

## **U.S. MINT NOT SUBJECT TO GOVERNMENT ACCOUNTABILITY OFFICE BID PROTEST JURISDICTION**

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The Government Accountability Office (“GAO”) recently confirmed that it has no bid protest jurisdiction over procurements made by the United States Mint. *A-Z Cleaning Solutions*. B-415228, Nov. 6, 2017.

GAO reiterated the fact that under the Competition in Contracting Act (“CICA”), it has jurisdiction to resolve bid protests, solicitations and contract awards that are issued by a “Federal Agency.” 31 U.S.C. § 3552(1). Federal Agencies include executive agencies or independent establishments in the executive branch. 40 U.S.C. § 102(4), (5). However, when Congress established the U.S. Mint Public Enterprise Fund to finance operations of the Mint, it included a proviso stating that “provisions of law governing procurement or public contracts shall not be applicable to the procurement of goods or services necessary for carrying out Mint programs and operations.” 31 U.S.C. § 5136. Thus the U.S. Mint joins a small number of agencies that have been exempted from GAO bid protest jurisdiction. These agencies include the U.S. Postal Service, the Federal Aviation Administration, the U.S. Mint and the Presidio Trust.

The specific exemptions are described below. Even exempt agencies are likely subject to the bid protest jurisdiction of the U.S. Court of Federal Claims. Some of the exempt agencies have established special forums to consider bid protests of their agency’s procurements:

- The U.S. Postal Service (“USPS”) is an independent establishment of the executive branch which is expressly exempted from any “Federal law dealing with public or Federal Contracts,” except for those laws enumerated in 39 U.S.C. § 410(b). The Competition in Contracting Act, from which the GAO derives its bid protest jurisdiction, is not included in the list of statutes made applicable to the USPS under that section.
  - Bid protests of USPS procurements may be submitted to the Postal Service Law Department, Senior Counsel, Contract Protests and Policies, under procedures found in USPS Purchasing Manual Section 3.6.
- The Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition is an independent tribunal statutorily designated to hear all bid protests and contract disputes subject to the Acquisition Management System of the Federal Aviation Administration. The GAO Bid Protest jurisdiction does not apply to these procurements. 49 U.S.C. §40110(d)(2)(F).
  - Bid protests may be submitted to the FAA Office of Dispute Resolution pursuant to 14 C.F.R. Part 17.

- The U.S. Mint, a federal agency within the Department of the Treasury, is not subject to the Government Accountability Office’s bid protest jurisdiction because its enabling legislation specifically states that “provisions of law governing procurement or public contracts shall not be applicable to the procurement of goods or services necessary for carrying out Mint Programs and operations.” 31 U.S.C. § 5136.
  - Bid protest forum not known
  
- The Presidio Trust is a wholly-owned government corporation established to exercise administrative jurisdiction over the Presidio, a former military post in San Francisco, and to manage the leasing, maintenance, rehabilitation, repair and improvement of property within the Presidio under its jurisdiction. Omnibus Parks and Public Lands Management Act of 1996 (Act), Pub.L. No. 104-333, §§ 103(a), (b), 104(a)-(c), 110 Stat. 4093, 4098, 4101 (1996).
  - Bid protest forum not known

Any protest you submit to the GAO regarding a procurement by any of these four agencies will be dismissed.

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