

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 98292 / September 6, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21610**

**In the Matter of**

**FLUOR CORPORATION,**

**Respondent.**

**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” or “SEC”) 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 Fluor Corporation (“Fluor” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 the Respondent and the subject matter of these proceedings, which are admitted, Respondent consents 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

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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.

## Summary

1. This matter involves deficiencies in Fluor’s accounting over a period of years for two fixed-price construction projects on which Fluor carried a risk of cost overruns with respect to work within the contract’s scope. Fluor bid on these projects, relying on overly optimistic cost and timing estimates. Following each project’s contract award, Fluor experienced cost overruns that worsened over time. Yet, Fluor failed to maintain a system of internal accounting controls sufficient to account for these contracts in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”). These failings resulted in inaccurate books and records and ultimately in materially misstated financial statements included in periodic reports filed with the SEC.

2. In August 2019, Fluor announced \$714 million in pre-tax charges stemming from an “operational and strategic review” of sixteen projects. These included a project requiring Fluor to validate and complete the design and to build a one-of-a-kind U.S. Army facility for manufacturing nitrocellulose, an ammunition propellant, (“Radford” or the “Radford Project”), and a project requiring Fluor to design and build a Floating Production Storage and Offloading (“FPSO”) facility for delivery to the Penguins oil and gas field located in the North Sea (“Penguins” or the “Penguins Project”).

3. Prompted by the SEC staff’s investigation, Fluor undertook an internal investigation in 2020 that identified material weaknesses in its internal control over financial reporting and material errors in its financial statements, and resulted in Fluor restating its annual and quarterly financial statements for its fiscal year 2016 through the third quarter of 2019, as disclosed in its 2019 Form 10-K filed with the SEC on September 25, 2020 (the “Restatement”). The material weaknesses identified in the Restatement were attributable to control failures associated with the Radford and Penguins projects, which resulted in material errors. Throughout the fiscal year ended December 31, 2016 through the first quarter ended March 31, 2019 (“Relevant Period”), Fluor’s accounting issues on Radford resulted in materially overstated net earnings in Fluor’s reported financial statements. Fluor overstated its annual net earnings by \$51 million (22%) in 2016, by \$38 million (25%) in 2017, and \$43 million (25%) in 2018, and understated its net loss by \$3 million (5%) in the first quarter of 2019. On the Penguins Project, Fluor’s delayed recognition of its loss for two quarters resulted in Fluor overstating its net earnings by \$17 million (22%) in the second quarter of 2018.

4. As a result of conduct detailed herein, Fluor violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, 13a-15(a), and 12b-20 thereunder.

## Respondent

5. Fluor Corporation is a Delaware corporation with its principal place of business in Irving, Texas. Since registering its common stock with the SEC under Section 12(b) of the Exchange Act in 2000, Fluor has been required to file periodic reports on Forms 10-K and 10-Q with the SEC pursuant to Section 13(a) of the Exchange Act and related rules thereunder. During the Relevant Period, the stock traded on the New York Stock Exchange under the ticker symbol “FLR.” Fluor performs engineering, procurement, and construction services worldwide and

operates through business segments, which, during the Relevant Period, included the two segments responsible for Radford and Penguins, respectively known as the Fluor Government Group (“FGG”) and Energy & Chemicals (“E&C”).

### **Background**

6. Under GAAP, Fluor accounted for its fixed-price projects Radford and Penguins using the percentage of completion (“POC”) method, whereby it was required to periodically recognize a project’s costs as incurred and the revenue as a percentage of the work completed to date. Under this method, for each reporting period, a project team develops dependable estimates of expected total revenues, total costs, and total project gross margin (“PGM”) to arrive at a project’s financial forecast (known as the Estimate at Completion or “EAC”). A project must recognize the entire amount of an anticipated loss as soon as the loss becomes evident.

7. To periodically record a project’s EAC, Fluor required use of the Project Margin Analysis Report (“PMAR”), which should document project management’s most likely current estimate of the project’s revenue, cost, and PGM forecast. Fluor required key personnel to certify PMAR accuracy quarterly. On the Radford Project, Fluor failed to maintain adequate internal controls over the PMAR process. Although Fluor’s accounting policy required the project team to determine the most likely EAC, it failed to maintain this control during the Relevant Period, as personnel failed to include all costs that were known or should have been known and, from the period ending December 31, 2017 through March 31, 2019, improperly included revenue from unapproved change orders in the accounting for Radford’s EAC.

