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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-238410, September 7, 1990

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Utility services
- ■ ■ ■ Use taxes

The telephone companies pass the burden of the 9-1-1 emergency service tax imposed by the State of Arizona on to their customers as a cost of providing telephone service. The 9-1-1 tax is a vendor tax, the legal incidence of which falls on the telephone companies. For that reason, the constitutional immunity of the United States does not apply, and that portion of the billings reflecting the amount of the tax may be paid by the federal government.

B-240908, September 11, 1990

Appropriations/Financial Management

Claims Against Government

- Claim settlement
- ■ Pending litigation
- ■ ■ GAO review

In response to a request from Senator Adams, on behalf of several of his constituents, we advise that a similar issue raised by the employees concerning receipt of Sunday premium pay while on authorized annual and sick leave is currently before the Claims Court in *Armitage v. United States*, and it is a long-standing policy of this Office not to act on matters which are in the courts pending litigation.

Civilian Personnel

B-238987, September 7, 1990

Civilian Personnel

Compensation

■ **Overtime**

■ ■ **Eligibility**

■ ■ ■ **Advance approval**

In view of the lack of specific factual evidence, the claimant, a dual-status United States Army Reserve technician did not demonstrate that there was any more than a tacit expectation on the part of his supervisor, who was also his commanding officer, that he had to attend administrative assemblies in the evenings after his normal working hours. Thus, claim for overtime pay under 5 U.S.C. § 5542 (1988) is denied.

B-240536, September 7, 1990

Civilian Personnel

Compensation

■ **Executive Branch**

■ ■ **Appointment**

■ ■ ■ **Congressional recommendation**

In response to request to review proposed bill establishing congressional scholarship program, we conclude that the mechanism for Members of Congress to recommend students for scholarships and eventual federal employment would not appear to violate the appointments clause of the Constitution, Article II, section 2, clause 2. To require the Director of the Office of Personnel Management to consider such recommendations might conflict with 5 U.S.C. § 3303 unless (1) all such appointments were made to the noncompetitive service or (2) language were added to the proposed bill exempting this program from the limitations in section 3303.

B-240908, September 11, 1990

Civilian Personnel

Compensation

■ **Additional compensation**

■ ■ **Eligibility**

■ ■ ■ **Weekends/holidays**

■ ■ ■ ■ **Annual leave**

Civilian Personnel

Compensation

■ **Additional compensation**

■ ■ **Eligibility**

■ ■ ■ **Weekends/holidays**

■ ■ ■ ■ **Sick leave**

In response to a request from Senator Adams, on behalf of several of his constituents, we advise that a similar issue raised by the employees concerning receipt of Sunday premium pay while on

authorized annual and sick leave is currently before the Claims Court in *Armitage v. United States*, and it is a long-standing policy of this Office not to act on matters which are in the courts pending litigation.

B-239097, September 17, 1990

Civilian Personnel

Compensation**■ Overtime****■ ■ Eligibility****■ ■ ■ Travel time**

A non-exempt employee who traveled outside normal duty hours to and from a forest fire emergency claims entitlement to FLSA overtime for his travel-time because it resulted from an administratively uncontrollable event. The 1984 amendment to 5 U.S.C. § 5542(b)(2)(B)(iv) which authorizes overtime pay for such travel is applicable only to title 5 and not to the separate and distinct provisions of the FLSA. The employee's claim is denied.

B-239118, September 18, 1990

Civilian Personnel

Leaves Of Absence**■ Annual leave****■ ■ Restoration****■ ■ ■ Service credits****■ ■ ■ ■ Computation errors**

Employee, because of administrative error in computing her service computation date (SCD) (December 28, 1962, rather than her correct SCD of December 29, 1972), used 6 days (48 hours) of annual leave prior to her intended retirement. Employee charged and actually used her annual leave and, therefore, has not forfeited annual leave under 5 U.S.C. § 6304 (1988). Therefore, the leave may not be restored under 5 U.S.C. § 6304(d)(1)(A). The provisions of the Back Pay Act, 5 U.S.C. § 5596, are not applicable since claimant has not suffered a withdrawal or a reduction in pay.

B-238920, September 20, 1990

Civilian Personnel

Relocation**■ Actual expenses****■ ■ Eligibility****■ ■ ■ Distance determination**

Employee, who was transferred to new official duty station about 60 miles away from old station, is not entitled to relocation expenses where the agency determines that relocation of the employee's residence was not incident to the transfer of duty station because among other things, both the old and new residences were at the old duty station. We will not upset agency's determination that employee's relocation was not incident to transfer where, although employee sold his home, the record contains insufficient evidence of employee's intention or good faith attempt to relocate closer to new duty station.

