

**Alert | Government Contracts & Projects/
False Claims Act & Qui Tam Defense**



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Construction Company Settles False Claims Act Allegations Relating to Small Business Subcontracting for \$2.8 Million

On May 12, the U.S. Department of Justice announced a \$2,804,110 settlement with Hensel Phelps Construction Company to resolve allegations that it violated the False Claims Act (FCA) by circumventing federal regulations designed to encourage contract awards to service-disabled veteran owned small businesses (SDVOSBs). According to the settlement, Hensel Phelps, a general contractor that performs public and private construction projects, improperly claimed credit toward its small business subcontracting goals for subcontracts it awarded to an SDVOSB that it should have known was acting as a mere “pass-through” for a large business that was actually performing the work.

The settlement highlights DOJ’s continued focus on FCA enforcement actions involving allegations of small business contracting fraud. DOJ has entered into a number of settlements with large businesses resolving such allegations, including a recent \$48.5 million with TriMark USA, LLC, which DOJ described as “the largest-ever False Claims Act recovery based on allegations of small business contracting fraud.” DOJ’s interest in these types of cases stems from its theory that, under the “presumption of loss rule,” 15 U.S.C. § 632(w), the government’s “damages” arising from misrepresentations of small business size or status are equal to the entire value of the contracts awarded. Combined with the FCA’s treble damages provision, the presumption of loss rule makes small business contracting fraud an attractive enforcement target for the government, as well as whistleblowers who can share in the recovery.

These settlements underscore the significant risk of liability for large contractors teaming with small businesses that do not meet the requirements for the size or status they claim. The consequences of resolving such allegations are severe and are not limited to paying a hefty settlement amount. Contractors will also face the ramifications of DOJ publicizing the settlement amount and allegations, and could be subject to suspension and debarment proceedings by federal agencies after the settlement with DOJ has been finalized.

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