

Procurement Countdown

Summer 1997, No. 110

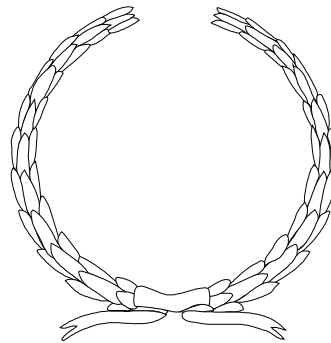
NAIS Honored Nationally for Achievements in Government Problem Solving

The NASA Acquisition Internet Service (NAIS) was recognized recently by the Ford Foundation and Harvard University for its original work in getting NASA acquisition information to contractors.

The NAIS is the federal government's first Agencywide acquisition service on the Internet. The NAIS team established this Agencywide service that delivers NASA's acquisition documents to industry over the Internet while reducing paperwork and saving time and money. Companies get the electronic version of a solicitation immediately upon release, avoiding several days of document reproduction and mail time.

The NAIS was chosen as a semi-finalist in the Innovations

In American Government Awards Program sponsored by Harvard and the Ford Foundation. While the NAIS was not



chosen as a finalist, by being chosen as a semi-finalist, the NAIS was given a great honor. Only 99 of the 1540 applicants were chosen as semi-finalists. This is less than 7 percent of the applicants. The Innovations Program's goal is to find and

celebrate outstanding examples of creative problem-solving in the public sector. By choosing the NAIS as a semi-finalist, Harvard recognized NASA's groundbreaking work for acquisition on the Internet.

The NAIS is a unique service that has been created and run at the working level, involving procurement and technical personnel from every NASA Center. It is truly an example of an innovative way of doing business. The NAIS saves time, energy, and money for contractors and for NASA personnel. The NAIS is located at <http://procurement.nasa.gov>.

Highlights...

Do you want to find out how to avoid paying unallowable protest costs? Turn to page 2.

See who's here and who's gone in the People on the Move column on page 3.

Performance Based Contracting is now firmly established on the Web. See what's available electronically by turning to page 3.

A new feature in this issue looks at recent GAO protests. There are two articles this month. The first is from Ames on page 4. The second is from Langley on page 5.

Cost estimating is discussed in an article on the Parametric Cost Estimating Initiative on page 6.

People with disabilities provide more than 4,000 supplies and services through the JWOD

program. For more information, turn to page 8.

Many documents we deal with have to be sent to CASI, the Center for AeroSpace Information. To find out which ones, turn to page 9.

Modular contracting for Information Technology is discussed on page 9.

Unallowable Protest Costs (and How to Avoid Them)

What is the easiest way to avoid protest costs? Conduct a letter-perfect procurement. Unfortunately, none of us are perfect and very few procurements fit that bill. Add into that complex technical and management issues and even the best procurements can face protests.

Experienced COs know that protests seldom come out of the blue. Likely protesters usually evidence unhappiness orally or in writing about some aspect of the procurement before filing with the GAO. If you encounter a firm indicating that it will protest, endeavor to learn the real (or perceived) cause for the firm's unhappiness. If the government has made a mistake (e.g., ambiguous statement of work), take the time to correct it (i.e., amend the solicitation). If the government might have made a mistake (this is more common) solve the problem, if at all possible. If the protester is going to file a protest, recommend a protest with the CO or the Deputy AA for Procurement. Unlike the GAO, these protests entail no obligation to pay protest costs.

Once a procurement is protested the FAR regulations on allowability of bid protest costs come into play. Federal Acquisition Circular 90-41, issued on October 7, 1996, amended FAR 31.205-47 (f) making unallowable the costs of "Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer."

While the government has had an implicit and long-standing policy of disallowing protest costs on the theory that "Government cost allowability rules should not encourage contractors to take the government to court," a recent decision by the Armed Services Board of Contract Appeals held that they were allowable. To undo that decision, FAR 31.205-47 (f)(8) made them explicitly unallowable.

