Contractors, UAP Programs, and Fraud Exposure: Costs, Disclosure Duties, and the False Claims Act

Version 1.10 · October 2026 · nhilaw.com/issues/d2.html

Version 1.10, October 2026. Legal information, not legal advice. Published by the Emergent Frontiers Institute (NHI Law is not a law firm). Citations checked in October 2026; check every citation before relying on it.

Key points

- Since the FY2024 NDAA, UAP-related IRAD is not an allowable indirect cost under covered DoD contracts unless the material and information were made available to the congressional committees and leadership (§1687(b), 50 U.S.C. §3373 note).
- Charging such costs without the disclosure is billing unallowable costs, which can support False Claims Act liability; scienter is what the contractor actually knew and believed (*SuperValu*), and the limitations period runs up to ten years (31 U.S.C. §3731(b)).
- Qui tam suits about classified programs are vulnerable to government dismissal (*Polansky*) and to the state secrets privilege (*Schwartz*); claims built on unclassified financial conduct fare better.
- Work run under other-transaction authority escapes the FAR but not the FCA.
- Contractor counsel should inventory UAP-related work, determine whether §1687(b) disclosures were made, and consider a disclosure under FAR 52.203-13 (Form D2-1).

1. Summary

Insider accounts place recovered UAP material and reverse-engineering work with private aerospace and defense contractors, sometimes funded through classified programs and sometimes through contractor independent research and development (IRAD). The most detailed account, by a former director of the Navy's UAP Task Force, names several prime contractors and subcontractors, says one of them held twelve recovered craft in 2009, and describes a CIA-controlled program whose contracts ran through Air Force vehicles (Jay Stratton, *Out of the Shadows* ch. 8 (2026)). Those are allegations by one author relying largely on unnamed sources; counsel should treat them as leads for document requests and not as findings about any company (Issue G1). Three legal consequences follow.

1. **Cost allowability.** Since the FY2024 NDAA, IRAD costs relating to UAP are not allowable as indirect expenses under DoD Instruction 3204.01-covered contracts "unless such material and information is made available [to] the appropriate congressional committees and

congressional leadership." Pub. L. No. 118-31, §1687(b) (50 U.S.C. §3373 note). A contractor that charged such costs without the required disclosure has billed unallowable costs.

2. **Mandatory disclosure and FCA exposure.** Contractors must disclose credible evidence of certain violations and of significant overpayments under FAR 52.203-13. Knowingly presenting or causing false claims (including claims that incorporate unallowable costs) creates False Claims Act liability (31 U.S.C. §3729): treble damages and per-claim penalties.

3. **Litigation constraints.** Qui tam suits involving classified programs are vulnerable to dismissal by the government under 31 U.S.C. §3730(c)(2)(A) (*United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419 (2023); *United States ex rel. Mateski v. Mateski*, 634 F. App'x 192 (9th Cir. 2015)) or under the state secrets privilege (*Schwartz v. Raytheon Co.*, 150 F. App'x 627 (9th Cir. 2005)), and contract disputes over black programs may be left where the parties stood (*General Dynamics Corp. v. United States*, 563 U.S. 478 (2011)).

Disclosure would expose contractors to cost audits, FCA claims, takings and title disputes (Issue E1), and tort claims (Issue D5). It would also give contractors leverage, because many hold the material and the expertise the government needs.

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2. Cost rules

- **IRAD.** Under 10 U.S.C. §3762 and DFARS 231.205-18, IRAD and bid-and-proposal costs are allowable indirect costs when they meet stated conditions; DoD Instruction 3204.01 governs DoD oversight of IRAD.
- **§1687(b).** The UAP-specific condition adds a disclosure requirement to allowability. The text does not limit itself to FY2024 funds. Contractors that performed UAP-related IRAD should determine whether they made the required disclosure to the defense and intelligence committees and congressional leadership. The U.S. Code prints §1687(b) as a permanent note to 50 U.S.C. §3373. The FY2024 Intelligence Authorization Act repeats the limitation in §7343(c) of the same public law, though without naming the DoD instruction its phrase "contracts covered by such instruction" refers to (Issue A3, §2.4).
- **Unallowable cost penalties.** Including expressly unallowable costs in indirect cost proposals triggers penalties under 10 U.S.C. §§3743 (effect of submission of unallowable costs) and 3748 (penalties for submission of costs known as not allowable) (recodified from former §2324) and FAR 42.709.
- **Classified program accounting.** Black programs use special accounting and DCAA audit procedures; allowability rules still apply.

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3. Disclosure duties

- **FAR 52.203-13** (Contractor Code of Business Ethics and Conduct) requires timely written disclosure to the agency IG, with a copy to the contracting officer, of credible evidence of certain federal criminal violations or violations of the civil FCA in connection with a

contract, and of significant overpayments. Knowing failure to disclose is a cause for suspension or debarment (FAR 9.406-2(b)(1)(vi), 9.407-2(a)(8)).

- **Classified matters.** Disclosures involving classified information go through the cognizant security office and the agency IG's secure channels.
- **§3373b.** Contractor employees with UAP information may use the AARO mechanism and are protected from reprisal by contractor officials (Issue C1). Contractors should not discourage such disclosures; doing so may violate §3373b(b)(2) and 10 U.S.C. §4701.

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4. False Claims Act

4.1 Liability theories in UAP settings

- Billing unallowable UAP IRAD as indirect costs (§1687(b)).
- Charging UAP-related work to contracts for other purposes (mischarging).
- False certifications of compliance with security, reporting, or records requirements, if material (*Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016)).
- Retention of government property (recovered material, data) under false representations.

