
GAO

United States General Accounting Office
Office of General Counsel

April 1991

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

Vol. II, No. 7

For sale by the Superintendent of Documents,
U.S. Government Printing Office, Washington, D.C. 20402

Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
Milton J. Socolar

General Counsel
James F. Hinchman

Deputy General Counsel
Vacant

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Preface

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

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Appropriations/Financial Management

B-238898, April 1, 1991***

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Liability
- ■ ■ Physical losses

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses

Relief from liability for an unexplained loss may not be granted pursuant to 31 U.S.C. § 3527(a) (1988) to the Alternate Class B Cashier of the Embassy in The Hague where the request was based solely upon the fact that, under applicable State Department procedures, she was not qualified to hold that post. However, the Class B Cashier for whom she was the Alternate is jointly and severally liable with her for the loss because he was responsible for determining the Alternate's qualifications before he entrusted imprest funds to her.

B-238955, April 3, 1991

Appropriations/Financial Management

Accountable Officers

- Determination criteria

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses

Decedent's relatives forwarded money to United States Embassy for deposit in Overseas Consular Service trust fund from which consular officer authorizes payments for funeral and other expenses. When consular officer directly handled money, he became accountable for them and their loss was a loss of public funds.

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Burden of proof

As the last person known to have custody of lost funds, rebuttable presumption of negligence on the part of the consular officer arises. That presumption is not rebutted by assertion and agency determination not supported by evidence. Relief is denied.

B-239802, April 3, 1991

Appropriations/Financial Management

Accountable Officers

- **Disbursing officers**
- ■ **Illegal/improper payments**
- ■ ■ **Liability restrictions**
- ■ ■ ■ **Statutes of limitation**

Request for relief received after the running of the 3-year statute of limitations, 31 U.S.C. § 3526(c), cannot be considered by our Office as the accountable officer's account is settled by operation of law and the officer is no longer liable for any deficiency in the account.

B-235048, April 4, 1991

Appropriations/Financial Management

Accountable Officers

- **Relief**
- ■ **Physical losses**
- ■ ■ **Embezzlement**

Upon reconsideration, we affirm our conclusion of B-235048, Nov. 14, 1990, that Prentis Kye, an Air Force accounting technician, is not pecuniarily liable as an accountable officer for the loss of funds embezzled by another accounting technician, Jeanna Carson. Whether Mr. Kye is liable, nonetheless, under Air Force regulation is for the Air Force to determine; however, a court-martial tribunal, which acquitted Mr. Kye of embezzlement, may have preempted the Air Force's determination in this regard. Ms. Carson's settlement does not discharge Mr. Kye of any liability he may still have in this matter. *See* 31 U.S.C. § 3711(d).

B-241478, April 5, 1991

Appropriations/Financial Management

Accountable Officers

- **Cashiers**
- ■ **Relief**
- ■ ■ **Physical losses**

This Office has no authority under 31 U.S.C. § 3527(a) (1988) to grant relief from liability for the physical loss of \$1,358.76 to Department of Veterans Affairs cashier since agency head failed to make the required determination that the loss was not the result of fault or negligence on the cashier's part.

Appropriations/Financial Management

Accountable Officers

- **Cashiers**
- ■ **Relief**
- ■ ■ **Physical losses**

Cashier's exemplary prior record and the hardship that repayment of lost money from personal funds would present do not provide this Office with a basis to grant relief from liability for a physical loss under 31 U.S.C. § 3527(a) (1988).

B-237858, April 15, 1991***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Debt conversion
- ■ ■ Foreign currencies

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Educational programs

Unless otherwise authorized, the United States Information Agency (USIA) may not use appropriated funds to engage in "debt for equity" swaps to fund educational and cultural exchange activities. The authority contained in the Mutual Educational and Cultural Exchange Act, 22 U.S.C. § 2451, to finance educational and cultural exchange activities by "grant, contract, or otherwise" does not include the authority to purchase discounted foreign debt from commercial lenders.

Appropriations/Financial Management

Budget Process

- Funding
- ■ Gifts/donations
- ■ ■ Educational programs

USIA may accept donations of foreign debt for the purpose of funding international educational and cultural activities. Under 22 U.S.C. § 2697, USIA may accept conditional gifts. Congress specifically provided that USIA may hold, invest, reinvest, and use the principal and income from any such conditional gift in accordance with the conditions of the gift to carry out authorized functions.

B-239249, April 15, 1991***

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Fiscal-year appropriation
- ■ ■ Substitute checks

An agency may, in issuing replacement checks for pre-effective date checks canceled under the provisions of Public Law 100-86, charge the original appropriation that supported the obligation to the extent funds remain available.

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Time restrictions
- ■ ■ Fiscal-year appropriation

Availability of funds is subject to the new account closing procedures enacted in the National Defense Authorization Act, Fiscal Year 1991. Pub. L. No. 101-510.

B-239483, April 15, 1991***

Appropriations/Financial Management

Accountable Officers

- **Illegal/improper payments**
- ■ **Determination**

Appropriations/Financial Management

Accountable Officers

- **Relief**
- ■ **Account deficiency**

When an accountable officer cashes a check outside the scope of his statutory authority under 31 U.S.C. § 3342, the payment of the check is an erroneous payment. If the check is uncollectible, under 31 U.S.C. § 3527(c), only GAO may grant relief for the deficiency in the accountable officer's account.

Appropriations/Financial Management

Accountable Officers

- **Relief**
- ■ **Illegal/improper payments**
- ■ ■ **Agency request**
- ■ ■ ■ **Submission time periods**

An accountable officer's account, including a deficiency from an erroneous payment made when a check was improperly cashed, is settled by operation of law upon the passing of the 3 year statute of limitations in 31 U.S.C. § 3526. The agency did not submit the questioned item to GAO until more than three years after both (1) the officer signed over responsibility for the account and (2) the loss was discovered.

Appropriations/Financial Management

Accountable Officers

- **Liability**
- ■ **Statutes of limitation**
- ■ ■ **Effective dates**
- ■ ■ ■ **Illegal/improper payments**

The Air Force did not toll the statute of limitations on an accountable officer's liability for an erroneous payment under 31 U.S.C. § 3526 by attempting to hold an accountable officer liable for a physical loss. Only GAO may toll the statute of limitations by suspending an item within an account under 31 U.S.C. § 3526(g).

B-243324, April 17, 1991

Appropriations/Financial Management

Accountable Officers

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

Relief is granted to cashier from a loss, apparently due to theft resulting from lax security.

B-235368, April 19, 1991

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Account deficiency

Where administrative laxity in fund handling procedures precludes assignment of a loss to any one individual, no one can be held liable for the loss.

B-235086, April 24, 1991

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Bona fide needs doctrine
- ■ ■ Applicability

An official of the United States Department of Agriculture, Forest Service, has requested our opinion concerning thirteen matters identified by the USDA Inspector General during an agencywide audit of end of fiscal year procurements. We have applied the *bona fide* needs rule to each matter to determine whether the Forest Service properly obligated fiscal year funds.

B-239387, April 24, 1991

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Theft

Relief is denied an employee of the Administrative Office of the United States Courts for a deficiency resulting from stolen Government Transportation Requests (GTRs) which were subsequently used for unauthorized travel. The Office did not, and could not, make the required determination under 31 U.S.C. § 3527(a) that the loss was not the result of employee fault or negligence, and consequently, administrative relief under title 7 of GAO's Policy and Procedures Manual is also not possible. As an accountable officer for purposes of safeguarding his GTRs the employee has not overcome the presumption of negligence against him. Relief may also not be granted on equitable grounds despite the employee's continuing potential liability for the remaining missing GTRs.

