IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(Atlanta Division)

UNITED STATES ex rel. DEBORAH W. COOK,	§	**Civil Action No.:** _____
	§	1:13-CV-4023
Relator,	§	**JURY TRIAL DEMAND**
	§	
v.	§	
	§	**FILED IN CAMERA**
SHAW AREVA MOX SERVICES, LLC; SHAW ENVIRONMENTAL & INFRASTRUCTURE, INC.; THE SHAW GROUP, INC.; and ENERGY & PROCESS CORPORATION,	§	**AND UNDER SEAL PURSUANT TO 31 U.S.C. § 3730**
	§	
	§	**DO NOT ENTER INTO PACER**
Defendants.	§	
	§	**DO NOT ENTER IN CM/ECF**
	§	
	§	**DO NOT PLACE IN PRESS BOX**

RELATOR'S COMPLAINT
PURSUANT TO THE FEDERAL FALSE CLAIMS ACT

TO THE HONORABLE JUDGE OF THE COURT:

This is an action for the United States of America brought by *qui tam* Relator Deborah W. Cook, to recover all damages, civil penalties, and other relief for violations of the FALSE CLAIMS ACT, 31 U.S.C. §§ 3729 *et seq*. by defendants

Shaw Areva MOX Services, LLC, Shaw Environmental & Infrastructure, Inc., The Shaw Group, Inc., and Energy & Process Corporation.

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I. INTRODUCTION

1.

Relator Deborah W. Cook brings this *qui tam* action under the FALSE CLAIMS ACT for the United States of America and herself against defendants Shaw Areva MOX Services, LLC, Shaw Environmental & Infrastructure, Inc., The Shaw Group, Inc., and Energy & Process Corporation.

II. JURISDICTION AND VENUE

2.

This *qui tam* action is brought under the FALSE CLAIMS ACT, 31 U.S.C. §§3729-3733. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1345 and 31 U.S.C. §3732(a).

3.

Under 28 U.S.C. §1391(b) and 31 U.S.C. §3732(a), venue is proper in the Northern District of Georgia as this is the place where false claims arose, were made, or presented and also because the defendants transact business in this district.

III. PROCEDURE

4.

This Complaint has been filed under seal as required by 31 U.S.C. §3730(b)(2).

5.

In accordance with 31 U.S.C. §3730(b)(2), Relator served this complaint and substantially all material evidence and information in her possession upon the Attorney General of the United States and the United States Attorney for the Northern District of Georgia.

IV. PARTIES

6.

The plaintiff is the United States of America. Its defrauded agencies are: the Department of Energy (DoE), the Nuclear Regulatory Commission (NRC), and the National Nuclear Security Administration (NNSA).[1] Service is made upon The Honorable Eric Holder, Attorney General, United States Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530-0001 and Sally Q. Yates, United States Attorney, United States Attorney's Office for the Northern District of

[1] The NNSA was established by Congress in 2000 as a separately organized agency within the U.S. Department of Energy, responsible for the management and security of the nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs.

Georgia, Richard B. Russell Federal Building, 75 Spring Street, S.W. Suite 600 Atlanta, GA 30303-3309.

7.

Relator Deborah W. Cook is a resident of the State of Georgia. She brings this action based upon her independent and direct knowledge.

8.

Defendant Shaw / AREVA MOX Services, LLC (MOX) is a consortium of businesses that was formed to design, build, and operate a Mixed Oxide Fuel Fabrication Facility (MFFF) on the Savannah River site, in Aiken, South Carolina. MOX is a South Carolina corporation. Its registered agent is CT Corporation System, 75 Beattie Place, Greenville, South Carolina, 29601.

9.

Defendant Shaw Environmental & Infrastructure, Inc. is a construction and engineering contractor that has several contracts with the federal government. Shaw Environmental & Infrastructure, Inc. is incorporated in the State of Louisiana and has its principal place of business at 4171 Essen Lane, Baton Rouge, Louisiana 70809. Its registered agent is CT Corporation System, 1201 Peachtree Street NE, Atlanta, Georgia 30361.

10.

Defendant the Shaw Group, Inc., is a construction and engineering contractor that has several contracts with the federal government. Shaw Group, Inc. is incorporated in the State of Louisiana and has its principal place of business at 5615 Corporate Boulevard, Suite 400B, Baton Rouge, Louisiana 70808. Its registered agent is CT Corporation System, 5615 Corporate Boulevard, Suite 400B, Baton Rouge, Louisiana 70808.

11.

Defendant Energy and Process Corporation (E&P) is a global supplier to the nuclear power industry. E&P is incorporated in Virginia and registered to do business in Georgia. Its registered agent is Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia, 30092.

12.

In the event any parties are misnamed or not included herein, such was a "misnomer" or such parties are "alter egos" of named parties. In the event that the true parties are misidentified, Relators rely upon the doctrine of misidentification.

V. OVERVIEW

13.

Relator Cook files this *qui tam* lawsuit under the FALSE CLAIMS ACT against the prime contractor (MOX) and its subcontractor (E&P) on the Mixed Oxide Fuel Fabrication Facility project, which is a nuclear fuel reprocessing plant being constructed on the Savannah River Site. The government paid these contractors to procure and install Nuclear Quality Assurance Level-1 quality components in the plant. Instead, they knowingly procured, delivered, and installed nonconforming components in the plant that failed to meet contract specifications and regulations. This bait-and-switch resulted in nonconforming components being installed in the plant, which caused a substantial delay to the project (costing the government millions of dollars), and potentially jeopardizing the structural integrity of the plant.

VI. THE ROLE OF THE PARTIES IN THIS CASE

14.

Relator Cook is a procurement and subcontract specialist. She has spent over twenty years working on large nuclear construction projects funded by the DoE and regulated by the NRC. She is the original whistleblower and source of

the information brought to her employer, Shaw/AREVA MOX Services, LLC, and to the Government upon which this FALSE CLAIMS ACT action is based.

15.

Shaw / AREVA MOX Services, LLC is a consortium of businesses that was formed to design, build, and operate a Mixed Oxide Fuel Fabrication Facility (MFFF) on the Savannah River site, in Aiken, South Carolina. Based upon information and belief, Shaw Environmental & Infrastructure, Inc. and Shaw Group, Inc. are part of this consortium. Collectively these defendants are referred to as "MOX".

16.

Energy and Process Corporation (E&P) is a global supplier to the nuclear power industry.

17.

The affected and defrauded federal agencies are the Department of Energy (DoE), the Nuclear Regulatory Commission (NRC), and the National Nuclear Security Administration (NNSA).

VII. BACKGROUND AND FACTS

A. The Mixed Oxide Fuel Fabrication Facility project (a nuclear fuel reprocessing plant)

18.

In 2000, the United States and Russia entered into a bilateral agreement stipulating each country would commit to eliminating 34 metric tons of surplus military plutonium produced during the Cold War by recycling it as fuel for civil nuclear applications.

19.

In 2006, the DoE, through NNSA, awarded a cost-plus reimbursement or cost-plus-fixed-fee contract to MOX [2] to design, build, and operate a Mixed Oxide Fuel Fabrication Facility on the Savannah River Site, in Aiken, South Carolina (MFFF or the "project" or the "plant"). The purpose of the project is to convert surplus weapons-grade plutonium, remove impurities, and mix it with uranium oxide to form mixed-oxide fuel pellets for civilian use. The MFFF is a nuclear fuel reprocessing plant. The NRC issued to MOX a license to construct the MFFF and a license to possess special nuclear material (SNM).

20.

The total projected cost for MFFF is $4.86 billion, which has increased to $7.7 billion through cost overruns. As this case reveals, one reason the project is

[2] The project was originally awarded to Duke, COGEMA, Stone & Webster, LLC in March 1999. Shaw Environmental and Infrastructure, LLC and AREVA NC own MOX. MOX assumed the contract and project in 2006.

over budget is because of MOX's failure to follow standards and regulations as it relates to properly procuring components that meet contract specifications and regulatory standards.

