

THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT *of* NEW YORK

[U.S. Attorneys](#) » [Northern District of New York](#) » [News](#)

Department of Justice

U.S. Attorney's Office

Northern District of New York

FOR IMMEDIATE RELEASE

Thursday, May 12, 2022

Construction Company Agrees to Pay \$2.8 Million to Resolve Allegations of Small Business Subcontracting Fraud

ALBANY, NEW YORK – Hensel Phelps Construction Company (Hensel Phelps), a large construction company headquartered in Greeley, Colorado, has agreed to pay \$2,804,110 to resolve allegations that it improperly manipulated a federal subcontract designated for a business owned and operated by a service-disabled veteran, announced Carla B. Freedman, the United States Attorney for the Northern District of New York, and Vanessa R. Waldref, the United States Attorney for the Eastern District of Washington.

“This settlement holds accountable another large company for scheming to obtain a contract set aside for a veteran-owned small business,” said United States Attorney Freedman. “Working closely with our colleagues in the Eastern District of Washington and our agency partners, we have returned millions of dollars to taxpayers over the past three months while demonstrating the serious consequences for those who divert contracting opportunities away from veterans.”

Federal government contracts and subcontracts may be reserved, or “set aside,” for various categories of small businesses, such that only eligible small businesses in a particular socioeconomic category are eligible to bid on, receive, and perform the contracts. One such category is a service-disabled, veteran-owned small business (SDVOSB), which is reserved for small businesses owned, controlled, and operated by veterans of the United States military who incurred a disability in the course of their military service to the United States. Large businesses that perform on large federal prime contracts must develop and implement small business subcontracting plans designed to subcontract portions of the work to SDVOSBs and other types of small businesses.

Hensel Phelps is a general contractor and construction company that performs large scale private construction and public works projects nationwide, including in New York and Washington States. In 2011, the U.S. General Services Administration (GSA), which oversees construction of many federal buildings, awarded Hensel Phelps a contract to construct the Armed Forces Retirement Home's New Commons/Health Care Building in Washington, D.C. The Armed Forces

Retirement Home provides retirement communities and residential facilities for veterans. As a condition of the contract, Hensel Phelps was required to have and implement a small business subcontracting plan to provide contracting opportunities for SDVOSBs and other types of small businesses.

During the course of the contract, Hensel Phelps negotiated with another large business, identified in the settlement agreement as “Company 1,” to provide kitchen and food service equipment for the Armed Forces Retirement Home. In the settlement agreement, Hensel Phelps admitted that it negotiated the entire subcontract, including all of the equipment, installation, and other needed kitchen work, including pricing, with Company 1, which was not an SDVOSB. Hensel Phelps further admitted that after it had fully negotiated the work with Company 1, rather than executing the subcontract with Company 1, Hensel Phelps instead entered into a subcontract with an SDVOSB, identified in the settlement agreement as “the SDVOSB,” providing for the same work and using the same terms and pricing that had been agreed upon between Hensel Phelps and Company 1, but including an additional 1.5% fee for the SDVOSB. Hensel Phelps further admitted that it should have known that the SDVOSB was merely a passthrough for Company 1, which was providing all of the work on the subcontract, including the bonding, purchasing, and installing of all of the equipment, and that the SDVOSB’s role was limited to providing its SDVOSB status and making it appear as though an SDVOSB was performing the work.

In February 2022, Trimark USA, LLC, an equipment vendor headquartered in Mansfield, Massachusetts, paid \$48.5 million to resolve admissions and allegations that TriMark subsidiaries improperly manipulated and obtained contracts set aside for SDVOSBs nationwide, including the Armed Forces Retirement Home subcontract. In the same settlement, former TriMark executive Kimberly Rimsza paid an additional \$100,000 penalty to resolve her individual liability.

“Taking advantage of contracts intended for companies owned and operated by service-disabled veterans demonstrates a shocking disregard for fair competition and integrity in government contracting,” said United States Attorney Waldref. “Together with the landmark TriMark settlement, we have returned over \$50 million to the public and provided accountability for these critical programs. I want to especially commend our strong partnership with the Northern District of New York and the stellar investigative work done by the case agents. We will continue to work with our law enforcement partners to pursue small business fraud and ensure fair contracting opportunities for our small business community, which is critical to a safe and strong Eastern Washington.”

“Fraudulent schemes that take advantage of contract opportunities set aside for disabled veterans cheat the government and deserving bidders. We will continue working with our law enforcement partners to preserve the integrity of federal contracting,” said GSA Inspector General Carol Fortine Ochoa.

“Protecting Department of Defense (DoD) contracts intended for small businesses owned by disabled veterans of the United States military is a priority for the DoD Office of Inspector General’s Defense Criminal Investigative Service (DCIS),” stated Special Agent in Charge Patrick J. Hegarty, DCIS Northeast Field Office. “We will continue to work with the Department of Justice and our law enforcement partners to hold companies accountable for circumventing SDVOSB requirements.”

This case began in April 2022, when a whistleblower, a company known as Fox Unlimited Enterprises, LLP, filed a *qui tam* complaint under seal in the U.S. District Court for the Northern District of New York, Case No. 1:22-cv-355. When a whistleblower, or “relator,” files a *qui tam* complaint, the False Claims Act requires the United States to investigate the allegations and elect whether to intervene and take over the action or to decline to intervene and allow the relator to go forward with the litigation on behalf of the United States. The relator is generally able to then share in any recovery. Pursuant to the settlement agreement, the relator will receive \$630,925 of the settlement.

The settlement was the result of a joint investigation conducted by the U.S. Attorney’s Office for the Northern District of New York; the U.S. Attorney’s Office for the Eastern District of Washington; the Defense Criminal Investigative Service, Syracuse Post of Duty; the General Services Administration Office of

Inspector General, New York Field Investigations Office; the Department of Homeland Security Office of Inspector General, New York Field Office; the Air Force Office of Special Investigations, Procurement Fraud Detachment 6, Rome, New York; the U.S. Army Criminal Investigative Division, Syracuse Fraud Branch Office; the U.S. Department of Veterans Affairs Office of Inspector General, Spokane and Buffalo Resident Agencies; and the Naval Criminal Investigative Service, Economic Crimes Resident Agency Northeast. Assistant United States Attorneys Adam J. Katz of the Northern District of New York and Dan Fruchter and Tyler H.L. Tornabene of the Eastern District of Washington handled this matter on behalf of the United States.

Topic(s):

False Claims Act

Component(s):

USAO - New York, Northern

USAO - Washington, Eastern

Updated May 12, 2022