

Actually It's About Ethics in Aluminum Production

Written by Nick Sanders
Tuesday, 24 April 2018 00:00

Most readers won't get the humor in the headline; and that's okay. (If you feel a burning need to understand the joke, go to the "Know Your Meme" website.)

Actually this article isn't about humor; it's about mandatory contractor disclosures made pursuant to the requirements of the FAR contract clause 52.203-13. As you may know (because we've spoken on the subject), the majority of contractor disclosures submitted pursuant to that clause are related to timekeeping and labor charging irregularities. (In GFY 2017, 83% of all contractor disclosures made to the DoD OIG were related to timekeeping issues.)

The contractor disclosure statistics are counter-intuitive and perhaps not what the promulgators of the rule intended in 2008, when the mandatory disclosure regime replaced the previous voluntary disclosure regime. At the time, "The DOJ expressed frustration that Defense Department contractors were not keeping pace with other industries in terms of self-governance." ([Link](#) to 2009 Crowell & Moring article.) Ironically, the other industries with which the defense contractors were not keeping up, in terms of self-governance and transparent disclosure, included both the banking and securities industries. (Why is that ironic? Think about the timing.) The promulgators of the new disclosure rules were convinced that defense contractors were hiding something and only a mandatory disclosure rule would compel them to report it. The focus was on violations of Federal criminal law "involving fraud, conflict of interest, bribery, or gratuity." Certainly, nobody would have thought that the big contractor secret was that personnel weren't properly recording labor charges.

Actually this article isn't about the mandatory disclosure rule; it's about false product certifications. You know, the kind of stuff that the contract clause was intended to force contractors to disclose. Specifically, this article is about allegedly false test certifications at an aluminum extrusion plant in Portland, Oregon. More specifically, it's about an allegation that the former production manager at that plant had falsified "tensile test results on hundreds of occasions, which were typed onto test certificates provided to the manufacturing facility's customers." Those customers, according to the [indictment](#), included both NASA and the Missile Defense Agency.

Even more specifically, the Department of Justice filed a major fraud indictment against Dennis Merkel, 71, of Portland, Oregon.

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“What is aluminum extrusion?” you may be asking. We found a website that stated “An aluminum extrusion is produced by pushing heated metal through a press to produce a desired form or shape. Typical applications for extruded products include window and door frames, store fronts, auto body frames, solar panel mounting systems, and heating, ventilation and air conditioning (HVAC).” In addition, the DoJ press release (link in previous paragraph) stated that “Aluminum extrusions are manufactured for a variety of applications, including aeronautic uses such as rockets and military hardware.”

According to that DoJ press release—

There are industry-set specifications for measuring the mechanical properties of extrusions, which are determined by conducting a tensile test. Merkel allegedly sent and caused to be sent testing certifications containing falsified mechanical properties test results in connection with government contracts for NASA and the Missile Defense Agency. The indictment alleges that Merkel and others carried out the scheme to conceal failing tensile test results, increase profits and productivity, and obtain bonuses, which were calculated in part based on a production metric.

Merkel was the production manager at the Portland area contractor and the indictment alleges that he falsified the aluminum test results from May 1996 to December 2006. That's a ten-year duration. But the alleged scheme ended more than ten years ago. The press release did not state why the government waited more than a decade to file its indictment.

Actually this article isn't about whether the government can reach back 10 years when the statute's language itself says the statute of limitations for major fraud against the United States is “7 years after the offense is committed, plus any additional time otherwise allowed by law.” (Perhaps the DoJ thinks it has found the “additional time” noted in the statute.)

What is this article about? Actually we're not sure! Perhaps it's about the kind of (alleged) fraud that the contractor mandatory disclosure rule was intended to force contractors to disclose. If so, that rule didn't work so well in this case, since it took more than a decade for the (alleged) wrongdoing to come to light.

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