

A Supremely Large False Claims Settlement

Written by Nick Sanders

Thursday, 11 December 2014 00:00

As we recently mentioned, we don't care for posting articles about routine FCA settlements. It seems that nearly every day some poor government contractor is settling with the Department of Justice for some alleged false claim or inflated contract price or failure to adhere to the GSA Price Reductions Clause ... or something similar. Some less-than-fully-gruntled former employee has filed a *qui tam* suit and is looking to get paid, or to right a wrong ... or something similar. We got bored. So many FCA settlements, all so very much the same. If we were bored with the continuous litany of FCA violation stories, we figured our readers must be bored as well. We stopped writing articles about such allegations and settlements.

The only time we get motivated to write about another FCA settlement is when the story offers something novel or interesting ... or perhaps offers a lesson for our small (yet deeply disturbed) readership. Such is the case with today's story about a Defense Logistics Agency contractor, named Supreme Group B.V., that, along with several subsidiaries each bearing the moniker Supreme somewhere in their corporate names, have entered into such a massive fraud settlement that we deemed the situation worthy of note. So here you go.

First, [the link](#) . It takes you to the DoJ press release. If one were simply to read the title ("Defense Contractor Pleads Guilty to Major Fraud in Provision of Supplies to U.S. Troops in Afghanistan") it would not seem especially newsworthy. Well, maybe the "Major Fraud" part, because routine FCA allegations rarely reach [that level](#) .

According to the DoJ announcement –

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Supreme Foodservice GmbH (formerly known as Supreme Foodservice AG), a privately held Swiss company related to Supreme Group B.V., pleaded guilty to a "major fraud" against the United States (as well as conspiracy to commit major fraud and wire fraud.

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Supreme Foodservice FZE (formerly known as Supreme Foodservice KG), a privately held UAE company, pleaded guilty to major fraud against the United States.

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Together, the two Supreme Foodservice companies agreed to pay US\$48 million in restitution, US\$10 million in criminal forfeiture, US\$96 million in criminal fines, plus an additional US\$38.3 million in refunds related to overpayments. That's a total of US\$192.3 million to resolve the criminal fraud allegations.

The DoJ announcement told the story of how these two Supreme Foodservice companies were awarded a contract to provide food and bottled water to US troops serving in Afghanistan, and how these two companies "devised and implemented a scheme to overcharge the United States in order to make profits over and above those provided in the \$8.8 billion subsistence prime vendor (SPV) contract." They did this by using a third UAE company (JAFCO)—which they controlled—as a false middleman subcontractor to fraudulently mark-up costs for local market ready (LMR) food and bottled water that were then sold to the two Supreme Foodservice companies for resale to the US Government.

According to the DoJ press release –

[The owners of the two Supreme Foodservice companies] made concentrated efforts to conceal Supreme's true relationship with JAFCO, and to make JAFCO appear to be an independent company. They also took steps to make JAFCO's mark-up on LMR look legitimate, and persisted in the fraudulent mark-ups even in the face of questions ... about the pricing of LMR.

Even though the SPV contract stated that the Supreme food companies should charge the government the supplier's price for the goods, emails between executives at the companies ... reveal the companies' deliberate decision to inflate the prices. ... On or about Feb. 16, 2006, during a discussion about supplying a new product to the U.S. government, one Supreme executive wrote to another, 'I am very sure the best option is to buy it from Germany and mark up via [JAFCO], like [non-alcoholic] beer.'

In early March 2006, after a ... contracting officer told the Supreme food companies that she wanted to see a manufacturer's invoice for specific frozen products, Supreme Foodservice GmbH lowered its prices for those products to prices that did not include a JAFCO mark-up. On March 14, 2006, instead of disclosing that the initial pricing had included a mark-up, a Supreme executive misled the [contracting officer] by saying, 'Based on more realistic

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quantities, we have been able to negotiate a better price,' to explain the change in pricing.

In June 2006, when a ... contracting officer raised questions about pricing focusing on four specific items, Supreme executives again misled the DSCP, claiming that the high prices were for a high quality of product, and offering to sell lower quality products for lower prices. Supreme Foodservice GmbH did this even after analyzing its JAFCO margin on the four items in question and finding its profit margins were between 41 and 56 percent.

So that little scheme cost the two companies nearly US\$200 million. But that's not the end of the story.

In addition to the foregoing criminal settlement, the DoJ also reported that Supreme Group "agreed to pay another \$101 million to settle a whistleblower lawsuit, filed in the U.S. District Court for the EDPA by a former executive, which alleged that Supreme Group, and its food subsidiaries, violated the False Claims Act by knowingly overcharging for supplying food and water under the SPV contract." Apparently, the *qui tam* relater alleged that the company failed to pass on "rebates and discounts it obtained from suppliers," which as we know would be a problem. But that's not the end of the story.

The DoJ also reported that –

Supreme Site Services GmbH, a Supreme Group subsidiary, agreed to pay \$20 million to settle allegations that they overbilled for fuel purchased by the Defense Logistics Agency (DLA) for Kandahar Air Field (KAF) in Afghanistan under a NATO Basic Ordering Agreement. The government alleged that Supreme Site Services' drivers were stealing fuel destined for KAF generators while en route for which the company falsely billed DLA.

But that's not the end of the story. The DoJ also reported that –

Supreme Group's subsidiary Supreme Logistics FZE also has agreed to pay \$25 million to resolve alleged false billings by Supreme Logistics in connection with shipping contracts between the U.S. Transportation Command (USTRANSCOM), located at Scott Air Force Base

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in Illinois, and various shipping carriers to transport food to U.S. troops in Afghanistan during Operation Enduring Freedom. The shipping carriers transported cargo destined for U.S. troops from the United States to Latvia or other intermediate ports, and then arranged with logistics vendors, including Supreme Logistics, to carry the cargo the rest of the way to Afghanistan. The United States alleged that Supreme Logistics falsely billed USTRANSCOM for higher-priced refrigerated trucks when it actually used lower-priced non-refrigerated trucks to transport the cargo.

And now we have reached the end of the reported story. To sum it all up:

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\$192.3 million criminal settlement

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\$101 million civil FCA settlement

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\$20 million overbilling settlement

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\$25 million false billings settlement

For a grand total of US\$338.3 million in settlement expenses. Of course, that value does not include attorneys' fees, which we suspect were considerable. All in all, a very large haul for the Federal government. And we suspect a fairly painful lesson for the companies involved.