Public Construction Projects: Not Always a Hollywood Ending

Plenary 4: False Claims Act: Be Aware, Be Wary, Be Ready

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Basic prohibitions:

- presenting or causing to present, false or fraudulent claims for payment to the United States §3729(a)(1)(A)

- making, using, or causing to be made or used false statements or records material to a false or fraudulent claim §3729(a)(1)(B)

- concealing or improperly avoiding an obligation to pay money to the United States ("reverse false clam") §3729(a)(1)(G)

Remedies:

- Three times the damages the United States sustained because of the violation.  
  §3729(a)(1)(A)

- Penalties per violation, adjusted for inflation (for violations after November 2, 2015 and penalties awarded after January 29, 2018, penalties are a minimum of $11,181 and maximum of $22,363.

  83 Fed.Reg. 3944; 28 C.F.R. §85.5
Qui Tam Actions

A case may be brought by the United States or by a person acting in the name of the government, known as a “relator.”

The government may join the case, or permit the person to proceed without the government.

A successful relator is awarded 15-30 percent of the proceeds of any settlement or judgment, as well as attorney fees and expenses paid by the defendant.
State False Claims Acts

Many states, the District of Columbia, and Puerto Rico have enacted similar statutes. Most are modeled on the federal FCA, but there are differences:

- Some are limited to Medicaid (E.g., CO; MD)
- Some do not authorize qui tam actions (E.g., MO)
- Some include local governments (E.g., CA)
- Some have different substantive and procedural provisions (E.g., NY)
Examples of FCA in Construction Law: Federally Reimbursed Local Projects

*United States ex rel. Plumber and Steamfitters Local Union No. 38 v. C.W. Roen Construction Co*, 183 F.3d 1088 (9th Cir. 1999)
Examples of FCA in Construction Law: Subcontractor Conduct and Prime Contractor Liability

United States ex rel. Wall v. Circle C Constr. LLC, 813 F.3d 616 (6th Cir. 2016)
Examples of FCA in Construction Law: Fraud in the Inducement of a Contract

Examples of FCA in Construction Law: Disaster Relief


Alcatec, LLC v. United States, 100 Fed.Cl. 501 (2011)
Red Flags: Manipulation/Inflation of Indirect Costs

Red Flags: Mischaracterization of Delay Costs

*Daewoo Eng’g & Constr. Co., Ltd. v. United States, 557 F.3d 1332 (Fed. Cir. 2009)*
Red Flags: Related Parties