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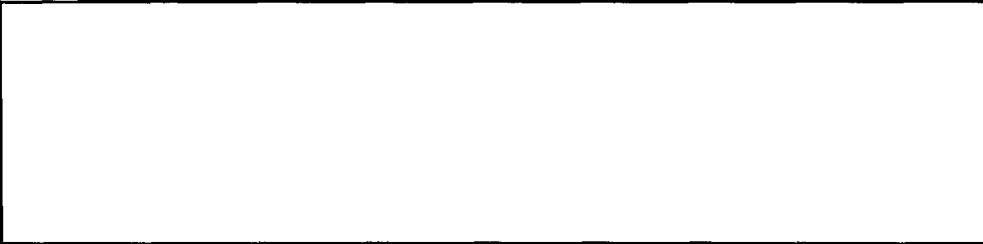


002

**Digests of Decisions
of the Comptroller
General of the
United States**



5



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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 contract claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 101). 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

J-247708, November 3, 1992***

Appropriations/Financial Management

Accountable Officers

Relief

■ Physical losses

When employing agency does not make required findings under 31 U.S.C. § 3527(a), matter of relief for accountable officer for an unexplained loss of \$527.60 is not properly before GAO and, regardless of merits, we have no authority to grant or deny relief.

Appropriations/Financial Management

Accountable Officers

■ Determination criteria

Person who is not formally designated as an accountable officer becomes an accountable officer when the person takes custody of funds.

Appropriations/Financial Management

Accountable Officers

■ Determination criteria

Person who serves as Budget and Fiscal Officer, or Financial Management Officer, and supervises cashiers and other custodians of funds, is not an accountable officer solely by virtue of her responsibility as supervisor.

B-250880, November 3, 1992

Appropriations/Financial Management

Appropriation Availability

■ Purpose availability

■ ■ Specific purpose restrictions

■ ■ ■ Fines

■ ■ ■ ■ State/local governments

Letter to Congressman discusses criteria for when appropriated funds may be used to pay or reimburse a federal government employee for paying parking meter fees and when the employee is personally liable for a parking ticket imposed on the employee when parking on a public street a government-owned vehicle used on official business.

Civilian Personnel

B-243315.3, November 5, 1992

Civilian Personnel

Compensation

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Upon reconsideration, waiver of collection of overpayments resulting from agency's failure to deduct amount of annuity from pay of a reemployed annuitant is granted. The employee promptly reported the failure to the proper officials and made numerous inquiries about the correctness of his pay thereafter. He was repeatedly assured that his pay was correct, and no one followed up on the error for almost 3 years when it was discovered that it was caused by a computer programming error. Under these circumstances, employee was free of fault and collection of the overpayments would be against equity and good conscience. *David L. Williams*, B-243315, Sept. 6, 1991 (70 Comp. Gen. 699), reversed.

B-249027, November 5, 1992

Civilian Personnel

Travel

- Travel expenses
- ■ Documentation procedures
- ■ ■ Burden of proof

The claim of a member to retain reimbursement for temporary travel for which he submitted false and fraudulent travel vouchers is denied because he has not met his burden of documenting the trips in detail and establishing that they were essential to the transaction of official business.

B-248960, November 9, 1992

Civilian Personnel

Relocation

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Transferred employee claimed reimbursement of \$1,521.58 for commercial shipment of his household goods. Agency reduced reimbursement by \$747.30 to cost of shipment by government bill of lading method. Employee's reclaim for \$747.30 is allowed where agency failed to indicate method of shipment on his travel orders and there was insufficient time available to obtain cost comparison. Further, the Federal Travel Regulation (FTR) does not contemplate that an agency should obtain a cost comparison after a household goods shipment has been completed merely for the purpose of limiting reimbursement to the employee. *John S. Phillips*, 62 Comp. Gen. 375 (1983).

-248460.2, November 10, 1992

Civilian Personnel

Compensation

Retroactive compensation

■ Eligibility

■ ■ Discretionary authority

A court clerk's appointing official did not approve his authorized promotion in grade until about four months after he was first eligible for the increase. The employee claims a retroactive pay increase for the four months. The authority under which the increase was granted made it contingent upon the request of the appointing official, and the general rule is that such an increase is not effective before the official exercises his discretion to grant it. Since the record shows no clerical or administrative error, there is no basis on which the increase may be made effective retroactively.

B-249028, November 10, 1992

Civilian Personnel

Relocation

Temporary quarters

■ ■ Actual subsistence expenses

■ ■ ■ Dependents

■ ■ ■ ■ Eligibility

An employee's dependents who continue to occupy the residence at the old duty station as the usual place of abode after the employee travels to the new duty station incident to his transfer are not entitled to temporary quarters subsistence expenses (TQSE) for visits to the new duty station because that residence has not been vacated, which is a requirement for receiving TQSE. Although the employee enumerated immediate events such as bad weather and housing unavailability at the new duty station as preventing the vacating of the old residence and allowing it to be considered as constructively vacated, these events did not demonstrate that the dependents had a "present intent" to vacate the old residence which was frustrated by the events.

B-248455, November 17, 1992

Civilian Personnel

Travel

■ Overseas travel

■ ■ Temporary duty

■ ■ ■ Per diem rates

■ ■ ■ ■ Maximum rates

An employee who performed official travel to foreign areas on an actual subsistence expense basis may be reimbursed for expenses on a daily basis, but the amount reimbursed may not exceed the greater of 150 percent of the maximum per diem rate for each location, or \$50 plus that maximum per diem rate, as specified in the Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas). *Federal Aviation Administration Employees*, 71 Comp. Gen. 433 (1992).

Civilian Personnel

Travel

- Temporary duty
- ■ Miscellaneous expenses
- ■ ■ Reimbursement
- ■ ■ ■ Telephone calls

Personal telephone calls by an employee while traveling on official business in foreign areas may not be reimbursed to the employee. *James R. Shea*, B-229151, Apr. 14, 1988.

