

Approved 9/12/05

FALSE CONTRACT PAYMENT CLAIMS
[KNOWINGLY MAKES FALSE REPRESENTATION]
(N.J.S.A. 2C:21-34b)

Count _____ of the indictment charges the defendant with knowingly making a false material representation in connection with the negotiation, award or performance of a government contract.

[READ COUNT OF THE INDICTMENT]

The statute provides in pertinent part:

A person commits a crime if the person knowingly makes a material representation that is false in connection with the negotiation, award or performance of a government contract.

In order to convict the defendant of this charge, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant made a representation;
2. That the representation was false;
3. That defendant knew the representation was false;
4. That the false representation was made in connection with the negotiation, award or performance of a government contract;
5. That the false representation was material to the negotiation, award or performance of a government contract; and
6. That the defendant knew the false representation was material to the negotiation, award or performance of a government contract.

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The first element that the State must prove beyond a reasonable doubt is that defendant made a representation.

The second element that the State must prove beyond a reasonable doubt is that the representation was false.

The third element that the State must prove beyond a reasonable doubt is that defendant knew the representation was false.

The fourth element that the State must prove beyond a reasonable doubt is that the false representation was made in connection with the negotiation, award or performance of a government¹ contract.

The fifth element that the State must prove beyond a reasonable doubt is that the false representation was material to the negotiation, award or performance of a government contract.

To be material, the representation must not be trivial or irrelevant. Rather, a representation is material, if when made, a reasonable person would have considered it relevant to his/her concerns and important in determining his/her course of action. In other words, a material representation must have the capacity to influence or affect the course or the outcome of the negotiation, award or performance of the government contract.²

¹ N.J.S.A. 2C:27-1b defines “government” as, “any branch, subdivision or agency of the government of the State or any locality within it.”

² State v. Neal, 361 N.J. Super. 522, 531-33 (App. Div. 2003); N.J.S.A. 2C:28-1 Cannel, New Jersey Criminal Code Annotated, comment 2. See also State v. Anderson, 127 N.J. 191 (1992).

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The sixth element that the State must prove beyond a reasonable doubt is that the defendant knew the false representation was material to the negotiation, award or performance of a government contract.

I have already defined material.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause such result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from the defendant’s conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all the surrounding circumstances established by the evidence.

If you find that the State has failed to prove any of the six elements beyond a reasonable doubt then you must find the defendant not guilty of the crime charged.

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On the other hand, if you find that the State has proven all six elements beyond a reasonable doubt, then you must find the defendant guilty of the crime of making a material representation that is false in connection with the negotiation, award or performance of a government contract. If you find the defendant guilty beyond a reasonable doubt you must then determine whether the State has proven beyond a reasonable doubt that the claim submitted was for:

[CHARGE AS APPLICABLE]

\$25,000 or above	();
more than \$2,500 but less than \$25,000	();
\$2,500 or less	().