

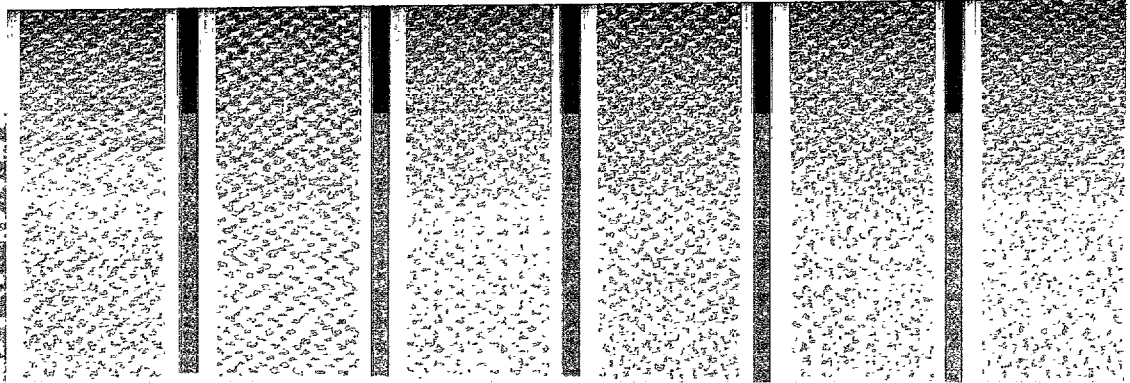
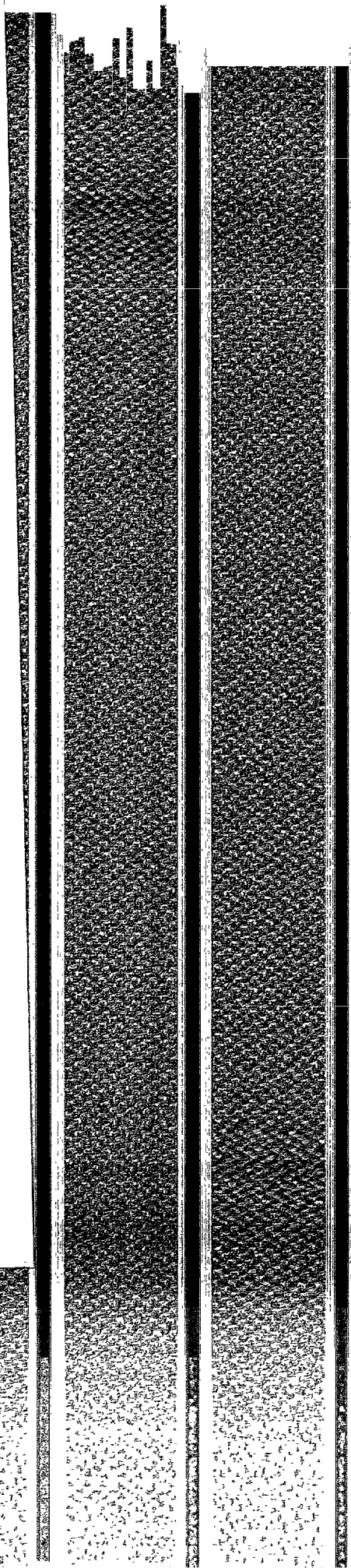
GAO

Office of General Counsel



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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-232575, November 8, 1990

Appropriations/Financial Management

Accountable Officers

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

U.S. Army officer is relieved of liability for the improper payments of checks on forged endorsements made by subordinate cashiers where the officer maintained and supervised an adequate system of procedures designed to prevent such improper payments. The cashiers, having complied with existing procedures, are also relieved of liability. The loss resulted from criminal activity over which the officer and cashiers had no control.

B-234937, November 9, 1990

Appropriations/Financial Management

Accountable Officers

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

Relief is granted Treasury disbursing official under 31 U.S.C. § 3527(c) from liability for an erroneous payment resulting from the payee's negotiation of both the original and an inadvertently issued second check. The disbursing official maintained and enforced an adequate system of procedures and controls to avoid errors and there was no indication of bad faith or a lack of due care.

B-197290, November 14, 1990

Appropriations/Financial Management

Claims By Government

- Illegal/improper payments
- ■ Waiver
- ■ ■ Statutory regulations
- ■ ■ ■ Amendments

The Waiver Acts (5 U.S.C. § 5584, 10 U.S.C. § 2774, and 32 U.S.C. § 716) were amended by Public Law 99-224, December 28, 1985, 99 Stat. 1741-1742, to permit waiver of collection of erroneous payments of travel, transportation, and relocation expenses and allowances made to or on behalf of civilian employees or members of the uniformed services. The GAO's waiver regulations in 4 C.F.R. Parts 91-93 are amended to reflect the statutory changes and to bring the regulations into conformance with current administrative practices. The amendment is in the form of a proposed rule to be published in the Federal Register with a 60-day period for comments.

Appropriations/Financial Management

Claims By Government

- Debt collection
- ■ Agency officials
- ■ ■ Authority
- ■ ■ ■ Waiver

Appropriations/Financial Management

Claims By Government

- Illegal/improper payments
- ■ Waiver
- ■ ■ Statutory regulations
- ■ ■ ■ Amendments

The Civilian Personnel Waiver Act, 5 U.S.C. § 5584 (1988), was amended by Public Law 100-702, Nov. 19, 1988, 102 Stat. 4667, to extend waiver authority to employees of the judicial branch. The Director, Administrative Office of the United States Courts, is the agency head for this purpose and is authorized to grant waiver up to \$10,000. The GAO's waiver regulations in 4 C.F.R. Parts 91-93 are amended to reflect the statutory amendment.

B-239154, November 30, 1990

Appropriations/Financial Management

Accountable Officers

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

U.S. Army Finance and Accounting Officer and subordinate cashier are relieved under 31 U.S.C. § 3527(c) for an improper payment made by cashing a fraudulently endorsed check. The officer's standard operating procedures for cashing personal checks were adequate and appear to have been followed by the cashier. The loss was the result of criminal activity beyond the control of either the officer or subordinate cashier.

Civilian Personnel

B-239886, November 9, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Broker fees
- ■ ■ Reimbursement

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

B-236327.2, November 13, 1990***

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Travel time

The claims of four employees for compensatory time for travel are allowed where the employees traveled to or returned from meetings or hearings which could not be scheduled or controlled administratively within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) (1988).

