10 BIG Mistakes in Government Contract Bidding

About the Author

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LAST MONTH, *CONTRACT MANAGEMENT* published my article "Ten Big Mistakes in Contract Administration." It was based on my 38 years of experience working in and around government contracting, including 18 years of serving as government contracts counsel and advising clients. Making mistakes in contract administration is common, and the courts and boards are filled with cases describing such mistakes. In this article, I describe the types of mistakes that contractors make in bidding on government contracts, including contracts formed using both sealed bidding and negotiated procurement. As demonstrated in bid protests before

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the Government Accountability Office (GAO) or the U.S. Court of Federal Claims, many government contractors and would-be government contractors repeat certain classic mistakes in government contract bidding. This is particularly true of new government contractors, who are sometimes overzealous in their desire to win an award. But all contractors must recognize that if they can't get it right, they can't get a contract—and many government contractors cannot seem to get it right consistently. Information on these mistakes is readily available from other government contractors, from training courses, from the literature, and from the case law.

Although no one has ever performed a content analysis to identify the 10 most frequently repeated mistakes, the following are my suggestions of 10 common mistakes made by contractors during the bidding process. If you correct your actions and do not repeat these mistakes, you are much more likely to receive government contract awards. Of course, this article also suggests ways to avoid the mistakes.

This article applies to all types of procurement methods, specifically, sealed bidding using an invitation for bids (IFBs) as described in Federal Acquisition Regulation (FAR) Part 14 and negotiated procurement, using a request for proposals (RFPs) as described in FAR Part 15. In some cases, there are differences between these procurement methods, which I explain.

1. You didn't read the entire solicitation, including all of the amendments and all of the clauses incorporated by reference. The *FAR* requires that a solicitation include all "anticipated terms and conditions that will apply to the contract."[1] Both IFBs and RFPs must be prepared using the uniform contract format, which includes all terms and conditions.[2] Solicitations will also tell you when you must submit your offer (bid or proposal) and how you

must submit it. The fundamental principle is that the offeror must read everything and follow it completely, even if you don't understand why or don't agree with the solicitation's approach. The written solicitation is the key to preparing your bid and proposal, because it will govern your obligations and responsibilities if you win the award. How many contractors actually read the entire contract before beginning performance? Most read the statement of work (SOW) and proceed from there. But, there are other critical sections in the uniform contract format, such as Section E, Inspection and Acceptance; Section F, Deliveries or Performance; Section H, Special Contract Requirements; and Section M, Evaluation Factors for Award, that may be equally important.

Here are just a few reported cases of an offeror's failure to read a solicitation.

- Solicitation specifically advised offerors that a one-ton truck would be needed. Offeror's failure to read or understand this provision of the solicitation did not provide a valid basis for protesting the agency's downgrading of its proposal.[3]
- Offeror should have realized that bid prices would be adjusted for prompt payment discounts of 20 days or more. Any failure to understand this fact was the result of a failure to read and apply all IFB provisions.[4]
- Protester objected that the agency failed to test a sample item provided by the protester. The protester did not submit its sample within the timeframe required by the solicitation. The problem was caused primarily by the protester's failure to read the solicitation carefully.[5]

These are only a few examples of procurements where the offeror's failure to read the solicitation became part of a bid protest. But there are many, many more examples where the offeror discovers his mistake or finds out about it at a debriefing, and there is no protest at all—just a sad and dejected offeror that must wait until his next opportunity to compete on a contract.

Potential government contractors must understand that many vital clauses are not even printed in the solicitation. Almost every solicitation includes a clause that permits the government to "incorporate clauses by reference."[6] Essentially, the government lists the *FAR* clauses, and states: "[t]his [solicitation] incorporates one or more clauses by reference, with the same force and effect as if they were given in full text." You can easily obtain the full text on the Internet or you can ask your contracting officer for a copy. It doesn't matter whether the clauses are printed in your solicitation in full text or incorporated by reference; they will still be part of the contract and you will still be responsible for all the duties and obligations contained in them. Indeed, the typical government solicitation, which might be only 30 pages long, expands to two or three times that length once the clauses incorporated by reference are printed out. The smart contractor prints out a copy of all clauses incorporated into a solicitation by reference, and inserts it into his master solicitation file, so he can review them carefully before preparing a bid or proposal.

