

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98293 / September 6, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21612

In the Matter of

JON ERIC BEST,

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 Jon Eric Best (“Best” 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 Best'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. Fluor sought to recover these costs by submitting change orders, otherwise known as Project Change Notices ("PCNs"), to the customer.
3. For the fiscal year ended December 31, 2017 and the first quarter ended March 31, 2018 ("Relevant Period"), Best, the then-Chief Financial Officer ("CFO") of the Fluor Government Group ("FGG"), a segment of Fluor, with the input of other Fluor personnel, accepted revenue estimates based on unapproved PCNs that Best knew or should have known were materially overstated and approved the recording of the overstated revenue on Fluor's books and records. The result was that the revenue kept the project forecast from a loss position.
4. Further, in support of the foregoing, Best, among others, participated in preparing documents required by Fluor's internal accounting controls, which reflected overstated PCN revenue estimates. Best 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"). Best was also a cause of these failings that resulted in Fluor's maintaining inaccurate books and records and ultimately in Fluor including materially misstated financial statements in periodic reports filed with the SEC for the fiscal year ended December 31, 2017 and the first quarter ended March 31, 2018.
5. 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. Fluor overstated its annual net earnings by \$38 million (25%) in 2017, and understated its net loss by \$8.7 million (33%) in the first quarter of 2018.

6. As a result of conduct detailed herein, Best 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

7. Jon Eric Best, age 55, is a resident of Simpsonville, South Carolina. During the Relevant Period, Best served as Vice President, CFO of FGG until June 1, 2018, when he became Senior Vice President for Financial Planning & Analysis of Fluor. He left Fluor in November 2019. He has never been licensed as an accountant or registered with the Commission in any capacity.

Relevant Entity

8. 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

9. 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, 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.

10. 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 Best, as segment CFO, and other segment personnel sign the PMAR review checklist quarterly, and, along with two other segment officers, sign 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

11. 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 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.

12. 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. For the periods of year-end 2017 and the first quarter of 2018, Fluor personnel sought to address the growing anticipated total cost over the original subcontract price through the use of PCNs to recover these additional costs. PCNs are proposed modifications of a contract that change the price or scope of work of the contract, or both. The subcontract prescribed a process for submitting PCNs in appropriate circumstances. Fluor personnel developed PCNs for submission to the Customer for approval.

13. 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, the PCN should be evaluated as a “claim” if it was a change order in dispute, or unapproved as to both scope and price. A claim under ASC 605-35 required a heightened level of evidence to demonstrate probable recovery.

14. However, for the fiscal year ended December 31, 2017, Best reviewed and approved the categorization of the PCNs as unpriced change orders, instead of claims, even though the relevant PCNs were either in dispute, or were unapproved as to price and scope, and included the PCNs in the revenue forecast when there was insufficient evidence to support that the PCNs were probable of recovery.

15. For the fiscal year ended December 31, 2017, Best, with others’ input, approved the inclusion of forecasted additional revenue from the unapproved PCNs, including rejected and not yet submitted PCNs, in the EAC based on an assumed recovery rate of 100% of the PCNs’ cost component. As a result, this revenue offset the additional forecasted costs and minimized the adverse impact on the PGM. Fluor assumed an incorrect 100% recovery rate on the cost component of the PCNs despite its actual rates of recovery on PCNs being low, as reflected below:

Radford Project	4Q 2017	1Q 2018
Unapproved PCNs in revenue forecast, net of profit fees	\$47M	\$68M
Assumed recovery rate of net PCN revenue in revenue forecast	100%	100%
Percent of total PCN revenue actually approved by Customer	4.5%	3.9%

16. Just after the year-end 2017, Best signed the PMAR review checklist specific to Radford erroneously stating that the project forecast revenue, costs, and PGM were best estimates in accordance with GAAP.

17. Subsequently, as part of the preparation of the 2017 year-end financial statements, Best was tasked by senior Fluor financial personnel with overseeing, with the involvement of relevant Fluor personnel, the process of preparing documentation to support the Radford accounting for year-end 2017. This control activity's objective was to document the facts and analysis supporting revenue estimates on a project with significant risks and judgments, in accordance with GAAP. Yet, this documentation, which Best participated in generating with input from others, and signed along with two other FGG personnel responsible for the Radford Project, failed to support sufficiently that recovery of the unapproved PCNs from the Customer was probable. The documentation stated that Fluor 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 at the assumed 100% recovery rate. Rather, throughout the Relevant Period, the Customer rejected many 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.

18. Best, in his capacity as CFO of FGG, along with two other segment personnel, signed the sub-certification to Fluor's Chief Executive Officer ("CEO") and CFO, for the year ending December 31, 2017, 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 605-35, and that all project forecasts represented management's best estimate of Fluor's financial results, when he knew or should have known that the financial estimates caused materially overstated revenue to be recorded on Fluor's books and records.

19. 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.

20. Best, with others' input and involvement, continued to approve of the inclusion of forecasted additional revenue in the first quarter of 2018, while lacking sufficient evidence of an enforceable right to the PCNs to support recording such revenue. As such, it was improper under GAAP to include revenue from the unapproved PCNs in the forecast.

21. Best signed a PMAR review checklist specific to Radford for the first quarter of 2018, stating erroneously that the project forecasted revenue, costs, and PGM were best estimates in accordance with GAAP. Best also signed a sub-certification to Fluor's CEO and CFO, for the quarter ending March 31, 2018, with the same representations as the prior sub-certification, but under ASC 606.

22. The conduct described above resulted in inaccurate books and records in reporting periods from year-end 2017 and the first quarter of 2018. Best was a cause of Fluor improperly including revenue for Radford unapproved PCNs in the total revenue forecast totaling \$47.1 million for 2017 and \$68.0 million for first quarter of 2018, which were included in financial

statements in the Form 10-K for fiscal year ended December 31, 2017 and the Form 10-Q for the first quarter ended March 31, 2018, respectively. As a result of the correction of these errors in the Restatement, revenues recognized for Radford were reduced by \$19.3 million for 2017 and by \$10.1 million for first quarter of 2018.

Violations

23. As a result of the conduct described above, Best 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.

24. As a result of the conduct described above, Best 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.

25. As a result of the conduct described above, Best 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 Jon Eric Best 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