

ALERT

# Large Grant Recipient Settles FCA Suit Arising from False Certifications and Representations under DHS Grant Program

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October 24, 2017

**WHAT:** On October 18, 2017, IBM and a *qui tam* relator settled a False Claims Act suit on the eve of trial arising out of a Department of Homeland Security (DHS) federal grant program. The program, known as “Project Gold Shield,” was designed to provide interoperable communications systems among Cook County, Illinois’ municipalities, so that police, fire, and EMT personnel could communicate with live streaming video, as well as through voice and data channels, in the event of a terrorist attack or natural disaster. IBM was the prime contractor and served as the project manager supervising the work performed by a number of subcontractors.

The relator filed suit in 2011 alleging at least \$50 million in fraud damages stemming from IBM’s failing to perform the work, falsely certifying that its subcontractors were competent to perform the work, and otherwise providing defective or inadequate software or services. The suit also alleged that IBM worked with a former Cook County official to rig bids, direct work to incompetent but politically connected subcontractors, and falsely certify compliance with DHS and Illinois grant requirements. Both the federal government and the State of Illinois declined to intervene, in 2013. On October 6, 2017, the court denied in part IBM’s motion for summary judgment, finding that a reasonable jury could conclude that IBM made knowingly false statements in connection with certain portions of the contract and federal grant requirements.

Trial was set to begin on October 23, 2017, but the parties settled just days before, with the terms unknown at the time of this alert.

## Authors

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Brian Walsh  
Partner  
202.719.7469  
bwalsh@wiley.law  
George E. Petel  
Partner  
202.719.3759  
gpetel@wiley.law

## Practice Areas

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Federal Grants and Cooperative Agreements  
Government Contracts  
Internal Investigations and False Claims Act

**WHAT DOES IT MEAN FOR INDUSTRY:** Grant recipients have increasingly come under federal scrutiny, including audits and investigations. As grants remain a significant portion of all government spending, and as sizable grants continue to serve as the vehicle for building up state and local homeland security infrastructure, contractors should be mindful of False Claims Act liability stemming from false certifications or representations under federal grant requirements. Additionally, grant recipients should be mindful of potential issues relating to anti-competitive conduct or bid rigging practices in state and local procurement environments.