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**Digests of Decisions
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Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
Milton J. Socolar

General Counsel
James F. Hinchman

Deputy General Counsel
Vacant

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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, Pub. L. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by the file number and date, e.g., B-229329.2, Sept. 29, 1989. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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Appropriations/Financial Management

B-235405, March 19, 1990

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Overpayments

After requesting relief of liability for an imprest fund cashier for an overpayment of \$180, GSA determined that it could not make the certification required by 31 U.S.C. § 3527 (1982) that the overpayment was not the result of fault or negligence on the part of the cashier. Because the terms and conditions of the statute cannot be satisfied, GAO is unable to grant relief for the cashier.

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Imprest funds
- ■ ■ Adjustments
- ■ ■ ■ GAO authority

GSA requested GAO to adjust the imprest fund account under 31 U.S.C. § 3530 (1982) for an overpayment caused by the fault or negligence of the cashier. Section 3530 authorizes the affected agency, and not GAO, to make such adjustment, when the criteria for adjustment set forth in that section have been met.

B-235044, et al., March 20, 1990

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Substitute checks

Relief is granted Treasury disbursing official under 31 U.S.C. § 3527(c) from liability for three erroneous payments resulting from the payees' negotiation of both the original and replacement checks. The second checks were printed mistakenly. The disbursing official maintained and enforced an adequate system of procedures and controls to avoid errors and there was no indication of bad faith or a lack of due care.

B-236146.2, March 20, 1990

Appropriations/Financial Management

Budget Process

■ Funds transfer

■ ■ Trust funds

■ ■ ■ Accounts

■ ■ ■ ■ Audits

BIA's appropriation requires that prior to transferring Indian trust fund accounts to Security Pacific, BIA audit and reconcile the accounts and have the reconciliation certified by a party independent of the party who made the reconciliation.

Civilian Personnel

B-234825, March 6, 1990

Civilian Personnel

Relocation

- Personnel
 - ■ IPA
 - ■ ■ Return travel
 - ■ ■ ■ Eligibility
-

Civilian Personnel

Relocation

- Relocation travel
- ■ Eligibility
- ■ ■ Time restrictions

A state government employee, who performed several consecutive 1-year assignments with the federal government in Washington, D.C., under Intergovernmental Personnel Act (IPA) agreements, completed his last assignment in July 1983. He did not perform authorized return travel and transportation at that time and now seeks clarification of his current travel entitlements. Under the Federal Travel Regulations, travel is to be performed "as soon as possible," with reasonable delays permitted. Since the individual made no effort to perform return travel in 1983 and instead accepted other non-IPA jobs in Washington, D.C., for more than 5 years before he inquired as to his travel reimbursement rights, such delay is not reasonable. Hence, any travel that he might perform may not be considered as incident to termination of his last IPA assignment, and his entitlements have expired.

B-233214.2, March 8, 1990

Civilian Personnel

Travel

- Local travel
 - ■ Travel expenses
 - ■ ■ Reimbursement
-

Civilian Personnel

Travel

- Temporary duty
- ■ Travel expenses
- ■ ■ Privately-owned vehicles
- ■ ■ ■ Mileage

While the Food Safety and Inspection Service may wish to designate a meat or poultry plant where a food inspector performs duties as within his official duty station, the designations which the Service chose here for two food inspectors entitle them to mileage reimbursement for temporary duty travel between their homes and plants outside their designated official duty stations.

B-235845, March 12, 1990***

Civilian Personnel

Travel

- Travel expenses
- ■ Reimbursement
- ■ ■ Witnesses

The statutory provision in 5 U.S.C. § 5751, authorizing reimbursement of travel expenses of government employees called as witnesses and the implementing regulations in 28 C.F.R. Part 21 are applicable to discrimination hearings before an Administrative Judge of the Equal Employment Opportunity Commission (EEOC). An employee who appears as a witness at such a hearing is in an official duty status and entitled to reimbursement for travel expenses.

Civilian Personnel

Travel

- Travel expenses
- ■ Reimbursement
- ■ ■ Witnesses

A current employee of the Department of Veterans Affairs (VA) was summoned to testify at an EEOC hearing concerning the witness's official duties at his former agency, the Coast Guard. The VA must initially authorize and pay the employee's travel expenses so as not to disrupt the equal employment opportunity process. Then, the VA is entitled to reimbursement from the respondent agency (Coast Guard), which is ultimately responsible for the cost of the employee's travel to attend the hearing.

B-233189, March 19, 1990

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Eligibility
- ■ ■ Adverse personnel actions
- ■ ■ ■ Compensatory damages

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

B-236754, March 21, 1990

Civilian Personnel

Compensation

- Retroactive compensation
 - ■ Eligibility
 - ■ ■ Adverse personnel actions
 - ■ ■ ■ Determination
-

Civilian Personnel

Leaves Of Absence

- Suspension
- ■ Disciplinary actions
- ■ ■ Propriety
- ■ ■ ■ AWOL

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

B-230703, March 23, 1990***

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Loan origination fees
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

If an employee retains a mortgage broker who performs necessary administrative services that assist the ultimate lender in processing a loan, the employee may be reimbursed for the loan origination fees charged by both the broker and lender. The employee's total reimbursement, however, is limited to the customary fee charged by financial institutions in the area of the residence. Furthermore, the services of the broker must not be duplicated by the lender and must not increase the loan origination fee over what the lender would have charged in the absence of a broker having been involved.

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Loan origination fees
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

The fact that an employee's loan obtained to purchase a residence at his new station includes an amount for prepaid finance charges would not affect the amount he may be reimbursed for a loan origination fee which is charged as a percentage of the total loan.

B-233388, March 23, 1990

Civilian Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

An employee converted bonus certificates he received from an airline's frequent flyer program based on official travel into free tickets which he used for personal travel. The employee is indebted to the government for the fair market value of the tickets, determined as of the dates he exchanged the certificates for flight tickets.

Civilian Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

An employee redeemed a large quantity of mileage points received from an airline's frequent flyer program based on official travel. He used the free tickets he received for personal travel, but the airline's records as to the redemption of points during that period are no longer available. Since the employee is indebted for the fair market value of the tickets, the department may construct a hypothetical use of the points, choosing travel from possible locations.