A contractor should also be aware that sometimes a clause that is not included or incorporated into a contract may be "read into" the contract later by the Courts or Boards of Contract Appeal. Where there is a missing mandatory contract clause that expresses a significant or deeply ingrained strand of public procurement policy, it is considered to be included in [the] contract by operation of law.[7] The termination for convenience clause is such a clause.[8] Unfortunately, as you can see, on some occasions, reading the entire solicitation will still not advise you of all your duties and responsibilities. Nevertheless, there is no substitute for a detailed, in-depth reading of your solicitation before preparing your offer. Only then is the offeror assured (to the maximum extent possible) that his price reflects every obligation contained in all of the clauses, terms, and conditions in the solicitation.

Finally, be sure that you have considered every amendment to the solicitation before you sign your bid or offer and submit it. You will be required to acknowledge receipt of all amendments. If you fail to acknowledge a material amendment to an IFB, your bid will be deemed nonresponsive, since without such an acknowledgement, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as stated in the amendment. You can easily confirm that you have all the amendments by either contacting the contracting officer or by checking **fedbizopps.gov**.

2. You didn't ask a question about an ambiguity in the solicitation.

Whenever you are about to submit an offer, whether in response to an IFB or an RFP, you must scour the solicitation for any obvious ambiguities or lack of clarity or precision. If there are any, you have a duty to obtain clarification before you bid, or the consequences may be most unpleasant. An ambiguity exists when a phrase, clause, or section of a solicitation does not have one plain meaning, but has two reasonable interpretations.[9] An ambiguity may be either patent or latent. A patent ambiguity in a solicitation is one that is, on its face, glaring and obvious—for example, where solicitation provisions appear inconsistent on their face.[10] A latent ambiguity, however, is not obvious on the face of the solicitation.[11]

A contractor may not rely on his interpretation of patent ambiguities, but instead has a duty to seek a clarification from the government before submitting his bid.[12] A bidder who does not inquire into a patent ambiguity assumes the risk for any unanticipated costs incurred as a result. That is not the case with a latent ambiguity. Courts will adopt a contractor's reasonable interpretation of a latent ambiguity under the *contra proferentem* rule, construing the ambiguity against the drafter.[13] Of course, it is the government that drafts a solicitation, and against whose interest the reasonable interpretation of a latent ambiguity will be construed.[14]

The message is simple—submit your questions and requests for clarification to the contracting officer before the closing date when offers are due. Only then will you meet your obligation to inquire, ensuring that any remaining latent ambiguities will be interpreted against the government, not against you. You should ensure that the contracting officer actually received your inquiry by obtaining a receipt or a signature by Certified Mail or Federal Express/UPS. Even if a solicitation

contains a "cut-off date" for submissions of questions, the agency must clarify an ambiguity at all times before the closing date. Simply send the contracting officer an informal agency protest with your question and the contracting officer must answer. A protest of a solicitation is timely at any time before the closing date. You do not need to label your letter a "protest." The GAO has consistently held that even if a letter to an agency does not explicitly state that it is intended to be a protest, the GAO nevertheless will consider it as such where it conveys an expression of dissatisfaction and includes a request for corrective action.[15]

If the contracting officer acknowledges an ambiguity, he or she should amend the solicitation. In any event, follow the interpretation that is given by the contracting officer, in writing.

3. You didn't submit your bid or offer on time. The *FAR* states that it is an offeror's responsibility to deliver his bid or proposal to the proper place by the proper time. Late delivery generally requires rejection of the offer.[16] A bid or proposal is late if it is received at the government office designated in the solicitation after the exact time specified for the receipt.[17] This seems so elementary and reasonable, until you think about how most contractors spend weeks putting their offers together and working on them until the last possible moment. But the *FAR* and the case law are not forgiving. If your offer is late, you are just like the runner who collapses at the starting line *before* the race. There is no chance you can possibly win the award. It doesn't matter if your offer is submitted by courier, hand delivery, or by one of the overnight mail carriers. The offer must be received on time at the place specified in the solicitation. If it is not, your offer most likely will not be considered by the agency for the procurement. My suggestion to companies who want to ensure timely submission is simple—place one person in charge of the entire bid or proposal effort and if the offer is not submitted on time, with a receipt to prove it, consider discharging the person for failing to perform his or her job.

