

The United States Court of Federal Claims Issues Favorable Ruling on “Other Transaction” Authority Jurisdiction

By Kelly E. Buroker and Jeffrey M. Lowry

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On February 24, 2025, Judge Armando Bonilla of the United States Court of Federal Claims (COFC) issued a decision holding that the COFC is the “de facto” forum for protests challenging agency actions in connection with their “other transaction” (OT) authority.

Traditionally, the federal government buys most of the products and services it requires through the use of contracts that are governed by the policies and procedures of the Federal Acquisition Regulation (FAR). OT agreements are distinct from traditional procurement contracts because they are not subject to the FAR, permitting agencies to award contracts with fewer regulatory restrictions and more flexibility. The Department of Defense’s OT authority allows the agency to engage in these non-traditional agreements for research and development purposes or for the development of prototypes.

The decision resulted from a bid protest filed by Raytheon Company, represented by Vedder Price’s Government Contracts group. Raytheon’s protest contests the Missile Defense Agency’s (MDA) decision not to award it continued work under its other transaction agreement (OTA) for the Glide Phase Interceptor prototype development effort. Since 2019, Raytheon has served as one of two OTA contractors developing the capability to intercept hypersonic missiles in their glide phase. In September 2024, MDA announced that it would only proceed with a single contractor and declined to award additional work to Raytheon. The government sought to dismiss Raytheon’s protest, primarily arguing that the Court of Federal Claims did not have jurisdiction over OTA bid protests.

The Court denied the government’s motion to dismiss and held that the Court had jurisdiction over bid protests challenging any OTA “intended to provide the government with a direct benefit in the form of products or services,” and that Raytheon’s protest “easily falls within the Court’s protest jurisdiction under the Tucker Act, 28 U.S.C. § 1491(b)(1).” While judges at COFC have previously recognized OTA bid protest jurisdiction under specific fact patterns, and decisions of individual COFC judges are not binding on other COFC judges, the *Raytheon* decision announced the most sweeping jurisdictional standard by a COFC judge to date.

The Department of Defense and other agencies increasingly rely upon OTAs in lieu of traditional procurements, to the tune of nearly \$18 billion in fiscal year 2024. There is every reason to believe that the current administration will continue to accelerate this trend. Historically, the question for contractors of whether and how to challenge agency OTA actions and award decisions has remained uncertain. Where protesting OTAs at the Government Accountability Office is foreclosed, and bringing an Administrative Procedures Act challenge to the district court is fraught with risk, the *Raytheon* decision indicates that, until Congress or the United States Court of Appeals says otherwise, contractors should bring OTA bid protests in the Court of Federal Claims.

Please reach out to Vedder Price’s full service Government Contracts group if it can provide your company with any assistance in navigating OTAs, compliance, bid protests, stop work orders, claims, terminations, or any other issues faced by federal contractors.

If you have any questions about the topics discussed in this article, please contact **Kelly E. Buroker** at kburoker@vedderprice.com, **Jeffrey M. Lowry** at jlowry@vedderprice.com, or any Vedder Price attorney with whom you have worked.

To read the court's full decision, [click here](#).

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