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United States Government Accountability Office
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GAO SIGNIFICANT BID PROTEST DECISIONS 2002-PRESENT

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GAO BID PROTEST STATISTICS FISCAL YEARS 2000-2005

	FY 2005	FY 2004	FY 2003	FY 2002	FY 2001	FY 2000
Cases Filed	1,356 (down 9%)	1,485 (up 10%)	1,352 (up 12%)	1,204 (up 5%)	1,146 (down 6%)	1,220 (down 13%)
Cases Closed	1,341	1,405	1,244	1,133	1,098	1,275
Merit (Sustain + Deny) Decisions	306	365 (80 days)	290 (79 days)	256 (79 days)	311 (79 days)	306 (86 days)
Number of Sustains	71	75	50	41	66	63
Sustain Rate	23%	21%	17%	16%	21%	21%
ADR (cases used)	103	123	120	145	150	144
ADR Success Rate	91%	91%	92%	84%	84%	81%
Hearings	8% (41 cases)	9% (56 cases)	13% (74 cases)	5% (23 cases)	12% (63 cases)	9% (54 cases)

SELECTED RECENT GAO BID PROTEST DECISIONS¹

Documentation of evaluation and source selection record

- Source selection decisions are required to be documented

Beautify Prof'l Servs. Corp., B-291954.3, Oct. 6, 2003, 2003 CPD ¶ 178 (protest of the award to a firm with a higher past performance rating and a higher price is sustained where the source selection authority ignored the protester's significantly lower price and, as a result, failed to justify the payment of a substantial price premium).

Dismas Charities, Inc., B-292091, June 25, 2003, 2003 CPD ¶ 125 (where contemporaneous record reflected multiple procurement flaws, and the agency's post-protest reevaluation of proposals--which was conducted "in the heat of an adversarial process"--included, among other things, an increase to the awardee's rating that was unsupported by objective documentation, GAO declines to afford any material weight to the reevaluation activities and rejects the assertion that the reevaluation demonstrates that protester was not prejudiced by the agency's errors in the conduct of the procurement).

YORK Bldg. Servs., Inc., B-296948.2 et al., Nov. 3, 2005, 2005 CPD ¶ 202 (protest sustained where source selection official failed to document rationale for source selection consistent with differential weighting of technical evaluation factors and emphasis on technical superiority as required by solicitation).

Evaluations and tradeoffs

- Source selection must be consistent with the solicitation's award criteria

Wiltex Inc., B-297234.2; B-297234.3, Dec. 27, 2005, 2006 CPD ¶ 13 (protest sustained where awardee's proposal failed to address material solicitation requirements and the agency failed to treat offerors equally by making award to the awardee despite the deficiencies in its proposal, while finding the protester's proposal unacceptable for similar deficiencies).

¹Bid protest decisions can be accessed at GAO's website: <http://www.gao.gov>. GAO's bid protest regulations have recently been revised with regard to, among other areas, the review of protests challenging agencies' affirmative determinations of companies' responsibility.

ProTech Corp., B-294818, Dec. 30, 2004, 2005 CPD ¶ 73 (protest sustained where weight applied to evaluation factors in source selection decision differed from that announced in the solicitation).

Tiger Enters., Inc., B-293951, July 26, 2004, 2004 CPD ¶ 141 (protest sustained where solicitation called for comparative evaluation of various criteria, but source selection appeared to be based on the low-priced, technically acceptable submission).

- Source selection official's decision to reject recommendation of proposal reviewers must have a reasonable basis

TruLogic, Inc., B-297252.3, Jan. 30, 2006, 2006 CPD ¶ 29 (source selection authority's (SSA) disagreement with the majority of the evaluators and acceptance of the minority's recommendation that the awardee be selected for award is unobjectionable and does not evidence a lack of "impartiality," where the SSA reached a reasoned conclusion, supported by the record, that the awardee's lower-priced, lower-rated proposal deserved a higher technical rating than was assigned by the majority and represented the best value to the government).

University Research Co., B-294358 et al., Oct. 28, 2004, 2004 CPD ¶ 217 (protest sustained where source selection official rejected award recommendation of project officers, whose participation in proposal evaluation is anticipated by agency regulation, without documentation explaining the basis of our decision).

- Bias

Lockheed Martin Corp., B-295402, Feb. 18, 2005, 2005 CPD ¶ 24 (where the record established that a procurement official who had significant involvement in activities that culminated in decision forming the basis of the protest was biased in favor of one offeror, protest sustained where the agency did not provide compelling evidence that the protester was not prejudiced).

Lockheed Martin Aeronautics Co.; L-3 Communications Integrated Sys. L.P.; BAE Sys. Integrated Defense Solutions, Inc., B-295401 et al., Feb. 24, 2005, 2005 CPD ¶ 41 (protest sustained where source selection authority, who was materially involved in the evaluation of proposals, admitted bias in favor of the awardee, and the agency did not demonstrate that the protesters were not prejudiced).

- Cost or price/technical tradeoffs cannot be mechanical, they must be explained

Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 (agency's price/technical tradeoff was inadequate where it mechanically compared the offerors' point scores rather than qualitatively assessing the technical differences between the proposals to determine whether the evaluated technical superiority justified the price premium of making award to the offeror with the higher price and point score).

Preferred Sys. Solutions, Inc., B-292322 et al., Aug. 25, 2003, 2003 CPD ¶ 166 (under procurement that gave technical factors more importance than cost, source selection decision selecting the low-priced, technically-inferior proposal as the best value, instead of the protester's higher-priced, higher-rated proposal, was not reasonably based, where the agency did not reasonably explain why the benefits associated with the evaluated technical superiority of the protester's proposal were not worth the price premium and where the source selection authority was not aware of the actual differences in costs that would be incurred under the competing proposals).

- Selection of higher-priced offer based upon awardee's technical superiority is not reasonable where the source selection official did not consider the protester's similar technical approach

Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 (protest sustained where agency's evaluation and source selection decision found awardee's staffing and proposed marketing approach to be significantly superior and agency did not fairly consider the protester's similar proposed staffing and marketing approach).

- Price must be meaningfully considered in the source selection decision

Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 (agency unreasonably evaluated protester's price by adding to protester's price the protester's proposed increase in telecommunications charges under another contract for maintaining the system, without first verifying with the protester whether costs for necessary telecommunications to accomplish the work were already included in its quoted price).

MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 (protest sustained where, in selecting proposals for award, agency failed to consider the differences among the offerors' proposed pricing).

- Cost evaluation that did not account for awardee's low contingency cost allowance was unreasonable

EPW Closure Servs., LLC; FFTF Restoration Co., LLC, B-294910 et al., Jan. 12, 2005, 2006 CPD ¶ 3 (protest sustained where the record showed that proposed allowances for contingency costs--which the solicitation required to be included in proposed target costs--did not reflect the likely costs of performance, given the risks associated with offerors' proposed approaches).

- Even where solicitation lacks detail regarding content of technical proposals, agency's evaluation of technical proposals must be reasonable

Garner Multimedia, Inc., B-291651, Feb. 11, 2003, 2003 CPD ¶ 35 (in a competition among Federal Supply Schedule contractors, where technical proposals were requested and award was to be made to the vendor submitting the lowest priced, technically acceptable quotation, agency could not reasonably reject the lowest priced quotation as technically unacceptable where the solicitation did not state what information was expected to be included in the technical proposal and the proposal addressed, and did not simply repeat, the statement of work tasks incorporated into the solicitation).

SKJ & Assocs., Inc., B-291533, Jan. 13, 2003, 2003 CPD ¶ 3 (where request for quotations (RFQ) required submission of a technical proposal but gave no guidance as to its content or how it would be evaluated, agency could not properly reject as technically unacceptable a quotation that took no exception to the RFQ requirements and addressed all the tasks listed in the RFQ).

