

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 97740 / June 16, 2023**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4419 / June 16, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21491**

**In the Matter of**

**DAVID DICKSON**

**and**

**STUART ANDREW  
SPENCE,**

**Respondents.**

**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”) 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 David Dickson (“Dickson”) and Stuart Andrew Spence (“Spence”) (together, the “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 Respondents and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent 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 finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of Respondents' role in the approval of an estimate-at-completion ("EAC") loss forecast recorded by McDermott International Inc. ("McDermott") for its Cameron LNG project ("Cameron" or the "Cameron Project") for the second quarter of 2018 ("Q2 2018") and related disclosures concerning Cameron. Then McDermott CEO David Dickson and then CFO Stuart Spence approved a \$490 million loss for the Q2 2018 Cameron EAC even though it was developed outside of the regular process for EAC cost forecasts and the initial draft EAC loss was over \$1.1 billion, thereby indirectly causing McDermott to maintain incorrect books and records and to file an inaccurate quarterly report. The related disclosures, in a Form 8-K press release, also did not fairly present the prospect that Cameron's new execution strategy could result in higher losses and longer scheduling delays.

2. Cameron was a closely-watched \$6.7 billion-dollar long-term, joint venture construction contract to build a liquefied natural gas export facility in Hackberry, Louisiana. McDermott acquired Cameron as part of its May 10, 2018 merger with Chicago Bridge & Iron Company ("CB&I"). The Cameron Project was the largest of several CB&I loss contracts that had been highlighted by McDermott and CB&I in their public disclosures leading up to the merger.

#### **Respondents**

3. David Dickson ("Dickson"), age 55, was the President and Chief Executive Officer of McDermott International, Inc. Dickson resides in Houston, Texas.

4. Stuart Andrew Spence ("Spence"), age 54, was the Executive Vice President and Chief Financial Officer of McDermott International, Inc. Spence resides in Houston, Texas.

#### **Other Relevant Entity**

5. McDermott International Inc. ("McDermott"), during the relevant period, was a Republic of Panama corporation headquartered in Houston, Texas. McDermott's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the NYSE under the trading symbol MDR until June 30, 2020 when it terminated its registration by filing a Form 15-12B. McDermott was required to file periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. On May 10, 2018, McDermott merged with CB&I. On January 21, 2020, McDermott and certain of its affiliates filed voluntary petitions for bankruptcy relief under Chapter 11.

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<sup>1</sup> 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.

## **Background**

6. At year-end 2017, CB&I disclosed that its Cameron Project had become a loss contract, meaning its expected total costs at completion were estimated to exceed the contract price. Once deemed a loss contract, CB&I's share of Cameron's EAC loss and increases thereto would have to be accrued in the current period, which would negatively impact CB&I's financial condition and future liquidity.

7. In Q1 2018, prior to the merger between McDermott and CB&I, the Project Cost Team forecasted a roughly \$438 million EAC loss for Cameron. However, CB&I management subjected this forecast to management challenges, which resulted in the Project Cost Team's EAC forecast being reduced to \$160 million—a \$278 million difference. The \$160 million EAC loss forecast was entered into CB&I's accounting software by the Project Cost Team and was used by CB&I in preparing its financial statements for Q1 2018.

8. On May 10, 2018, McDermott acquired CB&I in a merger and took over accounting and reporting obligations for Cameron. After the merger, McDermott took over CB&I's 50% interest in the Cameron contract and worked with CB&I's 50/50 joint-venture partner (the "JV Partner") to complete the Cameron Project.

### **The Q2 2018 Cameron Loss Forecast**

9. CB&I, and then McDermott, had an internal cost-estimating unit (the "Project Cost Team") assigned to the Cameron Project and working on-site. The Project Cost Team followed standard industry project control guidelines, as well as extensive CB&I written processes and procedures in determining the EAC, that is, the total estimated cost of the Cameron Project when all work is completed and all future deliverables have been made to the customer. Among other things, to determine the EAC, the group tracked historical trends for the Cameron Project, including quantities of materials used, wage rates, labor performance factors, physical progress, purchase orders, and subcontract orders, as well as other data. After the merger, the Project Cost Team data and forecasts were reviewed in detail by on-site Cameron Project management, North, Central and South America ("NCSA") area management (that is, the business unit responsible for managing and overseeing of the Cameron Project and other projects in the region), and Project Execution & Delivery ("PED") management, and then finally at an executive summary level by Dickson and Spence. The Cameron Project EAC was also subject to internal audits and review by external auditors.

