

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98295 / September 6, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21614

In the Matter of

ROBIN K. CHOPRA, CA

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission” or “SEC”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Robin K. Chopra (“Chopra” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over the Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This matter stems from Chopra's involvement in Fluor Corporation's ("Fluor") percentage of completion ("POC") accounting for a fixed-price construction project on which Fluor served as the subcontractor and carried a risk of cost overruns with respect to work within the contract's scope.
2. The project required Fluor to validate and complete the design and to build a one-of-a-kind U.S Army facility for manufacturing nitrocellulose, an ammunition propellant ("Radford" or the "Radford Project"). In 2015, Fluor submitted a bid on the Radford Project, relying on overly optimistic cost and timing estimates. Following the Radford Project's subcontract award, Fluor experienced cost overruns that worsened over time.
3. From the fiscal year ended December 31, 2017 through the quarter ending March 31, 2019 ("Relevant Period"), Chopra, as Senior Vice President, Controller, and Chief Accounting Officer ("CAO") of Fluor, accepted financial estimates for Radford from Fluor personnel. He should have known that these financial estimates caused materially overstated revenue to be recorded on Fluor's books and records. The result was that the overstated revenue kept the project forecast from a loss position. Further, in support of the foregoing, Chopra directed Radford Project personnel to prepare documentation required by Fluor's internal accounting controls that Chopra, among others, reviewed and commented on, and which reflected the incorrect revenue estimates and overstated revenue. Chopra thereby was a cause of Fluor's failure to maintain a system of internal accounting controls sufficient to account for the Radford contract in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"). These failings resulted in Fluor's maintaining inaccurate books and records and ultimately Fluor including materially misstated financial statements in periodic reports filed with the SEC that Chopra signed. Chopra was a cause of Fluor's filing these materially inaccurate financial statements in its periodic reports for the fiscal year ended December 31, 2017 through the quarter ending March 31, 2019.
4. In August 2019, Fluor announced \$714 million in pre-tax charges stemming from an "operational and strategic review" of sixteen projects, including Radford. Prompted by the SEC staff's investigation, Fluor undertook an internal investigation in 2020 that identified material weaknesses in its internal control over financial reporting and material errors in its financial statements, and resulted in Fluor restating its annual and quarterly financial statements for its fiscal year 2016 through the third quarter of 2019, as disclosed in its 2019 Form 10-K filed with the SEC on September 25, 2020 (the "Restatement"). The material weaknesses identified in the Restatement were attributable in part to control failures associated with the Radford Project, which resulted in material errors. Throughout the Relevant Period, Fluor's accounting issues on Radford resulted in materially overstated net earnings in Fluor's reported financial statements. Regarding the Radford Project, Fluor overstated its annual net earnings by \$38 million (25%) in 2017, and \$43 million (25%) in 2018, and understated its net loss by \$3 million (5%) in the first quarter of 2019.
5. As a result of conduct detailed herein, Chopra was a cause of Fluor's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder.

Respondent

6. Robin K. Chopra, age 58, is a resident of England. Chopra joined Fluor in 1991. In 2016, Chopra became the Senior Vice President, Controller, and CAO of Fluor, positions which he held until taking a leave of absence in June 2020 and resigning from the company in February 2021. Chopra is a Chartered Accountant in the United Kingdom. He has never been registered with the Commission in any capacity.

Relevant Entity

7. Fluor Corporation is a Delaware corporation with its principal place of business in Irving, Texas. Since registering its common stock with the SEC under Section 12(b) of the Exchange Act in 2000, Fluor has been required to file periodic reports on Forms 10-K and 10-Q with the SEC pursuant to Section 13(a) of the Exchange Act and related rules thereunder. During the Relevant Period, the stock traded on the New York Stock Exchange under the ticker symbol “FLR.” Fluor performs engineering, procurement, and construction services worldwide and operates through business segments, including the Fluor Government Group (“FGG”), the segment responsible for the Radford Project.

Background

8. Under GAAP, Fluor accounted for its fixed-price projects using the percentage of completion (“POC”) method, whereby it was required to periodically recognize the project’s costs as incurred and the revenue as a percentage of the work completed to date. Under this method, for each reporting period, a project team develops dependable estimates of expected total revenues, total costs, and total project gross margin (“PGM”) to arrive at a project’s financial forecast (known as the Estimate at Completion or “EAC”). A project must recognize the entire amount of an anticipated loss as soon as the loss becomes evident.

9. To periodically record a project’s EAC, Fluor required use of the Project Margin Analysis Report (“PMAR”), which should document project management’s most likely current estimate of the project’s revenue, cost, and PGM forecast. Fluor’s internal accounting controls required that Chopra, as the CAO, provide sub-certifications to the Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) as certifiers of Fluor’s financial statements. Chopra, as CAO, also provided Controller Updates, which incorporated information he obtained from others, to Fluor’s audit committee summarizing the significant accounting determinations and management representation letters attesting to the accuracy of the project forecasts and compliance with the applicable GAAP and Fluor’s policies.

