

## **Monroe County False Claims Ordinance**

### **ARTICLE IX. - FALSE CLAIMS ORDINANCE**

#### **Sec. 2-721. - Purpose and construction.**

The purpose of the Monroe County False Claims Ordinance is to deter persons from knowingly causing, assisting in causing, or attempting to cause the county to pay claims that are false, fraudulent, or inflated, and to provide remedies for obtaining damages and civil penalties for the county when money is sought or obtained from the county by reason of a false claim.

The provisions of this article are not exclusive, and the remedies provided for in this article shall be in addition to any other remedies provided for in any other law, or available under common law, or otherwise.

This article shall be liberally construed and applied to promote the public interest.

(Ord. No. 002-2009, § 1)

#### **Sec. 2-722. - Definitions.**

As used in this article the following words and terms used in this article shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

*Bid takeoff* 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.

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

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

*County* means the government of Monroe County or any department, division, bureau, section, commission, planning agency, board, district, authority, agency, or instrumentality of the county.

*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.

*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.

*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.

*Person* means any natural person, corporation, firm, association, organization, partnership, agency, limited liability company, business, trust, municipality or other form of government.

(Ord. No. 002-2009, § 1)

#### **Sec. 2-723. - Certification of claims.**

(a) Upon the request of the county, the person who has submitted any type of claim 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 statement that:

- (1) The claim is made in good faith;
- (2) The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- (3) The amount of the claim accurately reflects the amount that the claimant believes is due from the county; 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 forfeiture of the entire claim.

(Ord. No. 002-2009, § 1)

#### **Sec. 2-724. - Liability for false claims; penalties.**

- (a) The following action(s) shall constitute a violation of this article:
- (1) Any person who knowingly presents or causes to be presented to the county, or to any officer, employee, agent, or consultant of the county, a false or fraud 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 county;

- (3) Any person who conspires to defraud the county by facilitating the payment of a false, fraudulent, or inflated claim allowed or paid by the county;
  - (4) Any person who delivers, with the intent to defraud the county, goods or services of different quality or quantity than that specified in the applicable contract or
  - (5) Any person who is authorized to make or deliver a document certifying receipt of property used, or to be used, by the county and, intending to defraud the county, makes or delivers the receipt without completely 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, or agent of the county 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 county.
- (b) Any beneficiary of an inadvertent submission of a false claim to the county, who subsequently discovers the falsity of the claim, and who fails to disclose the falsity of the claim to the county within 30 days of discovering the error, shall also be found to have submitted a false claim to the county.
- (c) Any person found to have submitted a false claim to the county shall:
- (1) Be liable to the county for an amount equal to three times that part of the claim which is false, fraudulent, or inflated;
  - (2) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
  - (3) Be liable to the county for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the county to review, defend, and evaluate the claim; and
  - (4) Be subject to debarment from county contracting for a period not to exceed five years. Additionally, any person who certified a claim later found to be false shall be subject to debarment from county contracting for a period not to exceed five years.
- (d) Liability under this section shall be joint and several for any act committed by two or more persons.
- (e) Nothing contained herein shall preclude the prosecution of criminal laws against the person submitting the false or fraudulent claim.

(Ord. No. 002-2009, § 1)

**Sec. 2-725. - Civil actions for false claims.**

(a) The county administrator or his designee may investigate a violation under this article, the county administrator or designee finds that a person has violated or is violating this article, he or she may request approval from the board of county commissioners to bring a civil action against the person on behalf of the county. In the event that the county administrator is provided with information and evidence which support a civil action and fails to bring the matter forward to the board of county commissioners within 45 days after the clerk of courts or the county attorney has requested such action, the county attorney may bring the matter forward to the board of county commissioners.

(b) A person may bring a civil action for a violation of this article for the person and for the county. Civil actions instituted under this article shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the county.

(1) The complaint shall be identified on its face as a qui tam action and shall be filed under seal in the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County. Immediately upon filing of a complaint by a person, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the county administrator by registered mail, return receipt requested. The county administrator may elect to proceed with the action, in lieu of the qui tam plaintiff, on behalf of the county, within 180 days after he or she receives both the complaint and the material evidence and information.

(2) The county, for good cause shown, may petition the court to extend the time during which the complaint remains under seal under paragraph (1). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this subsection until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(3) Before the expiration of the 180-day period or any extensions obtained under paragraph (2), the county administrator or designee, or county attorney, shall:

a. Obtain approval from the board of county commissioners to proceed with the action, in which case the action is conducted by the county attorney on behalf of the county; or

b. Notify the court that the board of county commissioners declines to take over the action, in which case the person bringing the action has the right to conduct the action.

