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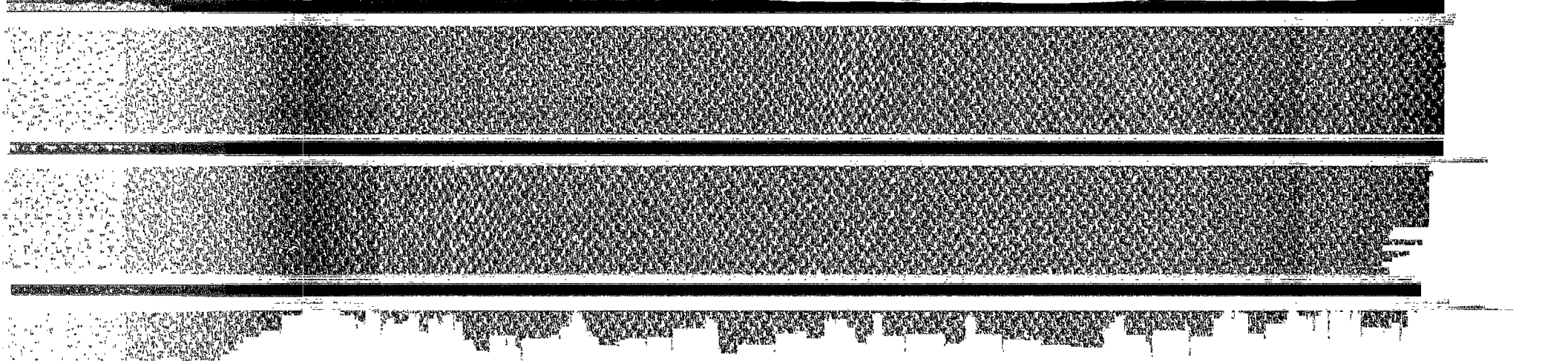
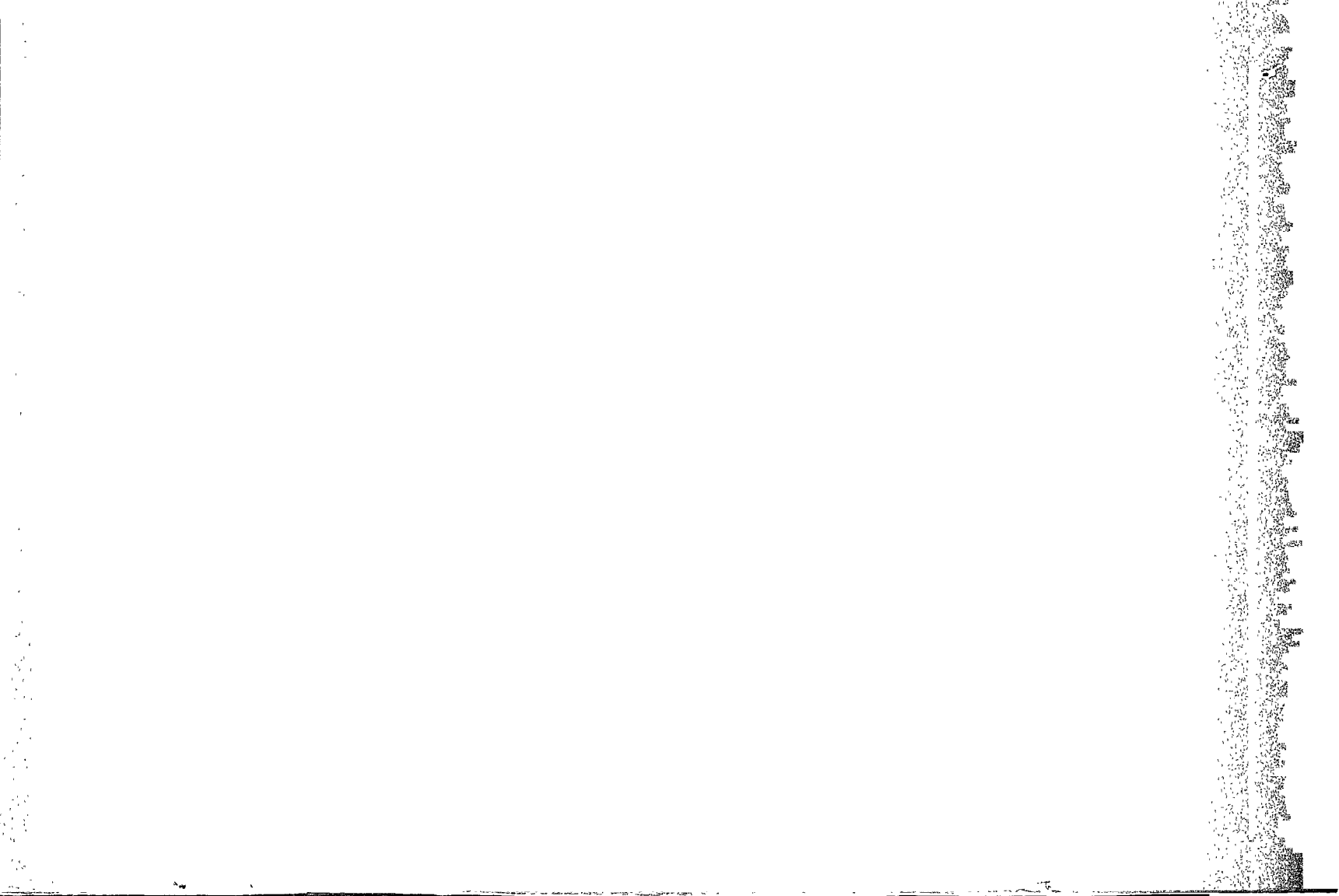
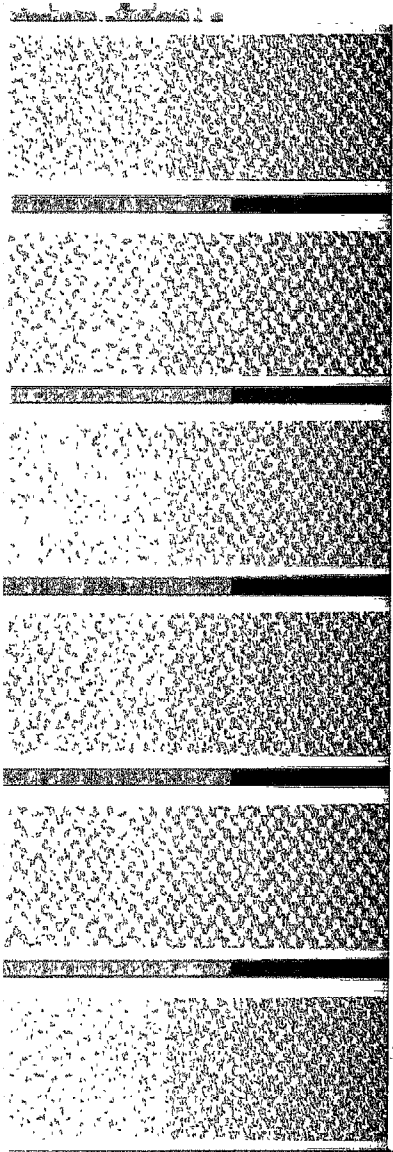


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Digests of Decisions of the Comptroller General of the United States

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Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
Milton J. Socolar

General Counsel
James F. Hinchman

Deputy General Counsel
Vacant

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Preface

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

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Appropriations/Financial Management

B-246369, February 3, 1992

Appropriations/Financial Management

Accountable Officers

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

Relief in the amount of \$1,091.07 is granted Army Finance Officer under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and collection requirements of 31 U.S.C. § 3527(c) have been met. However, B-244972, Oct. 22, 1991, authorized the Secretary of Defense or his designee to process duplicate check cases received after October 22, 1991, where the amount involved does not exceed \$3,000.

B-246418, February 3, 1992

Appropriations/Financial Management

Accountable Officers

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

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Fraud

Army finance officer and subordinate cashier are granted relief under 31 U.S.C. § 527(c) for improper payment totalling \$235. Improper payment resulted from fraudulent negotiation of a stolen check. The finance officer acted within bounds of reasonable care and the cashier followed established procedures.

B-241019.2, February 7, 1992

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Illegal/improper payments
- ■ ■ GAO decisions
- ■ ■ ■ Reconsideration

On reconsideration, we grant relief to an Army supervising financial officer whose subordinate improperly made two payments to contractor for one month's maintenance services. Completed record indicates that the accountable officer properly supervised his staff at the time of the incident by maintaining and enforcing an adequate system of procedures and controls even though human error resulted in the improper payment.

