

## Product Substitution is Bad Business

Written by Nick Sanders  
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Last year we [reported](#) about fraudulent quality testing that led to substandard steel castings being supplied to naval construction. That was an expensive lesson for the company that employed the Director of Metallurgy who falsified the test results.

More recently, an environmental laboratory analyst was sentenced to two years of probation and ordered to pay a \$2,500 fine for falsifying laboratory test results, according to [this](#) Dept. of Justice press release. According to the DOJ, the analyst “failed to properly calibrate and tune the quality control instruments, which was the foundation of the quality control process. This failure resulted in unreliable measurements of pollutants and hazardous substances, and therefore invalidated the testing process.”

That’s not good, and we suspect the laboratory that employed the analyst may have paid some expensive attorneys to make sure it was the analyst who was sentenced, and not the laboratory executives.

These are examples of product substitution fraud, which occurs when a contractor supplies nonconforming materials to the government. Most government contracts contain specifications that define what constitutes acceptable materials (and the quality assurance steps to ensure the materials meet spec). When a contractor falsifies lab results or other quality assurance report and, as a result, the government receives nonconforming materials (or materials that cannot be objectively determined to be conforming because of falsified tests), then that is product substitution. The “fraud” part speaks to intent.

Those two stories about are not good, but those aren’t today’s stories.

Today we want to talk about Djibouti.

Djibouti is in Africa, which makes it the purview of the Africa Strike Force, an initiative out of the Dept. of Justice’s [Southern District of California](#). The Africa Strike Force was “developed to combat fraud and corruption as the United States expends resources across Africa,” according to the Dept. of Justice. The Strike Force’s first [indictment](#)

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was issued in October, 2020; it contained 98 counts of conspiracy, wire fraud, and aggravated identity theft. The CEO of the contractor was arrested for and charged with (among other things): “submitted fraudulent quality control plans with résumés of fictitious employees; fabricated quality control checklists, certifying quality control work that was never performed; fraudulent concrete strength test results; and fraudulent claims for construction that was never performed or that did not adhere to specification.” That’s not good.

But that massive October, 2020, indictment is not today’s story.

Today’s story concerns another African contractor, another target of the Africa Strike Force, that settled its fraud allegations by agreeing that it “faked testing results and submitted a series of false documents and false claims to the United States as part of a scheme to defraud the United States in the sale of substandard concrete used to construct U.S. Navy airfields in Djibouti.” Link to the press release: [here](#) . The contractor in question was a subsidiary of a French civil engineering company.

According to the press release, the contractor (Colas Djibouti) “created fictitious testing results, made fraudulent representations regarding the concrete’s composition and characteristics, and knowingly provided concrete to the United States that did not comply with the specifications.” *Yeah*, that’s not good. You’ll notice that the “knowingly” part in that sentence introduces the fraud aspects.

The press released opined “As a result of this criminal conduct, Colas Djibouti ultimately supplied substandard concrete to the Department of Navy in Djibouti that could promote early cracking, surface defects, and corrosion of embedded steel, and thus significantly impair the concrete’s long-term durability.”

Part of the criminal conduct included falsifying water testing: “in response to a request for an analysis of the water used in the concrete mix, Colas Djibouti provided an analysis for a store-bought bottle of drinking water.”

To settle the criminal charges, Colas Djibouti agreed to “forfeit \$8 million, pay another \$2,042,002 to the Department of Navy in restitution, and pay a monetary penalty of \$2.5

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million.” That’s \$12.54 million.

But in order to settle the civil charges, the company also agreed to pay another \$1.858 million, bringing the total to *\$14.4 million*.

As the headline says, product substitution is bad business.