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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

EARLE S. YERGER,
and
ROBERT R. HALLSTEIN, on behalf
of the United States of America
Plaintiffs/Relators

CASE NO.:
3:11-cv-464-J-32MCR

vs.

FILED UNDER SEAL
JURY TRIAL DEMAND

IND-MAR SERVICES, INC.,
a Florida Corporation,
and
NORTH FLORIDA SHIPYARDS, INC.,
a Florida Corporation,
Defendants

_____/

QUI TAM COMPLAINT

RELATORS, EARLE S. YERGER and ROBERT R. HALLSTEIN, bring this Qui Tam action in the name of the United States of America, by and through their undersigned attorney, T. Jerry Snider, and allege as follows:

SUMMARY INTRODUCTION

1. This is an action by qui tam Relators, EARLE S. YERGER and ROBERT R. HALLSTEIN, on behalf of the United States, against Defendants, IND-MAR SERVICES, INC. and NORTH FLORIDA SHIPYARDS, INC. to recover penalties and damages arising from the fraudulent procurement of government contracts under the Service Disabled Veteran Owned Small Business Concerns (SDVOSVC). The Veterans Entrepreneurship and Small Business Development Act of 1999 established an annual

government wide initiative of not less than three percent of the total value of all prime contract and subcontract awards for participation by small business concerns owned and controlled by Service Disabled Veterans (SDV). The Small Business Administration has issued an interim final rule, establishing a Service Disabled Veteran Owned Small Business Concern Program. This program established the criteria to be used in Federal contracting to determine service disabled veterans status; business ownership and control requirements; guidelines for sole source and set aside procurement opportunities; and protesting appeal procedures for the SDVOSVC procurement.

2. In order to be eligible for the SDVOSVC, the soliciting company must meet the following criteria:

(a) The Service Disabled Veteran must have a service connected disability that has been determined by the Department of Veterans Affair or Department of Defense;

(b) The SDVOSVC must be small under the North American Industry Classification System code assigned to the procurement;

(c) The Service Disabled Veteran (SDV) must unconditionally own fifty-one percent of the SDVOSVC;

(d) The SDV must control the management and daily operation of SDVOSVC;

(e) The SDV must hold the highest officer position in the SDVOSVC.

3. Relator, ROBERT R. HALLSTEIN, retired from the United States Navy in November, 2001, holding the rank of Master Chief. After a very distinguished Naval Career, Relator, HALLSTEIN, became employed with NORTH FLORIDA

SHIPYARDS, INC. from October, 2007 until January, 2011. He rose to Vice-President of Operations for NORTH FLORIDA SHIPYARDS, INC. at the Commodores Point Industrial Facility. As such, Relator, HALLSTEIN, was privy to intimate details about all day-to-day operations of NORTH FLORIDA SHIPYARDS, INC.

4. Relator, ROBERT R. HALLSTEIN, has been determined to be fifty percent (50%) disabled by the Veterans Administration for a lumbar fusion of three vertebrates, as well as possible respiratory system impairments as a result of asbestos, lead, and mercury exposure.

5. Relator, EARLE YERGER, retired from the United States Navy in 2005 at the rank of Captain. He completed over twenty-eight years in the United States Navy and has been assigned a forty percent (40%) disability by the Veterans Administration as a result of diabetes, hearing loss, and tennitus.

6. He has been employed with the Mayport Division of NORTH FLORIDA SHIPYARDS, INC., since October of 2009. In his employment capacity, he supervises a work force of approximately one hundred and fifty employees and is intimately privy to the details of the day to day operations of the NORTH FLORIDA SHIPYARDS, INC.

7. In August of 2010, the Relators, ROBERT R. HALLSTEIN and EARLE YERGER, were approached by officers of NORTH FLORIDA SHIPYARDS, INC., specifically Bob Wilson and Matt Self, about being listed as officers for a corporation called, IND-MAR SERVICES, INC. When the Relators asked for information, they were given very little details other than it was related to "disabled veterans." After researching the details regarding Disabled Veteran Owned companies, the Relators believed that the intertwining of the new company, IND-MAR SERVICES, INC., with existing NORTH

FLORIDA SHIPYARDS, INC. seemed to be fraudulent and declined the offers to be listed as Officers of the Corporation.

8. Both Relators expressed concerns to Bob Wilson and were assured that they would not be involved with the formation of IND-MAR SERVICES, INC. The following Complaint will specifically and thoroughly set forth in detail how NORTH FLORIDA SHIPYARDS, INC., utilizing a shell corporation, IND-MAR SERVICES, INC., fraudulently received government contracts for United States Coast Guard refitting, docking and repairs of Coast Guard vessels, by utilizing the SDVOASBC program.

