

BRIEFING PAPERS[®] WEST[®]

SECOND SERIES

PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

IDENTIFYING VIABLE PREAWARD BID PROTEST ALLEGATIONS AT THE GAO

By Marko W. Kipa, Keith R. Szeliga, and Jessica M. Madon

The Government Accountability Office is authorized to hear preaward and postaward bid protest cases.¹ While protests often focus on postaward challenges to an agency's evaluation,² there are many meritorious protest grounds that must be raised, if at all, prior to the closing date for receipt of proposals.³

This BRIEFING PAPER assists protesters and their counsel in identifying viable preaward bid protest allegations. It identifies the most common categories of preaward bid protest grounds and describes

the circumstances under which each ground is most likely to prevail. This analysis is reinforced with a discussion of illustrative GAO preaward bid protest decisions.

IN BRIEF

Inclusion Of Improper Clause Or Provision	Small Business Issues
Failure To Include A Mandatory Clause Or Provision	Negotiation vs. Sealed Bidding
Unduly Restrictive Solicitation Provisions	Preference For Multiple Awards
Improper Bundling Of Requirements	"Out Of Scope" Task Order
Ambiguous Solicitation Provisions	Use Of FSS Contract For Non-FSS Purchase
Unreasonable Evaluation Method	Limitation On Proposal Revisions
Other Than Full & Open Competition	Changed Requirements
Lack Of Consideration	Improper Disclosure Of Proprietary Information
	Bias
	Improper Cancellation Of Solicitation

Inclusion Of Improper Clause Or Provision

An agency does not have the discretion to violate the law.⁴ The GAO will sustain a protest if you can establish that the terms of a solicitation expressly conflict with a generally applicable statute or regulation.⁵ Likewise, the GAO will uphold challenges to solicitation terms that violate an agency specific procurement statute or regulation.⁶

Marko W. Kipa, Keith R. Szeliga, and Jessica M. Madon are attorneys in the Washington, D.C. office of Sheppard Mullin Richter & Hampton, LLP. Their practice focuses on Government contracts litigation and counseling, including GAO and Court of Federal Claims bid protests.

The GAO also may sustain a protest if you can establish that a solicitation for commercial items contains nonmandatory provisions that are inconsistent with customary commercial practice. For an agency to include a nonstandard provision in a commercial item solicitation, the agency must (1) show through adequate market research that it is customary commercial practice to include such a requirement or (2) obtain a waiver to tailor the Federal Acquisition Regulation commercial item provisions to meet the needs of the Government.⁷ The GAO will sustain a protest if you can establish that a commercial item solicitation provision does not meet either of these requirements.⁸

Failure To Include A Mandatory Clause Or Provision

An agency may not omit solicitation provisions or contract clauses required by law.⁹ Thus, you may have a viable protest allegation if a solicitation fails to include a provision required by statute¹⁰ or regulation.¹¹

Unduly Restrictive Solicitation Provisions

An agency generally has the discretion to determine its needs and the best method to accommodate them.¹² In preparing a solicitation, however, an agency must specify its needs and solicit offers in a manner designed to achieve full and open competition.¹³ The GAO will sustain a protest if you can establish that a solicitation includes features that limit the field of competition but are not necessary to meet the agency's minimum needs.¹⁴

Most protests alleging that a solicitation is unduly restrictive of competition focus on the specifications or statement of work.¹⁵ Any solicitation provision may be found unduly restrictive of competition, however, if it is not necessary to meet the agency's minimum needs. Examples of provisions the GAO has found to unduly restrict competition include bonding requirements,¹⁶ product certification requirements,¹⁷ and evaluation criteria.¹⁸ Accordingly, it is critical to look beyond the specifications or statement of work in analyzing whether a solicitation contains unnecessary provisions or requirements.

■ The Agency's Burden Of Proof

If you allege that a solicitation provision is unduly restrictive of competition, the agency will have the burden to establish that the restrictive provision is necessary to meet its minimum needs.¹⁹ The GAO will review the agency's justification to determine whether it is reasonable and can withstand logical scrutiny.²⁰ The GAO will sustain your protest if it concludes that the agency's explanation is inadequate or does not respond to the issue raised.²¹ A protest is likely to succeed if an agency's justification for a restrictive provision is based on unsubstantiated assertions²² or the agency failed to consider whether alternative approaches would meet its minimum needs.²³

On the other hand, the GAO will not sustain a protest based on your mere disagreement with an agency's judgment concerning its needs and how to accommodate them.²⁴ Nor will the GAO sustain a protest simply because a solicitation provision limits competition by rendering an offeror or a class of offerors unable to compete.²⁵ Rather, you must show that the requirement is

WEST®

BRIEFING PAPERS

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

BRIEFING PAPERS® (ISSN 0007-0025) is published monthly except January (two issues) and copyrighted © 2010 ■ Valerie L. Gross, Editor ■ Periodicals postage paid at St. Paul, MN ■ Published by Thomson Reuters / 610 Opperman Drive, P.O. Box 64526 / St. Paul, MN 55164-0526 ■ <http://www.west.thomson.com> ■ Customer Service: (800) 328-4880 ■ Postmaster: Send address changes to Briefing Papers / PO Box 64526 / St. Paul, MN 55164-0526

BRIEFING PAPERS® is a registered trademark used herein under license. All rights reserved. Reproduction, storage in a retrieval system, or transmission of this publication or any portion of it in any form or by any means, electronic, mechanical, photocopy, xerography, facsimile, recording or otherwise, without the written permission of Thomson Reuters is prohibited. For authorization to photocopy, please contact the Copyright Clearance Center at 222 Rosewood Drive, Danvers, MA 01923, (978)750-8400; fax (978)646-8600 or West's Copyright Services at 610 Opperman Drive, Eagan, MN 55123, fax (651)687-7551.

unduly restrictive, i.e., that it is not necessary to meet the agency's minimum needs.²⁶

■ Preference For Design Specifications

There are two general categories of specifications: design specifications and performance specifications. Design specifications identify a particular manner of performance and permit no deviation. Performance specifications, on the other hand, specify the results to be obtained and leave it up to the contractor to determine how to accomplish those results.

Design specifications are appropriate only if an agency cannot state its minimum needs in terms of a performance specification that alternative designs can meet.²⁷ Protests challenging restrictive design specifications are most likely to succeed where an agency attempts to justify the use of a design specification based on its belief that alternative design approaches will not meet an objectively measurable standard of performance.²⁸

The use of precise design specifications, however, does not automatically provide a basis for finding a solicitation to be unduly restrictive of competition.²⁹ The GAO is likely to deny your protest if an agency can articulate a reasonable basis for requiring a particular design feature.³⁰

■ Specifications "Written Around" A Competitor's Product

Protesters frequently allege that specifications unduly restrict competition because they were "written around" a competitor's product. The fact that an agency used your competitor's product as a basis for drafting specifications does not, in itself, provide a valid basis for protest.³¹ On the other hand, the GAO will sustain a protest if an agency fails to establish that it actually requires the design features specified in the solicitation.³² This issue often arises where a brand name or equal specification identifies salient characteristics that are not necessary to meet the agency's needs.³³

■ Excessive Risk To Contractor

Agencies may impose risk on contractors only to the extent necessary reasonably to limit the

Government's burden.³⁴ Thus, you may have a colorable protest allegation if you can establish that a solicitation's pricing structure exposes offerors to excessive risk.³⁵

The mere presence of risk, however, does not make a solicitation improper.³⁶ The GAO has explained that an agency has the discretion to structure a competition to impose maximum risk on the contractor and minimum burdens on the agency.³⁷ Thus, it should come as no surprise that protests alleging that a solicitation imposes excessive risk rarely succeed.

■ Human Safety & National Security

Agencies have the discretion to set requirements relating to human safety and national security so as to achieve not just reasonable results, but the highest possible reliability and effectiveness.³⁸ An agency may, for example, impose "zero deviation" requirements in these areas whether or not such requirements are consistent with industry standards.³⁹ Furthermore, an agency is not required to show an instance of actual damage or injury under a prior contract before imposing a requirement that reduces risks to life or property, as long as the agency's position can withstand logical scrutiny.⁴⁰

Even where a restrictive solicitation provision relates to human safety or national security, however, the GAO will sustain your protest if it concludes that the agency's position lacks a reasonable basis.⁴¹ In a frequently cited case, the GAO held that a specification requiring shotguns with a particular type of safety was unduly restrictive of competition because shotguns with a different type of safety would have been equally effective.⁴² The GAO explained that an "unsupported theoretical assertion" that a solicitation requirement is necessary for human safety or national security does not meet the agency's burden to establish that the requirement is necessary to meet its minimum needs.⁴³ Thus, while the GAO affords agencies broad discretion in defining requirements relating to public safety and national security, the mere fact that a requirement bears on these issues does not give the agency *carte blanche* to include unduly restrictive requirements.

■ Number Of Offerors

Agencies often assert that a challenged solicitation provision does not unduly restrict competition because the agency received multiple responses to the solicitation. The GAO has rejected this argument, holding that the relevant test is not whether some competitors can surmount barriers to competition, but whether the barriers themselves are necessary to meet the Government's needs.⁴⁴ Thus, the fact that other offerors are likely to respond to a solicitation should not deter you from challenging an unduly restrictive requirement.

■ Other Procurements

Protesters often argue that a solicitation provision unduly restricts competition because it was not included in other solicitations. The GAO has held that each procurement is a separate action and that the propriety of the action taken under one procurement is not relevant to the propriety of the actions taken under another procurement.⁴⁵ Thus, the GAO will deny a protest alleging that specifications are unduly restrictive of competition solely on the basis that past solicitations did not include the restrictive requirement.⁴⁶

Improper Bundling Of Requirements

Since bundled procurements combine separate, multiple requirements into one contract, they have the potential to restrict competition by excluding firms that can furnish only a portion of the requirement.⁴⁷ Because of the potentially restrictive nature of bundling, particularly its impact on small businesses' ability to compete, the GAO will sustain a protest unless the agency demonstrates that bundling is necessary to meet its minimum needs.⁴⁸

You may have a compelling protest allegation if the agency's sole justification for bundling is administrative convenience.⁴⁹ The requirement for full and open competition takes precedence over the convenience and potential cost savings that might result from managing a single contract.⁵⁰ Thus, to the extent possible, you should characterize an agency's justification for bundling as relating to administrative convenience rather than some other Government interest.

