



PACA Pulse

FALL 2009

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

PO Box 9178
Albuquerque, NM 87119
www.pacanm.org

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PULSE EDITOR

Ross Crown

764.5402

RCrown@LRLaw.com

EDITORIAL SUPPORT & DESIGN

Ro Saavedra

830.2345

RoSaavedra@msn.com

UNDERWRITER

**LEWIS
AND
ROCA
LLP
LAWYERS**

Col. Duval's KAFB Report to the Albuquerque Community

On Thursday, September 11, 2009, Col. Michael Duval, commander of the 377th Air Base Wing, the unit that runs Kirtland Air Force Base, delivered his annual report to the community. The well attended event, held at the Embassy Suites Hotel, was sponsored by the Kirtland Partnership Committee.

Col. Duval's report began with highlighting the Kirtland personnel killed in the line of duty since the heinous attack on America on 9-11-2001. Fortunately, there aren't many because few KAFB units deploy, and only in small numbers, generally only one or two people.

Most of the people stationed at KAFB work in training and science. The training includes

pararescue and combat rescue officers as well as nearly all Air Force special operations personnel. Approximately 20,000 individuals work at KAFB with Sandia National Laboratories personnel accounting for half. There are only about 3,000 active military personnel on the base.

Col. Duval also talked about the Air Force Research Laboratory. In particular he noted the important contributions to national security provided by its Directed Energy Directorate and Space Vehicles Directorate.

Kirtland's financial output is about \$5.6 billion annually with roughly \$3 billion contributing to

the Albuquerque economy. •



Membership

PACA membership annual dues are \$150*. The fiscal year runs from April 1, 2009 to March 31, 2010. Mid-year applications will be pro-rated. You may apply on-line at www.paca.org.

For more information, contact Stacy Sacco, Membership Chair, at 489-2311 or sasacco@aol.com

* Dues are subject to change.

PACA Pulse

If you know a potential member or anyone else who would like to receive our newsletter, please forward their e-mail address to Burke Nelson, 944-2126.

This is your newsletter. If you would like to contribute an article, make announcements (promotion, job change, or a new product or service), please submit your newsletter contribution to the editor, Ross Crown, at RCrown@LRLaw.com or call him at 764-5402.

Contributions are welcome! •

PACA Profile: MIRADOR Enterprises, Inc.

For as far back as she can remember, Yolanda Diaz envisioned owning her own business. She began working right out of high school, while at the same time putting herself through college and earning a Bachelor of Science with a major in accounting. In 2002, she decided to start her own business. Yolanda founded MIRADOR Enterprises, Inc. as a facilities management and maintenance and environmental consulting company. She is the sole owner of MIRADOR, which is Spanish for “vision” or “view of the surroundings.”

Yolanda quickly learned that founding a company and actually getting work are two very different things. She created a marketing plan focused on developing her small disadvantaged business into a preferred provider to federal, state, and municipal customers. To help realize this objective, in 2006 MIRADOR obtained a Small Business Administration 8(a) certification.

MIRADOR is headquartered in El Paso, Texas with an office in Albuquerque. The company has approximately 35 employees. Its local office is run by Ron Unruh, Director of Operations for Albuquerque. Ron has been an active member of PACA for over 12 years. He currently serves PACA as Chair of the Briefing for Industry Committee and thus is one of the key people responsible for PACA's highly successful annual conference.

MIRADOR provides a wide range of services consisting of the following:

- **Facilities Management and Maintenance:** MIRADOR provides facilities management and maintenance services to many customers, including Balfour Beatty Communities, under their Military Family Housing Maintenance Contract at Fort Bliss, Texas; the Housing Authority of the City of El Paso, under various maintenance and upgrade contracts to communities in the El Paso area; the Directorate of Public Works, under the Installation Status Report (Infrastructure) Facility Assessments contract; the Texas Department of Transportation, under maintenance contracts spanning from El Paso to Laredo, Texas; the White Sands Missile Range (WSMR) in New Mexico; and the Department of Homeland Security, under annual General Maintenance contracts for facilities located in El Paso.

- **Environmental Consulting, Management, and Support:** MIRADOR's environmental consulting services include contracts such as NEPA environmental assessments for Valley Telephone Cooperative, Inc. and Texas Gas Service, cultural resources and compliance environmental services contracts for the Directorate of Public Works – Environmental Division (DPW-ED) Fort Bliss and the Directorate of Environment & Safety, WSMR.

