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**United States Government Accountability Office**  
**Washington, DC 20548**

## **GAO BID PROTEST OVERVIEW**

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**Bid Protest Statistics<sup>(a)</sup> for Fiscal Years 2007-2011**

	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
Cases Filed <sup>(b)</sup>	2,353 (up 2%)	2,299 (up 16%)	1,989 (up 20%)	1,652 (up 17%)	1,411 (up 6%)
Cases Closed	2,292	2,226	1,920	1,582	1,394
Merit (Sustain + Deny) Decisions	417	441	315	291	335
Number of Sustains	67	82	57	60	91
Sustain Rate	16%	19%	18%	21%	27%
Effectiveness Rate <sup>(c)</sup>	42%	42%	45%	42%	38%
ADR (cases used) <sup>(d)</sup>	140	159	149	78	62
ADR Success Rate <sup>(e)</sup>	82%	80%	93%	78%	85%
Hearings <sup>(f)</sup>	8% (46 cases)	10% (61 cases)	12% (65 cases)	6% (32 cases)	8% (41 cases)

<sup>(a)</sup> 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 case for purposes of this chart.

<sup>(b)</sup> Of the 2,353 cases filed in FY 2011, 147 are attributable to GAO’s recently-expanded bid protest jurisdiction over task orders.

<sup>(c)</sup> Based on a protester obtaining some form of relief from the agency, as reported to GAO.

<sup>(d)</sup> Alternative Dispute Resolution.

<sup>(e)</sup> Percentage of cases resolved without a formal GAO decision after ADR.

<sup>(f)</sup> Percentage of fully developed cases in which GAO conducted a hearing; not all fully-developed cases result in a merit decision.

## RECENT GAO DECISIONS

### I. EVALUATIONS AND SOURCE SELECTIONS

- **Relaxation of Requirements**

Raytheon Tech. Servs. Co. LLC, B-404655.4 et al., Oct. 11, 2011, 2011 CPD ¶ 236 (omission in awardee’s proposal constituted a material omission that rendered the proposal unacceptable. Protest was sustained where the solicitation required proposal of loaded labor rates to be used as ceiling rates in future task order competitions and awardee failed to propose rates for 20 labor categories).

- **Unequal Treatment**

Brican Inc., B-402602, June 17, 2010, 2010 CPD ¶ 141 (protest was sustained where the agency evaluated the awardee’s and the protester’s proposals unequally by crediting the awardee for the experience and past performance of a specialty subcontractor, but not similarly crediting the protester, which proposed the same subcontractor).

Douglas County Fire Dist. #2, B-403228, Oct. 4, 2010, 2010 CPD ¶ 239 (agency unreasonably evaluated the protester’s quotation with a “fail” rating for the geographic coverage factor for lack of a plan to cover the geographic area where the awardee’s quotation did not include any more specific information than the protester’s quotation, which was assigned a “pass” rating under the geographic coverage factor).

- **Agency Failed to Follow Evaluation Criteria**

Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 (protest was sustained where the agency assessed a weakness under the experience factor, which required the submission of five references, whenever an offeror’s reference did not have one of the six areas of the experience required by the solicitation, even though the solicitation only required that offerors’ references ‘collectively’ demonstrate experience in the required areas).

One Largo Metro LLC; Metroview Development Holdings, LLC; King Farm Associates, LLC, B-404896 et al., June 20, 2011, 2011 CPD ¶ 128 (protest was sustained where the agency failed to consider both the variety and quantity of amenities offered under the access to amenities subfactor, as required by the solicitation).

Mission Essential Personnel, LLC, B-404218.2; B-404218.3, June 14, 2011, 2011 CPD ¶ 120 (protest of agency evaluation was sustained where the record reflects that the agency failed to consider one of the evaluation factors established by the terms of the solicitation).

- **Unsupported Evaluation and Selection Decision**

DRS ICAS, LLC, B-401852.4; B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 (protest challenging evaluation of protester’s technical proposal was sustained where the agency assessed numerous weaknesses not reasonably supported by the record. For example, certain agency concerns first raised in a hearing on this protest were not reflected in the contemporaneous record, and had not been previously raised in the agency’s earlier responses to the protest; since these additional concerns were first raised in the heat of the adversarial process--and were inconsistent with the underlying record--they were given little weight).

