

## Client Alert

### ***Post Hoc* Explanation Inadequate To Save Unreasonable Price Evaluation**

**July 15, 2008**

In *Joint Venture Penauille/BMAR & Associates, LLC* (May 12, 2008, <http://www.gao.gov/decisions/bidpro/311200.pdf>), GAO sustained a challenge to the Navy's price evaluation, when, in a fixed-procurement, the agency unreasonably rejected the protester's proposal on the grounds that it offered low indefinite quantity pricing for certain minor work and the record contained no evidence that the pricing actually presented any risk to performance. GAO rejected the agency's *post hoc* justification that the low pricing presented performance risk because the contractor allegedly had the option to reject work if not sufficiently profitable, finding no support for this assertion in the record and nothing in the RFP that permitted the winning contractor to reject orders for the subject indefinite quantity work.

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

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