

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98296 / September 6, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21615

In the Matter of

BRADLEY R. SCOTT,

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 Bradley R. Scott (“Scott” 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 Scott'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 the 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"). 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 quarter ending March 31, 2018 through the quarter ending March 31, 2019 ("Relevant Period"), Scott, first as a Controller of a business unit of the Fluor Government Group ("FGG"), a segment of Fluor, and then as the Chief Financial Officer ("CFO") of FGG, accepted financial estimates for Radford that Scott knew or should have known materially overstated revenue. The result was that the project forecast was kept from a loss position and that overstated revenue was recorded on Fluor's books and records. Further, in support of the foregoing, he helped generate, reviewed, and accepted documents required by Fluor's internal accounting controls, but which reflected the incorrect revenue estimates and overstated revenue. He also accepted inaccurate project forecasts that Scott knew or should have known failed to include all anticipated costs. Scott 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 maintaining inaccurate books and records and ultimately in Fluor including materially misstated financial statements in periodic reports filed with the SEC for the quarter ending March 31, 2018 through the quarter ending March 31, 2019. Scott was a cause of Fluor's filing these materially inaccurate financial statements in its periodic reports.
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 \$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, Scott 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. Bradley R. Scott, age 54, is a resident of Aldie, Virginia. He became a Controller of a business unit of FGG and then the CFO of FGG in December 2017 and June 2018, respectively. He continues to hold the latter position. He has never been licensed as an accountant or 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 FGG.

Background

8. Under GAAP, Fluor accounted for its fixed-price projects using the 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, Fluor project personnel are required to develop 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 and use of a PMAR review checklist to "provide adequate assurances that project forecasts are best estimates in accordance with GAAP." Fluor's internal accounting controls required that project management approve the PMAR; that Scott, as the segment CFO, and other segment personnel sign the PMAR review checklist quarterly; and, that Scott, along with two other segment officers, provide sub-certifications to corporate-level management with each signer representing that "to the best of our knowledge and belief," the project forecasts represent management's best estimate, and are in 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 to build the Radford Project. As part of the scope of work, Fluor was provided an incomplete design from the prior, terminated contractor (“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. This growing anticipated costs over the subcontract price should have prompted Fluor to revise the EAC to reflect all the additional anticipated costs. Scott recognized early in 2018 that the project controls group for the Radford project was experiencing challenges in generating an EAC that accurately reflected the status of the project and took preliminary steps to address those challenges. That said, Scott knew or should have known that Fluor personnel generally added costs to the EAC only to the extent that the costs could be offset by corresponding additional forecasted revenues. As a result, Fluor’s forecasted cost in the EAC remained incorrectly low and delayed a loss recognition.

12. For costs included in the EAC over the original subcontract price, Fluor sought to recover most excess costs and offset them using additional forecasted revenues on 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, and that are subject to approval of the Customer. For the majority of PCNs, Fluor never obtained Customer approval. The additional forecasted revenues recorded on the unapproved PCNs were determined using overly high assumed rates of recovery, as described below.

13. Throughout the Relevant Period, Fluor was required to record revenue for unapproved PCNs under POC accounting in compliance with ASC 606, *Revenue from Contracts with Customers* (“ASC 606”), which Fluor adopted in the first quarter of 2018. 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 contract price, considering all relevant facts and circumstances, including the terms of the contract. During 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 had 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.

14. Scott, with others’ input and involvement, approved of the inclusion of forecasted additional revenue from unapproved PCNs, including rejected and not yet submitted PCNs, using overly high rates of assumed cost recovery. Although Scott initiated Fluor’s using recovery rates

less than 100%, there was insufficient evidence of it being probable under ASC 606 that a significant reversal of revenue would not occur for unapproved PCNs at those assumed recovery rates. 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	1Q 2018	2Q 2018	3Q 2018	4Q 2018	1Q 2019
Unapproved PCNs in revenue forecast, net of profit fee	\$68M	\$69M	\$68M	\$118M	\$132M
Assumed recovery rate of net PCN revenue in revenue forecast	100%	90%	80%	80%	78%
Percent of total PCN revenue actually approved by Customer	3.9%	3.4%	2.4%	3.9%	6.1%

15. Scott and others prepared documentation, at the request of Fluor financial personnel, to support the Radford accounting for year-end 2018 and the first quarter of 2019. This control activity’s objective was to document the facts and analysis supporting revenue estimates on projects with significant risks and judgments, in accordance with GAAP. This documentation did not adequately support Fluor’s enforceable right to the revenue and failed to support that it was probable that a significant reversal in the amount of revenue recognized would not occur. Fluor stated that it was entitled to payment because the Customer misrepresented the status of the Prior Design. But it was not probable under GAAP that Fluor would recover money from the Customer to pay for the delays and design issues underlying the majority of PCNs. 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.

16. For year-end 2018 and for the first quarter of 2019, with the involvement of others, Scott justified the assumed recovery rates based, in part, on the Customer’s approvals of a subset of monetarily small PCNs that were considered “less contentious” than the majority of outstanding PCNs. These recovery rates were not probable, particularly because, in January 2019 the Customer rejected \$54 million of the large and contentious PCNs and, in doing so, refuted Fluor’s central arguments on entitlement to the revenue. A Fluor employee informed Scott that these rejections signaled that the Customer was done negotiating the PCNs, that Fluor would not be able to recover 80% of the value of the PCNs as reflected in the revenue forecasts, and that the resolution of many of the PCNs would require mediation or litigation. In support of the probability determination, Scott prepared documentation, with the input and involvement of others, for year-end 2018 and the first quarter of 2019 asserting that the rejections were the Customer’s initial negotiation position, but Scott did not obtain sufficient evidence to support recording the additional revenue during the Relevant Period. As such, it was improper to include revenue from the unapproved PCNs in the forecast.

17. For the quarter ending June 30, 2018 through the quarter ending March 31, 2019, Scott signed a PMAR review checklist for Radford stating erroneously that the project forecasted

revenue, costs, and PGM are best estimates in compliance with GAAP. Scott also signed sub-certifications to Fluor’s Chief Executive Officer and CFO, for the Relevant Period, erroneously representing “to the best of his knowledge and belief” that, among other things, the financial information was presented in conformity with GAAP, that change orders unapproved as to scope, price, or both, had been recorded in accordance with ASC 606, and that all project forecasts represented management’s best estimate of Fluor’s financial results.

18. The conduct described above was a cause of inaccurate books and records in the Relevant Period. As described above, Scott knew or should have known that anticipated costs were not included in the EAC, and that the assumed rate of recovery for the PCNs was too high. Scott was a cause of Fluor’s improper inclusion of the unapproved PCN revenue and the improper exclusion of anticipated costs, which delayed the recognition of a loss. The errors described above were a cause of Fluor materially misstating its net earnings in periodic reports filed with the SEC as follows:

Reporting Period	Overstated Net Earnings	As % of Reported Net Earnings (Loss)
Q1 2018	\$8.7 million	(33%)
Q2 2018	\$7.5 million	10%
Q3 2018	\$8.8 million	12%
Q4 2018	\$17.8 million	37%
2018 (annual)	\$42.8 million	25%
Q1 2019	\$3.3 million	(5%)

Violations

19. As a result of the conduct described above, Scott 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.

20. As a result of the conduct described above, Scott 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.

21. As a result of the conduct described above, Scott 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 \$25,000 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 Bradley R. Scott 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, he shall not argue that he is entitled to, nor shall he 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 he 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