- **Best Value Tradeoff Ignored Lower-Priced Acceptable Offers**

System Eng'g Int'l., Inc., B-402754, July 20, 2010, 2010 CPD ¶ 167 (in a best value procurement for maintenance services, protest was sustained where the record showed that the agency performed a tradeoff between the two higher-rated, higher-priced quotations, but did not consider, in its tradeoff decision, the lower prices submitted by other lower-rated vendors, whose quotations were nonetheless found to be technically acceptable).

- **Mechanical Source Selection**

One Largo Metro LLC; Metroview Development Holdings, LLC; King Farm Associates, LLC, B-404896 et al., June 20, 2011, 2011 CPD ¶ 128 (protest was sustained where the head of the contracting activity did not meaningfully consider the evaluated differences in the offerors' proposals in her selection decision, rather her source selection was based on a mechanical comparison of the offerors' technical ratings).

- **Evaluations Must Be Adequately Documented**

Resource Dimensions, LLC, B-404536, Feb. 24, 2011, 2011 CPD ¶ 50 (protest was sustained where the agency failed to provide adequate supporting rationale in the record for GAO to conclude that the agency had a reasonable basis for its evaluation of the protester's oral presentation because of unresolved discrepancies regarding the unrecorded portion of the oral presentation).

Technology Concepts & Design, Inc., B-403949.2; B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 (protest challenging the issuance of a task order was sustained where the agency did not provide adequate supporting rationale for GAO to conclude that the agency's evaluation of the protester's proposal was reasonable).

- **Solicitation Requirement Exceeded Agency's Needs**

USA Jet Airlines, Inc.; Active Aero Group, Inc., B-404666, Apr. 1, 2011, 2011 CPD ¶ 91 (protest of the agency requirement that offerors present evidence of certification under certain industry quality standards at the time of proposal submission, rather than at the time of award or performance, was sustained where the requirement exceeded the agency's reasonable needs).

- **Unreasonable Reevaluation in a Corrective Action**

DRS ICAS, LLC, B-401852.4; B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 (protest was sustained where the agency incorrectly assumed that it was required to ignore the passage of time between the agency's initial evaluation and its post-corrective action reevaluation with regard to the evaluation of the protester's ongoing work and its relevance to the evaluation of system maturity and schedule risk factors).

## II. PRICE AND COST EVALUATIONS

- **Price Realism**

I.M. Sys. Group, B-404583 et al., Feb. 25, 2011, 2011 CPD ¶ 64 (protest that challenged the award of indefinite-delivery/indefinite-quantity contracts was sustained where, although the

solicitation provided that the agency would assess the realism of the offerors' loaded rates, the agency did not assess the realism of the labor rates of the awardee or the protester).

- **Cost Realism**

MPRI, Division of L-3 Servs, Inc.; LINC Gov't. Servs., B-402548 et al., June 4, 2010, 2011 CPD ¶108 (protest of cost realism evaluation was sustained where, although the agency reasonably determined that the protester had failed to adequately support its proposed substantial reduction in labor rates relative to those under its incumbent contract, the extent of the agency's resulting upward adjustment in the labor rates was unreasonable).

### III. DISCUSSIONS

- **Discussions Must Be Meaningful**

Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 (protest was sustained where discussions were conducted, but the protester was not provided with an opportunity to address the significant weaknesses identified in its proposal, even though one of the awardees had been provided the opportunity to revise its technical proposal in a significant way).

Ewing Constr. Co., Inc., B-401887.3; B-401887.4, Apr. 26, 2010, 2010 CPD ¶ 108 (agency conducted prejudicially misleading discussions with the protester where, in taking corrective action in response to the protester's prior protest, the agency reevaluated an aspect of the protester's proposal as constituting a deficiency that rendered the proposal ineligible for award under the solicitation's stated evaluation scheme. While this aspect of the protester's proposal had been previously identified during discussions as a significant weakness that would result in the proposal being downgraded, it would not have rendered the proposal ineligible for award under the solicitation's stated evaluation scheme).

