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Office of General Counsel



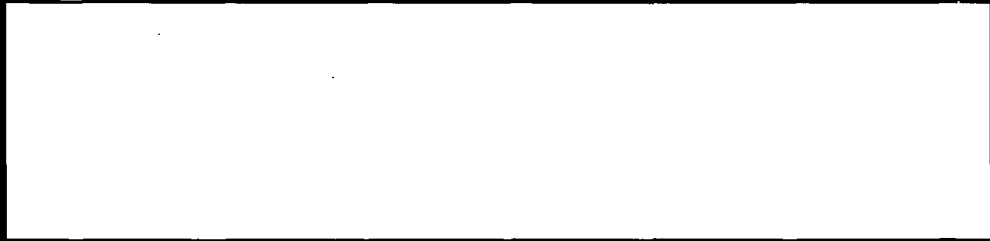
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**Digests of Decisions
of the Comptroller
General of the
United States**

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Preface

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

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Appropriations/Financial Management

B-248517, October 20, 1992

Appropriations/Financial Management

Accountable Officers

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

Appropriations/Financial Management

Accountable Officers

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

Appropriations/Financial Management

Accountable Officers

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

Appropriations/Financial Management

Accountable Officers

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

U.S. Air Force finance officer and subordinate cashiers are granted relief from liability under 31 U.S.C. § 3527(c) for improper payments totaling \$20,875.42 where the finance officer maintained and supervised an adequate system of procedures designed to prevent such improper payments and the cashiers complied with the established procedures. The improper payments resulted from criminal activity over which the finance officer had no control. The offender presented altered and forged purchased orders to the cashier for cash to allegedly pay a vendor but in fact retained the cash.

Appropriations/Financial Management

Accountable Officers

■ Disbursing officers

■ ■ Relief

■ ■ ■ Illegal/improper payments

■ ■ ■ ■ Fraud

Relief is granted to finance officers who had in place at the time of the improper payments at issue an adequate system of procedures and controls to safeguard the funds in their care, and to their subordinates who followed these procedures. The improper payments resulted from criminal activity that even an adequate and effectively supervised system cannot always prevent.

Civilian Personnel

B-248314.2, October 2, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Overseas personnel

An employee who purchased a residence at his former duty station upon return from an overseas assignment is not entitled to reimbursement of real estate expenses. The exception in 5 U.S.C. § 5724a(a)(4)(A), which provides reimbursement of real estates expenses when an employee returns from an overseas assignment to a different location in the United States, is not applicable here since the employee returned to his old duty station in California.

B-248887, October 2, 1992

Civilian Personnel

Compensation

- Payroll deductions
- ■ Life insurance
- ■ ■ Insurance premiums
- ■ ■ ■ Underdeductions

Employee elected basic life insurance and an additional option of three times his basic salary under the Federal Employees' Group Life Insurance Program (FEGLI). Upon transfer, his new agency only deducted for basic life plus the standard option. Since he received Standard Form 50s showing his coverage as basic life plus the standard option, and leave and earnings statements showing deductions for the reduced coverage, his failure to notice the errors in his insurance deductions and to make inquiry as to the correctness of his salary makes him at least partially at fault. Therefore, in the absence of evidence that the employee had requested a change in his FEGLI coverage, waiver of the overpayment of pay is denied.

B-248943, October 2, 1992

Civilian Personnel

Relocation

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

In accordance with 41 C.F.R. § 302-5.2(c) (1991), an employee is not eligible for temporary quarters subsistence expenses since he did not vacate the residence occupied at his former duty station when the transfer was authorized.

B-247048, October 6, 1992

Civilian Personnel

Compensation

- Civil Service regulations/laws
- ■ Service contracts
- ■ ■ Personal services
- ■ ■ ■ Prohibition

On basis of written record provided by U.S. Arms Control and Disarmament Agency and its Inspector General, we lack sufficient evidence to agree with IG that the agency improperly used its authority to employ experts and consultants to positions that should have been done by full-time regular government employees. See 22 U.S.C. § 2584.

B-249606, October 8, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Property titles

A transferred employee who purchased a home with his fiancée at his new duty station is entitled to reimbursement of only 50 percent of his allowable real estate expenses since, at the time of purchase, he acquired ownership of the residence with an individual who was not a member of his immediate family. *Anthony Stampone III*, B-223018, Sept. 30, 1986.

B-241953.2, October 9, 1992***

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem
- ■ ■ Additional expenses
- ■ ■ ■ Rest periods

When an intermediate rest stop is precluded or not authorized for travel beginning or ending outside CONUS (the 48 contiguous states and the District of Columbia), the FTR, 41 C.F.R. § 301-7.11(e) (1991), permits agencies to schedule the arrival time at the temporary duty point to allow a reasonable rest period before reporting for duty. In the exercise of its sound discretion an agency may allow an additional rest period at destination when an employee is scheduled to arrive too late at night to permit adequate rest before reporting for duty. We will not overturn an agency's action unless it is unreasonable or an abuse of discretion. Thus, where two employees flew directly from Alaska to CONUS arriving late at night, an agency's allowance of an additional rest period before reporting for duty is upheld as reasonable.

B-248637, October 14, 1992

Civilian Personnel

Compensation

- Personnel death
- ■ Lump-sum payments
- ■ ■ Guardians

A legally appointed guardian of a minor may receive payment on the minor's behalf of the minor's deceased parent's unpaid compensation pursuant to 5 U.S.C. § 5582. Where two separate guardians

of the same minor each claim the minor's share of the deceased father's unpaid compensation, the agency may pay the guardian who was most recently designated by the court which had jurisdiction over both guardians and the minor.

B-249480, October 15, 1992

Civilian Personnel

Leaves Of Absence

- Military leave
- ■ Charging

Civilian Personnel

Leaves Of Absence

- Military leave
- ■ Substitution
- ■ ■ Leave-without-pay

Where military leave was erroneously charged for a Reservist's inactive duty training, the Reservist may choose to have leave-without-pay rather than annual leave substituted for the military leave. However, such substitution would require collection of the pay the employee received for the leave period.

Civilian Personnel

Compensation

- Arbitration decisions
- ■ GAO review

GAO will not take jurisdiction of a claim where the claimant is subject to a collective bargaining agreement with grievance procedures covering the claim. The claim will be returned to the claimant for processing under the grievance procedures. *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

B-248506, October 26, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Miscellaneous expenses
- ■ ■ Reimbursement

A transferred employee may be reimbursed for survey costs incurred in connection with the purchase of a residence at his new permanent duty station where the purpose of the survey is to establish the perimeter and configuration of the property to comply with requirements for recording the deed or where the lender requires such a survey for financing purposes. Reimbursement is subject to the agency's determination that survey costs are customarily incurred by the purchaser incident to real estate transactions in the particular area in accordance with paragraph 302-6.2(c) of the Federal Travel Regulations. Reimbursement is not authorized for costs related to the survey of the plot of land from which the employee's plot was subdivided to qualify the seller's land for subdivision.

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Attorney fees
- ■ ■ Reimbursement

A transferred employee incurred attorney's fees for the drafting of the sales agreement with revisions, representation through 3 different attempts at financing with financing being obtained in

part from a private party, preparation of deed, loan notes and review of bank documents, representation at closing and other itemized services. Under applicable law and regulations, necessary and reasonable legal fees and costs incurred by reason of the purchase of a residence incident to a permanent change of station may be reimbursed provided that the costs are within the customary range of charges for such services within the locality of the residence transaction. However, attorney's fees for locating a lender and subdivision of seller's land are not reimbursable.

B-205694.2, October 28, 1992

Civilian Personnel

Compensation

■ Overtime

■ ■ Eligibility

■ ■ ■ Non-workday travel

■ ■ ■ ■ Justification

An employee traveled away from his duty station on Sunday in order to take a training course conducted by the government and returned on Friday evening. Such a course is an event that could be scheduled or controlled administratively and, therefore, the employee may not be allowed compensatory time for travel during his non-duty hours. *See* 5 U.S.C. § 5542 (b)(2)(B)(iv) (1988) and Federal Personnel Manual Supplement 990-2, Book 550, S1-3b.