In very rare cases (almost never!), a hand-carried proposal or bid that arrives late may be considered if it is received at the government installation designated for receipt of bids and was under the agency's control before the time set for receipt of bids.[18] A late offer may also be considered if improper government action is the paramount cause for the late submission and consideration of the offer would not compromise the integrity of the competitive procurement process.[19]

Here's an example of the highly unusual circumstances required to get an agency to consider a late bid: An agency set the closing date for proposals on Saturday. Even though the government building was closed that day, agency personnel were in the building and were supposed to be listening for the expected deliveries. When agency personnel left the building that day, they found a note stating that a delivery had been attempted that morning. The agency received the late proposal at 8:28 am on the following Monday. Although the doors of the facility were locked, the agency did not post instructions for couriers on how to make deliveries. "When a courier attempted to enter the locked doors and received no response from within, it was reasonable for the courier to assume that delivery at that address on Saturday was not possible." The GAO concluded that "but for the agency's action here, [the] hand-carried proposal would have been delivered before the required closing date," thus, the agency's action was the paramount cause of late delivery. Further, the GAO found that consideration of the late proposal did not compromise the integrity of the competitive procurement process because the proposals were not publicly opened and because the late proposal remained unopened in the possession of the courier, where it could not be altered, after the actual closing date.[20]

There are hundreds if not thousands of bid protest cases at the GAO concerning late bids that an offeror seeks to have considered for a procurement. Your company's offer should not be the subject of a future bid protest.

4. In a negotiated procurement, you expected to have discussions and be allowed to submit a final proposal revision. Many offerors think that they will be given a "second chance" to revise their initial proposal, propose a better solution,

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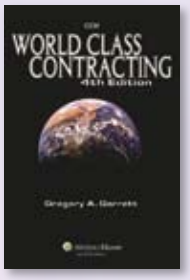

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and/or reduce their price by submitting a final proposal revision. Unfortunately, this is not always the case. In a negotiated procurement, offerors are not guaranteed that they will be given discussions (negotiations), including an opportunity to revise their initial proposals by submitting a final proposal revision. FAR 15.209(a) requires that an RFP include the clause at FAR 52.215-1, which states

> The government intends to evaluate proposals and award a contract without discussions with offerors….Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The government reserves the right to conduct discussions if the contracting officer later determines them to be necessary.

Only if the contracting officer intends to conduct discussions before making award, does the *FAR* require the use of FAR 52.215-1, Alternate 1, which states, "The government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range." As you can see, there is no particular reason to use Alternate 1 of this clause, since the clause alone permits the contracting officer to have discussions (and final proposal revisions) if he or she wants, or to skip them if they are unnecessary. (A contracting officer may dispense with discussions if award is made to the best value proposal.[21])

While large and complex procurements (airplanes, ships, missiles, computer systems, etc.) almost always require discussions to ensure best value to the government, many less complex procurements do not require discussions. Indeed, the U.S. Army, Defense Logistics Agency, General Services Administration, and most agencies that conduct procurements of commercial items have found that discussions can frequently be dispensed with, and selection and award made on initial proposals.

So take the admonition of the clause to heart. "The offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint." Be sure your initial proposal complies with the RFP and do your best to ensure that your price is competitive. You may not get a second chance.

5. You didn't follow instructions in the solicitation. One of the most important things a government contractor must do is follow the directions and instructions in a solicitation. Any company that seeks a government contract must comply fully with the instructions in the solicitation or run a significant risk that its proposal will be downgraded. Government solicitations (especially RFPs) frequently state the exact formats required for the proposal document itself, for personnel résumés that are included, for e-mail addresses or fax numbers of past performance references, and for a variety of other important information. Sometimes the RFP can be as specific as to state that the offerors are to furnish résumés that have a font size of "11 point proportional, averaging not more than 14 characters per inch (reduction is not permitted)."[22] Page limits on proposals are frequently a problem, but you must

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comply with them. Indeed, the GAO has frequently stated that offerors are required to prepare their proposals in the format established by the solicitation or assume the risk that an agency will either not evaluate pages beyond the page limits or take other reasonable steps to eliminate any unfair competitive advantage that the offeror may have gained by violating the limitations.[23]

A simple and very reasonable assumption for an offeror to make is that he must comply with everything stated in the solicitation. If the solicitation asks for technical and cost proposals to be submitted in separate notebooks, *do not combine them*. (There are probably two separate committees—a cost-evaluation committee and a technical evaluation committee—most likely located in two different places). If a solicitation requests five résumés, provide neither four nor six; provide five, exactly as requested. Write your proposals within the page limits. If you cannot achieve this, then ensure that your proposal fully "answers the mail" within the maximum number of pages permitted, and that the pages beyond the maximum can go unread without harming your proposal.

