

ALERT

Jury Needs Only 3.5 Hours to Convict CEO and Company of Disadvantaged Business Set-Aside Fraud

August 12, 2016

WHAT: A federal jury in Manhattan convicted Larry Davis, CEO, and his company, DCM Erectors, Inc., of one count each of wire fraud and conspiracy to commit wire fraud for their roles in a scheme to defraud the Port Authority of New York and New Jersey related to construction work on the World Trade Center and surrounding buildings. The fraud as alleged related to requirements to set-aside subcontracts for disadvantaged businesses.

WHEN: August 10, 2016.

WHAT DOES IT MEAN FOR INDUSTRY: There has been a definite uptick in investigations and criminal prosecutions of government contractors who fraudulently take part in programs designed to benefit woman-owned, minority-owned, or other disadvantaged business entities. Companies entering into government contracts requiring certain set-asides must make sure they are complying with the letter of the relevant regulations or risk costly investigations that can lead to both civil and criminal penalties. This summer has seen a plethora of final rules amending the Federal Acquisition Regulation (FAR) to add new regulations designed to further protect small and disadvantaged business subcontractors, and this case should further prompt contractors to review and update their compliance processes to address these new requirements accordingly.

OUR ANALYSIS:

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CEO Larry Davis, and his company DCM Erectors, Inc. (DCM), were charged by a superseding indictment with one count each of wire fraud and conspiracy to commit wire fraud. The charges arose from construction work awarded by the Port Authority of New York and New Jersey to Davis and DCM which required them to “make good faith efforts” to subcontract twelve percent of the overall contract amount to minority-owned business enterprises and five percent to women-owned business enterprises.

In an effort to satisfy the minority and women-owned subcontracting requirements, Davis allegedly caused DCM to claim that work was performed by a joint venture (JV) between DCM and minority-owned Solera Construction, Inc., and also performed by another entity, GLS Enterprise, Inc., that was a woman-owned business. In fact, according to the Justice Department, the work was performed by DCM itself or other non-minority or non-women-owned entities.

To carry out the fraudulent scheme, Davis and DCM allegedly conspired with the owner of the minority-owned half of the DCM JV, Johnny Garcia, to falsely certify records that showed laborers who performed work on the contract were employees of the JV when in fact they worked for a separate, non-minority-owned business. Davis and Garcia are also alleged to have created false invoices to show that the minority-owned DCM JV had procured steel for the project, when in fact DCM had procured the steel. Similarly, the charges state that Davis and DCM conspired with a former employee of DCM, Gale D’Aloia, to fraudulently claim credit for surveying work performed by D’Aloia’s woman-owned company, GLS. Davis directed D’Aloia to put DCM surveyors on her payroll, and then to invoice DCM for surveying work DCM continued to supervise.

Davis had originally agreed to plead guilty, but backed out of the guilty plea at his plea hearing in October 2014. Both Garcia and D’Aloia pled guilty before Davis was charged and testified against him. After an eight-day trial, the jury deliberated a scant 3.5 hours before finding both Davis and DCM guilty on each count. Davis faces a statutory maximum of twenty-years incarceration for each count. His sentencing is scheduled for November 15, 2016.