every contract that a DOT funding recipient signs with a contractor include an assurance by the contractor that "[t]he contractor . . . shall carry out applicable requirements of [the DBE Regulations] in the award and administration of DOT-assisted contracts." The DBE Regulations further state that "[f]ailure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate." 49 C.F.R. § 26.13(b).

8. The DBE Regulations provide that payments made to a DBE contractor may be counted toward DBE goals "only if the DBE is performing a commercially useful function on that contract." 49 C.F.R. § 26.55(c). A "commercially useful function" is performed when a DBE is "responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved." 49 C.F.R. 26.55(c)(1).

9. The DBE Regulations specifically prohibit "pass-through" arrangements. Thus, a DBE does not perform a commercially useful function "if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation." *Id.* If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, it is presumed that the DBE is not performing a commercially useful function. *Id.*

10. The DBE Regulations apply equally to projects funded through the Federal Transit Administration ("FTA"), which is an agency of the DOT. *See* 49 C.F.R. § 26.3(a).

The World Trade Center HUB Project

11. The Port Authority of New York and New Jersey (“PANYNJ”) oversees the construction of the World Trade Center HUB (the “HUB”). The design and construction of the HUB is funded partially with grant money awarded by the FTA.

12. As a condition of receiving DOT funding for the HUB, the PANYNJ established Minority Business Enterprise (“MBE”) and Women’s Business Enterprise (“WBE”) goals for the HUB. The PANYNJ’s MBE/WBE regulations were deemed by the PANYNJ and DOT to be substantially similar to the DOT’s DBE regulations, and accordingly DOT authorized the PANYNJ to use its own MBE/WBE regulations with respect to the HUB project.

13. In 2007 Moretrench contracted with the prime contractor (contract # WOTC-GC1-9-KN0080-0048-009) on the HUB Project to perform dewatering for the construction site. As part of its contract with the prime contractor, Moretrench agreed to use its best efforts to obtain seventeen percent MBE/WBE participation on its contract.

THE FRAUDULENT SCHEME

Environmental Energy Associates, LLC

14. In an effort to demonstrate that it met its MBE/WBE participation requirement, Moretrench contracted with Environmental Energy Associates, LLC (“EEA”) to operate the dewatering system for the HUB project. In June 2007, Moretrench reported to the prime contractor that it had entered into a subcontract with EEA for approximately \$1,100,000, which was seventeen percent of the value of Moretrench’s contract with the prime contractor.

15. At all times relevant to this complaint, EEA operated as a shell company, owned by Carmine Desio (“Desio”) and Balu Kamat (“Kamat”).

16. EEA and Moretrench had an arrangement pursuant to which Moretrench hired the

pump operators for the dewatering machinery, supervised the job site, and assembled bi-weekly payroll files.

17. To create an appearance that EEA was performing a commercially useful function, several pump operators, who were already working on the job site as Moretrench employees, were switched to EEA's payroll.

18. EEA's payroll paperwork was assembled by Moretrench employees. Every Monday, a Moretrench Site Supervisor faxed employee sign-in sheets to a Moretrench Administrative Assistant. The Assistant created a payroll form detailing the laborers and the amount of time they worked for the week. The new payroll form, prepared entirely by Moretrench employees, listed EEA as the contractor. The forms were then faxed to Desio or Kamat of EEA for their signature, and were submitted by Moretrench to PANYNJ as certified payrolls. EEA then faxed an invoice for the purported labor back to Moretrench with a markup, usually around ten percent. The markup was understood to be compensation for the use of EEA's MBE status.

19. In February 2008 and again in July 2009 and December 2009, Moretrench reported to PANYNJ the amounts it purported to have paid to EEA on its subcontract. These reports falsely represented that Moretrench paid EEA money for work performed, wherein in fact Moretrench performed the work on the HUB project itself.

21. Moretrench was required to submit such reports as part of its application for payment, and in fact Moretrench did receive payments from the prime contractor, which was a recipient of DOT funds.

22. As a result of the false reports submitted by Moretrench, it obtained federally funded project money to which it was not entitled.

FIRST CLAIM

Violations of the False Claims Act: Presentation of False Claims (31 U.S.C. § 3729(a)(1) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(A))

23. The United States incorporates by reference paragraphs 1-22 as if fully set forth in this paragraph.

24. The United States seeks relief against Defendant under Section 3729(a)(1) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(A), of the False Claims Act.

