UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, ex rel. [UNDER SEAL] Plaintiffs, v. [UNDER SEAL] Defendant.	Civil Action No: **COMPLAINT** **FILED IN CAMERA AND UNDER SEAL PURSUANT TO 31 U.S.C. §3730(b)(2)**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, ex rel. RICHARD PRIEM, Plaintiff, v. SCIENCE APPLICATIONS INTERNATIONAL CORPORATION (SAIC), Defendant.	Civil Action No: **COMPLAINT FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT, 31 U.S.C. § 3729 et seq.** **JURY TRIAL DEMANDED** **FILED IN CAMERA AND UNDER SEAL PURSUANT TO 31 U.S.C. §3730(b)(2)**

Qui tam plaintiff Richard Priem ("Relator"), through his attorneys, the Law Offices of James P. Lyle, P.C. (James P. Lyle) and Phillips and Cohen LLP, for himself and on behalf of the United States of America, for his Complaint against defendant Science Applications International Corporation (the "Defendant" or "SAIC"), alleges as follows:

INTRODUCTION

1. This is an action to recover damages and civil penalties, on behalf of the United States Government (the "United States" or the "Government"), arising from false and/or fraudulent statements, records, and claims made and caused to be made by the Defendant and/or its agents and employees in violation of the federal False Claims Act, 31 U.S.C. § 3729 et seq., as amended ("the FCA" or "the Act").

2. Defendant has engaged in a systematic scheme to defraud the United States by fraudulently billing government-funded training programs for labor based on grossly and consistently overstated labor costs. Defendant knowingly misrepresented to the Government

each year the identity, employment status, and employment-benefits eligibility of the people Defendant would be using to work in the programs. As a result of Defendant's misconduct, the United States has been billed and has paid labor rates that drastically exceed those it would have approved or paid had Defendant fairly and accurately identified its program-staffing plans. Moreover, having initiated its pattern of fraud from the inception of the programs at issue, Defendant thereafter continued the fraud each year in part out of concern that diverging significantly from the precedent set by its prior lies would lead to an audit that would have revealed past overpayments caused by Defendant's prior fraudulent acts and alert the Government to refunds that were therefore due the United States.

3. Defendant's conduct violates the federal False Claims Act. The FCA was originally enacted during the Civil War. Congress substantially amended the Act in 1986 – and, again, in 2009 and 2010 – to enhance the ability of the United States Government to recover losses sustained as a result of fraud against it.

4. The Act was amended in 1986 because Congress found that fraud in federal programs was pervasive and that the Act, which Congress has characterized as the primary tool for combating fraud against the federal Government, was in need of modernization. Congress intended that the 1986 amendments would create incentives for individuals with knowledge of fraud against the Government to disclose the information without fear of reprisals or Government inaction, and would encourage the private bar to commit legal resources to prosecuting fraud on the Government's behalf.

5. Likewise, the 2009 and 2010 amendments were introduced to fill gaps in the coverage of the Act and to correct ambiguities in the drafting and misinterpretations of the

intended scope of the Act that had emerged in case law in the more than 20 years that had passed since the 1986 amendments.

6. From the 1986 amendments until May 20, 2009, the FCA prohibited, *inter alia*: (a) "knowingly present[ing], or caus[ing] to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval" as well as (b) "knowingly mak[ing], us[ing], or caus[ing] 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)(1)-(2) (1986).

7. Until May 20, 2009, "claim" was defined under the Act as "any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded." 31 U.S.C. § 3729(c) (1986).

8. As amended in the Fraud Enforcement and Recovery Act of 2009 ("FERA"), the Act now imposes liability upon any person who, *inter alia*: (a) "knowingly presents, or causes to be presented, a false or fraudulent claim for payment of approval" or, effective June 7, 2008, (b) "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)(A)-(B) (2009).

9. As amended by FERA on May 20, 2009, "claim" now is defined in the Act as "any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that – (I) is presented to an

officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government – (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded." 31 U.S.C. § 3729(b)(2)(A) (2009).

10. Additionally, pursuant to the 2009 FERA amendments, a violation of the FCA occurs when any person ". . . knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." 31 U.S.C. § 3729 (a)(1)(G) (2009).

11. In relevant part, the term "obligation" is defined under the Act to include: "an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, or from the retention of any overpayment." 31 U.S.C. § 3729 (b)(3) (2009).

12. Any person who violates the Act is liable for a civil penalty of between $5,500 and $11,000 for each false or fraudulent claim, plus three times the amount of the damages sustained by the United States.

13. The Act allows any person having information about false or fraudulent claims to bring an action for himself and the United States, and to share in any recovery. The Act requires that the complaint be filed under seal for a minimum of 60 days (without service on the defendant during that time) to allow the Government time to conduct its own investigation and to determine whether to join the suit.

14. Based on the foregoing FCA provisions, *qui tam* plaintiff Richard Priem seeks, through this action, to recover damages and civil penalties arising from the false or fraudulent records, statements and/or claims that defendant SAIC made or caused to be made in connection with its provision of services under a federally-funded program at fraudulently-inflated labor rates.

