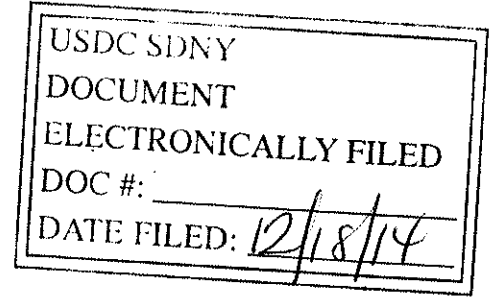


Broderick, J

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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 RMD Holdings, LLC, :
 :
 Defendant. :
-----X

14 Civ. 9978 (VSB)
STIPULATION AND
ORDER OF DISMISSAL
ECF Case

WHEREAS, the United States of America ("United States") commenced this action by filing a complaint in this Court (the "Complaint") against RMD Holdings, Ltd. d/b/a Nationwide Construction Group, ("RMD" or "Defendant") under the False Claims Act and common law arising from Defendant's violation of the regulations of the United States Department of Transportation ("DOT") designed to ensure the participation of disadvantaged business enterprises ("DBEs") in federally funded and/or subsidized contracts (the "DBE regulations");

WHEREAS, the DBE regulations 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;

WHEREAS, the United States contends that it has certain civil claims against the Defendant under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733, and the common law, based on Defendant's fraudulent conduct designed to take advantage of the DBE regulations in order to secure subcontracts on federally-funded projects by representing that work on those projects had been performed by a DBE when in fact RMD itself performed the work. Specifically, as set forth in the complaint, Defendant caused to be presented false or fraudulent claims for payment to the DOT for the construction of the LaGuardia Central Terminal Building Upper and Lower Level Bollards (DOT project number MF-100.509) by fraudulently representing that work done by RMD was instead done by MS Construction, a DBE (hereinafter, the "Covered Conduct").

WHEREAS, the United States seeks damages and civil penalties against Defendant under the False Claims Act, 31 U.S.C. §§ 3729-33, and common law; and

WHEREAS, the parties desire to reach a full and final settlement and compromise of the claims that the United States asserts against Defendant by entering into this stipulation of settlement (the "Stipulation");

NOW, THEREFORE, it is hereby ORDERED as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.
2. Defendant admits, acknowledges, and accepts responsibility for the following conduct: Defendant made and caused to be made false statements in violation of federal regulations designed to encourage the participation of disadvantaged business enterprises in federally-funded construction projects. Specifically, Defendant's employee acting on its behalf

caused false certifications by another entity to be submitted to the DOT representing that a DBE performed certain work and received certain payments, whereas the DBE never performed any work and received a commission from Defendant for the fraudulent use of their DBE status.

3. Defendant RMD shall pay to the United States a total of \$416,000 (the "Settlement Amount") within 10 days of the Effective Date (defined below).

4. Defendant shall pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

5. Further, in connection with the entry of this Stipulation, Defendant consents to the entry of a judgment against it and for the United States in the Settlement Amount (the Consent Judgment to be submitted to the Court for its approval is attached hereto as Exhibit A).

6. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Defendant's full payment of the Settlement Amount, and subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date) or any payment made under this Stipulation, the United States releases RMD and all of its current and former owners, officers, directors, employees, affiliates, successors, and assigns from any civil monetary claim the United States has for the Covered Conduct and for all work performed by or on behalf of the Defendant relating to the Covered Conduct, under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

7. Notwithstanding any term of this Stipulation, including the release provided in paragraph 6, any and all of the following are specifically reserved and excluded from the scope and terms of this Stipulation:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension or debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Stipulation.

8. RMD shall be in default of this Stipulation if it fails to make the payments set forth in paragraph 3. The United States will provide written notice of the default, to be sent by first-class mail to the undersigned attorneys for Defendant. In the event of default, the Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days after delivery of the notice of default, the United States may, at its option: (a) seek specific performance of the Stipulation; (b) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing Defendant by any department, agency or agent of the United States at the time of default; (c) reinstate this lawsuit; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Defendant shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any

State or Federal court. In addition, Defendant shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorney's fees and expenses. In the event that the United States opts to rescind this Stipulation and reinstate its action against Defendant pursuant to this paragraph, Defendant shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which relate to the Covered Conduct, except to the extent those defenses were available on the date of the filing of the complaint in this action.

9. Defendant agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant, its present or former officers, employees, and agents in connection with:
 - (1) the matters covered by this Stipulation;
 - (2) the United States's civil investigation of the Covered Conduct;
 - (3) the investigation, defense, and corrective actions undertaken by Defendant in response to the United States's civil investigation of the Covered Conduct (including attorney's fees);
 - (4) the negotiation and performance of this Stipulation; and
 - (5) the payments Defendant makes to the United States pursuant to this Stipulation.
- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendant, and Defendant shall not

charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State transportation program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendant to DOT.

- c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendant further agrees that within 90 days of the Effective Date of this Agreement they shall identify to applicable DOT components, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State transportation program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendant, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Defendant agrees that the United States, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. The United States reserves its rights to disagree with any calculations submitted by Defendant or any of its rights to audit, examine, or re-examine Defendant's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph, and to disagree with any calculations submitted by Defendant concerning any Unallowable Costs included in payments previously sought by

Defendant, or the effect of any such Unallowable Costs on the amount of such payments.

10. Defendant waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of the Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code or New York State Tax Law.

