

The Department of Justice [reported](#) on April 7, 2010 that Learning Tree International, Inc. had agreed to pay \$4.5 million to settle allegations of violations of the False Claims Act. Now as FCA settlements go, \$4.5 million isn't particularly large. In September 2009, Pfizer paid the U.S. Government \$1 billion as part of an FCA settlement. In April 2009, Network Appliance (NetApp) paid \$128 million as part of its FCA settlement. (For those interested, the Top 100 FCA settlements are listed [here](#).) The point is, a settlement of \$4.5 million indicates either a weak or a complex case.

But what interested us was the nature of Learning Tree's alleged FCA violation. According to the DOJ announcement, Learning Tree had a contract with the General Services Administration (GSA) to provide information technology training to Federal government employees. Learning Tree sold its courses in multiple-course packages known as "vouchers" or "passports," according to the DOJ. Normally, one purchases a passport that entitles one to attend several courses over a period of time. Obviously Learning Tree receives the passport price up-front and if one doesn't use all the courses one has purchased before the expiration date, then too bad.

But according to the DOJ, the GSA negotiated different payment terms in order to “prevent the United States from paying for training services that are not actually rendered.” The contract reportedly required that Learning Tree invoice the Government only for courses that were actually taken—or, as the DOJ phrased it, “as services are provided.” Learning Tree was accused of “knowingly invoic[ing] federal agencies in advance for multi-course training packages before employees of the purchasing agencies had attended the full number of courses available under each.” In addition, the company allegedly retained the fees it had billed in advance after the passport period had expired and it had become clear that the federal employees would not be able to take the courses for which the Federal government had been billed. It never offered its Federal customers a refund or credit for funds it had billed in advance, for services never provided—i.e., for money to which it was not contractually entitled.

We take away two lessons from this story. The first lesson is that commercial business practices don’t often work well in the world of Federal government contracting. What determines acceptable business practices is determined by the contract terms and conditions, not what makes “common sense.” In particular, contractors must clearly identify their Federal contracts and make sure their accounting and

billing departments treat them differently than their other commercial contracts. Billing terms and conditions must be communicated to the accounting and billing departments to avoid problems. When all else fails, read the contract and do what it says.

The second lesson concerns failure to promptly disclose to one's Federal customers that they are due a refund or credit. This most commonly happens when final indirect cost rates are less than contractual billing rates on cost-plus and/or T&M contract types. Many companies see no reason to let their customers know they've been overbilled, even though contract clause 52.216-7 ("Allowable Cost and Payment") clearly states that they must do so. This situation is also found when a company receives a year-end volume rebate or retroactive discount from a commercial vendor—and they do not record that transaction as a credit to the original debit (expense) they included as either a direct or indirect cost billed to the Federal government (in violation of the cost principle at FAR 31.201-5 ("Credits")). In either situation, companies are holding on to funds that don't belong to them—also known as receipt of "overpayments".

The Federal government takes a dim view of contractors that don't promptly notify customers of overpayments that they've received. Learn the lesson from Learning Tree and don't bill Federal customers in violation of contract terms, and promptly notify customers when overpayments are received. Don't be accused of violations of the False Claims Act.

Learn from Learning Tree: Give Back Funds Owed to Uncle Sam

Written by Administrator
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