

Ask any government contract accounting or compliance practitioner about the riskiest compliance environments, and we bet you'll hear about those companies that are mostly commercial, but which have a small percentage of sales to the Federal government. In those environments, we frequently hear complaints about burdensome rules and regulations—"the tail wagging the dog"—and how the government refuses to accept the efficiencies of commercial practices and instead imposes bureaucratic and non-value-added controls. (We also hear complaints about intrusive and inept auditors, but those complaints are universal.)

It's difficult to invest in appropriate internal controls at such companies, because management believes that the costs of such controls will erode their competitive position in the commercial marketplace. We have a term to describe such companies. We call them "penny-wise and pound-foolish".

Such companies see little need to "turn square corners" in their dealings with the Federal government and they think corner-cutting is smart business. Such companies would rather pay fines and penalties instead of investing in controls. After all, nobody gets a bonus for adding more bureaucracy; yet a crisis successfully managed can make one a hero. (Ignore the fact that the crisis should have been avoided in the first place.)

Why are so many of these companies located in the technology marketplace? Here are a couple of recent examples but—believe us—we could have Googled quite a few more if we'd had the mind to. Also note that we have reported similar stories on certain technology companies here on this site. Here is some new news on the topic of technology fraud, courtesy of the Society of Corporate Compliance and Ethics ([SCCE](#)).

Hewlett-Packard Settles

Here's a link to a story at the [Houston Chronicle](#) , reporting that "Hewlett-Packard will pay more than \$16 million to settle a lawsuit alleging they violated competitive bidding rules with the Houston and Dallas school districts to win technology contracts." As the result of an investigation into local business practices, a False Claim Act *qui tam* lawsuit was filed. The Chronicle reported—

The investigation accused Houston businessman Frankie Wong of setting up a group of

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Written by Nick Sanders

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companies, including Hewlett-Packard, that came to be known as 'The Consortium.' They applied for technology contracts with both HISD and the Dallas Independent School District.

Because of their close connection with district officials, thanks to the suspect gratuities, the bid requirements were worded in such a way that only they could satisfy them, officials said.

Wong — who was also involved in the DISD deal - was found guilty of bribery in July 2008 and sentenced to more than 10 years in prison.

HISD officials announced in March they had signed an \$850,000 settlement with the federal government for their role in the case. It allowed them to receive nearly \$90 million in technology funding that they had lost because of the investigation.

They also agreed to hire a compliance officer to monitor the money HISD receives through the E-rate program.

Oracle Dances with Dept. of Justice

[This link](#) takes you to a June, 2010, story at ComputerWorld.com discussing the U.S. Government's False Claims Act suit against Oracle Corporation for violations of pricing and discount practices. As the article reported that the whistleblower alleged that—

Oracle was finding ways around the GSA restrictions in order to give commercial customers even deeper discounts, according to the complaints. One alleged practice saw Oracle 'selling to a reseller at a deep discount ... and having the reseller sell the product to the end user at a price below the written maximum allowable discounts,' [the complaint] states.

This more recent [article](#) discusses Oracle's attempts to get the suit dismissed. The article reported—

In a strongly worded motion filed in late September, Oracle argued the government's allegations

should be dismissed partly on grounds they are too old and exceed the statute of limitations.

The government's case is 'a hodgepodge of inadequately pled, inconsistent, and, in many cases, untimely theories of liability that no set of facts can rescue,' Oracle's filing reads in part. Its 'most obvious problem is timeliness,' the motion adds. 'One of its primary allegations is that Oracle made false disclosures relating to discounting practices to the General Services Administration ... during 1997 contract negotiations. But this allegation ignores a 1998 pre-award audit of Oracle's discounting practices, which was distributed to a host of responsible Government officials.'

'Rather than taking action then, the Government sat on its hands, and in the subsequent thirteen years, witnesses have died, memories have faded and documents have disappeared -- the very reasons that statutes of limitations exist,' the motion states.

Motions for summary judgment are *de rigueur* in such litigation. Motions and counter-motions and replies and *sur* replies are the Kabuki dance of modern jurisprudence. In the ritual dance, Oracle appears to have scored a few points with the judge, who dismissed—

... any claims based upon the 1997 disclosures; (2) any claims alleging common law fraud occurring before May 29, 2004; and (3) any claims alleging False Claims Act violations, breach of contract, or quasi-contract violations occurring before May 29, 2001.

The ComputerWorld article reported that—

... by Nov. 16 the government must file an amended complaint 'stating only common law fraud claims based upon conduct occurring on or after May 29, 2004, along with any False Claims Act and breach of contract or quasi-contract claims based upon conduct occurring on or after May 29, 2001.'

Okay, we don't want to belabor the point—but notice that the one thing these two very large technology companies have in common is that they are not known for being government

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contractors. They are known for their commercial sales and, indeed, sales to the Federal government do not comprise a large percentage of either company's sales.

Ask any government contract accounting or compliance practitioner about the riskiest compliance environments, and we bet you'll hear about large commercial technology companies. You know: the entities that prize employee intelligence and practice sharp business dealings. Like Hewlett-Packard and Oracle.