B-249180, November 17, 1992

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

Transferred employee stayed with her sister and paid her sister temporary quarters lodging costs based on the costs of commercial facilities at her new duty station. Such costs are not considered to be reasonable and may not be reimbursed. Also, costs incurred by employee's sister for rent for her son at another residence are only incidental to and not directly related to the additional costs incurred. However, the employee has submitted written documentation showing additional costs incurred by her sister for electricity and purchases of wood for heating purposes necessitated by the presence of herself and her daughter in the home. She may be reimbursed the portion of the additional costs attributable to their presence.

B-248906, November 18, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Inspection fees
- ■ ■ Reimbursement

A transferred employee sold his residence at his old duty station and seeks reimbursement for the cost of radon and structural inspections as required services, because they were required by the purchaser as a condition of purchase. The term "required services" as used in 41 C.F.R. Part 302-6 (1991), relates only to those services which are imposed on the employee by state and local law, or by a lender as a precondition to financing. Since neither of the services performed were so required of the employee, he may not be reimbursed. *Leonard L. Garofolo*, 67 Comp. Gen. 449 (1988).

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Property surveys
- ■ ■ Fees

A transferred employee sold his residence at his old duty station and seeks reimbursement for the cost of the survey of his property required to be made by the purchaser. Ordinarily, such costs are ones borne by purchasers since the service is required by mortgage lenders. However, 41 C.F.R. § 302-6.2(c) permits reimbursement if it is customary in the area of the residence for a seller to pay that cost. Since it has been confirmed that such custom prevails in the residence area, it may be reimbursed to the seller to the extent that the cost is not excessive.

Military Personnel

3-248957, November 4, 1992

Military Personnel

ay

Overpayments

- Error detection
- Debt collection
- ■ Waiver

A military member who was indebted to the government due to an excess leave payment and an overpayment at separation cannot be granted waiver as to the excess leave payment, since a member is held accountable for knowledge of his or her leave balance and for notifying the proper authorities of any inaccuracies. Interest properly accrued on this debt because he did not pay it within 30 days of receiving notice and did not request waiver for over a year after receiving notice. However, the Claims Group properly granted waiver as to the overpayment at separation because the member had no knowledge of the overpayment.

B-248958, November 9, 1992

Military Personnel

Pay

- Retirement pay
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

The daughter of a deceased retired Air Force member is entitled to waiver of indebtedness for erroneous payments of retired pay she received after his death when the payments should have been terminated. Waiver is granted under 10 U.S.C. § 2774, since she had notified the Air Force of his death and was otherwise without fault.

B-249371, November 19, 1992

Military Personnel

Pay

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Former member of the Army was overpaid for accrued leave at separation from the Army. Since he should have had a reasonable awareness of his leave balance, and documents received by the member following the payment reflected an inaccurate leave balance, the member is not without "fault" in the matter and waiver must be denied. The Claims Group's decision is affirmed.

B-248554, November 24, 1992

Military Personnel

Relocation

■ **Housing allowances**

■ ■ **Advances**

■ ■ ■ **Debt collection**

■ ■ ■ ■ **Waiver**

Member of the Navy was advanced \$43,548 in housing allowances at his permanent duty station overseas with which he paid 1 year of rent in advance. Two months later he was transferred under permanent change of station orders and his monthly housing allowances were terminated. Since the member acted reasonably in the matter and through no fault of his own was forced to vacate the residence because of government action, he should not be required to refund the advance payment that he used to pay his rent. Any recovery of the rent payment from the landlord should be paid to the government.

Procurement

B-248464.2, November 2, 1992

92-2 CPD 296

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that discussions were inadequate based on alleged surprise questions posed by the agency during site visit is untimely and will not be considered where not filed with General Accounting Office within 10 working days of conclusion of site visit.

Procurement

Competitive Negotiation

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

Protest that evaluation and resulting rejection of proposal was improperly based on unstated evaluation criteria is denied where, contrary to protester's argument, deficiencies cited as basis of rejection were reasonably related to evaluation criteria.

B-248931.3, November 2, 1992

92-2 CPD 297

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Protester's late receipt of the agency report is not a basis for reopening a protest dismissed for failure to file comments or express continued interest in the protest within 10 working days after receipt of agency report, where protester failed to notify the General Accounting Office (GAO) that it had not received report until after the due date shown on the GAO notice acknowledging receipt of protest.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Subcontractors

Agency's consideration of an offeror's large business subcontractor's experience under the relevant evaluation factor was proper where the solicitation allowed for the use of subcontractors to perform the contract and did not prohibit the consideration of a subcontractor's experience in the evaluation of proposals.

Procurement

Competitive Negotiation

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

Award to a higher rated, higher priced offeror was proper under a solicitation in which price was significantly less important than technical factors and the agency reasonably concluded that the technical advantages associated with the awardee's proposal outweighed the higher price.

Procurement

Competitive Negotiation

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Requests for proposals

Where a canceled invitation for bids (IFB) has been converted to a request for proposals (RFP), protest that offeror whose bid was nonresponsive to the IFB should not be permitted to compete under the RFP is denied, since the applicable regulation only precludes the participation of non-responsible bidders and the firm in question was considered responsible.

Procurement

- Sealed Bidding
 - Invitations for bids
 - Cancellation
 - Resolicitation
 - Requests for proposals
-

Procurement

- Sealed Bidding
- Invitations for bids
 - Post-bid opening cancellation
 - Resolicitation
 - Auction prohibition

Protest that cancellation of the IFB and the subsequent conversion to negotiation after disclosure of bid prices creates the potential for an auction is denied, because where, as here, the cancellation is in accord with governing legal requirements, the agency has not created an impermissible auction.

Procurement

- Bid Protests
 - GAO procedures
 - Protests timeliness
 - 10-day rule

A protest issue raised in comments to the agency report almost 2 months after the protester was notified of the rejection of its bid is untimely since the protester failed to diligently pursue information disclosing the basis for the rejection.

