NEWS

Advanced Bionutrition Corporation And David Kyle, Its Former Chief Executive Officer, Agree To Settle Claims Of Grant Fraud

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Baltimore, Maryland -Advanced BioNutrition Corporation ("ABN"), a biotech company located in Columbia, Maryland, and David Kyle, its former Chief Executive Officer, have paid the United States $934,000 to settle claims that they violated the False Claims Act by fraudulently inducing the National Science Foundation ("NSF") to award Phase II of a Small Business Innovation Research ("SBIR") grant and submitting false progress reports during the Phase II grant.

The settlement was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General at the National Science Foundation.

United States Attorney Rod J. Rosenstein said, "Anyone who participates in government funded research must truthfully and accurately report the results of that research. Companies and individuals that misrepresent results in order to obtain government funding undermine the integrity of the government grant process."

Allison Lerner, Inspector General at the National Science Foundation stated, "The SBIR program is a valuable tool in advancing NSF's mission to promote the progress of science by increasing opportunities for small businesses to undertake cutting-edge scientific research, and it is essential to protect the integrity of this program. I want to thank AUSA Tom Corcoran for his vigorous efforts to resolve this case, which sends a strong message to those who seek to defraud the SBIR program."
The settlement resolves a lawsuit brought by a whistleblower, Albert Cunniff, Jr., in 2007 under the qui tam or whistleblower provisions of the False Claims Act, which permit private citizens with knowledge of fraud against the government to bring a lawsuit on behalf of the United States and to share in any recovery. Under the civil settlement announced today, Mr. Cunniff will receive $105,275 out of the recovery.

ABN was awarded Phase I of a NSF SBIR grant in February 2005 to develop technology to micro-encapsulate probiotic bacteria into particles. In January 2006 ABN submitted a grant proposal to work on Phase II, to further develop the micro-encapsulation process. In March 2006, NSF awarded ABN the Phase II grant based upon representations in the Phase II proposal about the results obtained in Phase I.

ABN made material misrepresentations and omitted critical information in the Phase II proposal about the results obtained in Phase I that induced NSF to award Phase II. Additionally, after Phase II was awarded, ABN made misrepresentations in interim and final reports about the progress it obtained in its Phase II work. David Kyle, ABN's Chief Executive Officer at the time ABN performed the NSF grant work, participated in the Phase I production runs and the reporting of the Phase I results in the Phase II proposal.

Both ABN and Kyle deny these allegations. As part of this settlement, ABN agreed to a five year Compliance Integrity Agreement while Kyle voluntarily agreed to be excluded for a period of five years from all federal procurement and non-procurement programs.

Enacted during the Civil War, the False Claims Act is the government's primary civil tool to combat fraud and abuse in federal programs and procurement. The Act allows the government to recover triple the amount of its actual damages, plus a civil penalty of $5,500 to $11,000 for each false claim.

United States Attorney Rod J. Rosenstein commended the investigative work performed by the National Science Foundation Office of Inspector General. Mr. Rosenstein also thanked Assistant U.S. Attorney Thomas F. Corcoran, who handled the case.

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