Civilian Personnel

Relocation

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

Employee, who was transferred to new duty station 60 miles from old duty station, sold his house at the old station and later moved into a house he already owned also at the old station. His claim for temporary quarters subsistence expenses while occupying temporary quarters at new duty station may not be allowed since the distance between his new residence and old duty station is not more than 40 miles greater than the distance between his old residence and his old duty station, as required by paragraph 2-5.2h of the Federal Travel Regulations.

B-239515, September 20, 1990

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Quality step increase
- ■ ■ Eligibility

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

B-236651.3, September 21, 1990***

Civilian Personnel

Relocation

- Expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Personal convenience

A transferred employee's entitlement to relocation expenses is contingent upon, among other things, a determination that the transfer is not primarily for the convenience or benefit of the employee or at her request. Primary responsibility for such determination rests with the agency, and GAO will not disturb the agency's determination unless it is clearly erroneous, arbitrary or capricious. Neither the possible benefit to the agency of the transfer nor the assertion that the employee requested the payment of relocation expenses at the time of her transfer is sufficient in and of itself to overturn the agency's determination that the transfer was primarily for the employee's benefit. *Jean Jacobson*, B-236651, Feb. 12, 1990, affirmed.

B-235468, September 25, 1990***

Civilian Personnel

Compensation

- Reduction-in-force
- ■ Compensation retention

A grade GS-9 employee was given a specific reduction-in-force (RIF) notice providing for his separation effective September 18, 1981. On September 17, 1981, the agency offered him a grade GS-5 position, which he accepted, but advised him that salary could not be set higher than grade GS-5, step-10, because it was outside his competitive area set under RIF procedures. The agency committed an unjustified and unwarranted personnel action when it erroneously denied him grade and pay retention on the basis that the employee did not receive a demotion pursuant to a RIF but

was reassigned to, a lower-graded position. The employee met the requirements for retained grade and pay since the employee had received a specific RIF notice and the grade GS-5 position was offered at the initiative of management.

Civilian Personnel

Compensation

■ Classification

■ ■ Appeals

■ ■ ■ GAO review

Civilian Personnel

Compensation

■ Reduction-in-force

■ ■ Procedural defects

A grade GS-7 employee was given a general reduction-in-force (RIF) notice informing him that the installation where he was then currently employed was targeted for closure. Subsequently he was reassigned to a position at the same grade and step. Since this reassignment neither was pursuant to a specific RIF notice nor resulted in a demotion, it does not appear to have resulted in any adverse consequences which would be subject to remedial action. Further, employee was subsequently laterally reassigned to a different position at the same grade and step. However, employee notes that new position was reclassified from GS-9 to GS-7 concurrent with his reassignment to it and questions this action. The Office of Personnel Management is required to review and correct agency classification and its corrective action is binding. *See* 5 U.S.C. § 5110, 5112. Hence, we are without jurisdiction to issue any ruling or decision concerning the classification of positions.

B-239872, September 25, 1990

Civilian Personnel

Relocation

■ Travel expenses

■ ■ Privately-owned vehicles

■ ■ ■ Multiple vehicles

■ ■ ■ ■ Mileage

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

Miscellaneous Topics

B-240536, September 7, 1990

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Executive Branch

■ ■ Scholarships

■ ■ ■ Congressional recommendation

In response to request to review proposed bill establishing congressional scholarship program, we conclude that the mechanism for Members of Congress to recommend students for scholarships and eventual federal employment would not appear to violate the appointments clause of the Constitution, Article II, section 2, clause 2. To require the Director of the Office of Personnel Management to consider such recommendations might conflict with 5 U.S.C. § 3303 unless (1) all such appointments were made to the noncompetitive service or (2) language were added to the proposed bill exempting this program from the limitations in section 3303.

B-231659, September 10, 1990***

Miscellaneous Topics

Transportation

■ Air carriers

■ ■ Excursion rates

■ ■ ■ Availability

Under the airlines' deregulated pricing system the citypair contract fare, if applicable, or the fare selected by a traveler when a reservation is made or the ticket is issued generally is the applicable fare. GSA's position that the government is entitled to the lowest available fare for the service provided although another fare was requested has no reasonable basis in law. However, if GSA can establish that a lower fare applied and was requested but not furnished, it may apply the lower fare. The burden is then on the carriers to provide evidence to show why such fare was not available, since such evidence is peculiarly within their knowledge and competence.

Procurement

B-238008.3, September 4, 1990

90-2 CPD 180

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision denying protest is affirmed where protester's request demonstrates that it was not prejudiced by agency's misleading discussions and acceptance of possibly noncompliant offer.

Procurement

Bid Protests

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

Untimely allegation will not be considered under the significant issue exception to the bid protest timeliness requirements where the issue raised is not one of widespread interest to the procurement community.

