



Ethics and Legislative Developments 2010:



New Era, New Rules
Hawaii NCMA Chapter Luncheon
July 13, 2010

Vision, Integrity, and Results



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- See www.ecc.net



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Project Highlight



6. Kirkuk Military Base

Fast-Track Design-Build Services of an Iraqi Military Base

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What does ECC do?

ECC delivers construction, design-build, engineering, environmental remediation, and munitions response solutions to complex challenges facing Government

Latest Headlines at ECC

[ECC Wins \\$16M USACE AED Contract for Mine and UXO ... 01/21/2010](#)

[Upgrade Mechanical Systems, Guam - \\$6.1M](#)

Opportunities at ECC

ECC believes diversity is key to our competitive advantage and values the diversity among all of our employees. With offices all over the world, ECC is a

Local intranet

🏠 | 🔍 100%

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Photovoltaic System Construction and Installation, Buildings 1050 and 2155, Hickam AFB, Hawaii

Time-Critical Removal Action of Hazardous Waste, Former Fire Fighting Training Facility, Richardson GSA, Pearl Harbor, Hawaii





MPPEH Inspection, Certification, Shipping, and Disposal, Kaho'olawe, Hawaii



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**Dorm Renovation, Palau Hall Dorm,
Andersen AFB, Guam, \$7.8M**



**\$9.7M; 8,500 Tons of PCB-Contaminated
Soil Remediated, Naval Base Guam**



Water Distribution System Renovation and Upgrade, Andersen AFB, Guam

8,300 meters of pipeline replaced



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History 101

- “We stand on the precipice of the largest infusion of Government funds over the shortest period of time in our Nation’s history. History teaches us that an outlay of so much money in such a short period of time will inevitably attract those seeking to profit criminally.”
 - » Special Inspector General Neil M. Barofsky (SIGTARP)



A Short History Lesson

- Following every major cycle of increased government spending, there follows revelations of govt. contract fraud
 - Selling faulty equipment
 - Billing for equipment not received
 - Selling stolen goods to the govt
 - Overbilling for meals
 - Providing rotten food



American Civil War vs the War in Iraq: Then vs Now

Then	Now
Decrepit (and stolen) horses and mules	Faulty helicopters, defective Humvees
Faulty ammunition and rifles	Faulty (and stolen) ammunition and bullet proof vests
Rancid rations and provisions	Overcharging for meals
Kickbacks in procurement and acquisition*	Kickbacks in procurement and acquisition



Vision, Integrity



History 101

- Then there follows new legislation aimed at preventing government contract fraud
 - False Claims Act
 - Qui Tam rules
 - Truth in Negotiations Act
 - Updates and increased penalties tacked onto existing laws
 - Acts designed to close loopholes in existing laws, increase oversight, punishment



Which brings us to today....

- Numerous new laws proposed over past few years
 - Increased oversight
 - New IGs - New Review processes
 - Decreased opportunity for abuse
 - Laws to reduce sole source and cost type work
 - E.g. Fiscal 2010 Defense Authorization Act Section 811 – requires written CO justifications – which must be approved by agency supervisor and made available to public - for sole source > \$20mm
 - More transparency
 - Federal Contractor database
 - More reporting to congress about awards
 - More avenues for investigation, punishment
 - E.g. **S.526** - Lieutenant Colonel Dominic "Rocky" Baragona Justice for American Heroes Harmed by Contractors Act
 - Expansion of MEJA to contractors
 - What are the new laws?



