



Government Procurement & Export UPDATE

LAW OFFICES

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GAO Grants Protest Challenging Sole-Source Award on Helicopter Contract

Without holding a competition, the Army awarded a sole-source contract to Rolls-Royce to develop and maintain data to allow field-maintenance and engine overhaul for “Kiowa” helicopters. Sabreliner filed a protest at the General Accounting Office (“GAO”) challenging the award. GAO granted Sabreliner’s protest finding that the Army’s “justification and approval” (“J&A”) — the document needed to justify a sole-source award — was deficient in three critical respects: (1) the J&A failed to describe accurately

the overhaul services that were being procured from Rolls-Royce; (2) the J&A grossly underestimated the contract length by 16 years; and (3) the J&A misstated the dollar value of the contract. In light of the deficiencies, the GAO recommended that the Army reassess its need to conduct a sole-source procurement and, given the extended length of the contract term, the GAO ruled that the Army should develop technical data to enable other offerors to be able to compete for future requirements to provide these services. ❖

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U.S. Munitions List expected to be cut

The Departments of Defense and State are soon expected to remove massive numbers of aircraft replacement parts from the U.S. Munitions List, meaning that henceforth no export licenses will be needed to export the parts removed from the List. The parts that are expected to be removed include parts from the Army’s Black Hawk helicopter, the UH-1 Huey helicopter, and the C-130 aircraft. Spare parts for military transport aircraft are also expected to be removed from the List.

The Departments of Defense and State are required to review one-quarter of the parts

on the Munitions List each year to determine whether the parts are properly included on the List. For parts that are included on the List, in excess of 45,000 export license applications are submitted to the State Department each year. Ninety-nine percent of these license applications are granted. If the expected deletions from the Munitions List are made, it is estimated that the number of license applications submitted each year will decrease by 10,000 to 35,000 applications submitted each year. ❖

McDonnell Douglas pays \$2.1M export fine

In 1995, the U.S. Government alleged that McDonnell Douglas made false and misleading statements on export license applications regarding the end-use and end-user of certain machine tools that the company exported to China. The used tools were sold to a Chinese-run government entity for the purported purpose of manufacturing commercial aircraft parts in China. However, McDonnell Douglas later learned and reported to the U.S. Government that the tools were found in a Chinese military facility. Notwithstanding that disclosure, the company was indicted for export fraud. As a result of McDonnell Douglas' payment of the \$2.1 million fine, all criminal and administrative charges were dropped. (*McDonnell Douglas is now part of Boeing.*) ❖

Contracting Officer's termination notice found to be invalid

When the Government terminates a contract for default, the Contracting Officer sends the contractor a termination notice which, among other things, advises the contractor of its right to appeal the termination. In a recent case, an agency board of contract appeals ruled that one such termination notice was invalid. Although the notice advised the contractor that it had the right to appeal the termination, the notice failed to inform the contractor where to file its appeal and the deadline for filing its appeal. ❖

End Notes....

The Air Force assured its contracting personnel that they already possess adequate authority under the Competition in Contracting Act to make sole-source buys, thereby bypassing "full and open competition," when making emergency buys to support Operation Enduring Freedom. ■ The House Small Business Committee approved a bill intended to provide additional compensation to small business contractors who experience increased security expenses on their government contracts in the wake of the September 11 attacks. ■ Congressional support is lining up behind the Boeing Company's efforts to convince the Air Force that Boeing's commercial 767 aircraft should be designated as the Air Force's next generation tanker aircraft replacing the aging fleet of KC-135E-aerial refueling tankers. ■ The Air Force awarded a \$20 million contract to Northrop Grumman to perform structural upgrades on the F-5 aircraft. ■ Rep. Tom Davis (R-Va.) is expected to introduce legislation next year known as the Services Acquisition Reform Act to reform the Government's acquisition of services, including providing financial incentives to service contractors who innovate and cut costs. ■ The Small Business Administration selected Fred Armendariz to head up its Office of Government Contracting.

Contractor fined \$1.2M for falsifying test results

A contractor was fined \$1.2 million under the False Claims Act for falsifying test results on its government contracts. The contractor admitted that over a nine year period, it falsely certified thousands of test results on components used in high reliability applications, including weapons systems. In addition to the civil fine under the False Claims Act, the contractor was also assessed a criminal fine of \$500,000 and placed on five years probation. ❖

GAO upholds small business protest

The GAO recently granted a protest filed by a disappointed bidder who challenged a Navy procurement award. One of the solicitation requirements stated that the Navy would favorably evaluate offerors who proposed to perform a large percentage of the work using small businesses. The protester was a small business and offered to perform all of the work itself or by using a small business subcontractor. GAO held that the Navy improperly failed to credit the portion of the work to be performed by the small business offeror itself toward the percentage of work performed by a small business. The GAO also held that the Navy improperly evaluated the awardee's key personnel when it evaluated all 11 key personnel without regard to whether the persons identified as key personnel were full or part-time. The GAO also held that the Navy ignored information that it had in its possession that one of the awardee's key personnel was no longer employed by the awardee. ❖