Radford Project

10. In December 2015, Fluor finalized a \$245 million fixed price subcontract with its customer (“Customer”) for the Radford Project to validate and complete the design and build the Radford Project. As part of the scope of work, Fluor was provided an incomplete design from the prior, terminated subcontractor (“Prior Design”) that it was required to validate and complete when performing the subcontract.

11. During the Relevant Period, the difference between the subcontract price and the anticipated total cost of the Radford Project grew significantly as delays and cost overruns worsened. To address the growing anticipated total cost over the original subcontract price, Fluor personnel determined to develop and submit change orders, also known as Project Change Notices (“PCNs”). PCNs are proposed modifications of a contract that change the price or scope of work of the contract, or both. Fluor personnel developed PCNs for submission to the Customer for approval.

12. Through fiscal year-end 2017, Fluor was required to record revenue for unapproved PCNs under POC accounting in compliance with ASC Subtopic 605-35, *Construction-Type and Production-Type Contracts* (“ASC 605-35”), and could only record it if recovery of the additional revenue was deemed probable. Under ASC 605-35, a PCN should be evaluated as a “claim” if it was a change order in dispute, or unapproved as to both scope and price. Revenue recognition for a claim under ASC 605-35 required a heightened level of evidence to demonstrate probable recovery. For the fiscal year ended December 31, 2017, even though the relevant PCNs were either in dispute or were unapproved as to price and scope, Fluor wrongly categorized them as unpriced change orders, instead of claims.

13. Chopra, among others, accepted FGG’s categorizing the PCNs as unpriced change orders, when they should have been categorized as claims. He also accepted, as did others, FGG’s inclusion of additional revenue in the project forecast from the unapproved PCNs, including rejected and not yet submitted PCNs, using overly high rates of assumed cost recovery on the PCNs. As a result, this revenue offset additional forecasted costs and minimized the adverse impact on the PGM. The amount of unapproved PCNs in the forecast increased during the Relevant Period, but Fluor’s actual rates of recovery from approved PCNs remained low, as reflected below:

Radford Project	4Q 2017	1Q 2018	2Q 2018	3Q 2018	4Q 2018	1Q 2019
Unapproved PCNs in revenue forecast, net of profit fee	\$47M	\$68M	\$69M	\$68M	\$118M	\$132M
Assumed recovery rate of net PCN revenue in revenue forecast	100%	100%	90%	80%	80%	78%
Percent of total PCN revenue actually approved by Customer	4.5%	3.9%	3.4%	2.4%	3.9%	6.1%

14. Chopra requested that Fluor personnel prepare documentation to support the Radford accounting for fiscal year-end 2017. The objective of this control activity, which Chopra introduced to Fluor, was to document the facts and analysis supporting revenue estimates on projects with significant risks and judgments, in accordance with GAAP. Fluor stated that it was entitled to payment because the Customer misrepresented the status of the Prior Design. But it was not probable Fluor would recover money from the Customer to pay for the delays and design issues underlying the majority of PCNs at the assumed 100% recovery rate. Rather, throughout the Relevant Period, the Customer rejected most PCNs, blamed Fluor for the design problems, and maintained that Fluor was responsible for the additional costs under the terms of the existing

fixed-price contract. Fluor never obtained, nor was Chopra ever apprised of, sufficient evidence to support recording the revenue on the PCNs.

15. For fiscal year-end 2017, in support of its assumed 100% recovery, Fluor relied on the assertion that a Customer employee allegedly “verbally acknowledged [Customer’s] responsibility for these changes and agreed to reconsider all rejected change orders, as well as begin reviewing and negotiating all PCNs with Fluor in late February.” Despite Chopra’s questions about the basis for the probability determination, Chopra was not provided with sufficient evidence to support revenue in addition to the contract amount in the face of the Customer’s resistance to paying for the PCNs. In fact, the Customer employee said that the Customer would undertake a revamped process to assess PCNs, not that it would approve or pay for any individual PCN.