Name Your Legislation: Pick One From Each Column

• Column A

- Accountability
- Fraud Prevention
- Reporting
- Emergency
- Honesty
- Leadership

• Column B

- In Contracting
- In Iraq and/or Afghanistan
- or Guam for that matter
- to Congress
- With Stimulus money

• Column C

- Prevention Act
- Assistance Act
- Disaster Aid Act
- Fraud Review Act
- Improvement Act
- Relief Act



Recent Legislative Developments

- Contractor Codes of Business Ethics and Conduct:
 - FERA
 - FAPIIS
 - Public Online Information Act (proposed)
 - Federal Funding Accountability and Transparency Act of 2006 (and as amended)
 - WARA provision for OCIs
 - Focus on OCIs generally
 - OSHAs new focus
 - DCAA current state



Contractor Codes of Business Ethics and Conduct - FAR 52.203-13

- Contractors (and subcontractors) must have a written code of business ethics and conduct.
 - Over \$5 million

Penalties

- Violation of civil false claims act
- Suspension and debarment
 - Includes crimes as well as “significant overpayments” language
- 4 requirements as follows:



Contractor Codes of Business Ethics and Conduct - FAR 52.203-13

- Have a code of conduct
- Post hotline poster(s)
- Disclose wrongdoing
- Full cooperation with the government



3. Disclose wrongdoing

- Standard:
 - whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor has committed a violation of federal criminal law in connection with the award or performance of any government contract performed by a contractor or a subcontract thereunder.
- To whom must this be disclosed?
 - OIG and CO
 - Agencies even have on-line disclosure forms



Fraud Enforcement & Recovery Act (FERA)

- Enhances criminal enforcement of fraud laws, esp. for financial institutions, mortgage, securities fraud, etc. (May 2009)
 - Impact to government contractors: Restates False Claims Act to “fix” the Allison Engine issue on presentment



Federal Awardee Performance and Integrity Information System (FAPIIS)

- Effective April 22 2010
- Requires Contracting Officers to review FAPIIS for contractor responsibility
- Not available to general public
- Suspension debarment info, past non-responsibility determinations, self reported criminal issues, civil liabilities and adverse administrative actions



Federal Awardee Performance and Integrity Information System

- COs must review FAPIIS
- Must document in the acquisition file what they reviewed and how it affected their source determination decision
- Notify the agency suspension/debarment official if the info seems appropriate for further consideration
- Must give contractor an opportunity to respond to any concerns
 - Contractors also have redress rights for new info posted in FAPIIS



Federal Awardee Performance and Integrity Information System

- Contractors must certify that all info in FAPIIS is accurate and complete, and must disclose any*:
 - Criminal convictions
 - Civil or administrative determinations of fault or liability in excess of \$5000
 - Settlements that could have led to a finding of fault or liability in excess of \$5000
- Contractors to be notified when new info is posted in FAPIIS
 - * Related to the performance of a government contract



Federal Awardee Performance and Integrity Information System

- May 9, 2010
 - Bi-partisan bill introduced to expand access
 - Federal Contracting Oversight and Reform Act of 2010 (Senate)
 - Extend the length of time information will remain in FAPIIS from five to ten years;
 - Expand the types of records and information contained in FAPIIS; and
 - Increase access to the FAPIIS database within the government.



Federal Awardee Performance and Integrity Information System

- May 27, 2010, (H.R. 4899)
- Bill would require the General Services Administration, which maintains FAPIIS, to "post all such information, excluding past performance reviews, on a publicly available Internet website."



Taking things a step further...

- Public Online Information Act (proposed)
- May 13 Federal register proposed rule would post “all contracts” online
- Many issues re administration of such a rule:
 - Efficiency
 - Consistency
 - Privacy
 - Compliance with FOIA
- Public comments due July 12



Federal Funding Accountability and Transparency Act (as amended)

- FAC 2005-044 amends FAR to:
 - Require OMB to establish a free, public website containing ‘full disclosure of all federal contract award information.’
 - Contractors must report executive compensation
 - Report first tier subcontracts over \$25,000
 - Including COTS
 - Comments due Sept 7 2010



Conflicts of Interest

- FAR Council published new proposed rule on personal conflicts of interest for contractor employees performing employee functions (See 74 Fed. Reg. 58,584 (Nov. 13, 2009))
 - Particularly for contractor employees involved in acquisition functions
 - Have procedures in place to identify and prevent COI