Paying the Costs

Notwithstanding their unallowability as reimbursable contract costs, the government routinely pays protest costs when it loses a protest. Unlike contractual obligations, a protester's

**NEED
TO
KNOW**

ability to recover such costs is provided by legislation. Under the legislative scheme, the GAO can recommend that agencies pay bid protest costs but — owing to constitutional separation of powers — it cannot compel agencies to pay. Agencies are expected to negotiate settlements but if unable, the GAO recommends an amount. Should an agency fail to pay the amount recommended by the GAO within 60 days, it must explain this in a report to the GAO. The GAO

then reports this to four separate committees on the Hill, viz., Committee on Governmental Affairs, Committee on Appropriations of the Senate, Committee on Government Operations, and the House Committee on Appropriations. With such leverage, it is not surprising that agencies have always followed the GAO's recommendations.

As set out in FAR 33.104 (h), protesters who prevail can recover the cost of filing and pursuing the protest, exclusive of profit, including reasonable attorney, consultant, and expert witness fees, as well as bid and proposal preparation costs. This expense is often considerable and sometimes exceeds the value of the procurement itself! Moreover, payment must be made from funds available for the procurement which seldom delights the requiring office. In addition, the Agency might also incur the indirect cost of reprocurement and will always incur any indirect costs associated with the delay of the initial procurement. The message here is that losing a protest can be a very expensive proposition for NASA.

Risk Assessment

When NASA receives a protest, the first step is a risk assessment, determining NASA's position and whether the protest should be defended. If the decision is made to defend and NASA management is convinced the position is correct with no questions, then

(continued on page 10)



People on the Move

Lewis Research Center: John Brett, Kathy Needham, Steve Fedor, Laurel Stauber and Bob Kistemaker have left Procurement for positions in the Commercial Technology Office at Lewis. Karin Huth has assumed responsibility of the SBIR Program. Carl Silski is now the Small Business Officer.

Headquarters: Jim Pesnell, a procurement analyst in the Contract Management Division retired after 43 years of government service. Chris Jedrey, a procurement analyst in the Contract Management Division, received a Superior Accomplishment Award for Special Service from the Chief Financial Officer for his work on unliquidated obligations. Bill Childs, a procurement analyst in the Contract Management Division, received an Agencywide group honor award for his work on the NASA Strategic Management Handbook Development Team. The NASA Acquisition Internet Service team also received an Agencywide group honor award for the NAIS. Michelle Glass, secretary of the Program Operations Division, left NASA to go to industry.

The list of **People on the Move** only includes those names that were submitted to the *Procurement Countdown*. If you know people who should be listed in this column, contact your Center *Procurement Countdown* point of contact, or send the names to the editor, Susie Marucci, on (202) 358-1896, email susie.marucci@hq.nasa.gov.

KSC Property Administrator Earns Three Property Management Certifications

Taking the concept of responsibility for her own career to heart, Cindy Jarvis, of the KSC Industrial Property Office (OP-OSO-P), recently earned three certifications for property from the National Property Management Association (NPMA). Jarvis' first certification was the Certified Professional Property Specialist. This was awarded based on the successful completion of property management examinations and professional experience as a Property Administrator.

The second certification Jarvis earned was the Certified Professional Property Administrator. For this certification, Jarvis had to document three years of experience in Property Management and successfully complete seven of fifteen examinations.

Not one to stop there, Jarvis went for the gold and is now a Certified Professional Property Manager. This is the third and final certification in the NPMA formal certification program. Jarvis received this certificate after successfully completing fifteen written examinations and certification experience worksheets documenting her knowledge and experience in Property Management.

