

To: Our Clients and Friends

July 16, 2014

Fraud Outweighs Fairness: Government Contractor Cannot Recover the Value of its Services

The Federal Circuit yesterday issued a sweeping rejection of any recovery for a federal government contractor who was found to violate the Special Plea in Fraud Statute, 28 U.S.C. § 2514. See *Veridyne Corp. v. United States*, No. 2013-5011 (Fed. Cir. July 15, 2014). The decision is significant, not because the result is surprising, but because it closes the door to a theory of recovery that the Court of Federal Claims had (briefly) opened, and means that contractors who have provided actual value to the government can still be left empty-handed.

The Special Plea in Fraud Statute (formally titled the “Forfeiture of Fraudulent Claims Act”) provides that “a claim against the United States shall be forfeited” by “any person who corruptly practices or attempts to practice any fraud” against the United States “in the proof, statement, establishment or allowance” of the claim. 28 U.S.C. § 2514. The statute directs the Court of Federal Claims to “specifically find such fraud or attempt and render judgment of forfeiture.” *Id.*

In *Veridyne*, the Court of Federal Claims (a trial-level court) found that Veridyne’s invoices to the federal government contained false information, which required Veridyne’s “direct contract claims” to be forfeited to the United States. (The “false information” was that Veridyne could perform its contract with the government for less than \$3,000,000, when its internal projections showed a cost of closer to \$36,000,000.) But the Court of Federal Claims also concluded that Veridyne could collect \$1,068,636.22 from the government, which was the value to the government from Veridyne’s contractual performance. The court held that “binding Federal Circuit precedent” allows such recovery, so long as the contractor had not bribed a government official or labored under a conflict of interest.

The Federal Circuit reversed. The Federal Circuit wasted little time on the issue, holding that its prior precedent and the statute’s legislative history compelled the conclusion that, if fraud exists or is attempted, “the claims [of the contractor are] forfeited, regardless of the theory or form in which the

claims were asserted.” The Court held that this rule applies even if there is “equity” (that is, fairness) in the contractor’s claim for some recovery against the government.

The Federal Circuit’s holding underscores the unforgiving nature of the various laws which prohibit fraud against the United States. Persons and entities subject to those laws must be alert to their obligations when dealing with the government.

Further Information

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