

# **Summary: Allegation of False Claim by Contractor at Mackay Island National Wildlife Refuge Unfounded**

**Report Date: August 2, 2017**

OIG initiated an investigation after receiving an allegation that a U.S. Fish & Wildlife (FWS) contractor withheld payment to a subcontractor after certifying to FWS that it would not withhold such payments, which potentially violated the Civil False Claims Act. The contract was for the repair of bulkheads along the shoreline of Mackay Island National Wildlife Refuge, North Carolina.

Although we confirmed that the prime contractor certified to FWS that it was not withholding payments to any subcontractors and then withheld payment from the subcontractor, we did not find sufficient evidence that this constituted a false claim.

We found that on July 24, 2015, the prime contractor submitted an invoice to FWS to approve a payment of \$142,813 for work completed, and later certified to FWS that it did not intend to withhold payments to subcontractors. The prime contractor subsequently withheld payment to a subcontractor for work covered under that invoice, asserting that the subcontractor claimed payment for more work than it had completed by the date of the invoice and was also delinquent in paying its own suppliers in accordance with Federal regulations. The prime contractor provided documentation indicating that it initially intended to pay the subcontractor, and did not make its final decision to withhold the full payment until after the August 1, 2015 certification.

Under Federal regulations, contractors are required to notify the Government “as soon as practicable” when they intend to withhold subcontractor payments after submitting an invoice to the Government. We found that the prime contractor did not notify FWS that it withheld payment to the subcontractor until March 21, 2016, almost seven months later. That regulation also requires the contractor to pay the Government interest on the overpayment, which they have not.

This is a summary of an investigative report that we issued to the Director of FWS for any action deemed appropriate.

