

# Government Contracts Blog

Posted at 6:08 AM on May 12, 2009 by Sheppard Mullin

## **Quo Vadis? - Rothe and the Future of Federal Contracting Programs for Minority-Owned Small Businesses**

The Congressional Research Service has recently published a useful and thought-provoking [report](#) on the potential Government-wide impact of the Federal Circuit's November 4, 2008 decision in *Rothe Development Corporation v. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008). Although we have previously reported on *Rothe* as it wound its way through the courts click [here](#) and [here](#), the CRS Report provides a comprehensive litigative history of *Rothe* that is often lacking in piecemeal reports relating to the latest developments in that decade-long saga. It also assesses the potential impact of *Rothe* on a host of federal contracting programs designed to promote the participation of disadvantaged small businesses in the federal procurement process and, including SBA's 8(a) Program, and on contracting assistance programs for women-owned businesses. While concluding, with suitable caveats, that few if any of these programs are likely to succumb to a *Rothe*-like attack, the report notes that cases like *Rothe* "place an increasingly heavy evidentiary burden on Congress," that the courts' traditional "deference to congressional authority has eroded over the years," and that "Congress must now support any race-conscious measures by developing a strong record, as demonstrated in hearings and legislative findings, of methodologically sound, broad statistical evidence of discrimination capable of withstanding searching judicial inquiry." The report is well worth the time it will take you to read it.

Authored by:

John W. Chierichella

(202) 218-6878

[jchierichella@sheppardmullin.com](mailto:jchierichella@sheppardmullin.com)