B-241879, April 26, 1991

Appropriations/Financial Management

Accountable Officers

- Certifying officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Computer equipment/services

Internal Revenue Service certifying officers who erroneously certified automated data processing equipment (ADPE) maintenance contract payments under an improper delegation of procurement authority are relieved of liability pursuant to 31 U.S.C. § 3528(b).

B-239856, April 29, 1991

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Lobbying

The National Endowment for the Arts (NEA) allegedly engaged in activities associated with its reauthorization that raised concerns under anti-lobbying laws. *None of the activities involved prohibited lobbying because: (1) NEA attended a meeting held by an arts lobbying group, but no lobbying took place or was planned at the meeting and NEA did not pay any expenses for the meeting; (2) a NEA representative who gave a presentation to members of the public, when asked about actions they could take to support NEA's reauthorization, responded in good faith that they could contact their congressional representatives; and (3) there is no indication that a media consultant hired by NEA prepared or helped to prepare any materials that would raise concerns from a lobbying standpoint.*

Civilian Personnel

B-238040, April 9, 1991***

Civilian Personnel

Compensation

■ Compensation restrictions

■ ■ Rates

■ ■ ■ Amount determination

Under 17 U.S.C. § 802(a) (1988), the Copyright Royalty Tribunal Commissioners are entitled to be compensated at the highest rate now or hereafter prescribed for grade GS-18. Since 5 U.S.C. § 5308 (1988) limits the highest rate prescribed (payable) for grade GS-18 to the rate of basic pay for level V of the Executive Schedule, the Commissioners may not be paid at a rate in excess of that rate, notwithstanding the fact that chapter 53 of title 5, United States Code, which includes 5 U.S.C. § 5308 (1988), may not otherwise be applicable to Copyright Royalty Tribunal positions. See *U.S. Sentencing Commission*, 66 Comp. Gen. 650 (1987), and *Farm Credit Administration*, 56 Comp. Gen. 375 (1977).

B-239150, April 15, 1991

Civilian Personnel

Relocation

■ Overseas personnel

■ ■ Quarters allowances

■ ■ ■ Eligibility

Civilian Personnel

Relocation

■ Overseas personnel

■ ■ Quarters allowances

■ ■ ■ Reimbursement

■ ■ ■ ■ Deadlines

Under 5 U.S.C. §§ 5922 and 5923 (1988), the head of an agency has discretionary authority to grant, and to require an accounting, for living quarters allowances (LQA) to civilian employees officially stationed in a foreign area. An agency's discretion to grant a LQA includes the discretion to impose a reasonable time limit on when an otherwise eligible employee must file his or her application for a LQA. The applicable regulations required the employee to report his LQA costs yearly. Where an employee neglected to file annual Standard Form 1190s claiming LQA for a 6-year period, without any explanation as to the reasons for not submitting them, the agency's denial of LQA is not arbitrary or an abuse of discretion. The claims may not be paid.

B-241761, April 15, 1991

Civilian Personnel

Relocation

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

Where employee's claim for an additional period of 60 days of temporary quarters, beyond the 60 days previously granted by the agency, was denied, without consideration of all of the factors affecting the employee's extension of occupancy of temporary quarters, the claim is remanded to the agency for reconsideration in light of the employee's particular circumstances in accordance with FTR, paras. 2-5.1 and 2-5.2.

B-241781, April 15, 1991

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

A transferred employee voluntarily left her agency 6 months after she reported for duty at her new station and went to work for another agency at the same location. She thereafter, but timely purchased a residence in the area and seeks reimbursement from the first agency for real estate expenses. The statutory condition to payment of real estate expenses on transfer is that the employee remain in government service a minimum of 12 months without a break in service. Since time with a particular agency is not a condition precedent to payment, so long as the employee performs the minimum 12 months without break, the transferring agency is obligated to pay the expenses in question. *Finn v. United States*, 192 Ct. Cl. 814 (1970), and cases cited.

B-236228.2, April 16, 1991

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Eligibility
- ■ ■ Intermittent employment

Civilian Personnel

Leaves Of Absence

- Sick leave
- ■ Eligibility
- ■ ■ Intermittent employment

An employee seeks reconsideration of a prior decision on his claim that held that the employee, hired as an intermittent United States deputy marshal, was not entitled to leave benefits because the findings contained in his agency's report supported the determination that he was not assigned regularly scheduled tours of duty. Evidence that he frequently reported to work at 8:30 a.m. sometimes at the request of his supervisor, that he performed a variety of duties, and that he often worked 78 hours in a pay period is not sufficient to refute those findings. The prior decision, B-236228, Dec. 22, 1989, is affirmed.

B-242007, April 16, 1991

Civilian Personnel

Travel

- Permanent duty stations
- ■ Actual subsistence expenses
- ■ ■ Prohibition

Employee claims reimbursement for meals, laundry, and dry cleaning expenses in addition to supplementary post allowance (SPA) previously paid pursuant to transfer to Comiso Air Station, Italy. SPA was correctly calculated and paid, and no additional entitlement can be authorized. SPA is intended to help defray only extraordinary subsistence expenses, i.e., those that exceed the portion of an employee's salary which would be ordinarily spent for food and housekeeping expenses while occupying normal housing at the post.

B-241915, April 17, 1991***

Civilian Personnel

Relocation

- Mobile homes
- ■ Shipment
- ■ ■ Actual expenses
- ■ ■ ■ Reimbursement

A transferred employee moved her mobile home to her new duty station and claims entitlement to expenses incurred to prepare the mobile home for transport and to set it up at the new duty station. Chapter 2, part 7 of the Federal Travel Regulations (FTR), authorizes reimbursement of costs directly related to actual shipment of a mobile home. Expenses necessarily incurred to relocate it before and after shipment are classified as miscellaneous expenses and reimbursable only through payment of a miscellaneous expense allowance under chapter 2, part 3 of the FTR. *John Schilling*, 66 Comp. Gen. 480 (1987). Since she has been paid the maximum amount allowable under FTR, para. 2-3.3b, her claim is denied.

B-238800, April 19, 1991***

Civilian Personnel

Leaves Of Absences

- Leave transfer
- ■ Leave substitution
- ■ ■ Propriety
- ■ ■ ■ Personnel death

Under the Voluntary Leave Transfer Program, donated leave may not be transferred to the recipient or used after the medical emergency terminates and any unused transferred leave must be restored to the leave donors. Therefore, the retroactive substitution of a recipient's unused donated leave for the recipient's leave-without-pay after the death of the recipient was improper, and the payment of compensation resulting from the retroactive substitution was erroneous. The erroneous payment, however, may be subject to waiver.

B-241196, April 23, 1991

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Residency

When the relocation service contractor's offer on the first residence an employee listed was unacceptable to the employee, she sought relocation expenses for the sale of a second residence in the same subdivision. The employee claimed that she occupied and regularly commuted from both homes. Since the record showed that she had owned the first residence for 10 years before purchasing the second residence 2 years before her transfer, she had listed the first residence as her official home on her request for relocations benefits, and she had made her contract for the purchase of a home at her new duty station contingent on the sale of her first residence, we conclude that the first residence was her actual residence at the time of her notice of transfer.

Civilian Personnel

Relocation

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

An agency acted within its discretion when it denied an employee an extension of temporary quarters subsistence expenses (TQSE) when a househunting trip was authorized and taken, the employee had agreed to purchase a home with a closing after the authorized period of TQSE, and the employee made the closing contingent on the sale of her former residence.

