



PACA Pulse

SUMMER 2010

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

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24th Annual BFI Draws 424 Attendees

A record number of participants (in recent years) attended the 24th Annual Briefing for Industry (BFI) sponsored by PACA and the Air Force Research Laboratory (AFRL) and held at Hotel Albuquerque in Old Town August 16-18. **Ron Unruh** chaired the conference committee for the 14th consecutive year.

Aerospace contractors from across the country received two full days of presentations from representatives of AFRL, Sandia National Laboratories, Los Alamos National Laboratory, the Small Business Innovative Research Program, the Space Development Wing, and many other government agencies. In addition to the speakers offering a comprehensive review of new business opportunities in the coming year, the BFI conference provided a unique opportunity to meet personally with industry and government representatives.

The conference concluded with an update on the happenings at Spaceport America. Rick Homans, Executive Director of the world's first purpose-built commercial spaceport, discussed the geographic benefits of the spaceport being built in New Mexico and the development time line.

Brigadier General Everett H. Thomas of the Air Force Nuclear Weapons Center (AFNWC) graciously substituted as luncheon keynote



Brigadier General Everett H. Thomas

speaker on the first day due to the last minute cancellation of the previously secured speaker. The AFNWC is responsible for the entire scope of the nuclear weapons support functions and comprises units at Kirtland AFB, Tinker AFB in Oklahoma, Ramstein Air Base in Germany, Hill AFB in Utah, and Lackland AFB in Texas.

General Thomas boldly and honestly expressed his thoughts regarding how the Air Force can improve to better meet the nation's defense needs in today's volatile and unpredictable international environment. General Thomas received a standing ovation for his animated and straightforward presentation.

Dr. Gary Payton, the recently retired Deputy Under Secretary of the Air Force for Space Programs, delivered the keynote address at the second day's luncheon. He was equally honest in summarizing our country's lack of space awareness and the current threat to our space assets. He stressed the importance of implementing technology to identify those threats and provide more resilient protection of the nation's military assets in space.

Again this year, the BFI welcomed event sponsorships. A special thanks to Qualis Corporation, Science Applications International Corporation (SAIC), and MEI Technologies for sponsoring BFI for the second time, and to first time sponsors The Centech Group, Inc., ATK Launch Systems, and Gaits.

"The BFI seems to improve every year," said Ron Unruh. "Regardless of all the planning, coordination and dry runs, there seems to be a last minute hiccup or two that we have to contend with. However, it is through the attendees critique forms that we can take a positive approach towards mitigating them for the next year. We know that this unique event meets the needs of the participants, both government and contractors, based on their positive feedback and the fact that 40% of this year's

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attendees learned of the BFI from word of mouth.”

Those corporations who sent representatives to the BFI have the distinct advantage of understanding the government's upcoming requirements and can pro-actively lean forward to assist in the final definition of those requirements and in establishing teams to go after specific efforts. Those who did not attend missed out on information pertaining to 23 organizations briefed with over 200 opportunities with an estimated total value of over \$5 billion (does not include SBIRs/STTRs that were also listed in the briefings).

Ron extends his appreciation to all presenters, keynote speakers, sponsors, exhibitors, and committee members for once again producing a valued conference. He also wants everyone to know that next year is the Silver Anniversary of the Briefing For Industry and the BFI Committee intends to make it truly special, so please ensure it gets on your calendar (August 15-17, 2011). •

PACA Luncheon Sponsorship Opportunities

The Board of Directors has launched a pilot program for the mutual benefit of the organization and the membership. Effective with the February 2010 luncheon, PACA members may sponsor a luncheon and receive the benefits listed below. Sponsorship provides an excellent opportunity to showcase your business.

If you are interested in taking advantage of this new program, contact Maran Vedamanikam at 797-3042 or Ro Saavedra at 830-2345.

