



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

September 29, 2015

MEMORANDUM NO:
2015-CF-1809

Memorandum

TO: Dane M. Narode
Associate General Counsel, Office of Program Enforcement, CACC

//signed//

FROM: Kimberly R. Randall
Director, Joint Civil Fraud Division, GAW

SUBJECT: Final Civil Action: Iron Mountain Settled Allegations of Making False Disclosures and False Statements Regarding Discounts and Prices Relevant to Contracts It Had With HUD

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG) assisted the U.S. Attorney's Office for the Eastern District of California in the civil investigation of Iron Mountain, Incorporated, and Iron Mountain Information Management, LLC (Iron Mountain). Iron Mountain is headquartered in Boston, MA.

The investigation began due to a *qui tam*¹ filing in the U.S. District Court for the Eastern District of California.

BACKGROUND

HUD contracts for document and data storage services through the General Services Administration (GSA). GSA is a Federal entity that provides centralized procurement for the Government, offering billions of dollars worth of products, services, and facilities that Federal agencies, such as HUD, need to serve the public. GSA establishes long-term, governmentwide contracts with commercial firms to provide access to millions of commercial products and

¹ The False Claims Act allows private persons to file suit for violations of the False Claims Act on behalf of the Government. A suit filed by individuals on behalf of the Government is known as a *qui tam* action, and the persons bringing the action are referred to as "relators." If the Government prevails in a *qui tam*, the court may award the relator a share of the False Claims Act award, based on the contributions the relator made to the investigation.

services at volume discount pricing. GSA entered into contracts with Iron Mountain to provide document and data storage for many Federal agencies beginning in 2001. HUD entered into storage service contracts with Iron Mountain, based on GSA-negotiated terms and pricing. HUD received storage services from Iron Mountain under the relevant contracts between 2001 and 2012.

The *qui tam* relators filed complaints and amended complaints in the U.S. District Court of the Eastern District of California in December 2011, April 2012, and May 2013. The United States intervened² in the civil action, contending that it had certain civil claims against Iron Mountain for its alleged conduct related to contracts it held with GSA to provide storage facilities for Federal agencies.

The Government alleged that Iron Mountain made false disclosures and false statements regarding GSA contracts. The Government further alleged that Iron Mountain did not disclose the discounts or prices it provided to its other customers, violating price reduction terms of the contracts, and as a result, Iron Mountain presented inflated claims for payment to the United States. The Government also alleged that Iron Mountain charged the United States for storage in facilities that complied with certain requirements of the National Archives and Records Administration (NARA) when the facilities where the materials were stored did not comply with NARA requirements.

RESULTS OF INVESTIGATION

On December 17, 2014, Iron Mountain agreed to pay the United States \$44.5 million to settle the matter. Iron Mountain specifically denied the allegations in the civil action. However, the parties entered into the settlement agreement to avoid the delay, uncertainty, inconvenience, and expense of prolonged litigation. The agreement was neither an admission of liability by Iron Mountain nor a concession by the United States that the claims were not well founded.

GSA received approximately \$24 million of the settlement amount to distribute to affected agencies and was responsible for determining the pro rata amount these Federal agencies were to receive. The remaining \$20.5 million was to be remitted to the U.S. Treasury and the relators.

In support of GSA's distribution efforts, HUD identified three contracts that it had with Iron Mountain during the applicable period. Appropriations accounts funding two of the contracts were closed; therefore, HUD was to receive no refund on these contracts.³ The appropriation account for the remaining contract was expired but not closed, so HUD was allowed a refund on this contract.

GSA determined that HUD's pro rata share of the settlement amount was 18 percent of the more than \$1.1 million contract amount for the appropriation account not yet closed, which resulted in

² If the Government intervenes in the *qui tam* action, it has the primary responsibility for prosecuting the action.

³ According to 31 U.S.C. (United States Code) 1552(a), "On September 30th of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose."

a refund to HUD of \$202,237. Using the same pro rata share methodology, GSA determined that \$523,024 was to be remitted to the U.S. Treasury for the closed appropriations accounts funding the HUD contracts.

The following chart details the relevant HUD contracts, contract amounts, and pro rata shares.

Contract number	Amount in contract period	Amount expired	18 percent of expired amount	Amount eligible for refund to HUD appropriation accounts	18 percent of eligible refund amount
C-OPC-21551	\$696,095	\$696,095	\$125,297	\$0	\$0
C-ATL-01776	\$1,678,275	\$1,678,275	\$302,090	\$0	\$0
C-ATL-01935	\$1,654,855	\$531,317	\$95,637	\$1,123,538	\$202,237
Totals	\$4,029,225	\$2,905,687	\$523,024	\$1,123,538	\$202,237
HUD-related refund remitted to U.S. Treasury			\$523,024		
Refunded to HUD					\$202,237

RECOMMENDATION

We recommend that HUD’s Office of General Counsel, Office of Program Enforcement,

- 1A. Ensure that HUD records the \$202,237 settlement refund as return of an ineligible cost.