B-249250, November 2, 1992**92-2 CPD 300**

Procurement

- Small Purchase Method
 - Quotations
 - Alternate offers
 - Rejection
 - Propriety

Protest that agency improperly rejected firm's alternate part in acquisition limited to approved sources is denied where firm fails to provide adequate technical data package (including drawings for original equipment manufacturer's part) for agency to determine that alternate part is interchangeable with original equipment manufacturer's (OEM) part. Agency may properly require that offeror obtain OEM drawings where it does not possess sufficient technical data to conduct evaluation of alternate part.

B-249269, November 2, 1992**92-2 CPD 301**

Procurement

- Sealed Bidding
 - Unbalanced bids
 - Materiality
 - Responsiveness

The apparent low bid on a contract for a 1-year base period and four 1-year options was properly rejected as materially unbalanced where there is a large price differential between the prices bid for the base and first 2 option years and the lower prices bid for the last 2 option years, where the

bid does not become low until the third option year, and where government has indicated doubt as to whether it will exercise all options due to funding uncertainty, as there is reasonable doubt that acceptance of the bid ultimately will result in the lowest overall cost to the government.

B-250496, et al., November 2, 1992**92-2 CPD 302**

Procurement

Bid Protests**■ Dismissal**

Protest of agency's failure to answer protester's questions about request for quotations is dismissed for failure to state a legally sufficient basis where protester has not explained what information it was seeking or why this information was necessary for the preparation of a quotation.

B-245563.2, November 3, 1992**92-2 CPD 317**

Procurement

Competitive Negotiation**■ Contract awards****■ ■ Administrative discretion****■ ■ ■ Technical equality****■ ■ ■ ■ Cost savings**

Agency reasonably awarded contract for security guard services to protect an embassy to the low-priced offeror, where the agency reasonably found that the awardee's and protester's technical proposals, including experience and personnel, are essentially equal.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation errors****■ ■ ■ Evaluation criteria****■ ■ ■ ■ Application**

Evaluation of proposals that was not strictly in accord with the solicitation's evaluation criteria—the evaluators accorded equal weight to criteria that were listed in descending order of importance and did not consider option prices as required—is not prejudicial to the protester where the protester's proposal would be rated slightly less advantageous to the government if scored properly.

Procurement

Competitive Negotiation**■ Technical evaluation boards****■ ■ Foreign nationals**

Neither the Diplomatic Security Act nor other statutory or regulatory provisions prohibit foreign nationals employed by United States embassies from serving on proposal evaluation panels.

Procurement

Socio-Economic Policies**Small business set-asides****■ Disadvantaged businesses****■ ■ Administrative discretion**

Contracting officer's determination not to set aside a procurement for small disadvantaged business (SDB) concerns was reasonable (1) where the agency synopsisized the procurement in the *Commerce Business Daily* (CBD) to assess whether qualified SDB concerns were interested in the procurement but only received expressions of interest from two firms that had a prior procurement history of bidding significantly more than 10 percent above the fair market price and from two other SDB concerns that did not provide the screening information requested by the CBD announcement and (2) where the agency had received no offers from SDB concerns for recent procurements for similar services at the contract activity.

Procurement

Sealed Bidding**■ Invitations for bids****■ ■ Amendments****■ ■ ■ Criteria**

Contracting officer was not required to amend a solicitation, which had been issued on an unrestricted basis, to set it aside for small disadvantaged business (SDB) concerns based upon information first learned after the issuance of the solicitation.

B-249259, et al., November 3, 1992***

Procurement

Small Purchase Method**■ Quotations****■ ■ Evaluation****■ ■ ■ Shipment schedules****■ ■ ■ ■ Best-buy analysis**

Under small purchase procedures, where the request for quotations (RFQ) states that price and delivery are the evaluation factors and that award may be based on earliest possible delivery, the Defense Logistics Agency may quantify the value to the government of each day of delivery in order to objectively evaluate quotations for the best value to the government, considering price and delivery, and need not announce in the RFQ the quantification of the delivery evaluation factor.

B-249308, November 3, 1992

Procurement

Competitive Negotiation**■ Offers****■ ■ Modification****■ ■ ■ Submission methods****■ ■ ■ ■ Facsimile**

Offeror bears responsibility for conveying its offer, including modification, to the designated government office on time; where modification was allegedly transmitted by telefacsimile, but agency denies receipt and there is no proof of receipt, offeror bears risk of nonreceipt.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Line items

Where protester's bid failed to include unit and extended prices for two line items in response to a solicitation requiring bidders to enter unit and extended prices for every line item, the bid was properly rejected as nonresponsive notwithstanding the fact that after bid opening the agency erroneously accepted the protester's correction of its bid and the extension of its bid acceptance period.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Evaluation of protester's proposal as not satisfying all solicitation requirements was reasonable where solicitation specifically required offerors to propose own utilities, but protester proposed tying into activity's electric power.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where awardee proposed mobilizing equipment early in contract, and protester did not, agency properly rated awardee's proposal superior to protester's in this respect, even though early mobilization of the equipment was not required by the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest against evaluation of awardee's offer on the basis of noncompliance with alleged solicitation requirements is without merit where solicitation in fact did not establish firm requirements in questioned areas, but only established a basis for a comparative evaluation of proposals.

Procurement

Competitive Negotiation**— Offers**

- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that proposal which offers two qualified reporters, one of which would not be available immediately upon award, did not meet solicitation requirement that firm provide two reporters to cover simultaneous proceedings immediately upon award is denied where there was no firm requirement that the awardee actually provide two reporters—the awardee was only required to be prepared to do so if necessary and awardee proposed to furnish a qualified substitute if necessary to provide the required services.

B-247919.7, November 6, 1992

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where requesting party fails to show any legal or factual basis warranting reconsideration of prior decision.

B-248352.4, B-248352.5, November 6, 1992

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Additional information

Decision denying protest of agency's transportation cost evaluation is affirmed where additional information furnished by agency confirms that awardee's total evaluated cost was substantially lower than protester's.

