



CONTRACT LAW DIVISION

Office of Assistant General Counsel for Finance and Litigation



Biweekly Report—Period Ending November 06, 1999

Raytheon STX Corporation v. Department of Commerce, GSBGA No. 14296 COM

The Board of Contract Appeals issued its decision awarding Appellant \$166,944 on its claim for the cost of salaries for employees laid off during the December, 1995-January, 1996 Government shutdown. The Board found that the NOAA was liable for the salaries if they were paid to ensure that employees would remain ready to resume work once funding was restored. The Board disallowed \$30,000 of the original claim. Fred Kopatich is leading the effort of considering whether an appeal to the Federal Circuit would be appropriate

ViON Corporation v. DoC—GAO No. B-283804

GAO has denied the Government's request for dismissal of a protest filed by ViON Corporation against an \$8M delivery order issued under EMC Corporation's GSA Schedule contract. We will therefore fully develop the record and prepare an agency report in response to the protest. (Lisa J. Obayashi)

DRC Corporation v. Dept. of Commerce, GSBGA No. 14919-COM

We received and analyzed the Board's decision and discussed it with the Contracting Officer. The Board ruled that the Government is responsible for one month of the Contractor's delay, as it should have allowed the restroom renovations to be completed in two, rather than three, phases. The Board found in the Government's favor that three months of the Contractor's delay were not the fault of the Census Bureau.

Kathpal Technologies, Inc. v. Dept. of Commerce, B-283137-3

Agency Report submitted on October 25. Issues have arisen regarding the basis for and documentation of the source selection authority decisions for the contract awards in the COMMITTS procurement. GAO wishes to review SSA Report *in camera* to determine relevance. (Agency has withheld the report on the ground of lack of relevance.) (Terry H. Lee).

ITT Federal Services International Corporation, B-283307; B-283307.2, November 3, 1999

[Although not a Commerce case, the recent GAO

decision in ITT Federal Services International Corp. is an interesting example of the need to adequately document the source selection decision in a *bestvalue* procurement. The full decision is on our site at <http://www.contracts.ogc.doc.gov/cld/gaodec.html#gao>]

Digest Protest challenging the validity of a source selection decision where the selection official chose the awardee's technically equal, higher cost proposal based on his conclusion that the protester's lower proposed costs were not reliable (in the SSA's view, they either would increase over time or would reflect reduction in quality of services provided), is sustained where

- (1) the selection decision is not adequately documented under the revised Part 15 Federal Acquisition Regulation requirements that documentation of tradeoff decisions include the benefits associated with additional costs;
- (2) the decision is improperly based on proposed, rather than evaluated, costs, because the agency did not perform a cost realism analysis of final costs; and
- (3) the concerns raised by the selection official about the protester's costs were shown during a hearing to be unsupported by the facts in the record.

CLD "Time to Complete"—4.1 Days

Actions by Contract Law Division during Period from 10/24/1999 11/06/1999

Bureau	Received	Completed
NIST	3	3
NOAA	4	5
Totals	7	8

Contract Law Division—Client Workload Period Ending 11/06/99