B-241871, April 25, 1991***

Civilian Personnel

Travel

- Temporary duty
- ■ Annual leave
- ■ ■ Return travel
- ■ ■ ■ Constructive expenses

Civilian Personnel

Travel

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

An employee was authorized round-trip air travel by premium class, but he did not return by premium class since he had scheduled annual leave in advance. The employee is not entitled to credit for the premium-class travel for the return trip for purposes of establishing constructive cost since his scheduled annual leave removed the justification for premium-class travel on the return trip.

B-241987, April 25, 1991***

Civilian Personnel

Travel

- Travel expenses
 - ■ Reimbursement
 - ■ ■ Amount determination
 - ■ ■ ■ Administrative discretion
-

Civilian Personnel

Travel

- Travel expenses
- ■ Reimbursement
- ■ ■ Spouses

Two employees were authorized temporary duty travel to receive awards at a Departmental Honor Awards Ceremony and to be accompanied by their spouses. Although the preplanned ceremonies were scheduled to end the morning of June 14, 1990, the official authorizing the travel had discretion to allow return travel on June 15. Accordingly, the employees may be allowed lodging and full per diem for June 14 and meals and incidental expenses for June 15.

Civilian Personnel

Travel

- Travel expenses
 - ■ Reimbursement
 - ■ ■ Amount determination
 - ■ ■ ■ Administrative discretion
-

Civilian Personnel

Travel

- Travel expenses
- ■ Reimbursement
- ■ ■ Awards/honoraria

Under the Office of Personnel Management's guidelines in FPM Letter 451-7, July 25, 1990, agency heads have broad discretionary authority to establish allowable per diem amounts, points of travel origin and return, and the number of individuals authorized to travel in connection with award ceremonies under 5 U.S.C. § 4503 (1988).

Military Personnel

B-238016, April 2, 1991

Military Personnel

Travel

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

The Joint Federal Travel Regulations prohibit payment of per diem to a reservist for commuting between home, or the place from which called or ordered to duty, and the individual's permanent duty station.

B-240394, April 2, 1991

Military Personnel

Pay

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

A member of the Air Force who received overpayments of Basic Allowance for Quarters (BAQ), a Variable Housing Allowance (VHA) and a Family Separation Allowance (FSA) at a "with dependent" rate based upon a marriage which he coerced the spouse to enter, which was subsequently annulled, is not entitled to such allowances where he never contributed to the spouse's support. The collection of such payments may not be waived due to the lack of good faith of the member who knew or should have known he was not entitled to them.

B-240759, April 2, 1991

Military Personnel

Pay

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

An Air Force member, promoted from 2nd to 1st Lieutenant, who was erroneously promoted to Captain on Air Force pay records, may obtain a waiver of overpayments which were accompanied by a Leave & Earnings Statement (LES) correctly listing his rank as Lieutenant, but overpayments which were accompanied by an LES incorrectly listing his rank as Captain will not be waived, as the member should have known he had not been promoted to Captain and should in good faith have questioned the amount he was paid, even though it was the same amount listed on all LES he received, and notwithstanding the fact that he eventually discovered the error and brought it to the attention of the Air Force.

B-242404, April 2, 1991

Military Personnel

Pay

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

A member of the armed services has a duty to examine his leave and earnings statements (LES's) for possible discrepancies. A member who was entitled to cost-of-living allowances (COLA) for two dependents but was paid for three dependents is not entitled to a waiver for overpayments of COLA where his LES's clearly showed that he was receiving COLA for three dependents.

B-238681, April 8, 1991***

Military Personnel

Pay

- Retirement pay
- ■ Amount determination
- ■ ■ Computation
- ■ ■ ■ Effective dates

Military Personnel

Pay

- Retirement pay
- ■ Reduction
- ■ ■ Computation

Marine Corps board of inquiry recommended to the Secretary that a major be retired at the rank of captain and that the member had not served satisfactorily as a major. *Even though the major first became eligible for voluntary retirement before the board's recommendation was approved by the Secretary, his retired pay should be calculated on the grade of captain, since it is evident that the Secretary would not have made the statutorily-required determination of satisfactory service as a major on the eligibility date.*

B-233736, April 15, 1991

Military Personnel

Travel

- Temporary duty
- ■ Lodging
- ■ ■ Expenses
- ■ ■ ■ Reimbursement

While the Joint Federal Travel Regulations prohibit reimbursement of TDY lodging expenses when a member stays with a relative or friend, that prohibition does not apply to people who merely are acquainted with each other, especially where there is an objective demonstration that a business relationship was intended with respect to the rental of lodging.

Military Personnel

Travel

- **Actual subsistence expenses**
- ■ **Fraud**
- ■ ■ **Allegation substantiation**
- ■ ■ ■ **Evidence sufficiency**

Claims for reimbursement for subsistence expenses which vary little over a 3-month period, while meriting investigation by the concerned agency for possible fraud, are nonetheless payable where the member affirms his claims and an investigation is unable to refute them.

Military Personnel

Travel

- **Commuting expenses**
- ■ **Reimbursement**
- ■ ■ **Eligibility**

A member's claims for reimbursement for local TDY mileage between his lodging and his duty site are payable only to the extent they are adequately supported. Where there is a dispute between the claimant and the government as to the actual mileage incurred, we will accept the government's official determination.

B-242021, April 15, 1991

Military Personnel

Pay

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

A member of the armed services may be granted waiver of the collection of erroneous overpayments of pay and allowances when he receives them in good faith. Thus, waiver may be granted to a member of the Navy whose pay account was in a temporary, unbalanced status for almost 2 years, who, when he questioned the overpaid status of his LES's, was repeatedly assured that he was not being overpaid, but that the negative balances were for the purpose of balancing his account.

B-238764, April 18, 1991

Military Personnel

Pay

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

Debt of Navy member who erroneously was paid both a Basic Allowance for Subsistence (BAS) and Separate Rations may be waived where the record showed that the member was without fault, and there is no indication of fraud, misrepresentation, or bad faith on his part.

B-237914, April 22, 1991***

Military Personnel

Relocation

■ Cost-of-living allowances

■ ■ Eligibility

Military Personnel

Relocation

■ Overseas allowances

■ ■ Variable housing allowances

■ ■ ■ Eligibility

A member of the military services ordered to a designated place outside the continental United States, Alaska, and Hawaii to await final action by a Physical Evaluation Board is entitled to the overseas housing allowance (OHA) and cost of living allowance (COLA) appropriate for the designated place.

Military Personnel

Relocation

■ Cost-of-living allowances

■ ■ Eligibility

Military Personnel

Relocation

■ Variable housing allowances

■ ■ Eligibility

■ ■ ■ Amount determination

A member of the military services ordered to a designated place in the continental United States, Alaska, or Hawaii to await final action by a Physical Evaluation Board is entitled to the variable housing allowance and cost of living allowance appropriate for the designated place.

Military Personnel

Leaves Of Absences

■ Involuntary leave

■ ■ Eligibility

■ ■ ■ Allowances

A member of the military services on involuntary leave pending appellate review of a court-martial sentence to a dishonorable or bad conduct discharge or dismissal from the Service, to the extent entitled to pay and allowances, is entitled to the allowances appropriate for his duty station.

B-238740, April 23, 1991

Military Personnel

Pay

■ Survivor benefits

■ ■ Annuities

■ ■ ■ Set-off

■ ■ ■ ■ Social security

When a widow receives a railroad survivor annuity and a Survivor Benefit Plan (SBP) annuity, 10 U.S.C. § 1451 requires offset from the SBP annuity of the amount of social security benefits included in the railroad survivor annuity that are predicated on the deceased member's military service after 1956.

Miscellaneous Topics

B-238955, April 3, 1991

Miscellaneous Topics

Finance Industry

■ **Financial institutions**

■ ■ **Financial information**

■ ■ ■ **Materiality**

As the last person known to have custody of lost funds, rebuttable presumption of negligence on the part of the consular officer arises. That presumption is not rebutted by assertion and agency determination not supported by evidence. Relief is denied.