NASA Launches PBC Website

For those of you looking for in-depth information on the Internet about Performance Based Contracting, it has arrived. The Office of Procurement has launched a website for PBC. It's address is <http://www.hq.nasa.gov/office/procurement/pbc.htm>. The address links to:

- ◆ NASA FAR Supplement Subpart 1816.4, Incentive Contracts
- ◆ OFPP Policy Letter 91-2, Service Contracting
- ◆ NASA Performance Based Contracting Initiative
- ◆ Summary of Performance Based Contracting
- ◆ PBC Course Schedule (NASA Office of Procurement)
- ◆ Sites offering guidance on preparation of PBC Statements of Work (SOW):
 - A Guide To Best Practices For Performance-Based Service Contracting (OFPP)
 - SOW For Center Operations Support Services (NASA Users Guide)
 - PBC Statement of Work for ADP Maintenance (ARNET)
 - PBC Statement Of Work, Navy Turbo Site #1
 - PBC Specification, Navy Turbo Site #2
 - Web-based Training for PBC SOW (call Patricia Pahlavani 202-358-1167 for password)

The creators of the page want to get feedback so they can tailor this website to meet your needs. Send your comments and feedback to Ed McClelland at ed.mcclelland@hq.nasa.gov, or call him at 202-358-0462.

GAO Protest:

Beginning with this issue of the Procurement Countdown, we are running articles that review recent GAO decisions and the issues surrounding them.

Ames and the Use of FAR Part 12: Lessons Learned

In September 1996, Ames Research Center procured a piece of equipment using FAR Part 12. This procurement led to a protest which GAO sustained. The procurement was for a 360 degree rear projection display system capable of simulating a Level V (high traffic density) air traffic control tower environment. The computer-generated display system will simulate the outside view from an airport control tower for NASA's Surface Development and Test Facility (SDTF) program. The SDTF is a state-of-the-art air traffic control tower simulator being developed jointly with the Federal Aviation Administration.

Starting With Market Research

The buying team initially began by conducting in-depth market research to determine which products would best meet the government's needs. The display system was composed of projectors and screens. The resulting contract would also require equipment installation and integration into the SDTF upon construction of the tower facility. Both the projectors and screens were available commercially. The buying team determined that the use of the streamlined procedures set forth in FAR subpart 12.6 were appropriate for this procurement.

In accordance with FAR 12.603, a combined synopsis/solicitation was issued. The solicitation included FAR 52.212-

2, *Evaluation—Commercial Items*. Paragraph (a) of the provision specified the following evaluation factors: i) technical capability of items offered, ii) price, and iii) past performance. All evaluation factors other than price, when combined,



were considered approximately equal to price. Award was to be made to the low, technically acceptable offer. Pursuant to FAR 12.202(b), the buying team believed the solicitation fully described the Agency's need in terms of acceptable commercial products to offer and the intended use of those products.

A total of nine proposals was received, including alternate proposals from three offerors. The buying team evaluated the proposals, and all but the low offer were determined to be technically acceptable. The buying team was unable to verify certain performance characteristics claimed by the low offeror. The team therefore determined in the interest of fairness to hold clarifications with all offerors. The low offeror's response to the

government's request for additional data verifying the initially submitted information did not alleviate the buying team's concerns, and its proposal was therefore determined to be technically unacceptable. Award was made to the next low offeror, whose proposal was judged to be technically acceptable.

Shortly after its debriefing, the low offeror protested the award to the GAO, contending it was wrongfully determined to be technically unacceptable.

Ultimately, GAO sustained the protest citing that the Agency did not include adequate salient characteristics in the solicitation. After reviewing the decision, ARC believed that an error in law had been made. With Headquarters' concurrence, a request for reconsideration was made.

Agency's Contention

Specifically, the Agency contended that FAR Part 12 makes clear that the government is only required to describe the Agency's needs in terms of acceptable commercial products to offer and the intended use for those products (see FAR 12.202(b)). After reconsideration, the GAO again sustained the protest. At this point, the GAO modified its recommendation for Agency action. This allowed Ames to retain the equipment received and paid for, rather than to start completely over.

(continued on page 10)

GAO Protest:

SAERS - The Long Road to Contract Award

What do mandatory participation goals, a small-business set-aside, and award without discussions have in common? A protest, at least if you were at Langley Research Center in the Spring of 1996. The following is a recap as to why it took almost one additional year to award a contract that was originally slated to be awarded through the award-without-discussion provision.

