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United States Government Accountability Office
Washington, DC 20548

GAO BID PROTEST OVERVIEW

Updated December 2009

Bid Protest Statistics for Fiscal Years 2005-2009 Primary & Secondary

	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
Cases Filed ¹	1989 (up 20%)	1,652 ² (up 17% ³)	1,411 (up 6%)	1,326 (down 2%)	1,356 (down 9%)
Cases Closed	1920	1,582	1,394	1,275	1,341
Merit (Sustain + Deny) Decisions	315	291	335	251	306
Number of Sustains	57	60	91	72	71
Sustain Rate	18%	21%	27%	29%	23%
Effectiveness Rate (reported) ⁴	45%	42%	38%	39%	37%
ADR ⁵ (cases used)	149	78	62	91	103
ADR Success Rate ⁶	93%	78%	85%	96%	91%
Hearings ⁷	12%(65 cases)	6% (32 cases)	8% (41 cases)	11% (51 cases)	8% (41 cases)

¹ All entries in this chart are counted in terms of the docket numbers ("B" numbers) assigned by our Office, not the number of procurements challenged. Where a protester files a supplemental protest or multiple parties protest the same procurement action, multiple iterations of the same "B" number are assigned (i.e., .2, .3). Each of these numbers is deemed a separate protest for purposes of this chart.

² Of the 1,989 cases filed in FY 2009, 168 are attributable to GAO's recently expanded bid protest jurisdiction over task orders (139 filings), A-76 protests (16 filings), and Transportation Security Administration protests (13 filings). These 168 filings represent 50% of the total increase in filings from FY 2008 to FY 2009 (337 filings).

³ From the prior fiscal year.

⁴ Based on a protester obtaining some form of relief from the agency, as reported to GAO.

⁵ Alternative Dispute Resolution.

⁶ Percentage resolved without a formal GAO decision.

⁷ Percentage of fully developed decisions in which GAO conducted a hearing.

Report to Congress on Bid Protests Involving Defense Procurements⁸

Hill Report Origin and Scope

- Report responded to the direction, contained in the report on the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009, Pub. L. No. 110-417 (2008) (H.R. Rep. No. 110-652, at 394-95, May 16, 2008), from the Committee on Armed Services, House of Representatives to the Comptroller General, to-
 - review bid protests of DOD activities filed with GAO during the last 5 years.
 - assess extent to which bid protests may be increasing, the extent to which frivolous and improper protests may be increasing, and causes of any identified increases.
 - recommend any actions that Congress, or the executive branch, could take to disincentivize frivolous and improper bid protests on the part of industry.

Findings

- found that the number of DOD protests filed in FY 2008 (611 protests) increased by 118 protests, from the number of DOD protests filed in FY 2007 (493 protests). However, the percentage of DOD protests closed within 30 days in FY 2008 (52.9%), remained roughly the same as the percentage of DOD protests closed within 30 days in FY 2007 (59.2%).
- existing process provides balanced approach to adjudicate and resolve challenges to U.S. government procurements.
- Despite increase in bid protest filings in FY 2008--driven in part by statutory expansions of GAO's bid protest jurisdiction--number of protests challenging DOD contract awards in last 5 years is relatively low when viewed historically.
- GAO bid protest process significantly reduces potential disruptions to DOD procurements as a result of three factors:
 1. GAO consistently closes more than 50 percent of all protests involving DOD procurements within 30 days of filing;
 2. remaining DOD protests must be, and are, resolved within 100 days of filing; and
 3. CICA permits agencies to proceed with contract performance even before protest is resolved when goods or services are urgently needed, or when proceeding is in the best interests of the United States.

⁸ <http://www.gao.gov/legal/bidprotest.html>

RECENT GAO DECISIONS

I. EVALUATIONS AND SOURCE SELECTIONS⁹

- **Relaxation of Requirements**

The S.M. Stoller Corp., B-400937 et al., March 25, 2009, 2009 CPD ¶ 193 (contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Protest was sustained where an agency improperly waived or relaxed its requirements for the awardee and the protester established a reasonable possibility that it was prejudiced by the agency's actions).