Civilian Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

An employee earned mileage points from an airline's frequent flyer program which have not been redeemed. The department should require the employee to account for the mileage points and to obtain certificates good for free tickets to be used by the department for official travel.

B-237169, March 23, 1990

Civilian Personnel

Travel

- Advances
- ■ Debt collection
- ■ ■ Waiver
- ■ ■ ■ New appointment

In reliance on erroneous advice, a new employee incurred per diem expenses during orientation at her permanent duty station. While her claim for per diem may not be paid, waiver of her remaining indebtedness for the travel advance may be considered under 5 U.S.C. § 5584 (1988) if the employee incurred the expenses in good faith reliance on erroneous agency advice and if collection of the debt would be against equity and good conscience.

B-237237, March 23, 1990***

Civilian Personnel

Relocation

- Taxes
- ■ Allowances
- ■ ■ Eligibility

A transferred employee sold her residence at her old duty station and requests reimbursement for state income taxes required to be paid on the profit realized from that sale as a Relocation Income Tax (RIT) allowance under 5 U.S.C. § 5724b (1988). The claim is denied. Under the statute and chapter 2, part 11 of the Federal Travel Regulations (FTR), only those relocation expenses and allowances which are reimbursable elsewhere in the FTR, chapter 2, may be included in the computation of a RIT allowance. Since state income taxes paid on the residence sales profit are not reimbursable under the FTR in the first instance, such taxes are not includable in computation of a RIT allowance. See *Guerry G. Notte*, B-223374, Feb. 17, 1987, and decisions cited.

Civilian Personnel

Relocation

- Taxes
- ■ Allowances
- ■ ■ Eligibility

A transferred employee who was required to have Federal Insurance Contributions Act (FICA) taxes withheld from her relocation expense reimbursement, may not be reimbursed those taxes under the provisions of 5 U.S.C. § 5724b (1988) and chapter 2, part 11 of the Federal Travel Regulations (FTR). Only the moving and relocation expenses listed in paragraph 2-11.3(a) through (i) of the FTR may be included in the computation of a Relocation Income Tax allowance.

B-238126, March 27, 1990

Civilian Personnel

Compensation

- Payroll deductions
- ■ Health insurance
- ■ ■ Overdeductions
- ■ ■ ■ Statutes of limitation

A portion of an employee's claim for excess health benefits premiums deducted from her pay, which accrued more than 6 years from the date the claim was filed in GAO, is barred by the 6-year limitation set forth in 31 U.S.C. § 3702(b) (1982). Although the employee's agency delayed filing the claim with GAO, we are without authority to waive or modify the application of 31 U.S.C. § 3702(b).

B-237507, March 30, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Loan origination fees
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

B-237693, March 30, 1990

Civilian Personnel

Compensation

■ **Overtime**

■ ■ **Eligibility**

■ ■ ■ **Travel time**

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

Military Personnel

B-226563, March 2, 1990

Military Personnel

Pay

- Survivor benefits
- ■ Annuities
- ■ ■ Eligibility
- ■ ■ ■ Former spouses

Where retired Air Force officer's court-ordered election to provide his former spouse with annuity coverage under the Survivor Benefit Plan (SBP) was invalid under then-current SBP law, Air Force should not have begun deducting premiums from his pension. Accumulated amount should not be refunded to the officer, however, since the court clearly intended the premium amount to benefit the former spouse. Instead, the Air Force should retain the money pending further court action.

B-232112, March 8, 1990

Military Personnel

Pay

- Additional pay
- ■ Eligibility
- ■ ■ Meals

Enlisted military personnel performing security duty at a location within the corporate limits of their permanent duty station, are not entitled to reimbursement for meals and snacks eaten while on duty.

B-234163, March 8, 1990

Military Personnel

Pay

- Overpayments
- ■ Waiver
- ■ ■ Statutes of limitation

The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. app. § 525, does not toll the 3-year limitation period for a member of the uniformed services while on active duty to file an application with the Comptroller General under 10 U.S.C. § 2274 for waiver of an overpayment of pay.

B-236258, March 14, 1990

Military Personnel

Pay

- Retirement pay
- ■ Reduction
- ■ ■ Computation

The reduction in a member's retired or retainer pay that is allocable to a pay period required by 5 U.S.C. § 5532(c) when the combined annual rate of retired pay and annual rate of basic pay for a civilian position with government exceeds level V of the Executive Schedule should be accomplished by converting all factors to a biweekly pay period basis for the purpose of determining whether the pay cap was exceeded and if it is exceeded the deduction should be implemented converting the excess to a yearly then a monthly rate.

B-238379, March 16, 1990

Military Personnel

Pay

- Retroactive pay
- ■ Claim accrual dates
- ■ ■ Statutes of limitation

Under 31 U.S.C. § 3702(b), the claim of a former Air Force member for back pay and allowances may not be considered, since it was received in GAO more than 6 years after it first accrued.

B-238189, March 22, 1990***

Military Personnel

Pay

- Retirement pay
- ■ Computation
- ■ ■ Dual compensation restrictions
- ■ ■ ■ Bonuses

Military Personnel

Pay

- Retirement pay
- ■ Reemployed annuitants
- ■ ■ Dual compensation restrictions
- ■ ■ ■ Bonuses

A bonus received by a retired member employed in a civilian position with the government should not be considered in computing the reduction in retired pay required by 5 U.S.C. § 5532(c) when an individual's combined retired pay and pay for the civilian position exceeds level V of the Executive Schedule as a result of the bonus, since the statute refers to the basic pay of the position.

B-232319, March 23, 1990

Military Personnel

Pay

- **Survivor benefits**
- ■ **Annuities**
- ■ ■ **Eligibility**
- ■ ■ ■ **Former spouses**

Where a retired service member was ordered by a court in September 1984 to provide a Survivor Benefit Plan (SBP) annuity to his former spouse, and thereafter failed to properly and timely complete the election process, the former spouse was not entitled to an annuity because at that time the law required timely completion of the election process. However, if the former spouse later obtains a second court order enforcing the original one, which is issued on or after November 14, 1986, the effective date of an amendment to the SBP law permitting court ordered deemed elections, and which requires such an election, then the former spouse is entitled to an SBP annuity starting on the first day of the first month after a proper request for a deemed election is received by the service accompanied with a copy of second order.

