

## CLIENT ALERT

### CFC Has "Pre-Procurement" Protest Jurisdiction

Aug.29.2008

In a case of first impression, the Federal Circuit this week held in *Distributed Solutions, Inc. v. U.S.* (Aug. 28, 2008) that the Court of Federal Claims' bid protest jurisdiction over an alleged statutory or regulatory violation "in connection with a ...proposed procurement" covered a challenge to an agency's decision to acquire software through an existing task order contract rather than by conducting a separate procurement for the software. GAO and the CFC had both dismissed the protest, but the Federal Circuit held that (a) a proposed procurement begins with the agency's process for determining its needs, and (b) that process had occurred here through an agency RFI market research effort, with the consequence that the subsequent agency decision to satisfy its needs through the existing task order contract was subject to the CFC protest jurisdiction over "proposed procurements."

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

**Thomas P. Humphrey**

Senior Counsel – Washington, D.C.

Phone: +1 202.624.2633

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