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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
ex rel. HUMBERTO IRIZARRY,

Plaintiff,

v.

INNOVATIVE TECHNOLOGIES, INC. and
MARIANO J. MARTINEZ,

Defendants.

Civil Action No. 13-0705 (EGS)

Jury Trial Demanded

UNITED STATES' COMPLAINT IN PARTIAL INTERVENTION

Having intervened in part in this matter, the United States of America (“United States” or “Government”) files this Complaint in Intervention to recover treble damages and civil penalties pursuant to the False Claims Act, 31 U.S.C. §§ 3729-33, or, alternatively, to recover damages, restitution, and other monetary relief under the federal common law theories of recovery.

NATURE OF ACTION

1. The causes of action asserted by the United States arise from false or fraudulent claims that Defendants Innovative Technologies, Inc. (“Innovative Technologies”) and individual Defendant Mariano J. Martinez (“Martinez”), Chief Executive Officer (“CEO”) and founder of Innovative Technologies, (collectively, “Defendants”) submitted or caused to be submitted to the Television-Audio Support Activity (“Support Activity”) of the Department of Defense Media Activity (“Media Activity”) for audio-visual equipment and implementation services.

2. From December 2006 to December 2015, Innovative Technologies contracted with the Defense Department to provide thousands of pieces of audio-visual equipment, implementation services, and customer technical support for communication facilities operated by the Defense

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Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

Department and other federal civilian agencies of the United States. Innovative Technologies provided these services under Contract Nos. HQ0028-07-D-0003 (the “2007 Contract”) and HQ0028-12-D-0011 (the “2012 Contract”).

3. Defendants knowingly submitted false or fraudulent statements, certifications, and documents to the Defense Department to obtain both the 2007 Contract and 2012 Contract and their task orders, and ultimate payment for material and services provided under those Contracts and their task orders.

- a. As part of their proposals for each contract, Innovative Technologies informed the Defense Department that it would not charge a fee on equipment and would pass along all manufacturer’s discounts.
- b. Despite the promise that Innovative Technologies would not charge a fee on equipment, it built in hidden equipment fees within their pricing quotations for each task order. Thus, Innovative Technologies inflated the cost of the equipment and kept a portion of discounts for themselves.
- c. Martinez led these knowingly wrongful efforts.
- d. By hiding these equipment fees, Innovative Technologies and Martinez violated the Federal Acquisition Regulation (“FAR”) and fraudulently induced the Government to award them the task orders.
- e. Had the Government known of these fees, it would not have found the Innovative Technologies’ task order quotations and proposals reasonable and would not have awarded the task orders to Innovative Technologies.
- f. Once it obtained the task orders, Innovative Technologies submitted multiple invoices to the Government containing these fraudulent equipment fees. Overall,

Innovative Technologies received approximately \$12.6 million in fraudulent overpayments from the Government because of these hidden fees.

4. As a result of Defendants' false or fraudulent statements and claims, Defendants knowingly submitted or caused to be submitted false or fraudulent invoices for payment to the United States for audio-visual equipment services, and knowingly made false statements material to false or fraudulent claims that caused the Defense Department to pay for the services at an inflated price.

5. Relator Humberto Irizarry filed this action on behalf of the United States pursuant to the qui tam provisions of the False Claims Act on May 14, 2013.

PARTIES

6. The United States is the Plaintiff in this action. The United States brings this action on behalf of the Defense Department, including its Media and Support Activities.

7. The Media Activity is a United States Department of Defense field activity that provides a broad range of high-quality multimedia products and services to inform, educate, and entertain Department of Defense audiences around the world. The Media Activity is headquartered on Fort Meade in Maryland.

8. The Support Activity is under the umbrella of the headquarters Media Activity and is headquartered in Riverside, California. The Support Activity designs, procures, installs, and supports radio and television, visual information, media archival, storage and duplication, and combat camera systems with commercial, off-the-shelf equipment and supplies.

9. Relator Humberto Irizarry is a former Innovative Technologies employee.

10. Irizarry worked at Innovative Technologies from 2001 to approximately June 2012 in positions of increasing responsibility including Business Area Manager, Vice President of Sales

and Marketing, Vice President of Visual Integration Services, and Senior Program Manager for Department of Defense contracts.