PARTIES

15. Plaintiff-Relator Richard Priem is an expert in leadership training, particularly as it relates to ensuring public safety. He currently resides in Albuquerque, New Mexico and serves as a Principal Member of Public Safety Protective Training, LLC, which specializes in providing training and support services to clients in the fields of public safety and protective services. He served for 21 years in the US Army as a Commander and Staff Officer. After retiring from the military and before becoming a principal with Public Safety Protective Training, Mr. Priem was employed by defendant SAIC for almost 16 years. Mr. Priem began working for SAIC in 1994 as a Senior Security Systems Analyst. From at least February 1996 until his departure in 2009, Mr. Priem served as a project manager for several of SAIC's security-based projects including the Weapons of Mass Destruction First Responder Program conducted at New Mexico Institute of Mining and Technology.

16. Defendant Science Applications International Corporation is a publicly-held Delaware corporation headquartered in McLean, Virginia and with offices in Albuquerque and Socorro, New Mexico that included staff who worked on the matters alleged herein. SAIC contracts extensively with the federal Government to provide a wide variety of consulting, scientific, engineering, and technology products and services.

JURISDICTION AND VENUE

17. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

18. Although such issue is no longer jurisdictional under the 2010 amendments to the FCA, to Relator's knowledge, there has been no statutorily relevant public disclosure of the "allegations or transactions" in this Complaint, as those concepts are used in 31 U.S.C. § 3730(e). Moreover, whether or not such a disclosure has occurred, Relator would qualify under that section of the FCA as an "original source" of the allegations in this Complaint. Before filing this action, Relator voluntarily disclosed and provided to the Government the information on which the allegations or transactions in this action are based. Additionally, Relator has knowledge about the misconduct alleged herein that is independent of, and that would materially add to, any publicly disclosed allegations or transactions that may prove to have occurred without his knowledge.

19. This Court has personal jurisdiction over Defendant pursuant to 31 U.S.C. § 3732(a) because that section authorizes nationwide service of process and because Defendant has minimum contacts with the United States. Moreover, Defendant can be found in and transacts substantial business in the District of New Mexico.

20. Venue is proper in the District of New Mexico pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and 31 U.S.C. § 3732(a) because Defendant can be found in and transacts business in this district. Defendant regularly conducts substantial business within this district and/or

maintains employees and offices in this district, including employees affiliated with the programs and work at issue herein.

BACKGROUND ON THE WEAPONS OF MASS DESTRUCTION FIRST RESPONDER PROGRAM

21. In the mid-to-late 1990's there was growing national concern about the threat of terrorist attacks on U.S. soil. A Commission chartered by Executive Order in 1996 determined that emergency services around the country were ill-prepared to handle such potential attacks. The Commission recommended that first responders, such as fire fighters, police, and paramedics, receive additional equipment and training to identify and manage incidents involving weapons of mass destruction.

22. Congress answered this call in 1998 by taking a number of steps, including appropriating funds to the Department of Justice to initiate equipment and training programs for first responders.

23. Up through the present fiscal year, Congress has continued to appropriate funds to train local responders to deal with terrorist attacks involving weapons of mass destruction. The federal agency managing these funds has changed over the years, but the goal of the program has remained constant.

24. The Office for Domestic Preparedness was established within the Department of Justice in 1998 to develop and administer the national domestic preparedness program. That Office was transferred to the Department of Homeland Security (DHS) in 2003 and consolidated with other DHS components to become the Office of State and Local Government Coordination Preparedness. In 2005, the Office of State and Local Government Coordination Preparedness

was incorporated into the Office of Grants and Training within DHS. To simplify pleading, to the extent that information is submitted to, or funding or funding approval is provided by, the above-named Offices – whether when they were then part of the Department of Justice or the Department of Homeland Security – rather than naming the precise Office at any particular time, those official entities shall be referred to hereafter in this Complaint jointly and separately as the "federal funding agency."

25. Since 1998, when the federal program to train first responders began, the Energetic Materials Research and Training Center at the New Mexico Institute of Mining and Technology (New Mexico Tech) has received federal funds to provide training.

26. Within the overall program, New Mexico Tech specializes in providing training to first responders dealing with emergency situations involving explosives and incendiaries. The program at New Mexico Tech is known as the "Weapons of Mass Destruction First Responder Program" ("WMD Program" or "First Responder Program").

27. The First Responder Program is funded entirely by the federal Government. Annual appropriations of federal funds to support the New Mexico Tech's program work have ranged from $1 million to $23 million between fiscal years 1998 and 2011. The chart below provides the approximate funding to New Mexico Tech by fiscal year:

Fiscal Year	Approximate Funding to New Mexico Tech Weapons of Mass Destruction First Responder Training Program
2011	$23,000,000
2010	$23,000,000

2009	$23,000,000
2008	$22,000,000
2007	$20,800,000
2006	$20,000,000
2005	$20,000,000
2004	$19,800,000
2003	$19,000,000
2002	$15,000,000
2001	$4,500,000
2000	$3,500,000
1999	$3,000,000
1998	$1,000,000

28. New Mexico Tech retained SAIC as a subcontractor to provide much of the training involved in the First Responder Program.

