

REPORT TO THE COMMISSION OF
INQUIRY ON THE AWARDING AND
MANAGEMENT OF PUBLIC
CONTRACTS IN THE
CONSTRUCTION INDUSTRY:

**THE UNITED STATES
FALSE CLAIMS ACT**

February 15, 2013

By Neal A. Roberts

PART I. THE BIRTH OF THE FALSE CLAIMS ACT
*THE HISTORY, GENESIS AND PASSAGE OF THE UNITED STATES FALSE CLAIMS ACT
-A FALSE CLAIMS ACT UNCOVERS HIDDEN EVIDENCE OF FRAUD*

- **Abraham Lincoln and the Creation of the False Claims Act in 1863**
- **The Origins of the Modern United States False Claims Act**
- **The Ripe Opportunity for Fraud in Government Contracts**
 - GOVERNMENTS DO NOT PRODUCE GOODS
 - LACK OF INFORMATION
 - COLLUSION
 - CO-OPTION
 - LACK OF INVESTIGATIVE RESOURCES

PART II. THE BASIC LEGAL PRINCIPLES OF THE MODERN FALSE CLAIMS ACT
*THE CREATION OF THE PRESENT DAY PROSECUTORIAL TOOL FOR FIGHTING
FRAUD AGAINST THE GOVERNMENT*

- **A False Claim: The Fraud against the Government**

- In Common parlance, to defraud the Government would be to “cheat” the Government.
- In legal terms this cheating is described as knowingly making a false representation (or omission) of a matter of fact that causes the Government to be deprived of money, or property or a right.

- LIABILITY
- KNOWLEDGE
- THE CLAIM
- THE DAMAGES AND PENALTIES FOR VIOLATING THE FALSE CLAIMS ACT

- MEASURE OF DAMAGES FOR HARM TO THE GOVERNMENT
 - Charging the Government the wrong amount
 - Cheating the Government in the process of securing the contract
 - Making false statements or certifications about the goods and services delivered
 - Product substitution and poor quality goods and services
 - Reverse False Claims under §3729 (a)(1)(G)
- PROTECTIONS AGAINST RETALIATION AGAINST THE WHISTLEBLOWER
- MEASURE OF DAMAGES IN RETALIATION
 - Back Pay

- ASSESSMENT OF PENALTIES
- ATTORNEY'S FEES AND COSTS AND EXPENSES
 - Lodestar Approach
 - Expenses
 - Costs
- STATUTE OF LIMITATIONS
- BURDEN OF PROOF
- LIMITING IMPROPER USE OF THE FCA
 - Frivolous, vexatious or harassment
 - Parasitic actions
 - When the Government is already pursuing a case
 - Collusion with the Defendant
 - Use of Action against members of the Government or members of the armed forces
 - Use of the Act with regard to Internal Revenue Code violations

THE QUI TAM PROCEDURE

-The Process that Produces the Unknown Evidence of Fraud

- THE FILING OF A CIVIL QUI TAM COMPLAINT
- THE GOVERNMENT INVESTIGATION
- THE ROLE OF THE RELATOR IN THE GOVERNMENT INTERVENED CASE
- THE ROLE OF THE RELATOR WHEN THE GOVERNMENT DECLINES
- THE AWARD TO QUI TAM PLAINTIFF
 - Shall not be less than 15% but not more than 25% of proceeds to the Government
 - Relator proceeds: 15% but not more than 30% of the proceeds to the Government
- LIMITATIONS ON AWARDS TO THE RELATOR

PART III. STATE AND LOCAL GOVERNMENT FALSE CLAIMS ACTS

PART IV. ADDITIONAL UNITED STATES WHISTLEBLOWER PROGRAMS

- **The Internal Revenue Service (IRS)**
- **The Securities and Exchange Commission**
 - No private right of action under this scheme
- **Commodity Futures Trading Commission**

PART VI. THE SUCCESS OF THE FALSE CLAIMS ACT IN UNCOVERING AND
DETECTING FRAUD AGAINST THE GOVERNMENT
IN PARTICULAR CONTRACTOR/CONSTRUCTION FRAUD AND KICKBACKS

- **Using Citizens to Find Fraud**
- **Examples of Fraudulent Schemes Unearthed by Whistleblowers**
 - **Construction**
 - » Contractor Kickbacks
 - » Bid Rigging
 - » Overbilling
 - » State Road Contracts
 - » Dangerous Construction Materials-The Big Dig
 - Failure to Test
 - Fraudulent Marketing and Promotion
 - Failure to Provide Quality Service or Product

Sample FCA Construction Cases

Case	Year	Settlement	Allegations
Fraudulent & Dangerous Construction Practices			
Commonwealth of Massachusetts, et al. v. Bechtel Corporation, et. Al.	2006	\$407,000,000.00	Fraudulent billing and false certifications.
United States ex rel. Johnston v. Aggregate Industries et al	2006	\$125,000,000.00	Falsified concrete batch slips delivered to the Big Dip inspectors.
Fraudulent Quality & Falsified Testing			
United States ex rel. Roederer v. Gohmann Asphalt and Construction Co.	2007	\$8,200,000.00	Samples of good high density asphalt were substituted for the poor quality asphalt which meant higher compensation for company.
<i>United States ex rel. Geoffrey K. Willson v. Alcatel-Lucent</i>	2012	\$4,200,000.00	Manager certified that system was tested successfully when it was not

Case	Year	Settlement	Allegations
Bid-Rigging and Corruption of Public Procurement			
United States ex rel. Miller v. Bill Harbert Intern. Const. et al.,	2010	\$47,000,000.00	The defendant entered into pay off agreements with other potential bidders who agreed to either bid high or not to bid at all.
U.S. ex rel. Coleman v. Fluor Corp.	2006	\$12,500,000	Billed Government for luxury items
United States ex rel. Garrison and Gaona. Jr. v. Crown Roofing Services, Inc.	2012	3,000,000.00	Made kickback payments in order to obtain contracts to supply roofing.
United States ex rel. Rambo v. Fluor Hanford, LLC et al	2013	1,100,000.00	Used federal funds to conduct lobbying to increase funding on the Government contract.

PART VII. THE SUCCESS OF THE UNITED STATES FALSE CLAIMS ACT 1986-2012

- **The Number of False Claims Act Cases has Increased Substantially**
- **The Amount of Damages Collected from Defendants have Increased Dramatically**
 - \$35 billion in fraud settlements and almost \$24 billion of that has been based on Qui Tam cases brought by private citizens.
 - In 1978, before the Act was amended, the total amount of monies collected for fraud against the Federal Government was \$15 million
 - 2010-2013, total collected has been more than \$3 billion per year

**Amount of Monies Collected for Fraud
since False Claims Act Amendment**

YEAR	SETTLEMENT & JUDGEMENT
1983	\$26,000,000
1987	\$86,479,949
2012	\$4,959,333,598

**TOTAL (1987-2012):
\$35,192,303,318**