

CLIENT ALERT

COFC Finds it Lacks Jurisdiction to Hear Bid Protest Challenging Evaluation and Award of Prototype OTA

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On August 28, 2019, in a case of first impression, the Court of Federal Claims held in *Space Exploration Technologies Corp. v. United States* that the Court lacks subject-matter jurisdiction over a protest challenging the awards of launch service agreements (“LSAs”) issued under the Department of Defense’s prototype other transaction (“OT”) authority. The protester, SpaceX, challenged the Air Force’s evaluation and portfolio award decisions under a solicitation for prototype OTs to facilitate and fund the development of U.S. launch systems by the awardees. SpaceX, which did not receive an award, argued that because the challenged LSA awards were expected to lead to the development of launch vehicles that would likely be offered by the awardees in a subsequent Phase II competition, the awards of the challenged LSAs were in connection with a procurement or proposed procurement, and, therefore, the Court had jurisdiction under the Tucker Act. The Court, however, disagreed and found that the prototype OT evaluation and award decisions for the LSAs were not “in connection with” the anticipated Phase 2 procurement for a number of reasons, including that the competitions involved separate and distinct solicitations, different acquisition strategies, and different goals (i.e., the LSA competition focused on increasing the pool of potential launch vehicles, whereas the Phase 2 procurement would procure launch services). Although the Court dismissed the complaint, the Court transferred venue to a district court to permit SpaceX to pursue its claims in an appropriate jurisdiction.

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