29. SAIC was responsible for managing the delivery of training courses to first

responders. This included hiring and supervising instructors, managing the development of training materials, providing training materials and equipment to staff and students, and managing the program logistics.

30. New Mexico Tech sole-sourced this contract to SAIC. Because New Mexico law requires government contracts of this size to be competitively bid absent good cause to proceed otherwise, each year when its contract came up for renewal, SAIC prepared and submitted a "sole-source justification" arguing that it had expertise which no other commercial organization could provide. New Mexico Tech then provided this justification to the State in order to be permitted to continue sole-sourcing the contract to SAIC. Because the sole-sourcing approval was always granted, the excessive labor rates and high company profits SAIC enjoyed, as alleged herein, were never subject to normal checks and balances of market competition. Both New Mexico Tech and the federal Government relied instead on the accuracy of SAIC's representations about its staffing plans and costs at the time rate approvals were given.

31. SAIC understood that New Mexico Tech could afford to devote up to about one-third of its total appropriation limit to pay bills from SAIC, based on the time and materials SAIC claimed it would devote to the project. Thus, once it became aware of the "contract funded value" each year, SAIC built its own budget proposal targeted to ensure that it captured as much funding as possible, rather than basing its proposed budget on cost data that was designed to reflect accurately SAIC's fairly warranted costs and reasonable levels of profit associated with the actual needs of the project.

32. Once work under the fraudulently updated contract was approved, SAIC billed New Mexico Tech on a 30-day cycle. New Mexico Tech then rolled SAIC's and any other

subcontractors' invoices into its own, and presented the total to the relevant federal funding agency for payment. SAIC would not be paid by New Mexico Tech until New Mexico Tech's overall project proposal was formally funded by the United States Government for that year. After New Mexico Tech's cooperative agreement with the United States was signed and formal funding authorized, New Mexico Tech would catch up on paying SAIC invoices that had been held pending such final approvals. Thereafter, for subsequent work in that contract year, New Mexico Tech normally would pay SAIC within 45 days of SAIC's submission of invoices.

33. The contract funded value to SAIC between 1998 and 2010 totaled approximately $65,000,000.

ALLEGATIONS REGARDING FCA VIOLATIONS

Summary Overview

34. Throughout the entire period of its participation in the First Responder Program, SAIC has fraudulently obtained federal approval of grossly inflated labor rates by misrepresenting its expected labor costs to the federal funding agency. SAIC has falsely certified each year that it would be using primarily high-cost employees (who worked full-time and/or who were entitled to receive costly fringe-benefit packages) to work on key portions of the New Mexico Tech contract, when it knew that it actually would be using low-cost employees (who worked part-time and/or were entitled to few benefits) to perform such work. Because the federal Government approves labor rates by considering the contractor's cost to provide services and the resulting profit from a particular rate, SAIC obtained approval from the federal Government of grossly inflated labor rates by making its costs appear much higher than they in fact were. As a result, for years, SAIC has obtained exorbitant profits for its work on the

First Responder program by billing the federal government, via its contract with New Mexico Tech, for labor performed by low-cost employees at rates calculated based on the use of high-cost employees.

35. During this time, New Mexico Tech has been the only government entity aware of the identity of personnel who actually performed work on the First Responder project. But New Mexico Tech was never privy to the representations SAIC made to the United States about which employees SAIC purportedly planned to use to perform work on the contract and was thus unaware that the rates it was being charged were based on false certifications regarding the kinds of personnel SAIC would use to do the job.

36. SAIC understood and fraudulently took advantage of a key weakness in information flow between New Mexico Tech and the federal Government: While the federal funding agency approved labor rates for SAIC's labor categories based on SAIC's representations about personnel whom SAIC claimed were the same or representative of the mix of personnel it planned to use to perform the work and -- more directly to the point at issue here -- what salaries, benefits, and other direct and indirect costs were associated with the mix of employees SAIC planned to use, the federal Government did not receive information about who thereafter actually performed the work on behalf of SAIC sufficient to alert it that the rates it had approved were based on vast overstatements of SAIC's actual labor costs.

37. Similarly, while New Mexico Tech was aware of who actually performed work on behalf of SAIC, it was not privy to the misrepresentations SAIC made to the federal Government each year about its staffing plans in order to secure approval of greatly inflated rates of reimbursement for its labor force. Nor was New Mexico Tech privy to know even the

salaries or benefit packages SAIC was providing staff it actually assigned to the job. Thus, like the federal Government, based on the incomplete information available to it, New Mexico Tech had no insight into whether the labor rates that had been approved for SAIC by federal authorities were out of line with SAIC's actual staffing costs.

Particulars of SAIC's Fraud

38. Each year, the grant of federal money to New Mexico Tech under the First Responder Program has been governed by a cooperative agreement between New Mexico Tech and the federal funding agency that was charged at that time with administering the program. Throughout the life of the Program, that cooperative agreement has required New Mexico Tech and its subcontractors to submit pricing proposals to the federal funding agency for approval.

39. As noted above, SAIC billed based on their "time and materials." SAIC thus would bill under the contract for direct expenses such as airfare and printing costs, as well as for its labor. But before SAIC could bill New Mexico Tech for its labor or costs, it had to have its labor rates and proposed expenses approved each year by the federal funding agency.

