

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,))
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)	Civil Action No.
PLAINTIFF,))
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v.))
))
BAE SYSTEMS TACTICAL))
VEHICLE SYSTEMS, LP,)	JURY TRIAL REQUESTED
))
DEFENDANT.))
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COMPLAINT OF THE UNITED STATES

The UNITED STATES OF AMERICA, by its attorneys, alleges as follows:

1. This action seeks treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended, based on fraud, false claims for payment, and false statements made by Defendant BAE Systems Tactical Vehicle Systems, LP (BAE) in connection with the solicitation, proposal, negotiation, award, and activity under Contract No. W56HZV-08-C-0460 – a contract between BAE and the U.S. Army Tactical Command Life Cycle Management Command (TACOM) for medium tactical vehicles (the Contract). In the alternative, this action seeks a downward price adjustment for violation of the Truth-in-Negotiations Act, 10 U.S.C. § 2306a. The complaint also alleges common law

claims for breach of contract, unjust enrichment, and payment by mistake of fact.

2. This action seeks damages and civil penalties from BAE for certifying and submitting false or fraudulent cost or pricing data to the contracting officials at TACOM on its proposal for the Contract in order to inflate the prices that BAE would charge TACOM for the vehicles. In seeking payment under this fraudulently priced contract, BAE submitted false claims to the United States and also produced false documents and records in support of those claims.

3. BAE submitted inflated claims to TACOM that falsely or fraudulently over-charged the government.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

5. This Court has personal jurisdiction over BAE because BAE resides in this district or has engaged in actionable conduct within this district.

6. Venue is proper in this district pursuant to 28 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b)(2).

Statute of Limitations

7. BAE executed a tolling agreement with the United States that tolled the running of the statute of limitations from December 8, 2014 until June 9, 2015.

8. All of the claims in this matter are timely under 31 U.S.C. § 3731(b)(1).

The Parties

9. The United States is the plaintiff in this action, filing suit on behalf of the Department of the Army, an agency of the United States, acting by and through the Contracting Officer for the Army Contracting Command – Warren, 6501 East 11 Mile Road, Warren, Michigan 48397-5000.

10. Defendant BAE is a contractor to the United States Government, with an address of 3701 Outlet Center Drive, Suite 15, Sealy, Texas 77474. At all relevant times, BAE was a contractor providing goods and services to the United States Government, including a Family of Medium Tactical Vehicles (FMTV) to the Army Contracting Command in Warren, Michigan.

Legal Background

The False Claims Act

11. The False Claims Act establishes liability for the following:
- a. any person who knowingly presents, or causes to be presented, to an

officer or employee of the United States Government a false or fraudulent claim for payment or approval, 31 U.S.C. § 3729(a)(1) (through May 19, 2009), or

any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval, 31 U.S.C. § 3729(a)(1)(A) (after May 19, 2009); and

b. any person who knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; 31 U.S.C. § 3729(a)(2) (through June 6, 2008), or

any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim, 31 U.S.C. § 3729(a)(1)(B) (after June 6, 2008).

12. The term “knowingly” under the False Claims Act means that a person, with respect to information, (i) has actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information. 31 U.S.C. § 3729(b)(1). No proof of specific intent to defraud is required to show that a person acted knowingly under the False Claims Act. 31 U.S.C. § 3729(b) (through May 19, 2009); 31 U.S.C. § 3729(b)(1)(B) (after May 19, 2009).

13. The False Claims Act provides for recovery of three times the damages sustained by the United States (“treble damages”) plus a civil penalty for

each false claim.

14. The civil penalty is to be not less than \$5,500 and not more than \$11,000. 31 U.S.C. § 3729(a), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, and the Debt Collection Improvement Act of 1996, see 28 U.S.C. § 2461 (notes), and 64 Fed. Reg. 47099, 47103 (1999).

The Truth-in-Negotiations Act

15. BAE had statutory, regulatory, and contractual obligations to disclose truthfully its proposed cost or pricing data, and the basis for arriving at the cost or pricing data, to the Army contract negotiators to ensure that the parties would reach a fair and reasonable price under the Contract.

16. BAE knew that it had these obligations to truthfully disclose accurate cost or pricing data and that the Army negotiators relied on BAE to honor its obligations.

17. More specifically, the Truth-in-Negotiations Act (TINA), 10 U.S.C. § 2306a, the Federal Acquisition Regulation (FAR), Part 15, and the Contract, Section I, required BAE to provide cost or pricing data to government negotiators and to certify that such cost or pricing was “accurate, complete, and current.”

18. TINA provides for a reduction in the contract price if it is found that BAE’s cost or pricing data was not accurate, complete, and current at the time of the negotiations and provides for the doubling of this amount if a contractor

knowingly submits false or defective cost or pricing data.

19. “Cost or pricing data” is defined by TINA, 10 U.S.C. § 2306a (h)(1), as “all facts that, as of the date of agreement on the price of the contract (or the price of a contract modification)..., a prudent buyer or seller would reasonably expect to affect price negotiations significantly.”

