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Legal Trends and Caveats on Failure to Document Contractor Performance Information

An Additional Help for ADS Chapter 302

Revision Date: 05/05/2006
Responsible Office: OAA/P
File Name: 302sah_050506_cd44

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GAO has ruled that an agency's failure to document contractor performance and to provide it for use in source selection is sufficient basis to sustain a protest against the agency's contract award for the same services. It is reasonable to assume that this decision is applicable to procurements of similar services, rather than strictly the same service, and to procurements of commodities when similar commodities have been previously procured, to the same end.

1997 WL 113958 (Comp.Gen.), B- 275,554, 97-1 CPD P 114

COMPTROLLER GENERAL

*1 Matter of: International Business Systems, Inc.
March 3, 1997

Robert E. Cohen, Esq., Robert E. Cohen & Associates, for the protester.
Amer M. Syed, Esq., for Dulles Networking Associates Inc., the intervenor.
Dennis Foley, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency's evaluation of past performance was unreasonable is sustained where the technical evaluation scheme envisioned a price/past performance tradeoff among technically acceptable proposals to determine the best value to the government, and where the agency failed to consider the past performance of the protester on a contract involving the same agency, the same services, and the same contracting officer because an individual in the agency did not complete and return the past performance evaluation materials.