21.

Procurement for components for the project is governed, in part, by 10 C.F.R Part 50, Appendix B, Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants ("Appendix B"). Appendix B, other applicable regulations, and contract specifications required the steel reinforcing bar (rebar), and other components, installed in the project to be Nuclear Quality Assurance-1 (NQA-1) grade, the highest quality rebar, rather than commercial grade, which is of substantially inferior grade. The requirements of 10 C.F.R. 50, Appendix B and 10 C.F.R. Part 21 were invoked by the purchase of 'basic components"[3], which included among other components, the reinforcing steel (rebar) for installation into Items Relied Upon For Safety (IROFS) at the MFFF.

[3] Under 10 C.F.R. §21.3,

> Basic component means a structure, system, or component, or part thereof, that affects their safety function, that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the [Nuclear Regulatory] Commission could create a substantial safety hazard.

22.

In addition, contract specifications and applicable regulations required MOX to implement and maintain an NQA-1 certified Quality Assurance Program (QAP) for the project. MOX's QAP, which was submitted and approved by the NRC, required MOX to flow down the QAP to all subcontractors. As discussed below, MOX failed to do so, which resulted in nonconforming rebar being procured by MOX's subcontractor, E&P. Much of this nonconforming rebar was installed and cannot be removed from the MFFF; the full consequences and potential harm to the integrity of the plant are unknown. The financial harm to the government is millions of dollars.

B. MOX subcontracted with E&P to supply rebar – MOX used government money to buy nonconforming rebar from E&P, and MOX installed the nonconforming rebar in the MFFF

23.

MOX's QAP required MOX to procure the rebar from NQA-1 certified suppliers. The QAP also required MOX verify and certify that its vendors were qualified to fabricate and source NQA-1 quality rebar. And MOX and its subcontractors were further required to certify that the rebar procured and installed in the project was NQA-1 quality and conformed to contract specifications and applicable regulations.

24.

MOX subcontracted with E&P to supply the rebar for the project. After purportedly auditing and certifying that E&P was a qualified NQA-1 supplier, MOX placed E&P on its Approved Supplier List (ASL). MOX issued purchase orders to E&P to supply the rebar, and other NQA-1 "basic components," for the project. MOX awarded two subcontracts to E&P for the procurement of nearly 10,000 tons of NQA-1 rebar. Specifically, MOX contracted with E&P to provide to the project NQA-1 IROFS rebar. As a certified NQA-1 supplier, E&P was required to have an Appendix B, NQA-1 equivalent QAP. Based upon information and belief, both MOX and E&P certified to the NRC that E&P had such a program and would follow that program when procuring IROFS and basic components for the project.

25.

Because E&P is merely a reseller rather than a fabricator of rebar, E&P subcontracted the fabrication and sourcing of the rebar to Commercial Metals Corporation (Rebar Carolinas) (CMC). At the time MOX issued the rebar subcontracts to E&P, CMC was qualified to fabricate *commercial grade rebar only*; CMC was not qualified to fabricate NQA-1 rebar. Nor was CMC a NQA-1 certified supplier when E&P subcontracted with CMC. MOX and E&P actually

knew CMC was not NQA-1 qualified but nevertheless contracted with CMC to fabricate and source rebar to the project.

26.

At the time MOX placed E&P on its Approved Suppliers List (ASL), MOX knew E&P was merely a reseller rather than a fabricator of rebar. MOX also knew that E&P had subcontracted to CMC the fabrication of the rebar. Both MOX and E&P knew CMC was not qualified to supply NQA-1 components. E&P knew of CMC's lack of qualifications because it audited CMC, as was required under the QAP. E&P's audit of CMC stated that CMC was not NQA-1 certified but was qualified to fabricate commercial grade rebar only. Despite this known deficiency, E&P contracted with CMC to fabricate and source the rebar for the project, which it did, and which MOX approved. MOX knew of CMC's lack of qualifications because E&P submitted its audit of CMC to MOX; MOX maintained this audit in its records, as it was required to do so by regulation.

27.

E&P, through its subcontractor CMC, supplied commercial grade rebar rather than NQA-1 quality rebar to the project, in violation of contract specifications and procurement regulations. In particular, the rebar CMC supplied failed to have a bend radius below the minimum specified by American Concrete

Institute's ACI Standard 315-99 and ACI Standard 349-97. These standards were incorporated into the contract documents and material to the government's decision to reimburse MOX for these costs. These standards also are material safety standards as it relates to the construction and operation of the MFFF.

28.

In sum, the rebar MOX purchased and installed in the project failed to meet the requirements of 10 C.F.R. 50 Appendix B, 10 C.F.R. Part 21, and contract specifications. MOX purchased nonconforming rebar and other basic components using government money. MOX installed in the nonconforming rebar in the plant. MOX and E&P's failure to follow contract specifications and regulations as they relate to the procurement of basic components is what caused the government to buy and install nonconforming rebar. Had MOX and E&P properly sourced the rebar acquisition by, *inter alia*, procuring rebar from a qualified NQA-1 supplier or overlaying an NQA-1 program upon CMC, or both, then the government would have received what it paid for, that is, NQA-1 rebar, the cost overruns would not have been incurred, and the plant would not have been constructed with nonconforming rebar and other nonconforming components.

C. MOX employed Ms. Cook as a nuclear construction procurement specialist

29.

Ms. Cook is a construction procurement specialist (CPS) with experience in procuring NQA-1 materials for nuclear construction projects owned and funded by the DoE and regulated by the NRC. On June 27, 2007, MOX hired Ms. Cook as a Senior Subcontract Administrator, Procurement Specialist 4, Grade E06. Her duties included managing MOX's NQA-1 subcontracts and purchase orders for the project. Prior to her hire, MOX subcontracted with E&P to supply nearly 10,000 tons of NQA-1 rebar for installation in the project. Ms. Cook was responsible for administering the two subcontracts MOX awarded to E&P for acquisition of NQA-1 rebar.

D. As a MOX insider, Ms. Cook discovered E&P was supplying nonconforming rebar, some of which MOX installed in the MFFF, and advised her superiors of this deficiency

30.

In managing the two rebar subcontracts, Ms. Cook became concerned about quality assurance issues related to MOX's procurement of rebar through E&P. Ms. Cook researched how MOX placed E&P on MOX's Approved Supplier List (ASL). In addition, Ms. Cook inquired with E&P's sales representative about the

execution of E&P's QAP program, whether E&P was providing NQA-1 quality rebar to the project, and whether E&P had overlaid the QAP upon CMC.

31.

Through her investigation, Ms. Cook discovered that, because E&P is just a reseller and it does not fabricate rebar, E&P outsourced the production of rebar to CMC. E&P was required to maintain an Approved Vendors List (AVL)[4] of its NQA-1 qualified suppliers. Ms. Cook learned that E&P listed CMC on its AVL despite the fact that CMC was not NQA-1 qualified.

32.

In January 2008, Ms. Cook's supervisor tasked her with ensuring that all audits of MOX's subcontractors were valid and up to date. From MOX's records, she pulled E&P's audit of CMC. E&P's audit was originally certified on April 10, 1996, but E&P recertified the audit on February 28, 2007. E&P's QA Manager endorsed E&P's audit of CMC. Upon studying the audit, Ms. Cook discovered that CMC was not qualified nor certified as an NQA-1 supplier. E&P's audit further revealed CMC was merely qualified to fabricate commercial grade rebar only and had never been qualified to fabricate NQA-1 rebar. CMC's limitations

[4] MOX uses the term "Approved Suppliers List" (ASL) and E&P uses the term "Approved Vendors List" (AVL).

were noted on the audit. For example, the audit noted CMC was approved to provide "commercial rebar" only rather than NQA-1 quality rebar. CMC's lack of qualifications troubled Ms. Cook because she had learned that CMC had been supplying rebar to the project. Having discovered CMC was qualified to fabricate commercial grade rebar only, she was concerned that the government was not getting what it paid for (commercial grade rebar instead of NQA-1 rebar). She was also concerned that MOX had installed the nonconforming rebar in the plant.

