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FILED
U.S. DISTRICT COURT

2011 APR 19 P 4:34

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,
ex rel.
SAIZ CONSTRUCTION CO., INC. and
ABEL SAIZ,

Plaintiffs,

vs.

OKLAND CONSTRUCTION COMPANY
INC.

Defendant.

Case: 2:11cv00362
Assigned To : Sam, David
Assign. Date : 4/19/2011
Description: SEALED V. SEALED

**FALSE CLAIMS ACT COMPLAINT
AND JURY DEMAND**

**FILED UNDER SEAL PURSUANT TO
31 U.S.C. § 3730(b)(2)**

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Plaintiffs, by and through counsel, complain and allege against defendant as follows:

INTRODUCTION

In the late 1990s, the Small Business Administration ("SBA") introduced a new business development Mentor/Protégé Program to assist small disadvantaged businesses, by having mentor companies partner with the businesses to allow the small companies to compete for federal contracts for which the mentor companies are ineligible under federal law. The SBA's

8(a) Business Development Program (“8(a) Program”) provides a logical, systematic approach to federal market access and enterprise growth to businesses owned and controlled by socially and economically disadvantaged individuals. 8(a) Business Development Program Standard Operating Procedure, p. 1.

In 2002, defendant Okland Construction Company Inc. (“Okland”) approached Abel Saiz and his company, Saiz Construction, Inc. (collectively “Saiz” and the “Relator” for purposes of this litigation), and offered to act as a mentor company to Mr. Saiz’s small, native-American owned construction company under the Mentor-Protégé Program. The parties signed two Mentor/Protégé Agreements in 2002, one undated and the other dated August 23, 2002. The U.S. Small Business Administration approved the agreement (believed to be the dated agreement) in October, 2002.

As the Mentor/Protégé relationship between Okland and Saiz progressed, it became apparent to Saiz that Okland was simply using the agreement as a vehicle to enable Okland, a large contractor, to receive work under 8(a) contracts for which it was ineligible. When Mr. Saiz brought his concerns to his mentor company, Okland simply threatened to pull any bonding on existing projects and informed him that if he had a problem, Okland would “bury [him] in court.”

“[The False Claims Act] was enacted in 1863 with the principal goal of ‘stopping the massive frauds perpetuated by large [private] contractors during the civil war.’” *Vermont Agency of Natural Resources v. United States*, 529 U.S. 765, 781 (2002) (quoting *United States v. Bornstin*, 423 U.S. 303, 309 (1976)). Relator, in this *qui tam* action, likewise seeks to stop a significant fraud perpetuated by Okland under the federal SBA Mentor/Protégé and 8(a) Programs wherein Okland collected millions of dollars in revenue for construction projects for

which it was not eligible and prevented Saiz, the intended recipient of the 8(a) Program's benefits, from being assisted to compete as Congress intended.

I. JURISDICTION AND VENUE

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising out of false claims, transactions and other related acts of defendant, and is brought pursuant to Title 31 U.S.C. §§ 3729-3733, more popularly known as the False Claims Act, through Relator, pursuant to 31 U.S.C. §§ 3730(b), for and on behalf of the United States of America.

2. Jurisdiction of the Court is founded upon 28 U.S.C. §§ 1331 and 1345. The claims set forth herein arise under and are founded upon Federal law.

3. Personal jurisdiction over the defendant is proper in this Court pursuant to 31 U.S.C. § 3732(a), which provides that any action under 31 U.S.C. § 3730 may be brought in any district in which the defendant can be found, resides, transacts business, or in which any act proscribed by 31 U.S.C. § 3729 occurred.

4. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b). Defendant Okland Construction Company Inc. is found in and does business in this District within the State of Utah, including a substantial part of the events and omissions giving rise to the claims set forth herein.

II. PARTIES

5. Defendant Okland Construction Company Inc. is a Utah corporation doing substantial business in the State of Utah. At all times, Okland acted through its officials, agents, and employees.

