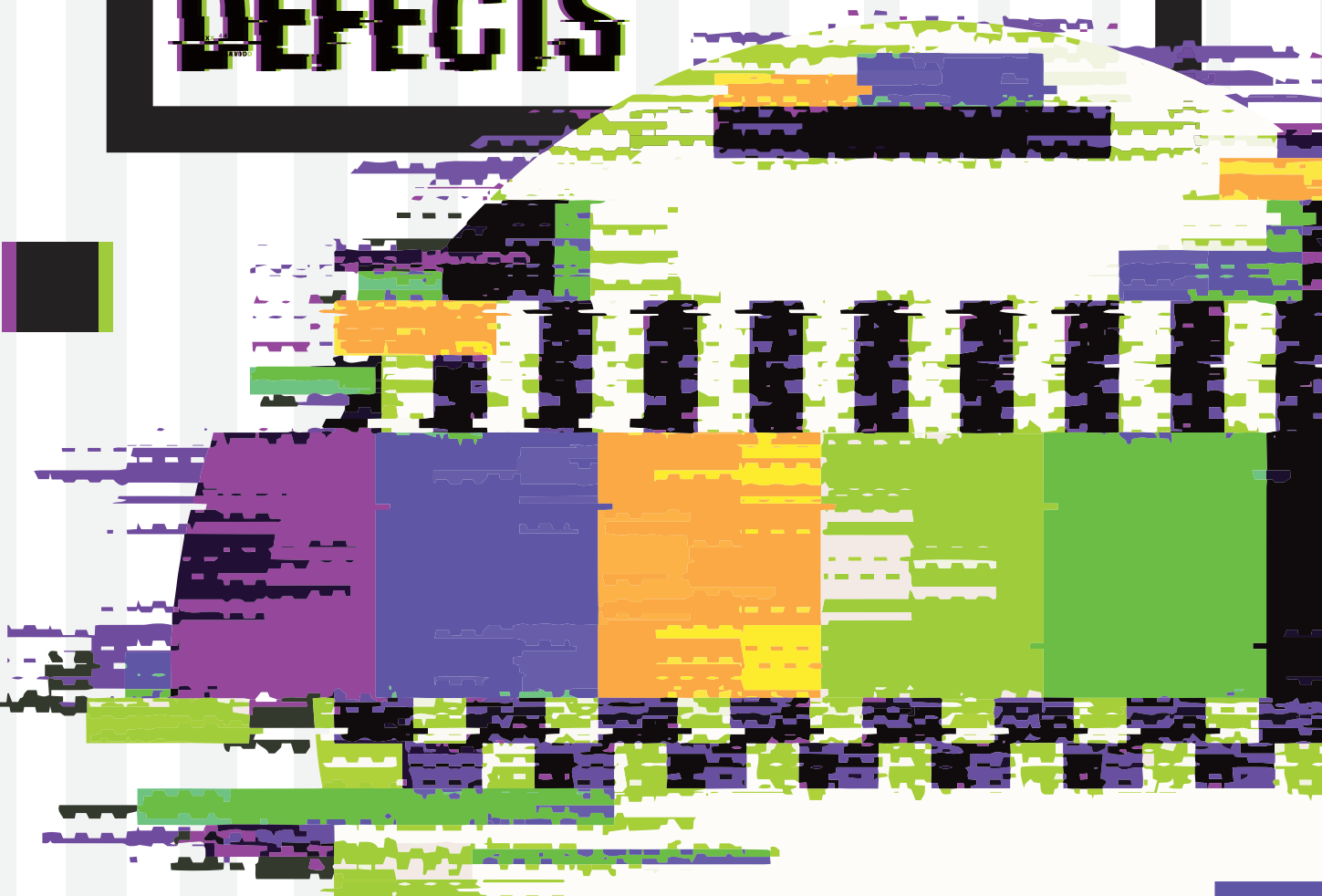


TEN COMMON PROPOSAL DEFECTS

What Bid Protests
Can Teach Us About
Writing Better
Contract Proposals
By Ross L. Crown



PROPOSALS TO PERFORM FEDERAL CONTRACTS MAY FAIL TO RESULT IN AWARDS FOR MANY REASONS.

Frequently, this failure is because the prospective contractor simply cannot compete on technical considerations, price, or past performance. However, on other occasions, a contract award is lost because of defects in the offeror's proposal.

