

**GAO**

United States General Accounting Office

Office of General Counsel

July 1992

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

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# Preface

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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

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**B-247683, July 6, 1992\*\*\***

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Personal expenses/furnishings

The White House Communications Agency may use appropriated funds to pay for the purchase or rental of formal attire for employees performing duties in support of the President or Vice President of the United States during formal functions since the apparel is necessary to perform their official duties, not merely to be dressed in a socially acceptable manner.

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**B-248777, July 6, 1992**

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

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

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone taxes imposed by the state of Washington because the taxes are vendee taxes, the legal burden of which fall directly on the federal government as a user of telephone services.

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**B-245138, July 7, 1992\*\*\***

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## **Appropriations/Financial Management**

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### **Federal Assistance**

- Government-insured loans
- ■ Compromise authority

Secretary of Housing and Urban Development has authority under the National Housing Act to automatically reduce the amount of debt due on Federal Housing Administration (FHA) insured loans for manufactured homes by deducting the greater of the sale price or the appraised value of the home from the outstanding loan balance. As a matter of proper accounting practice, FHA may choose to reflect the compromise of the loans by booking either (a) the loan amount and then immediately adjusting that amount to an amount equal to the insurance paid or (b) the amount of the reduced loan (which equals the amount of the insurance paid by FHA).

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**B-246616, July 17, 1992**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Business cards

The United States Department of Agriculture may not use appropriated funds to purchase business cards. The costs of business cards may not be paid with government funds without specific statutory authority to do so.

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**B-247853.2, July 20, 1992**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Lump-sum appropriation
- ■ ■ Administrative discretion

Direction in the report of congressional committee considering the contracting agency's appropriation that the agency not procure a non-domestic multibeam sonar system does not preclude the agency from awarding a contract for a non-domestic system where, notwithstanding the committee report, Congress ultimately appropriated a lump-sum amount without statutorily restricting what can be done with those funds.

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**B-239769.2, July 24, 1992\*\*\***

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Permanent/indefinite appropriation
- ■ ■ Refunds
- ■ ■ ■ Filing fees

Pursuant to section 6(c) of the Investment Company Act, the Securities and Exchange Commission (Commission) has broad authority to exempt a private investment company from a filing deadline. If, pursuant to this statutory authority, the Commission exempts the investment company from its filing deadline and consequently determines that the filing fees were erroneously collected and covered into the Treasury, the Treasury may charge the refund to the permanent, indefinite appropriation established under 31 U.S.C. § 1322(b)(2).

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**B-245648.2, July 24, 1992**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Attorney fees

An employee's personal conduct in connection with his official duties became the subject of an investigation by his employing agency as an outgrowth of a request made by a congressional subcommittee. The employee secured the services of private counsel to assist him and seeks reimbursement for those expenses. Even though a third party precipitated the investigation, since the agency conducted the investigation, the government's interest was not aligned with the employee's interest. Therefore, the attorney's fees incurred may not be reimbursed.

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**B-247981, July 24, 1992**

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**Appropriations/Financial Management**

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**Claims Against Government**

- Restitution
- ■ Restrictions
- ■ ■ National defense interest
- ■ ■ ■ Surplus property

Items which are or contain components that are restricted in availability to the public as a matter of national defense, but which are inadvertently sold as surplus by the government, are to be recovered under authority of section 793(d) of the Espionage Act, 18 U.S.C. § 793(d) (1988) and the legal possessor compensated, but the maximum compensation permitted is the out-of-pocket expenses incurred by the individual from whom recovery is made.

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**B-248955, July 24, 1992**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Personal expenses/furnishings
- ■ ■ ■ Licenses

An agency may not pay the costs associated with an employee's attainment of a professional engineering certificate which the agency required as a qualification for the employee's position. It has long been held that the costs of qualifying for a federal position are personal to the employee.

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**B-243862, July 28, 1992\*\*\***

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Educational programs
- ■ ■ Partnerships

The Federal Energy Regulatory Commission expended limited government resources to assist its adopted public school under a partnership in education program. The assistance provided included printing of a school yearbook and transporting students to attend Commission events. The expenditure of limited amounts of federal resources in support of civic, charitable, or similar community support activities is within the discretion of an agency head in managing the employees and resources of an agency.

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**B-246415, July 28, 1992**

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**Appropriations/Financial Management**

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**Accountable Officers**

- Certifying officers
- ■ Relief
- ■ ■ Illegal/improper payments

Relief is granted to a Panama Canal Commission Certifying Official under 31 U.S.C. § 3528(b)(1)(A) from liability for the certification of an erroneous payment. The official followed proper procedures and did not know, and by reasonable diligence and inquiry could not have discovered, that she was certifying a payment to an assignee that had been improperly acknowledged under the contract.

**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Foreign sources
- ■ ■ ■ Fuel cells

Under the so-called Berry Amendment provisions of the Department of Defense (DOD) Appropriations acts, DOD is prohibited from spending appropriated funds to purchase foreign-manufactured fuel cells where the fuel cells contain layers of synthetic fabric, an American product protected under the "Buy American" restriction of the Berry Amendment.

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# Civilian Personnel

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**B-222926.4, July 6, 1992**

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## **Civilian Personnel**

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### **Compensation**

#### **■ Arbitration decisions**

#### **■ ■ GAO review**

Based on *Cecil E. Riggs, et al.*, B-222926.3, April 23, 1992, 71 Comp. Gen. ———, which in turn was based on *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 46 (1990), GAO has repealed 4 C.F.R. Part 22, *Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations*. Any claims involving labor unions and agencies that arise outside of negotiated grievance procedures may be processed under 4 C.F.R. Part 31. GAO will continue to issue decisions to accountable officers and agency heads under 31 U.S.C. § 3529 (1988) on matters outside the scope of negotiated grievance procedures.

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## **Civilian Personnel**

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### **Compensation**

#### **■ Arbitration decisions**

#### **■ ■ GAO review**

GAO has amended its claims regulations at 4 C.F.R. Part 30 to provide that it will not take jurisdiction over claims that are subject to negotiated grievance procedures contained in collective bargaining agreements entered into pursuant to the Civil Service Reform Act, 5 U.S.C. § 7121(a)(1) (1988). The Act provides that these procedures shall be the exclusive means of resolving grievances falling within their coverage.

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**B-242848.2, July 6, 1992**

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**Civilian Personnel**

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**Travel**

- Temporary duty
  - ■ Per diem
  - ■ ■ Eligibility
- 

**Civilian Personnel**

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**Travel**

- Temporary duty
  - ■ Travel expenses
  - ■ ■ Privately-owned vehicles
  - ■ ■ ■ Mileage
- 

**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Eligibility
- ■ ■ Residency

The agency's determination that an employee's residence was San Francisco for purposes of temporary duty travel allowances is reasonable and supported by the record, including the employee's statement on a civil service retirement system form. Although the employee alleged that he also maintained a second residence in Sacramento, his permanent duty station, from which he commuted to work, the employee failed to provide sufficient evidence of residency in Sacramento during the period in question. However, he is authorized mileage payment for an initial trip from his permanent station, Sacramento, to his temporary duty station and for a return trip to Sacramento at the conclusion of the temporary duty.

