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Current Issues Affecting Government Contractors ■

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By Alston & Bird's Government Contracts Group

The GovCon Files

It's Good to Be King: The Curious Case of *United States v. JAAAT Technical Services*

As every experienced government contractor can attest, doing business with the federal government is anything but business as usual. In virtually every respect, the government sets the rules and calls the shots. This is particularly true in federal contracting's formal dispute resolution under the Contract Disputes Act, which in addition to waiving the government's sovereign immunity for contract claims, establishes the procedural requirements for resolving them.

In large part because of principles of privity of contract and the inherent limitations on the scope of the waiver of sovereign immunity, it is a historical reality that the government generally shies away from involving itself in downstream disputes arising between prime contractors and their subcontractors and suppliers. And any prime contractor attempting to pass through a lower-tier subcontractor's or supplier's claim ostensibly predicated upon the acts or omissions of the government is well-advised to abide by the limitations derived from the Supreme Court's 1943 decision in *Severin v. United States*, lest the claim be dismissed out of hand.

Of course, none of this is to say that Congress has made no effort to protect lower-tier subcontractors and suppliers. One need only consider the payment obligations of prime contractors imposed by the Prompt Payment Act, and the payment protections afforded by the Miller Act to certain public works subcontractors and suppliers, to know Congress indeed has made provision for (some of) those the government does not contract with directly but whose labor and materials are provided for the ultimate benefit of the government. However, as a recent case demonstrates, the government can and will more directly enter the fray to protect important governmental interests, which can have dramatic effects on prime-subcontractor relations.

In *United States v. JAAAT Technical Services, LLC, et al.*, the United States sued to obtain a temporary restraining order and preliminary injunction against three private parties: JAAAT Technical Services, LLC, the government's prime contractor on various construction projects in the Southeast; Tetra Tech Tesoro, Inc., one of JAAAT's subcontractors; and JAAAT's payment bond surety. The government sought to enjoin the defendants from taking any action that

would interfere with JAAAT's ability to disburse payments to subcontractors and suppliers from funds paid to JAAAT by the government. The government also sought to enjoin Tetra Tech from enforcing an earlier state court injunction that would have prohibited JAAAT from disbursing any funds to subcontractors and suppliers on the projects.

The United States, acting through the Army Corps of Engineers, hired JAAAT to oversee construction of various improvements at various military bases located in North Carolina and Georgia. As it was required to do, JAAAT obtained payment and performance bonds for the projects, which were issued by its surety and other co-sureties. Rather than perform the construction work itself, however, JAAAT subcontracted with Tetra Tech, which is described in court filings as the general contractor responsible for physically executing the construction work.

During the course of performance, disputes between JAAAT and Tetra Tech arose. Unable to resolve their dispute amicably, the parties then engaged in a multifaceted legal dispute that spawned—as of the writing of this article, anyway—no less than 10 separate lawsuits in federal and state courts throughout the country.[1]

The Three North Carolina State Court Cases

On November 21, 2014, Tetra Tech filed three separate cases (one for each project located in the state) against JAAAT in North Carolina state court. As described in court filings, all three projects required the construction of a facility to house a flight simulator, a brigade headquarters building, and an administrative training facility. In each case, Tetra Tech alleged, among other things, that: (1) JAAAT had breached its contract with Tetra Tech by failing to make required payments to Tetra Tech; (2) JAAAT had misappropriated the funds Tetra Tech was entitled to receive under the contract, which included more than $660,000 for design consulting services; and (3) JAAAT violated the federal False Claims Act by falsely certifying in its payment applications to the Corps that all undisputed amounts owed to subcontractors had been or would be disbursed from monies paid to JAAAT by the Corps. Tetra Tech also sought injunctive relief preventing JAAAT from using any monies received from the Corps for any purpose unless and until Tetra Tech was paid in full.

