**October FCA Enforcement: How Government Contractors Fared**

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The False Claims Act, which prohibits the knowing submission of false claims to the federal government for payment, continues to be a powerful tool in the government's fight against fraud.[1] FCA actions arise from federal and state government investigations, company self-disclosures and, most often, from qui tam litigation.[2] The qui tam provisions of the FCA allow private citizens, acting as whistleblowers, to bring FCA actions and share in the recovery, on behalf of the United States.

The FCA touches all industries that receive any form of federal government money, including the government contracts industry, which, increasingly, has been the focus of FCA enforcement. This uptick in FCA enforcement is not surprising since its origins are in government contracting; Congress enacted the FCA in 1863 to fight fraud perpetrated by Civil War contractors.[3]

In fiscal year 2013, the federal government recovered $2.9 billion from all investigations involving the FCA across all industries. In cases involving government contractors, the federal government recovered $887 million in settlements and judgments under the FCA representing just over 30 percent of the total recoveries in FY 2013.[4] Fast forward to this year, and the government has continued to pursue FCA actions against government contractors with vigor.

A review of some recent civil FCA enforcement activity in the government contracts space provides a glimpse into the nature of the cases being pursued by the government and whistleblowers under the FCA.

**Science Applications International Corporation**

- Allegations of undisclosed organizational conflicts of interest
- $1.5 million settlement

On Oct. 21, 2014, SAIC, now known as Leidos Holdings Inc., agreed to pay $1.5 million to resolve allegations that it knowingly engaged in conflicting business relationships as a contractor with the U.S. Nuclear Regulatory Commission. The government contended that SAIC, while under contract with the NRC to assist with specific rulemaking efforts, engaged in multiple business relationships with entities that had a financial interest in the outcome of the rulemaking. Such relationships were prohibited by the terms of its agreement with the NRC. The United States further contended that, on

multiple occasions, SAIC falsely certified that no such conflicting business relationships existed.

The settlement in this case followed a jury verdict in favor of the United States and a subsequent appeal to the U.S. Court of Appeals for the District of Columbia Circuit. In December 2010, the D.C. Circuit affirmed the judgment on the breach of contract claim, but reversed and remanded for a new trial on the FCA claims based on an error in the jury instructions.[5] The settlement was reached prior to a second trial on the merits.

**Boeing Company**

- Allegations of improper billing of labor costs
- $23 million settlement

On Oct. 10, 2014, the Boeing Company agreed to pay $23 million to resolve allegations that it submitted false claims in connection with contracts with the U.S. Air Force. The government contended that Boeing improperly charged labor costs in violation of the terms of its maintenance contracts for the repair of the C-17 Globemaster aircraft. The improper charges allegedly included time spent by mechanics at meetings not directly related to the contracts. The four relators will share in the whistleblower award of nearly $4 million.[6]

**DRS Technical Services Inc.**

- Allegations of overbilling of inflated labor costs
- $13.7 million settlement

The DRS Technical Services Inc. settlement also involved allegations of noncompliance with labor obligations. On Oct. 7, 2014, DRS entered into a $13.7 million settlement with the U.S. Department of Justice resolving allegations that it overbilled labor costs and, in furtherance of the purported scheme, submitted false claims to the federal government. More specifically, the DOJ contended that between 2003 and 2012 DRS billed the federal government for work performed by personnel who lacked the job qualifications required under contracts issued by the U.S. Army Communication and Electronics Command and the U.S. Coast Guard. The contracts at issue, which were named Rapid Response or "R2" contracts, were for the purchase of a variety of goods and services to support U.S. forces.[7]

**Analysis**

For fiscal year 2015, the U.S. Department of Defense requested $92.4 billion for procurement.[8] The vast majority of such funding supports contracts between the U.S. government and private-sector defense and other companies. These recent FCA resolutions signal that protecting the integrity of the federal procurement process and preventing fraud and abuse remains a priority, especially as more

general momentum builds for universal defense acquisition reform on Capitol Hill and within the DOD. Given the dollar amounts at issue, aggressive enforcement and increased recoveries in this space should be of no surprise.

The above resolutions are also indicative of the hallmark issues targeted in civil FCA settlements. Two of the three excerpted resolutions — Boeing and DRS — concern improper or inflated billings under government contracts. The SAIC settlement involved allegations of false certifications. Allegations of overbilling and false certifications are among the most frequent in FCA investigations. These October 2014 resolutions suggest not that the government is pursuing a novel enforcement strategy but rather that classic enforcement strategies are being pursued with renewed vigor.

Also noteworthy are the administrative remedies that are increasingly part of any such resolution. Earlier this year, the DOJ leaders announced a "renewed emphasis" on securing nonmonetary remedies — including, corporate integrity agreements, suspensions, and debarments — as part of FCA settlements.[9] Because certain administrative remedies serve to exclude entities and individuals from further contracting or business with the government, these often prove to be more burdensome and cause greater harm to a contractor than civil monetary penalties.

FCA enforcement activity in this space promises to continue throughout 2014 and beyond. Indeed, on Oct. 16, 2014, the DOJ announced that it decided to intervene in a FCA case against another aerospace company, Sikorsky Aircraft Corporation, and two of its subsidiaries. The complaint alleges that Sikorsky overcharged the Navy on an aircraft maintenance contract and violated the FCA. More specifically, the DOJ contends that Sikorsky approved an illegal cost-plus-a-percentage-of-cost subcontract and used the contract to overcharge the Navy.[10]

In light of the foregoing, it would be prudent for government contractors to review — and, where appropriate, bolster — compliance programs in an effort to reduce the risk of potential FCA exposure.

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[1]The False Claims Act is codified at 31 U.S.C. § 3729 et seq.

[2] The qui tam provisions of the FCA allow private citizens, acting as whistleblowers, to bring FCA actions — and share in the recovery — on behalf of the government. The government has a right to intervene and join the action. If the government declines to intervene, the relator can elect to proceed

in the matter. Id.

[3] See http://www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Primer.pdf (last visited Oct. 20, 2014).

[4] See http://www.gibsondunn.com/publications/pages/2013-Year-End-False-Claims-Act-Update.aspx (last visited Oct. 20, 2014).

[5] See http://www.justice.gov/opa/pr/science-applications-international-corporation-agrees-pay-15-million-resolve-alleged-false (last visited Oct. 21, 2014).

[6] See http://www.justice.gov/opa/pr/boeing-pays-23-million-resolve-false-claims-act-allegations (last visited Oct. 20, 2014).

[7] See http://www.justice.gov/opa/pr/defense-contractor-agrees-pay-137-million-settle-allegations-overbilling (last visited Oct. 20, 2014).

[8] See http://www.defense.gov/releases/release.aspx?releaseid=16567 (last visited Nov. 4, 2014).

[9] Andrew Delery, Assistant Attorney General, Statement at the A.B.A. National Institute on Civil False Claims Act and Qui Tam Enforcement (June 5, 2014).

[10] See http://www.fcpablog.com/blog/2014/10/17/doj-joins-fca-suit-against-sikorsky-for-overchaging-the-navy.html# (last visited Oct. 20, 2014).