11. As Senior Program Manager, Irizarry was responsible for overseeing the implementation of work and ensuring successful completion of deliverables for both the 2007 and 2012 Contracts. Irizarry's involvement in drafting proposal documents was limited to the operational and technical aspects of the proposals, such as supply integration, testing, training, and quality assurance. The pricing aspects of each proposal was ultimately the responsibility of the accounting department and Martinez. At all points in time, Martinez established the amount that Innovative Technologies charged the Government for equipment and labor costs.

12. Irizarry learned of the fraudulent schemes through the normal course of his employment, particularly through his participation in reviewing solicitation proposals, reviewing finalized contracts, and preparing certain documents at Martinez's request.

13. Innovative Technologies is a government contractor that provides visual information services, including design-build and on-site operations support of broadcast television and production facilities, multimedia centers, audio visual presentation facilities, command and control centers, and video conferencing facilities. These operations include but are not limited to systems integration, systems engineering and design, and customer operations support.

14. Innovative Technologies was founded in 1991 and is a closely held business, incorporated in and under the laws of the Commonwealth of Virginia. Innovative Technologies has worked on contracts with various agencies and departments in addition to Department of Defense, including Housing and Urban Development, NASA, Health and Human Services, the Department of Interior, the Department of Homeland Security, the Department of Commerce, and the Department of Labor.

15. Defendant Mariano J. Martinez is the founder and CEO of Innovative Technologies. As CEO, Martinez personally participated in the creation of each response to Government Requests for Proposals, directly influenced labor and equipment pricing, and signed each contract awarded to Innovative Technologies. As CEO, Martinez had ultimate responsibility for Innovative Technologies' compliance with Government regulations, including ensuring all Government billings complied with contract terms and the Federal Acquisition Regulation ("FAR").

JURISDICTION AND VENUE

16. This action arises under the False Claims Act and the common law.

17. This Court has jurisdiction over the subject matter of this action pursuant to 31 U.S.C. §§ 3732(a) and 28 U.S.C. §§ 1331, and 1345.

18. Venue is proper in this District under 31 U.S.C. § 3732 and 28 U.S.C. § 1391(b) and (c) because Defendants transacted business in this District and have committed acts proscribed by 31 U.S.C. § 3729 in this District.

STATUTORY BACKGROUND

19. The False Claims Act, originally enacted in 1863 during the Civil War was substantially amended by the False Claims Amendments Act of 1986, signed into law on October 17, 1986; and by the Fraud Enforcement and Recovery Act of 2009, signed into law on May 20, 2009. Congress' intent was to enhance the Government's ability to recover losses sustained as a result of fraud against the United States and to provide a private cause of action for the protection of employees and others who act in furtherance of the purposes of the Act.

20. The False Claims Act imposes liability for knowingly presenting false or fraudulent claims for payment to the United States Government, or knowingly using a false record or

statement material to a false or fraudulent claim. 31 U.S.C. § 3729(a)(1)(A); (a)(1)(B). At all times relevant to the Complaint, the False Claims Act provided, in pertinent part, that any person who:

(a)(1)(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval [or]

(a)(1)(B) knowingly makes, uses or causes to be made or used, a false record or statement material to a false or fraudulent claim . . .

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains[].

21. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 (notes), and 64 Fed. Reg. 47,099, 47,103 (1999), the FCA civil penalties were adjusted to a range of \$5,500 to \$11,000 per false claim for violations occurring from September 29, 1999, to November 2, 2015, and \$10,781 to \$21,563 per false claim for violations occurring after November 2, 2015.

22. For purposes of these provisions, the terms “knowing” and “knowingly” mean that a person, with respect to information: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. 31 U.S.C. § 3729(b)(1)(A). No proof of specific intent to defraud is required. 31 U.S.C. § 3729(b)(1)(B).

