

MEMORANDUM

Date: November 16, 1999

To: File #198060012 [REDACTED]

From: [REDACTED] Audit Advisor/Investigative Attorney

Via: [REDACTED] Special Agent-in-Charge, Investigations Section

Re: Case Closeout [REDACTED]

Background:

In March 1998, a special agent from EPA OIG contacted our office to obtain our assistance in an ongoing investigation of [REDACTED] SA [REDACTED] informed us that [REDACTED] who provides consulting services primarily to agencies of the United States government, was billing its government clients for subcontractor costs which [REDACTED] had not yet incurred, a violation of the Federal Acquisition Regulations. He also told us that [REDACTED] had previously been directed to discontinue this practice and failed to do so.

Investigation:

We worked with SA [REDACTED] and the Department of Justice, primarily providing information on the NSF contracts with Abt as requested. In June 1999 we were informed that Abt had agreed to settle with the government for \$1.9 million. We worked with SA [REDACTED] to coordinate agency review and approval of the settlement agreement.

Findings:

In September 1999 [REDACTED] agreed to settle with the United States government for \$1.9 million. As part of the settlement [REDACTED] also entered into a Compliance Agreement with the Environmental Protection Agency. The United States and its governmental clients agreed not to institute any civil or administrative action against [REDACTED] in connection with its billing of subcontractor charges it had not yet paid from the period January 1, 1988 through the effective date of the agreement. The agreement was executed on October 20, 1999.

This case is closed



U.S. Department of Justice

*United States Attorney
District of Massachusetts*

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Direct Line: 617/748-3139
Fax: 617/748-3992
October 27, 1999*

PRESS RELEASE

**ABT ASSOCIATES, INC. OF CAMBRIDGE
PAYS \$1.9 MILLION
TO SETTLE FALSE CLAIMS ALLEGATIONS**

Boston, MA... A Cambridge consulting firm has paid \$1.9 million to settle civil charges brought by the federal government under the False Claims Act.

United States Attorney for the District of Massachusetts, Donald K. Stern and Walter C. Holton, United States Attorney for the Middle District of North Carolina, today announced that **ABT ASSOCIATES, INC.** ("ABT"), a consulting firm based in Cambridge, Massachusetts, has paid \$1.9 million to the United States to settle civil claims arising under the federal False Claims Act.

ABT is a consulting firm which is engaged in the business of providing a wide array of consulting services to its clients, primarily agencies of the United States government. It relies heavily on the services of subcontractors. The Federal Acquisition Regulations ("FAR") prohibit government contractors like **ABT** from billing the government for its subcontractor costs until it has already paid those costs.

The United States alleges that from 1988 until early 1998, **ABT** was billing as many as fifteen different government agency clients for subcontractor costs which **ABT** had not yet incurred. The government clients included the Environmental Protection Agency, the Department of Health and Human Services, the Department of Justice, the Executive Office of the President and the National Science Foundation. In fact, an audit by the Defense Contract Audit Agency reflected that during this period, **ABT** may have billed the government prematurely nearly 74% of the time, by an average period of 37 days. This conduct, the United States alleges, deprived the government of the use of funds which it prematurely paid to **ABT**.

The United States further alleges that, during this time period, **ABT** accounting personnel knew what the FAR required, but nonetheless failed to comply with it. The United States also alleges that one of **ABT**'s governmental clients, the Environmental Protection Agency, warned

DATE

ABT orally and in writing on three occasions about its conduct, but ABT failed to remedy the problem.

ABT hired new accounting staff in 1998, and when they learned of the problem, they made significant changes in accounting procedures to ensure that the conduct did not reoccur. In addition, as part of its settlement with the United States, ABT has executed a Compliance Agreement which requires ABT, among other things, to retain an independent entity to review ABT's compliance with the FAR on an annual basis, to train its employees on government contract compliance, and to maintain a helpline/hotline for ABT employees who seek guidance on government contracting issues or who wish to report improper government contracting practices. ABT has also hired a Government Accounting and Compliance Manager to oversee its government contract compliance.

ABT cooperated with the government throughout the investigation.

