



CLIENT NEWS BRIEF

March 2010

Number 9

A CONTRACTOR MAY VIOLATE THE CALIFORNIA FALSE CLAIMS ACT BY SUBMITTING AN INVOICE WHEN IN BREACH OF CONTRACT

A California court has held that a contractor can be liable for a false claim under the California False Claims Act ("CFCA") for submitting invoices when knowingly in breach of the underlying contract, even if the invoice does not expressly certify that the contractor is in compliance with the material contract terms. (San Francisco Unified School District ex rel. Manuel Contreras et al. v. Laidlaw Transit, Inc., ("Laidlaw") ___ Cal.App.4th ___ (Feb. 26, 2010), 2010WL 670944).

Plaintiffs alleged that Laidlaw Transit, Inc. violated the CFCA by submitting invoices for payment when Laidlaw knew it was, or acted in reckless disregard as to whether it was, in breach of various terms of its bus services contract. The contract required the school district to make payment "for services satisfactorily performed" by Laidlaw, and plaintiffs alleged that Laidlaw's monthly invoices for payment "impliedly certified that (it) had met each and every material term of the contract," when in fact Laidlaw was in violation of many material terms.

In response to the complaint, Laidlaw stated that invoices submitted after alleged violation of a contractual provision cannot constitute the knowing presentation of false claims. Laidlaw argued that its invoices did not expressly certify compliance with the contract and that an invoice can constitute an implied certification only where the contract requires such a certification.

Relying on federal law interpreting the federal False Claims Act, on which the CFCA was based, the court held that submittal of invoices impliedly certifies compliance with the provisions in the contract and gives rise to liability under the CFCA, even without a contractual requirement for certification:

It is reasonable for governmental entities to assume that contractors seeking payment are in compliance with the material terms of their contracts. If a contractual provision turns out to be unduly onerous or a contractor needs more time to comply, the contractor does not expose itself to liability under the CFCA if it informs the governmental entity of the problem and seeks an accommodation. But if that same contractor is aware of the noncompliance and chooses to seek payment without informing the government, then it is a fraud appropriately within the scope of the CFCA.

CLIENT NEWS BRIEF

March 2010

Number 9

It remains to be seen whether the Laidlaw decision will be appealed, but for now the decision highlights the broad scope and interpretation of the CFCA in the California courts, and the risk to contractors if they submit regular invoices for payment when they know that they are in breach of the contract. A key factor in any Laidlaw analysis will be whether the false implied certification would naturally tend to influence the public agency's decision to pay the invoice. However, whether a contractor is in breach, and whether the CFCA has been violated, can be complex factual and legal questions.

These CFCA matters can arise not only with vendors or service providers, but also with construction contractors, and Lozano Smith's business and construction law attorneys can help you evaluate such complex issues. For further information, or if you have any questions concerning business or construction issues, please contact any of our [seven offices](#) located statewide, or consult our [website](#).

Written by:

[Arne Sandberg](#)

Senior Counsel

Walnut Creek Office

asandberg@lozanosmith.com

[David Wolfe](#)

Shareholder

Fresno Office

dwolfe@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.