On the other hand, your protest is likely to be denied if the agency can establish that the combination of requirements is necessary to meet its minimum needs.⁵¹ The GAO has recognized that combining requirements may be appropriate in a variety of cases, including, without limitation, where an agency (1) consolidates requirements to ensure military readiness,⁵² (2) requires a single contractor to perform the work to ensure the effective coordination and integration of inter-related tasks,⁵³ (3) lacks sufficient personnel to administer multiple contracts,⁵⁴ (4) reasonably determines that consolidation will result in significant cost savings or efficiencies,⁵⁵ (5) has a need to obtain the benefit of dealing with only one accountable contractor so as to avoid the need to analyze the source of technical problems and the resulting "finger pointing" between contractors,⁵⁶ or (6) reasonably anticipates that it will not receive competition for all of its requirements if it solicits separately for them.⁵⁷

An agency's mere assertion that one of these rationales applies, however, does not meet the agency's burden to establish that a bundled procurement is necessary to meet its minimum needs. Thus, the GAO will sustain a protest where, for example, an agency makes a generalized appeal to military readiness⁵⁸ or asserts that bundling is necessary to achieve competition, without adequate support for its position.⁵⁹

Ambiguous Solicitation Provisions

A solicitation requirement is ambiguous where it is susceptible to two or more reasonable interpretations.⁶⁰ The GAO will sustain a protest if you can show that solicitation provisions are vague or ambiguous, do not set forth a common basis for evaluating offerors' proposals,⁶¹ or do not allow offerors to compete on an equal basis.⁶²

The GAO will deny a protest, however, if the relevant solicitation provisions are susceptible to only one reasonable interpretation.⁶³ In making this determination, the GAO will apply traditional principles of contract interpretation and will read the solicitation as a whole so as to give effect to each provision in the solicitation.⁶⁴ For example, your interpretation of a solicitation provision may be found to be unreasonable where it contradicts

applicable regulatory provisions.⁶⁵ Importantly, even if the GAO denies a protest, finding that a solicitation provision is not ambiguous, this does provide clarity to the requirement in question—and the interpretation that the agency advocates in the preaward protest is one that it will not be able to escape after award.

You also should keep in mind that the GAO typically will review protests based on latent ambiguities in the postaward context, e.g., ambiguities that are not apparent from the face of the solicitation or do not come to light until after contract award.⁶⁶ However, your protest may be denied or dismissed as untimely in the postaward context if the ambiguity was patent, i.e., if it was an “obvious, gross, or glaring error.”⁶⁷ For instance, the GAO will dismiss a postaward protest where the relied-upon solicitation terms were in direct conflict with each other.⁶⁸ Thus, if you have any doubts regarding the import of a solicitation provision and the agency fails to clarify that provision prior to the closing time for receipt of proposals, you may wish to consider filing a preaward protest.

Unreasonable Evaluation Method

Most successful preaward protests challenging an agency’s disclosed evaluation method relate to cost or price. An agency has broad discretion to select an appropriate method for evaluating cost or price, but its evaluation scheme cannot be unreasonable, irrational, or likely to produce a misleading result.⁶⁹ The disclosed cost or price evaluation method must allow the agency to evaluate or compare the relative cost or price of proposals to determine whether one offeror’s proposal would be more or less costly than another offeror’s proposal.⁷⁰

The GAO will sustain a protest if you can show that there is no reasonable relationship between the agency’s disclosed cost or price evaluation method and the likely cost or price of performance. For example, your protest may be sustained if you can establish that an agency’s cost or price evaluation method does not account for the solicitation’s contemplated delivery schedule,⁷¹ considers services that will not be provided under the contract,⁷² or seeks to evaluate only a portion

of the costs likely to be incurred during performance.⁷³ The GAO will deny a protest, however, if an agency shows that its cost or price evaluation scheme reasonably represents the work likely to be performed under the contract.⁷⁴

Your chances for success will vary depending on the amount of information available to the agency when formulating its price evaluation scheme. For instance, your protest may be sustained where the agency possessed data pertaining to its complete requirements but only intended to evaluate the costs associated with a portion of those requirements.⁷⁵ However, your protest may be denied where the agency’s selection of reasonable estimates for evaluating prices was necessitated, in part, by a lack of pertinent information or data.⁷⁶

Other Than Full & Open Competition

Agencies generally must seek full and open competition for goods and services.⁷⁷ When agencies invoke exceptions to the requirement for full and open competition, they must comply with a detailed statutory and regulatory framework.⁷⁸ The GAO will “closely scrutinize” an agency’s proposed sole-source procurement.⁷⁹ However, the GAO typically will defer to an agency if the agency provides a reasonable justification for exercising an exception to the requirement for full and open competition and its actions are in “substantial compliance” with the Competition in Contracting Act.⁸⁰

This section of the BRIEFING PAPER highlights arguments that the GAO has confronted when addressing a protester’s challenge to an agency’s proposed sole-source award based on the most frequently invoked exceptions to the requirement for full and open competition—“one responsible source” and “unusual and compelling urgency.” Postaward protests relating to these exceptions, which have been addressed in a prior PAPER, should apply with equal force in the preaward context.⁸¹

■ Notice & Synopsis

An agency usually must issue a notice and synopsis of a proposed sole-source award when

invoking the “one responsible source” exception.⁸² However, an agency may not be required to submit a notice under the “unusual and compelling urgency” exception if the Government would be seriously injured by the agency complying with the required timeframe for potential offerors to respond.⁸³

An agency’s notice of its proposed sole-source award must contain an “accurate description” of the goods or services to be acquired.⁸⁴ The description must be “clear and concise” and cannot be misleading.⁸⁵ The synopsis must allow prospective sources to make an informed business judgment about whether to request a copy of the solicitation.⁸⁶ It also must afford prospective sources a meaningful opportunity to demonstrate their ability to meet the agency’s needs.⁸⁷

The GAO will sustain a protest if you can show that the agency’s notice and synopsis did not meet these standards. Specifically, the GAO is likely to sustain a protest where the agency’s notice is misleading, contains inaccurate information,⁸⁸ misclassifies the type of work,⁸⁹ or is simply too general to afford potential sources a meaningful opportunity to respond.⁹⁰

■ Lack Of Advance Planning

An agency must promote competition affirmatively and may not remain passive where it can take steps to avoid the need for a proposed sole-source award.⁹¹ While an agency’s planning efforts need not be error-free, they must be reasonable.⁹²

A protest is likely to succeed if you can show that an agency’s proposed sole-source award results from its lack of advance planning. For example, your protest may be sustained where an agency unreasonably deprives you of an opportunity to become an approved source in the face of foreseeable requirements.⁹³ Your protest also may be sustained where the agency fails to take steps to promote competition, such as undertaking an analysis concerning the potential cost savings from enhanced competition, updating its work manuals, and considering alternative methods for meeting its requirements.⁹⁴

On the other hand, the GAO will deny a protest if the agency engaged in adequate advance planning, but its efforts were simply unsuccessful. For instance, your protest may be denied where the agency issued multiple notices and conducted several market surveys but was unable to identify additional sources that could meet the agency’s requirements.⁹⁵ Your protest also may be denied where the agency’s planning efforts were derailed by an unexpected program failure⁹⁶ or other unanticipated events.⁹⁷ The GAO also is likely to deny a protest if you contributed materially to the agency’s inability to make a competitive award.⁹⁸

■ Exceeding Immediate Urgent Requirements

An agency’s invocation of the “unusual and compelling urgency” exception must be limited to the minimum quantity needed to satisfy its immediate urgent requirement.⁹⁹ Moreover, it should not continue for more than a minimum time.¹⁰⁰

The GAO is likely to sustain a protest if you can establish that an agency has failed to limit its justification and approval to its immediate needs. For example, your protest may be sustained where an agency seeks to procure an excessive number of items¹⁰¹ or items that do not need to be replaced immediately,¹⁰² does not limit the period of performance,¹⁰³ or could conduct a competition for a portion of its requirements.¹⁰⁴

Your protest may be denied, however, where the agency has taken reasonable steps to limit its proposed sole-source award to its immediate needs. For instance, your protest may be denied where an agency structures a procurement in phases to allow for the competitive acquisition of a majority of its requirements¹⁰⁵ or does not extend its proposed sole-source award beyond the time period necessary to conduct a competitive acquisition.¹⁰⁶

■ Adequacy Of The J&A

An agency must execute a written J&A with sufficient facts and rationale to support the use of an exception to the requirement for full and open competition.¹⁰⁷ The GAO will examine an agency’s J&A to ensure that it is reasonably based and supported by the record.¹⁰⁸

The GAO will sustain a protest if you can show that an agency's J&A is unreasonable.¹⁰⁹ For example, the GAO has found a J&A to be unreasonable where the J&A misstated the services to be acquired, the dollar value of the acquisition, and the length of the contract and also stated incorrectly that only one contractor could perform the work.¹¹⁰ The GAO also has found a J&A to be unreasonable where the J&A only contained conclusory statements regarding issues such as whether there would be "unacceptable delay" or "substantial negative effect" from having to compete the contract¹¹¹ or a substantial duplication of costs that would not be recovered through competition.¹¹²

Your protest will be denied, however, if the agency's rationale and conclusions are adequately justified and reasonable. For instance, the GAO upheld an agency's J&A where it was based on a reasonable need for standardization¹¹³ and legitimate safety concerns.¹¹⁴ The GAO also has upheld an agency's J&A where the record contained "voluminous documentation" supporting the agency's proposed sole-source procurement.¹¹⁵

Your protest also may be denied if the agency reasonably concluded that you were unable to meet its requirements. For instance, the GAO has denied protests where a protester lacked the necessary security clearance needed to perform the work,¹¹⁶ could not become qualified in time to meet the agency's delivery schedule,¹¹⁷ lacked familiarity with the system or its components,¹¹⁸ or merely "parroted the specifications from the solicitation" and did not establish that its system could meet the agency's needs.¹¹⁹

Lack Of Consideration

The GAO will sustain a protest if you can establish that the solicitation will not result in the award of an enforceable contract due to a lack of mutual consideration. This protest allegation has been successful in two scenarios: (1) requirements contracts that do not obligate the Government to purchase all of its requirements from a particular contractor and (2) indefinite-quantity contracts that fail to provide for a guaranteed minimum quantity.

■ Requirements Contracts

A requirements contract obligates an agency to purchase all of its requirements for particular supplies or services during a specified period from the contractor.¹²⁰ The essential feature of a requirements contract is that the agency is committed to satisfying its requirements only through that contractor and no other, while the contractor is committed to filling all such requirements that may arise.¹²¹ These mutual promises constitute the consideration necessary to form a binding requirements contract.¹²² The absence of either required promise undermines mutuality of consideration and renders the contract unenforceable.¹²³

You may have a viable protest allegation if a solicitation provision disclaims the agency's obligation to order all of its requirements from a particular contractor.¹²⁴ The GAO has explained that obligations that are avoidable at an agency's discretion, or whenever in the Government's interest, create an illusory promise rather than an enforceable contract.¹²⁵

■ Indefinite-Quantity Contracts

An indefinite-quantity contract allows an agency to purchase an indefinite quantity of supplies or services, within stated limits, during a fixed ordering period.¹²⁶ The contract must require an agency to order and the contractor to furnish at least a stated minimum quantity of supplies or services.¹²⁷ To be binding, an indefinite-quantity contract must specify a guaranteed quantity that is more than a "nominal amount."¹²⁸

The GAO will sustain a protest where a solicitation for an indefinite-quantity contract fails to state a guaranteed minimum quantity of supplies or services.¹²⁹ In theory, a valid basis for protest also exists where a solicitation for an indefinite-quantity contract specifies a guaranteed minimum quantity but that quantity is not "more than nominal."¹³⁰ In practice, however, the GAO has concluded that a guaranteed minimum quantity of as little as \$500 satisfies the requirement for mutual consideration.¹³¹ Thus, while a lack of mutual consideration may serve as a viable basis for protest, you are unlikely to prevail in a protest challenging the adequacy of such consideration.