40. When a federal agency considers whether to approve a proposed labor rate it is primarily concerned with determining whether the proposed rate would result in excessive profit to the contractor. Typically, a profit rate on labor of 7-10% would be considered to be within reasonable bounds for a Government contract, and amounts above that would be considered excessive. To evaluate whether a labor rate proposal from a government contractor would fall within reasonable bounds of profitability, the agency needs to know the total cost to the contractor of retaining its employees. Total cost includes not only direct salary payments to employees but also the indirect overhead costs associated with employees, such as whether they

will need office space and what sorts of fringe benefits they will receive.

41. As a large and long-standing government contractor, SAIC is well familiar with the way the federal Government operates when calculating billing rates under time and material contracts. In order to facilitate rate approval and billing processes, SAIC has divided all of its employees into "divisions." The overhead costs associated with retaining an employee determine that employee's division number. For example, SAIC employees who are part-time and receive no benefits are assigned by SAIC to Division 640. Because they are part-time workers and receive no benefits, the indirect cost associated with Division 640 employees is always quite low, especially relative to full-time employees who receive fringe benefits.

42. Indirect costs are standardized for each SAIC division through the use of "mark-ups." A mark-up for an employee is the amount by which one would multiply the employee's hourly rate in order to determine the total cost to SAIC to retain the employee. For example, in FY 2009, the mark-up for SAIC Division 640 employees was 1.24338. This means that for every dollar SAIC attributed to its direct salary costs of paying Division 640 employees, SAIC's average total cost to retain such employees would actually be 1.24338 dollars.

43. Every year, SAIC has its proposed mark-ups for each division approved by the Defense Contract Management Agency (DCMA), a component of the Department of Defense. In order to obtain annual approval for the proposed mark-ups applied to each of its divisions, SAIC submits to DCMA a packet of information. The submission includes information about what salaries and what overhead and fringe benefits are associated with each division. Each year, DCMA would consider this information and approve a "mark-up" for each SAIC division.

44. For purposes of this action, it is important to understand a few key differences between SAIC's "companies" and "divisions." Divisions that start with the number "1" (e.g., Division 14) come from SAIC's "Company 1." Most "Company 1" employees, including all those in Division 14, work full-time and receive robust benefit packages. For instance, Relator, who was a full-time employee with significant benefits while employed by SAIC, was in Division 14. Because they always include full-time employees who receive substantial benefit packages, SAIC Divisions starting with the number "1" invariably have high markups (often around the order of 2.5).

45. Divisions that start with the number "6" (e.g., Division 640, which included consultants retained by SAIC) come from SAIC's "Company 6." All divisions within Company 6 are made up of employees who work only part-time and receive little or no benefits and/or who work full time but receive little or no benefits. The particular divisions of Company 6 whose employees were used by SAIC to staff the First Responder Program (including Division 640) were virtually always part-time employees who received little or no benefits. The Division 640 group included a substantial number of "lead instructors" who actually worked on the New Mexico Tech contract part-time and without any benefits. Divisions from Company 6 have comparatively low mark-ups (often around 1.2-1.4).

46. When SAIC sought approval from the federal funding agency of the labor rates it planned to charge under the First Responder Program, it sought approval by labor category rather than by what division of SAIC the employee belonged in. SAIC's divisions are company-wide designations and can contain employees doing radically different types of work, so long as they all share essentially the same overhead characteristics. But when seeking approval for

labor rates to be charged under the First Responder Program, SAIC sought approval by type of work. For instance, the instructors that taught courses provided a significant portion of the labor on the contract. Instructors might fall into different SAIC divisions, depending on their employment status and benefit packages, but their hourly labor was always billed to the federal funding agency, via New Mexico Tech, under the labor categories of "Lead Instructor/Senior Subject Matter Expert" and "Instructor/Subject Matter Expert." It was for these labor categories that the federal funding agency would approve a so-called "labor rate."

47. As noted above, when approving labor rates, the federal funding agency is primarily interested in determining the contractor's costs so that it can ensure that any proposed labor rate will result in only a reasonable level of profit for the contractor. Therefore, in order to obtain approval of its labor rates for the First Responder Program, SAIC was required to submit to a contracting officer at the federal funding agency a packet of information regarding its expected expenses for the various labor categories working on the contract.

48. SAIC was required to include in this submission a list of employees that would be fairly representative of those who actually would be performing services to be billed under each labor category of the contract. SAIC also was required to indicate how much of that category of labor the representative employees would be performing, their hourly rates, and their division numbers or DCMA-approved markups. With accurate information of this kind, the federal funding agency could reach a fair estimate of what the total cost would be to SAIC to provide the labor under the contract and therefore determine whether the proposed hourly rate for a particular labor category would result in compensation to SAIC that fell within a reasonable range of profit.

49. For example, as stated above, a significant amount of the work on the New Mexico Tech contract was instruction of the First Responder Program training classes. This was done by employees who fell within the labor categories of "Lead Instructor" and "Instructor." In order to justify its proposed rate for the Lead Instructor labor category, SAIC would submit a list of employees it claimed were representative of those who would be working in this labor category, along with their hourly rate, division or DCMA-approved mark-up, and the percentage of the work in the category the listed employees – or other, similarly qualified and compensated employees -- would be doing. Using the percentages and marked-up hourly rates, the federal funding agency would review the proposed composite rate for the labor category and approve a labor rate for the category.

