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The DOJ Reminds Government Contractors That False Claims Act Liability Extends Beyond Health Care

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A False Claims Bulletin

“My warning is both simple and certain: If you knowingly overcharge the United States, we will pursue all remedies available to us and we will recover the government’s losses.”

- Stephen R. Wigginton, U.S. Attorney for the Southern District of Illinois¹

After a tumultuous February (See [Drum Beat of Health Care False Claims Act Settlements Continued in February](#)), health care providers faced yet another blitz of False Claims Act (“FCA”) activity in March. The Department of Justice (“DOJ”) announced six settlements — two of which involved healthcare providers, recovering almost 15 million dollars.²

In the face of such large, frequent health care settlements, it's easy to forget that companies that contract and do business with the government in all fields must be

vigilant against FCA liability. This past month, the DOJ fired a few warning shots.

The DOJ announced four, relatively small FCA settlements involving an unusual mix of contracts:

Selling Chinese Goods to the United States: \$5.66 million settlement³

CDW-Government LLC ("CDW-G") has agreed to pay \$5.66 million to settle a qui tam FCA suit filed by a former sales representative. The complaint alleged that CDW-G submitted false claims in connection with a contract to sell information technology, office supplies, and related products to the United States.

Interestingly, the complaint alleged, among other things, that CDW-G "sold products to the United States that were manufactured in China and other countries that are prohibited by the Trade Agreements Act."

Stuart F. Delery, Acting Assistant Attorney General for the Department of Justice's Civil Division warned other contractors, "Protecting the federal procurement process is a top priority for the Department of Justice . . . Contractors who abuse that process and undermine American trade interests will be held accountable for their actions."

Claiming to Mentor a Native-American-Owned Company: \$1,150,000 settlement⁴

Caddell Construction has agreed to pay \$1,150,000 to settle allegations that it falsely reported "to the Army Corps of Engineers that it hired and mentored a Native American-owned company to work on construction projects" at two Army bases.

In connection with the construction project, Caddell had submitted claims under two federal programs, The Mentor-Protégé Program and the Indian Incentive Program: "The Mentor-Protégé Program reimburses companies for the time and cost of mentoring small disadvantaged businesses, while the Indian Incentive Program provides a rebate to contractors for subcontracting with Native American-owned businesses."

According to the DOJ, however, the Native American-owned company was merely a pass-through entity and did not actually undertake any work or receive any mentoring from Caddell. Related criminal charges remain pending.

Giving the United States a Worse Deal: \$5.65 million settlement⁵

Corning Incorporated has agreed to pay \$5.65 million to resolve allegations that it presented false claims to the United States in connection with the sale of laboratory research products.

According to the DOJ, Corning "failed to meet its contractual obligations to provide GSA with current, accurate and complete information about its commercial sales practices, including discounts offered to other customers." In sum, Corning allegedly offered its commercial clients larger discounts than the United States, in violation of its contract.

"Contractors need to be honest and follow through with their promises to the federal government – or pay the consequences," said Brian D. Miller, Inspector General for the General Services Administration.

Wining and Dining the CIA: \$3 million settlement

Three prospective CIA contractors — American Systems Corporation, Anixter International Inc., and Corning Cable Systems LLC — have agreed to pay \$3 million to settle allegations that they violated the False Claims Act and the Anti-Kickback Act in bidding on a CIA contract.

The DOJ alleged that the companies "provided gratuities, including meals, entertainment, gifts and tickets to sporting and other events, to CIA employees and outside consultants" in order to favorably influence contract specifications.

The DOJ further alleged that the companies "improperly received source selection information from a CIA employee to whom they had provided gratuities, and that they had concealed the gratuities prior to award."

"This settlement shows that the United States will protect the integrity of the federal procurement process from the wrongful activities of unscrupulous contractors," said Stuart F. Delery, "Plying government officials with meals and entertainment to gain favorable treatment in the award of federal contracts corrupts the procurement process and will not be allowed."

Recommendations

Organizations that contract or do business with the federal government in any capacity should remain mindful that FCA liability can crop up in unexpected places. As always, we recommend that organizations work to strengthen their internal compliance programs. In particular, organizations should encourage their employees to bring potential issues to the attention of management.

Footnotes

- [Press Release](#), Hospice of Arizona and Related Entities Pay \$12 Million to Resolve False Claims Act Allegations (March 20, 2013); [Press Release](#), Department of Justice, E.D. Tenn., Tennessee-Based Therapy Providers to Pay \$2.7 Million to Resolve False Claims Act Allegations (March 8, 2013).

- See footnote 1, supra.
- [Press Release](#), Department of Justice, Caddell Construction Agrees to Pay \$1,150,000 to Resolve False Claims Allegations (March 25, 2013).
- [Press Release](#), Department of Justice, D.D.C., New York-Based Corning Incorporated to Pay U.S. \$5.65 Million to Resolve False Claims Allegations (March 8, 2013).