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Department of Justice

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Northern District of New York

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Central New York Construction Companies and Others to Pay Nearly \$4.5 Million to Resolve Allegations of Fraud Involving Contracting Opportunities Meant for Disabled Veterans

ALBANY, NEW YORK – Northland Associates, Inc. (Northland), its president James Tyler, The Diverse Construction Group, LLC (Diverse), and their bonding agent, Rose & Kiernan, Inc., have agreed to pay the United States \$4,470,000 to resolve allegations that they fraudulently exploited contracting opportunities reserved for veteran-owned small businesses and small businesses operating in historically underutilized business zones (HUBZones), announced United States Attorney Grant C. Jaquith.

“We are committed to curtailing corruption by contractors who take opportunities set aside for small businesses owned and operated by injured veterans,” said United State Attorney Jaquith. “We owe no less to those who sacrificed their own well-being for our safety and security.”

The United States has long used government contracting to promote small businesses owned by veterans who have service-connected disabilities and small businesses operating in economically distressed communities. To be eligible for these contracts, an applicant must first qualify as a small business. To qualify, the business must report to the U.S. Small Business Administration (SBA) its total income and employees along with the income and employees of any affiliates. Generally, federal regulations provide that companies are affiliated when one business has the power to control another, or when a third party has the power to control both businesses. When two companies are affiliated, and together exceed the income and employee limitations, neither will be eligible for small business set-aside contracts.

The settlement with Northland, Diverse, and Tyler resolves allegations that those parties orchestrated a scheme to secure government set-aside contracts for Diverse and subcontracts for Diverse’s undisclosed affiliate, Northland.

Diverse was 51% owned by a service-disabled veteran and 49% owned by senior Northland officials. Northland exerted influence over Diverse in various ways, including by maintaining a “bid calendar” with deadlines for upcoming Northland and Diverse contracting opportunities, staffing Diverse with former Northland employees, and funneling Diverse subcontracts to Northland for fulfilment. Northland also handled various administrative duties for Diverse, including its accounting, expediting, estimating, purchasing, contracting, and clerical work.

Witnesses recounted moving boxes of files from Northland’s Liverpool, New York office (which was not located in a HUBZone) to Diverse’s office in Plessis, New York (which was located in a HUBZone), to make the Plessis office appear operational for government inspections. When the SBA questioned the parties’ affiliation in 2009, Tyler and Diverse’s 51% owner submitted sworn declarations that misrepresented the relationship between the two companies. Shortly thereafter, Diverse funneled more than \$1 million to Northland through a Northland subsidiary in an effort to hide the parties’ affiliation. Northland, Diverse, and Tyler admitted that their conduct violated federal regulations designed to encourage contract awards to service-disabled veteran-owned small businesses and small businesses operating in HUBZones.

Contractors bidding for federal government construction contracts are generally required to post performance bonds and payment bonds, and the bonding company is required to ensure that the contractor will perform the work. Rose & Kiernan is an insurance and surety brokerage that acted as a bond broker for both Northland and Diverse on government construction projects. David Cooper is a senior vice president with Rose & Kiernan. The settlement with Rose & Kiernan and Cooper resolves allegations that those parties knew or should have known that Diverse and Northland were affiliated in violation of SBA regulations and that those companies took steps to hide their affiliation from the government to obtain and receive payment on government set-aside contracts. Their decision to help Diverse obtain bonding was a critical action in furtherance of Diverse's and Northland's fraud on the government, and served as a substantial factor in causing Diverse to submit false claims for payment to the United States.

"Providing false information to gain access to SBA's preferential contracting programs is fraught with peril and is especially egregious when it involves programs intended to benefit our nation's service-disabled veterans," said SBA Inspector General Hannibal "Mike" Ware. "SBA-OIG will always aggressively pursue allegations of wrongdoing against individuals that provide false information. I want to thank the Department of Justice for their dedication to this case resulting in this settlement."

SBA's Associate General Counsel for Litigation, Eric S. Benderson, said: "The result in this case is the product of enhanced efforts by federal agencies, such as the Small Business Administration working with the U.S. Attorney's Office and other Federal law enforcement agencies, to detect procurement fraud, pursue those individuals and companies that engage in fraudulent activities and protect the integrity of the program."

"Ensuring the integrity of the DoD procurement process is a top priority for the Defense Criminal Investigative Service (DCIS)," stated Special Agent in Charge Leigh-Alistair Barzey, DCIS Northeast Field Office. "The successful resolution of this case is the result of a joint investigative effort and demonstrates the DCIS' commitment to work with the U.S. Attorney's Office for the Northern District of New York and its law enforcement partners to identify and prosecute individuals and companies that seek to defraud U.S. government contracting programs."

"The Department of Veterans Affairs Office of Inspector General remains vigilant in its efforts to bring individuals and companies to justice that misappropriate the opportunity afforded exclusively to our nation's veterans to obtain these VA set-aside contracts," said VA-OIG Special Agent in Charge Christopher F. Algieri. "The VA-OIG will continue to protect the integrity of this important program, and thanks the U.S. Attorney's Office and our law enforcement partners in this collaborative effort."

"Those who contract with the United States government must do so fairly and honestly," said Douglas Shoemaker, Regional Special Agent-in-Charge of the U.S. Department of Transportation, Office of Inspector General. "Today's settlement clearly signals that it is not acceptable for contractors to unscrupulously take advantage of Federal programs created to enhance opportunities for small disadvantaged businesses."

As part of the settlement agreements, Northland will pay \$2,125,000, Tyler will pay \$2,125,000, Diverse will pay \$100,000, and Rose & Kiernan has paid \$120,000.

The government's investigation was triggered by whistleblower lawsuits filed under the *qui tam* provisions of the False Claims Act, which allows private persons, known as "relators," to file civil actions on behalf of the United States and share in any recovery. The relators in this case will receive \$1,000,000 of the settlement proceeds that the government receives from Northland, Diverse, and Tyler. The cases are docketed with the U.S. District Court for the Northern District of New York under numbers 5:17-cv-036 and 5:18-cv-516.

The investigation and settlements were the result of a coordinated effort among the U.S. Attorney's Office for the Northern District of New York, SBA-OIG, VA-OIG, DCIS, DOT-OIG, and the U.S. Army Criminal Investigation Command. The United States was represented by Assistant U.S. Attorneys Adam J. Katz and Christopher R. Moran.

Topic(s):

False Claims Act

Component(s):

USAO - New York, Northern