B-248200.4, November 9, 1992

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Minimum wage guarantees
- ■ ■ ■ Deviation

Bidder offering hourly rates below those specified in a Service Contract Act (SCA) wage determination is nonetheless eligible for a contract award where its bid does not evidence an intent to violate the SCA and the firm is otherwise determined to be responsible.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest that low bid should be rejected as unbalanced due to below-cost bid for a portion of the contract requirements is without basis where protester does not identify any portion of the low bid which contained overstated prices.

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Correction procedures

Protest that corrections in bid prices initialed by person other than the person signing the bid was improper is denied where record leaves no doubt that offeror intended to be bound by the initialed prices.

B-248423.2, November 9, 1992

92-2 CPD 328

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request that the General Accounting Office reconsider portion of earlier decision dismissing as untimely protester's claim that agency held improper discussions with only one bidder is denied where: (1) the record shows that the protester had enough information at the time it filed its initial protest to make this claim; and (2) in any event, our prior decision effectively held that the dialogue between the agency and the low bidder was an appropriate attempt to determine whether the low bidder had the capacity to perform as promised.

B-249069.2, November 9, 1992

92-2 CPD 329

Procurement

Bid Protests

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

Where protester's only concern with agency's failure to definitize a previously awarded letter contract is how that failure affects protester's ability to submit an offer under a current solicitation, protest against the failure to definitize the letter contract concerns an alleged impropriety in the solicitation process which must be timely under the rules governing protests of apparent solicitation defects. Protest here is untimely because protester knew that the letter contract would not be definitized prior to the due date for the submission of best and final offers and did not file protest until after that date.

Procurement

1 Protests**GAO procedures****■ GAO decisions****■ ■ Reconsideration**

Request for reconsideration is denied where request does not set forth errors of fact or law in prior decision that warrant reversing or otherwise modifying that decision.

B-249244.2, B-249244.3, November 9, 1992

Procurement

Competitive Negotiation**■ Contract awards****■ ■ Administrative discretion**

Where agency sustains agency-level protest against the cancellation of a solicitation for maintenance and repair services, issued under Office of Management and Budget A-76 Policies, agency reasonably concluded not to award a contract to the protester since the requirements that had not been performed in-house at the time of the decision would no longer be contracted for in accordance with an agency-wide policy against contracting for such services in effect at the time of the decision sustaining the protest.

B-249332, November 9, 1992**92-2 CPD 330****Procurement**

Sealed Bidding**■ Invitations for bids****■ ■ Post-bid opening cancellation****■ ■ ■ Justification****■ ■ ■ ■ Sufficiency**

Compelling reason exists for canceling invitation for bids (IFB) for office space renovation after bid opening in order to delete requirement in specifications for foreign-made floor covering which the Buy American Act prohibits the use of in the construction contract to be awarded under the IFB and in order to delete unnecessary environmental control and monitoring equipment and modular furniture.

B-249348, November 9, 1992**92-2 CPD 331****Procurement**

Specifications**■ Minimum needs standards****■ ■ Competitive restrictions****■ ■ ■ Allegation substantiation****■ ■ ■ ■ Evidence sufficiency**

Protest that specification is impossible to meet is denied where protester presents no clear and convincing evidence to show such impossibility.

Procurement

Specifications

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Design specifications**
- ■ ■ ■ **Overstatement**

Protest that specification overstates agency's minimum needs is denied where record shows requirement relates to human safety and national defense and is not only reasonable but is designed to achieve the highest possible reliability and effectiveness.

B-249484, November 9, 1992

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Post-bid opening cancellation**
- ■ ■ **Justification**
- ■ ■ ■ **Sufficiency**

Agency had a compelling reason to cancel a solicitation for real estate property closing services after bid opening where the solicitation, as issued, failed to reflect the agency's minimum needs that an attorney prepare the legal documents affecting title to the properties to be closed.

B-249496, November 9, 1992

92-2 CPD 332

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Personnel**
- ■ ■ ■ **Resumes**

Procurement

Specifications

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Justification**
- ■ ■ ■ **Sufficiency**

Protest that solicitation requirement for detailed profiles of proposed instructors to teach procurement courses is unduly restrictive of competition is denied where agency reasonably concluded that individuals with specialized non-lecture based training skills and procurement expertise are needed and that consideration of profiles as part of proposal was necessary to ascertain whether the successful contractor's personnel are qualified to teach the courses.

Procurement

Sealed Bidding**— Bids**

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

Hand-carried bid properly was considered for award where record establishes that it was received in the proper office 3-1/2 hours prior to bid opening and that government mishandling after receipt of the bid was the sole reason why the bid was not delivered to the proper location prior to bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration based on alleged errors of fact and law is denied where fact in question had no bearing on decision and there is no showing that decision was legally erroneous.

Procurement

Contract Management

- Convenience termination
- ■ GAO decisions
- ■ ■ Recommendations
- ■ ■ ■ Modification

Agency request that recommendation of termination for convenience followed by award to protester be changed to allow award to stand is denied where request is based on several factors—*e.g.*, agency good faith, high termination costs—that either are not supported in the record or on their face do not warrant withholding award to firm properly entitled to it.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of a decision sustaining a protest that the contracting agency improperly conducted post best and final offer discussions with the awardee is denied where the awardee merely repeats arguments made during the original protest but fails to point out any errors of fact or law or information not previously considered in the original decision.

B-249403, November 10, 1992

92-2 CPD 35

Procurement

Specifications

- **Minimum needs standards**
- ■ **Design specifications**
- ■ ■ **Office space**

Protest that solicitation's terms exceed agency's minimum requirements and unduly restrict competition is denied where solicitation's preferred ("ideal") stacking plan (regarding desired structural placement of rooms and offices) did not present a minimum requirement for offerors to meet—there was no language in the solicitation requiring that proposals fully meet the desired specifications.