B-239859, November 13, 1990

Civilian Personnel

Compensation

- Overpayments
- ■ Debt collection
- ■ ■ Statutes of limitation

Civilian Personnel

Compensation

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

Waiver of erroneous overpayments of pay to 25 Foreign Service Nationals is granted where all the qualifications for waiver have been met and the employees were unaware they were being overpaid. Since the waiver request was received in this Office within 3 years from the date of our prior decision, 67 Comp. Gen. 457 (1988), which first definitely determined that they were overpaid, the requirements of the statute of limitations for waiver applications in 5 U.S.C. § 5584(b)(2) (1988) have been met.

Civilian Personnel

Relocation**■ Residence transaction expenses****■ ■ Loan origination fees****■ ■ ■ Reimbursement****■ ■ ■ ■ Amount determination**

Transferred employee purchased a residence at new duty station and has furnished a statement by the lender itemizing, on a percentage basis, the charges covered by the claimed loan origination fee totaling \$6,750. Employee states that the itemization does not include prepaid interest, points, or a mortgage discount. The additional \$4,750 amount claimed as a loan origination fee (\$2,000 (1 percent) was previously paid by agency) charged by the lender may not be paid since the listing does not represent clear and convincing evidence as to the identity of the expenses actually incurred by the lender in arriving at the total loan origination fee. Further, the statement by the lender that the \$6,750 loan origination fee represents the rate customarily charged in the locality of the residence, standing alone, is insufficient to establish the accuracy of that rate.

Military Personnel

B-240049, November 1, 1990

Military Personnel

Pay

- Dual compensation restrictions
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Army officer who retired on disability subsequently accepted employment with the U.S. Postal Service but did not so advise the Army, with the result that he received \$32,672.61 over the next 11 years in violation of the dual compensation law. Debt may not be waived, since at retirement the officer signed a statement expressly taking personal responsibility for advising the Army of any future dual status; should have known he was receiving full retired pay; and never attempted to insure that his total compensation was appropriate and accurate.

B-237554, November 2, 1990

Military Personnel

Pay

- Family separation allowances
- ■ Eligibility

Navy personnel who served on duty on board a ship for a continuous period of more than 30 days at a site away from its home port are entitled by statute to a Family Separation Allowance for ship duty (FSA-S). The fact that they had been receiving an allowance for temporary duty away from their duty station (FSA-T), which also has a 30-day requirement, while preparing the ship to be commissioned, does not alter their statutory entitlement.

B-237767, November 6, 1990

Military Personnel

Pay

- Survivor benefits
- ■ Annuity payments
- ■ ■ Eligibility

Claim for Survivor Benefit Plan annuity by widow who was convicted of involuntary manslaughter in the accidental shooting of her husband may be paid, since the facts establish a lack of felonious intent on her part in connection with the shooting.

B-229337.3, November 7, 1990

Military Personnel

Travel

- **Advances**
- ■ **Overpayments**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

For waiver of a service member's travel allowance debt to be proper, the member must have received an erroneous travel advance that was spent in reliance on authorized, albeit erroneous, travel orders. Service member's travel allowance debt may not be waived when the record provides no evidence that the member was misinformed about the period of time he was allowed for travel after separation.

Military Personnel

Travel

- **Advances**
- ■ **Overpayments**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

When a service member receives travel advances in excess of her actual entitlement, waiver is not appropriate in the absence of erroneous travel orders or authorization.

Military Personnel

Travel

- **Advances**
- ■ **Overpayments**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

Service member received a travel advance pursuant to a permanent change of station, and then was unable to complete the travel due to an accident. Waiver of the balance of the advance not spent is not appropriate since there is no evidence of erroneous travel orders or authorization.

B-240761, November 7, 1990

Military Personnel

Pay

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

Claim for overpayment to member upon separation from Navy may be waived where, under the circumstances, the member could not reasonably have been aware he was receiving more than he was entitled to.

B-241343, November 7, 1990

Military Personnel

Pay

- Payroll deductions
- ■ Savings deposit

Military Personnel

Pay

- Payroll deductions
- ■ Savings deposit
- ■ ■ Interest

Former Army member claims amounts deducted by allotment from his military earnings in 1969 for deposit in the Uniformed Services Savings Deposit Program. Since the record shows that the amounts in fact were deducted pursuant to the member's authorization; the Army does not suggest that they were not deposited, but just were not entered under the member's name; and the money was not withdrawn previously, the claim, including interest as authorized by statute, should be paid.

B-230360, November 9, 1990***

Military Personnel

Pay

- Reenlistment bonuses
- ■ Computation

Under an Air Force early separation program a group of first-term enlisted members were released up to 5 months before their enlistments expired. Since these members were entirely free to separate from the service, their previously obligated service may be regarded as having been terminated. Therefore, when such a member reenlists immediately rather than separates from the service, the full period of the member's reenlistment may be counted as additional obligated service under 37 U.S.C. § 308(a)(1) for the purpose of computing the member's selective reenlistment bonus.

B-237975, November 23, 1990***

Military Personnel

Pay

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

Military Personnel

Relocation

- Reimbursement
- ■ Payments
- ■ ■ Foreign currencies
- ■ ■ ■ Exchange rates

A Navy Captain who exchanged British pounds sterling, representing the proceeds from the sale of his London home, for dollars at a Navy disbursing office is indebted to the United States for the \$29,000 overpayment he received as a result of the disbursing officer's use of an erroneous currency exchange rate that violated the applicable provisions in the Navy Comptroller Manual.

B-238130, November 23, 1990

Military Personnel

Pay**■ Severance pay****■ ■ Eligibility**

After failing a military drug screening test, a member of the National Guard was reassigned to another military specialty; lost his civilian technician position with the Guard for failure to maintain a military position compatible with the technician job; and was denied severance pay under applicable law because he had been removed from the civilian position for cause. Since there is no indication in the record that the determination of removal for cause was arbitrary or capricious, denial of severance pay was proper.

B-235936, November 29, 1990

Military Personnel

Pay**■ Overpayments****■ ■ Direct payroll deposit****■ ■ ■ Debt collection****■ ■ ■ ■ Waiver**

A former member of the Air Force was separated on August 20, 1984. After separation he received two separate payments, each deposited directly to his bank account and each in the full amount of his regular pay, resulting in an erroneous overpayment. Waiver of the overpayment represented by the second deposit cannot be granted, because the former member should have been aware of the likelihood that excess pay had been deposited to his account, since the bank notified him of the amount of the two deposits made after separation, and because the two deposits combined were more than double the amount of pay to which he was entitled.

