

## CLIENT ALERT

### Employee Unions And Elected Representatives Lack Standing For GAO Protests Of Private Sector Awards In A-76 Competitions

April 28, 2004

In *Dan Duefrene; Kelley Dull; Brenda Neuerburg; Gabrielle Martin*, B-293590.2, .3; B-293883; B-293887; B-293908 (April 19, 2004), the GAO ruled definitively that union officials and other elected representatives of government employees who lose to a private sector offeror in competitions conducted under Revised OMB Circular A-76 (May 29, 2003) do not have standing under the Competition In Contracting Act (CICA) to protest at the GAO. Stating that its jurisdiction is constrained by CICA's definition of an "interested party," which limits protest rights to actual offerors eligible to be awarded a "contract" -- and despite the Revised Circular's attempt to implement the recommendation of the Commercial Activities Panel and recast the government side of an A-76 competition in terms intended to confer standing for government employee representatives -- GAO reasoned that the government's tender offer, even if successful, would not result in the award of a "contract" under CICA and, hence, employee representatives of the government could not be interested parties with standing to protest.

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