6. Saiz Construction Co., Inc. is a Utah corporation.

III. GENERAL ALLEGATIONS

(Small Business Administration's 8(a) Mentor-Protégé and Business Development Programs)

7. In 1998, Congress enacted sections 8(a) and 7(j) of the Small Business Act to authorize a Minority Small Business and Capital Development program. 13 C.F.R. §124.1 (hereinafter "8(a)"). The purpose of the 8(a) program "is to assist eligible small disadvantaged business concerns compete in the American economy through business development." *Id.*

8. To achieve that purpose, the Small Business Administration ("SBA") is authorized to enter into contracts with other Federal agencies and to contract the performance of these contracts to qualified 8(a) participants. 13 C.F.R. §124.501(a). The 8(a) contracts may be either "sole source" awards or awards won through competition with other 8(a) participants. *Id.* at 501(b).

9. To qualify as 8(a) certified, an applicant must be a small business (as defined by 13 C.F.R. §124.102), which is unconditionally owned and controlled by one or more socially and economically disadvantaged individuals (*id.* at §124.103-106), who are of good character and citizens of the United States, and who demonstrate potential for success. (*Id.* §124.107).

10. Only 8(a) certified companies can bid on or be awarded 8(a) set aside or 8(a) competitive contracts. 13 C.F.R. §124.508(c) ("In order to be eligible to receive a sole source 8(a) contract, a firm must be a current Participant on the date of award."), 13 C.F.R. §124.501(g) ("A concern must be a current participant in the 8(a) BD program at the time of award..."), 13 C.F.R. §507 (for "either a negotiated or sealed bid competitive 8(a) acquisition, ... (1) ... SBA will determine whether the firm identified by the procuring activity is eligible for award.")

11. In order to encourage larger companies to provide assistance to eligible 8(a) participants, the Government created the Mentor/Protégé Program. (13 C.F.R. § 124.520) Under that program, contractors are allowed to benefit from 8(a) contracts by entering into a SBA-approved mentor-mentee agreement with an 8(a) eligible company. As a benefit of participation in the Mentor/Protégé program, the non-eligible contractor may own an equity interest of up to 40% in the protégé firm, may receive subcontracted work from the 8(a) Participant, which must remain the Prime Contractor, or may enter into a joint venture with the Participant. 13 C.F.R. §124.510(a) and 13 C.F.R. 125.6; 13 C.F.R. 124.520(d).

12. A Mentor/Protégé Agreement must be submitted by the Mentor and the 8(a) Participant to the SBA for approval. As a condition for approval and subsequent renewal, the Mentor/Protégé Agreement cannot be merely a vehicle to enable a non-8(a) participant to receive 8(a) contracts. 13 C.F.R. 124.520(e)(2).

13. If a valid Mentor/Protégé Agreement has been submitted and approved, the Mentor and Protégé may joint venture as a small business for any government procurement, including 8(a) sole source contracts and 8(a) competitive bid contracts, provided the protégé qualifies as small for the procurement. 13 C.F.R. 124.520(d).

(Okland – Saiz Mentor/Protégé Relationship)

14. In 2002, defendant Okland Construction Company Inc. (“Okland”) approached Abel Saiz and his company, Saiz Construction, Inc. and offered to act as a mentor company to Mr. Saiz’s small, native-American owned construction company under the Mentor/Protégé Program.

15. The parties signed two Mentor/Protégé Agreements in 2002, one undated and the other dated August 23, 2002. The U.S. Small Business Administration approved the agreement (believed to be the dated agreement) in October, 2002.

16. Under the Mentor/Protégé Program, as a large contractor with over \$30 million in yearly sales, Okland was ineligible to receive any 8(a) contracts unless Okland entered into a SBA approved joint venture agreement with its mentee which protected the 8(a) contractor/mentee's interests.

17. No joint venture agreement was ever entered into between Okland and Saiz, nor was any agreement between Okland and Saiz submitted for approval to the SBA other than the Mentor/Protégé Agreement.