- **Discussions Cannot Mislead**

PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 (offerors may have been misled by a procuring agency, where the solicitation established a build-to-budget concept that instructed offerors to use the full amount of the budget identified in the solicitation in developing their technical approach, and despite questions and discussions concerning this concept, offerors were not informed that they could propose less than the budgeted amount, no offeror but the awardee proposed less than the full budget amount, and the awardee was credited by the agency for offering a lower price).

- **What Constitutes Discussions**

C2C Solutions, Inc.; TrustSolutions, LLC, B-401106.6; B-401106.7, June 21, 2010, 2010 CPD ¶ 145 (where an agency, pursuant to FAR § 9.504(e), conducts exchanges with an offeror regarding the offeror's plan to mitigate identified conflicts of interest, such exchanges do not constitute discussions and, as a consequence, do not trigger the requirement to hold discussions with other offerors).

CIGNA Gov't Servs., LLC, B-401068.4; B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 (agency's communications with awardee regarding OCI mitigation strategies, following submission of final

proposals, did not constitute discussions or require that discussions be conducted with other offerors).

#### IV. PAST PERFORMANCE

- **Past Performance Evaluations Must Include Close at Hand Information**

Northeast Military Sales, Inc., B-404153, Jan. 13, 2011, 2011 CPD ¶ 2 (an agency's assessment of awardee's past performance as exceptional was not reasonable where the agency failed to consider adverse past performance information of which it was aware).

- **Evaluations Must Be Adequately Documented**

Solers, Inc., B-404032.3; B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 (protest challenging the evaluation of past performance was sustained where the record did not permit a meaningful review of whether the agency's evaluation was reasonable).

US Information Technologies Corporation, B-404357; B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 (protest of an agency evaluation of the awardee's past performance was sustained, where the solicitation provided for the evaluation of projects that were similar in scope and complexity, and there was no explanation in the record, or in response to the protest, explaining why the awardee's smaller-value past performance projects were similar in scope and complexity).

#### V. FEDERAL SUPPLY SCHEDULE (FSS) PURCHASE

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

Rapiscan Sys., Inc., B-401773.2; B-401773.3, Mar. 15, 2010, 2010 CPD ¶ 60 (where an agency announces its intention to order from an existing FSS contractor, all items quoted and ordered are required to be within the scope of the vendor's FSS contract. The sole exception to this requirement is for items that do not exceed the micro-purchase threshold of \$3,000, since such items properly may be purchased outside the normal competition requirements in any case. Here, the solicitation limited competition to vendors holding FSS contracts for required items, and successful vendor's FSS contract did not include all required items, therefore the protest was sustained. The micro-purchase exception was inapplicable because, while the non-FSS items were priced at \$0, the quotation stated that price of non-FSS items was included in the FSS item prices).

- **Ordering FSS Services at Hourly Rates When Statement of Work is Included**

US Information Technologies Corporation, B-404357; B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 (in a procurement conducted pursuant to the FSS procedures, an agency, when ordering services priced at hourly rates and when a statement of work is included, was required to consider the level of effort and the mix of labor offered to perform a specific task being ordered and determine that the total price was reasonable).

- **Use of Schedule Contractor Team Arrangements (CTA) in FSS Procurements**

Brooks Range Contract Servs., Inc., B-405327, Oct. 12, 2011, 2011 CPD ¶ 216 (protest that contracting agency improperly awarded a FSS task order to an entity that did not have an FSS contract is denied where the vendors submitted a CTA with their proposal as required by the solicitation [and as permitted by the procedures of the General Services Administration], and where each of the vendors in the team held the FSS contract required by the solicitation).

## **VI. ORGANIZATIONAL CONFLICTS OF INTEREST (OCI)**

- **Biased Ground Rules OCI**

QinetiQ North America, Inc., B-405008; B-405008.2, July 27, 2011, 2011 CPD ¶ 154 (protest that awardee had ‘biased ground rules’ type OCI was denied where the record did not establish that the awardee’s prior contract performance put the awardee in a position to materially affect the competition).

