

CLIENT ALERT

Proof Of Actual Bias Not Required To Show Conflict Of Interest

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Using the rarely-invoked exception to its timeliness rules for protests raising issues of widespread interest to the procurement community, the GAO in *Celadon Laboratories, Inc.*, (<http://www.gao.gov/decisions/bidpro/298533.pdf>, Nov. 1, 2006) upheld a protest challenging an HHS decision not to fund the protester's Small Business Innovation Research proposal, finding a conflict of interest where the members of the Special Emphasis Panel (SEP) that evaluated (and rejected) the proposal were employed by, or funded by, firms that support a competing technology. Because of the specific conflict information protester brought to the agency's attention during the evaluation, GAO not only rejected HHS's reliance on its SEP's self-certification but also, rejected the argument that actual bias must be shown and instead concluded that in cases in which the evaluator has a conflict, prejudice is presumed.

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

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