

Employee Qualifications, Take Two

Written by Nick Sanders
Monday, 27 July 2020 05:37

Less than a year ago we [wrote](#) an article discussing *employee qualifications* in which we asserted that, in T&M and cost-type contracts, only labor that meets qualification criteria is reimbursable labor. In other words, if you submit an invoice for labor that does not meet contractual qualifications, you should not expect to receive reimbursement for that labor.

In addition, your attempt to receive reimbursement for contractually unqualified labor may subject you and/or your company to allegations that you violated the False Claims Act. If that happens, the costs of supporting the government's investigation and the costs of defending in the resulting litigation likely are going to dwarf the original labor costs you tried to bill.

It's not all negative, though. In that 2019 article, we tried to point out that focusing compliance resources on employee qualifications not only reduced FCA exposure, but also led to possible revenue and/or project margin upsides. We noted that a focus on employee qualifications would possibly create opportunities to move employees to a higher hourly labor rate category during contract performance if they met the criteria for the higher billing rates through gaining more years of experience, obtaining a degree, and the like. In our view, there was, and is, a strong argument for looking hard at employee qualifications during both the proposal and execution phases of the contract.

Flash forward to July, 2020, where iNovex Information Systems, Incorporated (iNovex), located in Annapolis, Maryland, is having a bad year. True—we are all having a bad year. But iNovex's year included paying the United States government \$962,747.42 “to resolve federal False Claims Act allegations that iNovex knowingly billed the National Security Agency (“NSA”) ... for work performed by certain iNovex employees who did not meet all of the specialized qualifications required under their contract with NSA.”

The DoJ [press release](#) stated—

In March 2012, iNovex was awarded an NSA contract. Given the complexity of the work that was to be performed under the contract, the NSA specifically included as a term of the contract the requirement that iNovex provide personnel possessing the training, qualifications, and clearances to accomplish all tasks identified in the contract. To assure that iNovex understood the skills its employees were required to have to perform the services under the contract, NSA included an appendix to the contract that expressly referenced and attached a set of labor categories prescribing the experience, educational qualifications, and specialized certifications needed for the classes of personnel billed under the corresponding labor category, including the hourly rate that would be paid by the NSA.

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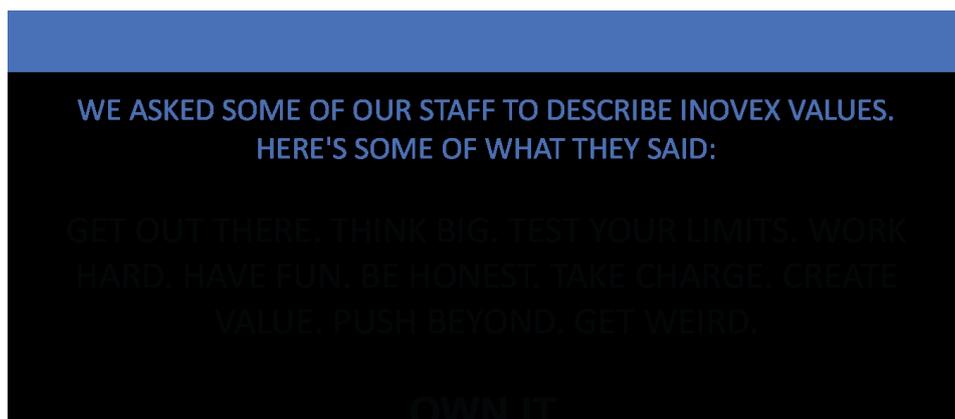
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According to the civil settlement agreement, the settlement resolves the allegation that between November 9, 2012 and April 14, 2016, iNovex knowingly billed the NSA, and the NSA paid, for work performed by iNovex employees who were identified by iNovex, on the invoices it presented to the NSA, as System Administrator-IV (“SA-IV”) and System Administrator-III (“SA-III”) positions, despite the fact that those employees did not timely obtain a specific certification required for payment of the rates corresponding to those two labor categories.

Thus, failure of certain contractor employees to hold a specific certification, which was called-out in the contract as a necessary qualification for two labor categories, led to allegations that iNovex violated the False Claims Act. Although the settlement amount was relatively small as these things go, we’re sure the company spent far more in attorney fees—all of which would be unallowable pursuant to the cost principle at FAR 31.205-47.

So that’s not the best 2020 iNovex could have had.

Before we move on, let’s note that we visited the iNovex website to see what the company had to say for itself. This is what we found:



We did not notice anything about behave in an ethical fashion, act with integrity, or comply with contract terms.

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Just sayin'.