Bronze Sponsors \$100

- Display booth at Luncheon (table stand only)
- President will publicly thank your company at Luncheon
- PACA will host a company representative at Luncheon

Silver Sponsors \$250

- Display booth at Luncheon (table stand only)
- President will publicly thank your company at Luncheon
- PACA will host a company representative at Luncheon
- Your Company may post banner at Luncheon

Gold Sponsors \$500

- Display booth at Luncheon (table stand only)
- President will publicly thank your company at Luncheon
- PACA will host a company representative at Luncheon
- Your Company may post banner at Luncheon
- Five minute presentation about your company at Luncheon
- Your company-provided information highlighted on PACA's website
- Advertisement in PACA Pulse
- Sit at head table with guest speaker

There will be a maximum of two Sponsors per monthly lunch. •

President's Corner

By Ginny Buckmelter

I'm glad to report that the Briefing For Industry 2010 was successful and a benefit to this year's many participants. The conference presents an ideal forum to network and interact with government entity directors regarding their organization's mission, goals, and contract requirements. It's a once a year window of opportunity for contractors to hear, directly from those in the know, how they can best serve their customers.

The planning committee met recently to recap this year's event and discuss the feedback received from the attendees. We will implement new suggestions and helpful ideas in planning next year's event, while not changing a thing about what works so well.

And as a member of the BFI program team, I extend a respectful thank you to Ron Unruh for chairing the committee yet again. He does a remarkable job of staying on top of the many facets of planning the large event, and the enduring success of the annual conference is largely due to his leadership.

With the BFI now behind us, I would like the entire membership to focus on recruiting aerospace and related industry professionals to PACA. Every issue of PACA Pulse announces new members, and this issue's New Members list is especially long, largely due to industry representatives joining in conjunction with registering for the BFI. So we must be doing something right, but we can do better. And the "we" I refer to in this case is specifically those of you in the industry. From our experience with the BFI and PACA, word of mouth communication can't be beat. Won't those of you in the aerospace community introduce a colleague to PACA? The success of our organization depends on active participation and on-going exchange of information regarding the aerospace market. I thank you in advance for your assistance!

Lastly, in a continuous effort to provide our members with valuable legislative information, we attempted to host a debate between U.S. Representative Martin Heinrich and his opponent in this year's congressional race, John Barela. Due to unavoidable circumstances in his frenetic and unpredictable campaign schedule, one of the candidates regrettably had to cancel. We will look for other opportunities in the future to expose PACA members to valuable information, political and otherwise. •



Upcoming Luncheon Speakers

■ September 21 - Colonel Michael Moran, Space Development & Test Wing



Under the direction of Colonel Moran, the wing's mission is to deliver small, responsive space capabilities to users across the National Security Space community. Colonel Moran oversees a combined team of 1,000+ military, government civilian, and contractors responsible for the development, acquisition, launch, demonstration, test, and operations of

Department of Defense and civil space systems.

He has served in a variety of air and space acquisition, operations, and staff assignments. Colonel Moran began active duty in the Titan IV launch vehicle program office. He then served in the National Reconnaissance Office as a satellite launch integrator, satellite engineer, executive officer, and staff officer. He was also assigned to the Pentagon as program element monitor for Defense Support Program/Space-Based Infrared System on the Secretary of the Air Force's staff. He later served in the Joint STARS aircraft program office during which he initiated the battle management, command, control, and communications division of the emerging Space Radar program office. Colonel Moran has held various command and staff positions in Air Force space operations before his SDTW command assignment.

Colonel Moran graduated from the University of Virginia as a mechanical engineer and received his commission through Air Force ROTC in 1987. He also holds an M.S. in Systems Management from the University of Southern California.

■ October 19 - Brigadier General John Thompson, Program Executive Officer for Strategic Systems

General Thompson's portfolio of programs and responsibilities include current and future nuclear systems, subsystems, and components. This includes all intercontinental ballistic missile demonstrations and validation, modernization, and sustainment efforts, and ongoing services efforts. He is also responsible for Air Force nuclear weapons support efforts and all current and future air-launched cruise missile investment programs.

General Thompson entered the Air Force in 1984 as a graduate of the U.S. Air Force Academy. He earned an M.S. in Industrial Engineering from St. Mary's University in San Antonio, Texas.

He has served in a variety of scientific, acquisition, and logistics-oriented capacities. His staff assignments include



positions at Air Force Systems Command, Air Force Materiel Command, and in the office of the Assistant Secretary of the Air Force for Acquisition. While at the Pentagon, the General served as the Air Force's Lead Joint Strike Fighter Program Element Monitor.