PARTIES

9. Relators, ROBERT R. HALLSTEIN and EARLE YERGER, are citizens of the State of Florida.

10. Defendant NORTH FLORIDA SHIPYARDS, INC. is a Florida Corporation that has been registered to do business in the State of Florida since June 8, 1978.

11. IND-MAR SERVICES, INC. is a Florida Corporation that has been registered to do business in the State of Florida since August 25, 2010.

JURISDICTION AND VENUE

12. This action arises under the False Claims Act, 31 U.S.C § 3729 *et seq.*

13. This Court maintains subject matter jurisdiction over this action pursuant to 31 U.S.C § 3732(a) (False Claims Act) and 28 U.S.C. § 1331 (Federal Question).

14. Venue is proper in this Court pursuant to 31 U.S.C. § 3732(a) because: (i)

Relators, HALLSTEIN and YERGER, reside in this district; (ii.) Defendant, NORTH FLORIDA SHIPYARDS, INC. transacts business in this district and did so at all time relevant to this Complaint; (iii.) IND-MAR SERVICES, INC. is a Florida Corporation and has transacted business in this district and did so at all times relevant to this Complaint.

15. Before filing this Complaint, the Relators did serve a copy of the same upon the United States, together with written disclosure statements that in forth enclosing all material evidence and information in their possession, pursuant to the requirements of 31 U.S.C. § 37 30(b)(2).

16. The Relators HALLSTEIN and YERGER have complied with all of the conditions precedent to bring this action.

17. The Relators are the original source of and have direct and independent knowledge of all publicly disclosed information. The alleged allegations herein might be deem based, and have voluntarily provided such information to the government before filing this action.

18. Specific disclosures include: (i) ORCHA applications and certification executed by Robert S. Wilson of NORTH FLORIDA SHIPYARDS, INC.; (ii) Coast Guard contracts awarded to IND-MAR SERVICES, INC. i.e. specifically, the repair and refurbishment of the USCGC Confidence;(iii) Contract for dining and logging for the USCGC Blue Fin; (iv) NORTH FLORIDA SHIPYARDS, INC. newsletter dated March 11, 2011 in which acknowledgment for the work done on the USCGC Confidence is mentioned; (v)Emails between Relator. ROBERT R. HALLSTEIN, and officers of NORTH FLORIDA SHIPYARDS, INC. (vi) Narrative provided to Captain Robert E.

Howell from Relator, ROBERT R. HALLSTEIN, setting forth involvement with IND-MAR SERVICES, INC. (Composite Ex. 1, Copies of All Known Available Disclosure).

FACTUAL ALLEGATIONS

19. In order to facilitate an annual government wide call of not less than 3% of the total value of all prime contract and sub-contract awards for participation by small business concerns owned and controlled by Service Disabled Veterans, The Veterans Entrepreneurship and Small Business Development Act of 1999 was established.

20. On December 16, 2003, The Veterans Benefits Act of 2003 was passed by congress. Section 308 of the Act established a procurement program for Service-Disabled Veterans Over Small Business Concerns (SDVOSBC). This procurement program provides that all federal Contracting Officers may restrict competition to SDVOSBC's and award a sole source or set aside contract where certain criteria are met.

21. The Small Business Administration has issued an interim final rule, establishing a Service Disabled Veteran Owned Small Business Concerned Program. This program establishes the criteria to be used, in federal contracting to determine Service-Disabled Veterans status; business ownership and control requirements; guidelines for establishing sole source and set aside procurement opportunities; and protesting appeal procedures for SDVOSBC procurement.

22. The criteria to be eligible for the SDVOSBC is as follows:

(a) The Service-Disabled Veteran must have a service connected disability that has been determined by the Department of Veteran Affairs or the Department of Defense;

(b) The SDVOSBC must be small under the North American Industry Classification System (NAICS) Code assigned to the procurement;

(c) the SDV must unconditionally own 51% of the SDVOSBC;

(d) The SDVOSBC must control the management and daily operations of the SDVOSBC; and

(e) The SDVOSBC must hold the highest officer position in the SDVOSBC.

23. To be on eligible SDVOSBC the following must be met:

(a) The management and daily business operations must be controlled by one or more Service-Disabled Veterans;

(b) Specifically meaning that, controlled by one or more Service-Disabled Veterans means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more Service-Disabled Veterans; and

(c) The management and the daily business operation of which are controlled by one or more Service-Disabled Veterans or in the case of a Service-Disabled Veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

NORTH FLORIDA SHIPYARDS, INC & IND-MAR SERVICES, INC.