Federal agencies expect an offeror to deliver an adequately written proposal for evaluation.¹ As such, it is an offeror's responsibility to submit a well-written proposal—with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. The proposal should affirmatively demonstrate the merits of the offeror's proposal, and if it fails to do so, the offeror risks rejection of the proposal.²

Bid protests before the Court of Federal Claims (COFC) and the Government Accountability Office (GAO) frequently turn on deficiencies in proposals submitted in response to a government solicitation. Looking at the past decisions in these cases, many of these defects could have been avoided if identified in advance. Consequently, protest decisions offer useful lessons as to why some proposals are rejected, and how they could have been improved.

The following are ten defects in contract proposals commonly identified in bid protest decisions.

#1. The Proposal Fails to Follow Instructions in Solicitation

A very common defect, which might seem easy for offerors to avoid, is failing to fol-

low the instructions for proposals set forth in the solicitation. Consider the following real-world examples.

Patricia A. Geringer³—The agency rejected a proposal where, contrary to the instructions in the solicitation, the disappointed offeror failed to provide a résumé for one of its key personnel listed in the proposal. The offeror's explanation—i.e., that the person whose résumé was omitted was not actually one of its key personnel—came too late to impact the evaluation of the proposal.

Simms Industries, Incorporated⁴—Where the request for proposals (RFP) required offerors to provide a description of its approach to performing the work, the protester did not present such a description. Rather, the offeror included some discussion of technical approach in its treatment of the sample problems presented in the solicitation. The RFP specifically required offerors to separately discuss their technical approaches under the "technical approach" section of the technical proposal. Therefore, the protest was denied.

Rel-Tek Systems & Design, Inc.⁵—Although the solicitation required software vendors to state they would comply with material requirements regarding acceptance, warranty, and software performance, the disappointed offeror proposed its own terms for performance of the stated requirements, rendering the proposal nonresponsive.

Systems Research Group, Inc.⁶—The agency found the protester's proposal incomplete. The solicitation required software vendors to break down tasks to the appropriate level and identify the labor category performing each task, the skill level of that labor category, and the amount of time it would take to perform each task. While the protester's proposal listed labor categories by way of its own unique position titles, it did not describe the skill level of the labor categories proposed to perform the tasks.

Constellation West, Inc. v. United States⁷—

In its proposal to provide IT services, the disappointed offeror did not include ceiling labor rates for all proposed option years in the pricing spreadsheet (as directed by the solicitation). Although the offeror maintained that the agency could have inferred the missing rates from other information in its proposal, the proposal was rejected. As the COFC explained:

[A]n agency is not required to sift through a proposal in order to identify information that the offeror failed to include in the correct place.⁸


#2. The Proposal is Poorly Organized

Many proposals are unsuccessful because they neglect to present information in a format that is reasonably accessible to the agency.

Shumaker Trucking and Excavating Contractors, Inc.⁹—The method by which the protester organized its proposal adversely affected its evaluation where the agency determined that while the proposal contained a long list of completed projects, the brief descriptions of the projects made it difficult to determine the type and scope of work performed.

International Medical Corps¹⁰—The agency noted as a deficiency in the disappointed offeror's proposal that, under the key personnel/staffing plan factor in the solicitation, no overall rationale or narrative was provided to explain the protester's complicated staffing plan and the proposal's organizational chart did not include all the positions shown in its staffing plan. The offeror appeared "to rely more upon a dizzying array of complex diagrams, figures, tables, charts, and graphs than a well-written explanation of its proposed technical approach."¹¹

Consummate Computer Consultants Systems, LLC¹²—Work histories included in the disappointed offeror's proposal did not clearly demonstrate that the proposed key personnel had the qualifications required by the solicitation, leading to rejection of the proposal. The offeror's argument that



the necessary qualifications were shown in the résumés submitted with the proposal was inadequate. According to GAO:

[An agency is not] required to cobble together and draw broad inferences from the information provided in the [proposal's] résumés in order to conclude that the requirements of the [request for quotation (RFQ)] were met.¹³

#3. The Proposal Fails to Demonstrate Adequate Understanding of Agency Requirements

Proposals are often rejected when they fail to adequately persuade the agency that the offeror actually understands what the agency is looking for in the contract.

