



PACA Pulse

SUMMER 2008

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

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BFI Was a Resounding Success

The 22nd Annual Briefing for Industry (BFI) was held at the Hotel Albuquerque in Old Town on August 19 and 20 with over 450 attendees. BFI has become one of the preeminent events of its kind in the country.

Co-sponsored by PACA and the Air Force Research Laboratory, the BFI brings together AFRL and most of the federal government organizations in New Mexico for a comprehensive review of new business opportunities for the coming year. Major General Curtis M. Bedke, AFRL Commander, provided this year's kickoff presentation. He provided real time insight into the AFRL to include his vision for the laboratory and its' thrusts and interests.

The 2008 event provided a new opportunity - the chance to talk with the speakers at the break-out sessions. As expressed to committee members, attendees were very appreciative for this added benefit. Also, participants enjoyed the two directorates of the Air Force Research Laboratory presenting on the second day of the conference, thus spreading out the interest. Attendees also felt that the speakers were more on point this year. "We look forward to redefine the format to make it more user friendly," said Bill Dettmer of the BFI Committee.

Lieutenant General Donald J. Hoffman presented the keynote address at the August 19 luncheon. He is currently the Military

Deputy, Office of the Assistant Secretary of the Air Force for Acquisition, responsible for research and development, testing, production, and modernization of Air Force programs worth more than \$23 billion annually. Lieutenant General Hoffman is selected for promotion to full general and reassignment as Commander, Air Force Materiel Command, Wright-Patterson Air Force Base in Ohio.



Lt. Gen. Hoffman

Major General Randal D. "Randy" Fullhart, presented the keynote address at the August 20 luncheon. He is Vice Commander, Air Force Cyber Command (Provisional), Barksdale Air Force Base, Los Angeles. His prior assignment was as Deputy Chief, Central Security Service (CSS), National Security Agency (NSA), Fort George G. Meade, Maryland. CSS is the combat support agency of the Department of Defense with military and civilian professionals stationed worldwide. He managed the partnership of the military Service Cryptologic Elements with the NSA/CSS.

We look forward to seeing you again at the 2009 event! •

Increase Newsletter Distribution & Membership

If you know a potential member or anyone else who would like to receive our newsletter, please forward their e-mail address to Burke Nelson, 944-2126.

If you are a non-member and would like information regarding membership, please contact:

Stacy Sacco, Membership Chairperson
(505) 254-4329 or (505) 489-2311 / marketing@kirtlandfcu.org

You may also access a membership application on our Web site at www.pacanm.org. •

PACA Profile: Fiore Industries, Inc.

Fiore Industries, Inc. is a small, minority-owned business headquartered in Albuquerque. PACA is happy to count its President and CEO, Bill Miera, among our members. Fiore was founded in 1989 and provides great customer service in the fields of cradle to grave systems engineering, prototyping, testing, facility operations, information technology systems and services, directed energy, pulsed power systems, and project management.

Bill Miera serves PACA as our Small Business Officer. He was born and raised in Albuquerque. Bill received a Bachelor's Degree with distinction in Mechanical Engineering and a Master's Degree in Robotics from the University of New Mexico. He also holds a Certificate in Management from UNM's Robert O. Anderson School of Management.

After obtaining his education, Bill worked for Rockwell International for nine years before founding Fiore with retirement savings and a second mortgage on his home. Today, Fiore employs over 50 top technologists for customers such as the Air Force Research Laboratory (Philips, Rome and Brooks sites), NASA, Science Applications International Corporation, Sandia National Laboratories, NNSA, the Department of Justice and others.



Bill is glad to belong to PACA. He says, "Having been involved with PACA since almost the inception of the company has been one of the most valuable things I have done for making contacts, learning of new procurements, and generally staying abreast of what is happening in the aerospace community."

Among Fiore's projects, Bill is most proud of pursuing the application of microwave energy to non-lethal weapons and the neutralization of biological contaminants. These applications will provide a humanitarian alternative to the use of conventional weapons for stopping high speed automobile chases, and support homeland defense by minimizing the effects of Anthrax contamination of buildings.