Energy Sys. Group, B-402324, Feb. 26, 2010, 2010 CPD ¶ 73 (protest challenging potential exclusion from competition on the basis of an OCI was denied where the agency reasonably concluded that the protester’s preparation of a report that was used to prepare a statement of work for a competitive solicitation created a biased ground rules OCI).

- **Unfair Access to Information OCI—“Hard Facts” Required**

VSE Corp., B-404833.4, Nov. 21, 2011, 2011 CPD ¶ \_\_ (protest that challenged the agency’s termination of a contract awarded to the protester was sustained where the record did not support the contracting officer’s determination that an appearance of impropriety had been created by the protester’s hiring of a former government employee as a consultant, because the record showed that the determination was based on assumptions, rather than hard facts, and relied on an incorrect understanding of the statutes and regulations that apply to post-government employment activities).

TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 (protest of agency’s termination of awardee’s contract due to the hiring of a former high-level agency employee on the basis that there was an appearance of impropriety that may have caused an unfair competitive advantage for the awardee was denied where the agency conducted a thorough and well-documented investigation, which found that the employee had access to non-public source selection information during his government employment and appeared to have input into the awardee’s preparation of its revised proposal when employed by the awardee).

Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 (protest that awardee had ‘unequal access to information’ type of OCI was denied where the allegations were based upon suspicion and not ‘hard facts,’ the agency’s investigation was meaningful, and the agency reasonably concluded that the awardee did not have access to nonpublic information that would provide the firm a competitive advantage in the procurement).

PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 (an agency’s investigation of the awardee’s alleged unequal access to information OCI was

unreasonable, where the agency concluded that the awardee's hiring of a high-level government employee from the office responsible for the project being procured created a potential conflict, but limited its review to what responsibility and role the government employee had in the procurement prior to his retirement without any consideration of the employee's access to non-public, source selection information, and where the record established the employee's continued daily contact with members of the source selection team and access to inside information concerning the agency's build-to-budget concept).

- **Waiver of OCI**

The Analysis Group, LLC, B-401726.3, Apr. 18, 2011, 2011 CPD ¶ 166 (protest that agency failed to give adequate consideration to awardee's potential OCI was denied, where the record showed that the agency extensively investigated the potential OCIs and, after completing its investigation and concluding that there was a remote possibility of an OCI, properly executed a waiver of the residual OCI).

- **Corrective Action to Address OCI**

C2C Solutions, Inc.; TrustSolutions, LLC, B-401106.6; B-401106.7, June 21, 2010, 2010 CPD ¶ 145 (agency's proposed corrective action, in response to GAO recommendation in prior decision sustaining the protest, to provide awardee with an additional opportunity to address concerns regarding its OCI mitigation plan, was not precluded by FAR § 9.504(e) and did not constitute unequal discussions with only one offeror).

## VII. PROTESTS

### Timeliness

- **Alleged Solicitation Improprieties**

Baldt Inc., B-402596.3, June 10, 2010, 2010 CPD ¶ 139 (protest that the agency should not have used simplified acquisition procedures was dismissed as untimely where the protester waited until after the award to raise the challenge and where the protester knew, or should have known, prior to the time set for receipt of quotes, that its own quote would be priced more than eight times higher than the simplified acquisition threshold, and that any resulting contract would likely exceed the threshold. Under the circumstances, GAO held that the protester should have raised its challenge prior to the closing time, rather than waiting till after award).

- **Patent Ambiguity**

Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 (the RFP was patently ambiguous as to whether discussions were contemplated where the solicitation failed to incorporate one of two mandatory clauses to indicate whether award was to be made with or without discussions. Any questions regarding the agency's obligation to conduct discussions had to be raised, if at all, prior to the closing time for receipt of initial proposals. Since Kiewit did not protest prior to the closing time, its assertion that the agency was required to engage in discussions was untimely, and we would not consider it).