A Plus Services Unlimited¹⁴—A protester's proposal evaluation was downgraded under the "technical management" subfactor because the agency found a critical understaffing of the labor hours and positions required by a contract for food services. The agency concluded that the offeror did not seem to fully comprehend the full scope of what was required under the contract (the offeror had proposed to staff only one side of a two-sided dining facility).

Deborah Bass Associates¹⁵—In response to a solicitation to design communication strategies, the disappointed offeror's proposal did not offer to deliver the contemplated product at the completion of the first phase of the contract (as required by the solicitation). The agency found that the offeror considered the deliverables at the end of the first phase to consist only of options, with actual delivery to be at a later time. Thus, the agency concluded that the offeror either misunderstood the

requirements and goals of the solicitation, or could not deliver the required product within the contract's time limits.

Applied Management Solutions, Inc.¹⁶—The agency rejected a proposal to provide support services to disaster medical response teams because it was overly detailed and "excessive of what was envisioned."¹⁷ According to the agency, the proposal would require a rewrite of the approach to become technically acceptable. Thus, the proposal was rejected because it did not adequately demonstrate the vendor's understanding of the level of effort necessary to perform the required scope of work.

Henry Schein, Inc.¹⁸—A proposal to manage a vaccine distribution program was rejected in part because the disappointed offeror evidenced significant misunderstanding about the roles played by the contractor and the agency in inventory management. Although the RFP provided that the agency would purchase the vaccines, the proposal demonstrated the offeror's belief that the contractor would make decisions about what products to buy and to whom orders would be issued.

#4. The Proposal Is Not Tailored to Agency Requirements

Proposals will be found unacceptable where they fail to offer solutions specifically designed to satisfy the agency's needs.

EG&G Washington Analytical Services Center, Inc.¹⁹—Based on the agency's finding that the offeror's technical approach suffered from a lack of specifics, the agency rejected the proposal. The agency concluded the proposal was "generic," in that it was derived from the offeror's program experience under an unrelated contract.

Caldwell Consulting Associates²⁰—A proposal to develop training courses for an agency was rejected where the offeror stated it would gather the information

needed to design these courses from agency headquarters in Washington, DC, rather than the agency installations in California (where the training courses would be given). The agency determined the offeror would not know enough about the "unique culture and problems"²¹ at the facilities where the training was needed.

#5. The Proposal Fails to Present Adequate Detail

Perhaps the most frequently found defect in contract proposals is failing to present enough detail to adequately explain how the offeror will perform the contract.

SBS Technical Services²²—A protester's blanket offer "to buy whatever computer diagnostics were required for each site"²³ was found not to be an adequate substitute for more complete and detailed information in its proposal establishing that it fully understood and would meet the government's needs with regard to diagnostics.

TRW Inc.²⁴—Although the protester contended it could have readily furnished additional information during discussions to establish compliance with solicitation requirements, an offeror has an obligation to submit a proposal that *fully* demonstrates that the resulting contract performance will meet those requirements.

Systems Research Group, Inc.²⁵—The agency rejected a proposal for IT services where the disappointed offeror's mere assumption that its software would operate on the agency's computer system was unaccompanied by any detail, assurance, or plan concerning its passage through the government's accreditation process. In addition, the offeror did not address the issue of ownership of the software—which was necessary because once it was installed on a government system, the software and data it extracted would become government property.

Henry Schein, Inc.²⁶—In response to a solicitation for management and distribution of vaccines, the protester did not

adequately explain how it would use IT to oversee allocations, nor how refrigerated or frozen vaccines would be maintained from storage through delivery to ensure their viability.

Consummate Computer Consultants Systems, LLC²⁷—An offeror’s mere restatement of the solicitation requirements pertaining to research experience, with check marks next to them, was determined not to be adequate to demonstrate that the proposed project manager had the required experience in those areas.

#6. The Proposal Does Not Include Commitments from Subcontractors

Proposals that rely on performance by specific subcontractors may be rejected if the proposal does not include commitments from these subcontractors to deliver the work if the offeror is awarded the contract.

Engineers International, Inc.²⁸—In response to an RFP for geologic and geotechnical assessment services, the protester’s proposal did not demonstrate in-house photograph interpretation capability or experience, and failed to show any commitments from an aerial photogrammetric subcontractor with such experience. The protester’s statement that it would take bids on these subcontract services after receiving the contract award was not enough to remedy this deficiency.