Procurement

B-242075, April 2, 1991

91-1 CPD 338

Procurement

Contract Management

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

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Distinctions
- ■ ■ Performance specifications

Whether an offeror will comply with solicitation requirement that employees possess certificates of training and competence to perform certain maintenance services prior to contract start date is a matter of contract administration. The requirement does not constitute a definitive responsibility criterion, rather, an offeror's ability to satisfy this performance obligation is simply a general matter which is encompassed by the contracting officer's responsibility determination.

Procurement

Contractor Qualification

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

The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procuring officials, or that definitive responsibility criteria were misapplied.

B-242133, April 2, 1991***

91-1 CPD 339

Procurement

Socio-Economic Policies

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

Protest that agency improperly determined under Federal Acquisition Regulation § 19.502.2 that offers would be received from two or more small businesses offering "the products of different small business concerns," and that total small business set-aside therefore was improper, is denied; although all small business offerors were expected to offer systems with the same major component, agency had reasonable expectation that small business offerors each would offer a different "product" by virtue of their assembly of component parts into an integrated system.

B-242729, et al., April 2, 1991

Procurement

Socio-Economic Policies

- **Federal procurement regulations/laws**
- ■ **Revision**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 90-58, a proposal to revise the contract clause at FAR section 52.246-4 to provide for government inspection at the contractor's facility under contracts for services.

Procurement

Socio-Economic Policies

- **Federal procurement regulations/laws**
- ■ **Severance pay**
- ■ ■ **Eligibility**
- ■ ■ ■ **Foreign nationals**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 90-30 (Item 1 of Federal Acquisition Circular 90-3), an interim rule that makes unallowable the costs of severance payments to foreign nationals if the termination of their employment results from a request of the host country to close or curtail activities at a U.S. facility located in the host country.

B-242817.2, April 2, 1991**91-1 CPD 340**

Procurement

Bid Protests

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

Procurement

Bid Protests

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Deadlines**
- ■ ■ ■ **Constructive notification**

Dismissal of protest as untimely is affirmed where protester contends it was unaware of its protest option, since protester is charged with constructive knowledge of General Accounting Office (GAO) Bid Protest Regulations and where evidence of timeliness, available to the protester at the time the protest was filed, is first presented to GAO in reconsideration request.

B-242384, April 3, 1991**91-1 CPD 343**

Procurement

Competitive Negotiation

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

Protest allegation that solicitation line item was not evaluated fails to state a valid basis of protest where the agency did, in fact, evaluate the line item.

Procurement

Contract Management

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

Agency's possible future actions in establishing number of hours needed for repair of shipping containers pursuant to an unambiguous provision in the awarded contract are matters of contract administration which are not for review by the General Accounting Office.

B-243325, April 3, 1991

91-1 CPD 344

Procurement

Sealed Bidding

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

Procuring agency properly did not permit protester to correct alleged mistake in bid—waiver of small disadvantaged business evaluation preference—where mistake is not apparent from the face of the bid.

B-243445, April 3, 1991

91-1 CPD 345

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Amendments**
- ■ ■ **Acknowledgment**

Protest of rejection of bid for failure to acknowledge an invitation for bids amendment establishing wage rates pursuant to the Service Contract Act is dismissed; such an amendment is material, and therefore must be acknowledged, except where employees are covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor, which protester does not allege.

B-243463, April 3, 1991

91-1 CPD 346

Procurement

Competitive Negotiation

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

Protest of rejection of proposal as technically unacceptable is dismissed where proposal did not offer required item; that protester can in fact supply required item does not excuse its failure to so indicate in proposal.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Second request for reconsideration of dismissal of protest as academic due to agency's corrective action is denied where protester fails to show that prior decision contained errors of fact or law, and information which protester alleged had not been previously considered was factually incorrect.

Procurement

Competitive Negotiation

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

Contracting agency had reasonable basis to reject protester's proposal as technically unacceptable where best and final offer failed to comply with material requirements under the request for proposals. Offeror should not expect to be granted an additional opportunity to clarify or revise its proposal after submission of best and final offers.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions where it directed protester to specific areas in which its proposal was deficient or noncompliant with material solicitation requirements.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that contracting agency utilized improper price auction techniques is denied where it is based solely on the circumstance of the awardee's reduction of its cost in its best and final offer and there is no corroborating evidence that supports the protester's speculative claim.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Requirement for meaningful discussions is met where the contracting agency provided the protester with questions, which reflected the agency's major concerns with the protester's highly rated

technically acceptable proposal and provided the protester with the opportunity to revise its proposal; the agency was not required to identify every single weakness contained in the protester's proposal.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Agency's evaluation of the protester's proposal was reasonable and consistent with the evaluation criteria; there is no evidence in the record to support the contention that the agency improperly evaluated the protester's proposal based upon information known only to the incumbent.

B-242165, April 4, 1991

91-1 CPD 350

Procurement

Socio-Economic Policies

- **Preferred products/services**
 - ■ **Domestic products**
 - ■ ■ **Compliance**
-

Procurement

Socio-Economic Policies

- **Preferred products/services**
- ■ **Domestic products**
- ■ ■ **Construction contracts**

Protest that contracting agency improperly rejected the protester's proposal for noncompliance with the Buy American Act requirement for domestic construction materials because the contract allegedly was for the supply of equipment is denied where the record shows that the contracting agency properly classified the solicitation as a construction contract.

Procurement

Socio-Economic Policies

- **Preferred products/services**
- ■ **Domestic products**
- ■ ■ **Waiver**
- ■ ■ ■ **Administrative discretion**

The General Accounting Office will not review an agency determination not to waive Buy American Act requirements since that Act vests discretion regarding such waivers in the head of the concerned agency.

Procurement

Competitive Negotiation

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

Protest that offeror was not allowed sufficient time to prepare proposal after receipt of amendment, which permitted offerors to propose alternatives to system allowed in original solicitation, is denied irrespective of whether contracting agency violated the Federal Acquisition Regulation by not extending the closing date where protester failed to show that it suffered competitive prejudice since evidence in the record suggests that the acquisition costs of the alternative system are very high and solicitation provides for award of contract to low cost, technically acceptable offeror.

Procurement

Small Purchase Method

- Requests for quotations
- ■ Cancellation
- ■ ■ Propriety

Cancellation of request for quotations issued under small purchase procedures is proper where agency determines that amount involved will exceed authorized ceiling for use of small purchase procedures.

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of protest as untimely filed is affirmed on reconsideration where protester argues that it was not on notice of agency's February 14 denial of its agency-level protest until February 27, since March 14, the date protest was filed, is 11 working days after February 27; under Bid Protest Regulations, protests must be filed within 10 working days after notice of denial of agency-level protest.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Award to offeror whose proposal failed to conform to material requirement concerning location for mounting of environmental scrubber system equipment was improper where waiver of requirement resulted in competitive prejudice to protester.

B-237562, April 8, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Tenders
- ■ ■ Applicability

A letter issued by the Military Traffic Management Command (MTMC) stated that uncancelled carrier tenders not filed in a new format by a specified date involving shipments of munitions or materials requiring Protective Security Service (PSS) will be removed from MTMC's files and placed into a nonuse status. This letter constituted a rejection of these uncancelled tenders to the extent that they apply to shipments involving munitions or materials requiring PSS, and accordingly, neither GSA in its transportation audit capacity, nor any DOD activity, could apply them to such shipments.