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Procurement

B-239212.2, November 1, 1990

90-2 CPD 356

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Contract Management

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

Request for reconsideration of decision dismissing protest that awardee does not intend to comply with solicitation requirement for a current production model is denied where solicitation did not request technical proposals and thus, by submitting a price, awardee offered to provide items conforming to the solicitation's requirements, one of which was that the item be a current production model.

B-240369, November 1, 1990

90-2 CPD 357

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

General Accounting Office (GAO) generally will not consider contention that agency should have imposed additional, more restrictive specifications in solicitation since GAO's role in reviewing bid protests is to ensure that statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications.

B-238220.7, November 2, 1990

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision denying protest that agency unreasonably made award at an excessive price is affirmed, where protester produces no credible evidence that indicates the agency's decision was unreasonable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Protest against an allegedly defective evaluation of a revised technical proposal is denied where protester merely expresses its disagreement with four of the deficiencies found by the evaluators and does not question the remaining 13 deficiencies.

Procurement

Competitive Negotiation

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

Agency properly eliminated protester's proposal from the competitive range where discussions leading the protester into the areas of its proposal in need of correction were conducted and the resulting response was reasonably found to be technically unacceptable in three of four evaluation areas; under these circumstances, agency was not required to conduct further discussions.

B-240249, November 2, 1990

Procurement

Sealed Bidding

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

Where bidder's intention not to supply all the components of electrical distribution panelboards required by the solicitation is clear from a cover letter submitted with the bid, as well as the bidder's not pricing certain items on the bid schedule, the bid was properly rejected as nonresponsive, even though agency's project engineer may have told the protester that such a bid would be acceptable since the protester may not rely on such oral advice inconsistent with the solicitation specifications.

B-240290, November 2, 1990

Procurement

Competitive Negotiation

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

Protest that damage caused by dropping furniture bid sample while it was in agency control created the deficiencies which ultimately resulted in determination of technical unacceptability is denied where the record clearly demonstrates that evaluators were notified of damage and instructed to disregard deficiencies thereby caused, and the evaluation documents show that deficiencies noted were not the result of damage.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Pre-qualification
 - ■ ■ Contractor personnel
 - ■ ■ ■ Security clearances
-

Procurement

Competitive Negotiation

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

General Accounting Office will not object to the exclusion from competition of offeror whose employees lacked the top secret security clearance required for access to intelligence information and would be unable to obtain the clearance in time for contract performance.

Procurement

Competitive Negotiation

- All-or-none offers
- ■ Acceptance

Agency properly awarded all solicitation items to offeror proposing lowest total price where request for proposals did not prohibit all or none offers and offeror made its offer contingent upon receipt of all items.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Risks

Protest that firm, fixed-price solicitation for family housing maintenance services subjects contractor to unreasonable risk due to requirement for lump-sum price with no limitation on amount of work that can be ordered under various tasks is sustained where lump sum pricing will serve stated government purpose only at unreasonable cost to both the contractor and the government and imposes unreasonable risk on the contractor; pricing scheme thus unduly restricts competition.

Procurement

Specifications

- Minimum needs standards
- ■ Total package procurement
- ■ ■ Propriety

An agency's decision to procure its immediate minimum need for modification kits and associated engineering services to upgrade jet engines on a total package basis rather than break out components for separate competitive procurements will not be disturbed where the agency reasonably

determined that due to the magnitude and complexity of the upgrade program the purchase of the kits and engineering services on a total package basis is essential to maintain standardization and configuration control of the parts.

Procurement

Noncompetitive Negotiation

- Use
- ■ Approval
- ■ ■ Justification

Protest that noncompetitive procurement is improper because it resulted from lack of advance planning is denied where record shows that agency's decision to procure on a sole-source basis was reasonable.

B-240261, November 5, 1990

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Interpretation

Under request for proposals (RFP) for automated package dimensioning and weighing subsystems, protester's interpretation of provision calling for standard commercial "components" as restricted to existing "systems" is not reasonable.

B-240268, November 5, 1990

90-2 CPD 364

Procurement

Competitive Negotiation

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

Award to offeror having higher-cost, technically superior proposal under request for proposals which gave greater weight to technical merit compared with cost is justified where contracting agency reasonably determined that acceptance of the proposal was worth the higher cost.

Procurement

Sealed Bidding

- Bids
- ■ Evaluation
- ■ ■ Point ratings

Point scores are useful only as guides to decision making and are generally not controlling in a selection decision because they often reflect the disparate subjective judgments of evaluators.

Procurement

Specifications

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

Where a brand name or equal solicitation required submission of descriptive literature sufficient to establish that the offered product conforms to the salient characteristics and bidders were advised that failure to do so would require rejection of their bids, the procuring agency properly rejected as nonresponsive a bid that included descriptive literature which failed to address two salient characteristics.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly rejected protester's offer for aircraft parts where protester, which had successfully performed prior contracts with the agency and for which first article testing for this procurement had been waived, failed to timely submit a technical proposal as required by the solicitation.

Procurement

Bid Protests

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

Protests that contract modifications at substantial price increase were beyond the scope of the original contract and constituted an unjustified sole-source procurement, are timely where filed within 10 working days of when the protesters first learned the amount of the price increase.

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Modifications which involve substantial cost and affect first article test requirements, delivery schedule, and performance specifications do not constitute a cardinal change where the nature and purpose of the original contract as well as the field of competition remain unchanged.

Procurement

Bid Protests

- Allegation substantiation
 - ■ Lacking
 - ■ ■ GAO review
-

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Protest is dismissed for failure to state a valid basis of protest where protester seeks General Accounting Office (GAO) to direct a sole-source award, change the Standard Industrial Classification Code in a solicitation or direct that a procurement be changed from a Section 8(a) set-aside to an unrestricted acquisition, since these are forms of relief that GAO does not grant.

Procurement

Contractor Qualification

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

Protest that awardee's price is unreasonably low is dismissed as essentially a challenge against contracting officer's affirmative determination of responsibility, which General Accounting Office will not review absent circumstances not present here.