- **Unstated Evaluation Criteria**

Public Commun. Servs., Inc., B-400058; B-400058.3, July 18, 2008, 2008 CPD ¶ 154 (the evaluation of protester's technical proposal was unreasonable, and protest thus was sustained where the certain features viewed as missing from protester's proposal were not required by the solicitation, and the record showed that the offerors were not evaluated equally).

- **Unequal Treatment**

Ahtna Support and Training Servs., LLC, B-400947.2, May 15, 2009, 2009 CPD ¶ 119 (protest was sustained where the agency evaluated the awardee and the protester unequally by crediting the awardee, but not the protester, with the experience of its subcontractor, even though the agency viewed both firms' subcontractors as having relevant experience).

- **Agency Failed to Follow Evaluation Criteria**

Ashbury Int'l Group, Inc., B-401123; B-401123.2, June 1, 2009, 2009 CPD ¶ 140 (protest that agency misevaluated awardee's proposal was sustained where record showed that, while solicitation provided that agency would conduct extensive testing on submitted product samples, it failed to conduct testing on awardee's product, as revised following discussions, and instead accepted awardee's unsubstantiated representation that it would provide a product that met solicitation requirements).

Northrop Grunman Infor. Tech., Inc., B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 (protest that agency failed to properly evaluate the awardee's proposal was sustained where (1) contrary to the evaluation scheme announced in the solicitation, the agency failed to evaluate staffing under all of the Mission Capability subfactors, and (2) the solicitation

⁹ Prepared by Katherine I. Riback, Senior Attorney.

stated that proposals would be evaluated on “the extent to which” they exceeded a requirement, and proposals that were substantially different nevertheless were rated the same).

Health Net Fed. Servs., LLC, B-401652.3; B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 (protest challenging evaluation of protester’s proposal in procurement for TRICARE managed health care support services was sustained where the record showed that the agency did not consider the network provider discounts associated with protester’s existing TRICARE network, in accordance with the solicitation). See also Humana Military Healthcare Servs., B-401652.2 et al., Oct. 28, 2009, 2009 CPD ¶ 219.

Port of Bellingham, B-401837, Dec. 2, 2009, 2009 CPD ¶ __ (protest sustained where agency had no reasonable basis to determine that awardee’s proposed pier was located outside a designated floodplain area and that it therefore complied with the solicitation’s limitations regarding lease of property located within a base floodplain).

- **Unsupported Evaluation and Selection Decision**

T-C Transcription, Inc., B-401470, Sept. 16, 2009, 2009 CPD ¶ 172 (protest challenging the award of contracts for transcription services at multiple locations was sustained where the record showed that: (1) the evaluation of the protester’s proposal under the most important technical factor was internally inconsistent and unreasonable; (2) the agency relied on a single overall adjectival rating and on prices in making its selection decision, and the overall rating failed to capture the differences between the relative ratings of the offerors’s proposals, or to reflect a reasonable conclusion that proposals with the same overall rating were technically equal; and (3) the agency tradeoff decision included only the two awardees and did not consider the protester for award, even at locations where the protester’s proposal was rated higher than the awardee’s proposal).

II. PRICE and COST EVALUATIONS

- **Price and Cost Evaluations Must Meaningfully Consider Price**

Public Commun. Servs., Inc., B-400058; B-400058.3, July 18, 2008, 2008 CPD ¶ 154 (protest challenging the evaluation of offerors’ pricing was sustained where the solicitation required offerors to propose eight international calling rates, and the agency evaluated only one rate as a surrogate for the others without a reasonable basis to do so).

ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 (protest was sustained in a competition for the issuance, on a best-value basis, of a task order to a higher-priced vendor under 8(a) Streamlined Technology Acquisition Resources for Services government-wide acquisition contract, where the record neither showed meaningful consideration of price in the agency’s selection of the higher-priced quotation, nor identified the superior capabilities of the awardee’s quotation that would justify paying the price premium associated with it).

Health Net Fed. Servs., LLC, B-401652.3; B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 (price realism evaluation was flawed where it did not reasonably consider whether the awardee's staffing, as related to its price/cost proposal, reflected a lack of understanding of the agency's technical requirements or presented technical risk).