B-249708.2, October 29, 1992

Civilian Personnel

Compensation

■ Personnel death

■ ■ Balances

■ ■ ■ Payees

■ ■ ■ ■ Designated beneficiaries

A federal employee designated his then spouse to receive any unpaid compensation due him at the time of his death on Standard Form (SF) 1150, Designation of Beneficiary for Unpaid Compensation, which was received in the agency in accordance with 5 U.S.C. § 5582 (1988). Later, he divorced her but did not change or revoke the designation. He remarried and his widow claims she is entitled to the unpaid compensation due at the time of his death. However, in the absence of a subsequent written designation by the employee received by the agency prior to his death, the designated beneficiary is entitled to the unpaid compensation. Accordingly, the claim of the employee's widow is denied.

Military Personnel

B-243671, October 8, 1992***

Military Personnel

Pay

- Payroll deductions
- ■ Survivor benefits
- ■ ■ Refunds

Under 10 U.S.C. § 1452(b) the retired pay of a member who elects child-only Reserve Component Survivor Benefit Plan (RCSBP) coverage shall be reduced to provide coverage only as long as he has an eligible beneficiary. A retired reservist whose pay continued to be reduced after his daughter ceased to be eligible for an RCSBP annuity is entitled to a refund of amounts withheld from his retired pay since the time his child became ineligible for an annuity. Interest on such refund is not payable.

B-248153, October 14, 1992

Military Personnel

Pay

- Evacuation allowances
- ■ Dependents
- ■ ■ Eligibility

The homeport of a Navy ship changed from the Philippines to San Diego, California. Dependents of the crewmembers were allowed to remain in the Philippines with logistical support for 8 weeks. During that time, dependents were evacuated due to the eruption of Mount Pinatubo. Evacuation allowances may be paid to the members for their command sponsored dependents because the Philippines remained, for purposes of evacuation allowances for dependents, the homeport notwithstanding issuance of notification of homeport change.

B-248439, et al., October 22, 1992

Military Personnel

Pay

- Special accounts
- ■ Savings deposit
- ■ ■ Interest

Claims by Air Force members for payment of interest on funds deposited in the U.S. Serviceman's Deposit Program (Program) are denied since at the time the deposits were made the members were ineligible to participate in the Program. Record does not reflect whether member who left funds on deposit after regulations were amended to liberalize eligibility requirements qualified under liberalized requirements.

Military Personnel

Pay

- Hazardous duty differentials
- ■ Eligibility
- ■ ■ Administrative determination
- ■ ■ ■ GAO review

A member claims hazardous duty pay for performing medical laboratory tests on patients infected with the virus which causes Acquired Immune Deficiency Syndrome. His claim is denied because he has not provided orders indicating that his primary duty meets the statutory and regulatory requirements for hazardous duty pay. Furthermore, various Army officials have determined that his duty is not sufficiently hazardous to entitle him to hazardous duty pay, and we will not substitute our judgment for the Army's in the absence of clear and convincing evidence that their determination was arbitrary and capricious.

Procurement

Redacted Version

B-246536.3, June 25, 1992

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Personnel
- ■ ■ ■ Advance approval

Proposal that failed to provide letters of intent for key personnel required by the solicitation should have been rejected as unacceptable for failure to satisfy a material solicitation requirement.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Personnel
- ■ ■ ■ Advance approval

Where agency properly received initial proposals, conducted meaningful discussions, and received final revised proposals, then awarded a contract to offeror whose proposal failed to satisfy material solicitation requirements, agency should reevaluate the extant final proposals and select an awardee on the basis of those proposals.

Redacted Version

B-248021, July 22, 1992

Procurement

Competitive Negotiation

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

Procurement

Special Procurement Methods/Categories

- Computer equipment/services
- ■ Computer software
- ■ ■ Technical acceptability

Where solicitation contained mandatory requirement for offerors to perform system demonstration, with only limited upgrades/modifications allowed after award, agency decision to eliminate the protester's from the competitive range was reasonable where protester proposed technological

enhancements to system available for demonstration beyond the limited upgrade/modification allowed by the solicitation.

B-248448, B-248448.2, October 1, 1992

92-2 CPD 304

Procurement

Competitive Negotiation

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

Protest that evaluation of proposals for travel services improperly failed to weight proposal elements according to their relative dollar values is denied where weights accorded the two factors were consistent with the terms of the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest of technical evaluation of proposal for travel services is denied where record supports agency's conclusions that proposal failed to adequately address certain requirements.

Procurement

Competitive Negotiation

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

Where solicitation provided that technical evaluation factors were more important in award selection than proposed discount/concession fees, agency properly made award to the technically superior offeror even though its fee proposal was slightly less advantageous.

B-248920, October 1, 1992

92-2 CPD 220

Procurement

Competitive Negotiation

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

Protest that the agency deprived the protester, the incumbent contractor, of the opportunity to compete for the agency's follow-on requirements because the agency did not provide the protester with a copy of the solicitation is sustained where the record shows that the agency omitted the protester from its solicitation mailing list, the protester had a reasonable expectation that it would be solicited, and the agency received only on bid.

Procurement

Socio-Economic Policies

- **Disadvantaged business set-asides**
- ■ **Incumbent contractors**
- ■ ■ **Adverse effects**
- ■ ■ ■ **Determination**

Small Business Administration (SBA) determination that the protester, the incumbent small business contractor, would not be adversely impacted by the acceptance of a requirement for custodial services for award under the SBA's 8(a) program to a small disadvantaged business is not objectionable where the determination was made in accordance with SBA regulations and no fraud or bad faith has been alleged.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Weighting**
- ■ ■ ■ **Bias allegation**

Although reevaluation of proposals based on weighting of evaluation factors in descending order of importance (rather than equal weighting improperly used in initial evaluation) theoretically render score reductions under least important factor less significant, difference was minor and did not affect award decision where (1) under the proper weighting the factor was only slightly less important than the other two technical factors, and (2) protester's proposal was significantly downgraded under all three technical factors, so that shifting of relative weights would have limited effect in any case.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Prior contract performance**

Allegation that evaluation of awardee's proposal under technical factor was too high because it failed to consider unsatisfactory past performance under a prior contract is without merit, where record shows agency did consider the information and did reduce the awardee's score, but also determined that awardee's most recent successful performance on a significant food services contract was the best indicator of the firm's technical ability, and that further score reduction was not warranted.

Procurement

Competitive Negotiation

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

Selection of the awardee on the basis of its overall technical superiority, notwithstanding its slightly higher price, was proper where agency reasonably determined awardee's higher-priced proposal was worth the additional cost, and cost/technical tradeoff was consistent with the evaluation scheme.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing protest under section 21.6(e) of Bid protest Regulations, even if we assume that the action was taken pursuant to the protest, where the agency took corrective action approximately 1 month after the protest was filed.

B-250641, October 5, 1992

92-2 CPD 226

Procurement

Bid Protests

- Dismissal

Allegations of government-wide violations of laws and regulations governing acquisition of automatic data processing equipment and services, without identification of any specific procurement, are insufficient to constitute a valid protest; under the Competition in Contracting Act of 1984, a protest must relate to a specific procurement.

B-247048, October 6, 1992

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Personal services
- ■ ■ Criteria

On basis of written record provided by U.S. Arms Control and Disarmament Agency and its Inspector General, we lack sufficient evidence to agree with IG that the agency improperly used its authority to employ experts and consultants to positions that should have been done by full-time regular government employees. *See* 22 U.S.C. § 2584.

B-247417.2, October 6, 1992

92-2 CPD 227

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

Procurement

Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Decision recommendatin—to amend overly restrictive solicitation—is modified to provide that agency need not cancel solicitation (even though it conducted bid opening while the initial protest was pending at our Office) in order to revise and resolicit the agency's requirements where, after consideration of all the circumstances surrounding the procurement, including new information

discovered after the initial decision was rendered that documents recent failures of direct buried systems similar to the protester's, the agency's need to have a new heat distribution system in place as soon as possible for the up-coming heating season, and the cost to the government, cancellation would not be in the best interests of the government.

B-248851.2, October 6, 1992**92-2 CPD 228**

Procurement

Bid Protests

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

Request for reconsideration is untimely where not filed—that is, received at the General Accounting Office within 10 working days after the basis for reconsideration is known. A protester acts at its own risk when it relies upon the mail to deliver protest materials, and loss in the mail does not serve as a basis for reviewing a request for consideration that has not complied with the requirement for timely receipt.