B-251048.3, November 10, 1992

92-2 CPD 339

Procurement

Bid Protests

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

Procurement

Bid Protests

- **GAO procedures**
- ■ **Interested parties**
- ■ ■ **Subcontractors**

Request for reconsideration is denied where request confirms that protester is a prospective subcontractor, not a prospective offeror, under protested procurement, and thus supports General Accounting Office's conclusion that protester is not an interested party to protest agency's disclosure of prices under its current contract.

B-247964.4, November 12, 1992

92-2 CPD 340

Procurement

Bid Protests

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

Prior decision dismissing protest is affirmed where protest was untimely filed and no basis exists for considering protest under significant issue exception.

B-249309, November 12, 1992

92-2 CPD 341

Procurement

Competitive Negotiation

- **Discussion**
- ■ **Determination criteria**

Under a negotiated defense agency procurement where offerors were advised that discussions were not contemplated, agency properly could conduct discussions with competitive range offerors where discussions were believed necessary to determine the proposal most advantageous to the government.

Procurement

Sealed Bidding**Bids**

- Cost estimates
- ■ Risk assumption

Procurement

Sealed Bidding**Invitations for bids**

- Terms
- ■ Defects

Protest by incumbent contractor that solicitation for housing maintenance and repair services is defective because the selected contractor is required to perform change of occupancy maintenance and other repair services on a lump-sum, fixed-price basis and because it does not provide reliable information needed to bid on these services is denied where the solicitation contained information such as detailed performance standards, layout drawings, opportunities for site visits, number of changes of occupancy per month, and fiscal year occupancy, that should be sufficient to permit bidders, using their expertise, to adequately estimate the cost of performing the services and thus to compete intelligently and on an equal basis

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Extension
- ■ ■ ■ Propriety

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Submission time periods
- ■ ■ ■ Adequacy

Agency's refusal to extend closing date for receipt of proposals after issuing amendment was reasonable where 65 total days were allowed for proposal submission, the amendment in question actually relaxed solicitation requirements so that proposal preparation should have been easier, and there is no evidence or allegation that the agency failed to follow applicable requirements regarding the dissemination of solicitation materials.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Protest claiming that solicitation pricing instructions misled protester into submitting nonresponsive bid prices for alteration line items is denied where (1) protester admits that it interpreted instructions—which enunciated statutory cost limitations of \$15,000 for a total house unit price

and \$2,000 for alteration work unit price—as requiring the sum of both the repair work price and the alteration work price to be included in the \$15,000 total cost limitation; and (2) solicitation pricing schedule, technical specifications, and drawings clearly established a separate alteration work unit price category.

Procurement

Bid Protests

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

Contention that solicitation was unduly restrictive because pricing instructions were misleading is untimely as it was not protested prior to bid opening.

B-243142.4, November 16, 1992

92-2 CPD 345

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**
- ■ ■ **Administrative remedies**

Claim for costs is dismissed where protester's basis for claim at General Accounting Office (GAO) was agency's initial refusal to consider any claim for protest costs pending judicial resolution of whether GAO's award of such costs is constitutional, and agency has now reversed its position and will consider the claim.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**
- ■ ■ **Administrative remedies**

Procurement

Bid Protests

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

Request that GAO modify the remedy to permit an offeror to recover its proposal preparation costs is dismissed where claimant was not awarded proposal preparation costs in the protest decision and did not request reconsideration of the remedy within 10 working days after the basis of the claimant's request was known.

B-248835.2, November 16, 1992

92-2 CPD 346

Procurement

Competitive Negotiation

- **Offers**
- ■ **Revision**
- ■ ■ **Propriety**

Protest that the agency acted improperly in allowing only one offeror to revise its price proposal to reflect a new wage rate determination after the selection of that offeror for award, but prior to the award of the contract, is denied where there is no reasonable possibility that the protester, which submitted a higher priced offer, would have improved its relative standing had it been pro-

ided with an opportunity to submit a revised price proposal based on the new wage determination.

B-248995.2, November 16, 1992

92-2 CPD 347

Procurement

Competitive Negotiation

Offers

Evaluation errors

- Evaluation criteria
- ■ Application

In a procurement for ship repairs where solicitation required the successful offeror to provide pier space during a specified 35-day period, agency's determination that protester's contingent proposal of pier space was unacceptable was consistent with the stated evaluation criteria.

B-249131.2, November 16, 1992

92-2 CPD 348

Procurement

Bid Protests

- GAO authority
- ■ Real property
- ■ ■ Condemnation

Protest that the process by which the General Services Administration (GSA) selected a building site for acquisition was flawed will not be considered where GSA has determined that it will acquire the site by condemnation.

B-249341, November 16, 1992

92-2 CPD 349

Procurement

Specifications

- Minimum needs standards
- ■ Determination
- ■ ■ Administrative discretion

Agency's decision to repair and rework aircraft carrier catapult trough covers, rather than replace them with new ones, is unobjectionable where agency reasonably determined that reworking the items was the least expensive approach.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

A sole-source award of a contract to rework and repair catapult trough covers in accord with a specification calling for laser welding is not objectionable where the agency reasonably determined that only one source was available to perform the required work and the protester has failed to show that it had currently available equipment which could meet the agency's requirements.

Procurement

Bid Protests

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

Protest challenging adequacy of proposal preparation period is dismissed as untimely where filed with the General Accounting Office more than 10 working days after protester's receipt of agency's response to agency-level protest, in which agency made clear its position that no further action would be taken on the protest arguments; protester's continued pursuit of protest with agency did not toll timeliness requirements.

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Agency's refusal to permit upward correction of low bid was unobjectionable where documentation furnished by the bidder did not clearly and convincingly support bidder's claim as to how mistake occurred, so that intended price was not clear.

Procurement

Payment/Discharge

- Shipment
- ■ Household goods
- ■ ■ Inventories

Every household good need not be listed on the inventory that accompanies a shipment.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Sufficiency

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Solicitations adequately detail agency's requirements for real estate asset management and related services and provide sufficient information for offerors to intelligently prepare technical proposals and to submit prices which will take into account perceived performance uncertainties and risks.