20. This case focuses on BAE’s obligation to disclose cost or pricing data to Army contract negotiators concerning the cost to BAE of the parts and materials BAE needed to buy or fabricate to manufacture the vehicles purchased under the Contract. BAE had a statutory, regulatory, and contractual obligation to disclose accurate, complete, and current cost or pricing data. The Army negotiators had a right to rely on, and did rely on, BAE meeting its obligations to truthfully disclose its cost and pricing information. The purpose of requiring disclosure of accurate, complete, and current cost or pricing data is to put government negotiators on equal footing with the contractor to ensure a fair and reasonable price.

Factual Allegations

The Contract

21. In September 2008, the Army agreed to buy 8,400 FMTV trucks, 1,600 FMTV trailers, System Technical Support (STS), and program support from BAE for \$2,099,328,517, with an option to buy an additional 10,000 units for \$1,666,884,022, under the Contract. This action concerns the pricing of this

Contract.

22. The Contract included Federal Acquisition Regulation (FAR) clauses 52.215-10 (Price Reduction for Defective Cost or Pricing Data) and 52.215-11 (Price Reduction for Defective Cost or Pricing Data – Modifications). These clauses provided the government a right to cost or pricing data from BAE in the course of negotiating the pricing under the Contract, including modifications, to ensure that fair and reasonable pricing was achieved on the Contract. These clauses also provide for a downward price adjustment for defects in certified cost or pricing data submitted by the contractor, and doubling the downward price adjustment for knowingly certifying defective cost or pricing data as accurate, complete, and current.

23. On December 14, 2007, BAE submitted its initial proposal (Proposal No. 07-CON-079) in response to the Army's request and solicitation for proposals for a contract to manufacture the FMTVs.

24. On January 29, 2008, BAE submitted its first revised contract proposal to the Army.

25. On April 14, 2008, BAE submitted its second revised contract proposal to the Army.

26. On May 20, 2008, BAE submitted its final revised contract proposal to the Army.

27. On May 30, 2008, the Army issued an undefinitized contract action and awarded the Contract to BAE. An undefinitized contract action is a contract in which the price is established (or definitized) after the award. After the award of the Contract, BAE and the Army began the process of negotiating a price.

Price Negotiations

28. Before July 30, 2008, BAE submitted a Bill of Materials (BOM) to the Army. A BOM is a list of parts and materials needed for a contract, together with costs, prices, and quantities. The BOM is a key document in negotiations. Having accurate, complete, and current data on the cost or pricing of these parts and materials was critical to establishing a fair and reasonable price for the FMTV vehicles to be delivered under the Contract. During contract negotiations, BAE was obligated to disclose to the Army negotiators accurate, complete, and current cost or pricing data.

29. On July 28-30, 2008, representatives of the Army and BAE met in Warren, Michigan to negotiate the price of the Contract.

30. The primary participants representing BAE in the negotiations were Melvin Thornhill, Senior Contract Administrator, Tammara Maiden, Director of Contracts, and Lowe Freitag, Jr., Manager - Estimating and Proposals.

31. On July 30, 2008, the Army Procuring Contracting Officer (PCO), James Victor, and BAE Senior Contract Administrator Thornhill initialed and

signed each page of the BOM.

32. Subsequent to the July 30 BOM, the parties continued to negotiate the price of materials.

33. On September 4, 2008, the PCO Victor told BAE: “Following an agreement, BAE will need to perform a sweep and submit a confirmation of negotiations with all prices and a Certificate of Current Cost and Price Data.” A certificate of accurate, complete, and current cost or pricing data is required by TINA, 10 U.S.C. § 2306a (a)(2). The purpose behind requiring contractors to disclose their cost or pricing data is to place the government on equal footing with the contractor in negotiating the contract.

34. On September 11, 2008, BAE submitted a revised BOM to Army negotiators (the September 11 BOM).

35. As negotiations continued, the September 11 BOM continued to be updated as the pricing for individual parts was discussed. Although updated in the following days, this key negotiating document continued to be referred to as the September 11 BOM.

36. In addition to providing the Army negotiators with cost or pricing data on parts and materials that BAE proposed to purchase, BAE also provided cost or pricing data on parts it intended to fabricate itself. These parts were called Fab Shop Parts. Cost or pricing data on Fab Shop Parts included the price of labor –

how much it would cost BAE to have its employees fabricate the parts.

37. Because the labor rates for BAE's employees were built into the price of the Fab Shop Parts, knowing and understanding the labor rate used was important in the negotiations and in reaching a fair and reasonable price for the Fab Shop Parts.

38. BAE's labor rates were separately negotiated with the Defense Contract Management Agency (DCMA). This separate negotiation established the labor rates that BAE would use on all its contracts with the Army, including the Contract. On July 18, 2008, BAE reached agreement with DCMA on its labor rates, memorialized in a forward pricing rate agreement (FPRA). BAE was required to use these rates going forward on all of its applicable projects and contracts, including the Contract.

39. In order to ensure that BAE was using the labor rates agreed to on July 18, 2008 in the Contract, Army negotiators specifically asked BAE if it was using those rates in its proposal submission, including for Fab Shop Parts, and BAE confirmed that all labor calculations were based on the new July 18, 2008 rates. The Army negotiators relied on the truth of these statements by BAE.