33.

Ms. Cook was at a loss to understand how MOX allowed E&P to source rebar through an unqualified fabricator. Ms. Cook brought this deficiency to the attention of MOX's QA Manager. She informed him that MOX was paying for and receiving nonconforming rebar from suppliers who were not NQA-1 qualified. She also informed him that although E&P was on MOX's ASL, CMC was not.

34.

Knowing something was wrong, Ms. Cook sought answers from E&P about the quality of rebar being delivered to the project. She called several meetings with E&P's QA personnel to discuss E&P's failure to maintain QA personnel at CMC's fabrication facility and its failure to certify that the rebar was fabricated and contract specifications and complied with applicable regulations. E&P's QA

personnel assured Ms. Cook that E&P QA personnel were onsite and inspecting CMC's fabrication of rebar so that the rebar being fabricated met contract specifications and regulations. This was not true.

35.

Not satisfied with E&P's response, Ms. Cook next inquired of CMC to find out whether E&P QA personnel were actually at CMC's mill verifying that the rebar was being fabricated in accordance with contractual specifications and regulations. She also conducted random calls to the CMC mill. Her investigation revealed that in fact there were no QA personnel or inspections done by E&P at CMC's facility and that the rebar was not being fabricated as required. Rather, E&P instructed CMC to simply fax an inspection report to E&P, which was signed and returned to CMC, which falsely indicated that the rebar had been fabricated in accordance with contract specifications and regulations. These reports were false. These false reports were then included with the manifests accompanying the delivery of the rebar. E&P did this to make it appear that it was executing the QAP, the rebar was being properly fabricated, and NQA-1 rebar was being delivered to the project. Ms. Cook figured out this subterfuge and told E&P that its process was unacceptable because no inspector was actually observing the rebar

fabrication to ensure it was being fabricated as required. E&P took no corrective action.

36.

Ms. Cook's investigation confirmed that CMC was shipping commercial grade rebar rather than NQA-1 grade rebar to the project, in violation of regulations and contractual specifications. Ms. Cook became concerned that MOX had installed this nonconforming rebar in the MFFF. Ms. Cook again informed MOX's VP of Quality Assurance about the deficiencies she uncovered. In response, Ms. Cook's chain of command told her they would look into it. Rather than take corrective action, however, MOX and E&P ignored the problem and continued to order and install commercial grade rebar rather than NQA-1 rebar in the project.

37.

Up to this point, Ms. Cook believed that she had done all within her power to report the deficiencies to MOX officials, who had sufficient authority and responsibility to take corrective action. But on February 6, 2008 she learned of the consequences of MOX's failure to address its known deficiency.

E. February 6, 2008 – the nonconforming rebar snaps

38.

While installing rebar for an upcoming concrete pour on February 6, 2008, an ironworker used a sledgehammer to force a bar into place. The bar snapped. It snapped at the point where the bar had been improperly bent by CMC during the fabrication process. The ironworkers immediately reported the incident to MOX engineering, who in turn reported the incident to Ms. Cook. MOX's investigation later determined that the rebar did not meet the contract specifications and regulatory standards.

39.

Ms. Cook held a meeting with MOX's quality assurance inspector and engineers to inspect the rebar that had snapped. Ms. Cook determined that the DoE and NRC should be notified because the rebar was flawed and much of it had already been installed in the project. Ms. Cook notified MOX's QA Manager and both then in turn reported the incident to the NRC; MOX engineering notified the DoE. Ms. Cook also notified the MOX Director of Procurement and her direct supervisor.

40.

Ms. Cook reported the incident to E&P's President. Ms. Cook requested E&P provide immediate assistance by conducting a random sampling inspection of

the rebar E&P caused to be delivered to the jobsite from CMC. Initially reluctant, E&P ultimately agreed to support the random sampling and was at the jobsite the next day. The inspection team included members of the MOX QA, MOX engineering, MOX construction, E&P, and representatives from the DoE and NRC. Construction on the MFFF had to be stopped due to the nonconforming rebar. The cost of delay was enormous.

F. An inspection of the rebar revealed that E&P procured nonconforming rebar and had it shipped to the project, some of which MOX installed in the project

41.

A random inspection of the rebar was conducted on February 7, 2008. The inspection team included members of the MOX QA, MOX engineering, MOX construction, E&P, and representatives from the DoE and NRC. All rebar on the jobsite was inventoried. The inspection revealed that a substantial amount of the rebar sourced by E&P was nonconforming, much of which MOX had installed in the project and could not be removed.

42.

At the end of the inspection, a meeting was held with the entire inspection team at which time Ms. Cook advised E&P that the majority of the rebar random samples were found to be out of tolerance with contract specifications and

regulatory requirements. Specifically, the rebar failed to meet the minimum bend radius per ACI Code 349-97. MOX QA caused a Corrective Action Report (CAR) and Nonconformance Report (NCR) to be issued to E&P relating to the nonconforming bar. A CAR and NCR was written for each E&P subcontract with E&P. (Two CARs and NCRs incident reports for each order.) Later, a 100-percent inspection of all bent rebar was done, which revealed that E&P delivered a large amount of nonconforming rebar to the jobsite. The nonconforming rebar was segregated at the jobsite.

43.

Ms. Cook took the lead to take corrective action to determine how MOX allowed nonconforming rebar to be procured and installed in the project. Ms. Cook demanded E&P make a deficiency report and conduct a root-cause analysis. Rather than take corrective action, however, E&P requested a revision to both subcontracts that would add the NQA-1 requirement onto its sub-contractor CMC. E&P tried to shift the responsibility of overlaying a QA upon CMC to MOX. Ms. Cook objected but nonetheless took steps for MOX to implement an NQA-1 program in CMC's fabrication facility.

44.

On March 20, 2008, Ms. Cook assembled a meeting with MOX's project management team and E&P's leadership. MOX served E&P with a Cure Notice. A follow up meeting with E&P took place on March 26, 2008 to discuss the status of its response to MOX's Cure Notice. E&P again refused to take corrective action.

45.

Spearheaded by Ms. Cook, MOX finally took corrective action as indicated below:

- MOX inspectors were placed in CMC mill to verify bend radius was made in accordance with specifications.

- MOX completed various initial focused surveillances at CMC to review: bending activities at point of fabrication, process monitoring at fabrication facility, material control and traceability for rebar from mill to point of fabrication and then shipment, CMC mill operations, and determination of design controls for fabrication detailing at the CMC fabrication facility.

- MOX performed a focused surveillance at E&P for QA Program controls regarding reinforcing steel dedication and fabrication activities at E&P's operations.

46.

These corrective actions added to the cost of the project and caused substantial delay to the completion of the project, which, based upon information

and belief, were never sought nor reclaimed by MOX on behalf of the government but simply passed on to the government through cost overruns.

47.

Ultimately, MOX terminated E&P's subcontracts and retained a subcontractor that was capable of delivering NQA-1 quality steel. The cost of construction delay was millions of dollars. As an attempt mitigate the cost of delay, MOX took the extraordinary step of overlaying its NQA-1 QA program, as set out immediately above, directly onto CMC's fabrication facility so that CMC could produce NQA-1 rebar.

G. MOX and E&P knowingly sold the Government and MOX substandard components and failed to follow contract specifications and regulations

48.