- **Environmental Technicians:** MIRADOR provides 16 environmental technicians to DPW-ED Fort Bliss under the

Hazardous Waste Support Services contract. The company supports and operates the Fort Bliss Hazardous Materials Management Program by providing professional, technical, and administrative expertise in all pertinent discipline areas. MIRADOR's technicians supply a wide range of services, including hazardous waste and other regulated waste curbside pick-up services, environmental compliance monitoring services, sustainability center operation (recycling/reuse/consolidation) services, maintaining inventory of pollution prevention equipment, deploy and retrieve, pick-up and set-up services for solvent equipment, spill response and clean-up, and the operation of the Fort Bliss Bio-Cell. Recently, MIRADOR acquired the Underground and Above Ground Storage Tank (UST/AST) Maintenance Contract. Under this contract, MIRADOR delivers interim maintenance and reporting of every single UST and AST for DPW-ED Fort Bliss. In addition, MIRADOR provides demolition, disposal, and installation of new UST/AST units.

- **Cultural Resource Support:** MIRADOR's cultural resource services consist of (a) mitigating the adverse effects of construction on archaeological sites in the Heavy Brigade Combat Team (HBCT) cantonment WSMR area; (b) site mitigation surveys for HBCT sites in the WSMR area; (c) marking of sensitive archeological (Native American burial grounds) and endangered species areas and collecting GPS information for DPW-ED Fort Bliss in New Mexico; and (d) the stabilization of four historical ranch buildings and one grave site located at the Prather Ranch on the Otero Mesa.

- **Construction Management:** MIRADOR provides unique renovation and construction management services to federal, state, and municipal customers. In 2007, MIRADOR received an Achievement Award from the 6th Air Defense Artillery Brigade at Fort Bliss for the design and con-



struction of a new track and field with superior systems that include a Super X Performance grade running track, professional sports lighting, and a specialized sports artificial turf

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that meets physical rehabilitation specifications. MIRADOR also built a replica of the certification course currently at the Federal Law Enforcement Training Facility in Artesia, New Mexico, an advanced team obstacle course for the Border Patrol Tactical Unit. MIRADOR provided complete fabrication and installation of 28 separate obstacle course units.

• **Construction Subcontracting:** As a subcontractor, MIRADOR has delivered new construction services for site work, concrete, rough carpentry, roofing, mechanical, and finishes to the Corps of Engineers for training facilities such as the Urban Assault Course, Live Fire Shoot Houses Course, Convoy Live Fire Course, and the Infantry Squad Battalion Course under multiple award task order contracts. MIRADOR has provided complete renovation and modification services to multi-story barracks, motor pool facilities, rappel towers, and administrative offices at Fort Bliss.

Recently, the SBA approved a Mentor Protégé Agreement between MIRADOR and MIRATEK Corporation, an ISO 9001:2008 certified high technology information systems, business, and engineering services firm also headquartered in El Paso. The two companies have together established MIRA Facilities Joint Venture, LLC, that features a blend of program management and high technology/engineering capabilities. MIRA Facilities offers 8(a) solutions and has the capacity to support multiple task orders nationwide across a wide area of technology, business, scientific, environmental, facilities management, and engineering disciplines. Although the Mentor Protégé Agreement is relatively new, MIRADOR and MIRATEK have significant experience working together on many information technology and environmental contracts over the last seven years.

As its name indicates, MIRADOR is a company of vision that is always on the lookout for opportunities. MIRADOR seeks to augment its professional and technical corporate capabilities and thus enhance its services in facility management and maintenance, environmental, and information technology. PACA is part of that strategy. Ron values his membership in PACA. Among other things, PACA provides him with peer networking. This has, in turn, led to contracts and teaming opportunities.

MIRADOR is dedicated to providing quality, responsive, competitive, and safe services to every customer. The company is prepared to provide low risk high technology and professional capabilities to help a diverse base of customers meet their challenges.

Additional information about MIRADOR can be found at www.miradorenterprises.com. •



It seems like just yesterday that I was telling you how thrilled I was to be your new president, and today more than half my term is gone. I never guessed how busy this position would keep me and I'm sure it will stay that way through March.