Procurement

Special Procurement Methods/Categories

- Service contracts
 - ■ Personal services
 - ■ ■ Criteria

Awards will not result in unauthorized personal services contracts where the agency will not, on any continuous basis, supervise or control the successful contractors in the performance of their contracts.

Procurement

Competitive Negotiation

- Requests for proposals
 - ■ Evaluation criteria
 - ■ ■ Prior contracts
 - ■ ■ ■ Contract performance

Procurement

Competitive Negotiation

- Requests for proposals
 - ■ Evaluation criteria
 - ■ ■ Sufficiency

Evaluation factors are not objectionable where they are directly relevant to the offerors' performance of the contracts and, as such, provide the basis for the agency's determination of the most advantageous proposals.

B-249473, November 17, 1992

92-2 CPD 354

Procurement

Competitive Negotiation

- Contract awards
 - ■ Administrative discretion
 - ■ ■ Technical equality
 - ■ ■ ■ Cost savings

Award to lower cost offeror is proper where the record shows that the technical proposals were reasonably considered to be essentially equal in technical merit.

B-249524, November 17, 1992

92-2 CPD 355

Procurement

Competitive Negotiation

- Unbalanced offers
 - ■ Materiality
 - ■ ■ Determination
 - ■ ■ ■ Criteria

The apparent low bid on a contract for a 1-year base period and four 1-year options was properly rejected as materially unbalanced where there is a large decreasing price differential between the prices bid for the base and first option years, and the prices bid for the last 3 option years, and where the bid does not become low until the final option year, thereby raising a reasonable doubt that the bid would result in the lowest actual cost to the government.

Procurement

Competitive Negotiation

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

Protest that agency improperly eliminated proposal from competitive range as technically unacceptable is denied where record shows that agency reasonably concluded that the proposal demonstrated a complete lack of understanding of the solicitation requirements.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Downgrading
- ■ ■ ■ Propriety

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly rejected protester's proposal as technically unacceptable where the record shows that the agency's technical evaluation committee reasonably downgraded protester's proposal in areas found deficient in accordance with the evaluation criteria announced in the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

Where a small business offeror was found unacceptable based upon a comparative assessment of its proposal under the evaluation criteria announced in the solicitation, the matter concerns technical acceptability rather than responsibility, and, as such, there is no requirement for referral to the Small Business Administration under certificate of competency procedures.

Procurement

Sealed Bidding**Unbalanced bids**

- Materiality
- Responsiveness

Protest that low bid was improperly rejected as unbalanced is sustained where agency does not show that bid contained both understated prices for some items and overstated prices for others, and there is no reasonable doubt that award will result in the lowest overall cost to the government.

Procurement

Socio-Economic Policies

- Small businesses
- Responsibility
- Competency certification
- GAO review

Under competitive section 8(a) acquisitions, where agency doubts bidder's ability to perform because of very low prices, negative preaward survey results or other reasons, the contracting officer should refer the matter to the Small Business Administration for its determination as to whether the bidder can perform.

Procurement

Bid Protests

- GAO procedures
- Protest timeliness
- 10-day rule

Protest is dismissed as untimely where record shows that protester was orally informed of basis of protest more than 10 working days prior to filing its bid protest at the General Accounting Office.

Procurement

Sealed Bidding

- Bids
- Responsiveness
- Descriptive literature
- Ambiguous bids

Where an invitation for bids requires the submission of descriptive literature to establish conformance of the product offered with the material specifications of the solicitation, bid which included literature susceptible of two interpretations, one of which clearly did not conform to a material specification, was properly rejected as nonresponsive.

Procurement

Bid Protests

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

Protest challenging nonresponsibility determination is dismissed as untimely where protest documents contain conflicting statements regarding timeliness of protest, and protester fails to explain the "clerical error" which it alleges as the cause of this discrepancy; since initial protest submission contains unrebutted contemporaneous evidence establishing that agency-level protest was filed more than 10 days after the protester received separate written and oral notice of its nonresponsibility determination, subsequent protest to this Office is untimely.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Brand name/equal specifications
- ■ ■ ■ Equivalent products

Procurement

Specifications

- Brand name/equal specifications
- ■ Equivalent products
- ■ ■ Salient characteristics
- ■ ■ ■ Descriptive literature

In a negotiated procurement, issued on a "brand name or equal" basis, award was improperly made to a firm offering an "equal" product where the descriptive material provided by the awardee, as required by the solicitation, did not demonstrate compliance with the stated salient characteristics.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Comments timeliness

Under Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1992), comments must be related to the protest issues addressed in the agency's report; submission that only raises new protest grounds based on the information in the report, but does not report on original protest issues, does not constitute comments, and thus there is no basis for reconsidering dismissal of original protest for failure to file comments.

Procurement

Specifications**Minimum needs standards**

- Design specifications
- ■ Office space

Protest that contracting agency was predisposed to reject protester's offer of incumbent building is denied where record shows protester's proposed space required major renovations to meet the minimum requirements of the solicitation and protester's proposed renovation plan was reasonably determined to be too disruptive to the tenant agencies and incapable of meeting the solicitation occupancy date.

B-249421, et al., November 23, 1992**92-2 CPD 364**

Procurement

Socio-Economic Policies**Labor standards**

- GAO procedures
- ■ Procedural changes

Procurement

Socio-Economic Policies

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

Protest challenging the evaluation of offers under the Buy American Act is sustained where the agency's prime contractor, acting by or for the government, made Buy American Act determinations regarding the domestic or foreign status of suppliers' offers for computer equipment without considering the issue of the place of manufacture for either the end products or the components being offered.