- Bias

Lockheed Martin Corp., B-295402, Feb. 18, 2005, 2005 CPD ¶ 24 (protest is sustained where the record established that a procurement official--who had significant involvement in activities that culminated in decision forming the basis of the protest--was biased in favor of one offeror, and the agency did not provide compelling evidence that the protester was not prejudiced).

Lockheed Martin Aeronautics Co.; L-3 Communications Integrated Sys. L.P.; BAE Systems Integrated Defense Solutions, Inc., B-295401 et al., Feb. 24, 2005, 2005 CPD ¶ 41 (protest is sustained where the source selection authority--who was materially involved in the evaluation of proposals--admitted bias in favor of the awardee, and the agency did not demonstrate that the protesters were not prejudiced).

- Price evaluation that does not provide a meaningful basis to consider cost to the government is unreasonable

R&G Food Serv., Inc., B-296435.4, B-296435.9, Sept. 15, 2005, 2005 CPD ¶ 194 (agency unreasonably determined that protester's prices were not fair and reasonable where agency's price evaluation considered only offerors' unit prices for some of contract line items and, in so doing, failed to provide a reasonable basis for comparing the relative overall costs to the government of offerors' competing proposals).

- Competitive range determination

Global, A 1st Flagship Co., B-297235; B-297235.2, Dec. 27, 2005, 2006 CPD ¶ 14 (in procurement that placed greater importance on technical factors, agency's establishment of a competitive range of one, which consisted of the awardee's technically unacceptable initial proposal and which excluded protester's "highly acceptable" technical proposal, on the basis that protester's evaluated cost/price was 15 percent higher than the awardee's, was not reasonable where the agency's cost/price evaluation reflected various flaws and erroneous assumptions).

Discussions and exchanges with offerors.

Frontline Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 (discussions were improper where agency afforded awardees a second round of discussions in two areas of their proposals where concerns remained after first round, but did not provide protester a second round of discussions, even though its proposal had been downgraded in the same two areas).

Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 (agency failed to conduct meaningful discussions with the protester where it did not convey in any meaningful way the disparity in the protester's prices and level of effort as compared to the agency's and awardee's staffing, such that the protester could not have understood the agency's concern with its proposal or that fundamental changes were required in order for the protester to have any reasonable chance of being selected for award).

Sytronics, Inc., B-297346, Dec. 29, 2005, 2006 CPD ¶ 15 (protest sustained where the agency conducted price discussions that improperly favored the selected vendor over the protester (whose higher priced quotation received a higher technical score)).

Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 (protest sustained where agency engaged in post-final proposal revision discussions only with the awardee).

Martin Elecs., Inc., B-290846.3, B-290846.4, Dec. 23, 2002, 2003 CPD ¶ 6 (agency improperly favored one offeror over the other, in contravention of Federal Acquisition Regulation § 15.306(e)(1), where it conducted exchanges with one offeror regarding its delivery record but failed to conduct similar exchanges with the other offeror).

Past performance evaluations

- Assessment of relevant past performance must be reasonable, even in competitive FSS procurements

KMR, LLC, B-292860, Dec. 22, 2003, 2003 CPD ¶ 233 (where record does not support agency's finding that awardee's experience was relevant to the requirements of the solicitation, agency unreasonably rated its quotation equal to protester's under past performance evaluation factor).

- Consideration of information collected by other evaluation boards in other procurements

Cooperativa Muratori Riuniti, B-294980, B-294980.2, Jan. 21, 2005, 2005 CPD ¶ 21 (although it was not objectionable to base a past performance evaluation on information compiled in connection with a different recent solicitation, protest sustained where the agency used ratings from the other procurement to rate the protester in accordance with a different rating scale and under different criteria than that used in the other procurement and there was no evidence that the new ratings were reasonably based).

- Similarity of past performance

Kaman Dayron, Inc., B-292997, Jan. 15, 2004, 2004 CPD ¶ 101 (protest is sustained where, under a solicitation that indicated that when rating proposals under the technical evaluation factor particular importance would be placed on the similarity of the items previously produced to the grenade fuze being procured, the record does not support the agency's ultimate determination that the awardee's experience producing part of a different fuze was nearly identical to the experience of the protester in producing the fuze being procured here such that both offerors were entitled to the same "excellent" rating).

- Lack of relevant past performance

Greater Pac. Aquatics, B-297654, Feb. 2, 2006, 2006 CPD ¶ 37 (under solicitation for lifeguard services, agency reasonably rated protester's past performance as neutral where protester's proposal showed that protester had managed swim team, but had not performed lifeguard services).

MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 (protest sustained, where agency downgraded protester's proposal under the past performance evaluation factor based upon the agency's determination that the proposal lacked relevant past performance information).

- Small business issues

Phil Howry Co., B-291402.3, B-291402.4, Feb. 6, 2003, 2003 CPD ¶ 33 (GAO sustained protest challenging rejection of protester's proposal where the agency effectively found protester, a small business, to be nonresponsible based solely on what amounted to a pass/fail evaluation of the protester's past performance, without referring the matter to the Small Business Administration).

- Joint venture treatment

JACO & MCC Joint Venture, LLP, B-293354.2, May 18, 2004, 2004 CPD ¶ 122 (agency may consider the experience and past performance history of individual joint venture partners in evaluating the joint venture's proposal where solicitation does not preclude doing so, and both joint venture partners will be performing work under the contract).

Experience evaluations

- Relevant experience

Cooperativa Muratori Riuniti, B-294980, B-294980.2, Jan. 21, 2005, 2005 CPD ¶ 21 (protest sustained where, in assessing the relevance of the protester's experience, the agency unreasonably differentiated between experience in performing multiple projects at multiple sites under a single contract and experience in concurrently performing multiple projects at multiple sites under multiple contracts, given that concurrent performance at multiple sites was what the RFP required).

- Evaluation of subcontractor experience

KIC Dev., LLC, B-297425.2, Jan. 26, 2006, 2006 CPD ¶ 27 (protest sustained where the agency's determination that the protester's proposal was unacceptable because it did not show that the protester itself met the solicitation's experience requirement--while its subcontractor clearly did--was inconsistent with the solicitation's evaluation scheme, which allowed offerors to meet experience requirements using the experience of properly-committed key employees or subcontractors).

Cost evaluations

- Cost realism analysis of cost reimbursement contract must comply with Federal Acquisition Regulation

National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190 (agency's cost realism analysis of awardee's proposed staffing costs was not supported where there was no meaningful explanation in the record of the basis for accepting the awardee's proposed reduced staffing levels).

- Price realism evaluation may pose challenges

Bechtel Hanford, Inc., B-292288 et al., Aug. 13, 2003, 2003 CPD ¶ 199 (protest that agency improperly made award in a cost-plus-incentive-fee acquisition to a firm that submitted a proposal whose cost was found to be unrealistic by the agency is sustained where solicitation called for evaluation of realism of cost proposals, agency emphasized need for realism during written and oral discussions, agency never indicated to offerors during the competition that it would accord little weight to realism in its source selection, protester relied on agency's direction in submitting a proposal that was found very realistic, and agency failed to

adequately document in its selection decision why it discounted the importance of realism in its source selection).

Task/delivery orders and modifications

- GAO may consider certain issues despite the jurisdictional bar on protests relating to task or delivery orders

Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 (protest that task order request for electronic passport covers is outside the scope of General Services Administration's (GSA) indefinite delivery/indefinite quantity, multiple-award contract for "Smart Identification Cards" (Smart Card) is sustained, where GSA's Smart Card contract contemplates the purchase of credit card-sized plastic cards, while the task order contemplates the purchase of cloth cover sheets for electronic passports with embedded integrated circuit chip inlays that are significantly larger in size than a Smart Card and are manufactured using different materials).