- **Filing**

Marine Hydraulics Int'l, Inc., B-403386.3, May 5, 2011, 2011 CPD ¶ 98 (protest challenging the agency's decision not to consider the awardee's performance under certain contracts was untimely where GAO sustained the protest against the initial source selection on other grounds, had previously found the agency's approach in this regard to be reasonable, and the protester did not timely request reconsideration).

- **Interested Party**

Integral Sys., Inc., B-405303, Aug. 16, 2011, 2011 CPD ¶ 161 (parent corporation was not an interested party to protest elimination from consideration for award of a proposal submitted by parent's wholly-owned subsidiary where the parent failed to show that the subsidiary was other than a separate and distinct legal entity with which the government would contract if award were made under the proposal in question).

- **Costs**

KGL Food Servs., WLL; Intermarkets Global-Costs, B-400660.7; B-400660.8, June 20, 2011, 2011 CPD ¶ 131 (costs are not recommended where issues concerning awardee's responsibility, lack of meaningful discussions, and protesters' own technical evaluations are readily severable from successful price realism challenge based on different set of facts and legal theories).

- **Must Document Cost Claims**

Baine Clark Co., Inc.--Costs, B-401172.4, June 7, 2010, 2010 CPD ¶ 135 (protester requesting reimbursement of protest costs must submit evidence sufficient to support its claim that those costs were incurred, reasonable, and properly attributable to filing and pursuing the protest; claimed costs that improperly aggregated allowable costs with unallowable costs or relate to settlement negotiations are disallowed).

- **Corrective Action**

Power Connector, Inc., B-404916.2, Aug. 15, 2011, 2011 CPD ¶ 186 (protest was sustained where, in response to an earlier protest, the agency took corrective action by amending the solicitation to change a material requirement under its past performance evaluation scheme, but improperly precluded offerors from making revisions to all aspects of their proposals, including price).

## **VIII. TASK AND DELIVERY ORDERS**

- **Task Order Jurisdiction**

Technatomy Corp., B-405130, June 14, 2011, 2011 CPD ¶ 107 (GAO took jurisdiction over a protest concerning the issuance of a task order under the authority of Title of the U.S. Code, notwithstanding the sunset of 41 U.S.C. § 4106(f) (2006 & Supp. IV 2010) (formerly codified at 41 U.S.C. § 253j(e) (2006 & Supp. III 2009)). The sunset provision eliminated both a pre-existing restriction on GAO's jurisdiction to hear protests concerning the issuance of task or

delivery orders under multiple-award indefinite-delivery/indefinite-quantity contracts, and a temporary partial waiver of that restriction concerning task orders over \$10 million. With the elimination of both the underlying restriction, and the partial waiver of that restriction, GAO's jurisdiction reverts to its original jurisdiction for its bid protest function-i.e., the jurisdiction set forth in the Competition in Contracting Act of 1984-under which GAO had jurisdiction to hear such protests).

- **Determining Task Order Value for Purposes of Jurisdiction**

U.S. Bank, B-404169.3, Feb. 15, 2011, 2011 CPD ¶ 43 (for purposes of determining GAO jurisdiction over challenges to the award of a task and delivery order, the term "value" for a no cost task order for third party payment services for transportation service providers [TSP] includes the anticipated transaction fees that the contractor will recover from the TSPs during the term of the contract, including options. However, GAO has no jurisdiction where the anticipated transaction fees of the selected contractor are less than \$10 million based on the estimated dollar volume of the total transactions under the order as stated in the solicitation and where the protester did not timely challenge the estimated dollar volume).

Qwest Gov't Servs., Inc., B-404845, Mar. 25, 2011, 2011 CPD ¶ 77 (costs for equipment and services furnished by the government in connection with the performance of a task order are not considered when determining whether the value of the order exceeded the \$10 million threshold to invoke task order protest jurisdiction).

- **Appeal to Task Order Ombudsman**

UXB-KEMRON Remediation Servs., LLC, B-401017.4, Oct. 25, 2010, 2010 CPD ¶ 251 (protest contesting the agency's decision to issue a delivery order request for proposals to the "unrestricted" pool of contractors under an indefinite-delivery/indefinite-quantity contract rather than to the "small business" pool was dismissed as untimely where it was filed after the due date for receipt of proposals; protester's previous appeal of this matter to the agency Task Order Ombudsman did not constitute an agency-level protest and did not toll GAO's timeliness requirements).