E&P failed to ensure CMC was NQA-1 qualified and capable of fulfilling the contract specifications and regulatory requirements as it relates to fabricating NQA-1 rebar. E&P's subcontractor, CMC, was not NQA-1 qualified at the time it was sourcing rebar to the project. MOX had actual knowledge CMC was not qualified or certified to fabricate NQA-1 rebar. MOX also had actual knowledge that CMC was delivering commercial grade rebar rather than NQA-1 quality rebar

to the MFFF. MOX knew all of this because it possessed E&P's audit of CMC, which indicated CMC was qualified to fabricate commercial grade rebar only rather than NQA-1 rebar.

49.

Moreover, MOX failed to ensure E&P had an adequate QAP, particularly as it relates to overlaying a NQA-1 program upon CMC. E&P further failed to ensure CMC had properly surveyed and inspected CMC's fabrication of the rebar to ensure it was fabricated in accordance with contract specifications and regulations. MOX further failed to ensure that appropriate NQA-1 requirements were flowed down to E&P and CMC. In sum, MOX had inadequate procurement and quality assurance procedures to ensure that the QAP and NQA-1 requirements were flowed down to E&P and CMC.

H. The harm to the Government

50.

As a result of MOX and E&P's failures, CMC fabricated and delivered approximately 10,000 tons of nonconforming rebar to the project. MOX procured this rebar for installation in the MFFF as items relied on for safety (IROFS). An indeterminate amount of nonconforming rebar was actually installed and imbedded in concrete in critical locations of the plant.

51.

Had MOX done what it was paid to do by the government, nonconforming rebar would not have been procured and installed in the plant. Had MOX followed contract specifications and regulations, NQA-1 rebar would have been procured and installed in the plant. Because of these deficiencies, MOX ultimately procured about 10,000 tons of commercial-grade rebar from E&P and CMC rather than NQA-1 rebar.

52.

The harm suffered by the government could have been avoided had MOX and E&P simply done what it was paid to do: execute a QAP and procure NQA-1 rebar. The financial harm to the government caused by MOX and E&P is substantial. First, the government paid for commercial grade rebar when it contracted and paid for NQA-1 rebar. Second, the substandard rebar was unknowingly installed and imbedded in the plant. Because tons of concrete has been poured over the rebar, it cannot be removed. It is unknown what the risk to the integrity of the structure will ultimately be. Third, the government incurred millions of dollars of cost overruns because of the delay caused by MOX and E&P.

I. Ms. Cook seeks to make the Government whole

53.

For her diligence and perseverance, MOX awarded Ms. Cook a $2,500.00 Spot Bonus Award, the maximum award MOX awards to its employee. The justification for her award reads as follows:

> In February of this year it was identified that the bend in certain size rebar exceeded the minimum bend radius allowed by the project design specifications. It was determined that most of the affected bent rebar must be replaced under the warranty clause of the rebar contract. Debbie's persistence and professional approach towards resolution of the issue to date has minimized the schedule impact and saved the project from certain massive delay costs from the fixed price structural concrete placement contractor.
>
> The rebar contractor has stated its disagreement with the replacement decision and has not been completely cooperative in its efforts to replace the affected bent bar. Debbie has worked tirelessly for many long hours day after day (including most "off Fridays") to keep abreast of which bar are required to support upcoming concrete pours. . . .

54.

While this accolade is of some satisfaction to Ms. Cook, as a relator she seeks through this *qui tam* action to make the government whole and remedy the harm caused to it by MOX and E&P.

VIII. VIOLATIONS OF THE FALSE CLAIMS ACT

A. The False Claims Act

55.

The FALSE CLAIMS ACT (FCA), 31 U.S.C. 3729, *et seq*., permits Ms. Cook to bring suit to redress fraud committed by MOX and E&P against the United States and share in any recovery. 31 U.S.C. §3730(b)(1). The FCA is "the Government's primary litigative tool for combating fraud." S. Rep. No. 345, 99th Cong., 2d Sess. 2 (1986), as reprinted in 1986 U.S.C.C.A.N. 5266.

56.

The FCA imposes liability on any person who (A) "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;" or (B) "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(A)-(B). The FCA also imposes liability on any person who "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit

money or property to the Government." 31 U.S.C. §3729(a)(1)(G) (commonly called a "reverse false claim").[5]

57.

For the purposes of the FCA, a "claim" is a request for money from the Government.[6] The request might be made directly to the Government, or it might be made to a third party that is supplying money on the Government's behalf.[7]

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[5] *See* THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2009 (H.R. 3590) (Mar. 23, 2010), §6402 (expanding the definition of "obligation" as defined in 31 U.S.C. §3729(b)(3); requiring overpayments to be reported and returned within 60 days of identity or the date a corresponding cost report is due, whichever is later; and deeming any overpayment retained after the 60-day deadline to be an "obligation" for purposes of the FCA).

[6] Under 31 U.S.C. §3729(b)(2) the term "claim" :

> (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—
>
> (i) is presented to an officer, employee, or agent of the United States; or
>
> (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—
>
> (I) provides or has provided any portion of the money or property requested or demanded; or
>
> (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded[.]

[7] 31 U.S.C. §3739(b)(2); *United States v. President & Fellows of Harvard Coll.*, 323 F. Supp. 2d 151, 187 (D. Mass. 2004) ("[A] defendant may be liable if it operates under a policy that

Claims include not only claims for payments due, but also claims for favorable actions by the Government, such as in a license or loan application. [8]

58.

The FCA defines the terms "knowing" and "knowingly" to include "actual knowledge of [particular] information," "deliberate ignorance of the truth or falsity of the information," and "reckless disregard of the truth or falsity of the information." 31 U.S.C. §3729(b)(1)-(3). A person who violates the FCA is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990 (28 U.S.C. 2461; Public Law 104-410) to $11,000, plus three times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. §3729(a)(1).

59.

As it relates to this case, a claim can be false or fraudulent for the purposes of FCA liability in three different ways.[9] First, a claim is false or fraudulent if it is

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causes others to present false claims to the government.").

[8] *United States v. Neifert-White Co.*, 390 U.S. 228, 230–33 (1968).

[9] *See Mikes v. Straus*, 274 F.3d 687, 696–97, 699–700 (2d Cir. 2001); *United States ex rel. Hockett v. Columbia/HCA Healthcare Corp.*, 498 F. Supp. 2d 25, 64 (D.D.C. 2007).

for goods or services that have not been rendered.[10] Courts term these "factually false" claims.[11] Second, a claim is false or fraudulent if the contractor expressly certifies compliance with a contract term, statute, or regulation despite a breach or violation.[12] These are "legally false" claims based on an express certification.[13] Third, some courts have held that a claim for payment itself implicitly represents material compliance with contract terms, statutes, or regulations.[14] Where that implied representation is false, the claim is again termed "legally false," but now by virtue of an implied certification.[15]

60.

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[10] *See, e.g., Mikes*, 274 F.3d at 697.

[11] *United States ex rel. Conner v. Salina Reg'l Health Ctr., Inc.*, 543 F.3d 1211, 1217 (10th Cir. 2008); *Mikes*, 274 F.3d at 697.

[12] *See* 31 U.S.C. § 3729(a)(1)(B)

[13] *Conner*, 543 F.3d at 1217; Mikes, 274 F.3d at 696–97.

[14] *Mikes*, 274 F.3d at 700; *Ab-Tech Constr., Inc. v. United States*, 31 Fed. Cl. 429, 434 (1994).