B-240954, B-240954.2, April 8, 1991***

Procurement

Specifications

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

Protest is sustained on basis that solicitation requirement for level 3 drawings, which include detailed data on manufacturing processes, exceeded agency's actual needs, where record shows that agency's need for drawings was to support emergency repair and overhaul of the valves, for which full production data is not needed.

B-240991, April 8, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

The carrier who picked up an Air Force member's household goods from a storage facility is not liable for the loss and damage to items listed as lost or damaged on the exception sheet prepared against the facility's inventory and signed by the storage facility representative.

B-241665.2, B-241665.3, April 8, 1991

91-1 CPD 356

Procurement

Competitive Negotiation

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

Agency's contention that protester was not injured by agency's failure to accept entire cost reduction in protester's best and final offer since agency could have chosen not to recognize any part of the reduction due to protester's limited explanation, is without merit because the agency is required to perform a reasonable cost realism analysis and the record reflects that protester's explanation was adequate to put agency on notice that a reduction in effort was justified due to the overlap between the instant effort and a similar effort in which the protester is involved.

Procurement

Competitive Negotiation

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

Protester's argument that agency's cost realism analysis was unreasonable is denied where, arguments presented during the course of the protest establish that the agency's decision was reasonable, even though the contemporaneous selection decision documents provide no rationale for the decision to recognize some, but not all, of the protester's reductions in its best and final offer.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Protester's contention that the evaluation panel unreasonably failed to consider its work on a similar effort conducted as part of an independent research and development (IR&D) effort with another contractor in analyzing proposed cost reductions in protester's best and final offer (BAFO)

is denied where the protester's explanation for its BAFO reductions provides information regarding the overlap between the instant effort and a similar research and development (R&D) effort, but provides no suggestion that the evaluators should recognize the relationship between the similar R&D effort indicated and the previous IR&D effort.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Royalties**
- ■ ■ ■ **Cost evaluation**

Protester's assertion that the agency cost realism analysis was unreasonable because it did not consider the cost impact of royalties to be paid to protester by awardee for infringement of protester's patents is without merit where assertion is based on mere speculation and agency and awardee deny that any infringement of protester's patents exists.

Procurement

Competitive Negotiation

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

Despite protester's contention to the contrary, agency properly considered technical effect of changes proposed in protester's best and final offer and reasonably concluded that no change should be made to protester's superior merit score as a result of its role as a subcontractor on a related effort.

B-242290, B-242290.2, April 8, 1991

91-1 CPD 357

Procurement

Competitive Negotiation

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

Protest that agency conducted an improper cost realism analysis of the awardee's cost proposal is denied where the record shows protester's allegation is based upon erroneous assumptions—that the awardee underestimated the manning necessary to perform the contract requirements and that the awardee took exception to paying wages and fringe benefits at rates fixed by collective bargaining agreements and Department of Labor wage determinations—and where record shows that agency's cost realism analysis was reasonable.

B-242350, April 8, 1991

91-1 CPD 358

Procurement

Contractor Qualification

- **Responsibility**
- ■ **Contracting officer findings**
- ■ ■ **Negative determination**
- ■ ■ ■ **Criteria**

Protester was properly found nonresponsible by a Department of Energy management contractor, where it reasonably was determined that the protester probably could not produce a system meet-

ing the specifications within the short performance period required to meet the production schedule, notwithstanding its offer to do so.

B-242644.2, April 8, 1991

91-1 CPD 359

Procurement

Bid Protests

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

Dismissal of original protest because protester failed to respond to agency report is affirmed where, despite filing response to agency's request for summary dismissal, protester failed to respond to agency report.

B-243248.2, April 8, 1991

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Prior dismissal of protest as untimely is affirmed where protest was not received by the General Accounting Office (GAO) until after 10-day filing deadline, despite protester's claim that it mailed the protest within 10 working days after learning of the adverse agency action, since under GAO Bid Protest Regulations the term "filed" means actual receipt by GAO.

B-243394, April 8, 1991

91-1 CPD 360

Procurement

Sealed Bidding

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

Late bid on overseas procurement can only be accepted if it is determined that the late receipt was due solely to mishandling by the government after receipt at the government installation; this does not include alleged mishandling by the Postal Service.

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Late submission
- ■ ■ ■ Rejection

Late bid cannot be accepted as a modification to an otherwise successful bid, since the definition of an otherwise successful bid is the low bid received at the time of bid opening.

B-241868.2, April 9, 1991

91-1 CPD 361

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision sustaining protest against agency's failure to act in a timely manner on protester's request for source approval and finding that such failure denied protester a reasonable opportunity to qualify as a source and to compete for award is denied where agency expresses mere disagreement with decision and does not show that previous decision contained either errors of fact or law.

B-242217, April 9, 1991

91-1 CPD 362

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protest that awardee failed to offer the required minimum manning established by the specifications is denied where the protester was not prejudiced by any relaxation of the requirement.

B-242362, April 9, 1991

91-1 CPD 363

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest against alleged confusion in an item description in a request for quotations (RFQ) is denied where the record shows that the RFQ identified a National Stock Number (NSN) and two approved source part numbers for the item. The fact that another NSN identified the same item in no way prevented offerors from submitting a quote under the RFQ.

Procurement

Bid Protests

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

Where a protester supplements, in its comments on the agency report, a timely protest with new grounds that should have been raised at the time the protest was initially filed in our Office, those

grounds are untimely where the protester knew or should have known the basis of its protest as of its initial filing.

B-240799.4, B-240802.4, April 10, 1991

91-1 CPD 364

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior dismissal due to protester's failure to diligently pursue grounds of protest is denied where protester fails to show any error of fact or law that would warrant reversal.

B-242220, April 10, 1991

91-1 CPD 365

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Liability restrictions

Where a commercial bid bond limits the surety's obligation to the difference between the amount of the awardee's bid and the amount of a reprocurement contract, the terms of the commercial bond represent a material departure from the rights and obligations of the parties as set forth in the solicitation, which requires the bond to cover any cost of reacquiring the defaulted work; this deviation renders the bid bond deficient and the bid nonresponsive.

B-242944, April 10, 1991

91-1 CPD 366

Procurement

Bid Protests

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

Protest filed with the General Accounting Office more than 10 days after agency denied agency-level protest is untimely. Protester's continued pursuit of the matter with the contracting agency did not alter its responsibility to conform to timeliness requirement of Bid Protest Regulations.

B-239672.5, April 12, 1991

91-1 CPD 367

Procurement

Competitive Negotiation

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

Selection of awardee on the basis of its overall technical superiority, notwithstanding its higher price, is unobjectionable 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

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency met requirement to conduct meaningful discussions where it directed protester to specific areas in which its proposal was deficient or noncompliant with mandatory solicitation requirements.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Risks

Protest that solicitation for military family housing maintenance subjects bidders to unreasonable financial risk because it requires the submission of a lump-sum price for much of the work, rather than breaking out each element of work separately for payment on a unit price basis, is denied where the solicitation limited the amount of work which the contractor could be required to perform under the lump-sum portion of the contract, and contained sufficient information for bidders to compete intelligently and on a relatively equal basis.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Defects

Disparity in bid prices received does not by itself establish the existence of a solicitation defect.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where the employment experience descriptions in the resumes of five key personnel provided by protester with its best and final offer remained deficient in that they failed to show that the key personnel met several minimum experience requirements, the protester's proposal properly was downgraded in the personnel area and, ultimately, properly was rejected as technically unacceptable.

Procurement

Contract Management

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

General Accounting Office (GAO) will not consider protest allegation that challenges agency decision to conduct a cost comparison study under Office of Management and Budget Circular A-76, a matter of executive branch policy not reviewed by GAO.

Procurement

Bid Protests

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

Protest filed with the General Accounting Office more than 10 days after agency-level protest is denied as untimely.

