



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-234591; B-234593

June 20, 1989

Ms. Margaret A. Willis
FAR Secretariat
General Services Administration

Dear Ms. Willis:

This responds to your letter of February 10, 1989, requesting our comments on Federal Acquisition Regulation (FAR) case Nos. 88-68 and 88-72.

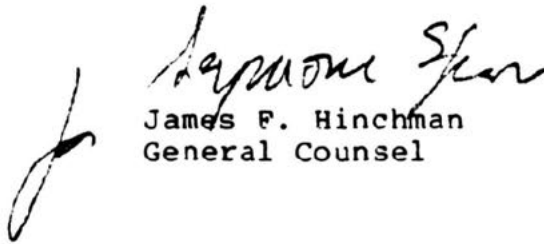
FAR case No. 88-68 is a proposed rule that would amend FAR Parts 9, 14, 15, and 52 with respect to unbalanced bids and offers. The amendments would require that solicitations inform bidders or offerors that separately stated first article prices may not be materially unbalanced in relation to prices for production quantities. Revised section 14.404-2(g) would state that any bid may be rejected if the prices for any line items or subline items are materially unbalanced. Similarly, FAR section 15.814(c) would provide for rejection of materially unbalanced offers in negotiated procurements. Guidance on material unbalancing for both bids and offers would be provided in a new FAR section 15.814.

The proposed rule would address an issue identified in a number of recent decisions of this Office. Beginning with Riverport Industries, Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, we have said that a bid or offer containing grossly unbalanced first article prices should be rejected when acceptance of the bid or offer would be tantamount to allowing an advance payment. The proposed changes would provide for rejection of materially unbalanced bids or offers and would require explicit notice of that possibility to prospective bidders or offerors. We support the proposed changes.

FAR case No. 88-72 is a proposal to revise FAR sections 25.102(a)(4) and 25.202(a)(3) and the clause at FAR section 52.225-1 to make clear that for purposes of establishing an exception to the domestic end product requirements of the Buy American Act, each procuring agency is responsible for determining that a given end item is not reasonably available in the United States. In particular, the

revision would state that the list of items in FAR section 25.108(d) that have been found by one or more agencies to be unavailable domestically is for information purposes only. We also have no objection to these proposed revisions.

Sincerely yours,



James F. Hinchman
General Counsel