

CLIENT ALERT

Minimum Offer of Guaranteed Workshare Still Not Enough to Enforce Teaming Agreement

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In *Futrend Tech., Inc. v. MicroHealth LLC*, a Virginia state court considered “an all too familiar tale” of a government contractor attempting to enforce a teaming agreement, and once again refused to do so. This case involved an incumbent prime contractor, Futrend, who teamed with an 8(a) small business, MicroHealth, to bid on the follow-on contract set aside for 8(a) businesses. MicroHealth was ultimately awarded the contract, but the relationship between the parties broke down while negotiating a subcontract contemplated by their teaming agreement. Futrend brought suit against MicroHealth alleging, inter alia, breach of that agreement, which promised approximately 49% of the workshare under the awarded contract.

Citing the “well-settled” law in Virginia that contractual provisions that “merely set out agreements to negotiate future subcontracts” are unenforceable, the court refused to enforce the agreement. The court noted the parties’ acknowledgement that the “minimum offer” required under the agreement established a floor legal obligation, but found it to be “illusory and indefinite.” While the agreement “guaranteed” workshare of “approximately 49%” of the awarded contract, the court explained that the use of the word “approximate” indicated a degree of indefiniteness. Given these “uncertain” legal obligations, the court held that the teaming agreement was unenforceable. In addition to the breach of contract count, the court also rejected all other claims flowing from the teaming agreement, including breach of non-solicitation provision, tortious interference, misappropriation of trade secrets, conspiracy, and unjust enrichment.

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

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