Small Business Issues

All acquisitions above the micro-purchase threshold (currently \$3,000) but less than the simplified acquisition threshold (currently \$100,000)¹³² must be set aside for small businesses unless the Contracting Officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery.¹³³ An agency must set aside acquisitions over the simplified acquisition threshold if it reasonably expects at least two small business concerns to offer fair market prices.¹³⁴ This set-aside rule is known as the “Rule of Two.” It applies to solicitations for contracts as well as competitively awarded task orders.¹³⁵

■ Reasonable Expectation Of Two Offers

The GAO will sustain a protest if an agency’s decision not to issue a procurement as a small business set-aside resulted from the CO’s failure to undertake reasonable efforts to ascertain the availability of small businesses.¹³⁶ This protest allegation can be particularly strong where an agency has ignored expressions of interest by small businesses¹³⁷ or failed to contact small business offerors that submitted proposals for a similar competition.¹³⁸

On the other hand, the GAO will defer to an agency’s determination that it is unlikely to receive offers from two responsible small businesses if that determination is supported by adequate market research.¹³⁹ For example, the GAO denied a protest challenging an agency’s failure to set aside a procurement where the agency searched multiple databases, held industry day events, discussed the market research with a Small Business Administration representative, and in the end determined that it could reasonably expect an offer from only one responsible small business.¹⁴⁰

■ Hierarchy Of Set-Aside Programs

There is a “hierarchy” of small business set-aside programs. For instance, the historically underutilized business zone set-aside program takes precedence over the service-disabled veteran-owned small business concern set-aside program because the statutory language of the

HUBZone set-aside program *requires* that the agency set aside contract opportunities if the agency has a reasonable expectation that two HUBZone small businesses will submit offers and the award can be made at a fair price, while SDVOSBC set-asides are *permissive*.¹⁴¹ Thus, you may have a viable protest allegation if you can establish that a procurement should have been set aside for one type of small business concern rather than another.¹⁴²

■ Small Business Size Status

The SBA possesses the exclusive authority to determine the size and socioeconomic status of a business concern.¹⁴³ The GAO will sustain a protest where an agency purports to determine a business concern’s size or socioeconomic status rather than referring the matter to the SBA.¹⁴⁴ For example, in one case, the agency rejected the protester’s bid as nonresponsive based on its own determination that the joint venture agreement at issue did not comply with the SBA’s regulatory requirements.¹⁴⁵ The GAO sustained the protest because the agency failed to refer the issue to the SBA, the authority responsible for determining SDVOSBC status.¹⁴⁶

■ NAICS Code Classification

The GAO will sustain a protest if you can establish that the agency misclassified a procurement under the North American Industry Classification System code¹⁴⁷ or disregarded a decision by the SBA’s Office of Hearings and Appeals on the proper NAICS code classification.¹⁴⁸ The GAO has explained that by failing to include the proper NAICS code, an agency fails to effectively notify potential offerors of a procurement and to obtain full and open competition under CICA.¹⁴⁹ An improper NAICS code has further implications for a small business procurement because size standards vary between NAICS code classifications.¹⁵⁰

■ Partial Set-Asides

An agency must set aside a *portion* of an acquisition for small business concerns when (1) a total set-aside is not appropriate, (2) the requirement is severable into two or more lots, (3) one or more small business concerns has the technical

competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price, and (4) the acquisition is not subject to simplified acquisition procedures.¹⁵¹ The GAO will sustain a protest where an agency fails to consider whether a partial small business set-aside is required.¹⁵²

Negotiation vs. Sealed Bidding

An agency must use sealed bidding procedures, as opposed to a negotiated procurement, when (a) time permits, (b) the award will be made on the basis of price, (c) no discussions are required, and (d) the agency expects to receive more than one sealed bid.¹⁵³ The GAO will sustain a protest challenging an agency's use of negotiated procedures where the statutory requirements for the use of sealed bidding procedures are present.¹⁵⁴

Agencies typically have little difficulty defending the use of a negotiated procurement, even where price is the determining factor based, for example, on the need for discussions.¹⁵⁵ However, when an agency justifies the need for discussions either for administrative convenience or to ensure all firms have a complete understanding of the specifications, you may have a viable protest ground, assuming the other statutory requirements for the use of sealed bids are present.¹⁵⁶

Preference For Multiple Awards

■ Single vs. Multiple Award IDIQ Contracts

The Federal Acquisition Streamlining Act, as implemented by the FAR, establishes a preference for multiple award indefinite-delivery, indefinite-quantity contracts.¹⁵⁷ The FAR also identifies six instances in which an agency is prohibited from issuing multiple awards—where (1) only one contractor can provide the level of quality required because the supplies or services are unique or highly specialized, (2) a single award will result in more favorable terms and conditions, including price, (3) the expected cost of administering multiple contracts outweighs the associated benefits, (4) the projected task orders are so integrally related that only a single contractor can reasonably perform the work, (5) the total

estimated value of the contract is less than the simplified acquisition threshold, or (6) multiple awards would not be in the best interests of the Government.¹⁵⁸

The GAO will review an agency's determination under each of these factors for reasonableness.¹⁵⁹ If an agency fails to justify the award of a single indefinite-quantity contract under at least one of the factors, your protest may be sustained.¹⁶⁰ On the other hand, your protest is unlikely to succeed if you do not present "any convincing evidence" that the agency erred in making a single award.¹⁶¹ Your protest also may not be successful if an agency opted to award a single requirements contract instead of making multiple awards.¹⁶²

■ "Advisory & Assistance" Services

"Advisory and assistance" services include (a) management and professional support services, (b) studies, analyses, and evaluations, and (c) engineering and technical services.¹⁶³ The FAR precludes an agency from awarding a requirements contract for "advisory and assistance" services where the period of performance exceeds three years and the value of the contract, including options, is over \$11.5 million, unless the appropriate agency official makes a written determination that the services are so unique or highly specialized that it is not practicable to make multiple awards.¹⁶⁴ The GAO may sustain your protest if you can show that an agency is seeking to procure "advisory and assistance" services under a requirements contract, rather than a multiple award contract, without obtaining the required approval.¹⁶⁵

"Out Of Scope" Task Order

The GAO is authorized to hear task order protests where the task order is valued at over \$10 million.¹⁶⁶ The GAO also is authorized to entertain allegations that the order exceeds the scope, period, or maximum value of the underlying multiple award contract because such a task order would constitute an improper sole-source award.¹⁶⁷

To prevail in a protest alleging that a task order exceeds the scope of an IDIQ contract,

you will need to show that there was a material difference between the task order and the underlying contract.¹⁶⁸ The GAO will examine the circumstances surrounding the procurement; changes to the nature and type of work, period of performance, and price; and whether the solicitation adequately advised offerors that the agency could procure the type of work ordered.¹⁶⁹ The GAO's primary concern is whether offerors reasonably could have anticipated the issuance of such a task order at the time they submitted their proposals for the contract.¹⁷⁰

For example, your protest may be successful where the task order request and underlying contract call for products that contain "significant physical differences," are manufactured using different materials, and are subject to a vastly different "breadth of distribution."¹⁷¹ Likewise, your protest may be successful where there is only a "small overlap" between the work identified in the task order request and underlying contract.¹⁷²

Use Of FSS Contract For Non-FSS Purchase

Non-Federal Supply Schedule purchases that exceed the micro-purchase threshold typically must comply with general competition requirements.¹⁷³ Agencies may not use FSS procedures to procure non-FSS products or services, commonly known as "open market" products and services, even if those products or services are integral or incidental to FSS items.¹⁷⁴ Your protest may be sustained if an agency attempts to purchase non-FSS products or services using FSS procedures.¹⁷⁵

Limitation On Proposal Revisions

When an agency amends a solicitation and permits proposal revisions, it must permit offerors to revise any aspect of their proposals, including those that were not the subject of the amendment, unless the agency establishes that (1) the amendment could not reasonably have any effect on other aspects of proposals or (2) allowing such revisions would have a detrimental impact on the competitive process.¹⁷⁶

The cases applying these criteria demonstrate you may have a compelling protest allegation where an agency attempts to restrict proposal revisions following an amendment that materially changes its disclosed requirements or evaluation method.¹⁷⁷ On the other hand, a protest is unlikely to succeed where an agency reopens discussions for the limited purpose of obtaining information that is unlikely to affect other aspects of offerors' proposals.¹⁷⁸

Changed Requirements

■ Failure To Allow Proposal Revisions

Where an agency's requirements change after a solicitation has been issued, the agency must amend the solicitation to reflect its changed needs and afford offerors an opportunity to submit revised proposals.¹⁷⁹ If an agency fails to do so, your protest may be sustained. For example, in one case, an agency amended a solicitation for travel services to allow contractors to charge their traditional transaction fee in the event of a system failure and to delete a most favored customer provision but did not permit offerors to submit revised proposals.¹⁸⁰ The GAO sustained the protest and found that the agency was required to reopen the competition because the amendment eliminated a significant performance risk and shifted financial risk from offerors to the Government.¹⁸¹

■ Award With Intent To Modify

The GAO generally will not consider issues of contract administration.¹⁸² However, the GAO will review a protest alleging that an agency contemplates awarding a contract with the intent to modify its terms or requirements, since this is "tantamount to an improper sole-source award."¹⁸³ Your protest may be sustained if you can establish that an agency intends to modify the material terms of a contract after award.¹⁸⁴

Improper Disclosure Of Proprietary Information

The GAO will review a protest alleging that a solicitation improperly discloses your proprietary

data. It will sustain such a protest only if you can present clear and convincing evidence that the procurement will violate your proprietary rights. Specifically, you must establish that (1) the material provided to the Government was properly marked as proprietary or submitted to the Government in confidence, (2) the material reflects a design or concept that resulted from the investment of significant time and expense, and (3) the material contains data or concepts that could not be obtained independently from publicly available literature or common knowledge.¹⁸⁵ Even if there is no direct evidence that the Government used your proprietary data in drafting the solicitation, the GAO may be inclined to sustain your protest if the Government cannot explain any striking similarities between your proprietary data and the design included in a solicitation.¹⁸⁶