24. Relator, ROBERT R. HALLSTEIN, began employment with NORTH FLORIDA SHIPYARDS, INC. in October 2007. At this time, NORTH FLORIDA

SHIPYARDS, INC. (NFSY), did not have the Dry-Dock or QA Certifications to do any military repair work such as Navy or Coast Guard vessels at the Commodores Point Facility.

25. In 2008, NFSY achieved sufficient certification in their Dry-Dock and QA program to support repairs and dry-docking of Coast Guard vessels.

26. As part of a concerted effort to win Coast Guard bids for dry-docking repairs, NFSY did complete dry-dock repairs to four separate 270 foot Coast Guard Cutters.

27. In his capacity as Vice President of Operations, NORTH FLORIDA SHIPYARDS, INC., Relator, ROBERT R. HALLSTEIN, it became apparent that the Coast Guard was releasing more solicitations for dry-dock repair with set-aside restrictions, such as the Small Disabled Veteran Owned Companies. This prevented NFSY from bidding on this work as the prime contractor.

28. On or about late 2009 or early 2010, Relators, HALLSTEIN and YERGER, were approached by the Chief Financial Officer of NFSY, Mr. Bob Wilson. Mr. Wilson indicated that he wished to establish a new company that would meet the criteria to bid as a small Disabled Veteran Business Owned Company. He indicated that this new company would be called IND-MAR SERVICES, INC. and that he wished for Relators, HALLSTEIN and YERGER, to be named as owners/officers of IND MAR SERVICES, INC to support eligibility as a SVODB.

29. Relators, HALLSTEIN and YERGER, began asking specific questions regarding how NFSY could be intertwined with IND-MAR SERVICES, INC. and still meet the criteria for a small Disabled Veteran Owned Company. Mr. Wilson refused to

give specific information, and on or about the week of August 23, 2010, informed Relators HALLSTEIN and YERGER that they were no longer needed to be involved with IND-MAR SERVICES, INC.

30. Relator, HALLSTEIN, was then informed that other employees of NFSY who were disabled veterans would be listed as part of IND-MAR SERVICES, INC. These individuals were identified as Don Nickle and Arial Dushesne. Mr. Wilson informed Relator, HALLSTEIN, that he still "wanted him on the team because he ran production."

31. Mr. Don Nickle was and still is the staff accountant for NORTH FLORIDA SHIPYARDS, INC. and presently works directly for the NFSY CFO, Mr. Bob Wilson. Prior to the establishment of IND-MAR SERVICES, INC., and during the period of employment of the Relators with NFSY, Mr. Nickle had no direct involvement with operation or production work. Mr. Nickle was an hourly employee. Mr. Arial Dushesne was an estimator for NFSY and resides in Alabama.

32. Relator, HALLSTEIN, indicated to Mr. Wilson, as well as immediate Supervisor Matt Self that he did not want to be involved in any way with IND-MAR SERVICES, INC. Relator, HALLSTEIN, sent a formal e-mail to confirm his wishes. This e-mail is attached as **EXHIBIT "A"**.

33. In January 2010, IND-MAR SERVICES, INC. was awarded the US Coast Guard Cutter Blue Fin for docking and repairs, **EXHIBIT "B"**. IND-MAR SERVICES, INC. was awarded this contract because it was able to bid as a Small Disabled-Veteran Owned Company. At this time, Relator, HALLSTEIN, was again approached by Mr. Wilson and Matt Self and was asked to be a part of IND-MAR SERVICES, INC. Relator

HALLSTEIN, again refused. Mr. Wilson and Matt Self indicated they wanted to introduce him to the Coast Guard as an IND-MAR SERVICES, INC. employee. Upon his refusal, Arial Dushesne flew from Alabama to NFSY to attend the arrival conference for the Coast Guard vessel. He was introduced as IND-MAR SERVICES, INC. Vice President and Mr. Don Nickle was introduced as the President of IND-MAR SERVICES, INC. In his position as Vice President of Operations of NFSY, Relator, HALLSTEIN, was aware that there was no IND-MAR SERVICES, INC. employees or facilities, and all work was physically completed and managed by NFSY, using North Florida Shipyard employees, equipment, and processes.