ToxCo, Inc.²⁹—Where an RFP requested proposals to process hazardous waste in spent torpedo boilers, the protester failed to demonstrate that it had enforceable, firm commitments from any of its proposed processing subcontractors. This failure constituted a technical weakness in the proposal, and supported the agency’s decision to reject the proposal.

Deborah Bass Associates³⁰—A proposal to design communication strategies to improve relationships between state and county child protection agencies and the news media was rejected by the agency where the disappointed offeror had no commitments from any of the several

consultants the offeror proposed to work on the contract.

Creative Management Technology, Inc.³¹—The agency denied award of a contract for technical engineering and space lift services where the disappointed offeror’s proposal failed to include letters of commitment from proposed on-call engineering subcontractors. As a result, the agency downgraded the protester’s performance risk rating. In its protest, the offeror argued that the agency never asked for such letters. Although letters of commitment were not required, based on questions the agency issued during discussions, the protester reasonably should have been able to ascertain that stronger evidence of its ability to rely on its subcontractors was needed to support its proposal. In contrast, the awardee of the contract did provide letters of commitment from its subcontractors.

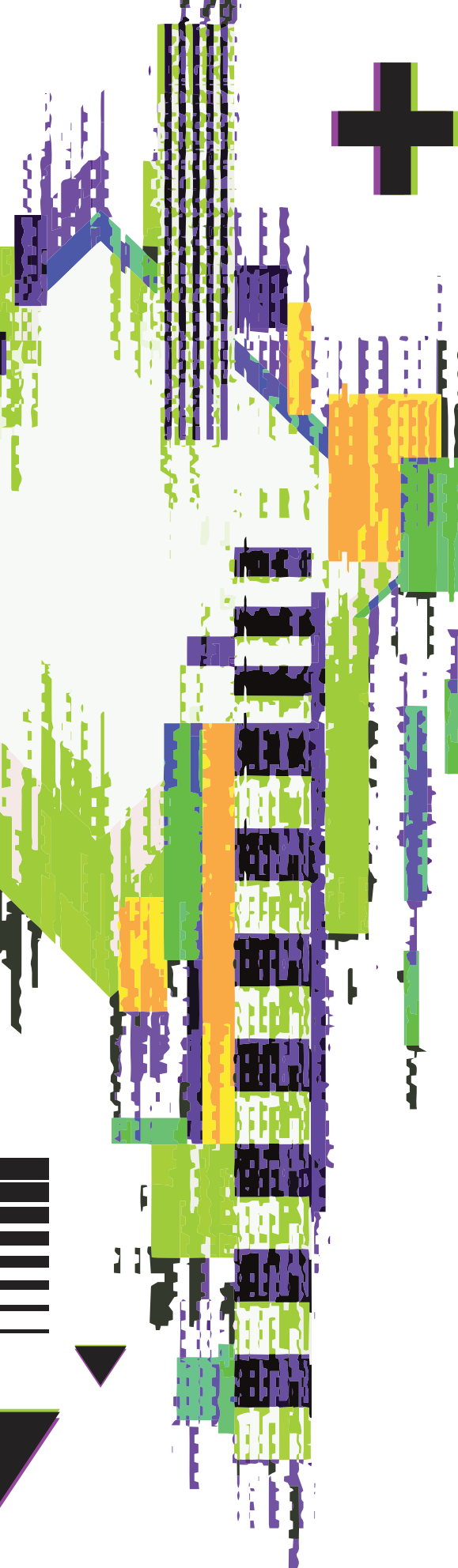
#7. The Proposal Does Not Offer Added Value

Many proposals are rejected because, compared to competing proposals, they fail to offer added value to their technical approach, even if the offeror complies with the requirements of the solicitation.

Federal Bureau of Investigation et al.³²—In response to a solicitation for acquisition of transcribing and dictating equipment and related warranty and maintenance services, a proposal was rejected because the disappointed offeror would not provide on-site maintenance service. The offeror argued that if on-site maintenance had been required by the solicitation, it would have offered the service. Nevertheless, the agency decided to award the contract to a competitor who would provide on-site maintenance.

Hill’s Capitol Security, Incorporated³³—An agency’s solicitation for security services required offerors to provide for drug testing of their employees. In its proposal, the protester proposed to conduct only “reasonable suspicion” drug testing, as opposed to the random testing proposed by the awardee of the contract. The agency deemed random testing more reliable. Although the solicitation only required offerors to provide a plan for designing and implementing a drug testing pro-





gram, there was nothing in the RFP that precluded offerors from proposing more stringent random testing under the drug plan subfactor.

