

## Client Alert

### GAO Finds Discussions Were Not Meaningful And, In Fact, Misleading

June 30, 2004

In Lockheed Martin Corp. (May 27, 2004), GAO found that the agency failed to conduct meaningful discussions because it neglected to notify the protester during discussions that proposed "contractor-specific" savings would be excluded from the agency's calculation of the Average Unit Production Cost ("AUPC"), despite the protester's reasonable belief that the agency would do so, and further, that discussions were misleading because the agency failed to disabuse the protester of its erroneous (though reasonable) understanding regarding the costs that the agency intended to apply in calculating the AUPC. GAO also determined that the award decision was flawed because the agency credited the awardee's proposal with having met certain performance requirements even though the proposal never addressed the specific level of performance required.

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

**Thomas P. Humphrey**

Retired Partner – Washington, D.C.

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

**Daniel R. Forman**

Partner – Washington, D.C.

Phone: +1.202.624.2504

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