



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation



Biweekly Report - Period Ending November 25, 1995

MESU Associates, Inc. – GAO B-261232.4

GAO dismissed this protest (one of several identical protests to various agencies) before we filed our Agency Report. Back in July, 1993, MESU had submitted a lengthy, unsolicited proposal for the creation of an inter-agency on-line retrieval system for all executive agency unpublished documents. The project, if implemented as proposed, would have cost on the order of \$5 billion. Protestor claimed that the Department's failure to evaluate its lengthy, unsolicited proposal within the time provided in FAR 15.5 entitled protestor either to contract award or lost profits and proposal preparation costs. GAO dismissed the protest, stating that an agency's failure to comply with FAR 15.506(1)(c) is a technical violation which is non-protestable. Further, no agency can be compelled to make an award based on an unsolicited proposal. [This was Lynn Patton's last case for the Division. We wish Lynn well in her new private practice career with a firm in Jackson, Mississippi.]

Unisys V. DOC

On November 21, 1995, appellant filed a protective appeal of the contracting officer's refusal to issue a final decision on the issue as to whether appellant can be re-

quired to repay the alleged overpayment for spare parts, in light of an alleged oral deferment agreement entered into sometime in the fall of 1994. The dispute arose in about April 1995 when the contracting officer demanded repayment of the amount determined to be due and owing the government pursuant to the March 29, 1994, contracting officer's final decision and a subsequent agreement on the amount entered into in August 1994. Terry Lee and Steve Carrara have the appeal

Fluor Daniel, Inc. Procurements

We have submitted to NOAA a draft of language for a request to the General Accounting Office for an opinion whether GAO's May, 1995 opinion, which stated that Fluor Daniel's administrative costs must be applied to the statutory limitation on design costs, should apply to the last two contracts between Fluor and NOAA.

Fred Kopatich will be traveling to Kansas City early next week to meet with NOAA representatives and Fluor Daniel's counsel to discuss issues raised in the Contracting Officer's recent demand for repayment of excess costs of approximately \$4 million under the 1986 contract.

POES

Negotiations between NASA and Martin Marietta ended unsuccessfully; We received a draft of the NASA claim against Martin Marietta. NASA is demanding \$2.7M. The bases for the recovery remain the same: (1) design and production costs for two super-enforced batteries, (2) Government costs to convert NOAA-J to the NOAA-I (NOAA-13) orbit, and (3) NOAA-J delay costs. Roxie Jones is advising.

Aspen Helicopters v. DOC

In this appeal alleging damages due to failure to exercise an option to lease an aircraft to perform NMFS surveys, we had an abortive (due to shutdown) meeting with the Contracting staff in Kansas City to prepare discovery responses and assess the merits of our defense. At this point, we still believe that we have a winning defense to this claim.

Paperless Contract Division Reports

Beginning in 1996 our regular distribution of this report will be via e-mail in an Adobe Acrobat format. Acrobat readers for various platforms are available on the Web at <http://www.adobe.com/Software/Acrobat/>

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Actions Completed/Received during Period

	From 11/12/95	To 11/25/95
	Received	Completed
CENSUS	0	1
NIST	3	3
NOAA	4	4
Total	7	8

Government Shutdown

Contract Law Division—Client Workload
Period Ending 11/25/95

