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PRESS RELEASE

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Forrester Construction Company Agrees to Pay $2.15 Million, Admits Abuse of Certified Business Enterprise Program

Company Also Agrees to Extensive Corporate Remediation and Compliance Measures

WASHINGTON – Forrester Construction Company has agreed to pay $2.15 million to the United States and implement internal reforms to resolve a criminal investigation into alleged fraud committed by the company in connection with the use of Certified Business Enterprises (CBEs) in the procurement of more than $145 million in District of Columbia government contracts. The internal reforms will be subject to independent review and reporting.

As part of the resolution, Forrester Construction admitted that it improperly entered into written letter agreements and "Action of Management Committee" memoranda with the CBE participants to joint ventures that were not disclosed to the District of Columbia during the contract procurement process. As a result, the company admitted, both Forrester Construction and the CBE partners failed to follow the required CBE rules and regulations.

The resolution was announced by Ronald C. Machen Jr., U.S. Attorney for the District of Columbia; Andrew G. McCabe, Assistant Director in Charge of the FBI's Washington Field Office; Daniel W. Lucas, Inspector General for the District of Columbia, and Peggy E. Gustafson, Inspector General of the U.S. Small Business Administration (SBA-OIG).

The announcement concludes a two-year investigation into Forrester Construction, a firm based in Rockville, Md., as well as its CBE partners on the joint venture projects.

Under the terms of a non-prosecution agreement reached with the U.S. Attorney's Office for the District of Columbia, Forrester Construction agreed to pay $2.15 million to the United States and accepted and acknowledged responsibility for its improper conduct, as described in a Statement of Facts. The company also agreed to undertake various remedial measures to ensure compliance with the requirements of the District of Columbia's CBE program (or any such equivalent on federal government projects) and the U.S. Small Business Administration's 8(a) program, insofar as the company undertakes projects involving CBEs or 8(a) companies in the future.

Both the District of Columbia's CBE program and SBA's 8(a) program are meant to help small, disadvantaged businesses access government procurement markets.

The remedial measures include the hiring or designation of a CBE and 8(a) Compliance Officer, as well as an Ethics Officer; the implementation of a comprehensive training program for all company personnel regarding compliance with the CBE and 8(a) programs; maintaining an effective compliance and ethics program, and continuing cooperation with law enforcement. Significantly, individual employees directly associated with the inappropriate conduct are no longer employed by the company.

Additionally, the company agreed to undertake community service intended to develop improvements in the CBE and 8(a) programs going forward. Forrester Construction agreed to offer workshops, either individually or in collaboration with an industry trade association, aimed at providing training with respect to the rules and regulations of the CBE and 8(a) programs, among other topics relating to the construction industry.

This case is the latest example of law enforcement efforts to protect the integrity of CBE programs. Michael A. Brown, a former member of the Council of the District of Columbia, pled guilty in 2013 to a federal bribery charge stemming from an undercover investigation in which he accepted $55,000 from FBI agents posing as employees of a company that purportedly wanted CBE approval and contracting opportunities. Brown is serving a 39-month prison term.

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"Forrester won lucrative D.C. construction contracts by exploiting a program designed to help disadvantaged local businesses," said U.S. Attorney Machen. "Forrester entered secret side deals that wrested control of those contracts away from their historically under-represented partners and undermined the purpose of the CBE program. In addition to paying $2.15 million, Forrester has agreed to implement and fund industry-leading compliance programs within the company and provide training to other participating corporations on the rules and regulations of the CBE and 8(a) programs. This prosecution, along with the investigation and conviction of former D.C. Council member Michael Brown, highlights law enforcement's efforts to prevent fraud and abuse in programs intended to promote fairness and equality in the awarding of city government contracts."

"By changing the terms of joint ventures with small disadvantaged businesses and not reporting them to the D.C. government, Forrester Construction circumvented the foundation of the CBE program and used their proceeds to increase their own bottom line," said Assistant Director in Charge McCabe. "By doing so, Forrester did a grave disservice to the D.C.-based CBE certified companies that work to support local job creation and grow our local economy. The FBI, along with the SBA, will continue to investigate companies that abuse procurement laws."

“The agreement to settle this criminal investigation demonstrates this Office’s commitment along with our federal partners, the SBA-OIG, the FBI, and the United States Attorney’s Office, to ensure that businesses which receive District of Columbia government contracts and participate in programs designed to help small and disadvantage businesses, like the District’s CBE program and the federal SBA 8(a) program, are expected to comply fully with program requirements,” said Inspector General Lucas of the District of Columbia.

