

Government Contractor Agrees to Pay Record \$48.5 Million to Resolve Claims Related to Fraudulent Procurement of Small Business Contracts Intended for Service-Disabled Veterans GSA Office of Inspector General

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Department of Justice
U.S. Attorney's Office
Northern District of New York
February 23, 2022

Former TriMark Executive Kimberley Rimsza to Pay Additional \$100,000 Individual Penalty

ALBANY, NEW YORK – TriMark USA, LLC of Mansfield, Massachusetts, has agreed to pay \$48.5 million to resolve allegations that its subsidiaries, TriMark Gill Marketing and Gill Group, Inc. (collectively, TriMark), improperly manipulated federal small business set-aside contracts around the country, announced Carla B. Freedman, the United States Attorney for the Northern District of New York, and Vanessa R. Waldref, the United States Attorney for the Eastern District of Washington. A former TriMark executive in charge of the company's government business, Kimberley Rimsza of Phoenix, Arizona, has agreed to pay an additional \$100,000 as an individual civil penalty for her conduct in connection with the scheme. The settlement constitutes the largest-ever False Claims Act recovery based on allegations of small business contracting fraud.

"TriMark and one of its former top executives are paying a steep price for obtaining contracts intended for service-disabled veterans," said United States Attorney Freedman. "This settlement demonstrates the federal government's commitment to ensuring the integrity of its business partners, and the serious consequences for depriving legitimate small businesses of the opportunities that the government has allocated to them."

Federal government contracts may be reserved, or "set aside," for various categories of small businesses, such that only eligible small businesses in a particular socioeconomic category are eligible to bid on, receive, and perform the contracts. One such category is a service-disabled, veteran-owned small business (SDVOSB), which is reserved for small businesses owned, controlled, and operated by veterans of the United States military who incurred a disability in the course of their military service to the United States.

TriMark provides kitchen and food service equipment to government customers around the world, including in the Northern District of New York and the Eastern District of Washington. As part of the Settlement Agreement, TriMark and Rimsza admitted to and accepted responsibility for their conduct in connection with set-aside contracts that, because of their actions, resulted in federal agencies improperly awarding government set-aside contracts between 2011 and 2021 to three small businesses with which TriMark worked, identified in the Settlement Agreement as "Company 1," "Company 2," and "Company 3" (the "small businesses").

TriMark and Rimsza admitted that their conduct caused federal agencies to award set-aside contracts to the small businesses in violation of federal regulations designed to encourage contract awards to legitimate small businesses and SDVOSBs. TriMark and Rimsza further admitted that when set-aside contracts were awarded

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Under the Settlement Agreement, TriMark admitted that TriMark Gill Marketing, rather than the small business, that performed substantially all the work, while the small business merely served as the face of the contract, billing the government for the work, and using its small business status to obtain the set-aside contracts.

As part of the Settlement Agreement, TriMark admitted that TriMark Gill Marketing identified federal set-aside contract opportunities for the small businesses to bid on using their set-aside status; instructed them regarding how to prepare their bids and what prices to propose; “ghostwrote” emails for those companies to send to government officials to make it appear as though the small businesses were performing work that TriMark Gill Marketing was performing; and affirmatively concealed TriMark Gill Marketing’s involvement in the contract. TriMark and Rimsza further admitted that one of the small businesses expressed concern more than a decade ago that their business arrangement violated the law and would subject both companies to liability under the False Claims Act, after which a TriMark Gill Marketing official responded that she had spoken with Rimsza about the concerns, and told the individual to “calm down and enjoy your weekend.”

With regard to one of the small businesses, TriMark admitted that certain TriMark Gill Marketing employees had access to and used that company’s email accounts in order to conduct business with the government on behalf of the small business; that TriMark Gill Marketing assisted it in obtaining federal contracts to supply goods that, in reality, TriMark Gill Marketing was providing; that at least one TriMark Gill Marketing employee posed as a representative of the small business when communicating with the government; that TriMark Gill Marketing allowed the small business to use its office space and equipment; and that TriMark considered the small business “an extension” and “affiliate” of TriMark.

TriMark, which has fully cooperated in the United States’ investigation, also represented in the Settlement Agreement that it has taken “comprehensive measures and implemented enhanced controls” to prevent the recurrence of similar conduct, including personnel changes, and implementing revised compliance procedures and training programs.