LBM, Inc., B-290682, Sept. 18, 2002, 2002 CPD ¶ 157 (statutory limitation on GAO's bid protest jurisdiction over challenges to the award of task or delivery order under indefinite-delivery/indefinite-quantity (ID/IQ) contracts does not apply to protest challenging transfer to the ID/IQ contract of an acquisition of services (to be procured under a task order competition) that had been previously set aside for small business without regard to Federal Acquisition Regulation (FAR) requirement pertaining to small business set-asides. GAO sustains protest because agency failed to consider FAR requirements in transferring acquisition to ID/IQ contract, and recommends that the agency consider whether services should be set aside exclusively for small businesses).

Dept. of the Army--Modification of Recommendation, B-290682.2, Jan. 9, 2003, 2003 CPD ¶ 23 (agency requested that GAO modify its recommendation in LBM, Inc., supra, to recognize that the agency, having decided to acquire the services exclusively from small businesses, could limit the competition to those small businesses who hold ID/IQ contracts for the services at issue; GAO denied the request on the ground that CICA provides for full and open competition among eligible small businesses for acquisitions required to be set aside for small businesses).

Global Comm. Solutions, Inc., B-291113, Nov. 15, 2002, 2002 CPD ¶ 194 (statutory limitation on GAO's bid protest jurisdiction over challenges to the award of a task or

delivery order under indefinite-delivery/indefinite-quantity contracts do not apply where the solicitation contemplated only a single competitive source selection for specific items, based on the proposals submitted in response to the solicitation, and was not for work to be assigned based on further competitions among the awardees).

Simplified acquisitions and Federal Supply Schedule purchases

- Electronic notice of solicitation must be accessible in a form that allows convenient and universal user access

Jess Bruner Fire Suppression, B-296533, Aug. 19, 2005, 2005 CPD ¶ 163 (posting of pre-solicitation notice and solicitation conducted under simplified acquisition procedures on the Federal Business Opportunities Internet site did not deprive the protester of an opportunity to compete for a contract for fire engine services to be provided in a particular national forest where the pre-solicitation notice and solicitation were accessible on the Internet site by searching by geographic location).

- FSS procedures cannot be used to purchase items not on schedule

KEI Pearson, Inc., B-294226.3, B-294226.4, Jan. 10, 2005, 2005 CPD ¶ 12 (award of a task order to an FSS vendor was improper where the vendor's quotation was based on purchasing software products outside the framework of the FSS).

American Sys. Consulting, Inc., B-294644, Dec. 13, 2004, 2004 CPD ¶ 247 (award of a delivery order that included user support manager services was unreasonable where the services were not identified in the firm's FSS contract).

Armed Forces Merchandise Outlet, Inc., B-294281, Oct. 12, 2004, 2004 CPD ¶ 218 (delivery order improperly issued for item not on FSS vendor's schedule).

- Even simplified acquisitions require rational price/technical tradeoffs

e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 (under a request for quotations, issued under simplified acquisition procedures, under which oral presentations constituted the vendors' technical submissions and which provided for award based upon a price/technical tradeoff, protest challenging source selection decision is sustained, where the contracting officer's selection of the higher-priced, higher-rated quotation reflected a failure to meaningfully consider price, given that the price/technical tradeoff was based primarily

upon a technical consideration which the contracting officer testified he did not understand and for which he obtained no advice).

- No obligation to conduct discussions in competitive FSS procurements

Avalon Integrated Servs. Corp., B-290185, July 1, 2002, 2002 CPD ¶ 118 (agency not obligated to conduct discussions in FSS procurement even where it established “competitive range” and the solicitation stated that discussions were contemplated).

- The way oral presentations in competitive FSS procurements are conducted can result in finding that discussions were held

TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 (where agency personnel comment on, or raise substantive questions or concerns about, vendors’ quotations or proposals in the course of an oral presentation, and either simultaneously or subsequently afford the vendors an opportunity to make revisions in light of the agency personnel’s comments, questions, and concerns, discussions have occurred; once discussions have occurred with one offeror, they must be held with all offerors within the competitive range, and they must be meaningful).

- If an agency buys using the FSS, it must do so in accordance with schedule limitations

REEP, Inc., B-290665, Sept. 17, 2002, 2002 CPD ¶ 156 (agency could not place order under FSS contract where it was aware that identical services were being offered at lower prices under other FSS contracts).

CDM Group, Inc., B-291304.2, Dec. 23, 2002, 2002 CPD ¶ 221 (where an agency solicited a requirement under the FSS program, it properly rejected a quotation from a vendor that did not possess an FSS contract covering the solicited requirement).

- Order issued on the basis of a quotation that deviates from requirements of request for quotations is improper

Haworth, Inc., B-297077; B-297077.2, Nov. 23, 2005, 2005 CPD ¶ 215 (protest sustained where agency issued blanket purchase agreement for office furniture to vendor whose quotation did not comply with requirements of request for quotations).

- Discretion to cancel a competitive FSS procurement is not unfettered

SMF Sys. Tech. Corp., B-292419.3, Nov. 26, 2003, 2003 CPD ¶ 203 (agency determination, in the face of protester's challenge to selection decision to cancel request for quotations for services under the FSS and to issue an order for services on a noncompetitive basis because the initial competition allegedly was contrary to regulations governing FSS acquisitions and inconsistent with an urgent need to conduct the procurement with minimum delay was not reasonable where the competition conducted was not contrary to applicable regulations and the urgency was primarily the result of the agency's missteps in the acquisition process).

- Small Business issues

CMS Info. Servs., Inc., B-290541, Aug. 7, 2002, 2002 CPD ¶ 132 (where a competitive request for quotations issued under the FSS limits competition to small business vendors, procuring agency properly may require firms to certify as to their small business size status as of the time they submit their quotations).

- Cost issues

CW Government Travel, Inc.--Reconsideration; CW Government Travel, Inc.; CI Travel; The Alamo Travel Group; National Travel Service; Bay Area Travel; Knowledge Connections, B-295530.2, B-295530.3, B-295530.4, July 25, 2005, 2005 CPD ¶ 139 (protest challenging solicitation's price evaluation scheme is sustained where scheme did not require offerors to propose binding transaction and management fees for the services being procured, thereby precluding the agency from meaningfully evaluating proposals' cost to the government, and where the agency has not explained why it cannot request and evaluate this pricing information).

Alion Science & Tech. Corp., B-294159, B-294159.2, Sept. 10, 2004, 2004 CPD ¶ 189 (under anticipated time-and-materials task order to be placed under successful vendor's Federal Supply Schedule contract, protest sustained where record indicated that solicitation may not accurately reflect agency's needs and its lack of clarity resulted in uncertainty about the total cost of each vendor's approach).

Cross Match Techs., Inc., B-293024.3; B-293024.4, June 25, 2004, 2004 CPD ¶ 193 (solicitation provision that provides for incorporating into a BPA additional, unevaluated items, in quantities for which no estimates are provided in the solicitation, and at prices that are subsequently to be negotiated, appears neither to ensure that competitors are evaluated on

an equal basis nor to comply with the requirement that the total cost to the government for the required goods or services be taken into account in the evaluation, but protest is nevertheless denied because error did not prejudice protester).

- Non-binding nature of quotations

Computer Associates International, Inc., B-292077.3 *et al.*, Jan. 22, 2004, 2004 CPD ¶ 163, *recon. denied*, B-292077.6, May 5, 2004, 2004 CPD ¶ 110 (agency lawfully issued purchase order to vendor at price quoted in response to request for quotations, notwithstanding language in quotation indicating that it was valid only through a specified date and order was issued after that date; quotations are not offers, and vendors are not bound to honor them, so that the concept of an acceptance period has no application to quotations).

