



October 21, 2008

**Request for Proposals: NCHRP 20-6, Study Topic 16-03,
Identification, Prevention, and Remedies for False Claims in Highway Improvement
Contracting**

Dear Attorney:

The Technical Activities Division of the Transportation Research Board (TRB), as part of its work with the National Cooperative Highway Research Program (NCHRP), plans to award a contract for a study and report. The research Problem Statement is enclosed for your consideration.

TRB anticipates an estimated 300-360 hour level of effort and compensation in the \$36,000.00 to \$45,000.00 range for this project. Research reports sponsored by this project are published in TRB's Legal Research Digests (LRD) series or in electronic format. Publications are made available to some libraries and to approximately 4000 transportation lawyers and officials through the TRB distribution network.

After reviewing the enclosed statement, if you are interested in being considered as the researcher and author, you should reply by mail or email on or before December 1, 2008 to:

James B. McDaniel
Counsel for Legal Research Projects
Transportation Research Board
500 5th Street, NW, 4th Floor
Washington, DC 20001

Tel: (202) 334-3209
Fax: (202) 334-2003
Email: jmcdaniel@nas.edu

Your reply should include: a statement of interest; a resume; a list of your prior publications (you may enclose one or two publications); a statement of resources you will allocate to this project; any additions, deletions, or changes you may wish to suggest for undertaking the work; and your requested compensation.

Offerors are evaluated by Project Panel members and NCHRP staff consisting of individuals collectively knowledgeable in the problem area. Evaluations are based upon the offerors': 1) experience in the subject area; 2) understanding of the work (demonstrated by the commitment of resources); 3) prior relevant publications (including briefs); 4) schedule for completing the work; and 5) price.

Feel free to call me at (202) 334-3209 if you have questions.

Sincerely,
James B. McDaniel
Counsel for Legal Research Projects

Enclosure
JBM/jlc

PROBLEM STATEMENT
NCHRP 20-6, STUDY TOPIC 16-3: IDENTIFICATION, PREVENTION AND
REMEDIES FOR FALSE CLAIMS IN HIGHWAY IMPROVEMENT CONTRACTING

Public owners are frequently confronted with inflated and fraudulent claims in highway improvement contracting, the extent of which has not been precisely determined. Multi-million dollar judgments and settlements in false claim cases have focused national attention on this issue.

A fundamental and unresolved issue is whether a false claim submitted to a state DOT on a FHWA/USDOT federally funded contract satisfies a legal requirement that the false claim be presented to the federal government. A recent decision of the United States Supreme Court establishes the test that must be met. The false claim need not be submitted directly to the Government, but it must be material in influencing the Government's decision to pay. *Allison Engine Company v. United States ex rel Sanders*, No. 07-214, June 9, 2008.

Some States and the District of Columbia have false claim statutes, which allow civil recovery at the state or municipal level and thereby avoid the presentment issue pending before the U.S. Supreme Court. Many states without false claim statutes are actively considering promulgating relevant legislation, regulations, and administrative procedures to protect the public interest. However, even among individuals and governmental agencies that are quite active in the civil false claims arena, a lack of knowledge exists concerning the applicability and reach of the Federal False Claims Act and alternative state and local administrative, regulatory and civil action statutory identification, prevention, and remedies for false and inflated claims in highway improvement contracting.

Research is needed to examine civil false claims activities of federal, state and local highway administrations. Attention should be focused on false claims defenses and agency liability in the highway construction claims, potential false claims abuses, taxpayer's actions, individual civil false claims state statutes and their implementation, court litigation, and administrative actions. In order to identify best practices and procedures, an assessment should be made of valuable lessons learned regarding how state and local highway agencies are dealing with false claims.

The scope of this project includes: defining false claims as it is set forth in case law, civil statutes, and other resources; distinguishing fraud; researching case law on false contract claims in connection with highways; reviewing the conflicting federal False Claims Act, state civil false claims statutes, qui tam provisions, taxpayers actions, or the equivalent; and reviewing administrative processes -looking for best practices and procedures in place for contract disputes resolution..

The scope of the project should include a brief survey directed to the appropriate state highway agencies to obtain information that aids in selecting 4 to 5 targeted states that have extensive experience in this area and various federal agencies to interview knowledgeable experts regarding techniques to prevent and remedy false claims. Personal direct travel to and from

meetings with selected knowledgeable personnel is required. In order to gain a complete understanding of best practice strategies these in-depth interviews should include the following:

For prevention

- Inspections
- Audits
- Prequalification conditions
- Report and certification requirements
- Quality control procedures
- Methods for states/federal agencies to exchange information on successful means for detecting false claims

For remedies

- Presentment issues and resolution following U.S. Supreme Court decision in *Allison Engine Co. v. United States* (07-214)
- Actions based on contributory role of third parties – inspection, false certifications, suppliers, subcontractors
- Compare remedies and standard practices for resolutions to identify effective best practices
- Damages
- Reviewing accepted methods for quantifying damages.

Based on the research and interviews conducted, this project should result in a summary of recent trends in States regarding the prevalence of civil false claim issues, statutory changes, administrative actions, and training, procedures and model forms and references. The goal is to produce a Legal Research Digest Report with relevant precedent and guidance along with a table of cases and authorities cited.

Research Implementation

This research will be conducted in 4 tasks pursuant to a firm fixed price agreement. The tasks will be as follows:

Task 1. **Research Plan and Detailed Report Outline.** The consultant will conduct background research and collect relevant data. Based on the initial but complete review of the source material, the consultant will propose a detailed report outline and questionnaire. The outline should be about 10-15 pages and contain sufficient detail to inform the committee of what a 75-100 page, typewritten, double-spaced report will contain. This outline should also contain the estimated pagination for each proposed section and/or subsection. This material will be submitted to the Principal Investigator for committee consideration and approval.

Estimated Length of Time: 30-45 days
Estimated Work Effort: 80 hours

Task 2: After TRB approval of the detailed outline, the consultant should conduct additional research, surveys, case and statutory/regulatory analysis, and extensive field interviews to collect additional primary data to the extent necessary.

Estimated Length of Time: 45-60 days
Estimated Work Effort: 80-120 hours

Task 3: Draft report in accordance with the approved outline (including modifications required by TRB). Report will be in a format to be published as a Legal Research Digest. It should be properly supported with footnotes cited in accordance with the "The Bluebook: A Uniform System of Citation, Eighteenth Edition."

Estimated Length of Time: 30-45 days
Estimated Work Effort: 80 hours

Task 4: Revise report as necessary. The consultant should estimate that 2 revisions will be necessary. One revision may be required after review by the Principal Investigator and members of a select subcommittee. Additional revisions may be required after the full committee has reviewed the report.

Estimated Length of Time: 30 days
Estimated Work Effort: 60-80 hours

Total Estimated Length of Time: 270-300 days
Total Estimated Work Effort: 300-360 hours
Estimated Compensation: \$36,000-45,000.

25% paid upon submission and approval of the Task 1 Report
50% paid upon submission and approval of the Task 3 Report
25% paid upon submission and approval of the Final Report

If an offeror's estimation of length of time and estimated work effort differs from those above, the offeror should use his/her estimates.

An important factor in rating offers will be the offeror's commitment to promptly undertake and complete this study.

Submit Statements of Interest on or before December 1, 2008 by mail or email to:

James B. McDaniel
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Transportation Research Board
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