History

In January 1996, Langley issued a Request for Proposal (RFP) for Systems Analysis and Engineering Research Support (SAERS); the RFP was a small-business set-aside with a mandatory 40% Small Disadvantaged Business (SDB) participation goal (at the prime or subcontract level); the approach to meeting the goal was to be evaluated as part of a subfactor under Mission Suitability. Proposals were received from seven firms; the Source Evaluation Board (SEB) evaluated the proposals and presented the results to the Contracting Officer (CO), who recommended that the evaluation results be presented to the Source Selection Official (SSO) for a potential "award without discussion" selection. In May 1996, the SSO selected NYMA, Inc., a firm that had represented itself as an SDB and thus proposed to satisfy the SDB participation goal at the prime level. Another offeror,

AVIATE, LLC, protested the SDB status of NYMA to the CO, and the CO referred the matter to the SBA. After review, the SBA ruled that NYMA was not, in fact, an SDB for purposes of the SAERS procurement.

The Challenge

The SBA decision presented Langley with a challenge on how to best proceed with the procurement since the selected offeror, NYMA, no longer had an approach to meeting the mandatory 40% SDB participation goal. After much discussion internal to Langley, as well as with NASA Headquarters, the CO sent the SEB back to assess the impact of the SBA's decision on the evaluation results. The SEB revised their findings and presented the results to the CO, who concluded that there was no longer a basis to pursue award without discussion since NYMA had weaknesses assigned to its proposal. Accordingly, the CO made a competitive range cut which included two firms, NYMA and AVIATE. The SEB conducted written discussions with NYMA and AVIATE and received BAFO's (i.e., signed contracts) from both firms. Evaluation results were presented to the SSO, who selected NYMA for contract award in September 1996.

The CO conducted debriefings for all unsuccessful offerors, including AVIATE. After the AVIATE debriefing, AVIATE filed a protest with the General Accounting Office

(GAO) in October 1996. After AVIATE received the Agency report on the protest, they amended their protest on three different occasions over the course of the next two months; in total, they presented 16 grounds of protest.

The Protest

In their protest, AVIATE challenged the inclusion of NYMA in the competitive range, the evaluation of AVIATE's and NYMA's proposals, and the source selection decision; AVIATE also argued that NYMA made material misrepresentations in its proposal.

Specifically, 1) AVIATE challenged the CO's determination to include NYMA in the competitive range, arguing that NYMA's failure to meet the mandatory participation goal in the original proposal should make them patently unacceptable and therefore not properly included in the competitive range.

2) AVIATE challenged the SEB's assessment of NYMA's BAFO subcontracting plan, arguing that the evaluation unreasonably found the plan acceptable based on the proposed use of unidentified and uncommitted SDB subcontractors and did not account for approximately 20% of the contract work to be subcontracted to these unidentified subcontractors. AVIATE also challenged NASA's assessment of NYMA's evaluation in

(continued on page 11)

Parametric Cost Estimating Initiative

by Joe Le Cren, Headquarters Analysis Division

With all the initiatives that NASA has embraced over the past few years, procurement professionals have learned that many of those new ways of doing business really can save time and money. Another initiative is being tested that may change the way NASA does business - but the idea behind it is not new. That initiative is the Parametric Cost Estimating Initiative (PCEI).

Parametric cost estimating is an alternative cost estimating methodology. Instead of the bottoms up approach that we are all familiar with, parametrics is based on cost estimating relationships (CERs). Parametrics

The PCEI grew out of an interest... to reengineer the cost estimating process and the belief that parametric cost estimating can result in proposals which provide as good if not better results than the standard bottoms up approach...

focuses on the costs drivers, i.e., the controllable system design or planning characteristics, that have the most significant cost impact on the products (hardware or software) being estimated. A parametric cost estimate may be based on a single CER, multiple CERs, or may involve a complex in-house or commercial model. An example of a CER is one used in the construction industry where the rule of thumb relates floor space to building cost. For example, if we were to build a brick two-story house with a basement, one might use \$60/square foot (or whatever is the

current rate) to estimate the price of the house (\$60/square foot X 2,000 square feet = \$120,000).