In this issue of the Pulse I'd like to highlight a few of the things we're working on to make PACA better. The first area I'll touch on is expanding our interaction with the Air Force Research Laboratory (AFRL). PACA's officers met with the AFRL directors on October 1. A key topic of the get together focused on what PACA could do to help AFRL publicize their programs and increase the interaction between the contractor and research communities. All ideas are on the table and we welcome your input. Ideas in discussion include tours of test facilities, AFRL articles included in the Pulse, technical briefings from researchers on their programs, and researcher/contractor socials at the club.

I am pleased to report that we have updated and validated our membership list. This list is available on the "Members" tab when you sign onto the PACA Web site (www.pacanm.org). The membership listing, along with the Briefing For Industry (BFI) attendees list, provides a valuable resource for networking and teaming opportunities. As a reminder, these lists are resources for our members only and should not be shared with others looking to market to our members.

Another area I want to highlight is improving our commitment to education. As a result of the BFI's great financial performance this year, we have more resources to devote to education. PACA funds endowments at the University of New Mexico, New Mexico State University, and New Mexico Institute of Mining and Technology, and we will be adding to them this year. We will again be participating as science fair judges and be offering scholarships to outstanding project participants. And in a new effort we are looking to extend our outreach to high schools in the Albuquerque area. We hope to positively influence high school seniors to pursue science and engineering careers and plan to award scholarships to a few students planning college majors that lead to careers in these areas.



On a final note, it is time again for our annual holiday celebration. This year our party is on Friday, December 4 at Tanoan Country Club. All members should have received an e-mail invitation for this gala event. Details and event registration are also available through the PACA Web site. I look forward to seeing all of you there. •

Upcoming Lunch Speakers



- **November 17, 2009**, to be announced at luncheon
- **December 4, 2009 (Friday)**, PACA Holiday Luncheon at Tanoan Country Club beginning at 11:30 am



- **January 19, 2010**, Carol Yarnell, Director of Supply Chain Management, Sandia National Laboratories

The purpose of Supply Chain Management is to help execute and grow Sandia's missions through meeting the various departments' needs for product, services, and information while satisfying regulatory requirements. Specific tasks include:

- Help acquire and manage goods and services
- Manage Sandia's supplier base
- Perform major subcontract management
- Design unique packaging for special materials
- Deliver hazardous and non-hazardous material
- Package and ship materials
- Provide mail services
- Provide transportation services
- Help Sandia's line organizations plan for mission project's supply chain needs
- Help track and manage organization assets
- Provide and maintain storage facilities for unique/mission critical assets, like explosives and radioactive materials
- Dispose and/or reapply assets no longer needed
- Manage and maintain Sandia's vehicle fleet

We meet the 3rd Tuesday of each month at the Mountainview Club (located on Club Road on the east side of Kirtland Air Force Base). Registration begins at 11:30 am followed by lunch at 12:00 noon. Members are admitted free and our guest fee is \$15.

To RSVP, e-mail paca@ngc.com or register online at www.pacanm.org. Include your name, guest's name, and menu selection (typically a meat, fish, or vegetarian dish). Please RSVP by the Friday before the week of the meeting.

If you are not already on base, enter at the Wyoming gate and state your purpose. Assuming you're registered, your name will appear on the PACA list and you will be admitted. •

Welcome NEW Members

Wheaton Byers, SAIC

Phillip Darling, LinQuest

Rick De Fatta, Teledyne Solutions, Inc.

David Dericotte, Mechtronic Solutions, Inc.

Michelle Detry, Keystone International, Inc.

Rich Hartlaub, Teledyne CollaborX

Edgar Johansson, Red Canyon
Engineering & Software

Bradley Kettner, SGT

James Kubinski, LinQuest

Bill Kurey, ASRC Communications

Stephen Matier, Information Systems
Laboratories, Inc.

Mark Mimovich, CSA Engineering,
A Moog Company

David Montoya, Manzano Strategies

Michael Mostrom, Ktech Corporation

Mitchell Norman, Industrial
Electric-Automation, Inc.

Barry Olson, Booz-Allen-Hamilton

Steven Torrance, ORION International
Technologies, Inc.

Joe Woodward, Scitor



Legal Insights: Reach of False Claims Act Expanded

By Ross Crown

On May 20, 2009, President Barack Obama signed into law the Fraud Enforcement and Recovery Act of 2009 (FERA). The primary purposes of the FERA, as stated in the Act, are to improve enforcement of mortgage fraud, securities and commodities fraud, financial institutions fraud, and other frauds related to federal assistance and relief programs, and recovery of funds lost to these frauds. Most of the attention FERA has received is focused on its role in overseeing the vast disbursement of federal dollars through the stimulus plan and the Government's industry bailouts. The FERA also, however, has particular significance for government contractors. This statute includes a significant broadening of contractor civil liability under the False Claims Act (FCA).