U.S. Attorney Stern commented: "For a ten year period ABT knowingly billed its government clients before it was entitled to do so, and thus improperly obtained the use of government funds prematurely, in violation of the government requirement. This simple but important rule is intended to save the taxpayers money and insure that government contractors are not getting a windfall. We are gratified that the company has corrected this problem and taken steps to ensure that it does not reoccur."

U.S. Attorney Holton from the Middle District of North Carolina added: "This investigation demonstrates the importance of cooperation among law enforcement agencies. The initial problem was discovered in billings to the EPA in the Research Triangle Park, North Carolina. Rather than simply addressing the EPA issue, the federal investigators looked into whether the billing practice affected other federal agencies and determined that this billing practice was widespread and involved billings to fifteen other federal agencies."

The case investigation was led by the U.S. Environmental Protection Agency's Office of the Inspector General. The Boston Branch Office of the Defense Contract Audit Agency audited the damages suffered by the government. The case was handled by Assistant U.S. Attorney David S. Mackey, Chief of Stern's Civil Division, Assistant U.S. Attorney Gill Beck from the Middle District of North Carolina, and Trial Attorney Maya Guerra of the Department of Justice. The Compliance Agreement was negotiated by Kimberly Patrick, Esq., Debarment Counsel for the Environmental Protection Agency.

Press Contact: Samantha Martin, (617) 748-3139, U.S. Attorney's Office, District of MA



U.S. Department of Housing and Urban Development
Office of Inspector General

Dan T. Stanford
Special Agent

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Settlement Agreement

This Settlement Agreement is made and entered into on October 20, 1999 (the "Effective Date") by and between the United States of America represented by the Department of Justice, the United States Attorney's Office for the District of Massachusetts, and the United States Attorney's Office for the Middle District of North Carolina (collectively "the United States"), the Environmental Protection Agency, the Agency for International Development, the Department of Health and Human Services, the Department of Justice, the Department of Housing and Urban Development, the Department of Agriculture, the Department of Labor, the National Science Foundation, the Department of Education, the Social Security Administration, the Executive Office of the President, the Department of Commerce, the General Accounting Office, the Medicare Payment Advisory Commission, the Federal Trade Commission, the National Endowment for the Arts, and the Consumer Product Safety Commission (collectively, "the Governmental Clients"), and Abt Associates Inc. ("Abt Associates"), a Massachusetts Corporation with a principal place of business in Cambridge, Massachusetts.

WHEREAS, Abt Associates is a consulting firm which is engaged in the business of providing a wide array of consulting services to its clients, primarily agencies of the United States government; and

WHEREAS, Abt Associates' contracts with its Governmental Clients are governed by the Federal Acquisition Regulation (the "FAR"). FAR Section 52.216.7, also known as the "Allowable Cost and Payment Clause," is incorporated into some of Abt Associates'

contracts with its Governmental Clients. The United States contends that the Allowable Cost and Payment Clause provides that a contractor may not bill the Government for subcontractor charges until the contractor has paid those charges; and

WHEREAS, the United States alleges that, for the period from 1988 until early 1998 Abt Associates was billing its Governmental Clients in some cases for subcontractor and consultant charges which Abt Associates had not yet paid. The United States does not allege that the subcontractor or consultant charges for which Abt Associates billed its Governmental clients were themselves improper, but instead that they were prematurely billed. In particular, an audit by the Defense Contract Audit Agency ("DCAA") determined that, for the period from 1988 until early 1998, Abt Associates prematurely billed its Governmental Clients 74% of the time, by an average period of 37 days, thereby depriving its Governmental Clients of the use of funds which they prematurely paid to Abt Associates; The Government determined that the Government suffered losses in the form of imputed interest for that time period, based on the Government's allegations; and

WHEREAS, the United States alleges that, during all relevant times, Abt Associates knew that the Allowable Cost and Payment Clause prohibited Abt Associates from billing its Governmental Clients for subcontractor charges until after Abt Associates had paid them; and

WHEREAS, the United States alleges that, the Environmental Protection Agency ("EPA") warned Abt Associates, in writing and orally, that its billing practices violated the