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**B-247860, July 23, 1992**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ New residence construction

A transferred employee constructed a residence at his new permanent station rather than purchase an existing residence. The real estate expenses authorized under paragraph 302-6.2 of the Federal Travel Regulations (FTR) to be reimbursed are those which are comparable to expenses incurred in connection with the purchase of an existing residence. Although the expenses authorized by paragraph 302-6.2 of the FTR to be reimbursed are those usually incurred incident to the securing of permanent financing upon completion of the residence, other expenses incurred prior to permanent financing also may be reimbursed so long as they are not a duplication of an expense item already allowed incident to that permanent financing, an expense uniquely applicable to the construction process, or a nonreimbursable item listed under FTR, para. 302-6.2(d)(2).

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## **Civilian Personnel**

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### **Relocation**

- **Residence transaction expenses**
  - ■ **Reimbursement**
  - ■ ■ **Eligibility**
  - ■ ■ ■ **New residence construction**
- 

## **Civilian Personnel**

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### **Relocation**

- **Residence transaction expenses**
- ■ **Reimbursement**
- ■ ■ **Surveys**

Transferred employees may be reimbursed for survey costs incurred in connection with the purchase of a lot for construction of a residence where the purpose of the survey was to establish the perimeter and configuration of the property and where the lender requires such a survey for financing purposes. Reimbursement is subject to the agency's determination that the amount of the charges is customary for the area.

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## **Civilian Personnel**

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### **Relocation**

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

An employee incurred an attorney's fee for preparation and execution of Act of Donation for property acquired as a gift for building a house, and another attorney's fee for preparation and execution of Servitude of Passage for property acquired for construction of residence. The Federal Travel Regulations limit reimbursement to expenses comparable to those reimbursable in connection with the purchase of existing residences and does not include expenses which result from construction. Since the attorney's fee for the preparation of the Servitude of Passage was incurred because the employee chose to build a residence as opposed to purchasing an existing one, he may not be reimbursed the attorney's fee for this purpose. However, he may be reimbursed the attorney's fee for preparation of the Act of Donation since this fee is unrelated to construction and correlates with attorney fees which would have been incurred for closing on the lot had he purchased it rather than received it as a gift.

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## **B-248770, July 23, 1992**

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## **Civilian Personnel**

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### **Relocation**

- **Taxes**
- ■ **Allowances**
- ■ ■ **Eligibility**

A transferred employee was required to pay additional federal income taxes on his relocation expense reimbursement, but was unable to receive the benefit of the relocation income tax allowance authorized by 5 U.S.C. § 5724b (1988) because he was a federal income tax nonitemizer and those expenses may only be treated as an itemized deduction on Schedule A of the Form 1040 income tax return. This Office may not grant the relief requested since the regulatory authority under 5 U.S.C. § 5724b has been delegated to the General Service Administration.

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**B-246074, July 27, 1992\*\*\***

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**Civilian Personnel**

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**Compensation**

- **Computation**
  - ■ **Civil Service regulations/laws**
  - ■ ■ **Reemployed annuitants**
- 

**Civilian Personnel**

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**Compensation**

- **Computation**
- ■ **Concurrent benefits**
- ■ ■ **Social security**
- ■ ■ ■ **Set-off**

Authorized certifying officer asks whether full deductions for both Civil Service Retirement System (CSRS) and Social Security contributions must be made when computing the pay of a re-employed annuitant who is a CSRS-Offset employee. The requirement under certain circumstances to deduct full CSRS-Offset contributions at the same time as Social Security's Old Age, Survivor, and Disability Insurance contributions are being withheld, is a reasonable interpretation by the Office of Personnel Management (OPM) of the governing statutory provisions and effectively carries out the intent of the law.

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**B-248172, July 28, 1992**

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**Civilian Personnel**

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**Travel**

- **Temporary duty**
- ■ **Travel expenses**
- ■ ■ **Additional costs**
- ■ ■ ■ **Personal convenience**

An employee, whose duty station and commuting residence were in Texas, was on a temporary duty assignment in Atlanta, Georgia. She traveled to her parents' home in Shelbyville, Tennessee, for personal reasons over the weekend of April 26-28, 1991. Her claim for the transportation expense to Shelbyville is denied since reimbursable weekend travel is limited to travel to the duty station or place of abode, under the Federal Travel Regulations.

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**B-247585, July 29, 1992**

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**Civilian Personnel**

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**Relocation**

- **Overseas personnel**
- ■ **Return travel**
- ■ ■ **Eligibility**

Return travel to the continental United States by an employee or former employee from an overseas location must be clearly incident to separation from that assignment in order to be reimbursed by the government. Where an employee at an overseas location separated from the service there for the purpose of accepting private employment at that location, he does not qualify under paragraph C4202-2 of Volume 2, Joint Travel Regulations for delayed return travel.



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# Military Personnel

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**B-244417, July 1, 1992**

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## Military Personnel

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### Pay

- Dual compensation restrictions
- ■ Exemptions

A retired member who was employed by the Census Bureau in a temporary position and, after resignation from that position, was appointed to another temporary position with recognizably different duties and responsibilities from the original position is entitled to the 30-day exemption from dual compensation restrictions under 5 U.S.C. § 5532 (d)(2).

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## Military Personnel

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### Pay

- Dual compensation restrictions
- ■ Exemptions

A retired member who held a temporary appointment with the Census Bureau before the effective date of Public Law 101-86, which provided for a 6-month exemption from the Dual Compensation Act for members appointed to temporary positions with the Bureau on or after the effective date of the law, does not qualify for the 6-month exemption.

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**B-247263, July 23, 1992**

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## Military Personnel

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### Pay

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

Where Air Force officer was overpaid basic pay totaling \$20,089 over 23 months because of error in computing of service, waiver of government's claim is denied for all but \$4,469 of amount incurred in first 6 months of military service, because the officer could have detected subsequent overpayments by comparing his leave and earnings statement to standard pay chart he had been provided.

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**B-248732, July 28, 1992**

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## Military Personnel

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### Leaves Of Absence

- Annual leave
- ■ Leave repurchase
- ■ ■ Reservists
- ■ ■ ■ Active duty status

An employee called to military active duty to participate in Operation Desert Storm requested to be placed in a leave without pay status. However, the agency erroneously placed him on annual

leave and paid him his salary for 80 hours. Upon discovery of the error, the agency gave the employee the option of keeping the payment and the charge to his leave or having the leave reinstated and being billed for the payment. The employee chose to have the leave reinstated. Collection of the resulting debt for the annual leave payment is not against equity and good conscience nor against the best interests of the United States in these circumstances since the employee elected to have the leave restored with the knowledge that this would create a debt. Therefore, the debt is not eligible for waiver under 5 U.S.C. § 5584.

