

Corruption in the public procurement process? Say it ain't so!

Over at DOE's Savannah River site, contractor CB&I AREVA MOX Services LLC (MOX Services) has been in the news recently. And it's not for the ASBCA [decisions](#) that keep going their way. Recently, the Department of Justice

[announced](#)

that it had filed suit against MOX Services and one of its subcontractors, Wise Services, alleging violations of the False Claims Act and the Anti-Kickback Act. Between 2008 and 2016, MOX Services awarded multiple subcontracts to Wise Services. As alleged in the filing, "Wise Services' Senior Site Representative Phillip Thompson paid kickbacks to MOX Services officials with responsibility for the subcontracts [in order] to improperly obtain favorable treatment from MOX Services."

Consequently, the government alleged that "Wise Services falsely claimed reimbursement under its subcontracts with MOX Services for construction materials that did not exist, and that in turn MOX Services knowingly submitted \$6.4 million in claims to NNSA for the fraudulent charges submitted by Wise Services."

Let's unpack those allegations a bit.

The MOX Services' subcontract manager (or whatever they are called) accepted kickbacks from Wise Services.¹ Wise Services submitted invoices for costs incurred under its illegally obtained subcontracts. Some of the costs were never, in fact, incurred. MOX Services paid the invoices anyway, and then billed the NNSA/DOE for the monies it paid to Wise Services.

Let's look at the keyword in the allegations: "knowingly." Did MOX Services "knowingly" invoice NNSA/DOE for fraudulent invoices it paid to Wise Services? The government will say "yes"—because MOX Services' subcontract manager accepted kickbacks and that subcontract manager represented the company. Even though the person preparing the invoice, and also perhaps the person reviewing and certifying the invoice, had no knowledge of the kickbacks, an official company representative did have knowledge. So that's going to be a problem.

Let's look at the notion of inflated prices being invoiced by the subcontractor. In this instance, the government alleged that Wise Services invoiced MOX Services for "construction materials that did not exist" and thus inflated its invoice values. We don't know the basis for that allegation; however, we are fairly sure (as non-lawyers) that it wouldn't matter. A long time ago

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Written by Nick Sanders

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we were involved in a similar matter, where the government alleged the subcontractor inflated its invoices in order to recover the cost of its bribes. At that time, we were told that, when bribes are made or kickbacks are accepted, the government's presumption is that the resulting invoices are always inflated—because otherwise how would the crooks profit from their corrupt payments? We were hired to help rebut that presumption. We were hired to find evidence that the invoices prices billed to this one prime contractor varied from invoice prices billed to all other prime contractors (where there had been no corruption alleged).²

This is a fairly common story that government contractors would do well to think about. When there is a corrupt payment made/accepted between a subcontractor and the contractor's purchasing agent, it is like a domino that keeps on moving throughout the life of the prime contract. As a prime contractor, it's very hard to recover from that corrupt act—especially if your controls never detected it. Prime contractors must work hard to prevent corrupt dealings, and to detect them if/when they happen. It's not really hard to bolster controls; but it does take an investment of time and resources. We strongly suggest that such an investment will more than pay for itself.

In our next story of procurement fraud, we have another tawdry tale of corruption between a prime contractor and a government official, courtesy of [another](#) recent DOJ press release. According to allegations reported in that announcement—

From 2010 through 2018, Dombroski [long-time Government employee at Picatinny Arsenal] and Nayee ["Company A" Division Director, in charge of "Company A's" Picatinny Arsenal branch office] conspired with other federal employees at Picatinny Arsenal and employees of Company A to seek and accept gifts and other items of value, such as Apple products, luxury handbags, Beats headphones, and tickets to a luxury sky box at professional sporting events, valued at \$150,000 to \$250,000, in exchange for government contracts and other favorable assistance for Company A at Picatinny Arsenal.

As per the DOJ press release, "Dombroski ... is charged by complaint with one count of conspiracy to commit wire fraud and four counts of making false statements. Indra Nayee ... is also charged by complaint with one count of conspiracy to commit wire fraud."

No details were provided regarding how this alleged corruption came to light. However, we note that the government contractor was not identified by name; we are guessing that means that "Company A" either discovered the wrongdoing and reported it, or else cooperated with

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government investigators to such an extent that it was thrown a bone that might keep downstream shareholder suits from bothering company executives.

We expect to read a future DOJ press release, announcing that “Company A” has settled allegations that it illegally obtained contracts by disgorging all related profits. Meanwhile, “the count of conspiracy to commit wire fraud carries a maximum penalty of 20 years in prison. The false statement charges each carry a maximum penalty of five years in prison.”

¹ In fact, the DOJ announcement included this tidbit: “On Feb. 27, 2017, Mr. Thompson entered a guilty plea on charges of conspiring to commit theft of government funds.” *Nice plea deal.*

² We did our job and were able to show that the (alleged) crooks—our clients—did not recover their bribes through inflated pricing to the prime contractor. To this day, I’m not sure what happened after we turned in our report to defense counsel. I’m happy to be rid of those clients.