Procurement

Bid Protests

- Antitrust matters
- ■ GAO review

General Accounting Office does not consider allegations of predatory pricing in violation of the Robinson-Patman Act because that Act is not applicable to government contracts and violations of antitrust laws are within the jurisdiction of the Department of Justice.

B-230837, November 7, 1990

Procurement

Payment/Discharge

- Shipment
 - ■ Tenders
 - ■ ■ Terms
 - ■ ■ ■ Interpretation
-

Procurement

Payment/Discharge

- Shipment costs
- ■ Rate schedules
- ■ ■ Applicability

Where carrier's rate tender for "Freight All Kinds" specifies a less truckload minimum charge or class rate, the tender is complete and unambiguous on its face, and a limitation of liability provision for a specific item in the governing classification cannot be incorporated by reference into the tender unless there is a clear and unambiguous statement in the tender making such an incorporation. Since the Department of Defense's new Freight Traffic Rules Publication Number 1, effective October 1, 1986, was not incorporated into the carrier's applicable rate tender, and since Publication Number 1 did not otherwise apply, a limitation of liability provision for "Freight All Kinds" shipments in Publication Number 1 did not apply to shipments under the carrier's rate tender.

B-237268.3, et al., November 7, 1990

90-2 CPD 369**Procurement**

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office will not consider new arguments raised by agency in request for reconsideration where those arguments are derived from information available during initial consideration of protest but not submitted, since parties that withhold or fail to submit all relevant evidence, information, or analyses for our initial consideration do so at their own peril.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where procuring agency fails to establish any factual or legal errors in decision sustaining protest.

B-238877.3, November 7, 1990

Procurement

Sealed Bidding

- Below-cost bids
- ■ Acceptance

It is not legally objectionable for a firm, in the exercise of its business judgment, to submit a below-cost bid, and a contracting officer may accept such a bid so long as the firm is responsible and capable of performing the contract at the price it bid.

Procurement

Bid Protests

- Antitrust matters
- ■ GAO review

Procurement

Bid Protests

- Forum election
- ■ Recommendations

A single instance of alleged below-cost bidding does not evidence an intent by a firm to undercut the prices submitted by its competitors in order to monopolize contract awards for the particular item. Further, the proper forum for consideration of possible monopolistic practices is the Department of Justice, not the General Accounting Office.

Procurement

Bid Protests

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

Protester who waits more than 5 weeks, after it was notified of award and after filing initial protest, to submit Freedom of Information Act request for information concerning possible additional grounds of protest, has failed to diligently pursue such information, and second protest subsequently filed is therefore untimely.

B-240012.2, November 7, 1990

90-2 CPD 370

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request contains no statement of fact or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied when based on an argument that could have been but was not raised by protester in course of the original protest.

Procurement

Contractor Qualification

- **Organizational conflicts of interest**
- ■ **Allegation substantiation**
- ■ ■ **Evidence sufficiency**

Protest of alleged conflict of interest resulting from the agency project officer's prior affiliation with the awardee's proposed subcontractor is denied where the project officer's affiliation occurred 3 years ago and the record does not show that any improper influence was exerted in procurement on behalf of awardee.

Procurement

Competitive Negotiation

- **Discussion**
- ■ **Bad faith**
- ■ ■ **Allegation substantiation**

Protest that agency's prejudicial questions—during discussions and an agency site visit—violated prohibitions against technical leveling, auctions, and improperly altered the evaluation criteria is denied where record shows that agency asked questions in an effort to alert the protester to deficient areas of its technical proposal.

Procurement

Competitive Negotiation

- **Discussion**
- ■ **Adequacy**
- ■ ■ **Criteria**

Protest that agency failed to conduct meaningful discussions is denied where protester's proposal was considered acceptable and in the competitive range, and where agency's questions were sufficient to direct protester to areas of its proposal which could have used strengthening.

B-240309, November 7, 1990

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Ambiguous prices**

Bid for refuse collection and disposal is ambiguous as to intended price, and therefore was properly rejected as nonresponsive, where bid contained notation that prices for base period of required services were "based on dumping fees of \$26 per ton."

Procurement

Bid Protests

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

Protests that proposed awardee's bid is unbalanced will not be considered where the protests constitute untimely challenge to solicitation's lack of straight time and overtime estimates for line items.

Procurement

Sealed Bidding

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

A bid in which the bidder submitted high prices for straight time services as opposed to overtime services was properly rejected as unbalanced where agency had reasonable doubt that bid represented lowest ultimate cost to the government.

Procurement

Contractor Qualification

- Responsibility
- ■ Information
- ■ ■ Submission time periods

Protest alleging that bid was nonresponsive because it did not contain required information concerning whether bidder entered into a third party indemnification agreement in order to obtain bonds required by solicitation is denied. The information does not relate to the bidder's obligation to perform in accordance with the material terms and conditions of the solicitation, and therefore can be furnished any time before award.

Procurement

Contractor Qualification

- Responsibility/responsiveness distinctions

Requirement concerning the submission of information unrelated to the material terms and conditions of the solicitation, and thus unrelated to the bidder's performance obligation, cannot be converted into a matter of responsiveness merely by the terms of the solicitation.

Procurement

Competitive Negotiation

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

Protest challenging determination not to evaluate subcontractor experience under corporate experience criterion is denied where request for proposals (RFP) did not provide for inclusion of sub-

contractor's experience under corporate experience and it was necessary for the contractor to possess relevant corporate experience in order to assure satisfactory performance of the contract.

Procurement

Competitive Negotiation

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

Competitive range of one is unobjectionable where agency reasonably determined that due to initial substantial scoring and price differential the excluded firms lacked a reasonable chance for award.

B-241045, November 7, 1990

Procurement

Bid Protests

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

Protest filed by a prospective subcontractor/supplier to a prime contractor is dismissed since the protester is not an interested party eligible to have its protest considered under the Competition in Contracting Act of 1984 and the General Accounting Office's implementing Bid Protest Regulations.

B-241299, November 7, 1990

90-2 CPD 376

Procurement

Bid Protests

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

General Accounting Office will not consider protest of an alleged solicitation impropriety because protester did not timely file with the agency prior to bid opening its initial protest of the same solicitation impropriety.

B-241732, November 7, 1990

90-2 CPD 377

Procurement

Sealed Bidding

- **Below-cost bids**
- ■ **Acceptance**

Submission and acceptance of below-cost bid is not legally objectionable.

