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Florida Strengthens Its Anticorruption Laws To Target Dishonest Contractors

On March 25, 2016, the Governor of Florida signed into law an anti-corruption bill, HB 7071, which allows prosecutors to bring charges more easily when they allege bribery, bid rigging and official misconduct. By amending portions of Chapter 838, Fla. Stats., the new anti-corruption bill expands accountability to the employees and officers of companies that pay bribes or offer rewards to any city, county or state official in exchange for a government contract or procuring government business. The amendments also loosen the standard of proof required to verify a violation of the anti-corruption law. Prosecutors now only need to prove a “knowingly and willful” violation, as opposed to demonstrating that a public officer had “corrupt intent” when receiving a payment or steering business to a particular contractor. The new changes to Florida’s anticorruption laws go into effect on October 1, 2016.

Perhaps most importantly, the new bill changes the definition of “official misconduct” (Fla. Stat. §838.022) such that private contractors, who have entered into contracts with the government, are now considered “public contractors” and therefore have the same liability as “public servants” under the new law. With this change, private businesses that enter into contracts with the government may very well be investigated for bribery, bid tampering and falsifying official documents.

The changes in the anti-corruption laws were initially brought about to close existing loopholes in the statute that had failed to address private entities performing public functions. As more services that were traditionally provided by the government became privatized, the Florida legislature deemed it necessary to eliminate these loopholes and cover private companies and their employees who were otherwise immune from prosecution, despite receiving bribes or falsifying official documents.

However, the new law was not easy to pass. Many concerns were raised among contractors that traditional business networking activities, such as the giving of holiday gifts, would now be considered as bribes. To address this issue, the legislature amended the statute such that contractors who operate government services could not be charged for taking bribes. Instead, such contractors could be charged with “official misconduct,” which includes altering or destroying public records or covering up a felony. These changes bring Florida’s anti-corruption laws in line with many federal contracting rules that prohibit bribery and kickbacks.

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The key takeaways from the new legislative changes are: (1) prosecutors can now more easily prosecute cases involving bid rigging, bribery or official misconduct by simply showing “knowingly and willful” conduct; and (2) private contractors who enter into contracts with the government will now be treated like public servants. In light of these amendments, contractors who enter into government contracts should be sure to have proper compliance programs in place and train their employees on the new legislative changes taking effect in Florida. These important preemptive steps will help contractors avoid future liability and investigative inquiries, which could be costly and damaging to their reputations.

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