B-229351, March 28, 1990

Military Personnel

Travel

- **Commuting expenses**
- ■ **Reimbursement**
- ■ ■ **Eligibility**

An Army member was ordered on a permanent change of station from Munich to Augsburg, Germany. Although government quarters were available for him in Augsburg and he was told that if he elected not to use them and commute, it would be at his personal expense, he claims travel allowances for commuting. His claim can not be allowed because the commuting between abode and permanent duty station is the member's personal responsibility for which travel allowances are not payable.

Miscellaneous Topics

B-236146, March 13, 1990***

Miscellaneous Topics

Finance Industry

- Financial institutions
- ■ Accounting services
- ■ ■ Contract awards
- ■ ■ ■ Propriety

So long as a federal disbursing officer exercises managerial responsibility for reviewing and overseeing disbursement operations and discharges other judgmental tasks set forth in 31 U.S.C. § 3325, 31 U.S.C. § 3321 does not preclude an agency from contracting with a private bank to perform the ministerial, operational aspects of disbursement, such as printing checks, delivering checks to payees, and debiting amounts from accounts.

Procurement

B-237990, March 1, 1990

90-1 CPD 251

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest that a source listed in request for quotations (RFQ) is not a manufacturer is untimely since it was filed more than 10 working days after a contracting agency letter advised the protester that only manufacturers could be listed as sources in RFQs.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest that source listed in solicitation was improperly approved first raised more than 6 months after closing date and subsequent award is dismissed as untimely since the matter was not diligently pursued.

B-238460.2, March 5, 1990

90-1 CPD 252

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Reconsideration of prior dismissal of protest as untimely is denied where protester fails to show any error of fact or law that would warrant reversal or modification of prior decision.

Procurement

Competitive Negotiation

- Requests for proposals
 - ■ Cancellation
 - ■ ■ Justification
 - ■ ■ ■ Competition enhancement
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Where protester was improperly excluded from competition and there was no need for an immediate award, in view of the mandate of the Competition in Contracting Act of 1984 for full and open competition, when the exclusion came to agency's attention, the government's interests would have been best served by canceling solicitation and giving all responsible sources a fair opportunity to compete on resolicitation.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protest is sustained where agency failed to comply with regulatory requirement concerning inclusion of those furnished solicitations on the solicitation mailing list.

Procurement

Contract Management

- Contract administration
 - ■ Commercial products/services
 - ■ ■ Compliance
 - ■ ■ ■ GAO review
-

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Whether a contract awardee is capable of and does comply with a commercial product requirement involves matters of affirmative responsibility and contract administration which are within the discretion of the procuring agency and generally not reviewable by the General Accounting Office.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Administrative determination
- ■ ■ ■ GAO review

Agency may correct contract award error by terminating improper award.

Procurement

Contract Management

- Contract administration
- ■ Domestic products
- ■ ■ Compliance
- ■ ■ ■ GAO review

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Whether a contract awardee is capable of and does comply with domestic product requirement involves matters of affirmative responsibility and contract administration which are within the discretion of the procuring agency and generally not reviewable by the General Accounting Office.

B-237727, March 7, 1990**90-1 CPD 255**

Procurement

Small Purchase Method

- Contract awards
- ■ Propriety

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Where both the low offeror and the second low offeror on a small purchase procedure request for quotations misidentified part numbers of the same offered alternate product, second low offeror's protest of the award is denied since the protester was not prejudiced by the acceptance of the lower-priced offer of the same product, given the relatively informal nature of small purchase procedures.

B-238812, March 7, 1990**90-1 CPD 256**

Procurement

Bid Protests

- GAO authority

Protest that contracting agency improperly disclosed proposed awardee's price to the protester—after revised best and final offers were submitted but prior to award—is dismissed, where the protester was not competitively prejudiced by the agency's action.

B-233601, March 8, 1990

Procurement

Payment/Discharge

- Shipment costs
- ■ Rate schedules
- ■ ■ Applicability

Solicitation for tenders cautioned carriers that because the purpose of the solicitation was to maximize competition by individual carriers the government would not accept the tenders of ratemaking bureaus or associations. The provision is irrelevant to the computation of charges for shipments ordered from a carrier that did not participate in the solicitation with a tender for the routes involved, so that in computing charges the government may follow the normal practice of referring to bureau or association tenders for applicable rates.

B-237114.2, March 8, 1990

90-1 CPD 257

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency improperly failed to conduct discussions and to provide notice that discussions were concluded in request for best and final offers (BAFO) is denied where the record shows that offerors were notified in writing of deficiencies in proposals and requested to address concerns in BAFO by a specified date.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Risks

Protest that currency exchange rate fixed as of award date subjects contractor to unreasonable risk is denied where risk did not discourage offerors from submitting proposals. Contracting agency may properly structure a procurement to impose maximum risk on the contractor and minimize potential burdens on the government.

B-237584, March 8, 1990

90-1 CPD 258

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Preferences
- ■ ■ ■ Eligibility

Agency's determination that a small disadvantaged business (SDB) was not a regular dealer in air cooled chiller systems, and thus was not eligible for an SDB evaluation preference, did not have a reasonable basis where the contracting officer rejected the SDB's certification as a regular dealer without any inquiry or investigation, and without explanation applied eligibility criteria in determining the SDB's regular dealer status which depart significantly from regulations implementing the Walsh-Healey Act which agency reports it has adopted.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials, or that definitive responsibility criteria contained in the solicitation were misapplied.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Pre-award surveys
- ■ ■ ■ Administrative discretion

Contracting agency is not required to conduct a pre-award survey if the contracting officer believes he has sufficient information available to allow him to make a responsibility determination.