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**B-246495, July 29, 1992**

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**Military Personnel**

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**Pay****■ Retroactive pay****■ ■ Eligibility****■ ■ ■ Courts-martial**

A former enlisted member of the United States Army whose general court-martial conviction and sentence were set aside on appeal, and whose original sentence included a forfeiture of all pay and allowances that was executed, is not entitled to recover the forfeited pay and allowances when a valid second sentence also includes forfeiture of pay and allowances. The member receives any credit available for the original forfeiture under the second sentence.

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# Miscellaneous Topics

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**B-245138, July 7, 1992\*\*\***

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## Miscellaneous Topics

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### Housing/Community Development

- **Manufactured homes**
- ■ **Government-insured loans**
- ■ ■ **Debts**
- ■ ■ ■ **Compromises**

Secretary of Housing and Urban Development has authority under the National Housing Act to automatically reduce the amount of debt due on Federal Housing Administration (FHA) insured loans for manufactured homes by deducting the greater of the sale price or the appraised value of the home from the outstanding loan balance. As a matter of proper accounting practice, FHA may choose to reflect the compromise of the loans by booking either (a) the loan amount and then immediately adjusting that amount to an amount equal to the insurance paid or (b) the amount of the reduced loan (which equals the amount of the insurance paid by FHA).

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## Miscellaneous Topics

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### Housing/Community Development

- **Manufactured homes**
- ■ **Government-insured loans**
- ■ ■ **Debts**
- ■ ■ ■ **Compromises**

Secretary of Housing and Urban Development has authority under the National Housing Act to assess interest on manufactured housing and property improvement loans made pursuant to Title I of the Act at the lesser of the rate specified in the borrower's promissory note or the Treasury rate.

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**B-247155, July 7, 1992**

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## Miscellaneous Topics

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### Environment/Energy Natural Resources

- **Air pollution**
- ■ **Administrative settlement**
- ■ ■ **Authority**

The Environmental Protection Agency lacks authority to settle mobile source air pollution enforcement actions brought pursuant to section 205 of the Clean Air Act, as amended, 42 U.S.C.A. § 7524 (West Supp. 1991), by entering into settlement agreements that allow alleged violators to fund public awareness and other projects relating to automobile air pollution in exchange for reductions of the civil penalties assessed against them.

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**B-245815, July 20, 1992**

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**Miscellaneous Topics**

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**Housing/Community Development**

- Low-income housing
- ■ Court decisions
- ■ ■ Damages
- ■ ■ ■ Lead-based paint

Decision discusses results of cases brought against federal and local governmental entities by plaintiffs damaged as a result of purchasing or renting federally owned or federally assisted housing containing dangerous amounts of lead-based paint. Decision also discusses possible amendments to the Lead-Based Paint Poisoning Prevention Act. 42 U.S.C. §§ 4821-4846.

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**B-239769.2, July 24, 1992\*\*\***

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**Miscellaneous Topics**

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**Finance Industry**

- Securities
- ■ Deadlines
- ■ ■ Exemptions

**Miscellaneous Topics**

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**Finance Industry**

- Securities
- ■ Filing fees
- ■ ■ Errors
- ■ ■ ■ Refunds

Pursuant to section 6(c) of the Investment Company Act, the Securities and Exchange Commission (Commission) has broad authority to exempt a private investment company from a filing deadline. If, pursuant to this statutory authority, the Commission exempts the investment company from its filing deadline and consequently determines that the filing fees were erroneously collected and covered into the Treasury, the Treasury may charge the refund to the permanent, indefinite appropriation established under 31 U.S.C. § 1322(b)(2).

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**B-247981, July 24, 1992**

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**Miscellaneous Topics**

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**National Security/International Affairs**

- National defense interests
- ■ Surplus property

Items which are or contain components that are restricted in availability to the public as a matter of national defense, but which are inadvertently sold as surplus by the government, are to be recovered under authority of section 793(d) of the Espionage Act, 18 U.S.C. § 793(d) (1988) and the legal possessor compensated, but the maximum compensation permitted is the out-of-pocket expenses incurred by the individual from whom recovery is made.

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# Procurement

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**B-247430, July 1, 1992**

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**Procurement**

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**Payment/Discharge**

■ **Shipment**

■ ■ **Carrier liability**

■ ■ ■ **Burden of proof**

A *prima facie* case of carrier liability is not established where in 1988 a shipper provides no substantive evidence to support her allegation that \$2,000 was paid in 1975 for a Karastan carpet lost by the carrier, which had been listed on the inventory as only "rug, red, green." The member must offer some substantive evidence that indicates the value of the lost item.

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**B-246796.2, July 2, 1992**

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**92-2 CPD 1**

**Procurement**

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**Bid Protests**

■ **GAO procedures**

■ ■ **GAO decisions**

■ ■ ■ **Reconsideration**

Prior decision of the General Accounting Office (GAO) dismissing as untimely a protest challenging the terms of a solicitation filed after the closing date for receipt of initial proposals is affirmed because protester's contention that GAO waived its right to dismiss the protest by developing the case and requesting an agency report has no merit and does not state a basis for reconsideration of our prior dismissal.

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**B-247722, B-247801, July 2, 1992**

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**92-2 CPD 2**

**Procurement**

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**Specifications**

■ **Brand name/equal specifications**

■ ■ **Equivalent products**

■ ■ ■ **Acceptance criteria**

Protest is sustained where procuring agency failed to advise offeror proposing an alternate product of agency needs where alternate product can be readily modified to be acceptable.

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**B-247896, July 2, 1992**

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**92-2 CPD 3**

**Procurement**

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**Bid Protests**

■ **GAO procedures**

■ ■ **Protest timeliness**

■ ■ ■ **Apparent solicitation improprieties**

Protest is dismissed as untimely where the protester failed to file its protest of an alleged solicitation impropriety prior to the closing date for receipt of best and final offers.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Protester is not entitled to disputed portion of claimed costs of filing and pursuing a protest where the agency has provided a detailed, reasonable explanation for its rejection on the basis that the costs in question were unrelated to the protest before the General Accounting Office, and the protester failed to respond substantively to the agency's position.

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**B-244918.3, July 6, 1992**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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**Procurement**

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**Contractor Qualification**

- Responsibility criteria
- ■ Distinctions
- ■ ■ Evaluation criteria

Prior decision sustaining protest of small business offeror against rejection of its proposal on grounds that the rejection of proposal for unacceptability under a responsibility-related factor was tantamount to a finding of nonresponsibility and thus required referral to the Small Business Administration is reversed where agency shows on reconsideration that proposal was unacceptable under factors not related to responsibility as well as a responsibility-related one.

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**B-247738, July 6, 1992**

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**Procurement**

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**Small Purchase Method**

- Quotations
- ■ Submission methods
- ■ ■ Facsimile
- ■ ■ ■ Burden of proof

Protest that agency lost and thus failed to consider quotation allegedly transmitted by telefacsimile machine is denied where agency has procedures reasonably calculated to record incoming telefacsimile quotations, agency denies receipt of the transmission, and the record contains no independent evidence outside of the protester's control of transmission or receipt of quotation by the agency.