- Adequate time and information to respond under simplified acquisition

Information Ventures, Inc., B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 (where agency contemplated a sole-source purchase under simplified acquisition procedures, and its December 31, 2003, announcement of the intended award established a response period for capability statements from potential sources of 1 ½ business days (until January 5, 2004), the agency did not provide potential sources with a reasonable opportunity to respond, particularly given that the record does not show a need for the short response period and the agency knew of the requirement well in advance of issuing the notice).

Information Ventures, Inc., B-293518, B-293518.2, Mar. 29, 2004, 2004 CPD ¶ 76 (protest that published synopsis expressing an agency's intent to award a sole-source contract under simplified acquisition procedures was improper because it lacked necessary information, is sustained where the synopsis did not accurately describe the agency's requirements).

- Commercial buys

Firearms Training Sys.. Inc., B-292819.2, *et al.*, Apr. 26, 2004, 2004 CPD ¶ 107 (when using commercial items procedures, agency is not required to formally evaluate and document whether proposed items are in fact commercial items unless either a solicitation provision requires such an evaluation, or the agency has some indication that proposed items are not commercial).

Bundling

Sigmatech, Inc., B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 (protest challenging bundling of system engineering and support services with other requirements under a single-award BPA issued under the awardee's Federal Supply Schedule contract is sustained where the agency failed to perform a bundling analysis or satisfy the requirements of FAR §§ 7.107(a),(b); 10.001(c)(2); and 19.202-1).

- Bundling continues to raise competition concerns

EDP Enters., Inc., B-284533.6, May 19, 2003, 2003 CPD ¶ 93 (protest that food services were improperly bundled with other logistics support functions, thereby unduly restricting the private-sector portion of a competition conducted pursuant to Office of Management and Budget Circular A-76, is sustained where the agency failed to provide a reasonable justification that bundling was necessary to meet its needs).

Vantex Serv. Corp., B-290415, Aug. 8, 2002, 2002 CPD ¶ 131 (agency's combining of portable latrine rental services with waste removal services, each of which was classified under a different North American Industrial Classification System code and was generally performed by a different set of contractors, was improper under the Competition in Contracting Act of 1984 where the agency has not shown that combining the services was necessary to meet its needs).

TRS Research, B-290644, Sept. 13, 2002, 2002 CPD ¶ 159 (agency's consolidation of requirements previously provided by small businesses under separate smaller contracts, where consolidated requirement is likely to be unsuitable for award to small businesses, constitutes "bundling" under Small Business Act, 15 U.S.C. § 631(j)(3), and agency failed to comply with Act's requirements to demonstrate bundling was justified and FAR's requirements that there be coordination with the Small Business Administration).

USA Information Sys., Inc., B-291417, Dec. 30, 2002, 2002 CPD ¶ 224 (where all of the services covered by the solicitation at issue were performed under one predecessor contract, the provisions of the Small Business Act concerning bundling are not applicable since the solicitation does not represent the consolidation of services previously performed under separate smaller contracts).

B.H. Aircraft Co., B-295399.2, July 25, 2005, 2005 CPD ¶ 138 (consolidating minor engine parts contract into logistics supply chain management contract covering more than 2,000 parts is unobjectionable where the record establishes that the consolidation will provide a measurably substantial benefit to the government).

Reverse Auctions

MTB Group, Inc., B-295463, Feb. 23, 2005, 2005 CPD ¶ 40 (reverse auction is permissible under simplified acquisition procedures of FAR Part 13, where these procedures encourage the use of innovative procedures and do not expressly prohibit the disclosure of vendors' prices and where the disclosure of vendors' prices is not prohibited under the procurement integrity provisions of the Office of Federal Procurement Policy Act).

Jurisdiction

Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 (protest that awardee's proposal contained material misrepresentations regarding its status as a qualified Historically Underutilized Business Zone (HUBZone) small business concern is dismissed, since protest ultimately involves issue of whether awardee was a qualified HUBZone concern, a matter within the exclusive statutory authority of the Small Business Administration).

Starfleet Marine Transportation, Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 (GAO has jurisdiction to consider protest of award of concession contract, where contract includes delivery of goods or services to the government).

Sprint Communications Company LP; Global Crossing Telecommunications, Inc., B-288413.11; B-288413.12, Oct. 8, 2002, 2002 CPD ¶ 171 (dismissing protests alleging material misrepresentation of an offeror's financial information submitted to the agency for the purposes of determining the offeror's responsibility because the totality of circumstances make it inappropriate for GAO to review this matter).

SAMS El Segundo, LLC, B-291620, Feb. 3, 2003, 2003 CPD ¶ 44 (GAO has jurisdiction over protest challenging award decision under a solicitation contemplating the acquisition of office space from the awardee in exchange for government-owned real property since the transaction involves the procurement of property by the government, notwithstanding the concomitant transfer of real property to the awardee as part of the transaction).

Performance Excavators, B-291771, Mar. 17, 2003, 2003 CPD ¶ 63 (the Presidio Trust, a wholly-owned government corporation, is not subject to GAO bid protest jurisdiction under CICA since the Trust is statutorily exempt from all federal procurement laws and regulations but for certain enumerated exceptions that do not include CICA).

Savantage Financial Servs., Inc., B-292046, B-292046.2, June 11, 2003, 2003 CPD ¶ 113 (GAO has jurisdiction over a protester's challenge of an agency's decision not to provide the firm a copy of a request for quotes--and thus a decision not to allow the firm to compete--used to solicit competition for an FSS order).

Prejudice

- A protester must demonstrate a reasonable possibility that it was prejudiced by the agency's actions

Bath Iron Works Corp., B-290470, B-290470.2, Aug. 19, 2002, 2002 CPD ¶ 133 (on major procurement of naval surface design work, agency's denial of the protester's use of a decommissioned destroyer for testing while allowing the awardee such use constituted unequal treatment, but was not prejudicial to the protester where the record showed the protester would have obtained no material technical benefit or evaluation advantage if it had been allowed the use of the destroyer).

M.K. Taylor Contractors, Inc., B-291730.2, Apr. 23, 2003, 2003 CPD ¶ 97 (where agency's required quantity of services increased substantially after issuance of solicitation, agency improperly failed to issue amendment notifying all offerors of the changed requirements; however, since, by protester's own calculations, increased quantities would not have led protester to reduce its price sufficiently to give it a substantial chance of receiving the award, protester was not prejudiced by agency's actions and there thus was no basis to sustain protest).

Conflicts of interest

Alion Science & Tech. Corp., B-297342, Jan. 9, 2006, 2006 CPD ¶ 1 (protest sustained where record does not support the agency's conclusion that awardee's conflicts of interest would be minimal, with limited impact on quality of contract performance, where awardee, a manufacturer of spectrum-dependent products, will perform analysis and evaluation and exercise subjective judgment regarding formulation of policies and regulations that may affect the sale or use of spectrum-dependent products manufactured by the awardee or the awardee's competitors, and those deployed by the awardee's customers).

Alion Science & Tech. Corp., B-297022.3, Jan. 9, 2006, 2006 CPD ¶ 2 (protest sustained where record did not support the agency's assessment regarding the "maximum potential" for organizational conflicts of interest to occur during awardee's contract performance where awardee, a manufacturer of spectrum-dependent products, will perform various activities requiring subjective judgments that may affect the sales or use of spectrum-dependent products of the awardee, the awardee's competitors, and the awardee's customers.).

Lucent Tech. World Servs. Inc., B-295462, Mar. 2, 2005, 2005 CPD ¶ 55 (protest challenging protester's exclusion from participation in a procurement denied, where the contracting officer reasonably determined that the protester had an organizational conflict of interest arising from its preparation of technical specification used by the agency in the solicitation).

PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 (protest sustained where agency failed to reasonably consider or evaluate potential conflicts of interest that would be created by awardee's involvement in evaluating the performance of undersea warfare systems that had been manufactured by the awardee or by the awardee's competitors, even if such evaluations were not "part of the procurement process").