All three cases were consolidated. The superior court judge presiding over the consolidated action issued a preliminary injunction against JAAAT on July 16, 2015, prohibiting JAAAT from using any money collected from its contracts with the Corps to pay any of its other subcontractors or suppliers before paying Tetra Tech. The injunction also required JAAAT to hold all money received in escrow pending further order of the court.

The Two Georgia State Court Cases

The contract between JAAAT and the Corps also included expansion of a facility located in Georgia at Fort Gordon. There, JAAAT subcontracted Tetra Tech to provide the architectural, engineering, design, and other consulting services for that work. Alleging that JAAAT had failed to pay Tetra Tech for the services Tetra Tech had rendered, Tetra Tech sued JAAAT for breach of contract and unjust enrichment in two separate Georgia superior courts in December 2014.

As it had in the (consolidated) North Carolina cases, Tetra Tech petitioned for injunctive relief to prevent JAAAT from using any monies received from the Corps for any purpose prior to paying Tetra Tech in full. In January 2015, JAAAT removed one of the cases to federal court. In the remaining state court case, Tetra Tech repeated its allegations that JAAAT had breached the subcontract by failing to pay Tetra Tech as agreed. Tetra Tech also alleged JAAAT breached its fiduciary duties owed to Tetra Tech under a constructive trust theory of recovery, and that JAAAT converted monies due and owed to Tetra Tech.[2]

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1 The timeline below attempts to bring a little more clarity to the complicated procedural history of the parties' dispute.

2 JAAAT moved to dismiss the remaining Georgia state court case for lack of subject matter jurisdiction, which was granted. Tetra Tech has appealed.

The Two Virginia Federal Court Cases

After the North Carolina state court injunction was issued, on January 9, 2015, the surety filed suit against its bond principal, JAAAT, in the federal District Court for the Eastern District of Virginia, seeking indemnification from JAAAT for bond claims it had received from other subcontractors alleging they were owed money that had not been paid. JAAAT filed a third-party complaint against Tetra Tech, seeking indemnification against the surety's claims and an order requiring Tetra Tech to pay its subcontractors for working on the project.

On April 14, 2015, JAAAT filed an independent lawsuit against Tetra Tech in the same federal court. In that case, JAAAT claimed Tetra Tech breached the subcontract by failing to adequately perform the work of the subcontract, which caused significant delay on each of the projects located in North Carolina and Georgia. JAAAT claimed nearly $10 million in actual and consequential damages for these alleged delays.

No party informed the court in the Virginia surety case of the issuance of the North Carolina state court injunction, nor of the pending parallel lawsuit in the same court filed by JAAAT. Instead, all parties in the Virginia surety case consented to the court's issuance of an injunction that gave the surety control over all funds JAAAT received from the Corps for any work performed on each of the five projects. As part of the agreement, JAAAT also stipulated to final judgment in the surety's favor on the issues of breach of contract and specific performance of JAAAT's obligations under its indemnity agreement with the surety in an amount to be determined at a future hearing.

The parties' failure to disclose the existence of the state court injunction did not escape the court's notice in the Virginia surety case for long. The government ultimately initiated a lawsuit of its own seeking to compel JAAAT's payment to subcontractors and suppliers, which were prevented under the state court injunction and the stipulated federal injunction. Upon learning of the existence and scope of the state court injunction, the district court in the Virginia surety case concluded that the parties were forum shopping and dissolved the federal injunction to which the parties had stipulated. Following this dismissal, JAAAT and the surety stipulated to a partial final order in favor of the surety on its breach of contract, specific performance, and declaratory judgment claims.

The Single California Federal Court Case

Despite the multitude of other suits in which they could have intervened, the sureties joined to file a case in the federal District Court for the Central District of California against Tetra Tech, seeking indemnification for payment and performance bond claims received by the sureties for bonds issued under the contracts. Mercifully, because of the pendency of all the other actions, on September 8, 2015, this case was stayed pending the outcome of the other cases.