B-249428, November 23, 1992**92-2 CPD 365**

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Contractors
- ■ ■ Prior contracts

Procurement

Specifications

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

Agency properly permitted offerors option of extending current manufacturer's system with compatible equipment—in addition to option of replacing current system with that of different manufacturer—even though it may give manufacturer of current system a competitive advantage since the equipment already installed would have to be replaced only by offeror electing replacement option; first option clearly is reasonable (and potentially least costly) means of meeting agency's need, and competitive advantage is not improper where it resulted from firm's prior contracts and not improper or unfair agency action.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Allegation that competitive advantage of current system manufacturer improperly was created by agency's piecemeal small purchase of additional equipment is without merit where agency initially procured the current system on a competitive basis and subsequent installation of additional equipment on a building-by-building basis was necessitated by the need to replace the old equipment that became inoperable, and the inability to obtain adequate funding to replace the entire system in one procurement.

B-249452, B-250377.2, November 23, 1992

92-2 CPD 366

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Agency improperly extended an interim services contract on a sole-source basis where it did not establish that only the incumbent contractor could provide the services within the required time frame and where it could have avoided the urgency that ultimately led to the sole-source award through advance procurement planning.

Procurement

Bid Protests

- GAO authority
- ■ Protective orders
- ■ ■ Information disclosure

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Protective orders

Awardee alleging protective order violation by a competitor is not entitled to the costs of filing and pursuing a protest seeking the competitor's exclusion from the competition on a follow-on contract or the material's release to the awardee, where the agency did not originally designate the material in question as protected, only designated the material as protected in response to the awardee's untimely insistence for protective order coverage, and then released the material from coverage in response to the awardee's protest.

B-249491, November 23, 1992

92-2 CPD 367

Procurement

Small Purchase Method

- Small business set-asides
- ■ Requests for quotations
- ■ ■ Unrestricted resolicitation

Agency's decision to solicit additional quotes under small purchase procedures is not legally objectionable where the only quote received was unreasonably priced.

Procurement

- Protests
- GAO procedures
- GAO decisions
- Reconsideration

Request for reconsideration is denied where protester repeats arguments made in its protest submissions and disagrees with original decision.

Procurement

- Competitive Negotiation
- Offers
- Evaluation
- Technical acceptability

Protests that agency did not properly evaluate the relative strengths and weaknesses of proposals under two solicitations which provided for a relative evaluation of technical proposals but instead leveled the proposals by finding them to all be equal is denied where record shows that the agency did, in fact, assess strengths and weaknesses in its technical evaluations and where there is nothing in the record which indicates that protester's proposals should have received a higher technical rating which would justify its substantially higher price.

Procurement

- Bid Protests
- GAO procedures
- Interested parties
- Direct interest standards

Protester is not an interested party to challenge the technical evaluations of awardees' proposals under two solicitations since even if the protester were correct that agency miscalculated those proposals, protester would not be in line for awards as record shows that agency reasonably concluded that, under each solicitation, another firm's lower-priced proposal was technically equivalent to protester's.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Tests

Protest challenging exclusion of proposal from the competitive range based on pre-award demonstration tests of protester's proposed equipment which were conducted by the agency is denied where the test results demonstrate that the proposed equipment is technically unacceptable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Agency properly rejected offeror's best and final offer (BAFO) to provide personnel for automatic data processing support services as technically unacceptable where the offeror's BAFO did not satisfy the minimum solicitation requirements for employee qualifications for 9 of 36 resumed employees, which was the most important technical evaluation area, despite the offeror's being accorded meaningful discussions on this point.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions where it informed the offeror of numerous deficiencies in its proposal in the area of employee qualifications and advised the offeror to check this entire section of its proposal, and where the minimum requirements for employee qualifications were clearly stated in the solicitation.

Procurement

Socio-Economic Policies

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

Under a multiple award procurement partially set aside for small businesses, an agency is not required to continue discussions with a small business offeror that submitted a technically unacceptable best and final offer.

Procurement

Competitive Negotiation**Contract awards**

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

Award to the offeror submitting a slightly higher-priced, technically superior proposal under a request for proposals which gave greater weight to technical merit than price is justified where the contracting agency reasonably determined that the acceptance of the awardee's proposal was worth the higher price based on a comparative evaluation of the offerors' past quality performance.

Procurement

Competitive Negotiation

- Offers
- ■ Price reasonableness
- ■ ■ Determination
- ■ ■ ■ Administrative discretion

Protest objecting to the agency's finding that the awardee's price, which was 20 percent higher than the price it submitted under a prior contract, was reasonable is denied where the agency found the awardee's price was lower than the government estimate and that its prior lower contract price was based on significantly greater quantities than solicited under the current request for proposals.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Award to a higher-priced, technically superior offeror under request for proposals which gave greater weight to technical merit is justified where the agency reasonably determined that awardee's proposal was worth the higher price, and where selection decision was reasonably based and consistent with solicitation's evaluation scheme.

Procurement

Contractor Qualification

- De facto debarment
- ■ Non-responsible contractors

Contracting agency's failure to award contracts to the protester under separate solicitations associated with procurements for similar services does not constitute *de facto* suspension or debarment where the record shows that agency did not determine that the protester is nonresponsible; rather,

the agency's award decisions were each properly based upon a reasonable evaluation which found the protester's proposals technically inferior.

B-249810.3, November 24, 1992

92-2 CPD 37

Procurement

Socio-Economic Policies

■ **Disadvantaged business set-asides**

■ ■ **Use**

■ ■ ■ **Administrative discretion**

Air Force decision to set aside a contract for base housing maintenance for small disadvantaged business (SDB) concerns pursuant to section 1207 of Public Law 99-661 is not inconsistent with the Small Business Competitiveness Demonstration Program Act of 1988, 15 U.S.C. § 644 note (1988, and Supp. III 1991), which requires procurements of certain services and under certain circumstances to be conducted on an unrestricted basis, as the latter statute expressly excludes from its requirements SDB set-asides conducted pursuant to section 1207.

B-249879, B-249879.2, November 24, 1992

92-2 CPD 375

Procurement

Bid Protests

■ **Moot allegation**

■ ■ **Determination**

Procurement

Sealed Bidding

■ **Alternate bids**

■ ■ **Use**

■ ■ ■ **Administrative discretion**

Where protester complains that alternate item in invitation for bids should have been evaluated by agency in selecting a firm for award, protest is dismissed as academic where proposed awardee is low whether or not alternate item is evaluated for award purposes.