**Procurement**

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**Contract Types**

- Fixed-price contracts
  - ■ Price reasonableness
- 

**Procurement**

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**Special Procurement Methods/Categories**

- Service contracts
- ■ Fixed-price contracts
- ■ ■ Price reasonableness
- ■ ■ ■ Property management

Agency performed a proper price analysis in determining that a low priced offeror's price reflected the offeror's proposed approach and was reasonable on a solicitation for a fixed-priced contract for property management services.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Preferences
- ■ ■ ■ Geographic restrictions

Evaluation criterion in request for proposals for property management services that gives a preference for offerors having offices within the geographic area to be served does not establish a requirement that an offeror have an established office in that area; agency properly evaluated this criterion where it gave more credit to an offeror who had a local office over an offeror who did not.

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**Procurement**

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**Bid Protests**

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

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Record does not support protester's contention that it was entitled to a perfect technical score, where the proposal was not perfect and legitimate weaknesses were identified.

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**Procurement**

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**Competitive Negotiation**

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

Agency gave appropriate weight to heaviest weighted technical factors in awarding a contract to a slightly lower rated offeror, who offered a significantly lower fixed price, where the agency reason-

ably found that the only significant difference between the proposals involved one criterion and that this advantage was not worth the significant price premium.

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## **B-247774, July 6, 1992**

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### **Procurement**

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#### **Small Purchase Method**

- Quotations
- ■ First-article testing
- ■ ■ Waiver
- ■ ■ ■ Administrative discretion

Agency had a reasonable basis to waive first article testing requirements for binnacles where awardee had successfully furnished similar items in the past and the specifications had not materially changed.

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### **Procurement**

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#### **Small Purchase Method**

- Quotations
- ■ First-article testing
- ■ ■ Waiver
- ■ ■ ■ Administrative discretion

Agency reasonably refused to waive first article testing requirements for binnacles for the protester where record shows that protester had never successfully furnished similar items in the past and had never completed first article testing in the past.

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## **B-247815, July 6, 1992**

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### **Procurement**

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#### **Competitive Negotiation**

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

Protest challenging award to firm which submitted a higher priced, higher rated technical proposal is denied where the solicitation's evaluation criteria provide that technical factors are more important than price, and the agency reasonably determined that the technical superiority of the higher priced offer outweighed the cost difference.

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### **Procurement**

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#### **Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Allegation that written discussions were not meaningful is denied where the discussions alerted the protester to all of the agency's concerns in considerable detail.



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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation errors**

#### **■ ■ ■ Evaluation criteria**

#### **■ ■ ■ ■ Application**

Protest challenging the agency's technical evaluation is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

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**B-247579.2, July 8, 1992**

**92-2 CPD 8**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Discussion**

#### **■ ■ Adequacy**

#### **■ ■ ■ Criteria**

Where an agency conducted meaningful discussions, it was not required to reopen discussions after the submission of best and final offers (BAFO) in order to afford the protester an opportunity to resolve remaining weaknesses in its technical proposal and to resolve deficiencies first introduced in its BAFO.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Contract awards**

#### **■ ■ Administrative discretion**

#### **■ ■ ■ Cost/technical tradeoffs**

#### **■ ■ ■ ■ Cost savings**

Where the solicitation stated that technical evaluation factors and an offeror's evaluated price were of equal importance and that the award would be made to the most advantageous offeror, the agency reasonably awarded a contract to a lower technically rated, lower priced offeror instead of to the protester, a higher technically rated, higher priced offeror, where it was determined that the difference in the protester's and the awardee's technical ratings did not warrant paying a price premium to the protester.

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**B-247910, July 8, 1992**

**92-2 CPD 9**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Contract awards**

#### **■ ■ Administrative discretion**

#### **■ ■ ■ Cost/technical tradeoffs**

#### **■ ■ ■ ■ Cost savings**

Protest against award to other than the low-priced offeror is denied where record shows that solicitation provided that award would be based on price and other factors listed in the solicitation and where agency reasonably evaluated proposal in accordance with those stated factors.

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**Procurement**

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**Contract Management**

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

Where agency improperly awarded a contract to protester under a solicitation which was erroneously converted from sealed bidding to negotiation, agency corrective action of terminating the contract and recompeting the requirement was reasonable under the circumstances to protect the integrity of the competitive procurement system.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Production capabilities
- ■ ■ ■ Quality control

Where solicitation evaluation scheme emphasizes manufacturing approach and matters related to product quality rather than simply knowledge of the components and the workings of a device to be manufactured, the assignment of high evaluation scores to a proposal with an approach that stresses up-front engineering and design and quality management as a means to best assure successful and timely completion of the contract, and the assignment of lower or unacceptable scores to offers that failed to propose such an approach, is consistent with the evaluation scheme.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

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**Procurement**

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**Competitive Negotiation**

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

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation. Therefore, General Accounting Office (GAO) will not make an independent determination of the merits of technical proposals; rather GAO will examine the agency evaluation record to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Mere disagreement with the agency does not render the evaluation unreasonable.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

##### **■ ■ Competitive ranges**

##### **■ ■ ■ Exclusion**

##### **■ ■ ■ ■ Administrative discretion**

Proposal was properly excluded from competitive range where agency reasonably concluded that proposal was unacceptable because it failed to address many required areas of the solicitation, failed to meet the delivery schedule and failed to demonstrate that the offeror could successfully manufacture devices in a timely manner.

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**B-247902, July 9, 1992**

**92-2 CPD 12**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Discussion**

##### **■ ■ ■ Adequacy**

##### **■ ■ ■ ■ Criteria**

Protest that agency misled protester during discussions into not trying to improve its proposal is without merit where (1) record does not support protester's assertion that it was told by the agency's contract negotiator not to change its technical proposal; (2) agency's letter requesting protester's best and final offer encouraged protester to review its proposal and make any improvements it deemed appropriate; and (3) protester's belief that no improvements were required was based in part on its unwarranted assumption that its proposal's "acceptable" rating under comparative evaluation meant that its proposal was of such high quality that no improvements were necessary.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

##### **■ ■ Evaluation**

##### **■ ■ ■ Adjectival ratings**

There is nothing improper in an agency's using adjectives such as "acceptable" and "highly acceptable" to express the relative quality of proposals as determined through the evaluation process; such adjectives have no impact on the evaluation itself, but are merely one means by which an agency may choose to express its evaluation findings.

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**B-244881.2, July 10, 1992**

**92-2 CPD 13**

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## **Procurement**

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### **Socio-Economic Policies**

#### **■ Small business 8(a) subcontracting**

##### **■ ■ Incumbent contractors**

##### **■ ■ ■ Adverse effects**

##### **■ ■ ■ ■ Determination**

Protest by incumbent small business contractor that the Small Business Administration (SBA) failed to properly determine adverse impact on protester of accepting contract requirement into the 8(a) program is denied where protester merely disagrees with the SBA's conclusion and does not show that regulation governing adverse impact determinations has been violated.

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**Procurement**

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**Bid Protests**

- GAO Procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision finding requester not entitled to protest costs is denied where requester has failed to show that the prior decision, which found that the agency had taken prompt corrective action in connection with the protest, contained any legal or factual errors.