Procurement

Socio-Economic Policies

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

Since the basis for setting a procurement aside for small businesses is the reasonable expectation that offers will be obtained from at least two responsible small business concerns, the number of

small business firms that actually submitted bids is not relevant to the propriety of the agency's initial determination not to set aside the procurement for exclusive small business participation.

B-241801, November 7, 1990

90-2 CPD 379

Procurement

Socio-Economic Policies

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

A small disadvantaged business (SDB) dealer that proposed to supply end items manufactured by a large business is not entitled to the solicitation's SDB evaluation preference.

B-240357, November 8, 1990***

90-2 CPD 380

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Point ratings

Under solicitation for design and construction of a commissary, evaluation and assignment of points for innovative design features is proper, notwithstanding solicitation's general description of desired commissary as one operated and designed under standards similar to those found in commercial food stores, where solicitation provided that offerors would receive quality points for innovative or creative proposals and there is no language in the evaluation criteria requiring that design features meet only commercial food store standards.

Procurement

Competitive Negotiation

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

Where solicitation provided that the lowest priced offeror would not necessarily receive award, and that the award would be based on the combination of technical merit and price which is most advantageous to the government, agency properly awarded to higher priced offeror since agency reasonably determined that the technical advantage associated with higher-rated proposal warranted the price premium.

B-240311, B-240311.2, November 9, 1990

90-2 CPD 381

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester is an interested party under Bid Protest Regulations to protest alleged improper evaluation of its proposal, even though the challenged evaluation ranked the protester's proposal fifth overall, because the protester has a chance of being awarded the contract if the protest is sustained and the protester's proposal is reevaluated.

Procurement

Competitive Negotiation

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

Protest that an agency improperly evaluated protester's and awardee's proposals is denied where review of the agency's evaluation documentation shows that the agency's scoring of the proposals was reasonable and related to the solicitation's stated evaluation criteria.

Procurement

Bid Protests

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

Protest that an agency failed to conduct meaningful discussions is untimely under the General Accounting Office Bid Protest Regulations when it was first filed in the postconference comments, more than 10 working days after the protester learned the basis of protest.

Procurement

Competitive Negotiation

- Contract award notification
- ■ Procedural defects

Even where an agency fails to give required pre-award notice of award to allow size protest, the General Accounting Office will not find the award improper unless a timely postaward size protest was filed and the awardee was found to be other than small.

B-240317, November 9, 1990

90-2 CPD 382

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procuring agency reasonably determined that the protester's proposal was technically unacceptable and not in the competitive range in a procurement for utility rate expert services, where the protester's proposal did not indicate that it had the required utility services experience or that it had available personnel to perform the contract.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Rates
- ■ ■ ■ Mileage

Where solicitation provides that offerors' rates will be adjusted based on mileage determined by the Installation Transportation Officer (ITO) to reflect cost of roadmarch of a large convoy transporting tanks, trucks, and other heavy military equipment between Army base and offeror's railroad terminal, the ITO reasonably determined the protester's mileage on the basis of a four-lane interstate highway route which the ITO selected based on safety considerations. The agency was not required to calculate the mileage based on a shorter state highway route which the ITO considered less safe.

Procurement

Competitive Negotiation

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

Contracting agency conducting an urgent procurement under the authority of the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(c)(2) (1988), may make award on the basis of initial proposals whether or not such award represents the lowest overall cost to the government.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee failed to literally comply with solicitation experience requirements is denied where record discloses that no proposal, including the protester's, literally met the requirements and where the agency had sufficient information from the awardee upon which it could reasonably conclude that the firm's experience was equivalent to what was required.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Where solicitation provides for the possibility of a waiver of the statutory cost limitation on improvements on military family housing units, and such waiver is authorized by statute and regulation, challenge to agency's authority to request waiver fails to state a valid basis of protest under Bid Protest Regulations.

Procurement

Bid Protests**■ Premature allegation****■ ■ GAO review**

Protest that statements submitted by the agency in its request to the Under Secretary of Defense for a waiver of statutory cost limitation on improvements on military family housing do not state the necessary grounds and are insufficient to justify a waiver is premature because no decision concerning the waiver has been made and no contract has been awarded.

B-240839, November 9, 1990**90-2 CPD 387**

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ Apparent solicitation improprieties**

Protest that agency performed inadequate evaluation of total contract cost for award purposes is dismissed as untimely where basis of protest concerns method of cost calculation announced in solicitation, but matter was not protested until after closing date for receipt of proposals.

B-239121.3, November 13, 1990**90-2 CPD 388**

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Technical acceptability**

Agency reasonably found protester's proposal unacceptable where financing plan contained in its business proposal took exception to material terms of the solicitation and therefore did not evidence, as required by the solicitation, the financial ability of the protester to perform the work in manner required by the RFP.

B-239680.2, November 13, 1990**90-2 CPD 389**

Procurement

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

Request for reconsideration is denied where protester makes no showing of any legal error and claimed factual errors fail to provide a basis for reversal of the decision.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Department of Energy prime contractor reasonably determined that the protester's low-priced, alternate proposal to produce coils for dipole magnets to be incorporated in an electron accelerator was technically unacceptable where the contractor found the alternate product may be less reliable and more risky and the protester did not provide sufficient documentation, even after discussions and a site visit, to demonstrate the acceptability of its alternate product.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Department of Energy prime contractor was not obligated to provide the protester with all specific information or data needed to establish the acceptability of its proposal of an alternate proprietary product; prime contractor satisfied its obligation to conduct meaningful discussions by repeated discussions requesting information to establish the acceptability of the alternate proprietary product.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price omission

Protest that agency improperly rejected protester's bid for failure to include a price for work that was not required by the solicitation is denied where reasonable reading of the solicitation indicates that the work was required.

Procurement

Bid Protests

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

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

Procurement

Contractor Qualification

- Licenses
- ■ State/local laws
- ■ ■ GAO review

Protest that awardee and other bidders did not possess required state licenses at time of bid opening is dismissed; a contractor's compliance with a state licensing requirement is a matter for resolution by the contractor and the state or local authorities, not by federal officials.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Liability restrictions

Protester's bids were properly rejected as nonresponsive where the bids contained commercial bid bond forms which may not hold the surety liable for the protester's failure to furnish payment bonds.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Post-bid opening periods
- ■ ■ Submission
- ■ ■ ■ Responsiveness

Since the Buy Indian Act does not require an agency to accept a nonresponsive bid on an invitation for bids (IFB) set aside under that Act, a low bidder which did not submit an acceptable bid bond by bid opening was properly rejected as nonresponsive under an IFB provision "may" be cause for rejection.