8. Similarly, Fluor failed to maintain sufficient internal accounting controls over the PMAR process on the Penguins Project. Moreover, costs that were known or should have been known were excluded from the EAC in the second and third quarters of 2018.

### **Radford Project**

9. In December 2015, Fluor finalized a \$245 million fixed price subcontract with its customer (“Customer A”) for the Radford Project to validate and complete the design and to build the Radford Project. As part of the scope of work, Fluor was provided an incomplete design from the prior, terminated subcontractor (“Prior Design”) that it was required to validate and complete when performing the subcontract. Fluor was told during the bidding process that agreeing to validate and complete the facility’s design was risky because FGG personnel did not know the Prior Design’s quality or completeness. By early 2016, certain Fluor personnel realized that the incomplete and flawed Prior Design was causing significant additional cost and delay on the Radford Project.

### **Costs that Were Known or Should Have Been Known Were Improperly Excluded from the EAC**

10. During the Relevant Period, the difference between the subcontract price and the anticipated total cost of the Radford Project grew significantly as delays and cost overruns

worsened. The growing anticipated total costs over the subcontract price should have prompted Fluor to revise the EAC to reflect all the additional anticipated costs. Instead, Fluor improperly excluded certain such costs from the total cost estimate in the EAC. Generally, Fluor personnel added costs to the EAC only to the extent that the costs could be offset by corresponding added forecasted revenues, which were determined using overly high assumed rates of recovery, as described below.

11. As a result, Fluor’s forecasted cost in the EAC remained artificially low and delayed loss recognition. Fluor’s failure to maintain sufficient internal accounting controls governing the PMAR process contributed to this result.

### **Revenues from Change Orders Were Improperly Included in the Forecast**

12. From year-end 2017 through the first quarter of 2019, to address the growing anticipated total cost over the original subcontract price, Fluor personnel determined to develop and submit change orders, also known as Project Change Notices (“PCNs”). PCNs are proposed modifications of a contract that change the price or scope of work of the contract, or both. Fluor personnel developed PCNs for submission to Customer A for approval. Fluor then forecasted additional revenue from the PCNs using overly high rates of assumed cost recovery on the PCNs, including for unapproved PCNs. As a result, this revenue offset additional forecasted costs and minimized the adverse impact on the PGM. The amount of unapproved PCNs, including rejected and not yet submitted PCNs, in the forecast increased during the Relevant Period, but Fluor’s actual rates of recovery from approved PCNs remained low, as reflected below:

<b>Radford Project</b>	<b>4Q 2017</b>	<b>1Q 2018</b>	<b>2Q 2018</b>	<b>3Q 2018</b>	<b>4Q 2018</b>	<b>1Q 2019</b>
Unapproved PCNs in revenue forecast, net of profit fee	\$47M	\$68M	\$69M	\$68M	\$118M	\$132M
Assumed recovery rate of net PCN revenue in revenue forecast	100%	100%	90%	80%	80%	78%
Percent of total PCN revenue actually approved by Customer A	<b>4.5%</b>	<b>3.9%</b>	<b>3.4%</b>	<b>2.4%</b>	<b>3.9%</b>	<b>6.1%</b>

13. Through fiscal year-end 2017, Fluor was required to record revenue for unapproved PCNs under POC accounting in compliance with ASC Subtopic 605-35, *Construction-Type and Production-Type Contracts* (“ASC 605-35”), and could only record it if recovery of the additional revenue was deemed probable. Under ASC 605-35, a PCN should be evaluated as a “claim” if it was a change order in dispute or unapproved as to both scope and price. Revenue recognition for a claim under ASC 605-35 required a heightened level of evidence to demonstrate probable recovery. For the fiscal year ended December 31, 2017, even though the relevant PCNs were either in dispute or were unapproved as to price and scope, Fluor wrongly categorized them as unpriced change orders, instead of claims. As a result, Fluor did not obtain sufficient evidence to demonstrate probable recovery of the PCNs under ASC 605.

14. In the first quarter of 2018, Fluor adopted ASC 606, *Revenue from Contracts with Customers* (“ASC 606”), which superseded the revenue recognition requirements in ASC 605.

