



Government Contracts/Government & Internal Investigations ADVISORY ■

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Is Breach of Contract Alone Enough to Trigger False Claims Act Liability in California?

On March 11, 2014, the California Court of Appeal (1st District) issued its opinion in *San Francisco Unified Sch. Dist. ex rel. Contreras v. First Student, Inc.* There, the court denied the defendant contractor's motion for summary judgment in a *qui tam* case brought under the California False Claims Act on grounds that an issue of fact existed as to whether the defendant contractor's implied certification of compliance with the commercial terms of its agreement with the San Francisco School District was material to the District's decision to pay the contractor's invoices. This decision has the potential of inviting more *qui tam* cases based on nothing more than a contractor's noncompliance with the terms of its contract with a public agency.

In *Contreras*, the relators brought suit in the name of the San Francisco Unified School District against First Student, a provider of student bus transportation services. Relators alleged that First Student did not maintain its buses in compliance with the technical requirements of First Student's contract with the School District. Evidence adduced in discovery proved that the relators' allegations were well founded in certain respects. Nevertheless, First Student moved for summary judgment, arguing (among other things) that its technical noncompliance with certain maintenance requirements was not material to the School District's decision to pay its invoices, as evidenced by the School District's renewal of the subject contract after the relators' allegations were made public. The trial court agreed and the relators appealed.

On appeal, a panel of the First District Court of Appeal reversed. In reaching this decision, the appellate panel concluded that FCA liability extends to invoices that impliedly certify compliance with contractual requirements, so long as those requirements are material—i.e., they have a natural tendency to influence the government's decision to pay out monies. Importantly, in reaching this decision, the appellate panel was not persuaded by First Student's evidence that tended to show that the School District was aware of First Student's failure to comply strictly with its maintenance obligations under the contract, but paid First Student's invoices regardless, focusing instead on the *potential* effect these impliedly false representations could have had on the agency's decision to pay: "If a violation of the [California FCA] is complete with the submission of a false claim for payment, then the government's *actual* response to the claim cannot be dispositive on the issue of materiality." (Emphasis added.)

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The Court of Appeal's decision in *Contreras* is an alarming precedent for implied certification claims brought under the California FCA, because it is difficult to imagine a contractual breach of any practical significance that a public agency *could not* reasonably rely upon in denying an otherwise proper claim for payment under a public contract. That is why many courts that have considered implied certification claims under the federal FCA or other states' equivalent laws have limited the viability of such claims to those instances where the government agency's payment obligations are explicitly conditioned upon compliance with specifically identified statutory, regulatory or contractual obligations. Because the transportation contract at issue in *Contreras* did not explicitly predicate the School District's payment obligations upon First Student's compliance in all respects of the bus maintenance requirements of its contract, the Court of Appeal's decision in *Contreras* represents a significant expansion of commonly understood FCA jurisprudence and opens the door to substantially more fraud claims predicated on nothing more than technical noncompliance with the terms of a public contract.

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