

Congress Continues Its Efforts to Stem Perceived Fraudulent Activity in Federal Procurement

April 2, 2009

In the past two months, two House bills and two Senate bills have been introduced relating to "false claims" in federal procurement. These bills respectively are:

- S. 386, "Fraud Enforcement and Recovery Act of 2009," (Feb. 5, 2009);
- H.R. 1788, "False Claims Correction Act of 2009," (Mar. 30, 2009);
- S. 458, "False Claims Clarification Act of 2009," (Feb. 24, 2009); and
- H.R. 1667, "War Profiteering Prevention Act of 2009," (Mar. 23, 2009).

The False Claims Correction Act of 2009 and the False Claims Clarification Act of 2009 have the similar goal of amending portions of the False Claims Act (FCA). These bills have the stated goal of "protecting taxpayer dollars and strengthening the government's hand in combating fraud." The False Claims Clarification Act of 2009 seeks to clarify and strengthen the FCA by:

- Removing the requirement that false claims be directly presented to government officials, instead of tying the liability directly to government money and property;
- Allowing public disclosures to be addressed at any time during an FCA proceeding; and
- Clarifying that fraudulent claims for payment or reimbursement for non-taxpayer funds under the control of the U.S. government are actionable under the FCA.

The False Claims Clarification Act of 2009, however, would also restrict government employees from bringing an FCA case if the information is obtained from an indictment or information; any ongoing criminal, civil or administrative investigation; or if the employee is serving as an auditor, investigator or attorney charged with the duty to investigate fraud. This restriction is intended to help ensure that a government employee can act as a relator, but only if the employee is asserting a claim that the government has refused to investigate or that is unrelated to the employee's governmental duties.

The False Claims Correction Act of 2009 was introduced by Rep. Howard Berman only three days ago. This bill takes similar measures to further tighten the False Claims Act legislation.

The Fraud Enforcement and Recovery Act of 2009 seeks to "provide the federal government with more tools to investigate and prosecute financial fraud." The bill targets all kinds of fraudulent activity, but in the federal government contracting arena, it, among other things, seeks to:

- Extend the coverage of the False Claims Act to any false or fraudulent claim for government money or property, whether or not the claim is presented to a government official or employee, whether or not the government has physical custody of the money, or whether or not the claimant specifically intended to defraud the government;
- Amend the major fraud statute to protect funds expended under the TARP and the economic stimulus package; and
- Authorize funding to hire fraud prosecutors and investigators at the U.S. Department of Justice, the Federal Bureau of Investigation and other law enforcement agencies.

The War Profiteering Prevention Act of 2009 is aimed at U.S. companies with government contracts to provide goods and services overseas. The measure would establish penalties, including prison and fines for bid rigging, fraud, gross overcharging, delivery of faulty military parts or environmental damage. It would prohibit schemes to defraud the United States, including those to "materially overvalue any good or service with the intent to defraud" the United States. Violations of the act would be punishable by criminal fines of up to \$1 million and imprisonment of up to 20 years. The act would also prohibit falsification or concealment of material facts, fraudulent representations and submission of false writings with knowledge that writing is materially false, fictitious or fraudulent. Violations of this portion of the act would be punishable by criminal fines of up to \$1 million and imprisonment of up to 10 years. Furthermore, the statute would assert extraterritorial jurisdiction over these offenses.

For Further Information

If you have any questions about this Alert or would like more information, please contact [Tamara M. McNulty, LEED AP](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.