The section of the FERA amending the FCA is entitled, "Clarifications to the False Claims Act to Reflect the Original Intent of the Law." These "clarifications" are in part a response to recent judicial decisions adopting narrower interpretations of the FCA than the current Congress believes is warranted. Regardless of the particular rationale for the amendments to the FCA, they all share a common objective of discouraging so-called fraud in federal contracting and facilitating the recoupment of federal funds. The most important changes to the FCA are discussed below. Please note that for purposes of brevity, the sections of the FCA reviewed in this article are paraphrased. To determine precisely the changes made to the FCA, it is necessary to read the statute itself.

Acts Giving Rise to Liability

The FCA identifies conduct to which liability attaches. The descriptions of certain of these actions have been expanded by the FERA. The old FCA recited that liability would be imposed on any person who knowingly makes or uses a false statement to get a false or fraudulent claim paid by the Government. 31 USC § 3729(a)(2). The new FCA holds liable any person who knowingly makes or uses a false statement "material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(B).

By adding a materiality requirement, the new FCA now puts in writing a requirement that was previously implied by some courts in interpreting the old FCA. Unfortunately for contractors, the new FCA defines materiality broadly as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." 31 U.S.C. § 3729(b)(4). This contrasts with narrower definitions of materiality some courts have employed, such as the materiality standard utilized in *Costner v. URS Consultants*, 153 F.3d 667, 677 (8th Cir. 1998). In that case, the court limited actions subject to the FCA to those "which have the purpose and effect of causing the United States to pay out money it is not obligated to pay, or those actions which intentionally deprive the United States of money it is lawfully due..."

Where a contractor has already received payment from the Government, the old FCA imposed liability on a person who knowingly makes or uses a false statement to avoid an obligation to pay money or deliver property to the Government. 31 U.S.C. § 3729(a)(7). Under the new FCA, liability in this circumstance exists where a person knowingly makes or uses a false statement material to an obligation to pay money or deliver property to the Government, or knowingly conceals or improperly avoids an obligation to pay money or deliver property to the Government.

31 U.S.C. § 3729(a)(1)(G). Whereas the old FCA required a false statement by the contractor, the revised statute extends liability beyond false statements to instances where the contractor is found to have knowingly concealed or improperly avoided its obligation to the Government.

Definition of Claim

The old FCA defined a "claim" as including any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee or other recipient if the Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee or other recipient for any portion of that money or property. 31 U.S.C. § 3729(c).

The new FCA defines a claim to mean any request or demand, whether under a contract or otherwise, for money or property, and whether or not the Government has title to the money or property, that is presented to an officer, employee or agent of the United States. A claim can also be 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. To qualify as a claim in this situation, the Government must also have provided a portion of the money or property requested or demanded, or will reimburse such contractor, grantee or other recipient for any portion of that money or property. 31 U.S.C. § 3729(b)(2). This revised definition expands the meaning of a claim by including demands made on persons other than Government representatives. The demand must still, of course, be seeking funds or property that originally came from the Government, in whole or in part.



Statute of Limitations

The FCA includes a twofold statute of limitations for civil actions. Such an action may not be brought more than six years after the violation of the Act is committed, or more than three years after the date when facts material to the action are known or reasonably should have been known by a cognizant Government official, but in no event more than ten years after the violation is committed. 31 U.S.C. § 3731(b). Civil actions for violations of the FCA may be brought by the Government or by private persons acting as whistleblowers. These whistleblowers are usually referred to in the context of the FCA as "relators."

Under the old FCA, there was confusion as to what happened when a relator's complaint was filed within six years of the violation, but the Government's follow-on complaint was brought after the six year period. Some courts held that the statute of limitations prevented the Government from pursuing claims that occurred more than six years before the Government filed its complaint. See, e.g., *U.S. ex rel. Ramadoss v. Caremark Inc.*, 586 F. Supp. 2d 668, 701 (W.D. Tex. 2008).

Congress clarified this issue in the new FCA. Now under the FCA, for statute of limitations purposes, any Government complaint

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Legal Insights

continued

shall be deemed to relate back to the filing date of the relator's complaint, to the extent that the Government's claim arises out of the same conduct set forth in the prior complaint. 31 U.S.C. § 3731(c).

