

Lobbying for Federal Contract Leads to Byrd Amendment \$4.8 Million Penalty

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By D. Mark Renaud and Stephen J. Kenny

On August 21, the U.S. Department of Justice (DOJ) announced that it had reached an agreement with Sandia Corporation to settle allegations that the company violated the Byrd Amendment and the False Claims Act by using federal funds to lobby Congress and federal agencies over a four-year period. Sandia, a wholly-owned subsidiary of Lockheed Martin, agreed to pay nearly \$4.8 million to resolve the allegations.

The Byrd Amendment prohibits using federal funds to lobby Congress or a federal agency to award or renew a federal contract, grant, loan, or cooperative agreement. The Byrd Amendment also requires that applicants for the above federal programs certify that they have not used appropriated funds to lobby in violation of the Amendment as well as file reports disclosing certain of the applicant's lobbying activities related to a contract, grant, loan, loan guarantee, or cooperative agreement (via Standard Form LLL).

Since 1993, Sandia has held a contract with the U.S. Department of Energy's (DOE) National Nuclear Security Administration to operate the Sandia National Laboratories. The DOJ alleged that, between 2008 and 2012, Sandia used federal funds to lobby Congress and other federal officials to obtain an extension of this contract without competitive bidding. The contract was worth approximately \$2.4 billion per year. The DOE's Office of the Inspector General conducted an investigation and issued a report that concluded that appropriated funds were used to pay Sandia employees and outside consultants salaries and fees for developing a plan to influence federal officials in connection with the contract extension. The

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

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Inspector General's Report served as the basis for the DOJ's case.

Federal contractors need to be aware that Byrd Amendment violations are coming under increasing scrutiny. Although the Department of Justice has historically prosecuted few Byrd Amendment violations, the Department has in recent years shown a willingness to use the False Claims Act—under which treble damages are available as a remedy—to go after alleged violations. As the Sandia case demonstrates, even activities that would seem to be acceptable efforts to extend a federal contract may run afoul of the Byrd Amendment. The OIG Report indicates that Sandia believed its efforts were typical of any federal contractor seeking a contract extension. Sandia further believed its activities were allowed under applicable Federal Acquisition Regulations.

Wiley Rein maintains preeminent government ethics and government contracting practices. We are prepared to assist contractors in complying with all federal lobbying laws, including the Byrd Amendment.