Government Contract Fraud

Our firm has pursued several government contract fraud cases in which there were two types of basic allegations that the Defendants have violated the False Claims Act ("FCA") and/or the Texas Medicaid Fraud Prevention Act ("TMFPA"). First, we have alleged fraudulent in several cases inducement to obtain Federal and State government contracts and grants. Second, we have alleged that after the contracts and/or grants were awarded, there were multiple violations of the terms of those contracts or grants.

Fraudulent Inducement

What is fraudulent inducement? In the case of *U.S. ex rel. Longhi v. U.S.*, 575 F.3d 458 (5th Cir., 2009), the Fifth Circuit adopted the following requirements for fraudulent inducement liability pursuant to the FCA: (1) whether "there was a false statement or fraudulent course of conduct; (2) made or carried out with the requisite scienter; (3) that was material; and (4) that caused the government to pay out money or to forfeit moneys due (i.e., that involved a claim)." *Id.* at 467. In *Longhi,* the Court held that "this type of FCA claim is characterized as fraudulent inducement. Under a fraudulent inducement theory, although the Defendants' "subsequent claims for payment made under the contract were not literally false, [because] they derived from the original fraudulent misrepresentation, they, too, became actionable false claims". The bottom line is that if a Relator can prove that a contract was fraudulently procured, then EVERY claim submitted thereafter is a False Claim in violation of the FCA and/or an Unlawful Act in violation of the TMFPA, potentially resulting in penalties of $5,500-$11,000 per False Claim.

Types of Government Contract Fraud

Below is a description of some of the more common ways in which defense contractors have tried to defraud the federal government:

- **Shifting of Costs from Fixed Price to Cost Plus Contracts**: Cross-charging occurs when a defense contractor improperly shifts costs and expenses from one defense contract to another in order to boost its profits. The U.S. typically awards one of two types of contracts in defense procurement: the "fixed-price" contract and the "cost-plus contract." Defense contractors that have both of these types of contracts have a strong financial incentive to shift costs (such as equipment costs) from the "fixed-price" contract to the "cost-plus" contract, and thereby maximize the contractor's profits.

- **Product Substitution**: Defense contracts frequently specify that the contractor use a particular type or quality of product or parts. Defense contractors can often save costs, and maximize profits if they substitute cheaper or substandard parts. If a defense contractor does this without the permission of the government, it can violate the FCA.
- **Shifting of Costs from Private Business Contracts to Government Contracts**: One way that some defense contractors have attempted to secure lucrative contracts from private businesses or governments outside the United States is to improperly allocate or shift costs from those contracts onto the "cost-plus" contracts they have with the U.S. government, resulting in the U.S. paying for the costs that should be paid by private businesses.
- **Defective Products or Services**: There are instances where the defense contractor knew, or was reckless in not knowing, that the products they were delivering would not perform as promised. Delivering worthless or substandard products can have devastating impact on the men and women of the military that use these items, and can sometimes result in a FCA violation.
- **Improper Billing of Cost-Plus Contracts**: In "cost-plus" contracts, the government pays the defense contractor a set price plus a percentage of the contractor's costs for producing the weapons system or other product. One common form of fraud has been for the contractor to improperly inflate their costs and charges (such as equipment and materials costs) to increase the revenue the company earns from the government.

Example of Recent Whistleblower Awards in Government Contract Cases:

In a 2019 case in which stemmed from a **whistleblower** lawsuit brought by a former university employee, in which the **Relator received $33.75 million** from the settlement, Duke University agreed to pay the government **$112.5 million** to resolve allegations that it violated the FCA by submitting applications and progress reports that contained purportedly falsified research on federal grants to the National Institutes of Health ("NIH") and to the Environmental Protection Agency. Among other allegations, DOJ asserted that the university fabricated research results related to mice to claim millions of grant dollars from the NIH. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Duke University Agrees to Pay U.S. $112.5 Million to Settle False Claims Act Allegations Related to Scientific Research Misconduct (Mar. 25, 2019), https://www.justice.gov/opa/pr/duke-university-agrees-pay-us-1125-million-settle-false-claims-act-allegations-related.

Blow the Whistle on Government Contract Fraud

Individuals with knowledge of fraud committed by government contractors may be able to blow the whistle on this kind of fraud using the FCA, the TMFPA and other whistleblower reward programs. Whistleblowers play a critical role in bringing this type of fraud to light and holding wrongdoers accountable when they try to cheat the system.

To talk with me about your government contract fraud case, call my Dallas law offices at 214-505-0097 or contact me online. Consultations with a Dallas County Government Contract attorney are free and confidential. I handle these types of cases on a contingent fee basis, meaning you owe me no legal fees or expenses unless I obtain a recovery for you.