

CLIENT ALERT

“Good” Enough: Court Finds Certification Merely Defective on Pass-Through Claim

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In *M.K. Ferguson Co. v. U.S.* (Apr. 14, 2016), a case involving a pass-through claim compelled by the prime’s bankruptcy judge, the CFC denied the government’s motion to dismiss and held that the prime’s initial pass-through certification – which stated only that the prime was “authorized to certify the claim” – was not a “failure to certify” (which would have cost the court its jurisdiction) but was instead a “defective certification” that the prime could (and did) cure through its subsequent certification. Although the prime contractor had previously expressed “legitimate concerns as to the amount claimed” to the bankruptcy judge, the CFC concluded that the prime’s compliance with the bankruptcy court’s order showed the prime’s sponsorship was made in “good faith” and remanded to the agency for a final decision, after holding that the prime’s potential liability to the subcontractor (despite the discharge of liability in bankruptcy) was enough to satisfy the “modern” *Severin* doctrine.

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

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