B-243710, February 10, 1992***

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Antideficiency prohibition
- ■ ■ Violation

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Advances
- ■ ■ Specific purpose restrictions

Under 15 U.S.C. § 1526, funds advanced to the National Technical Information Service by its customers are not available for the Service's operating expenses unless directly related to services performed or to be performed. To the extent the Service incurred expenses exceeding its actual obligational authority it violated the Antideficiency Act and should report to the President and the Congress as required by 31 U.S.C. § 1351.

B-246294, February 26, 1992

Appropriation/Financial Management

Appropriation Availability

- Purpose availability
- ■ Attorney fees

Agency appropriations are not available to reimburse a federal employee private legal fees and expenses related to a state criminal proceeding when the agency and the Department of Justice have determined that the employee's actions which gave rise to the proceeding were not within the scope of federal employment and that representation would not be in the interest of the United States.

Civilian Personnel

B-245417, February 10, 1992***

Civilian Personnel

Compensation

- Overtime
 - ■ Eligibility
 - ■ ■ Advance approval
-

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Non-workday travel
- ■ ■ ■ Justification

Employees who traveled away from their official duty stations on Sunday in order to teach agency training courses beginning Monday morning may not be allowed overtime pay or compensatory time for their travel under 5 U.S.C. § 5542(b)(2)(B)(i) or (iv) which require that for traveltime to be compensable, work must be performed while traveling or the travel must result from an event which could not be scheduled or controlled administratively. Here, the employees did not work while traveling and the event was scheduled and controlled by the employees' agency. However, time spent on Sunday after arrival at the training site setting up for the course is compensable work time if it is officially ordered and approved.

B-244666, February 14, 1992

Civilian Personnel

Relocation

- Temporary quarters
 - ■ Interruption
 - ■ ■ Actual expenses
 - ■ ■ ■ Temporary duty
-

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem rates
- ■ ■ Amount determination

When an employee who is performing temporary duty (TDY) at one training location is required to interrupt that duty for occasional overnight assignments at another TDY location, the employee on such occasions is entitled to the full per diem allowance at the second location and only the actual lodging expenses incurred at the initial location.

B-245457, February 14, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Property titles
- ■ ■ Insurance premiums
- ■ ■ ■ Reimbursement

Transferred employee paid cash in purchasing residence at new duty station with no mortgage involved. He may not be reimbursed for the cost of an owner's title insurance policy. The policy was not a prerequisite to financing or the transfer of the property as required by the FTR, 41 C.F.R. § 302.6-2d(ix) (1991). Since the employee was not legally required to purchase the policy, its cost is a nonreimbursable expense, not essential to the purchase of the residence.

B-245519, February 18, 1992

Civilian Personnel

Travel

- Temporary duty
- ■ Travel expenses
- ■ ■ Return travel
- ■ ■ ■ Reimbursement

An employee scheduled travel and leave to immediately precede a previously scheduled training assignment. At the conclusion of the annual leave, the employee was notified that the training assignment had been canceled and the employee was instructed to return to his permanent duty station. The employee may be reimbursed his travel expenses for return to his permanent duty station only if the agency determines that he planned his personal travel in direct response to his training assignment and would not have traveled to the leave point and incurred the travel expense but for the approved training assignment by the agency. Reimbursement may not exceed the cost the agency would have incurred for direct travel to return from the training site.

B-245281, February 20, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Time restrictions

A transferred employee who failed to complete the sale of his residence at the old duty station within 3 years of the date he reported for duty at the new duty station may not be reimbursed for residence sales expenses incurred thereafter. *Thomas L. Chapman*, B-230880, Dec. 12, 1988, and decisions cited.

B-230370.2, February 28, 1992

Civilian Personnel

Compensation

- Dual compensation restrictions
- ■ Retired personnel

A retired Army officer employed as a teacher under the Defense Department Overseas Teachers Pay and Personnel Practices Act is considered a full-time employee during the school year for purposes of the Dual Compensation Act, 5 U.S.C. § 5532, and therefore, the period in which he re-

ceives salary due to his civilian position is the full calendar period of each pay period, not actual days worked.

B-245933, February 28, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
 - ■ Reimbursement
 - ■ ■ Eligibility
 - ■ ■ ■ Permanent duty stations
-

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Permanent residences

An employee is not entitled to real estate selling expenses upon his transfer to a new duty station when the home that was sold was not located at his old duty station and he did not regularly commute between the home and his place of work, as travel regulations require, regardless of the fact that he may have received erroneous advice from agency personnel.

B-245977, February 28, 1992

Civilian Personnel

Relocation

- Travel expenses
 - ■ Constructive expenses
 - ■ ■ Eligibility
 - ■ ■ ■ Spouses
-

Civilian Personnel

Relocation

- Travel expenses
- ■ Constructive expenses
- ■ ■ Privately-owned vehicles
- ■ ■ ■ Multiple vehicles

Employee is not entitled to reimbursement for the constructive cost of his wife's passenger fare on the Alaska Marine Highway System where he transported a second privately-owned vehicle at personal expense and his wife, as the driver of the second vehicle was not charged for passage. The government has no obligation to reimburse an employee for the constructive cost of travel where the employee incurred no actual travel expenses for wife's passage.

Military Personnel

B-244823, February 14, 1992

Military Personnel

Travel

■ **Travel allowances**

■ ■ **Eligibility**

A member who retired from active duty designated Eureka, California, as his home of selection. He travelled to California but remained there only a short time. He is not entitled to travel and transportation allowances to his home of selection since he did not take up residence in California. However, he indicates that he also travelled to his home of record at that time. When he provides documentation for that travel, he may receive allowances for his personal travel to his home of record.

B-244830, February 14, 1992

Military Personnel

Pay

■ **Death gratuities**

■ ■ **Eligibility**

■ ■ ■ **Former spouses**

A member filed for and was awarded a divorce from his second wife by a state court. His military records were changed to reflect his single status. At his death, both of his former wives filed claims as the mothers of the member's children, for the death gratuity and pay and allowances due. Their claims were paid, each former wife receiving half of the amount due on behalf of her child. The second wife then had her divorce from the member reversed on appeal. She claims the full amount of the death gratuity and allowances, based on the fact that she is now the member's widow. Payment to her would require that a second payment of the death gratuity and allowances be made. It has been well established that where confusion as to the member's marital status was largely due to his own representations, the government can receive a good acquittance of its obligation even though the payment of the death gratuity and other amounts may not have been made to the lawful wife. Where the member and the former spouse were divorced at the time of the member's death have represented themselves as such, the government has a good acquittance and a second payment should not be made.

B-227582.3, February 21, 1992

Military Personnel

Pay

■ **Death gratuities**

■ ■ **Eligibility**

■ ■ ■ **Spouses**

Where through administrative mistake of fact or law a death gratuity payment is made to a person clearly not entitled to it and it is equally clear that another person is entitled thereto, the administrative office should make payment to the proper payee, whether or not the erroneous payment is recovered. Thus when death gratuity payment was made to the spouse of a member who later was implicated in the member's death, second payment may be made to her parent.



Military Personnel

Pay

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

A retired regular officer of the Air Force who accepted government civilian employment upon retirement received erroneous payments of retired pay in violation of dual compensation laws because of administrative errors by the Air Force Accounting & Finance Center. This debt may not be waived under 10 U.S.C. § 2774 since, under these circumstances, the officer reasonably could be expected to have recognized that he was being overpaid.

Procurement

B-245250.3, February 3, 1992

92-1 CPD 133

Procurement

Competitive Negotiation

- Offers
- ■ Commercial products/services
- ■ ■ Administrative determination

Agency reasonably concluded that awardee offered a commercial product (i.e., a product purchased by entities other than the federal government) where the record contains evidence that the awardee sold the product to the general public.

B-245749, February 3, 1992

92-1 CPD 134

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Risks

Procurement

Specifications

- Minimum needs standards
- ■ Risk allocation
- ■ ■ Performance specifications

Protest by incumbent contractor that solicitation for housing maintenance and repair services is defective because it fails to limit the scope of services that the selected contractor could be required to perform on a lump sum, fixed-price basis and thus imposes undue risk on prospective bidders is denied. The solicitation reasonably minimizes the risk of performance by placing ceilings on the amount of potentially expensive work that can be ordered under the lump sum portion and by including other expensive required services on an indefinite-quantity basis, which provides for unit pricing.

Procurement

Contractor Qualification

- Responsibility/responsiveness distinctions

- ■ Sureties

- ■ ■ Financial capacity

Procurement

Sealed Bidding

- Bid guarantees

- ■ Sureties

- ■ ■ Acceptability

Where bidder failed, after being given a second opportunity, to furnish proof that evidence of title to real property, pledged by individual surety in Standard Form 28 to support bid bond, was prepared by an approved title insurance company, agency reasonably found surety unacceptable and bid was properly rejected.

Procurement

Competitive Negotiation

- Offers

- ■ Evaluation

- ■ ■ Technical acceptability

- ■ ■ ■ Tests

Agency did not improperly eliminate the protester's library security equipment from consideration on the basis of a pass/fail test where the agency found three major deficiencies in the protester's equipment in addition to the protester's failure to pass a required adhesive test.