B-239853, September 4, 1990

90-2 CPD 181

Procurement

Sealed Bidding

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

Even though protester acknowledged amendment changing delivery schedule, protester's bid was ambiguous and therefore properly rejected as nonresponsive where protester also inserted the unamended delivery date on its bid form, thereby creating doubt as to whether protester had bound itself to deliver in accordance with the amended delivery schedule.

B-240134.4, September 4, 1990

90-2 CPD 182

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Options

Bid that acknowledges amendment to the solicitation, but fails to include price for option year period added by the amendment, is nonresponsive where the invitation for bids requires such

prices and provides that they will be evaluated for award, and bidder's other option period prices do not establish a consistent pattern which shows both that the omission of the price was an error and the bidder's intended price.

B-240145, September 4, 1990

90-2 CPD 183

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

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

B-240417, September 4, 1990

90-2 CPD 184

Procurement

Bid Protests

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

Protest challenging the propriety of a subcontract acquisition by a government prime contractor is dismissed where the prime contractor is not acting as the government's agent and the award is not made "by or for the government."

B-240913, September 4, 1990

90-2 CPD 186

Procurement

Sealed Bidding

- Below-cost bids
- ■ Contract awards
- ■ ■ Propriety

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

Procurement

Sealed Bidding

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

Protest alleging that bid is unbalanced is dismissed for failure to state a valid basis of protest where the protester fails to establish likelihood that the bid in fact is mathematically and materially unbalanced.

Procurement

Noncompetitive Negotiation**■ Use****■ ■ Justification****■ ■ ■ Urgent needs**

Protester's contention that it was prejudiced by agency's failure to cancel a request for proposals (RFP) before placing a sole-source order based on an urgent requirement is denied where the agency notified unsuccessful offerors under the RFP in time for those offerors to challenge the sole-source award on a timely basis.

Procurement

Noncompetitive Negotiation**■ Contract awards****■ ■ Sole sources****■ ■ ■ Propriety**

Procurement

Noncompetitive Negotiation**■ Use****■ ■ Justification****■ ■ ■ Urgent needs**

Challenge to sole-source award is denied where agency reasonably determines only one source can provide the needed items in time to meet the agency's requirements.

Procurement

Noncompetitive Negotiation**■ Use****■ ■ Justification****■ ■ ■ Urgent needs**

Protest that agency has violated statutory bar against limiting competition when agency has failed to perform advance planning is denied where agency has not failed to plan but has planned unsuccessfully; likewise, agency error in attempting to obtain competition does not constitute failing to plan.

Procurement

Noncompetitive Negotiation**■ Contract awards****■ ■ Sole sources****■ ■ ■ Propriety**

Argument that agency exceeded its immediate needs in placing a sole-source order is denied where protester is not the low-priced offeror for any portion of the purchased quantity it might conceivably be able to deliver.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ Pending protests
- ■ ■ ■ Contract awards

Contract awarded on the basis of an initial Small Business Administration (SBA) determination that awardee was a small business is valid and is not required to be terminated because SBA on appeal concludes that awardee is other than small.

B-239578, B-239578.2, September 6, 1990

Procurement

Specifications

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

Solicitation specifications requiring that distributed digital control system be the established product of a single manufacturer which has a permanent service organization are not overly restrictive where the agency is attempting to assure itself of the system's reliability and availability of service for the system.

Procurement

Specifications

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

Protest that competition could be enhanced if the agency had issued a solicitation comprised totally of performance specifications, rather than a combination of performance and design specifications, is denied where the protester fails to show that the specifications exceed the agency's minimum needs.

B-231659, September 10, 1990*****Procurement**

Payment/Discharge

- Payment deductions
- ■ Propriety

An amendment made by the Civil Aeronautics Sunset Act of 1984 to 31 U.S.C. § 3726(b)(1) does not limit GSA's long-standing authority to deduct overcharges for airline fares from current bills due the airlines. Other authority in 31 U.S.C. § 3726(b)(2), encompassing rates based on all means of contractual arrangements or exemptions from regulation, supports such deductions.

Procurement

Payment/Discharge

■ Payment deductions

■ ■ Propriety

Section 322 of the Transportation Act of 1940, now codified in 31 U.S.C. § 3726, provides authority for the government to pay its transportation bills prior to audit and recover overcharges administratively determined in the postpayment audit by deduction from other bills. In *United States v. New York, New Haven and Hartford Railroad Co.*, 355 U.S. 253 (1957), the Supreme Court held that this places the burden on the carriers to provide evidence to support their charges and the burden is not on the government to prove it has been overcharged. Deregulation of domestic air transportation has not changed this relationship.

B-239486, September 10, 1990

Procurement

Sealed Bidding

■ Bids

■ ■ Responsiveness

■ ■ ■ Samples

Where solicitation requires submission of a bid sample but fails to list the specific characteristics for which the bid sample is to be examined, rejection of a bid because the accompanying bid sample did not meet a specification requirement would be inappropriate.