Allowable Cost and Payment Clause. EPA ultimately referred the matter to its Office of Inspector General in November, 1996; and

WHEREAS, the United States alleges that Abt Associates persisted in its violations of the Allowable Cost and Payment Clause until February 1998. At that time, a new financial management team at Abt Associates notified the Government, and Abt Associates has represented that it has corrected the problem; and

WHEREAS, Abt Associates has represented that it has taken steps to ensure that the practice at issue never occurs again, including completely overhauling its accounting department and instituting new billing and payment procedures; and

WHEREAS, based on these events, the United States alleges that Abt Associates is subject to liability under the False Claims Act, 31 U.S.C. § 3729 et seq., and under the common law, for up to three times the amount of the damages caused by Abt Associates conduct; plus civil penalties, investigative costs and interest; and

WHEREAS, Abt Associates denies the allegations of the United States, and denies that it has violated the False Claims Act, the Allowable Cost and Payment Clause, or any other provision of law; and

WHEREAS, there has been no judicial finding or adjudication against Abt Associates with respect to the allegations of the United States; and

WHEREAS, EPA and Abt Associates have entered into a Compliance Agreement which requires Abt Associates to take certain steps to ensure compliance with its government contracts; and

WHEREAS, the United States and Abt Associates desire to reach a full and final settlement and compromise of all potential claims and causes of action and further wish to avoid the expense, delay and inconvenience of protracted litigation.

ACCORDINGLY, in consideration of the mutual promises, covenants and obligations set forth in this Settlement Agreement and the resolution of all pending claims and differences, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Not later than five calendar days after the execution of this Settlement Agreement, Abt Associates will pay the United States, in full satisfaction and accord, the sum of \$1,900,000. Such payment shall be made by wire transfer, pursuant to instructions from the United States.

2. In consideration for the full and timely payment of the sum agreed upon in paragraph 1 of this Settlement Agreement, and except as provided in paragraphs 4 and 5 of this Settlement Agreement, the United States and the Governmental Clients hereby waive, release, discharge, and promise to refrain from instituting or maintaining any civil claim, action, demand, suit or proceeding against Abt Associates, its current and former affiliates, subsidiaries, divisions, or subdivisions, its successors and assigns and all of their respective current and former officers, directors, employees, agents or representatives, concerning any and all demands, claims, causes of action, suits, liabilities, costs, damages and expenses, that the United States or the Governmental Clients have or may have under common law, the False Claims Act, 31 U.S.C. §§ 3729, et seq., the Program Fraud Civil Remedies Act, 31

U.S.C. § 3801, et seq., the Contract Disputes Act, 41 U.S.C. § 601 et seq., or any other statute creating causes of action for civil damages or penalties, for Abt Associates' billing of its Governmental Clients for subcontractor or consultant charges which Abt Associates had not yet paid for during the period January 1, 1988 through the Effective Date of this Agreement, or for the costs of investigating these claims.

3. In further consideration for the full and timely payment of the sum agreed upon in paragraph 1, the United States and the Governmental Clients hereby release and discharge Abt Associates, its current and former affiliates, subsidiaries, divisions, or subdivisions, its successors and assigns and all of their respective current and former officers, directors, employees, agents or representatives, from any administrative sanctions for the conduct described in the Settlement Agreement, including but not limited to suspension and debarment.

4. Notwithstanding the provisions of paragraph 2, the United States does not release Abt Associates from claims, if any, arising under Title 26, U.S. Code (Internal Revenue Code).

5. Notwithstanding the provisions of paragraph 2, the United States and the Governmental Clients do not release Abt Associates from claims, if any, based upon the delivery of deficient or defective consulting services, based upon express or implied warranties pertaining to consulting services, or based upon failure to deliver consulting services.

6. Nothing in this Settlement Agreement shall, or shall be deemed to, toll, suspend, extend or stay the running of any or all statutes of limitations applicable to the disputes and claims that are the subject of paragraphs 4-5.