Procurement

Sealed Bidding

- Invitations for bids

- ■ Post-bid opening cancellation

- ■ ■ Justification

- ■ ■ ■ Ambiguous specifications

Compelling reason to cancel invitation for bids after bid opening existed where invitation when read as a whole created an ambiguity concerning whether bid guarantees were required, and one of the two bidders was misled by the ambiguous bid guarantee requirement.

Procurement

Sealed Bidding

- Invitations for bids

- ■ Cancellation

- ■ ■ Justification

- ■ ■ ■ Price reasonableness

Agency rejection of low bid as unreasonably priced is proper where bid exceeds government estimate by a significant amount and protester provides no evidence that agency's determination was unreasonable.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Prices
- ■ ■ ■ Line items

Bid of \$200,000 for line item which solicitation provided was subject to \$200,000 statutory cost limit was properly determined responsive where bidder certified that bid contained all applicable costs, overhead, and profit for this line item, and the agency determined that no government-imposed contingency or overhead costs were applicable to the item as of the time of bid opening.

Procurement

Sealed Bidding

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

Any bid that does not conform to the specifications as stated in the invitation for bids must be rejected as nonresponsive.

Procurement

Bid Protests

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

A protest of the propriety of an invitation for bids specification is untimely where protested after bid opening.

Procurement

Sealed Bidding

- Hand-carried bids
- ■ Late submission
- ■ ■ Acceptance criteria

A hand-carried bid that is received by the appropriate official at the bid opening location after the time set for bid opening may not be accepted for award where the bidder's failure to follow solicitation procedures (which directed that hand-carried bids be deposited at another location), rather than improper government action, was the paramount cause of the late delivery.

Procurement

Sealed Bidding

- Contingent fees
-

Procurement

Sealed Bidding

- Incumbent contractors
- ■ Information disclosure
- ■ ■ Contingent fees
- ■ ■ ■ Prohibition

Protests that agreements between selling agents and contractors constitute improper contingent fee agreements are denied where contracting activity reasonably determined bona fide commercial or selling agents were maintained by contractors for the purpose of securing business and agents did not exert or propose to exert improper influence to solicit or obtain government contracts.

Procurement

Sealed Bidding

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

Bid which did not contain revised language as instructed by an amendment to the solicitation, but which acknowledged the amendment and listed the new required line items, is responsive when the bid otherwise meets the terms of the solicitation. The omission was properly waived by the agency as a minor informality.

Procurement

Bid Protests

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

Allegation that low bidder failed to complete representations and certifications is dismissed as untimely where protester did not initially raise issue in its protest to the agency and the time for raising the issue under GAO's bid protest regulations has expired.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Contracting agency reasonably excluded protester's proposal from the competitive range where the record shows that the technical evaluation panel properly downgraded protester's proposal in areas found deficient in accordance with stated evaluated criteria, resulting in a significantly lower rating relative to the scores of the 24 highest-rated offerors included in the competitive range. Notwithstanding possibility that some deficiencies might have been cured through discussions, protester's proposal lacked reasonable chance of being selected for award.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Requests for reconsideration of prior decision sustaining protest and recommending that the agency reinstate the award unless it determines under its contract administration authority to terminate the contract for reasons other than flaws in the original solicitation are denied where the requests by the agency and interested party fail to demonstrate any factual or legal errors in the prior decision which warrant its reversal.

Procurement

Competitive Negotiation

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

Where solicitation provides that technical factors are more important than cost and award was made on the basis of higher rated, higher cost proposal, source selection official's failure to specifically discuss the cost/technical tradeoff in the selection decision document does not render award invalid where tradeoff is supported by the record.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Propriety
 - ■ ■ Corporate entities
-

Procurement

Contractor Qualification

- Corporate entities
- ■ Existence
- ■ ■ Determination

Where bids were submitted in the name of "Alfred Boehm GmbH," but documentation for the preaward survey was submitted in the name of "GfB-Gesellschaft fuer Bautenschutz Alfred Boehm GmbH" (GfB), a corporation which was first registered after bid opening, and record does not show existence of GfB prior to bid opening, the agency properly determined not to make award to GfB since it was an entity different from that which submitted the bid.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

When a protest appears untimely on its face and is dismissed for that reason, a protester will not be permitted to introduce for the first time, in a reconsideration request, facts and information establishing its timeliness where the facts and information were in the protester's possession but were not initially provided to our Office.

Procurement

Competitive Negotiation

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

In a negotiated procurement for a fixed-price, combined indefinite quantity and requirements, contract, a procuring agency is not required to conduct a cost analysis simply because the solicitation required cost and pricing data, where adequate price competition was obtained and the solicitation does not provide for a cost realism analysis.

Procurement

Bid Protests

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

A protester who challenges an award on one basis must diligently pursue information that may reveal additional bases for protest—protest based on information revealed months after initial protest was filed, where protester made no effort to obtain such information, is untimely.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Procurement

Sealed Bidding

- Invitations for bids
- ■ Certification
- ■ ■ Signature lines
- ■ ■ ■ Omission

Where solicitation's Certificate of Procurement Integrity failed to provide a signature line—and accordingly misled bidders to believe a separate signature on the certificate was not required—procuring agency properly canceled an invitation for bids; protester's requested corrective action on reconsideration—that the solicitation be reinstated and that it be permitted to submit a properly signed certificate and receive contract award as the low bidder—is denied since such action would prejudice the integrity of the competitive bidding system by giving otherwise successful bidders a second opportunity to walk away from a low bid.

Procurement

Bid Protests

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

Protest against solicitation is untimely when it is not filed with either the procuring agency or the General Accounting Office before the closing time for receipt of initial proposals. Alleged improprieties that are apparent on the face of a solicitation must be filed by that time.

Procurement

Contractor Qualification

- Licenses
- ■ Determination time periods

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Distinctions
- ■ ■ Performance specifications

Requirement that offeror be certified by the state to perform asbestos work is a contract performance requirement, not a definitive responsibility criterion where, although a state regulation incorporated by reference into the solicitation required certification before bidding or before performance, when the solicitation is read reasonably and as a whole it only required possession of a certificate before performance began.

Procurement

Contractor Qualification

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

Agency had sufficient evidence to reasonably conclude that the proposed awardee satisfied a definitive responsibility criterion that the awardee have completed three similar asbestos projects within the last 3 years.

Procurement

Sealed Bidding

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

Cashier's check is not an acceptable form of bid guarantee on Department of Defense construction solicitation where the solicitation specifically limits, as permitted by regulation, acceptable types of bid guarantees to bid bonds or public debt obligations of the United States.

Procurement

Special Procurement Methods/Categories

- Quotations
- ■ Rejection
- ■ ■ Shipment schedules

Rejection of protester's quotation was proper where protester, in telephone conversation with contracting officer after submission of quotations, reasonably led contracting officer to question protester's commitment to specified delivery schedule; although protester disputes agency's conclusion that it qualified its quotation, record shows that agency interpretation of telephone conversation was reasonable.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Corrective actions

Where deficiencies are introduced in a firm's best and final offer, the agency is not compelled to reopen discussions with the company (which would require reopening with the other offerors as well) to allow the firm to attempt to cure them.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Decision dismissing protest is affirmed where reexamination of record shows that General Accounting Office's conclusion as to piecemeal nature of protest was in error, but also establishes that protest was untimely filed.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Approved sources

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Standards

A qualified products list requirement relates to the qualification of the specific product, and not the qualification of individual offerors; therefore, the firm that offers the qualified product need not be the same firm that passes the tests qualifying the product.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Auction prohibition

Contracting agency did not engage in a prohibited auction by requesting 1 offeror to reduce its price by 10 percent and another offeror to reduce its price by 30 percent, where the price objectives were based upon a comparison of the proposed price for each piece of equipment with catalog and prior contract prices and on an allowance for desirable quantity discounts; a contracting agency may develop different negotiation price objectives based upon separate appraisals of each offeror's proposal, and these objectives may be disclosed to the offeror in question as a negotiation tool for reaching an agreement as to a fair and reasonable price.

B-246018, February 7, 1992

92-1 CPD 160

Procurement

Competitive Negotiation

- Offers
- ■ Price omission
- ■ ■ Line items

Agency properly awarded a contract to a firm which submitted a price for only one of two line items listed in the solicitation where that firm offered the most advantageous price for the individual item and the solicitation allowed line item awards and did not specify that an aggregate award would be made.

B-246123, February 7, 1992

92-1 CPD 161

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Correction procedures

Where an uninitiated bid correction leaves no doubt as to the intended bid price, the requirement for initialing changes is a matter of form and the omission may be excused as a minor informality.