16. In the first quarter of 2018, Fluor adopted ASC 606, *Revenue from Contracts with Customers* (“ASC 606”), which superseded the revenue recognition requirements in ASC 605. Under ASC 606, Fluor could only include the unapproved PCNs in the revenue forecast if Fluor had an enforceable contractual right to additional revenue beyond the fixed contractual price, considering all relevant facts and circumstances, including the terms of the contract. From the first quarter of 2018 through the end of the Relevant Period, Fluor did not sufficiently evaluate under ASC 606 if it had an enforceable contractual right to the unapproved PCNs. Without such an evaluation, it was improper to include revenue from the unapproved PCNs in its forecast. Even if Fluor sufficiently evaluated under ASC 606 whether it had an enforceable contractual right to the unapproved PCNs, it was only permitted to increase forecast revenue to the extent it was probable that a significant reversal in the amount of cumulative revenue recognized would not occur, weighing factors such as the limited predictive value from Fluor’s prior experience given the low recovery rates, the length of time it would take to resolve and susceptibility to the judgment of third parties. But Chopra, as Fluor’s CAO, did not have sufficient evidence of it being probable under ASC 606 that a significant reversal would not occur for unapproved PCNs.

17. Chopra again requested that Fluor personnel prepare documentation to support the Radford accounting for fiscal year-end 2018, and the first quarter of 2019. This documentation did not adequately support Fluor’s enforceable right to the revenue and failed to support that recovery from the Customer was probable.

18. For fiscal year-end 2018 and for the first quarter of 2019, Fluor personnel justified the assumed recovery rates based on the Customer’s approvals of a subset of monetarily small PCNs that were considered “less contentious” than the vast majority of outstanding PCNs. This was incorrect, particularly because, in January 2019, the Customer rejected \$54 million of the large and contentious PCNs and, additionally, Fluor’s central arguments on entitlement to the revenue. In turn, Chopra questioned how the revenue from these PCNs could continue to be included in the revenue, in light of the rejections. In response, to support of the probability determination, the requested documentation for year-end 2018 and the first quarter of 2019 asserted that the rejections were the Customer’s initial negotiation position. Chopra accepted this, even though this was inconsistent with other facts of which he was aware.

19. Additionally, for Fluor’s 2018 Form 10-K and the Form 10-Q for the first quarter of 2019, Chopra helped draft a materially misstated disclosure regarding Radford PCNs: “The company’s [Radford] forecast is based on its assessment of the probable resolution of certain change orders submitted to the client which are currently under discussion, and if not achieved, could adversely affect revenue and segment profit.” Chopra should have known this was a material misstatement because many PCNs were not “under discussion,” but rather either formally rejected or not yet submitted, and that the statement failed to note that lack of favorable resolution on the PCNs could have a *material* adverse effect on revenue and *consolidated* profit due to the large value of those PCNs. Finally, Chopra should have known the disclosure omitted the amount of the unapproved PCNs, which was required under GAAP and SEC regulations, specifically ASC 910-20-50-1, and SEC Regulation S-X Rule 5-02.3(c)(3).

20. As the CAO, Chopra signed the periodic SEC filings during the Relevant Period. Chopra also signed management representation letters for each reporting period during the Relevant Period, representing that management expected to recover revenue for unapproved change orders in Radford’s forecast. Chopra also signed sub-certifications to Fluor’s CEO and CFO, for the Relevant Period, representing that, among other things, the financial information was prompted by and based on facts and circumstances which were in evidence in the relevant quarter.

21. The conduct described above resulted in inaccurate books and records in the Relevant Period. Chopra had information that he should have known indicated that the assumed rate of recovery for the PCNs revenue was too high. While engaging in the foregoing, Chopra was a cause of Fluor improperly including revenue for Radford unapproved PCNs in the total revenue forecast, which kept the project forecast from loss positions that should have been recognized. As a result of the correction of these errors, revenues for Radford were reduced in the Restatement as follows:

Reporting Period	Restatement Reduction in Revenues Recognized	Restatement Reduction in Radford Forecast Revenues
2017 (annual)	\$19.3 million	\$46.7 million
Q1 2018	10.1 million	\$65.9 million
Q2 2018	\$9.4 million	\$62.1 million
Q3 2018	\$11.8 million	\$66.7 million
Q4 2018	\$14.0 million	\$115.2 million
2018 (annual)	\$45.3 million	\$115.2 million
Q1 2019	\$9.5 million	\$123.5 million

Violations

22. As a result of the conduct described above, Chopra was a cause of Fluor’s violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder. Section 13(a) of the Exchange Act requires issuers with a class of securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1 and 13a-13 require the filing of annual and quarterly reports, respectively. The

obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

23. As a result of the conduct described above, Chopra was a cause of Fluor's violations of Section 13(b)(2)(A) of the Exchange Act, which requires an issuer of a security registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets.

24. As a result of the conduct described above, Chopra was a cause of Fluor's violations of Section 13(b)(2)(B) of the Exchange Act, which requires an issuer of a security registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general and specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

B. Respondent shall, within 10 business days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Robin K. Chopra as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Carolyn M. Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph B above. This Fair Fund may be combined with the Fair Fund created in *In the Matter of Fluor Corporation*, AP File No. 3-21610. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree

or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary