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

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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-241820, January 2, 1991

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses
- ■ ■ ■ Theft

Relief is granted to Forest Service alternate imprest fund cashier for loss by theft of \$1,477.57 since evidence showed loss was attributable to forced entry into safe by burglars and investigation revealed no connection between accountable officer and the theft.

Appropriations/Financial Management

Accountable Officers

- Funds
- ■ Security safeguards

We recommend that Forest Service accountable officers refamiliarize themselves with Treasury and Forest Service regulations regarding safekeeping of funds in reaction to a statement in Forest Service investigative report that security procedures in such offices are customarily lax.

B-238181, January 9, 1991

Appropriations/Financial Management

Obligation

- Payments
- ■ Estimates
- ■ ■ Communications systems/services

General Services Administration (GSA) is authorized by 40 U.S.C. § 757 (1988) to recover cost of Federal Telecommunications System (FTS) services and facilities through charges based on statistical sampling formula that recovers approximate cost of providing FTS services to individual user agencies. GSA is also authorized to recover termination costs that arose by virtue of GSA's authorized administrative practice regarding the Federal Telecommunications (FT) Fund, 40 U.S.C. § 757 (1982), but which were incurred subsequent to merger of FT Fund into the Information Technology (IT) Fund, 40 U.S.C. § 757 (1988).

B-240371, January 18, 1991***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Fitness centers
- ■ ■ Membership fees

Under 5 U.S.C. § 7901 (1988), federal agencies may establish preventive health service programs to promote and maintain the physical and mental fitness of their employees. Moreover, regulations issued by the Office of Personnel Management to implement section 7901 specifically authorize agencies to establish and operate "physical fitness programs and facilities designed to promote and maintain employee health." Federal Personnel Manual (FPM), ch. 792 (Inst. 261, Dec. 31, 1980), as amended by FPM letter 792-15 (April 14, 1986). As such, we conclude 5 U.S.C. § 7901 and its implementing regulations authorize the Department of Defense, Defense Medical Systems Support Center to use appropriated funds to provide its employees access to private fitness center's exercise facilities.

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Membership fees

The prohibition in 5 U.S.C. § 5946 against the use of appropriated funds to pay the membership dues of a federal employee in a society or association does not prohibit a federal agency from using appropriated funds to purchase access for its employees to a private fitness center's exercise facilities.

B-237343, January 23, 1991

Appropriations/Financial Management

Accountable Officers

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

U.S. Army disbursing official is relieved of liability pursuant to 31 U.S.C. § 3527(c) for the improper payment resulting from payee's negotiation of both original and recertified checks. The disbursing official followed the proper procedures in the issuance of the recertified check; there is no indication of bad faith on the part of the disbursing official; and he initiated collection action in a timely and adequate manner.

B-240395, January 23, 1991

Appropriations/Financial Management

Claims Against Government

- Meritorious claims
- ■ Submission

A manpower shortage category appointee received erroneous advice from agency officials regarding travel and transportation entitlements to first duty station. That erroneous information was reiterated in the employee's travel authorization. Under 5 U.S.C. § 5723 (1988), manpower shortage category appointees have limited entitlements and any expenses incurred in excess of those entitlements may not be reimbursed. However, in view of the amount of expenses incurred by the employee in good faith reliance on the erroneous representations of agency officials, we are submitting the matter to the Congress under 31 U.S.C. § 3702(d) (1988) as a meritorious claim.

B-240553, January 23, 1991

Appropriations/Financial Management

Accountable Officers

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

Relief is granted to three Army finance officers for improper payments because they maintained an adequate system of procedures and controls to avoid errors in their office and they supervised their subordinates to ensure that the system was followed.

B-239708, January 31, 1991***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Office space
- ■ ■ Use
- ■ ■ ■ Child care services

The General Services Administration (GSA) may lease space or construct buildings specifically for child care facilities if there is insufficient space available for such purposes in its existing inventory. The Tribble amendment, 40 U.S.C. § 490b, authorizes officials controlling space in federal buildings to provide space for child care facilities if, among other requirements, "such space is available." Because a restrictive reading of the "space available" language (in light of the limited existing inventory of appropriate space in federal buildings) would effectively preclude GSA from providing space for child care; and because the legislative history of the Federal Credit Union Act, upon which the Tribble amendment is modeled, indicates that the "space available" language was not intended to limit agency ability to provide facilities for credit unions, we interpret the statute as permitting GSA to acquire space to make it available for child care facilities. To the extent it is inconsistent with this decision, 67 Comp. Gen. 443 (1988) is overruled.

Civilian Personnel

B-210555.44, January 22, 1991***

Civilian Personnel

Travel

- **Commuting expenses**
- ■ **Prohibition**
- ■ ■ **Applicability**

Use of a government vehicle for transportation between an employee's home and an airport or other common carrier terminal in conjunction with official travel is not precluded by the statute governing home-to-work transportation or by any provision of the Federal Travel Regulations. Contrary views expressed in B-210555.23, May 18, 1987, will no longer be followed.

B-240395, January 23, 1991

Civilian Personnel

Relocation

- **Expenses**
- ■ **Reimbursement**
- ■ ■ **Eligibility**
- ■ ■ ■ **Manpower shortages**

Civilian Personnel

Relocation

- **Meritorious claims**

A manpower shortage category appointee received erroneous advice from agency officials regarding travel and transportation entitlements to first duty station. That erroneous information was reiterated in the employee's travel authorization. Under 5 U.S.C. § 5723 (1988), manpower shortage category appointees have limited entitlements and any expenses incurred in excess of those entitlements may not be reimbursed. However, in view of the amount of expenses incurred by the employee in good faith reliance on the erroneous representations of agency officials, we are submitting the matter to the Congress under 31 U.S.C. § 3702(d) (1988) as a meritorious claim.

B-240819, January 24, 1991***

Civilian Personnel

Relocation

- **Residence transaction expenses**
- ■ **Finance charges**

A transferred employee may not be reimbursed the amount of a seller financing concession adjustment that went into the determination of the market valuation of his house which was the basis of the offer made to him by a relocation services contractor and accepted by him in the sale of his house.

B-239887, January 25, 1991***

Civilian Personnel

Travel

- Travel expenses
 - ■ Reimbursement
 - ■ ■ Official business
 - ■ ■ ■ Determination
-

Civilian Personnel

Travel

- Travel regulations
- ■ Applicability

Attendance at a funeral is not normally considered official business for which an agency may pay an employee's travel expenses. However, where the head of the agency or his delegatee determines that there are circumstances relating to significant activities of the agency that justify the designation of an employee as an official agency representative to attend a funeral, the employee may be reimbursed travel expenses from agency funds. B-236110, Jan. 26, 1990; B-199526, Feb. 23, 1981; B-166141, Feb. 27, 1969; and B-129612, July 1, 1957, are modified.

B-242473, January 25, 1991

Civilian Personnel

Compensation

- Prevailing rate personnel
- ■ Wage rates
- ■ ■ Determination

The NFFE is advised that its prevailing rate employees' request for a change in their rate scale was never denied by the agency and filing a request with this office would be premature since the employees have not exhausted their administrative remedies. Further, the Office of Personnel Management has the responsibility for defining the boundaries of wage and survey areas. Agencies has considerable discretion in setting the salaries of prevailing rate employees and courts will not set aside such determination unless there has been an abuse of discretion, or that such a determination is so arbitrary as to be clearly wrong. *Best v. United States*, 14 Cl. Ct. 720 (1988).

B-242095, January 28, 1991

Civilian Personnel

Relocation

- Household goods
- ■ Temporary storage
- ■ ■ Time restrictions
- ■ ■ ■ Additional expenses

A transferred employee may not be allowed additional time for the temporary storage of household goods in excess of the 180-days authorized by the Federal Travel Regulations applicable to transfers.