Science Applications Int'l Corp., B-293601 et al., May 3, 2004, 2004 CPD ¶ 96 (where agency acknowledges that awardee's substantial involvement in activities subject to environmental regulations could create a conflict of interest in performing certain tasks contemplated by the solicitation's scope of work, and agency gave no consideration to the impact of such potential conflicts in making award, agency failed to comply with Federal Acquisition Regulation requirement that it "identify and evaluate potential organizational conflicts of interest").

Ktech Corp., B-285330, B-285330.2, Aug. 17, 2002, 2002 CPD ¶ 77 (conflict was found where the record showed that the awardee's subcontractor may have obtained and used information obtained from the protester as a result of the subcontractor's oversight role on the protester's predecessor contract; protest sustained where the agency did not consider or mitigate this conflict).

REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 (GAO will generally dismiss as premature protests that competitors have impermissible conflicts of interest where no award decision has been made).

OMB Circular A-76 competitions

Johnson Controls World Servs., Inc., B-295529.2; B-295529.3, June 27, 2005, 2005 CPD ¶ 124 (a decision by the agency's Independent Review Official to withdraw its certification that the agency's plan for performing the services in-house includes all required costs renders academic a protest alleging that the agency's in-house cost estimate failed to include all required costs).

- Jurisdiction

Vallie Bray, B-293840, B-293840.2, Mar. 30, 2004, 2004 CPD ¶ 52 (protest filed by federal employee on behalf of other federal employees who assert that they are directly affected by agency's decision--pursuant to a streamlined competition conducted under OMB Circular A-76, as revised on May 29, 2003--to contract for the work rather than continue to perform the work in-house, is dismissed because, as permitted under the Circular's streamlined procedures, the decision to contract out was based on the agency's internal analysis, rather than pursuant to a solicitation; under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (2000), and GAO's Bid Protest Regulations, 4 C.F.R. part 21 (2004), GAO's jurisdiction is limited to considering protests involving solicitations and awards made or proposed to be made under those solicitations).

- Interested party status

Dan Duefrene; Kelley Dull; Brenda Neuerburg; Gabrielle Martin, B-293590.2 et al., Apr. 19, 2004, 2004 CPD ¶ 82 (notwithstanding May 29, 2003 revisions to Office of Management and Budget Circular A-76, the in-house competitors in public/private competitions conducted under the Circular are not offerors and, therefore, under the current language of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (2000), no representative of an in-house competitor is an "interested party" eligible to maintain a protest before the General Accounting Office).

- Other significant A-76 decisions

Johnson Controls World Servs., Inc., B-295529.2, B-295529.3, June 27, 2005, 2005 CPD ¶ 162 (a decision by the agency's Independent Review Official to withdraw its certification that the agency's plan for performing the services in-house includes all required costs renders academic a protest alleging that the agency's in-house cost estimate failed to include all required costs).

Career Quest, Div'n of Syllan Careers, Inc., B-293435.2, B-293435.3, Aug. 2, 2004, 2004 CPD ¶ 152 (protest under OMB Circular A-76 cost comparison is sustained where record shows that most efficient organization (MEO) was misevaluated regarding key aspects of intended in-house staffing levels--principally, a failure to cost all positions proposed in the MEO technical performance plan, and uncertainty whether other staffing levels were adequate to perform in accordance with the quality control aspects of the performance work statement--and the misevaluation could have affected the outcome of the cost comparison).

BAE Systems Technical Services, Inc., B-293070, Jan. 28, 2004, 2004 CPD ¶ 24 (in competition conducted pursuant to OMB Circular A-76, where in-house cost estimate (IHCE) for performance by the government's most efficient organization (MEO) fails to include costs for various performance work statement (PWS) requirements, and the additional costs required for the MEO to meet all PWS requirements are greater than the marginal difference between the protester's evaluated cost and the IHCE, GAO recommends that agency award a contract to the protester based on its lower-cost proposal).

LBM, Inc., B-291775, Mar. 21, 2003, 2003 CPD ¶ 50 (in an A-76 cost comparison, GAO denied protest alleging that 1) the agency's calculation of in-house performance costs was improper where the record showed that the calculations were in accordance with policy guidelines and reflected actual costs agency will experience and 2) the agency improperly failed to include certain direct costs in in-house cost estimate where the record showed that agency properly treated costs as "wash" costs. GAO also denied remaining allegations because they involved dollar amounts insufficient to change the outcome of the cost study even if the alleged errors were corrected).

RemTech Servs., Inc., B-292182, July 17, 2003, 2003 CPD ¶ 133 (protest challenging agency decision to retain certain services in-house as a result of a cost comparison conducted pursuant to OMB Circular A-76 on the basis that government's "most efficient organization" (MEO) plan improperly failed to include sufficient staffing to meet performance work statement (PWS) requirements is denied where record supports reasonableness of agency's determination, confirmed by independent reviewing official and administrative appeals board, that MEO included adequate staffing to meet PWS requirements).

Consolidated Engineering Services, Inc., B-291345, B-291345.2, Dec. 23, 2002, 2002 CPD ¶ 220 (protest is sustained where the record fails to reasonably support the agency's decision to eliminate from consideration as technically unacceptable the only proposal received from a

commercial offeror in the private-sector portion of the competition conducted pursuant to Office of Management and Budget Circular A-76).

Pacific Support Group LLC, B-290467, Aug. 8, 2002, 2002 CPD ¶ 142 (adjustment to the most efficient organization (MEO) staffing cost estimate as necessary to satisfy the performance work statement (PWS) requirements, based on findings by the agency administrative appeals board after consultation with MEO study team, is an appropriate element of agency-level A-76 appeal process, the adoption of which does not provide a basis to object to the propriety of the cost comparison determination).

Sodexo Mgmt., Inc., B-289605.2, July 5, 2002, 2002 CPD ¶ 111 (while it may be permissible for MEO to include nonappropriated fund instrumentality (NAFI) employees, where the NAFI employees constitute the overwhelming majority--more than 80 percent of the labor force--the agency was required to apprise private sector offerors of this possibility to allow them to make an intelligent business judgment concerning whether or how to compete).

Electronic commerce

Allied Materials & Equipment Company, Inc., B-293231, Feb. 5, 2004, 2004 CPD ¶ 27 (protest of agency's failure to post solicitation on FedBizOpps Internet website, as required by regulation, is denied where protester did not avail itself of every reasonable opportunity to obtain the solicitation; although presolicitation notice indicated an anticipated closing time, as that time approached and passed, protester did not contact agency to determine status of solicitation, and finally inquired as to status approximately 7 weeks after closing time).

Integrated Bus. Solutions, Inc., B-292239, July 22, 2003, 2003 CPD ¶ 122 (agency properly rejected protester's electronically submitted final proposal revision for facilities management services where solicitation did not authorize the electronic submission of proposals).

USA Information Sys., Inc., B-291488, Dec. 2, 2002, 2002 CPD ¶ 205 (in a procurement conducted by electronic commerce, where the solicitation materials were available only on the Internet, GAO denied a protest that it was improper for the agency to post an amendment with a short response time without specifically advising the protester, where the record showed that the protester failed to avail itself of every reasonably opportunity to obtain the amendment by either registering for e-mail notification or checking the Internet site, and this failure was the reason the protester allegedly had insufficient time to protest the solicitation's terms).

Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 (agency properly rejected proposal as late, where it was submitted electronically but was not received at the initial point of entry to the government infrastructure by 5 p.m. one working day prior to the deadline for submitting proposals).

PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 (on procurement requiring the submission of electronic proposals, agency reasonably rejected proposal not received by required closing time where the protester waited 13 minutes before the closing time before electronically transmitting the protest to the agency's web site).

