

D.C. Circuit Dismisses False Claims Act (FCA) Suit & Provides Guidance for Contractor Reliance on Supplier Certifications

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On August 29, 2014 the U.S. Court of Appeals for the D.C. Circuit upheld the dismissal of a *qui tam* **suit** under the **False Claims Act (“FCA”)** alleging that government contractor **Govplace made false statements and false claims** by selling to the Government, via its GSA schedule contract, computer and other products not originating in designated countries under the **Trade Agreements Act (“TAA”)**. The decision shows that a contractor may defend against an FCA action by showing that it reasonably relied on a supplier’s certification as to TAA compliance.

The D.C. Circuit Decision: Govplace has been providing information technology (“IT”) integration and product solutions to the Government via a GSA schedule contract since 1999. Products on GSA schedule contracts must comply with the **TAA** requirement that “only U.S.-made or designated country end products [can] be offered and sold” under such contracts. Govplace acquires many of the products listed in its schedule contract from a distributor, Ingram Micro, which expressly certifies that its products are TAA compliant.

In the Govplace case, the relator alleged that certain products that Govplace acquired from Ingram Micro were manufactured in China, a non-designated country, and that Govplace acted with reckless disregard in relying on Ingram Micro’s certifications.

Under the FCA’s knowledge element, the plaintiff must establish that a defendant submitted a false claim or made a false statement to the Government, and did so “knowingly,” “in deliberate ignorance,” or “in reckless disregard” of the claim or statement’s falsity. The district court, equating reckless disregard with “gross negligence-plus,” found that Govplace’s reliance on certifications from its distributors did not amount to gross negligence-plus, absent a showing that Govplace had reason to question those certifications.

The D.C. Circuit upheld the district court’s determination, rejecting two main pieces of evidence the relator offered to demonstrate Govplace’s reliance was unreasonable: (1) an email from a manufacturer to Govplace concerning the possible foreign origin of a product, which was received

only after the sale to the Government; and (2) a price list from an Ingram Micro competitor, allegedly demonstrating inconsistencies in the origin of the products at issue, which the relator was unable to demonstrate Govplace had ever read.

Additionally, the court focused on two key facts to conclude that “a contractor like Govplace is ordinarily entitled to rely on a supplier’s certification that the product meets TAA requirements.” First, it noted Govplace’s participation in Ingram Micro’s GSA Pass Through Program, through which Ingram Micro certified compliance by providing letters of supply and manufacturer-certified information to participants. Second, the court found that the GSA had implicitly approved of Govplace’s reliance on the Program’s certifications during Contractor Administrator Visits.

Relevance to Contractors: Contractors often question whether it is reasonable to rely on certifications from suppliers for an array of issues, including TAA, Buy American Act, and other national-origin compliance regulations; commercial item determinations; the detection and avoidance of counterfeit parts; supply chain integrity; and rules governing the use of IT products originating in certain countries. This decision provides some guidance as to when such reliance is reasonable:

- Contractors likely will not be held liable under the FCA if information disproving a certification comes to light after the sale is made. The court’s reasoning suggests that, by the same token, contractors cannot purposely ignore information that suggests a potential supply problem.
- Although contractors likely will be held responsible for information known to them before a sale, they are not required to go to extensive lengths to seek out extrinsic information to confirm or contradict a supplier’s certification.
- A representation from an original manufacturer as to TAA compliance likely will be considered by the court as a reasonable basis for reliance.
- To the extent that the Government reviews or supports a contractor’s processes for obtaining supplier certifications, the court may find that the Government “bought into” the approach and ratified the reasonableness of the contractor’s reliance.