[15] *See Conner*, 543 F.3d at 1218; *Mikes*, 274 F.3d at 699. The Eleventh Circuit has not expressly adopted the implied certification theory, but has held that there can be a false claim without an express statement. In *United States ex rel. McNutt v. Haleyville Med. Supplies, Inc.*, the Eleventh Circuit stated "[w]hen a violator of government regulations is ineligible to participate in a government program and that violator persists in presenting claims for payment that the violator knows the government does not owe, that violator is liable, under the Act, for its submission of those false claims. 'The False Claims Act does not create liability merely for a health care provider's disregard of Government regulations or improper internal policies unless, as a result of such acts, the provider knowingly asks the Government to pay amounts it does not owe.'" 423 F.3d 1256, 1259-1260 (11th Cir. 2005). *See also United States ex rel. Freedman v. Suarez-Hoyos*, 781 F. Supp. 2d 1270, 1278 (M.D. Fla. 2011).

A claim is false or fraudulent under the FCA when a government contractor "'certified compliance with a statute or regulation as a condition to government payment,' yet knowingly failed to comply with such statute or regulation."[16] Legally false claims require knowingly false certification of compliance with a regulation or contractual provision as a condition of payment. Legally false requests for payments can be based upon either an express or implied certification theory. Claims under an express-false-certification theory arise when a payee "falsely certifies compliance with a particular statute, regulation or contractual term, where compliance is a prerequisite to payment." The payee's certification need not be a literal certification, but can be any false statement that relates to a claim. "This promise may be any false statement that relates to a claim, whether made through certification or invoices or any other express means." A government contractor who falsely certifies compliance with a particular statute, regulation, or contractual term, where compliance is a prerequisite to payment, and then demands payment from the government has submitted a false claim. This promise may be

[16] *See United States ex rel. Conner v. Salina Regional Health Center, Inc.*, 543 F.3d 1211, 1217 (10th Cir. 2008); *see also Shaw v. AAA Eng'g & Drafting, Inc.*, 213 F.3d 519, 531 (10th Cir. 2000) (allowing §3729(a)(1) liability to attach under a theory of false certification for invoices submitted for payment where contractor failed to comply with specific requirements within its contract with the government).

any false statement that relates to a claim, whether made through certifications on invoices or any other express means. [17]

B. Contract specifications and applicable regulations required MOX and E&P to implement and execute an NQA-1 Quality Assurance Program that met the requirements of 10 C.F.R. Part 50 (Appendix B) and 10 C.F.R. Part 21

61.

The reinforcing steel (rebar) for installation as Items Relied on For Safety (IROFS) procured by MOX did not meet the requirements of 10 C.F.R. 50 Appendix B, 10 C.F.R. Part 21, and contract specifications. The rebar was a "basic component" of the MFFF. The quality of this basic component, which is an item procured for installation into "safety-related" or IROFS applications, is predicated on adherence to the regulations, codes, and standards listed in the contracts between the government and MOX, and the contracts between MOX and E&P. MOX and E&P were required to flow down to CMC these regulations, standards, and specifications. Adherence to these codes and standards was mandatory under contract specifications and regulations. Conformance with these regulations, standards, and specifications was material to the government's decision to award the MFFF contract to MOX and to subsequently pay MOX's invoices for its

[17] *See Conner*, 543 F.3d at 1217, *citing U.S. ex rel. Hendow v. Univ. of Phoenix*, 461 F.3d 1166, 1172 (9th Cir. 2006) ("So long as the statement in question is knowingly false when made, it matters not whether it is a certification, assertion, statement, or secret handshake; False Claims liability can attach.")

services and components procured for the project.

62.

As the prime contractor, MOX was required to have a 10 C.F.R. Part 50, Appendix B equivalent Quality Assurance Program (QAP) and flow down the program to its subcontractors. MOX contracted with E&P to supply NQA-1 rebar to MOX as an approved NQA-1 supplier. Based upon information and belief, under the terms of the prime contract, MOX was obligated to ensure E&P had a quality assurance program that complied with Appendix B of 10 C.F.R. Part 63. Moreover, MOX was obligated to ensure that E&P flowed down these requirements to all lower-tiered vendors such as CMC. However, CMC did not have a NQA-1 QAP. MOX and E&P knew of CMC's deficiency at the time it awarded the subcontract to CMC to supply NQA-1 rebar but nonetheless sourced the rebar procurement to CMC.

64.

Among other requirements, an NQA-1 QA program required MOX and E&P to adhere to American Society of Mechanical Engineers *Quality Assurance Requirements for Nuclear Facility Applications* (NQA-1) standards for their QA programs. NQA-1 requires the establishment and execution of a QAP. Among other requirements, the NQA-1 standards required MOX and E&P to:

- evaluate CMC's capabilities to provide materials in accordance with specified requirements prior to contract award;

- perform periodic audits and inspections of CMC to ensure continued compliance with procurement requirements;

- ensure that quality assurance requirements were "flowed down" in procurement documents to CMC and provide access to CMC's facilities for audits and inspections;

- verify that the item procured conforms with procurement requirements prior to receiving and installing it;

- employ special processes that control or verify quality, such as those used in fabricating and bending the rebar. These processes must be performed by qualified personnel using qualified procedures in accordance with specified requirements; and

- ensure that nonconforming rebar was not used.

C. MOX and E&P had actual knowledge that CMC was not qualified to source NQA-1 rebar to the project

65.

MOX and E&P had actual knowledge that CMC was not qualified to fabricate NQA-1 rebar. MOX and E&P also knew that CMC did not have a QAP that met the standards of Appendix B. Knowing of these deficiencies, MOX and E&P nonetheless contracted with CMC to supply NQA-1 rebar to the project. E&P's deficiency went one step further. Despite knowing CMC was not qualified to fabricate NQA-1 rebar, E&P did not even attempt to overlay a QAP upon CMC.

As the prime contractor, however, the obligation to ensure E&P overlaid the QAP program upon CMC was MOX's ultimate duty.

66.

MOX and E&P's failures led to CMC supplying nonconforming rebar to the project. The rebar CMC supplied to the project was nonconforming because it was commercial grade rebar rather than NQA-1 grade. The rebar was also nonconforming because it failed to meet the minimum bend radius required under ACI Code 349-97. E&P's failure to provide quality oversight over CMC's fabrication of the rebar was the cause of CMC's fabricating rebar that failed to meet the minimum bend radius required under ACI Code 349-97. This deficiency could have been avoided had E&P either: 1) subcontracted with a NQA-1 qualified rebar fabricator, or 2) overlaid upon CMC the MFFF QAP program.

67.

Ms. Cook has a good faith belief that numerous contract specifications, both in the prime contract and subcontracts, required that the rebar procured be of NQA-1 quality and in accordance with the standards set forth in Appendix B.

D. MOX and E&P's violations of law and regulation

68.

The chart below lists the regulations Relator believes MOX and E&P violated as it relates to the procurement of the rebar. Conformance with these regulations was material to the government's decision to award the contract to MOX and to pay its invoices.

Law	**MOX's Failures**	**E&P's Failures**
10 C.F.R. Part 50, Appendix B, Criteria I & II (Establishment and implementation of a Quality Assurance Program)	While MOX had a QA program, it failed to properly execute the QA program. MOX failed to verify whether E&P had implemented its QA program. MOX failed to ensure that E&P flowed down to CMC the QA program.	E&P failed to execute its QA program. E&P failed to flow down to CMC a QA program.
10 C.F.R. Part 50, Appendix B, Criterion III (Design Control – Commercial Grade Dedication)	MOX failed to verify, check, and test whether the rebar procured met the design specifications.	E&P violated Criterion III when it supplied rebar procured from CMC that failed to meet NQA-1 standards. The rebar E&P delivered to the project was commercial grade. Because E&P purchased the steel from CMC as commercial

This regulation requires, in part, that "measures shall be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the structures, systems and components."		grade, it used its Form 109, which only documented traceability of the rebar but did not verify the required critical characteristics required under the commercial dedication process. E&P also failed to overlay any QA program over CMC. As result, CMC fabricated steel that failed to conform to the NQA-1 specifications and regulations. Notably, CMC fabricated steel that did not meet the minimum bend diameter as required by ACI-349 (Code Requirements for Nuclear Safety-Related Concrete Structures). As a result, CMC delivered approximately 10,000 tons of nonconforming rebar to MOX, much of which was imbedded in critical parts of the MFFF.
10 C.F.R. Part 50, Appendix B, Criterion VII (Control of Purchased Material)	MOX failed to ensure that the rebar conformed to contract specifications. MOX failed to implement and execute measures to ensure the rebar was being supplied by a qualified fabricator.	E&P failed to ensure that the rebar conformed to contract specifications. E&P failed to implement and execute measures to ensure the rebar was being supplied by a qualified fabricator.