40. The Army and BAE continued negotiating based on the cost and pricing disclosures set forth in the updated September 11 BOM and subsequent cost or pricing data provided by BAE.

41. Negotiations on the price of materials continued up to September 22, 2008, when the Army and BAE agreed to a price for the Contract.

42. The materials price agreement between the Army and BAE is reflected in the September 11 BOM, as modified through the conclusion of negotiations.

43. Sometime before September 24, 2008, BAE performed a sweep of its cost or pricing data and prepared a final updated BOM of material costs – the Sweep BOM. BAE did not disclose this Sweep BOM to the Army negotiators.

44. In an email at 1:01 a.m. on September 25, 2008, BAE informed the Army PCO that the requested “Sweep is complete.”

45. In a letter dated September 25, 2008, BAE Senior Contract Administrator Thornhill informed the Army PCO that the result of the sweep revealed an *increase* in the cost of materials, but that nevertheless BAE would agree to the price agreed to, based the September 11 BOM. Specifically, Mr. Thornhill stated, “After completion of the sweep, current material cost now equal \$1,542,962,510.” This amount was approximately \$16 million higher than the amount already agreed to by the parties. Mr. Thornhill stated that even though the sweep indicated an increase in the cost of some materials, BAE would honor the commitment it made during negotiations and “honor the all agreed upon material costs and final pricing.”

46. On September 24, 2008, Mr. Thornhill signed the Certificate of Current Cost or Pricing Data on behalf of BAE, certifying that the cost or pricing data BAE had disclosed to the Army was accurate, complete, and current. The Army negotiators relied on that data and BAE's certification.

47. On September 25, 2008, based on the BAE certificate of cost or pricing data, the Army and BAE agreed on the final Contract Line Item (CLIN) prices for the Contract.

48. In reaching the Contract price, Army negotiators relied on the cost or pricing data provided to the Army in BAE's proposals and in response to Army questions during negotiations.

49. Despite its clear obligation to provide the Army with cost or pricing data that was accurate, complete, and current, BAE knowingly failed to meet its obligation.

50. Instead, BAE provided cost or pricing data that was neither accurate, nor complete, nor current as of the date of the price agreement.

51. By failing to provide accurate, complete, and current cost or pricing data to government contracting personnel, BAE knowingly misrepresented its costs to the government. This knowing misrepresentation was intended by BAE to result, and did result, in inflated prices to the Army that were not fair and reasonable.

52. Further, by failing to provide accurate, complete, and current

information to the Army negotiators, BAE knowingly violated the Truth-in-Negotiations Act, 10 U.S.C. § 2306a.

53. In fact, unbeknownst to the Army, and prior to the conclusion of negotiations, BAE knew that it had cost and pricing data that it had not disclosed to the Army negotiators, as it was required to do, that revealed that its costs of parts and materials were significantly *lower* than had been disclosed.

54. Mr. Thornhill and other BAE negotiators knew, before Mr. Thornhill certified BAE's cost or pricing data as accurate, complete, and current, that BAE had compiled an updated BOM – the Sweep BOM – that revealed, in many instances, *lower* material costs than those disclosed to the government.

55. BAE did not disclose these lower material costs to the Army negotiators.

56. BAE, including its chief negotiators (Mr. Thornhill, Ms. Maiden, and Mr. Freitag) knew that these costs would significantly affect price negotiations on the Contract but did not disclose these lower material costs because BAE did not want the lower prices to depress the price of the Contract; BAE wanted to maintain a higher Contract price.

57. Army negotiators relied on BAE's cost or pricing data to be accurate, complete, and current when they negotiated the Contract price.

Defectively Priced Parts

58. BAE knowingly concealed vendor quotations for 40 parts from various vendors that were lower than the quotations BAE had disclosed to the Army.

59. The following is an itemization of the parts for which BAE had lower vendor quotations than those disclosed to the Army:

Description	Part Number
ENVIRONMENTAL CONTROL UNIT	12443857-001VE
CLEVIS	12505530
CS CYLINDER BRACKET - INSIDE	12505527-002NF
RS CYLINDER BRACKET - INSIDE	12505527-001NF
INTERCOM, TROOP, 2-WAY	12423376
HARNESS, DASH PANEL	12505717
LOWER COVER	12505265NF
APPURTENANCE PLUG	12505287
TANK, AIR PRESSURE	12414369-006NF
ASSY, CIRCUIT BREAKER BOX	12505745
COVER ASSEMBLY	12505235NF
BRACKET COIL SPRING SHOCK	12505633NF
SWITCH BOX ASSEMBLY	12505555NF
CAB PIVOT BEARING	12505369
CABLE ASSEMBLY, ABS	12423228-001
PIN	12422834
SUPPORT, ENGINE-TRANSMISSION	12414289-001
CABLE, WRECKER MAIN WINCH	12423661
DOOR WINDOW, LTAS	12505295-002
DOOR WINDOW, LTAS	12505295-001
WINDSHIELD, CURBSIDE, LTAS	12505195-002
WINDSHIELD, ROADSIDE, LTAS	12505195-001
HEADLAMP ASSY, HALOGEN, 7"	12422867
LED MARKER LIGHT ASSY, AMBER	12422657-001
LED MARKER LIGHT ASSY, AMBER	12422657-002
ROADSIDE MOUNT 1	12505210-001NF
BEARING SLEEVE	12505519-003
OIL FILL TUBE	12505669

