

CLIENT ALERT

Government Meets Its Waterloo In The Great Engine War

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Affirming the ASBCA's rejection of the government's \$299 million defective pricing claim, the Federal Circuit in *Wynne v. United Technologies Corp.* (8/28/06) held that the Air Force failed to show any reliance upon the allegedly defective data where: (1) no one "reviewed the BAFO cost or pricing data prior to award," (2) the agency record did not document any reliance upon such data, (3) the Air Force testimony "was lacking in specificity and was unpersuasive," and (4) the Air Force relied upon "competitive forces," rather than the allegedly defective data, to make the awards. Rebuffing the government's "strict liability" theory under the Truth in Negotiations Act (TINA) that would impose liability even when government personnel disregarded the cost data at issue, the Federal Circuit concluded that TINA itself, its legislative history, and judicial precedents all squarely require reliance as an essential element of a defective pricing claim even where the government alleges that the contractor used defective data in the price.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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