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**B-246597.2, B-246597.3, July 13, 1992****92-2 CPD 15**

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**Procurement**

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**Bid Protests**

- Agency-level protests
- ■ Acknowledgment

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**Procurement**

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**Bid Protests**

- Dismissal
- ■ Definition

Protest that agency failed to notify protester in writing that its agency-level protest was received is dismissed since there is no requirement that agencies provide such acknowledgement to a protesting party.

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**Procurement**

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**Bid Protests**

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

Protest filed after bid opening that solicitation failed to include required Buy Indian Act clause is dismissed as untimely since alleged improprieties apparent from the face of a solicitation must be filed prior to bid opening.

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**Procurement**

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**Bid Protests**

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

Protest that agency failed to resolve agency-level protest in a timely manner is dismissed as untimely where protester failed to raise this argument within 10 working days of receiving notice of agency's projected decision date.

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## **Procurement**

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### **Bid Protests**

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

Protest that awardee is not a valid Buy Indian Act concern is dismissed as untimely where filed more than 10 working days after protester received denial of this ground of its agency-level protest.

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## **Procurement**

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### **Bid Protests**

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

Protest that awardee submitted a nonresponsive bid is dismissed as untimely where this challenge was not raised until more than 5 months after the protester knew the contents of the allegedly nonresponsive portion of the awardee's bid.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Acceptance time periods
- ■ ■ Expiration

Protest that awardee's bid expired prior to contract award is denied where record shows that agency-level protest tolled the expiration of awardee's bid acceptance period.

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## **Procurement**

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### **Contractor Qualification**

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

Protest that agency's affirmative determination of awardee's responsibility was made in bad faith is dismissed where protester fails to provide any evidence to support this allegation.

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## **Procurement**

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### **Bid Protests**

- Contract performance
- ■ Work suspension

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## **Procurement**

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### **Bid Protests**

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

Protest that agency improperly awarded contract prior to resolution of protest is dismissed since Competition in Contracting Act does not require an agency to withhold award unless the protest was filed within 10 calendar days of award.

**Procurement**

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**Bid Protests**

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

Where agency awarded contract on the basis of initial proposals without establishing a competitive range, protester is an interested party to raise issues which, if sustained, could result in recommendation that the agency establish a competitive range, conduct discussions, and request best and final offers.

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**Procurement**

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**Competitive Negotiation**

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

Protest challenging awardee's demonstration of ability to produce required components of missile warning system is denied where record supports agency's determination that the awardee's proposal adequately demonstrated the firm's ability to perform the contract.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee intends to provide components from a nonqualified source is denied where awardee's proposal expressly states that it will comply with all solicitation requirements and specifically references solicitation drawing identifying the qualified source.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Protest that awardee's proposal failed to comply with solicitation informational requirement is denied where protester's interpretation of section in question is inconsistent with other solicitation provisions and the language at issue does not constitute a material requirement.

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## **Procurement**

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### **Competitive Negotiation**

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

Protest that agency converted evaluation formula in solicitation which required cost/technical tradeoff to one in which award was based on the low priced, technically acceptable proposal is denied where the record shows that the agency made a valid cost/technical tradeoff.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Determination

Where agency awarded contract on the basis of initial proposals, protest that communications between agency and awardee prior to award constituted discussions, obligating the agency to conduct discussions with other offerors, is denied where the communications dealt with a matter of no consequence.

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**B-247150.2, July 13, 1992**

**92-2 CPD 16**

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## **Procurement**

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### **Competitive Negotiation**

- Evaluation
- ■ Subcriteria

Agency properly considered time frames and milestones proposed by the protester in solving particular problems in response to solicitation for training marine mammals since they bear on the offeror's understanding of the training requirements and are reasonably related to the stated evaluation criteria; this consideration did not involve an unidentified evaluation subfactor, but rather an element of the evaluation intrinsic to evaluation factors and subfactors evaluated to assess the offerors' understanding of the agency's requirements.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Protester's allegation that it did not receive meaningful discussions and was misled by an agency statement at oral discussions that the agency understood the protester's response to stated proposal deficiencies is denied, where the record considered as a whole shows that the protester should have been aware of the agency's continued concern with the stated deficiencies and that the protester's interpretation of the agency's statement at oral discussions was unreasonable.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

##### **■ ■ Cost realism**

##### **■ ■ ■ Adjustments**

##### **■ ■ ■ ■ Rates**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

##### **■ ■ Evaluation**

##### **■ ■ ■ Cost realism**

##### **■ ■ ■ ■ Rates**

The procuring agency, in conducting a cost realism analysis on a negotiated procurement for a cost reimbursement contract, reasonably concluded that some of the protester's proposed wage rates were unrealistic, based on a survey of wage rates for comparable positions in the geographic area of contract performance, and acted properly in adjusting upward the protester's proposed costs to reflect more realistic wage rates.

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**B-247913, July 13, 1992**

**92-2 CPD 17**

## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

##### **■ ■ Purposes**

##### **■ ■ ■ Competition enhancement**

The General Accounting Office generally will not consider protest that procuring agency should use more restrictive specifications to meet its minimum needs.

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## **Procurement**

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### **Sealed Bidding**

#### **■ Bids**

##### **■ ■ Samples**

##### **■ ■ ■ Submission time periods**

##### **■ ■ ■ ■ Adequacy**

Protest that agency did not permit sufficient time for offerors to submit bid samples is denied where the agency permitted more than the statutorily required 30 days, adequate competition was expected, and there is no indication that the agency deliberately attempted to exclude the protester from the procurement.

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**B-248218, July 13, 1992**

**92-2 CPD 18**

## **Procurement**

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### **Government Property Sales**

#### **■ Timber sales**

##### **■ ■ Bids**

##### **■ ■ ■ Certification**

Contracting agency properly rejected the high bid in a sealed bid timber sale set aside for small business concerns where the high bidder failed to include a Certificate of Small Business Status with her bid since, in the absence of a signed certificate, the bidder had not bound herself to comply with the performance restrictions set out in the certificate regarding the resale, logging, and manufacture of the timber.



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**Procurement**

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**Contractor Qualification**

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

Where the contracting officer finds the prospective awardee to be a responsible contractor based in part on the contractor's past performance record with the requiring agency and where there is no showing that this determination was made in bad faith, there is no basis to object to the agency's affirmative determination of the prospective awardee's responsibility.

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**B-246977.2, et al., July 14, 1992**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office affirms prior decision, which sustained a protest that a management and operations contractor of the Department of Energy violated the terms of its own procurement provisions and the "federal norm" in making award under a solicitation for a telecommunications system, rather than amending the quantity estimates contained in the solicitation to reflect significant changes in the government's estimated needs.

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**Procurement**

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**Bid Protests**

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

The General Accounting Office (GAO) denies request for modification of recommendation, contained in a prior decision sustaining a protest, that a management and operations contractor of the Department of Energy reopen the competition on the basis of a solicitation that reflects its current requirements, where GAO was cognizant of the potential termination liability in making the recommendation and where the evidence provided in support of the request was available during the initial consideration of the protest and, in any event, still demonstrates significant differences between the government's current requirements and those stated in the solicitation.

