It only cost Alutiiq International Solutions LLC (AIS), a subsidiary of Afognak Native Corporation (Afognak) and an Alaskan Native Corporation, $1.26 million to resolve allegations that its personnel engaged in a kickback and fraud scheme related to a multi-million-dollar GSA contract to modernize the Harry S. Truman Federal Building in Washington, D.C. As part of the resolution, AIS was permitted to enter into a Non-Prosecution Agreement (NPA), in which further charges against the company would be waived. Here’s **a link** to the DOJ press release.

$1.26 million seems like a lot of money. It *is* a lot of money! But compared to what could have happened to AIS, this is about as happy an ending as one could have hoped for.

Let’s discuss.

According to the DOJ—

[Starting in] June 2010, the AIS project manager … began receiving kickbacks from a subcontractor on the project in exchange for steering work to the subcontractor. These kickbacks initially were paid in the form of meals, vacations, and other things of value but, by 2015, the AIS project manager began demanding cash kickbacks equivalent to 10 percent of the value of contract modifications that were being awarded to the subcontractor. At the same time, the AIS project manager billed the GSA for services purportedly provided by an on-site superintendent when there was no superintendent on site. The AIS project manager’s false and fraudulent billings caused the GSA to pay $568,800 to AIS that it should not have paid. Additionally, when making contract modification requests to the GSA, the AIS project manager illegally inflated the estimated costs that AIS received from its subcontractor, resulting in $690,644 in monies paid by GSA to AIS.

Bribery. Kickbacks from subcontractors. False statements. False claims. The mind boggles at the world of hurt that AIS was facing, should the DOJ have decided to play hardball with the company.

Those were our first thoughts. Then we began to try to imagine how the scheme was perpetrated. It seems clear that the project manager had to run roughshod over the AIS

buyers/subcontract administrators assigned to the project. The project manager (allegedly) awarded inflated contract modifications to the subcontractor, and that doesn’t happen when somebody other than the project manager formalizes the modifications. That shouldn’t happen if somebody was performing independent cost/price analyses on the subcontractor’s Requests for Equitable Adjustment (REAs) to make sure the subcontractor was receiving only the amount to which it could support entitlement. It seems to us as expected purchasing system independent checks and balances were missing. Further, this (alleged) misconduct seems to have been perpetrated over a period of at least five years. Thus, our thoughts went to: “*where was the purchasing department when all this was going on?”*

It has got to be a red flag when the project manager tells the buyer(s) or subcontract administrator(s) that they don’t need to do any kind of analysis, just award the mod in the value requested. Just as it’s also a red flag when the project manager tells the purchasing department to award a subcontract to one named source without bothering to get competition or to analyze whether the subcontract price is fair and reasonable. If we were going to set up an internal control or management surveillance function, we would definitely look for those red flags, and others like them.

It is possible that AIS learned of the (alleged) project manager misconduct through its normal internal control and/or management surveillance functions, because the DOJ noted that “AIS fully and completely cooperated with the investigation from the moment it became aware of the conduct” and “as soon as AIS and Afognak learned of the misconduct, the companies engaged in extensive remedial measures.”

Other actions that DOJ reported with approval included:

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AIS … committed to paying full restitution to compensate for the GSA’s losses and, at the time of the offense conduct, provided its profits from the relevant contracts to Afognak, which uses these profits to support Afognak’s Alaskan Native shareholders, who are members of severely economically disadvantaged villages.

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… The companies engaged in extensive remedial measures, including enhancing their compliance program and internal controls by, among other things:

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Revising their policies and procedures to complete the separation of the contract procurement and contract execution functions

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Conducting annual risk assessments related to government contracting

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Conducting regular audits of a sampling of all procurement files and reviewing all procurements over certain cost thresholds

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Introducing additional management controls for prime contracts, subcontracts, and government projects that includes requiring higher levels of management to approve contract awards and budget changes

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Requiring additional trainings specific to the Anti-Kickback Act, including training quizzes, ethics publications, and additions to the annual Code of Conduct training

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Tracking all compliance reports received through a third-party hotline and email accounts

Now one could argue that AIS should have been doing all those things already as a part of its government contracting compliance program. But better late than never! Compare your own company’s controls to the list of corrective actions that AIS agreed to implement. How do you stack up? If you are not doing at least those things, you may have compliance risks of which

you are unaware.

Finally, let’s discuss the situation of the (now former) AIS project manager whose alleged misconduct led to AIS’ favorable settlement and NPA. According to the DOJ press release—

A federal grand jury in the District of Columbia returned an indictment charging the AIS project manager … with conspiracy to violate the Anti-Kickback Act, and four counts of wire fraud, in May 2019. Trial is currently scheduled for Dec. 7, 2020, before U.S. District Court Judge Amy Berman Jackson. An indictment is merely an allegation, and a defendant is presumed innocent until proven guilty beyond a reasonable doubt in a court of law.

We are not lawyers here, but a Google search seems to indicate that a violation of the Anti-Kickback Act subjects the perpetrator to a fine of up to $25,000, felony conviction punishable by imprisonment up to five years, or both. In addition, each count of wire fraud may carry with it a penalty of up to $250,000, imprisonment of up to 20 years, or both. Thus, it seems to us that the (former) AIS project manager is facing spending the rest of his life in a Federal prison, should he be convicted of the charges in December.

We urge our readers to learn from this real life story.