The Federal Government Enters the Fray

Not surprisingly, the federal government was not a party to or otherwise directly participating in any of the cases filed by JAAAT, Tetra Tech, or the sureties in North Carolina, Georgia, Virginia, or California. But in May 2015 that changed: in a remarkable move, the government filed its own lawsuit in the District Court for the Eastern District of North Carolina against JAAAT, Tetra Tech, and the surety.

Simultaneously with the filing of its complaint, the government filed a motion for injunctive relief, alleging that as the prime contractor, JAAAT was obligated to pay all of its subcontractors promptly from the proceeds of each pay request submitted to and approved and paid by the Corps, and that JAAAT's consistent failure to pay the subcontractors despite these requirements necessitated injunctive relief to compel the required payments. To accomplish these goals, the government requested that: (1) a declaratory judgment be entered holding both the state court injunction and federal court injunction, which at this time still were in effect, conflicted with federal laws that required prompt payment to subcontractors and suppliers;[3] (2) a temporary restraining order and preliminary and permanent injunctions be issued

[3] The government specifically asserted that the state and federal court injunctions violated the Prompt Payment Act, 31 U.S.C. §3901, et seq., which requires prime contractors to pay their subcontractors and suppliers promptly from the proceeds of payments made by the United States government, and its implementing regulations that were incorporated into JAAAT's contracts.

prohibiting the parties from complying with or otherwise attempting to enforce the state and federal injunctions; and (3) an order be issued directing the disbursement of the funds to third parties (i.e., other subcontractors and suppliers) who were owed money but not paid.

To support its claims for relief, the government argued that, if enforced, the state and federal court injunctions would cause irreparable harm to the government in the form of the likely termination of the contract with JAAAT. As a result, projects the government claimed were "critical to mission success" of soldiers and operations within the Army would be stopped, and components vital to the War on Terror would be delayed. To avoid these undesired effects, the government proposed a disbursement process that it argued would comport with federal law and that would be in the best interest of all parties. The proposed process would prohibit all defendants from taking any action that would interfere with JAAAT's ability to pay, from monies obtained from the Corps, undisputed amounts owed to other subcontractors and suppliers. To support this proposition, the government argued it had a compelling interest in ensuring that the other subcontractors and suppliers on the projects were paid, an interest it claimed the surety and JAAAT shared.

Tetra Tech opposed the government's request on several grounds. First, Tetra Tech argued that there were no exigent circumstances justifying injunctive relief, which Tetra Tech argued was supported by the government's admission that it did not anticipate making any immediate payments to JAAAT. Second, Tetra Tech opposed the request on grounds the government improperly was requesting the federal court "substitute its judgment" in place of the judgment of the North Carolina state court judge who entered the state court injunction, relying on "longstanding principles of comity" that ordinarily compels a federal court's deference to a prior state court ruling. Further, Tetra Tech argued that the federal court lacked the ability to issue injunctive relief here because the North Carolina state court had exclusive jurisdiction over payments owed to JAAAT under the so-called Karatz Doctrine,[4] and because the Anti-Injunction Act barred such an order. Finally, Tetra Tech argued that even if the federal court had the power to enter an injunction, it should refrain from doing so under the abstention doctrine.[5]

The North Carolina district court rejected Tetra Tech's arguments and issued the requested injunctive relief, concluding:

1. The United States will be irreparably injured unless the defendants[, Tetra Tech, JAAAT, and the surety,] are temporarily restrained;

2. [Tetra Tech, JAAAT, and the surety] will not be harmed by a temporary restraining order;

3. the United States had provided sufficient information to show that it is likely to prevail on the merits; and

4. the injunction is in the public interest.[6]

Consequently, the district court ordered the Corps to deposit monthly payments owed to JAAAT directly into the registry of the court, accompanied by a list of subcontractors to be paid from those amounts, thereby effectively bypassing any payment to JAAAT directly. The district court further enjoined Tetra Tech from taking any additional steps on an attempt to enforce the state court injunction.

