

## CLIENT ALERT

### CAFC Holds Agency Standardization Decision Outside COFC Jurisdiction

Jan.31.2018

In a January 23 decision, *AgustaWestland North America, Inc. v. U.S.*, the Federal Circuit reversed a COFC decision that had enjoined the U.S. Army from sole source procuring Airbus UH-72A Lakota helicopters to meet the Army's standardized training helicopter needs. The CAFC first held that the Army's "Execution Order" standardizing to the UH-72A was not a procurement decision because it did not discuss procuring helicopters and instead assessed existing Army assets, and therefore the COFC lacked jurisdiction. The CAFC then rejected the COFC's conclusion that the Army's decision to sole source as a "follow-on contract for . . . production of a major system" was flawed because (1) the COFC abused its discretion in supplementing the administrative record; (2) the procurement qualified as a "follow-on" even absent a preceding contract; (3) the J&A was sufficiently supported; and (4) that the CO signed before legal or competition advocate review was not *prima facie* arbitrary and capricious. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**John E. McCarthy Jr.**

Partner – Washington, D.C.

Phone: +1 202.624.2579

Email: [jmccarthy@crowell.com](mailto:jmccarthy@crowell.com)