

CLIENT ALERT

Court Compels Government to Produce Attorney Documents and CO's Justification for Rescinding Final Decision that Formed Basis of FCA Case

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On April 24, the Eastern District of Michigan compelled discovery in an FCA case, ordering the government to produce documents and testimony supporting the CO's basis for withdrawing the Army's final decision and demand for payment underlying an ASBCA appeal that involved "precisely the same facts." Both matters stemmed from a DCAA audit report alleging defendant BAE Systems Tactical Vehicle Systems (BAE-TVS), represented by C&M, provided defective cost or pricing data, which in turn led to the Army's pursuit of payment and the government's subsequent fraud claims. As a result of the CO's rescission of the final decision alleging defective pricing, the ASBCA action was dismissed as moot; but the government persisted with the FCA action while resisting discovery into the CO's determination. The court rejected the government's work-product and attorney-client privilege defenses, explaining that: (1) the attorneys involved voluntarily supplied facts that formed the basis of the CO's decision; (2) the CO's decision resembled a non-privileged administrative adjudication; and (3) the CO was acting pursuant to "public requirements unrelated to litigation."

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