

## CLIENT ALERT

### OCIs Must Be Considered During M&A Activity

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In *McCarthy/Hunt, JV* (Feb. 16, 2010) and *B.L. Harbert-Brasfield & Gorrie, JV* (Feb. 16, 2010), GAO found that the awardee had both an "unequal access to information" and a "biased ground rules" OCI when a firm, which was negotiating to acquire the awardee's design subcontractor, had performed procurement planning and development services for the procurement at issue, including preparation of design documents, plans, specifications, and cost estimates. GAO presumed prejudicial impact from the OCIs and recommended that the Army Corps of Engineers eliminate the awardee from the competition because (i) the awardee could have had access to helpful information beyond what was disclosed in the solicitation (e.g., the agency's unstated priorities, preferences, and dislikes), and (ii) the competition could have been skewed in favor of the awardee by virtue of the fact that the entity negotiating to acquire the awardee's design subcontractor played a role in preparing the solicitation requirements.

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

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