7. It is agreed that all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47) incurred by or on behalf of Abt Associates and its officers, directors, agents and employees in connection with (1) the issues covered by this Settlement Agreement, (2) the government's audit and investigation of the matters covered by this Settlement Agreement, (3) Abt Associates' investigation, defense of the matters, and corrective actions, (4) the negotiation of this Settlement Agreement, and (5) the payment made to the United States shall be unallowable costs for government contract accounting purposes to the extent required by FAR 31.205-47. These amounts shall be separately accounted for by cost reports, cost statements or information reports.

8. This Agreement is made in compromise of disputed claims. Neither the Agreement, its execution or performance of any obligation under it, including payment of damages, nor the fact of the settlement, is intended to be, or shall be understood as, an acknowledgement of responsibility, admission of liability or wrongdoing, or other expression reflecting upon the merits of the claims. Any such responsibility, liability or wrongdoing is expressly denied by Abt Associates.

9. Each party to this Settlement Agreement represents that it has the full power and authority (without further approvals and consent) to enter into this Settlement

Agreement and to perform the obligations hereunder, and that this Settlement Agreement is being executed on its behalf by a person who is fully authorized to do so.

10. This Settlement Agreement constitutes the entire agreement of the United States, the Governmental Clients, and Abt Associates with respect to the subject matter of this Settlement Agreement and may not be modified, amended or terminated except by a written agreement signed by the parties specifically referring to this Settlement Agreement.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, hereunto set their hands.

ABT ASSOCIATES INC.

By: David L. Lerner

Its: Vice President and Chief Financial Officer

DONALD K. STERN

United States Attorney
District of Massachusetts

David S. Mackey
David S. Mackey
Civil Chief

WALTER C. HOLTON
United States Attorney
Middle District of N. Carolina


Walter C. Holton

Civil Chief

WALTER C. HOLTON
United States Attorney
Middle District of N. Carolina

Gill Beck
Assistant U.S. Attorney

DAVID W. OGDEN
Acting Assistant Attorney General



Michael F. Hertz
Stephen D. Altman
Maya S. Guerra
Attorneys for the United States
Civil Division
Department of Justice

ENVIRONMENTAL PROTECTION
AGENCY

By: _____

Its: _____

AGENCY FOR INTERNATIONAL
DEVELOPMENT

By: _____

Its: _____

DEPT. OF HEALTH AND HUMAN
SERVICES

By: _____

Its: _____

DEPT. OF HOUSING AND

DAVID W. OGDEN
Acting Assistant Attorney General

Michael F. Hertz
Stephen D. Altman
Maya S. Guerra
Attorneys for the United States
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Department of Justice

ENVIRONMENTAL PROTECTION
AGENCY

By: *Stephen D. Altman*
Its: ACTING PRINCIPAL DEPUTY
GENERAL COUNSEL

AGENCY FOR INTERNATIONAL
DEVELOPMENT

By: _____
Its: _____

DEPT. OF HEALTH AND HUMAN
SERVICES

By: _____
Its: _____

DEPT. OF HOUSING AND
URBAN DEVELOPMENT

By: _____
Its: _____

DAVID W. OGDEN
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Michael F. Hertz
Stephen D. Altman
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ENVIRONMENTAL PROTECTION
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By: _____

Its: _____

AGENCY FOR INTERNATIONAL
DEVELOPMENT

By: Robert A. Parker

Its: OLG Council

DEPT. OF HEALTH AND HUMAN
SERVICES

By: _____

Its: _____

DEPT. OF HOUSING AND
URBAN DEVELOPMENT

By: _____

Its: _____

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Acting Assistant Attorney General

Michael F. Hertz
Stephen D. Altman
Maya S. Guerra
Attorneys for the United States
Civil Division
Department of Justice

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By: _____

Its: _____

DEPT. OF HEALTH AND HUMAN
SERVICES

By: J. Moore

Its: Assistant Dir for Legal Affairs

DEPT. OF HOUSING AND
URBAN DEVELOPMENT

By: _____

Its: _____

DAVID W. OGDEN
Acting Assistant Attorney General

Michael F. Hertz
Stephen D. Altman
Maya S. Guerra
Attorneys for the United States
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By: _____