Crown Support Services, Inc.³⁴—The protester’s safety plan was deemed defective because it did not address safety issues pertinent to the contract being awarded. During discussions, this defect was brought to the attention of the offeror, who responded that the safety plan it had submitted with its proposal was only a *preliminary* safety plan, and that it intended to deliver a final plan meeting the specific contract requirements within 30 days after award (as allowed by the RFP). The agency’s award of the contract to a competitor (who had included a safety plan in its proposal that better addressed the contract requirements) was upheld.

#8. The Proposal Poses Unacceptable Performance Risk

This proposal defect is the opposite of a proposal that fails to offer added value. In other words, the offeror goes too far in the other direction. These proposals present what appear to be creative approaches to technical issues or innovative cost-saving strategies, but they may be perceived by the agency as posing an unacceptable risk, and that the offeror will not be able to perform the contract.

Proteus Corporation et al.³⁵—After evaluating a proposal for providing technical support services to a weapons training range, the agency rejected the proposal as too risky. “Risk” was an evaluation criterion, and the agency found the disappointed offeror’s low staffing, extensive cross-utilization, and use of management personnel to perform work-level tasks endangered contract scheduling and could potentially have a negative effect on performance in terms of lost missions, degraded pilot training, and budget adjustments.

HMX, Inc.³⁶—A proposal for reusable launch vehicle systems engineering did not provide adequate support for refurbishment costs. The largely unsupported,

summary cost estimate was substantially lower than historical costs. Under these circumstances, the agency (reasonably) found as significant weaknesses in the proposal that the price was unsupported, did not include certain costs, and appeared to be unreasonably low. Moreover, the agency determined that the disappointed offeror’s schedule was “highly unrealistic.” The proposal did not provide adequate margins for probable schedule delays and did not adequately identify risks associated with the tight schedule.

#9. The Offeror Fails to Ask Questions

Proposals may be rejected in instances where the offeror could have submitted a stronger proposal by clarifying the agency’s requirements with questions prior to the deadline for receipt of proposals, yet neglects to take advantage of this opportunity.

Sallyport Global Holdings, Inc. v. United States³⁷—Contrary to the requirements of the RFQ, a proposal to provide electrical safety assessments and related services to overseas military installations was rejected because it did not identify a project manager who would be deployed to the Middle East. To the extent the protester needed clarification of the agency’s deployment requirements, it had the opportunity to ask questions of the contracting officer prior to submission of its proposal, but failed to do so.

EG&G Washington Analytical Services Center, Inc.³⁸—Where an RFP specifically encouraged offerors to submit questions concerning, or to request clarification of, any aspect of the RFP prior to the closing date, a protest contending that the agency’s requirements were not fully disclosed was denied because the disappointed offeror did not avail itself of the opportunity to ask questions.

#10. The Offeror Fails to Timely Protest Apparent Improprieties in the Solicitation

Weak proposals often result from ambiguities or errors in the solicitation. In subsequent protests, disappointed offerors whose proposals were rejected frequently blame the terms of the solicitation. These protests are usually found to be untimely.

The COFC will dismiss a protest challenging a solicitation containing a patent error or ambiguity if it is not asserted prior to award of the contract.³⁹ Similarly, GAO disposes of arguments directed to the solicitation by ruling that the protester should have protested the terms of the solicitation prior to the deadline for receipt of proposals. Bid protest regulations governing GAO require that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals be filed by the closing date.⁴⁰

Phoenix Management, Inc. v. United States⁴¹

—During discussions concerning award of a contract for air base operative services, the protester defended its rejected proposal by alleging that the solicitation improperly excluded information required by the offerors to prepare a competitive proposal, failed to disclose that certain costs would be evaluated, and did not provide for evaluation of the offeror's past performance. The protest was dismissed as untimely because the solicitation was not challenged prior to the deadline for submission of proposals.

A Plus Services Unlimited⁴²—The protester alleged that the agency improperly utilized an evaluation scheme under which technical considerations were more important than price. However, this contention was found to be untimely raised because the evaluation scheme was clearly stated in the solicitation. To be "timely," a protest based on this contention should have been filed prior to submission of initial proposals.