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**B-249331, July 14, 1992**

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**Procurement**

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**Bid Protests**

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

Protest of agency's rejection of bid as nonresponsive due to defective bid bond is dismissed as untimely where previous agency-level protest was untimely filed.

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## **Procurement**

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### **Bid Protests**

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

Untimely protest of agency's refusal to accept facsimile copy of bid bond will not be considered under "significant issue" exception to General Accounting Office (GAO) timeliness requirements where identical issue has been considered in prior GAO decisions.

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**B-246210.2, July 15, 1992**

**92-2 CPD 22**

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## **Procurement**

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### **Bid Protests**

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

Protester is not entitled to the costs of filing and pursuing its protest where, during the course of the protest involving allegations of conflict of interest, the agency after receipt of information from the protester promptly initiated an investigation into matter and discovered a contradiction in the sworn statements of the government employee which led to corrective action—the termination for convenience of the contract on the same day preliminary results of the investigation were received by the agency.

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**B-246339.2, July 15, 1992**

**92-2 CPD 23**

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## **Procurement**

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### **Bid Protests**

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

Request for reconsideration is denied where request contains no statement of facts or legal grounds that warrants reversal but merely restates arguments made by the protester which were previously considered by the General Accounting Office.

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**Procurement**

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**Special Procurement Methods/Categories**

- Service contracts
  - ■ Sewage services
  - ■ ■ Federal facilities
  - ■ ■ ■ Determination
- 

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**Procurement**

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**Special Procurement Methods/Categories**

- Service contracts
- ■ Sewage services
- ■ ■ Municipalities
- ■ ■ ■ Mandatory use

Based upon prior General Accounting Office and court decisions, agency reasonably viewed the Naval Weapons Station at Concord, California as a major federal facility entitled to contract for its own refuse collection services.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Interpretation

Protest that agency waived certain technical requirements, including those concerning software program development language and interchangeability with government furnished equipment is denied, where protester's arguments are primarily based on unreasonably restrictive interpretations of solicitation requirements.

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**Procurement**

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**Competitive Negotiation**

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Low offer is not materially unbalanced because of lower prices for the option quantities where there is no showing that the offer contained enhanced prices, and where sufficient option quantities are reasonably expected to be exercised so that no reasonable doubt exists that the offer will result in the lowest ultimate cost to the government.

**Procurement**

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**Bid Protests**

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

**Procurement**

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**Socio-Economic Policies**

- **Small business 8(a) subcontracting**
- ■ **Contract awards**
- ■ ■ **Propriety**

Protest against the proposed award of a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), is denied where the protester, who alleged that the procuring agency improperly favored a particular 8(a) contractor, fails to show that the procurement officials acted fraudulently or in bad faith.

**Procurement**

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**Special Procurement Methods/Categories**

- **Federal supply schedule**
- ■ **Offers**
- ■ ■ **Rejection**
- ■ ■ ■ **Propriety**

Agency properly rejected protester's proposed noncompliant commercial equipment submitted in response to *Commerce Business Daily* synopsis setting forth the agency's intent to place an order under another firm's nonmandatory multiple award schedule contract.

**Procurement**

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**Payment/Discharge**

- **Payment procedures**
- ■ **Set-off rights**

A compromise offer submitted to a carrier by an agency to settle a loss and damage claim does not bind the agency unless accepted by the carrier. Upon carrier rejection, the agency may set off from monies otherwise due to the carrier amounts up to the carrier's full contractual liability, whether or not they exceed the amount of the proposed compromise.

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**Procurement**

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**Payment/Discharge**

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

A carrier can be charged with the loss of an item not specifically listed on the inventory where the surrounding circumstances are sufficient to establish that the item was shipped and lost. A shipper who specifies details regarding the packing and tender of such an item to a carrier or warehouseman at origin has provided adequate evidence of tender to establish a *prima facie* case of carrier liability.

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## **Procurement**

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### **Payment/Discharge**

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

When goods pass through the hand of several bailees, any loss/damage is presumed to have occurred in the hands of the last bailee.

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**B-248025, July 17, 1992**

**92-2 CPD 28**

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## **Procurement**

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### **Payment/Discharge**

- **Shipment costs**
- ■ **Rates schedules**
- ■ ■ **Applicability**

Rates and charges in an air freight forwarder's government rate tender applied to the exclusion of higher charges quoted at the time the government ordered the services, because the services were no different than those covered by the tender.

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**B-247853.2, July 20, 1992**

**92-2 CPD 30**

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## **Procurement**

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### **Socio-Economic Policies**

- **Preferred products/services**
- ■ **Domestic products**
- ■ ■ **Statutory restrictions**

Direction in the report of congressional committee considering the contracting agency's appropriation that the agency not procure a non-domestic multibeam sonar system does not preclude the agency from awarding a contract for a non-domestic system where, notwithstanding the committee report, Congress ultimately appropriated a lump-sum amount without statutorily restricting what can be done with those funds.

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## **Procurement**

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### **Socio-Economic Policies**

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

General Accounting Office will not review an agency determination whether to waive Buy American Act requirements; the Act and implementing regulations vest discretion concerning such determinations in the head of the concerned agency.

**Procurement**

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**Sealed Bidding**

- Bids
  - ■ Evaluation
  - ■ ■ Price reasonableness
  - ■ ■ ■ Administrative discretion
- 

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Evaluation
- ■ ■ Price reasonableness
- ■ ■ ■ Administrative discretion

Agency reasonably determined that the protester's lowest responsive bid under an invitation for bids for tool kits was unreasonably priced based solely on a comparison with a lower priced nonresponsive bid, where there is no other legitimate benchmark available to judge the current reasonable market price, inasmuch as the government estimate in the particular case should be accorded little weight since it is based upon the prices of the protester, which has been the only supplier of the tool kits for 8 years, and the defect in the nonresponsive bid has a negligible impact on price.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Point ratings

Protester's disagreement with agency's evaluation of technical proposals for a custodial services contract does not serve as a basis for finding that the agency acted unreasonably in scoring competing proposals.

**Procurement**

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**Payment/Discharge**

- Shipment costs
- ■ Additional costs
- ■ ■ Evidence sufficiency

Under the Military Traffic Command's Freight Traffic Rules Publication No. 1A, the charge for a shipment weighing 7,000 pounds cannot exceed the charge for a shipment weighing 45,000 pounds but which otherwise is exactly the same. Therefore, if a carrier cannot assess an additional charge for exclusive use when such service is requested by the government in a shipment based upon a minimum weight of 45,000 pounds, then it cannot charge for such service on the 7,000 pound shipment where the government computes the charge for the 7,000 pound shipment as if it weighed 45,000 pounds.

**Procurement**

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**Competitive Negotiation**

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

Where solicitation required offerors seeking waiver of first article testing to identify the prior contracts under which the item or similar items had been tested and approved, the contracting agency reasonably denied waiver since the only two contracts identified by the offeror were awarded to a wholly-owned subsidiary of the offeror rather than the offeror itself and there was no indication that the subsidiary would be involved with performance of the contract.