- **Cannot Exclude Technically Acceptable Proposal Without Considering Price**

Arc-Tech, Inc., B-400325.3, Feb. 19, 2009, 2009 CPD ¶ 53 (an agency may not exclude a technically acceptable proposal from the competitive range based on a lower technical rating than other proposals, without also taking into consideration the proposal's price).

III. DISCUSSIONS

- **Agency Must Treat Offerors Fairly, If Not Equally**

Ashbury Int'l. Group, Inc., B-401123; B-401123.2, June 1, 2009, 2009 CPD ¶ 140 (protest that agency failed to engage in meaningful discussions with protester was sustained where record showed that agency downgraded protester's proposal for failure to include information that was not called for in solicitation, the information was not the subject of discussions, and weaknesses assigned to protester's proposal ultimately were the sole technical discriminator between proposals; agency should have either amended solicitation to reflect changed requirements, or conveyed new requirements to protester during discussions).

The Analysis Group, LLC, B-401726; B-401726.2, Nov. 13, 2009, 2009 CPD ¶ __ (protest was sustained where agency allowed successful vendor to make a material revision that made its quotation acceptable, but did not provide protester similar opportunity to revise its quotation, thereby improperly engaging in discussions only with successful vendor).

- **Discussions Must Be Meaningful**

Burchick Constr. Co., B-400342, Oct. 6, 2008, 2009 CPD ¶ 203 (agency failed to conduct meaningful discussions where discussions were limited to cost proposals and did not identify significant weaknesses or deficiencies that the agency had identified in the protester's technical proposal).

Tiger Truck, LLC, B-400685, Jan. 14, 2009, 2009 CPD ¶ 19 (discussions cannot be meaningful if a vendor was not advised of the significant weaknesses or deficiencies that must be addressed in order for its quotation to be in line for award).

IV. PAST PERFORMANCE

- **Past Performance Evaluations Must Be Consistent With Solicitation**

Honeywell Tech. Solutions, Inc., B-400771; B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 (once having decided to consider a particular contract performed by the awardee, the agency was required to evaluate the relevance of that contract consistent with the evaluation criteria in the RFP, *i.e.*, the degree of similarity in size, content and complexity between an offeror's past performance information and the RFP requirements. Here, there was nothing in the contemporaneous record to suggest that the agency engaged in such an analysis).

Caddell Constr. Co., Inc., B-401596; B-401597; B-401598, Sept. 21, 2009, 2009 CPD ¶ 187 (the Omnibus Diplomatic Security and Antiterrorism Act of 1986, 22 U.S.C. § 4852 (2000), established statutory qualification requirements for construction firms seeking to build a U.S. embassy, including a requirement that an entity seeking contracts for diplomatic construction projects over \$ 10 million must have performed construction services "similar in complexity, type of construction, and value to the project being bid." Agency determination that vendor satisfied this requirement was unreasonable where vendor's projects were not similar in complexity or value).

Health Net Fed. Servs., LLC, B-401652.3; B-401652.5, Nov. 4, 2009, 2009 CPD ¶ __ (protest was sustained where: (1) the agency credited the awardee with past performance of its parent and corporate affiliates, yet record established neither the entities involved with performing the prior contracts submitted by the awardee, nor the roles that the various entities would have in awardee's performance of the contract, and (2) under past performance evaluation of the awardee, the record showed that in assigning the awardee the highest past performance rating, agency failed to consider, as contemplated by the solicitation, the fact that awardee's past performance references were very small in relation to the size of the contract to be awarded).

V. FEDERAL SUPPLY SCHEDULE (FSS) PURCHASE

- **Non-FSS Products and Services May Not Be Purchased Using FSS Procedures**

Seaborn Health Care, Inc., B-400429, Oct. 27, 2008, 2009 CPD ¶ 197 (protest was sustained in FSS acquisition where request for quotations required that competing vendors offer non-FSS services (specific on-site supervisory personnel) as part of their quotations, since non-FSS products and services may not be purchased using FSS procedures). See also Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ __.

- **FSS Evaluations Must Be Reasonable**

AINS, Inc., B-400760.2; B-400760.3, June 12, 2009, 2009 CPD ¶ 142 (protest challenging agency evaluation of quotations received in response to solicitation for establishment of a blanket purchase agreement was sustained where record showed that some aspects of the agency's evaluation of quotations were not supported by the record and indicated unequal treatment of competing vendors).