The GAO will deny a protest, however, if you cannot establish any one of the criteria identified above. In one case, for example, the GAO denied a protest where the protester failed to establish that it had properly marked its data as proprietary, much of the data disclosed in the solicitation had been included in prior solicitations that the protester had not protested, and the protester produced no evidence, beyond its self-serving statements, that its efforts involved significant time and expense.¹⁸⁷ In another case, the GAO denied a protest where the protester's concept was not unique and the protester had disclosed significant portions of that concept in workshops held over a 13-year period.¹⁸⁸

The circumstances under which the GAO will sustain a protest relating to the disclosure of proprietary data are limited in several other respects. The GAO will deny a protest if the Government has disclosed your proprietary data inadvertently.¹⁸⁹ Furthermore, the GAO will not exercise jurisdiction over protests alleging that another offeror misappropriated your proprietary data since such allegations constitute a dispute between private parties.¹⁹⁰

Bias

Bias is a frequently alleged, but rarely successful, protest ground. To prevail on an al-

legation of bias, you must allege and prove that the agency acted in bad faith and without a reasonable basis.¹⁹¹ This burden is difficult to meet because Government officials are presumed to act in good faith.¹⁹² In fact, the only recent case in which the GAO sustained an allegation of bias related to the Darleen Druyun scandal, where a senior procurement official, who was involved in altering the procurement requirements, acknowledged that she was biased in favor of The Boeing Company and had been indicted earlier for her improper conduct.¹⁹³

Improper Cancellation Of Solicitation

While an agency has broad discretion in determining whether to cancel a solicitation,¹⁹⁴ the GAO will examine the agency's decision to ensure that it is reasonable.¹⁹⁵ The GAO has analyzed the cancellation of a solicitation in a variety of contexts. Regardless of the context, however, the GAO is likely to sustain a protest if you can show that the decision to cancel a solicitation was unreasonable.¹⁹⁶

■ Cancellation As A Pretext

The GAO will sustain a protest if an agency cancels a solicitation as a pretext to avoid a competition or to avoid resolution of a protest.¹⁹⁷ For example, the GAO sustained a protest where the agency stated that its decision to cancel a solicitation was due to a lack of valid delegated procurement authority, but the agency continued with similar competitions during the same time period.¹⁹⁸

You may encounter difficulty proving that a cancellation was pretextual because Government officials are presumed to act in good faith and this presumption is overcome only through "convincing proof" that the agency was motivated by bad faith.¹⁹⁹ The GAO will not attribute unfair or prejudicial motives to procurement officials on the basis of inference and supposition.²⁰⁰ For example, the GAO will deny your protest if you offer only your suspicions regarding the timing of the cancellation decision, without any further evidence.²⁰¹

■ Failure To Follow Procedure

If an agency fails to follow proper procedure when it cancels a solicitation, the GAO will likely sustain a protest challenging the agency's actions as unreasonable.²⁰² For example, in one case, the GAO sustained a protest where a small business concern was the sole offeror and the agency did not believe it was a responsible contractor.²⁰³ Instead of obtaining a Certificate of Competency from the SBA, as required, the agency cancelled the solicitation and decided to perform the work itself.²⁰⁴ The GAO concluded that the agency did not have a rational basis to cancel the solicitation without first referring the matter to the SBA, which has exclusive jurisdiction over such matters.²⁰⁵

In addition, you may have a viable protest allegation if an agency cancels a procurement based on an erroneous belief that cancellation was necessary to comply with a statute.²⁰⁶ For example, the GAO sustained a protest where the agency cancelled a solicitation because it believed that certain services had to be procured under the Javits-Wagner-O'Day Act.²⁰⁷ The GAO concluded the agency lacked a rational basis to cancel the procurement because the required services were not included on the JWOD procurement list.²⁰⁸

■ Possibly Compromised Procurements

While an agency's concern that the integrity of a procurement may have been compromised is a valid basis for cancellation,²⁰⁹ the GAO will sustain a protest if an agency cancels a solicitation without investigating whether perceived irregularities actually affected the procurement.²¹⁰ For example, in one case, the agency decided to cancel the solicitation following the disclosure of offerors' proposed prices.²¹¹ The GAO found that cancellation of the solicitation was unreasonable because the agency had no information that anyone benefited from, or was prejudiced by, the disclosure.²¹²

■ Ambiguity

An agency may cancel a solicitation that it reasonably determines to be ambiguous.²¹³ It is possible, however, to challenge an agency's determination of ambiguity.²¹⁴ For example,

the GAO sustained a protest where the agency cancelled a solicitation based on an ambiguous price evaluation provision because, when the solicitation was read as a whole, there was only one possible interpretation of the provision.²¹⁵ In a similar case involving an FSS contract, an agency canceled a request for quotations on the grounds that it was ambiguous, but the GAO sustained the protest because there was only one reasonable interpretation of the RFQ and that interpretation was consistent with the terms of the FSS contract.²¹⁶

If an agency cancels a solicitation based on one offeror's misinterpretation of the solicitation, the GAO may sustain a protest challenging the agency's cancellation decision.²¹⁷ For instance, in one case, only one firm out of four that had submitted offers misinterpreted a pricing provision, but the agency decided to cancel and reissue the solicitation.²¹⁸ The GAO sustained the protest, however, because it determined that when read as a whole there was only one plausible interpretation of the solicitation and therefore the agency's decision to cancel was unreasonable.²¹⁹

■ Changed Requirements

An agency may cancel a solicitation if it reasonably determines that the stated requirements no longer meet its needs.²²⁰ Similarly, the GAO will deny a protest when an agency determines that it no longer has a requirement for the item solicited²²¹ or that an existing contract would better serve its needs.²²²

On the other hand, the GAO may sustain a protest challenging an agency's cancellation of a solicitation based on changed requirements when, in fact, the record reflects that the agency's requirements have not changed. For example, the GAO sustained a protest where the agency based its decision to cancel the solicitation on minor clarifications and corrections to the technical data package.²²³ The GAO determined that the agency's decision to cancel the solicitation was unsupported and therefore unreasonable because the agency's own technical documentation stated that the proposed changes would have no cost impact.²²⁴

★ GUIDELINES ★

These *Guidelines* are intended to assist you in identifying viable preaward bid protest allegations. They are not, however, a substitute for professional representation in any specific situation.

1. An agency does not have the discretion to violate the law. Thus, the GAO will sustain a protest where a solicitation includes a clause or provision that conflicts with applicable law or fails to include a clause or provision required by applicable law.

2. Where a solicitation includes requirements that restrict the field of competition, an agency has the burden to establish that those requirements are necessary to meet its minimum needs. Although most successful protests in this area involve challenges to design specifications, the GAO has sustained protests challenging unduly restrictive solicitation provisions in numerous contexts, including performance specifications, bonding and certification requirements, and evaluation criteria. Even in the case of provisions relating to human safety and national security, where agencies have broad discretion, the GAO will sustain your protest if the agency fails to establish that the restrictive provisions are necessary to meet its minimum needs.

3. Where an agency bundles distinct requirements into a single procurement, the agency has the burden to establish that such bundling is necessary to meet its minimum requirements. Your protest is likely to succeed if the agency's justification for bundling is based solely on administrative convenience or unsubstantiated assertions that bundling will achieve economy or efficiency. On the other hand, the GAO has found bundling to be permissible in many contexts, including where an agency consolidates requirements to ensure military readiness, requires a single contractor to coordinate interrelated tasks or avoid "finger pointing," lacks sufficient personnel to administer multiple contracts, reasonably determines that consolidation will result in significant cost savings, or reasonably determines that separate procurements would not result in adequate competition.

4. A solicitation must provide sufficient information to allow offerors to compete on an equal basis. Your protest may be sustained if you can show that a solicitation provision is ambiguous, i.e., susceptible to two or more reasonable interpretations. While patent ambiguities must be raised prior to the closing time for receipt of proposals, the GAO will consider protest grounds based on latent ambiguities in the postaward context.

5. An agency's evaluation method may not be irrational, unreasonable, or otherwise produce a misleading result. Protesters achieve the most success when challenging an agency's cost or price evaluation scheme. An agency must consider cost or price as a significant factor in its evaluation and award. Your protest may be sustained if you can show that the agency's disclosed cost or price evaluation method is not reasonably related to the actual cost or price of performance.

6. Where an agency relies on an exception to the requirement for full and open competition, it must substantially comply with CICA's requirements and provide a reasonable justification for its actions. The GAO may sustain your protest if the agency's notice and synopsis do not contain an "accurate description" of the goods or services to be acquired or are misleading. Your protest also may be sustained if the agency's actions are the result of a lack of advance planning. In addition, your protest may be sustained if the agency's J&A exceeds the minimum requirements necessary to satisfy the urgency or fails to provide a reasonable justification for the agency's proposed sole-source award.

7. The GAO will sustain a protest if you can establish that a solicitation will not result in an enforceable contract due to a lack of mutual consideration. This protest allegation is most likely to succeed where (a) the solicitation contemplates a requirements contract but does not actually require the Government to purchase all of its requirements from a particular contractor or (b) the solicitation contemplates an indefinite-quantity contract but fails to provide for a guaranteed minimum quantity.

8. An agency generally must set aside an acquisition for small businesses if there is a reasonable expectation that it will receive at least two fair-market-priced offers. This rule applies to task and delivery orders, as well as stand-alone contracts. The GAO will sustain a protest if you can demonstrate that an agency did not adequately consider whether at least two small businesses would be likely to submit proposals, particularly where the agency has ignored readily available information suggesting that at least two small business offers are likely.

9. An agency is statutorily required to use sealed bidding when (a) time permits, (b) the award will be made on the basis of price, (c) no discussions are required, and (d) the agency expects to receive more than one sealed bid. The GAO will sustain a protest if you can demonstrate that all four conditions are present, but the agency has decided to conduct a negotiated procurement instead. The agency will likely base its decision to use competitive negotiation on the need for discussions. However, the GAO may sustain a protest if you can establish that the perceived need for discussions is not reasonable.

10. The FAR establishes a preference for multiple award IDIQ contracts. Your protest may be sustained if you can demonstrate that an agency intends to issue a single award IDIQ contract but has failed to make the requisite showing in support of its determination. Likewise, your protest may be sustained if an agency intends to issue a requirements contract for “advisory and assistance” services that has a period of performance of over three years and a contract value of over \$11.5 million but has failed to obtain a written determination that the services are so unique or highly specialized that it is not practicable to make multiple awards.

11. The GAO is authorized to hear protests of task orders issued under multiple award contracts where the value of the task order exceeds \$10 million or the protester alleges that the task order exceeds the scope, period, or maximum value of the underlying contract. Your protest may be successful if you can establish a material difference between the task order and the underlying contract, e.g., differences in the nature and type

of work, period of performance, or costs. The GAO also will consider whether a reasonable offeror would have anticipated that the agency could procure the work contemplated by the task order when competing for the underlying contract.

12. An agency generally must use competitive procedures to procure non-FSS products or services that exceed the micro-purchase threshold. The GAO may sustain your protest if an agency attempts to purchase such non-FSS products or services using FSS procedures.

