

CLIENT ALERT

Nonmanufacturer Rule Applies to Procurements for Services

Sep.25.2014

In *Rotech Healthcare Inc. v. U.S.* (Sept. 19), the Court of Federal Claims enjoined the Department of Veterans Affairs from moving forward with a procurement for home oxygen supplies and services issued under a NAICS Code for services, finding that the solicitation violated the statutory "nonmanufacturer rule" (NMR)—a provision that requires nonmanufacturer recipients of small business set-aside contracts for products to provide the products of domestic small business manufacturers or processors. Relying on a 2006 CFC decision instead of a subsequent, unambiguous SBA regulation that limited the NMR to procurements assigned manufacturing or supply NAICS codes, the court explained that Congress intended the NMR to apply to mixed service and supply contracts irrespective of NAICS code.

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

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