

CLIENT ALERT

Fourth Circuit Accepts "Implied Certification" Theory When Contractual Requirement Is Unambiguous and Material

Jan.12.2015

On January 8, 2015, the Fourth Circuit, in *U.S. ex rel. Badr v. Triple Canopy, Inc.*, reversed the district court's dismissal of allegations that the contractor had submitted false claims by invoicing for security guards who had failed to pass the marksmanship proficiency test even though the contractor never affirmatively certified to the guard's shooting proficiency or presented to the government the false test cards allegedly created to hide the deficiency. The Court noted that the implied certification theory was "prone to abuse" and that it had previously "guarded against turning what is essentially a breach of contract into an FCA violation," but concluded the best manner for drawing the line was by "strict enforcement of the Act's materiality and scienter requirements" and, here, the marksmanship requirement was an objective criterion and its materiality demonstrated by the contractor's alleged falsification of the scoring cards which were required to be maintained under the contract.

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

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