



CONTRACT LAW DIVISION

Office of Assistant General Counsel for Finance and Litigation



Biweekly Report—Period Ending October 21, 2000

Aspen Helicopters, Inc. v. United States

CAFC issued summary affirmance of Board's decision and order. Appellant has 45 days in which to seek reconsideration. (Terry H. Lee, Amy Freeman-Pierce).

The Great Lakes Towing Company, B-286410-1:

Pursuant to NOAA's letter stating that the agency intends to take corrective action, GAO dismissed the protest. NOAA is in the process of terminating the subject contract for convenience. (Amy Freeman Pierce)

Hawaii Longline Observer Program

On October 13, CLD found legally sufficient the contract award for the Hawaii Longline Observer Program. This award represents part of the compliance with the federal district court's (D. Hawaii) August 4, 2000, order to have longline vessels in certain Pacific fisheries carry NMFS-approved observers. It appears from the contract that in addition to supplying qualified and experienced observers, the contractor is to monitor the incidence of longline vessel activity. (Terry H. Lee).

J. A. Jones/Bell, JV—GAO No. B-286458-1

The unsuccessful offeror in NIST's Advanced Measurement Laboratory procurement, following its debriefing, filed a protest alleging that the evaluation of proposals was not done on a rational basis. Recognizing shortcomings in the debriefing, the Contracting Officer offered a second, more thorough debriefing. The second debriefing took place on October 19, and the protestor's attorney informed us that a decision will be made early next week whether to continue with the protest.

Agency Protest of Cleveland State University

Cleveland State University protested to the NIST Protest Decision Authority NIST's rejection of its proposal to perform technical studies. Although the protestor submitted its proposal to Federal Express the day before proposals were due, weather delays caused Federal Express to delay its delivery for two days. The protest was denied on the ground that submission of a proposal to a commercial carrier is equivalent to hand-carrying it, and it must be delivered on time to the Government.

Potential Copyright Violations

OAM has requested OGC/CLD review of matter

involving possible OHRM violation of contractor copyrights to contractor's materials for OHRM's in-house course on Individual Development Plans. In connection with this request, Ed Weber performed extensive legal research into the copyright and other intellectual property statutes.

Bonds Required for Ship Repair Contracts

We recently revisited our 1992 opinion regarding the need for bonds for NOAA ship repair contracts. One procurement point had indicated that bidders were complaining that they did not need to provide such bonds on Navy contracts and questioned the need for bonds by NOAA. In sealed bid and negotiated procurements exceeding \$100,000, the requirements for performance, payment and bid bonds are mandatory for construction, alteration and repair of NOAA vessels. Unfortunately, while the Secretary of the Navy may waive these Miller Act requirements, NOAA may not. See 40 USC § 270e. However, the NOAA Fleet Modernization Act of 1992, 33 USC § 891d(c) provides that said bonds are limited in amount to 20 per cent of the base contract, excluding options, unless NOAA finds that a higher bond would not impede competition. (See FAR 28-101(c) for possible waiver of the bid bond requirement.)

CLD "Time to Complete"—2.3 Days

Actions by Contract Law Division during Period

Bureau	Received	Completed
NOAA	8	6
Totals	8	6