Procurement

Bid Protests

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

Protester is not an interested party eligible to challenge agency's failure to include evaluation preference clauses favoring small disadvantaged businesses (SDB) in a partial small business set-aside where it would not be in line for award even if the SDB evaluation preferences were applied and its protest were sustained.

Procurement

Bid Protests

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

Where *Commerce Business Daily* (CBD) notices announcing agency's plans to make sole-source awards gives other potential sources 45 days to submit expressions of interest showing their capability to respond to agency's requirements, potential offerors must, as a prerequisite to filing protests challenging the sole-source decisions, submit timely expressions of interest in response to CBD notices. Where protester waited anywhere from approximately four to thirteen months to submit expressions of interest in response to respective CBD notices, protests are dismissed as untimely.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly awarded contract to low, technically acceptable, responsible offeror where protester's allegations that awardee's proposal failed to meet certain solicitation specifications are not supported by the record.

Procurement

Contractor Qualification

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

Where solicitation requires the acquisition of necessary approvals and permits by the awardee, this is ordinarily a performance requirement encompassed in a contracting officer's affirmative responsibility determination, which is not subject to review by the General Accounting Office except in limited circumstances not present here.

Procurement

Bid Protests

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

Where protester offered cost-sharing arrangement for equipment in its alternate cost proposal that was not permitted by solicitation, protester was on constructive notice that agency would not consider its alternate cost proposal when agency issued request for best and final offers (BAFO) that did not provide other offerors the opportunity to propose cost-sharing or similar arrangements, and protest filed several weeks after request for and receipt of BAFOs is untimely.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical and price most advantageous to the government.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where an agency advised offerors in the competitive range of all technical and cost concerns and gave the offerors an opportunity to revise their proposals based on these concerns, agency has satisfied the requirement that meaningful discussions be conducted. Even if an offeror's price is higher than the other offeror's price, the agency is not required to advise the high offeror of this fact if there is no indication that the agency found the high offeror's price to be unreasonable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Point ratings

Protest that agency failed to follow stated evaluation methodology by using penalty points and bonus points in its actual scoring is denied since the solicitation advised offerors of the broad method of scoring to be employed and gave reasonably definite information concerning the relative importance of evaluation factors. The precise numerical weights in an evaluation need not be disclosed.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency relaxed certain solicitation requirements for the awardee is denied where record shows that the agency allowed both the protester and the awardee to make certain minor software and hardware changes to their products and nothing in the solicitation precluded such changes.

B-238773.2, B-238773.3, November 19, 1990

90-2 CPD 401

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Evaluation criteria
- ■ ■ ■ Modification

Solicitation's delivery schedule is a material requirement, and a change in this requirement must be communicated to all offerors since a relaxation of this material term potentially could lead offerors to reduce their prices.

B-239867.2, November 19, 1990***

90-2 CPD 402

Procurement

Bid Protests

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

Protest challenging the application of the new individual surety regulations to the procurement is dismissed as untimely where protester did not protest this application within 10 working days of learning agency intention to apply the new regulations.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Protester properly was found nonresponsible where sureties pledged assets which are unacceptable under the current regulatory requirements.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Point ratings

Where solicitation for travel management services calls for award to be made to the responsible offeror whose offer conforms to the solicitation and is most advantageous to the government, in accordance with the listed technical evaluation factors, and provides for additional consideration of general and specific enhancements, the agency may properly take into account specific, albeit not expressly identified, enhancements that are logically encompassed by or related to stated evaluation criteria.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation ratings
- ■ ■ Point ratings

Where protester and awardee both meet all requirements of the solicitation, agency reasonably awarded contract for travel services to the offeror proposing the most enhancements.

Procurement

Socio-Economic Policies

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

Protest that agency was required to apply small disadvantaged business (SDB) evaluation preference in protester's favor in accordance with solicitation's inadvertently included SDB preference clause is denied where the procurement was conducted on an unrestricted basis pursuant to the Small Business Competitiveness Demonstration Program Act of 1988, 15 U.S.C. § 644 note (1988), and the agency regulatory implementation of the Act prohibits the application of the SDB preference where a procurement falls under the demonstration program and where the protester had reasonable notice from the solicitation and applicable regulations that the small disadvantaged business evaluation preference would not be applied.

Procurement

Bid Protests

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

A bid is late when received 6 days after the time set for opening in a contracting office in Guam, even though it was sent by certified mail at least 5 calendar days before the specified bid opening date, since the certified mail exception to the late bid rule is not applicable where bids are submitted outside the 50 states of the United States, the District of Columbia and Canada.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of dismissal of protest alleging that solicitation was improperly issued as a negotiated procurement is denied where, after filing of protest, agency agreed with the protester and canceled the solicitation. Although the protester's requested relief was for the agency to correct the deficiency by amending the solicitation to change the procurement method from negotiated to sealed bid, corrective action taken by the agency to cancel the solicitation was reasonable.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Claim for protest costs where agency took corrective action remedying alleged procurement defect in response to protest is denied since award of protest costs is contingent upon issuance of decision on merits finding that agency violated a statute or regulation in the conduct of a procurement.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest of agency's failure to furnish incumbent contractor with copy of solicitation and to set procurement aside for small business is denied where request does not allege any error of fact or law in prior decision or offer new information that would warrant reversal or modification of decision.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Suspended/debarred contractors

Where the contracting agency initiates debarment proceedings against the protester, it is no longer an interested party eligible to maintain a protest under our Bid Protest Regulations.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Request for reconsideration of dismissal of protest as untimely is denied; alleged lack of sufficient information about denial of agency-level protest does not excuse protester's failure to file protest at General Accounting Office within 10 days of notification of adverse agency action as required by Bid Protest Regulations.

Procurement

Bid Protests

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

Protest challenging the rejection of offer as technically unacceptable is untimely when filed more than 10 working days after receipt of agency letter stating reasons for rejecting offer.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Contract Management

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

Where solicitation specification requires that offered product be one of a manufacturer's current models, proposal to provide a product which will require major modifications to meet domestic content provisions of solicitation should have been rejected as technically unacceptable.