50. Relator was not involved in the preparation of this annual submission, and thus has never had access to these records. However, based on explanations of the process that were provided to him by his superiors within SAIC, the following chart provides the kind of information SAIC was required to submit to the federal funding agency on an annual basis in a format that is functionally equivalent to what SAIC actually submitted:

Labor Category: Lead Instructor			
Employee Name	Hourly Rate	SAIC Division Number/DCMA Approved Mark-up	Percentage of Labor in Category Employee will be Providing
Steve Howard	$45	14/2.517	33.3%
Dave Garner	$55	14/2.517	33.3%

Thomas Anders	$45	6542/1.437	33.3%

51. The federal funding agency reviewing such a submission would be provided no information with which it could objectively verify or disprove SAIC's representations regarding the kind of employees SAIC planned to use to perform each kind of work listed or how much of each kind of work those categories of employees would be doing. Rather, relying on the good-faith accuracy of SAIC's representations and its certifications about those details, the reviewing federal funding agency would simply consider the hourly rates for the employees SAIC listed in its submission and their mark-up to determine if the billing rate that was being proposed by SAIC would result in a reasonable profit to SAIC.

52. Thus, to summarize the basic concept of SAIC's fraud: in order to fraudulently boost its profits, SAIC would knowingly misrepresent in its submission to the agency which employees would be performing what work under SAIC's contract with New Mexico Tech and/or how much of that work they would be performing by certifying that high-cost employees (those with high mark-ups) would be performing the majority of the work in labor categories where the work was generally done by low-cost employees (with low mark-ups).

53. The most prevalent example of this abuse occurred in the labor categories of "Senior Instructor/Senior Subject Matter Expert" and "Instructor/Subject Matter Expert." The employees in these labor categories served as the lead and assistant instructors in the First Responder Program courses.

54. SAIC's intention from the beginning of the First Responder Program was to use low-cost employees (part-time, on-call, intermittent instructors who received no benefits) to serve as training instructors. This staffing model had been established by another SAIC project for which Relator previously worked. In the previous project, SAIC had contracted with Louisiana State University to support a Department of State antiterrorism training program. When Relator began working with the New Mexico Tech program he proceeded to use a staffing model identical to that used by SAIC at Louisiana State University. SAIC never had any intention of using full-time employees in instructor roles, and indeed did not have full-time employees who were as expert in the areas to be taught as were SAIC's part-time employees who spent their full-time careers actually functioning as first-responders in their home communities. At all times during his tenure on the First Responder Program, SAIC management understood and acknowledged Relator's actual staffing plans for that project, including his use of part-time, no-benefit personnel as SAIC's primary instructors in those roles.

55. For those reasons, SAIC never seriously contemplated using high-cost employees to provide instructor services, except as infrequently proved necessary to meet coverage requirements. However, rather than telling the federal funding agency that they would be using low-cost employees, SAIC each year certified falsely that high-cost (full-time, full-benefit) employees would be providing these services, and thereby obtained higher markups and a corresponding higher labor rate.

56. The fact that the classes were taught almost exclusively by low-cost employees, and that SAIC knew and expected that would be the case all along, is borne out by a review of the class schedules.

57. For example, an instructor schedule for October 2006 through March 2007 for the "Incident Response to Terrorist Bombings" and "Prevention and Response to Suicide Bombings Incidents" courses (two of the major courses developed and staffed by SAIC) shows that the vast majority of teaching slots were filled by Division 6542 employees. A lesser number of these slots were filled by Division 640 and Division 2643 employees (another division of low-cost employees), while only a couple of slots were filled by Division 14 employees.

58. Some of the instructors SAIC actually used to perform such work may have been employees of a temp agency which Relator hired through, rather than employees of SAIC. Their mark-ups would have been in the range of 1.2 to 1.4, similar to SAIC Company 6 employees.

59. Specifically, the instructor schedule reveals that "Senior Instructors" came almost exclusively from Division 6542. In 2007, the average hourly pay to a Division 6542 employee was $48.62. The mark-up for division 6542 employees in FY 2008 was 1.437. The actual cost of a Division 6542 employee to SAIC in 2007 was thus approximately $69.87.

60. Because, however, SAIC had falsely represented to the federal funding agency that primarily high-cost employees would be working in this labor category, SAIC gained approval to bill a labor rate for fiscal year 2008 of $112/hour for "Senior Instructors." This equates to profit to SAIC of approximately 60% in this labor category, a rate of profit that is more than six times the maximum profit rate that is normally acceptable and thus that would not have been approved had SAIC's true staffing plans and practices been disclosed.

61. The instructor schedule further reveals that non-senior "Instructors" actually used for courses SAIC taught consisted principally of low-cost employees that SAIC assigned to Divisions 6542 and 640, with a few from Division 2643 and a sprinkling from Division 14. As

explained above, the cost to SAIC of a Division 6542 employee in 2007 was approximately $69.87. Division 640 and 2643 employees were paid direct salaries in approximately the same amount as employees in Division 6542, and had markups equal to or lower than those of Division 6542 employees. Division 14 employees were paid a similar hourly rate, but as full-time employees with significant benefit packages, had a mark-up of about 2.517.