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Performance capabilities

Whether a bidder can perform at its proposed facility is a matter of responsibility which is not for review by our Office.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Validity

Absence of corporate seal on bid does not affect bid's validity since evidence of signer's authority may be presented after bid opening.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency reasonably selected technically superior, higher priced proposal on elevator maintenance contract where agency found the awardee's strengths in personnel and quality control and its fair and reasonable price would provide best opportunity for efficient and economical performance of the contract.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest filed with General Accounting Office more than 10 working days after the protester should have been on notice of the basis of its protest from an oral debriefing is dismissed as untimely, since the 10-day protest filing period is not extended to allow the protester to wait for receipt of written notification confirming the basis for protest.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest alleging defective specifications is untimely where not filed prior to closing date for receipt of initial proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Proposal that took exception to material solicitation requirements properly was found technically unacceptable.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Allegation that solicitation's evaluation criteria and statement of work conflict is dismissed as untimely where firm did not raise matter until after award and alleged conflict was apparent on face of solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Protest that agency conducted an improper cost realism analysis of firm's proposal is denied where record shows that protester's allegation is based upon erroneous assumptions regarding which contract requirements were considered in cost realism analysis and where record shows that agency's cost realism analysis was reasonable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest is denied where there is no basis to conclude that alleged miscalculation of protester's proposal by agency deprived the protester of an award to which it was otherwise entitled.

B-237659, March 12, 1990**90-1 CPD 265**

Procurement

Special Procurement Methods/Categories

- In-house performance
- ■ Service contracts
- ■ ■ Propriety

Where solicitation does not give preference to in-house capabilities for performance of maintenance and training, agency reasonably found firm intending to subcontract portions of these services acceptable.

B-237678, March 12, 1990**90-1 CPD 266**

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Contractor personnel
- ■ ■ ■ Security clearances

Protester's offer was properly rejected because its offered personnel did not have Department of Energy "L" clearances which were clearly required by the solicitation's evaluation criteria.

B-237806, March 12, 1990**90-1 CPD 267**

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Checks
- ■ ■ ■ Adequacy

A bid on a sale of surplus metal must be rejected as nonresponsive when accompanied by a bid deposit in the form of an uncertified company check with no supporting bid bond or irrevocable letter of credit, even if the check is erroneously cashed by the agency after bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest filed more than 10 working days after the protester was orally informed of the basis of its protest is untimely. Oral information can be sufficient to put the protester on notice of the basis of its protest—written information is not required.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Office space

Challenge to award of a lease to a higher-priced offeror by the General Services Administration (GSA) is denied where protester's building was badly damaged in an earthquake after receipt of third round of best and final offers and the contracting officer reasonably decided that GSA could not wait to receive engineering analyses detailing damage to the building and repairs needed to bring the building into compliance with the solicitation, because of concerns that GSA might lose access to an acceptable building for its tenant agency, and lose the benefit of an already-extended competition.

Procurement

Competitive Negotiation

- Use
- ■ Criteria

Where contracting agency's justification for challenged procurement is reasonable and protesters have not demonstrated that requirements exceed government's needs, protest that procurement is unnecessary is denied.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Administrative discretion

Contracting officer's decision to procure services on an unrestricted basis, and not through a small business set-aside, is not an abuse of discretion where the contracting officer's knowledge of the market did not support an expectation that offers from two or more responsible small business concerns would be received; where the level of service is considerably greater than those of current set-aside procurements; and where the agency small business program manager concurs with the decision not to set aside the procurement.

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Allegation that bid is nonresponsive because the awardee's allegedly unreasonably low price for one line item indicates that awardee will not provide all the services required under this line item is denied since the awardee did not take any exception to the requirement and, even if its bid was below cost in this respect, it would not be legally objectionable.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Low bid is not unbalanced where there is no evidence that bid contained enhanced prices.

B-238433, March 13, 1990

Procurement

Bid Protests

- Agency-level protests
- ■ Procedures
- ■ ■ Federal procurement regulations/laws
- ■ ■ ■ Revision

General Accounting Office supports objective of establishing more effective agency protest procedures but GAO recommends that the regulations warn protester that they are not entitled in an agency-level protest to either the stay of award or the suspension of performance granted by the Competition in Contracting Act of 1984 to protesters before the GAO.

B-238785, March 13, 1990

Procurement

Bid Protests

- Subcontracts
- ■ GAO review

The General Accounting Office will not consider a bid protest by a subcontractor concerning the propriety of an agency's acceptance of a specification change proposed by the prime contractor where the government's involvement in the procurement is not so pervasive that the prime contractor should be considered a mere conduit for a government contract award.

B-237742, March 14, 1990

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Protest challenging sole-source award of an interim contract for housing maintenance services based on unusual and compelling urgency is sustained where contracting agency failed to obtain

maximum practicable competition by not soliciting protester, who record showed was a viable additional source since it had recently provided the services at issue, and had advised the agency that it was in a position to begin performance on short notice.

B-237676, March 15, 1990

90-1 CPD 298

Procurement

Sealed Bidding

- Bid guarantees
- ■ Amounts
- ■ ■ Indefinite quantities

Protest that bonds for indefinite quantity contracts should be based on estimated value of contract is denied as Federal Acquisition Regulation provides that the penal sum of payment and performance bonds for such contracts should be based on the price payable for the specified minimum quantity.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety

Failure of agency to include Variation in Estimated Quantities clause in the solicitation does not provide a basis for disturbing procurement where the award would meet government's needs and there is no evidence that the competition was prejudiced by the omission.

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Commercial products/services
- ■ ■ Use
- ■ ■ ■ Indefinite quantities

Protest that painting services can not be procured through the use of an indefinite quantity contract because those services do not constitute a commercial product is denied, where Federal Acquisition Regulation (FAR) does not prohibit the use of indefinite quantity type contracts for the acquisition of other than commercial items. Further, the painting services are sold to the general public in the course of normal business operations based on market prices and thus would constitute a commercial product as defined in FAR.