6. You took verbal advice, or took advice from someone not authorized to give you valid advice or answers.

Contractors should never rely on verbal advice from government officials, and this is certainly true in the bidding stage. Verbal advice does not operate to amend a solicitation or otherwise legally bind the agency. An offeror chooses to rely on such verbal advice and to propose an approach contrary to the RFP at her own risk.[24] Contractors frequently call government officials and ask for clarifications in an RFP or IFB. This is a bad practice. As explained earlier, if there are patent ambiguities, offerors should write questions to the contracting officer. Verbal advice that conflicts with a written solicitation is not binding on the government, and an offeror relies on an verbal explanation of a solicitation at her own risk.[25] So get into the habit of doing everything in writing. There must always be a written amendment for a change to a solicitation to be binding on the offerors—oral advice alone just won't do.

In the formation of contracts, verbal actions are permitted in some situations, but offerors must be very careful and recognize that these situations are unique. Verbal solicitations may be used both for micropurchases as well as those under the simplified acquisition threshhold ($100,000), and the contracting officer is instructed to solicit quotations verbally "to the maximum extent practicable."[26] Even in formal negotiated procurements, verbal presentations are encouraged and verbal RFPs are authorized when a written solicitation would delay the procurement and a synopsis is not required.[27,28]

Next is the problem of the actual authority of the official. Government contract cases at the U.S. Court of Federal Claims and the Board of Contract Appeals are filled with examples of contractors who received important information from officials who had no authority to provide that information. The *FAR* states that

> Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. [They] may bind the government only to the extent of the authority delegated to them [and they] shall receive from the

> appointing authority (citation omitted) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.[29]

Although not clearly stated in the *FAR*, government personnel and contractors often speak of these officials as "warranted contracting officers."[30] A warranted contracting officer is the only person to whom you should address your RFP or IFB questions or requests for amendments. While you may communicate with a contracts specialist, a contracting officer's technical representative, or a contracting officer's representative, these individuals have no authority to advise you about a solicitation or to issue an amendment to a solicitation.

7. You submitted a nonconforming bid or noncompliant proposal. It is essential to submit a conforming bid in response to an IFB or a compliant proposal in response to an RFP. In sealed bidding, award may be made only to a responsible bidder whose bid conforms to the IFB and is lowest in price (including price related factors in the IFB such as transportation).[31] Any bid that does not conform to the essential requirements of the IFB must be rejected.[32]

In a negotiated procurement, the government makes award to the offeror whose proposal represents the best value after evaluation in accordance with the evaluation factors provided in the solicitation. One of the evaluation factors must be price. A proposal that fails to conform to the material terms and conditions of the solicitation is technically unacceptable and may not form the basis for an award.[33]

Examples of nonconforming bids include:

- Failing to conform to the essential requirements of the IFB,
- Failing to conform to the specifications in the IFB,
- Failing to conform to the delivery schedule in the IFB,
- Imposing conditions that would modify the IFB or limit the bidder's liability to the government,
- Failing to state a specific price or stating a qualified price,
- Limiting the government's rights under any clause, or
- Failing to acknowledge a material amendment to an IFB.

Material terms of a solicitation are those that affect the price, quantity, quality (specifications), or delivery of the goods or services offered.[34] Examples of technically unacceptable proposals that fail to conform to the material terms of a solicitation include:

- Altering delivery locations in the RFP,
- Adding or revising terms concerning government notifications required in the RFP,
- Taking exception to a specific requirement in the RFP,
- Revising or taking exception to the delivery schedule,
- Failing to propose a minimum speed or horsepower required,
- Exceeding the maximum permissible weight, and
- Failing to meet specifications.

