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LARGEST VERDICTS

VIRGINIA'S LARGEST VERDICTS OF 2017



1 **\$3.8 Million**

Contractor lost bid based on wrong 'size' of competitor

Heard Construction Inc. v. Waterfront Marine Construction Inc.

Type of case: Tortious Interference

Court: Chesapeake Circuit Court

Attorneys: General Counsel, P.C., J. Andrew Baxter, McLean, and Christopher D. Davis, Chesapeake



BAXTER



DAVIS

The parties were all government contractors who bid on project to replace a boat ramp on Pier 34 at the Little Creek Naval Base in Norfolk.

The Invitation for Bid (“IFB”) mandated sealed bidding with the lowest offer winning. Defendant was the low bidder, but plaintiff was classified as a HUBZone business entitled to a 10 percent pricing preference under 48 CFR 19.1307 under certain conditions. The 10 percent pricing preference was only applicable if defendant was classified as a “large” business under the applicable size standard at the time of the bid. Defendant falsely represented its size as “small,” and therefore the 10 percent preference did not apply and defendant was awarded the bid.

When plaintiff discovered that defendant was actually a “large” business at the time of the bid, plaintiff filed a bid protest. In considering the protest, the local Small Business Administration (“SBA”) office requested information from defendant to verify its size status, and defendant responded with information that initially led the SBA office to determine that defendant was “small,” as it claimed. Plaintiff successfully appealed the SBA’s decision, and on remand the local SBA office determined that defendant was “other than small.”

Plaintiff filed suit in the Chesapeake Circuit Court, alleging tortious interference, against defendant, along with the former principals of defendant and defendants’ parent companies. Plaintiff argued that if defendant had not falsely identified its size as “small,” the contract would have properly been awarded to plaintiff. After a four-day jury trial, the jurors found defendants liable and awarded damages.