Bundling

Sigmatech, Inc., B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 (protest challenging bundling of system engineering and support services with other requirements under a single-award BPA issued under the awardee's Federal Supply Schedule contract is sustained where the agency failed to perform a bundling analysis or satisfy the requirements of FAR §§ 7.107(a),(b); 10.001(c)(2); and 19.202-1).

B.H. Aircraft Co., B-295399.2, July 25, 2005, 2005 CPD ¶ 138 (consolidating minor engine parts contract into logistics supply chain management contract covering more than 2,000 parts is unobjectionable where the record establishes that the consolidation will provide a measurably substantial benefit to the government).

Cost claims

Honeywell Tech. Solutions, Inc.--Costs, B-296860.3, Dec. 27, 2005, 2005 CPD ¶ 226 (where GAO attorney, in conducting outcome prediction alternative dispute resolution (ADR), advised parties that protest issue related to organizational conflict of interest would likely be sustained (which led agency to take corrective action that rendered entire protest academic), GAO did not recommend reimbursement of costs associated with other, separate unresolved issues raised by protest, which were severable from the organizational conflict of interest issue addressed during ADR and were not clearly meritorious).

Johnson Controls World Servs., Inc.--Costs, B-295529.4, Aug. 19, 2005, 2005 CPD ¶ 162 (request that GAO recommend reimbursement of protest costs in challenge to A-76 cost comparison decision is granted where: (1) the issues raised in the initial protest filing clearly identified deficiencies in the agency's determination that in-house performance would be

more economical than contracting out, (2) the agency admitted that it did not investigate the protest allegations, and (3) the agency withheld relevant protest documents until more than 70 days after the initial protest filing; agency's actions constituted an undue delay in taking corrective action in the face of a clearly meritorious protest).

Information Ventures, Inc.--Costs, B-294580.2 et al., Dec. 6, 2004, 2004 CPD ¶ 244 (GAO will not recommend reimbursement of protest costs in a series of protests where, in each case, the agency took prompt corrective action that rendered the protests academic and where the record, in any event, provided no support for the protester's allegation that the agency corrective action indicated a pattern of improper agency conduct of procurements).

First Fed. Corp.--Costs, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 (where agency took corrective action--amendment of solicitation and resolicitation--in response to protest challenging agency's relaxation of solicitation's geographical location requirement, GAO nevertheless will not recommend reimbursement of protest costs, since relaxation did not result in competitive prejudice to protester, and corrective action therefore was not in response to clearly meritorious protest).

Dept. of the Army--Modification of Remedy, B-292768.5, Mar. 25, 2004, 2004 CPD ¶ 74 (where GAO sustained protest on one issue, but additional issues not addressed or denied in decision were related to the same core allegation so that they were not distinct and severable from the sustained issue, GAO's recommendation that protest costs be reimbursed extends to all issues raised).

TRS Research--Costs, B-290644.2, June 10, 2003, 2003 CPD ¶ 112 (protester's request that GAO recommend reimbursement of protest costs is denied where it fails to document reasonableness of the hourly rate claimed for attorney's services, and provides no evidence that it is obligated to pay the legal fees claimed regardless of whether they are recovered from the government).

Sodexo Mgmt., Inc.--Costs, B-289605.3, Aug. 6, 2003, 2003 CPD ¶ 136 (costs for pursuit of administrative appeal of Circular A-76 cost comparison decision are tantamount to agency-level protest costs, and thus are not reimbursable as GAO protest costs; request that Comptroller General recommend that increase in cost of living justifies a fee higher than the statutory cap of \$150 per hour for attorneys' fees is granted where Department of Labor's Consumer Price Index supports claim that cost of living has increased, and protester presents a reasonable basis upon which the adjustment should be calculated).

Department of State--Costs, B-295352.5, Aug. 18, 2005, 2005 CPD ¶ 145 (request that Comptroller General recommend reimbursement of attorneys' fees at a rate higher than the statutory cap of \$150 per hour based on increase in cost of living is granted where protester's claim filed with agency presented a reasonable basis for the adjustment).

Miscellaneous issues

- Improper sole source award

WorldWide Language Resources, Inc.; SOS Int'l Ltd., B-296984 *et al.*, Nov. 14, 2005, 2005 CPD ¶ 206 (protest challenging award of sole-source contract for bilingual-bicultural advisors for Iraq utilizing other than competitive procedures, based on unusual and compelling urgency, was sustained where agency initially attempted to place the requirement under an environmental services contract, which, on its face, did not include within its scope the bilingual-bicultural advisor requirement; this obvious error constituted a lack of advance planning, which compromised the agency's ability to obtain any meaningful competition).

Europe Displays, Inc., B-297099, Dec. 5, 2005, 2005 CPD ¶ 214 (award of a contract for the design and construction of an exhibition pavilion on a sole-source basis under simplified acquisition procedures to a firm that the agency believed the exhibit organizer required be used was unreasonable where the agency's belief was erroneous and unreasonable).

M.D. Thompson Consulting, LLC; PMTech, Inc., B-297616; B-297616.2, Feb. 14, 2006, 2006 CPD ¶ 41 (protests sustained where agency notice of intent to modify contract to extend performance on a sole-source basis did not comply with requirement for an accurate description of the services to be furnished and thus did not provide enough information to allow all prospective sources a meaningful opportunity to demonstrate the ability to meet the agency's requirements).

- Modification changing the scope of a contract

Poly-Pacific Techs., Inc., B-296029, June 1, 2005, 2005 CPD ¶ 105 (protest challenging agency's modification of a contract was sustained where the modification improperly changed the scope of the work anticipated by the underlying solicitation).

DOR Biodefense, Inc.; Emergent BioSolutions, B-296358.3; B-296358.4, Jan. 31, 2006, 2006 CPD ¶ 35 (protest that modification of contract for research and development of botulinum vaccine was outside scope of the original contract denied because changes did not

substantially alter the type of work, costs or period of performance beyond that which could have been reasonably anticipated by offerors.).

- Multiple award vs. single award

One Source Mechanical Servs, Inc.; Kane Constr., B-293692, B-293802, June 1, 2004, 2004 CPD ¶ 112 (protest of solicitation terms sustained, where agency lacked a reasonable basis for not structuring the procurements to provide for multiple contract award).

- Affirmative determination of responsibility

FN Mfg., Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 (protest challenging affirmative determination of awardee's responsibility on the ground that contracting officer (CO) unreasonably failed to consider available relevant information suggesting that the awardee does not have a satisfactory record of integrity and business ethics was denied where the record showed that: (1) while the awardee was investigated for possible fraud, it was neither indicted nor proposed for debarment; (2) the CO was aware of the information that led to the questions about the awardee's activities under certain previous contracts and did not ignore the matter; and (3) the CO's more recent dealings with the company provided a rational basis for her conclusion that the awardee is a responsible contractor).

Consortium HSG Technischer Serv. GmbH & GeBe Gebäude- und Betriebstechnik GmbH Südwest Co., Mgt. KG, B-292699.6, June 24, 2004, 2004 CPD ¶ 134 (in order to challenge affirmative responsibility determination on basis that the contracting officer failed to consider relevant information, protester must show that the contracting officer failed to consider available information of which the contracting officer was or should have been aware).

Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 (contracting officer's affirmative determination of the awardee's responsibility was not reasonably based where, despite having general awareness of misconduct by some of awardee's principals and parent company, the contracting officer did not obtain sufficient information about or consider the awardee's record of integrity and business ethics in making his responsibility determination.

- Use of traditional responsibility factors as technical evaluation criteria

Capitol CREAG LLC, B-294958.4, Jan. 31, 2005, 2005 CPD ¶ 31 (where traditional responsibility factors are used as technical evaluation criteria and where the proposal of a

small business concern, which would otherwise be in line for award, is found ineligible for award based on the agency's evaluation of those criteria, whether or not the agency's decision was tantamount to a nonresponsibility determination depends upon whether the agency was evaluating the offeror's capability to perform under those factors--which would be a responsibility determination--or technical approach to performing the work).

