

CLIENT ALERT

A-12 Default Affirmed

June 11, 2009

Rejecting the contractors' argument that the A-12 contract could not be terminated for default because "the absence of a contract completion date per se precludes the government from ever justifiably terminating a contract for failure to make progress," the Federal Circuit in *McDonnell Douglas Corp. v. U.S.* (June 2, 2009) has affirmed the judgment of the Court of Federal Claims upholding the decision terminating the contract for default. Although purporting to "reiterate" that to the decision in *Lisbon Contractors, Inc. v. U.S.*, 828 F.2d 759 (Fed. Cir. 1987), requiring that the government must normally justify a default by demonstrating that the contract includes a validly established delivery schedule that the contractor will fail to meet "remains good law," the Federal Circuit holds that in the unusual circumstances of the A-12 termination where there was no valid delivery schedule default may be justified based on other factors, "including the contractor's failure to meet progress milestones, its problems with subcontractors and suppliers, its financial situation, and its performance history."

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

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