

Criminal Prosecutions Of Gov't Contractors On The Rise

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Contractors doing business with the government face a range of risks for potentially fraudulent behavior. These risks include exposure to civil liability under the False Claims Act, as well as criminal liability under various criminal fraud-related statutes. In recent months, we have seen not only an uptick in civil FCA enforcement against government contractors but also an increase in criminal enforcement efforts.

The [U.S. Department of Justice](#) criminally prosecutes fraud against the government in a variety of ways. Potential charges for fraudulent activities are not limited to a criminal fraud charge, but also include bribery, false claims, false statements, conspiracy to defraud, wire fraud, and mail fraud, among others.[1] Most of these crimes are felonies that carry substantial penalties, including fines and possible imprisonment.[2] Furthermore, additional remedies available to the government include restitution and refunds for overpayments.



John Kelly

Increasingly, civil and criminal actions are pursued as parallel investigations by the DOJ and other enforcement agencies. In September 2014, Assistant Attorney General for the Criminal Division Leslie Caldwell announced that DOJ's Criminal Division will be "stepping up" its coordination with the Civil Division to look for potential criminal liability in qui tam complaints.[3] The Criminal Division will receive and review all new qui tam complaints as soon as the cases are filed so that it may determine whether to open a parallel criminal investigation.[4]

The recent guilty pleas and civil settlements with Supreme Group and its subsidiaries, which are discussed in further detail below, provide an example of the heightened exposure to liability that a government contractor faces when the DOJ pursues a coordinated criminal and civil action against it.

Supreme Group

- Allegations of price markups for supplies provided to U.S. troops in Afghanistan
- Companies agreed to pay \$48 million jointly in restitution, \$10 million jointly in criminal forfeiture, and \$96 million each in criminal fines

Supreme Foodservice GmbH and Supreme Foodservice FZE, which operate as subsidiaries of Supreme Group BV, pleaded guilty on Dec. 8, 2014, to committing a \$48 million fraud against the United States in connection with an \$8.8 billion subsistence prime vendor (SPV) contract. The fraud involved the inflation

of prices for food and bottled water provided to U.S. troops in Afghanistan. Both companies pleaded guilty to charges of major fraud, and Supreme Foodservice GmbH also pleaded guilty to conspiracy to commit major fraud and wire fraud. The companies agreed to jointly pay \$48 million in restitution and \$10 million in criminal forfeiture. In addition, each company agreed to pay \$96 million in criminal fines.[5]

Contemporaneously, the DOJ intervened in a related civil FCA lawsuit against Supreme Group based on similar allegations. Supreme Group agreed to pay \$101 million to resolve the civil allegations that Supreme Group and its food subsidiaries violated the FCA by overbilling for supplies under the SPV contract.[6]

Navy Military Sealift Command

- Allegations of bribes paid in exchange for governmental assistance
- Prison sentences ranging from two to eight years, forfeiture amounts as high as \$175,000

Beginning in February 2014, seven contractors pleaded guilty to bribery and conspiracy to commit bribery in relation to federal contracts with the Military Sealift Command, which is the leading provider of transportation for the [U.S. Navy](#). According to the plea agreements, top executives at two Chesapeake, Virginia companies (identified only as “Company A” and “Company B” in court documents) paid regular cash bribes and gave other valuable items such as flat screen televisions in exchange for official assistance — including the steering of millions of dollars in business — from individuals at the Military Sealift Command. The cash bribes amounted to more than \$265,000 over the course of five years, beginning in approximately November 2004. In November 2014, the contractors each received prison sentences ranging from two years to eight years, and were ordered to forfeit dollar amounts as high as \$175,000.[7]

Army National Guard Marketing Contracts

- Allegations of bribes paid in exchange for the award of marketing contracts
- Sentencing scheduled for January 2015

Three individuals pleaded guilty to, and another three individuals have been charged with, bribery and conspiracy to solicit bribes related to the awarding of Army National Guard marketing, retention, and recruitment contracts. The DOJ announced the charges and convictions on Oct. 1, 2014. The National Guard Bureau, which oversees the distribution of federal funding to the Army National Guard, can avoid the competitive bid process by awarding marketing contracts to minority-owned [Small Business Administration](#) certified 8(a) companies. According to the DOJ’s allegations, the bribery scheme involved several 8(a) companies that paid bribes to active Army National Guard officials in exchange for the award of marketing contracts outside the competitive bid process. The bribes were paid in various

forms, including a percentage of all contracts steered to the company, a 15 percent cut of all company profits, and cash bribes in the amount of \$30,000.[8]

The above resolutions illustrate the significant criminal penalties, including fines and jail time, that government contractors face when accused of fraudulent activity. Contractors doing business with the government should therefore implement robust compliance programs to ensure adherence to the terms of their agreement, and to avoid exposure to both criminal and civil enforcement risks.

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[1] See, e.g., 18 U.S.C. § 286 (conspiracy to defraud the government with respect to claims); § 287 (false, fictitious, or fraudulent claims); § 1001 (statements or entries generally); § 1031 (major fraud against the United States); § 1341 (mail fraud); § 1343 (wire fraud).

[2] See *id.*

[3] Remarks by Assistant Attorney General for the Criminal Division Leslie R. Caldwell at the Taxpayers Against Fraud Education Fund Conference, Department of Justice, Office of Public Affairs (Sept. 17, 2014), available at <http://www.justice.gov/opa/speech/remarks-assistant-attorney-general-criminal-division-leslie-r-caldwell-taxpayers-against> (last visited Dec. 9, 2014).

[4] See *id.*

[5] Defense Contractor Pleads Guilty to Major Fraud in Provision of Supplies to U.S. Troops in Afghanistan, Department of Justice, Office of Public Affairs (Dec. 8, 2014), available at <http://www.justice.gov/opa/pr/defense-contractor-pleads-guilty-major-fraud-provision-supplies-us-troops-afghanistan> (last visited Dec. 9, 2014).

[6] *Id.*

[7] Former United States Navy Military Sealift Command Contractor and Co-Founder of Government Contracting Company Sentenced to Prison, Department of Justice, Office of Public Affairs (Nov. 7, 2014), available at <http://www.justice.gov/opa/pr/former-united-states-navy-military-sealift-command-contractor-and-co-founder-government> (last visited Dec. 8, 2014); Former United States Military Sealift Command Contractor Pleads Guilty to Bribery and Conspiracy, Department of Justice, Office of Public

Affairs (Aug. 12, 2014), available at <http://www.justice.gov/opa/pr/former-united-states-navy-military-sealift-command-contractor-pleads-guilty-bribery-and> (last visited Dec. 8, 2014).

[8] Five Army National Guard Officials and One Civilian Charged with Bribery, Department of Justice, Office of Public Affairs (Oct. 1, 2014), available at <http://www.justice.gov/opa/pr/five-army-national-guard-officials-and-one-civilian-charged-bribery> (last visited Dec. 8, 2014).

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