Carahsoft Tech. Corp., B-401169; B-401169.2; June 29, 2009, 2009 CPD ¶ 134 (protest challenging an order under an FSS contract for faceted search capability software pursuant to a competition conducted under Federal Acquisition Regulation (FAR) subpart 8.4 was sustained where the agency unreasonably issued an order on the basis of a quotation that failed to meet one of the minimum technical specifications of the solicitation).

- **Agency's Request For Vendor Price Reductions**

OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 (agency's request for vendor price reductions in FSS acquisition conducted under FAR part 8.4 did not constitute discussions, and therefore did not trigger agency obligation to engage in meaningful discussions, as would be required in a negotiated acquisition conducted pursuant to FAR part 15; FAR part 8.4 expressly requires agencies to seek price reductions in specified circumstances). See also USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9.

VI. ORGANIZATIONAL CONFLICTS OF INTEREST (OCI)

- **Contracting Officer Must Address OCIs**

L-3 Servs., Inc., B-400134.11; B-400134.12, Sept. 3, 2009, 2009 CPD ¶ 171 (protest that agency unreasonably determined that the awardee did not have a "biased ground rules" OCI was sustained where the record showed that the awardee's subcontractor provided procurement development services that put it in a position to affect the subsequent competition in its favor; protest that agency unreasonably determined that awardee did not have an "unequal access to information" OCI also was sustained where the record showed that the awardee's subcontractor had access to competitively useful, non-public information, and the drafts of the mitigation plans intended to prevent the disclosure of that information were not furnished to the agency until after the conclusion of the performance of the work covered by those plans).

Nortel Gov't Solutions, Inc., B-299522.5; B-299522.6, Dec. 30, 2008, 2009 CPD ¶ 10 (where offeror would be required to review and provide input on designs proposed by itself under separate contract with same agency, agency unreasonably failed to determine the extent of offeror's OCI and unreasonably concluded that offeror's mitigation plan was acceptable, where it did not avoid, mitigate, or neutralize the OCI, and instead relied on agency's existing process that made government responsible for final decisions).

The Analysis Group, LLC, B-401726; B-401726.2, Nov. 13, 2009, 2009 CPD ¶ __ (protest that successful vendor had “impaired objectivity” OCI was sustained where record (1) showed that successful vendor’s advice and assistance could lead to agency’s procurement of other products and services offered by successful vendor, and (2) did not show that agency adequately considered possibility of “impaired objectivity” OCI, or whether such a potential OCI could be avoided, neutralized or mitigated).

VII. UNFAIR COMPETITIVE ADVANTAGE

Health Net Fed. Servs., LLC, B-401652.3; B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 (protest that awardee’s use of a former high-level government employee in preparing its proposal created an appearance of impropriety based on the unfair competitive advantage stemming from the individual’s access to non-public proprietary and source selective information was sustained, where the contracting officer never considered the matter—because the awardee did not bring it to his attention—and the record showed that the individual had access to non-public proprietary information concerning the protester’s performance of the incumbent contract, which appeared relevant to the challenged procurement).

VIII. PROTESTS

Timeliness

- **Must Seek Timely Debriefing**

University of Mass. Donahue Inst., B-400870.3, July 15, 2009, 2009 CPD ¶ 173 (exception to timeliness rules based on receipt of a debriefing was inapplicable where protester chose to delay debriefing regarding the elimination of its proposal until after award; post-award protest challenging agency’s elimination of proposal, filed more than 3 months after protester received notice of the proposal’s elimination, was untimely where protester received all of the information on which the protest was based at the time the proposal was eliminated).

- **If OCI is Known Prior to Closing Time, Protest May Not Be Delayed Until After Closing**

Honeywell Tech. Solutions, Inc., B-400771; B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 (post-closing time protest that awardee had an impermissible OCI was untimely where (1) solicitation was issued on an unrestricted basis, (2) protester was aware of the underlying facts giving rise to the potential OCI (and knew awardee was participating in the procurement), and (3) in response to protester’s inquiry, agency specifically informed protester that it did not believe awardee had an impermissible OCI).