B-247116.3, B-247116.4, October 7, 1992**92-2 CPD 229**

Procurement

Competitive Negotiation

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

Allegation that General Accounting Office's (GAO) recommendation to make award to protester improperly failed to require agency to execute justification for award to technically superior, higher-priced offeror is denied; agency need not prepare formal justification before following GAO recommendation that was based on showing in record that award to technically superior, higher-priced offeror was consistent with solicitation's evaluation scheme.

Procurement

Competitive Negotiation

- GAO decisions
- ■ Recommendations
- ■ ■ Implementation

General Accounting Office (GAO) will not object to price discussions conducted with one offeror, pursuant to GAO recommendation to make award to that offeror, where the discussions do not affect GAO's original conclusion that the offeror was entitled to award.

B-248903, October 7, 1992**92-2 CPD 230**

Procurement

Socio-Economic Policies

- Labor standards
- ■ Service contracts
- ■ ■ GAO authority

The General Accounting Office will not consider the applicability of the Service Contract Act to a given procurement where the Department of Labor has already determined that the Act applies and has issued a wage determination for the solicitation and the Department of Labor's position is not clearly contrary to law.

Procurement

Competitive Negotiation

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

Agency's determination to procure graphic arts services on the basis of a single award is not objectionable where the services varied greatly in the level of difficulty and the agency reasonably feared that it would receive no reasonable offers for the more complex, time-consuming tasks if it allowed multiple awards.

B-248927, October 7, 1992

92-2 CPD 352

Procurement

Special Procurement Methods/Categories

- **Computer software**
- ■ **Sample evaluation**
- ■ ■ **Testing**

Procurement

Specifications

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

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

B-249824, October 7, 1992

Procurement

Payment/Discharge

- **Payment priority**
- ■ **Payment sureties**

Where a payment bond surety notifies the government of its claim to undisbursed contract funds, but the government nevertheless pays the funds to the contractor, the United States is liable to the surety for its substantiated claims.

B-248910, October 8, 1992

92-2 CPD 231

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Amendments**
- ■ ■ **Notification**
- ■ ■ ■ **Contractors**

Protester's alleged nonreceipt of an amendment modifying the terms of the solicitation and extending the closing date for receipt of initial offers provides no legal basis to disturb the procurement where the record represents that the agency properly sent the amendment to the protester and did not violate applicable regulations governing the distribution of amendments, and the pro-

tester did not avail itself of every reasonable opportunity to obtain the amendment it knew had been issued.

Procurement

Competitive Negotiation

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

Agency is not required to extend the closing date for receipt of proposals because of the protester's asserted nonreceipt of an amendment where the agency complied with applicable regulations regarding the dissemination of amendments, the protester did not avail itself of every reasonable opportunity to obtain the amendment it alleges it did not receive, the protester's request that the RFP's closing date be extended was made only 1 day prior to the closing date, and the record suggests that the protester's inability to submit a proposal in a timely manner apparently stemmed from its involvement in other projects.

B-248915, October 8, 1992

92-2 CPD 232

Procurement

Specifications

- Ambiguity allegation
- ■ Specification interpretation

Procurement

Specifications

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

Protest alleging that invitation for bids (IFB) for facilities maintenance services is defective because bidders are precluded from intelligently preparing bids is denied where IFB contains detailed technical exhibits and a comprehensive performance work statement specifically describing the agency's requirements, the performance standards, and the contractor's responsibilities, and where bidders were afforded an opportunity for a site visit and review of all incumbent contractor-generated reports and work plans; there is no requirement that a solicitation be so detailed as to completely eliminate all performance uncertainties and risks.

B-246071.4, October 9, 1992

Procurement

Competitive Negotiation

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

Determination that offeror's proposal was no longer within the competitive range was proper where agency reasonably determined that offeror's second best and final offer was technically unacceptable; proposal that agency properly finds technically unacceptable may be excluded from the competitive range irrespective of its lower proposed price.

Procurement

Competitive Negotiation

- Discussion
 - ■ Adequacy
 - ■ ■ Criteria
-

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

Discussions were meaningful where agency provided sufficient information to protester to afford it a fair and reasonable opportunity to identify and correct any deficiencies in its proposal. Agency was not required to reopen discussions after the submission of second best and final offers (BAFO) in order to afford the protester an opportunity to resolve remaining deficiencies or to cure deficiencies first introduced in its second BAFO.

B-247941.3, October 9, 1992**92-2 CPD 233**

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Office space
 - ■ ■ ■ Handicapped accessibility
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance
- ■ ■ ■ Leases

Where solicitation for leased office space contained a preference for space that is in full compliance with the Uniform Federal Accessibility Standards handicapped accessibility requirements for new construction, the low-priced proposal of less than fully compliant space in an existing building was properly rejected where offers were received for space in newly constructed, existing buildings that fully complied with the handicapped accessibility requirements.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Protester was not reasonably misled by discussions with an agency on a solicitation for leased space, notwithstanding that the protester alleges that the agency apprised it that a particular configuration of handicapped accessible restrooms would make it fully compliant with the solicitation's handicapped accessibility preference provisions, where this alleged advice was inconsistent with the solicitation evaluation provisions, which specifically set forth the criteria regarding handicapped accessible restrooms that would make a proposal fully compliant.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Leases

Agency determination that a lease price was reasonable will not be disturbed where it was based upon an independent appraisal, market survey, and present value analysis.

Procurement

Bid Protests

- GAO authority

The General Accounting Office will not consider a protest concerning the nature and equality of discussions, where the protested discussions do not relate to the reasons the protester's offer was not rejected—for which it was accorded meaningful discussions—and the protester therefore would not be prejudiced even if the alleged improper discussions had occurred.

Procurement

Bid Protests

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

Protester, which was properly rejected as offering only minimally compliant handicapped accessible space on a solicitation for leased space that accorded a preference for fully compliant handicapped accessible space, is not an interested party under the Bid Protest Regulations eligible to protest the acceptability of the awardee's proposal, which offered fully compliant space, where there was a third offeror which also offered fully compliant space, since the protester would not be in line for award even if its protest were sustained.

B-248200.2, October 9, 1992

92-2 CPD 234

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Incumbent contractors

In the absence of evidence showing that the contracting agency unfairly created an incumbent contractor's advantage, agency has no obligation to equalize any advantage allegedly created by offeror's purchase of certain required equipment which was leased to government under prior contract, but which remains the property of the incumbent.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Progress payments

Contracting agency has discretion to determine whether or not to include a provision for progress payments in a solicitation.

Procurement

Contractor Qualification

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

Protest that awardee did not meet definitive responsibility criterion requiring the awardee to be legally, organizationally, and operationally separate from the business of selling fresh fruit and vegetables is sustained where the contracting officer lacked adequate, objective evidence upon which to reasonably conclude that the awardee met the criterion in view of considerable evidence that the awardee was closely associated with a business that sells fresh fruit and vegetables.

Procurement

Sealed Bidding

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

Contracting agency properly rejected late hand-carried proposal where the record establishes that the protester's representative delivered the proposal to the delivery point after the closing time; there is no evidence of wrongful government action or advice that was the paramount cause of the late delivery; and the protester's representative's own actions significantly contributed to the late delivery. Contracting official's reliance on time/date clock that was in closest proximity to proposal delivery point was reasonable in determining closing time for receipt of proposals.

Procurement

Competitive Negotiation

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

Agency properly determined to make award to firm which submitted higher rated, higher priced proposal in procurement where price was less important than technical evaluation factors and the contracting agency reasonably concluded that the technical superiority of the awardee's proposal outweighed the higher price.

Procurement

Bid Protests

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

Protest based upon information in agency report submitted in response to timely protest is untimely where filed more than 10 days after protester's receipt of protest.

Procurement

Sealed Bidding

- Payment bonds
- ■ Justification

Procurement

Sealed Bidding

- Performance bonds
- ■ Justification

Agency reasonably included bid guarantee requirement in invitation for bids (IFB) for maintenance and repair/replacement services of military family housing where the work specified included construction in excess of \$25,000, and agency reasonably determined that performance and payment bonding was necessary to ensure that its need for continuous operations would be satisfied.

Procurement

Contractor Qualification

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

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

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ First-step offers
- ■ ■ Nondevelopment items

Agency may initiate a procurement for a nondevelopmental item (NDI) at a time when no NDI is available in the market-place, where agency expects such NDI to be available by the time of award.

