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## **Mandatory Disclosures Lead to False Claim Act Settlement/Fines for Government Contractor-Charging for a Firm Fixed Price and Time and Materials Subcontracts Simultaneously**

**By: Christine V. Williams**

On Thursday, August 25, 2016, the Department of Justice stated that it had reached a settlement agreement with Fairbanks Morse Engine (FME) resulting from civil fraud allegations that the employees engaged in mischarging labor hours.

Specifically, FME had two subcontracts it was performing simultaneously for the Navy. The first subcontract was firm fixed price and the second was a time and materials subcontract. Supervisory hours were charged to the time and materials subcontract where they should have been included under the firm fixed price subcontract. FME took corrective action, repaid the money, and submitted a disclosure to the Department of Defense Inspector General under the Contractor Business Ethics Compliance Program and Disclosure Rule a/k/a the Mandatory Disclosure Rule.

With involvement by the U.S. Attorney's Office, the Naval Criminal Investigative Service, and the Defense Criminal Investigative Service with assistance from the DCAA, FME paid the Government an additional \$142,500 to settle False Claims Act (FCA) violations resulting from the misconduct.

**Take Away:** In the grand scheme of FCA damages, this may seem rather minor but some relevant points should be made here. First, having I have seen many simultaneous subcontracts being issued to a Government contractor that have two different pricing methods and correctly charging management hours should be a priority: this is not a new issue to arise. Second, the contractor disclosed the action and repaid the money. Hopefully, it had already instituted a plan so that future incidents could not occur, or would be far less likely to occur, or demonstrated the fluke nature of a one-time incident. Lastly, even with simple disclosures when there is an indication evidence of intent (recall: the threshold for intent is low for FCA and there was not finding of civil liability as part of this settlement), there is likely to be criminal division involvement. Even though the fines in this case were relatively minor, to get to this point, one can speculate that the contractor paid substantially in other ways in costs related to reach this settlement.