FACTUAL ALLEGATIONS

23. In or around early-2006, the Support Activity advertised Solicitation No. HQ0028-R-0023 to multiple vendors to obtain site survey, system design, supply integration, installation, testing, and training for visual information and broadcast systems for Defense Department customers. This solicitation included a requirement to submit a proposed pricing structure for equipment that would be used as a baseline for pricing the task orders associated with the awarded

contract. Innovative Technologies was one of the vendors chosen to submit an offer for this solicitation, which it did on July 20, 2006.

24. After examining the offers submitted, the Support Activity awarded the 2007 Contract to Innovative Technologies on November 7, 2006. The contract was for commercial items which is in line with how the Support Activity typically procured equipment and other supplies from commercial, off-the-shelf vendors who were in the business of providing systems integration and design work that was tailored to meet the customer's needs.

25. In awarding the 2007 Contract, the Support Activity agreed with Innovative Technologies' proposed equipment pricing structure, which was outlined in "Part 1 Solicitation Document and Price Proposal" of Innovative Technologies' offer, including Section B-2.2.6 entitled Proposed Fixed Fee Percent. In that section, Innovative Technologies expressly stated that "there is no fee applied to equipment." Innovative Technologies also stated that it "negotiates a manufacturer's discount that is shared with [the Support Activity], and a 5% [General & Administrative charge] applied. When an additional manufacturer's discount is earned (typically based on volume) the additional discount is shared with" the Support Activity.

26. Despite the Support Activity accepting Innovative Technologies' proposed equipment pricing structure, Innovative Technologies added fees to equipment sold to Defense Department customers when developing the pricing and quotations for each task order under the 2007 Contract.

27. To hide its markup, Innovative Technologies would submit narrative proposals and quotations with exact pricing in a PDF spreadsheet. On the surface of these quotations, Innovative Technologies purported to show customer extension prices that were less than the list prices for each piece of equipment.

28. This made it appear to the Defense Department that Innovative Technologies was passing along the entirety of the discounts negotiated with the manufacturers as stated in its proposal.

29. This was not the case.

30. The native Excel versions of each quotation, which Innovative Technologies never provided the Support Activity or its Defense Department customers, contained hidden columns, showing that Innovative Technologies added a profit margin or fee percentage (including in a column named “Fee”) to the original extended cost of each piece of equipment. These fee percentages resulted in a markup of 8% and 20% in most cases. Then after adding this additional equipment fee, Innovative Technologies added its 5% General and Administrative cost on top of the total equipment cost and fee.

31. By including fees on equipment, Innovative Technologies clearly violated the 2007 Contract’s equipment pricing structure. That is, Innovative Technologies was inflating the cost of the equipment by adding fees and not passing on the entirety of the manufacturer’s discounts to the Government as it promised it would do.

32. This was no accident. Innovative Technologies and Martinez generated quotations by applying fees and markups to equipment and then hiding the columns depicting these markups.

33. By not passing on the entirety of the manufacturer’s discounts, Innovative Technologies also violated FAR 31.201-5 Credits, which provides “the applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund.”

34. Innovative Technologies did not disclose these added equipment fees in their narrative proposals for each task order. From the PDF versions of the spreadsheets attached to each proposal and quotation, the Defense Department was unable to see this hidden fee column.

35. For example, on Task Order 0100 of the 2007 contract, the customer extension price on the face of the quotation was \$545,016.60. That said, the native Excel version of the same quotation demonstrates that Innovative Technologies added a 20% fee to the original extended price of each piece of equipment, which amounted to a total fee of \$90,836.10. Again, this added fee was hidden from the Defense Department in Innovative Technologies' quotation.

36. By not disclosing these equipment fees, Innovative Technologies also violated FAR 16.505(a)(7), Ordering, which states "Orders place under indefinite-delivery contracts must contain the following information: (i) Date of order; (ii) Contract number and order number; and (iii) for supplies and services, line-item number, subline-item number (if applicable), description, quantity, and unit price or estimated cost and fee (as applicable)."

37. In addition to the hidden fees, Innovative Technologies also quoted higher equipment prices than the manufacturer's list prices in some cases and would bill higher than what was offered at the retail price. Innovative Technologies claimed this was due to it providing customized products to the Government. However, the true goal of adding the fees and higher equipment prices was to earn at least an 8% profit margin on the equipment. Innovative Technologies' negotiating tactic for equipment on each task order was to compare the total customer extension price to the total list price and if the total customer extension price was less than everything was reasonable. Innovative Technologies called it a bottom-line approach and ignored the fact that it was not passing along all manufacturer's discounts.