- **Alleged Procurement Integrity Act Violation Must Be Timely Raised With Agency**

Frank A. Bloomer–Agency Tender Official, B-401482, July 20, 2009, 2009 CPD ¶ 174 (protest alleging violation of Procurement Integrity Act was dismissed where the protester did not report the alleged procurement integrity violation to the contracting agency within 14 days after the protester received the evidence that it believed showed a possible violation; timely reporting was required as a condition precedent by the statutory procurement integrity provisions and GAO’s Bid Protest Regulations).

- **Post-Award Protest of Corrective Action Ground Rules Untimely**

Northrop Grunman Info. Tech., Inc., B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 (protest of agency’s decision not to consider revised proposals in the reevaluation following corrective action was untimely where filed after the issuance of the new award decision, where protester knew or should have known, prior to award decision, of the agency’s intent not to consider proposal revisions).

- **Significant Issue Invoked**

Tiger Truck, LLC, B-400685, Jan. 14, 2009, 2009 CPD ¶ 19 (significant issue exception to GAO’s timeliness rules applied where issue raised was one of widespread interest to the procurement community and had not been previously decided).

Costs

- **Must Document Cost Claim**

Solutions Lucid Group, LLC–Costs, B-400967.2, Oct. 1, 2009, 2009 CPD ¶ 198 (protester’s request for recommendation that it be reimbursed \$52,800 in protest costs was denied where protester failed to furnish sufficient evidence to establish the number of hours worked and rates of compensation for the individuals who worked on the protest).

- **\$150 Per Hour Attorneys’ Fees Cap Adjusted**

Core Tech Int’l Corp.–Costs, B-400047.3, June 2, 2009, 2009 CPD ¶ 121 (request that GAO recommend reimbursement of attorneys’ fees at a rate higher than the statutory cap of \$150 per hour based on increase in cost of living was granted where claim filed with agency presented reasonable basis for adjustment).

- **GAO May Recommend Reimbursement of Costs for Protest of Foreign Military Sale Award**

Absalam Aircraft Co.—Costs, B-401298.3, Nov. 5, 2009, 2009 CPD ¶ 208 (neither CICA, nor the Arms Export Control Act, bars GAO from recommending that the agency reimburse a successful protester's costs of filing and pursuing a protest challenging award under a procurement conducted under the Foreign Military Sales program, and neither statute bars the agency from making such reimbursement).

- **Corrective Action**

American K-9 Detection Servs., Inc., B-400464.6, May 5, 2009, 2009 CPD ¶ 107 (an agency's decision to limit discussions in implementing corrective action in response to a protest was unreasonable and inappropriate, since the limitation failed to account for other significant weaknesses or deficiencies found in the proposals).

Jurisdiction

- **GAO Will Hear Protest of No-Cost Procurement of Services**

Armed Forces Hospitality, LLC, B-298978.2; B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 (protest jurisdiction of the GAO extends to protest of a no-cost contractual agreement for the provision of lodging services to transient soldiers, as part of the Department of the Army's privatization of Army lodging program, because the contract concerns a procurement for services by a federal agency and results in a benefit to the government).

Public Commun. Servs., Inc., B-400058; B-400058.3, July 18, 2008, 2008 CPD ¶ 154 (GAO has jurisdiction to hear protest of the award of a no-cost contract for provision of phone services to detainees in the custody of the Bureau of Immigration and Customs Enforcement because the contract concerns a procurement for services by a federal agency and results in a benefit to the government).

- **GAO Will Not Review Agency Management Decision**

Aleut Facilities Support Servs., LLC, B-401925, Oct. 13, 2009, 2009 CPD ¶ 202 (GAO will generally not review agency's decision to cancel a solicitation to perform the work in-house because decision whether to perform work in-house is generally a matter of executive branch policy).

IX. TASK and DELIVERY ORDERS

Delex Sys., Inc., B-400403, Oct. 8, 2008, 2008 CPD ¶ 181 (the set-aside provisions of Federal Acquisition Regulation (FAR) § 19.502-2(b) apply to competitions for task and delivery orders issued under multiple-award contracts).

Bay Area Travel, Inc., et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 (FAR part 15 procedures do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16).