13. When an agency amends a solicitation and permits proposal revisions, it must permit offerors to revise any aspect of their proposals, including those that were not the subject of the amendment, unless the agency establishes that (a) the amendment could not reasonably have any effect on other aspects of proposals or (b) allowing such revisions would have a detrimental impact on the competitive process. The GAO will sustain your protest if an agency limits proposal revisions when neither of these factors are present.

14. Where an agency’s requirements have materially changed, the agency must amend the solicitation and allow offerors an opportunity to submit revised proposals. Your protest may be sustained if you can establish that an agency made a material preaward change but failed to allow proposal revisions. Your protest also may be sustained if you can establish that an agency contemplates awarding a contract with the intent to modify material terms shortly after award.

15. You may succeed in a protest challenging an agency’s improper inclusion of your proprietary information in a solicitation if you can establish that (a) the material provided to the Government was properly marked as proprietary or submitted to the Government in confidence, (b) the material reflects a design or concept that resulted from the investment of significant time and expense, and (c) the material contains data or concepts that could not be obtained independently from publicly available literature or common knowledge. On the other hand, a protest challenging the Government’s inadvertent disclosure of your proprietary data or misappropriation of such data by a competitor is unlikely to succeed.

16. The GAO will sustain a protest alleging bias only if you present clear evidence that an agency acted in bad faith and without a reasonable basis. An allegation of bias is difficult to prove because Government officials are presumed to act in good faith.

17. While agencies have the discretion to cancel a solicitation, their decision must be reasonable. If you can show that the agency's decision to cancel

the solicitation was unreasonable, you may have a valid protest ground. Your protest will most likely succeed if you can establish that the agency used the cancellation as a pretext to avoid awarding a contract to a particular offeror, attempts to justify the cancellation based on changed requirements although its requirements have not materially changed or based its decision on an erroneous finding of ambiguity.

★ REFERENCES ★

- 1/ 4 C.F.R. § 21.2(a)(1), (a)(2); FAR 33.104(b), (c). See generally Schaengold, Guiffre & Gill, "Choice of Forum for Bid Protests," Briefing Papers No. 08-11 (Oct. 2008).
- 2/ See generally Szeliga, Kipa & Marcinak, "Identifying Viable Postaward Bid Protest Allegations at the GAO," Briefing Papers No. 09-4 (Mar. 2009).
- 3/ 4 C.F.R. § 21.2(a)(1).
- 4/ Intertribal Bison Coop., Comp. Gen. Dec. B-288658, 2001 CPD ¶ 195 (sustaining protest where the terms of a solicitation violated a U.S. Department of Agriculture statute regarding the procurement of certain food items despite the agency's argument that it had discretion to do so).
- 5/ TFabMfg., Inc., Comp. Gen. Dec. B-401190, 2009 CPD ¶ 127 (sustaining protest where, contrary to the Small Business Act, a solicitation included a limitation on subcontracting clause that applied separately to the supply and services portions of a contract).
- 6/ Crane & Co., Comp. Gen. Dec. B-297398, 2006 CPD ¶ 22, 48 GC ¶ 117 (sustaining protest where the Bureau of Engraving and Printing solicited offers for a six-year contract in violation of a statute that requires contracts for "distinctive currency paper" not to exceed four years).
- 7/ FAR 12.302(a), (c).
- 8/ Smelkinson Sysco Food Servs., Comp. Gen. Dec. B-281631, 99-1 CPD ¶ 57, 41 GC ¶ 218 (sustaining protest where agency required commercial item offerors to disclose pricing information not required by the FAR but failed to show that requiring the pricing information was customary commercial practice or to obtain a waiver to tailor the standard FAR requirements).
- 9/ U.S. Def. Sys., Inc., Comp. Gen. Dec. B-244653, 92-2 CPD ¶ 179 (sustaining protest where solicitation failed to include a domestic preference provision required by statute).
- 10/ Puerto Rico Marine Mgmt., Inc., Comp. Gen. Dec. B-247975.5, 92-2 CPD ¶ 275 (sustaining protest based on the omission of a solicitation provision required to implement the Buy American Act).
- 11/ Sletager, Inc., Comp. Gen. Dec. B-244710, 91-2 CPD ¶ 452 (sustaining protest based on the omission of an equitable adjustment clause required by the FAR).
- 12/ Che Consulting, Inc., Comp. Gen. Dec. B-297534.4, 2006 CPD ¶ 84 (denying protest alleging that requirement for vendors to obtain support from original equipment manufacturers was unduly restrictive of competition).
- 13/ 10 U.S.C.A. § 2305(a)(1)(A)(i), (a)(1)(A)(iii), (a)(1)(B)(i); 41 U.S.C.A. § 253a(a)(1)(A), (a)(1)(C), (a)(2)(A).
- 14/ 10 U.S.C.A. § 2305(a)(1)(B)(ii); 41 U.S.C.A. § 253a(a)(2)(B); MadahCom, Inc., Comp. Gen. Dec. B-298277, 2006 CPD ¶ 119, 48 GC ¶ 326.
- 15/ See, e.g., MadahCom, Inc., Comp. Gen. Dec. B-298277, 2006 CPD ¶ 119, 48 GC ¶ 326.
- 16/ Altex Enters., Inc., Comp. Gen. Dec. B-228200, 88-1 CPD ¶ 7 (sustaining protest where agency failed to establish that performance bond and bid guarantee requirements were necessary to protect its interests).
- 17/ SMARTnet, Inc., Comp. Gen. Dec. B-400651.2, 2009 CPD ¶ 34, 51 GC ¶ 85 (sustaining protest alleging that requirement for product certification at the time of quotation submission was unduly restrictive of competition).
- 18/ Navajo Nation Oil & Gas Co., Comp. Gen. Dec. B-261329, 95-2 CPD ¶ 133, 37 GC ¶ 605 (sustaining protest where agency failed to provide any empirical, historical, or other evidence for its position that a contractor meeting the solicitation's experience requirement would be more likely to fulfill its contractual obligations).
- 19/ MadahCom, Inc., Comp. Gen. Dec. B-298277, 2006 CPD ¶ 119, 48 GC ¶ 326 ("Where a solicitation provision is challenged as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs.").
- 20/ MadahCom, Inc., Comp. Gen. Dec. B-298277, 2006 CPD ¶ 119, 48 GC ¶ 326 ("[The GAO] reviews the adequacy of the agency's justification by examining whether it is reasonable, that is, whether the explanation can withstand logical scrutiny.>").
- 21/ Navajo Nation Oil & Gas Co., Comp. Gen. Dec. B-261329, 95-2 CPD ¶ 133, 37 GC ¶ 605.
- 22/ MadahCom, Inc., Comp. Gen. Dec. B-298277, 2006 CPD ¶ 119, 48 GC ¶ 326 (sustaining protest challenging a requirement for a transmitter with a range of 10 kilometers where the agency failed to support its assertion that regulatory and technical barriers would prevent it from using multiple transmitters with a shorter range).
- 23/ Shred Pax Corp., Comp. Gen. Dec. B-253729, 93-2 CPD ¶ 237, 43 GC ¶ 107 (sustaining protest challenging a requirement for a hydraulic shredding machine because the agency had failed to consider whether other types of shredding machines would meet its needs).

- 24/ Che Consulting, Inc., Comp. Gen. Dec. B-297534.4, 2006 CPD ¶ 84 (denying protest where protester's challenge to a restrictive solicitation provision amounted to nothing more than "mere disagreement" with the agency's judgment).
- 25/ C. Lawrence Constr. Co., Comp. Gen. Dec. B-289341, 2002 CPD ¶ 17 (denying protest alleging that experience requirement prevented small, emerging businesses from being considered for award).
- 26/ C. Lawrence Constr. Co., Comp. Gen. Dec. B-289341, 2002 CPD ¶ 17.
- 27/ Kohler Co., Comp. Gen. Dec. B-257162, 94-2 CPD ¶ 88 (sustaining protest where agency could have met its requirements for emissions, fuel economy, and noise by using performance specifications rather than requiring a particular type of diesel engine).
- 28/ Kohler Co., Comp. Gen. Dec. B-257162, 94-2 CPD ¶ 88.
- 29/ Allen Organ Co.—Recons., Comp. Gen. Dec. B-231473 et al., 88-2 CPD ¶ 196 (denying protest alleging that a requirement for a pipe organ was unduly restrictive of competition because the agency provided what GAO determined to be a reasonable explanation—that an electric organ would have been inconsistent with the architectural design of the building in which the organ would be placed).
- 30/ Allen Organ Co.—Recons., Comp. Gen. Dec. B-231473 et al., 88-2 CPD ¶ 196.
- 31/ Stavely Instruments, Inc., Comp. Gen. Dec. B-259548 et al., 95-1 CPD ¶ 256 (denying protest alleging that solicitation was "written around" a competitor's design where protester did not assert that technical specifications overstated or otherwise exceeded agency's actual needs).
- 32/ ShredPax Corp., Comp. Gen. Dec. B-253729, 93-2 CPD ¶ 237, 43 GC ¶ 107.
- 33/ ShredPax Corp., Comp. Gen. Dec. B-253729, 93-2 CPD ¶ 237, 43 GC ¶ 107.
- 34/ BMAR & Assocs., Inc., Comp. Gen. Dec. B-281664, 99-1 CPD ¶ 62 (sustaining protest where agency had "not adequately justified the inordinate risks to the contractor" resulting from lump-sum pricing structure).
- 35/ Four Star Maint. Corp., Comp. Gen. Dec. B-240413, 91-1 CPD ¶ 70 (sustaining protest challenging the requirement to propose a monthly lump-sum price with no limitation on the amount of work that could be ordered under a contract).
- 36/ TN-KY Contractors, Comp. Gen. Dec. B-291997.2, 2003 CPD ¶ 91 (denying protest alleging that solicitation's pricing scheme unreasonably shifted cost risk to offerors).
- 37/ TN-KY Contractors, Comp. Gen. Dec. B-291997.2, 2003 CPD ¶ 91.
- 38/ Atl. Coast Contracting, Inc., Comp. Gen. Dec. B-291893, 2003 CPD ¶ 87.
- 39/ Atl. Coast Contracting, Inc., Comp. Gen. Dec. B-291893, 2003 CPD ¶ 87.
- 40/ Mossberg Corp., Comp. Gen. Dec. B-274059, 96-2 CPD ¶ 189, 39 GC ¶ 50.
- 41/ Mossberg Corp., Comp. Gen. Dec. B-274059, 96-2 CPD ¶ 189, 39 GC ¶ 50.
- 42/ Mossberg Corp., Comp. Gen. Dec. B-274059, 96-2 CPD ¶ 189, 39 GC ¶ 50.
- 43/ Mossberg Corp., Comp. Gen. Dec. B-274059, 96-2 CPD ¶ 189, 39 GC ¶ 50.
- 44/ Airport Markings of Am., Inc., Comp. Gen. Dec. B-238490 et al., 90-1 CPD ¶ 543.
- 45/ Harris Enters., Inc., Comp. Gen. Dec. B-311143, 2008 CPD ¶ 60 (denying protest alleging that ISO 9001 certification was unnecessary to meet the agency's needs because the requirement had not been contained in the protester's previous contract).
- 46/ Harris Enters., Inc., Comp. Gen. Dec. B-311143, 2008 CPD ¶ 60.
- 47/ EDP Enters., Inc., Comp. Gen. Dec. B-284533.6, 2003 CPD ¶ 93, 45 GC ¶ 232.
- 48/ EDP Enters., Inc., Comp. Gen. Dec. B-284533.6, 2003 CPD ¶ 93, 45 GC ¶ 232.
- 49/ EDP Enters., Inc., Comp. Gen. Dec. B-284533.6, 2003 CPD ¶ 93, 45 GC ¶ 232 (sustaining protest and rejecting agency's position that the need to avoid multiple solicitations and multiple contracts with multiple contractors justified the bundling of services classified under different NAICS codes).
- 50/ Better Serv., Comp. Gen. Dec. B-265751, 96-1 CPD ¶ 90 (sustaining protest where agency attempted to justify the bundling of requirements based on the decreased burden associated with administering a single contract).
- 51/ Carahsoft Tech. Corp., Comp. Gen. Dec. B-297112, 2005 CPD ¶ 208 (denying protest where agency reasonably determined that consolidation of requirements was necessary to meet the agency's needs for efficiency and risk avoidance).
- 52/ B.H. Aircraft Co., Comp. Gen. Dec. B-295399.2, 2005 CPD ¶ 138 (denying protest challenging bundling of maintenance requirements where agency demonstrated that a single performance-based logistics contract was the only means by which it could alleviate parts shortages, increase availability, and otherwise maintain military readiness of aircraft).
- 53/ Tuscon Mobilephone, Inc., Comp. Gen. Dec. B-256802, 94-2 CPD ¶ 45 (denying protest challenging bundled procurement for supply and installation of emergency communication system where agency provided specific examples of instances in which use of separate contractors resulted in impermissible periods of downtime).
- 54/ Sequoia Group, Inc., Comp. Gen. Dec. B-252016, 93-1 CPD ¶ 405 (denying protest challenging bundled procurement for building maintenance services at separate facilities located in two cities where staffing reductions prevented agency from monitoring multiple contracts).
- 55/ Advanced Elevator Servs., Inc., Comp. Gen. Dec. B-272340 et al., 96-2 CPD ¶ 125, 38 GC ¶ 594 (denying protest challenging consolidation of 100 separate contracts for elevators in 178 buildings where agency established that bundling would achieve economies of scale and increase contractor's incentive to deliver quality services).
- 56/ Carahsoft Tech. Corp., Comp. Gen. Dec. B-297112, 2005 CPD ¶ 208 (denying protest challenging bundling of computerized performance appraisal systems across all agency components where use of different applications would require agency to arbitrate disputes regarding compatibility of multiple systems).
- 57/ Va. Elec. & Power Co., Comp. Gen. Dec. B-285209 et al., 2000 CPD ¶ 134, 42 GC ¶ 34 (denying protest alleging that requirement to privatize all utilities was unduly restrictive of competition where agency's market research demonstrated that allowing offerors to propose on the basis of 13 individual utility systems would result in not receiving an acceptable offer for some or all water and wastewater systems).
- 58/ Pemco Aeroplex, Inc., Comp. Gen. Dec. B-280397, 98-2 CPD ¶ 79, 40 GC ¶ 476 (sustaining protest where agency failed to establish that bundling requirement for aircraft parts and maintenance was necessary for military readiness).