38. Had the Government known of these fees and equipment prices in excess of the list prices, it would not have found Innovative Technologies' task order quotations and proposals reasonable and would not have awarded the task orders to Innovative Technologies.

39. By hiding these equipment fees, Innovative Technologies and Martinez fraudulently induced the Government to award the task orders to Innovative Technologies. The Government was misled into thinking it was receiving the lowest possible price consistent with the equipment pricing requirements of the 2007 Contract.

40. The pricing aspects of each proposal was ultimately the responsibility of the Innovative Technologies' accounting department and Martinez. At all points in time, Martinez as CEO established the amount that Innovative Technologies charged the Government for equipment costs.

41. These hidden equipment fees were a means to increase the profitability of the company and the wealth of Martinez who is the founder and owner of Innovative Technologies.

42. Martinez would remind the Irizarry twice a year to "stick with the story" that there we no equipment fees and Innovative Technologies was only getting its share of additional manufacturer's discounts that were beyond the contract specified discounts.

43. For the 2007 contract, 147 out of the 155 task orders had hidden fees added to the equipment costs totaling approximately \$9.5 million. These task orders also had General and Administrative costs that marked-up the hidden equipment fees by approximately \$500,000. Out of the 147 task orders awarded under the 2007 contract, 19 had equipment fees exceeding \$100,000 each.

44. Knowing that they would continue getting away with adding hidden equipment fees to each task order, Innovative Technologies applied the same scheme to the 2012 Contract it received from the Support Activity on June 7, 2012.

45. That is, for task orders under the 2012 Contract, Innovative Technologies continued to build equipment fees into their quotations. This was contradictory to what Innovative Technologies said in Section B-3.2.6 of the proposal for the 2012 Contract where it again stated, “there is no fee applied to equipment.”

46. In each quotation, Innovative Technologies violated the equipment pricing structure that the Support Activity accepted in the base 2012 Contract. Innovative Technologies failed to pass along all manufacturer’s discounts and deceptively added equipment fees to each quotation.

47. On June 7, 2012, Martinez asked the Media Activity Contracting Officer via email to incorporate Innovative Technologies’ proposal, which includes the language regarding no fee will be applied to equipment, into the 2012 Contract as part of Modification 1. On June 14, 2012, the Contracting Officer said the modification was complete, demonstrating that Martinez personally knew that equipment fees were not allowed per the 2012 Contract and yet still directed that they be included in the task order quotations anyways.

48. For the 2012 Contract, Innovative Technologies billed the Government for 48 task orders that included hidden equipment fees totaling approximately \$2.4 million. Innovative Technologies’ billings also included an additional approximately \$85,000 in General and Administrative markups to the equipment fees.

49. Prior to the finalization of the 2007 Contract, Irizarry participated in a meeting with Martinez where he raised questions about the inclusion of the “there is no fee applied to equipment” phrase because, in fact, there was a fee added.

50. After raising his concerns with Martinez regarding the appropriateness of this “fee,” in or about the end of November until the beginning of December 2006, Martinez assured Irizarry of the legality of this pricing structure and informed Irizarry that task order pricing was not his responsibility, which led Irizarry to drop the issue at the time.

51. After the award of the 2012 Contract, which again included the representation that no fees would be applied to equipment purchases, Irizarry again became concerned with the validity of this pricing structure, particularly the fees added to equipment.

52. Irizarry was concerned about the misleading nature of this language and how in reality equipment fees were being billed to the Government throughout the period of the contracts.

53. Throughout the 2007 and 2012 Contracts, Martinez marketed these contracting vehicles to various Department of Defense customers.

54. In or around April 24, 2013, Martinez met with representatives of the Defense Information Systems Agency to discuss using Innovative Technologies’ Support Activity engineering contract.

