

Service Contract Act Requirement

Companies with government service contracts may face complicated regulatory hurdles and increased scrutiny brought on by the McNamara-O’Hara Service Contract Act of 1965 (the “SCA”). Due to the government’s increased focus on salaries paid by government contractors, this regulation has recently come to the forefront and become a key enforcement tool used by the government.

The Wage and Hour Division of the Department of Labor (“DOL”) strictly enforces the SCA and has the authority to impose severe penalties if it believes violations have occurred. The SCA stipulates different minimum monetary wages, fringe benefits, holiday pay, vacation time, and other workplace standards for hundreds of different categories of employees. These minimums are often significantly higher than national or state minimum wages and labor standards.

Minimum Wages and Benefits Standards

The DOL issues Wage Determinations outlining minimum labor standards. Continuously monitoring promotions and job descriptions is important, because as an employee gains more responsibilities in his or her role, or changes roles within the organization, that employee may change categories and have a different minimum wage.

Additionally, employees may change benefit elections, including 401(k) match, or have life events which affect the benefits they receive throughout the year. Benefits must be tracked in real time and an employer may have to make a payment in lieu of benefits if an employee falls below the DOL threshold. Wage and benefit payments cannot make up for each other, and are evaluated on an hourly basis, not just as a whole. To complicate matters, Wage Determinations differ by region, which may result in different requirements. If employees work on multiple contracts, keeping track of how many hours each employee spends on each contract and which Wage Determination governs those contracts is also critical.

Key Compliance Issues

Historically, most SCA violations have been uncovered through employee complaints. However, in recent years, the

DOL has taken more of an active role in discovering non-compliance issues by hiring more investigators and more vigorously looking at contracts subject to the SCA. A recent Executive Order requires contractors to make pre-award disclosures of labor law violations and then to periodically disclose labor law violations post-award. It also directs federal agencies to increase consideration of labor law violations for contractor responsibility determinations.

Consequences of Non-Compliance

The penalties for non-compliance and labor violations can be extremely burdensome. Violations of the SCA could cost a company millions of dollars in back wages, benefits, and penalties, and may impact a contractors’ ability to compete for federal contracts. Consequences can include withholding federal funds, terminating contracts, personal liability for corporate officers, and debarment from bidding on government contracts for three years. Given the severity of these penalties, the best approach is to get out in front of the DOL, promptly address any violations, and make sure a system is in place which can monitor, rectify, and prevent violations.

The Chess Consulting Advantage

Our highly experienced team of government contract accounting, investigation and regulatory compliance experts have amassed years of experience in internal and external corporate investigations, risk assessments, and compliance reviews. We have worked with companies and their outside counsel to assess compliance on government contracts, address DOL audit questions, calculate SCA underpayments, develop and implement compliant payroll and timekeeping practices, and train employees throughout the organization on the SCA and its implications to the organization.

Given the nature of SCA actions, we can work directly with the company or under the direction of legal counsel to provide investigative services including technical accounting, internal control and government contract regulatory guidance and analysis, and data collection review and analysis, as well as other services that may be required. Our engagement teams are comprised of certified public accountants, certified fraud examiners, forensic accountants, corporate governance

specialists and regulatory experts. We understand how to work and communicate effectively with legal counsel, management and boards of directors. We specialize in combining government contracting and industry knowledge and experience with investigative techniques to uncover and interpret the facts surrounding alleged SCA violations and effectively convey those facts to legal counsel, the DOL, and other government agencies, as appropriate. Our professionals also analyze and, if necessary, reconstruct books and records, calculate underpayments, and evaluate the design and operating effectiveness of internal controls and business systems relevant to the alleged SCA violations.

Risk Assessment, Compliance, and Monitoring

In addition to helping contractors and their legal counsel to respond promptly and effectively after an SCA issue is discovered or an allegation has been made, Chess Consulting also helps contractors identify and remediate SCA compliance risks before they lead to a violation or alleged violation of the Act. Through comprehensive risk assessments, often conducted in conjunction with legal counsel, we give clients the tools and knowledge to understand their vulnerabilities and to design and implement policies, procedures and controls to remediate and mitigate their risks. Additionally, we help contractors identify, assess and mitigate the SCA compliance risks associated with potential mergers and acquisitions. We also help to educate contractor employees about red flags and response strategies and to develop effective mechanisms for internal reporting of potential SCA issues. This allows for prompt detection through automated systems, thereby helping contractors to meet their SCA compliance requirements, as well as their responsibilities to their employees, shareholders, and other stakeholders.

Our work includes reviewing and identifying internal processes and procedures for SCA monitoring, as well as determination of any potential underpayments to the employees. Notable client engagements include:

- *A publicly traded air transport government contractor.* The company provides air transport services to the government at numerous locations around the continental U.S. We assisted the company by determining underpayments of wages and benefits, implementing a monitoring process, and training employees on the requirements of the SCA.

Chess Consulting Differentiators

Deep industry knowledge and technical expertise which helps each client deal effectively with the complexities of the processes and issues facing its business.

Profitability focus concentrating on actions and solutions that create a competitive business advantage while fully complying with regulatory requirements.

Practical and creative solutions that effectively address difficult compliance and business issues.

Supportable positions that have been proven to withstand scrutiny from regulatory agencies such as the SEC, DCAA, DOJ, and GAO.