General Thompson has been Chief of the Commodities Division, Ogden Air Logistics Center, Utah, and Chief of the Air Vehicle Division, C-17 System Program Office, Wright-Patterson

AFB, Ohio. He also served as Director of Propulsion, Oklahoma City ALC,; and Chief of Staff, Air Force Materiel Command, Wright-Patterson AFB. He commanded the 327th Aircraft Sustainment Wing, Tinker AFB, Oklahoma., with responsibility for the total life-cycle management and sustainment of nearly 1,200 Air Force aircraft. Before assuming his current position, General Thompson was Commander of the 303rd Aeronautical Systems Wing and Air Force Program Executive Officer for Intelligence, Surveillance and Reconnaissance, where he was responsible for the development, acquisition, integration, and sustainment of ISR and special operations systems.

General Thomas is the recipient of the 1990 Secretary of the Air Force Leadership Award.

■ November 16 – Colonel Robert L. Maness, Commander, 377th Air Base Wing



Under the leadership of Colonel Maness, the wing provides highly trained forces in support of the Air Force nuclear enterprise, expeditionary combat forces to the combatant commanders, and is responsible for installation security, operations, maintenance, and mission support for more than 23,000 personnel who live and work on Kirtland's 52,000 acres.

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Colonel Robert L. Maness *continued*

The 377th Air Base Wing is host to over 100 mission partners, including the Air Force Nuclear Weapons Center, Air Force Operational Test and Evaluation Center, Air Force Safety Center, Air Force Inspection Agency, Air Force Distributed Mission Operations Center, Defense Threat Reduction Agency, Air Force Research Laboratory, 58th Special Operations Wing, 150th Fighter Wing, New Mexico Air National Guard, U.S. Department of Energy, National Nuclear Security Administration, and Sandia National Laboratories.

Colonel Maness received his commission through Officer's Training School in 1986. His command experience includes the flight, squadron group, and wing levels. His staff tours include the Joint Chiefs of Staff and Air Force Global Strike Command Headquarters.

Colonel Maness is a Master Navigator with more than 3,400 flight hours. He has led numerous combat flying missions, including in Operations Just Cause and Desert Storm as an aircrew member, and as a bomber squadron commander in Iraqi Freedom and Enduring Freedom.

He holds a B.S. in Management Information Systems from the University of Tampa, an M.S. in Public Administration from Harvard University, and an M.S. in Military Operational Art/Science from the Air Command and Staff College, Maxwell Air Force Base.

We meet the 3rd Tuesday of each month at the Mountainview Club (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 admitted free and our guest fee is \$15.

To RSVP, register online at www.pacanm.org. Include your name, guest's name, and menu selection. Please RSVP by noon on the Friday before the week of the meeting.

If you are not already on base, enter at the Wyoming gate and state your purpose. Assuming you're registered, your name will appear on the PACA list and you will be admitted. •

Increase Membership & Newsletter Distribution

PACA membership annual dues are \$150. The fiscal year runs from April 1, 2010 to March 31, 2011. Mid-year applications will be pro-rated. You may apply on-line at www.pacanm.org.

For more information, contact Maran Vedamanikam, (Membership Chair), 797-3042 / maran@euroclydon.com.

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.

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. Contributions are welcome! •

Welcome NEW Members

Patrick Cannon
AEgis Technologies

Hector Del Aguila
Fiore Industries

Dustin Doud
SpaceX, Hawthorne, California

Nancy Eberhart
Glacier Technologies, LLC

Lorena Sue Fleming
Stolar Research Corporation, Raton, New Mexico

Glynn Germany
Ball Aerospace & Technologies Corp.

Philip Hoyle
Summit Technical Solutions, LLC
Colorado Springs, Colorado

Michael Jacox
StarVision Technologies, Inc., College Station, Texas

Richard Klodnicki
Cobham Analytic Solutions
Colorado Springs, Colorado

Ted Kreifels
Booz Allen Hamilton

John Lepore
SpecPro, Inc., Niceville, Florida

David Lupia
L-3 Cincinnati Electronics, Mason, Ohio

Candy Maness
Space News International

Mark Menicucci
Menicucci Enterprise Risk Management

David Montoya
Manzano Strategies

Michael Redmon
SGT, Inc.
Moffett Field, California

Mark Smith
Mark Smith Associates

Rob Trep
Edge Consulting, Peoria, Arizona

Legal Insights: Recent Developments in Jurisdiction Over Appeals of Contract Claims

By Ross Crown

This summer both the U.S. Court of Federal Claims and the Armed Services Board of Contract Appeals issued opinions addressing the jurisdiction of these forums over appeals of claims brought by contractors against the federal government pursuant to the Contract Disputes Act. One decision was contractor-friendly, the other decidedly not.