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Certification**
- ■ ■ ■ **Omission**

Bidder's failure to complete solicitation's Certificate of Procurement Integrity renders its bid non-responsive since completion of the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Protest that offeror had insufficient time to prepare revised proposal because of its late receipt of amendments is denied where the protester had the last-issued amendment 5 working days prior to the closing date; 5 days appears to be a reasonable time period to address the particular changes made by the amendments; adequate competition was achieved through the receipt of eight proposals; and there is no showing that the agency deliberately attempted to exclude protester.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Non-prejudicial allegation**

Agency's failure to equalize competition to compensate for some potential offerors' legal acquisition of incumbent contractor's contract information is not objectionable where the information's availability was not the result of improper or unfair action and pertinent information possessed by the agency was not necessary for offerors to compete intelligently and on a relatively equal basis.

Procurement

Competitive Negotiation

- **Contingent fees**
-

Procurement

Competitive Negotiation

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

Incumbent contractor's offer to sell access to its employees and its contract information to potential offerors who agree to buy inventory and equipment at pre-agreed prices if they win the contract is not a prohibited contingent fee arrangement within the meaning of 10 U.S.C. § 2306(b) (1988) because the services were not "to solicit or obtain the contract" since they did not involve any dealings with government officials.

B-242302, April 15, 1991

91-1 CPD 374

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Oral statements**
- ■ ■ **Contractors**
- ■ ■ ■ **Notification**

Oral advice about solicitation requirements generally is not binding, and a bidder relies on such advice at its own risk.

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Brand name/equal specifications**
- ■ ■ ■ **Equivalent products**

Bid which provided for an "equal" product submitted under brand name or equal procurement for copy machines was properly rejected where the bidder did not submit descriptive data with bid on the equal model, but rather submitted descriptive literature on the product, after award had been made to the next low bidder, which was not in existence prior to bid opening.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Evaluation criteria

Cancellation of line item of solicitation for computer systems after bid opening is unobjectionable where the specification for the item as stated was erroneous and led two of nine bidders to offer higher-priced systems that exceeded the agency's needs.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Protest that low bid must be rejected as nonresponsive because it is unbalanced is denied where despite disagreement concerning the correct estimates of the work to be performed, the low bid remains low in all cases and thus is not materially unbalanced.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Competitive system integrity

Alleged untimeliness of protest before the General Accounting Office is no bar to agency's taking corrective action where agency properly determined that such action is warranted.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision which found that agency engaged in adequate discussions with protester is denied where protester merely restates arguments previously considered.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Administrative determination
- ■ ■ ■ GAO review

Protest seeking termination of awardee's contract is denied where Small Business Administration found awardee other than small and agency has proposed appropriate corrective action—not to

exercise option periods in awardee's contract and to resolicit for the remaining requirements under a small business set-aside.

B-241581.2, April 17, 1991**91-1 CPD 381**

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Invitations for bids
- ■ ■ ■ Identification

Bid should be rejected as nonresponsive where it is accompanied by a bid bond containing an incorrect solicitation number, project title, job location and bid opening date, since there is no objective evidence that the bond was intended to apply to the procurement.

B-242315, April 17, 1991**91-1 CPD 382**

Procurement

Competitive Negotiation

- Discussion
- ■ Offers
- ■ ■ Clarification
- ■ ■ ■ Propriety

Agency's requests for specific additional information from the protester and other offerors prior to the initiation of proposal evaluation did not constitute competitive range discussions, but were only clarification contacts made to enable agency to determine which offerors were in the competitive range.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Protester's proposal was reasonably found unacceptable and not within the competitive range where, for example, it proposed unqualified key personnel and scored less than half of the total available technical points.

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Award procedures**
- ■ ■ **Procedural defects**

Agency's late notice of award is procedural in nature and does not affect the validity of an otherwise properly awarded contract.

B-242289, April 18, 1991

91-1 CPD 383

Procurement

Competitive Negotiation

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

Meaningful discussions were not provided regarding perceived informational deficiencies in a proposal relating to parts cleaning and traceability where the agency did not inform the offeror of these problems in a sufficiently clear manner to alert the offeror to the agency's concerns.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Pages**
- ■ ■ ■ **Restrictions**

Where a solicitation provision limited the number of pages to be contained in offers, the agency's review of a proposal appendix which exceeded the limitation was improper because it provided one offeror an evaluation opportunity not provided to others.

B-242304, April 18, 1991

91-1 CPD 384

Procurement

Competitive Negotiation

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

Protest is sustained where the procuring agency improperly relaxed a mandatory solicitation requirement that data encryption equipment be endorsed by the National Security Agency (NSA), where the procuring agency knew prior to the closing date for receipt of proposals that NSA no longer issued such endorsements and that the agency would accept equipment that was not endorsed, but which NSA had approved for the intended use, yet did not notify offerors, other than the awardee, of its changed requirements.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Procuring agency's communications with the awardee concerning the awardee's offered delivery and warranty terms constituted discussions since delivery and warranty provisions were material solicitation terms to which a proposal had to conform to be acceptable; once discussions were held with the awardee, discussions had to be conducted with all offerors in the competitive range.

B-238520.2, April 19, 1991

91-1 CPD 385

Procurement

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement

Specifications

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

Protest that agency failed to evaluate proposed alternate "equal" items in brand name or equal procurement for shipboard information systems is sustained where agency engaged in technical discussions concerning alternate items and protester responded in its first best and final offer (BAFO) by amending alternate proposal to address agency comments; although protester's subsequent BAFOs did not specifically mention alternate items, the BAFOs stated that protester was letting its technical proposal stand as submitted, only revised the cost proposal in other areas of the specifications and did not withdraw the alternate proposal, while the agency failed to resolve any uncertainties through meaningful discussions.

B-239490.5, April 19, 1991

91-1 CPD 386

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

Procurement

Competitive Negotiation

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

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

B-242061.2, April 19, 1991

91-1 CPD 387

Procurement

Bid Protests

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

Protest against provisions in request for proposals is untimely where filed after the closing date for the receipt of initial proposals.

B-242313, B-242313.2, April 19, 1991

91-1 CPD 388

Procurement

Competitive Negotiation

- Source selection boards
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Propriety

In reviewing an agency's source selection decision, General Accounting Office will look to the entire record, including statements and arguments made in response to a protest, to determine whether the selection is supportable. That review is not limited to the question of whether the selection decision was properly supported at the time it was made.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Procurement

Competitive Negotiation

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

Agency was not required to discuss with protester the concern that protester's best and final offer (BAFO) did not include sufficient costs for subcontracts because agency did not know level of subcontractor costs proposed until it received BAFOs and an agency is not required to reopen discussions to allow an offeror a further opportunity to revise its proposal when a deficiency first becomes apparent in its BAFO.

Procurement

Competitive Negotiation

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

Award to offeror having higher cost, technically superior proposal is appropriate under request for proposals which gave greater weight to technical merit compared to cost.

B-242394, April 19, 1991

91-1 CPD 389

Procurement

Specifications

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

Requirement that inflating cylinders be visually inspected after endurance test portion of first article test is reasonable where the record shows that inspection of cylinders at this point is the only way to establish that the barrier coating on the cylinders has not been impaired during the endurance test.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Quality control**
- ■ ■ ■ **Testing**

Procurement

Specifications

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

Requirement that inflating cylinders showing any unwrapping of fiberglass after endurance test portion of first article test be rejected is reasonable where the record shows that such unwrapping breaks the moisture-barrier coating applied to the exterior of the cylinder and increases the rate at which moisture, which breaks down the fiberglass over time, is absorbed into the cylinder.