11. Defendant fully and finally releases the United States, its agencies, departments, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Defendant has asserted, could have asserted, or may assert in the future against the United States, its agencies, departments, employees, servants, and agents related to the Covered Conduct, and the United States' investigation and prosecution thereof, and this Stipulation.

12. This Stipulation is intended to be for the benefit of the parties only. The parties do not release any claims against any other person or entity, except as provided in this Stipulation. Until the Settlement Amounts are fully satisfied, Defendant shall maintain custody of, or make arrangements to have maintained, all documents and records of Defendant related to the Covered Conduct.

13. Defendant expressly warrants that it has reviewed its financial situation and that it

currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will not become insolvent following payments of the Settlement Amounts. Further, the parties expressly warrant that, in evaluating whether to execute this Stipulation, such parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendant, within the meaning of 11 U.S.C. § 547(c)(1); and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange. Further, the parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonable equivalent exchange of value which is not intended to hinder, delay or defraud any entity to which Defendant was or became indebted on or after the Effective Date of this Stipulation, all within the meaning of 11 U.S.C. § 548(a)(1).

14. If, within 91 days of the effective date of this Stipulation or within 91 days of any payment under this Stipulation, Defendant commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors: (i) seeking to have any order for relief of Defendant's debts; (ii) seeking to adjudicate Defendant as bankrupt or insolvent; or (iii) seeking appointment of a receiver, trustee, custodian or other similar official for Defendant or for all or any substantial part of their assets, then:

- a. Defendant's obligations under this Stipulation shall not be avoided pursuant to 11 U.S.C. § 547, and Defendant shall not argue or otherwise take the position in any such case, proceeding or other action that: (i) Defendant's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Defendant was insolvent at the time this Stipulation was entered into, or became insolvent as a

result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Defendant.

b. In the event that Defendant's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind its agreement to this Stipulation, and bring any civil and/or administrative claim, action or proceeding against Defendant for the claims that would otherwise be covered by the release provided in paragraph 5 above. Defendant: (i) shall not contend that any such claims, actions or proceedings brought by the United States are subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph; (ii) Defendant shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within thirty (30) calendar days of written notification to Defendant that the releases herein have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the date the complaint was filed in this action; and (iii) Defendant shall not contest the validity of a claim filed by the United States against Defendant in the amount of \$416,000, and the United States may pursue its claims in the case, action or proceeding referenced in the first clause of this paragraph, as well as any other case, action, or proceeding.

c. Defendant's agreements in this paragraph are provided in exchange for

valuable consideration provided in this Stipulation.

15. Except as expressly provided to the contrary in this Stipulation, the United States and Defendant shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

16. This Stipulation is governed by the laws of the United States without regard to choice of law or conflict of law principles. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Stipulation as it relates to this action will be the United States District Court for the Southern District of New York. The parties waive any objection that any of them may now have or hereafter may have to this venue, whether concerning this Stipulation or for any related suit, action or proceeding, and consent to the jurisdiction of this Court and agree to accept and acknowledge service in any such suit, action or proceeding.

17. For purposes of construction, this Stipulation shall be deemed to have been drafted by all parties to this Stipulation and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

18. Any failure by any party to this agreement to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and that party, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

19. If any part of this Stipulation shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Stipulation, which shall survive and be construed as if such invalid unenforceable part had not been contained herein.

20. This Stipulation constitutes the complete agreement between the parties. This

Stipulation may not be amended, changed, modified or waived except in writing signed by all parties or their authorized representatives.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and entities indicated below.

22. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

23. This Stipulation is binding on Defendant's successors, transferees, heirs, and assigns.

24. The Complaint is hereby dismissed, without prejudice to reinstatement in accordance with the terms of this Stipulation.

25. Any notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

Ellen London and Mara Trager
Assistant United States Attorneys
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
Facsimile: (212) 637-2702

IF TO DEFENDANT:

Rogue Tyson
Attorney for RMD
53861 Gratiot Ave.
Chesterfield Twp., MI 48051-1718

26. The effective date of this Stipulation is the date upon which this Stipulation is entered by this Court (the "Effective Date").

27. Defendant represents that this Stipulation and Order is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

Dated: New York, New York
Dec. 17, 2014

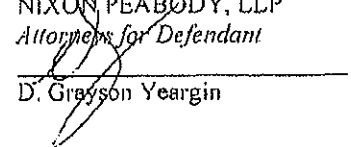
PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: 

MARA E. TRAGER
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New York, New York 10007
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ellen.london@usdoj.gov

Dated: Washington, DC
12/16, 2014

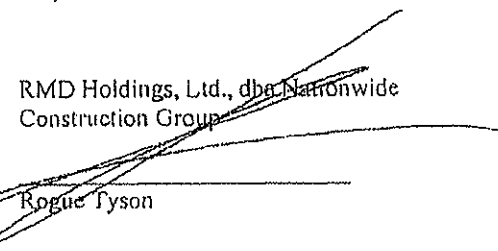
NIXON PEABODY, LLP
Attorneys for Defendant

By: 

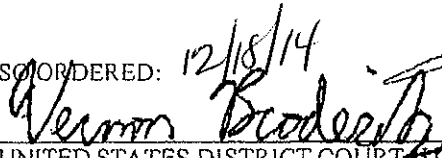
D. Grayson Yeargin

Dated: Chesterfield Twp., MI
12/16, 2014

RMD Holdings, Ltd., dba Nationwide
Construction Group

By: 

Rogue Tyson

SO ORDERED: 12/18/14


UNITED STATES DISTRICT COURT JUDGE