B-240965, September 10, 1990

Procurement

Bid Protests

■ Dismissal

■ ■ Definition

Where protest alleges low bid is nonresponsive because low bidder intends to subcontract for required services, but does not allege any improper relationship between low bidder and proposed subcontractor or that solicitation prohibits subcontracting, protester has failed to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office Bid Protest Regulations.

B-239126.4, September 11, 1990

90-2 CPD 195

Procurement

Competitive Negotiation

■ Offers

■ ■ Competitive ranges

■ ■ ■ Exclusion

■ ■ ■ ■ Administrative discretion

Protester was properly excluded from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because of major deficiencies in its technical proposal, its poor rating for relevant experience, and because of its otherwise low technical score.

Procurement

Contract Types

- Fixed-price contracts
- ■ Incentive contracts
- ■ ■ Use
- ■ ■ ■ Administrative determination

Protest that solicitation should provide for a cost reimbursement contract is denied where there is no evidence that the agency's choice of firm, fixed-priced contract type is unreasonable.

Procurement

Contract Types

- Fixed-price contracts
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Travel expenses

Protest that travel and related expenses should be excluded from the quoted hourly rate and essentially not evaluated in the total cost is denied where the solicitation calls for a firm, fixed-price contract and it would be improper not to evaluate such costs.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Incumbent contractors

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protest alleging that evaluation criteria are unduly restrictive and improperly favor incumbent is denied where agency demonstrates that criteria are reasonably required in order to meet its minimum needs and that adequate competition exists. Fact that firm may enjoy competitive advantage as a result of its incumbency is not legally objectionable where advantage does not result from favoritism or preferential treatment by agency.

Procurement

Bid Protests

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

Protest alleging organizational conflict of interest on the part of awardee is dismissed as untimely filed where protester was informed of agency's decision to reverse its position and consider award-ee's proposal, but did not file protest until after award, more than 1 month later.

Procurement

Bid Protests

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

Protest challenging the propriety of a subcontract awarded by a government prime contractor independent of the contracting agency is dismissed since it was not made "by or for the government."

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Even though the agency failed to place the protester, who has been issued an invitation for bids (IFB), on the solicitation mailing list and this failure precluded the protester from submitting a bid because it was unaware of the revised bid opening date set forth in an IFB amendment, the protest is denied because the protester did not avail itself of every reasonable opportunity to obtain the amendments.

Procurement

Socio-Economic Policies

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

Small disadvantaged business (SDB) is not entitled to preference where solicitation expressly deletes clause providing for SDB preference.

Procurement

Specifications

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

Protest alleging that specification requiring 10 RPM low spindle speed for machining center was unduly restrictive of competition is denied where the contracting agency has offered a reasonable explanation for the requirement.

Procurement

Competitive Negotiation

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

Where evaluation factors are clearly set forth there is no requirement that those factors in every case contain minimum standards.

Procurement

Bid Protests

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

Protest of alleged solicitation improprieties which are apparent on the face of the solicitation is dismissed as untimely where not filed until after the closing date for receipt of initial proposals.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Protester's speculation regarding contracting agency's evaluation of acceptability of other offerors' proposals is premature and thus provides no basis for protest where no award decision has been made.

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Options
- ■ ■ Rate changes
- ■ ■ ■ Restrictions

Agency-drafted clause which places a ceiling on recoverable cost increases during option years as the result of Service Contract Act wage rate increases is inconsistent with Federal Acquisition Regulation clause which allows pass-through of the total increase and allows another clause to be used only if it accomplishes the same purpose. 62 Comp. Gen. 542 (1983) and B-213723, June 26, 1984 overruled in part.

Procurement

Bid Protests

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

Procurement

Socio-Economic Policies

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

The General Accounting Office will not review a contracting agency's determinations that a small business is nonresponsible, or the agency's alleged failure to furnish the Small Business Administration (SBA) current information regarding the firm's responsibility where the protester had the opportunity to present this information before the SBA under the certificate of competency program.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Request for reconsideration of dismissal as untimely of protest challenging amount of time agency allowed for offerors to respond to solicitation amendment is denied where protest was not filed until after revised closing date for receipt of proposals, since protest involved alleged solicitation impropriety and therefore had to be filed no later than revised closing date.

Procurement

Competitive Negotiation

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

Protester's proposal was properly rejected as late where proposal was delivered by commercial carrier to the agency installation's warehouse and was not received at the office designated in the solicitation by the time set for receipt of proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Modification
- ■ ■ Late submission

A late proposal modification resulting from an agency's request for best and final offers may be accepted only if the late receipt is due solely to government mishandling or if the late modification makes the terms of an otherwise successful proposal more favorable to the government. The term "government" as used in the late proposal clause means the contracting activity, not the Postal Service.

