

## Client Alert

### No Past Performance = Neutral, Not Negative

**March 11, 2005**

In *The MIL Corp.* (Dec. 30, 2004), GAO sustained a challenge to the agency's elimination of its proposal, finding that the agency improperly penalized the protester under the past performance factor for a lack of relevant experience, when the FAR requires no worse than a neutral rating in such circumstances. GAO also determined that the agency failed to give meaningful consideration to proposed prices, and it rejected the agency's argument that it was unnecessary in the context of a contract where the selected vendors will have to compete in the future for individual task orders.

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

**Daniel R. Forman**

Partner – Washington, D.C.

Phone: +1.202.624.2504

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