## IX. MISCELLANEOUS ISSUES

- **Solicitation Ambiguous**

CWTSato Travel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 (protest was sustained where certain terms of the solicitation did not clearly communicate whether objectives were optional or required).

- **Solicitation Cancellation**

JER 370 Third St., LLC, B-402025.2; B-402541, June 1, 2010, 2010 CPD ¶ 120 (protest of agency decision to cancel the solicitation and resolicit the requirement was sustained where the record failed to demonstrate a reasonable basis for the contracting officer's conclusion that competition under the original solicitation was inadequate).

- **Requirements Change After Issuance of Solicitation**

Global Computer Enters., Inc.; Savantage Financial Servs., Inc., B-404597 et al., Mar. 9, 2011, 2011 CPD ¶ 69 (protest that challenged the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract was sustained where the agency knew, prior to award, that the agency's anticipated schedule for issuance of task orders was materially different from the assumptions set forth in the solicitation, upon which the offerors were required to base their proposals).

- **Modification Beyond the Scope of the Original Contract**

DynCorp Int'l LLC, B-402349, Mar. 15, 2010, 2010 CPD ¶ 59 (protest that task order requests for proposals (TORP) were outside the scope of multiple-award ID/IQ contracts was sustained, where the ID/IQ contracts were limited to providing counter-narcoterrorism support services worldwide, and the TORPs sought mentoring, training, facilities, and logistics support services for the Ministry of the Interior and Afghan National Police in general law enforcement and counter-insurgency activities, which were not reasonably contemplated under the ID/IQ contracts).

Emergent BioSolutions Inc., B-402576, June 8, 2010, 2010 CPD ¶ 136 (protest that modification of contract for advanced development, testing, and production of anthrax vaccine was outside of the scope of the original contract was denied where modification did not substantially alter the scope of work anticipated by the underlying solicitation. GAO recognized that additional latitude for modifying a contract may exist where the contract was for research and development work, noting that the scope of such contracts is often flexible because of unanticipated changes due to the lack of definitiveness of the government's requirements).

- **Late Proposal**

SafeGuard Servs., LLC, B-404910, June 28, 2011, 2011 CPD ¶ 132 (agency improperly rejected the protester's final proposal revisions [FPR] as late due to the fact that a minor subcontractor submitted a late FPR, where the agency did not determine whether the protester's FPR was acceptable without considering the subcontractor's late FPR).

U.S. Aerospace, Inc., B-403464; B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 (agency properly rejected proposal as late where the delay accompanying admission of protester's messenger to a secure military facility, and the alleged misdirection by the facility's entry gate guards, were not the paramount cause of protester's late submission of its proposal because protester's messenger did not attempt to enter the facility at the gate designated for entry of non-military visitor's, did not seek advance entry approval, and failed to determine the location of, and directions to, the building designated for proposal submission).

- **Small Business Administration's (SBA's) Office of Hearings and Appeals (OHA)**

Eagle Home Med. Corp., B-402387, Mar. 29, 2010, 2010 CPD ¶ 82 (protest was sustained where agency failed to comply with the final decision of the SBA's OHA, in which the OHA reversed the North American Industry Classification System (NAICS) code assigned by the contracting officer and the contracting officer did not amend the solicitation to reflect the NAICS code that the OHA had determined was appropriate for this procurement, as required by applicable regulations).

ONS21 Sec. Servs., B-403067, Sept. 16, 2010, 2010 CPD ¶ 218 (under small business set-aside, where award was made to an offeror determined to be a small business by the SBA area office in response to a size status protest, contracting agency was not required under applicable regulations to terminate the contract based on a subsequent reversal of the area office's size determination by SBA's Office of Hearing and Appeals).

