

CLIENT ALERT

Services In Contract Don't Trump "Non-Manufacturer Rule"

September 13, 2006

In *Rotech Healthcare Inc. v. United States* (July 24, 2006), a pre-award bid protest of small business set-aside procurements, the Court of Federal Claims held that the Small Business Act's "non-manufacturer rule" requires recipients of small business set-aside contracts to provide products only of domestic small business manufacturers, even if the contract is for both products and services. Finding, inter alia, that the statute is "clear and unambiguous" in its application of the rule to "any" contract for the supply of a product, Judge Bush rejected government pleas for deference to SBA's less-restrictive applications of the rule and permanently enjoined set-aside awards to offerors who failed to certify compliance.

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

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