

A Bridge Not Far Enough to Reach Fairness

In *Cherokee Nation Technologies, LLC v. United States*, the Bureau of Indian Affairs awarded an information technology services contract to Cherokee Nation Technologies. But the incumbent contractor, Chenega Federal Systems, LLC, filed a protest with the General Accounting Office, and the BIA ultimately responded by terminating the contract with Cherokee Nation and dismissing the bid protest.

But during the pendency of BIA's review of the bid protest, on March 27, 2014, BIA asked Chenega if it was interested in a bridge contract to meet the agency's information technology needs while the bid protest was under review, to which Chenega indicated that it was. On April 1, 2014, BIA approved a Justification for Other Than Full and Open Competition, and on April 2, 2014, BIA awarded the bridge contract to Chenega in the amount of \$3.6 million, with an option to renew. Cherokee filed suit in the United States Court of Federal Claims, seeking a preliminary injunction to enjoin BIA from performing under the Chenega contract.

The CFC granted the preliminary injunction, holding that each of the four factors considered on a motion for a preliminary injunction—success on the merits, irreparable harm, balance of equities, and public interest—weighed in Cherokee's favor. In particular, the court rejected the Government's argument that the BIA's lack of preparation justified giving the contract back to Chenega without any competitive process:

Plaintiffs also contend that the public's interest will be served by granting the requested preliminary relief. "Clearly, the public interest in honest, open, and fair competition in the procurement process is compromised whenever an agency abuses its discretion in evaluating a contractor's bid." . . . In this case, though, the circumstances presented are even worse, as it appears that the agency authorized the use of a contracting vehicle that limited competition and favor the prior incumbent. . . . In the instant case, the public's interest likewise lies in preserving the integrity of the competitive process.

Read the full opinion [here](#).