History of Parametrics

Although parametrics may be unfamiliar and, therefore, considered something new, it is not. The origins of parametrics date back to World War II. Since that time, both industry and government have used parametrics. NASA and DoD have used parametric estimates to form the basis of new project commitments to Congress, and industry has used parametrics for decision making regarding bid strategies and as a cross-check for their bottoms up cost proposals. To date, industry has made limited use of parametrics as the primary basis for their business proposals.

The purpose of this article is not to go into the details of what parametrics is, but rather aims to identify what has occurred and is currently occurring with regards to the Parametric Cost Estimating Initiative which started in 1994.

Reengineering the Process

The goal of the PCEI is to create an environment that elevates parametric estimating techniques to the same level of acceptability as other cost estimating techniques. The PCEI grew out of an interest on the parts of both industry and the Department of Defense to reengineer the cost estimating process, and the belief that parametric cost estimating can result in proposals which provide

as good if not better results than the standard bottoms up approach, but with reduced proposal preparation time and costs.

A working group was chartered to explore the role played by parametrics in cost estimating. The working group was originally made up of representatives from all the Armed Services, the Defense Contract Audit Agency, the Defense Contract Management Command, and industry. NASA and the Defense Systems Management College (part of the Defense Acquisition University (DAU)) representation was added in 1995. In addition to the working group, an executive steering committee was created consisting of senior acquisition executives from the participating government and industry organizations. Tom Luedtke is the NASA representative. The purpose of the working group is to implement the decisions made by the executive steering committee.

Accomplishments

The Initiative has had several accomplishments, among them: senior DoD, NASA and industry acquisition executives have been briefed, and they have endorsed the initiative; the Parametric Cost Estimating Handbook was developed and distributed; periodic workshops have been held to share information; 13 companies volunteered to be lab sites to test the use of parametrics; parametric training has been provided to the lab sites; and a newsletter

has been developed to communicate information about parametrics and share lessons learned. Although these are all significant, the remainder of the article will focus on a few of these achievements, as well as related current or planned activities.

The handbook, which was first issued in the Fall of 1995, puts in one place the "how to" of parametrics and includes case studies and examples. It can be found on the Internet at <http://www.contracts.hq.navsea.navy.mil/webdata/pceh/pceh.html>. One of the key action items of the working group is to update the handbook so that it can be relied on as the primary source of guidance for identifying, developing, calibrating/validating, and evaluating parametric cost estimating techniques to be used to estimate costs on government proposals. The goal is to have the handbook updated by early calendar year 1998.

During the last few months, some members of the executive steering group and the working group have visited four of the lab sites. The purpose of the visits has been to obtain specific details on the models being tested, the accuracy of the models in predicting costs, and the involvement and satisfaction of the buying offices with the parametric techniques.

Candidates

One of the lab sites participating in the initiative is Boeing North American (Boeing NA), formerly Rockwell Space

Systems Division located in Downey, California. JSC is currently trying to identify a candidate procurement on which a parametric-based proposal can be tested. While no direct NASA candidates have been identified, it appears that a candidate will probably be selected from potential subcontract proposals from Boeing NA to US Alliance under the Space Flight Operations Contract (SFOC).

Training is viewed as one of the main avenues for institutionalizing the use of parametric cost



estimating techniques. Consequently, joint team training was provided to the government and contractor personnel participating in the initiative at the lab sites. This training provided an opportunity for the government and contractor personnel to work together and to identify issues to be pursued at the particular lab site. The working group is currently working to establish a permanent training course. It is envisioned that some or all of the colleges/institutes of the DAU would be involved in conducting that training. The DAU was

recently briefed on the areas that the course should include. The goal is to have a permanent course up and running by late this Fall.

Currently, there is only one NASA employee who has received the parametrics training. The plan is to have at least one NASA onsite training session. Given the above mentioned participation of Boeing NA, JSC would be the logical location. There would probably be extra slots available which would be offered to other NASA centers. We will keep you informed about classes as more information becomes available.

The PCEI newsletter provides useful information regarding what is happening in the area of parametric cost estimating. To date, four issues have been distributed. Within NASA, copies have been distributed to all the Center Procurement Officers, as well as a number of other individuals. The newsletter can be found on the Internet at <http://mijuno.LARC.NASA.gov/dfc/societies/ispa.html>.

