

## CLIENT ALERT

### Fine Print: A False Claims Act Settlement Does Not Void a Contract

Nov.20.2020

In Regiment Constr. Corp. v. Dep't of Veterans Affairs, the Civilian Board of Contract Appeals (Board) denied the Government's motion for summary judgment and held that there was no evidence that the contractor committed fraud, despite the existence of a settlement agreement with the Department of Justice (DOJ) in a related False Claims Act (FCA) matter. In this case, the contractor was awarded a service-disabled veteran-owned small business (SDVOSB) set-aside contract for piping replacement at a VA healthcare facility. Near the end of performance, the contractor submitted a Contract Disputes Act claim and subsequently appealed to the Board, seeking payment for additional costs under the contract. The contractor and the VA agreed to suspend the Board proceedings to engage in settlement discussions. While the settlement discussions on the CDA claim were ongoing, the contractor entered into a separate settlement agreement with the DOJ to resolve DOJ's FCA and common law fraud claims. Based on the FCA settlement, the VA asked the Board to find that the VA SDVOSB contract was void *ab initio* due to the contractor's alleged fraudulent misrepresentation. The Government relied on the DOJ settlement agreement, a VA OIG referral for suspension and debarment, and a DOJ press release as evidence of the contractor's fraud. The contractor moved to strike the VA's motion, alleging that the VA's failure to previously raise fraud as an affirmative defense was unduly prejudicial.

The Board held that the VA's fraud argument was "devoid of merit" because its reliance on the DOJ settlement agreement – which expressly denied any admission of fraud or of liability – and related documents was insufficient to prove that the contractor had committed fraud.

This case highlights the important distinction between a concession or finding of fraudulent conduct, and settlements that contain no admission of liability. The mere settlement of an FCA allegation, without an admission of fault, is not sufficient evidence to support a contract void or a non-responsibility determination.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Stephen J. McBrady**

Partner – Washington, D.C.  
Phone: +1 202.624.2547  
Email: [smcbrady@crowell.com](mailto:smcbrady@crowell.com)

**Brian Tully McLaughlin**

Partner – Washington, D.C.  
Phone: +1 202.624.2628  
Email: [bmclaughlin@crowell.com](mailto:bmclaughlin@crowell.com)

**Lyndsay A. Gorton**

Counsel – Washington, D.C.  
Phone: +1 202.654.6713  
Email: [lgorton@crowell.com](mailto:lgorton@crowell.com)

**Catherine O. Shames**

Associate – Washington, D.C.

Phone: +1 202.688.3446

Email: [cshames@crowell.com](mailto:cshames@crowell.com)