Civilian Personnel

Relocation

- Household goods
- ■ Temporary storage
- ■ ■ Time restrictions
- ■ ■ ■ Additional expenses

An agency erroneously authorized the storage of household goods, incident to an employee's transfer, for a period that exceeded the time limit authorized by the Federal Travel Regulations. The error was discovered after the expenses were incurred but before the bill for the excess charges was paid by the agency. Erroneous advice may not be the basis for consideration of waiver. Waiver applies only where an erroneous payment has already been made and the employee is indebted to the government.

B-238242.2, January 29, 1991

Civilian Personnel

Relocation

- Overseas personnel
- ■ Post differentials
- ■ ■ Eligibility

Civilian Personnel

Relocation

- Overseas personnel
- ■ Quarters allowances
- ■ ■ Eligibility

Employee claims living quarters allowance and foreign post differential for employment in Okinawa following 13 years of private employment there after military retirement. We agree with the reasonableness of the determinations made by the agencies involved that the claimant's presence in Okinawa was not fairly attributable to his government employment. His contention that he was actively searching for government employment for a 13-year period is not persuasive in view of his voluntary residence in Okinawa, and his lengthy employment in the private sector.

B-239590, January 29, 1991***

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

Employee entered into a contract to sell his old residence after he was selected and accepted a job offer from another agency at a new duty station. He later accepted another job offer from his old agency and declined the first offer. He is entitled to reimbursement of sales expenses incident to his transfer by his agency. Since the residence sales contract was occasioned in contemplation of a transfer in the interest of the government his acceptance of another transfer does not defeat his right to be reimbursed.

Military Personnel

B-239039, January 17, 1991

Military Personnel

Pay

- **Death gratuities**
- ■ **Eligibility**
- ■ ■ **Spouses**

GAO does not object to Navy decision that a deceased member's second spouse is his widow for purposes of eligibility for a military Identification and Privileges Card where the member's first spouse, who herself remarried, maintains that she remarried in reliance upon a divorce from the member that she says she now is unsure ever was finalized.

B-241802, January 29, 1991

Military Personnel

Pay

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

Member of the Navy who was medically incapacitated for aviation duty and continued to receive Aviation Career Incentive Pay (ACIP) after the 180 day grace period had elapsed should have known that his continued entitlement was doubtful and should have taken action to have the matter resolved. Therefore, waiver is denied.

Miscellaneous Topics

B-239712, January 23, 1991

Miscellaneous Topics

Environment/Energy/Natural Resources

■ **Environmental protection**

■ ■ **Contractors**

■ ■ ■ **Cost allocation**

Advance agreement between contractor and government that environmental cleanup costs will be treated as ordinary and necessary business overhead costs in the year paid is not improper under the Federal Acquisition Regulation (FAR). Specific costs claimed, however, are payable only if they are allowable under FAR cost principles and procedures.

Procurement

B-240881, January 2, 1991

91-1 CPD 1

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

An amendment which incorporates into an invitation for bids (IFB) for tailoring services a requirement that the contractor provide contingency plans to assure uninterrupted services in the event of natural disaster, adverse weather conditions, or labor strikes, and which adds a provision advising that the contractor might be required to support an increased workload in the event of mobilization, is not material, since it does not have more than a negligible effect on price, quantity, quality, or delivery of services, or on the relative standing of bidders, and there is no evidence that the amendment imposes significant obligations on the contractor not previously contained in the original IFB.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Waiver

Bidder's late acknowledgment of an amendment to invitation for bids which is not material may be properly waived as a minor informality.

B-240889, January 2, 1991

91-1 CPD 2

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Agency did not reasonably determine that awardee's proposal for the lease of office space was technically acceptable where the awardee failed to submit with its proposal a required plot plan drawn to scale, and the record suggests that the awardee's office building including landscaping and parking actually does not fit within the proposed site without the use of additional land contiguous to the building site.

Procurement

Bid Protests

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

Protest allegation that solicitation, as amended, failed to include list of all questions submitted by protester and agency responses to those questions concerns an alleged solicitation defect and is untimely where protest is filed after bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Reconsideration of dismissal of protest as untimely is denied where the protester knew the basis of its protest more than 10 working days prior to filing its protest but failed to file its protest within the 10-day period as required by Bid Protest Regulations.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price data
- ■ ■ ■ Minor deviations

Where unit prices were provided for each of the individual bidding schedule items, the fact that the contracting officer had to add the individual item prices and fill in the total for the bid schedule that the bidder had left blank does not mean the bid was nonresponsive, as the bidder showed his intent to be bound by including all of the unit prices. Failure to add the item prices was only a clerical omission, and the mere mechanical exercise of addition shows the total bid amount intended.

Procurement

Sealed Bidding

- Bids
 - ■ Post-bid opening periods
 - ■ ■ Error correction
 - ■ ■ ■ Propriety
-

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

A bid which offers a 15-day minimum bid acceptance period in response to a sealed bid solicitation requiring 90 days is nonresponsive and may not be corrected after bid opening.

Procurement

Bid Protests

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

Protest alleging that awardee's price exceeded the solicitation ceiling price and that contracting official improperly expressed a preference for extravagant proposal formats contrary to the solicitation instructions is untimely under the Bid Protest Regulations when not filed within 10 working days after the protester learned of the facts on which it bases its protest.

Procurement

Bid Protests

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

Protest against certification requirement in solicitation is untimely under the Bid Protest Regulations when not filed until several months after receipt of initial offers.

Procurement

Bid Protests

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

Agency's allegedly erroneous advice to a protester on where and when a protest could be filed does not excuse an untimely filed protest at the General Accounting Office, since the Bid Protest Regulations are published in the Federal Register and protesters are charged with constructive notice of their contents.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Bidder who protested terms of invitation for bids (IFB) prior to bid opening is an interested party to challenge IFB's payment bond requirement, notwithstanding that protester's bid was nonresponsive because it failed to include a required bid bond, since if the protest were sustained, the remedy would be a resolicitation under which the protester could compete.

Procurement

Sealed Bidding

- Payment bonds
- ■ Justification

Protest of payment bond requirement in invitation for bids (IFB) for security guard services is denied since it is within the agency's discretion to require bonding even in an IFB set aside for small businesses; the agency's requirement for uninterrupted performance of the security guard services is a reasonable basis for imposing the bonding requirement, especially where previous contractors had a history of unsatisfactory performance and of not paying wages due employees.

Procurement

Bid Protests

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

Protester's new and independent grounds of protest are dismissed where the later raised issues do not independently satisfy the timeliness rules of the General Accounting Office Bid Protest Regulations.

Procurement

Sealed Bidding

- Bids
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Protester's bid, delivered by a common carrier, was properly rejected as late where it did not arrive at the location designated for bid opening on time because the outer bid envelope was addressed and delivered to an individual who was not the bid opening officer and was not marked with any information identifying it as a bid or referring to the solicitation number and time of bid opening.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Prospective bidder's late receipt of amendment reestablishing bid opening date does not warrant cancellation and recompetition where late receipt appears to be an inadvertent, isolated occurrence not suggestive of a deliberate attempt to exclude the protester, and where protester did not inquire as to the status of the procurement during an approximately 1 month period following dismissal of protester's earlier protest which should have put protester on notice that competition could be resumed.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Foreign laws

Protest is dismissed where protester complains of its competitive disadvantage in procurement of Embassy guard services resulting from application of Panamanian law since disadvantage is not the result of preference or unfair action by United States government.

