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Government contract fraud: The troll under the bridge

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Following President Joe Biden's signing of the expansive infrastructure bill on Nov. 15, the government is set to spend $1.2 trillion on bridges, highways, clean water, broadband, and more. As that "Building a Better America" cash flows into the hands of private contractors, the dark specter of fraud and abuse will undoubtedly appear.

Who will expose the bad apples who misuse these taxpayer funds? The Department of Justice has that responsibility, but it will rely heavily on whistleblowers — individuals with insider knowledge of wrongdoing, most often employees or executives at private companies motivated by a "do the right thing" mindset and handsome financial incentives in whistleblower reward programs.

The infrastructure law will channel $110 billion to roads and bridges, $66 billion to railroads, $39 billion to transit, $25 billion to airports, $17 billion to ports and waterways, $11 billion to safety measures, $7.5 billion

to electric vehicle chargers, $7.5 billion to electric buses, and $1 billion to reconnecting communities separated by previous infrastructure projects. The bridge expenditures represent the single largest investment of this kind since the construction of the interstate highway system and the largest federal investment in public transit in U.S. history. Some 700,000 new jobs are expected to result from the total spending bill in manufacturing, construction, and transportation.

Competing for such lucrative government contracts has led some companies to commit fraud, violating the federal False Claims Act in the following ways:

- Obtaining contracts through false statements in bidding documents
- Misrepresenting the cost of projects or underbidding contracts
- Cross-charging or improperly cost allocating among contracts
- Delivering products or services that do not meet contract specifications

Under the category of infrastructure, taxpayers will bear the cost of massive fraud and abuse unless whistleblowers step up and report potentially fraudulent practices such as those described above. In its fight against COVID-19, the government committed $4.5 trillion in total budgetary resources, which prompted the DOJ to take a "historic" level of enforcement action as fraudsters bilked various programs aimed at helping those affected by the pandemic. The infrastructure surge should prompt the same or greater scrutiny starting immediately.

The primary tool to motivate whistleblowers and stamp out government contract fraud is the False Claims Act, used during the Obama administration to recover billions of misspent mortgage crisis dollars and save the Mutual Mortgage Insurance Fund from collapse. The act incentivizes whistleblowers by rewarding them with 15% to 30% of all recovered funds.

A portion of the infrastructure act is dedicated to green initiatives, including modernizing public transit and replacing school buses and other fleets with zero-emission models. That means tax dollars will flow to vehicle manufacturers, creating fresh opportunities for fraud and whistleblowing in that industry. Luckily, the National Highway Traffic Safety Administration has its own whistleblower reward program. That initiative recently awarded a former Hyundai Motor engineer $24 million for reporting the carmaker failed to take sufficient corrective action concerning an engine fault that increased vehicle crash risk and led to the recall of 1.7 million vehicles. The reward came out of Hyundai's $210 million civil penalty.

Any private sector individual with knowledge of fraud involving a federal contract should contact an attorney with deep experience handling False Claims Act cases.

Renée Brooker , former assistant director of the office in the U.S. Department of Justice that supervises False Claims Act whistleblower cases in all 94 federal trial courts, represents whistleblowers as a partner in the law firm Tycko & Zavareei LLP .

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