- **Revival of Expired Proposal**

Ocean Servs., LLC, B-404690, Apr. 6, 2011, 2011 CPD ¶ 73 (protest that contracting agency improperly refused to allow the protester to revive its expired proposal was sustained where the revival would not prejudice the other offerors or the competitive system, given that the protester's proposal, the acceptance period for which expired on a Saturday, was revived by its extension of the acceptance period on the following Monday morning).

- **Historically Underutilized Business Zones (HUBZone)**

B&B Medical Servs., Inc.; Rotech Healthcare, Inc., B-404241; B-404241.2, Jan. 19, 2011, 2011 CPD ¶ 24 (statutory non-manufacturer rule does not apply to procurements set aside for Historically Underutilized Business Zone small business concerns).

Explo Sys., Inc., B-404952; B-404952.2, July 8, 2011, 2011 CPD ¶ 127 (in a procurement that required a best value tradeoff, the agency was required to apply the HUBZone price evaluation preference in evaluating proposals, even though the HUBZone proposal was lower in price than the large business proposal, where the plain language of the solicitation, which incorporated FAR clause 52.219-4, required that the price evaluation preference be applied).

- **Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBC)**

Aldevra, B-405271; B-405524, Oct. 11, 2011, 2011 CPD ¶ 183 (the Department of Veterans Affairs (VA) is required to conduct market research to determine if the procurements should be set aside for SDVOSB concerns before using the FSS. The Veterans Benefits, Health Care, and Information Technology Act of 2006-and implementing regulations require the VA to use such set-asides where the statutory prerequisites are met).

A1 Procurement, JVG, B-404618.3, July 26, 2011, 2011 CPD ¶ 140 (GAO has jurisdiction to review a protest challenging a contracting officer's decision that the protester was not listed in the VA VetBiz database as eligible for award under a VA service-disabled, veteran-owned small business set-aside).

Pro South-Emcon, a Joint Venture, B-405267; B-405268, Aug. 18, 2011, 2011 CPD ¶ 162 (where solicitation required that a SDVOSB offeror be listed in the VetBiz database, that requirement applied to a joint venture offeror and was not met by one of the joint venturers' compliance).

MICCI Imaging Constr. Co., Inc., B-405654, Nov. 28, 2011, 2011 CPD ¶ 259 (in a VA procurement that was set aside for SDVOSBs, the protester is not an interested party to maintain its protest where the VA denied the protester's application for inclusion in the VA's VetBiz Vendor Information Pages database, notwithstanding the firm's pending request to the VA for reconsideration).

Powerhouse Design Architects & Engineers, Ltd., B-403174 et al., Oct. 7, 2010, 2010 CPD ¶ 40 (protest that the VA improperly failed to set aside architect-engineering services procurements for SDVOSBs were sustained, where the applicable statute--the Veterans Benefits, Health Care, and Information Technology Act of 2006--and implementing regulations, require such set asides where the statutory prerequisites were met).

- **Agency May Include Restrictive Solicitation Requirements Only to the Extent Necessary to Satisfy the Agency's Needs**

Technosource Information Systems, LLC; TrueTandem, LLC, B-405296 et al., Oct. 17, 2011, 2011 CPD ¶ 220 (protest of agency requirement that any non-U.S.-based cloud computing data centers be located in Trade Agreements Act Designated Countries was sustained where the agency failed to establish a connection to any legitimate government need).

Total Health Resources, B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 (solicitation requirement that the prime contractor itself have 2 years of family advocacy program experience was unduly restrictive, where the agency did not show that its needs could not be satisfied by a subcontractor with the requisite experience).

- **Change in Requirement After Receipt of Proposals**

Diebold, Inc., B-404823, June 2, 2011, 2011 CPD ¶ 117 (protest was sustained where an agency made material modifications to the solicitation without requesting revised proposals from the other offerors).

- **Brand Name Procurement**

MEDI-e-ImageData Corp., B-405164, Sept. 16, 2011, 2011 CPD ¶ 192 (placement of an order based on a quotation submitted in response to a request for quotations, issued on a 'brand name or equal' basis, was improper, where the awardee's 'equal' product did not show compliance with a material solicitation requirement).

