

GC MICRO SUES DEFENSE LOGISTICS AGENCY OVER THE FOIA

GC Micro filed suit against the Defense Logistics Agency Nov. 16, claiming the DLA had improperly withheld information concerning defense contractor compliance with the government's goal of awarding 5% of prime contract and subcontract awards to small disadvantaged businesses (GC Micro Corp. v. Defense Logistics Agency, ND CA, No. 91-4027).

(See P. 79 for a copy of the complaint.)

The suit was brought under the Freedom of Information Act, as amended, (5 U.S.C. Section 552(a)(4)(b)), seeking a preliminary and final injunction against the DLA from withholding information from GC Micro and directing that the information be disclosed.

According to the complaint, the DLA holds certain records pursuant to the Small Business Act, 15 USC Section 644(g). The Act requires reports to be filed with the Agency concerning the federal government goal that at least 5% of all prime contracts and subcontracts be awarded to small businesses that are owned and controlled by socially and economically disadvantaged individuals. Belinda Guadarrama, a female of Mexican American descent, is the president, CEO and owner of plaintiff GC Micro.

Among the records maintained by the DLA are Standard Form 294, a quarterly report of a contractor's progress in implementing a subcontract plan, and Standard Form 295, which includes contractor goals, both percentage and dollar amounts, for small and disadvantaged individuals. According to the plaintiff, Standard Form 295 contains the latest tally of actual dollars spent on small disadvantaged subcontracts, and the percentage of subcontracts let on the contract.

GC Micro says that it requested, in writing, that the DLA disclose Standard Forms 294 and 295 data on McDonnell Douglas Corp. and Northrop Corp. The complaint says that the DLA partially refused the request in writing, agreeing to release of the Standard Form 295, but not the Standard Form 294.

GC Micro again requested disclosure of Standard Forms 294 and 295 on the Loral Aeronutronic Corp. GC Micro says that request received the same response as the earlier requests. The plaintiff appealed both the partial denials to the DLA director, offering to accept redacted Standard Form 294s, specifying the acceptable redactions.

The DLA director, Charles McCausland, who is also named in the suit, issued a written "final decision" denying the plaintiff's appeal. GC Micro said that McCausland's denial exhausted the company's administrative remedies.

The plaintiff asserts that other federal agencies have released, to them, Standard Form 294s submitted by government contractors.

GC Micro also argues that since they have employed attorneys to represent it in the action, it has incurred and will continue to incur attorneys' fees and costs, and that since the defendant's refusal to disclose the information is "wrongful and without lawful reason or intent," the company is entitled to relief as provided by the Act.

Aside from relief, GC Micro is seeking a preliminary and final injunction prohibiting the DLA from withholding the Standard Form 294 records, as requested. It also seeks future injunctions that (1) direct the DLA to make the documents available and to permit the inspection and copying of the documents and (2) strike the DLA regulation, 32 C.F.R. 1285.3(e)(3), and any other DLA regulations that conflict with the U.S. Supreme Court and Congressional interpretations regarding the disclosure of records pursuant to the Freedom of Information Act.

✓ GC Micro is represented by the Daniel R. Bartley of San Francisco.

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◆ NATION ◆

Defense Department must disclose data on minority contractors

By Eric Brazil
OF THE EXAMINER STAFF

A Novato computer firm has prevailed over the Department of Defense in a Freedom of Information Act complaint that could produce a business boom for minority entrepreneurs.

The 9th Circuit Court of Appeals in San Francisco ruled Saturday that the act requires the release of reports that show the percentage of minority-owned firms involved in major Defense Department contracts.

Belinda Guadarrama, president of GC Micro, contended that by classifying that information as proprietary, and therefore secret, the

Defense Department's Defense Logistics Agency was hurting her business and those of other similarly situated minority contractors.

The decision, Guadarrama said Saturday, "is going to make a tremendous difference to all minority contractors. Now that we have access to this information again, it is imperative that we use it to show Congress and President Clinton that the DOD and its contractors have consistently refused to allow competent and qualified minority firms to participate in government contracts. . . . The whole minority business community has been watching this case."

In 1992, the late U.S. District Judge John Vukasin ruled against

Guadarrama, concluding that the information she sought was proprietary.

Corporations filing affidavits of support for the Defense Department position — McDonnell Douglas, Northrop and the Loral Corp. — said that release of the information would damage them competitively by providing their competitors with road maps of their plans and strategies.

The appellate court disagreed, saying that the data sought "would provide little if any help to competitors attempting to estimate and undercut the contractors' bids."

Besides, the court said, the

Freedom of Information Act's "strong presumption in favor of disclosure trumped the contractors' right to privacy."

Federal procurement law requires agencies to aim for a goal of 5 percent contracting by minority-owned small businesses in defense contracts. Guadarrama contends that many contractors don't approach that goal.

In 1989, she began using the Freedom of Information Act to obtain reports to the government from major contractors that disclose the level of minority small business participation in their contracts. The reports showed that many contractors were falling far below the minority participation

goal.

A case in point was Lockheed, prime contractor for the airframe of the F-22 advanced tactical fighter, a \$3.2 billion contract of which just \$694,000 or .02 percent, went to minority-owned firms.

It was after Guadarrama began calling attention to the low numbers that the defense contractors prevailed on the Defense Logistics Agency to start classifying the forms as proprietary data.

When the forms were denied her, Guadarrama sued, contending that the government had deprived her of an indispensable tool for leveraging more business, for which she was fully eligible, out of the Defense Department.

GC Micro Corporation, Plaintiff-Appellant, v. Defense Logistics Agency, Defendant-Appellee, 33 F.3d 1109 (9th Cir. 1994)