- 59/ Pemco Aeroplex, Inc., Comp. Gen. Dec. B-280397, 98-2 CPD ¶ 79, 40 GC ¶ 476.
- 60/ Tucson Mobilephone, Inc., Comp. Gen. Dec. B-250389, 93-1 CPD ¶ 79.
- 61/ North Am. Reporting, Inc., Comp. Gen. Dec. B-198448, 80-2 CPD ¶ 364 (sustaining protest where solicitation for a requirements-type contract for recording and transcript services required bidders to bid on unspecified "other services").
- 62/ Sea-Land Serv., Inc., Comp. Gen. Dec. B-246784.2, 92-2 CPD ¶ 122 (sustaining protest where solicitation for cargo transportation did not identify the rates the agency intended to use in its evaluation, which could have led offerors to prepare proposals based on different assumptions).
- 63/ OwlCorp., Comp. Gen. Dec. B-224174, 86-2 CPD ¶ 706 (denying protest where solicitation's pricing provision was susceptible to only one reasonable interpretation).
- 64/ Lankford-Sysco Food Servs., Inc., Comp. Gen. Dec. B-274781 et al., 97-1 CPD ¶ 11 (denying protest alleging that rebate/discount provisions were ambiguous).
- 65/ Triple P. Servs., Inc., Comp. Gen. Dec. B-271629.3, 96-2 CPD ¶ 30 (denying protest where protester's interpretation that the agency intended to make an award without discussions was unreasonable because it contravened applicable FAR provisions).
- 66/ AroraGroup, Inc., Comp. Gen. Dec. B-288127, 2001 CPD ¶ 154 (sustaining postaward protest where a latent ambiguity caused offerors to make reasonable—albeit different—assumptions regarding whether certain requirements were mandatory or discretionary).
- 67/ Ashe Facility Servs., Inc., Comp. Gen. Dec. B-292218.3 et al., 2004 CPD ¶ 80, 46 GC ¶ 192.
- 68/ Bank of Am., Comp. Gen. Dec. B-287608 et al., 2001 CPD ¶ 137, 43 GC ¶ 353 (concluding that two solicitation provisions containing different page limitations constituted a patent ambiguity).
- 69/ AirTrak Travel et al., Comp. Gen. Dec. B-292101 et al., 2003 CPD ¶ 117, 45 GC ¶ 287.
- 70/ AirTrak Travel et al., Comp. Gen. Dec. B-292101 et al., 2003 CPD ¶ 117, 45 GC ¶ 287.
- 71/ AirTrak Travel et al., Comp. Gen. Dec. B-292101 et al., 2003 CPD ¶ 117, 45 GC ¶ 287.
- 72/ AirTrak Travel et al., Comp. Gen. Dec. B-292101 et al., 2003 CPD ¶ 117, 45 GC ¶ 287 (sustaining protest where agency's pricing model did not account for the fact that certain travel systems would be phased-in at various locations over time).
- 73/ S.J.ThomasCo., Comp. Gen. Dec. B-283192, 99-2 CPD ¶ 73, 41 GC ¶ 463 (sustaining protest where agency only sought "mark-up rates" from offerors, but the actual labor rates and material costs under task orders would include significant additional costs).
- 74/ Dayton T. Brown, Inc., Comp. Gen. Dec. B-402256, 2010 CPD ¶ 72 (denying protest where agency provided a detailed "correlation guide" between the sample task orders and the work to be performed under the contract).
- 75/ Globe-Air, Inc., Comp. Gen. Dec. B-188611, 77-1 CPD ¶ 395 (sustaining protest where agency only considered the price associated with one function of a helicopter, but possessed data showing that the function accounted for only 25% of the agency's needs).
- 76/ Bristol-Myers Squibb Co., Comp. Gen. Dec. B-294944.2, 2005 CPD ¶ 16; SmithKline Beecham Corp., Comp. Gen. Dec. B-283939, 2000 CPD ¶ 19, 42 GC ¶ 98.
- 77/ 10 U.S.C.A. § 2304(a)(1)(A); 41 U.S.C.A. § 253(a)(1)(A); FAR 6.101(a).
- 78/ FAR subpt. 6.3 ("Other Than Full and Open Competition").
- 79/ Sperry Marine, Inc., Comp. Gen. Dec. B-245654, 92-1 CPD ¶ 111 (sustaining protest against proposed sole-source award where agency unreasonably concluded that only one source could deliver radar systems that met its needs). See generally Edwards, "Sole-Source ('No Bid') Contracting," Briefing Papers No. 08-6 (May 2008).
- 80/ LucasAul, Inc., Comp. Gen. Dec. B-234842, 89-1 CPD ¶ 569 (denying protest against proposed sole-source award where protester lacked required security clearance).
- 81/ See Szeliga, Kipa & Marcinak, "Identifying Viable Postaward Bid Protest Allegations at the GAO," Briefing Papers No. 09-4, at 13–15 (Mar. 2009) (discussing postaward allegations relating to the "one responsible source" and "unusual and compelling urgency" exceptions to the requirement for full and open competition).
- 82/ FAR6.302-1(d)(2); FARsubpt.5.2("Synopses of Proposed Contract Actions").
- 83/ FAR 5.202(a)(2).
- 84/ M.D.ThompsonConsulting, Inc., LLC, Comp. Gen. Dec. B-297616 et al., 2006 CPD ¶ 41, 48 GC ¶ 108.
- 85/ M.D.ThompsonConsulting, Inc., LLC, Comp. Gen. Dec. B-297616 et al., 2006 CPD ¶ 41, 48 GC ¶ 108 (citing FAR 5.207(c), (d)).
- 86/ M.D.ThompsonConsulting, Inc., LLC, Comp. Gen. Dec. B-297616 et al., 2006 CPD ¶ 41, 48 GC ¶ 108.
- 87/ SabrelinerCorp., Comp. Gen. Dec. B-288030 et al., 2001 CPD ¶ 170, 43 GC ¶ 420.
- 88/ SabrelinerCorp., Comp. Gen. Dec. B-288030 et al., 2001 CPD ¶ 170, 43 GC ¶ 420 (sustaining protest where agency's notice stated that the contractor would be required to overhaul helicopter engines to commercial configurations, but the agency's actual requirement entailed overhauling the engines to military configurations).
- 89/ Info. Ventures, Inc., Comp. Gen. Dec. B-293541, 2004 CPD ¶ 81, 46 GC ¶ 174 (sustaining protest where agency's requirement contemplated "other scientific and technical consulting services," but its notice was misclassified as "medical services").
- 90/ M.D.ThompsonConsulting, Inc., LLC, Comp. Gen. Dec. B-297616 et al., 2006 CPD ¶ 41, 48 GC ¶ 108 (sustaining protest where agency's notice only identified the contract number and cryptically described the work as "critical, highly specialized technical and administrative support").
- 91/ eFedBudget Corp., Comp. Gen. Dec. B-298627, 2006 CPD ¶ 159, 48 GC ¶ 422.
- 92/ RBC Bearings, Inc., Comp. Gen. Dec. B-401661 et al., 2009 CPD ¶ 207, 51 GC ¶ 424.