- Timeliness

MadahCom, Inc.--Recon., B-297261.2, Nov. 21, 2005, 2005 CPD ¶ 209 (protest that a solicitation improperly restricts competition to multiple-award task-order contract holders, and that the task orders will exceed the scope of the underlying contracts, was timely where filed before the closing date for receipt of task-order proposals; dismissal of protest as untimely because it was not filed within 10 days of when the protester knew that the procurement would be restricted to task-order contract holders therefore is reversed).

WorldWide Language Resources, Inc.; SOS Int'l Ltd., B-296984 et al., Nov. 14, 2005, 2005 CPD ¶ 206 (announcement of contract award on the Department of Defense's official website, www.DefenseLink.mil, did not place protesters on constructive notice of the award and thus require protesters to file their protests within 10 days of the announcement since DefenseLink has not been designated by statute or regulation as the public medium for announcement of procurement actions).

CBMC, Inc., B-295586, Jan. 6, 2005, 2005 CPD ¶ 2 (posting of award notice on the FedBizOpps internet site is constructive notice of the protested contract award, and protest filed more than 10 days after the award posting is untimely).

American Multi Media, Inc.--Recons., B-293782.2, Aug. 25, 2004, 2004 CPD ¶ 158 (when a firm has been notified that the agency is considering taking an action adverse to the firm's interests, but has not made a final determination, the firm need not file a "defensive protest," since it may presume that the agency will act favorably to the firm).

- Agency's Refusal to Provide Administrative Report

Great S. Bay Marina, Inc., B-296335, July 13, 2005, 2005 CPD ¶ ____ (where agency refuses to furnish an agency report responding to a protest, GAO will decide the protest on the basis of the documents available, even if that record is limited to documents submitted by the protester).

- Cancellation

Rand & Jones Enters. Co., B-296483, Aug. 4, 2005, 2005 CPD ¶ 142 (cancellation of RFP after receipt of proposals was unreasonable where agency justified cancellation on basis that it wanted to reissue solicitation as an IFB and make award based solely on price, but the RFP had omitted evaluation factors, so that the competition already had been conducted based solely on price).

Greenlee Constr., Inc., B-294338, Oct. 26, 2004, 2004 CPD ¶ 216 (cancellation of solicitation for offers was improper where agency's basis for cancellation was that solicitation was ambiguous regarding which of two methodologies would be used for evaluating price, but the agency was unable to identify a methodology, consistent with the balance of the solicitation, under which the protester's price would not be low).

- Debarment/suspension protests

Shinwha Electronics, B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 (GAO will no longer review protests that agency improperly suspended or debarred a contractor).

- Corrective action

Cooperativa Muratori Riuniti, B-294980.5, July 27, 2005, 2005 CPD ¶ 144 (where agency amends request for proposals after closing and permits offerors to submit revised proposals, it should permit offerors to revise aspects of their proposals that were not the subject of the amendment absent evidence that the amendment could not reasonably have any effect on other aspects of proposals, or that allowing such revisions would have a detrimental impact on the competitive process).

Saltwater, Inc.--Recon. and Costs, B-294121.3, B-294121.4, Feb. 8, 2005, 2005 CPD ¶ 33 (where an agency's implementation of promised corrective action, which caused GAO to dismiss a protest as academic, is such that the issue in controversy in fact has not been rendered, GAO will consider the protest's merits in response to a reconsideration request).

SYMVIONICS, Inc., B-293824.2, Oct. 8, 2004, 2004 CPD ¶ 204 (protest is sustained where agency provided material information concerning solicitation requirements to a single competitor in a post-award debriefing and the agency subsequently reopened the competition without providing the other competitors with the same information).

Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2004 CPD ¶ 108 (protest sustained where agency in taking corrective action in response to a protest conducted discussions only with the awardee, rather than with all offerors whose proposals were in the competitive range).

Ridoc Enters., Inc./Myers Investigative & Sec. Servs., Inc., B-293045.2, July 26, 2004, 2004 CPD ¶ 153 (protest sustained where, after restoring offerors--including protester--to the competitive range in order to resolve an earlier protest, and having already conducted discussions with offeror that had continued to be in the competitive range, the agency failed to conduct any discussions with the reinstated offerors).

Security Consultants Group, Inc., B-293344.2, Mar. 19, 2004, 2004 CPD ¶ 53 (agency's decision to reopen competition, after making award to protester, in order to correct solicitation defect (failure to accurately disclose intended weights of evaluation factors), was unreasonable where record does not establish a reasonable possibility that any offeror was prejudiced by the defect; reopening of competition thus did not provide any benefit to the procurement system that would justify competitive harm to protester from resoliciting after exposure of protester's price).

Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 (contracting agencies have broad discretion in deciding which specific form of corrective action to take).

- Modification of Remedy

Dept. of State; Wackenhut Int'l, Inc.--Recon. and Mod. of Recommendation, B-295352.3, B-295352.4, Apr. 19, 2005, 2005 CPD ¶ ____ (agency request for modification of GAO's recommendation that guard services contract at a foreign embassy be terminated immediately and a new contract be awarded was granted, in view of security concerns and significant changes in the agency's need for guard services at the embassy).

- Role of contractors in supporting government contracting personnel

J.L. Malone & Assocs., B-290282, July 2, 2002, 2002 CPD ¶ 116 (notwithstanding the role played by contractor personnel in receiving and controlling a bid, the bid was reasonably viewed as received at government installation and under government's control prior to scheduled bid opening time, and therefore not late).

- Randolph-Sheppard Act

Washington State Dept. of Servs. for the Blind, B-293698.2, Apr. 27, 2004, 2004 CPD ¶ 84 (protest by a state licensing agency (SLA) for the blind challenging the elimination of its proposal from consideration under request for proposals issued pursuant to the Randolph-Sheppard Act is dismissed; GAO will not consider protests from SLAs because arbitration procedures are provided for under the Act, and decisions of the arbitration panel are binding on the parties involved).

Intermark, Inc., B-290925, Oct. 23, 2002, 2002 CPD ¶ 180 (agency improperly issued a solicitation for food services on an unrestricted basis; where regulations would normally require that the solicitation be issued as a small business set-aside, but a Randolph-Sheppard Act state licensing agency, which is not small, expressed interest in competing, the solicitation should be limited to small businesses and the state licensing agency).

- Small business set-asides

Rochester Optical Mfg. Co., B-292247, B-292247.2, Aug. 6, 2003, 2003 CPD ¶ 138 (protest challenging agency decision not to set aside procurement for small business concerns is sustained where decision was based on insufficient efforts to ascertain small business interest and capability to perform the requirement).

- Improper sole-source award

WorldWide Language Resources, Inc.; SOS Int'l Ltd., B-296984 et al., Nov. 14, 2005, 2005 CPD ¶ 206 (protest challenging award of sole-source contract for bilingual-bicultural advisors for Iraq utilizing other than competitive procedures, based on unusual and compelling urgency, was sustained where agency initially attempted to place the requirement under an environmental services contract, which, on its face, did not include within its scope the bilingual-bicultural advisor requirement; this obvious error constituted a lack of advance planning, which compromised the agency's ability to obtain any meaningful competition).

Europe Displays, Inc., B-297099, Dec. 5, 2005, 2005 CPD ¶ 214 (award of a contract for the design and construction of an exhibition pavilion on a sole-source basis under simplified acquisition procedures to a firm that the agency believed the exhibit organizer required be used was unreasonable where the agency's belief was erroneous and unreasonable).