10. On June 25, 2018, a McDermott PED executive emailed the Project Cost Team's draft executive cost forecast presentation for the Cameron Project to Dickson and Spence. The Cameron Project Director reviewed it with them later that day. According to the presentation, as a result of an increase in expected costs related in part to a Q2 2018 execution strategy change implemented prior to the merger, the Project's total estimated loss at completion had increased from the \$160 million reported by CB&I in Q1 2018 to \$1.252 billion, an increase of more than \$1 billion from what CB&I had estimated and recorded approximately two months earlier.

11. On July 2, 2018, the Project Cost Team circulated a revised draft of its EAC loss forecast, which reported the EAC loss for Cameron as \$1.147 billion. Later that day, the Project

Cost Team met with Spence and representatives from NCSA and PED management to, among other things, present the Project Cost Team's final draft forecast.

12. Dickson and Spence, together with certain NCSA and PED executives, expressed skepticism of the Project Cost Team's final draft \$1.147 billion EAC loss forecast because, among other things, they sought to use a different, less costly contract execution strategy going forward. That different execution strategy involved a reduction in workforce on site over time. Specifically, in June and July 2018, McDermott management initiated a reduction in workforce of over 1,800 direct/sub-contracted workers and planned to implement further reductions in Q3 2018 from a high of roughly 11,400 workers to an expected optimum level of roughly 9,000 to 9,500 workers. McDermott also implemented, among other things, a 15% reduction in Cameron's "project and construction management team." In addition, the JV Partner told McDermott executives that it lacked confidence in the \$1.147 billion EAC loss amount and preferred to complete a review before reflecting increases of that magnitude in the Cameron EAC.

13. On July 3, 2018, an NCSA executive, after consulting with PED management, proposed an alternative Cameron \$490 million Q2 2018 EAC loss forecast (the "\$490 million EAC"). The NCSA executive calculated the \$490 million EAC by taking the Q1 2018 Cameron EAC loss forecast of \$160 million and adding \$330 million, consisting of \$200 million in actual cost overruns during Q2 2018 and additional expected cost overruns of \$130 million for all future reporting periods. The NCSA executive calculated the \$490 million EAC outside of the routine cost-estimating process, using a methodology that was inconsistent with the regular process for a project of this complexity and magnitude. One quarter later, at the end of the third quarter, after completing an EAC for the Cameron project consistent with the routine cost estimating process, McDermott booked a significantly higher loss increase.

14. On July 9, 2018, the NCSA and PED executives presented the \$490 million EAC to Dickson and Spence for their review and approval. Although Dickson and Spence were aware of information indicating that the \$490 million EAC was prepared outside of the Project Cost Team's normal cost-estimating process, they approved the \$490 million EAC.

15. The \$490 million EAC was not calculated by modifying and aggregating the underlying detailed cost estimates forecasted by the Project Cost Team. As a result, the Project Cost Team did not know how the \$490 million EAC was determined or how that forecast was supposed to be allocated to specific cost categories. Instead, beginning on July 10, 2018, the Project Controls Manager, the Project Cost Team Leader, and the Project Director for Cameron made top-level cuts from each cost category, mainly in areas where they thought actual expenses would not soon exceed the forecast. The Project Controls Manager, the Project Cost Team Leader, and the Project Director then directed the project cost analysts in charge of the affected cost categories to figure out how to make the cuts in their sub-cost categories. This process caused the project cost analysts to input amounts unsupported by a detailed sub-cost category build up into McDermott's accounting software.

16. On July 12, 2018, McDermott's Internal Audit distributed a report to management and audit committee members, including Dickson and Spence. The report featured an audit observation that CB&I management had reduced the Cameron Project Cost Team's Q1 2018 cost

estimate by approximately \$278 million (effectively, reducing the Q1 \$438 million estimated loss at completion for Cameron to \$160 million) without any plans in place to achieve those reductions. On July 12 and July 18, Dickson and Spence received preliminary and final versions of this internal audit report, and on July 13, they attended one meeting to review its findings. The report noted that the “Risk/Implication” for the Q1 2018 cost estimate was “high” because “[i]f total project costs are not captured in the forecast, cost and profit ratios may be misstated thereby affecting the project’s revenue recognition and financial reporting.”

