

CLIENT ALERT

Negative Responsibility Determination Overturned

Dec.02.2010

In *Bilfinger Berger AG v. U.S.* (Nov. 19, 2010), the CFC found that the Army Corps of Engineers had unreasonably relied on the opinion of an Italian lawyer applying Italian law to disqualify an offeror for when the Corps had failed to describe all the relevant situation to the attorney and issued a preliminary injunction stopping all work under the contract. The case is another example of the little deference that the CFC gives GAO opinions, as the GAO had found in the Corps' favor on the same facts, and Judge Sweeney also joins those on the court who have ruled that the jurisdiction under 1491(a)(1) of the court to consider a breach of the implied-in-fact contract to consider a solicitation fairly and consistently with the solicitation is intact after the addition of bid protest jurisdiction in 1491(b)(1) and the Federal Circuit's decision in *Resource Conservation Group* earlier this year.

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

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