

CLIENT ALERT

OCI Exclusion Without Notice Denies Due Process

September 22, 2008

In *AT&T Govt. Solutions, Inc.* (<http://www.gao.gov/decisions/bidpro/400216.pdf>), the Navy employed a quick-trigger solicitation provision ("The Contracting Officer will strictly avoid conflicts of interest . . . by disqualifying any potential offeror who has . . . even the appearance of a conflict") and excluded AT&T from the competition without any prior notice of the agency's OCI concerns that the offeror might theoretically favor its own products under this procurement for information operations support services. In sustaining C&M's protest for AT&T against this exclusion, GAO found that the Navy (1) denied AT&T the regulatory due process of providing notice and an opportunity to respond prior to an OCI exclusion, (2) failed to consider the proposed OCI mitigation plan, and (3) lacked support for the OCI assumption that "appears to be based more on unsupported inference than fact."

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

James J. Regan

Partner – Washington, D.C., London

Phone: +1.202.624.2930 , +44.20.7413.0011

Email: jregan@crowell.com