Procurement

Contract Types

■ **Construction contracts**

■ ■ **Funding**

■ ■ ■ **Bad faith**

Allegation that agency manipulated amount of funding available is denied where record shows that agency reasonably evaluated deduct alternate items in invitation for bids to reduce project costs to come within previously established budget constraints for two construction projects that were the subject of lump-sum appropriation by Congress.

Procurement

Sealed Bidding

Bids

- Responsiveness
- ■ Acceptance time periods
- ■ ■ Deviation

Procurement

Sealed Bidding

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

Bid that omitted standard form 1442, "Solicitation, Offer and Award," which contains several material provisions (such as a minimum bid acceptance period), was properly rejected as nonresponsive where the bid did not otherwise evidence bidder's intent to be bound by form's material provisions.

Procurement

Socio-Economic Policies

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

Protest allegation that solicitation improperly failed to include provisions of Buy American Act is dismissed where the contract is to be performed outside the United States and therefore is not subject to the Act.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Applicability
- ■ ■ Administrative determination

Protest allegation that solicitation improperly failed to include various labor provisions is dismissed where the contract is to be performed outside the United States and thus is not subject to domestic labor laws.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest allegation that solicitation improperly failed to include provisions of Balance of Payments program is dismissed where agency reports it will issue an amendment to include the program, rendering the allegation academic.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to reimbursement of the costs of filing and pursuing its protest where agency agreed to take corrective action in its agency report and where protester has not shown it expended time and resources it would not have expended had the agency taken corrective action earlier.

B-250923.2, November 24, 1992

92-2 CPD 378

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Protest against elimination of proposal from the competitive range was properly dismissed as untimely when filed more than 10 working days after the protester was advised of its exclusion from the competitive range and the reasons for its exclusion.

Procurement

Bid Protests

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

Protester whose proposal has been eliminated from the competitive range is not an interested party to challenge award to another firm.

B-251221, B-251222, November 24, 1992

92-2 CPD 379

Procurement

Sealed Bidding

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

Bid was properly rejected as nonresponsive where the bidder furnished a bid guarantee in the form of an uncertified personal check.

Procurement

Sealed Bidding

Bid guarantees

■ Responsiveness

■ ■ Signatures

■ ■ ■ Authority

Bidder's failure to enter the date signed and title of the signer in the signature block of the bid form does not affect price, quantity, delivery or quality, or otherwise affect the bidder's obligations under the contract; the omissions, therefore, were minor informalities that could be waived.

B-244691.2, November 25, 1992

92-2 CPD 380

Procurement

Special Procurement Methods/Categories

■ Requirements contracts

■ ■ Additional work/quantities

■ ■ ■ Interagency agreements

Pursuant to the Economy Act, 31 U.S.C. § 1535 (1988), one agency may properly acquire goods under another agency's contract, where the user agency reasonably determines that the goods cannot be obtained as conveniently or cheaply from a commercial enterprise, and the requirements of the Economy Act otherwise are met.

B-249522, November 25, 1992

92-2 CPD 381

Procurement

Competitive Negotiation

■ Competitive advantage

■ ■ Privileged information

■ ■ ■ Disclosure

Procurement

Competitive Negotiation

■ Competitive advantage

■ ■ Subcontractors

■ ■ ■ Prior contracts

Protest that the awardee gained an unfair competitive advantage and should have been excluded from the competition because the agency used an evaluator employed by the awardee's subcontractor on a simultaneous procurement for similar services is denied where the record does not support the protester's contention that its proprietary information was improperly disclosed, or was not safeguarded by the evaluator, or that the evaluator participated in the preparation of the proposal for the awarded contract.

Procurement

Competitive Negotiation

- Best/final offers
 - ■ Modification
 - ■ ■ Acceptance criteria
-

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Price adjustments

Where the protester's price modification of its best final offer was submitted after the protester was advised of the awardee's identity and that it was not in line for award, the contracting officer reasonably determined not to reopen discussions to consider the protester's modification since to do so would have compromised the integrity of the competition.

Procurement

Competitive Negotiation

- Best/final offers
 - ■ Late submission
 - ■ ■ Rejection
 - ■ ■ ■ Propriety
-

Procurement

Competitive Negotiation

- Offers
- ■ Price adjustments
- ■ ■ Late submission
- ■ ■ ■ Acceptability

Protester's price reduction submitted after the date specified for receipt of best and final offers was properly rejected where none of the exceptions permitting the acceptance of late submissions, as outlined in the solicitation, applied.

Procurement

Bid Protests

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

Protest alleging that agency improperly awarded contract to another firm on sole-source basis is dismissed as untimely filed where protester was aware of agency's intent to make the award more than 10 working days before filing its protest.

Procurement

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

Agency's opening of bids without acting on agency-level protest constituted constructive notice to protester of adverse action; protest to the General Accounting Office of agency's subsequent adverse decision, filed more than 10 days after bid opening, therefore is dismissed as untimely.

Procurement

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

Protest that awardee's product has a hazardous toxicity level is dismissed where record shows that protester, the fifth low bidder, was not in line for award based on bids received, and therefore is not an interested party to challenge the award on this basis.

Procurement

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

Request for reconsideration of decision dismissing protest of award to another firm is denied where protest did not explain why award was allegedly improper, and therefore did not meet General Accounting Office's requirement for a detailed statement of protest grounds.

Late Case

Procurement

- Special Procurement Methods/Categories
 - ■ Computer software
 - ■ ■ Sample evaluation
 - ■ ■ ■ Testing

Procurement

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

The rejection of the protester's proposal for computer software was reasonable where solicitation warned that failure of an offeror's proposed software to meet any of the mandatory specifications may render the proposal unacceptable and could provide the basis for rejection of the proposal, and a functional test demonstration showed that protester's software did not meet two of the performance specifications.

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