TUBE, CHARGE AIR	12423103
TUBE ASSEMBLY, COOLING SYSTEM	12420634-003
TANK, AIR PRESSURE, WET	12414369-002NF
TANK AIR RESERVOIR	12442962-006NF
BRACKET,ENGINE MOUNT	12414290-001
HEADLINER, RS FRONT	12505242-001
HEADLINER, CS FRONT	12505242-002
HEADLINER, RS REAR	12505242-003
HEADLINER, CS REAR	12505242-004
HEADLINER, ROOF HATCH	12505242-005
LIGHT, COMPOSITE FRONT, AMBER	12422957
TOOL BOX	12505549NF

60. The Army relied on BAE's certifications that its disclosures were accurate, complete, and current with respect to these parts.

61. The undisclosed vendor quotations are cost or pricing data, as defined by TINA. These quotations were available to and known by BAE before it certified its cost or pricing data as accurate, complete, and current.

62. BAE had an obligation under TINA and the Contract to disclose the lower vendor quotations to the Army.

63. If BAE had met its obligations to disclose these lower quotations to the Army, the price of the Contract would have been reduced by more than \$20 million.

64. BAE also knowingly failed to disclose purchase orders that it had issued to suppliers and historical data for nine other parts needed for the Contract that were issued for lower prices than the purchase orders that BAE disclosed to the Army negotiators.

65. The following is an itemization of parts for which BAE had cost or pricing data in the form of supplier purchase orders and historical information that was not disclosed to the Army:

Description	Part Number
ALTERNATOR, 260 AMP DUAL VOLT,	12423713
CONTROL DEVICE, LOAD & BATTERY	12422851
CABLE ASSY, ELEC., POWER	SC-D-883963G9-3
POWER CABLE ASSEMBLY	12443772
VOLTAGE CONVERTER BOX	12442971-001
MOTOR, WINDSHIELD WIPER, ELECTRI	12414349
SOLENOID	12505755
BRACKET ASSY GRVL DFLECTR, RT	12505698-002NF
THRUST WASHER GTM-3862-015	12505524

66. The purchase orders and historical information are cost or pricing data as defined by TINA. The purchase orders and historical information were available to and known by BAE before it certified its cost or pricing data as accurate, complete, and current.

67. BAE had an obligation under TINA and the Contract to disclose the purchase orders and historical information to the Army.

68. The Army relied on BAE's certifications that its disclosures were accurate, complete, and current with respect to these parts.

69. If BAE had met its obligations to disclose these lower purchase orders and historical information to the Army, the price of the contract would have been reduced by more than \$1 million.

70. BAE also knowingly failed to disclose that it used incorrect labor rates

to calculate its cost to fabricate certain other parts for the Contract. In response to specific questions by the Army, BAE misrepresented that it had used the proper labor rates (*i.e.*, those reflected in the July 18, 2008 FPRA) in calculating the costs of the Fab Shop Parts. In fact, BAE knew that it had used rates higher than those agreed to in the July 18, 2008 FPRA. BAE's statement that it had used the proper labor rates was false. The following is an itemization of parts for which BAE used improper and undisclosed cost or pricing data to calculate the cost to BAE of fabricating parts:

Description	Part Number
CHANNEL,STRUCTURAL-SUBFRAME LH	12412336
CHANNEL,STRUCTURAL-SUBFRAME RH	12412337
PLATE, REINFORCING, WRECKER	12414344
FRAME SECTION STRUCTURAL	12414543
FRAME, STRUCTURAL LMTV	12417250
FRAME MTV W/MHE	12417254
FRAME MTV W/MHE	12417255
FRAME, STRUCTURAL MTV	12417259
FRAME, STRUCTURAL MTV	12417260
FRAME, STRUCTURAL LMTV	12417261
BRACKET, STEERING	12417307
SUPPORT, SHOCK-REAR LEFT	12417397
SUPPORT, SHOCK-REAR RIGHT	12417399
BEARING, FLANGE	12417401
BRACKET, STABILIZER BAR	12417404
SUPPORT, SHOCK-FORWARD RIGHT	12417408
BRACKET, STIFFENER	12417411
SUPPORT, SHOCK-FORWARD LEFT	12417412
SUPPORT, V-ROD-FORWARD	12417413
SUPPORT, V-ROD-REAR	12417417
BRACKET, MOUNTING, TAIL LIGHT,	12417895
BRACKET, MOUNTING, TAIL LIGHT,	12417896
CAM, CONTROL	12417905
BRACKET, MOUNTING	12417924