8. You didn't understand the evaluation factors in an RFP or you failed to base your bid on the evaluation factors. An agency must evaluate competitive proposals and assess their qualities solely on the evaluation factors and subfactors in the solicitation.[35] Evaluation factors and significant subfactors must be in key areas of importance and support meaningful comparisons. All factors and significant subfactors and their relative importance must be stated clearly in the RFP, even though the rating method need not be disclosed and the exact weight of each factor need not be given.[36] However, the RFP must state, at a minimum, whether all evaluation factors other than cost or price, when combined, are significantly more important, significantly less important, or approximately equal to cost or price.

Contractors sometimes do not understand the evaluation factors in a negotiated procurement or the importance of internally setting up your own working scheme showing their likely value in the actual evaluation. (You can usually determine reasonably close percentages, e.g., "If technical factor A is more important than B, B is more important than C, and all three technical factors are approximately equal to price," the result would likely be: 25 percent for A, 15 percent for B, and 10 percent for C, with price worth 50 percent. Even if the agency's weights are slightly different, performing this analysis will help the bidder determine the agency's priorities).

Once you determine what factors are worth, you can then spend more time on the high-value items and less time on the low-value items. For example, if price is significantly less important than technical merit, spend substantial time developing a superior technical proposal and devote less effort to limiting costs. If price is significantly more important than technical, devote considerable effort to cost or price reduction, while spending less time on technical merit.

One of the hallmarks of negotiated procurement is that, unlike in sealed bidding, low price will not necessarily win the award. In negotiated procurements, agency selection officials retain considerable discretion in making best-value decisions that trade cost for technical merit. These judgments must bear a rational relationship to the evaluation factors in the RFP.[37] Award may be made to a firm that submitted a higher-rated, higher-cost proposal only if the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the cost difference.[38]

9. You didn't check your bid or proposal for compliance with the solicitation through a procedure such as Red Team/Blue Team, or other method. As explained earlier, compliance with the terms of the RFP is essential to receive an award. Of course, as you read the RFP, you must be cognizant of its many requirements and should develop a detailed checklist for use at the end of proposal drafting. Before a proposal writer finishes the proposal, he or she should be sure that it contains

every item on the initial checklist. But, there is more that can be done to ensure compliance.

Many large contractors use a Red Team/Blue Team approach. The Red Team prepares the proposal and "submits" it to the Blue Team well in advance of the closing date. The Blue Team plays the role of agency evaluator, reviewing the proposal for compliance with the solicitation. The Blue Team also critiques the format, substance, and all other factors of the solicitation. When both teams have finished, the company modifies the proposal to reflect all the comments of the Blue Team that indicated noncompliance with the RFP. In addition, the company rewrites sections of the proposal that are unclear and upgrades any sections that the Blue Team indicated needed improvement.

The alternative to the Red Team/Blue Team approach is the review of the proposal by an independent party for compliance with the RFP, such as a legal review by outside counsel, or review by an outside consultant. Although there is no formal team, the independent party checks for compliance with all terms of the solicitation and recommends improvements in the proposal wherever warranted.

10. You didn't request a post-award debriefing in a negotiated procurement. Many contractors do not take advantage of the significant information that they can obtain from a post-award debriefing as required by FAR 15.506(a)(1). By simply submitting a written request to the contracting officer within three days of receiving notification of award in a FAR Part 15 procurement, an offeror can ensure he will receive a debriefing. These post-award debriefings are acknowledged to have reduced bid protests.[39] However, the purpose of a debriefing is not to provide grist for a bid protest, but to furnish the basis for the selection decision and contract award.[40] Yet, the information obtained in a debriefing is substantial and may help an offeror win the next procurement.

In a debriefing, FAR 15.506 requires that the offeror be given, at a minimum:

- The government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
- The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror;
- Past performance information on the debriefed offeror;
- The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;
- A summary of the rationale for award;
- For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
- Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

Of course, an offeror may find out that the rules were violated and may choose to protest, but the most important aspect of debriefings is what is learned that can be used for the next procurement.