B-246166, February 7, 1992

92-1 CPD 162

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Where bidder's Certificate of Procurement Integrity indicates that bidder possesses no information regarding procurement violations and is otherwise complete, the bidder's failure to insert the word "none" in the certificate, which confirms a lack of violations, is not a material omission which would make the bid nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protester may not assert a claim of mistake in the awardee's bid since it is the responsibility of the contracting parties—the government and the awardee—to assert rights and bring forth the necessary evidence to resolve mistake questions.

B-246357, February 7, 1992**92-1 CPD 163**

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Contractors
- ■ ■ ■ Identification

Procurement

Sealed Bidding

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

Where bid is submitted in the name of one person, but is accompanied by bid bond which identifies that person and also another individual as principal, the bond is materially defective, requiring rejection of the bid as nonresponsive, because the surety's obligation under the bond is unclear.

B-247487, February 7, 1992**92-1 CPD 164**

Procurement

Bid Protests

- Dismissal
- ■ Definition

Where protest submission states that specific basis of protest is set forth in an enclosure, but does not contain any enclosure, general protest allegation that agency improperly handled protester's bid is dismissed for failure to set forth a legally sufficient basis.

B-245664.2, February 10, 1992**92-1 CPD 165**

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show that prior decision dismissing its protest contained errors of fact or law regarding its failure to initially state a legally sufficient basis of protest.

Procurement

Small Purchase Method

- Contract awards
- ■ Propriety

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Where quoter under a small purchase solicitation failed to provide certification from a licensed engineer that its vault met all of the material requirements necessary to protect the storage of classified information on magnetic media as required by the solicitation, the procuring agency's award of the purchase order to that quoter and the agency's decision to allow performance under the order were improper.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that agency modified truck-loading schedule in the current solicitation for only awardee based on the results of an experimental truck-loading schedule under awardee's incumbent contract for the same services is denied where there is no evidence that schedule was changed for awardee and, in fact, awardee's proposal shows that it will perform in accordance with the truck-loading schedule set forth in the current solicitation.

Procurement

Competitive Negotiation

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

Protest challenging evaluation of awardee's proposal is denied where record shows that agency scored proposal consistently with RFP evaluation scheme; although awardee had relatively less experience than protester, agency reasonably determined that, in light of overall experience, it was appropriate to score awardee only marginally lower than protester under technical experience factor.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Agency was under no obligation to discuss price with protester where record does not show that agency considered protester's price unreasonable, and protester's offered hourly rates were below hourly rates used to calculate government estimate.

Procurement

Competitive Negotiation

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

Contracting agency properly excluded from the competitive range a proposal (for telemetry transmitters to enable testing and evaluation of missile performance) which the agency appropriately concluded had no reasonable chance for award because it evidenced non-compliance with solicitation's frequency tolerance requirement for transmitters and failed to demonstrate understanding of other significant technical requirements the correction of which would have required major design revision.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Premature bid opening

Procurement

Sealed Bidding

- Premature bid opening
- ■ Bids
- ■ ■ Revision

Protest that agency acted improperly in continuing with bid opening and award is sustained where protester's bid was prematurely opened, read aloud, and recorded on an unrelated bid abstract 1 day prior to scheduled bid opening, and where agency failed to give sufficient time for protester to revise its bid.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ First-article testing
- ■ ■ Waiver
- ■ ■ ■ Propriety

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest is sustained where agency improperly waived a first article testing requirement for awardee and improperly accepted the awardee's otherwise nonconforming proposal.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably determined protester's proposal to be technically unacceptable where protester failed to submit required letter of intent for key personnel and proposed staffing well below the government estimate.

Procurement

Sealed Bidding

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

Amendment, which added inadvertently omitted specifications that contained the government's precise requirements for sump pumps to be replaced under solicitation for construction work, was material and therefore procuring agency properly rejected the protester's bid, which failed to expressly acknowledge the amendment, in the absence of any evidence that the amendment was constructively acknowledged.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Prices
- ■ ■ ■ Line items

Bid which contains price entry in block intended for government to enter award amount rather than on bid schedule is responsive where the solicitation requires only a lump-sum price and, by signing bid form which incorporates detailed specifications of the requirements, the bidder is obligated to perform all material requirements upon acceptance of its bid.

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Descriptive literature
 - ■ ■ ■ Adequacy
-

Procurement

Specifications

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

Where a brand name or equal solicitation required submission of descriptive literature to establish that the offered product meets the salient characteristics and bidders were informed that failure to do so would require rejection of their bids, agency properly rejected bid on the basis that the accompanying descriptive literature did not demonstrate compliance with a number of salient characteristics. A bid that promises to supply customized equipment that will meet specification requirements is an insufficient substitute for required descriptive literature.

Procurement

Bid Protests

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

Protest filed 3 months after award challenging the evaluation of the protester's quotation and the issuance of delivery orders to another contractor is dismissed as untimely where the protester did not diligently pursue the information forming its basis of protest as the protester waited 2 months to file a Freedom of Information Act request after being notified that it was not selected for award and after receiving no information from the agency in response to its informal inquiries.

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
-

Procurement

Competitive Negotiation

- Contract awards
- ■ Errors
- ■ ■ Corrective actions
- ■ ■ ■ Moot allegation

Protester is not entitled to costs of filing and pursuing protest where agency promptly investigated allegations that contract had been awarded improperly and, after determining protester was correct, terminated the contract for the purpose of resoliciting the requirement. Agency's actions, completed 1 day after the agency report on the protest was due and 1 month after protester had finalized its protest, were reasonably prompt given the relative complexity of issues involved.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior dismissal is affirmed on reconsideration where the protester has not shown that our prior decision contains either errors of fact or law, and the protester merely disagrees with our prior decision.

Procurement

Bid Protests

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

Protest of an alleged solicitation impropriety subsequently incorporated into the solicitation and apparent from the face of the solicitation was untimely where the protester failed to file its protest prior to the closing date for receipt of revised proposals following the incorporation.

Procurement

Competitive Negotiation

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

Agency properly found unacceptable a proposal whose low maintenance staffing created a risk of conflict with ongoing training and whose suggested approaches to system restoral were impractical.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where protester's initially proposed maintenance and system restoral plans contained major deficiencies, and agency advised protester that the plans were deficient and sought details and elaboration of those plans, agency conducted meaningful discussions since it properly alerted protester to perceived deficiencies in its proposal.

Procurement

Bid Protests

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

Protester whose proposal was properly found technically unacceptable is not an interested party to protest the cost/technical tradeoff or the evaluation of the awardee's proposal where there are

other, technically acceptable proposals in line for award and it would not be in line for award if its allegations were resolved in its favor.

B-246012, February 12, 1992

92-1 CPD 180

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Where bidder's representative failed to sign solicitation's Certificate of Procurement Integrity on designated signature line, he failed to unequivocally commit his company to the certificate's terms; thus, the agency properly rejected his company's bid as nonresponsive.

B-247137, February 12, 1992

92-1 CPD 181

Procurement

Contract Management

- Contract administration
- ■ GAO review

The General Accounting Office will not consider a mistake in bid claim alleged after award, since it is a matter of contract administration.

B-247247.2, February 12, 1992

92-1 CPD 182

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

A protest that alleges a competitor's price is unreasonably low, which suggests either a mistake or a buy-in, was properly dismissed, without obtaining an agency report, because the protest fails to state a valid basis for protest.

B-245246.2, February 13, 1992

92-1 CPD 183

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protester has not demonstrated that the procuring agency determination—that awardee's equipment complied with specifications stated in the request for proposals—is unreasonable where protester is alleging that the awardee's equipment should comply with requirements that were not part of the specifications, and where the record clearly shows that the awardee's offered equipment does comply with the specifications as stated.

Procurement

Bid Protests

- **Bias allegation**
- ■ **Allegation substantiation**
- ■ ■ **Burden of proof**

Protest alleging agency bias is denied where allegation is based on (1) the agency's decision to permit awardee to demonstrate its equipment after best and final offers were submitted and (2) the agency's decision to relax the specifications so that the awardee and another firm could qualify for award where the awardee was the low technically acceptable offer and award decision had been made and the specifications were relaxed to conform to the agency's minimum needs.

B-246003, February 13, 1992*****92-1 CPD 184**

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Options**
- ■ ■ ■ **Prices**

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Terms**
- ■ ■ ■ **Compliance**

Where invitation for bids specifically provided that the option clause giving the government the unilateral right to extend the terms of the contract for up to 2 additional years at the proposed base-year price, subject to adjustment only as provided by the Economic Price Adjustment clauses (EPA) included in the solicitation, would not become a part of the contract, absent express assent by the bidder, agency properly rejected bid as nonresponsive because bidder failed to show required commitment in its bid.

B-246008, February 13, 1992**92-1 CPD 185**

Procurement

Bid Protests

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

Protest by representative of manufacturer of alleged brand name item that agency improperly converted a brand name only procurement to a brand name or equal procurement is denied where it was clear from the solicitation that the agency would consider an offer of a product manufactured by the awardee.