Under ASC 606, Fluor could only include the unapproved PCNs in the revenue forecast if Fluor had an enforceable contractual right to additional revenue beyond the fixed contractual price, considering all relevant facts and circumstances, including the terms of the contract. From the first quarter of 2018 through the end of the Relevant Period, Fluor did not sufficiently evaluate under ASC 606 if it had an enforceable contractual right to the unapproved PCNs. Without such an evaluation, it was improper to include revenue from the unapproved PCNs in its forecast. Even if Fluor had sufficiently evaluated under ASC 606 whether it had an enforceable contractual right to the unapproved PCNs, it was only permitted to increase forecast revenue to the extent it was probable that a significant reversal in the amount of cumulative revenue recognized would not occur, weighing factors such as the limited predictive value from Fluor's prior experience given the low recovery rates, the length of time it would take to resolve and susceptibility to the judgment of third-parties. But Fluor lacked sufficient evidence of it being probable under ASC 606 that a significant reversal of revenue would not occur for unapproved PCNs.

15. Fluor personnel prepared documentation to support the Radford accounting for year-end 2017, year-end 2018, and the first quarter of 2019. This control activity's objective was to document the facts and analysis supporting revenue estimates on projects with significant risks and judgments, in accordance with GAAP. This documentation did not adequately support Fluor's enforceable right to the revenue and failed to support that recovery from Customer A was probable. Fluor stated that it was entitled to payment because Customer A misrepresented the status of the Prior Design. But, it was not probable under GAAP that Fluor would recover money from Customer A to pay for the delays and design issues underlying the majority of PCNs. Rather, throughout the Relevant Period, Customer A rejected most PCNs, blamed Fluor for the design problems, and maintained that Fluor was responsible for the additional costs under the terms of the existing fixed-price contract. Fluor did not obtain objective evidence to support recording the revenue during the Relevant Period.

16. For example, for year-end 2017, in support of its assumed 100% recovery, Fluor largely relied on the assertion that a Customer A employee allegedly "verbally acknowledged [Customer A's] responsibility for" the PCNs. In fact, the Customer A employee said that Customer A would undertake a revamped process to assess PCNs, not that it would approve or pay for any individual PCN.

### **Impact on Fluor's Financial Statements**

17. As of year-end 2016, the Radford Project was, in reality, operating at a loss. Fluor's improper exclusion of costs that were known or should have been known led to inaccurate books and records during the reporting period ended December 31, 2016. Fluor's improper inclusion of the unapproved PCN revenue and the continuing improper exclusion of anticipated costs that were known or should have been known resulted in inaccurate books and records in reporting periods from year-end 2017 through the first quarter of 2019. As a result of the errors described above, Fluor materially misstated its net earnings in periodic reports filed with the SEC as follows:

Reporting Period	Overstated Net Earnings	As % of Reported Net Earnings (Loss)
2016 (annual)	\$50.9 million	22%
2017 (annual)	\$38.4 million	25%
Q1 2018	\$8.7 million	(33%)
Q2 2018	\$7.5 million	10%
Q3 2018	\$8.8 million	12%
Q4 2018	\$17.8 million	37%
2018 (annual)	\$42.8 million	25%
Q1 2019	\$3.3 million	(5%)

Fluor corrected the foregoing errors in the amended financial statements included in the Restatement.

18. Additionally, Fluor’s 2018 Form 10-K and the Form 10-Q for the first quarter of 2019 included a materially misstated disclosure regarding Radford PCNs: “The company’s [Radford] forecast is based on its assessment of the probable resolution of certain change orders submitted to the client which are currently under discussion, and if not achieved, could adversely affect revenue and segment profit.” This was a misstatement because many PCNs were not “under discussion,” but either formally rejected or not yet submitted, and it failed to note that lack of favorable resolution on the PCNs could have a *material* adverse effect on revenue and *consolidated* profit due to the large value of those PCNs. Finally, the disclosure omitted the amount of the unapproved PCNs, which was required under GAAP, specifically ASC 910-20-50-1, and SEC Regulation S-X Rule 5-02.3(c)(3).

### **Penguins Project**

19. In December 2017, the E&C segment of Fluor won a contract for an FPSO project with a large international energy company (“Customer B”). Fluor’s responsibilities under the Penguins contract included engineering, design, procurement, selection of subcontractors, construction management, fabrication, integration, commissioning, delivery, and handover of the FPSO.

20. The contract totaled \$491.7 million, with an as-sold margin of \$33.9 million. The bid was based on Fluor subcontracting fabrication of the FPSO to an offshore engineering, procurement, and construction company (“Fabrication Subcontractor”). This subcontract was a significant portion of the Penguins Project, constituting at least 25% of the cost of the overall contract. Although Fluor received a binding bid from the Fabrication Subcontractor for a subcontract agreement, it had expired prior to Fluor submitting its final bid to Customer B. Accordingly, Fluor had to finalize the subcontract with the Fabrication Subcontractor after Fluor signed its fixed price contract with Customer B.