34. In January 2011, Relator, HALLSTEIN, was asked to attend a verbal negotiation conference between IND-MAR SERVICES, INC. and the Coast Guard contract branch in Norfolk to discuss the dry-dock and repair for the 210 foot US Coast Guard Cutter Confidence. The repairs of this vessel were released as a Small Disabled Veteran Owned Company set-aside.

35. Bob Wilson indicated to, Relator, HALLSTEIN, that he needed to be a "team player" and be introduced as the Production Manager for IND-MAR SERVICES, INC. Relator, HALLSTEIN, refused and an argument took place in front of several NFSY Officers and employees. Relator, HALLSTEIN, decided to leave his position with NFSY. On February 9, 2011 in preparation for leaving NFSY, Relator, HALLSTEIN, was passed a message that originated from Company Secretary, Ann Dunn, suggesting that he check out the website where corporations were listed for the State of Florida. At this time, Relator, HALLSTEIN, found that he was listed as the Incorporator for IND-

MAR SERVICES, INC. under the Articles of Incorporation filed with the State of Florida. Additionally, Relator, EARLE S. YERGER, was listed as Vice President.

36. Relator, HALLSTEIN, immediately confronted his Supervisor and President of NFSY, Matt Self, who assured him that he was unaware that the Relators names had been used in the Articles of Incorporation and that it would be taken care of immediately.

37. On this same day, February 9, 2011, IND-MAR SERVICES, INC. received notice that they were awarded the dry-docking availability for the Coast Guard Cutter Confidence and that the vessel would arrive on the 14th day of February 2011. **EXHIBIT "C".**

38. On Thursday, February 10, 2011, Bob Wilson called Relator, HALLSTEIN, and asked him to come by his office and sign a resignation from IND-MAR SERVICES, INC. so his name could be removed from the Company. Relator, HALLSTEIN, informed Bob Wilson that he was not resigning from the organization since he had never served in such a capacity and did not want something in writing that indicated that he had served as an officer.

39. On Thursday, February 10, 2011, Matt Self, the President of NORTH FLORIDA SHIPYARDS, INC., informed Relator, HALLSTEIN, he was developing a letter to "straighten out" the mess Mr. Wilson had caused. Mr. Self told Relator, HALLSTEIN, that he would have the letter by Friday. Mr. Self indicated to Relator, HALLSTEIN, that the whole thing was a "big mistake."

40. On Friday, February 11, 2011, Relator, HALLSTEIN, received a call from Matt Self informing him that a letter was prepared that indicated that he was not affiliated

with IND-MAR SERVICES, INC. and this letter is attached as **EXHIBIT "D".** Nothing was signed by Relator, HALLSTEIN, relating to IND-MAR SERVICES, INC.

41. Relator EARLE YERGER, in his capacity of Vice President of Operations, Mayport Division of North Florida Shipyards, Inc. was also asked by Mr. Bob Wilson to become involved with IND-MAR SERVICES, INC..

42. Like Relator, HALLSTEIN, Relator, YERGER, was not provided specific information as to how NFSY could operate in connection with IND-MAR SERVICES, INC., a company supposedly owned and operated by disabled veterans.

43. Relator, YERGER, also informed Mr. Bob Wilson and Matt Self of NFSY that he did not wish to be an Officer or involved with IND-MAR SERVICES, INC.

44. Relator, EARLE YERGER, was also unaware that his name had been used on the Articles of Incorporation for IND-MAR SERVICES, INC.

SPECIFIC ALLEGATIONS

45. Relators, HALLSTEIN and YERGER, allege that Agents and Officers of NORTH FLORIDA SHIPYARDS, INC. knowingly and willfully created IND-MAR SERVICES, INC. with the sole purpose of bidding on set-aside contracts, specifically set-aside for Small-Disabled Veteran Owned Companies.

46. NFSY fraudulently utilized Relators, HALLSTEIN and YERGER's names, as disabled veterans, to file Articles of Incorporation for IND-MAR SERVICES, INC. and to establish IND-MAR SERVICES, INC. as a small business under the North American Industry Classification System.

47. NFSY, utilizing the name IND-MAR SERVICES, INC. did receive contracts for the repairs and dry-dock of the US Coast Guard Cutter Blue Fin and US

Coast Guard Cutter Confidence. NFSY is currently bidding on and being awarded additional government contracts for docking repair utilizing the corporation name IND-MAR SERVICES, INC.

48. IND-MAR SERVICES, INC. does not meet the criteria as set-forth in the Service-Disabled Veteran Small Business program in that IND-MAR SERVICES, INC. is not 51% owned by a service disabled veteran; and it is not under the control and management and daily operation of a Service-Disabled Veteran.

