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Newark-Based Company and CEO Agree to Pay \$2.75 Million to Resolve Allegations of Government Contracting Fraud

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WILMINGTON, Del. – David C. Weiss, United States Attorney for the District of Delaware, announced today that E.M. Photonics, Inc. (“EMP”) and its Chief Executive Officer, Eric Kelmelis, have agreed to pay \$2.75 million to resolve allegations that they violated the False Claims Act by seeking disbursements from federal agencies for falsified labor costs and duplicative work in order to maximize charges to contracts awarded by federal agencies.

As alleged in the settlement agreement, from January 2009 to April 2014, EMP received funds under seven different contracts and grants awarded through the federal Small Business Innovation (“SBIR”) and Small Business Technology Transfer (“STTR”) programs. These two federal initiatives are the nation’s largest source of early stage/high risk funding for start-ups and small businesses. To be eligible, the small business must be American-owned, organized as a for-profit entity, and have less than 500 employees. There are eleven federal agencies that participate annually in the SBIR program and five that participate in the STTR program. Here, the contracts and grants at issue were awarded by a variety of federal agencies, including the Department of the Navy; Defense Advanced Research Projects Agency; Department of the Air Force; Department of Energy; and the National Aeronautics and Space Administration.

The government alleged that Kelmelis and EMP engaged in two principal schemes to defraud the SBIR/STTR programs. First, EMP and Kelmelis directed EMP employees, or caused others to direct EMP employees, to falsely complete timesheets for direct labor that the employees did not perform and submit false invoices and public vouchers to the funding agencies for direct labor that was not performed on these contracts and grants. Second, EMP and Kelmelis sought and received SBIR/STTR funding for essentially equivalent work already performed and funded by another government agency and falsely certified that such work was, in fact, non-duplicative. The government alleged that both of these schemes were designed to maximize charges to each contract or grant.

U.S. Attorney David C. Weiss said, “The SBIR and STTR programs are critical components to our government’s economic strategy to fuel innovative small businesses across the United States. Any small business who seeks to participate in these programs must do so with integrity. In this era of limited government resources, our Office is committed to ensuring that every dollar spent on these critical economic programs is properly used – the public demands nothing less.”

"One of the top investigative priorities of the Defense Criminal Investigative Service (DCIS) is to ensure the integrity of the U.S. Department of Defense's (DoD) procurement system, to include the DoD's research and development programs," stated Leigh-Alistair Barzey, Special Agent-in-Charge of the DCIS Northeast Field Office. "The settlement agreement announced today is the

result of a joint investigative effort and is demonstrative of the DCIS' ongoing commitment to work with its law enforcement agency partners and the U.S. Attorney's Office, District of Delaware, to identify those who submit false claims to the federal government in order to fraudulently receive SBIR and STTR funding."

"I applaud the outstanding efforts of our agents and law enforcement partners, who successfully investigated this matter and with this agreement highlight the importance of protecting federal research funds," said NASA OIG Special Agent in Charge, Curtis Vaughn.

The claims resolved by the civil agreement are allegations only, and there has been no determination of civil liability.

This case was investigated by Assistant U.S. Attorneys Jamie M. McCall and Jennifer Hall. This matter was investigated by multiple agencies, including the Defense Criminal Investigative Service, National Aeronautics and Space Administration's Office of Inspector General, Naval Criminal Investigative Service Northeast Field Office, U.S. Air Force Office of Special Investigations, U.S. Army Criminal Investigation Command, and U.S. Department of Energy's Office of Inspector General.