Common Conflicts of Interest

- Personal or Organizational
 - Designer on the team that bids the work
 - CO. has other unfair advantage or inherent conflict (e.g. also serving as Title II or GITA contractor)
 - Govt employees working for contractor may have had unfair competitive advantage
 - Govt employee involved in acquisition of contract may not work for winning contractor
 - Other prohibitions
 - Complete bar
 - Cooling off period
 - No direct representation



Refresher Topic: Conflicts of Interest

- Best way to avoid issues is early identification
 - Conflicts exist, but they can be minimized
 - Segregation and disclosure
 - Early proper disclosure to client
- Rules are complex and very case specific
 - so do not try to figure it out on your own
 - get legal involved for a thorough review



The New (and improved?) OSHA

- OSHA's top officials have announced a return to enforcement
- More resources
- Less focus on partnership, more focus on penalties and enforcement actions
- We are definitely seeing a spike in the number of large, public fines and OSHA violations
- July 7, 2010 – OSHA unveils www.whistleblowers.gov

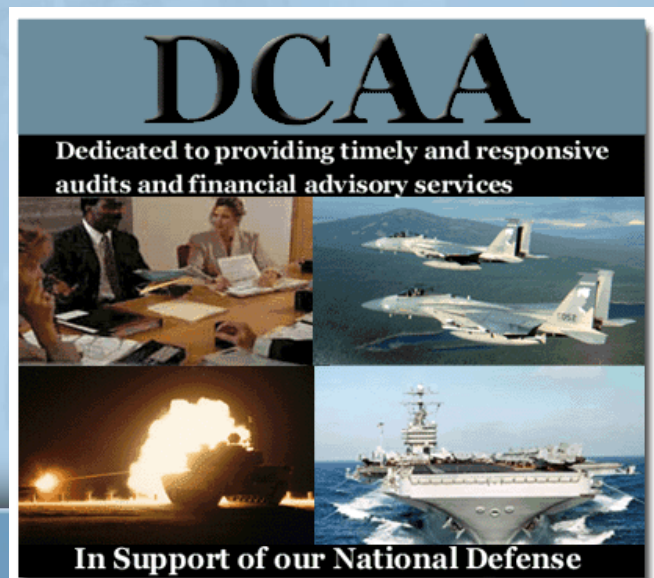
**Job Safety
and Health**
It's the law!

OSHA
Occupational Safety
and Health Administration
U.S. Department of Labor



DCAA

- Criticized robustly by GAO in multiple audit reports
- Led to a change in leadership on national and regional levels
- Change in focus
- New audit guidance
- What to expect going forward





Current Events in Ethics

- Alternately titled: Things Not To Do





Current Ethics Events



- Who am I?

“I was recently arrested in Afghanistan for conspiracy to commit bribery and bribery. I allegedly offered my government Contracting Officer 1.5% of all invoices paid to me, and actually wired \$16,789 to him in the US.



Dinorah Cobos, a US Citizen living in Dubai



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Dinorah Cobos, Epilogue



- The “government official” turned out to be Cobos’s sister, 61 yr old Gloria Martinez
- 26 yr career in USACE Contracting
- Funneled \$74 million to these companies
- Received \$475k in cash, Rolexes, jewelry, living expenses and housing in Dubai, etc.
- Martinez pled guilty Aug 2009; faces prison time and already forfeited much of the money and items she received

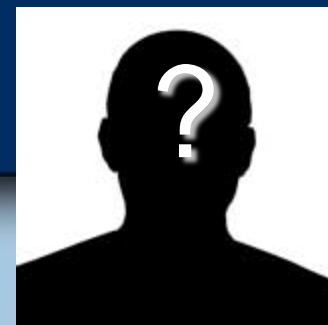


Take Away

- Bribery and kickbacks are not uncommon news stories – but this was one of the first major cases in Afghanistan, and involved local arrest and extradition. The sister-twist was announced later.
- Look for more in Afghanistan this year as DOJ assigns more of its resources over to Govt. contractor fraud cases.



Who are we?



- My brother and I were just indicted (July 2010) in Honolulu for bribing soldiers from Schofield for work in Afghanistan in 2004. We were previously indicted for bribing others by a Chicago grand jury in 2008.



