



CONSTRUCTION AND WHITE-COLLAR COMPLIANCE AND DEFENSE

ALERT

NEW YORK ATTORNEY GENERAL CREATES NEW UNIT TO INVESTIGATE STATE GOVERNMENT CONTRACTORS

By Ernest E. Badway and John D. Horowitz

Over the past several years, New York state has substantially increased its efforts to crack down on contractors who violate the state's employment, wage and hour, and tax laws. For instance, in or around August 2010, the New York Legislature passed the Construction Industry Fair Play Act, which is a statute designed to prosecute construction industry contractors who misclassify employees as independent contractors. Part of the state's motivation for enacting this statute was its desire to recoup the hundreds of millions of dollars it believed it was losing as a result of employers failing to remit the correct payroll taxes to the state, based on the unlawful independent contractor relationships they had established.

New York continues to target contractors of all tiers, as well as other entities that do business with the state. Most recently, New York State Attorney General Eric Schneiderman created a unit within his office to investigate and prosecute corrupt government contractors. Specifically, the Attorney General's office has indicated the new unit will seek to enforce New York's False Claims Act, which is a statute that allows the government to recover up to three times the losses associated with discovered tax fraud. The

Attorney General has also indicated there is a whistle-blower provision permitting individuals who report fraud to recover up to 30 percent of the proceeds recovered.

Attorney General Schneiderman has commented that this new unit will add dozens of prosecutors who will target individuals that are "thinking of ripping off New York taxpayers."

Clearly, Attorney General Schneiderman's warning should prompt all contractors to review their billing practices, public contract compliance and tax reporting procedures to help them avoid becoming the subject of the unit's investigation. Here at Fox Rothschild, our Construction and White-Collar Criminal Defense and Compliance Groups are monitoring this situation and remain ready to assist contractors who find themselves subject to these investigations.

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