Several of the lab sites have begun to submit parametric based proposals. It is probably only a matter of time before NASA receives such a proposal. Therefore, it is incumbent on us to be prepared for that day. Some ways to do that are to review the Handbook, stay abreast of the happenings with the initiative, and to take advantage of the training when it is offered.

If you have questions or want additional information concerning the Parametrics Cost Estimating Initiative, contact Joe Le Cren at (202) 358-0444, or at joseph.lecren@hq.nasa.gov.

Mandatory Source for Office Supplies/Services

Through the Javits-Wagner-O'Day (JWOD) Program, thousands of Americans with severe disabilities are given the opportunity to contribute more significantly to the American economy. The JWOD Program is a mandatory source program under 41 USC 46-48c and FAR 8.7. NASA has been asked by the Committee for Purchase from People who are Blind or Severely Disabled, a federal agency, to remind acquisition personnel of this program, for consideration and action in centers' outsourcing activities.

More than 4,000 supplies and services are included in the JWOD Program, which generates jobs for 30,000 people with disabilities. In addition to office supplies and general products, services range from administrative activities like transcription, data entry, and publications distribution, to laundry and

recycling. Recent honors to JWOD nonprofit agencies include the Hennessey Award - the Air Force's top food service award, the Ney Award for



excellence in Navy food service and the U.S. Postal Service National Quality Supplier Award. Additional information is located at <http://www.jwod.gov>.

Many of the JWOD-participating organizations serve not only persons with severe disabilities, but vocationally disadvantaged individuals who are often

welfare recipients. Such organizations can provide candidates for hiring under the Welfare-To-Work program. (Information regarding these organizations will be available on the JWOD website mentioned above.)

Ms. Kimberly Zeich of the committee has offered to assist acquisition personnel in developing requirements for just-in-time delivery of supplies (including JWOD items) or who would like information about similar GSA contracts available. She can be reached at (703) 603-7740. Her email address is kzeich@jwod.gov. Her fax number is (703) 412-7113. Bob Clark at GSFC has agreed to share his experiences with JWOD in establishing a contract with Office Depot. Mr. Clark can be reached at (301) 286-7740.

Standard Industrial Classification Search

by Diane Thompson, Headquarters Analysis Division

The Standard Industrial Classification (SIC) is a 4-digit code originally developed by the Office of Management and Budget to facilitate statistical economic analysis and reporting based on enterprises engaged in production, trade, and service. The SIC manual classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. The

size standards are used in solicitations to enable offerors to appropriately represent themselves as small or large businesses.

The NASA Procurement Library links to a good searchable SIC site for the procurement professional. It is hosted on the Internet by the United States Department of Labor Occupational Safety and Health Administration at <http://www.osha.gov/oshstats/sics.html>. Searches

can be performed either by keyword to access the appropriate 4-digit SIC, or by the 4-digit SIC to find the descriptive information. The University of Washington also hosts a SIC manual site. It can be accessed at <http://weber.u.washington.edu/~dev/sic.html>. Although not searchable, it can be a good resource.

Keeping Information Up-To-Date with CASI

By Lynn Heimerl, Langley Research Center, and Tom Deback, Headquarters Contract Management Division

The NASA FAR Supplement and the Grant and Cooperative Agreement Handbook require that we forward many of our contracts, grants, and cooperative agreements to CASI. We need to better understand CASI's role and the importance of ensuring the proper documents are sent to them.

CASI, the Center for AeroSpace Information, is the facility that (1) acquires, maintains, disseminates, and preserves NASA scientific and technical information (STI) and other STI that is of critical importance to NASA and the U.S. aerospace community, (2) maintains NASA's STI Database, and (3) provides other STI services and products (as shown at url <http://www.sti.nasa.gov/>). NASA STI includes reports such as Technical Publications, Technical Memoranda,

Contractor Reports, Conference Publications, Special Publications, and Technical Translations, in addition to journal literature, conference and meeting papers and proceedings, multimedia, and other pertinent information.