The Significance of the JAAAT-Tetra Tech Dispute and Its Aftermath

The final chapter of the dispute between JAAAT and its principal subcontractor, Tetra Tech, is still being written. But the incredible escalation of their dispute—manifested in a multifaceted legal battle involving nearly a dozen separate lawsuits in federal and state courts around the country—resulted in an incredible reaction from the federal

[4] *Lion Bonding & Sur. Co. v. Karatz*, 262 U.S. 77, 89 (1923). In *Karatz*, the Supreme Court held, "Where a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts."

[5] *Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* doctrine holds that "a federal court should abstain from interfering in a state proceeding, even though it has jurisdiction to reach the merits, if there is (1) an ongoing state judicial proceeding, instituted prior to any substantial progress in the federal proceeding; that (2) implicates important, substantial, or vital state interests; and (3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in the federal lawsuit." *Moore v. City of Asheville, N.C.*, 396 F.3d 385, 390 (4th Cir. 2005).

[6] Temporary Restraining Order, No. 5:15-cv-00227, Docket No. 17, p. 2.

government: the filing of its own lawsuit against private parties seeking injunctive relief to allow payments to be made to other subcontractors and suppliers in accordance with federal laws and regulations designed to ensure timely payment on federal works of improvement. This surprising turn of events is significant for several reasons.

First, the government routinely distances itself from the countless payment disputes that arise between the government's prime contractors and their lower-tier subcontractors and suppliers, relying on the protective mechanisms afforded by the Prompt Payment Act and Miller Act. But the dispute between JAAAT and Tetra Tech—and particularly the impact the dispute had on every other subcontractor and supplier on the projects at issue—caused the government to take the step of initiating its own lawsuit against the parties to compel their compliance with existing federal laws.

Second, there is no doubt that the subcontract between JAAAT and Tetra Tech was a sophisticated, highly negotiated agreement that detailed the rights and remedies of the parties in the event of a dispute. While the request for and ultimate issuance of injunctive relief preventing payments by JAAAT to any other subcontractor or supplier unless and until Tetra Tech was paid likely was not contemplated by the agreement, in all likelihood the parties' agreement did not contemplate the government's seeking and receiving an injunction of its own that resulted in the diversion of contract payments into the registry of a federal district court for disbursement to third parties. Effectively, the government's maneuver almost certainly disrupted JAAAT's and Tetra Tech's understanding of their respective rights and obligations to resolve payment disputes—in other words, the government's intervention undoubtedly changed the nature of the bargain reflected in JAAAT and Tetra Tech's agreement.

Finally, the legal machinations of the parties, reflected in the dozen or so active lawsuits spread across multiple states, and the government's ensuing suit to protect the payment rights of parties not involved in that dispute no doubt has corrupted whatever partnering efforts the Corps attempted to develop in the first place. As anyone experienced with Corps-managed constructions projects knows, partnering has long been an objective and goal for the Corps. On these projects, from an outsider's perspective, that goal appears largely unattained.

Protest Decisions

GAO Clarifies Discussions and Discusses Clarifications

Procurement guidelines are clear for government agencies and departments: treat all vendors fairly and do not conduct unauthorized communications with vendors during the solicitation. But which types of communications are fair and which are unauthorized? During a procurement, must agency discussions about quotation or proposal submissions be conducted with *all* qualified vendors? This question was a paramount issue in a recent protest of an award from the U.S. Department of the Air Force. The protestor, International Waste Industries of Rockville, Maryland (IWI), sought review by the Comptroller General of the U.S. Government Accountability Office (GAO) to determine whether there were improper agency actions by the agency holding discussions with other vendors but not with IWI. The GAO concluded that the Air Force, having conducted discussions with one vendor, was required to also conduct discussions with all other vendors in the competition, including IWI. Importantly for practitioners, the GAO's findings also distinguished between what constitutes discussions and what constitutes clarifications. This key distinction has the potential to assist vendors in understanding a potential basis for future protests.