Procurement

Bid Protests

- Forum election
- ■ Finality

Procurement

Bid Protests

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

Protest, which was initially filed with and then withdrawn from the General Services Administration Board of Contract Appeals (GSECA), may be considered by the General Accounting Office (GAO), despite the fact that the GSECA did not issue an order dismissing the protest until 2 days after the protest was filed at the GAO, where the protester sought withdrawal of its GSECA protest in order to pursue its protest at the GAO, the withdrawal was not opposed by the agency, and the protest was otherwise timely filed at the GAO.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Award to a higher-priced offeror is unobjectionable under a request for proposals that stated that technical considerations were more important than cost and the agency reasonably concluded that the protester's price advantage over the awardee was outweighed by its significantly higher evaluated risk.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that meaningful discussions were not conducted is untimely filed under the General Accounting Office Bid Protest Regulations, where the protester only identifies in its post-conference comments the specific areas where it contends discussions were not conducted even though it was made aware of the facts on which it bases this contention at a debriefing conducted prior to the filing of the initial protest.

B-241056.3, January 7, 1991

91-1 CPD 15

Procurement

Bid Protests

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

Protest against technical evaluation of protester's proposal is untimely where protester is advised of specific deficiencies in its proposal at debriefing, but does not file protest concerning these matters until more than 10 working days after the debriefing. Offer by protester, in its initial protest, to provide point-by-point rebuttal to evaluation does not constitute protest of these specific deficiencies.

Procurement

Competitive Negotiation

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

Award to higher-rated, higher-cost offeror was proper where price and technical factors were of equal importance and where agency reasonably determined that the technical advantage associated with the proposal was worth the difference in cost.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Contractors**
- ■ ■ **Prior contracts**

An agency is not required to equalize competition with respect to an advantage accruing to an offeror due to its prior involvement in related contracts provided that such advantage is not the result of unfair government action.

B-241474, January 7, 1991

91-1 CPD 16

Procurement

Bid Protests

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

Protest that agency improperly converted procurement from sealed bidding to a negotiated procurement is dismissed as untimely where it is filed more than 10 working days after the protester received the solicitation amendment informing it of the conversion.

Procurement

Bid Protests

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

Protest that agency improperly failed to make award to the protester, the low offeror, is dismissed where the protester was found nonresponsible and did not timely challenge the nonresponsibility determination.

B-241500, January 7, 1991

91-1 CPD 17

Procurement

Competitive Negotiation

- **Offers**
- ■ **Risks**
- ■ ■ **Evaluation**
- ■ ■ ■ **Technical acceptability**

Consideration of risk involved in an offeror's technical approach is inherent in the evaluation of technical proposals. Agency reasonably considered unexplained technical changes in protester's

best and final offer as an indication that protester's proposal represented a significant technical risk of not being able to meet the minimum performance requirements of the solicitation.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Technical acceptability
- ■ ■ Negative determination
- ■ ■ ■ Propriety

Contracting agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer since the offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation.

B-241062, January 8, 1991

91-1 CPD 18

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Responsiveness

Contracting agency properly rejected as nonresponsive a bid that failed to acknowledge amendment which, in addition to modifying and clarifying specifications, contained a modification of the applicable wage determination which increased wage rates, and there is no evidence that the bidder's employees are covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Agency's failure to send bidder a copy of a material amendment was not improper where the protester was not on the solicitation mailing list, and the record does not support the protester's allegation that the agency sent the firm the original solicitation, or suggest that there are significant deficiencies in the contracting agency's solicitation process, and the protester did not avail itself of every reasonable opportunity to obtain the amendment.

B-242118, January 8, 1991

91-1 CPD 19

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Cancellation
- ■ ■ Unrestricted resolicitation
- ■ ■ ■ Propriety

Where no small business offers are received under a small business set-aside, contracting agency properly decided to withdraw the set-aside and resolicit on an unrestricted basis rather than award to a large business offeror, so that all eligible firms may have an opportunity to compete.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ GAO review

The Small Business Administration has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the certificate of competency process.

B-238235.4, January 9, 1991

Procurement

Bid Protests

- GAO procedures
- ■ Reconsideration

Prior decision denying claim for proposal preparation costs is affirmed since a decision on the merits of a protest by the General Accounting Office is an essential condition to a declaration that the protester is entitled to the award of costs and no decision was rendered.

B-240311.3, January 9, 1991

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office rejects protester's contention that an agency report comment—that the agency conducted written discussions by sending the offerors a letter—elevated protester's earlier observation—that it received a letter promising discussions, but the agency did not conduct discussions—into a protest that fair and meaningful discussions were not conducted, when the protester did not contend in its initial protest that the agency should have conducted discussions. Therefore, the protesters failure to protest this matter within 10 working days of being apprised of its evaluated deficiencies and that the agency did not mention these deficiencies during discussions renders its protest untimely.

Procurement

Bid Protests

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

Procurement

Contractor Qualification

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

Protestor's contention on request for reconsideration that the general standards of responsibility contained in the Federal Acquisition Regulation (FAR) are definitive responsibility criteria is erroneous, as the FAR contains general standards that apply to all procurements and are not the specific, objective standards that would constitute definitive responsibility criteria.

Procurement

Bid Protests

- Non-prejudicial allegation
 - ■ GAO review
-

Procurement

Competitive Negotiation

- Contracting officer duties
- ■ Contract award notification

Protest that contracting agency failed to promptly notify protester that its technical proposal was technically unacceptable and not included in the competitive range is denied where the late notification results in no prejudice to the protester's competitive position.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Protest that agency improperly awarded contract for satellite system to offeror whose system did not contain an integrated receiver/decoder and motor drive controls in a single unit is denied where the specifications did not require such a system.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Protest that agency improperly awarded a contract for satellite system to offeror that was not offering a receiver/decoder that was in current stock as required by solicitation because the receiver/decoder was not in the manufacturer's current price book is denied because the specifications did not require the latest model receiver/decoder and there is no evidence that the offeror was not offering its current stock.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Price reasonableness

Agency reasonably determined not to award a contract to a small disadvantaged business (SDB), the ninth low of ten bidders, as its bid exceeded the low priced, non-SDB's bid by 115 percent.

Procurement

Bid Protests

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

Protest filed after bid opening and after award challenging agency's decision not to set aside the procurement before issuance of the solicitation for small disadvantaged business is untimely since protest of alleged improprieties in a solicitation must be filed prior to bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Convenience termination
- ■ ■ ■ Withdrawal

Procurement

Sealed Bidding

- Bids
- ■ Preparation costs

Prior decision is modified to delete recommendation that awardee's contract be terminated for the convenience of the government and contract awarded to protester where contract is 90 percent complete and protester is unwilling to accept the portion of the contract that is not completed; instead, protester is entitled to recover its bid preparation and protest costs.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Liability restrictions

Bid bond in the amount of 20 percent of the bid price submitted by the low bidder on an invitation for bids (IFB) for an indefinite quantity construction contract, which did not solicit bid prices, but instead requested bidders to bid multipliers that would be applied to pre-priced items in perform-

ing the contract, is insufficient to meet the IFB requirement for a \$20,000 bid bond, since the IFB only provided for a \$50,000 minimum value and stated no estimate of the government's anticipated needs; thus, the bid bond amount would be \$10,000. However, the low bid may be accepted under applicable regulation because the difference between the low bid price and the next higher price is less than the insufficient \$10,000 bid bond amount under any reasonable calculation.

B-240990, January 14, 1991

91-1 CPD 30

Procurement

Small Purchase Method

- Requests for quotations
- ■ Brand name specifications
- ■ ■ Use
- ■ ■ ■ Propriety

An agency's use of a Federal Supply Schedule vendor's stock number to describe equipment in a *Commerce Business Daily* notice does not transform all of the equipment's functional capabilities into salient characteristics that an alternative source must address in order to meet the agency's minimum needs.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Off-schedule purchases
- ■ ■ Justification
- ■ ■ ■ Low prices

Agency that published in the *Commerce Business Daily* (CBD) its intention to purchase a particular Federal Supply Schedule telecommunications vendor's equipment off that vendor's non-mandatory schedule contract, properly ordered an alternative source's equipment off that source's schedule contract, after determining that the alternative source's equipment was lower priced and functionally equivalent to the CBD-listed equipment, even though the alternative source's equipment may not have some of the capabilities of the CBD-listed equipment, where the allegedly missing capabilities are not named salient characteristics in the CBD notice or are provided by a different but functionally equivalent approach.

