



## GOVERNMENT PROGRAMS & CONTRACTS

### Defining the Types of Fraud Covered by the SEC Whistleblower Program

Each year, the federal government spends hundreds of billions of dollars on goods and services, much of which is paid to federal contractors. In fact, since 2018, the U.S. spent more than \$300 billion every year on military contracts alone, not including the hundreds of billions more spent on contracts and programs related to infrastructure, education, technology, disaster relief and other sectors.

Because of the scale of government spending, fraud in government contracts and programs continues to be a major focus area of government enforcement, including in whistleblower actions under the False Claims Act. In fact, the False Claims Act was originally enacted during the Civil War to combat unscrupulous military contractors. Today, it remains one of the most powerful and effective tools in combatting fraud in government contracts and programs, and numerous successful enforcement actions have been based on *qui tam* lawsuits directed at fraud in government contracts.

For example, in July 2023, Booz Allen Hamilton, a major government contracting and consulting firm, agreed to pay more than \$377 million to the United States to resolve allegations in a whistleblower case brought under the False Claims Act, that it improperly billed costs to government contracts that should have been billed to commercial and international clients.

Fraud in federal and state government contracts occurs in many different forms and affects numerous government agencies and industries. The consequences of government contract fraud can be extremely significant – from substantial waste of tax dollars to the harm caused by compromised national security, endangerment to members of the military, or fault in government construction and procured products.

Common types of government contract fraud include:

- **Cross-Charging** - Cross-charging schemes occur where a government contractor charges one government contract for the costs, labor, materials and other fees incurred in the performance of a different contract. Cross-charging schemes frequently involve contractors shifting costs from a “fixed-price” contract to a “cost-plus” contract.

- **Improper Cost Allocation** – Improper cost allocation occurs when a government contractor fraudulently shifts costs that are unrelated to a particular government contract (for example, overhead costs from unrelated private sector work) to the government through a government contract.
- **Violations of the Truth in Negotiations Act (TINA)** – When the government purchases products or services which require complex technology or other specialization (especially weaponry or military equipment), there may be only one company (sole source) with the ability to satisfy the government's contractual needs. The Truth in Negotiations Act (TINA) protects the government from being overcharged in the negotiation of sole source and other contracts by requiring that contractors make certain disclosures including accurate, current, and correct cost and pricing information. Contractors who falsify these disclosures may be subject to FCA liability.
- **Bribery, Bid-Rigging and Kickbacks** – Government contractors are prohibited from colluding with each other on bids, providing kickbacks in order to gain an unfair advantage in the bidding process, and accepting bribes/kickbacks – such as from a subcontractor.
- **Improper Product Substitution** - Government contracts often contain specific requirements with regard to the type, quality or grade of parts to be used under the contract. Government contractors may seek to reap undue profits by substituting a less expensive or otherwise inferior part or product without the government's permission.
- **Failure to Comply with Specification** - Just as government contracts often contain specific requirements about the quality or grade of parts, government contracts may also include very detailed product specifications. Specifications could include: required quality assurance steps or other kinds of testing, design specifications, or certain temperatures or conditions the product needs to be able to withstand. A contractor's decision to cut corners or otherwise disregard specifications may form the basis of a False Claims Act case.
- **Government Contractor Wage Fraud** – The Davis Bacon Act requires that government contractors and subcontractors on public works and construction projects pay their employees the prevailing wage rate. These contractors must also submit payroll certifications vouching for the appropriate payment of all workers on the project. Contractors have been held liable for falsifying these certifications, or submitting them without actually checking that proper payment was made.
- **Retaining Rebates/Discounts** – Where a government contractor is providing the government with supplies procured from other companies, the government contractor may receive discounts or rebates. Many government contracts require the contractor to pass all discounts or rebates to the government customer. Successful

enforcement actions have been brought against contractors who fail to provide rebates and discounts to the government.

- **Disadvantaged/Small Business Fraud** – Misrepresenting small or disadvantaged business status, such as by setting up a shell or front company, in order to obtain government contracts

If you would like to speak to a member of our whistleblower group about a potential whistleblower matter, please contact us to schedule a case evaluation. All case evaluations are confidential and free.