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FLUOR DANIEL AGREES TO PAY $8.2 MILLION TO RESOLVE CHARGES THAT IT OVERBILLED ON GOVERNMENT CONTRACTS

Fluor Daniel, Inc., one of the nation’s largest engineering and construction companies, has agreed to pay the United States $8.2 million to settle a “whistleblower” lawsuit that accused it of improperly charging commercial overhead costs to its federal contracts, United States Attorney John S. Gordon announced today.

The settlement resolves a lawsuit filed in 1997 under the qui tam provisions of the False Claims Act. The settlement agreement was signed today by lawyers in the United States Attorney’s Office and by attorneys for Fluor Daniel.

Patrick C. Hoefer, Fluor Daniel’s former director of Government Financial Compliance, filed the whistleblower lawsuit, accusing Fluor Daniel of “knowingly and deliberately” submitting millions of dollars in false invoices to the Government during Fluor Daniel's 1995 and 1996 fiscal years.

The Government intervened in the case filed by Hoefer and took over prosecution of the lawsuit in 1999. In settling the lawsuit, Fluor Daniel – which is now known as Fluor Enterprises, Inc. and is a subsidiary of the Aliso Viejo-based Fluor Corporation – denies any wrongdoing.

In the settlement agreement, Fluor Daniel agrees to pay the $8.2 million settlement within eight days. Every year, Fluor Daniel performs millions of dollars of environmental remediation work for the Department of Energy, as well as engineering and construction projects for numerous other federal agencies. During 1995 and 1996, Fluor Daniel charged millions of dollars of commercial costs to its federal cost reimbursement contracts, and then certified to the United States that the charges were proper, according to the government’s complaint. But, according to the lawsuit, the corporation knew that the charges violated the Federal Acquisition Regulation (FAR) and the federal Cost Accounting Standards (CAS).

The allegedly improper costs consisted of overhead attributable to the operations of a Fluor Daniel division called Technology Operating Company (TOC). Founded in mid-1994, TOC’s primary mission was to find and evaluate new technologies for use mainly in Fluor Daniel’s commercial work. If TOC found a technology that appeared to be potentially profitable, Fluor Daniel was supposed to acquire the right to use it or invest in it. TOC ultimately failed, but during its existence from 1994 through early-1997 it incurred millions of dollars of overhead costs.

Fluor was obliged by FAR, CAS and the terms of its federal contracts to distribute TOC’s overhead costs equitably among those contracts that benefitted from them. According to the lawsuit, TOC’s operations and overhead supported Fluor Daniel’s business operations as whole, which at the time were 90 percent to 95 percent commercial, and only about 5 percent to 10 percent federal. Fluor Daniel nevertheless charged the vast bulk of TOC’s overhead solely to its federal contracts, allegedly with knowledge that the charges were excessive and violated the law.

As part of the settlement, the parties will ask United States District Judge Gary L. Taylor to dismiss the qui tam lawsuit, United States of America, ex rel Patrick C. Hoefer v. Fluor Daniel, Inc., SA CV 97-1008-GLT.
Mr. Hoefer will receive $1.8 million – or approximately 22 percent of the settlement amount – plus $300,000 in attorneys’ fees that will be paid by Fluor Daniel in addition to the $8.2 million. The Government investigative and litigation team included agents and auditors from the Department of Energy’s Office of Inspector General, the Defense Criminal Investigative Service, the Army Criminal Investigative Command, the Department of Transportation’s Office of Inspector General, and the Defense Contract Audit Agency.