

Qui Tam... Scarier than Halloween?



Qui Tam, also known as whistleblower or the False Claims Act, is an old tool being used in new ways to threaten government contractors with huge fines and penalties if an employee reports wrongdoing by a contractor that can be proved by the government.

What is Qui Tam and why is it important to Federal Government Contractors?

Two things make this a risk management issue. First, a whistleblower can make astounding sums of money as they are eligible to receive up to 30% of the dollars recovered by the government. In many cases whistleblowers have made millions. Second, it has the potential to be used in the political arena as a tool to extract billions of dollars from defense companies and other firms. It is being considered as a way to help close the budget gap and has been cited prominently in the Dodd Frank Act and the new Healthcare act as a way to pay for each of these programs.

The statute, first passed in 1863, includes an ancient legal device called a "qui tam" provision. This provision allows a private person, known as a "relator," to bring a lawsuit on behalf of the United States, where the private person has information that the named defendant has knowingly submitted or caused the submission of false or fraudulent claims to the United States. The relator need not have been personally harmed by the defendant's conduct.

Qui Tam Claims

So what give the whistleblower act teeth? MONEY. \$3 billion paid out in 2010 versus \$175 million in 1988. All told, officials estimate more than \$29 billion has been recovered by the government since 1986. Moreover, there are projected to be more than 1300 claims awaiting action as of early 2011.

Specific examples include:

- The government found that a defense contractor was charging a different rate to the DoD than the commercial markets – the contract specifically said that the government would never pay more than the lowest rate. Settlement was \$87.5 million.
- An aircraft contractor was found to be overcharging for helicopter parts. Settlement was \$16.5 million.
- A contractor making bullet proof vests for soldiers was found to be falsifying the effectiveness of the fabric's performance. More than \$54 million was paid by seven contractors.
- 30 contractors were fined almost \$100 million in failing to provide security and logistics for the Army per the contract. It turned out that none of the 30 companies had the expertise they claimed to have had.

How to protect yourself?

It is not easy especially in light of a new government rule distributed on September 16th, 2011 that requires all government contractors prominently post hotline numbers for reporting fraud of any kind. When you add ease to the money at stake for private citizens in a Qui Tam action, it can make it very difficult for even the most conscientious company to protect themselves.

Here are the basics in risk management:

- You want to make it as easy as possible for employee to report their concerns to top management. An internal 'hotline' is a good place to start. Outline your steps and expectations to report fraud as a company expectation. Ensure people will be protected by allowing and encouraging anonymity.
- Ethics need to be at the center of corporate expectations and reinforced wherever possible.
- A specific committee along with a risk management plan to proactively deal with Qui Tam.

Where do most False Claims Act actions originate:

- Inaccurate grants or inflated invoices
- Product substitution
- Implied false certifications of compliance
- Misstatements or errors in request for change orders
- Reckless disregard. Even unintentional mistakes theoretically may be actionable if they result from the contractor's failure to maintain or follow appropriate verification procedures

Need Help with Qui Tam?

Send us an email: defense@rwoinsurance.com

For more helpful information click on our [website](#).

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