Assad Ramin and Tahir Ramin, of AZ Corp

- The two servicemen from Chicago (P Boyd, R. Moore) have already pled guilty and agreed to testify against the Ramins.
- Two other servicemen from Schofield (C Finch, G Canteen) are facing conspiracy and bribery charges.
- Ramin's atty. has complained that the Hawaii indictment was filed to pressure other defendants in Chicago to plead guilty.
- Ramin's are naturalized US citizens who fled Afghanistan in 1979 during the Soviet occupation.
- Take away?



Current Ethics Events



- Who am I?

I former Postal service worker, I received \$50,000 in bribes over a 4 year period. Most of these were relatively small dollar, averaging \$5000, with the largest payment received being \$7200.

The person who paid me the bribes, Jeffrey Baker, faces up to three years in prison, and up to \$250,000 in fines.



I am Ashvin Shah

- Baker's punishment is relatively mild, in proportion to the size of the fraud committed.
- 12 hours after Shah was interviewed by law enforcement officials, he committed suicide.



Take Away

- Bribery and kickback rules, generally
- Multiple suicides reported in conjunction with fraud investigations teach us that the consequences frequently go far beyond jail time and fines.



Who Am I?

- A former civilian DOD employee, I was just sentenced to 110 months in prison, and ordered to pay \$1.6 million in fines, plus \$816,485 to the IRS.

I was an Air Force contracting officer in Kuwait and failed to report \$2.4 million in income tax from 2003-2007.



I am Tijani Ahmed Saani

- I also admitted to having foreign bank accounts in Ghana, Switzerland, the Netherlands, Jersey Channel Islands, and the UK to conceal unreported income and I wired over \$3.5 million between these accounts.
- Take away: what was the underlying offense(s)?



DOJ's Many Tools

- Bribery
- Conspiracy to commit bribery
- Kickbacks
- Conspiracy to solicit or receive kickbacks
- Failing to report gifts
- Obstruction of justice
- witness tampering
- Evidence tampering
- obstruction of audit
- Tax evasion
- RICO
- And many more.....

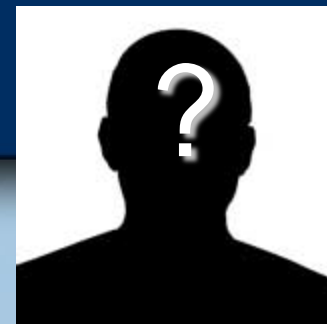


Take Away

- If the ethics at the top are not strong, it is difficult to expect anything radically different from the rest of the company
- Stanley also pled to receiving \$11 million in kickbacks



Current Ethics Events



- Who am I?

“As a NASA contractor working on the Space Shuttle Endeavor, I delivered a faulty part to NASA. I welded a part back together that is used to secure cargo to the payload and tried to cover it up, because I knew NASA wouldn't accept the part otherwise. I face 10 years in prison and a \$250,000 fine.”



**Richard J. Harmon, employee (former) of
Spacehab Inc.**



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Take Away

- Not all fraud relates to bribes and kickbacks.
- Quality, safety, specifications, inspections and testing are all areas that are rife with possible fraud opportunities.
- Ensure full implementation of HS/QC plans for you and your subcontractors.



Who am I?

- A former White House liaison and NASA official, I directed earmarks to a "consulting client" - then based on his success at getting them funding, asked them for a raise.
- I pled guilty in August 2009 to violating 18 U.S.C. § 208 (conflicts of interest) and two counts of making False Statements, in violation of 18 U.S.C. § 1001



Courtney Stadd

- Judge indicated that the sentence would “send a message” to other government officials. Stadd received three years probation, six months electronic monitoring and a \$2500 fine.
- Heightened scrutiny on conflicts of interest, generally.





Epilogue – more trouble for NASA

- In January 2010 NASA announced that evidence of cocaine was found at the Space Shuttle hangar, three weeks prior to the Shuttle launch.
- Drug Free Workplace Act Refresher



Who are we?

