

## Highway Robbery

By Hank Sims

The Eureka-based construction firm Mercer Fraser, well known for its work on roads and highways locally and around the north state, last week agreed to pay \$1.3 million to settle a lawsuit charging that the company defrauded the federal government while bidding on several highway projects dating back to at least 2005. The suit, which was filed in Sacramento federal court in 2007, charged that the company falsely posed as a small business during the bidding process, thus giving it an unfair advantage over rival bidders.

In a press release announcing the settlement, Acting United States Attorney Lawrence G. Brown noted that Mercer Fraser denied any wrongdoing in the matter. And on Tuesday, Vice President Justin Zabel confirmed that the company believed that it had acted properly when it applied for small business status with the federal government. The decision to settle the case, Zabel said, was purely a matter of putting the suit in the past.

"We had to make a business decision -- do we try to fight it and pay millions and millions of dollars?" he said. "Eventually we decided that we should pay it and move on."

The lawsuit, which was originally filed by a private individual named Mark Mann, charged that Mercer Fraser deceived the government in two ways: By not disclosing its relationship with the Contri Construction Company of Reno, Nev. and by identifying itself as primarily a gravel and sand supplier rather than a heavy construction firm. (The company operates several gravel processing sites in the county.) The complaint charged that the two factors, taken together, allowed Mercer Fraser to illegally qualify for standing under the federal government's HUBZone Empowerment Contracting program, which was set up to give preferential treatment to small businesses from "historically underutilized business zones." The federal government eventually endorsed and joined Mann's suit.

But Zabel said that Mercer Fraser completely disclosed its business relationship with the much larger Contri Construction Company, which owns a large stake in the Eureka firm, and that personnel from the HUBZone program signed off at the time the company applied. He said that Mercer Fraser was contacted by the program after the company filled out its original application online, asking for details on Contri Construction, and that Mercer fully complied with the request.

"The government just said, 'No, this looks good, you're fine, congratulations,'" Zabel said Tuesday. As for Mercer Fraser's designation as primarily a sand and gravel operation, Zabel said that it was the HUBZone computer system that hung that on them; the computer application required the company to list all its business activities, he said, and it decided to spit back sand and gravel as its primary designation.

Mann, the original complainant, is only identified in the lawsuit as "an individual who has worked for a competitor and supplier of the defendant corporations [Mercer Fraser and Contri Construction]." As the initiator of the matter, he is entitled to receive 15 percent or more of the proceeds from the settlement. The *Journal* was unable to locate Mann, and calls to his attorney were not returned by press time.

Mercer Fraser has done over \$30 million worth of business with the U.S. Federal Highway Administration since 2000. Just over half of that total comes from a single 2006 contract for work to reconstruct the Oroville-Quincy Highway in Butte and Plumas counties. In addition, the company does frequent work for the County of Humboldt and other local governmental entities.

The last time the company made news, a couple of months ago, it was for winning a legal case: Mercer Fraser was one of two companies that sued the county over Measure T, the 2006 citizens' initiative that sought to ban "non-local" corporations from contributing to local political campaigns. After the companies won an initial, pre-trial decision in that case, county government agreed to drop enforcement of the measure.

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