

Government Contracts Advisory

Contractor Wins FCA Country of Origin Case

June 18, 2015

The US District Court for the Eastern District of Louisiana recently granted summary judgment for a subcontractor in a *qui tam* case under the civil False Claims Act alleging that the subcontractor failed to comply with the Buy American Act (BAA). *U.S. ex rel. Kress v. Masonry Solutions Int'l., Inc.*, C.A. 12-2380 (ED LA, June 8, 2015). Defendant Masonry Solutions was a subcontractor on four US Army Corps of Engineers projects to reinforce pumping stations in New Orleans. The relator was a former Masonry Solutions' employee.

Masonry Solutions provided and installed injectable spiral wall tie kits and enhancement anchors. Although framed as a BAA case, the procurement was subject to the Trade Agreements Act (TAA), and was largely decided pursuant to the TAA's country of origin requirements. [As we previously noted](#), the BAA does not apply to procurements subject to the TAA.

The wall tie kits consisted of stainless steel rods manufactured in England, a designated country under the TAA, and then packaged with compatible injectable filler (CIF) material made in the US. The court held (Slip at 13) that since the kits were purchased from a designated country, there was no violation of the BAA. Masonry Solutions also labeled the kits as "Made in USA," arguing that since the contract did not require labeling of country of origin, there was no false statement. The court simply noted that since the kits included both parts from England and CIF material made by Masonry Solutions in Maryland, there were no facts that demonstrated that the "Made in USA" label was a false statement made to induce the government to pay a claim. *Id.* (The court also noted that the Department of Justice (DOJ), which did not intervene but did file a Statement of Interest, had taken issue with Masonry Solutions' position that the "Made in USA" label was not material because there was no contractual labeling requirement. Rather, the DOJ argued that the label could be material to a claim for payment "if [it] merely had the potential of influencing the Government's decision to pay." *Id.* at 10, n.1.)

The enhanced anchors consisted of certain "pre-manufacture raw material . . . [that] was purchased and shipped from China." *Id.* 10. That raw material was then manufactured by Masonry Solutions in the US through a cold forging process which, according to Masonry Solutions, "physically strengthens and reinforces the steel at the molecular level" and was "necessary to strengthen the steel to meet the specifications for the functionality of its use." *Id.* The court concluded that the cold forging process resulted in the Chinese raw material undergoing substantial transformation, thus creating a new construction material manufactured in the US. *Id.* at 13.

One note of caution: The court's analysis of the application of the BAA and TAA was limited and the decision to grant summary judgment for Masonry Solutions turned heavily on the relator's failure to come forward with evidence sufficient to create a disputed issue of material fact.

For more information and answers to questions regarding this decision, or about Steptoe's government contracts practice, please contact Thomas Barletta at +1 202 429 8058, Paul Hurst at +1 202 429 8089, or Andrew Irwin in Washington at + 1 202 429 8177 or Century City at +1 310 734 1926.

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Questions and comments about the Steptoe Government Contracts advisory are always welcome.

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