Scienter. The FCA's knowledge standard turns on what the defendant actually knew and believed when it submitted the claim, not on what an objectively reasonable contractor might have thought. *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739 (2023). A contractor whose cost staff knew of §1687(b) and believed UAP-related IRAD had not been disclosed to the committees cannot defend by pointing to an arguable reading of the statute. Conversely, a contractor that compartmented the program so tightly that the people who prepared indirect cost proposals did not know of it will argue that no one with knowledge submitted the claim; discovery into who knew what will decide the case.

Limitations. An FCA action must be brought within six years after the violation, or within three years after the responsible U.S. official knew or should have known the material facts, but never more than ten years after the violation (31 U.S.C. §3731(b)). IRAD billed in fiscal year 2024 is reachable until at least 2030, and longer if the facts stayed concealed.

Fraudulent inducement. The Supreme Court has held that wire fraud based on fraudulent inducement does not require proof that the defendant sought to cause economic loss. *Kousisis v. United States*, 605 U.S. 114 (2025). Contracts obtained by misrepresenting the nature of a program, or by concealing that it involved recovered material, are within the criminal fraud statutes even if the government got what it paid for (Issue D3).

4.2 Qui tam and the government's dismissal authority

- **Dismissal.** The government may dismiss a qui tam over the relator's objection after notice and an opportunity for a hearing; courts apply the Rule 41(a) standard as adapted, giving substantial deference. *Polansky*, 599 U.S. 419 (2023). In *Mateski*, a relator alleged that Raytheon falsely claimed to meet requirements of a classified satellite sensor contract; the

government moved to dismiss, and the Ninth Circuit affirmed, holding the dismissal served a valid governmental purpose and was not arbitrary or illegal, and that the relator had no protected property interest. 634 F. App'x 192.

- **State secrets.** *Schwartz v. Raytheon* affirmed dismissal of a qui tam because the government determined it threatened military secrets and the relator could not litigate without privileged material.
- **Constitutionality.** In *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, 751 F. Supp. 3d 1293 (M.D. Fla. 2024), the district court held the qui tam provisions violate the Appointments Clause. The Eleventh Circuit vacated and remanded, holding that "relators do not occupy a continuing position" and so "are not officers of the United States subject to the Appointments Clause"; it remanded for the district court to consider the defendants' Take Care Clause and Vesting Clause arguments. *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, ___ F.4th ___, No. 24-13581, 2026 WL 2581886 (11th Cir. Sept. 1, 2026) (published). Qui tam remains available, but the Article II challenge continues on the remaining theories.
- **Public disclosure bar** (§3730(e)(4)): allegations already disclosed in congressional hearings, GAO reports, or the news media may bar a qui tam unless the relator is an original source. UAP allegations aired in congressional hearings since 2023 make this bar significant; relators should have independent, material knowledge.
- **Retaliation** (§3730(h)) protects employees, contractors, and agents who act in furtherance of an FCA action or to stop violations.

4.3 Practical outlook

A qui tam centered on classified program activities will likely be dismissed. Claims centered on unclassified financial conduct (cost accounting, IRAD allowability, mischarging) stand a better chance, and can be pleaded without describing classified program content. Coordination with the Department of Justice before filing, and with congressional oversight, increases the chance the government will not seek dismissal.

4.4 Programs run outside the FAR

Much prototype and research work is now done under "other transaction" authority (10 U.S.C. §§4021-4022), and OTAs are not procurement contracts: the FAR, the cost principles, and the standard disclosure and property clauses do not apply unless the agreement imports them. A UAP-related effort run as an OTA would escape FAR 52.203-13 and the IRAD cost rules, but not the FCA, which reaches any false claim for government money, nor §1687(b) if contractor IRAD is charged to covered contracts. Counsel investigating a program should ask early whether it was funded by contract, grant, cooperative agreement, or OTA, because the answer changes which rules apply.

4.5 Audit

DCAA audits classified contracts under special procedures with cleared auditors, and IRAD is a standing audit topic. A contractor considering a §1687(b) disclosure should assume that DCAA will test the IRAD pools for the years in question.

5. Contract disputes and suspension

- Disputes under black-program contracts may be nonjusticiable if state secrets prevent litigating a valid defense (*General Dynamics*); the result leaves funds and property where they were on the filing date.
- Suspension and debarment (FAR subpart 9.4) are administrative tools the government may use after disclosure if contractors concealed material or misled agencies.
- Title to recovered material held by a contractor turns on the government property clause, FAR 52.245-1 (Issue E1, §3.1): government-furnished property stays the government's, and under cost-type contracts title to acquired property usually vests in the government.
- Contractors holding recovered material face competing claims of government title, takings (if the government seizes material in which the contractor has property rights), and possible statutory takings under the pending UAP Disclosure Act §1767 (Issue E1).

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6. Practice checklist for contractor counsel

1. Inventory any UAP-related work, material, data, and IRAD projects; identify contracts and cost pools.
2. Determine whether §1687(b) disclosures were made; if not, assess allowability and consider disclosure under FAR 52.203-13 and cost adjustments.
3. Preserve records (FY2024 NDAA §1842(a)(2)(A); litigation holds).
4. Review employee communications policies for consistency with §3373b and 10 U.S.C. §4701.
5. Assess title to any material (government-furnished property, contractor-acquired property, or contractor-owned) and document the chain of custody.
6. Prepare for congressional and Review Board requests (Issue A3, D1).