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FALSE CLAIMS ACT

Telecom contractor ends false-claims inquiry for \$13.7 million

By Catherine A. Tomasko, Esq., Senior Legal Writer, Westlaw Journals

A Virginia-based telecommunications and security company has agreed to pay the United States \$13.7 million to resolve allegations it overbilled for labor on U.S. Army and Coast Guard contracts.

The payment by DRS Technical Services Inc., of Herndon, Va., ends the federal government's claim that the company's bills contained inflated labor rates for employees who lacked

contractually mandated qualifications for such billing rates, the Justice Department said in an Oct. 7 statement.

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FALSE CLAIMS ACT

Shipyard pays Justice Department \$1 million to end small-business fraud case

The United States has agreed to a \$1 million payment from a Florida shipyard to end its lawsuit alleging the company fraudulently obtained Coast Guard contracts by posing as a small firm owned by service-disabled veterans.

United States ex rel. Yerger et al. v. North Florida Shipyards et al., No. 11-CV-464, settlement announced (M.D. Fla. Oct. 29, 2014).

The Justice Department said in a statement that the payment by North Florida Shipyards in Jacksonville and President Matt Self resolves allegations that the company violated the False Claims Act, 31 U.S.C. § 3729.

The law is the federal government's primary tool for fighting procurement fraud.

The Justice Department said NFS used another company as a front to win five Coast Guard vessel repair contracts awarded as part of the Small Business Administration's service-disabled, veteran-owned small-business program.



The program offers service-disabled veterans the opportunity to obtain government contracts if their companies meet certain criteria.

To participate in the program, a business must be a small firm, and a service-disabled veteran

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Telecom contractor

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DRS, which handles satellite and wireless networks, telecommunication services, and security systems, agreed to the out-of-court settlement without admitting or denying wrongdoing. The company did not respond to a request for comment on the case.

Federal prosecutors alleged DRS violated the False Claims Act by knowingly overbilling on federal contracts between Jan. 1, 2003, and Dec. 31, 2012.

The FCA, 31 U.S.C. § 3729, is the government's primary tool for fighting procurement fraud. Congress enacted the statute during the Civil War to combat contractors that supplied defective goods to the Union Army. Today, the United States uses the law to recover federal funds paid to entities who submit false or fraudulent claims under contracts or government programs such as Medicare.

The Justice Department announced in December 2013 that it had obtained \$3.8 billion through settlements and

judgments under the statute for the fiscal year that ended Sept. 30, 2013. The majority of the cases involved health care and defense contract fraud.

The agency said the 2013 fiscal-year recovery brought the government's FCA recoveries since January 2009 to \$17 billion. The United States is expected to release its totals for fiscal year 2014 FCA cases in December.

The statute also allows private citizens who suspect fraud to sue on the government's behalf and share in any recovery.

Nicholas Woodfield, a principal at **The Employment Law Group** in Washington, who is not involved in the DRS case, said the False Claims Act promotes the security of the public fisc.

"The FCA's beneficiaries are not simply the whistleblowers, but rather people who pay taxes and/or receive federal services, as the FCA promotes efficiencies in the spending of government money so that tax dollars have the greatest impact possible," Woodfield said.

ALLEGATIONS AGAINST DRS

The Justice Department alleged DRS overbilled on an Army Communication and Electronics Command contract to provide a variety of services and supplies to the U.S. military in Iraq and Afghanistan. The contract was called "R2," or Rapid Response, since the company was contracted to supply the goods and services quickly.

DRS also inflated its bills on a contract with the Coast Guard Aviation Logistics Center for aircraft maintenance, according to the charges.

Both contracts were of the "time and materials" variety, which means contractor time is paid at a fixed hourly rate, and the company is reimbursed for materials' actual cost. The federal government uses time-and-materials contracts when it is not possible at the time of contracting to accurately estimate the extent or duration of the particular work or to anticipate costs with a reasonable degree of confidence.

The government alleged that DRS had certain contract work performed by employees whose qualifications did not match the labor rates they were billed under. By submitting these employees under a higher labor rate,



Nicholas Woodfield, a principal at **The Employment Law Group** in Washington, comments on the importance of the False Claims Act:

The False Claims Act rewards people to bring lawsuits on the government's behalf to recover monies fraudulently procured from the U.S. government. Simply stated, Congress uses the FCA to incentivize citizens to protect the national fisc from opportunists seeking to fleece the Treasury. Hence the FCA's beneficiaries are not simply the whistleblowers, but rather people who pay taxes and/or receive federal services, as the FCA promotes efficiencies in the spending of government money so that tax dollars have the greatest impact possible.