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Suppliers

Protest filed by a prospective subcontractor/supplier to potential prime contractors is dismissed since the protester is not an interested party eligible to have its protest considered under the Competition in Contracting Act of 1984 and the General Accounting Office's implementing Bid Protest Regulations.

B-224827.4, November 21, 1990

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

Where correction notice to government bill of lading, providing for a stated lump sum released valuation, is mailed to carrier and delivered to carrier's agent prior to shipment, and freight bills and bills of lading accompanying shipment reflect release of shipment based on a lump sum valuation, the carrier's maximum liability for loss or damage to the shipment is contractually set at the amount of the lump sum valuation.

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

The government, in recovering under a contract with a carrier for loss or damage to a service member's household goods, is not limited in recovery to the amount it paid to the member under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. § 3721.

Procurement

Payment/Discharge

- Payment procedures
- ■ Set-off rights

Where a carrier liable for damage to a shipment of household goods has been accorded the pre-offset procedural rights specified in the Debt Collection Act, collection by administrative offset is proper.

Procurement

Sealed Bidding

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

Agency properly refused to permit protester to correct an alleged mistake in bid where the protester did not submit clear and convincing evidence of its intended bid.

Procurement

Contract Management

- Contract modification
- ■ Change orders
- ■ ■ GAO review

Protest that changes in the way awardee is performing master agreement orders (MAO) are beyond the scope of the orders is denied where there is no significant change in the purpose and nature of the MAOs and obligation of either party to the MAOs.

Procurement

Sealed Bidding

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

Amendment to an invitation for bids (IFB) which increases by more than 1,000 units the quantity required by the IFB is material and the bidder's failure to acknowledge such amendment renders its bid nonresponsive, even where protester alleges it never received the amendment.

Procurement

Bid Protests

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

Protest against the Small Business Administration's (SBA) refusal to issue certificate of competency (COC) is untimely when not filed in General Accounting Office within 10 days of the protester's receipt of notice from SBA declining to issue a COC.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Request for reconsideration is denied where protester did not submit bid under solicitation and therefore is not an interested party to protest award to another firm.

Procurement

Bid Protests

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

Protester, an approved household goods carrier under agency's current in-house employee relocation service, is not an interested party to protest agency's decision to contract out for relocation services or to protest terms of the solicitation, as it is not an actual or prospective offeror under the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

General Accounting Office (GAO) will not consider allegation that agency acted improperly in relaxing solicitation experience requirement in order to broaden competition since GAO's role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect a protester's interest in a more restrictive requirement.

Procurement

Specifications

- Brand name/equal specifications
- ■ Equivalent products
- ■ ■ Acceptance criteria

Procurement

Specifications

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

Where protester argues awardee did not meet experience requirement that proposed software system, "without modifications, must have been implemented and operating" at one site for 6

months, but protester likewise proposed a system which was not in its entirety in use at any one site for 6 months, and agency has determined that awardee's system will satisfy its minimum needs, contracting officials have treated both offerors equally and there is no basis to sustain protest against award.

B-240525, November 23, 1990***

90-2 CPD 420

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Eligibility
- ■ ■ ■ Criteria

Contracting agency is required to refer its finding that small business bidder is nonresponsible to the Small Business Administration (SBA) for consideration under certificate of competency procedures despite the fact that agency is located outside the United States, since statutory requirement for referral to SBA is unrelated to agency's location.

B-240563, November 23, 1990

90-2 CPD 421

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

While protester contends that patented cloth does not comply with requirements of military specification based on results of test conducted by independent laboratory retained by the protester, General Accounting Office has no basis upon which to object to agency's judgment that the cloth meets the requirements where it has tested the item twice, observed and approved the manufacturer's test and in each instance the results have indicated compliance with specifications.

Procurement

Specifications

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

Where protester contends that patent indemnity clause in solicitation results in supplier of patented item being in sole-source position, but record shows that agency has reasonable basis for concluding that use of clause was authorized by regulations, clause is unobjectionable.

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Orientation costs

Procurement**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Where solicitation for custodial services provided that offers from other than incumbent contractor would be evaluated for award by adding orientation costs for a period beginning July 1, or date of award, whichever is later, through July 31, contracting agency reasonably included in the evaluation of protester's proposed price the cost of 8 days of orientation where contract was awarded on July 23, and protester was not the incumbent contractor.

Procurement**Contractor Qualification**

- Responsibility
- ■ Information
- ■ ■ Submission time periods

Procurement**Contractor Qualification**

- Responsibility/responsiveness distinctions
- ■ Sureties
- ■ ■ Financial capacity

Bid is responsive despite individual surety's failure to file pledge of assets with bid bond since a pledge of assets is information which bears on responsibility and, as such, may be furnished any time prior to award.

Procurement**Sealed Bidding**

- Bids
- ■ Modification
- ■ ■ Submission methods
- ■ ■ ■ Facsimile

Bid modification submitted via facsimile transmission in response to a solicitation which provided that facsimile modifications would not be considered was properly rejected by the agency.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration based on information protester timely could have submitted, but did not, during initial consideration of the protest is denied.

Procurement

Bid Protests

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

Protest filed with the General Accounting Office (GAO) more than 10 working days after protester knew of its basis for protest was properly dismissed as untimely. The fact that the protester first filed its protest with the Department of Transportation Board of Contract Appeals, which dismissed it as not involving a matter within the Board's jurisdiction, does not toll the time for filing with GAO.

Procurement

Specifications

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

Protest of requirement for raw data as to the number of alpha tracks generated during exposure of radon monitors is denied where agency demonstrates that raw data is needed to permit identification of anomalies in the data which could skew the readings.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Justification

Protest of requirement for tape seals on radon monitors is denied where the agency demonstrates that the tape seals are the only effective means available to it for protecting the monitors against additional radon exposure while they are being shipped back to the laboratory for analysis.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Justification

Protest of requirement that material used in radon monitors to record alpha tracks have no more than 3 tracks/ 10 square millimeters (sq. mm.) at the time it is inserted into the monitors is sustained where the record shows that material with more than 3 tracks/10 sq. mm. would serve the agency's needs.

Procurement

Specifications

- Ambiguity allegation
- ■ Specification interpretation

Protest of requirement for submission with offers of a quality assurance plan tailored to meet specific agency requirements is sustained where agency indicates that it intended to require only the submission of offerors' standard quality assurance plans with their offers but solicitation language does not reflect the agency's intended meaning.