(4) When a person files an action under this section, the board of county commissioners shall make the decision whether to intervene on behalf of the county or bring an action under this article based on the facts underlying the pending action.

(Ord. No. 002-2009, § 1)

**Sec. 2-726. - Rights of the parties in civil actions.**

(a) If the county elects to proceed with the action, he or she has the primary responsibility for prosecuting the action, and is not bound by any prior or subsequent act(s) of the person (hereafter qui tam plaintiff) originally bringing the action. The county may also voluntarily dismiss the action notwithstanding the objections of the qui tam plaintiff.

(b) If the county elects not to proceed with the action, the qui tam complainant has the right to conduct the action. If the county administrator or county attorney so requests, he or she shall be served with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When the qui tam plaintiff proceeds with the claim, the court may permit the county to take over the action on behalf of the county at a later date upon a showing of good cause.

(c) Nothing in this article shall be construed to limit the authority of the county or the qui tam plaintiff, proceeding pursuant to this article, to compromise a claim brought in a complaint filed under this article if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(Ord. No. 002-2009, § 1)

**Sec. 2-727. - Awards to qui tam plaintiffs.**

(a) If the county proceeds with and prevails in an action brought by qui tam plaintiff under this article, except as provided in subsection (b), the court shall order the distribution to the qui tam plaintiff of ten percent of the proceeds recovered under any judgment obtained by the county in an action under this article or of the proceeds of any settlement of the claim.

(b) If the county proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, or administration hearing; a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than five percent of the proceeds recovered under a judgment or received in settlement of a claim under this article, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(c) If the county does not proceed with an action under this article, the qui tam plaintiff shall receive 25 percent of the proceeds recovered under a judgment rendered in an action under this article or in settlement of a claim under this article.

(d) Any payment under this section to the qui tam plaintiff shall be paid only out of the proceeds recovered from the defendant.

(e) Whether or not the county proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or furthered the violation of this article upon which the action was brought, 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 county to continue the action.

(Ord. No. 002-2009, § 1)

**Sec. 2-728. - Expenses; attorney's fees and costs.**

(a) If the county initiates an action under this article or assumes control of an action brought by a qui tam plaintiff under this article, and the county prevails in such action, the county shall be awarded its reasonable attorney's fees, expenses, and costs.

(b) If the court awards the qui tam plaintiff proceeds under this article, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

(c) If the county does not proceed with an action under this article and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the qui tam plaintiff.

(d) No liability shall be incurred by the county for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this article, except as otherwise specifically provided by law.

(Ord. No. 002-2009, § 1)

**Sec. 2-729. - Exemptions to civil actions.**

(a) In no event may a person 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 county is already a party.

(b) No court shall have jurisdiction over 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 county, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the county manager before filing an action under this article based on the information.

(c) No court shall have jurisdiction over an action where the person bringing the action under this article is:

- (1) Acting as an attorney for the county; or
- (2) An employee or former employee of the county,

and the action is based, in whole or in part, upon information obtained in the course or scope of county employment.

(d) No court shall have jurisdiction over an action where the person bringing the action under this article obtained the information from an employee or former employee of the county.

(Ord. No. 002-2009, § 1)

**Sec. 2-730. - Protection for participating employees.**

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of employment by his or her employer because of lawful acts done by the employee in furtherance of an action under this article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this article, shall have a cause of action under F.S., § 112.3187.

(Ord. No. 002-2009, § 1)

**Sec. 2-731. - Burden of proof re claims under contracts; presumption of false claim.**

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

(b) Upon request from the county, a contractor making a claim against the county for delay or other damages shall submit, within 20 days, a copy of the final bid takeoff, certified pursuant to this subsection. Failure to provide the requested certification shall constitute a forfeiture of the claim for delay or other damages. 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, and the contractor shall have the burden of proving that any such

claim for extended overhead is not false.

(Ord. No. 002-2009, § 1)

**Sec. 2-732. - Innocent claimant affirmative defense.**

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

- (1) The claimant submitted or caused to have submitted the claim to or against the county reasonably believing that such claim was free of any material misstatements, or any exaggerated, inflated, or unsubstantiated assertions or damages;
- (2) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;
- (3) 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
- (4) When information indicating that any element, statement, or allegation in the claim was false or misleading first became available, such claimant, within five business days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the county with immediate notice thereof.

(Ord. No. 002-2009, § 1)

**Secs. 2-733—2-750. - Reserved.**