Procurement

Contractor Qualification

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

Protest that proposed awardee's employment of former employee of University of California who served as technical advisor to agency task force constitutes a conflict of interest which should disqualify firm from award is denied where there is no evidence that as a result of task force duties he received any procurement sensitive information or information that was otherwise competitively useful and not available to other offerors, particularly the protester, a long-term incumbent.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Bias allegation
- ■ ■ ■ Allegation substantiation

Protest that under Department of Energy alternative source selection procedures agency erred in selecting only a single offeror for final negotiations leading to award is denied where the record supports the agency's selection decision based on the technical superiority of the awardee's proposal.

Procurement

Competitive Negotiation

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

Although solicitation did not separately list as evaluation factors or subfactors the use of subcontractors or the extent of reliance on subcontractors, those issues are logically and reasonably relat-

ed to "Organizational Structure and Staffing Plan" evaluation factor and therefore were properly considered by evaluators.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cost evaluation
- ■ ■ Evaluation criteria
- ■ ■ ■ Applicability

Cost evaluation under a solicitation for a cost-plus-award-fee operation and management contract which did not compare total cost estimates for each offeror was consistent with solicitation which indicated that nature of the management and operating services did not permit reasonably accurate estimating of total cost of performance.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Standard for discussions announced in Department of Energy alternative source selection guidelines is not substantially different from standard used by General Accounting Office in determining whether meaningful discussions were held under procurements conducted pursuant to "traditional" negotiation procedures.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

The fact that more extensive discussions are held with one offeror does not mean that offerors were treated unequally as the extent of discussions may vary among offerors as dictated by the different matters of concern raised by different proposed approaches.

B-239614, September 14, 1990

90-2 CPD 211

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest alleging that agency improperly evaluated offer on the basis of specific experience not included as an evaluation criterion in the request for proposals is denied where the experience at issue was specifically set forth in the statement of work as preferable.

Procurement

Competitive Negotiation

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

Award to higher priced, higher rated offeror is proper where solicitation provides that technical considerations are more important than price and the agency reasonably determined that the technical superiority outweighed the cost savings.

B-239695, September 14, 1990

90-2 CPD 212

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Time restrictions
- ■ ■ ■ Propriety

Fourteen day period for the submission of proposals for the services of a dentist at a military clinic was not unreasonably short where acquisition was a reprocurement of a recently defaulted contract; there was a shortage of dentists at the clinic which justified expedited treatment of the procurement; "technical proposals" essentially consisted of the *curriculum vitae* of only one individual; and four offerors, including the protester, did submit offers by the due date.

B-239730, September 14, 1990***

90-2 CPD 213

Procurement

Sealed Bidding

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

Where the legal entity shown on the bid form and the legal entity shown on the bid bond are not the same, and it is not possible to conclude from the bid itself that the two entities intended to bid as a joint venture, the contracting officer properly rejected the bid as nonresponsive.

B-239805, September 14, 1990

90-2 CPD 214

Procurement

Bid Protests

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

Protest against cancellation of solicitation filed more than 5 months after solicitation was canceled is untimely.

Procurement

Competitive Negotiation

■ Offers

■ ■ Preparation costs

Protester is not entitled to reimbursement for costs incurred in anticipation of being awarded a government contract which it did not receive.

Procurement

Competitive Negotiation

■ Contract awards

■ ■ Government delays

■ ■ ■ Procedural defects

An agency's delay in awarding a contract is merely a procedural matter which alone does not provide a basis of protest because it does not affect the validity of the procurement.

B-240477.2, September 14, 1990

90-2 CPD 215

Procurement

Bid Protests

■ GAO procedures

■ ■ GAO decisions

■ ■ ■ Reconsideration

Request for reconsideration is denied where protest of agency's refusal to extend date for receipt of proposals and defective solicitation failed to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office Bid Protest Regulations, and reconsideration request does not specify any error of fact or law that would warrant reversal or modification.

Procurement

Bid Protests

■ GAO authority

General Accounting Office's authority to decide bid protests is limited by statute to protests of a particular solicitation or award and does not extend to general protests of agency contracting practices.

B-240906.2, B-240909.2, September 14, 1990

90-2 CPD 216

Procurement

Bid Protests

■ GAO procedures

■ ■ GAO decisions

■ ■ ■ Reconsideration

Procurement

Bid Protests

■ GAO procedures

■ ■ Protest timeliness

■ ■ ■ Significant issue exemptions

■ ■ ■ ■ Applicability

Request for reconsideration is denied where protest issue found untimely in previous decision does not present significant issue.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied because the requests for reconsideration do not show that the initial decision contained errors of fact or law that would warrant its reversal or modification.