Procurement

Bid Protests

- **Patent infringement**
- ■ **GAO review**

Allegation that awardee will violate another firm's patents in performing a contract is dismissed because the matter is for consideration by the courts, not the General Accounting Office.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that evaluation of awardee's proposal was improper is without merit where record shows that the agency had a reasonable basis to view the proposal as it did.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest that agency conducted an improper cost realism analysis of the awardee's cost proposal is denied where the record shows protester's allegation is based upon an erroneous assumption—that the awardee underestimated the staffing necessary to perform the contract requirements—and where record shows that agency's cost realism analysis was reasonable.

Procurement

Sealed Bidding

- Hand-carried bids
- ■ Late submission
- ■ ■ Acceptance criteria

Bid delivered 39 minutes before bid opening to warehouse office at government facility by Federal Express was properly rejected as late where it did not arrive in the bid opening room on time because it was not delivered to the exact location designated in the solicitation and the mailing envelope received by the agency was not marked with a sealed bid label or other information that identified the contents as a bid.

Procurement

Small Purchase Method

- Blanket purchase agreements
 - ■ Use
-

Procurement

Small Purchase Method

- Small business set-asides
- ■ Use

Agency improperly determined to issue blanket purchase agreements under small purchase procedures on an unrestricted basis, rather than using a small business set-aside, where the contracting officer failed to undertake reasonable efforts to ascertain whether quotations from at least two responsible small business concerns would be received.

Procurement

Contractor Qualification

- Suspension
- ■ GAO review

When a protester alleges that it has been improperly suspended or debarred during the pendency of a procurement in which it was competing, the General Accounting Office will review the matter to ensure that the agency has not acted arbitrarily to avoid making an award to the bidder otherwise entitled to the award and also to ensure that minimum standards of due process have been met.

Procurement

Contractor Qualification

- Contractors
- ■ Agents
- ■ ■ Suspension
- ■ ■ ■ Propriety

Agency had a reasonable basis to suspend an individual, who was authorized to sign contracts for a suspended contractor, since the agency had adequate evidence to impute the suspended contractor's misconduct (involving bribery to obtain government contracts) to the individual.

Procurement

Contractor Qualification

- Contractors
- ■ Suspension
- ■ ■ Notification

Due process for a suspension requires notice sufficiently specific to enable the suspended party to marshal evidence on its behalf so as to make the subsequent opportunity for response meaningful.

Procurement

Contractor Qualification

- Contractors
- ■ Suspension
- ■ ■ Notification

Agency is not required to inform persons of proposed suspensions to allow them an opportunity to submit evidence; such evidence is properly presented in the person's post-suspension response to the action.

Procurement

Sealed Bidding

- Suspended/debarred contractors
 - ■ Affiliates
 - ■ ■ Notification
 - ■ ■ ■ Procedural defects
-

Procurement

Sealed Bidding

- Suspended/debarred contractors
- ■ Bids
- ■ ■ Rejection
- ■ ■ ■ Propriety

Agency's failure to give proper written notice to an affiliate of a suspended contractor pursuant to Federal Acquisition Regulation § 9.407-1(c) is a procedural defect that does not deprive the affiliate of due process or affect the validity of the rejection of the affiliate's bid based on the suspended contractor's ineligibility, where the suspended contractor had actual notice of the intended suspension and the ownership and control of the suspended contractor is the same as for the affiliate.

Procurement

Contractor Qualification

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

Low bidder whose bid was rejected because the firm was properly suspended at the time of award, and award was made to an eligible bidder, is not entitled to the award when the suspension was terminated upon appeal.

B-246110, February 14, 1992

92-1 CPD 190

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Protest challenging agency's evaluation of proposal and exclusion from the competitive range is denied where review of agency's evaluation of protester's proposal establishes that it was evaluated in accordance with solicitation's evaluation criteria and that agency reasonably concluded that the proposal would require major revisions to become acceptable.

Procurement

Competitive Negotiation

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

Proposal that agency properly finds technically unacceptable may be excluded from the competitive range without consideration of price.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Proposal that agency properly finds technically unacceptable may be excluded from the competitive range without consideration of price.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Contracting agency is not required to conduct discussions with offerors of proposals reasonably determined to be technically unacceptable.

B-246159, February 14, 1992

92-1 CPD 191

Procurement

Sealed Bidding

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

Upward correction of low bid was proper where worksheets clearly showed that, due to bidder's failure to multiply unit prices by total number of units, the per unit labor and material costs to repair bathrooms was factored into the bid for one unit only, and erroneously omitted for the remaining 39 units.

Procurement

Bid Protests

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

Procurement

Contract Management

- Contract administration
- ■ GAO review

Decision dismissing protest is affirmed where basis of request for reconsideration—the General Accounting Office's failure to consider allegation that agency improperly modified the awardee's contract—involves an issue of contract administration which is not for consideration by our Office.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Evaluation errors
- ■ ■ ■ Materiality

Protest against award of contract is sustained where proposals were not evaluated on the basis of the weighted evaluation factors contained in the solicitation.

Procurement

Competitive Negotiation

- Alternate offers
 - ■ Acceptance
 - ■ ■ Propriety
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Criteria

Where agency, after receipt of initial offers, determines that an alternate approach not contemplated under the solicitation is acceptable and where agency states that alternate approach represents a "significant improvement" to the solicitation, and resulted in a more favorable evaluation of the awardee's proposal, the agency is required to either amend the solicitation or engage in appropriate discussions with the offerors to allow all competitive range firms an opportunity to compete on a common basis.

Procurement

Competitive Negotiation

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

Agency reasonably evaluated proposal as high risk where offeror during negotiations demonstrated a lack of a complete understanding of specification requirements for voice communications subsystem and of the relevant technology; although offeror ultimately satisfied specification requirements by proposing subsystem supplied under prior contract by another offeror, agency properly gave greater weight to offeror's initial approach in evaluating its limited technical understanding and the consequent risk to the agency.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency was not required to again raise in request for best and final offers offeror's lack of a complete technical understanding of specification requirements and relevant technology where the offeror's limited understanding had been repeatedly demonstrated during the prior negotiations and the matter by its nature was not subject to correction through the discussion process.

Procurement

Competitive Negotiation

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

Although solicitation specifically included as part of the evaluation consideration of risk based upon offeror's past and present performance, and did not otherwise enumerate risk as an evaluation factor, agency was not thereby precluded from also considering any risk arising from the offeror's approach or demonstrated lack of a complete understanding since the consideration of the risk involved with respect to an offeror's proposal and approach is inherent in the evaluation of technical proposals.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

Contracting agency did not abuse its discretion when it determined that it was not clearly in the government's best interest to reopen discussions after best and final offers so as to permit high risk, technically inferior offeror to correct deficiency in price proposal—failure to reconcile various price and cost formats—which had previously been brought to offeror's attention during negotiations.

Procurement

Special Procurement Methods/Categories

- Computer equipment/services
- ■ Federal supply schedule
- ■ ■ Non-mandatory purchases

Agency properly rejected protester's response to a *Commerce Business Daily*(CBD) notice of the agency's intent to place purchase order for federal information processing equipment against a nonmandatory General Services Administration schedule contract where protester's response did not address mandatory maintenance/repair training and documentation requirements.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Record does not support protester's contention that it was misled by agency's oral advice to submit a best and final offer that did not conform to the solicitation's bonding requirements with the understanding a failure to conform to those requirements would, in effect, be waived.

Procurement

Bid Protests

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

Allegations that solicitation terms related to bonding requirements overstated the agency's minimum needs and were restrictive of competition are dismissed as untimely since they were filed after the date set for receipt of initial proposals.

Procurement

Small Purchase Method

- Requests for quotations
- ■ Contractors
- ■ ■ Notification

An incumbent contractor's nonreceipt of a request for quotations under a small purchase procurement, which agency records show was mailed to the contractor, is not cause for overturning the award.

Procurement

Small Purchase Method

- Quotations
- ■ Late submission

Where small purchase request for quotations contains "late proposal" clause an agency reasonably declined to consider a quotation received after the stated quotation due date.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

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

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where, despite the contracting officer's failure to follow regulation concerning referral of questions about an offeror's status as a small disadvantaged business to the Small Business Administration, the same contractor would have received the contract if the agency had followed proper procedure, and thus, the procedural irregularity did not result in prejudice.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Federal procurement regulations/laws
- ■ Amendments
- ■ ■ Contract awards
- ■ ■ ■ Initial offers

The National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101-510, § 802, 104 Stat. 1485, 1588 (1990), amended 10 U.S.C. § 2305(b), to authorize agencies whose procurements are governed by Title 10 of the United States Code, to make contract awards, after evaluation of proposals, on the basis of initial proposals, without conducting discussions with the offerors (other than for the purpose of minor clarification), unless discussions are determined to be necessary, if the solicitation states the agency's intent to do so. Although the amendment requires consideration of cost or price, or cost-related or price-related factors in the evaluation of proposals, the amendment deletes the previous requirement under 10 U.S.C. § 2305(b)(4) that an award based on initial proposals without discussions result in the lowest overall cost to the United States.