10 C.F.R. Part 50, Appendix B, Criterion IX (Control of Special Processes)	MOX failed to ensure that the rebar fabrication was controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable standards.	E&P failed to ensure that the rebar fabrication was controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable standards.
10 C.F.R. Part 50, Appendix B, Criterion X (Inspection and Surveillance) This regulation requires, in part, that "a program for inspection activities affecting quality shall be established and executed by or for the organization performing the activity to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity."	MOX failed to implement and execute an inspection program to verify the rebar procured was in conformance with regulatory standards and contractual specifications.	E&P failed to implement and execute an inspection program to verify the rebar procured was in conformance with regulatory standards and contractual E&P failed to perform inspections and surveillance of rebar purchased from CMC. As a consequence, CMC fabricated rebar for the project that failed to conform to specifications, notably ACI-349 and ACI -315. Approximately 892 tons of nonconforming rebar was fabricated, much of which was installed by MOX for installation into items relied on for safety.
10 C.F.R. Part 50, Appendix B, Criterion XV	MOX failed to establish and execute required regulatory measures to control the inadvertent	E&P failed to establish and execute required regulatory measures to control the inadvertent installation of the

(Nonconforming materials)	installation of the nonconforming rebar. Specifically, MOX failed to implement procedures for the identification, documentation, segregation, and notification to the DoE of the nonconforming rebar.	nonconforming rebar. Specifically, E&P failed to implement procedures for the identification, documentation, segregation, and notification to MOX of the nonconforming rebar.
10 C.F.R. Part 50, Appendix B, Criterion XVI (Corrective Action and Root Cause Analysis). This regulations requires, in part that "in the case of significant conditions adverse to quality, measures shall be taken to preclude repetition."	MOX failed to investigate and then correct the deficiency after Ms. Cook first reported the deficiency.	E&P failed to take corrective action to cure its defective delivery of the nonconforming it sold to MOX. E&P failed to conduct a root cause analysis to determine and report how the nonconformance occurred. These omissions also violated 10 C.F.R. §21.21.
10 C.F.R. Part 50, Appendix B, Criterion XVIII (Audits) This regulation requires, in part, that "audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine the	MOX failed to perform audits of E&P and its subcontractors to verify the effectiveness of its and E&P's quality assurance program.	E&P failed to properly audit CMC to determine the effectiveness of CMC's quality assurance program. Had E&P conducted a proper audit, it would have determined that CMC was incapable of fabricating the quality of rebar called for under contract specifications and under the standards required by applicable regulations.

effectiveness of the program."		E&P further violated this regulation by failing have an internal audit process to determine whether its suppliers on its Approved Vendor List (AVL) were qualified to supply NQA-1 supplies.

10 C.F.R. Part 21—Reporting of Defects and Noncompliance

Applicability: Part 21 regulations apply to each individual, corporation, partnership, or other entity, and each director and responsible officer of such an organization, that supplies basic components (i.e., safety-related SSCs) for a facility or activity licensed under the NRC regulations. 21 C.F.R. §21.2.

§21.1 Purpose:

> The regulations in this part establish procedures and requirements for implementation of section 206 of the Energy Reorganization Act of 1974. That section requires any individual director or responsible officer of a firm constructing, owning, operating or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, who obtains information reasonably indicating: (a) That the facility, activity or basic component supplied to such facility or activity fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards or (b) that the facility, activity, or basic component supplied to such facility or activity contains defects, which could create a substantial safety hazard, ***to immediately*** notify the [NRC] of such failure to comply or such defect, unless he has actual knowledge that the [NRC] has been adequately informed of such defect or failure to comply.

E. MOX and E&P submitted false or fraudulent claims when it used government money to buy nonconforming rebar and also when it submitted invoices to the government for its services knowing it supplied nonconforming rebar to the government

69.

MOX and E&P supplied substandard rebar to the project.[18] Knowing this, they nonetheless submitted claims to the government for payment, which were paid. MOX and E&P procured the rebar from a supplier they knew was not qualified to fabricate NQA-1 quality rebar.[19] The quality of the rebar was material to the government's decision to pay. Had the government known it was paying for commercial grade rebar rather than NQA-1 quality grade rebar, it would have not paid. In so doing, MOX and E&P submitted false claims to the government.

F. MOX and E&P submitted factually false claims to government because it submitted claims for nonconforming rebar knowing that it was required to supply NQA-1 rebar to the government

[18] *See, e.g., United States v. Aerodex, Inc.*, 469 F.2d 1004 (5th Cir. 1973) (contractor supplied substandard product).

[19] *See, e.g., United States ex rel. Compton v. Midwest Specialties, Inc..*, 142 F.3d 296 (6th Cir. 1998) (finding that the contractor's supplying of untested products to the government to be "valueless").

70.

A claim is false or fraudulent under the FCA if it is for goods or services that have not been rendered.[20] Factually false claims generally require a showing that the payee has submitted an incorrect description of goods or services provided or a request for reimbursement for goods or services never provided.[21] MOX and E&P, operating under a cost-plus reimbursement type contract, submitted claims to the government after having indicated to the government it purchased and installed NQA-1 rebar in the project when it actually purchased and installed commercial grade rebar. In so doing, MOX and E&P submitted false claims to the government. Based upon information and belief, MOX submitted the claims directly to the government. E&P submitted its claims to MOX, knowing that payment would eventually be made by MOX with government money.

G. Legally false claims—express false certifications

71.

Based upon information and belief, MOX and E&P expressly falsely certified that they had complied with the applicable regulations and material

[20] *See Mikes*, 274 F.3d at 697.

[21] *Id.*

contract specifications when they submitted invoices to the government seeking payment related to procuring the rebar, and other components, and for services related to procuring and installing the rebar. Alternatively, through the act of submitting invoices, MOX and E&P knowingly and falsely implied that they were entitled to payment. MOX and E&P knowingly violated legal and contractual obligations, material to the government's decision to pay, when they submitted invoices to the government.

72.

MOX and E&P falsely certified in these invoices that they complied with the law and contract specifications as it relates to supplying the rebar and implementing a QAP. Such claims were false because MOX and E&P knew, when they presented invoices to the Government, that they failed to comply with regulations and contractual terms related to the procurement of the rebar. Compliance with these regulations and the contractual terms was a condition of payment. The misrepresentation by MOX and E&P of their compliance with a precondition of payment was false or fraudulent. Compliance with the law and contract clauses was material to the government's decision to pay the invoices presented by MOX and E&P. The government would not have paid these invoices had it known they were false. In so doing, MOX and E&P submitted false claims

to the government. The false invoices amount to false claims under 31 U.S.C. §3729(a)(1)(A) or 31 U.S.C. §3729(a)(1)(B), or both.

H. Legally false claims—implied false certifications

73.