17. McDermott also sought to study the possible effects of the workforce reduction and productivity factors. On July 19, 2018, Dickson, Spence, and others received an executive presentation (the “July 19 Analysis”) that included a high-level hypothetical modelling “Scenario Analysis” of various alternative workforce reduction scenarios and associated anticipated effects on the Cameron Project’s estimated gross loss. On July 24, 2018, Dickson and Spence received a revised scenario analysis (the “July 24 Analysis”). Taken together, the July 19 Analysis and July 24 Analysis showed that even under significant workforce reductions (ranging from 17% to 36%) and varying productivity factors, the Cameron Project could suffer losses ranging from \$1.05 billion to \$1.7 billion, with the exception of one of the scenarios which resulted in an estimated loss at completion of \$702 million based upon using aggressive assumptions of labor productivity as necessary to meet contract completion dates.

#### **McDermott’s Quarter-End Press Release and Form 8-K**

18. On July 31, 2018, McDermott filed a Current Report on Form 8-K, with a McDermott press release as an exhibit. The press release stated that McDermott was “currently targeting completion dates of Q1 2019 for Phase 1, Q3 2019 for Train 2, and very early Q1 2020 for Train 3, in accordance with the customer requirements.” The press release also contained a quote from Dickson stating that:

“We are clearly disappointed with the increased cost estimates from three of the legacy CB&I projects. The increases are within the bounds of the scenarios we contemplated during our due diligence, and we believe that by applying our disciplined One McDermott Way to these projects, we can bring them to successful completion. We have already made significant changes to personnel, reporting structures, stakeholder relationships and execution plans on Cameron, for example, since the combination closed, and there are encouraging signs that these changes have made a difference. More importantly, we have moved forward to further strengthen our relationships with stakeholders. Going forward, we plan to continue to aggressively apply our McDermott approach to ensure appropriate risk evaluation and mitigation across the combined Company’s portfolio – from bidding to execution.”

19. The statements concerning Cameron’s targeted schedule dates and “encouraging signs” were inconsistent with some content included in the July 19 Analysis and July 24 Analysis. The hypothetical modelling scenarios in those presentations did not, in large part, match the target schedule dates in McDermott’s press release. Moreover, the press release statement that McDermott was seeing “encouraging signs” did not fairly present the fact that the scenarios showed potential schedule delays and increased losses for Cameron if certain project execution assumptions were unsuccessful in future periods.

## **Financial Statement Impact**

20. McDermott reported an additional \$165 million EAC loss (representing McDermott's share of the increase in the loss amount from the Q1 2018 amount) in the notes to the financial statements and in the MD&A section filed with its Q2 2018 Form 10-Q.

21. The Q2 2018 Form 10-Q included certain materially inaccurate Cameron Project specific information.

## **Applicable Law**

22. As a result of the conduct described above, Respondents caused McDermott to violate:

- a. Section 13(a) of the Exchange Act and Rules 13a-11, 13a-13 and 12b-20<sup>2</sup> thereunder, which require every issuer of with a class of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that current reports, including reports on Form 8-K, and periodic reports, including quarterly reports on Form 10-Q, contain such further material information as may be necessary to make the required statements not misleading
- b. Section 13(b)(2)(A)<sup>3</sup> of the Exchange Act, which requires every issuer of with a class of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of their assets;
- c. Sections 13(b)(2)(B)<sup>4</sup> of the Exchange Act, which requires every issuer of with a class of securities 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 recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles and
- d. Rule 13b2-1, which prohibits directly or indirectly falsifying or causing to be falsified, any book, record, or account subject to Section 13(b)(2)(A). A violation of Rule 13b2-1 does not require scienter and may rest on a finding of negligence.

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<sup>2</sup> An issuer's violation of these reporting provisions does not require scienter. *See SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

<sup>3</sup> Scienter is not an element of an issuer's violation of the books-and-records provision. *See Ponce v. SEC*, 345 F.3d 722, 737 n.10 (9th Cir. 2003) (noting that a "plain reading of Section 13(b) reveals that it also does not impose a scienter requirement").

<sup>4</sup> Scienter is not an element of an issuer's violation of the internal accounting controls provision. *See id.*

*See McConville v. SEC*, 465 F.3d 780, 789 (7th Cir. 2006) (finding no scienter requirement for Rule 13b2-1).

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents Dickson's and Spence's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents Dickson and Spence 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-11, 13a-13, and 13b2-1 thereunder.

B. Respondent Dickson shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Respondent Spence shall, within 30 days of the entry of this Order, pay a civil penalty in the amount of \$40,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 David Dickson or Stuart Spence 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 Melissa R. Hodgman, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5553.

C. 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, each 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, each 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 a 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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