

Hallandale Beach False Claims Ordinance

ARTICLE VIII. - FALSE CLAIMS ORDINANCE

Sec. 8-201. - Short title; purpose.

(a) This article shall be known and may be cited as "The City of Hallandale Beach False Claims Ordinance."

(b) The purpose of the city false claims ordinance is to deter persons from knowingly causing or assisting in causing the city to pay false claims, and to provide remedies for obtaining damages and civil relief for the city when the false claim is sought or obtained from the city.

(c) The provisions of this chapter are to be liberally construed to effectuate its remedial and deterrent purposes, the public interest and are not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for under law.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-202. - Definitions.

The following terms and phrases shall have the meanings ascribed to them in this section:

(a) ***Bid takeover*** means the final estimate, tabulation, or worksheet prepared by the contractor in anticipation of the bid submitted, and which shall reflect the final bid price.

(b) ***Claim*** means any invoice, statement, request, demand, lawsuit, or action under contract or otherwise, for money, extension of contract time, property, or services made to any employee, officer, or agent of the city, or to any contractor, grantee, or other recipient if any portion of the money, time extension, property, or services requested or demanded was or will be issued from, or was provided by, the city.

(c) ***Claimant*** means any person who brings, submits, files, maintains, or pursues a claim.

(d) ***City*** means the government of the City of Hallandale Beach.

(e) ***Extended overhead*** means the amount of a claim relating to an increase in overhead costs resulting from a delay in contract performance that is not compensated by a markup of direct costs.

(f) ***Knowing or knowingly*** means that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information.

(g) ***Overhead per diem*** means the amount calculated by dividing the total overhead costs set forth in the final bid takeoff by the number of days for substantial completion of the work set forth in the contract.

(h) ***Person*** means any natural person, corporation, firm, association, organization, partnership, agency, limited liability company, business, or trust.

(i) ***Trustee*** means the person bringing suit under section 8-205

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-203. - Certification of claims.

(a) Upon the request of the city, the person submitting a claim to the city shall, within 30 days, including Saturdays, Sundays, and legal holidays, submit a certified claim as defined by this section. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a sworn statement that:

- (1) The claim is made in good faith;
- (2) The claim's supporting data are accurate and complete;
- (3) The amount of the claim accurately reflects the amount that the claimant knowingly believes is due from the city; and
- (4) The certifying person is duly authorized by the claimant to certify the claim.

(b) Failure to provide the requested certification within the prescribed 30-day period shall constitute a waiver of the entire claim.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-204. - Liability for false claims; penalties.

(a) The following action(s) shall constitute a false claim and a violation of this chapter:

- (1) Any person who knowingly presents or causes to be presented to the city, or to any officer, employee, agent, or consultant of the city, a false or fraudulent claim for payment or approval;
- (2) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false, fraudulent, or inflated claim paid or approved by the city;

- (3) Any person who knowingly conspires to defraud the city by facilitating the payment of a false, fraudulent, or inflated claim allowed or paid by the city;
 - (4) Any person who knowingly delivers, with the intent to defraud the city, goods or services of different quality or quantity than that specified in the applicable contract or specification;
 - (5) Any person who is authorized to make or deliver a document certifying receipt of property received, used, or to be used, by the city and, who knowingly defrauds the city, by delivering the receipt without knowing that the information on the receipt is true;
 - (6) Any person who knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer, employee, consultant, or agent of the city who lawfully may not sell or pledge the property; or
 - (7) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the city.
- (b) Any beneficiary of a submission of a false claim to the city, who subsequently discovers submission of the claim violates subsection 8-204(a), if the beneficiary fails to disclose the falsity of the claim to the city within 30 days of its discovery, shall also be found to have submitted a false claim to the city.
- (c) Any person found to have submitted a false claim to the city shall:
- (1) Be liable to the city for an amount equal to three times that part of the claim which is knowingly false, fraudulent, or inflated;
 - (2) Immediately, fully, and irrevocably waive the entire amount of the claim;
 - (3) Be liable to the city for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the city to review, defend, and evaluate the claim;
 - (4) Be subject to debarment from city contracting for a period not to exceed five years; and
 - (5) Be subject to criminal and civil city penalties under section 1-8 of this Code.
- (d) Liability under this section shall be joint and several for any act committed by two or more persons.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-205. - Civil actions for false claims.

- (a) All suits under this section shall be filed in the 17th Judicial Circuit in and for

Broward County and shall be governed by the Florida Rules of Civil Procedure.

(b) The city manager or designee may investigate a violation under section 8-204. If the city manager or designee finds that a person has violated or is violating section 8-204, the city manager may authorize a civil action against that person on behalf of the city.