"Claims under an implied-false-certification theory do not require courts to examine a payee's statements to the government. Rather, 'the analysis focuses on the underlying contracts, statutes, or regulations themselves to ascertain whether they make compliance a prerequisite to the government's payment.' (citations omitted). 'If a contractor knowingly violates such a condition while attempting to collect remuneration from the government, he may have submitted an impliedly false claim.'" [22] Such claims are best brought under §3729(a)(1)(A). [23] Courts do not look to the contractor's actual statements; rather, the analysis focuses on the underlying contracts, statutes, or regulations themselves to ascertain whether they make compliance a prerequisite to the government's payment. If a contractor

[22] *U.S. ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1168-69 (10th Cir. 2010).

[23] *See* fn 4 in *Lemmon*, where the court stated that purported breaches of defendant's contractual obligations are sufficient to sustain plaintiff's implied-false-certification claims.

knowingly violates such a condition while attempting to collect payment from the government, it may have submitted an impliedly false claim. [24]

74.

The implied false certification theory is explained as follows: "[W]here the government pays funds to a party, and would not have paid those funds had it known of a violation of a law or regulation, the claim submitted for those funds contained an implied certification of compliance with the law or regulation and was fraudulent." *United States ex rel. Barrett v. Columbia/HCA Healthcare Corp.*, 251 F.Supp.2d 28, 33 (D.D.C. 2003) (D.D.C. 2003) (citation omitted); *see also United States ex rel. Compton v. Circle B Enterprises, Inc.*, 2010 WL 942293, at *7 (M.D. Ga. Mar. 11, 2010).

75.

MOX and E&P failed to follow contract specifications and regulations that required NQA-1 rebar be supplied. MOX and E&P also failed to implement the required quality assurance program. Knowing of these deficiencies, MOX and E&P nonetheless presented invoices to the government associated with procuring and installing the nonconforming rebar. These invoices were false because the

[24] *See Conner*, 543 F.3d at 1217, *citing U.S. ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc.*, 214 F.3d 1372, 1376 (D.C. Cir. 2000); *Shaw*, 213 F.3d at 531-33.

products and services MOX and E&P delivered failed to conform to applicable regulations. Government payment to MOX and E&P was conditioned upon these contractors' compliance with the regulations set out above and contractual terms requiring the procurement of NQA-1 rebar only. Compliance with these rules was material to the government's decision to pay. Had the government known MOX and E&P failed to comply with these rules, it would not have paid. The invoices are false or fraudulent claims under 31 U.S.C. §3729(a)(1)(A) or 31 U.S.C. §3729(a)(1)(B), or both.

76.

Based upon information and belief, MOX and E&P submitted invoices for other basic components and products for the MFFF knowing that they failed to conform to contract specifications and regulations.

I. Fraud in the Inducement

77.

Based upon information and belief, MOX, by itself and through its predecessors, fraudulently induced the DoE to award it a contract; such conduct amounts to a false claim under 31 U.S.C. §3729(a)(1)(A) or 31 U.S.C. §3729(a)(1)(B), or both.

78.

31 U.S.C. §3729(a)(1)(A) prohibits the knowing submission to the Government of "a false or fraudulent claim for payment or approval." A false statement submitted in connection with a request for payment will render the claim "false or fraudulent" if the false statement is material to the government's funding decision. Under that standard, the false statements that MOX submitted in its bid to be awarded the contract were material to the government's decision to award the contract to MOX.

79.

Based upon information and belief, the government awarded MOX the contract based in part upon MOX's false statements and representations that it was a responsible contractor, was capable of performing, would comply with all applicable standards, specifications, and regulations. Had the government known that MOX had no intention in fulfilling material promises under the contract, it never would have contracted with MOX. Thus, invoices MOX presented to the government for the construction of the plant are false claims within the meaning of 31 U.S.C. §3729(a)(1)(A), because the government never would have contracted with MOX in the first place had it known the truth, and the government also would not have paid the invoices as it did had it known that MOX did not comply with

material terms of the contract. MOX's false statements and all of the invoices related to the construction of the project that MOX submitted to the government under the contract violate 31 U.S.C. §3729(a)(1)(A).[25]

J. TINA violations

80.

Liability can also be imposed under the FALSE CLAIMS ACT because MOX violated the TRUTH IN NEGOTIATIONS ACT (TINA), 10 U.S.C. § 2306a. TINA, together with its implementing regulations, require contractors in negotiated procurements to disclose and certify that disclosed details concerning expected costs ("cost or pricing data") are accurate, current and complete. Based upon information and belief, MOX was required to submit a Certificate of Current Cost or Pricing Data using the format found at FEDERAL ACQUISITION REGULATION (FAR) §15.406-2(a). *See* 10 U.S.C. § 2306a(a)(2). The certificate was due as soon as practicable after the date the parties conclude negotiations and agree to a contract price. FAR §15.406-2(a). Even if MOX failed to certify its cost or pricing data, that omission does not relieve it of liability for defective pricing. 10

[25] Under a fraudulent inducement theory, although a defendant's claims for payment made under the contract were not literally false, because they derived from the original fraudulent misrepresentation, they, too, became actionable false claims. *United States ex rel. Laird v. Lockheed Martin Eng'g & Science Servs. Co.*, 491 F.3d 254, 259 (5th Cir. 2007) (citing *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 543-44 (1943)); *see also United States ex rel. Longhi v. Lithium Power Technologies*, 575 F.3d 458 (5th Cir. 2009) (same).

U.S.C. § 2306a(f)(2). Based upon information and belief, the information MOX provided to the government in connection with the negotiations of the MFFF contract was knowingly inaccurate, incomplete, not current, and misled government contracting officials. Based upon information and belief, MOX promised the government it would implement and execute a QAP and would flow down the program to its subcontractors. MOX also promised it would procure rebar and other products that conformed to contract specifications and regulations. Government contracting officials relied upon the accuracy of the disclosures in negotiating the MFFF contract. MOX's defective disclosures led to the government to paying higher costs for the services called for under the MFFF contract.

81.

TINA also required MOX provide the Government "cost or pricing data" in connection with any contract negotiation. 10 U.S.C. §2306a (a)(2). The term "cost or pricing data" is defined by TINA as "all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) . . . a prudent buyer or seller would reasonably expect to affect price negotiations significantly." 10 U.S.C. §2306a (h)(1). MOX was required to disclose "accurate, complete and current data." 10 U.S.C. §2306a (a)(2). This includes "all the facts

that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred." FAR §2.101. Because the duty to furnish accurate, complete and current data is a duty imposed on Government contractors by a statute, this duty cannot be waived.[26] When MOX submitted its bid and in subsequent negotiations, MOX was required to "certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current." 10 U.S.C. §2306a(a)(2). MOX's compliance with TINA and its implementing regulations is a condition or prerequisite to a Government payment. MOX's false TINA's certifications amount to false claims under the FALSE CLAIMS ACT.

82.

By these means, MOX knowingly, as that term is defined in 31 U.S.C. 3729(b)(1)-(3), caused to be presented false claims to the Government. MOX's actions of using Government funds to pay E&P for substandard rebar are false or fraudulent claims under 31 U.S.C. §3729(a)(1)(A). MOX's subsequent actions of presenting an invoice seeking payment for services associated with the acquisition and install of the rebar, among other components and services, are false or

[26] *See Singer v. United States*, 576 F.2d 905, 917 (Ct. Cl. 1978); *M-R-S Manufacturing Company v. United States*, 492 F.2d 835, 841 (Ct. Cl. 1974).

fraudulent claims under 31 U.S.C. §3729(a)(1)(A) or 31 U.S.C. §3729(a)(1)(B), or both.

K. Reverse False Claims

83.

MOX and E&P were not entitled to the money it received as a result of its false claims submitted. MOX and E&P had an obligation, as defined in 31 U.S.C. §3729(b)(3), to return within 60 days these overpayments. MOX and E&P committed "reverse false clams," 31 U.S.C. §3729(a)(1)(G), when it knowing and improperly avoided its obligation to return this money to the Government.