B-240489, November 27, 1990

90-2 CPD 428

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certificate
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

A claim of bad faith on the part of contracting officials requires substantial proof of a specific and malicious intent to injure the protester, which is not met by the mere failure of contracting officials to grant a discretionary extension to process a certificate of competency.

B-240625, November 27, 1990

90-2 CPD 429

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Sureties

Where a bidder has submitted a bid bond which only contained a photocopy of the signature of the surety's agent as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bid bond subsequent to bid opening.

Procurement

Bid Protests

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

Protest that agency did not afford protester opportunity to extend bid is untimely where filed more than 10 working days after the bid acceptance period expired, the point at which the basis of protest was apparent.

Procurement

Sealed Bidding

- Bids
- ■ Expiration
- ■ ■ Reinstatement
- ■ ■ ■ Propriety

Protest that agency improperly awarded contract to thirdlow bidder, whose bid had not expired, instead of allowing protester to revive expired bid, is denied where agency properly determined that allowing protester to revive bid would compromise integrity of competitive bidding process.

Procurement

Contractor Qualification

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

Protest that nonresponsibility determination lacked a reasonable basis is denied where the determination is based on contracting agency's reasonable perception of inadequate performance by the protester disputes the agency's interpretation of the facts and where there is some indication of satisfactory performance on other contracts.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Since a nonresponsibility determination is based on circumstances at the time of award and is inherently judgmental, the fact that different conclusions as to a firm's responsibility may be reached by others does not demonstrate unreasonableness or bad faith on the part of the contracting officer.

Procurement

Sealed Bidding

- Bid guarantees
 - ■ Responsiveness
 - ■ ■ Sureties
 - ■ ■ ■ Liability restrictions
-

Procurement

Sealed Bidding

- Bid guarantees
- ■ Waiver

Where bid bond provided is less than is required by the solicitation, but is greater than the difference between the bid price and the next higher acceptable bid agency may waive the noncompliance and accept the bid.

Procurement

Sealed Bidding

- Bid guarantees
 - ■ Responsiveness
 - ■ ■ Sureties
 - ■ ■ ■ Liability restrictions
-

Procurement

Sealed Bidding

- Bid guarantees
- ■ Waiver

Where a bid bond does not list the United States as the obligee, but correctly identifies the offeror, the solicitation number and the name of the location of the project involved, and is otherwise acceptable, the agency may waive the noncompliance and accept the bid.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of dismissal of protest objecting to the Small Business Administration's (SBA) refusal to issue a certificate of competency (COC) is denied where the SBA did not fail to consider vital information in reaching its COC decision since such information was contained in SBA's record during COC proceedings.

Procurement

Contractor Qualification

- Responsibility/responsiveness distinctions
- ■ Approved sources
- ■ ■ Compliance time periods

Where solicitation provides that qualification of product may be completed up to time of award, bidder entry of erroneous Qualified Products List test number does not provide basis for rejecting the bid since compliance with the requirement is a matter of responsibility, not responsiveness, and information on product qualification may be provided to agency any time before award.

Procurement

Contractor Qualification

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

Whether a product should be kept on the Qualified Products List (QPL) without being retested is a matter for the determination for the agency responsible for the QPL, and the General Accounting Office will not question the agency's judgment unless it is shown not to have a reasonable basis.

Procurement

Competitive Negotiation

- Contracting officer duties
- ■ Competitive system integrity

A contracting officer may properly protect the integrity of the procurement system by disqualifying from the competition a firm which engaged in improper business conduct which may have afforded the firm an unfair competitive advantage.

Procurement

Bid Protests

- Bias allegation
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest challenging award under invitation for bids based on protester's allegation of bias in award selection process is denied where there is no evidence of bias in the record and the award was properly made to the low bidder as required under sealed bidding procedures.

Procurement

Sealed Bidding

- Contract award notification
- ■ Procedural defects

Protest challenging award decision based on protester's complaint that agency informed awardee of award 8 days prior to notifying the unsuccessful bidders is denied because while agencies are required to provide notice of contract awards, the delay in notifying the protester was merely a procedural defect which does not affect the validity of the contract award.

Procurement

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

Protest alleging that awardee's proposal for copying equipment and services violated statutory sanctions against contracting with the Toshiba Corporation is denied, because although the proposal did violate the sanction the violation did not result in any competitive disadvantage for the protester.

Procurement

Specifications**■ Minimum needs standards****■ ■ Competitive restrictions****■ ■ ■ Design specifications****■ ■ ■ ■ Justification**

Protest that solicitation for test support airplanes unduly restricts competition by including specifications allegedly "written around" design features of a competitor's product is denied where agency establishes that one specification the protester cannot meet, a minimum speed requirement, is necessary to meet its mission needs.

Procurement

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

Award to higher-rated, higher-priced 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 price.

Procurement

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

An amendment to an invitation for bids (IFB) is material where the amendment changes the contract period from June 1 or date of award, whichever is later, through May 31, to October 1 or date of award, whichever is later, through September 30, because it has a significant impact on the delivery terms required under the IFB.

Procurement

Sealed Bidding

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

Bid is properly rejected as nonresponsive where bidder fails to acknowledge a material amendment requesting a modified contract period, because, absent such acknowledgment, the bidder is not obligated to furnish the item during the new period.

B-241439.2, November 28, 1990

90-2 CPD 441

Procurement

Bid Protests

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

Bidder's inclusion in its bid of an "exception" sheet in which it objected to a certain specification requirement does not constitute a timely agency-level protest since the contracting officer is not authorized to open a bid until the time set for bid opening.

Procurement

Sealed Bidding

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

Bid properly was rejected as nonresponsive where bidder enclosed with it an "exception" sheet in which the bidder expressly stated that it would not comply with one of the specification requirements.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

A bidder who is ineligible for award because its bid is nonresponsive is not an "interested party" under the General Accounting Office's Bid Protest Regulations to maintain a protest of an award to another bidder.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester's reiteration of its original basis for protest does not show that prior dismissal was based on either errors of fact or law and where protester does not present information not previously considered that warrants reversal or modification of the prior decision.

B-239848.3, November 29, 1990

Procurement

Bid Protests

■ **GAO authority**

Procurement

Bid Protests

■ **Subcontracts**

■ ■ **GAO review**

The General Accounting Office has no bid protest authority to review an award of a subcontract by a prime contractor when the subcontract procurement was not made "by or for the government."

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