Procurement

Bid Protests

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

Where procuring agency properly required offerors to supply a nondevelopmental item and protester cannot meet that requirement, protester is not an interested party to challenge solicitation's bid sample requirement.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Where General Accounting Office (GAO) sustained a protest against a contract award based on the inadequacy of the agency's documentation of its evaluations and award decision, and GAO recommended that the agency reevaluate the proposals, subsequent protest alleging that the original source evaluation officials could not conduct an objective reevaluation and urging that the agency appoint new officials is dismissed. Premature and unsupported anticipation of bias in reevaluation provides no basis for protest.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where solicitation requests offerors to include specific information in technical proposals, such as plans for coordinating consultant efforts, resumes for professional personnel, and dollar value of past contracts, evaluators reasonably viewed proposal that provided that information as superior to proposal that did not, notwithstanding protester's arguments that evaluators could have inferred the necessary information from other information in the proposal.

Procurement

Competitive Negotiation

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

Where agency evaluators reasonably concluded that the low-cost offeror had submitted a technically superior proposal, award without discussions to that offeror was proper.

Procurement

Bid Protests

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

Where solicitation specifically required offerors to identify the journeymen they intended to use in contract performance and stated that the agency would evaluate those personnel, agency reasonably rejected protester's proposal as technically unacceptable for failing to identify journeymen it intended to use.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel

Supplemental protest issues which are raised more than 10 days after protester knew, or should of known, of bases for protest are dismissed as untimely.

B-248981, B-248981.2, October 14, 1992

92-2 CPD 245

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably found that proposal for computer systems support services was technically unacceptable, where proposed staffing of critical tasks—integration, testing, and evaluation of new hardware and software—was only half the level required under the government estimate.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions of revised proposal were meaningful where agency led protester into elements of its proposal perceived as contributing to excessively high cost, including proposed labor hours, and in response protester reduced proposed labor hours in its best and final offer.

Procurement

Competitive Negotiation

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

Protester's high technical score for proposed staffing plan was not inconsistent with rejection of its proposal as technically unacceptable, where solicitation contained evaluation criterion specifically providing for rejection for failure to make adequate technical commitment.

B-248977, October 15, 1992

92-2 CPD 246

Procurement

Competitive Negotiation

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

Allegation that contracting agency improperly failed to perform a "cost realism" type analysis on fixed prices offered in connection with proposals for a construction contract is denied where the agency requested and received two separate price breakdowns for the basic work; each offeror's price breakdown was evaluated and compared to the government's independent estimate, and to

corresponding competitor's prices; protester's total price for the basic work and all options was less than 10 percent higher than awardee's total price; and the agency awarded the contract in accordance with the terms of the solicitation for the basic work and one option item at a price that was less than 3 percent lower than the protester's prices for the same items.

Procurement

Competitive Negotiation

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

Where the period for acceptance of all proposals had expired by time of award, the contracting officer properly may allow the successful offeror to waive the expiration of its proposal acceptance period, without reopening negotiations, to make an award on the basis of the offer as submitted, since such waiver does not confer any unfair competitive advantage on the awardee nor prejudice the protester.

Procurement

Bid Protests

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

Allegations that contracting agency improperly disseminated protester's cost savings ideas to competitor by incorporating into the solicitation changes to the scope of work based upon those cost savings ideas are dismissed where offerors were informed during negotiations that cost savings ideas would be incorporated by amendment to the solicitation and that offerors would be afforded an opportunity to submit revised proposals based upon those changes; cost savings ideas were in fact incorporated into the solicitation by amendment; and this protest was not filed until well after the time set for receipt of best and final offers—offerors may not participate in a procurement and wait until after they are not selected for award to protest alleged improprieties fully disclosed and incorporated by amendment into the solicitation.

B-250251.2, October 15, 1992

92-2 CPD 247

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

When a protest appears untimely on its face and is dismissed for that reason, General Accounting Office will not consider the dismissal based on facts and information previously in protester's possession.

B-250427.2, October 15, 1992

92-2 CPD 248

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

When a protest appears untimely on its face and is dismissed for that reason, General Accounting Office will not reconsider the dismissal based on facts and information previously in the protester's possession.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Pricing

Protest challenging agency's finding that awardee's staffing is adequate to meet solicitation requirements is denied, where technical proposal demonstrated awardee's understanding of requirements and where under a fixed-price contract, awardee assumes risk if its approach results in higher costs than anticipated.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Adjectival ratings

Use of color adjectival scoring scheme supported by narrative assessment of proposal advantages and disadvantages is not improper so long as the contracting officer is thereby able to gain a clear understanding of the relative merits of proposals.

Procurement

Competitive Negotiation

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

Agency did not act improperly by failing to reject a proposal that did not incorporate terms of collective bargaining agreement into option year prices where awardee's interpretation of solicitation instructions appears reasonable, prices could be evaluated on a common basis, and nothing on the face of the proposal indicated that the awardee intended to violate the Service Contract Act.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Equivalent products

Agency reasonably rejected proposed alternate product where, during its evaluation of the alternate product, the agency determined that the offeror's technical information package contained drawing errors which indicated that the product fails to meet dimensional requirements.

Procurement

Contractor Qualification

- **Approved sources**
- ■ **Alternate source**
- ■ ■ **Approval**
- ■ ■ ■ **Government delays**

Protest that agency failed to provide reasonable opportunity for offeror to qualify its alternate product is denied where agency was unable to complete the requisite review in time to be able to make an award which would satisfy its need for the specified item.

B-249040, October 19, 1992

92-2 CPD 250

Procurement

Competitive Negotiation

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

Protest is sustained where agency failed to advise protester that the agency believed that its proposed delivery schedule was deficient prior to the agency's request for best and final offers and, thus, agency failed to conduct meaningful discussions with the offeror. In order to show that the protester was prejudiced by the agency's failure to conduct meaningful discussions, the protester does not have to prove that it would have received the award but for the agency's improper action, but rather that it would have had a reasonable chance of receiving award.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**

Procurement

Competitive Negotiation

- **Offers**
- ■ **Preparation costs**

Where contracting agency improperly awarded a lease, but termination is not possible during the base period because the lease does not contain a termination for convenience clause, the protester is entitled to the costs of proposal preparation and of filing and pursuing its protest.

B-249086, October 19, 1992

92-2 CPD 251

Procurement

Competitive Negotiation

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

Proposal was properly found technically unacceptable where proposal did not affirmatively demonstrate that the offeror understood the requirements and could provide the required services and a review of the agency's evaluation shows that it was conducted in accordance with the solicitation evaluation criteria.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Shipment schedules
- ■ ■ ■ Prior contract performance

Where solicitation required printing of a monthly publication within 27 workdays, information showing that the protester had made late deliveries under a number of recent contracts provided a reasonable basis for concluding that protester would not be able to meet the solicitation's short delivery schedule and thus was nonresponsible.

Procurement

Contractor Qualification

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

An agency is not required to conduct a preaward survey if information on hand or readily available is sufficient to allow the contracting officer to make a responsibility determination.

B-249479, October 19, 1992

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Notification

Although a carrier normally is notified of loss or damage through DD Forms 1840 and 1840R, we have held that other written forms of notice are acceptable so long as they are timely and sufficiently detailed to alert the carrier to the claim for damages.

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

The date of dispatch typed by the Navy claims office on a notice to a carrier of loss or damage to a shipment of a service member's household goods is sufficient to establish the notice's timeliness for purposes of establishing a *prima facie* case of carrier liability.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Shipment schedules
- ■ ■ ■ Deviation

Where bidder offered a delivery schedule which failed to unambiguously commit the bidder to the required delivery period contained in the solicitation, bid was properly rejected as nonresponsive.

Procurement

Sealed Bidding

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

Bid is responsive even though it fails to acknowledge receipt of solicitation amendments in the space provided in the bid itself, where it acknowledges the amendments on a bid envelope furnished by the contracting agency providing for such an acknowledgment.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Risks

Protest against terms of solicitation for disposal of hazardous waste is denied where solicitation format, which allows the agency to select the disposal method which the contractor is to use on each particular hazardous waste item to be disposed of, is reasonably related to the government's interest in decreasing the risk of long-term environmental liability for hazardous waste.