62. Because, as with the "Senior Instructors," SAIC had falsely represented to the federal funding agency that primarily high-cost employees would be working this labor category, SAIC's labor rate for fiscal year 2008 was $95/hour for Instructors. Given a cost of labor of about $69.87/hour this lead to profit for SAIC on this labor category of at least 36%, a rate of profit that would not have been approved had SAIC's true staff plans and practices been disclosed.

63. This pattern continued through all years of the contract. By way of further example, the instructor schedule for the 2009 "Incident Response to Terrorist Bombings" class reveals that "Senior Instructors" who actually taught this course came exclusively from SAIC's Division 6542 low-cost employee pool. In 2007, the average hourly pay to a Division 6542 employee was $48.62. The mark-up for Division 6542 employees in FY 2009 was 1.430. So, the cost of a Division 6542 employee to SAIC in 2009 was approximately $69.53.

64. However, because, in seeking rate approvals from the federal Government, SAIC had fraudulently certified that high-cost employees would be performing most of the work in this labor category, SAIC gained approval to bill a labor rate for 2010 of $113/hour for Senior Instructors. This equates to profit of approximately 62% in this labor category, a rate of profit that is more than six times the maximum profit rate that is normally acceptable and thus that

would not have been approved had SAIC's true staffing plans and practices been disclosed.

65. Similarly, the Instructors for the Incident Response to Terrorist Bombings classes in 2009 came largely from Divisions 6542 and 640, with a few also coming from SAIC's Division 2643. As noted above, the cost to SAIC of a Division 6542 employee in 2007 was approximately $69.87. Division 640 and 2643 employees were paid approximately the same amount as employees in Division 6542, and had markups equal to or lower than those of Division 6542 employees.

66. Because SAIC fraudulently obtained a labor rate for 2010 of $95.75/hour for Instructors, this labor category resulted in approximately 37% profit to SAIC, a rate of profit that is approximately four times the maximum profit rate that is normally acceptable and thus that would not have been approved had SAIC's true staffing plans and practices been disclosed.

67. Rather than listing the low mark-up Division 6542 and 640 employees who SAIC knew would be providing significant amounts of the training in the First Responder Program, at the time it sought rate approvals SAIC falsely certified that full-time, full-benefit employees would be providing a majority of these services, and thereby gained approval of an unwarranted, higher markup.

68. In addition, SAIC falsely certified that the few full-time, full-benefit employees that actually did serve as Instructors and Lead Instructors would provide a far higher percentage of the instructor services than they in fact were expected to provide (or, in fact, did provide).

69. This practice also would make it appear that SAIC's costs were much higher than they in fact were and the reviewing agency would approve profit levels it would not have approved had the astronomical profits been revealed.

70. Based on his discussions with senior SAIC management while employed on this project and his understanding of the rate approval process, Relator believes and therefore alleges that the following Division 14 employees were likely used by SAIC to build inflated Lead Instructor and Instructor rates: Philip Bosma (paid approx. $75/hour), Richard Priem (paid approx. $40/hour), Eddie Hulsey (paid approx. $35/hour), Dave Williams (paid approx. $75/hour), Dave Garner (paid approx. $55/hour), and Terry May (paid approx. $40/hour). All of these employees were full-time, full-benefit employees in Division 14 with mark-ups around 2.517. However, they provided little or none of the instructor labor used on this federally funded project, and it was never SAIC's intention that they would.

71. Similarly based upon information and belief, Relator understands and believes that SAIC falsely certified that full-time, full-benefit employees with high mark-ups, such as Steve Howard and Dave Turner, whom SAIC in fact planned and knew would be providing only a small amount of instructor labor, were expected by SAIC to provide a much higher percentage of the work in this labor category.

72. Relator lacks access to all of the data on annual approved mark-ups, billed labor rates, and hourly wages, but the examples above for instructor labor categories and below for various other labor categories are included for explanatory purposes and are, upon information and belief, representative of profits obtained across various labor categories in all years of the contract.

73. The over billing in the Instructor and Lead Instructor categories was the most systematic and extreme area of SAIC's fraud, particularly given that these labor categories accounted for approximately one-quarter of SAIC's billing under its contract with New Mexico

Tech. But there was similar abuse with respect to other high-density labor categories.

74. For example, in the 2007-2008 contract year, SAIC charged $102/hour for employees in the "Senior Training Manager Position." Four Division 6542 employees worked in this category (Cynthia Howell, James Lehner, Jerald Little, and Carlos Maldonado) and were paid an average hourly rate of $46.15. The mark-up on their labor was 1.437, putting their cost to SAIC at approximately $66.32. Billing $102/hour generated profits of about 54% of cost, a figure that would not have been approved in the absence of misrepresentations by SAIC to federal authorities about the categories of employees SAIC actually intended to use to perform this category of work.

