

ALERT

District Court Puts the “Fraud” Back into Fraudulent Inducement FCA Liability

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In *United States ex rel. Thomas v. Siemens AG*, the District Court for the Eastern District of Pennsylvania held that proving a violation of the False Claims Act (FCA) for fraudulently procuring a contract requires evidence that the contractor's falsity actually induced the award, and not merely that it could have. The decision, and its underlying rationale, is good news for companies that contract with the federal government. It undercuts the familiar argument that facially accurate claims for payment made during contract performance are false due to the "taint" of a pre-award misrepresentation, even if the misrepresentation only theoretically had any effect on the decision to award the contract.

The whistleblower in this case, a former Senior Accounts Manager at Siemens Medical Solutions USA, Inc. (SMS), alleged that SMS caused the U.S. Department of Veterans Affairs (VA) to overpay for capital medical equipment (CME) by misrepresenting the extent of its price discounts to commercial customers, information that the VA used to determine a fair and reasonable price. In bidding on an umbrella IDIQ contract for the sale of CME, SMS was required to submit information about discounts it provided commercial customers that resulted in lower net prices than those offered to the Government. The whistleblower alleged that SMS omitted information about certain discounts, thereby distorting the VA's effort to set a fair and reasonable price, and provided misleading explanations for undisclosed discounts that were uncovered in audits. The whistleblower asserted a "fraudulent inducement" theory of FCA liability, alleging that SMS's omissions induced the VA to award SMS the contract, making all of SMS's invoices under the contract false claims under the FCA. The United States declined to intervene in the

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In a detailed opinion, the district court granted summary judgment to SMS. As an initial matter, the district court noted that through the United States’ Statement of Interest and attached declaration from a VA official, the Government had made an “unequivocal statement that it was not defrauded.” In further analyzing the whistleblower’s claims, the district court distinguished materiality from inducement—*i.e.*, the requirement that the misrepresentations be material to the Government’s award decision, and the need to show that the misrepresentations induced the Government to award the contract. The court explained that while materiality focuses on the potential effect of the falsity—whether it has a “natural tendency to influence” or was “capable of influencing” the contract award—the whistleblower also needed to prove “that the government was *induced* by, or relied on, the fraudulent statement or omission when it awarded the contract” (emphasis in original). The court rejected the whistleblower’s argument that he needed to show only potential and not actual reliance, reasoning that showing potential reliance only sufficed in “a typical FCA case,” where a contractor bills the Government for goods or services it did not provide. By contrast, the court reasoned, proving a fraudulent inducement claim requires evidence “that the *decision to award a contract was actually*, not just potentially, based on a false statement” (emphasis in original). Finding no evidence that SMS’s alleged omissions influenced the Government’s award decision—or that they were false in the first place—the court granted SMS summary judgment.

This reasoning, if it gains traction, marks a positive development for companies that contract with the federal government. In recent years, whistleblowers and the Government have frequently argued, sometimes successfully, that a contract can be fraudulently induced even without evidence that a misrepresentation had anything to do with the Government’s decision to award the contract. Under this expansive theory, a company that fully performed a government contract could be liable for damages amounting to three times the entire value of the contract, along with a massive number of statutory penalties, solely because a pre-award misrepresentation or omission could have *theoretically* influenced the Government’s award. The court’s analysis in this decision properly limits fraudulent inducement claims to those where there is some evidence of a falsity that caused the Government to award the contract. Notably, in granting summary judgment, the court also stated that a contractor’s omission of information that was not required cannot constitute a material falsity under the FCA, and that a contractor does not knowingly make a false claim when it acts on a reasonable interpretation of an imprecise contract provision.

In short, this decision is welcome news, as it recognizes that it simply does not make sense to penalize a contractor under the FCA for submitting claims for payment during performance that accurately describe the goods and services provided.

The court’s decision can be found [here](#).