The Court of Federal Claims considered jurisdictional issues in *Paradigm Learning, Inc. v. United States*, 93 Fed. Cl. 465 (2010), an opinion handed down in June. In this case, Paradigm developed what the Court described as a learning tool entitled "ZODIAK, The Game of Business Finance and Strategy." This product was originally developed by Paradigm for a private customer. Subsequently, Paradigm was asked to demonstrate ZODIAK to the Defense Acquisition University (DAU). The DAU determined that it wanted to use ZODIAK as one of its training tools.

DAU declined to enter into a license for ZODIAK but consented to the execution of a confidentiality agreement to provide Paradigm with equivalent protection for its seminars, training services, and training materials. To acquire the product, the DAU placed its order for ZODIAK through a General Services Administration schedule contract with another contractor. Paradigm later entered into its own GSA schedule contract with the DAU for ZODIAK.

Paradigm began delivering its product to the DAU in compliance with purchase orders. Unfortunately for Paradigm, during this period the DAU began to develop a clone of ZODIAK. Paradigm responded to the clone by filing a certified claim for breach of contract with the contracting officer asserting a claim for breach of contract under both GSA schedule contracts. The contractor alleged that the DAU violated the confidentiality agreement that was a part of the purchase orders and also violated the proprietary legends contained on the products delivered under the purchase orders. The contracting officer denied the claim and Paradigm appealed to the Court of Federal Claims.

In the Court of Federal Claims, the Government moved to dismiss Paradigm's complaint for lack of jurisdiction. In addressing the motion, the Court noted there are three jurisdictional requirements that must be satisfied for a contractor to assert a claim against the Government under the Contract Disputes Act. First, the contractor must have submitted a proper claim to the contracting officer. This is a written demand seeking, as a matter of right, the payment of money in a sum certain. Second, the contracting officer must have issued a decision on the claim or it must be deemed denied by the contracting officer's failure to decide. Third, the contractor must properly appeal the contracting officer's decision or lack thereof to the Court of Federal Claims or

the cognizant board of contract appeals.

Among the Government's arguments as to why the Court lacked jurisdiction, the Government contended that neither the confidentiality agreement nor the restrictive legends placed on the products were incorporated by reference into the GSA schedule contracts. The Court rejected this argument finding that the provisions of the confidentiality order and the restrictive legends did not need to be incorporated into the contracts to base a contract appeal upon them. Instead, the Court found the GSA schedule contracts contained a provision that permits negotiation of data rights outside the four corners of the contracts.

The Government further contended that the Court lacked jurisdiction because Paradigm's breach of contract claim was really a tort claim for misappropriation of trade secrets. Tort claims may not be pursued under the Contract Disputes Act. The Court rejected this argument as well, however, holding that it is well-established where a tort claim stems from a breach of contract the cause of action is ultimately one arising in contract and that was appropriately within the jurisdiction of the Court of Federal Claims.

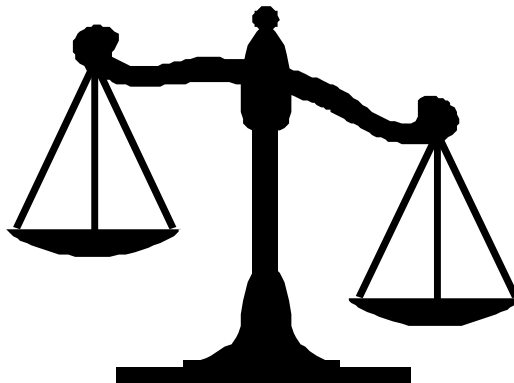
A contractor and its subcontractor did not fare as well before the ASBCA in *J.P. Donovan Construction, Inc.*, ASBCA No. 55335, 2010 WL 2899029 (July 16, 2010). This case involved a contract awarded to J.P. Donovan Construction to repair a runway at the naval air station in Key West, Florida. Donovan subcontracted with Costello Industries for joint resealing,

concrete spall repairs, herbicide application, and incidental related work. Costello subsequently submitted to Donovan a request for equitable adjustment for \$559,764 and asked that Donovan certify the request and submit it to the Navy. Donovan sent the request to the contracting officer by means of a letter entitled "Claim for Equitable Adjustment." Not only did Donovan submit Costello's claim, but it also added a claim for recovery of associated costs incurred by Donovan. The claim letter included the following statement:

Of the \$559,764.00 that Costello is claiming, Donovan is herein stating that Donovan has or will have approximately \$65,000.00 of additional direct and administrative costs that should be added to this Costello requested amount.