The STI Database houses more than 3 million bibliographic records of R&D and is a virtual resource tool for NASA and the nation. This database increases the yield of tax dollars invested in NASA research, helps avoid duplication of research, and accelerates scientific progress.

Contractors, grantees and recipients are required to send reports to CASI. We are not always distributing our award documents to CASI as we should. Our contractors, grantees, and recipients also are not always submitting data and reports as they should.

CASI receives STI from the NASA centers, national and international exchange partners,

and commercial sources. CASI assigns subject categories to the STI, processes the material into the STI Database, creates electronic versions, if needed, announces the information in awareness publications, archives the documents for future use, disseminates, and subsequently fills orders for the information. CASI has more than 10,000 users and receives approximately 100,000 documents and other information each year.

We are important contributors to the CASI database. Please ensure that you send contracts, grants, and cooperative agreements, as appropriate, to CASI and that NASA contractors, grantees, and recipients fulfill their responsibilities. Also, it is important that our contractors, grantees, and recipients avail themselves of the CASI resources to avoid duplication of effort and increased cost to the Agency.

Modular Contracting - Change is on the Way

by Valerie J. Stucky, Headquarters Contract Management Division

The Information Technology Management Reform Act (ITMRA) of 1996, also known as Clinger-Cohen, enacted new policies and procedures regarding acquisition of information technology (IT) using modular contracting techniques. Federal agencies should use modular contracting, to the maximum extent practicable, when acquiring major systems of information technology. When using a modular contracting approach, agencies acquire major IT acquisitions by

dividing them into smaller, more manageable increments. Benefits that may be realized as a result of modular contracting include delivery and testing of systems in discrete increments that are not dependent on other increments, and the opportunity to take advantage of technology evolution.

A proposed rule on FAR coverage for modular contracting was published in the Federal Register on March 27, 1997. On April 28, 1997, a public meeting was held in Washington, DC,

where concerned persons presented their views. For example, one organization suggested that the FAR should specifically state that modular contracting is an option, but is not mandatory. In July 1997, the FAR Interagency Information Technology Committee met to discuss the written comments submitted in response to the proposed rule.

For more information, please contact Valerie Stucky, NASA's representative to the IT Committee at (202) 358-0503.

Ames Protest

(continued from page 4)

GAO's decision illustrates their recognition that a key element of efforts to increase purchase of commercial items is to state requirements in broad functional or performance terms, rather than using detailed specifications. Nonetheless, FAR Part 12 obligates a contracting agency to describe its need for commercial items in "sufficient detail for potential offerors of commercial items to know which commercial products or services to offer." GAO found that "... the competition was flawed because NASA failed to ... include sufficient information for commercial vendors to understand NASA's requirements."

Considering the lessons learned on this procurement, ARC will continue to make maximum use of Part 12 but will incorporate the following:

Market research is clearly an important—if not the most crucial—element to be completed

before the solicitation is issued. Make sure that the most critical information garnered in the market research is incorporated into the solicitation's specification.

The instructions to offerors at FAR 52.212-1 contain broad language. Unless the requirement is patently simplistic, specify both the information and level of detail to be provided by the offeror. Think carefully about the use of the combined synopsis/solicitation vs. a formal Request for Offers, particularly where complexities exist.

If the solicitation states that the government reserves the right to evaluate proposals and make award on the basis of initial submissions, do so whenever possible. Be wary of seeking verification or clarifications that may be misconstrued as discussions.

Requirements that have detailed specifications or salient characteristics are best suited for award to the low priced, technically acceptable offer. Requirements that use more generic language (i.e., a description of intended use or function to be performed) generally necessitate evaluation factors. For those cases, Best Value Selection is the more appropriate method of acquisition.

GAO's decision on the initial protest, as well as the government's request for reconsideration, can be found on the "Decisions of the Comptroller General of the United States" page on the Internet at <http://www.gao.gov/decisions/decision.htm> or http://www.access.gpo.gov/su_docs/aces/aces170.shtml under case number B-274748 for Access Logic, Inc.

