

## Shoddy Property Record-Keeping Leads to False Claims Allegations

Written by Nick Sanders

Monday, 14 March 2011 00:00

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Kellogg-Brown & Root Services (KBR) is the poster child for those who claim that government contractors are evil war-profiteers engaged in fraud, waste and abuse. Nary a Commission on Wartime Contracting hearing goes by without at least a token finger being pointed at the company; and we've devoted several blog articles to its travails. For example, DCAA Director Pat Fitzgerald testified before the CWC that his auditors had recently questioned "more than 40 percent" of KBR's proposed subcontractor costs because of a lack of supporting documentation.

We also [reported](#) that, in April 2010, the U.S. Department of Justice had filed suit against KBR, alleging violations of the False Claims Act stemming from KBR's use of private security subcontractors. In that same article, we noted that "hundreds" of National Guardsmen had filed suits against KBR for allegedly exposing them to hexavalent chromium ... not to mention the "Franken Amendment" that reportedly originated from a KBR employee's rape at the hands of her co-workers. We could continue but we think the point's been made.

In short, KBR's LOGCAP III and LOGAP IV contracts have made it one of the largest defense contractors in the world—but that success has come at a price. The price is a tattered reputation in the eyes of the general public.

The latest chapter in this tawdry tale is kind of puzzling, though. The U.S. DOJ [announced](#) that it had intervened in a False Claims Act *qui tam*

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suit filed by a former KBR employee, alleging that KBR had violated the False Claims Act on its LOGCAP III contract “

because it was unable to account for materials paid for” under a subcontract with a Turkish company named Yuksel-Reysas. According to the announcement, Yuksel-Reyas performed operations and maintenance (O&M) services at various U.S. Army camps located near Mosul, Iraq.

Which is kind of puzzling, isn't it? Because while failing to account for contractor-acquired material may be a lot of things—such as violations of the property control system, or breakdowns of the material management and accounting system, or even violations of accounting system internal controls—it's hard to picture how that would lead to presentation of a knowingly false claim to the U.S. Government.

But the Project on Government Oversight (POGO) was able to [dig up](#) some more details. While we've not always been kind to POGO, we can't deny that the group often supplements the official record with interesting and useful facts. POGO found the

*qui tam*

relator's original complaint and reported that the relator “

alleges that at least \$31 million worth of property and materials purchased under the subcontract was lost--air conditioners, refrigerators, generators and motor vehicles, among other valuable items, just vanished into the desert air.”

Looking at the complaint, we saw that the relator was a Government Property Administrator employed by KBR, and allegedly tasked to investigate an \$80 million “overexpenditure” on the Yuksel subcontract. During that investigation, the relator alleged that the subcontractor had spent at least \$31 million in “unauthorized purchases of property and materials”—which had never been entered into the property control system. (The relator's complaint appeared to acknowledge that roughly \$5 million of that amount was subsequently located, leaving \$26 million of unaccounted-for property.)

Because of KBR's alleged property control system failures and inaccurate property reports, the relator alleged a “reverse False Claim” situation—which is (in layperson's terms) where a knowingly false statement is made with the intention of wrongfully lowering an amount of money normally due to the U.S. Government. The thing is, we're not sure that KBR would normally owe the U.S. Government any money even if \$31 million worth of stuff had gone missing.

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Obviously, we don't have access to KBR's LOGCAP III contract and we don't know the exact language of its property clauses. But normally, the standard Government Property clause (52.245-1) states—

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies—

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, theft, damage or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, theft, damage or destruction, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, theft, damage or destruction of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage or destruction of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

Astute readers will notice that there are several scenarios where a contractor (such as KBR) might be held liable for the loss, theft, damage, or destruction of government property. As we said, though, normally the U.S. Government prefers to "self-insure". So it seems to us that the relator and the U.S. Department of Justice will have a tough time proving to a judge and jury *why*

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KBR would go to such lengths to lie about missing and/or unaccounted-for materials.

Well, we've seen sketchier allegations before. Time will tell whether the prosecution can prove its case.