B-235906.3, March 16, 1990

90-1 CPD 299

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision is affirmed because request for reconsideration does not show that initial decision contained errors of fact or law or that information not previously considered exists that would warrant its reversal or modification.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Purchases
- ■ ■ Justification
- ■ ■ ■ Low prices

Agency properly may elect to order a non-mandatory item from a Federal Supply Service contract where the agency has a reasonable basis to determine that the burden and cost of a new procurement would exceed a \$222 cost savings which it appeared might be available by using a competitive procurement.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Where sample problem is the primary technical evaluation factor in a solicitation that weights technical factors more than price, agency has made reasonable cost/technical tradeoff in selecting higher priced offerors who passed the sample problem over lower priced offerors who failed.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Protesters are not competitively prejudiced by an agency's failure to advise them during discussions that they failed a sample problem included in the solicitation, where they were precluded by the solicitation from revising the sample problem responses and they could not have sufficiently improved the rest of their proposals to be in line for award, given that the sample problem was the primary technical evaluation criterion.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Agency is not obligated, under a solicitation for engineering services to be provided under a time and materials contract, to conduct discussions on, and give offerors the opportunity to revise, responses to a sample problem included in the solicitation, which was intended to provide a measure of an offeror's ability to independently size up a problem and come up with a viable, efficient solution, where the solicitation made clear what information was to be submitted in response to the sample problem and that no changes to the sample problem responses would be permitted.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where weaknesses in the cost proposal and corporate experience are part of a proper technical evaluation, there is no requirement for referral of the matter to the Small Business Administration for a certificate of competency.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

While agency's use of arithmetic mean of actual scores of sample problem, included in solicitation to determine whether responses to the problem passed or failed, is questionable, the protesters, who failed the problem with scores which were the lowest of any offerors included in the competitive range and which were significantly less than the awardees' scores, were not competitively prejudiced where they have not shown their responses were misevaluated.

B-237611.2, B-237751, March 19, 1990

90-1 CPD 302

Procurement

Contract Management

- Contract administration
- ■ Default termination
- ■ ■ GAO review

General Accounting Office will not consider the propriety of a contracting agency's decision to terminate a contract for default, since that is a matter to be resolved under the disputes clause of the contract.

Procurement

Contract Management

- Contract administration
- ■ Default termination
- ■ ■ Resolicitation
- ■ ■ ■ GAO review

Generally, statutes and regulations governing regular federal procurements are not strictly applicable to reprourement after default; General Accounting Office will review reprourement only to determine if the contracting agency's actions were reasonable in the circumstances.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Criteria

Contracting officer had a reasonable basis for finding protester nonresponsible in reprourement for repairs to ship, where: (1) agency had terminated original ship repair contract with protester for default after determining that protester's poor workmanship had damaged ship, thus necessi-

tating reprocurement for additional repairs; (2) protester had been unable or unwilling to repair problem with ship's propeller shaft after more than 7 months of negotiations with agency under original contract; and (3) proposal submitted in reprocurement showed that protester did not plan to change its work methods or the personnel used, if awarded the reprocurement contract.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Prior contract performance

Termination of protester's prior contract for default may properly be considered by contracting officer in determining protester nonresponsible for award of reprocurement contract.

B-237679.2, March 19, 1990

90-1 CPD 303

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Where the protester is in possession of facts that would establish the timeliness of its protest, that is, that it had filed an earlier agency-level protest, but does not include these facts in its protest to the General Accounting Office (GAO), GAO affirms dismissal of protest that was otherwise untimely on its face.

B-237690, March 19, 1990

90-1 CPD 304

Procurement

Small Purchase Method

- Contract awards
- ■ Propriety

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Protest challenging contract award for protective vests as inconsistent with requirements in request for quotations (RFQ) is sustained where the record indicates that awardee's vest did not comply with at least three of the RFQ requirements, and it appears protester may have lowered its price substantially had it known that the requirements were waived.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Initial-offer awards
 - ■ ■ Propriety
-

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that contracting officer improperly failed to request best and final offers, thereby depriving protester of any opportunity to revise or clarify its initial proposal, is denied where contracting officer: (1) held oral discussions with all offerors in the competitive range, including protester; (2) sent each offeror a list of written discussions questions/comments confirming oral discussions; and (3) sent letters inviting each offeror to submit final revisions or modifications to their technical or cost proposals by a common cutoff date/time.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions of technical matters were meaningful where agency imparted sufficient information to protester to afford it a reasonable opportunity to identify and correct any deficiencies in its proposal and discussions were designed to guide protester into those portions of its proposal that required amplification.

Procurement

Competitive Negotiation

- Offers
 - ■ Cost realism
 - ■ ■ Evaluation
 - ■ ■ ■ Administrative discretion
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Protest that agency improperly raised protester's proposed costs in cost evaluation for cost-type contract without holding discussions with protester concerning alleged cost deficiencies is denied, where the contracting agency reasonably determined that protester's costs were understated after consulting with Defense Contract Audit Agency and comparing protester's proposed labor rates with rates billed under previous and current contract for similar services, and record shows that protester was not competitively prejudiced in any event.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest alleging impropriety in request for proposal's (RFP) evaluation scheme is untimely when filed after award because, under General Accounting Office's Bid Protest Regulations, protest alleging impropriety which is apparent on the face of the RFP must be filed prior to the deadline for receipt of initial proposals.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

General Accounting Office (GAO) will not review protest that government should procure services from particular firm on a sole-source basis, since the objective of GAO's bid protest function is to ensure full and open competition for government contracts.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protester's contention that its proposal should have been selected for award because it offered a warranty and updated technical configurations is denied where solicitation does not require warranty or most up-to-date configuration, and RFP does not list such items among evaluation factors; proposals must be evaluated only on the basis of factors specified in the solicitation.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ GAO review

General Accounting Office will not review an affirmative determination of responsibility by the contracting officer, absent a showing of possible fraud or bad faith on the part of the contracting agency or an alleged failure of the agency to apply definitive responsibility criteria.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protest that agency improperly rejected protester's quotation as nonresponsive to request for quotations is dismissed where protester is not an interested party since another firm that was rejected on the same basis had a lower evaluated price and protester therefore would not be in line for award even if its protest were sustained.

Procurement

Bid Protests

- Subcontracts
- ■ GAO review

The General Accounting Office will not consider a bid protest by a subcontractor concerning the propriety of an agency's acceptance of a specification change proposed by the prime contractor where the government's involvement in the procurement is not so pervasive that the prime contractor should be considered a mere conduit for a government contract award.

