

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA ex rel.)
BOBBY GARRISON AND)
RUDOLFO GAONA, JR.)

Plaintiffs,)

v.)

CIVIL ACTION NO. H-07-1018

CROWN ROOFING SERVICES, INC.,)
USS ENGINEERING, LLC, and)
JAMEEL HATTAB,)

Defendants.)

COMPLAINT OF THE UNITED STATES

The United States of America alleges as follows:

I. INTRODUCTION

1. This action seeks relief under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, based upon false claims and statements that defendants Crown Roofing Services, Inc., USS Engineering, LLC, and Jameel Hattab presented or made or caused or conspired to present to the United States. The false claims and statements were made in connection with the award and administration of task orders under a Master Contract for roofing work at the NASA Johnson Space Center. The action also seeks damages for violation of the Anti-Kickback Act, 41 U.S.C. §§ 51-58, and common law claims for breach of contract, unjust enrichment, and payment by mistake.

II. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1345. The Court has supplemental jurisdiction to entertain the common law causes of action under 28 U.S.C. § 1367(a). The Court may exercise personal jurisdiction over the defendants under 31 U.S.C. § 3732(a) and because each of the defendants reside within and/or are doing and/or previously did business within this District.

3. Venue is proper in this District under 31 U.S.C. § 3732 and 28 U.S.C. § 1391(b) because the defendants transact or transacted business in this District and a substantial part of the events giving rise to the above-captioned action occurred in this District.

III. PARTIES

4. Plaintiff is the United States of America. This action arises from certain transactions under a Master Contract with the National Aeronautics and Space Administration (NASA) an agency of the United States government.

5. The Plaintiff relators, Bobby Garrison and Rudolfo Gaona, are former employees of Crown who filed a complaint on behalf of the United States in 2007.

6. Defendant Crown Roofing Services, Inc., (hereinafter "Crown") is a roofing company with offices in Texas, Louisiana, and Florida. Crown's last known Texas address is 905 West Archer Road, Baytown.

7. Defendant USS Engineering, LLC, (hereinafter "USSE") is a design and construction company that operates in Houston, Texas. USSE's last known address is 9950 Westpark, Suite 614, Houston, Texas.

8. Defendant Jameel Hattab is the owner and operator of USSE. At the same time he owned and operated USSE, Hattab also was employed as a contracting officer's technical representative (COTR) at NASA Johnson Space Center in Houston, Texas.

IV. FACTS

9. In 2005, NASA awarded Master Contracts to several prime contractors, including Crown, for the performance of roofing repairs at NASA's Johnson Space Center. The contractors were expected to submit competing bids for roofing work on task orders issued by NASA.

10. NASA was to choose among the competing bidders using "best value" selection criteria, i.e., past performance, quality of workmanship, and price. The task orders were awarded by the contracting officer. However, the COTR provided technical input critical to determining whether award to the contractor was appropriate. The COTR also monitored the contractor's performance and authorized payment for work performed by the contractor.

11. In or about 2005, Crown, USSE, and COTRs Jameel Hattab and Larry Shelmire entered into a scheme to manipulate NASA's competitive bidding process for their own benefit. Crown provided USSE, Hattab's company, with nearly \$400,000 in subcontract work. Hattab and Shelmire, both of whom subsequently pled guilty to felony conflict of interest charges, performed the subcontract work and split the proceeds. In return, the two COTRs gave Crown favorable award recommendations, agreed to modifications and variances for which NASA did not receive consideration, and authorized payment for work that did not meet specifications.

12. Neither Crown, USSE, nor Hattab informed NASA of the conflict of interest among themselves. By failing to provide such information to NASA, the defendants knowingly

misrepresented information essential to the competitive process. Had NASA known about the defendants' conflict of interest, it would not have awarded Crown the task orders or agreed to the modification and variances or authorized payment for work.

13. The first task order, NNJ05JH69D/RD, was awarded to Crown on July 15, 2005 for roofing work on NASA JSC Building 16 valued at \$864,483. Shel mire recommended award of the task order to Crown. Thereafter, in November of 2005, Crown gave a subcontract to USSE, Hattab's company, to perform quality control work on a contract that Crown had with another federal agency. Shel mire subsequently approved a modification to the Building 16 task order that compensated Crown for unforeseen conditions but failed to credit the government for more than \$160,000 in work that Crown failed to perform. The defendants presented or made or caused or conspired to present claims for payment to NASA for Building 16 for which Crown was paid \$856,243 by NASA. The claims are listed in Table 1 of the Appendix to this Complaint.

