

## **CLIENT ALERT**

### **Offeror's Flip-Flop On Berry Amendment Compliance Dooms Award**

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Sidestepping the question of whether pesticide impregnation in China of U.S. domestic fabric for bed nets actually violated the Berry Amendment, GAO held in *MMI-Federal Marketing Service Corp.* (Feb. 8, 2006, <http://www.gao.gov/decisions/bidpro/297537.pdf>), that the agency's evaluation of the awardee's proposal was unreasonable because it failed to verify the awardee could in fact impregnate the fabric at a domestic facility as required under the agency's interpretation of the Berry Amendment requirements. Although the agency -- knowing that the awardee, on another contract, had insisted that the impregnation could, by license, only occur in China -- looked beyond the awardee's certification and requested additional information concerning where it would occur, the GAO found the additional information was insufficient to confirm that the awardee had made the necessary arrangements to shift the process to a U.S. domestic facility.

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

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