“These joint ventures principally served the interests of Forrester Construction Company to make money and to obtain contracting opportunities otherwise unavailable to them,” said SBA Inspector General Gustafson. “Joint ventures involving SBA program participants should be structured and executed to give the small business an opportunity to gain experience and technical knowledge and to further develop their business. I want to thank the U.S. Attorney’s Office for its leadership in reaching this agreement.”

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According to the Statement of Facts agreed to by the company, between 2008 and 2009, Forrester Construction formed multiple joint ventures with CBEs for the purpose of bidding on construction contracts in the District of Columbia.

Three joint ventures formed by Forrester Construction and one of the CBEs, EEC of D.C., Inc., were awarded construction contracts from the District of Columbia. These contracts, including change order amounts, totaled approximately $64 million for construction of a new headquarters building for the Department of Employment Services; approximately $5.4 million for construction of a Senior Wellness Center in Ward 1, and approximately $56 million for the renovation and modernization of the existing Anacostia Senior High School building.

Forrester Construction also formed joint ventures with another CBE, and those joint ventures were also awarded construction contracts from the District of Columbia, which were, over a period of approximately three years, in an aggregated amount in excess of $20 million.

In each of these various projects, the joint venture formed by Forrester Construction and the respective CBE partner received the maximum amount of contracting preferences for which the CBE partner was eligible, which provided Forrester Construction and the respective CBE partner with a competitive advantage during the bidding process.

As part of its joint venture submissions to the District of Columbia Department of Small and Local Business Development (DSLBD), Forrester Construction and its respective CBE partner represented that the CBE partner would be the majority partner and maintain a 51% interest in the joint venture, entitling the CBE partner to 51% of the net operating profits of the joint venture. Each joint venture agreement also established a “Management Committee,” consisting of two representatives from the CBE partner and one representative from Forrester Construction, which provided the CBE partner with majority control of the joint venture.

After each joint venture for the projects was submitted to, and certified by, the DSLBD, however, Forrester Construction and the respective CBE partner signed a memorandum entitled “Action of Management Committee” or signed a letter agreement, which related to the operations of each joint venture. The memoranda and/or letter agreements effectively increased Forrester Construction's control over the day-to-day operations of the projects and reduced the CBE partner's share of the profits or losses in the projects -- notwithstanding the requirements of the joint venture agreements and the CBE rules and regulations. Forrester Construction and the CBE partner did not disclose these "Action of Management Committee" memoranda or the letter agreements to the District of Columbia government during the procurement process.

The "Action of Management Committee" memoranda also revised the respective scope of work and services that Forrester Construction and the CBE partner would provide to certain of the projects. In each instance, the "Action of Management Committee" memorandum applicable to the particular project identified a small scope of work for the CBE partner to complete and provided that Forrester Construction would provide all remaining general conditions, subcontract work, and all other work required to fulfill the requirements of the project.

For example, with respect to the Anacostia Senior High School joint venture, the applicable "Action of Management Committee" memorandum provided that the scope of work for the CBE equated to approximately $2.75 million, while the scope of work for Forrester Construction equated to approximately $46 million. The "Action of Management Committee" memoranda also established a pre-determined profit for the joint venture that specifically excluded any profits earned or losses sustained by either Forrester Construction or the CBE partner for their respective scope of work. Moreover, Forrester Construction and the CBE partner agreed that only the pre-determined profit, exclusive of each partner's individual "scope of work," would be split in the proportions agreed to in the joint venture agreement (*i.e.*, 51% for the CBE partner and 49% for Forrester Construction). All other profits or losses generated through an individual scope of work would belong to the respective entity.

All of the work was performed under the various contracts. However, as a result of the letter agreements and "Action of Management Committee" memoranda, the CBE participant for each of the projects did not maintain majority control of the projects and did not receive 51% of the profits or losses associated with the projects, as required by the joint venture agreements and in accordance with the CBE rules and regulations.

This investigation was conducted by the FBI's Washington Field Office; the Criminal Investigation Unit of the U.S. Attorney's Office for the District of Columbia; the District of Columbia's Office of the Inspector General, and the SBA Office of Inspector General.

The prosecution is being handled by Assistant U.S. Attorneys David A. Last, Richard DiZinno, and Michael K. Atkinson, of the U.S. Attorney's Office for the District of Columbia.

Assistance is being provided by Criminal Investigators Juan Juarez and Stephen Cohen; Forensic Accountant Maria Boodoo; Paralegal Specialists Tasha Harris, Angela Lawrence, and Heather Sales; Litigation Technology Specialist Leif Hickling, and Assistant U.S. Attorney Anthony Saler, all of the U.S. Attorney's Office for the District of Columbia.

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