B-241002, January 14, 1991

91-1 CPD 31

Procurement

Competitive Negotiation

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

Cost analysis using updated historical data to compare labor mixes and rates of two competing technically acceptable proposals for a cost-type level-of-effort contract was reasonable and adequate to support the agency's decision to make award without discussions.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency acted reasonably in concluding that competing proposals were technically equal where technical evaluation revealed proposed awardee had a slightly better understanding of the technical issues involved in the procurement but presented a slightly higher performance risk than the incumbent competitor because of a lack of direct experience in operating an analysis information center.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel

Where solicitation did not specify what positions were "key" to successful performance, agency was not required to reject an offer for failure to include a resume for the position of information specialist.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Record does not support the protester's contention that proposed awardee had access to a computer model during the preparation of its proposal which placed the protester at an unfair competitive disadvantage in the evaluation process.

B-241050, January 14, 1991

91-1 CPD 32

Procurement

Bid Protests

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

Protest by firm not in line for award if the protest were sustained is dismissed since protester does not have the direct economic interest in the contract award to be considered an interested party under General Accounting Office Bid Protest Regulations.

B-241050.3, January 14, 1991

91-1 CPD 33

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester submits for the first time in its request for reconsideration information which was available to the protester at the time of the initial protest but was not submitted.

Procurement

Contractor Qualification

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

Small business concern's protest against its rejection as nonresponsible under solicitation for dental services is dismissed where the protester was determined to be nonresponsible by the contracting agency, and the matter of the protester's responsibility has been referred to the Small Business Administration (SBA) for possible issuance of a certificate of competency, because SBA's authority in this regard is conclusive.

B-231357, January 15, 1991

Procurement

Contractor Disputes

- Shipment costs
- ■ Freight charges

The cost to repair two damaged items in a shipment of household goods belonging to an Air Force member was greater than the replacement value of those items. The Air Force determined that the two items were legally irreparable and that, therefore, freight charges did not have to be paid for their delivery. Since the Air Force has not shown that the items were damaged to the extent of no longer existing in the form in which they were tendered to the carrier or that they were useless for the purpose for which they were intended or that they had so little salvage value that they were useless, they were not totally "destroyed" within the meaning of 49 C.F.R. 1056.15. Thus, the carrier is entitled to the freight charges.

B-240888.2, January 15, 1991

Procurement

Bid Protests

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

Where protester initially alleges latent ambiguity in a solicitation without specifying what provision it believes is ambiguous, and then specifies for the first time in its comments on the agency report that the solicitation contains inaccurate area measurements for maintenance work, the specific argument is untimely and will not be considered.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Propriety

Fact that disparate bid prices were received does not by itself establish existence of ambiguity or other solicitation defect warranting resolicitation.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Incumbent contractors**

Contracting agency was not required to acquire and furnish to offerors the incumbent contractor's software that was used in maintaining government data base but was not required for contract performance; the government has no obligation to equalize a competitive advantage that a firm may enjoy because it gained experience under a prior government contract, where the advantage does not result from preference or unfair action by the agency.

Procurement

Competitive Negotiation

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

Solicitation for cost-plus-fixed-fee contract for technical resources and support for cancer chemo-prevention research is not defective where agency furnishes such information as is available as to its minimum needs and offerors are given sufficient detail to be able to compete intelligently and on an equal basis.

Procurement

Competitive Negotiation

- **Use**
- ■ **Criteria**

Use of competitive negotiation procedures was appropriate where contracting officer reasonably determined that discussions were necessary to gauge offeror understanding of complex specifications on two renovation projects which were combined into a single procurement just prior to the issuance of the solicitation and to obtain offeror input to ensure that the specifications would accurately reflect the agency's needs.

Procurement

Competitive Negotiation

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

Protester was properly excluded from the competitive range where the agency appropriately concluded that the protester had no reasonable chance for award because of several deficiencies in its technical proposal, the correction of any one of which would have required major revisions to the proposed design.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Cost estimates
- ■ ■ ■ Indefinite quantities

Agency properly amended invitation for bids (IFB) to solicit bids for an indefinite quantity-type contract for landscape maintenance and request a single percentage factor to be applied to agency pre-priced work items and agency estimated frequencies to determine the amount paid under the contract; this is a legitimate method to prevent deliberate unbalancing of prices by bidders and assure award to the low bidder under the IFB regardless of quantities ordered.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest challenging agency price and frequency estimates for landscape maintenance services is denied where agency properly prepared estimates on the basis of historic information, and adjusted estimates in light of information provided by the protester and further agency review of the requirements; protester's allegation that uncorrected defects in the estimate remain is unsupported.

Procurement

Government Property Sales

- Timber sales
- ■ Small business set-asides

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Administrative discretion
- ■ ■ Timber sales

Where nothing in the Small Business Act, the National Forest Management Act or any applicable regulations mandates that certain timber sales be set aside for small business or prohibits setting aside any particular timber sale, the decision to set aside a particular sale is within the discretion of the Forest Service and is not subject to the General Accounting Office's review.

Procurement

Sealed Bidding

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

Upward correction of a mistake in bid resulting from alleged failure to include proper subcontractor costs is permissible where evidence consisting of the bidder's worksheets, the subcontractor's quotations, and an adding machine tape clearly and convincingly demonstrate both the existence

of a mistake and the intended bid, and the bid as corrected remained below the next low bid by approximately 3 percent.

B-242375, January 15, 1991

Procurement

Bid Protests

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

Protest of terms of solicitation, including contract requirements and evaluation criteria, is untimely where not filed prior to time set for receipt of proposals.

B-241028, January 16, 1991

91-1 CPD 45**Procurement**

Sealed Bidding

- Use
- ■ Criteria

Protest that procurement for construction site ordinance detection and other general site work should have been conducted by soliciting competitive proposals instead of sealed bids is denied where agency reasonably determined all factors specified in the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(2)(A) (1988), for the use are present.

B-241058, January 16, 1991

91-1 CPD 46**Procurement**

Sealed Bidding

- Partial contract awards
- ■ Propriety

Partial award of certain base line items for construction services is proper where agency reasonably concludes that funds were not available for total quantity.

B-241156, January 16, 1991

91-1 CPD 44**Procurement**

Competitive Negotiation

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

Award of a cost-reimbursement contract to a higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the solicitation evaluation criteria and the agency reasonably determined that the difference in technical merit was sufficiently significant to justify cost difference.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Where technical evaluation scheme in request for proposals sets forth prior performance as an evaluation factor and agency evaluates it using information obtained by the agency through contact of references furnished by the protester, agency is not required to permit protester to rebut that information since it is historical in nature, and protester thus is generally unlikely to be able to make a significant contribution to its interpretation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Adjectival ratings

Agency's use of broad adjectival scoring scheme (consisting of four categories) supported by narrative assessment of proposal advantages and disadvantages was not improper where agency was able to gain a clear understanding of the relative merit of proposal.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Incumbent contractors

An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of preferential or unfair government action.

B-241178, January 16, 1991 ***

91-1 CPD 48

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Advertising

Procurement for transient aircraft services was properly synopsisized under maintenance and repair category of *Commerce Business Daily*, even though requirement also covers certain work that could be synopsisized under housekeeping services, where solicitation clearly includes significant proportion of maintenance and repair work and, although other activities previously have synopsisized similar procurements under housekeeping, prior procurement by this activity was synopsisized as maintenance and repair work.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

Protest that agency deprived protester of an opportunity to compete because it failed to furnish it a copy of the solicitation is dismissed as untimely where procurement was properly synopsized in the *Commerce Business Daily*, and the protester did not file protest within 10 working days of the closing date specified in the synopsis.