IX. FIRST CAUSE OF ACTION AGAINST MOX
(Presenting or Causing to be Presented False Claims)

84.

Relator re-alleges and incorporates the allegations above as if fully set forth herein.

85.

MOX knowingly presented, or caused to be presented, false claims to the government seeking payment. In addition or in the alternative, MOX knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims. Compliance with applicable regulations and contractual

terms were material conditions of the government's decision to pay MOX for services related to the project. Had the government known that MOX failed to comply with these material obligations, the government would not have paid MOX. The United States, unaware of the falsity of the claims, records, or statements, and in reliance on the accuracy thereof, made payments upon them, and was therefore damaged in an amount to be determined at trial. MOX's actions are false claims under 31 U.S.C. §3729(a)(1)(A) or 31 U.S.C. §3729(a)(1)(B), or both

86.

Based upon information and belief, MOX'S false claims are ongoing.

X. SECOND CAUSE OF ACTION AGAINST MOX
(Reverse False Claims)

87.

Relator re-alleges and incorporates the allegations above as if fully set forth herein.

88.

MOX knowingly made or used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly concealed or knowingly and improperly avoided or

decreased an obligation to pay or transmit money or property to the government. MOX's actions and inaction are false claims under 31 U.S.C. §3729(a)(1)(G).

89.

Based upon information and belief, MOX'S false claims are ongoing.

XI. THIRD CAUSE OF ACTION AGAINST MOX
(Fraud in the Inducement)

90.

Relator re-alleges and incorporates the allegations above as if fully set forth herein.

91.

Based upon information and belief, the contract under which the government paid MOX was procured by fraud. 31 U.S.C. §3729(a)(1)(A) prohibits the knowing submission to a federal employee of a "false or fraudulent claim for payment or approval." Having performed contract and having submitted a comprehensive bid in response to a detailed solicitation with multiple modifications, MOX knew of the contractual obligations set forth in the solicitation, especially as it relates to the awardee's duties to comply with applicable regulations and contract specifications. MOX knowingly made false statements in its bid to be awarded the contract, which were material to the

government's decision to award the contract to MOX. MOX falsely certified to the government that it: 1) was a responsible contractor; 2) was capable of performing; 3) would deliver all services set forth in the solicitation, statement of work, and the contract; and 4) and would comply with all law and regulation applicable to the execution of the contract. Relying upon these assurances, the government awarded MOX contract. MOX's deceptions fraudulently induced the government to award the contract to it. MOX's compliance with TINA and its implementing regulations is a condition or prerequisite to a government payment. MOX's false TINA's certifications amount to false claims under the FALSE CLAIMS ACT.

XII. FIRST CAUSE OF ACTION AGAINST E&P
(Presenting or Causing to be Presented False Claims)

92.

Relator re-alleges and incorporates the allegations above as if fully set forth herein.

93.

E&P knowingly presented, or caused to be presented, false claims to the government seeking payment. In addition or in the alternative, E&P knowingly made, used, or caused to be made or used, false records or statements material to

false or fraudulent claims. Compliance with applicable regulations and contractual terms were material conditions of the government's decision to pay E&P for services related to the project. Had the government known that E&P failed to comply with these material obligations, the government would not have paid E&P. The United States, unaware of the falsity of the claims, records, or statements, and in reliance on the accuracy thereof, made payments upon them, and was therefore damaged in an amount to be determined at trial. E&P's actions are false claims under 31 U.S.C. §3729(a)(1)(A) or 31 U.S.C. §3729(a)(1)(B), or both.

XIII. SECOND CAUSE OF ACTION AGAINST E&P
(Reverse False Claims)

94.

Relator re-alleges and incorporates the allegations above as if fully set forth herein.

95.

E&P knowingly made or used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the government. E&P's actions and inactions are false claims under 31 U.S.C. §3729(a)(1)(G).

96.

Based upon information and belief, E&P's wrongful actions are ongoing.

XIV. CONSPIRACY CAUSE OF ACTION AGAINST DEFENDANTS (31 U.S.C. §3729(a)(1)(C))

97.

Relator re-alleges and incorporates the allegations above as if fully set forth herein.

98.

As set out above, defendants, each with the other and with others both known and as yet unknown, conspired to commit one or more violations of 31 U.S.C. §§3729(1)(A), and (B), making them liable under 31 U.S.C. §3729(1)(C).

XV. PRAYER

99.

Relator requests the Court to enter judgment against defendants, as follows:

a) That the United States be awarded damages in the amount of three times the damages sustained by the United States because of defendants' violations of the FALSE CLAIMS ACT.

b) That the maximum civil penalties be imposed for each and every false claim that defendants presented or caused to be presented.

c) That pre-judgment and post-judgment interest be awarded, along with reasonable attorney's fees, costs, and expenses which the Relators necessarily incurred in bringing and prosecuting this action.

XVI. RELATOR'S INTEREST

100.

Relator is entitled to the statutory percentage of the amount received by the United States, reasonable expenses that have been incurred, attorney's fees, and costs. 31 U.S.C. §3730(d).

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Appendix to Follow

Appendix

[redacted]	
ACI	American Concrete Institute ACI 349 (Code Requirements for Nuclear Safety-related Concrete Structures) ACI 315 (Details and Detailing of Concrete Reinforcement)
ANSI	American National Standards Institute
ASL	Approved Supplier List
ASME	American Society of Mechanical Engineers
ASL	Approved Vendor List
CAR	Corrective Action Report
CGI	Commercial Grade Item
COTS	Commercial Off the Shelf material
CMC	Commercial Metals Corporation (Rebar Carolinas)
CMC	Commercial Metals Company
CPS	Construction Procurement Specialist
DoE	Department of Energy
E&P	Energy & Process Corporation
IROFS	Items Relied on for Safety
MFFF	Mixed Oxide Fuel Fabrication Facility
MOX	Shaw / Areva MOX Services, LLC
NQA-1	Nuclear Quality Assurance 18 requirements: 1 Organization 2 Quality Assurance Program 3 Design Control 4 Procurement Document Control 5 Instructions, Procedures and Drawings 6 Document Control 7 Control of Purchased Material, Equipment and

	Services 8 Identification and Control of Materials Parts and Services 9 Control of Special Processes 10 Inspection 11 Test Control 12 Control of Measuring and Test Equipment 13 Handling, Storage and Shipping 14 Inspection, Test and Operating Status 15 Nonconforming Items 16 Corrective Action 17 Quality Assurance Records 18 Audits
NRC	Nuclear Regulatory Commission
QA	Quality Assurance
QAM	Quality Assurance Manual
QAP	Quality Assurance Program
QC	Quality Control
QL-1	Quality Level 1
REA	Request for Equitable Adjustment
Rebar	Reinforcing steel bars
SNM	Special Nuclear Material

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(Atlanta Division)

UNITED STATES ex rel. DEBORAH W. COOK,	§	**Civil Action No.: _____**
	§	
	§	
Relator,	§	**JURY TRIAL DEMAND**
	§	
	§	
v.	§	
	§	**FILED IN CAMERA**
SHAW AREVA MOX SERVICES, LLC; SHAW ENVIRONMENTAL & INFRASTRUCTURE, INC.; THE SHAW GROUP, INC.; and ENERGY & PROCESS CORPORATION,	§	**AND UNDER SEAL**
	§	**PURSUANT TO**
	§	**31 U.S.C. § 3730**
	§	
	§	**DO NOT ENTER INTO PACER**
Defendants.	§	
	§	**DO NOT ENTER IN CM/ECF**
	§	
	§	**DO NOT PLACE IN PRESS BOX**

CERTIFICATE OF FONT

I hereby certify that the foregoing was prepared in Times New Roman 14-point font in conformance with Local Rule 5.1C.

PIERCE ~ GABRIEL Partners, LLC

/s/ Charles D. Gabriel
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