Procurement

Small Purchase Method

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

Agency may use manufacturers' part number or national stock number as an item description under a procurement of a relatively simple and common item conducted through small purchase procedures where there is no indication that such identification failed to convey the agency's needs.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision is denied where protester essentially reiterates contentions raised and considered in our prior decision and fails to show any error of fact or law that would warrant reversal or modification of prior decision.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

An amendment to an invitation for bids (IFB) is material where the amendment increases the mandatory option quantity from 20,000 to 50,001, and thus has a significant impact on the quantity required under the IFB.

Procurement

Sealed Bidding

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

Bid is properly rejected as nonresponsive where bidder fails to acknowledge a material amendment requesting an additional option quantity of items being procured, and thus does not bid on

the precise quantity called for by the solicitation because, absent such acknowledgment, the bidder is not obligated to furnish the additional items.

B-239628, September 17, 1990**90-2 CPD 221**

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Where agency's justification for proposed sole-source award under the authority of 10 U.S.C. § 2304(c)(1) (1988) is based primarily on urgent time constraints and safety concerns, and those concerns are only applicable to a portion of the work required, the sole-source award should be limited to that portion of the work.

B-239700, September 17, 1990**90-2 CPD 222**

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

Bid for construction project properly was rejected as nonresponsive where notation on bid schedule, stating that the bidder had "allowed" \$500,000 for doors required by solicitation because it had not received prices from door suppliers, reasonably could be interpreted as indicating bidder's intent to offer other than a firm, fixed-price.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination time periods

A notation included in bid which renders the bid nonresponsive cannot be waived or deleted on the basis of a post bid opening explanation that notation was included for informational purposes only since a nonresponsive bid cannot be made responsive after bid opening.

B-239709, September 17, 1990**90-2 CPD 223**

Procurement

Sealed Bidding

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

The validity of a bid bond that does not include the signature of the authorized representative of the surety is sufficiently questionable to warrant rejection of the bid as nonresponsive.

Procurement

Sealed Bidding

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

Agency properly determined bid ambiguous and thus nonresponsive where insertion of unsolicited part number suggested that the bidder possibly intended to furnish that specific part number whether or not it complied with solicitation specifications and nothing else in the bid or other data reasonably known to be available before bid opening resolved the ambiguity.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

Procurement

Sealed Bidding

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

Bid that acknowledges amendment to a solicitation, but fails to indicate unit and extended prices for the option quantity added by amendment, is nonresponsive since the bid does not represent a clear commitment to furnish the item at a specified price.

Procurement

Sealed Bidding

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

The authority to permit correction of mistakes in bids is limited to bids that are responsive to the solicitation and may not be used to make a nonresponsive bid responsive.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Protester's complaint that its proposal received unreasonably low scores on a number of technical evaluation subfactors is denied where record reveals that agency had a reasonable basis for scoring the proposal as it did.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Price competition

Agency was not required to award to lowest-priced, technically acceptable offeror where request for proposals did not provide for price to be the determinative factor in the selection of an award-ee.

Procurement

Competitive Negotiation

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

Agency reasonably determined that higher-priced proposal was worth its additional cost where agency found significant differences in technical quality between higher-priced proposal and protester's proposal.

B-239847, September 18, 1990***

90-2 CPD 227

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ 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 represent 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.

B-239898, September 18, 1990

90-2 CPD 228

Procurement

Bid Protests

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

Since the General Accounting Office resolves doubt over the timeliness of a protest in the protester's favor, protest is considered timely under our Bid Protest Regulations, even though contracting agency states it mailed notice of contract award a month prior to the protest filing date, where the agency provides no evidence of the actual date of mailing or the date of receipt by the protester, and the protester states that it received the notice 7 days prior to filing its protest.

Procurement

Socio-Economic Policies

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

A small disadvantaged business (SDB) regular dealer which proposed to supply end-items manufactured by a large business is not entitled to the SDB evaluation preference incorporated in a solicitation.

B-240442, September 18, 1990

90-2 CPD 229

Procurement

Bid Protests

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

Protest that agency violated protester's proprietary rights in technical data through solicitation release of competitor's drawing, allegedly containing protester's proprietary data, is dismissed as untimely where protester had constructive notice of agency's release of drawing through announcement of a previous solicitation for the same part in *Commerce Business Daily* more than 3 years before issuance of current solicitation.

B-239630.2, September 19, 1990

90-2 CPD 230

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

While new information indicates that protest dismissed as untimely was in fact timely, the protest is nevertheless academic where agency has taken corrective action.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Protester is not entitled to proposal preparation costs and costs of filing and pursuing protest, including attorney fees, where protest was rendered academic by agency taking corrective action and thus no decision on the merits has been issued.

Procurement

Competitive Negotiation

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

Protest that in evaluating protester's proposal agency deviated from the stated evaluation criteria is denied where the allegedly unstated criteria were reasonably related to the stated criteria.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency denied protester the opportunity for meaningful discussions is denied where the agency's questions led the protester into the areas of its proposal with which the agency was concerned.