The Air Force issued a Request for Quotations (RFQ) for a fixed-price contract for a solid waste incinerator to be delivered to a joint base and to be used by the Missile Defense Agency. Per usual, the award was to be made to the vendor submitting the lowest-priced technically acceptable quotation that conformed to the terms of the solicitation. Addressing permitted discussions during the solicitation, the RFQ provided that "the Government reserves the right to conduct discussions if later determined by the contracting officer to be necessary."

IWI was one of 11 vendors that submitted timely quotations. However, the Air Force determined that only one of those vendors, who happened to be the highest-priced vendor, was technically acceptable. IWI initiated an agency-level protest after it was debriefed and learned that IWI's quotation had been declared technically unacceptable because,

among other things, IWI did not specifically state whether one of the materials it identified for the proposed work was actually replaceable. Yet, the Air Force had conducted communications with the winning vendor about the awardee's quotation. Given such a technicality, IWI insisted that it could have clarified the issues and should have been given the opportunity, and that the agency's determination on IWI was unreasonable. The Air Force denied IWI's protest, and IWI appealed to the GAO.

The GAO reviewed the procurement for consistency with the concern for fair and equal competition and for consistency with the terms of the solicitation. The GAO found that the Air Force was not required to conduct discussions at all, per the procurement guidelines; however, "where an agency avails itself of negotiated procurement procedures, the agency should fairly and reasonably treat offerors in the conduct of those procedures." The Air Force asserted that its communications with the winning vendor were only permissible clarifications or limited exchanges. The GAO investigated deeper. The authorized types of communications relevant to this procurement are contained in Federal Acquisition Regulations (FAR) § 15.306. According to the law, clarifications are communications between an agency and an offeror for the purpose of eliminating minor uncertainties or irregularities in a quotation or proposal and do not give an offeror the opportunity to revise or modify its quotation or proposal. If an agency is simply clarifying an issue, no cures or material alterations are to be permitted for deficiencies or omissions. Discussions are different—they can be initiated by an agency to obtain information essential to the quotation or proposal such that it is appropriate for vendors to materially revise or modify their quotations or proposals. The GAO emphasized that distinguishing between clarifications and discussions is based on how the vendor acts, not on how the agency characterizes the communications. "[W]hen an agency conducts discussions with one offeror, it must afford all offerors remaining in the competition an opportunity to engage in meaningful discussions," noted the GAO. Ultimately, the GAO determined that the Air Force engaged in discussions with the winning vendor, instead of mere clarifications as the agency asserted, and those discussions afforded the vendor the opportunity to revise portions of its quotation, an opportunity that other vendors were not given (but should have) by the Air Force.

The GAO relied heavily on the FAR and other GAO decisions to distinguish between agency discussions and clarifications with potential vendors during this particular procurement process. Likewise, companies seeking contracts with the federal government may be able to rely on the FAR to ensure they are treated fairly and equitably during a given solicitation. Companies should be mindful of anticipated evaluation timelines to mark periods for when agency communications might be permissible, then keep a careful register on which types of communications are sought by the agency. Be mindful: an agency's communications with vendors may ultimately be a point of protest upon an award announcement.

U.S. Gov't Accountability Office, *Matter of: International Waste Industries*, B-411338 (July 7, 2015).

Changes to the Marketplace

SBA Seeks to Extend Small Business Participation to Any Tier

On December 26, 2013, the National Defense Authorization Act for Fiscal Year 2014 ("2014 NDA") was signed into law. Section 1614 of that law allows an other than small prime contractor that has an individual subcontracting plan for a contract to receive credit towards its small business subcontracting goals for subcontract awards made to small business concerns at any tier. We wrote about the statute at the time, which you can read here.