Procurement

Competitive Negotiation

- **Contract awards**
 - ■ **Initial-offer awards**
 - ■ ■ **Discussion**
 - ■ ■ ■ **Propriety**
-

Procurement

Competitive Negotiation

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

Protest of the award of a contract by the Department of the Army, based on initial offers without discussions with offerors, to other than the lowest priced offeror is denied since, in accordance with 10 U.S.C. § 2305(b), the request for proposals (RFP) advised offerors of the Army's intent to award the contract based on initial offers, and evaluation of proposals was consistent with the evaluation criteria set forth in the RFP.

B-246106, February 19, 1992

92-1 CPD 201

Procurement

Sealed Bidding

- **Bids**
- ■ **Minor deviations**
- ■ ■ **Acceptability**

A condition in a bid that modifies a material solicitation requirement which is not divisible from the remainder of the solicitation requirements may not be waived as a minor informality.

Procurement

Sealed Bidding

- **Bids**
- ■ **Minor deviations**
- ■ ■ **Government advantage**
- ■ ■ ■ **Acceptability**

The importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived.

B-246121, February 19, 1992***

92-1 CPD 202

Procurement

Bid Protests

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

Protest against terms of "open season" amendment to earlier General Services Administration solicitation for multiple award, Federal Supply Schedule contract is timely where filed prior to the time set for receipt of initial proposals under the amendment; as the amendment includes new requirements and solicits offers from all interested firms, it is tantamount to new solicitation for purposes of protesting its terms.

Procurement

Competitive Negotiation

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

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Terms
- ■ ■ Defects

● Requote arrangements" clause in Federal Supply Schedule (FSS) solicitation is inconsistent with Competition in Contracting Act requirement for full and open competition, and thus is improper, since it provides for limited competition exclusively among FSS vendors for supplies in excess of maximum order limitations instead of permitting all interested firms to compete.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Commercial products/services
- ■ ■ Federal supply schedule
- ■ ■ ■ Classification

Protest of agency's determination as to appropriate federal supply classification (FSC) for certain items is denied where record shows that agency's classification is reasonable; fact that items could also be classified under other FSCs is not, in itself, sufficient basis to disturb agency determination.

B-246139, February 19, 1992

92-1 CPD 203

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Risks

Agency acted improperly in awarding a contract to an offeror under a request for proposals (RFP) for the simplified acquisition of base engineering requirements, where the award was based on "performance risk," which was said to be a "general consideration," whose relative importance was not disclosed *vis-a-vis* the evaluation factors specifically identified and listed in the RFP in descending order of importance, and where the awardee's proposal under the stated and weighted evaluation criteria was technically equal to but higher in price than the protester's proposal.

Procurement

Bid Protests

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

Procurement

Contract Management

- Contract administration
- ■ Options
- ■ ■ Use
- ■ ■ ■ GAO review

Protest that contracting agency improperly exercised a contract option is denied where the protester has not shown that the agency failed to follow applicable regulations or that the determination to exercise the option was unreasonable.

Procurement

Bid Protests

- Bad faith
 - ■ Allegation substantiation
 - ■ ■ Lacking
-

Procurement

Contract Management

- Contract administration
- ■ Options
- ■ ■ Use
- ■ ■ ■ GAO review

Protest alleging that agency in bad faith improperly failed to exercise an option is denied where the protester has provided no evidence to support its assertion, and where agency's decision to exercise option under another contract was reasonable because it was lower in cost than protester's option.

Procurement

Competitive Negotiation

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

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Procuring agency failed to obtain maximum competition practicable for diesel engine repair work, which was solicited from a limited number of sources, but not the protester, based upon an unusual and compelling urgency, where the record shows that the procuring agency should have been

aware that the protester was a potential source due to its recent performance of similar repair services and specific requests to be solicited for ship repair work in the area.

B-246333.2, February 19, 1992

92-1 CPD 206

Procurement

Bid Protests

- Dismissal
- ■ Definition

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of an untimely protest of a 1989 subcontract award, filed at the General Accounting Office in 1991, is affirmed; protest of a subcontract award is generally measured from the prime contractor's award selection, not the government's approval of the selection.

B-247421, February 19, 1992

92-1 CPD 207

Procurement

Bid Protests

- GAO authority

Protest of agency actions unrelated to a particular solicitation or award is outside the scope of General Accounting Office bid protest function.

B-246795.2, February 20, 1992

92-1 CPD 208

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Dismissal of protest on basis that protester is not an interested party is affirmed where there are intermediate parties that have a greater interest in the procurement than the protester.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Personnel experience

Agency reasonably rejected as unacceptable a proposal for accounting services for a governmental public utility agency, where the proposal did not evidence public utility or governmental experience on the part of the firm or its key personnel, and the solicitation evaluation criteria clearly stated that such experience would be particularly considered.

Procurement

Bid Protests

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

A protest that a solicitation is not for the reprocurement of items under defaulted prior contract concerns an alleged impropriety apparent on the face of the solicitation and is untimely where solicitation stated that it was for a "reprocurement" and the protest was not filed prior to bid opening.

Procurement

Contract Management

- Contract administration
- ■ Defaulted contractors
- ■ ■ Repurchase contracts
- ■ ■ ■ Price determination

A reprocurement of a defaulted contract for air conditioners may not be awarded to the defaulted contractor at a price greater than the defaulted contract. Where agency, on reprocurement, uses revised specifications, it is appropriate for the agency to determine if those specification changes increase the cost of performance and if so to take that into account in determining whether the defaulted contractor's price on the reprocurement exceeded the price that it may be paid.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bidder's failure to enter company name in second paragraph of Certificate of Procurement Integrity form does not render its bid nonresponsive where the certifier's typed name and signature were

erly inserted on the certificate; the certification is clearly applicable to the bidder since the completed certificate was submitted with the bid which was signed by the company president, the same individual who signed the certificate.

B-246185, February 21, 1992

92-1 CPD 212

Procurement

Competitive Negotiation

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

Protest of firm's exclusion from the competitive range is sustained where agency's technical evaluation of a drill rig offered as an equal under a brand name or equal solicitation did not focus on technical information furnished with offer, but was heavily influenced by evaluation committee's perception that offeror had not produced the exact (or closely similar) product before, yet no requirement for a standard production model was included in solicitation.

B-246793.2, February 21, 1992

92-1 CPD 214

Procurement

Bid Protests

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

Protest against elimination of proposal from the competitive range was properly dismissed as untimely when filed more than 10 working days after protester was advised of its exclusion from competitive range and reasons for exclusion; subsequent discovery of additional information to support original bases of protest does not make protest timely.

Procurement

Bid Protests

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

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

B-247201.2, February 21, 1992

92-1 CPD 215

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest of allegedly restrictive solicitation requirements is denied where agency has canceled solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

In evaluating proposals for award of an indefinite-quantity contract, protest that agency failed to properly credit protester's proposal for alleged ability to provide overall cost savings due to higher efficiency performance is denied where protester's past performance record contradicts its representations regarding cost effectiveness and protester has not identified any particular attribute or qualification of proposed personnel which the agency failed to consider.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Procurement

Contract Management

- Contract administration
- ■ GAO review

Protester's speculation that agency will fail to properly administer contract is not for consideration by the General Accounting Office.

Procurement

Competitive Negotiation

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

Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the proposal was technically unacceptable and the offeror had no reasonable chance of award because of deficiencies in personnel experience, technical approach, and corporate experience.

Procurement

Bid Protests

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

Allegations of improper disclosure of protester's proposal information and of improper contact between agency and competitor are dismissed as untimely where raised more than 10 working days after protester knew or should have known of protest basis.

Procurement

Bidding**Bids**

- Interpretation
 - Intent
 - Evidence
-

Procurement

Sealed Bidding**Low bids**

- Error correction
- Price adjustments
- Propriety

Bid containing discrepancies between the total price and the prices bid for the base item and one of three additive items bid may be corrected where the firm's intended prices for both base and additive items are reasonably evident from the face of the bid in light of the other bids received.

Procurement

Competitive Negotiation

- Offers
- Competitive ranges
- Exclusion
- Administrative discretion

Agency properly excluded proposal from the competitive range where the offeror had no reasonable chance of award because its proposal failed to provide any information concerning the proposed method of performance, which was required by the solicitation, and correction would necessitate major revision of the proposal.

Procurement

Competitive Negotiation

- Offers
- Evaluation
- Technical acceptability

Agency properly rejected protester's proposal as technically unacceptable where protester's equipment did not meet the solicitation's technical specification requirements.