### **The Second Quarter of 2018 Forecast Inaccurately Reported Penguins as Profitable**

21. In May 2018, Fluor personnel compiled forecasts reflecting the best, most likely, and worst case financial scenarios for the Penguins Project. By the middle of the second quarter of 2018, they concluded that the most likely scenario for the Penguins Project was that it “won’t be a break-even scenario, it will be a loss.”

22. As the quarter progressed, the forecast did not improve. In fact, toward the end of the second quarter of 2018, Fluor signed a subcontract with the Fabrication Subcontractor after months of negotiations. The final subcontract terms were significantly more expensive to Fluor than anticipated the quarter before and as had been budgeted for in the contract bid. Likewise, the cost of supplies, including steel, suggested the forecast could worsen from the project team’s then-current estimate that Penguins would be a loss.

23. Nevertheless, after quarter close, Fluor recorded the Penguin Project’s PGM in the second quarter of 2018 as \$23.5 million. This PGM was essentially unchanged from the prior quarter’s PGM despite significant changes in circumstances for the Penguins Project, most notably the subcontract price with the Fabrication Subcontractor. That PGM was inaccurate. Fluor later corrected the PGM for the second quarter of 2018 to *negative* \$19.4 million in the Restatement.

24. The exclusion of costs that were known or should have been known from the forecast for the Penguins Project led to misstated books and records, and ultimately resulted in materially misstated financial statements reported in Fluor’s Form 10-Q for the quarter ended June 30, 2018. Penguins was in a loss position in the second quarter of 2018, and, therefore, to be in accordance with U.S. GAAP, Fluor needed to recognize the full amount of the forecasted loss in its Net Earnings that quarter in addition to reversing previously recognized profits. Since it did not, in the second quarter of 2018, Fluor overstated Net Earnings by \$17 million (\$20.6 million pre-tax) or 22% and overstated the E&C Segment profit by 28%.

### **The Third Quarter of 2018 Forecast Misstated Penguins at a Breakeven PGM When It was a Loss**

25. In the third quarter of 2018, Fluor personnel again compiled forecasts reflecting the best, most likely, and worst case scenarios for the Penguins Project. In August 2018, the project team presented a most likely forecast scenario for the Penguins Project of over a \$20 million loss.

26. Fluor recorded the Penguin Project’s PGM in the third quarter of 2018 as \$0.8 million, roughly a breakeven gross margin. Fluor continued to delay reporting the project’s loss this quarter, and the exclusion of costs that were known or should have been known from the forecasts for the Penguins Project led to misstated books and records in the third quarter of 2018. The most likely forecast at the time showed a loss of \$19.8 million, as Fluor subsequently amended its financial statements to reflect in the Restatement.

## Violations

27. As a result of the conduct described above, Fluor violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13, and 12b-20 thereunder. Section 13(a) of the Exchange Act requires issuers with a class of securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1 and 13a-13 require the filing of annual and quarterly reports, respectively. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

28. As a result of the conduct described above, Fluor violated Section 13(b)(2)(A) of the Exchange Act, which requires an issuer of a security registered pursuant to Section 12 of the Exchange Act to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets.

29. As a result of the conduct described above, Fluor violated Section 13(b)(2)(B) of the Exchange Act, which requires an issuer of a security 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 executed in accordance with management's general and specific authorization; transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Fluor also violated Exchange Act Rule 13a-15(a), which requires issuers to maintain internal control over financial reporting as defined in Rule 13a-15(f).

## Undertakings

30. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) agrees to appoint an agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.



31. In determining to accept Respondent's Offer, the Commission considered remedial acts undertaken by Respondent, cooperation previously afforded the Commission staff, and the foregoing undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent 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-1, 13a-13, and 13a-15 thereunder.

B. Respondent shall, within 10 business days of the entry of this Order, pay a civil money penalty in the amount of \$14.5 million to the Securities and Exchange Commission. 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) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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) Respondent 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 Fluor Corporation 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 Carolyn M. Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph B above. This Fair Fund may be combined with and/or receive funds received in proceedings arising out of the same conduct that is the subject of this

Order. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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, Respondent agrees that it 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 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.

By the Commission.

Vanessa A. Countryman  
Secretary