Fiore's primary business strategy is to provide outstanding customer service and to solve customer problems that have never been solved before. This includes the continuous development of high technology solutions executing on Fiore's motto of ***Making Technology Serve Mankind.***

In March of this year, Fiore was awarded an International Standards Organization 9001:2000 Certification. This certification was achieved based on Fiore's quality management system. Fiore has also received a number of

other awards including the following:

- Hispanic Business Magazine – Top 500 Hispanic Owned Companies in the United States, 1997 - 2008
- NM Business Weekly Power Broker, 2007 - 2008
- NM Business Journal – Technology Flying 40, 1997 - 2006
- NM Business Weekly – Top 25 Technology Companies in New Mexico, 2002 - 2006
- SBA 8(a) Graduate Firm of the Year, 2004
- New Mexico Private 100 – Top 100 Privately-Held Companies in New Mexico, 2004
- GACC Board of Directors Recognition for awarding of \$30 Million Defense Contract, 2003
- Duke City Dozen, Albuquerque's Fastest Growing Companies, 2002
- HENAAC Entrepreneur of the Year, 2001
- Sam Walton Community Leader Award, 1999
- Maxie Anderson Small Business Award, 1998
- SBA Prime Contractor of the Year Region VI and Award for Excellence, 1998
- Quality New Mexico Roadrunner Award, 1997

Part of Fiore's vision is to give back. Fiore contributes to the community by supporting many organizations, including New Mexico Special Olympics, MESA, USHCC, Adelante, Make-A-Wish Foundation, UNICEF, United Way, Muscular Dystrophy Association, Cuidando Los Ninos, MADD, the American Heart Association, the Regional Science Fair and the University of New Mexico Engineering Day.

Additional information about Fiore Industries, Inc. can be found at www.fiore-ind.com. •



Chem-Bio Hazard Neutralization

Fiore is presently under contract with Brooks Air Force Base to develop a method to destroy chemical and biological weapon agents without damaging the surrounding environment. This method uses a microwave source to irradiate the agent. (Taken from Fiore Web site.)

PACA Luncheon Speakers

■ October 21, 2008

Dr. Peter Wegner, Director of the U.S.
Air Force's Operationally Responsive Space Office

■ November 18, 2008

To be announced

■ December 16, 2008

Christmas Luncheon



We meet the 3rd Tuesday of each month at the Mountainview Club (which is located on Club Road on the east side of Kirtland Air Force Base). Registration begins at 11:30 am followed by lunch at 12:00 noon. Members are free and Non-member/Guests are \$15.

To RSVP, E-mail paca@ngc.com or call the PACA hotline at 842-8911, ext. 333. Include your name, guest's name, and menu selection (typically a meat, fish or vegetarian dish). Please RSVP by the Friday before the week of the meeting. If you do not have access to KAFB, please include a request for a base pass (to the Wyoming gate) with your luncheon order. •

Newsletter Contributions

This is your newsletter. If you would like to contribute an article, make announcements (promotion, job change, or a new product or service), please submit your newsletter contribution to the editor, Ross Crown, at RCrown@LRLaw.com or call him at 764.5402.

All contributions are welcome!

President's Corner

Greeting PACA members! I hope you all had a good summer. The Web site has been up and running for several months now. We have been working through some speed bumps, hiccups, and other "words" that would better express new technology growth pains. In the process of streamlining and using new and easier processes, not all of the systems have progressed as smoothly as planned; hence some of you have experienced some minor but frustrating problems. To help us identify and fix any issues promptly, please give us your feedback on the new Web site.

We are extremely pleased with the success of this year's Briefing for Industry conference with the highest attendance (450+) record since Dar Johnson served as PACA president. We value this annual gathering of colleagues and government representatives and appreciate everyone making the event a success. BFI leadership did a stellar job with the many arrangements required for an event of this magnitude. All

Connections

By Stacy Sacco

Following are groups PACA members connect to in the local aerospace industry. Let us know if you need an introduction!