49. The State of Florida, the Department of the Division of Corporations shows the principle address of IND-MAR SERVICES, INC. as being that of 2060 East Adams Street, the same physical address of NFSY, Inc. All Officers and Directors of IND-MAR SERVICES, INC. are employees and/or officers of NFSY, Inc.

50. As required in the Federal Acquisition Regulations FAR 52.215-22 and 23, as in IND-MAR SERVICES, INC. has no physical facilities, all work is performed by NORTH FLORIDA SHIPYARDS, INC. The sole purpose is to act as "conduit" to permit NFSY to bid on contracts restricted to Small Disabled Veteran Owned companies. IND-MAR SERVICES, INC. does not provide any "value" to the government. Under the current method of operating, IND-MAR SERVICES, INC. does not meet the requirements of this FAR clause, as 100% of the effort is subcontracted to NFSY.

51. The two disabled veterans listed under Officers and Directors for IND-MAR SERVICES, INC., specifically Donald Nickle and Arial Dushesne, are not involved in the daily operations and management of IND-MAR SERVICES, INC. or NORTH FLORIDA SHIPYARDS, INC. and the listing of their names as Officers and

Directors is an attempt by NFSY, Inc. to represent IND-MAR SERVICES, INC. as a Service-Disabled Veteran Owned Corporation.

52. NFSY, Inc. is conducting all repairs and services to the Coast Guard vessels contractually awarded to IND-MAR SERVICES, INC.

53. This misleading and fraudulent corporation listed as IND-MAR SERVICES, INC. is operating contrary to the intention of the SDVOSBCP, whereas it is bidding and receiving contracts contrary to the intention of The Veterans Entrepreneurship and Small Business Development Act of 1999, the Veterans Benefit Act of 2003 and the Service-Disabled Veteran Owned Small Business Concern program.

54. IND-MAR SERVICES, INC. does not meet the eligibility or business control criteria set forth to be identified as Service-Disabled Veteran Small Business Program, and yet it is receiving repair contracts that were set aside for those companies who specifically do meet that criteria for a SDVOSBC program.

COUNT I – VIOLATIONS OF THE FALSE CLAIM ACT

55. Each of the foregoing allegations is re-alleged and incorporated herein.

56. As was described in this Qui Tam Complaint, Defendant, IND-MAR SERVICES, INC. and NORTH FLORIDA SHIPYARDS, INC. by and through its Officers, Agents and employees: (i) knowingly presented, or caused to be presented, to the United States Government, a false or fraudulent claim for payment or approval; (ii) knowingly made, used or caused to be made a false record or statement to get a false or fraudulent claim paid or approved by the government; and (iii) knowingly made, used, or caused or to made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money to the Government.

57. Defendants, IND-MAR SERVICES, INC. and NORTH FLORIDA SHIPYARDS, INC. authorized and ratified all the violations of the False Claims Act committed by its various Officers, Agents and Employees.

58. The United States Government, the public, and legitimate Service Disabled Veterans, and SDVOC, have been damaged as a result of Defendants, IND-MAR SERVICES, INC., and NORTH FLORIDA SHIPYARDS, INC. violations of the False Claims Act.

59. Relators, HALLSTEIN and YERGER, request a jury trial on all issues so triable.

WHEREFORE, Relators, ROBERT R. HALLSTEIN and EARLE S. YERGER, by and through their undersigned attorney and the United States Government prays:

(i) That this Court enter a judgment against the Defendants in an amount equal to three times the amount of damages the United States has sustained as a result of Defendants violations of the False Claims Act;

(ii) That Relators, HALLSTEIN and YERGER, recover all costs for this action, with interest including the cost to the United States Government for its expenses related to this action;

(iii) That Relators, HALLSTEIN and YERGER, be awarded all reasonable attorneys fees in bringing this action;

(iv) That in the event that the United States Government proceeds with this action that Relators, HALLSTEIN and YERGER, be awarded an amount for bringing this action of at least 15% but not more than 25% of the proceeds of this action;

(v) That in the event that the United States Government does not proceed with this action, Relators, HALLSTEIN and YERGER, be awarded an amount for bringing this action of at least 25% but not more than 30% of the proceeds of this action;

(vi) That Relators, HALLSTEIN and YERGER, be awarded pre-judgment interest;

(vii) That a trial by jury be held on all issues so triable; and

(viii) That Relators, HALLSTEIN and YERGER, and the United States of America receive all relief to which either or both may be entitled at law or in equity.

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