B-241254, January 16, 1991

91-1 CPD 43

Procurement

Bid Protests

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

Protest contention that agency's specifications for maintenance of security and fire alarm systems are unduly restrictive is dismissed as untimely when not filed prior to the time for receipt of initial proposals, since the alleged improprieties were apparent from the face of the solicitation.

Procurement

Bid Protests

- **Moot allegation**
- ■ **GAO review**

Protest basis challenging initial evaluation of proposals and award is dismissed as academic where agency determined procurement was defective and initiated appropriate corrective action.

Procurement

Bid Protests

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

Protest of alleged auction created by agency's disclosure of protester's prices to competitor to equalize competition must be filed within 10 working days after basis of protest is known to be considered timely.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest alleging defects in solicitation is dismissed as academic where the agency agrees to amend the solicitation to correct the alleged deficiencies.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that agency should be required to amend solicitation to provide invoicing instructions is denied where the requested information is clearly included in the solicitation.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that solicitation contains defective descriptions of services to be provided is denied where the solicitation in fact clearly describes the requested services.

Procurement

Contractor Qualification

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

A proposed awardee's failure to include required information with its bid concerning its competency to perform the contract involves the issue of the awardee's responsibility. An affirmative determination of responsibility is a prerequisite to any award and the General Accounting Office will not review such a determination absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation were misapplied.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

While contracting agency was obligated to consider awardee's past performance on comparable recent contract with another agency in its evaluation of experience, since information on that contract was included in awardee's proposal, the matter was covered in discussions, and contracting agency was aware of the firm's performance on the contract and considered it in the evaluation,

the contracting agency did not have an affirmative duty to contact other agency for information on the contract.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

While awardee's performance on recent, comparable contract was poor, given the authority of the contracting agency in evaluating proposals and the evidence relied on by contracting agency in exercising its judgment, contracting agency had a reasonable basis for its evaluation of awardee's overall experience as "excellent."

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

A party requesting reconsideration must show that prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of decision. Repetition of arguments made during the original protest or mere disagreement with decision does not meet this standard.

B-240924.2, January 17, 1991

91-1 CPD 53

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 and past small business performance did not support an expectation that offers from two or more responsible small business concerns would be received; where the level of service will be greatly increased; and where the agency small business representative concurs with the decision not to set aside the procurement.

B-241169, B-241169.2, January 17, 1991

91-1 CPD 50

Procurement

Competitive Negotiation

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

Protests challenging agency's exclusion of proposals from the competitive range are denied where protesters' proposals were evaluated in accordance with the stated evaluation criteria and without bias, and the agency reasonably concluded that the proposals were significantly inferior relative to the proposals included in the competitive range and would require major revisions to become eligible for award.

Procurement

Competitive Negotiation

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

Composition of evaluation panel is within the discretion of the agency, and where protesters have not shown fraud, bad faith, conflict of interest, or actual bias, there is no basis to question the composition of the panel.

Procurement

Competitive Negotiation

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

Allegations that evaluation panel is biased are denied where the record shows that the evaluations were reasonable and in accordance with the stated evaluation criteria.

Procurement

Contract Management

- Contract administration
- ■ Contract terms
- ■ ■ Compliance
- ■ ■ ■ GAO review

Protests that the awardee will not perform as required under contract for feral pig eradication services, because the awardee lacks incentive to eradicate pigs while also operating a commercial hunting business involving the same pigs, involves a matter of contract administration not for review under the General Accounting Office bid protest forum.

Procurement

Bid Protests

- GAO authority

Allegation that the National Park Service is abdicating its stewardship of a national park to commercial operations is beyond the bid protest jurisdiction of the General Accounting Office.

Procurement

Bid Protests

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

Challenge to the solicitation's evaluation criteria and proposal due date raised for the first time in protester's comments on agency report is untimely since such challenges must be raised prior to the closing date for submission of proposals.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision rendered at the request of a court is denied where the court has not requested reconsideration of the decision.

B-241425, January 17, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

A carrier is not responsible for damage to a shipment caused solely by the operation of natural laws, under the exception to a carrier's liability for damage resulting from "the inherent vice or nature" of the item. The exception does not apply, however, to relieve the carrier of liability for damage to the finish of two items of furniture simply because no other furniture was damaged, where the carrier packed the items and the damage was caused by the packing material sticking to the finish.

B-241590, et al., January 17, 1991

Procurement

Bid Protests

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

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

B-241757.2, January 17, 1991

Procurement

Bid Protests

- GAO procedures
- ■ Administrative reports
- ■ ■ Comments timeliness

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of original protest for failure to respond to the agency report is affirmed where, despite notice of its responsibility, the protester did not notify the General Accounting Office that it had not received the report on the report due date until more than 10 working days after that date.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest of award to firm that allegedly is not an authorized dealer of offered product is denied where only new information offered in request relates to awardee's status as a regular dealer under the Walsh-Healey Act, an issue which the General Accounting Office does not consider.

B-240938.2, January 18, 1991

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Where it is not clear from solicitation that agency was required to make multiple awards, protester that claims it should have been entitled to one of two awards was not prejudiced by failure to award multiple contracts because even if solicitation required multiple awards, agency's only obligation when it decided that a single award would meet its needs was to amend solicitation to permit a single award and it is unlikely that protester would have been in line for single award under amended solicitation.

Procurement

Bid Protests

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

Protest allegation raised for first time in comments on agency report must independently satisfy timeliness requirements.

B-241067, January 18, 1991***

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Sewage services
- ■ ■ Municipalities
- ■ ■ ■ Mandatory use

Provision of Resource Conservation and Recovery Act, 42 U.S.C. § 6961 (1988), requiring federal agencies to comply with local requirements respecting control and abatement of solid waste, does not require the El Toro Marine Air Station to use Orange County, California's exclusive permittee for refuse collection. Although the air station is within the unincorporated limits of Orange County, it is a major federal facility under the guidelines of the Environmental Protection Agency and should be treated as though it were a separate municipality entitled to contract for its own refuse collection services.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest, contending that proposed agency procurement of waste disposal services is improper because of the existence of protester's exclusive franchise as sole refuse collector within city limits, is denied where city code expressly excludes federal facilities from the scope of the franchise.

B-241157, January 18, 1991

91-1 CPD 63

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Procurement

Competitive Negotiation

- Contract awards
- ■ Quantities
- ■ ■ Increase
- ■ ■ ■ Propriety

Protest that agency improperly awarded contract for quantity greater than stated maximum quantity in solicitation is denied where protester, whose proposal was rated marginal with high risk, would not have been in line for award if agency had afforded it opportunity to submit revised offer for additional quantity.

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Protest of technical evaluation and performance risk assessment is denied where record supports agency's determination that proposal was marginally acceptable and performance risk was high.

Procurement

Competitive Negotiation

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

Decision not to award to protester was proper where agency reasonably concluded that protester's proposal represented a significant performance risk and that awardee's proposal's technical superiority and low risk outweighed its cost premium.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Conflicts of interest**
- ■ ■ **Post-employment restrictions**
- ■ ■ ■ **Allegation substantiation**

Awardee's employment of former agency contracting official does not disqualify firm from award by that agency where individual accepted employment with awardee firm prior to issuance of solicitation, and there is no evidence that the individual improperly influenced the award or used inside information to help firm obtain award.

B-241450, et al., January 18, 1991

91-1 CPD 57

Procurement

Contractor Qualification

- **Approved sources**
- ■ **Alternatives**
- ■ ■ **First-article testing**

Procurement

Noncompetitive Negotiation

- **Contract awards**
- ■ **Sole sources**
- ■ ■ **Propriety**

Where schedule of products authorized to be supplied by Federal Prison Industries (FPI) contained cable assemblies that were not approved items on agency's qualified products list (QPL), agency decision to purchase supplies from FPI was, nevertheless, proper where QPL listed only one source and agency found that it could assure satisfactory quality of items from FPI through first article testing.