18. Any joint venture agreement between Okland and Saiz would have been required to, among other things, designate Saiz as the managing venturer of the joint venture, designate a Saiz employee as the project manager responsible for performance of the 8(a) contract, provide that not less than 51 percent of the net profits earned by the joint venture would be distributed to Saiz, and designate that accounting and other administrative records relating to the joint venture be kept in Saiz Construction's office.

19. Saiz Construction was first awarded a contract under the Saiz-Okland Mentor/Protégé Agreement in 2003.

20. Under this Agreement, Saiz Construction was awarded the following contracts:

- a. Repair ALS Auditorium (9/30/2003)
- b. Shivwits Medical (8/17/2004)
- c. Taxiway Edgelights (9/30/2004)

- d. Repair Electrical Dist 2nd St (9/22/2005)
- e. HAFB Building 118 (9/28/2005)
- f. Eastside Fire Rescue Station (8/30/2006)
- g. Regional Kennel Training (9/29/2007)
- h. 3rd Street electrical (9/30/2007)

21. Each of these contracts was either an 8(a) set aside competitive bid contract or 8(a) sole source contract. An 8(a) set aside contract is one wherein the bidding is limited to 8(a) contractors only. A sole source contract is one wherein a governmental agency selects one 8(a) contractor and negotiates a written contract. Sole source contracts are highly desirable, in part because, due to the absence of competitive bidding, a greater potential exists for an increased profit margin.

22. Using Saiz Construction and its 8(a) certification as a pass-through or front, Oakland sought and obtained the listed contracts. Oakland considered itself, and treated Saiz, as if Oakland were the contracting entity. For example:

- Oakland informed Saiz, who was supposed to be the prime contractor, that Oakland would allow Saiz to “bid” on “subcontracts” on the projects;
- Oakland hired in-house personnel and relatives as project managers, superintendents and other administrative positions rather than allowing Saiz personnel into these positions;
- Oakland used its own estimating personnel and resources exclusively to bid the projects, transferring to Saiz little, if any, technical services or assistance in the area of technical expertise;

- Okland required that subcontractors submit their certified payrolls to Okland rather than to Saiz;
- Okland evaluated most if not all of the subcontracts in relation to each Saiz project without consultation with Saiz and then issued the subcontracts from Okland's offices rather than through Saiz;
- Okland refused to allow Saiz to retain, and itself chose to retain in its offices, all of the administrative documents and records relating to each of the contracts;
- Okland performed subcontract work or "self-performance" work on the Saiz contracts for which Okland was not eligible;
- Okland demanded the ability to and did remove funds from the Saiz Construction account without permission;
- Okland pocketed all of the General Conditions and Overhead monies, estimated to be approximately \$2.9 million and \$1.46 million respectively, for the projects listed above.

23. As Mr. Saiz was new to this sort of government work, he relied on Okland's help when it came to fill out the reports for the SBA. Okland employees Tom Dalton and Jeremy Blanke would coach Mr. Saiz on how to fill out the report. They informed Mr. Saiz that, if he did not want to lose this opportunity to grow as a small business, he should keep the report positive, often informing Mr. Saiz what language to use.

24. As Mr. Saiz learned more about the Mentor-Protege Program's regulations, he continued to question Okland regarding compliance with the regulations. Okland insisted that the

government allowed Okland to retain the control over the projects, and insisted that Mr. Saiz allow Okland to maintain this control.

25. When Mr. Saiz finally determined that Okland was never going to follow the applicable regulations, he terminated the Mentor/Protégé Agreement on or about June 23, 2008.

26. In response, Okland threatened Mr. Saiz with legal action and removed \$600,000 from the Saiz Construction bank account without permission.

FIRST CAUSE OF ACTION
(False Claims Act – Presentation of False Claims)
(31 .S.C. § 3729(a)(1))

27. All other paragraphs of this Complaint are re-alleged and incorporated as though fully set forth herein.

28. As described in paragraphs 20-25 above, Okland knowingly (*i.e.*, with actual knowledge, in deliberate ignorance of the truth, or with reckless disregard of the truth) presented or caused to be presented materially false or fraudulent claims for payment or approval to the United States on each of the contracts list above.