75. Similarly during the 2007-2008 contract year, SAIC charged $36/hour for labor in the "Administrative Assistant" category. During this contract year three employees performed in this labor category (Laura Higgs, Theresa Lopez, and Lisa Oty) and were paid an average hourly rate of $10.29. The markup on their labor was 2.517 putting their cost to SAIC at approximately $25.90. Billing at $36/hour created profit of 39% of cost. The fact that SAIC was allowed to bill at such a high rate indicates that SAIC misrepresented the employees who were likely to be working in this category as well.

76. The routine inflation of approved labor rates caused by SAIC's misrepresentations regarding the kinds of employees who would be performing labor in each category resulted in excessive overall profits for Defendant on the First Responder Program. Between 1998 and 2010, the First Responder Program netted profits for SAIC between 23% and 30% of the funded contract value.

77. Relator had no responsibility for pricing the contract. In addition, Relator never

had authority to sign the proposals sent to New Mexico Tech. These were signed by a contracting representative and approved at the division manager level and operation manager level.

78. Relator's understanding is that the initial pricing of the contract with New Mexico Tech that included the misrepresentations regarding which employees would be working in which labor categories, was prepared by Phillip Bosma (manager of Division 14), Dave Garner (division senior manager), and Dave Williams (business development vice-president and later operations vice-president) along with other contracts and pricing specialists.

79. It was well-known among high-level SAIC executives that the defective pricing scheme was creating excessive profits for SAIC. Relator had conversations with several such high-level SAIC officials about the excessive profits generated by the program, including Elissa Hillman (the contracts manager for the First Responder Program), Dave Garner (a division senior manager), Charley Sparks (the division manager), Lloyd McGrady (the operations manager), and Dave Williams (business development vice-president and later operations vice-president).

80. In the course of such discussions, Relator was told on several occasions by Elissa Hillman, the contracts manager for the First Responder Program, that the program was generating profits for SAIC that the federal Government would consider excessive. Ms. Hillman fretted at least once each contract year that a Government audit of labor charges on the project would uncover the pricing problems and likely result in SAIC's loss of the contract. However, no such audit ever occurred.

81. Similarly, Dave Williams (who was first SAIC's business development vice-

president and later its operations vice-president, and who had overall management responsibility for the First Responder Program) warned Relator in one conversation that, should New Mexico Tech or the US Government become aware of SAIC's profits on the contract, the consequences would be "dire." During another conversation, Dave Williams informed Relator that the First Responder Program generated profit revenues for SAIC equivalent to a typical program three times its size.

82. Even Dave William's wife told Relator's wife at a social function that New Mexico Tech "would be extremely displeased" if they knew how much profit SAIC was generating on the contract.

83. The outlying financial performance of the First Responder Program was common knowledge among key executives at least three levels above Relator. Whenever program reviews were conducted, profit was discussed. Therefore, everyone participating in the reviews was aware of the exceedingly large profit margins generated by the program. Participants at those reviews regularly included Lloyd McGrady (the operations manager), Charley Sparks (the division manager), Dave Garner (division senior manager), and the contracts representative and finance manager.

84. At all times during Relator's employment with the company, SAIC emphasized the importance of securing proprietary information, including its profit margins. Relator was made aware that he was, under no circumstance, to divulge to New Mexico Tech the profits SAIC was generating on its contract.

85. When Relator asked SAIC's top project managers why they could not simply change the practice that was causing such concern and start making accurate submissions to the

federal funding agency about the mix of employees that actually would be providing services under the contract, he was told the company was unwilling to do this because it would reveal that all of the prior submissions were false and SAIC then would be required to refund the overpayments.

86. In an effort to mitigate the extent of the problem going forward without violating company directives against revealing its profits, Relator encouraged his division manager not to raise rates when the contract was renewed or, short of that, to implement only small increases. However, Relator's recommendations were usually rebuffed by those in upper management with authority to make pricing decisions, including: Charley Sparks (division manager), Dave Garner (division senior manager), Lloyd McGrady (operations manager), and Dave Williams (business development vice-president and later operations vice-president). Relator was told by Dave Garner (division senior manager) and Dave Williams (business development vice-president and later operations vice-president) that SAIC had to raise rates in a manner typical of annual rate changes for a project of this kind because, if it did not, New Mexico Tech would likely come to suspect that they had been overcharged in the first instance.

87. Given his inability to control the pricing of labor, Relator also attempted with limited success to mitigate the extent of the overcharges for labor by charging some contract-related items to a separate unbillable account so that the charges would not be passed on to New Mexico Tech.

88. Every 30 days from 1998 to the current day, SAIC has submitted a "false claim" within the meaning of the False Claims Act when it billed New Mexico Tech for services. SAIC billed New Mexico Tech on a 30-day billing cycle (approximately 13 times a year) for its

expenses and labor. Throughout all times relevant to this lawsuit, SAIC has known that the amounts it claimed for labor on this project were not properly due and owing because SAIC's approved labor rates were based on prior false representations SAIC made each year about who would be working on the job and what amount of a particular type of work they would be doing.