Procurement

Bid Protests

- GAO procedures
- Protest timeliness
- Apparent solicitation improprieties

Protest of alleged solicitation impropriety apparent from the face of the solicitation is dismissed as untimely where protester failed to file its protest prior to the closing time for receipt of initial proposals.

Procurement

Bid protests

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

Protester which properly was determined technically unacceptable and thus ineligible for : . . .
not an interested party to challenge the technical acceptability of the awardee's proposal . . .
protester would not be in line for award even if its protest were sustained.

B-246224, February 24, 1992

92-1 CPD 22

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Adequacy

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency's determination that protester's proposal was technically unacceptable on the basis that the level of proposed personnel was inadequate to perform the requirements in the solicitation was reasonable where it was based on a comparison of protester's proposed staffing level with the government's estimate of the staffing level, the historical staffing level at the same facility, and actual staffing levels at other government buildings of similar size.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency satisfied the requirement for meaningful discussions when it repeatedly questioned protester whether its proposed staffing level was adequate to perform the required work load and offered the protester a reasonable opportunity to explain why its staffing was adequate and/or to revise its approach.

B-246232, February 24, 1992

92-1 CPD 222

Procurement

Competitive Negotiation

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

Protest against the exclusion of a proposal from the competitive range as technically unacceptable is denied where the record shows that the agency reasonably determined that the proposal contained numerous technical deficiencies, and that a complete revision of the proposal would be required to render it technically acceptable.

Procurement

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

Procurement

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

Protest for reconsideration is denied where protest properly was dismissed as untimely based on timely initial agency-level protest; fact that protest basis arose during holiday season does not excuse protester from its obligation to file protest within 10 working days after learning of basis.

B-246214, February 25, 1992**Procurement**

- Sealed Bidding
 - ■ Bids
 - ■ ■ Responsiveness
 - ■ ■ ■ Descriptive literature
 - ■ ■ ■ Adequacy
-

Procurement

- Sealed Bidding
- ■ Bids
- ■ ■ Responsiveness
- ■ ■ ■ Terms
- ■ ■ ■ Compliance

Protest challenging the rejection of a bid as nonresponsive on the basis that descriptive literature submitted with the bid failed to establish that the offered equipment conformed to the specifications is sustained where the solicitation effectively did not require descriptive literature, and the bid did not take exception to any of the solicitation's requirements.

B-246216, February 25, 1992**Procurement**

- Special Procurement Methods/Categories
- ■ In-house performance
- ■ ■ Requests for proposals
- ■ ■ ■ Cost data
- ■ ■ ■ ■ Additional work/quantities

Protest that agency misled offerors by furnishing inaccurate historical cost figure in solicitation is denied where agency offered no information on the breakdown of the cost figure, and protester should have known that figure included cost of additional work for which the solicitation did not request prices; protester's reliance on the figure therefore was unreasonable.

Procurement

Bid Protests

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

Where protester, the lowest technically rated offeror, does not challenge its technical evaluation or that of higher rated, lower priced offer, protester would not be in line for award if protest challenging price realism analysis of awardee's considerably lower priced proposal were sustained; protester therefore is not an interested party to challenge award on this basis.

B-246233; B-246233.2, February 25, 1992

92-1 CPD 22

Procurement

Competitive Negotiation

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

Agency reasonably made a determination to eliminate the protester's proposal from the competitive range where solicitation placed emphasis on technical factors and where after discussions and the submission of revised proposals, the protester's technical score was less than half that of the other remaining offeror and the evaluation record otherwise supports the agency's conclusion that the proposal had no reasonable chance for award.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to fulfill its obligation to conduct meaningful discussions with the protester is denied where record shows that during discussions agency identified the weaknesses and deficiencies that it found in the protester's proposal and extended the protester the opportunity to revise its proposal to eliminate those weaknesses and deficiencies.

B-246236, February 25, 1992

92-1 CPD 227

Procurement

Bid Protests

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

Protester is an interested party to maintain a protest even though it submitted the third low cost proposal and the fourth ranked technical proposal, where award was made without discussions to the low evaluated offeror and protester claims that if its cost proposal had been properly evaluated it would have been the low offeror.

Procurement

- Protests
- GAO authority
- Protective orders
- Information disclosure

Agency request that admission of experts to our protective order in this case be contingent upon a "cooling off" period of 5 years (in the form of a promise to avoid any participation in future procurement for these services for that period) was reasonable given the large dollar value of the contract and the competition sensitive nature of the information to be made available to the expert.

Procurement

- Competitive Negotiation
 - Offers
 - Cost realism
 - Evaluation errors
 - Allegation substantiation

Procurement

- Competitive Negotiation
 - Offers
 - Evaluation errors
 - Evaluation criteria
 - Application

Protester's challenge to the evaluation of cost proposals is sustained where: (1) agency upwardly adjusted hourly labor rates covered by a collective bargaining agreement to a higher government estimate despite the fact that the contractor already had the employees in place and had a legally binding agreement with the employees for the amount of their wages; (2) agency upwardly adjusted management salaries by normalizing any proposed management salary that fell below the government estimate, without regard to the strengths or weaknesses of the particular proposals; (3) agency performed an unreasonable normalization of proposed travel costs by accepting some offerors' proposed travel costs and rejecting the proposed costs of others, even though the costs were widely divergent because the solicitation contained insufficient information to permit offerors to submit informed proposed travel costs; and (4) agency awarded on initial proposals without discussions after improperly upwardly adjusting protester's proposed award fee, and after unilaterally imposing an award fee on the proposal with the lowest proposed cost, thus causing that offeror to be the second low cost offeror.

Procurement

- Competitive Negotiation
 - Offers
 - Cost realism
 - GAO review

Agency cost realism analysis was proper where: (1) agency reasonably imposed an upward adjustment on the protester's proposed hourly union labor rates for the time period after expiration of a collective bargaining agreement because the agency reasonably disagreed with protester's contention that it would be able to avoid any further increase in hourly wages; and (2) agency did not double-count certain personnel or improperly add personnel to protester's proposed costs, as protester claims.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Contention that agency improperly failed to increase estimated requirement for maintenance i solicitation is denied where protester fails to show that the estimate is unreasonable, and the agency points to solicitation clauses designed to address such increases should they occur, the protester was not prejudiced because all offerors were evaluated using the same estimate.

B-247603, February 25, 1992

92-1 CPD 22

Procurement

Specifications

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

Protest of cancellation of solicitation after bid opening is dismissed where cancellation was based on overly restrictive specifications, a compelling basis for cancellation.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Procurement

Small Purchase Method

- Requests for quotations
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

General Accounting Office (GAO) will not entertain protest allegation that specifications should be more restrictive, since GAO's role is to ensure that full and open competition requirements are met, not to protect any interest a protester may have in more restrictive specifications.

B-244367.3, February 26, 1992

92-1 CPD 229

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest that agency failed to perform adequate cost realism analysis of awardee's cost proposal is denied where the agency reasonably assessed the realism of the awardee's proposed costs, including an evaluation of the extent to which its labor rates and costs were consistent with the various elements of its technical and management approach.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency was not required to discuss with an offeror its proposed relatively higher manning levels when these levels were considered to be acceptable rather than deficient.

B-246080, February 26, 1992

92-1 CPD 230

Procurement

Sealed Bidding

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

Agency properly allowed correction of a mistake in bid alleged by the low bidder where the existence of the mistake and the intended bid price were clearly established from the bidder's original bid preparation papers and corrected bid remains significantly below next low bid.

Procurement

Contractor Qualification

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

General Accounting Office does not review affirmative determinations of responsibility except where the determination was made fraudulently or in bad faith or where definitive responsibility criteria in the solicitation were not met, exceptions not alleged to exist here by the protester.

B-246149.3 et al., February 26, 1992

92-1 CPD 231

Procurement

Bid Protests

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

Access to documents under a protective order will be denied where, due to applicants' position and duties as in-house counsel, there is unacceptable risk that protected materials could be inadvertently disclosed.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation errors
 - ■ ■ Allegation substantiation
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Interpretation

Protest that procuring agency improperly determined protesters' proposals technically unacceptable based on alleged unstated solicitation requirement for interchangeability of piece parts of offered equipment with piece parts of existing equipment is denied where protesters' interpretation of requirement is inconsistent with solicitation read as a whole.

Procurement

Competitive Negotiation

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

Procurement

Specifications

- Performance specifications
- ■ Waiver
- ■ ■ Propriety

Protest that agency improperly failed to waive first article testing for portion of offered equipment is denied where agency reasonably determined that waiver was inappropriate for piece of equipment protester had not previously furnished as government prime contractor.