- **Task Order Jurisdiction**

Armorworks Enters., LLC, B-401671.3, Nov. 6, 2009, 2009 CPD ¶ 225 (GAO does not have jurisdiction to consider protest challenging agency's decision to issue three separate delivery orders for body armor plates, where each of the delivery orders was valued below the statutory threshold of \$10 million, and the record does not support protester's contention that agency's decision to procure the plates by separate delivery orders was a deliberate effort to evade GAO's bid protest jurisdiction).

ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ __ (here, in connection with task order for dismantling ships, offerors were required to sell the scrap resulting from the ship dismantling, were permitted to retain the scrap sale proceeds, and were required to offset their proposed prices with the scrap sale proceeds; the calculation of value, for purposes of determining GAO's jurisdiction to review a protest of the task order, was not limited to consideration of offerors' proposed prices, but properly included consideration of estimated ship scrap values).

Innovative Tech. Corp., B-401689 et al., Nov. 9, 2009, 2009 CPD ¶ __ (GAO views the National Defense Authorization Act of 2008's authorization for GAO to consider protests of task orders in excess of \$10 million as extending to protests objecting to the terms of the task order solicitation. Therefore, the protest of alleged improprieties apparent on the face of the task order solicitation, filed after issuance of the task order, was dismissed as untimely under GAO's Bid Protest Regulations because the protester knew or should have known, upon receipt and review of the RFP, that the task order would be issued for an amount in excess of \$10 million, given that it was the incumbent contractor and its initial proposal price exceeded \$10 million).

X. OMB CIRCULAR A-76

New Dynamics Corp., B-401272, July 8, 2009, 2009 CPD ¶ 150 (protest of agency's decision to retain custodial services in-house based on results of a standard public-private competition conducted pursuant to OMB Circular No. A-76 was sustained where the agency did not reasonably consider whether agency tender's material and supply costs were realistic, as required by the solicitation and OMB Circular A-76).

Rosemary Livingston-Agency Tender Official, B-401102.2, July 6, 2009, 2009 CPD ¶ 135; Recon. Denied, Department of Navy-Recon., B-401102.3, Aug. 6, 2009, 2009 CPD ¶ 162 (protest challenging evaluation of agency tender in public-private competition under OMB Circular A-76 was sustained where the record contained inconsistent statement by the agency in its contemporaneous evaluation and inadequate documentation of the agency's findings regarding the tender's shortcomings).

Frank A. Bloomer-Agency Tender Official, B-401482.2; B-401482.3, Oct. 19, 2009, 2009 CPD ¶ 203 (protest challenging a public-private competition between an agency tender and a private sector proposal was sustained where: (1) the agency unreasonably accepted the private-sector offeror's revised fringe benefit ratios in its cost realism analysis; (2) the record provided no reasonable basis for the agency to accept the private-sector offeror's unsupported assumption that the firm could perform a significant portion of the workload 10 percent more efficiently; and (3) the agency unreasonably

allowed the private-sector offeror to omit the labor cost associated with the material supply function from its cost proposal, and these errors prejudiced the protester).

XI. MISCELLANEOUS ISSUES

- **Solicitations**

PWC Logistics Servs. Co., B-400660, Jan. 6, 2009, 2009 CPD ¶ 67 (protest of terms of a solicitation was sustained where solicitation was silent as to the basis for determining which zone an offeror would be awarded where its proposal was found to be most advantageous for both zones. This failure to advise offerors of the factors the agency would apply was inconsistent with the requirements in CICA that agencies identify the bases upon which proposals will be evaluated).

SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 (protest against restrictive requirement in a solicitation was sustained where the record did not establish that the requirement was necessary to meet the agency's needs).

- **Simplified Acquisitions**

Solutions Lucid Group, LLC, B-400967, Apr. 2, 2009, 2009 CPD ¶ 198 (if using simplified acquisition procedures, agencies are required to "promote competition to the maximum extent practicable." FAR § 13.104. Protest was sustained where the agency deliberately failed to solicit a responsible source that had expressed interest in competing, and there was not a reasonable basis for questioning the source's ability to meet the agency's needs).

