

CLIENT ALERT

Technology Replacement Clause Requires Actual Replacement

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Some technology contracts have included "replacement" clauses which put limits on the agency's use of its termination for convenience power to flip to another vendor simply to get a better price. The Federal Circuit in *McHugh v. DLT Solutions, Inc.* (Sept. 23, 2010), held that, when the agency in such a clause had only agreed not to "replace" the leased software with "functionally similar equipment and/or software" for one year after termination or expiration of the lease, it did not breach when it did not install the leased software and continued to use its prior software.

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

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