14. On December 9, 2005, Crown was awarded task orders on NASA JSC Buildings 420 and 422, both under task order number NNJ06JE40D/RD, and 9 North High Bay, under task order number NNJ06JE39D/RD, despite the fact that Crown was the highest bidder on each task order. The total value of the three task orders was approximately \$2,875,581. Again, Shel mire recommended award of the task orders to Crown. Thereafter, on December 26, 2005, Crown gave USSE subcontracts to perform design work on these same NASA buildings totaling nearly \$150,000. The defendants presented or made or caused or conspired to present claims for payment to NASA for Buildings 420, 422 and 9 North High Bay for which Crown was paid \$287,913 by NASA. The claims are listed in Tables 2 and 3 of the Appendix to this Complaint.

15. In late May 2006, Crown was awarded task orders on JSC Buildings 13, task order number NNJ06JG02D/RD, and 15, task order number NNJ06JG03D, valued at \$2,095,269. Hatab was the COTR who recommended award of the task orders to Crown. On May 18, 2006, Crown awarded a contract in the amount of \$195,000 to USSE to renovate Crown's Baytown headquarters. The defendants presented or made or caused or conspired to present claims for payment to NASA for Buildings 13 and 15 for which Crown was paid \$1,218,407 by NASA. The claims are listed in Tables 4 and 5 of the Appendix to this Complaint.

16. NASA subsequently discovered the conflict of interest and in July 2007, it formally terminated Crown's Master Contract for default. Work was suspended on the contracts which were in various stages of design and construction.

17. Subsequent to the termination for default, NASA discovered that the roofs on which Crown had performed repair work performed poorly during rains storms. Consequently, a full inspection of Crown's work was conducted. The inspection revealed that the modification to Building 16, sought by Crown and recommended by Shelmire, resulted in a lesser quality roof than was required by the original specifications.

18. The inspection also found that as a result of a variance initiated by Crown and recommended by Hatab, the roofs on Buildings 13 and 15 had a severe slope creating the danger that they would fill with water in this hurricane-prone area and cause undue stress on the buildings. As a result, NASA was forced to dismantle the roofs and re-procure the projects at a cost of approximately \$3.5 million.

19. NASA also discovered that the roofing designs Crown provided (which were prepared by USSE) for Buildings 420, 422, and 9 North High Bay were deficient. NASA paid to obtain

new roofing designs and secured a new contractor to re-roof the buildings.

20. The full extent of NASA's damages are not completely known because additional defects may be discovered over time.

V. CLAIMS

Count I

(False Claims Act , 31 U.S.C. § 3729(a)(1))

21. By reason of the conduct alleged in paragraphs 1-20, Crown, USSE, and Hattab knowingly presented or caused to be presented to an officer or employee of the United States government, false or fraudulent claims for payment or approval: Crown's claims for payment under the task orders for Buildings 16, 13, 15, 420, 422, and 9 North High Bay.

22. As a result of the above-referenced conduct, defendants Crown, USSE, and Hattab violated the False Claims Act 31 U.S.C. § 3729(a)(1) and damaged the United States in an amount to be proven at trial.

Count II

(False Claims Act , 31 U.S.C. § 3729(a)(1)(B))

23. By reason of the conduct alleged in paragraphs 1-20, defendants Crown, USSE, and Hattab knowingly made or used or caused to be made or used false records or statements material to Crown's false or fraudulent claims for payment or approval: Crown's claims for payment under the task orders for Buildings 16, 13, 15, 420, 422, and 9 North High Bay.

24. As a result of the above-referenced conduct, defendants Crown, USSE, and Hattab violated the False Claims Act 31 U.S.C. § 3729(a)(1)(B) and damaged the United States in an amount to be proven at trial.

Count III

(False Claims Act , 31 U.S.C. § 3729(a)(3))

25. By reason of the conduct alleged in paragraphs 1-20, Crown, USSE, and Hattab conspired to defraud the Government by getting false or fraudulent claims paid or allowed: Crown's claims for payment under the task orders for Buildings 16, 13, 15, 420, 422, and 9 North High Bay.

26. As a result of the above-referenced conduct, defendants Crown, USSE, and Hattab violated the False Claims Act 31 U.S.C. § 3729(a)(3) and damaged the United States in an amount to be proven at trial.

Count IV - Crown

(Anti-kickback Act, 41 U.S.C. § 53(1))

27. By reason of the conduct alleged in paragraphs 1-20, Crown provided, attempted to provide, or offered to provide kickbacks: Crown provided subcontracts, to USSE, a subcontractor, and Hattab, a subcontractor and NASA COTR, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract

28. As a result of the above-referenced conduct, defendant Crown violated the Anti-kickback Act, 41 U.S.C. § 53(1), and damaged the United States in an amount to be proven at trial.

