

Author:

Mark A. Rush (Pittsburgh)
412.355.8333
mark.rush@klgates.com

Contacts:**Internal Investigations**

Mark A. Rush (Pittsburgh)
412.355.8333
mark.rush@klgates.com

Michael D. Ricciuti (Boston)
617.951.9094
michael.ricciuti@klgates.com

Government Contracts

Robert J. Sherry (Dallas)
214.939.4945
robert.sherry@klgates.com

William A. Shook (Washington)
202.661.6256
bill.shook@klgates.com

K&L Gates comprises approximately 1,400 lawyers in 22 offices located in North America, Europe and Asia, and represents capital markets participants, entrepreneurs, growth and middle market companies, leading FORTUNE 100 and FTSE 100 global corporations and public sector entities. For more information, please visit www.klgates.com.

DOJ Targets Procurement Fraud

Background: An Aggressive Enforcement Climate

At a recent ABA meeting, a high ranking DOJ official candidly remarked that a lot of defense lawyers would be billing a lot of time on procurement fraud issues. These comments along with other public statements emphasize the extent to which procurement fraud is a top priority for DOJ. The newly formed National Procurement Fraud Task Force already has more than 60 civil or criminal cases under its belt and DOJ has seventy prosecutors handling contract fraud cases. Furthermore, it is not just the DOJ that contractors need to worry about; congressional investigations may ultimately prove more daunting and potentially damaging to a company's reputation, regardless of the outcome, and there are substantial follow-on risks of SEC investigations and shareholder actions. This heightened level of enforcement activity is a clear signal that companies need to be proactive in this area. This means that companies need to: (1) implement thoroughly reviewed and enhanced compliance policies and procedures; (2) identify possible problems early on; (3) co-opt the government by conducting a credible independent internal investigation; and (4) cooperate fully via self-reporting or sharing the facts uncovered in the investigation.

The Importance of Independent Internal Investigations

Conducting a timely and independent internal investigation at the first sign of wrongdoing may help the company avoid or minimize corporate liability. Additionally, an independent internal investigation lends credibility to the company's position, assists in the development of facts and context needed for a defense, and allows the development of a thoughtful public relations response. Depending on the timing of the internal investigation, it may even preempt a government investigation, which will in turn result in less disruption of business, more control over the scope of the investigation and the public dissemination of information, and a less adversarial engagement with the government. Thus, there are tremendous benefits to conducting an internal investigation when procurement fraud is suspected.

A "do-it-yourself" approach by in-house counsel, while understandable from a cost-containment standpoint, does not achieve these benefits. To avoid suspicions of whitewashing or intimidation in the process, especially where management level employees may be implicated, it is important that the company be able to demonstrate that its investigation is independent. Turning to independent, outside counsel, especially in the early stages of an investigation, will add a measure of credibility while safeguarding confidentiality. Plus, it can be reassuring to go through this process with a firm that has been through it before, understands what congressional committees and DOJ investigators are looking for, and can communicate effectively with the government.

K&L Gates Internal Investigation Capabilities

The timing and structure of an independent internal investigation is extremely important. It must be done in a way that minimizes legal risk and protects confidentiality and privileged communications. K&L Gates lawyers know how to achieve these objectives. Our lawyers have conducted numerous internal investigations concerning a variety of subjects, including procurement fraud, violations of the securities laws, extortion, money laundering,

economic espionage, theft of trade secrets, and the Foreign Corrupt Practices Act. The lawyers at our firm who conduct internal investigations have noteworthy credentials and include a former United States Attorney General, former Assistant U.S. Attorneys, a former United States Senator, former senior officials at DOJ and the Securities and Exchange Commission, and former congressional investigators and staff. K&L Gates has the resources and experience to handle an internal investigation of any size or issue and to answer some of the difficult questions that arise in this context, such as when to conduct an internal investigation, who should conduct it, who should control it, whether it needs to be disclosed publicly, how it should be organized, how to best protect privileges and preserve information, how to minimize disruptions to the company, whether or not a formal report should be prepared, and what type of report (if any) should be prepared.

We also have extensive capability and experience in managing large document intensive matters by using state-of-the-art technologies to capture, process and analyze millions of pages of documents, both in electronic and hard copy, quickly and cost effectively.

K&L Gates Government Contracts & Procurement Policy Experience

K&L Gates lawyers regularly assist government contractors in a variety of matters, including the development of compliance programs that both help avoid more serious problems as well as provide for

early detection of misconduct. Our Government Contracts lawyers have teamed up with our White Collar Crime/Criminal Defense lawyers on numerous occasions to conduct independent internal investigations, to represent contractors in grand jury investigations, agency inspector general investigations, criminal and civil procurement fraud cases, qui tam or “whistleblower” proceedings, “voluntary disclosures” of potential wrongdoing to responsible officials of agencies such as the United States Department of Defense (“DOD”) and the United States General Services Administration (“GSA”), and responding to congressional investigating committees.

Conclusion

Given the heightened enforcement environment, companies should take every step possible to avoid being the target of a criminal investigation for alleged procurement fraud. Possible approaches to mitigate the likelihood of an indictment, FCA action and debarment is to: (i) take a proactive approach to government inquiries and whistleblower allegations by considering independent internal investigations by outside counsel; (ii) insuring that your compliance programs and ethics policies are current and understood through meaningful training; and (iii) consider select targeted audits of business groups on compliance and ethics policies. K&L Gates lawyers have the experience to assist you in any of these matters.

K&L Gates comprises multiple affiliated partnerships: a limited liability partnership with the full name Kirkpatrick & Lockhart Preston Gates Ellis LLP qualified in Delaware and maintaining offices throughout the U.S., in Berlin, and in Beijing (Kirkpatrick & Lockhart Preston Gates Ellis LLP Beijing Representative Office); a limited liability partnership (also named Kirkpatrick & Lockhart Preston Gates Ellis LLP) incorporated in England and maintaining our London office; a Taiwan general partnership (Kirkpatrick & Lockhart Preston Gates Ellis) which practices from our Taipei office; and a Hong Kong general partnership (Kirkpatrick & Lockhart Preston Gates Ellis, Solicitors) which practices from our Hong Kong office. K&L Gates maintains appropriate registrations in the jurisdictions in which its offices are located. A list of the partners in each entity is available for inspection at any K&L Gates office.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

Data Protection Act 1998—We may contact you from time to time with information on Kirkpatrick & Lockhart Preston Gates Ellis LLP seminars and with our regular newsletters, which may be of interest to you. We will not provide your details to any third parties. Please e-mail london@klgates.com if you would prefer not to receive this information.

©1996-2007 Kirkpatrick & Lockhart Preston Gates Ellis LLP. All Rights Reserved.