



Bid Protest Weekly

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Introduction

General Counsel, P.C.'s Government Contracts Practice Group is pleased to provide you with the *Bid Protest Weekly*. Researched, written and distributed by the attorneys of General Counsel, P.C., the *Bid Protest Weekly* allows the Government Contract community to stay on top of the latest developments involving bid protests by providing weekly summaries of recent bid protest decisions, highlighting key areas of law, agencies, and analyses of the protest process in general.

General Counsel, P.C.'s Government Contracts Group has over eighty years of combined government contract law experience (both as in-house and outside legal counsel), helping clients solve their government contract problems relating to the award or performance of a federal government contract, including bid protests, contract claims, small business concerns, and teaming and subcontractor relations.

If you have any questions or comments regarding the discussed content, or questions about bid protests, please feel free to contact the attorneys at General Counsel, P.C. at (703) 556-0411 or visit us at www.generalcounselaw.com.

1. Colonial Press International, Inc., B-403632, October 18, 2010

Link: [GAO Opinion](#)

Agency: Government Printing Office

Disposition: Protest denied.

Keywords: Responsibility Determination

General Counsel P.C. Highlight: With regard to determinations of nonresponsibility, GAO generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the agency or a lack of any reasonable basis for the determination.

Colonial Press International, Inc. (Colonial) protests the award of a contract under a solicitation issued by the U.S. Government Printing Office (GPO) for the production of 75,000 brochures.

Colonial was the previous awardee for the requirement, but was terminated for default. The original contract was terminated when Colonial refused to reprint the brochure, despite numerous quality issues. Following termination, GPO issued a solicitation to attempt to reprocur the requirement. Colonial submitted the lowest-priced quote, but was determined to be nonresponsible due to the previous default.

Colonial asserts that GPO's determination of nonresponsibility was improper, given that Colonial is currently challenging the termination for default before GAO's Contract Appeals Board. GAO states that it will review a reprocurement to determine whether the agency acted reasonably under the circumstances. With regard to determinations of nonresponsibility, GAO generally will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the part of the agency or a lack of any reasonable basis for the determination. GAO has specifically held that an agency may properly exclude a defaulted contractor from a reprocurement for the remaining work in the defaulted contract.

This view is consistent with various Board of Contract Appeals decisions reviewing agency's default terminations, which have long held that the contracting officer's broad discretion in conducting reprocurements includes the discretion to exclude the defaulted contractor from the repurchase. This reasoning will apply despite the fact that the protester has appealed to a

Board of Contract Appeals. GAO holds that the agency's decision to exclude Colonial from the reprocurement does not provide a basis for sustaining the protest. The protest is denied.

2. **Buy Rite Transport, B-403729; B-403768, October 15, 2010**

Link: [GAO Opinion](#)

Agency: Department of Veterans Affairs

Disposition: Protests denied.

Keywords: SDVO Set asides

General Counsel P.C. Highlight: The Veterans First Contracting Program provides the VA with independent authority to set aside contracts for Service Disabled-Veteran Owned (SDVO) Small Businesses and Veteran-Owned Small Businesses (VOSB) firms. SDVOSB firms receive first priority and acquisitions must be set aside for SDVOSB firms if the VA determines that there is a reasonable expectation that offers will be received by at least two SDVOSB firms and that award can be made at a fair and reasonable price.

Buy Rite Transport protests the Department of Veterans Affairs (VA) decision to set aside exclusively for service-disabled veteran-owned small businesses (SDVOSB) request for proposals (RFP) for laboratory specimen courier services.

The VA's requirements for laboratory specimen courier services for a VA health-care center in Oregon were originally issued as a VA-exclusive, veteran-owned small business set-aside for the transportation of laboratory specimens. The pre-solicitation notice for the procurement identified the North American Industry Classification System (NAICS) code for taxi services, but was issued under the NAICS code for Couriers and Express Delivery Services. The RFP was protested by a SDVOSB, claiming that it should have been set aside for SDVOs rather than for VOSBs. Under the VA rules, SDVO set asides have priority over VOSBs. In response to the protest, the VA advised GAO that it would take the corrective action and set aside the procurement for SDVOSB firms.

Prior to taking corrective action, the VA had conducted research using an online database of businesses eligible to participate in its SDVOSB program and found over 100 SDVOSB firms nationwide. The agency subsequently divided the geographical territory of the procurement into two separate areas and issued two solicitations covering each geographical area. Both new procurements were set aside for SDVOSB firms under the NAICS code for

Couriers and Express Delivery Services. Buy Rite, a VOSB firm, protested the VA's corrective action to set aside the solicitations for SVOSB firms.

GAO states that the Veterans First Contracting Program provides the VA with independent authority to set aside contracts for SDVOSB and VOSB firms. SDVOSB firms receive first priority and acquisitions must be set aside for SDVOSB firms if the VA determines that there is a reasonable expectation that offers will be received by at least two SDVOSB firms and that award can be made at a fair and reasonable price.

The protester argued that there was not two SDVOs available in the relevant geographical areas to perform this work and thus should not have been set aside for SDVOs and that the research for setting aside the procurement was done before the decision to divide the geographic scope of the procurement. GAO determined that there was no requirement that the SDVO offerors reside within the geographical area of the procurement. Further, GAO states that regardless of the precise date when the VA conducted its search, the search results provided a reasonable basis for the VA to conclude that it would receive at least two offers from SDVOSB firms. GAO also performed a search to confirm the accuracy of the VA's results. Finally, the VA's receipt of four offers from SDVOSB firms during the first solicitation further confirms the decision to set aside the requirements. In sum, GAO concludes that the VA's decision to set aside these procurements for SDVOSB firms was reasonable, considering its search and its receipt of four offers from SDVOSB firms in response to the prior solicitation, which was set aside for VOSB firms. The protests are denied.