Conclusion

There are many mistakes that a government contractor can make, and this article has only covered 10 of them. Although some of these mistakes may sound like platitudes, if you read many bid protest cases at the GAO or the U.S. Court of Federal Claims, you will soon recognize them as common sources of problems in federal procurements. Do your best to avoid these mistakes and you will significantly increase your likelihood of receiving contract awards. ***CM***

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Endnotes

1. See FAR 15.203; 14.201.
2. See FAR 15.204-1 for RFPs and 14.201-1 for IFBs.
3. *Atlantic Coast Contracting*, Inc., B-259082.3, July 17, 1995, 95-2 CPD ¶ 21.
4. *Capitol Hill Blueprint Co.*, B-220354, November 13, 1985, 85-2 CPD ¶ 550.
5. *Hydraulic Design & Mfg.*, B-213756, June 5, 1984, 84-1 CPD ¶ 594.
6. FAR 52.252-2.
7. *General Eng'g & Mach. Works v. O'Keefe*, 991 F.2d 775, 779 (Fed. Cir. 1993).
8. *G. L. Christian and Assocs. v. United States*, 312 F.2d 418, 425 (Ct. Cl. 1963).
9. *Aerospace Design & Fabrication, Inc.*, B-278896, 98-1 CPD ¶ 139.
10. See *Beacon Constr. Co. of Mass. v. United States*, 314 F.2d 501, 504 (Cl. Ct. 1963) (describing patent ambiguity as "an obvious omission, inconsistency, or discrepancy of significance").
11. *Triax Pac., Inc. v. West*, 130 F.3d 1469, 1475 (Fed. Cir. 1997) (describing latent ambiguity as "[m]ore subtle" than a patent ambiguity).
12. *P.R. Burke Corp. v. United States*, 277 F.3d 1346, 1355 (Fed. Cir. 2002).
13. See *Newsom v. United States*, 676 F.2d 647, 650 (Ct. Cl. 1982) (*Contra profer–entem* means "against the party who proffers or puts forward a thing," i.e., the drafter of the solicitation).
14. See *Salem Eng'g & Const. Corp. v. United States*, 2 Cl. Ct. 803, 807 (1983).
15. See, e.g., *American Material Handling, Inc.*, B-250936, March 1, 1993, 93-1 CPD ¶ 183.
16. FAR 14.304; 15.208.
17. FAR 14.304(b)(1); FAR 15.208(b)(1).
18. FAR 14.304(b)(ii); FAR 15.208(b)(1)(ii).
19. *Cadell Constr. Co., Inc.*, B-280405, August 24, 1998, 98-2 CPD ¶ 50.
20. *Hospital Klean of Texas, Inc.*, B-295836, April 18, 2005, 2005 CPD ¶ 185.
21. FAR 52.215-1(f).
22. *Client Network Servs., Inc.*, B-297994, April 2, 2006, 2006 CPD ¶ 79.
23. See *Coffman Specialties, Inc.*, B-284546, May 10, 2000, 2000 CPD ¶ 77.
24. See *Northrop Grumman Tech. Srvcs., Inc.*, B-291506, Jan. 14, 2003, 2003 CPD ¶ 25.
25. *Input/Output Tech., Inc.*, B-280585, October 21, 1998, 98-2 CPD ¶ 131.
26. FAR 13.106-1.
27. FAR 15.102.
28 FAR 15.203(f).
29. FAR 1.602-1.
30. See, e.g., Dept of Agriculture Acquisition Regulation 416.405-2; Dep't of State Acquisition Regulation 652.242-70.
31. FAR 14.408-1(a)(3).
32. FAR 14.404-2(a).
33. 41 U.S.C. § 253b(a); *Marshall-Putnam Soil and Water Conservation Dist.*, B-289949, May 29, 2002, 2002 CPD ¶ 90.
34. *Seaboard Elecs. Co.*, B-237352, January 26, 1990, 90-1 CPD ¶ 115.
35. FAR 15.305(a).
36. FAR 15.304(d).
37. *American Sys. Eng'g Corp.*, B-265865, January 23, 1996, 96-1 CPD ¶ 56.
38. *Nat'l Toxicology Labs., Inc.*, B-281074.2, January 11, 1999, 99-1 CPD ¶ 5.
39. Steven W. Feldman, Legal And Practical Aspects of Debriefings: *Adding Value to the Procurement Process—Debriefings of Unsuccessful Offerors*, Army Lawyer, Sept.-Oct. 2001; Statement By Kenneth J. Oscar, Assistant Secretary of the Army for Research, Development, and Acquisition, before the Senate Committee on Armed Services, March 18, 1998, on Acquisition Reform.
40. 10 U.S.C. § 2305(b)(5); *OMV Med.*, Inc., B-281388, February 3, 1999, 99-1 CPD ¶ 53 n.3.