- **American Institute of Aeronautics and Astronautics**
www.aiaa.org

Albuquerque Section / <http://www.aiaa.org>

Holloman / Alamogordo

Petra Nedimovic, petra.nedimovic@46tg.af.mil

White Sands Space Harbor

James Walker, Regional Director,

james.walker@swri.org

- **American Council of Engineering Companies**

www.acec.org

New Mexico Chapter / www.acecnm.org

- **American Society of Mechanical Engineers**

www.asme.org

New Mexico Section

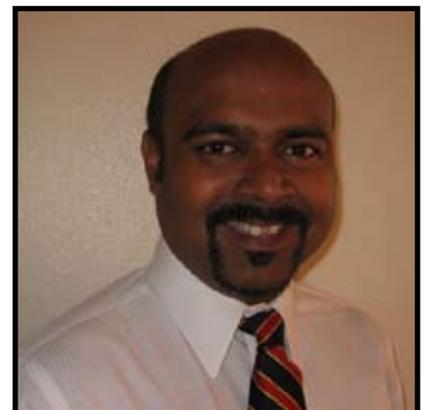
www.sections.asme.org/new_mexico/index.html

To get further connected, be sure to check out the New Mexico Economic Development Department Business and Community Development Calendar at <http://edcalendar.nmccap.org>. The calendar is quickly becoming the best resource for finding out what is happening across the state. It includes information about hundreds of meetings, workshops, and other events. •

By Maran Vedamanikam

through the year members of the Board of Directors spend a large amount of their personal time contacting military leadership, especially high level officers, who are best suited to give the briefings that are most needed for our industry. This task is quite arduous and delicate in nature and we are most appreciative of all the sacrifices and effort made by all involved.

Thank you Board and BFI Committee members; job well done! •



Legal Insights: Government Decision Not to Exercise Contract Option

By Ross Crown

Option years are a common feature of service contracts with the federal government. Many such contracts provide for a base period of performance and then allow the Government to exercise one or more options to extend the contract term. When a contractor satisfactorily performs the contract, options are typically exercised. Yet, sometimes the contractor does everything right but the Government will still decline to exercise an option. The result can be financially painful. Does the contractor have any recourse?

Standard

Generally speaking, the disappointed contractor is out of luck. The Government has a broad right to decide within its own discretion whether to exercise a contract option. *Aspen Helicopters, Inc. v. Department of Commerce*, GSBGA No. 13258, 99-2 BCA ¶ 30, 581 (1999). The decision to trigger an option resides with the option holder; the mere existence of an option does not require the holder to exercise it. *Magic Brite Janitorial v. United States*, 72 Fed. Cl. 719 (2006). When the Government holds an option, it may employ whatever lawful criteria it chooses when deciding whether to exercise the option. *Id.* Even satisfactory performance by a contractor does not impair the Government's right to refuse to exercise an option. *Vehicle Maintenance Services v. General Services Administration*, GSBGA No. 11663, 94-2 BCA ¶ 26, 893 (1994).

A contractor has no right to assume an option will be exercised. Thus, an offeror who prices its proposal by amortizing its fixed costs on the expectation that option periods will be authorized does so at its own risk. *Aspen Helicopters, supra.*

Limitations

Limitations on the Government's right to refuse to exercise a contract option are few. One limit is if the Government, by the terms of the contract, or by statute or regulation, restricts its own discretion. Accordingly, a contractor facing the Government's refusal to exercise an option should first review the contract for any terms that might define the circumstances under which an option will be authorized. A similar review should be made of the legal provisions incorporated into the contract.

