



IN REPLY
REFER TO

MMP
PROCLTR 97-24

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MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Protest Decisions

Several Comptroller General decisions concerning the use of past performance and treatment of alternate offers in source selection on DLA procurements have been issued in the past year and a half. These decisions, while usually favorable to DLA, can also provide useful lessons in how past performance and alternate offers should be handled.

With regard to past performance, the GAO has generally continued to support our past performance evaluations even when they result in award to other than the low offeror (Macon Apparel Corporation, B-272162, SEAIR Transport Services, B-274162, USA Electronics, B-275389, Rotair Industries, Inc., B-276435). However, the GAO has clarified and amplified its expectations with regard to our past performance evaluations. In one case (PMT Services, Inc., B-270538), the GAO sustained the protest of an offeror where the contracting officer found the offeror's performance on prior contracts was not of the same level of complexity as required by the existent solicitation. The GAO found that the contracting officer had equated the size of past contracts with complexity - an invalid assumption. The Comptroller General also has concluded that the use of Automated Best Value Model scores which an offeror previously had opportunity to review constitutes a valid basis for analyzing past performance and making award decisions (Rotair Industries, Inc., B-276435 and USA Electronics, B-275389). The Comptroller General consistently supports the exercise of judgement by the contracting officer so long as it is accomplished in accordance with the terms contained in the solicitation and it is not arbitrary or capricious. So long as we gather the best possible information appropriate to support our judgements and we use logical business sense, the GAO will support us.

Unfortunately, one protest was sustained recently concerning evaluation of alternate offers (Henschel, Inc., B-275390). The GAO held that reliance upon a telephonic statement from a Navy engineer that an alternate part was equivalent to the one specified in the solicitation was not sufficient. This decision highlights the need for a fully developed technical analysis and award decision even where we are trying to save money and increase competition.



Your local Office of General Counsel has all of these GAO decisions available for your review should you wish more detail on the Comptroller General's findings. This PROCLTR is effective immediately and expires, for record keeping purposes, upon dissemination. Any questions or comments may be directed to Hal Hermann, MMPPP, (703) 767-1354 or DSN 427-1354.



ROBERT L. MOLINO
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(Procurement)