Procurement

Competitive Negotiation

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

Protest challenging agency's exclusion of protester's proposal from the competitive range is denied where the record shows that the agency reasonably found the proposal technically unacceptable.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Protest that contractor with prior involvement in the program which is the subject of the current procurement gained a competitive advantage because it knew the Navy's cost estimate was erroneous is denied where protester did not rely on the estimate, and in any case, there is no evidence that, if it had known of the error, the protester could have improved its technical proposal sufficiently to be competitive with the awardee.

Procurement

Competitive Negotiation

- Discussion
 - ■ Adequacy
 - ■ ■ Criteria
-

Procurement

Competitive Negotiation

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

Exclusion of proposal from the competitive range is not reasonable where the deficiencies cited are minor in relation to the scope of work and the revisions necessary to correct them; the deficiencies, in some cases, have been corrected during discussions but the corrections apparently have been overlooked; and discussions, in certain cases, were not sufficiently specific to advise offeror of the needed corrections.

Procurement

Government Property Sales

- Timber sales
- ■ Price omission
- ■ ■ Line items

Protester's timber sale bid, which omitted bid for one type of timber, was properly rejected as non-responsive, since bid did not obligate protester to purchase omitted timber.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Bid guarantees
- ■ ■ ■ Facsimile

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

Procurement

Bid Protests

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

Low bidder whose bid properly was rejected as nonresponsive is not an interested party to argue that second-low bidder's bid should be rejected where there is another bidder which could be considered for award if the second-low bid were rejected, since protester would not be in line for award even if the protest were sustained.

Procurement

Noncompetitive Negotiation**■ Use****■ ■ Justification****■ ■ ■ Industrial mobilization bases**

Agency reasonably justified limiting competition under solicitation for grenade parts to mobilization base producers without a current production contract.

Procurement

Bid Protests**■ GAO procedures****■ ■ Interested parties**

General Accounting Office (GAO) affirms prior dismissal based on the determination that the protester was not an interested party entitled to protest under GAO Bid Protest Regulations, where the protester knowingly took itself out of the competition by disbanding its proposal team prior to filing its protest and disclaiming any interest in the award.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protests timeliness****■ ■ ■ 10-day rule**

Protest challenging location requirement in solicitation for lease of office space which is not filed before the closing date for receipt of proposals is untimely and not for consideration on the merits.

Procurement

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

Protest of solicitation provision indicating that the solicitation is to establish a mobilization base is untimely under Bid Protest Regulations when filed after the closing date for receipt of proposals.

Procurement

Contract Management**■ Contract administration****■ ■ GAO review**

Protest that agency has an obligation under prior contract to designate protester as a mobilization base producer concerns a matter of contract administration not for review by the General Accounting Office.

Procurement

Competitive Negotiation

- Contract awards
- ■ Shipment schedules
- ■ ■ Modification
- ■ ■ ■ Propriety

Protest is sustained where agency relaxed the solicitation's required delivery schedule for the awardee without providing an equal opportunity for the protester and the relaxation could have had a material impact on the protester's proposed cost.

Procurement

Bid Protests

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

Protest to the General Accounting Office filed more than 10 working days after notice of initial adverse agency action on agency-level protest is untimely and will not be considered.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Brand name specifications

Solicitations for component parts of a monitoring system for nuclear reactors restricted to brand names only are unobjectionable where the procuring activity reasonably determines that only the brand name sources will satisfy its critical minimum needs.

Procurement

Socio-Economic Policies

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

Protest that agency improperly withdrew a small business set-aside on the ground that low bid exceeded the fair market price, because agency's fair market price determination allegedly was based on unrealistically low government estimate of the cost of the work, is denied; the record shows that the government estimate had a rational basis, and that the protester's bid was substantially higher than a subsequently submitted large business bid, the government estimate, and the level of available funds for the work.

Procurement

Sealed Bidding

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

Agency improperly rejected a bid that failed to acknowledge a solicitation amendment which was not material because it merely relaxed the agency's requirements by extending the time for performance from 30 to 60 days.

Procurement

Small Purchase Method

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

Agency may use manufacturers' part number or national stock number as an item description under a procurement of relatively simple and common items conducted through small purchase procedures where there is not an indication that such identification failed to convey the agency's needs.

Procurement

Competitive Negotiation

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

Award to higher-priced offeror is unobjectionable where solicitation made technical considerations more important than cost and agency reasonably concluded that technical superiority of awardee's proposal was worth the additional cost.

Procurement

Bid Protests

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

Fifth ranked offeror, with highest evaluated cost, is not an interested party to question highest ranked offeror's eligibility for award since protester would not be in line for award even if the issues raised were resolved in its favor.