Unallowable Protest Costs

(continued from page 2)

NASA does not back off. The protest is vigorously defended. The vast majority of the time under these circumstances, the GAO determines in our favor. However, when there are gray areas, when there are questions about the government making a mistake, then there are other steps that can be taken.

When a protest is filed with the GAO, the Agency can usually avoid paying protest costs if it takes so-called "corrective action" before NASA's Agency

report is due at the GAO. Evaluate the merits of the protest in conjunction with your technical and legal counterparts at your Center and with appropriate personnel at Headquarters. This evaluation usually culminates in a business decision in which the time, expense, and risk of losing the protest is balanced against the time and expense of accommodating the protester's concerns, e.g., perhaps amending the solicitation or reevaluating proposals. The possibility that

accommodating the protester will invite protests from others must also be considered. However, protests alleging such things as bribery or fraud by government personnel usually do not permit accommodation.

The best way to avoid paying a protester's costs is to conduct the procurement properly right from the start. This usually assures that NASA will win before the GAO which precludes the payment of protest costs.

Langley Protest

(continued from page 5)

the cost and past performance area on these same grounds (i.e., lack of specificity on subcontractors).

3) AVIATE alleged that NYMA made material misrepresentations in its proposal; reportedly one of the candidate firms that NYMA identified to receive work under the contract had told AVIATE, prior to BAFO, that NYMA would not be using them in contract performance. 4) AVIATE challenged the SEB's evaluation of their own BAFO, arguing that NASA misevaluated its uncompensated overtime approach and its planned performance of administrative contract functions. 5) AVIATE challenged the basis of the source selection decision.

In addition, one of the 16 grounds of protest challenged the SDB status of one of NYMA's proposed subcontractors. AVIATE also protested the SDB status of the subcontractor to the CO, who initially denied the protest and did not refer the matter to the SBA as it was felt to be outside SBA's jurisdiction. Eventually, the matter was referred to the SBA (even though NASA did not change its position on jurisdiction), and the referral had a

very interesting impact on the balance of the protest. In a surprise move, GAO dismissed the protest in January 1997 "without prejudice," stating that the SBA's determination on the SDB status of the subcontractor could render academic some or all of the remaining protest issues; however, GAO did inform AVIATE that, after the SBA ruled, they could refile any protest issues that they felt still had "continued vitality" so long as they were filed in a timely manner.

SBA ruled in February 1997 that the NYMA subcontractor was, in fact, an SDB firm. AVIATE immediately refiled all of the remaining protest issues. In addition, AVIATE had also filed yet another protest asking for the reimbursement of attorneys' fees related to its challenge of NASA's refusal to forward AVIATE's SDB status protest to the SBA. The GAO agreed to rule on all issues in one decision.

On April 14, 1997, the GAO issued its decision, and NASA prevailed on all counts. Specifically, GAO ruled that 1) NASA had properly included NYMA in the competitive range determination since an agency may include an allegedly unacceptable proposal in the competitive range when the agency concludes that

the proposal is susceptible of being made acceptable and has a reasonable chance of being selected for award. 2) NASA had reasonably evaluated NYMA's SDB participation plan, and the evaluation was consistent with the RFP. 3) There was no evidence that NYMA had made material misrepresentations concerning its SDB participation plan. 4) A protester's mere disagreement with an agency's assessment of weaknesses in its proposal does not show the agency's judgment was unreasonable. 5) There was a reasonable basis for the selection made.

In addition, AVIATE's request for recovery of attorneys' fees was denied since NASA did not unduly delay in referring the SDB status matter to the SBA.

So, eleven months after we thought we were going to make award, we finally did - to the same contractor we originally selected! One thing is for sure - the protest process is alive and well at Langley!!

For the complete redacted version of the decision at <http://www.gao.gov/decisions/decision.htm> or http://www.access.gpo.gov/su_docs/aces/aces170.shtml and look for B-275058.6.

Procurement Countdown

Procurement Countdown is published by NASA's Office of Procurement.

Editor.....Susie Marucci
(202) 358-1896
susie.marucci@hq.nasa.gov