

Mercer-Fraser settles for \$1.3 million in fraud lawsuit

Erin Tracy/The Times-Standard
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Eureka-based construction company Mercer-Fraser last week agreed to settle a federal fraud case out of court for \$1.3 million, though the company maintains it did nothing inappropriate.

The case alleges that Mercer-Fraser misrepresented its business type and size to gain preference for federal construction work under the U.S. Small Business Administration's HUBZone Empowerment Contracting program.

But the company insists it was forthright in the applications process -- and the mistake was made by the Small Business Administration.

The U.S. Department of Justice filed the case in Eastern California U.S. District Court in November 2007 after Mark Mann, an employee of a competitor and supplier of Mercer-Fraser and its affiliate Contri Construction Co., brought the matter to the federal agency's attention.

Efforts to contact Mann were unsuccessful, and his attorney Paul D. Scott did not return calls by deadline.

The HUBZone Program was established in 1997 to encourage the use of small businesses located in "historically under-utilized business zones through the establishment of preferences ... to empower communities, create jobs, and attract private investment," according to the SBA.

Mercer-Fraser Vice President Justin Zabel said Mercer-Fraser's annual receipts totaled less than \$27.5 million, qualifying it as a small business.

However, after receiving a letter from the SBA requesting clarification, Mercer-Fraser further disclosed its affiliation with Contri Construction. The Nevada-based contractor, which has had annual revenue in excess of \$50 million a year, took a 55 percent share in Mercer-Fraser in 2002, effectively disqualifying it as a small business.

The suit cited numerous projects tying Mercer-Fraser to Contri Construction as evidence of fraud.

However, Zabel maintains that the SBA had already been made aware of the affiliations, and even after submitting the clarification, Mercer-Fraser was approved for HUBZone status.

The complaint also alleges that Mercer-Fraser improperly identified itself under the North American Industry Classification System as "Construction Sand and Gravel Mining," rather than "General and Heavy Construction."

The primary difference between the two is that the industry size standard for "Construction Sand and Gravel Mining" is limited to companies with less than 500 employees, and does not account for revenue.

Zabel said the company used that code because the online application process prompted it to do so after a series of questions. The SBA acceptance letter to Contri Construction and Mercer-Fraser states that the company not only qualifies under "Construction Sand and Gravel Mining," but can also be awarded contracts under other industry classification codes for which it qualifies.

Zabel said he made all these points during mediation, but was told that the company is ultimately responsible for verifying the accuracy of the application. He said the decision to settle was a business decision, weighing the \$1.3 million against the potential cost of litigation.

Zabel said the settlement agreement was some \$20 million less than what was originally sought, and no convictions or penalties to Mercer-Fraser resulted.

Zabel cited Mann's personal stake -- 15 percent of the settlement -- in pursuing the lawsuit.

A statement on the Web site of Mann's attorney Paul D. Scott reads, "We specialize in helping whistleblower collect rewards for reporting fraud against the government in qui tam actions under the False Claims Act."

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