Procurement

Small Purchase Method

- Small business set-asides
- ■ Requests for quotations
- ■ ■ Cancellation
- ■ ■ ■ Propriety

Agency properly canceled small business-small purchase set-aside, and determined to recompile the purchase on an unrestricted basis, where the lowest eligible small business quote exceeded the lower priced quote from an ineligible quoter by 14 percent; in absence of other indicators, a current competitor's price, even though an ineligible quote, is an appropriate indicator of the current market price.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protester's nonreceipt of a material amendment containing a Department of Labor wage rate determination does not warrant a cancellation and recompetition where the record does not indicate that the agency violated applicable regulations governing the distribution of amendments or deliberately attempted to exclude the bidder from the competition.

Procurement

Competitive Negotiation

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

Where solicitation places greater importance on technical factors than on cost in overall evaluation scheme, agency properly may award contract to a lower cost offeror where the contracting officer reasonably determines proposals to be technically equal.

Procurement

Competitive Negotiation

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

Where cost realism evaluation, even as adjusted based on protester's assumptions, establishes that awardee's proposed costs are lower than protester's, there is no basis to disturb decision based on lower proposed cost.

Procurement

Small Purchase Method

- Purchases
- ■ Propriety

Where record shows that agency had an inadvertent, critical shortage of locks, but was not in a position to proceed with fully competitive award for these items, agency's utilization of small purchase procedures to make interim, emergency filler buys on an as-needed, urgency basis was not improper.

Procurement

Specifications

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

Solicitation's purchase item description identifying standard commercial lock by manufacturer part number and national stock number (NSN) is not unduly restrictive where (1) procurement is conducted under Federal Acquisition Regulation small purchase procedures; (2) offerors could readily obtain additional item information using either the listed part number or the NSN item number; and (3) solicitation permitted offers for functionally interchangeable, alternate products.

B-249055, B-249055.2, October 20, 1992

92-2 CPD 260

Procurement

Specifications

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

Limitation of competition for preliminary designs for submersible vessel to offerors capable of completing the final design and constructing the prototype in the next phase of the procurement is legally unobjectionable where agency reasonably concluded limitation will assure that designs are consistent with construction contractors' capabilities, thereby avoiding unnecessary delays and duplication of costs, and will reduce lost time associated with a construction contractor familiarizing itself with another firm's design.

Procurement

Contract Management

- **Contract administration**
- ■ **GAO review**

Allegation that after award agency may impose upon contractors the agency's own in-house design, which allegedly is inconsistent with solicitation performance specifications, agency's actual minimum needs, and statutory and regulatory preference for the use of nondevelopmental items and technology, concerns contract administration, a matter not for consideration by the General Accounting Office.

Procurement

Bid Protests

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

Procurement

Bid Protests

- Moot allegation
- ■ Cooperative agreements
- ■ ■ Offers
- ■ ■ ■ Withdrawal

Protester is not entitled to reimbursement of the costs of filing and pursuing its protest where agency corrective action—withdrawal of offer to enter into a cooperative research and development agreement—was implemented 10 working days after the protest was filed.

B-249115, B-249115.3, October 20, 1992

92-2 CPD 261

Procurement

Bid Protests

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

Protest challenging solicitation requirement that offerors submit supervisors' names for proposed personnel is untimely when filed after award.

Procurement

Competitive Negotiation

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

Protest that awardee engaged in "bait-and-switch" tactics is denied where record does not indicate that awardee misrepresented its intention to perform the contract with the personnel it proposed.

Procurement

Competitive Negotiation

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

Protest that agency improperly evaluated the qualifications of individual proposed by awardee is denied where record shows evaluation was reasonable and proposed employee met the minimum requirements of the solicitation.

Procurement

Competitive Negotiation

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

Protest that as the low, technically acceptable offeror, protester was entitled to the contract award is denied since the solicitation did not require that award be based on price and the procuring agency reasonably determined that the awardee's technically superior proposal offset the protester's slight price advantage.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency's evaluation of proposals was improper is denied where review of record shows that evaluation was reasonable and the protester does no more than present its disagreement with the agency's evaluation.

Procurement

Bid Protests

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

Protest that agency failed to use the proper solicitation format in procuring charter services, which is not filed until after the closing time set for receipt of proposals, is dismissed as untimely since it concerns an impropriety apparent from the face of the solicitation.

Procurement

Contractor Qualification

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

Contention that offeror had an organizational conflict of interest and was ineligible for award because it provided material that led directly, predictably, and without delay to a statement of work is sustained where the agency—over the course of 8 months— used a contractor to write a draft project paper, adopted most of the analysis in its own project paper, and then used the two documents to prepare a statement of work for which the same contractor is now the successful awardee, and where the agency failed to take any action to mitigate the conflict.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly found protester's proposal unacceptable where the proposal had so many deficiencies that it could only be made acceptable with major revisions.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Bid guarantees

Where a solicitation clearly and unambiguously required bid guarantees only for bids exceeding \$25,000, the agency improperly rejected the protester's apparent low bid, which did not exceed \$25,000, as nonresponsive for failure to submit a bid guarantee.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Joint ventures

Bid of a joint venture, which submitted a bid bond in the name of only one of the corporations forming the joint venture, is nonresponsive.

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Amount determination
- ■ ■ ■ Depreciation

A carrier that caused additional damage in transit to an item of household goods argues that because of pre-existing damage the shipper's agency should have assessed maximum, instead of scheduled, depreciation against the item before calculating the carrier's liability. However, because the carrier has offered no evidence of the item's market value before shipment, GAO will not conclude that the agency abused its discretion by not assessing maximum depreciation.

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Notification

A Notice of Loss or Damage is sufficient to overcome the presumption of correct delivery if it is written, timely and in content sufficient to alert the carrier that damage has occurred for which reparation is expected.

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

Where the record shows the existence of pre-existing damage and lacks evidence of greater or different damage incurred in transit, the carrier is not liable for damages.

B-248944, B-248944.2, October 22, 1992**92-2 CPD 267**

Procurement

Sealed Bidding

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

Protest that agency improperly refused to allow low bidder to correct alleged mistake in bid is denied where record shows that protester's evidence, while demonstrating that firm had made a mistake in its bid, did not clearly or convincingly show what the firm intended to bid.

Procurement

Contractor Qualification

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

Protest challenging agency's negative responsibility determination is denied where protester fails to show that agency acted in bad faith or that determination was unreasonable in light of firm's overall financial posture.

B-249108.2, October 22, 1992**92-2 CPD 268**

Procurement

Specifications

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

Under a brand name or equal solicitation, the proposed awardee's non-brand name item need not conform to those features of the brand name item which are not listed as salient characteristics.

Procurement

Specifications

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

Under a brand name or equal solicitation, the agency reasonably determined that the proposed awardee's non-brand name item satisfied the salient characteristic in the solicitation requiring automatic safety controls for a recharging unit.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Size status
- ■ ■ Administrative discretion
- ■ ■ ■ GAO review

Allegation that the proposed awardee, which certified that it was a small business concern and that all end items would be manufactured or produced by small business concerns, is a "front" for a large business under a total small business set-aside procurement is not for General Accounting Office's (GAO) because the Small Business Administration, not the GAO, has the conclusive authority to determine matters of small business size status for federal procurements.

Procurement

Contract Management

- Contract administration
- ■ GAO review

General Accounting Office (GAO) will not consider allegation that the proposed awardee does not intend to comply with the limitations on subcontracting as incorporated in the solicitation because the issue involves a matter of responsibility and contract administration which, under the circumstances of the protest, is not reviewable by the GAO.

B-249114, B-249114.2, October 22, 1992***

92-2 CPD 269

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Competition
- ■ ■ Administrative determination
- ■ ■ ■ Procedural defects

Protest is sustained where the agency improperly decided to issue an unrestricted solicitation for work previously set aside for small business, despite its expectation of competition from two or more responsible small businesses, solely because the agency doubted that a small business set-aside procurement would allow for an award at a fair market price, without first consulting the Small Business Administration (SBA) procurement center representative, as required by applicable regulations; SBA, to whose views the General Accounting Office (GAO) will give deference in these matters, reasonably found that the procuring agency's decision was unsupported and not based on adequate investigation, and GAO's review confirms SBA's views.

Procurement

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

Agency's determination not to set aside a procurement for small business concerns is reasonable where the agency concluded from a thorough consideration of relevant factors including past procurement history and the complex nature of the requirement that it could not reasonably expect to receive proposals from at least two responsible, small business offerors.