- In one of the highest profile cases of overcharging to come to light in recent years, we bilked the Pentagon out of over \$20 million dollars by inflating shipping invoices. In one case we shipped two 19 cent washers and billed \$998,000 – and got paid for it.



Charlene Corley and Darlene Wooten (Sisters)

- Charlene Corley sentenced to 6 ½ years, March 2009
- Darlene Wooten committed suicide before trial



- Take away? Consequences of crime can be permanent



Who am I?

- In a scheme to stage an accident by crashing my truck to commit insurance fraud, I slipped, hit my head on the pavement, and was killed.



I am Paul W. Guillory

- An accomplice who was following him has been named in the investigation, but not named publicly.
- Victim was 26 years old, and a new father
- Insurance fraud costs businesses, taxpayers, \$150 Billion annually – about \$1000 per family in increased premiums and added costs to consumer goods.



Who are we?

- At the Federal Creosote Superfund site in NJ, we subcontractors have pled guilty to a variety of charges including kickbacks, money laundering, SEC obstruction, and conspiracy. Some of the money was used for “lavish cruises for senior officials of the prime contractor” as well as electronics, entertainment tickets, and pharmaceuticals.



We are the following:

- Robert Griffiths, Bennet Environmental Inc
- Zul Tejpar, a former BEI executive
- John Drimak (owner) and JMJ Environmental
- Norman Stoerr, Contract Administrator for the prime contractor
- Victor Boski, and National Industrial Services LLC
- Christopher Tranchina, Sewell, NJ based company (unnamed)
- Frederick Landgraber, Co-owner Martinsville NJ based landscaping co, (unnamed)



Take Away

- Pervasive behavior
- Apparently went all the way to the top
- Impacted a wide variety of subs in different areas
- Stoerr was apparently employed by the prime for over 20+ years
- 7+ different companies now implicated, and investigation is “ongoing”



Who are we?

- We were found guilty of wire fraud, mail fraud and conflicts of interest violations in connection with Fish & Wildlife Contracts at Hanalei National Wildlife Refuge.



Kevyn Paik, James Alan Duarte

- Sentencing scheduled for Aug 23
- Pair facing maximum of 20 years imprisonment and \$250,000 in fines
- Take away: equipment operators; not white collar executives
- Not a million dollar enterprise





Who am I?

- I was indicted January 2010, along with 21 other individuals, for violations of the US Foreign Corrupt Practices Act, in conjunction with foreign weapons sales
- I bribed two undercover FBI agents who posed as representatives of an unnamed African country's minister of defense



Amaro Goncalves

- Smith & Wesson Vice President for Sales



Smith & Wesson



Takeaway

- US FCPA – statistics and stories; DOJ not just pursuing multi-million dollar settlements
- Warning signs
 - See National Fraud index from Transparency International
- Tone from the Top
 - VP of Smith and Wesson joined by chief executive of Protective Products of America Inc, R. Patrick Caldwell, (they immediately filed for bankruptcy).



Transparency International Global Corruption Perception Index

- 1 New Zealand
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- 180 Somalia



Who are we?

- “We are three companies who agreed to pay a cumulative total of over \$2.4 Billion to the British, German and US Authorities to settle USFCPA charges. We were charged with bribing officials in Bangladesh, Iraq and Venezuela, among others, over a 10 year period. Sometimes we even did it old school, with suitcases full of cash. One of our CEOs even personally negotiated bribes with Nigerian officials totaling \$182 million.”



Siemens AG, KBR, BAE Systems



BAE SYSTEMS

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- Our sponsors did what?



Interesting Epilogue

- Siemens and KBR both paid big fines (\$1.4 billion, \$579 million respectively)
- Settlement documents praised Siemens for its extensive cooperation
 - Fine was only 1/3 of the suggested minimum under the federal sentencing guidelines
- No such complimentary language in the KBR settlement
 - Their fine was higher than the suggested minimum
 - Largest fine ever for a US based corporation
- Take away: Cooperation pays off.



Questions?



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