The current total federal government spending for 2014 is projected to be \$3.5 trillion. This means that the federal government will expend \$3,500,000,000,000 on defense, medicine, medical treatment, salaries, infrastructure, etc., in 2014. Almost all of these expenditures are through electronic systems, and it will receive invoices electronically for much of the money expended. It is simply impossible for the government to verify that each of the invoices submitted are for work performed properly (or at all) or for good that comply with contractual requirements.

As such, the government relies on auditing and stiff penalties for keeping government contractors honest. However, most government contractors are aware that the odds of getting caught are in their favor should they bill for nonconforming services or goods. It is this temptation that the FCA is intended to address, as government contractors don't just have to worry about the government catching them anymore. Rather, the FCA allows for contractors to be policed from the inside out, and it does so on a rewards basis so that fraudulently procured monies are recovered at no additional cost to the government.

Adam Smith, the world's first free-market capitalist, would have been a staunch supporter of the FCA as it promotes the efficiency of capital accumulation and distribution through incentivizing individuals to work in their own best interests. And he would have chuckled at the irony that the real beneficiaries, however, are the taxpayers who benefit from FCA whistleblowers' efforts to make sure tax dollars are spent as efficiently as possible.

the company increased the amount of its billings on its time-and-materials contracts, the Justice Department said.

"Contractors that fail to provide qualified labor as promised are not entitled to bill

the government as though they had," acting Assistant Attorney General Joyce R. Branda of the Justice Department's Civil Division said in a statement. "The Department of Justice will pursue contractors

that claim taxpayer funds to which they are not entitled."

The Justice Department did not disclose the exact labor rates and worker qualifications at issue in the case. [WJ](#)

False Claims Act: What the experts are saying



Robert W. Sadowski
Sadowski Fischer PLLC

"Apart from health care fraud, defense contract fraud is one of the most common predicates for False Claims Act liability.

"Since its enactment, the government has used the False Claims Act as a highly effective tool against companies that contracted with and then defrauded the United States military by providing defective arms and equipment and substandard or improper services."



Andrea Fischer
Sadowski Fischer PLLC

"Whistleblowers coming forward and uncovering the fraud is key to the government's tremendous recoveries under the False Claims Act. Of the \$3.4 billion recovered under the False Claims Act by the government, \$2.9 billion resulted from actions filed by whistleblowers."



Raphael Katz
Sadowski Fischer PLLC

"Bottom line — as the [U.S.] Supreme Court said — 'Men must turn square corners when they deal with the government.' And False Claims Act lawsuits commenced by whistleblowers are the government's most forceful and effective tool to prosecute fraud."



Lathrop Nelson
Montgomery McCracken Walker & Rhoads

"The False Claims Act provides an extremely effective tool for the government to combat fraud in federal contracting matters. The False Claims Act relies upon whistleblowers and insiders to help ensure that those federal dollars are not improperly spent or siphoned off by contracting agencies and individuals. Given that the government spends hundreds of billions of dollars each year on federal contracts, the government cannot possibly rely on its own law enforcement and investigating agencies to make sure that



Glenn Whitaker
Vorys, Sater, Seymour & Pease

each and every dollar is properly spent. By providing significant financial incentives to whistleblowers, the False Claims Act enlists corporate insiders and citizens to make sure that federal funds are spent properly."

"The FCA is certainly a very important tool for the government to combat fraud. However, because the FCA is such a powerful enforcement weapon for the government, contractors often settle these cases for substantial amounts even when they sincerely believe that they've done nothing wrong. Particularly when the government has intervened, the potential for treble damages, civil penalties, serious disruption of business operations, and administrative remedies such as suspension or debarment creates significant incentives for companies to resolve matters before trial. This is one of the major reasons that it's critical for companies to investigate any allegation of fraud immediately and to marshal facts demonstrating to the government that no fraud occurred or that there was limited damage to the federal fisc."



Christopher R.J. Pace
Jones Day

"As the federal government enlarges its role in huge areas of the economy such as health care and infrastructure construction, the government cannot afford to ignore the billions of dollars that fraud ... costs taxpayers every year. As a result, the increase in False Claims Act cases and investigations in recent years is likely the new norm as opposed to an aberration. So, too, therefore, is the need for companies that deal with the federal government to be ever vigilant in complying with government contracts and regulations as well as investigating credible reports of possible fraud by their employees and contractors."