

## CLIENT ALERT

### 'No Prejudice' Response to Protest of Past Performance Evaluation Tantamount to Concession of Error

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In a recent [decision](#), GAO sustained Native Resource Dev. Co.'s protest that its past performance should have been rated Outstanding given the undisputed record of the agency's superlative written findings. GAO held that the agency's response, which was solely that if the protester's past performance merited a higher rating, then so did the awardee's, was "tantamount to a concession" that it could not defend its assignment of a Satisfactory rating and dismissed the agency's findings about the essential equivalency of protester's and awardee's past performance as merely a *post hoc* argument to be given little weight.

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

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