- 93/** RBC Bearings, Inc., Comp. Gen. Dec. B-401661 et al., 2009 CPD ¶ 207, 51 GC ¶ 424 (sustaining protest where protester sought to become an approved source for approximately 10 years, agency actions unreasonably deprived the protester of an opportunity to do so, and the agency's continuing requirements were foreseeable).
- 94/** HEROS, Inc., Comp. Gen. Dec. B-292043, 2003 CPD ¶ 111, 45 GC ¶ 286.
- 95/** Envtl. Tectonics Corp., Comp. Gen. Dec. B-248611, 92-2 CPD ¶ 160.
- 96/** PolarPower, Inc., Comp. Gen. Dec. B-270536, 96-1 CPD ¶ 57.
- 97/** Bannum, Inc., Comp. Gen. Dec. B-289707, 2002 CPD ¶ 121.
- 98/** C&S Antennas, Inc., Comp. Gen. Dec. B-224549, 87-1 CPD ¶ 161 (denying protest where the contractor failed to keep an appointment to discuss its product and waited approximately one month before submitting an expression of interest and test unit).
- 99/** Tri-Ex Tower Corp., Comp. Gen. Dec. B-239628, 90-2 CPD ¶ 221.
- 100/** Tri-Ex Tower Corp., Comp. Gen. Dec. B-239628, 90-2 CPD ¶ 221.
- 101/** Pacific Sky Supply, Inc., Comp. Gen. Dec. B-228049, 87-2 CPD ¶ 504 (sustaining protest where agency sought to procure 294 different spare aircraft parts).
- 102/** Tri-Ex Tower Corp., Comp. Gen. Dec. B-239628, 90-2 CPD ¶ 221 (sustaining protest where certain masts did not fall within agency's "urgent" requirement).
- 103/** Pacific Sky Supply, Inc., Comp. Gen. Dec. B-228049, 87-2 CPD ¶ 504 (sustaining protest where the J&A contemplated a five-year period of performance).
- 104/** Tiger Enters., Inc., Comp. Gen. Dec. B-292815.3 et al., 2004 CPD ¶ 19 (sustaining protest where agency did not explain why an 11-month base period of performance was required for the lease and maintenance of washers and dryers, especially given that a competitive procurement could have been conducted in the interim).
- 105/** Electro-Methods, Inc., Comp. Gen. Dec. B-239141.2, 90-2 CPD ¶ 363 (denying protest where agency limited the proposed sole-source award to 14% of its total requirements and procured the remainder competitively).
- 106/** Raytheon Co.-Integrated Def. Sys., Comp. Gen. Dec. B-400610 et al., 2009 CPD ¶ 8.
- 107/** Sabreliner Corp., Comp. Gen. Dec. B-288030 et al., 2001 CPD ¶ 170, 43 GC ¶ 420.
- 108/** Sperry Marine, Inc., Comp. Gen. Dec. B-245654, 92-1 CPD ¶ 111.
- 109/** Sabreliner Corp., Comp. Gen. Dec. B-288030 et al., 2001 CPD ¶ 170, 43 GC ¶ 420.
- 110/** Sabreliner Corp., Comp. Gen. Dec. B-288030 et al., 2001 CPD ¶ 170, 43 GC ¶ 420.
- 111/** Test Sys. Assocs., Inc., Comp. Gen. Dec. B-244007 et al., 91-2 CPD ¶ 367.
- 112/** Sperry Marine, Inc., Comp. Gen. Dec. B-245654, 92-1 CPD ¶ 111.
- 113/** ALK Assocs., Inc., Comp. Gen. Dec. B-237019, 90-1 CPD ¶ 113 (denying protest where agency reasonably concluded that a comparable product would not meet its needs because the agency required an identical automated mileage software package).
- 114/** Brinkmann Instruments, Inc., Comp. Gen. Dec. B-309946 et al., 2007 CPD ¶ 188.
- 115/** Servo Corp. of Am., Comp. Gen. Dec. B-246734, 92-1 CPD ¶ 322.
- 116/** LucasAul, Inc., Comp. Gen. Dec. B-234842, 89-1 CPD ¶ 569.
- 117/** Polar Power, Inc., Comp. Gen. Dec. B-270536, 96-1 CPD ¶ 157.
- 118/** Kearfott Guidance & Navigation Corp., Comp. Gen. Dec. B-292895.2, 2004 CPD ¶ 123.
- 119/** Envtl. Tectonics Corp., Comp. Gen. Dec. B-248611, 92-2 CPD ¶ 160.
- 120/** FAR 16.503(a).
- 121/** Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed. Cir. 1992) (holding that a blanket purchase agreement was unenforceable for lack of consideration because it neither expressly required the agency to purchase all of its requirements from the contractor nor specified a guaranteed minimum quantity).
- 122/** Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed. Cir. 1992).
- 123/** Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed. Cir. 1992).
- 124/** Satellite Servs., Inc., Comp. Gen. Dec. B-280945 et al., 98-2 CPD ¶ 125, 41 GC ¶ 38 (sustaining protest where solicitation allowed agency to order work from other contractors whenever "otherwise determined to be in the best interest of the Government").
- 125/** Satellite Servs., Inc., Comp. Gen. Dec. B-280945 et al., 98-2 CPD ¶ 125, 41 GC ¶ 38.
- 126/** FAR 16.504(a).
- 127/** FAR 16.504(a)(1).
- 128/** FAR 16.504(a)(2).
- 129/** Satellite Servs., Inc., Comp. Gen. Dec. B-280945 et al., 98-2 CPD ¶ 125, 41 GC ¶ 38.
- 130/** FAR 16.504(a)(2).
- 131/** Library of Congress—Obligation of Guaranteed Minimum for Indefinite-Delivery, Indefinite-Quantity Contracts Under the FEDLINK Program, Comp. Gen. Dec. B-318046, 2009 WL 1978719.
- 132/** See FAR 2.101.
- 133/** Laboratory Sys. Servs., Inc., Comp. Gen. Dec. B-258519.2, 95-1 CPD ¶ 175.
- 134/** FAR 19.502-2(b).
- 135/** Delex Sys., Inc., Comp. Gen. Dec. B-400403, 2008 CPD ¶ 181, 50 GC ¶ 404. See generally Edwards, "The Rule of Two: It's Applicable to Task and Delivery Order Contracts," 22 Nash & Cibinic Rep. ¶ 75 (Dec. 2008); Edwards, "Postscript: The Rule of Two," 23 Nash & Cibinic Rep. ¶ 13 (Mar. 2009).
- 136/** Rochester Optical Mfg. Co., Comp. Gen. Dec. B-292247 et al., 2003 CPD ¶ 138, 45 GC ¶ 333 (sustaining protest where agency did not conduct proper market research to ascertain whether there were at least two small businesses that could perform the requirement).
- 137/** Info. Ventures, Inc., Comp. Gen. Dec. B-294267, 2004 CPD ¶ 205, 46 GC ¶ 413 (sustaining protest where agency based its decision not to issue a solicitation as small business set-aside on a limited single database search of potential small businesses and ignored the responses of several capable small businesses to the presolicitation notice).

- 138/** SWR, Inc., Comp. Gen. Dec. B-294266, 2004 CPD ¶ 219, 46 GC ¶ 488.
- 139/** Family Entertainment Servs., Inc., Comp. Gen. Dec. B-401693 et al., 2009 CPD ¶ 204.
- 140/** Family Entertainment Servs., Inc., Comp. Gen. Dec. B-401693 et al., 2009 CPD ¶ 204.
- 141/** Int'l Program Group, Comp. Gen. Dec. B-400278, 2008 CPD ¶ 172, 50 GC ¶ 368; 15 U.S.C.A. § 657a(b)(2)(B); 15 U.S.C.A. § 657f(b). See generally Edwards & Nash, "Postscript II: Small Business Programs," 23 Nash & Cibinic Rep. ¶ 55 (Oct. 2009).
- 142/** Int'l Program Group, Comp. Gen. Dec. B-400278, 2008 CPD ¶ 172, 50 GC ¶ 368.
- 143/** 15 U.S.C.A. §§ 637(b)(6), 632(q), 657(b); 13 C.F.R. §§ 125.25, 125.27.
- 144/** PPG-CMS-PSI JV, Comp. Gen. Dec. B-298239 et al., 2006 CPD ¶ 111, 48 GC ¶ 271.
- 145/** Singleton Enters.-GMT Mech. JV, Comp. Gen. Dec. B-310552, 2008 CPD ¶ 16, 50 GC ¶ 64.
- 146/** Singleton Enters.-GMT Mech. JV, Comp. Gen. Dec. B-310552, 2008 CPD ¶ 16, 50 GC ¶ 64.
- 147/** TMI Mgmt. Sys., Inc., Comp. Gen. Dec. B-401530, 2009 CPD ¶ 191, 51 GC ¶ 381 (sustaining protest where agency misclassified a procurement for facilities support as "miscellaneous").
- 148/** Eagle Home Med. Corp., Comp. Gen. Dec. B-402387, 2010 CPD ¶ 82, 52 GC ¶ 153 (sustaining protest where agency refused to amend solicitation to reflect the NAICS code the SBA determined to be appropriate).
- 149/** TMI Mgmt. Sys., Inc., Comp. Gen. Dec. B-401530, 2009 CPD ¶ 191, 51 GC ¶ 381.
- 150/** Rochester Optical Mfg. Co., Comp. Gen. Dec. B-292247 et al., 2003 CPD ¶ 138, 45 GC ¶ 333 (discussing the difference between various NAICS codes).
- 151/** FAR 19.502-3.
- 152/** Belleville Shoe Mfg Co., Comp. Gen. Dec. B-287237 et al., 2001 CPD ¶ 87, 43 GC ¶ 229.
- 153/** 10 U.S.C.A. § 2304(a)(2); 41 U.S.C.A. § 253(a)(2); FAR 6.401(a).
- 154/** Northeast Constr. Co., Comp. Gen. Dec. B-234323 et al., 89-1 CPD ¶ 402.
- 155/** TLT Constr. Corp., Comp. Gen. Dec. B-286226, 2000 CPD ¶ 179, 42 GC ¶ 482 (denying protest challenging the use of negotiated procedures in procurement for demolition and construction services where GAO determined the agency reasonably decided that discussions were necessary because the award was to be made based on the evaluation of technical factors as well as price).
- 156/** Racial Corp., Comp. Gen. Dec. B-240579, 90-2 CPD ¶ 453.
- 157/** 10 U.S.C.A. §§ 2304a-2304d; 41 U.S.C.A. §§ 253h-253k; FAR 16.504(c)(1)(i), (ii) (A)(1)-(4).
- 158/** FAR 16.504(c)(1)(ii)(B)(1)-(6).
- 159/** LNM Corp., Comp. Gen. Dec. B-247669, 92-1 CPD ¶ 405 ("[The GAO's] review... is limited to ascertaining whether the determination has a reasonable basis").
- 160/** One Source Mech. Servs., Inc., Comp. Gen. Dec. B-293692 et al., 2004 CPD ¶ 112, 46 GC ¶ 255 ("[T]he existence of circumstances supporting any one of the exceptions would be sufficient to justify making a single award").
- 161/** Knowledge Connections, Inc., Comp. Gen. Dec. B-297986, 2006 CPD ¶ 85 (denying protest where protester failed to present evidence that multiple awards for travel management services were not in the Government's best interest).
- 162/** Delta Oaktree Prod., Comp. Gen. Dec. B-248903, 92-2 CPD ¶ 230 (rejecting protester's argument that a single award was inappropriate where agency intended to award a requirements contract in lieu of a multiple award contract for visual information graphic arts services).
- 163/** FAR 2.101 (defining "advisory and assistance" services).
- 164/** FAR 16.503(d)(1).
- 165/** Nations, Inc., Comp. Gen. Dec. B-272455, 96-2 CPD ¶ 170, 38 GC ¶ 595.
- 166/** 10 U.S.C.A. § 2304c(e)(1)(B); 41 U.S.C.A. § 253j(e)(1)(B); FAR 16.505(a)(9)(i)(B).
- 167/** 10 U.S.C.A. § 2304c(e)(1)(A); 41 U.S.C.A. § 253j(e)(1)(A); FAR 16.505(a)(9)(i)(A).
- 168/** Anteon Corp., Comp. Gen. Dec. B-293523 et al., 2004 CPD ¶ 51, 46 GC ¶ 157.
- 169/** DynCorp Int'l LLC, Comp. Gen. Dec. B-402349, 2010 CPD ¶ 59, 52 GC ¶ 110.
- 170/** DynCorp Int'l LLC, Comp. Gen. Dec. B-402349, 2010 CPD ¶ 59, 52 GC ¶ 110.
- 171/** Anteon Corp., Comp. Gen. Dec. B-293523 et al., 2004 CPD ¶ 51, 46 GC ¶ 157 (sustaining protest against task order request for electronic passport covers under a General Services Administration IDIQ multiple award contract for Smart Identification Cards).
- 172/** DynCorp Int'l LLC, Comp. Gen. Dec. B-402349, 2010 CPD ¶ 59, 52 GC ¶ 110 (sustaining protest against task order request for mentoring, training, facilities, and logistics support for the Afghan Ministry of the Interior and National Police under a multiple award contract for counter-narcoterrorism support services worldwide).
- 173/** Seaborn Health Care, Inc., Comp. Gen. Dec. B-400429, 2008 CPD ¶ 197.
- 174/** Seaborn Health Care, Inc., Comp. Gen. Dec. B-400429, 2008 CPD ¶ 197 (rejecting agency's argument that certain supervisory personnel were "inherent" in the scope of the underlying non-personal services contract).
- 175/** Seaborn Health Care, Inc., Comp. Gen. Dec. B-400429, 2008 CPD ¶ 197 (sustaining protest where agency sought to require vendors to offer an "on-site Facility Administrator" and "on-site supervisor" in its quotation for pharmacists and pharmacy technicians).
- 176/** Lockheed Martin Sys. Integration—Owego, Comp. Gen. Dec. B-299145.5 et al., 2007 CPD ¶ 155, 49 GC ¶ 351.
- 177/** Lockheed Martin Sys. Integration—Owego, Comp. Gen. Dec. B-299145.5 et al., 2007 CPD ¶ 155, 49 GC ¶ 351 (sustaining protest where agency amended solicitation to alter significantly the disclosed price evaluation method but prohibited offerors from revising their technical proposals).
- 178/** Sys. Planning Corp., Comp. Gen. Dec. B-244697.4, 92-1 CPD ¶ 516 (denying protest where agency limited the scope of proposal revisions to the submission of additional past performance information that would have little impact on offerors')