55. On August 8, 2014, Martinez also met with the Chief of the Army Global Services Branch to discuss using Innovative Technologies’ contract to purchase equipment and services for its facilities.

56. In both meetings, Martinez stated that “no contract fee” was a benefit of using the vehicle despite knowing that Innovative Technologies’ had a pattern of building in hidden equipment fees and applying fees to nearly every line item on its task orders.

COUNT I – AGAINST ALL DEFENDANTS
FALSE CLAIMS ACT: PRESENTMENT OF FALSE CLAIMS
31 U.S.C. § 3729(A)(1)(A)

57. The United States realleges and incorporates by reference herein the allegations set forth in the preceding paragraphs.

58. Innovative Technologies and Martinez knowingly presented or caused to be presented materially false or fraudulent claims for payment or approval to the United States, in violation of 31 U.S.C. § 3729(a)(1)(A).

59. The United States paid the false or fraudulent claims because of Innovative Technologies and Martinez’s acts, and incurred damages as a result in an amount to be proven at trial.

60. Innovative Technologies and Martinez are liable to the United States for three times the amount of all damages sustained by the United States because of their conduct, plus a civil penalty for each violation of the Act.

COUNT II – AGAINST ALL DEFENDANTS
FALSE CLAIMS ACT: MAKING OR USING FALSE RECORD OR STATEMENT
31 U.S.C. § 3729 (A)(1)(B)

61. The United States realleges and incorporates by references the allegations set forth in the preceding paragraphs.

62. Innovative Technologies and Martinez knowingly made, used, or caused to be made or used, false records, statements, or certifications material to the United States’ decision to render payment for reimbursement claims resulting from sales of generic medication.

63. Innovative Technologies and Martinez knowingly made or used false or fraudulent claims for payment that were submitted to, and paid by, the United States.

64. The United States paid the false or fraudulent claims because of Innovative Technologies and Martinez's acts, and incurred damages as a result in an amount to be proven at trial.

65. Innovative Technologies and Martinez are liable to the United States for three times the amount of all damages sustained by the United States because of their conduct, plus a civil penalty for each violation of the Act.

COUNT III – AGAINST INNOVATIVE TECHNOLOGIES
BREACH OF CONTRACT

66. The United States realleges and incorporates herein by reference the allegations set forth in the preceding paragraphs.

67. The 2007 and 2012 Contracts called for Innovative Technologies to price equipment purchase without the addition of fees.

68. Innovative Technologies breached that obligation by adding fees to prices of equipment and charging General and Administrative markups to those fees.

69. As a result of Innovative Technologies, the United States made payments to Innovative Technologies under the mistaken belief that the reported equipment prices Innovative Technologies presented to federal programs reflected actual equipment prices without prohibited fees, and sustained damages.

COUNT IV – AGAINST DEFENDANT MARTINEZ
UNJUST ENRICHMENT

70. The United States realleges and incorporates by reference the allegations set forth in the preceding paragraphs.

71. As described above, Martinez as CEO of Innovative Technologies received, and/or continued to maintain control over federal monies to which he was not entitled.

72. By receiving sums derived payments from federal programs for inflated equipment prices reimbursement claims submitted over the course of Innovative Technologies' contracts with the Support Activity, Martinez through inequitable means has been unjustly enriched and is liable to account for and pay such amounts, which are to be determined at trial, to the United States.

PRAYER FOR RELIEF

WHEREFORE, the United States demands judgment against Defendants as follows:

A. On Plaintiff's Counts I and II against Innovative Technologies and Martinez, for treble the amount of the United States' single damages to be proven at trial, plus civil penalties allowable by law for each violation;

B. On Plaintiff's Count III, Breach of Contract, against Innovative Technologies, for the amounts paid to Innovative Technologies as a result of its contractual breaches in an amount to be determined, together with costs and interest;

C. On Plaintiff's Count V, Unjust Enrichment, against Martinez, for the amount by which Martinez has been unjustly enriched in an amount to be determined, together with costs, and interest; and

D. all other and further relief as the Court may deem just and equitable.

The United States of America Requests a Jury Trial on All Claim so Triable.

* * *

Dated: September 28, 2023
Washington, DC

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar #481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

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