Under the current rules, prime contractors are only permitted to take "credit" towards agreed goals for small business subcontractors (including women-owned, economically disadvantaged, HUBZone, veteran-owned, and service-disabled-veteran-owned small businesses) from subcontracts at the immediate "first tier" below the prime contractor. As a result, the current rules provide an incomplete picture of true small business participation and, some would argue, encourages the creation and utilization of "sham" and pass-through small businesses for large subcontracts. This is especially the case in defense, health care, and construction contracts, where the first-tier subcontracts are often in the tens of millions or hundreds of millions of dollars, at or above applicable size standards. As we also have written

about previously, the Department of Justice, Small Business Administration (SBA), and even contracting agencies themselves have become far more aggressive in efforts to shine a light on subcontracting practices that push or overstep the boundaries of good-faith efforts to provide legitimate small business with the "maximum practicable opportunity" to participate in federal procurement.

After a lengthy period of review, the SBA has finally released its proposed regulations to implement the significant shift in the small business subcontracting rules. On October 6, 2015, the SBA proposed to amend its regulations to implement Section 1614 of the 2014 NDA. The proposed amendments would allow a large prime contractor that has an individual subcontracting plan for a contract to receive credit towards its small business subcontracting goals for subcontract awards made to small business concerns at any tier. With this benefit, however, comes additional responsibility and risk. The proposed rule also requires that a prime contractor implement the statutory requirements related to the subcontracting plans of all subcontractors that are required to maintain such plans, including the requirement to monitor subcontractors' performance and compliance towards reaching the goals set out in those plans as well as their compliance with subcontracting reporting requirements. Accordingly, a prime contractor cannot just pass down the obligation to have a subcontracting plan to large subcontractors, but instead must make sure those businesses have effective plans, and make appropriate efforts to reach stated goals.

Although the SBA proposed this new rule, Section 1614 can only take effect after the regulation is implemented. Moreover, the FAR Councils have yet to propose amendments to the FAR that are parallel to these SBA rule changes. As a result, the current system for counting small business subcontractors' participation remains in place while the SBA and FAR Councils, as well as contracting agencies, work out the challenges related to the new "holistic" approach to small business subcontracting credit.

Government Contractor Litigation

Supreme Court Poised to Resolve Split on Implied Certification Theory of False Claims Act Liability

An important circuit split involving the False Claims Act (FCA) may soon be resolved as the U.S. Supreme Court has granted certiorari in a case involving the implied certification theory of FCA liability.

The FCA is the government's primary tool to combat procurement fraud, with its effectiveness reinforced year after year. According to the Department of Justice, in 2015 alone, the government recovered more than $3.5 billion from FCA settlements and judgments, bringing the total recovery since January 2009 to approximately $26.4 billion. Traditionally, and still at its most fundamental level, the FCA targets false or fraudulent claims that are knowingly presented to the government for payment. Over the last 30 years, however, major amendments to the law and numerous cases interpreting those amendments have broadened the scope of the FCA.

In some jurisdictions, this includes expansion beyond objectively false and fraudulent claims to situations where the government receives from a contractor precisely the goods and services it bargained for and at the agreed upon price. Liability in these cases derives from the contractor's failure to comply with statutory, regulatory, or other, nontechnical contractual requirements governing the deal, like failure to properly subcontract to small businesses or to pay prevailing wages, for example. This theory of liability, known as the implied certification theory of liability, is recognized in the majority of circuits, but not all of them, resulting in the circuit split that the Supreme Court is poised to resolve.

Two FCA decisions in 2015 further reinforced the lingering question of the propriety and viability of the implied certification theory of liability. In March 2015, the First Circuit Court of Appeals endorsed the implied certification theory of liability in *United States v. Universal Health Servs., Inc.*, 780 F.3d 504 (1st Cir. 2015). In that case, the relators filed a qui tam action alleging that a provider of mental health services in Massachusetts violated the FCA by submitting invoices for services to a state Medicaid agency even though it had not complied with certain regulatory obligations.

