



CONTRACT LAW DIVISION

Office of Assistant General Counsel for Finance and Litigation



Biweekly Report—Period Ending January 01, 2000

ViON Corp. v. DoC—GAO No. B-283804

GAO convened a hearing in this bid protest brought by ViON Corporation against an \$8 million PTO delivery order issued to EMC Corp. GAO requested a hearing to hear testimony regarding two technical issues which are in dispute. A decision is expected in January. (Lisa J. Obayashi)

Census 2000 Matters

Fred Kopatich provided legal review of modifications exercising the option year of the contract and revising hourly rates for certain CLINs, the source selection documentation and contract for the Field Recruitment Advertising procurement.

DRC Corporation v. Department of Commerce, GSBGA No. 15172-C

Fred Kopatich is drafting the submission of DOC's opposition to DRC's claim for attorney fees under the Equal Access to Justice Act.

Failure to Exercise an Option

Diane Canzano and Terry Lee have reviewed numerous JFOCs on the basis of unusual and compelling urgency proposed by CO where CO inadvertently failed to extend an option to extend the term of a contract They advised CO that to use unusual and compelling urgency exception, CO must request offers from as many potential sources as is practicable.

Detek, Inc. v. DOC

Ed Weber advised NIST regarding the continued protest of the award of a contract with NDT Systems for acquisition of an ultra-sonic flaw detector and accessories for the Center For Neutron Research (Reactor Division). NIST has responded to the Protester that the award to NDT has been cancelled and the RFQ will be re-issued with performance specifications for this sensitive scientific apparatus.

Rule of Two

We are all familiar with this rule from FAR § 19.502-2(b) which states:

(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable

expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns ... and (2) award will be made at fair market prices.

In a recently published bid protest decision, [Marketing & Management Information, Inc.](#), B-283399.2, November 30, 1999, the Comptroller General sustained a protest which questioned the CO's decision to not set aside the procurement. The GAO found that the decision was based on insufficient efforts to ascertain small business capability to perform the contract. The GAO stated that the agency's determination not to set aside the procurement was based upon incomplete information (regarding small business interest and capability) and unsupported assertions (regarding the ability of a small business to realize a profit under the contract...)

We suggest that the decision, which is on our web site, be read by all involved with making the decision whether or not to set aside for small businesses.

CLD "Time to Complete"—2.9 Days

Actions by Contract Law Division during Period

Bureau	Received from 12/19/1999	Completed 01/01/2000
BXA	1	1
CENSUS	1	1
NIST	6	6
NOAA	4	4
OIG	1	0
Totals	13	12

Contract Law Division—Client Workload
Period Ending 01/01/2000

