

Global Fraud Resolution

Written by Nick Sanders
Wednesday, 29 December 2021 08:16 -

With not much happening in terms of regulatory changes or DCAA audit guidance updates—and with *nothing* happening at the CAS Board—we have scaled back the frequency of blog articles. When we do post, it is likely to be about a Department of Justice settlement. Even then, we try to restrict those articles to something that may be informative, something that may impart a lesson learned to our readers.

Today, as we wind up 2021, we have another DoJ settlement and (hopefully) another lesson for our readers.

On December 22, 2012, the Department of Justice [announced](#) that it had reached a “global resolution” of both civil and criminal matters with the contractor, Balfour Beatty Communities, LLC (BBC), an entity that was described as “one of the largest providers of privatized military housing to the U.S. Armed Forces.” (BBC operated 55 military housing communities for three different services, according to the DoJ press release.) The resolution involved BBC pleading guilty to one count of major fraud against the United States (18 U.S.C. § 1031)(a)(1)). In addition, BBC agreed to pay “over \$33.6 million in criminal fines and over \$31.8 million in restitution to the U.S. military, serve three years of probation, and engage an independent compliance monitor for a period of three years.”

But wait. There’s more. “Separately, BBC also entered into a False Claims Act settlement with the United States to resolve its civil liability for \$35.2 million. The amounts paid under the civil settlement will be credited against the amounts owed under BBC’s criminal plea.”

So basically, almost \$66 million. Not a small settlement, not at all.

What had BBC done to warrant such a significant payment?

According to the press release, BBC employees falsely claimed that the company had met contractual performance objectives in order to obtain quarterly (or semi-annual) performance incentive fees. The relevant contractual objectives related to timely performance of maintenance services and resident satisfaction with BBC’s management. “BBC employees altered or manipulated data in property management software and destroyed and falsified resident

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comment cards to falsely inflate these metrics and, ultimately, to fraudulently induce the service branches to pay performance incentive fees which BBC had not earned.”

In addition, “the military service branches were provided an inaccurate assessment of the state of BBC’s military housing communities and were unable to assess, and potentially correct, BBC’s performance.”

The size of the fine was affected by a number of factors, “including the nature and seriousness of the offense, the pervasiveness of the misconduct among BBC’s employees and at multiple military installations, and the state of BBC’s compliance program and the progress of its remediation, including the fact that BBC’s compliance program and internal controls [had] not been fully implemented or tested to demonstrate that they would prevent and detect similar misconduct in the future.”

Finally, the announcement stated that two BBC employees had been individually charged with offenses related to the scheme, and both had pleaded guilty earlier this year.

What lessons can be learned from this?

First, many contractors have award-fee contracts or incentive-fee contracts that require a contractor’s self-assessment. Other contracts make the self-assessment optional. In either case, contractors must be clear that their self-assessments are legal documents, subject (at a minimum) to the False Statements Act. And, as this case clearly shows, false statements (or documents) may lead to allegations of violations of the False Claims Act (or the Major Fraud Act). Therefore, contractors must take care to ensure that their self-assessments are factually correct to the best of their ability. There is a natural, human, tendency to puffery in such things—but that tendency must be tempered with the knowledge that an intent to deceive could have catastrophic consequences for the company that far exceed the award or incentive fees earned. Those consequences could (and, in this case, did) extend to individual employees.

Second, note that, once again, a contractor was heavily fined for an inadequate compliance program and associated internal controls. Contractors who have accepted contracts that contain FAR clause 52.213-13 (“Contractor Code of Business Ethics and Conduct”) are urged to read it closely and to take its requirements seriously. The money you save by implementing a robust

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compliance program and associated internal controls may be sufficient to repay your investment, several times over.

Link to DoJ's charges is [here](#) .

Link to BBC's plea agreement is [right here](#) .

This is likely the last 2021 blog article. We wish for you peace and prosperity in 2022!