



# The Government is Here to Help You – BE CAREFUL: Best Business Practices in the Post-COVID 19 World



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# Navigating the Risks Associated with Government Funding

If you can anticipate potential problems, you can prepare for them.

- Dangers from within/internal preparation
- Dangers from without/external preparation

# Government Funding Risks

## Dangers from within/internal issues

- Compliance – general & specific
- Record keeping
- Technicalities
- Assessment of government contracts
- Government accounting is not accounting
- Old habits
- Industry practices

# Lessons Learned from Past Crises/Best Practices

- Adopt and maintain compliance policies and procedures, especially in emergencies
- Engage in careful recordkeeping and communications with government authorities
- Demand commitment to best practices from third parties that are part of dealings with government
- Document government instruction and guidance

# Government Funding Risks

## Dangers from without/external Issues

- Extraordinary government funding = Heightened review by government = Heightened regulatory scrutiny
- You will be responsible for compliance failures of others
- You can be used by others to commit fraud
  - Partners or subcontractors can use you as a conduit (intentionally or unintentionally)

# Government Review

Government will look for objective proof that you tried to do the right thing:

- Compliance programs
- Due diligence
- Independent review processes
- Training programs
- Record keeping
- Document retention
- Tone

# Government Red Flags

## Usual/typical red flags:

- Public record incorrect

## More subtle red flags:

- Slow to provide information
- Express annoyance at government questions (such as “personal questions”)
- Question the need for information
- Unusual compensation structure

# Government Red Flags

## Subtle red flags (cont.):

- Resources to provide services are questionable
- Request for certain advance payments
- Odd invoices
- Reluctant to provide references
- New to the business/lack of experience
- Reluctant to identify beneficial owners
- Objection to audit rights

# Victim or Participant?

For government regulators (and perhaps prosecutors), there is a thin line between being a victim and being a co-conspirator.

# Who is a Government Agent?

- Criminal: federal (DOJ), state (attorneys general) and local (district attorneys)
- Civil regulatory/administrative: federal (DOJ), state (attorneys general), agency inspectors general (federal, state and local)
- Quasi-public authorities: private inspectors general & third-party monitors
- “On the ground” government agency construction project teams
- Private civil actors (qui tam/class action/labor/employment lawyers)

# Government Potential Actions

- Criminal prosecutions
- Civil regulatory/administrative actions
- Qui tam suits
- Class actions
- Other civil actions
- Government audits
- Private investigations

# Thank you!

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