Procurement

Contract Management

- Contract administration
- ■ Value engineering
- ■ ■ Change orders
- ■ ■ ■ GAO review

Protest allegation that agency improperly approved a value engineering change proposal is a matter of contract administration which is not for review by the General Accounting Office.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Deviation

Bid which offered to supply a machine tool with a hydraulic drive instead of the mechanical drive required by the solicitation specifications was nonresponsive.

Procurement

Sealed Bidding

- Conflicts of interest
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

A prospective bidder who, at the using agency's request, furnished a specification which the purchasing activity incorporated into its solicitation not knowing that it was descriptive of the pro-

tester's product, may not be declared ineligible for any subsequent award under that solicitation on the grounds that the bidder has an organizational conflict of interest where the government had not contracted with that firm to prepare the specification and because the government has an obligation to screen for unduly restrictive specifications furnished by prospective vendors.

B-236462.4, March 21, 1990

90-1 CPD 310

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal, but merely restates arguments considered, and rejected, by the General Accounting Office in denying in part and dismissing in part original protests.

B-237724, March 21, 1990***

90-1 CPD 311

Procurement

Contractor Qualification

- Contractor personnel
- ■ Misrepresentation

Where solicitation did not require personnel to be committed to performance under the resulting contract, awardee did not misrepresent the availability of persons it "intended for assignment" by submitting the resumes of three of the protester's employees as part of its proposal since the record discloses that, prior to the submission of the resumes, two of the individuals took direct actions expressing a willingness to consider employment with the awardee, and the third individual relayed a similar willingness through his supervisor.

B-237739, March 21, 1990

90-1 CPD 312

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

Objection to award formula under which price is weighted only 20 percent is without merit because, in a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the solicitation specifies price will be the determinative factor.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that procurement was not negotiated because no discussions were held is denied where, following initial technical evaluation, offerors were sent letters requesting clarification or additional information regarding their proposals and requesting best and final offers.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Point ratings

Award of a contract based on the highest total score is not improper because price scores were not calculated in a manner described in the solicitation, where even if scores were computed in accordance with the solicitation formula the protester's relative position would not change.

Procurement

Competitive Negotiation

- Technical evaluation boards
- ■ Bias allegation
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Disparity in scores among evaluators does not alone signify that the evaluation of proposals was unreasonable or biased where there is no evidence in the record to suggest that the technical scoring by individual evaluators reflected anything other than their reasonable judgments as to the relative merits of the proposals.

B-237782, March 21, 1990

90-1 CPD 313

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Applicability
- ■ ■ Vessels
- ■ ■ ■ Suppliers

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Suppliers
- ■ ■ Domestic sources
- ■ ■ ■ Applicability

The requirement that only United States-flag vessels may be used in the transportation by sea of military supplies to be furnished in the performance of a contract does not apply to a contract for cable-laying services which will involve use of a specialized cable-laying vessel and incidental carriage of the cable to be laid by that vessel at sea without delivery to any port.

Procurement

Competitive Negotiation

- Offers
 - ■ Late submission
 - ■ ■ Acceptance criteria
-

Procurement

Competitive Negotiation

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria
- ■ ■ ■ Government mishandling

Contracting agency properly rejected a proposal sent via U.S. Postal Service Express Mail on the day before the date for receipt, but received late at the location designated in the solicitation, where: (1) none of the circumstances under which the solicitation permitted consideration of late proposals applied, and (2) agency's once-a-day pickup of mail from local post office box did not constitute mishandling in the process of receipt where protester's failure to mark Express Mail envelope with solicitation number and deadline for receipt of proposals may have contributed to the delay.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protester, the fifth low offeror, is not an interested party entitled to protest the award of a contract to the lowest priced technically acceptable offeror because the protester would not be in line for award even if its protest were sustained.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision is denied where the protester essentially only restates its initial arguments and expresses disagreement with the decision.

Procurement

Competitive Negotiation

- Offers
 - ■ Competitive ranges
 - ■ ■ Exclusion
 - ■ ■ ■ Evaluation errors
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Contracting agency's refusal to permit protester to compete for trainer procurement, because agency seeks to limit competition to two offerors found within competitive range by prime contractor who subsequently failed to complete procurement, does not comply with statutory requirement that offers be solicited from as many sources as practicable, where protester shows that prime contractor's evaluation of protester's proposal was flawed, and protester is able to submit its proposal within the time constraints of the agency's urgent need for the trainers.

Procurement

Bid Protests

- Prime contractors
- ■ Contract awards
- ■ ■ Subcontracts
- ■ ■ ■ GAO review

Protest challenging the propriety of a subcontract awarded by a government prime contractor, designated as a federal contract research center, is dismissed since it was not made "by or for the government" where the prime contractor, which is performing research and development services, is not operating or managing a government facility or otherwise providing large scale management services.

Procurement

Noncompetitive Negotiation

- Industrial mobilization bases
- ■ Contract awards
- ■ ■ Propriety

Protest that contracting agency improperly awarded a sole-source contract on industrial mobilization base grounds to complete a terminated shipbuilding contract, after requesting quotations from other firms to perform the reprocurement contract, is denied since even if request for quotations constituted a competitive solicitation, agency properly could cancel it and make the sole-source mobilization base award.

Procurement

Nonecompetitive Negotiation**■ Industrial mobilization bases****■ ■ Contract awards****■ ■ ■ Propriety**

Protest that contracting agency improperly awarded a sole-source contract on mobilization base grounds is denied where record shows that agency properly exercised its discretion in deciding that award was necessary to protect the industrial mobilization base.

B-238790, March 22, 1990**90-1 CPD 320**

Procurement

Bid Protests**■ Forum election****■ ■ Finality**

Protest is dismissed where a protest of same procurement filed by another party raising matters dispositive of the issue of entitlement to award is pending before the General Services Administration Board of Contract Appeals.