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DEPT. OF HOUSING AND
URBAN DEVELOPMENT

By: Edward J. Kane 10-20-99

Its: Director HUD Enforcement Center

DEPT. OF AGRICULTURE

By:

Gary W. Butler

Gary W. Butler

Its:

Acting Assistant General Counsel

DEPT. OF LABOR

By: _____

Its: _____

NATIONAL SCIENCE
FOUNDATION

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EXECUTIVE OFFICE OF THE
PRESIDENT

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DEPT. OF AGRICULTURE

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DEPT. OF LABOR

By: Don J. Benda

Its: Asst. Regional Inspector General
for Investigations.

NATIONAL SCIENCE
FOUNDATION

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NATIONAL SCIENCE
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By: Wm. L. Howard

Its: Assistant General Counsel

DEPT. OF EDUCATION

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DEPT. OF EDUCATION

By: Thomas P. SkellyIts: THOMAS P. SKELLY
Acting Chief Financial OfficerSOCIAL SECURITY
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EXECUTIVE OFFICE OF THE
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SOCIAL SECURITY
ADMINISTRATION

By: *Alvin B. Davis*

Its: *Deputy Associate General Counsel*
for General Law

EXECUTIVE OFFICE OF THE
PRESIDENT

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SOCIAL SECURITY
ADMINISTRATION

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EXECUTIVE OFFICE OF THE
PRESIDENT

By: Dale Helms

Its: CHIEF, PROCUREMENT BR.

DEPT. OF COMMERCE

By:

/GMAh

Its:

Procurement Executive

GENERAL ACCOUNTING OFFICE

By:

Its:

MEDICARE PAYMENT ADVISORY
COMMISSION

By:

Its:

FEDERAL TRADE COMMISSION

By:

Its:

NATIONAL ENDOWMENT FOR
THE ARTS

By:

Its:

CONSUMER PRODUCT SAFETY
COMMISSION

By:

Its:

DEPT. OF COMMERCE

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GENERAL ACCOUNTING OFFICE

By: En Maly

Its: Robert Green

MEDICARE PAYMENT ADVISORY
COMMISSION

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FEDERAL TRADE COMMISSION

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GENERAL ACCOUNTING OFFICE

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MEDICARE PAYMENT ADVISORY
COMMISSION

By: William J. Ingold

Its: General Counsel

for
PropAC/
PPRC

FEDERAL TRADE COMMISSION

By: _____

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NATIONAL ENDOWMENT FOR
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By: _____

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DEPT. OF DEFENSE

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GENERAL ACCOUNTING OFFICE

By: _____

Its: _____

PHYSICIAN PAYMENT REVIEW
COMMISSION

By: _____

Its: _____

FEDERAL TRADE COMMISSION

By: Jean D. Sefchick

Its: Jean D. Sefchick
Contracting Officer

DEPT. OF COMMERCE

By: _____

Its: _____

GENERAL ACCOUNTING OFFICE

By: _____

Its: _____

MEDICARE PAYMENT ADVISORY
COMMISSION

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FEDERAL TRADE COMMISSION

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NATIONAL ENDOWMENT FOR
THE ARTS

By: Karen Weiss

Its: Deputy General Counsel

CONSUMER PRODUCT SAFETY
COMMISSION

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GENERAL ACCOUNTING OFFICE

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MEDICARE PAYMENT ADVISORY
COMMISSION

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Its: _____

FEDERAL TRADE COMMISSION

By: _____

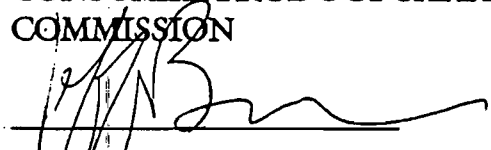
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NATIONAL ENDOWMENT FOR
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CONSUMER PRODUCT SAFETY
COMMISSION

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FEDERAL TRADE COMMISSION

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NATIONAL ENDOWMENT FOR
THE ARTS

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Its: _____

CONSUMER PRODUCT SAFETY
COMMISSION

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Its: _____

DEPT. OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

By: 

Its: AAG

10/15/99