

## Legal Alert

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**QUESTION: WHY WAS A COMPANY FORCED TO FORFEIT MORE THAN \$53 MILLION FOR WORK PERFORMED ON FEDERAL PROJECTS?**

**ANSWER: THE CLAIMANT WAS FOUND TO HAVE VIOLATED THE ANTI-KICKBACK ACT AND THE FALSE CLAIMS ACT, LEADING TO THE FORFEITURE OF ALL OTHER CLAIMS UNDER THE FORFEITURE OF FRAUDULENT CLAIMS ACT.**

Are any of the funds you claim for your work derived from the federal government? Are these payments being shared with others and, if so, why? Are you seeking payment too early? Are your claims in the right amounts and properly documented? Are you complying with all federal laws and regulations for claims submitted? Why should you care?

***Be very careful when submitting payment claims to the federal government!***

According to the Forfeiture of Fraudulent Claims Act: “A claim against the United States shall be forfeited...by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof.” 28 U.S.C. § 2514. Moreover:

[The Forfeiture of Fraudulent Claims Act] goes further than merely banning fraudulent claims. It provides for a forfeiture of the claim if any fraud is practiced or attempted to be practiced in proving, establishing or allowing a claim. This is one of the conditions on which the Government gives its consent to be sued and waives its otherwise sovereign immunity.

*Kamen Soap Products Co. v. United States, 124 F. Supp. 608 (1954).*

So even if there was nothing wrong with the work performed or the services provided, any “knowing” presentation of a false claim will result in the forfeiture of the entire claim and all related claims. Specific intent to defraud is not needed.

***What did the contractor do that was so wrong as to cause the forfeiture of more than \$53 million worth of claims for construction work performed?***

Affiliates of AMEC were awarded large construction contracts for the St. Louis Federal Court House, the San Francisco Customs House, and the Sacramento

Court House and Federal Building. AMEC was to be paid many hundreds of millions of dollars for the construction work on these projects. *Morse Diesel International, Inc. dba AMEC Construction Management, Inc. v. United States*, 74 Fed. Cl. 601 (2007).

The facts are complicated and resulted in fifteen separate claims by AMEC and its affiliates for compensation on the construction projects. Among other things, AMEC had its subsidiary “bill bond costs at twice the normal amount.” AMEC also agreed that the bonding agents would split their fee commissions with AMEC. The General Services Administration’s Office of Investigations found that: “[Plaintiff] used falsified invoices and [made] false certifications to obtain payments for bonds.”

AMEC and its subsidiaries should have paid the bond premiums prior to billing the Government. Instead, they billed for amounts that they had not paid, including the split commission arrangements. “Plaintiff used this ruse to obtain contract funds prior to the completion of the contract.”

According to AMEC “the alleged fraud on these contracts was not pervasive...[and] was limited to only a few mid-level employees.” It took the position that the violations were “technical” and “non-knowing.” The court responded that: “Knowingly” is defined to mean that “a person, with respect to information...has actual knowledge of the information.” Thus: “Where plaintiff “knew” of a false claim, specific intent to defraud is not required.”

#### ***Additional penalties for Anti-Kickback Act and False Claims Act violations.***

The court assessed the maximum civil penalties and damages under the Anti-Kickback Act in the amount of \$259,547.04.

The court also awarded the government the maximum civil penalties and treble damages under the False Claims Act in the amount of \$7,032,666.

The total award to the government for the Anti-Kickback Act and False Claims Act violations was \$7,292,213, which was in addition to the \$53,534,679.16 in forfeited claims. Keep in mind that the actual loss to the government was relatively slight, because it would have reimbursed for the appropriate bond premiums had the claims been properly presented. Simply complying with the government’s rules would have saved the contractor about \$61 million and probably allowed it to be awarded further lucrative federal contracts.

#### ***Lessons learned.***

Compliance with federal procurement and payment rules can be complicated, but failing to do so can lead you to forfeit the entire value of your work and to be fined additional amounts, as well. If your company needs assistance in complying with the Federal Acquisition Regulation, please contact me.

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