HOUSING, BEARING UNIT, CAB	12418160
HOUSING, BEARING UNIT,CAB TILT	12418177
ARM, PIVOT, CAB TILT LOWER	12418217
SUPPORT, PINTLE HOOK	12418314
FRAME, STRUCTURAL MTV LWB	12418502
FRAME, STRUCTURAL MTV/LWB	12418503
LIFT ARM	12418608
BRACKET, CLAMP	12421249
PLATE,REINFORCEMENT	12422588
RAIL, CARGO BED, RIGHT, LMTVT	12441150
RAIL, CARGO BED, LEFT, LMTVT	12441151
FRAME SECTION, RIGHT SUB-RAIL,	12441177
FRAME SECTION, LEFT SUB-RAIL,	12441178
Frame Section, Plate,Himars	12485837
BRACKET, PORTABLE WORKLIGHT	12486145
FRAME SECTION, CROSSMEMBER	12414510NF
Tubular Crossmember	12414511NF
Tubular Crossmember	12414513NF
FRAME SECTION, CROSSMEMBER	12414514NF
BRACKET, MUFFLER SUPPORT	12414627-005
CLOSURE, CRANE POCKET	12414739NF
SUBFRAME, CHASSIS, LOWER	12416365NF
CAP, END	12416589NF
SHACKLE, SPRING	12417389TA
Shackle, Spring	12417389TX
BRACKET, REAR STABILIZER	12417391A
COVER, ACCESS	12417406A
Bracket Assy, Crane Mounting	12417999NF
Bracket Assy, Crane Mounting	12418000NF
Door, Upper Bulkhead	12418505NF
DOOR, UPPER BULKHEAD	12418535NF
PANEL, DOOR	12418597-001NF
ANGLE	12418703-003FAB
PLUG, LADDER POCKET	12418775NF
PANEL, DOOR	12418834-001NF
BRACKET, BATTERY BOX, LEFT	12420082-001
BRACKET, RIGHT BATTERY BOX	12420855-006
BRACKET,RIGHT HAND BATTERY BOX	12420855-007NF
BRACKET,MOUNTING,TRACTOR LEFT	12422578-001

BRACKET,MOUNTING,TRACTOR RIGHT	12422578-002
Bracket ASSY, Mounting, RH	12422578-007
INNER CHANNEL, LH	12422587-001
INNER CHANNEL, RH	12422587-002
Crossmember, Rear	12422832NF
TUBE, EXTENSION PINTLE HOOK	12422833NF
Bumper Assy, Vehicular, Rear	12422835NF
Bracket, Support, Structural	12422837NF
BRACKET, STINGER ADAPTER	12423013NF
FRAME SECTION CROSSMEMBER-REAR	12423043NF
Plug, Ladder Pocket	12423186NF
PLATE, MUDFLAP	12423190NF
CARGO BODY, LMTV	12423301NF
CARGO BODY, MTV	12423303NF
STOWAGE, LADDER	12423305-002NF
STOWAGE, LADDER	12423305NF
CARGO BODY, MTV W/MHE	12423306NF
CARGO BED, LMTVT	12423308NF
CARGO BED, MTVT	12423312NF
CARGO BODY, MTV LWB	12423315NF
FRAME SECTION, RIGHT SIDE-	12423330NF
FRAME SECTION, LEFT SIDE-MTVT	12423331NF
FRAME SECTION, VEHICULAR RIGHT	12423332NF
FRAME SECTION, VEHICULAR LEFT	12423333NF
BUMPER, FRONT	12423374NF
BRACKET, LIFTING, FRONT, STD	12423410-001NF
ENCLOSURE BATTERY DISCONNECT	12423451NF
SPACER, DOOR HANDLE	12423653NF
CHANNEL, SUBRAIL LEFT-AIR DROP	12424335-001NF
CHANNEL, SUBRAIL RIGHT-AIRDROP	12424335-002NF
FRAME RAIL, STRUCTURAL, LEFT-	12424346-001NF
FRAME RAIL, STRUCTURAL, RIGHT-	12424346-002NF
CARGO BODY, MTV, AIR DROP A1R	12424428NF
CARGO, BED LMTV AIR DROP-A1R	12424440NF
TONGUE ASSEMBLY, TRAILER	12441126-001NF
Bracket, Hose Clamp	12442911NF
Frame Section, Left, Plate	12442958NF
Frame Section, Right, Plate	12442959NF
FRAME, STOWAGE BOX	12443550-001NF

BOX, STOWAGE	12443552-001NF
BRACKET	12443557NF
RACK, STORAGE	12443569NF
DOOR	12443570NF
DOOR	12443571NF
DOOR	12443572NF
BRACKET, MOUNTING	12443632-001NF
GUARD	12443634NF
SPACER, PLATE	12443635NF
ARM, SUPPORT, LH SHORT	12443636-003NF
ARM, SUPPORT, RH SHORT	12443636-004NF
SPACER, U-BOLT	12485815NF
PLATE, REINFORCEMENT	12485847-006NF
Reinforcement Plate	12485870-003
PLATE, REINFORCEMENT	12485870-005NF
Plate, Reinforcement	12485870-P02
CROSSMEMBER, REAR	12485886NF
PLATE, MOUNTING, CONNECTOR	12486047NF
BRACKET, CONNECTOR	12486050NF
PLATE,REINFORCEMENT,LEFT FRONT	12486056NF
PLATE,REINFORCEMENT,RIGHTFRONT	12486058NF
CHANNEL SUBFRAME SECTION, LEFT	12486060NF
PLATE, REINFORCEMENT	12486061NF
BUMPER ASSEMBLY, REAR	12486062NF
Fwd Subframe Section, Right	12486063NF
Connecting Channel – Lhs	12486069NF
Frame, Reinforcing Plate, Rear	12486070NF
Shield, Exhaust	12486093NF
BRACKET, INTERMEDIATE SIDE	12486099NF
BRACE,OIL COOLER BRACKET,SHORT	12486103NF
BRACKET, TAILLAMP, LHS	12486105NF
Bracket	12486111NF
BRACKET, MOUNTING	12486120NF
BOX, STOWAGE	12486144
BOX STOWAGE, RS	12505257-001NF
CENTER SUPPORT ASSY	12505270NF
MOUNTING BRACKET, OH ENDS	12505272NF
CARRIER INSTRUMENT PANEL	12505275NF
TRAY, HVAC	12505279-001NF