---

**Procurement**

---

**Competitive Negotiation**

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Protest that awardee's offer should have been rejected as materially unbalanced because it contains a disparity between base and option prices is denied where record shows that offer does not contain overstated charges for any items.

---

**Procurement**

---

**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where agency identifies no significant technical deficiencies in the proposals, protest allegation that the agency failed to hold discussions with offerors and request best and final offers is not supported by record since, under these circumstances, discussions which merely afford offerors an opportunity to submit revised proposals are adequate.

---

**Procurement**

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**Bid Protests**

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

Protest that agency engaged in improper discussions with awardee is dismissed as untimely where it was not filed within 10 working days after the protester knew of the protest basis.

**Procurement**

---

**Competitive Negotiation**

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

Award to technically superior, higher priced offeror is proper where award on that basis is consistent with the solicitation evaluation criteria and the agency reasonably determined that the superior technical merit of successful proposal was sufficiently significant to justify award at higher cost.

**Procurement**

---

**Bid Protests**

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

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

**Procurement**

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**Bid Protests**

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

Prior decision denying protest that specifications for a project involving the rehabilitation and replacement of an underground steam distribution system are overly restrictive is affirmed where the agency has reasonably determined that a direct buried system will not meet its minimum needs in the particular application; the fact that the direct buried system proposed by the protester has been approved for use in projects similar to that contemplated by the solicitation does not negate the reasonableness of the agency's determination.

**Procurement**

---

**Bid Protests**

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

Where agency determined that all three proposals received were reasonably priced and essentially equal, and that awardee's lowest priced proposal represented the best value to the government, protester is an interested party under the General Accounting Office's Bid Protest Regulations to challenge the evaluation of proposals, despite the fact that protester submitted highest evaluated price, since if protest were sustained, there is no requirement that award be made to lowest priced offeror under solicitation calling for award on the basis of the "best value" to the government.



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## **Procurement**

---

### **Competitive Negotiation**

- **Contract awards**
- ■ **Source selection boards**
- ■ ■ **Documentation procedures**
- ■ ■ ■ **Compliance**

Protest is sustained where the record lacks adequate documentation to show that the agency's source selection decision was reasonably based on the announced evaluation criteria.

---

## **Procurement**

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### **Competitive Negotiation**

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

Protest is sustained where solicitation for transportation and disposal of polychlorinated biphenyl waste specifically required offerors to submit evidence of "established working relationships" with proposed transporters and with treatment, storage, and disposal facilities, or written evidence of their willingness to provide subcontracting services, but the record does not support the agency's determination that the awardee's proposal complied with that requirement.

---

## **Procurement**

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### **Contract Management**

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

Allegation that contracting agency improperly allowed awardee to modify its proposal after the date set for receipt of best and final offers involves a matter of contract administration which the General Accounting Office does not review, since letter allegedly modifying proposal concerned only how awardee would perform the contract, and did not affect the evaluation results or selection decision which had been completed prior to agency's receipt of letter.

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## **Procurement**

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### **Contract Management**

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

---

## **Procurement**

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### **Contractor Qualification**

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

Allegation that offerors will not comply with applicable regulations as reflected by the "interim storage" requirement in solicitation for the transportation and disposal of polychlorinated biphenyl waste concerns the contracting officer's affirmative determination of responsibility which the General Accounting Office will not review absent a showing of fraud or bad faith on the part of procuring officials or that definitive responsibility criteria in the solicitation were not met; whether a successful offeror ultimately complies with requirement pertaining to environmental standards is a matter of contract administration which we will not review.

---

## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Price competition**

#### **■ ■ ■ Adequacy**

#### **■ ■ ■ ■ Fixed-price contracts**

Although agencies may provide for a "cost realism" type analysis when soliciting firm, fixed-price proposals to measure an offeror's understanding of the requirements, where adequate competition is obtained, cost realism is generally not considered in the evaluation of such proposals since a firm, fixed-price contract provides for a definite price and places upon the contractor the risk and responsibility for all contract costs and resulting profit or loss.

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**B-247465.2, B-247467.2, July 22, 1992**

**92-2 CPD 39**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ GAO decisions**

#### **■ ■ ■ Reconsideration**

Bid Protest Regulations require party requesting reconsideration of prior decision to show that the decision contains errors of fact or law, or to present information not previously considered that warrants reversal or modification of decision; repetition of arguments made during consideration of the original protests and mere disagreement with decision do not meet this standard.

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**B-247923.2, July 22, 1992**

**92-2 CPD 40**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Protest timeliness**

#### **■ ■ ■ Apparent solicitation improprieties**

Protest that RFP provisions were unduly restrictive is dismissed where alleged improprieties were apparent from the face of the solicitation, but protester did not file its protest until after receiving notice of award to another offeror.

---

## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Competitive ranges**

#### **■ ■ ■ Exclusion**

#### **■ ■ ■ ■ Administrative discretion**

Agency properly eliminated protester's proposal from the competitive range where agency reasonably determined that the proposal failed to meet mandatory requirement of the RFP.

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## **Procurement**

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### **Bid Protests**

#### **■ Definition**

Allegation that procurement favored incumbent due to incumbent's greater understanding of the government requirements does not state a valid basis for protest.

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## **Procurement**

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### **Competitive Negotiation**

- **Contract awards**
  - ■ **Propriety**
- 

## **Procurement**

---

### **Competitive Negotiation**

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

Agency's failure to promptly notify protester that its proposal had been excluded from the competitive range does not affect the validity of an otherwise proper award.

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**B-247961, July 22, 1992**

**92-2 CPD 41**

## **Procurement**

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### **Competitive Negotiation**

- **Offers**
- ■ **Evaluation**
- ■ ■ **Testing**
- ■ ■ ■ **Flammability**

Proposal was properly rejected for failure to meet requirement for certified fire test results where offeror only promised that certified test results would be furnished but failed to provide them.

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## **Procurement**

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### **Bid Protests**

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

Protester whose proposal was properly rejected is not an interested party under the Bid Protest Regulations eligible to protest the acceptability of the awardee's offer where there is another acceptable offeror in the competition that would be in line for award if the protest were sustained.

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**B-248060, July 22, 1992**

**92-2 CPD 42**

## **Procurement**

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### **Sealed Bidding**

- **Bids**
  - ■ **Evaluation**
  - ■ ■ **Prices**
- 

## **Procurement**

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### **Sealed Bidding**

- **Contract awards**
- ■ **Propriety**

Where bid contained unit price that was inconsistent with extended price, agency reasonably determined from the face of the bid that the bidder intended to bid the extended price where the aggregate bid was the arithmetic sum of the extended prices and the bid bond was exactly 20 percent of the extended prices bid.

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**Procurement**

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**Bid Protests**

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

Protester is not entitled to reimbursement of the costs of filing and pursuing its protest where agency corrective action—cancellation of solicitation—was implemented approximately 2 weeks after the protest was filed.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Technical acceptability
- ■ ■ Descriptive literature

Agency properly eliminated proposal from competitive range as technically unacceptable where: (1) manufacturer's literature accompanying proposal listed several required features as options, but did not indicate that they were being offered; (2) the literature was found to show that the offered equipment in fact could not include one of the features; and (3) the proposal did not include required information explaining how the offered equipment would meet each requirement.