(c) A trustee may bring a civil action for violations of section 8-204 and shall be brought in that person's name on behalf of the city, with a certification that all papers in the action are delivered to the city. The city shall not be bound by the trustee's actions.

(1) When a trustee files an action under this section, the city may intervene or bring an action under this section based on the facts underlying the pending action, and the city shall not be bound by the trustee's actions.

(2) If the city intervenes in the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by the acts of the trustee in bringing or participating in the action. The trustee shall have the right to continue as a party to the action, subject to the city's right to dismiss or settle the suit notwithstanding the trustee's objections. If the city does not intervene, the trustee has the right to conduct the action on its own, subject always to the city's right to intervene.

(d) Only the city or a trustee or both may file suit based on the same allegations and intervene in the action of the other. No other person may intervene or bring suit based on same.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-206. - Awards to plaintiffs bringing action.

(a) If a trustee, not joined by the city under this article prevails, the court shall order the distribution to the trustee of not more than 20 percent of the proceeds recovered under any judgment obtained or out of the proceeds of any settlement with the remainder to be distributed to the city.

(b) If the city proceeds with an action and the trustee joins, the trustee shall in no case be awarded more than ten percent of the proceeds recovered under a judgment or settlement of a claim under this article with the remainder to be distributed to the city, taking into account the significance of the information and the role of the trustee in bringing the action and in advancing the case, with the remainder to be distributed and paid to the city.

(c) If the city joins in an action with the trustee, the trustee bringing the action or settling the claim shall receive not more than 15 percent of the proceeds recovered under a judgment rendered or in settlement of a claim under this article with the remainder to be distributed to the city, taking into account the significance of the information and the role of the trustee in bringing the action and in advancing the case, with the remainder to be distributed and paid to the city.

(d) Whether or not the city proceeds with the action, if the court finds that the action was brought by a person who is in violation of section 8-204, the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the city to continue the action.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-207. - Expenses; attorney's fees and costs.

(a) In an action by the city or trustee who prevail in such action, the trustee and the city shall be awarded its reasonable attorney's fees, expenses, and costs.

(b) No liability shall be incurred by the city for any expenses, attorney's fees, or other costs incurred by the trustee in bringing or defending an action under this article.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-208. - Exemptions to civil actions.

(a) No action shall lie under this article against a member of the city commission or city employee.

(b) In no event may a trustee bring an action under this article based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the city is already a party, unless same were brought pursuant to this article.

(c) The trustee cannot bring an action brought under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, unless the action is brought by the city, or unless the trustee bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means a person who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the city manager or designee before filing an action under this article based on the information.

(d) No action under this article by the trustee can be brought by an employee or former employee of the city, upon information obtained in the course or scope of city employment.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-209. - Burden of proof; presumption of false claim.

(a) Whenever practicable, bid specifications for city contracts shall contain a requirement that the successful bidder maintain, as a condition precedent to submitting a claim against the city, a final bid takeoff. In any event, contractors shall have performed a final bid takeoff, as a condition precedent to submitting a claim against the city. The final bid takeoff shall contain a line item for allocation of overhead costs.

(b) Upon request from the city, a contractor making a claim against the city shall submit, within 20 days, a copy of the final bid takeoff, certified pursuant to this article. Failure to provide the requested certification shall constitute a waiver of the entire claim. The certification shall be submitted under oath by a person duly authorized by the claimant and shall contain a statement that:

- (1) The final bid takeoff was prepared contemporaneously with the bid and in anticipation of the bid for the project;
- (2) The contractor relied on the final bid takeoff to prepare the bid and the original schedule of values; and
- (3) The final bid takeoff has not been altered in any way.

(c) Any claim for extended overhead costs that exceeds, on a per diem basis, more than ten percent of the overhead per diem contained in the final bid takeoff shall be presumed to be a false claim. The contractor shall have the burden of proving that any such claim for extended overhead is not false.

(Ord. No. 2004-07, § 1, 4-20-2004)

Sec. 8-210. - Innocent claimant affirmative defenses.

The provisions of this article shall not apply if the claimant can demonstrate by a preponderance of the evidence each of the following facts:

- (a) The claimant submitted or caused to have submitted the claim to or against the city reasonably believing that such claim was not a false claim, was free of any material misstatements, or of any exaggerated, inflated, or unsubstantiated assertions or damages;
- (b) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;
- (c) Prior to submitting the claim, the claimant diligently investigated the facts underlying such claim and prepared the claim in a reasonable manner given all the relevant information available; and
- (d) When information indicating that any element, statement, or allegation in the claim was false or misleading first became available, such claimant, within 30 business days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the city with immediate notice thereof.

(Ord. No. 2004-07, § 1, 4-20-2004)