Procurement

Competitive Negotiation

- Discussion
 - ■ Adequacy
 - ■ ■ Criteria
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Weighting

Where agency determined that, notwithstanding protester's slightly higher overall technical/cost score, awardee's lower cost made its initial proposal more favorable to the government, award without discussions was proper and consistent with solicitation provision reserving agency's right to select for award the most favorable initial proposal resulting in the lowest overall cost to the government.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Prices**
- ■ ■ ■ **Unbalanced offers**

Under multi-year contract which included both firm and option quantities, protest that awardee's offered first year firm and option quantity prices were unbalanced is denied where there is no doubt that awardee's offer will result in lowest ultimate cost to the government.

Procurement

Competitive Negotiation

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

Where solicitation for multi-year contract did not require level pricing between contract years, awardee's offer of unlevel prices was not basis for rejecting proposal; there is no basis for reading level pricing provision into solicitation even if, as protester asserts, it was mandatory regulatory requirement.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Clerical errors**
- ■ ■ **Error correction**
- ■ ■ ■ **Propriety**

Agency reasonably determined that discrepancy in delivery term in a summary bar graph chart furnished with proposal, which was inconsistent with agreement in text of proposal to comply with delivery requirements, was a correctable typographical-type error.

Procurement

Bid Protests

- **Private disputes**
- ■ **GAO review**

Allegation that awardee may have acquired proprietary information from former employee of incumbent contractor involves a dispute between private parties which does not provide a basis for protest to the General Accounting Office.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Propriety
 - ■ ■ Evaluation errors
-

Procurement

Competitive Negotiation

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

Protest challenging agency's technical evaluation and selection of higher priced offeror is sustained where record, showing unexplained deductions in the protester's technical score in areas of past experience and timeliness, and maximum scores assigned to awardee who failed to provide information requested for evaluation, does not support technical evaluation and award decision.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Agency improperly accepted proposal from offeror who incorporated into its proposal terms and conditions of sale that differed materially from requirements in solicitation for firm, fixed-price contract, including contingent pricing and provisions conflicting with the solicitation's Federal Acquisition Regulation clauses on default and termination for convenience.

Procurement

Competitive Negotiation

- Discussion
 - ■ Error correction
 - ■ ■ Post-award error allegation
-

Procurement

Competitive Negotiation

- Discussion
- ■ Propriety
- ■ ■ Post-award error allegation
- ■ ■ ■ Contract rescission

Agency properly determined to terminate contract and reopen discussions with offerors in the competitive range, including the awardee, where, shortly after award and in response to an agency-level protest, agency reasonably found that proposal upon which award was made was materially deficient because the proposed items did not comply with a technical requirement in the solicitation.

Procurement

Sealed Bidding

- Invitations for bids
 - ■ Post-bid opening cancellation
 - ■ ■ Resolicitation
-

Procurement

Socio-Economic Policies

- Labor standards
- ■ Service contracts
- ■ ■ Wage rates
- ■ ■ ■ Omission

Where hybrid procurement procedures are utilized by Department of Energy management contractor, and bids are not publicly opened, contractor reasonably canceled a solicitation after receipt of bids under the standard applicable to negotiated procurements. In these circumstances, the failure to incorporate current Davis-Bacon Act wage rate determination in solicitation provided a reasonable basis for cancellation and resolicitation of the same requirement.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Service contracts
- ■ ■ Wage rates
- ■ ■ ■ GAO review

Protest of higher wage rates, that management contractor and union allegedly would require potential subcontractor to pay its employees, is a matter for consideration by the Department of Labor which has the exclusive authority to determine new wage rates.

Procurement

Bid Protests

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

Procurement

Contract Management

- Contract performance
- ■ Work suspension
- ■ ■ Administrative discretion

The contracting agency is not required to order suspension of contract performance where protest is filed with GAO within 10 working days of protester being notified of award, but agency receives notice more than 10 calendar days after award.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Auction prohibition

Reopening competitive range discussions after awardee's total price has been disclosed does not constitute an improper auction where reopening discussions is necessary to remedy an improper award; the statutory requirements for competition take precedence over regulatory prohibitions of auction techniques.

B-246345, February 26, 1992

92-1 CPD 234

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Hand-carried bids
- ■ Late submission
- ■ ■ Acceptance criteria

A late bid delivered by Federal Express at the installation more than 4 hours prior to bid opening may be considered where government action was paramount cause of lateness and the integrity of the system would not be compromised.

B-246654, February 26, 1992

92-1 CPD 235

Procurement

Bid Protests

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

Protest that awardee's offered product was not equal to the brand name product specified in the solicitation is dismissed as untimely where the protester did not diligently pursue information which forms the basis of the protest.

Procurement

Specifications

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

The fact that an offered equal item in a brand name or equal solicitation does not have a characteristic of the brand name product does not provide a basis to reject equal item where the characteristic was not listed as a salient characteristic of the brand name item.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of costs of filing and pursuing its protest, where the contracting agency promptly acted upon the protest, which alleged that the proposal was improperly rejected, by requesting that the proposal be resubmitted for evaluation.

B-246301, February 28, 1992***

92-1 CPD 241

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Post-bid opening cancellation
- ■ ■ Propriety

Where an agency permitted one offeror in a two-step sealed bid procurement to design its own fastener component on a helmet instead of proposing a helmet compatible with the sole-source fastener component—a component which was supposed to be furnished by the government—as contemplated by the step one request for proposals, and then amended the step two invitation for bids to procure the fastener component without providing the second offeror/bidder an opportunity to address the revised requirements, there is a compelling reason to cancel step two of the solicitation after receipt of bids to allow the offerors to submit revised proposals on a relatively equal basis, since there was a reasonable possibility that the second bidder, which submitted a higher bid, was prejudiced by the changes to the solicitation requirements.

Procurement

Sealed Bidding

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Communication between a bidder's employee and a government engineer that was not an attempt to influence the procuring agency in connection with a federal contract is not a violation of the Byrd Amendment, 31 U.S.C. § 1352 (Supp. I 1990). In any case, since there is no evidence that appropriated funds were expended in this communication, there can be no violation of the Byrd Amendment.

Procurement

Bid Protests

- Intellectual property
- ■ Disclosure
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Communication between a bidder's employee and a government engineer that does not solicit or obtain proprietary or source selection information is not a violation of the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1988).

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Procurement

Specifications

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

GAO will not disturb an award where the record shows that the agency had a reasonable basis for determining that the item being procured met the technical specifications.

B-246047.2, February 28, 1992*****92-1 CPD 238**

Procurement

Contract Management

- Contract administration
- ■ Contract terms
- ■ ■ Modification

Where ambiguity in contract, arising from agency's inclusion of awardee's proposed delivery schedule which provided for later exercise of options than dates provided elsewhere in contract schedule, is resolved through post-award deletion of the awardee's proposed schedule, protest that awardee obtained an unfair advantage as a result of acceptance of noncompliant offer is denied since protester suffered no competitive disadvantage.

B-246124.3, February 28, 1992**92-1 CPD 239**

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of proposal preparation costs or the costs of filing and pursuing its protest where the agency canceled the solicitation at issue for reasons unrelated to the protest allegations.

B-246226.2, February 28, 1992**92-1 CPD 240**

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of a decision dismissing a protest as academic, based on agency corrective action of reevaluating a proposal that had been improperly rejected, is denied, where the request rests only on the protester's anticipation that the agency may act improperly.

Procurement

Small Purchase Method

- Quotations
- ■ Alternate offers
- ■ ■ Rejection
- ■ ■ ■ Propriety

Rejection of quote for alternate disk drive in a small purchase procurement was unobjectionable where the dimensions of the alternate item are different from those of the brand name item and the difference precludes mounting the alternate in the existing configuration storage cabinet without modifications or additions to the cabinet.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Adequacy

Agency reasonably rejected protester's low-priced proposal for lack of required staffing and understanding of agency requirements where protester did not adequately respond to concerns the agency expressed during discussions about the protester's staffing.

Procurement

Specifications

- Brand name/equal specifications
- ■ Salient characteristics
- ■ ■ Sufficiency

Procurement

Specifications

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

Protest that salient characteristic specifications for intercable connectors solicited on a brand name or equal basis are unduly restrictive of competition is denied where the contracting agency reasonably determined that the salient characteristics at issue are necessary safety features.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Protest that agency should make the brand name or equal specifications more, not less, restrictive, is dismissed since the role of the General Accounting Office in resolving bid protests is to ensure that the statutory requirements for full and open competition in the award of government contracts is met, not to protect any interest a protester may have in more restrictive specifications.

Procurement

Bid Protests

■ Dismissal

■ ■ Definition

Protest is dismissed because the protester failed to provide a sufficient legal and factual basis to conclude that the agency violated applicable procurement laws or regulations or that the agency acted inconsistently with the requirements for full and open competition by not including in the solicitation additional provisions which the protester argued would address its safety and financial concerns with the specifications for an aircraft.

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