The only other commonly recognized limit on the Government's discretion to decline an option is that it must act in good faith. Like all other contracting parties, the Government is obligated to deal in good faith with its contractors. *Continental Collection & Disposal, Inc. v. United States*, 29 Fed. Cl. 644 (1993). Unfortunately, bad faith is difficult to prove against the Government. Government officials are presumed to act in good faith. *Carolina Oil & Distributing Company*, ASBCA No. 48093, 98-2 BCA ¶ 29,955 (1998). A contractor must be able to present compelling evidence that

the Government's decision not to exercise the option was the result of some specific intent to injure the contractor and not motivated by any valid reasons relating to the contractor's performance or the Government's future lack of requirements for the contracted services. *Continental Collection & Disposal, supra.* The scant case law on this subject does not provide many examples of improper motivation on the part of Government officials, but presumably it includes inappropriate purposes such as personal animus, racial or gender-based discrimination, punishment for asserting contract rights and pro or anti-union bias.

Remedy

If a contractor believes it possesses convincing evidence that the Government's decision not to exercise an option is in bad faith, what is its remedy? The contractor's recourse is a claim for breach of contract brought under the Contract Disputes Act to the contracting officer and thereafter to either the cognizant Board of Contract Appeals or the U.S. Court of Federal Claims. In such an action, unfortunately, a contractor is unlikely to obtain an injunction preventing the Government from reprocurring the requirement. Injunctive relief requires a claimant to establish, among other things, that it does not have an adequate damages remedy. In this circumstance, however, a contractor could be adequately compensated by an award of damages for any wrongful failure to exercise an option. *Harris Systems International, Inc. v. United States*, 5 Cl. Ct. 253 (1984). These damages would probably consist of the lost profits the contractor would otherwise have realized during the option period.

Conclusion

A contractor faced with a Government decision not to exercise a contract option is probably going to have to grin and bear it. Under exceptional circumstances, however, the contractor can obtain a remedy. This remedy likely will consist of damages but not include the opportunity to continue performing the contract. •



Ross is a partner with the Albuquerque office of Lewis and Roca LLP. This article is intended for general information only and should not be construed as legal advice or opinion. Any questions concerning your legal rights or obligations in any particular circumstance should be directed to your lawyer.

UPDATE: New Mexico Spaceport Authority

By Lou Gomez, Program Manager Spaceport America

■ Vertical Launches

Preparations continue for the launch of UP Aerospace vehicle SL-3. The launch date was scheduled for June 28; however, at the request of UP Aerospace a new launch date will be scheduled for a later date.

■ Update of Spaceport America Design and Construction Packages

The planning and design for the various components of Spaceport America are well underway. Construction will begin after the EIS/ROD process, with licensed operations scheduled to begin in early 2009 for vertical launch and in late 2010 for horizontal flight. Costs are in-line with the budget. A summary of the packages is as follows:

~ *Temporary Road Improvements* - Third Quarter, 2008 — NMDOT will procure construction services for road and bridge work on approximately 8.5 miles of AO13, just south of Engle. Design and construction is being coordinated by NMDOT.

~ *On-site Infrastructure* - Fourth Quarter, 2008 — NMSA will procure construction services for site grading, utilities (water and power distribution), roadwork, airfield paving, fencing, and fuel storage facilities for the entire Spaceport America site. Design is 95 percent complete, and the construction procurement will be coordinated by NMSA with the support of the design team headed by DMJM Aviation, Molzen Corbin, and Dekker/Perich/Sabatini.

~ *Systems Integration Package* - Fourth Quarter, 2008 — NMSA will issue performance specifications for communications, security, and life safety systems for the selection of a Systems Integrator for the detailed design, construction, installation, and start-up for systems to be housed in the Fire Station and in the Terminal and Hangar facility at Spaceport America. Specifications are 95 percent complete, and the procurement will be coordinated by NMSA with the support of the systems design team, DMJM Aviation.

~ *Fire Station and Maintenance Facility* - Fourth Quarter, 2008 — NMSA will procure construction services for the 8,000 square foot fire station and maintenance facilities on-site at Spaceport America. Design is 95 percent complete, and the Procurement will be coordinated by NMSA with the support of the design team, DMJM Aviation.