“This case demonstrates a shocking disregard for fair competition, small business rules, and integrity in government contracting,” said United States Attorney Waldref. “We insisted that both TriMark and former company executive Kimberley Rimsza admit and accept responsibility for their conduct, which included improperly obtaining contracts that were meant for legitimate small businesses, and affirmatively concealing TriMark’s role in the sham contracts. The fact that the money they were stealing was intended for service-disabled veterans is simply unconscionable. Conduct of this kind is antithetical to a safe and strong Eastern Washington.”

“The Department of Veterans Affairs Office of Inspector General is committed to identifying and stopping those individuals who misappropriate an opportunity meant solely for our nation’s veterans with disabilities,” said Inspector General Michael J. Missal. “I want to recognize Special Agent in Charge Christopher Algeri of our Northeast Field Office and Special Agent in Charge Jason Root of our Northwestern Field Office for their leadership on this investigation. We appreciate the exhaustive efforts of our law enforcement partners and both U.S. Attorney’s Offices in this collaborative effort.”

“Investigating corrupt schemes that undermine the integrity of Department of Defense (DoD) procurement is a top priority for the DoD Office of Inspector General’s Defense Criminal Investigative Service (DCIS),” stated Special Agent in Charge Patrick J. Hegarty, DCIS Northeast Field Office. “Today’s announcement demonstrates our commitment to work with the Department of Justice and our law enforcement partners to ensure that the contracting process for legitimate small businesses remains fair and competitive.”

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“We will continue to work with our law enforcement partners to root out small business contracting fraud,” said General Services Administration Inspector General Carol Ochoa. “I appreciate the hard work of the team on this case.”

“When contractors abuse set-aside programs and divert opportunities to themselves, they are undermining the acquisition process and taking business away from legitimate companies. The Air Force Office of Special Investigations, our joint investigative partners, and DOJ work vigorously to protect the Department of Defense’s procurement process and ensure wrongdoers are held accountable,” said Special Agent Paul W. Wachsmuth, Air Force Office of Special Investigations Procurement Fraud Director.

“The settlement in this matter demonstrates the excellent results achieved through the combined efforts of federal agencies to uncover and forcefully respond to procurement fraud that unconscionably deprives legitimate small businesses of important procurement opportunities,” said the Small Business Administration’s General Counsel, Peggy Delinois Hamilton. “The federal government is strongly committed to identifying and aggressively pursuing instances of fraud perpetrated by those participating in SBA’s procurement programs. We commend the hard work of all those in law enforcement who successfully prosecuted this case.”

The case began in May 2019, when a whistleblower, a company known as Fox Unlimited Enterprises, LLP, filed a *qui tam* complaint under seal in the U.S. District Court for the Northern District of New York. When a whistleblower, or “relator,” files a *qui tam* complaint, the False Claims Act requires the United States to investigate the allegations and elect whether to intervene and take over the action or to decline to intervene and allow the relator to go forward with the litigation on behalf of the United States. The relator is generally able to then share in any recovery. In this case, the United States intervened in the action in December 2021, and subsequently reached this settlement. Pursuant to the Settlement Agreement, the relator will receive \$10,912,500 of the settlement amount paid by TriMark.

The settlement was the result of a joint investigation conducted by the U.S. Attorney’s Office for the Northern District of New York; the U.S. Attorney’s Office for the Eastern District of Washington; the U.S. Department of Veterans Affairs Office of Inspector General, Spokane and Buffalo Resident Agencies; the Defense Criminal Investigative Service, Syracuse Post of Duty; the General Services Administration Office of Inspector General, New York Field Investigations Office; the Department of Homeland Security Office of Inspector General, New York Field Office; the Air Force Office of Special Investigations, Procurement Fraud Detachment 6 Rome, New York; the U.S. Army Criminal Investigative Division, Syracuse Fraud Branch Office; and the Small Business Administration, Office of Inspector General, Seattle Field Office. Assistant United States Attorneys Adam J. Katz of the Northern District of New York and Dan Fruchter and Tyler H.L. Tornabene of the Eastern District of Washington handled this matter on behalf of the United States.

Case No. 1:19-cv-914 (N.D.N.Y.)

[Download TriMark-Rimsza Settlement Agreement](#)

Source: U.S. Attorney's Office [press release](#)