

## CLIENT ALERT

### GSA Finalizes Rule Declaring Certain Commercial Supplier Agreement Terms Unenforceable

**Feb.26.2018**

On February 22, 2018, GSA published a [final rule](#) amending its acquisition regulation and declaring certain common Commercial Supplier Agreement (CSA) terms—such as indemnification and arbitration provisions, provisions that subject the U.S. Government to state law, and automatic renewal provisions—unenforceable in government contracts as inconsistent with federal procurement law. GSA published the proposed rule in June 2016 ([discussed here](#)) and related class deviation ([discussed here](#)) in August 2015.

The final rule makes several noteworthy changes to GSA’s proposed rule, including: (1) it reverts the order of precedence of contract terms to give precedence to “[a]ddenda to [the] solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements—Unenforceable Clauses provision” over “[s]olicitation provisions” and “[o]ther paragraphs of [the] clause”; and (2) it removes the previously proposed requirement to provide full text CSA terms with the offer, paving the way for CSA terms to be incorporated by reference. As GSA maintains, this final rule will eliminate the need for negotiation on the identified unenforceable terms and could facilitate faster procurements. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Jonathan M. Baker**

Partner – Washington, D.C.  
Phone: +1 202.624.2641  
Email: [jbaker@crowell.com](mailto:jbaker@crowell.com)

**Lorraine M. Campos**

Partner – Washington, D.C.  
Phone: +1 202.624.2786  
Email: [lcampos@crowell.com](mailto:lcampos@crowell.com)

**John E. McCarthy Jr.**

Partner – Washington, D.C.  
Phone: +1 202.624.2579  
Email: [jmccarthy@crowell.com](mailto:jmccarthy@crowell.com)

**Nicole Owren-Wiest**

Partner – Washington, D.C.  
Phone: +1 202.624.2863  
Email: [nowrenwiest@crowell.com](mailto:nowrenwiest@crowell.com)

**Christopher D. Garcia**

Associate – Washington, D.C.  
Phone: +1 202.688.3450  
Email: [cgarcia@crowell.com](mailto:cgarcia@crowell.com)