B-242437, April 19, 1991

91-1 CPD 390

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Initial-offer awards**
- ■ ■ **Propriety**
- ■ ■ ■ **Price reasonableness**

Award of contract on the basis of initial proposals is proper where the solicitation advised offerors of the possibility and existence of adequate competition demonstrated that acceptance of the low-priced initial proposal will result in the lowest overall cost to the government.

Procurement

Competitive Negotiation**■ Requests for proposals****■ ■ Terms****■ ■ ■ Interpretation**

Protests that awardee did not meet solicitation requirement to provide tailored version of Department of Defense standard for software development with its proposal are denied where only reasonable reading of solicitation shows that tailored version was not required to be submitted until after award and, in any case, awardee submitted tailored version prior to submission of best and final offer.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Prior contract performance**

Protests that agency failed to consider awardee's past and current performance on government contracts in evaluation process is without merit where record shows evaluators noted past performance problems, but also found awardee had corrected the problems so that there was no basis for downgrading proposal.

Procurement

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

Procurement

Sealed Bidding**■ All-or-none bids****■ ■ Responsiveness**

Where solicitation permitted bidders to bid on an "all or none" basis and did not expressly prohibit similarly restricted bids, agency improperly rejected bid as nonresponsive based on bidder's written qualification that it would not accept award for more than 35 items; the 35-item statement was analogous to an "all or none" qualification and because it only qualified the size of the award the bidder was seeking, neither the rights of the government nor the bidder's obligation to perform as specified under the solicitation were affected. Protest challenging rejection of bid nevertheless is denied since even if protester's bid had been properly considered, protester would not be in line for award because awardee was the only bidder who could meet agency's needs by supplying all of the required items.

Procurement

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

Protester does not have the direct economic interest necessary to protest that contracting agency improperly issued and amendment extending solicitation's closing date in order to permit a newly

qualified source to compete where relief requested is exclusion of new source's proposal and record shows that protester was not the low offeror even among those offers submitted by the original closing date and thus, even if protest were sustained, protester would not be in line for award.

B-242646, April 22, 1991

91-1 CPD 394

Procurement

Bid Protests

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

Procurement

Bid Protests

- Subcontracts
- ■ GAO review

Protest challenging the propriety of a subcontract awarded by a government prime contractor independent of the contracting agency is dismissed since the prime contractor is not acting as the government's agent and the award was not made "by or for the government."

B-243329, April 22, 1991

91-1 CPD 395

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Federal procurement regulations/laws
- ■ ■ ■ Deviation

Protest that solicitation improperly included agency clause inconsistent with Federal Acquisition Regulations is dismissed, where the contracting agency was granted a deviation from the regulation.

B-240799.3, B-240802.3, April 23, 1991

91-1 CPD 396

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision holding that there is no requirement for a common cut-off date for receipt of revisions to proposals under step one of two-step sealed bid procurement is affirmed on reconsideration where governing regulations and policy behind this procurement method clearly demonstrate that there is no such requirement.

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Bids
- ■ ■ Responsiveness
- ■ ■ ■ GAO review

Contention that General Accounting Office (GAO) failed to adequately address argument that awardee failed to meet solicitation's minimum staffing requirements and that therefore its bid was nonresponsive is without merit where GAO's review not only included a review of the responsiveness of the awardee's bid submitted under step two but—contrary to the protester's belief—also the technical acceptability of the awardee's proposal under step one.

Procurement

Bid Protests

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

General Accounting Office affirms its dismissal, as untimely, of contention that awardee had not met alleged definitive responsibility criteria, where that issue was first raised in protester's post-conference comments and clearly was not presented in the initial protest.

B-241170.2, April 23, 1991

91-1 CPD 397

Procurement

Bid Protests

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

Prior dismissal of protest as untimely is affirmed where protest to the General Accounting Office was filed more than 10 days after protester was notified of agency's denial of protester's initial protest to the procuring agency.

B-241583.5, April 23, 1991

91-1 CPD 398

Procurement

Small Purchase Method

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

Protest by original awardee against award to another quoter is denied where agency upon reevaluation properly determined that original evaluation was inconsistent with applicable evaluation procedures established by the Federal Supply Schedule for the procurement of systems furniture.

Procurement

Small Purchase Method

- Quotations
- ■ Acceptance time periods
- ■ ■ Applicability

Concept of bid acceptance period does not apply under request for quotations (RFQ); a quotation received in response to an RFQ is not an offer and cannot be accepted by the government to create a binding contract.

B-241858.2, April 23, 1991

91-1 CPD 399

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration which fails to identify any specific factual or legal errors is denied; general statement that initial decision failed to consider all relevant information is insufficient to warrant reconsideration of prior decision.

B-242010.2, April 23, 1991

91-1 CPD 400

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Resolicitation
- ■ ■ ■ GAO review

Procurement

Specifications

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

Contracting agency's decision to resolicit its requirement for jet engine starter hoses after terminating the original contract is not objectionable where the solicitation overstated the minimum needs and the potential for increased competition under a resolicitation exists, thus providing a reasonable basis for the agency's decision not to make award to the next low offeror under the original solicitation.

Procurement

Bid Protests

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

Bias or improper motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or speculation.

Procurement

Competitive Negotiation**■ Sureties****■ ■ Acceptability**

Protest that agency improperly rejected protester's offer for failing to propose a Department of the Treasury-approved corporate surety for a fidelity bond is denied where record shows that protester proposed an unapproved surety contrary to the express terms of the solicitation.

Procurement

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

Protest against a small disadvantaged business (SDB) set-aside for a Simplified Acquisition of Base Engineering Requirements contract is denied where the acquisition is covered by the Small Business Competitiveness Demonstration Program Act of 1988, 15 U.S.C. § 644 note (1988), which provides, on a test basis, for the issuance of solicitations on an unrestricted basis in four designated industry groups where agency's small business participation goals have been met, but specifically exempts procurements set aside for SDB concerns pursuant to section 1207 of the Defense Authorization Act of 1987, 10 U.S.C. § 2301 note (1988).

Procurement

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

Agency decision to set aside procurement for small disadvantaged business (SDB) concerns was proper where contracting officer determined there was a reasonable expectation that offers would be obtained from at least two responsible SDB firms at prices which will not exceed the fair market price by more than 10 percent.

Procurement

Special Procurement Methods/Categories**■ Federal supply schedule****■ ■ Offers****■ ■ ■ Rejection****■ ■ ■ ■ Propriety**

Agency properly rejected a late proposal for a Federal Supply Schedule contract where a commercial carrier caused the late delivery.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Exclusion of a proposal from the competitive range was reasonable where the record shows that the agency evaluators acted properly in downgrading protester's proposal on the basis of properly identified weaknesses and deficiencies and the protester's relatively low rating.

Procurement

Bid Protests

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

Prior dismissal of protest as untimely is affirmed where the initial protest submission indicated on its face that the protest was untimely, and the protester failed to provide evidence in its protest to establish timeliness.

Procurement

Bid Protests

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

A protester is not an interested party to object that award to another offeror would violate a solicitation prohibition against concurrent construction contracts where the protester, whose proposal was excluded from the competitive range, and who did not timely protest this exclusion, would not be in line for award even if this objection were sustained.

Procurement

Contractor Qualification

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

The General Accounting Office will not review a procuring agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith, or the misapplication of a definitive responsibility criterion; a performance requirement that certain paper be used in printing a newsletter is not such a criterion.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Propriety
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where request for proposals to design and construct a shed roof stated that roof was to be supported by "a pre-engineered steel framing system on concrete piers with bar joists," contracting agency improperly made award to an offeror proposing a support system that did not use bar joists.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Elimination of a technically acceptable, lower cost proposal from the competitive range without discussions, leaving a competitive range of one, was unreasonable where the record shows that weaknesses in the lower cost proposal were considered minor and could be easily addressed during discussions to make it stronger, and that the awardee's evaluated technical superiority was not such that no other offeror had a reasonable chance for award.