M.D. Thompson Consulting, LLC; PMTech, Inc., B-297616; B-297616.2, Feb. 14, 2006, 2006 CPD ¶ 41 (protests sustained where agency notice of intent to modify contract to extend performance on a sole-source basis did not comply with requirement for an accurate description of the services to be furnished and thus did not provide enough information to allow all prospective sources a meaningful opportunity to demonstrate the ability to meet the agency's requirements).

HEROS, Inc., B-292043, June 9, 2003, 2003 CPD ¶ 111 (protest is sustained where agency's conclusion that the successor-in-interest to the original equipment manufacturer was the only entity that possessed adequate information to successfully overhaul the engine failed to reflect a reasonable level of advance planning as required by the Competition in Contracting Act).

- Applicability of CICA

Jacobs COGEMA, LLC, B-290125.2, Dec. 18, 2002, 2003 CPD ¶ 16 (statutory provision enacted after proposals were evaluated but before source selection decision was made, which directs Secretary of Energy to, "notwithstanding any other provision of law," ask offerors to confirm or reinstate their offers within a certain time, select for award of a contract the "best value of proposals" for the solicitation's scope of work within 30 days of enactment, and negotiate with the awardee for certain contract modifications, does not remove the procurement from the coverage of the ordinarily applicable procurement laws and

regulations, including those governing GAO jurisdiction over a protest of the procurement, where the statutory provision's requirements are not inconsistent with these ordinarily applicable procurement laws and regulations).

- HUB Zones

SWR, Inc., B-294266, Oct. 6, 2004, 2004 CPD ¶ 219 (protest challenging agency decision not to set aside procurement for Historically Underutilized Business Zone (HUBZone) small business concerns is sustained where the decision was unreasonable, particularly since two HUBZone firms had competed under a similar procurement).

Universal Constr. Co., B-292407, Aug. 18, 2003, 2003 CPD ¶ 154 (agency properly awarded a contract to an Historically Underutilized Business Zone small business concern whose evaluated price was not more than 10 percent higher than the evaluated price of a large business).

- Buy American Act compliance

Leisure-Lift, Inc., B-291878.3, Sept. 25, 2003, 2003 CPD ¶ 189 (agency's determination that the awardee offered a domestic end product compliant with the Buy American Act was reasonable, where in response to allegations made prior to award concerning the compliance of the awardee's product, the agency reasonably investigated the compliance of awardee's product with the Buy American Act, including visiting the awardee's facility to observe the manufacturing process and receiving detailed information from the awardee regarding the cost and origin of the components that comprise the offered product, and where the protester provided no specifics that showed the end product or the majority of its component costs were not manufactured in the United States).

- Agency cannot overlook vendor's failure to certify compliance with Buy American Act/Trade Agreements Act

Wyse Tech., Inc., B-297454, Jan. 24, 2006, 2006 CPD ¶ 23 (agency improperly awarded contract where the offeror expressly declined to certify that the product to be provided would comply with the Trade Agreements Act as was required by the terms of the solicitation).

- Non-U.S. citizen workforce

United Coatings, B-291978.2, July 7, 2003, 2003 CPD ¶ 146 (protest that the agency improperly failed to downgrade awardee's quote because of the intended use of several non-United States citizens, who would require a security waiver to perform work, is denied where the agency reasonably assessed the attendant risk).

- Unbalanced bidding

Burney & Burney Constr. Co., B-292458.2, Mar. 19, 2004, 2004 CPD ¶ 49 (protest that agency improperly rejected protester's bid as unbalanced is denied where bid included overstated prices for some line items, and agency determined that, due to uncertainty in estimated quantities for those items, bid posed risk that government would pay an unreasonable price for contract performance).

- Material misrepresentation

Greenleaf Constr. Co., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 (evaluation of awardee's proposal for contract to provide single-family home management and marketing services was unreasonable where it was based on awardee's proposal of key personnel and an electronic monitoring system that awardee should have known-- more than 2 months prior to final evaluation and award--would not be available, and awardee never advised agency of the material change in circumstances).

Patriot Contract Servs.--Advisory Opinion, B-294777.3, May 11, 2005, 2005 CPD ¶ 97 (in response to court's request for an advisory opinion, GAO finds protest meritorious where the record shows that the awardee misrepresented in its proposal that--as the solicitation required-- it had discussed salary, benefits and other specified employment matters with certain of its proposed key personnel).

ACS Gov't Servs., Inc., B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 (protest that awardee misrepresented that three proposed key personnel had agreed to work for the firm is sustained where the record shows that the three individuals had not so agreed, and the misrepresentation materially affected the evaluation of the awardee's proposal).

Integration Techs. Group, Inc., B-291657, Feb. 13, 2003, 2003 CPD ¶ 55 (protest that small business concern awardee misrepresented status of a large business firm as a member of its team is sustained where (1) discussions between the awardee and its proposed large business subcontractor had consisted of essentially nothing more than the large firm's transmittal of a proposal to perform nearly all of the work, which the awardee recognized was unacceptable

under the solicitation limitation on subcontracting, and (2) the misrepresentation regarding the large firm's participation had a significant impact on the evaluation).

- Defective solicitation

Oregon Potato Co., B-294839, Dec. 27, 2004, 2004 CPD ¶ 254 (protest sustained where invitation for bids failed to provide sufficient information to allow bidders to prepare their bids intelligently and to compete on an equal basis).

- Use of traditional responsibility factors as technical evaluation criteria

Capitol CREAG LLC, B-294958.4, Jan. 31, 2005, 2005 CPD ¶ 31 (where traditional responsibility factors are used as technical evaluation criteria and where the proposal of a small business concern, which would otherwise be in line for award, is found ineligible for award based on the agency's evaluation of those criteria, whether or not the agency's decision was tantamount to a nonresponsibility determination depends upon whether the agency was evaluating the offeror's capability to perform under those factors--which would be a responsibility determination--or technical approach to performing the work).

- Changing of requirements after issuance of solicitation

Northrop Grumman Information Tech., Inc.; Broadwing Communications LLC; Level 3 Communications, Inc.; Qwest Gov't Servs., Inc.; MCI WORLDCOM Communications, Inc., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 (protest sustained where, during the procurement, the agency changed the approach stated in the solicitation for exercising options, making it significantly less likely that options would be exercised, without informing offerors of the changed requirements or affording them an opportunity to respond).

- Option Exercise

Antmarin Inc.; Georgios P. Tzanakos; Domar S.r.l., B-296317, July 26, 2005, 2005 CPD ¶ 149 (protest that agency improperly exercised option is denied where the record shows that the agency reasonably determined that exercising option was the most advantageous means of satisfying the agency's needs).

- Modification changing the scope of a contract

Poly-Pacific Techs., Inc., B-296029, June 1, 2005, 2005 CPD ¶ 105 (protest challenging agency's modification of a contract is sustained where the modification improperly changed the scope of the work anticipated by the underlying solicitation).

TRICARE

Sierra Military Health Servs., Inc.; Aetna Gov't Health Plans, B-292780 et al., Dec. 5, 2003, 2003 CPD ¶ 55 (agency's communications with awardee during oral presentation did not constitute discussions, and agency thus was not required to conduct discussions with and request revised proposals from all offerors in the competitive range, where information furnished by awardee (with respect to staffing of effort to develop health care network) in response to agency questions after oral presentation was merely a clarification of information previously furnished by awardee in the presentation slides and accompanying oral presentation of slides).

- Implementation of preference for local firms in debris removal services under Robert T. Stafford Disaster Relief and Emergency Assistance Act

AshBritt Inc., B-297889, B-297889.2, Mar. 20, 2006, 2006 CPD ¶ ____ (protest that agency improperly set aside procurement for firms residing, or primarily doing business, in Mississippi, under solicitation for cleanup efforts in Mississippi associated with damage resulting from Hurricane Katrina, is denied because the Stafford Act requires the agency to provide a preference in debris removal contracts to firms residing, or primarily doing business, in the area affected by a major disaster).