

District of Columbia Court Allows Qui Tam Suit to Proceed Against Computer Sciences Corporation and Modis for Circumventing Small Business Act Requirements

Article By:

Tycko & Zavareei Whistleblower Practice Group

Last week, a federal judge in the District of Columbia issued a ruling in which she refused to dismiss a **whistleblower's qui tam case** brought under the **False Claims Act ("FCA")** alleging that a company fraudulently evaded requirements of the [Small Business Act \("SBA"\)](#). The SBA promotes government contractors' use of small business subcontractors because of small businesses' positive effect on the economy. The SBA requires that government contractors who wish to bid on contracts of more than \$500,000 create a subcontracting plan that provides the maximum benefit to small businesses, and that contracts be awarded to the contractor with the best plan to do so. Therefore, a company that makes misrepresentations about its plans to utilize small business subcontractors in its bid for a project could be held liable under the FCA, which provides for treble damages, penalties, and attorney's fees. And whistleblowers who come forward with reports of fraud related to compliance with the SBA are entitled to 15-30% of any recovery.

On July 3, 2014, Judge Ketanji Brown Jackson, of the U.S. District Court for the District of Columbia [rule](#) that FCA claims could proceed in a qui tam case against Computer Sciences Corporation ("CSC") and Modis, Inc. alleging that the companies violated the SBA. The Department of Homeland Security ("DHS") awarded a contract for IT work to be performed for the U.S. Citizenship and Immigration Service to CSC based on its small business subcontracting plan in which it represented that a minimum of 40% of the money that it paid out to subcontractors would go to qualified small businesses. However, rather than comply with its obligations under the contract, the relator alleges that CSC set up a scheme in which it would subcontract work to qualified small businesses, and as a condition of the subcontract, those small businesses would agree to further subcontract the work to large businesses that CSC trusted, such as Defendant Modis, in exchange for a small fee. This "pass-through" scheme violated several provisions of the FCA insofar as it permitted CSC to report to the government that the company had met its small business subcontracting goals when, in reality, large businesses were performing the substantive work under the contract.

Defendants argued that this scheme is legal because the government allows small business who win "set aside" contracts to use large business to fulfill up to 50% of their contracts, so therefore, large businesses that win contracts should be able to use up to 50% of their small business commitment to hire large businesses. However, the court explained that this case does not involve a "set aside"

contract and thus, Defendants are held to the requirements in their small business subcontracting plan.

This ruling will likely help prevent future government fraud by companies seeking to circumvent SBA requirements.

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