

Jason Workmaster Quoted on Clarity of Jurisdiction Over OTAs in Bloomberg Law

"Three Rulings That Could Make 2022 Easier for Contracts Lawyers"

BLOOMBERG LAW

12.13.2021

Jason Workmaster commented on the circumstances when the claims court has jurisdiction over an Other Transaction Agreement (OTA) protest, which are now "materially clearer," he said. OTAs are legally binding (but non-Federal Acquisition Regulation (FAR)-based) instruments that allow contractors to provide agencies with prototypes and research services without having to comply with certain regulations. In *Kinometrics Inc. v. United States*, the protester asserted that the Air Force unreasonably awarded Nanometrics Inc. a \$10 million OTA for seismic equipment used to monitor nuclear treaty compliance under a Commercial Solutions Opening Acquisition. Kinometrics' protest could be reviewed because it was raised "in connection with a procurement," the claims court said on September 17. The seismic equipment solicitation Kinometrics challenged had a direct effect on the award of a contract, it said. Contractors knowing the circumstances under which they can protest an OTA in court is vital, given the Government Accountability Office (GAO) generally won't review such protests and because of the growing commitment to OTAs by federal agencies.