B-242375, January 18, 1991

91-1 CPD 62

Procurement

Bid Protests

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

Protest of terms of solicitation, including contract requirements and evaluation criteria, is untimely where not filed prior to time set for receipt of proposals.

B-242392, January 18, 1991

91-1 CPD 61

Procurement

Bid Protests

- **Agency-level protests**
- ■ **Protest timeliness**
- ■ ■ **GAO review**

Protest which was initially untimely filed with the contracting agency will not be considered by the General Accounting Office.

Procurement

Bid Protests

- Agency-level protests
- ■ Protest timeliness
- ■ ■ GAO review

Where, after being advised by contracting agency that it was ineligible for award, protester discussed matter with agency instead of protesting immediately, and then filed agency-level protest more than 10 working days after notice of ineligibility, agency protest was untimely under Bid Protest Regulations; consequently, subsequent protest filed with General Accounting Office also is untimely, and will not be considered.

Procurement

Bid Protests

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

Protest against amendment to request for proposals (RFP) for embassy guard services eliminating minimum monthly wages established in the RFP is untimely where the protest was not filed before the next closing date established in the challenged amendment.

Procurement

Bid Protests

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

Offeror whose proposal is found to be technically unacceptable by General Accounting Office (GAO) decision is not an "interested party" under GAO's Bid Protest Regulations to challenge the acceptability of another offeror's proposal since, even if the protest were sustained, the protester would not be eligible for award.

Procurement

Sealed Bidding

- Bids
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Proposal for a Federal Supply Schedule contract that was delivered by a commercial carrier to the place designated for receipt of proposals after the time set forth in the solicitation for receipt of offers was properly rejected where the lateness was caused by the offeror's failure to properly address the proposal package to ensure timely delivery by the carrier.

Procurement

Bid Protests

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

The General Accounting Office (GAO) will not review a protest that the procuring agency should issue a more restrictive solicitation since GAO's role is to ensure that the statutory requirements for full and open competition are met.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Protest based on alleged impropriety apparent from the face of the solicitation—agency's decision not to limit procurement to approved sources—is untimely when filed after the time set for bid opening.

Procurement

Sealed Bidding

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

Contracting agency had compelling reason to cancel solicitation after bid opening where specification required engines driven by gasoline-type fuels for equipment designated for shipment overseas and agency directive required that equipment designated for shipment overseas be designed for utilization of diesel fuels only.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety

Contract may not be awarded to low bidder under solicitation, which required gasoline engine driven air compressors, with the intent of materially modifying the contract after award to require diesel engine driven air compressors.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Where protester alleges procuring agency has violated its proprietary rights in a technical drawing which it developed through reverse engineering but does not provide sufficient factual record to determine whether the drawing is protectable, and does not provide adequate information re-

garding the value of materials that were provided by the government at no charge for the reverse engineering effort, protester has not shown that the drawing is entitled to protection as a trade secret and the government's release of the drawing therefore is not legally objectionable.

B-241149, January 25, 1991

91-1 CPD 74

Procurement

Socio-Economic Policies

■ **Disadvantaged business set-asides**

■ ■ **Use**

■ ■ ■ **Administrative discretion**

Department of the Army decision to set aside a contract for house painting for small disadvantaged business (SDB) concerns was proper because the Small Business Competitiveness Demonstration Program Act of 1988, 15 U.S.C. § 644 note (1988), establishing a demonstration program where procurements of services from firms in designated industry groups are conducted on an unrestricted basis, does not relieve the agency of statutory requirements to set aside contracts for SDBs.

Procurement

Socio-Economic Policies

■ **Disadvantaged business set-asides**

■ ■ **Use**

■ ■ ■ **Administrative discretion**

A challenge to the propriety of a small disadvantaged business set-aside does not involve a violation of Executive Order 11246 or Federal Acquisition Regulation § 22.802, which concerns the prohibition of discrimination against any employee or applicant for federal employment because of race, color, religion, sex or national origin.

Procurement

Socio-Economic Policies

■ **Small businesses**

■ ■ **Disadvantaged business set-asides**

■ ■ ■ **Eligibility**

■ ■ ■ ■ **Determination**

The exceptions to the requirement to set aside an acquisition for exclusive small disadvantaged business participation where the services have previously been acquired on the basis of a small business set-aside or where the acquisition is for construction, including maintenance and repairs, do not apply to procurements involving the four industry groups, one of which is construction, covered by the Small Business Competitiveness Demonstration Act of 1988.

B-241155, January 25, 1991

91-1 CPD 75

Procurement

Competitive Negotiation

■ **Requests for proposals**

■ ■ **Cancellation**

■ ■ ■ **Justification**

■ ■ ■ ■ **GAO review**

Cancellation of solicitation after submission of proposals is reasonable where the agency based its decision on the following considerations: (1) uncertainty regarding budgetary constraints, which would ultimately reduce the agency's requirement for the services by approximately 33 percent; (2) significant alteration of the government furnished equipment list in the solicitation; and (3) a re-

duction in the workload would more than likely materialize after a planned agency reorganization.

B-241719, January 28, 1991

91-1 CPD 76

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ Effects

Agency improperly rejected protester's bid as nonresponsive on the basis of agency's concern that the firm would not comply with retention of work clause in the invitation for bids. This clause imposes a performance requirement which the protester agreed to in its bid; thus, the agency's concern related to the bidder's responsibility, not the responsiveness of the bid, and since the protester is a small business, the matter must be referred to the Small Business Administration under the certificate of competency procedures.

B-242577, January 28, 1991

91-1 CPD 77

Procurement

Bid Protests

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

Protest that agency improperly allowed awardee to correct alleged mistake in bid is dismissed for lack of diligent pursuit where protester waited at least 3 months for decision on agency-level protest before filing protest at General Accounting Office.

B-242662, January 28, 1991

91-1 CPD 78

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that agency failed to properly notify protester of award of a contract under request for proposals for security guard services is dismissed as not stating a basis for protest.

B-239681.2, January 29, 1991***

91-1 CPD 79

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision may contain either errors of fact or law or to present information not previously considered that warrants reversal or modification of our decision; repetition of arguments made during consideration of the original protest and mere disagreement with decision do not meet this standard.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Bid offering to furnish compliant item was properly found responsive notwithstanding post-bid opening notice from bidder that manufacturer named in bid does not manufacture compliant item; whether a bid is responsive and therefore eligible for award must be determined from contents of the bid itself at bid opening, without reference to information submitted after bid opening.

B-241167, January 29, 1991

91-1 CPD 80

Procurement

Competitive Negotiation

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

Selection of the awardee on the basis of its overall technical superiority, notwithstanding its 15 percent higher price, is unobjectionable where solicitation made technical considerations more important than cost and agency reasonably concluded that technical superiority of awardee's proposal was worth the 15 percent cost premium.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions were adequate where agency led protester into areas of proposal deficiencies; agency could not properly coach the firm as to how it could improve its proposal to the superior level of the awardee's.

B-241175, January 29, 1991

91-1 CPD 81

Procurement

Bid Protests

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

Offeror was properly evaluated as not low, in accordance with agency evaluation scheme set forth in amended request for proposals and instructions provided to it. Disagreement with evaluation scheme was required to be protested prior to closing date for receipt of best and final offers.

Procurement

Contractor Qualification

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

Requirement that offeror certify that it is a public utility, or is otherwise authorized to distribute natural gas in the contract area, concerns a matter of responsibility which may be met after proposals are submitted. Thus, public utility offeror, which subsequently loses that status but regains it prior to award, is eligible for award.