Procurement

Small Purchase Method**■ Requests for quotations****■ ■ Cancellation****■ ■ ■ Justification****■ ■ ■ ■ Minimum needs standards**

Agency has a reasonable basis to cancel solicitation issued under small purchase procedures where it reasonably determined that changed circumstances necessitated the performance of the services in-house and therefore contract performance of the services was no longer required.

Procurement

Contractor Qualification**■ Organizational conflicts of interest****■ ■ Corporate ownership****■ ■ ■ Spouses****■ ■ ■ ■ Contracting officers**

Procurement

Scaled Bidding**■ Conflicts of interest****■ ■ Competition rights****■ ■ ■ Contractors****■ ■ ■ ■ Exclusion**

Contracting officer properly protected integrity of the procurement system by disqualifying from the competition a firm where the record showed a likelihood that a conflict of interest existed; spouse of firm's president was the contracting officer's supervisor who had access to the government estimate for the procurement because she failed to disqualify herself until after bid opening in addition to her omission of her relationship with the firm on her financial disclosure form.

Procurement

Bid Protests

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

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

B-247207.2, October 23, 1992

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is entitled to the costs of filing and pursuing its protest where the agency failed to promptly investigate the protester's allegations until after the protester undertook the time and expense to file comments on the agency's report and did not take corrective action in response to the clearly meritorious protest until 62 days after the protest was filed, despite having access, at the time the protest was filed, to the evidence which supported the validity of the protest.

B-247363.6, October 23, 1992***

Procurement

Bid Protests

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

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Standards

The General Accounting Office will consider timely protest that agency improperly waived certain qualification requirements in listing the awardee's product on a qualified products list in the context of a protest of a sealed bid procurement for the qualified product.

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Waiver

In a sealed bid procurement for tank track components that were required to be qualified for inclusion on a qualified products list (QPL) prior to award, a protest allegation that award was made to an offeror whose product was improperly placed on the QPL is sustained where the agency waived material qualification requirements to qualify the awardee's product.

Procurement

Contractor Qualification

- **Approved sources**
- ■ **Alternate sources**
- ■ ■ **Approval**

Procurement

Contractor Qualification

- **Approved sources**
- ■ **Alternatives**
- ■ ■ **Pre-qualification**
- ■ ■ ■ **Testing**

Although Department of Defense (DOD) Federal Acquisition Regulation Supplement § 225.872-3(f)(1) and a memorandum of understanding with a qualifying country require a DOD agency to consider for qualification the products of a qualifying country that have been tested by that country, the agency may not accept the product for listing on a qualified products list (QPL), based on the qualified country's certified test results, unless the DOD agency is reasonably assured the tests were performed in accordance with the QPL requirements.

B-247975.5, October 23, 1992***

92-2 CPD 275

Procurement

Specifications

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

Protest of agency's rejection of proposal for ship is sustained where agency's overstatement of its minimum needs in the solicitation misled protester into offering unnecessary modifications and resulted in rejection of proposed ship for failure to meet requirements as is.

Procurement

Socio-Economic Policies

- **Federal procurement regulations/laws**
- ■ **Amendments**
- ■ ■ **Tax credits**

Absent any contrary policies of the U.S. Trade Representative, a civilian agency procurement for items indispensable to the national defense is not subject to the Trade Agreements Act of 1979. In such cases the Buy American Act applies.

B-248860.2, October 23, 1992

92-2 CPD 276

Procurement

Special Procurement Methods/Categories

- **Requirements contracts**
- ■ **Cancellation**
- ■ ■ **Resolicitation**
- ■ ■ ■ **Propriety**

A solicitation for a requirements contract was properly canceled, and the requirement resolicited where the solicitation's estimated quantities did not reasonably reflect the government's actual needs and where the use of accurate estimates in evaluating bids created a reasonable doubt as to which bid represented the lowest overall cost to the government.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest challenging agency's technical evaluation of proposals is denied where General Accounting Office's review of protester's proposal confirms that proposal failed to address certain requirements.

Procurement

Competitive Negotiation

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

Protest alleging that agency improperly made upward adjustments to proposed costs under cost-reimbursement solicitation is denied where agency had reasonable basis for adjustments.

Procurement

Contract Management

- Contract performance
- ■ Off-site work

Protest of agency's alleged failure to consider protester's status as a labor surplus area concern is without merit where place of contract performance is not a labor surplus area.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Work site visits
- ■ ■ ■ Propriety

Protest allegation that agency's pre-proposal site visit was insufficient to allow offerors other than the incumbent contractor to prepare adequate proposals is untimely where not filed before proposals were due.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Interpretation
- ■ ■ Terms

Solicitation provision which required bidders to furnish the percentage content of post consumer recovered material (PCRM) "being used for this procurement" could not reasonably be interpreted as requiring the percentage PCRM in the total material of the procurement where (1) applicable specifications required PCRM content in only one component of the procured items; (2) the provision specifically referred bidders to the specification requiring PCRM content for that component; and (3) there is no PCRM content requirement in the other component.

Procurement

Sealed Bidding

- Ambiguous bids
- ■ Determination criteria

Bid was properly rejected as nonresponsive where solicitation required that a component of the required item contain at least 40 percent post consumer recovered material (PCRM) and bidder inserted "30" into blank space for percentage of PCRM used in the procurement; irrespective of provision elsewhere in the solicitation that, by signing its bid, protester was agreeing to comply with applicable requirements for the use of recovered materials, insertion of "30" in the space for percentage of PCRM content rendered bid ambiguous as to whether protester was agreeing to be bound by the 40-percent requirement, and thus nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Taxes

Where invitation for bids contained the standard tax clause requiring that bid prices include all applicable federal, state, and local taxes, a bid that was qualified with the phrase "Sales tax not included," with no indication elsewhere in the bid as to what specific tax in what amount was excluded, was properly rejected as nonresponsive.

Procurement

Bid Protests

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

Offeror with the seventh highest price but highest technical score of the eight offerors in the competitive range lacks the direct economic interest necessary to be an interested party for the purposes of pursuing a bid protest concerning a price/technical tradeoff decision where the offeror's price is far above the price submitted by most offerors and where the two offerors with the second and third lowest prices received virtually equal technical scores as the protester.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Wage rates
- ■ ■ Amendments
- ■ ■ ■ Acknowledgment

Contracting agency properly rejected as nonresponsive a bid that failed to acknowledge an amendment increasing rates in the applicable Department of Labor wage determination, since the rates are mandated by the Davis Bacon Act and there is no evidence that the bidder otherwise was legally required to pay its employees wages of at least those amounts.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Wage rates
- ■ ■ Amendments
- ■ ■ ■ Acknowledgment

Bidder's alleged late receipt of an amendment containing a Department of Labor wage determination does not excuse the bidder's failure to acknowledge the amendment, where there is no indication of any fault by the agency.

Procurement

Bid Protests

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

Protester who submitted the highest priced proposal, which was ranked sixth technically among seven technically acceptable proposals, is not an interested party to protest the evaluation of its proposal vis-a-vis the awardee's because there are numerous intervening offerors, and the protester's proposal would not be in line for award, even if all of the protest grounds were sustained.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Powers of attorney

Protest of agency's rejection of bid as nonresponsive due to defective bid bond is dismissed where power of attorney form attached to the bond did not designate the individual who signed the bond as an attorney-in-fact authorized to bind the surety; bid thus failed to establish surety's ability to be bound under the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

Procurement

Contract Management

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

Modification to contract for Guard I security services, which added a significant amount of Guard II security services at a site not under the contract for a new price negotiated after the award of the contract, exceeded the scope of the contract, which did not envision or price Guard II services; modification did not satisfy the requirements for a sole-source award and should be terminated.

Procurement

Competitive Negotiation

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

Contracting agency properly excluded from the competitive range a proposal for research and development of electromagnetic launcher science and technology which the agency properly concluded had no reasonable chance for award because it did not include an approach which the agency believed would meet its needs, and because the proposal would need major revisions to become acceptable.

Procurement

Competitive Negotiation

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

Late proposals transmitted by facsimile may be considered only if it is determined that late receipt was due solely to mishandling by the agency after timely receipt of entire proposal at the agency installation. The offeror bears the risk of any deficiencies in transmitting or receipt of facsimile proposals.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Where a solicitation provision clearly puts offerors on notice not to rely on the oral representations of agency personnel, an offeror must suffer the consequences of its reliance upon such advice.

