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## Legal Briefs

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### Federal Court Refuses to Throw Out San Francisco's False Claims Lawsuit Against Tutor-Saliba

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On July 2, 2003, the City of San Francisco sued Tutor-Saliba alleging, among other things, that it had submitted false claims in connection with several contracts for the San Francisco International Airport in violation of State law and City ordinance. Tutor-Saliba requested that the court dismiss the City's lawsuit. On May 19, 2004, the court denied that request and, in its order, made several important decisions concerning both the State's and City's False Claims Acts.

With regard to the State False Claims Act, the court stated the following:

- First, in interpreting the State Act, the court would consider federal court decisions interpreting the federal False Claims Act. This is significant because there are relatively few cases interpreting the State Act, so federal cases are needed to provide guidance on many false claims issues.
- Second, for a contractor to be liable for a false claim, the false information in the claim must be "material," that is, the information must have been likely to have affected the State's decision to pay the claim. A materiality requirement does not appear in the language in either the federal or State Acts, but a majority of federal courts have interpreted the federal Act as including this requirement. The court's statement in the Tutor-Saliba case is significant because materiality often can provide a defense to contractors, *e.g.*, where the public owner knew of the alleged falsity in the contractor's claims when it decided to pay those claims.

- Third, the State need not be damaged by a false claim for a contractor to be liable under the State Act. This decision is consistent with the view of a majority of federal courts that the federal Act will impose liability even where the Government suffered no damage. This portion of the court's order is significant because, in the many cases in which the State can prove false claims were knowingly submitted but may not be able to prove the State suffered damage, the contractor will still face liability for civil penalties of up to \$10,000 per false claim.
- Finally, the requirement that plaintiffs suing for fraud include in their complaints a detailed description of the alleged fraud also applies to lawsuits under the State False Claims Act. This requirement is important to contractors because it helps them weed out meritless claims and prevents the State and whistleblowers from maintaining vague and general complaints with the hope that they can uncover specific false claims through the discovery process available in civil lawsuits.

The order also reveals that Tutor-Saliba did not challenge the City's request for prejudgment interest on any false claims recovery; this is surprising because the majority of courts that have considered whether public owners can recover such interest have decided that they cannot.

While the court did not dismiss the City's State False Claims Act claim against Tutor-Saliba, it did dismiss the City's claim based on the City's False Claims Ordinance.

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The court found the City ordinance invalid because it is duplicative of the State Act. This is significant because the City ordinance, unlike the State Act, would have allowed the City to recover its attorneys' fees if it were to win at trial. In a case of this magnitude, those fees promise to be substantial (millions of dollars).

The court also excised from the complaint the City's request that the court declare Tutor-Saliba to be non-responsible, which would have the effect of debarring Tutor-Saliba from receiving future City contracts. The court removed this request because it was based on the City ordinance which the court found to be invalid. This

portion of the decision is less significant because, if the City prevails on its State False Claims Act claim, it will still be able to initiate an administrative proceeding to debar Tutor-Saliba. It should be noted, however, that two different public entities, CalTrans and the Los Angeles Unified School District, have previously reviewed evidence of false claims by Tutor-Saliba on another project (the Metro Red Line Transit project for the Los Angeles Metropolitan Transit Association), which claims were similar to the false claims alleged by the City of San Francisco, and both determined that Tutor-Saliba was a responsible bidder and so should not be precluded from contracting with them.

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