B-241210, January 29, 1991

91-1 CPD 82

Procurement

Bid Protests

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

Protest against the delineated area in a solicitation for the lease of office space is untimely because it was filed after the closing date for receipt of proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Office space

Procurement

Competitive Negotiation

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

Protest that objects to contracting agency's evaluation of proposals under technical evaluation criteria for office space lease and which disputes agency's conclusion that space offered by awardee is superior to protester's is denied where the record supports the ratings given to the protester and the awardee under each of the evaluation criteria and the record supports the agency's conclusion that space offered by the awardee is best suited to the needs of the user agency as set forth in the solicitation.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that agency failed to apply solicitation preference for historical buildings is denied since preference did not apply where agency reasonably concluded that the awardee's offer was superior to the protester's offer.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest that solicitation for the indexing of journal articles improperly limited competition to firms located near agency's repository for the journals by requiring weekly visits was rendered academic where agency amended solicitation to remove virtually all such requirements; the amendments limited such visits to a brief inspection period at commencement of performance, which agency reasonably required for quality assurance.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Options
- ■ ■ ■ Prices

Protest that option provisions in solicitation for the indexing of documents tend to limit competition is denied where options are reasonably necessary to assure continuity of indexing services through option periods.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Procurement

Special Procurement Methods/Categories

- In-house performance
- ■ Administrative discretion
- ■ ■ GAO review

Allegation that agency improperly failed to conduct cost comparison under Office of Management and Budget Circular A-76 is dismissed; the General Accounting Office does not consider such matters of executive branch policy except where a competitive solicitation has been issued for purposes of performing a cost comparison.

Procurement

Bid Protests

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

Protest that allegedly proprietary information was disclosed to competitors, protested over a month after the protester knew of the disclosure, is untimely filed under the General Accounting Office Bid Protest Regulations.

Procurement

Bid Protests

- **Antitrust matters**
- ■ **GAO review**

Protest that competitors engaged in improper collusive bidding in violation of Anti-trust laws is not for consideration by the General Accounting Office, but rather is for consideration of contracting officer and Department of Justice.

B-236892.2, January 30, 1991

91-1 CPD 85

Procurement

Competitive Negotiation

- **Offers**
- ■ **Acceptance time periods**
- ■ ■ **Extension**
- ■ ■ ■ **Propriety**

Agency request made to offerors after best and final offers to extend offer acceptance period did not reopen discussions where agency gave no indication of an intent to reopen discussions; no new common cutoff date was established; and request for extension was made for purpose of processing award to the otherwise successful offeror.

Procurement

Competitive Negotiation

- **Best/final offers**
- ■ **Modification**
- ■ ■ **Late submission**
- ■ ■ ■ **Acceptance criteria**

Agency decision not to reopen negotiations after receipt of best and final offers (BAFO) to give protester the opportunity to incorporate its late price reduction of approximately eight percent of the contract price was unobjectionable where protester had a fair opportunity to submit a BAFO with its most favorable terms, and agency determined that any further delay in the procurement was not in the government's best interest.

Procurement

Competitive Negotiation

- **Discussion reopening**
- ■ **Propriety**

Agency is not required to reopen discussions after receipt of best and final offers to consider a late price reduction submitted by other than the otherwise successful offeror, that is, the offeror that has been identified as in line for the award.

Procurement

Sealed Bidding

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

Low bid was properly rejected as nonresponsive where the contracting agency reasonably determined that bid samples required as part of the bid did not conform with stated workmanship requirements under the solicitation.

Procurement

Competitive Negotiation

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

Agency properly determined to award to low-priced, technically acceptable offeror, consistent with the solicitation evaluation criteria, where the agency reasonably concluded that the protester's lower-priced alternative offer was unacceptable based on protester's statement in its offer indicating that the product did not satisfy a material performance requirement under the solicitation.

Procurement

Competitive Negotiation

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

Procuring agency in a negotiated procurement adequately documented its evaluation judgments where the record consists of the proposal evaluation board's contemporaneous evaluation narratives and point scores for each evaluation criteria and the agency during the protest provided further detailed narrative explanations for each evaluation criteria, such that there is sufficient detail to judge the rationality of the agency's evaluation decision.

Procurement

Competitive Negotiation

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

Award was properly made to the low priced offeror under a negotiated procurement, in which technical considerations were stated to be more important than cost, where the procuring agency reasonably determined that the offers were technically equal.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Administrative discretion**

Procuring agency under a negotiated procurement did not improperly award extra credit for enhancements exceeding the solicitation's minimum requirements where the agency's evaluation, in accordance with the stated evaluation scheme, merely reflected the agency's qualitative distinctions between the offerors' technical approaches to accomplishing the solicitation requirements.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Organizational experience**

Procurement

Competitive Negotiation

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

Procuring agency, in a negotiated procurement for a recoil system exerciser, reasonably found that the awardee and the protester had equivalent experience under the pertinent evaluation criterion, where both firms had considerable experience in building such equipment.

B-241239, B-241239.2, January 30, 1991

91-1 CPD 89

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **First-article testing**
- ■ ■ **Waiver**
- ■ ■ ■ **Administrative determination**

Agency reasonably determined not to waive first article testing requirement for current producer of item being procured where the technical data package for the item had changed to include additional inspection and documentation procedures, and the agency had experienced quality problems with the protester's product.

B-241280, January 30, 1991

91-1 CPD 90

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **First-article testing**
- ■ ■ **Waiver**
- ■ ■ ■ **Administrative determination**

The procuring agency reasonably did not waive a first article test for a protester that had not passed a first article test for the item in accordance with the solicitation requirements.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ First-article testing
- ■ ■ Waiver
- ■ ■ ■ Administrative determination

The procuring agency reasonably waived a first article test for the awardee, which had previously passed the test for the same item and has subsequently been supplying an acceptable product to the agency.

B-241286, January 30, 1991

91-1 CPD 91

Procurement

Bid Protests

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

Where protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later raised allegations are untimely where not filed within 10 working days after the basis of protest is known or should have been known.

Procurement

Competitive Negotiation

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

Agency reasonably excluded offeror from the competitive range where offeror's proposal for the first phase of a multiphase research, development and acquisition program did not affirmatively demonstrate the required capability to perform the subsequent phases, and the proposal would require major revision in order to be made acceptable in this regard.

B-241304, January 30, 1991

91-1 CPD 92

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Protest against the sole-source award of a contract for chemical protective suits is denied where the contracting agency reasonably determined that only one company was capable of expeditiously providing a suit amenable for use in "Operation Desert Shield."

Procurement

Bid Protests

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

Protests that the specifications for refrigeration machinery are unduly restrictive and not internally consistent are alleged improprieties apparent from the solicitation and are untimely when not filed prior to bid opening.

Procurement

Sealed Bidding

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

Protester's bid was properly rejected as nonresponsive where on its face it took exception to a material specification requirement.

Procurement

Contractor Qualification

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

Allegations that the awardee does not have the competence or financial resources needed to perform the contract concerns the agency's affirmative determination of the awardee's responsibility which the General Accounting Office will not review absent a showing of possible fraud, bad faith, or misapplication of a definitive responsibility criterion.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Waiver

The contracting officer properly waived a bidder's failure to acknowledge receipt of two solicitation amendments which merely clarified the solicitation and did not impose additional obligations on the bidders.

Procurement

Contractor Qualification

- Corporate entities
- ■ Corporate dissolution

Bid was properly rejected where at time of bid opening bidding corporation's charter had been revoked for nonpayment of franchise taxes.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

Where a bid offers a minimum bid acceptance period of 30 days in response to a sealed bid solicitation requiring 90 days, the bid is nonresponsive and may not be corrected after bid opening, since the minimum bid acceptance period is a material requirement of the solicitation, which must be complied with at bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protests is denied where protester does not show that prior dismissals were based on either errors of fact or law and protester does not present information not previously considered which warrants reversal or modification of the prior decision.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Significant issue exemptions
- ■ ■ ■ Applicability

Significant issue exception to the General Accounting Office's timeliness requirements will not be invoked where the protest involves a matter which has been considered on the merits in previous decisions and which does not appear to be of widespread interest to the procurement community.