Procurement

Bid Protests

- Constitutional rights
- ■ GAO review

Absent clear judicial precedent, the General Accounting Office will not consider protester's challenge to the constitutionality of agency's use of a confidentiality of information clause since issues involved are more appropriate for resolution by the courts.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision is denied where the protester merely restates its initial arguments and expresses disagreement with the decision.

Procurement

Socio-Economic Policies

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

Protest is sustained where agency based decision not to set guard services procurement aside for small business concerns on conclusion that small businesses likely would not have resources to perform satisfactorily and on another agency's difficulties in obtaining offers from responsible small businesses, where (1) agency did not investigate any small business's capability to perform, and (2) the other agency's facility is outside the immediate area in which the subject building is located, and information relied upon was from procurement conducted 3 years ago, so that the small business competition in that instance was not a reasonable basis for comparison.

Procurement

Competitive Negotiation

- Contract awards
- ■ Personnel
- ■ ■ Substitution
- ■ ■ ■ Propriety

Protest is sustained where offeror selected for award substituted key personnel in proposal prior to award, and agency reviewed and approved the substitutions; substitutions constituted discussions with proposed awardee and the agency therefore was required to conduct discussions with the other offeror in competitive range.

Procurement

Contract Management

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

Protest challenging contracting agency's decision to conduct competitive procurement instead of exercising incumbent contractor's option is dismissed since decision whether to exercise option is a matter of contract administration outside General Accounting Office's bid protest function.

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Pricing errors
- ■ ■ ■ Line items

Contracting officer improperly permitted correction of a bid containing discrepancy between arithmetic total of line item prices and total price indicated in bid where either price reasonably could have been intended but only one was low. Solicitation provision providing that apparent errors in addition of lump-sum and extended prices shall be corrected is not applicable where the bid does not clearly indicate an apparent addition error.

Procurement

Contractor Qualification

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

Protest that awardee's price is unreasonably low is essentially a challenge against contracting officer's affirmative determination of responsibility and does not establish the likelihood that, as alleged, offerors were not competing on equal basis.

Procurement

Bid Protests

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

Protest of agency's decision to request best and final offers (BAFO) from all offerors is dismissed as untimely filed where not filed at General Accounting Office prior to the closing date for receipt of BAFOs.

Procurement

Sealed Bidding

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

Agency properly determined a bid bond was defective and the bid therefore nonresponsive under a sealed bid procurement where the bond indicated that it was executed by the bonding agent 3 days before power of attorney authorized the bonding agent to sign the bond on behalf of the surety.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision is denied where protester fails to show that prior decision may contain errors of fact or law warranting its reversal or modification.

Procurement

Bid Protests

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

Letter to agency stating future intent to submit a protest concerning the agency's rejection of a proposal as technically unacceptable does not constitute a protest and subsequent protest filed with General Accounting Office more than 10 working days after the basis for protest was known is dismissed as untimely.

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ Negative determination

Where solicitation did not advise offerors that financial condition would be considered in the evaluation of proposals, small business concern's financial condition related solely to its responsibility; accordingly, agency's rejection of its proposal on the basis of inadequate financial capacity but under the guise of a comparative, "best value" evaluation effectively constituted a finding of non-responsibility which the agency was required to refer to the Small Business Administration.

Procurement

Specifications

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

Protest that requirement for 128 kilobytes (128K) of memory for transient digitizers unduly restricts competition is sustained where the record fails to show that the specification is reasonably related to contracting agency's current needs, since the 128K memory capacity cannot be utilized by the agency given current technology and even if the necessary technology becomes available in the near future, the agency lacks any definite plans to use it.

Procurement

Specifications

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

Contention that requirement for a DR11 compatible high speed parallel port for transient digitizers improperly restricts competition is sustained where the contracting agency in effect concedes that compatibility feature is not required to meet its minimum needs.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ Pending protests
- ■ ■ ■ Contract awards

Where Small Business Administration (SBA) regional office, pursuant to a timely post-award size protest, has determined awardee to be a large business, and both awardee and agency have appealed the determination to the SBA Office of Hearings and Appeals, whose decision is pending, protest that awardee's contract should be terminated because awardee is other than small is premature.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency engaged in adequate discussions with protester where agency's discussion questions should reasonably have led protester into areas of its proposal requiring strengthening.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Agency error in distributing partially misprinted evaluation scheme with request for proposals (RFP) is not prejudicial where all competitive range offerors received identical copies of the RFP,

omitted subfactors were reasonably subsumed under evaluation criterion, and relative standing of offerors was not materially affected.

Procurement

Competitive Negotiation

■ Contract awards

■ ■ Administration discretion

■ ■ ■ Cost/technical tradeoffs

■ ■ ■ ■ Technical superiority

Agency's cost/technical tradeoff is reasonable where, despite cost premium associated with award-ee's proposal, awardee submitted clearly superior technical proposal.

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