Critical Process Filtration, Inc., B-400746 et al., Jan. 22, 2009, 2009 CPD ¶ 25 (protest was sustained where agency used simplified acquisition procedures to meet requirements that should reasonably have been valued above the simplified acquisition threshold. GAO determined that the record showed that the agency was splitting the order to allow the use of simplified acquisition procedures, which is expressly barred by FAR § 13.003(c)(2)).

Historically Underutilized Business Zones (HUBZone)

- **GAO Has Concluded That Under Law, That HUBZone Set-Asides Have Priority Over Other Set-asides**

Mission Critical Solutions, B-401057, May 4, 2009, 2009 CPD ¶ 93 (an agency must make reasonable efforts to determine whether it will receive offers from two or more HUBZone small businesses and, if so, set the acquisition aside for HUBZone firms, even where a prior contract for the requirement had been performed by an 8(a) contractor). Recon. Denied, SBA-Recon., B-401057.2, July 6, 2009, 2009 CPD ¶ 148 (request for reconsideration from the SBA--arguing that our Office exceeded its statutory grant of authority to decide bid protests when we concluded in Mission Critical Solutions, that set-asides under the HUBZone program were mandatory where the enumerated conditions of the HUBZone statute are met--was denied where, despite the SBA's contentions to the contrary, our decision did not "invalidate" the SBA's conflicting regulation, and the decision, and the recommendation within it, were consistent with our statutory jurisdiction).

All Seasons Apparel, Inc., B-401805; B-401805.2, Nov. 4, 2009, 2009 CPD ¶ 221 (agency's cancellation of solicitation for Army combat shirts, which was set aside for HUBZone small business concerns, was reasonable where cancellation was due to disagreement between GAO and Executive Branch on interpretation of authorizing statutes for small business programs, agency was faced with threat of litigation, and another procurement vehicle was available to meet at least part of the agency's needs while the agency decided how best to meet its remaining needs).

- **Small Business Set-Asides**

TFab Mfg., LLC, B-401190, June 18, 2009, 2009 CPD ¶ 127 (protest challenging propriety of solicitation provision—stating that offerors must meet requirements under Limitations of Subcontracting (LOS) clause separately for services and supply portions of work under solicitation—was sustained where provision was inconsistent with Small Business Act, which provides for application of either services or supply portion of LOS clause, but not both).

- **Agency Obligation To Use Reasonable Methods To Obtain Full and Open Competition**

TMI Mgmt. Sys., Inc., B-401530, Sept. 28, 2009, 2009 CPD ¶ 191 (agency's misclassification of a procurement for facilities support services on the Federal Business Opportunities Internet website under a "miscellaneous" product classification code improperly deprived the protester of an opportunity to respond to the agency's solicitation and was not consistent with the agency's obligation to use reasonable methods to obtain full and open competition).

- **Improper Sole Source Awards**

Major Contracting Servs., Inc., B-401472, Sept. 14, 2009, 2009 CPD ¶ 170 (agency improperly extended a contract on a sole-source basis where it did not establish that only the incumbent could provide the service and the agency could have avoided the urgency that ultimately led to the sole-source award through advance procurement planning). See also RBC Bearings Inc., B-401661; B-401661.2, Oct. 27, 2009, 2009 CPD ¶ 207.

OSC Solutions Group, B-401498, Sept. 14, 2009, 2009 CPD ¶ 185 (protest challenging the cancellation of a request for quotations (RFQ) and issuance of orders on a sole-source basis to a non-profit agency under the authority of the Javits-Wagner-O'Day Act was sustained where the acquired items were not on the procurement list maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled; since the sole-source procurement therefore was improper, the cancellation of the RFQ was not reasonable).

- **Responsibility**

ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ __ (when an agency undertakes a responsibility determination, even when discretionary, the conclusions drawn from the analysis must be reasonable).

- **Trade Agreements Act (TAA)**

Tiger Truck, LLC, B-400685, Jan. 14, 2009, 2009 CPD ¶ 19 (in a procurement covered by the TAA, protest of an award to a vendor whose quotation identified products that were not TAA-compliant was sustained where the agency failed to follow required evaluation procedures for TAA procurements, and improperly failed to ascertain whether the products identified by the protester were TAA-compliant).