~ *Terminal and Hangar Facility Package* - First Quarter, 2009 — NMSA will procure construction services for the 103,000 square foot Terminal and Hangar Facilities that will house NMSA facilities as well as lease space for the tenant, Virgin Galactic. Design is 10 percent complete. The procurement will be coordinated by NMSA with the support of the Terminal design team, URS Corporation, Fosters & Partners, and SMPC Architects.

~ *Off-Site Power* - Third Quarter, 2009 — Sierra Electric Co-op will procure construction and installation services for the off-site power distribution that will supply Spaceport America. Design is underway. Design and procurement will be coordinated by Sierra Electric Co-op in Elephant Butte, New Mexico.

• Virgin Galactic

Negotiations continue with Virgin Galactic on a development agreement and a facilities lease. Progress continues on the development agreement and is expected to be signed by the time this newsletter goes to print. The lease is in draft form and will be worked upon after execution of the development agreement.

• EIS

The draft EIS was released in March. This starts the official review, comment, and update cycle. The process includes stakeholder agency review followed by a public comment period prior to the final EIS being issued. The anticipated date for the final EIS and Record of Decision is February 2009, however, it could be as early as December 2008 assuming the process goes smoothly.

• License

The current draft of the Launch Site Operator License application has incorporated responses to all questions and comments from FAA/AST, and is ready for submittal in accordance with the current EIS schedule. The site license is anticipated shortly after issuance of the final EIS Record of Decision.

• Community Outreach

Community outreach activities continue with regard to keeping the public informed on Spaceport progress and construction activity. To that end, meetings have been held with business and community leaders in Las Cruces, Alamogordo, Hatch and T or C. As reported earlier, the Spaceport Tax vote was held April 22, 2008 for Sierra County. The voters of Sierra County approved an increase in local gross receipts tax to support the construction of Spaceport America. Sierra County now joins adjacent Doña Ana County in forming a Tax Development District as required by the New Mexico State Legislature for the project to move forward.

Otero County Commissioners recently provided a letter of support to Spaceport America and agreed to put the GRT to a vote in the general election on November 8, 2008, contingent on the passage of the GRT in Sierra County. Since then, the Otero County Commission conducted a hearing on the GRT vote and received public comment. The Commission placed this issue on the November ballot. NMSA has provided information to Otero County voters at various forums in Alamogordo. •

Welcome NEW Members

Sean Ahern — ITT Corporation

Christian Alexander — Vic Myers Associates, Inc.

Robert Arias — Southwest Native Consultants, Inc.

Jeffrey Banks — Scientific Research Corporation

Joe Barfoot — Orion International Technologies

Michael Black — Boeing

Gina Bonner — Battelle

Margret Brown — Aerotek

Preston Campbell — L-3 Communications

Tom Cavalli — Barrios Technology

Sean Darcy — Boecore, Inc.

Steven Dolby — ATA Aerospace

Jim Geisler — Respec

Charles Gilman — SAIC

Bill Goodman — Trex Enterprises Corporation

Guz Hernandez — COLSA Corporation

Douglas Lincoln — ITT Corporation

Dannielle Martin — Orion International Technologies

George Moretti — MTSI

Vic Myers — Vic Myers Associates, Inc.

James Nicklaus — Energetic Materials Research & Testing Center, NM Tech

Robert Peterkin — SAIC

Michael Pollack — EnvirOptics, Inc.

Betty Ramos — Beck Office Systems

Jerry Rawlinson — Quantum Research International

John Santacroce — Space Dynamics Laboratory, Utah State University

James Scott — Treeline Consulting, LLC

Stephen Stover — Abacus Technology Corporation

Charles Straw — Quantech Services, Inc.

Donald Sullivan — KTECH Corporation

John Twitchell — National Technical Systems, Inc.

Jay Wolfington — Eclipse Energy Systems, Inc.