After a Massachusetts district court dismissed the complaint, the First Circuit reversed, holding that noncompliance with mandatory regulations can trigger FCA liability when compliance with such regulations is a condition of payment. According to the court of appeals, each time the provider submitted a claim for payment it implicitly communicated that it had conformed to relevant program requirements, and if it had not complied, FCA liability could attach.

A few months later, in June 2015, the Seventh Circuit also weighed in on the implied certification question, but expressly declined to adopt this theory of FCA liability. In *United States v. Sanford-Brown, Ltd.*, 788 F.3d 696 (7th Cir. 2015), a relator filed a qui tam action alleging that Sanford-Brown College and its parent company violated the FCA by receiving subsidies despite its alleged violation of the Higher Education Act and the program participation agreement (PPA) it entered into with the U.S. Secretary of Education. The Seventh Circuit rejected this premise of the relator's claims, holding that neither violation of the PPA nor of the statutes and regulations incorporated into the PPA alone was sufficient to trigger FCA liability unless there is proof that the original agreement was entered into fraudulently.

With the First Circuit's decision in *Universal Health Services* and the Seventh Circuit's decision in *Sanford-Brown*, the implied certification split grew slightly wider. Although the majority of circuits have upheld some form of the implied certification theory—namely, the First, Second, Third, Fourth, Sixth, Ninth, Tenth, Eleventh, and D.C.—the Fifth and Seventh Circuits have declined to adopt it. This split in authority may soon be resolved, as the Supreme Court granted certiorari on this very issue.

More specifically, the Supreme Court agreed to address two questions:

1. Whether the "implied certification" theory of legal falsity under the FCA—applied by the First Circuit below but recently rejected by the Seventh Circuit—is viable.

2. If the "implied certification" theory is viable, whether a government contractor's reimbursement claim can be legally "false" under that theory if the provider failed to comply with a statute, regulation, or contractual provision that does not state that it is a condition of payment, as held by the First, Fourth, and D.C. Circuits; or whether liability for a legally "false" reimbursement claim requires that the statute, regulation, or contractual provision *expressly* state that it is a condition of payment, as held by the Second and Sixth Circuits.

Although it will be some time before the Supreme Court publishes its decision on this issue, as briefing has not yet begun, there is no question that the impact of this case will be felt immediately. Contractors, most assuredly, hope the Supreme Court sides with the Fifth and Seventh Circuits, leaving regulatory and contract noncompliance to the agencies to enforce through their own processes or breach of contract claims. The government, however, no doubt wants the Supreme Court to follow the majority and further expand the already broad reach of the FCA. Time will tell which stakeholder claims the victory.

Pros in the Press

On November 5, 2015, Jeff Belkin was quoted in *Law360* in connection with the SCOTUS *Kingdomware* case. In *Kingdomware Technologies, Inc. v. United States*, the U.S. Supreme Court removed from its docket oral arguments over concerns that the contract dispute underlying the case had been resolved, thus rendering it moot. *Law360* Quotes Jeff Belkin on SCOTUS *Kingdomware* Case.

On December 1, 2015, Jeff Belkin was quoted in Law.com in connection with the SCOTUS *Kingdomware* case. Law.com Quotes Jeff Belkin on SCOTUS *Kingdomware* Case.

On January 11, 2016, Chris Roux was quoted in the *Law360* article "5 Highlights of NY Gov. Cuomo's Transportation Initiatives" about the $3 billion plan to use P3 project delivery methodology to expand and modernize New York City's Penn Station. *Law360* Quotes Chris Roux on P3 Best Practices.

On January 27, 2016, Jeff Belkin, Andy Howard, and Jessica Sharron will present a live webinar titled "The False Claims Act: Recent Trends and Hot Topics" in connection with Lorman Education Services.

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