COVER - VENT RS	12505281-001NF
COVER - VENT CS	12505281-002NF
HYD BULKHEAD PANEL	12505283NF
AUX PANEL ASSY	12505289NF
AUXILIARY PANEL COVER	12505290NF
CENTER PANEL, UPPER FRONT	12505293NF
SWITCH BRACKET	12505307NF
WASHER, SQUARE HOLE	12505309NF
SWING PLATE	12505315-001NF
COMBAT LATCH	12505319NF
PANEL COVER, DASH, CURBSIDE	12505340NF
Mounting Bracket, Fuse Module	12505349NF
BRIDGE ASSEMBLY	12505364NF
WASHER (ID26XOD75X6THK)	12505366-001NF
WASHER (ID26XOD95X6.35)	12505366-002NF
Plate - Washer (Upper Hinge)	12505483-001NF
Plate - Washer (Lower Hinge)	12505483-002NF
Cab Door Adaptor Plate	12505483-003NF
Cab Door Adaptor Plate	12505483-004NF
Applique, Antenna Washer	12505484NF
BRACE, ENGINE COVER	12505487NF
BRKT, BULKHEAD ELECTRICAL CONN	12505489NF
SHIM, PLATE	12505490-001NF
Shim, Plate	12505490-002NF
REINFORCEMENT, UPPER SPLASH	12505491NF
RS ANCHOR PLATE – OUTSIDE	12505513-001NF
CS ANCHOR PLATE – OUTSIDE	12505513-002NF
CAM WASHER	12505532NF
SWITCH BOX COVER	12505556NF
BRACKET	12505563NF
SHIELD – INNER	12505565NF
SHIELD, OUTER ROADSIDE	12505566-001NF
SHIELD, OUTER CURBSIDE	12505566-002NF
GUARD, FUEL TANK	12505568NF
GUARD, FUEL TANK	12505569NF
BRACKET, CAB LIMIT SWITCH	12505577-001NF
SIDERAIL, RSV, RIGHT	12505588NF
SIDERAIL, RSV, LEFT	12505589NF
BRACKET, ENGINE MOUNT	12505613NF

SIDERAIL, LMTV/CARGO, LEFT	12505615-001NF
SIDERAIL, MTV/CARGO, LEFT	12505615-002NF
SIDERAIL, MTV WRECKER, LEFT	12505615-005NF
SIDERAIL, MTV LONG CARGO C, LH	12505615-007NF
SIDERAIL, MTV LONG CARGO, LH	12505615-008NF
SIDERAIL, LMTV/CARGO, RIGHT	12505616-001NF
SIDERAIL, MTV/CARGO, RIGHT	12505616-002NF
SIDERAIL, MTV WRECKER, RIGHT	12505616-005NF
SIDERAIL, MTV LONG CARGO C, RT	12505616-007NF
SIDERAIL, MTV LONG CARGO, RT	12505616-008NF
SHIELD	12505646NF
SIDERAIL, LHS, LEFT	12505654NF
SIDERAIL, LHS, RIGHT	12505655NF
SIDERAIL, TRACTOR, LEFT HAND	12505656NF
SIDERAIL, TRACTOR, RIGHT HAND	12505657NF
RAMP, TRACTOR, RH	12505667-001NF
RAMP, TRACTOR, LH	12505667-002NF
CROSSMEMBER, FRONT	12505751NF
SPRING BRACKET, CURBSIDE	12505752-002NF
BRACKET	12505757NF
WINCH ROLLER GUIDE	12505758NF
Ltas Cover Plate	12505760NF
PLATE BALLAST	12505881-001NF
SPACER, SUPPORT	12505889NF
RADIATOR SUPPORT (left)	12505890-001NF
RADIATOR SUPPORT (right)	12505890-002NF
SPACER, U-BOLT, RST REAR RS	12508929NF
SPACER, U-BOLT, RST FORWARD CS	12508930NF
SPACER, U-BOLT, RST REAR CS	12508931NF
SPACER, U-BOLT, RST FORWARD RS	12508932NF
SHIM	M22499-1-049
CARGO BED, MTVT RST, A1 R	TVS30115-002NF
SPREADER BAR WELDMENT	TVS30125NF
CARGO BED, HIMARS RSV, A1 R	TVS30117-002NF
PLATE BALLAST	12505881-002NF

71. The actual labor rates used to calculate cost of the Fab Shop Parts, and the methodology used by BAE, are cost or pricing data as defined by TINA. The

cost or pricing data for the Fab Shop Parts was available to and known by BAE before it certified its cost or pricing data as accurate, complete, and current.

