

CLIENT ALERT

Federal Circuit Reaffirms Deferential OCI Standard

May 6, 2009

The Federal Circuit in *Axiom Resource Mgmt., Inc. v. U.S.* (May 4, 2009) reversed the CFC decision granting a protest on the basis of an organization conflict of interest ("OCI"), and, in doing so, reaffirmed that, when the CFC reviews an OCI determination by a CO, including, in this case, the adequacy of a mitigation plan, it must apply the deferential "arbitrary and capricious" standard of the Administrative Procedure Act. In addition, the appellate court criticized the CFC for accepting litigation affidavits and relying on them when there was no need to supplement the administrative record, along the way casting doubt on the vitality of the *Esch* factors commonly used by the CFC in deciding whether to supplement an agency record in a bid protest case.

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

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