The contracting officer denied the claim and Donovan appealed to the ASBCA. On appeal, the Board noted that a valid claim under the Contract Disputes Act seeking the payment of money must set forth a sum certain. This requirement, said the Board, means that the amount being demanded in the claim not be subject to qualifying language such as "approximately." When a

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claim describes a claim as approximate and never states a sum certain, the requirement has not been met.

The Board did note that where qualifying language is used in a claim in relation to a cost but the sum certain being demanded is expressly stated or is ascertainable elsewhere in the claim, the requirement is met. It also acknowledged it is not material that the cost elements may be estimates, for it is the final amount being demanded in the claim that must appear as a sum certain.

The Board concluded that Donovan did state a sum certain for the portion of its claim belonging to Costello, but used qualifying language as to Donovan's own add-on and never thereafter stated a total sum certain. Since Costello's alleged costs and Donovan's were not separate claims, the entire single claim must be in a sum certain. The ASBCA dismissed the appeal for lack of jurisdiction.

Conclusion

Although one decision went in favor of the contractor and the other did not, what *Paradigm* and *Donovan* both show is that contractors must walk a very narrow path to present a proper appeal of a contract claim. Even if an alleged deficiency does not result in the dismissal of an appeal, the Government will assert the technical defenses available thus increasing the cost of pursuing a claim. Contractors should pay close attention to each and every requirement of the Contract Disputes Act as they prepare and appeal claims. Technical defenses lurk everywhere and they will be raised, often successfully. •

Ross is a partner in 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.

FAR Councils Seek Input on Changes to 8(a) Program

Congress ordered changes to the 8(a) business development program when it comes to sole source contracts with Native American and Alaskan Native companies.

The Federal Acquisition Councils are holding a series of meetings on how to implement the mandated revisions. They announced meetings in Albuquerque, Fairbanks, Alaska, and Washington, however, the councils did not say when the meetings will be held. "The purpose of these consultations and outreach is to encourage meaningful dialogue with tribal officials regarding the development of federal acquisition policy when implementing section 811 of the NDAA 2010," the notice in the Federal Register states.

In the fiscal 2010 National Defense Authorization Act, Congress required a new FAR rule for agencies to justify sole-source contract awards to 8(a) businesses that exceed \$20 million. Under the rules of the 8(a) program, sole source

contracts must be below \$5.5 million for manufacturing contracts and \$3.5 million for everything else, except for Native American and Alaskan Native firms. Those companies have no ceiling for sole source awards.

Agencies have taken advantage of this loophole by awarding contracts worth hundreds of millions of dollars without competition. Sen. Claire McCaskill (D-Mo.) has been a vocal critic of this provision in the law. She held a hearing in June 2009 on the topic.

A Small Business Administration inspector general audit revealed to Congress that between 2000 and 2008 obligations to Alaskan Native Corporations (ANC) increased by 1,386 percent, and more than tripled in recent years, from \$1.1 billion in 2004 to \$3.9 billion in 2008.

Additionally, the SBAIG found that between 2004 and 2008, the percentage of 8(a) obligations to ANC companies doubled, and these firms received approximately 26 percent of total 8(a) obligations, even though they constituted just two percent of companies performing such contracts. "These trends suggest that ANC-owned companies are receiving a disproportionate share of obligations to 8(a) firms," the SBA IG states in testimony to the Senate Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight.

Given those trends, Congress included language in the 2010 DoD authorization bill requiring that sole-source justification must include:

- A description of the needs of the agency concerned for the matters covered by the contract.
- A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract.
- A determination that the use of a sole-source contract is in the best interest of the agency concerned.
- A determination that the anticipated cost of the contract will be fair and reasonable.

The notice states that while justifications must be approved by an appropriate official as specified in the statute, the bill does not require a justification and approval if the contract award is equal to or less than \$20 million. Additionally, agencies must make justifications public within 14 days after contract award. •