72. BAE had an obligation under TINA and the Contract to disclose the actual labor rates used to calculate the cost of the Fab Shop Parts and the methodology used by BAE to the Army.

73. The Army relied on BAE's certifications that its disclosures were accurate, complete, and current with respect to these parts.

74. If BAE had disclosed its valid labor rates were not being used to calculate the cost of these fabricated parts, this would have reduced the price of the Contract by approximately \$11 million.

75. BAE also failed to disclose accurate, complete, and current cost or pricing data as to the quantity of eight other parts in its proposal and BOMs.

76. BAE knew that it did not need the same quantity of parts as it claimed in its cost or pricing disclosures. The following is an itemization of the parts for which BAE misrepresented the quantity needed in the BOM:

Description	Part Number
HYDRAULIC POWER UNIT	12505551
BRACKET SPRING, FRONT	12417407
LATCH, HYDRAULIC-CAB	12414677-001
CS CYLINDER BRACKET	12505536-002NF

RS CYLINDER BRACKET	12505536-001NF
FUSE BOX	12505679
TERMINAL BLOCK, 10 STUD	12505718
AES18M064A025DG6A2 SCREW	ASME0062

77. The Army negotiators relied on the accuracy of these disclosures.

78. The quantity of parts needed to build a vehicle is cost or pricing data as defined by TINA. This cost or pricing data was available to and known by BAE before it certified its cost or pricing data as accurate, complete, and current.

79. The Army relied on BAE's certification that its disclosures were accurate, complete, and current with respect to these parts.

80. BAE had an obligation under TINA and the Contract to disclose the actual quantity of parts needed for the Contract.

81. If BAE had disclosed the truth about the quantity of these parts, it would have reduced the Contract price by approximately \$12 million.

82. BAE's knowing failure to disclose cost or pricing data about the quantity of parts and materials needed for the Contract resulted in the Army agreeing to a higher Contract price – a price it would not have agreed to had BAE met its statutory and contractual obligations to disclose accurate, complete, and current cost or pricing data.

83. Between December 17, 2008 and December 19, 2011, BAE submitted claims for payment for 26,789 FMTVs, totaling more than \$3.6 billion. The claims for payment for each of the vehicles were based on a specific price per vehicle type, negotiated by the parties. The defective cost or pricing data disclosed by BAE inflated the negotiated price for each vehicle type and, in turn, inflated each of the claims submitted for the vehicles. Under the Contract, BAE submitted more than 26,000 false or fraudulent claims because it knew that the prices for the vehicles were inflated pursuant to defective cost or pricing data.

84. BAE induced the Army to pay excessive prices by knowingly failing to disclose accurate, complete, and current cost or pricing data to government contract negotiators in violation of TINA and the False Claims Act, and by submitting to the government false or fraudulent statements of its expected costs to get the government to pay BAE's false or fraudulent claims.

85. Despite having represented that it submitted accurate, complete, and current cost or pricing data to the Army, BAE knew that its disclosure of the data was, in fact, not accurate, complete, and current.

86. As a result of BAE's failure to disclose accurate, complete, and current cost or pricing data, and certifying that its cost or pricing data was accurate, complete, and current when it knew that it was defective, the United States paid inflated prices for the vehicles under the Contract, and the United States was

damaged thereby.

Claims for Relief

Count I

False Claims Act: Submission of False Claims
31 U.S.C. § 3729(a)(1) (claims through May 19, 2009)

87. The United States repeats and realleges the preceding paragraphs.

88. BAE knowingly presented, or caused to be presented, to an officer or employee of the United States false or fraudulent claims for payment or approval for vehicles under the Contract. The claims were false or fraudulent as a result of BAE knowingly concealing lower prices for parts and materials during negotiations which resulted in inflated Contract prices.

89. By virtue of the false or fraudulent claims, the United States suffered damages in an amount to be determined at trial, and is entitled to treble the amount of those damages under the False Claims Act, plus civil penalties of not less than \$5,500 and up to \$11,000 for each violation.

Count II

False Claims Act: Submission of False Claims
31 U.S.C. § 3729(a)(1)(A) (claims from and after May 20, 2009)

90. The United States repeats and realleges the preceding paragraphs.

91. BAE knowingly presented, or caused to be presented, false or fraudulent claims for payment or approval for vehicles under the Contract. The claims were false or fraudulent as a result of BAE knowingly concealing lower

prices for parts and materials during negotiations which resulted in inflated Contract prices.

92. By virtue of the false or fraudulent claims, the United States suffered damages in an amount to be determined at trial, and is entitled to treble the amount of those damages under the False Claims Act, plus civil penalties of not less than \$5,500 and up to \$11,000 for each violation.