Procurement

Competitive Negotiation

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

Where agency's evaluation of proposals was fair and reasonable and in accordance with the solicitation's stated evaluation criteria, and where protester's and awardee's proposals were reasonably determined to be essentially technically equal, price properly became the determining factor for award.

Procurement

Bid Protests

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

Protest is dismissed as untimely where filed more than 10 working days after basis of protest is known, or should have been known through receipt of information released pursuant to Freedom of Information Act request and in contracting agency report responding to earlier protest.

Procurement

Bid Protests

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

Protest that incomplete Certificate of Procurement Integrity does not render bid nonresponsive is dismissed as untimely where filed more than 10 working days after protester learned that its bid had been rejected for failure to execute the certification.

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

Where bidder took no exception to solicitation requirements, rejection of small business's low bid for lack of adequate testing facilities and award of a contract to the second-low bidder was improper where the agency failed to refer question of responsibility to the Small Business Administration for certificate of competency proceedings.

Procurement

Bid Protests

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

Where protester knew basis of protest, but protester reasonably understood from competition advocate that agency would not act contrary to the protester's interests while the competition advocate investigated the matter, protester reasonably delayed filing protest until it received notice to the contrary.

Procurement

Special Procurement Methods/Categories

- **Requirements contracts**
- ■ **Additional work/quantities**
- ■ ■ **Interagency agreements**

Under the Economy Act, 31 U.S.C. § 1535 (1988), where the ordering agency reasonably determines that amounts are available, that the receiving activity is able to provide or get by contract the ordered goods or services, that ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise, and that placement of the order is in the best interest of the government, an agency may purchase its requirements under another agency's contract.

Procurement

Contract Management

- **Contract modification**
- ■ **Cardinal change doctrine**
- ■ ■ **GAO review**

Where contract provided for purchase of nonredundant uninterruptible power systems and for expansion of those systems to redundant configuration, agency's purchase of redundant systems made from nonredundant systems and ancillary items available under the contract is within scope of contract.

Procurement

Contract Management

- **Contract modification**
- ■ **Cardinal change doctrine**
- ■ ■ **Effects**

Proposed issuance of delivery orders for quantity of uninterruptible power systems in excess of stated maximum quantity under the contract would be outside the scope of that contract, would result in a contract materially different from that for which the competition was held, and absent a valid sole-source determination, would be subject to Competition in Contracting Act requirements for competition.

B-235558.5, April 29, 1991

Procurement

Payment/Discharge

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

Shipper's claim for loss of comic books is denied, except for one carton marked "comics," where the record does not establish that the comics were tendered to the carrier.

Procurement

Payment/Discharge

- **Shipment**
- ■ **Carrier liability**
- ■ ■ **Amount determination**

Contractual liability of carrier to government is not limited to the amount the government pays the shipper for loss or damage.

Procurement

Small Purchase Method

- Contract awards
 - ■ Propriety
-

Procurement

Small Purchase Method

- Quotations
- ■ Contract awards
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency decision to award contract for employee assistance program to higher-priced quoter was improper where record indicates that evaluation was inconsistent with terms of solicitation, and does not support agency's conclusion that awardee's proposal was superior to protester's.

Procurement

Socio-Economic Policies

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

The Small Business Administration (SBA) did not act fraudulently, or fail to consider critical information, in declining to issue a certificate of competency to a small business offeror, where the record establishes that SBA has a reasonable basis for concluding that the offeror would not satisfy the solicitation requirement—that the offeror's contract manager work exclusively on the contract—and where the offeror had a sufficient opportunity to present its views to SBA on the issue, even though it did not review all documentation provided to SBA by procuring agency.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Geographic restrictions
- ■ ■ ■ Justification

Geographical restriction in solicitation for the towing, storage, and disposal of seized vehicles does not unduly restrict competition where the agency reasonably based the restriction upon its legitimate operational needs.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest by unsuccessful offeror alleging clerical error in its proposal is denied where record does not demonstrate that agency either was on actual or constructive notice of the error before award.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Validity
- ■ ■ State/local laws
- ■ ■ ■ Applicability

Where applicable federal law exists, the General Accounting Office will not look to state law to determine the validity of a bid guarantee submitted for a federal procurement.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

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

Agency properly rejected bid as nonresponsive where bidder furnished as its bid guarantee a letter from a local bank stating that bidder had deposited a U.S. Treasury bill; that a notation had been placed on the bill indicating that it had been pledged in favor of the contracting agency; and that the bill would be held until the agency released its security interest, but bidder did not provide a power of attorney and an agreement authorizing the sale of the security if bidder defaulted, as required by applicable regulations.

Procurement

Bid Protests

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

Allegations that contracting agency amended the solicitation to include an improper clause, failed to require a common cutoff date for receipt of best and final offers (BAFO), and did not provide protester with sufficient time to submit its BAFO, are dismissed as untimely where protest was not filed prior to closing date for receipt of BAFOs or within 10 working days after protester learned of agency's actions in these regards.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Organizational experience

Allegation that experience of president, key employees and subcontractors should be attributed to protester's organization is denied where the solicitation provided for corporate experience and key employees to be evaluated separately.

Procurement

Bid Protests

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

Protester is not an interested party to challenge the acceptability of awardee's proposal where there is an intervening party of greater interest which would be in line for award if protest were sustained.

Procurement

Bid Protests

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

Prior dismissal of protest because of the protester's failure to timely comment after the early submission of the agency report is affirmed; protester's reliance on statement in the General Accounting Office (GAO) protest acknowledgment letter—that for timeliness purposes GAO would assume the protester received its copy of the agency report on the regularly scheduled "Report Due Date"—is misplaced and does not excuse failure to timely comment, where the protester was expressly advised that an early agency report would be submitted and that the protester would have 10 working days after its receipt of the early report in which to comment.

Procurement

Small Purchase Method

- Requests for quotations
- ■ Terms
- ■ ■ Design specifications

Protest is dismissed where the identical issue concerning the propriety of agency use of a manufacturer's part number as an item description under a small purchase procedure procurement was considered and denied by our Office in recently decided protests involving the same parties.

Procurement

Sealed Bidding

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

Where a commercial bid bond form limits the surety's obligation to the difference between the amount of the awardee's bid and the amount of a reprocurement contract, the terms of the commercial bond represents a significant departure from the rights and obligations of the parties as set forth in the solicitation, which renders the bid bond deficient and the bid nonresponsive.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Invitations for bids
- ■ ■ Identification

Where a commercial bid bond form does not refer to the solicitation by number or otherwise adequately identify the procurement to which it pertains, enforcement of the bond is uncertain; the bond thus does not constitute a firm commitment as required by the solicitation and the bid properly is rejected as nonresponsive.

Procurement

Competitive Negotiation

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

Agency's determination that protester's proposal was unacceptable outside the competitive range was reasonable where the proposal contained significant informational deficiencies, calling into question whether the firm understood what it would be required to do under the contract and precluding an adequate assessment of the relative strengths and weaknesses.

Procurement

Competitive Negotiation**■ Offers****■ ■ Risks****■ ■ ■ Pricing**

A protest that solicitation provisions are ambiguous is denied where all provisions to which the protester objects reasonably describe the work to be performed and the information provided is adequate to enable firms to compete intelligently and on an equal basis. The mere presence of risk in a solicitation does not render it inappropriate, and offerors are expected to consider the degree of risk in calculating their prices.

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