B-234682.2, March 23, 1990*****90-1 CPD 321**

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Procurement

Sealed Bidding**■ Bid guarantees****■ ■ Sureties****■ ■ ■ Acceptability**

Decision sustaining protest against agency's determination that individual sureties on bid guarantee were unacceptable for pledging their personal residences—when in fact there was no prohibition against pledging of personal residences in support of guarantee—is affirmed on reconsideration even though, after issuance of original decision, agency undertook investigation that revealed other bases for rejecting sureties; original decision was correct based on issues, record and arguments developed by the agency and protester.

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Procurement

Bid Protests**■ GAO procedures****■ ■ Preparation costs**

Protest costs awarded in connection with sustained protest are disallowed on reconsideration where information surfaces after issuance of decision indicating that the protest was filed even though protester knew or should have known that sureties' personal residences—which, protester

had argued and General Accounting Office ultimately found, had improperly been disregarded by agency in rejecting sureties based on inadequate assets—were not solely owned by sureties and thus could not properly be pledged on bid guarantee, as the agency originally had concluded. ~

Procurement

Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Where prior decision correctly held that agency improperly found individual sureties unacceptable for pledging their personal residences in support of bid guarantee, and agency presents new information in requesting reconsideration that shows sureties properly were determined unacceptable for different reasons, decision is modified to eliminate recommendation that award be made to protester.

B-237032.3, March 23, 1990

90-1 CPD 322

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Prior decision is modified to include correct bid prices and to retract conclusion that awardee was only entitled to award for one particular quantity.

B-237759, March 23, 1990

90-1 CPD 323

Procurement

Socio-Economic Policies

- Computer equipment/services
- ■ Federal supply schedule
- ■ ■ Off-schedule purchases
- ■ ■ ■ Advertising

Procurement

Specifications

- Brand name/equal specifications
- ■ Ambiguous specifications

Agency which publishes a *Commerce Business Daily* notice of intent to purchase computer equipment from a non-mandatory Federal Supply Schedule, but fails to include sufficient information to provide prospective offerors with an opportunity to respond to the notice in a meaningful way, violates applicable provisions of the Federal Information Resources Management Regulation.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest concerning pre-closing solicitation amendment provisions relaxing specifications is untimely where protester waited 2 months after receipt of initial proposals before filing protest.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that awardee's technical proposal did not meet specifications is denied where awardee committed itself to meeting technical requirements for radiation detection equipment and where agency reasonably evaluated information submitted by awardee to determine that its proposal was technically acceptable.

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Contractors
- ■ ■ Evaluation

Protest is sustained where agency improperly proceeded to evaluate the protester's architect-engineer qualifications without obtaining qualifications statements lost by agency after initial evaluation of submissions.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Where contracting agency did not provide protester with the solicitation until one day before the closing date for receipt of initial proposals, notwithstanding protester's requests and agency's assurance that it would do so, and where agency advised protester that closing date was being extended but did not disclose revised closing date until one day prior to closing, protester was improperly excluded from the competition in violation of the Competition in Contracting Act of 1984, which requires "full and open" competition.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protester was properly excluded from the competitive range where agency reasonably concluded that firm had no reasonable chance for award because of significant technical deficiencies identified in its proposal which was rated by agency's technical evaluators as "unacceptable" in seven of the solicitation's nine technical and management evaluation areas.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protester, the third low acceptable offeror, did not fail to qualify as an interested party eligible to bring protest—such that General Accounting Office would not have sustained protest against award agency concedes was improper—where protest alleged award improperly was based on relaxed requirements; appropriate remedy for successful protest on this ground could be recompetition, which would afford protester opportunity to offer different price on changed requirements.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Where General Accounting Office sustains protest against award on basis that agency concedes it made award to nonconforming offeror, but contract has been performed so that recompetition of the requirement no longer is a practicable remedy, protester is entitled to reimbursement of protest and proposal preparation costs.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Conflicting evidence
- ■ ■ ■ Burden of proof

Protest was not untimely filed—such that General Accounting Office would not have sustained protest against award agency concedes was improper—where agency asserts, without documentation, that it advised protester of denial of agency-level protest more than 10 working days before protest was filed, but protester denies receiving such advice and circumstances tend to support protester's position; doubt as to timeliness is resolved in favor of the protester.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where it is based on information which is inconsistent with the basis of the original protest and which the protester withheld from our Office when protest was originally filed.

Procurement

Bid Protests

- Administrative policies
- ■ GAO review

General Accounting Office will not question an agency's interpretation of its own program where protester has not shown that the interpretation is unreasonable.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest against the use of the Blue Ribbon Contractor Program is untimely where notice that the program was being used as an evaluation factor was contained in the request for best and final offers (BAFO) and the protest was not filed by the closing date for the receipt of BAFOs.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Request for best and final offers (BAFO) constitutes meaningful discussions where a proposal contains no technical uncertainties, and the BAFO request specifically ask offerors to provide additional information in a particular area, which was needed to improve an offerors proposal.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protest that transportation dimensions for F.O.B. origin items included in bid for trailers indicate that bid is nonresponsive is denied where the bid offered to provide the trailers as specified in the solicitation and it contains no qualifications.

Procurement

Sealed Bidding

- Competitive advantage
- ■ Pricing
- ■ ■ Shipment costs
- ■ ■ ■ Rates

Protest that successful bidder received an unfair price advantage by providing inaccurate dimensions in transportation data clause for F.O.B. origin items is denied since bidders are permitted to use shipping weights and dimensions in bid which are less than actual shipping weights and dimensions as an alternative to reducing the price of the item bid on.

B-235687.3, March 27, 1990**90-1 CPD 332**

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Decision concluding that agency did not improperly emphasize price in solicitation which provided that technical factors were significantly more important than price and that technical factors were "of paramount importance" is affirmed on reconsideration because General Accounting Office believes that 60 percent weight given to technical factors in the actual evaluation was consistent with solicitation language.

B-237166.6, March 27, 1990**90-1 CPD 333**

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Offers
- ■ ■ Rejection
- ■ ■ ■ Propriety

Protester's proposal was properly rejected as technically noncompliant under North Atlantic Treaty Organization modified two-step procurement conducted by the Department of the Air Force where protester was given notice of potential areas where its proposal did not comply with essential requirements of the solicitation and failed to correct those areas.