Count V - USSE and Hattab

(Anti-kickback Act, 41 U.S.C. § 53(2))

29. By reason of the conduct alleged in paragraphs 1-20, USSE and Hattab solicited, accepted, or attempted to accept a kickback. USSE, a subcontractor, and Hattab, a subcontractor

and a NASA COTR, accepted subcontracts from Crown as an inducement or reward for favorable treatment in connection with a prime contract.

30. As a result of the above-referenced conduct, defendants USSE and Hattab violated the Anti-kickback Act, 41 U.S.C. § 53(2), and damaged the United States in an amount to be proven at trial.

Count VI

(Common-law Fraud)

31. By reason of the conduct alleged in paragraphs 1-20, Crown, USSE, and Hattab knowingly misrepresented information material to the contracting process: that there was a conflict of interest amongst them, the United States reasonably relied upon the material misrepresentation, and the United States suffered substantial damages as a result of its reliance.

Count VII - Crown

(Breach of Contract)

32. By reason of the conduct alleged in paragraphs 1- 20, defendant Crown breached its duty to perform in accordance with the terms of its Master Contract with NASA entitling the United States to recover all consequential damages caused by the breach.

Count VIII

(Unjust Enrichment)

33. By reason of the conduct alleged in paragraphs 1-20, Crown, USSE, and Hattab were unjustly enriched at the expense of the United States, and in equity and good conscience, the money should be returned to the United States.

Count IX

(Payment by Mistake)

32. By reason of the conduct alleged in paragraphs 1-20, the United States made payments to Crown, and consequently to USSE and Hattab, by mistake. As a result of these payments by mistake, the United States has sustained damages in an amount to be proven at trial.

Demand for Judgment for Relief

Wherefore, Plaintiff, the United States, demands judgment against defendants Crown, USSE, and Hattab as follows:

A. Under Counts I, II, and III (False Claims Act), damages the United States has sustained, including investigative costs, plus civil penalties as are allowable by law; and

B. Under Counts IV and V (Anti-kickback Act), a penalty equal to twice the amount of the kickback; and

C. Under Count VI (Breach of Contract), all consequential damages incurred by the United States; and

D. Under Count VII (Unjust Enrichment), a sum equal to the amount by which defendants Crown, USSE, and Hattab were unjustly enriched, plus interest; and

D. Under Count VIII (Payment by Mistake), a sum equal to the amount of payments made by the United States to Crown, and consequently to USSE and Hattab, by mistake, plus interest; and/or

E. Such other relief as this Court may deem just and proper, together with interests and costs of this action.

Respectfully submitted,

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Attorneys for the United States of America

DATED: November 12, 2009

APPENDIX

Table 1
Building 16

Date	Invoice #	Disbursement
9/9/05	1	\$19,000
3/6/06	2	294,561
3/21/06	3	62,977
4/10/06	4	23,403
7/12/06	5	212,720
9/21/06	6	167,132
9/28/06	7	72,538.62
12/4/06	8	\$3,911.76
Total Paid		\$856,243.38

Table 2
Buildings 420 and 422

Date	Invoice #	Disbursement
3/10/06	HO5616-01	23,578.80
3/10/06	HO5617-01	19,021.80
4/4/06	H05616-01	23,578.80
4/4/06	HO5617-01	19,021.80
6/9/06	H05616-03	23,578.80
6/19/06	H05617-03	19,021.80
8/2/06	H05617-04	6,340.60
8/2/06	H05616-04	7,859.60
Total Paid		\$142,002

Table 3
Building 9 North High Bay

Date	Invoice #	Disbursement
9/28/06	HO5615-05A	\$33,272
2/15/07	HO5615-06	26,617.60
3/20/07	HO5615-07	6654.40
6/15/07	H07659-1	79,367
Total Paid		\$145,908

Table 4
Building 13

Date	Invoice #	Disbursement
8/22/06	H06629-1	\$22,206
12/4/06	2	137,240.50
4/4/07	3	41,411.61
5/10/07	4	204,834
6/15/07	5	165,801
Total Paid		\$571,493.11

Table 5
Building 15

Date	Invoice #	Disbursement
8/24/06	1	\$30,929
12/04/06	2	402,997
3/29/07	3	111,462
5/16/07	4	101,526
Total Paid		\$646,914

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

United States, Garrison, Bobby, Gaona, Rudolfo

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U S PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

see attachment

DEFENDANTS

Crown Roofing Serv., USS Engineering, and Hattab, Jameel

County of Residence of First Listed Defendant (IN U S PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

see attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U S Government Plaintiff
2 U S Government Defendant
3 Federal Question (U S Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 31 USC 3729 et seq., 41 USC 53 et seq. and common law

Brief description of cause: false statements and kickbacks to federal officials

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/12/2009 /S/ Jose Vela

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT TO CIVIL ACTION COVERSHEET

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