Protection From Retaliatory Actions

The FCA protects relators from retaliation by the contractor who is the subject of an FCA complaint. Under the old FCA, any employee who was discharged, demoted, suspended, threatened or in any other manner discriminated against was entitled to all relief necessary to make the employee whole. 31 U.S.C. § 3730(h).

The new FCA extends protection from retaliatory actions by any company that is the subject of a relator's complaint not only to employees, but also to contractors and agents. Such persons are entitled to all relief necessary to make him or her whole should that person be discharged, demoted, suspended, threatened or in any other manner discriminated against. 31 U.S.C. § 3730(h)(1).

Another difference between these old and new anti-retaliation provisions in the FCA is that the prior version of the Act protected relators from retaliation for his/her efforts in furtherance of an action under the FCA. The amended provision provides protection from

retaliation for the relator's efforts to stop one or more violations of the FCA. Thus, the new provision encourages relators to try to halt violations of the Act instead of just protecting their pursuit of a claim. The new provision will likely be read by the courts as broader than the old provision since efforts to stop violation of the Act may arguably not only include the relator's efforts to halt contractor misconduct, but also initiation of an action under the FCA to remedy such misconduct.

Conclusion

Like other legal developments during the past year, passage of the FERA represents a further challenge for government contractors. Fairly or unfairly, government contractors are more than ever targets of the Government instead of its partners. This new environment demands that contractors be confident in their internal compliance programs. Contractors whose company controls are not state-of-the-art need to upgrade these systems promptly. •

Ross is a partner in the Albuquerque office of Lewis and Roca LLP. This article is intended for general information only and should not be construed as legal advice or opinion. Any questions concerning your legal rights or obligations in any particular circumstance should be directed to your lawyer.

The Press Release: A NO BRAINER!

By Ro Saavedra

Issuing a press release to the news media is an easy and free way to promote an important event, invention, or business expansion, as well as simply to announce new hires or promotions within your company, a new location, or recognitions and awards. It's an ideal opportunity to remind your customers and potential customers of your company's achievements and those of your employees. If you're not already doing so, do take full advantage of this means to positively highlight your business.

Unlike a newspaper article that details a news story, a press release is disseminated to specific reporters or media outlets (such as television newsrooms, print newspapers, online news sources, and trade journals) to report your company's news. If it's momentous news, such as a new invention or discovery, your purpose would be to encourage the media to develop stories in reporting the noteworthy news. If the content is an announcement rather than hard news, such as a new hire, your purpose is to have the print or online newspaper or magazine include the announcement and photo (always provide a photo) in their "business announcements" section, such as the Business Outlook's Briefcase page (Monday Albuquerque Journal insert).

The press release format is simple. The masthead must contain the company name (and logo if available) and a contact person including their phone number and e-mail address. It's a good idea to also include a physical address, Web site address, and fax number.

"FOR IMMEDIATE RELEASE" (all in upper case) should appear at the top left or right of the page below the masthead information. Rarely is there a reason to issue a release that isn't intended for immediate release, but if that is the case, "HOLD FOR RELEASE UNTIL (date)" is used.

A strong declarative headline follows and should be one

sentence that states the content of the release. Center the heading (in bold font) and capitalize the first letter of each word.

The body of the release should be 1.5 or double spaced with paragraphs indented and begin with city, state, country (when appropriate), and date (month, day, year). Written in the third person, a release is generally two to five brief paragraphs totaling no more than about 500 words. The introductory sentence needs to capture the readers' attention and clearly state the news or announcement. Included in the first sentence and paragraph are the applicable five Ws: who, what, when, where, and why. The remainder of the first paragraph summarizes the release, essentially relating the entire message.

The second paragraph provides supportive and detailed information and might include quotes, figures, impressive comparisons, and other attention grabbing details. The most effective release is an inverted pyramid which contains the most vital information first followed by support data that can be "cut" if necessary. Therefore, the third and following paragraphs include "additional" information such as a Web site that provides further information, experts and their contact information, or an upcoming demonstration. The final paragraph most often is a sentence or two about the company or organization. Lastly, "###" indicates the end of the release.

To acquire and retain credibility with reporters and media outlets, be succinct and to the point, use correct grammar, proof the release carefully for typos and other errors, and tell the truth. •