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed where protester fails to show that General Accounting Office conclusion as to when protester learned of basis for protest was based on error of fact or law.

Procurement

Sealed Bidding

- Invitations for bids
 - ■ Amendments
 - ■ ■ Acknowledgment
 - ■ ■ ■ Responsiveness
-

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

An amendment which incorporates into an invitation for bids the amount which is to be assessed as liquidated damages is material because it imposes a legal obligation different than that imposed by the original solicitation; thus, a bidder's failure to acknowledge with its bid the amendment renders the bid nonresponsive.

Procurement

Competitive Negotiation

- Contract awards
- ■ Multiple/aggregate awards
- ■ ■ Propriety

Protest that solicitation was deceptive regarding the possibility of multiple contract awards is denied where the solicitation specifically provided for the possibility of multiple awards.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that contracting agency will waste \$50,000 in unnecessary travel costs is denied where travel costs were not an evaluation factor for award.

Procurement

Competitive Negotiation

- Offers
- ■ Subcontracts
- ■ ■ Use
- ■ ■ ■ Propriety

Award to a firm that proposed to subcontract 39 percent of the work under the service contract to a large business was consistent with solicitation provisions limiting subcontracting on this small business set-aside.

Procurement

Competitive Negotiation

- Offers
- ■ Organizational experience
- ■ ■ Evaluation
- ■ ■ ■ Subcontractors

Evaluation, which took into account the experience and personnel of the awardee's significant subcontractor, was proper and consistent with the solicitation's stated evaluation criteria.

Procurement

Competitive Negotiation

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

Agency reasonably found that protester's proposal, which received a consolidated technical and cost score of 91.5 points on a 100-point scale, was not essentially equal to the awardee's proposal, which received a consolidated point score of 92, where the contracting officer found the point difference justified the award in view of the protester's significantly higher (12 percent) evaluated price and the relatively close technical ratings of the protester and awardee.

Procurement

Bid Protests

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

Protest that agency failed to provide adequate proposal preparation and evaluation period is untimely under the General Accounting Office's Bid Protest Regulations where protested after award.

B-241288, January 31, 1991

91-1 CPD 99

Procurement

Contractor Qualification

- Contractor personnel
- ■ Misrepresentation

Procurement

Contractor Qualification

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

Protest challenging agency's affirmative determination of responsibility on the basis that the awardee made false representations in the "representations and certifications" section of its bid is denied where there is no evidence in the record of bad faith on the part of procurement officials. The awardee's errors and omissions in completing the certifications properly were corrected prior to award and the contracting officer considered the accurate information in making his affirmative responsibility determination.

Procurement

Sealed Bidding

- Ambiguous bids
 - ■ Determination criteria
-

Procurement

Sealed Bidding

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

The procuring agency in a sealed bid procurement reasonably rejected as nonresponsive a bid that first stated that the protester offered a particular model that met all specifications and then included language that could reasonably be interpreted as meaning the particular model would not meet certain material solicitation requirements. A bid that takes exception to material solicitation requirements or is ambiguous with respect to whether the bid represents an offer to comply with all material requirements, must be rejected as nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Ambiguous bids

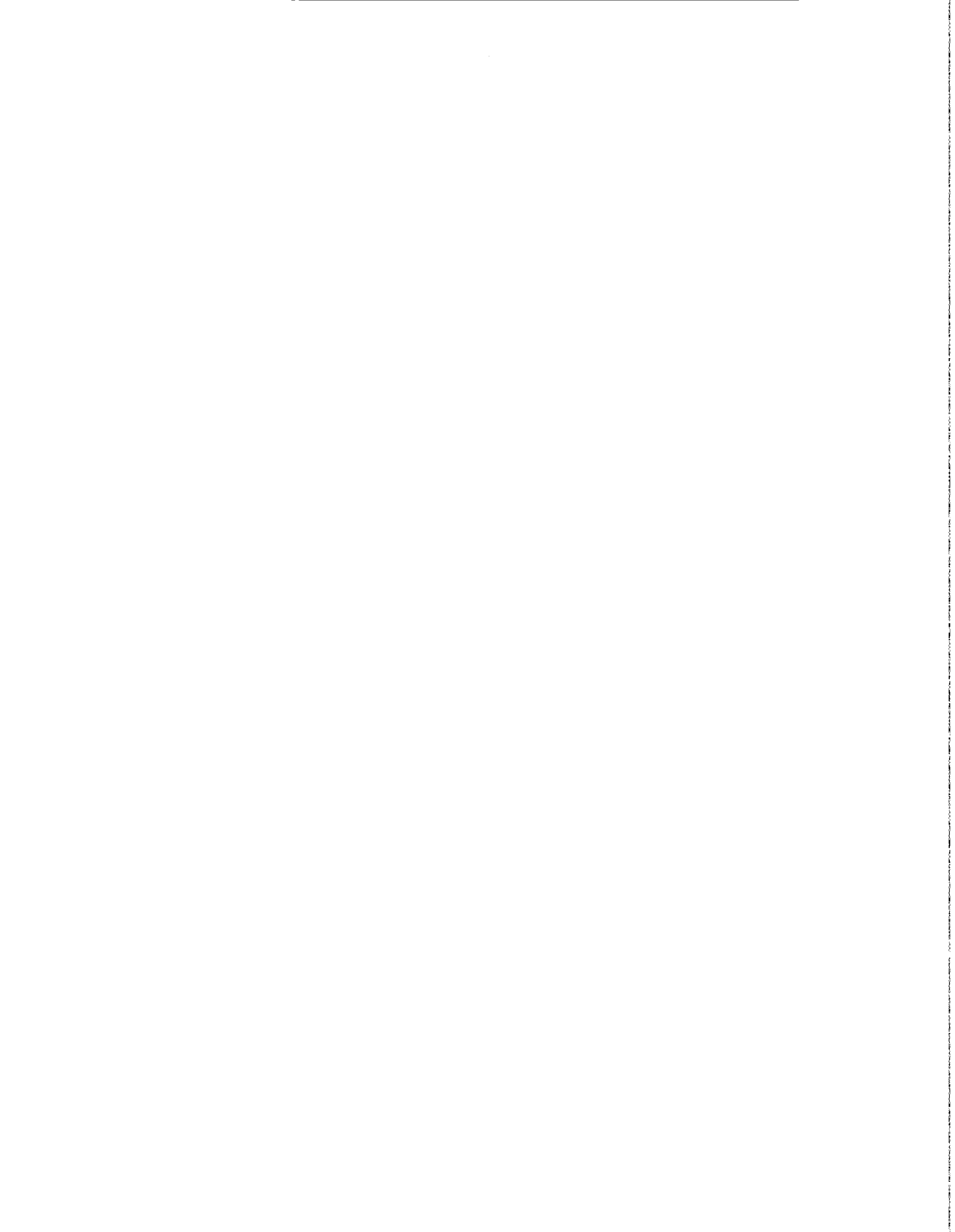
The procuring agency cannot properly disregard unsolicited descriptive literature, where a bid specifically states that the bidder is offering equipment meeting or exceeding specifications contained in the descriptive literature; where the specifications contained in the unsolicited descriptive literature are noncompliant with a material solicitation requirement, the bid must be rejected as nonresponsive.

Procurement

Small Purchase Method

- Requests for quotations
- ■ Contractors
- ■ ■ Exclusion
- ■ ■ ■ Propriety

An agency's failure to solicit the incumbent contractor for procurements conducted under small purchase procedures is not improper where the incumbent contractor was not deliberately or consciously excluded and competition "to the maximum extent practicable" was obtained.



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