

FALSE CLAIMS ACT UPDATE

Avoiding Pitfalls through Knowledge of the Law – And Your Business

INTRODUCTION

In 2013, the Federal Government secured \$3.8 billion in settlements and judgments from civil cases involving fraud against the Government, under the False Claims Act (FCA). An estimated \$887 million of that amount is attributable to the Defense/Procurement industry. Those numbers have undoubtedly risen in 2014, although the statistics are still pending, and will likely rise in 2015.

This post will recap the fundamentals of the FCA, discuss a recent example of a successful claim, and cite some factors that indicate an uptick in Government enforcement and prosecution of false claims.

THE FUNDAMENTALS

The False Claims Act is federal law that imposes liability on persons and companies who defraud governmental programs. It is the federal Government's primary tool in combatting fraud against the Government. A more in depth discussion on the FCA can be found [here](#) (pdf).

The FCA provides that any person who:

- (1) *knowingly presents, or causes 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;*
- (2) *knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;*
- (3) *conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government...; or*
- (7) *knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages which the Government sustains because of the act of that person.” 31 U.S.C. § 3729(a).*

The increasing majority of false claims brought by the U.S. Government against contractors are Qui Tam, or “whistleblower” actions, as discussed in a [previous post](#).

Finally, the reach of the FCA has been expanded, and some recent changes to the FCA have impacted the procurement sector, as previously discussed [here](#).

A RECENT EXAMPLE OF A FALSE CLAIM

A “false claim” can be made in a number of ways, but the courts generally agree that a claim against the Government that is “**legally false,**” or a false statement made in support of such a claim, qualifies as a false claim. Additionally, a number of courts have found that a claim can be “legally false” under the FCA based on a defendant’s “implied certification” of compliance with a statutory, regulatory, or contractual provision that is a precondition to government payment. See *United States ex rel. Steury v. Cardinal Health, Inc.*, 735 F.3d 202, 204 (5th Cir. 2013); see also *United States ex rel. Ketroser v. Mayo Found*, 729 F.3d 825 (8th Cir. 2013).

In a **recent example**, a majority owner of a defense contracting company was [sentenced to over 3 years](#) in prison for defrauding the U.S. Government out of \$1.2 million. The owner was also fined \$7,500, and sentenced to 3 years supervised probation after his release from prison. This punishment was a result of a scheme to divert and steal about \$1.2 million in progress payments that the Government paid to his company under contracts to produce drive train parts for military helicopters. The owner also admitted that he made the false claims to the Government in order to continue receiving the progress payments, although he knew that his company did not earn them.

Additionally, the owner tried to cover up his fraud by **lying**, and **submitting false documents** to Government auditors, and directing his employees to do the same.

TRENDS: INCREASED ENFORCEMENT OF THE FCA

All of the factors that have caused FCA enforcement to increase in recent years – including financial incentives for whistle-blowers, attorneys, and the Government – aren't going away, and the increase is likely to continue.

A [key indicator](#) that investigation and enforcement will increase is President Obama’s 2015 budget, which **increases funding for fraud and compliance enforcement**. The budget shows a focus on fighting fraud, waste and abuse in government contracting by increasing the number of compliance and fraud enforcers at several agencies, including the Department of Labor (DOL), the Department of Defense (DOD), the Department of Health and Human Services (HHS), and the General Services Administration (GSA).

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, and 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 potential FCA claims to eliminate the possibility of such an oversight or occurrence.

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Author's note: The information contained in this article is for general informational purposes only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation. – Taylor Benson, Esq., Asst General Counsel