Count III

False Claims Act: Making or Using False Records or Statements to
Get a False or Fraudulent Claim Paid or Approved
31 U.S.C. § 3729(a)(2) (claims through June 6, 2008)

93. The United States repeats and realleges the preceding paragraphs.

94. BAE knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid under the Contract.

95. In particular, BAE certified that its cost and pricing data was accurate, complete, and current when it knew that was not true. BAE also falsely stated that its TINA sweep revealed that its material costs were higher than had previously been disclosed. BAE also submitted false records and statements in the form of BOMs to Army negotiators to ensure a higher Contract price, and ultimately to get claims for vehicles at inflated prices paid under the Contract. BAE also made statements to the Army that it was using its current and approved labor rates when it knew it was using higher rates that were obsolete.

96. By virtue of these false or fraudulent records and statements, the United States suffered damages in an amount to be determined at trial, and is entitled to treble the amount of those damages under the False Claims Act, plus civil penalties of not less than \$5,500 and up to \$11,000 for each violation.

Count IV

False Claims Act: Making or Using False Records or Statements
Material to a False or Fraudulent Claim
31 U.S.C. § 3729(a)(1)(B) (claims after June 6, 2008)

97. The United States repeats and realleges the preceding paragraphs.

98. BAE knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims for payment under the Contract.

99. In particular, BAE certified that its cost and pricing data was accurate, complete, and current when it knew that was not true. BAE also falsely stated that its TINA sweep revealed that its material costs were higher than had previously been disclosed. BAE also submitted false records and statements in the form of BOMs to Army negotiators to ensure a higher Contract price. BAE also made statements to the Army that it was using its current and approved labor rates when it knew it was using higher rates that were obsolete. These false records and statements were material in reaching the price of the Contract and ultimately to BAE's false or fraudulent claims for payment under the Contract.

100. By virtue of these false or fraudulent records and statements, the

United States suffered damages in an amount to be determined at trial, and is entitled to treble the amount of those damages under the False Claims Act, plus civil penalties of not less than \$5,500 and up to \$11,000 for each violation.

Count V
Truth-in-Negotiations Act, 10 U.S.C. 2306a

101. The United States repeats and realleges the preceding paragraphs.

102. The United States is entitled under the Contract and the Truth-in-Negotiations Act to a downward adjustment in the contract price because BAE did not disclose to Army negotiators accurate, complete, and current cost or pricing data at the close of negotiations, resulting in a negotiated Contract price significantly higher than it would have been if BAE had made proper disclosures to the Army.

103. BAE knowingly certified to defective cost or pricing data.

104. As a result of BAE's failure to disclose accurate, complete, and current cost or pricing data, and in reliance on BAE's knowing false certification of that data, the United States sustained damages in an amount to be determined at trial.

Count VI
Breach of Contract

105. The United States repeats and realleges the preceding paragraphs.

106. Pursuant to Section I of the Contract, BAE was required to disclose to

the Army its cost or pricing data during the negotiation of the price of the Contract and, at the conclusion of negotiations, to truthfully certify that its disclosure of cost or pricing data was accurate, complete, and current.

107. BAE failed to disclose accurate, complete, and current cost or pricing data on numerous parts and materials that played a role in negotiating the Contract price.

108. BAE failed to provide a truthful certification that its cost or pricing data was accurate, current, and complete.

109. As a result of BAE's misrepresentation of its costs, BAE breached the Contract.

110. As a result of BAE's breach, the United States was damaged in an amount to be determined at trial.

Count VII
(Unjust Enrichment)

111. The United States repeats and realleges the preceding paragraphs.

112. Through BAE's false representations and knowing failure to disclose required and relevant information, BAE was unjustly enriched by its receipt of monies to which it was not entitled. In equity and good conscience, BAE should not retain these payments.

113. As a result of BAE's unjust enrichment, the United States was damaged in an amount to be determined at trial.

COUNT VII
(Payment by Mistake)

114. The United States repeats and realleges the preceding paragraphs.

115. By reason of the foregoing, BAE caused the United States to make payments in the mistaken belief that payment was due. In such a circumstance, payment was by mistake and not authorized.

116. As a result of the mistaken payments, the United States was damaged in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, the United States demands and prays that judgment be entered in favor of the United States against BAE as follows:

I. On the First Count under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties as are required by law, together with such further relief as may be just and proper.

II. On the Second Count under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties as are required by law, together with such further relief as may be just and proper.

III. On the Third Count under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties as are required by law, together with all such further relief as may be just and proper.

IV. On the Fourth Count under the False Claims Act, for the amount of the United States' damages, trebled as required by law, and such civil penalties as are required by law, together with such further relief as may be just and proper.

V. On the Fifth Count under the Truth-in-Negotiations Act, for the amount of the United States' damages, doubled as required by law, and such interest as set forth in the statute and civil penalties, together with such further relief as may be just and proper.

VI. On the Sixth Count for breach of contract, for the amount of damages by reason of the breach to be determined, together with interest, costs and expenses, and such further relief as may be just and proper.

VII. On the Seventh Count for Unjust Enrichment, for the amount by which BAE was unjustly enriched, plus interest, costs, and expenses, and such further relief as may be just and proper.

VIII. On the Eighth Count for Payment by Mistake, for the amount the United States paid by mistake, plus interest, costs, and expenses, and such further relief as may be just and proper.

A Jury Trial is Requested.

Dated: June 18, 2015

Respectfully submitted,

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