

CLIENT ALERT

Air Force Space Contracts “Watch List” May Preclude Contracts and Subcontracts

November 28, 2017

Section 1612 of the National Defense Authorization Act for Fiscal Year 2018 contains a development that should be concerning to contractors working on space procurements. The NDAA requires the Commander of the Air Force Space and Missile Systems Center to develop a “watch list” of contractors with a history of poor performance on space contracts, including procurement contracts and research, development, test and evaluation space program contracts. The basis for inclusion is the Commander’s determination that performance on a specific contract is “uncertain” because of: (1) poor performance or award fee scores of under 50%; (2) financial concerns; (3) felony convictions or civil judgments; security or foreign ownership and control issues. Entire companies or divisions may be included on the “watch list” and inclusion will end the availability of new contracts, options, changes, etc. without the Commander’s permission. The “watch list” will also preclude subcontracts of more than \$3 million or 5 percent of the contract value without Commander permission.

This appears to be an attempt to extend the Section 841 warzone contracting exclusion authority to space contracts, without the national security exigency and without an understanding of the special requirements and intense engineering and testing required for space contracting. Although there is a “Rule of Construction” in the law saying the watch list is not a suspension or debarment, the *de facto* debarment possibilities here are staggering. The “watch list” also would create confusion in the marketplace concerning where to discuss performance issues on space contracts (e.g., with the debarment office, or the SMC Commander - assuming such a meeting would even be possible). For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Adelicia R. Cliffe

Partner – Washington, D.C.
Phone: +1.202.624.2816
Email: acliffe@crowell.com

Peter Eyre

Partner – Washington, D.C.
Phone: +1.202.624.2807
Email: peyre@crowell.com

David J. Ginsberg

Partner – Los Angeles
Phone: +1.213.443.5545
Email: dginsberg@crowell.com

Alan W. H. Gourley

Partner – Washington, D.C.
Phone: +1.202.624.2561
Email: agourley@crowell.com