

DO YOU THINK YOU KNOW THE RAMIFICATIONS UNDER THE FALSE CLAIMS ACT, THINK AGAIN!

PART III: TRENDS AND EXPANSION OF THE FALSE CLAIMS ACT

INTRODUCTION

The False Claims Act (FCA) [31 U.S.C. §§ 3729–3733](#) was enacted to impose liability for contractors or suppliers who knowingly make or present a false claim or statement to the Government and also addresses liability for using false statements to conceal, hide, or limit a monetary obligation owed to the Government.

The Government now requires all contractors to obtain a Commercial and Government Entity (CAGE) code before they can be awarded any Government contracts. This makes the process of communication and awarding projects more efficient. (<http://www.onvia.com/business-resources/articles/naics-cage-and-other-Government-codes>)

CHANGE IN THE PROCUREMENT SECTOR

The Department of Defense's Defense Logistics Agency (DLA) issues five-digit CAGE codes consisting of numbers and letters used as identification for participating contractors. Contractors must first be registered with the System for Award Management (SAM) in order to obtain a CAGE code; this automatically occurs during the SAM registration process. The CAGE codes have been required as part of the Defense Federal Acquisition Regulation (DFAR) since 1999. See **SUBPART 204.72-CONTRACTOR IDENTIFICATION** (Revised May 16, 2013) (http://www.acq.osd.mil/dpap/dars/dfars/html/current/204_72.htm)

Currently a CAGE code is required if a contractor wishes to do business with the Government. In particular, a CAGE code is necessary to bid for and be awarded Department of Defense (DOD) contracts. (<http://govwin.com/knowledge/cage-codes>) CAGE codes allow the Government to determine the location of a particular facility, what clearances are required for the facility and a

list of contract bidders for that location. (*Id*)

Examples of how CAGE codes identify particular locations or regions can be found on the DLA website. (<http://www.dlis.dla.mil/cage/help.html>) Depending on the letter or number, a CAGE designation can be either foreign or domestic. Additionally, a CAGE code identifies a supplier, its affiliation, the size and type of an organization, a corporate organization, a business category, or even if an entity's status is active, obsolete, or if a contractor has been canceled or debarred. (*Id*)

EXPANDING THE REACH OF THE FCA

The FCA now imposes liability for both civil as well as criminal infractions, holding those who knowingly and intentionally commit fraud against the Government, liable for probable financial loss to the United States Government. www.lw.com/thoughtLeadership/expanding-application-state-federal-fca Criminal penalties can include up to five (5) years in prison and fines up to \$250,000 against anyone who "...makes or presents...any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent." 18 U.S.C. § 287

False claims can include charging the Government for any inadequate materials, underbidding or "bid-rigging", or goods and services that conflict with specifications set forth in a contract with the Government. Civilly, Qui Tam (whistleblower/relator actions) cases have increased over the last four (4) years. As mentioned in the previous installment (Part II), there are incentives for whistleblowers or relators to come forward and bring "action" on behalf of the Government. These individuals can receive portions of any recovery obtained by the Government including expenses and attorney's fees. Consequently, fraud cases initiated by prosecutors have increased as a result of Qui Tam actions.

Due to the expanded reach of the FCA, subcontractors can be penalized if a fraudulent claim or invoice is presented to a contractor when a subcontractor then bills fraudulently for work performed. Government money is involved in the payment of the contractor's performance and therefore trickles down to the subcontractor through payment from the contractor. (*Id*) The Government's ability to reach and penalize those who choose to submit false claims, payment requests, or hide reimbursements to the Government has increased to higher levels and has allowed the Government, just in the past two years, to recover "...at least \$3 billion through FCA prosecutions and settlements..." (*Id*) State Governments have begun to also impose FCA penalties for false claims under their own statutes, some of which now include provisions for tax fraud. (*Id*)

CONCLUSION

The professional consultants at Excell Consulting International, Inc. can help you gain a better understanding of the FCA and show you how to avoid pitfalls before they occur, long before you reach the point of no return. With that empowerment via partnership, you can expect that, with a specialized review of your particular situation, Excell Consulting will guide you through possible FCA claims, should they arise.

EXCELL CONSULTING: “HERE TODAY FOR YOUR TOMORROW”

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