B-237168.2, March 27, 1990**90-1 CPD 334**

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision dismissing protest on grounds that protester's bid was nonresponsive is affirmed. Procurement regulations do not permit the correction of a material deficiency in a bid.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Arguments that protester was misled by solicitation provision into submitting information with its bid which resulted in the bid's rejection first raised in request for reconsideration will not be considered where they should have been raised in initial protest.

B-237980, March 27, 1990

90-1 CPD 335

Procurement

Special Procurement Methods/Categories

- In-house performances
- ■ Evaluation criteria
- ■ ■ Cost estimates

Protest that contracting agency improperly evaluated bids under solicitation issued for cost comparison purposes pursuant to Office of Management and Budget Circular No. A76 is denied where agency followed applicable procedures in conducting the cost comparison and protester fails to show that the methodology used was unreasonable or inconsistent with the Circular and other related guidelines.

B-238017, March 27, 1990

90-1 CPD 336

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Late submission
- ■ ■ ■ Rejection

Protest that agency improperly failed to negotiate with low bidder after finding that IFB did not accurately reflect its minimum needs is denied; low bidder's revised offer in response to negotiations under such circumstances, in effect, would have constituted an improper late bid modification, and agency's decision instead to resolicit the requirement based on revised specifications thus was proper.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Ambiguous specifications

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Contracting agency had a compelling reason to cancel invitation for bids (IFB) after bid opening where it reasonably determined that IFB specifications relating to copying and photographic printing services were ambiguous, or did not accurately reflect its minimum needs.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion

Procuring agency properly could select for award the higher rated, higher priced offeror in a negotiated procurement where the solicitation provided that, although price was the most important evaluation factor, technical and management factors would also be evaluated.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

The ultimate selection official reasonably determined, notwithstanding the contrary recommendations of the chairman of the technical evaluation board, contract award review panel and designated source selection authority, that the awardee's higher technical score reflected the technical superiority of the awardee's proposal which outweighed the protester's price advantage and that the awardee's proposal, which had received the highest price/technical/management point total, was the most advantageous to the government.

Procurement

Competitive Negotiation

- Source selection boards
- ■ Authority delegation

Supervisory official of contracting functions at a Navy command has the authority to review, vacate, and make source selection decisions pursuant to a delegation of authority from the head of the contracting activity.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester presents no evidence showing that prior decision was factually or legally erroneous.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Applicability

Agency properly applied a domestic item restriction contained in an appropriations act where the agency reasonably determined that the items being procured do not fall within an exception in the act because the items are not "chemical warfare protective clothing."

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Privileged information**
- ■ ■ **Disclosure**

Protest that agency failed to investigate alleged disclosure of proprietary information by protester's former employees to competitor during the course of a procurement as a violation of procurement integrity legislation, i.e., section 27(c) of the Office of Federal Procurement Policy Act, is denied since the Act (which currently is suspended) does not cover the type of disclosure alleged and, in any case, the record contains no evidence to show any improper disclosure.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation errors**
- ■ ■ **Non-prejudicial allegation**

Protest challenging evaluation preference given to awardee's proposal is denied where, even if protester is correct that awardee should not have received the 100 point evaluation preference, protester was not prejudiced since protester's evaluation score still would be 225 points lower than awardee's; in any case, record indicates agency reasonably relied on awardee's representation that it was a physician-sponsored organization entitled to the evaluation preference.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Shipment costs**

Agency determination to use f.o.b. destination delivery terms for multiple-award Federal Supply Schedule contracts for conference room tables is not legally objectionable where there has been no showing that the determination was unreasonable, unduly restricted competition, or was inconsistent with applicable regulations.

Procurement

Bid Protests

- **Non-prejudicial allegation**
- ■ **GAO review**

Protest that contracting agency improperly disclosed proposed awardee's price to the protester—after revised best and final offers were submitted but prior to award—is dismissed, where the protester was not competitively prejudiced by the agency's action.

B-236334.2, March 30, 1990

Procurement

Bid Protests

- GAO procedures
 - ■ GAO decisions
 - ■ ■ Reconsideration
-

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Fact that bidder fails to submit a bid on a line item under an invitation for bids, based on oral advice that no award would be made on that item, does not constitute a basis on which General Accounting Office will sustain a protest, when protester waits more than 4 months after bid opening before inquiring about the award and the protester does not dispute its offered product would not comply with agency's proposed revised specification.

B-236864.3, March 30, 1990**90-1 CPD 343**

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

There is no basis for an award of proposal preparation costs where the protest was dismissed as academic, since a prerequisite to the award of costs is a decision on the merits of a protest.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Protest filed more than 10 days after protester was orally informed that its agency-level protest had been denied, together with the basis for the denial, is untimely under General Accounting Office's Bid Protest Regulations.

B-237885, March 30, 1990

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Liquidated damages
- ■ ■ ■ Propriety

Provision for liquidated damages in contract for housing maintenance services incident to transfers of Air Force personnel is reasonable given significant financial considerations bearing on services and transfers.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive specifications
- ■ ■ Performance specifications
- ■ ■ ■ Justification

Protest that an inadequate number of work days was specified for accomplishing housing maintenance services incident to transfers of Air Force personnel is denied where contracting agency shows specified work days are required to meet its minimum needs.

B-238132, March 30, 1990

90-1 CPD 344

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ GAO review

Protest by a defaulted contractor that the procuring agency should obtain spare parts from a manufacturer to supply the contractor on an x-ray maintenance and repair contract is denied, where the agency reasonably expects adequate competition based on the contractor obtaining the parts, the protester's performance problems under the current contract do not appear solely attributable to its inability to obtain parts from the manufacturer and the problems of the defaulted contractor with the manufacturer does not establish that this would be the case for other firms.

B-238370, March 30, 1990

90-1 CPD 345

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

General Accounting Office does not consider protest issues which are essentially made on behalf of other potential competitors who themselves may properly protest as interested parties.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use

Contracting agency's inadvertent inclusion of small business set-aside notice in solicitation does not require termination of large business awardee's contract where there is no legal requirement that the contract be set aside for small business concerns, and no bidder was prejudiced as a result.

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