

## CLIENT ALERT

### Material Misrepresentation Dooms Contract From the Get-Go

Feb.07.2019

In *ABS Dev. Corp.* (January 7, 2019), the ASBCA found a contract void *ab initio* because the contractor's proposal contained a material misrepresentation about staffing. Although failure to perform in accordance with an incorporated proposal is generally only a breach, the Board noted that where a contractor obtains a contract through a material misrepresentation—with no intention of performing in accordance with the representation—the contract is void *ab initio*. Here, the Board found ABS' contract void *ab initio* because: (1) ABS, to address contracting officer concerns regarding staffing approach in its proposal, represented that it would directly hire personnel to perform on-site work; (2) ABS did not have any intention to adhere to such representation; and (3) had ABS not made such representation, the contracting officer would not have awarded ABS the contract. Because no valid contract ever existed, ABS' claim for additional compensation was denied and the Government's assessment of liquidated damages was likewise denied.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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