Procurement

Bid Protests

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

Protest of alleged improprieties in solicitations which are apparent prior to the date set for initial proposal opening must be filed prior to the time set for receipt of initial proposals.

B-249475.3, October 27, 1992

92-2 CPD 288

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

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

Procurement

Bid Protests

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

Protest that agency improperly included proprietary specification in solicitation, filed after bid opening, is untimely.

Procurement

Contract Management

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

Protest that awardee may violate contract requirement for use of U.S. flag vessels is dismissed, as it concerns a matter of contract administration outside General Accounting Office bid protest function.

Procurement

Bid Protests

■ GAO authority

General Accounting Office will not consider protest that awardee's labor practices in foreign country violate U.S. policy, since allegation does not concern a violation of procurement laws or regulations.

B-247619.2, October 28, 1992

92-2 CPD 289

Procurement

Contractor Qualification

■ Responsibility criteria

■ ■ Performance capabilities

Procurement

Socio-Economic Policies

■ Small businesses

■ ■ Responsibility

■ ■ ■ Competency certification

■ ■ ■ ■ GAO review

Contracting officer's determination that a small business offer did not meet the solicitation requirement for evidence that local zoning laws permit the type of facility proposed concerns the ability of an offeror to meet its performance obligations under the lease and thus constitutes a finding that the offeror was nonresponsible, which should have been referred to the Small Business Administration for a certificate of competency.

B-248399.4, October 28, 1992

92-2 CPD 290

Procurement

Competitive Negotiation

■ Offers

■ ■ Competitive ranges

■ ■ ■ Exclusion

■ ■ ■ ■ Administrative discretion

Protests that agency improperly included a technically unacceptable proposal in the competitive range are denied where record shows that the proposal was rated as acceptable.

Procurement

Competitive Negotiation

■ Discussion adequacy

■ ■ Criteria

Protests that agency conducted overly extensive technical discussions with awardee while not conducting technical discussions with the protesters are denied where record shows that awardee's discussion questions specifically related to those areas found to be deficient in its proposal and where no technical discussion questions of the protesters were necessary because each had achieved the highest technical rating possible.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Prices**
- ■ ■ **Evaluation**
- ■ ■ ■ **Technical acceptability**

Protests that agency failed to consider whether awardee's low prices indicated a lack of technical understanding are denied where agency did consider the relationship of awardee's prices to the contract requirements and concluded that they were reasonable to perform the required effort.

B-248551.2, October 28, 1992

92-2 CPD 316

Procurement

Competitive Negotiation

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

Although the protester's proposal showed its experience was superior to awardee's, as reflected in its overall higher score under the experience factor, the agency reasonably downgraded the protester's proposal where the proposal emphasized experience on a similar contract for peer review of medical care without adapting experience to current requirement, and experience on contracts other than this similar peer review contract was limited.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Compliance**

Where solicitation required offerors to propose on a firm, fixed-price basis and provided no information on the number of medical records to be reabstracted, awardee's proposal, which contained an estimate of the number of reabstractions to be performed, was an unequivocal offer to perform the contract at a firm, fixed-price since awardee did not condition additional reabstractions exceeding its estimate on an increased price.

Procurement

Competitive Negotiation

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

Agency reasonably determined that awardee's estimate of performance costs was realistic, even though significantly lower than the independent government estimate, where the supporting data and the rationale submitted substantiated awardee's lower cost estimate.

Procurement

Sealed Bidding

- Ambiguous bids
 - ■ Determination criteria
-

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

Amendment to solicitation for lodging and meals for military applicants clarified that the solicitation's estimated quantity of 12,000 for double occupancy rooms referred to 12,000 persons in double occupancy rooms and not 12,000 rooms. The amendment was material since it removed the ambiguity from the solicitation concerning the number of persons to be lodged under the contract and therefore had an impact on the relative standing of bidders.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

While it is the contracting agency's affirmative obligation to use reasonable methods, as required by the regulations for the dissemination of amendments to prospective competitors, this does not make the contracting agency a guarantor that these documents will be received in every instance. Protester's nonreceipt of a material amendment does not warrant corrective action where the record does not show that the agency deliberately attempted to exclude bidder from competition, or otherwise violated applicable regulations governing the distribution of amendments.

Procurement

Competitive Negotiation

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

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Offers
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest that agency improperly selected higher rated, large business concern for negotiation of an architect-engineer contract is denied where procurement was unrestricted and, consistent with the published evaluation criteria, the agency accorded a small business preference factor to protester's proposal, but determined that the preference factor was insufficient to outweigh the technical superiority of the selected large business offer.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Omission

An unsigned standard form 1442 does not render a bid nonresponsive where the bid is accompanied by a signed bid bond that refers to and clearly identifies the bid.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Omission
- ■ ■ ■ Materiality

Failure to complete all sections of a standard form 1442 does not render a bid nonresponsive where the omitted sections are informational in nature and do not affect either the material provisions of the invitation for bids or the bidder's intent to be bound.

Procurement

Bid Protests

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

Protest is dismissed for failure to file comments on the agency report within 10 working days after receipt of the report where—despite the protester's initial assertion about when it received the report—the agency provides documentary evidence, including a sign-in sheet, establishing the date and time protester's counsel received the agency report.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Discussion

Agency's decision to reject protester's proposal as technically unacceptable and therefore not within the competitive range was reasonable where the proposal contained significant deficiencies which would have required major revisions to correct. Contracting agency is not required to conduct discussions with offerors whose proposals are outside the competitive range.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Socio-Economic Policies

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

Agency was not required to refer rejection of protester's offer as technically unacceptable to Small Business Administration for certificate of competency determination where rejection was based on a proper technical evaluation and did not involve a responsibility determination.

B-249623, October 29, 1992

92-2 CPD 295

Procurement

Bid Protests

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protest based upon alleged failure of prospective bidder to receive solicitation amendment is dismissed where (1) there is no allegation that contracting agency failed in its obligation to use a reasonable method to disseminate solicitation documents to prospective bidders; and (2) record shows that agency complied with the Federal Acquisition Regulation requirements regarding the dissemination of solicitation documents.

Procurement

Bid Protests

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

Protest filed after bid opening challenging solicitation's progress payments prohibition as unduly restrictive is dismissed as untimely since alleged improprieties apparent from the face of a solicitation must be filed prior to bid opening.

Procurement

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

Protest against award on the basis of awardee's low cost, technically superior proposal is denied where evaluation of technical proposals was reasonable and consistent with stated evaluation criteria; agency properly considered whether the identification of the protester's proposed program coordinator with prior economic reform program that led to riots and overthrow of prior government would hinder accomplishment of the statement of work requirement to assist in implementing the next phase of economic reforms.

B-248892, October 30, 1992

Procurement

Payment/Discharge**■ Payment priority****■ ■ Payment procedures****■ ■ ■ Set-off**

Procurement

Payment/Discharge**■ Shipment****■ ■ Damages****■ ■ ■ Notification**

Carrier concedes liability for in-transit damage to a mattress, but argues that the mattress must have been smaller than the claimed king-size since the inventory indicates that it was packed in a box too small for that size. Set-off for the damage was proper since the carrier was timely notified of damage to a king-size mattress, including the allegation that the mattress was bent; the record suggests that the carrier may have understated dimensions on the inventory; and the carrier could have, but did not, ascertain the item's size by inspection.

B-249072, October 30, 1992

Procurement

Payment/Discharge**■ Shipment****■ ■ Damages****■ ■ ■ Amount determination**

The General Accounting Office will not question an agency's calculation of the value of the damages to items in the shipment of an employee's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

Where the record shows pre-existing damage to household goods claimed damaged in transit, but lacks evidence of greater or different damage incurred during the shipment, the carrier is not liable.

B-249272, October 30, 1992**92-2 CPD 307****Procurement**

Competitive Negotiation

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

Determination of whether particular items offered are appropriate for inclusion in Federal Supply Schedule under specified Federal Supply Classification code, is for the General Services Administration and will not be disturbed unless it is without a reasonable basis.

B-249286, October 30, 1992**92-2 CPD 308****Procurement**

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Educational institutions
- ■ ■ Competitive advantage

In the absence of evidence that the agency unfairly created an advantage for educational institutions previously granted Article 71 status by the German Government, a status which allows the United States Armed Forces to provide logistic support to, and confers certain economic benefits on, American companies performing services in support of United States Armed Forces in Germany, the agency is not required to equalize competition for offerors who have not been granted such status.