25. As set forth above, in connection with the foregoing scheme, Defendant knowingly, or with reckless disregard for the truth, presented and/or caused to be presented false or fraudulent claims for payment to the PANYNJ, a recipient of federal funds, and such funds were spent or used by the PANYNJ on the Government's behalf and to advance a Government interest. Specifically, Moretrench submitted reports as part of applications for payment on the HUB Project, a federally-funded project, reflecting falsely that EEA performed work on the HUB project when in fact EEA had not performed such work.

26. By reason of these false claims, the United States has sustained damages in a substantial amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

SECOND CLAIM

Violations of the False Claims Act: Making or Using a False Record or Statement (31 U.S.C. § 3729(a)(2) (2006), and, as amended, 31 U.S.C. § 3729(a)(1)(B))

27. The United States incorporates by reference paragraphs 1-22 as if fully set forth in this paragraph.

28. The United States seeks relief against Defendant under Section 3729(a)(2) (2006),

and, as amended, 31 U.S.C. § 3729(a)(1)(B), of the False Claims Act.

29. As set forth above, in connection with the foregoing scheme, Defendant knowingly, or in reckless disregard for the truth, made, used, and caused to be made and used, false records and statements material to a false and fraudulent claim that was made to the PANYNJ, a recipient of federal funds, and such funds were spent or used by the PANYNJ on the Government's behalf and to advance a Government interest. Specifically, Moretrench made and used false reports as part of its bid and its requests for payments on the federally-funded HUB Project.

30. By reason of these false claims, the United States has sustained damages in a substantial amount to be determined at trial, and is entitled to a civil penalty as required by law for each violation.

THIRD CLAIM

Unjust Enrichment

31. The United States incorporates by reference paragraphs 1-22 as if fully set forth in this paragraph.

32. By reason of the payments to Defendant, Defendant was unjustly enriched. The circumstances of Defendant's receipt of these payments are such that, in equity and good conscience, Defendant should not retain these payments, the amount of which is to be determined at trial.

FOURTH CLAIM

Common Law Fraud

33. The United States incorporates by reference paragraphs 1-22 as if fully set forth in this paragraph.

34. Defendant made material misrepresentations of fact, with knowledge of, or in reckless disregard of, their truth, in connection with the claims for payment submitted by, or on behalf of, Defendant to the United States. Specifically, although Moretrench represented in its bid to the prime contractor on the HUB Project that it would subcontract seventeen percent of its work to a DBE, Moretrench knew at the time of the bid that it would not meet such requirement, and further, throughout the performance of the contract, it submitted false reports reflecting that it had subcontracted work to a DBE whereas in fact it was performing the work itself.

35. Defendant intended that the United States rely upon the accuracy of the false representations referenced above.

36. The United States made substantial payments of money in justifiable reliance upon Defendant's false representations.

37. Defendant's actions caused the United States to be damaged in a substantial amount to be determined at trial.

FIFTH CLAIM

Payment Under Mistake of Fact

38. The United States incorporates by reference paragraphs 1-22 as if fully set forth in this paragraph.

39. The United States seeks relief against Defendant to recover monies paid under mistake of fact.

40. The Government disbursed funds based on statements submitted by Defendant to the PANYNJ under the erroneous belief that Defendant's statements that it was complying with MBE requirements were true.

41. Because of these payments and/or guarantees by mistake, Defendant has received

monies to which it is not entitled.

42. By reason of the foregoing, the United States was damaged in a substantial amount to be determined at trial.

WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor and against Defendant as follows:

(a) On the First and Second Claims for Relief (Violations of the False Claims Act), for treble the United States' damages, in an amount to be determined at trial, plus civil penalties for each false claim presented and an award of costs pursuant to 31 U.S.C. § 3729(a);

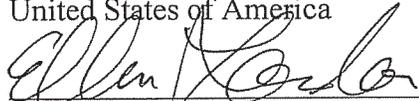
(b) On the Third, Fourth, and Fifth Claims for Relief, in an amount to be determined at trial, together with costs and interest; and

(c) awarding such further relief as is proper.

Dated: New York, New York
May 5, 2014

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By:


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