89. Because New Mexico Tech rolled SAIC's charges into its own billing statements before submitting those claims for reimbursement to the federal funding agency, and because SAIC was paid its overcharges from the federal funds provided to New Mexico Tech, this constituted "knowingly . . . causing to be presented, to an officer or employee of the United States government . . . a false or fraudulent claim for payment" under the 1986 FCA and the "knowing[] present[ment] [of a] . . . false or fraudulent claim for payment or approval" under the 2009 FERA.

90. Every year from 1998 to the current day, SAIC has submitted to the federal Government a "false record or statement" within the meaning of the False Claims Act when it submitted rate approval papers to the federal funding agency. These submissions contained knowing misrepresentations by SAIC about the kinds of employees it planned to use to perform work under the contract with New Mexico Tech. Those misrepresentations, moreover, were made for the purpose of obtaining approval of unreasonably high proposed labor rates. This constituted "knowingly present[ing] . . . to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval" under the 1986 FCA and the "knowing[] . . . use[] . . . [of] a false record or statement material to a false or fraudulent claim" under the 2009 FERA amendment to that subsection of the False Claims Act.

91. Similarly, from May 2009 to the current day, SAIC has violated the False Claims

Act as amended by FERA by "knowingly conceal[ing] . . . an obligation to pay or transmit property to the Government" by continuing to submit rate proposals based on misrepresentations regarding personnel and charging based on the approved labor rates in order -- at least in substantial part -- to avoid detection of its prior fraudulent conduct and the resulting overpayments that it knew were properly due to be refunded to the United States Government.

Count I
False Claims Act
31 U.S.C. §§3729(a)(1) (1986)
31 U.S.C. §§3729(a)(1)(A) (2009)

92. Relator realleges and incorporates by reference the allegations contained in paragraphs 1-91 above as though fully set forth herein.

93. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §3729, et seq. as amended.

94. With respect to acts occurring prior to the effective date of the 2009 False Claims Act amendments, by and through the acts described above, Defendant has knowingly presented or caused to be presented, false or fraudulent claims to the United States Government for payment or approval.

95. With respect to acts occurring on or after the effective date of the 2009 False Claims Act amendments, by and through the acts described above, Defendant has knowingly presented or caused to be presented false or fraudulent claims for payment or approval.

96. The Government, unaware of the falsity of all such claims made or caused to be made by Defendants, has paid and continues to pay such false or fraudulent claims for inflated labor costs that would not be paid but for Defendant's illegal conduct.

97. By reason of Defendant's acts, the United States has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

98. Additionally, the United States is entitled to the maximum penalty of up to $11,000 for each and every violation alleged herein.

Count II
False Claims Act
31 U.S.C. §§3729(a)(2) (1986)
31 U.S.C. §§3729(a)(1)(B) (2009)

99. Relator realleges and incorporates by reference the allegations contained in paragraphs 1-91 above as though fully set forth herein.

100. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §3729, et seq. as amended.

101. With respect to acts occurring prior to the effective date of the 2009 False Claims Act amendments, by and through the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by the Government.

102. With respect to acts occurring on or after the effective date of the 2009 False Claims Act amendments, by and through the acts described above, Defendant knowingly made, used, or caused to be made or used false records or statements material to false or fraudulent claims.

103. The Government, unaware of the falsity of the records, statements, and claims made or caused to be made by Defendants, has paid and continues to pay inflated labor rate claims that would not be paid but for Defendant's illegal conduct.

104. By reason of Defendant's acts, the United States has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

105. Additionally, the United States is entitled to the maximum penalty of up to $11,000 for each and every violation alleged herein.

Count III
False Claims Act
31 U.S.C. §§3729(a)(1)(G) (2009)

106. Relator realleges and incorporates by reference the allegations contained in paragraphs 1-91 above as though fully set forth herein.

107. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §3729, et seq. as amended.

108. By and through the acts described above, Defendant has, at all times relevant to this Complaint, knowingly concealed and improperly avoided an obligation to pay money to the Government, including specifically Defendant's obligation to report and repay past overpayments of labor costs for which Defendant knew refunds were properly due and owing to the United States Government as a result of Defendant's own prior misrepresentations during rate-setting processes regarding the categories and relevant efforts of categories of employees Defendant knew it would use to perform work under its Government contracts.

109. The Government, unaware of the concealment by the Defendant has not made demand for or collected the years of overpayments due from the Defendant.

110. By reason of Defendant's acts, the United States has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

111. Additionally, the United States is entitled to the maximum penalty of up to

$11,000 for each and every violation alleged herein.

PRAYER

WHEREFORE, Relator Richard Priem prays for judgment against the Defendant as follows:

1. That Defendant ceases and desists from violating 31 U.S.C. §3729 et seq.;

2. That this Court enter judgment against Defendant in an amount equal to three times the amount of damages the United States has sustained because of Defendant's actions, plus a civil penalty of not less than $5,500 and not more than $11,000 for each violation of 31 U.S.C. §3729;

3. That Relator be awarded the maximum amount allowed pursuant to §3730(d) of the False Claims Act;

4. That Relator be awarded all costs of this action, including Relator's attorneys' fees and expenses; and

5. That Relator and the United States be provided all such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Richard Priem hereby demands a trial by jury.

Dated: February __, 2012

By: /s/ James P. Lyle, Attorney

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