B-249307, October 30, 1992**92-2 CPD 309****Procurement**

Special Procurement Methods/Categories

- Service contracts
- ■ Management services
- ■ ■ Indefinite quantities
- ■ ■ ■ Defects

Protest that solicitation that provides for award of an indefinite-quantity contract for management and related services for single family properties is defective—based on the protester's belief that minimum quantity of 50 properties which will require these services is nominal—is denied because the government is obligated to acquire services for at least this number of properties and payment

for work to be performed on 50 properties is more than adequate consideration for a binding contract.

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Management services
- ■ ■ Maximum quantities

Maximum quantity stated in solicitation for indefinite-quantity contract for properties that will require management-related services was properly based on historical and current information.

B-249323, October 30, 1992

92-2 CPD 310

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Performance bonds

Protest against a bonding requirement in a solicitation is denied where, even assuming the requirement would result in a restriction of competition, the agency's need to assure the uninterrupted performance of the solicited services constitutes a reasonable basis for imposing the requirement.

B-249380, October 30, 1992

92-2 CPD 311

Procurement

Bid Protests

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

Protest challenging award of contract on basis that awardee's bid was nonresponsive is dismissed where protester submitted the third low bid and, thus, would not be in line for award because the second low bid—contrary to the protester's contention—is responsive.

B-249395, October 30, 1992

92-2 CPD 312

Procurement

Competitive Negotiation

- Low offers
- ■ Options

Where a single, firm, fixed-price contract is awarded to the low-priced, technically acceptable, responsible offeror for the base line items and for an option line item and when the agency exercises the other option line items the awardee remains the low-priced offeror, there is no basis to disturb the award where, under all circumstances, the award results in the lowest overall cost to the government.

Procurement

Competitive Negotiation**■ Requests for proposals****■ ■ Terms****■ ■ ■ Performance bonds**

Procurement

Socio-Economic Policies**■ Small business set-asides****■ ■ Disadvantaged businesses****■ ■ ■ Terms****■ ■ ■ ■ Performance bonds**

Agency properly included bonding requirements in solicitation for food services set aside for small disadvantaged businesses where the agency reasonably determined that bonding was necessary to ensure that its need for uninterrupted performance would be satisfied.

Procurement

Competitive Negotiation**■ Hand-carried offers****■ ■ Late submission****■ ■ ■ Determination**

Whether a hand-carried proposal is late is measured by the time of arrival at the office designated in the solicitation, not at the agency's lobby.

Procurement

Competitive Negotiation**■ Best/final offers****■ ■ Late submission****■ ■ ■ Rejection****■ ■ ■ ■ Propriety**

Protest against rejection of a hand-carried best and final offer (BAFO) submitted after the time set for receipt of BAFOs is denied where the late delivery was not caused by improper government action.

Late Cases

B-115398, August 1, 1977

Appropriations/Financial Management

Budget Process

- Funds
 - ■ Impoundment
 - ■ ■ Statutory restrictions
-

Appropriations/Financial Management

Budget Process

- Military programs
- ■ Weapons
- ■ ■ Stop work orders

Since the B-1 bomber is not specifically authorized by statute nor is it the subject of specific appropriations, and in the absence of any other applicable statutory restrictions, the executive branch may lawfully terminate production of the B-1 as long as it complies with the Impoundment Control Act. As matter of policy, however, termination of major program should not be initiated before Congress has been informed or allowed to complete consideration of rescission proposal. B-115398, June 23, 1977, distinguished. To the Hon. Strom Thurmond.

B-229153, October 29, 1987

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses

Relief granted to Class B Cashier under 31 U.S.C. § 3527(a) for funds lost when all personnel at United States Embassy in San Salvador were forced to evacuate building because of earthquake. Standard of reasonable care does not require accountable officer to endanger her life.

B-230658, June 14, 1988

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Substitute checks
- ■ ■ Issuance
- ■ ■ ■ Waiting periods

When payee claims nonreceipt or original check, Army policy is to issue recertified check after 3-day waiting period. In case of payroll checks which are mailed prior to actual pay day, 3-day period includes mailing days prior to pay day, although Army will not issue recertified check prior to pay day. In considering relief requests for duplicate check losses, GAO will not raise question of due care solely because of application of 3-day waiting period, but cautions that automatic recerti-

fication after only 3 days may be inappropriate in some circumstances, for example, multiple requests by the same individual.

B-232252, January 5, 1989

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses

In November 1987, Cuban detainees rioted at two federal penitentiaries, and in each case forced open safe containing imprest funds. Funds were either hidden or destroyed, and were never found. Relief is granted to both imprest fund cashiers because losses resulted from forced entry into locked safes with no contributing fault or negligence by either cashier.

B-235180, May 11, 1989

Appropriations/Financial Management

Accountable Officers

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

Fish and Wildlife Service office was burglarized and entire safe containing imprest funds was stolen. Police investigation produced no evidence implicating the imprest fund cashier (accountable officer). Relief is granted to cashier under 31 U.S.C. § 3527 because GAO agrees with administrative determination that loss occurred without fault or negligence on cashier's part.

B-239598, May 17, 1990

Miscellaneous Topics

Human Resources

- Health care
- ■ Communicable diseases
- ■ ■ Administrative determination

Miscellaneous Topics

National Security/International Affairs

- Immigration/naturalization
- ■ Restrictions
- ■ ■ Communicable diseases

Provision in 1987 supplemental appropriations act directing the President, by a specified date, to list HIV infection as a dangerous contagious disease precluding entry by aliens into the country, does not clearly bar the Secretary of Health and Human Services or the President from later deciding that HIV infection is not a dangerous contagious disease. Pub. L. No. 100-71, § 518 (July 11, 1987).

Miscellaneous Topics

Human Resources

- Health care
- ■ Communicable diseases
- ■ ■ Administrative determination

Secretary of Health and Human Services continues to have the same authority to control the listings of dangerous contagious diseases that he did before enactment of a 1987 supplemental appropriations act. Pub. L. No. 100-71, § 518 (July 11, 1987).

B-238540, August 30, 1990

Military Personnel

Pay

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

A member who elected Survivor Benefit Program (SBP) coverage for his wife and child upon his retirement from the Air Force in 1977, who was divorced in 1985 with a property settlement agreement awarding the spouse 40 percent of his retirement income cannot be "deemed" to have elected coverage for the former spouse since he had not executed a voluntary written agreement to provide such coverage. Further, a *Nunc Pro Tunc* order issued by a state court in 1988 after the member's death purporting to amend the prior 1985 divorce decree to award an annuity to the former spouse is without effect since at that time no authority existed for a court to order SBP coverage incident to a divorce proceeding.

B-241911, October 23, 1990

Appropriations/Financial Management

Budget Process

- Funding gaps
- ■ Work stoppage

In GAO's view, Congress neither desires nor expects complete and immediate shutdown of government during funding gap. Consistent with Attorney General's opinion interpreting Antideficiency Act, legislative branch agency may incur obligations necessary to assist Congress in performance of constitutional duties. How far to go is matter of sound discretion and consultation with Congress. Agency may also incur obligations necessary to orderly termination of activities during funding gap, but should not act precipitously. (Letter from GAO General Counsel to Library of Congress General Counsel)

B-235048, November 14, 1990

Appropriations/Financial Management

Accountable Officers

- Determination criteria

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Embezzlement

Accounting technician at Air Force accounting and finance office, accused of participating with another employee in embezzlement of funds, is not an accountable officer for purposes of assessing

pecuniary liability because he did not have custody of funds nor did he have supervisory responsibility over anyone who did. Whether he participated in embezzlement has no bearing on issue of whether he is an accountable officer. *Aff'd upon reconsid.*, B-235048, April 4, 1991.

B-241137, December 27, 1990

Appropriations/Financial Management

Accountable Officers**■ Certifying officers****■ ■ Relief****■ ■ ■ Illegal/improper payments****■ ■ ■ ■ Overpayments**

Relief is granted Department of the Treasury disbursing officer under 31 U.S.C. § 3527 for erroneous overpayments. The overpayments were not the result of bad faith or lack of reasonable care, an adequate system of procedures and controls was maintained, and diligent collection actions were taken.

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