29. Okland was not an 8(a) contractor, was not operating under any SBA approved joint venture agreement, and was, therefore, ineligible to receive any benefit of the contracts.

30. By virtue of the false or fraudulent claims made and caused to be made by Okland, the United States suffered damages as the government's intent under the 8(a) Mentor/Protégé Program has been thwarted by the defendant's illegal receipt of benefits under the aforementioned contracts.

31. The damages include all amounts paid to Okland Construction under the aforementioned contracts to which Okland was not legally entitled, amounts to be determined at trial.

SECOND CAUSE OF ACTION

(False Claims Act – Making or Using False Record or Statement to Cause Claim to be Paid)
(31 U.S.C. § 3729(a)(2))

32. All other allegations of this Complaint are re-alleged and incorporated as though fully set forth herein.

33. As described above, Okland knowingly (*i.e.*, with actual knowledge, in deliberate ignorance of the truth, or with reckless disregard of the truth) made or used, or caused to be made or used, materially false records or statements in order to obtain payment or approval by the United States of false or fraudulent claims on each of the listed contracts above.

34. Okland was not an 8(a) contractor, was not operating under any SBA approved joint venture agreement, and was, therefore, ineligible to receive any benefit of the contracts.

35. By virtue of the use of materially false records or statements in order to obtain payment or approval by the United States of false or fraudulent claims on each of the listed contracts above, the United States suffered damages as the government's intent under the 8(a) Mentor/Protégé Program has been thwarted by the defendant's illegal receipt of benefits under the aforementioned contracts.

36. The damages include all amounts paid to Okland Construction under the aforementioned contracts to which Okland was not legally entitled, amounts to be determined at trial.

THIRD CAUSE OF ACTION
(Conversion)

37. All other allegations of this Complaint are re-alleged and incorporated as though fully set forth herein.

38. As described above in paragraphs 24 and 25, Okland intentionally and without lawful justification removed \$600,000 from the bank account of Saiz Construction, depriving Saiz Construction of its use and possession.

39. By virtue of the conversion of these funds by defendant, plaintiff Saiz Construction was deprived of the use and possession of the \$600,000 to the extent that these funds were not then paid by Okland for expenses related to the projects described in paragraphs 20-25 above.

PRAYER FOR RELIEF

WHEREFORE, Relator, on behalf of themselves individually, and acting on behalf of and in the name of the government of the United States, respectively, pray that relief be granted as follows:

1. That judgment be entered against Okland in the amount of three times the amount of damages the United States has sustained because of defendant's actions;
2. That judgment be entered against defendant for a civil penalty of \$11,000 for each act in violation of the False Claims Act, as adjusted per regulation;
3. That Relator be awarded the maximum amount available under 31 U.S.C. § 3730(d) for bringing this action, namely, 25 percent of the proceeds of the action or settlement of the claim if the Government intervenes in the matter (or pursues its claims through any alternate

remedy available to the Government), or, alternatively, 30 percent of the proceeds of the action or settlement of the claim, if the Government declines to intervene;

4. That Relator be awarded all reasonable expenses that were necessarily incurred in prosecution of this action, plus all reasonable attorney fees and costs, as provided by 31 U.S.C. § 3730(d);

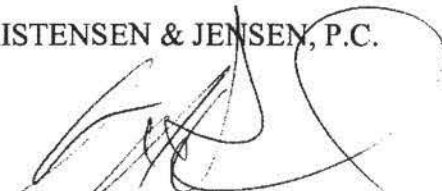
5. That Relator be awarded all damages related to its Third Cause of Action, plus statutorily applicable prejudgment interest; and

6. That the Court award all other appropriate equitable relief deemed just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

DATED this 19th day of April 2011.

CHRISTENSEN & JENSEN, P.C.



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