California Indus. Facilities Resources, Inc., d/b/a CAMSS Shelters, B-403397.3, Mar. 21, 2011, 2011 CPD ¶ 71 (protest that solicitation was unduly restrictive because it required firms to submit proposals based solely on a brand name list of particular products was sustained where the solicitation did not include salient characteristics for the brand name products, and the agency had not taken the steps necessary to procure its requirements using other than full and open competition).

NCS Technologies, Inc., B-403435, Nov. 8, 2010, 2010 CPD ¶ 281 (solicitation requirements that computers and monitors be from the same manufacturer and use Intel-based microprocessors was overly restrictive where the agency failed to demonstrate a reasonable basis for the requirements).

- **Commercial Item Waiver**

U.S. Foodservice, Inc.; Labatt Food Servs., LP, B-404786 et al., May 13, 2011, 2011 CPD ¶ 102 (protest of the terms of a solicitation for food distribution services on the grounds that the terms were inconsistent with the commercial practice and were otherwise unreasonable was denied).

where the agency properly issued a waiver in accordance with FAR § 12.302(c) for commercial item solicitation requirements that may be inconsistent with customary commercial practice, and the record showed that the terms were reasonably justified).

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

Missouri Mach. & Eng'g Co., B-403561, Nov. 18, 2010, 2010 CPD ¶ 276 (in a commercial item acquisition for the repair and overhaul of pumps, protest requiring vendors to be an original equipment manufacturer's authorized repair facility was sustained, where the agency did not show that the restriction on competition was necessary to meet its needs).

- **Use of Public Interest Exception to Full and Open Competition**

Sikorsky Aircraft Corp., B-403471; B-403471.3, Nov. 5, 2010, 2010 CPD ¶ 271 (protest challenging the use of the public interest exception to the full and open competition for acquisition of Russian-made helicopters for delivery to the Afghanistan Air Force was denied where the Acting Secretary of the Navy issued a determination that justified the restricted competition).

- **Use of Exception for Industrial Mobilization Purposes to Full and Open Competition**

Outdoor Venture Corp., B-405423, Oct. 25, 2011, 2011 CPD ¶ 241 (protest challenging sole-source award for tents was denied where agency sole-source justification reasonably determined that award was necessary for industrial mobilization purposes).

- **Architect/Engineering Services**

EBA Ernest Bland Assocs., P.C., B-404825.5; B-404825.6, Oct. 11, 2011, 2011 CPD ¶ 212 (protest challenging the agency's selection of firms with which to negotiate contracts for architect/engineering services was sustained where the agency's final selections were based solely on results of oral interviews and did not consider specific evaluation factors established by the terms of the solicitation).

- **Responsibility**

Construct Solutions, Inc.-Protest and Reconsideration, B-405288; B-405288.2, Oct. 11, 2011, 2011 CPD ¶ 214 (protest challenging SBA's denial of certificate of competency (COC) was sustained where the basis for the SBA's refusal to issue the COC resulted from SBA's misapplication of its regulations).

- **Invitation for Bids (IFBs)**

Shaka, Inc., B-405552, Nov. 14, 2011, 2011 CPD ¶ 252 (agency improperly determined bid bond to be unacceptable where the surety's liability under the bid bond was unaffected by a letter in the bid package from the bidder and its subcontractor disclosing that the bidder had obtained the bond through the subcontractor's relationship with the surety and advising the agency that it was not affiliated with the subcontractor).

SBBI, Inc., B-405754, Nov. 23, 2011, 2011 CPD ¶ 258 (agency properly accepted bids as timely, where the bids were received at the place designated in the solicitation at the applicable local time. There is one standard time for most governmental purposes, and that time is the local time, regardless of whether it is referred to as standard time or as daylight savings time in the solicitation).

Hostetter, Keach & Cassada Constr., LLC, B-403329, Oct. 15, 2010, 2010 CPD ¶ 246 (protester's bid was responsive despite a discrepancy in the names of the bidder and the bid bond principal, where the record reflected that the bidder and the bid bond principal were the same entity so that it was certain that the surety would be liable to the government in the event that the bidder withdrew its bid or failed to execute a written contract or to furnish required performance and payment bonds).