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CLIENT ALERT

Prime Settles Allegations of Small Businesses Subcontracting Fraud

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On June 7, 2018, the Department of Justice (DOJ), a *qui tam* relator, and a joint venture of several engineering firms notified Judge Salvador Mendoza of the U.S. District Court for the Eastern District of Washington that the parties had reached settlement in *United States ex rel. Savage v. Washington Closure Hanford LLC*. Defendant Washington Closure Hanford (WCH) agreed to pay $3.2M to settle False Claims Act (FCA) allegations that it used pass-through businesses in order to meet targets for small business subcontracting during WCH's performance of a multibillion environmental cleanup contract for the U.S. Department of Energy's Hanford Site.

Savage is the latest example of a large contractor becoming ensnared in an FCA action alleging small business fraud, and the first application of the "presumption-of-loss rule" in a civil FCA case (previously discussed here). In a 2017 opinion, Judge Mendoza denied the defendants' motion for partial summary judgment and ruled that—under the presumption-of-loss rule—the DOJ could seek as damages the full value of the subcontracts which the government valued at "tens of millions of dollars." Coupled with the FCA's relatively low standard for "knowingly" submitting false claims – which can be based not just on actual knowledge but also reckless disregard or deliberate ignorance – the presumption-of-loss rule as applied in *Savage* significantly raises the stakes for large contractors who may be held liable for teaming with small businesses that lack the size or status they claim.

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

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