SBS Technical Services⁴³—A protest contending that the equipment quoted by

the offeror included features that made it superior to the brand-name equipment specified by the agency was found to be untimely. The protester could not challenge the need for certain requirements in the solicitation because this issue was not raised prior to receipt of bids.

Lessons to be Learned

While many contract proposals are destined to be rejected in favor of stronger proposals from competitors, some proposals would have an increased chance of resulting in contract awards if the offerors could remedy proposal deficiencies in advance. Improved understanding of the reasons why agencies reject proposals and why these negative outcomes are upheld in bid protests will produce better proposals. **CM**

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ENDNOTES

1. See, e.g., *A Plus Services Unlimited*, B-255198 et al. (January 31, 1994), 94-1 CPD ¶ 52.
2. See, e.g., *Henry Schein, Inc.*, B-405319 (October 18, 2011), 2011 CPD ¶ 264.
3. *Patricia A. Geringer*, B-247562 (June 11, 1992), 92-1 CPD ¶ 511.
4. *Simms Industries, Incorporated*, B-252827 et al. (October 4, 1993), 93-2 CPD ¶ 206.
5. *Rel-Tek Systems & Design, Inc.*, B-280463.3 (November 25, 1998), 99-1 CPD ¶ 2.
6. *Systems Research Group, Inc.*, B-291855 (March 21, 2003), 2003 CPD ¶ 64.
7. *Constellation West, Inc. v. United States*, 125 Fed. Cl. 505 (2016).
8. *Ibid.*
9. *Shumaker Trucking and Excavating Contractors, Inc.*, B-290732 (September 25, 2002), 2002 CPD ¶ 169.
10. *International Medical Corps*, B-403688 (December 6, 2010), 2010 CPD ¶ 292.
11. *Ibid.*
12. *Consummate Computer Consultants Systems, LLC*, B-410566.2 (June 8, 2015), 2015 CPD ¶ 176.
13. *Ibid.*
14. B-255198 et al. (see note 1).
15. *Deborah Bass Associates*, B-257958 (November 9, 1994), 94-2 CPD ¶ 180.
16. *Applied Management Solutions, Inc.*, B-291191 (November 15, 2002), 2002 CPD ¶ 202.

17. *Ibid.*
18. B-405319 (see note 2).
19. *EG&G Washington Analytical Services Center, Inc.*, B-242149 (April 4, 1991), 91-1 CPD ¶ 349.
20. *Caldwell Consulting Associates*, B-242767 et al. (June 5, 1991), 91-1 CPD ¶ 53.
21. *Ibid.*
22. *SBS Technical Services*, B-259934 (April 19, 1995), 95-1 CPD ¶ 20.
23. *Ibid.*
24. *TRW Inc.*, B-260779 et al. (August 7, 1995), 95-2 CPD ¶ 57.
25. B-291855 (see note 6).
26. B-405319 (see note 2).
27. B-410566.2 (see note 12).
28. *Engineers International, Inc.*, B-224177 (December 22, 1986), 86-2 CPD ¶ 699.
29. *ToxCo, Inc.*, B-254912 (January 26, 1994), 94-1 CPD ¶ 41.
30. B-257958 (see note 15).
31. *Creative Management Technology, Inc.*, B-266299 (February 9, 1996), 96-1 CPD ¶ 61.
32. *Federal Bureau of Investigation et al.*, B-245551 et al. (June 11, 1992), 92-1 CPD ¶ 507.
33. *Hill's Capitol Security, Incorporated*, B-250983 (March 2, 1993), 93-1 CPD ¶ 190.
34. *Crown Support Services, Inc.*, B-284471 (April 21, 2000), 2000 CPD ¶ 70.
35. *Proteus Corporation et al.*, B-270094 et al. (February 8, 1996), 96-1 CPD ¶ 165.
36. *HMX, Inc.*, B-291102 (November 4, 2002), 2003 CPD ¶ 52.
37. *Sallyport Global Holdings, Inc. v. United States*, 129 Fed. Cl. 371 (2016).
38. B-242149 (see note 19).
39. See, e.g., *COMINT Systems Corp. v. United States*, 700 F.3d 1377 (Fed. Cir. 2012).
40. See, e.g., B-242767 et al., note 20.
41. *Phoenix Management, Inc. v. United States*, 125 Fed. Cl. 170 (2016).
42. B-255198 et al. (see note 1).
43. B-259934 (see note 22).

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