- proposed prices, while allowing offerors to revise their price proposals following the disclosure of their proposed prices would have a detrimental impact on the competitive process).
- 179/** Northrop Grumman Info. Tech., Inc., Comp. Gen. Dec. B-295526 et al., 2005 CPD ¶ 45, 47 GC ¶ 158 (sustaining postaward protest where memorandum of understanding made it significantly less likely that options would be exercised).
- 180/** AirTrak Travel et al., Comp. Gen. Dec. B-292101 et al., 2003 CPD ¶ 117, 45 GC ¶ 287.
- 181/** AirTrak Travel et al., Comp. Gen. Dec. B-292101 et al., 2003 CPD ¶ 117, 45 GC ¶ 287 (relying on FAR 15.206(e)).
- 182/** 4 C.F.R. § 21.5(a) (stating that the GAO shall dismiss protest bases pertaining to contract administration).
- 183/** Hoechst Marion Roussel, Inc., Comp. Gen. Dec. B-279073, 98-1 CPD ¶ 127, 40 GC ¶ 289.
- 184/** Hoechst Marion Roussel, Inc., Comp. Gen. Dec. B-279073, 98-1 CPD ¶ 127, 40 GC ¶ 289 (sustaining protest where agency intended to add higher dosages to the contract following postaward negotiations rather than considering those dosages and their associated prices during its evaluation).
- 185/** To the Secretary of the Air Force, Comp. Gen. Dec. B-165542, 1969 CPD ¶ 47 (sustaining protest where agency was unable to explain the similarities between its specifications for a competitive procurement and a design submitted by the protester in connection with an unsolicited proposal).
- 186/** To the Secretary of the Air Force, Comp. Gen. Dec. B-165542, 1969 CPD ¶ 47.
- 187/** Porta Power Pak, Inc., Comp. Gen. Dec. B-196218, 80-1 CPD ¶ 305.
- 188/** EDN Corp., Comp. Gen. Dec. B-225746 et al., 87-2 CPD ¶ 31.
- 189/** Janico Bldg. Servs., Comp. Gen. Dec. B-290683, 2002 CPD ¶ 119 (denying protest where agency disclosed protester's data as the result of a clerical error).
- 190/** LLH & Assocs., LLC, Comp. Gen. Dec. B-297804, 2006 CPD ¶ 52.
- 191/** Dr. Robert J. Telepak, Comp. Gen. Dec. B-247681, 92-2 CPD ¶ 4 (evidence that agency action was based on animus toward protester is not a sufficient basis to sustain a protest where agency's action also had a reasonable basis).
- 192/** See, e.g., Armorworks Enters., LLC, Comp. Gen. Dec. B-401671.3, 2009 CPD ¶ 225.
- 193/** Lockheed Martin Corp., Comp. Gen. Dec. B-295402, 2005 CPD ¶ 24, 47 GC ¶ 87.
- 194/** See, e.g., Surgi-Textile, Comp. Gen. Dec. B-289370, 2002 CPD ¶ 38.
- 195/** Griffin Servs., Inc., Comp. Gen. Dec. B-237268 et al., 90-1 CPD ¶ 558.
- 196/** Griffin Servs., Inc., Comp. Gen. Dec. B-237268 et al., 90-1 CPD ¶ 558.
- 197/** Gonzales-McCaulley Inv. Group, Inc., Comp. Gen. Dec. B-299936.2, 2007 CPD ¶ 192, 49 GC ¶ 451.
- 198/** Gonzales-McCaulley Inv. Group, Inc., Comp. Gen. Dec. B-299936.2, 2007 CPD ¶ 192, 49 GC ¶ 451.
- 199/** Deva & Assocs. PC, Comp. Gen. Dec. B-309972.3, 2008 CPD ¶ 89.
- 200/** Logistics Solutions Group, Inc., Comp. Gen. Dec. B-294604.7 et al., 2005 CPD ¶ 141.
- 201/** Deva & Assocs. PC, Comp. Gen. Dec. B-309972.3, 2008 CPD ¶ 89.
- 202/** Griffin Servs., Inc., Comp. Gen. Dec. B-237268 et al., 90-1 CPD ¶ 558.
- 203/** Griffin Servs., Inc., Comp. Gen. Dec. B-237268 et al., 90-1 CPD ¶ 558.
- 204/** Griffin Servs., Inc., Comp. Gen. Dec. B-237268 et al., 90-1 CPD ¶ 558.
- 205/** Griffin Servs., Inc., Comp. Gen. Dec. B-237268 et al., 90-1 CPD ¶ 558; see 15 U.S.C.A. § 637(b)(7); FAR subpt. 19.6.
- 206/** Aleman & Assocs., Inc., Comp. Gen. Dec. B-287275.2 et al., 2001 CPD ¶ 120.
- 207/** Aleman & Assocs., Inc., Comp. Gen. Dec. B-287275.2 et al., 2001 CPD ¶ 120; see FAR subpt. 8.7.
- 208/** Aleman & Assocs., Inc., Comp. Gen. Dec. B-287275.2 et al., 2001 CPD ¶ 120.
- 209/** Noelke GmbH, Comp. Gen. Dec. B-278324.2, 98-1 CPD ¶ 46.
- 210/** R. & W. Flammann GmbH, Comp. Gen. Dec. B-278486, 98-1 CPD ¶ 40, 40 GC ¶ 366.
- 211/** R. & W. Flammann GmbH, Comp. Gen. Dec. B-278486, 98-1 CPD ¶ 40, 40 GC ¶ 366.
- 212/** R. & W. Flammann GmbH, Comp. Gen. Dec. B-278486, 98-1 CPD ¶ 40, 40 GC ¶ 366.
- 213/** Starlight Corp., Inc., Comp. Gen. Dec. B-297904.2, 2006 CPD ¶ 69 (denying protest where agency properly determined that there was more than one reasonable interpretation of the solicitation's experience requirement).
- 214/** Massaro Co., Comp. Gen. Dec. B-280772.2 et al., 98-2 CPD ¶ 123 (sustaining protest where the solicitation, when read as a whole, was susceptible to only one reasonable interpretation regarding how bids were to be structured).
- 215/** Canadian Commercial Corp./Ballard Battery Sys. Corp., Comp. Gen. Dec. B-255642, 94-1 CPD ¶ 202.
- 216/** Herman Miller, Inc., Comp. Gen. Dec. B-241582 et al., 91-1 CPD ¶ 184.
- 217/** TUMI Int'l, Inc., Comp. Gen. Dec. B-235348, 89-2 CPD ¶ 174.
- 218/** TUMI Int'l, Inc., Comp. Gen. Dec. B-235348, 89-2 CPD ¶ 174.
- 219/** TUMI Int'l, Inc., Comp. Gen. Dec. B-235348, 89-2 CPD ¶ 174.
- 220/** Rice Servs., Inc., Comp. Gen. Dec. B-293861 et al., 2004 CPD ¶ 167.
- 221/** SKJ Assocs., Inc., Comp. Gen. Dec. B-294219, 2004 CPD ¶ 154.
- 222/** Brian X. Scott, Comp. Gen. Dec. B-310970 et al., 2008 CPD ¶ 59.
- 223/** Pro-Fab, Inc., Comp. Gen. Dec. B-243607, 91-2 CPD ¶ 128.
- 224/** Pro-Fab, Inc., Comp. Gen. Dec. B-243607, 91-2 CPD ¶ 128.