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**Procurement**

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**Sealed Bidding**

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

Where the bid opening officer receives a hand-carried bid after declaring the arrival of the bid opening time and record fails to establish that bid opening officer extended bid opening deadline, the agency properly rejected the bid as late.

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**Procurement**

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**Bid Protests**

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

Protest against award to low-priced, technically acceptable offeror is dismissed where protester is third-low offeror and protest does not challenge acceptability of second-low offeror.

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**Procurement**

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**Bid Protests**

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

Protest challenging agency's selection of a Standard Industrial Classification code size standard is dismissed where protest was filed after agency's award decision; protests against apparent solicitation improprieties must be filed prior to the time set for receipt of proposals.

---

**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Protester's interpretation of solicitation provision requiring cryogenic pumps to be of "manufacturers design" to mean that only manufacturers could bid is unreasonable where the solicitation contains no limitation as to what type of firms may bid.

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**Procurement**

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**Sealed Bidding**

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

Commercial catalogue information submitted by competing bidders provided a reasonable basis for the agency to determine that the cryogenic pumps they offered were of a "proven design," as required by the solicitation.

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**Procurement**

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**Bid Protests**

- Non-prejudicial allegation
- ■ GAO review

Contention that contracting agency improperly failed to release information concerning other offers received under request for proposals is without merit since during negotiated procurement the procuring agency is not permitted to provide information to an offeror concerning the names of other offerors or the details of other offers.

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## **Procurement**

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### **Contractor Qualification**

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

Protest that awardee is not capable of performing contract concerns the contracting agency's affirmative determination that the awardee is a responsible firm, a determination which the General Accounting Office will not review where there is no showing of fraud, bad faith, or misapplication of a definitive responsibility criterion.

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## **Procurement**

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### **Bid Protests**

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

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## **Procurement**

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### **Competitive Negotiation**

- Competitive advantage
- ■ Allegation substantiation

Protest that procuring agency was biased in favor of the awardee is denied where the protest is based solely on inference and unsupported allegations.

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## **Procurement**

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### **Bid Protests**

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

Protest that cost should have been the determining factor in the award decision under a negotiated procurement is dismissed as untimely when not filed before the closing time for the receipt of proposals.

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## **Procurement**

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### **Competitive Negotiation**

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

Protest that the procuring agency improperly awarded contract to a higher priced offeror is denied where the solicitation provided that technical factors were more important than price and the agency reasonably determined that the awardee's superior technical proposal was worth the additional cost.

---

## **Procurement**

---

### **Bid Protests**

#### **■ Allegation substantiation**

#### **■ ■ Burden of proof**

Protest that offers were not properly secured between the time they were received and evaluated is denied where the agency provides affidavits from the contracting officer and his assistant that the proposals were locked up after they were received and the protester fails to provide an affidavit to dispute the agency's position.

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**B-247225.3, July 27, 1992**

**92-2 CPD 54**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation errors**

#### **■ ■ ■ Allegation substantiation**

Protest that agency unreasonably analyzed the capacity of a proposed sonar system to meet a performance requirement of generating 35 consecutive sonar pulses is sustained where the agency's analysis does not provide reasonable support for its conclusion that the batteries proposed for the protester's sonar system do not have sufficient capacity to meet the performance requirement.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation**

#### **■ ■ ■ Technical acceptability**

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## **Procurement**

---

### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Risks**

#### **■ ■ ■ Evaluation**

#### **■ ■ ■ ■ Technical acceptability**

Protest contention that agency unreasonably evaluated whether the electrical cable proposed by awardee would overheat is denied since the awardee specifically committed itself to providing a cable that meets the solicitation requirements and since the protester does not argue that no cable could be made to handle the energy and temperature loads required by the awardee's proposed system; in the absence of evidence that a compliant cable could not be obtained, there was nothing unreasonable in the agency's decision to accept the risk of the awardee's proposed approach.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Cost realism**

#### **■ ■ ■ Evaluation**

#### **■ ■ ■ ■ Administrative discretion**

Agency evaluation of cost proposals was reasonable where based on computerized cost modeling system agency created cost estimates for each proposal based on specific features of proposed systems and used those cost estimates in the selection decision. Although protester argues that agency has not justified its use of higher cost estimates than proposed by the protester for a number of items, since agency has explained the factors that went into its estimating system to

arrive at estimates for particular cost items and protester has not explained why its own estimates are any more accurate than the agency's estimates, cost evaluation was reasonable.

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**B-247449, July 27, 1992**

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**Procurement**

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**Payment/Discharge**

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

A carrier is not liable for damage to an item if it can provide sufficient evidence that the goods at issue were not in the carrier's custody at the point at which they were damaged.

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**B-248019, July 27, 1992**

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**92-2 CPD 34****Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

An agency's decision to acquire aviation fuel via a sole-source award is justified where the agency's facilities are limited to receiving the fuel by pipeline and only one source can deliver the fuel by pipeline.

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**B-248050, July 27, 1992**

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**92-2 CPD 49****Procurement**

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**Competitive Negotiation**

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

Procuring agency satisfied its duty to disclose the evaluation factors and the relative importance of these factors by stating in the solicitation that award will be made to the lowest priced, technically acceptable offeror and stating that the weight of each technical evaluation factor is equal.

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**B-248086, July 27, 1992**

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**92-2 CPD 55****Procurement**

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**Competitive Negotiation**

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

Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because of numerous deficiencies in its technical proposal which were not susceptible to correction.



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## **Procurement**

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### **Competitive Negotiation**

- **Technical evaluation boards**
- ■ **Bias allegation**
- ■ ■ **Allegation substantiation**
- ■ ■ ■ **Evidence sufficiency**

Protest that one of four technical evaluators was biased against the protester is denied where the record contains no evidence of bias or bad faith and the technical score awarded the protester's proposal by the allegedly biased evaluator was the highest total score and did not vary significantly from the scores awarded by the other three evaluators.

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**B-248108, July 27, 1992**

**92-2 CPD 50**

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## **Procurement**

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### **Government Property Sales**

- **Timber sales**
- ■ **Bids**
- ■ ■ **Certification**

Agency properly rejected as nonresponsive protester's high bid in sealed-bid timber sale set aside for small business concerns, where protester failed to include with its bid a properly executed "Certificate of Small Business Status," which contained specific contract performance commitments.

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**B-248160, B-248161, July 27, 1992**

**92-2 CPD 56**

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## **Procurement**

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### **Competitive Negotiation**

- **Unbalanced offers**
- ■ **Materiality**
- ■ ■ **Determination**
- ■ ■ ■ **Criteria**

Awardee's offers for maintenance services submitted under two solicitations are not materially unbalanced where protester fails to show that reasonable doubt exists that awards to the firm will result in the lowest ultimate cost to the government.

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**B-249179.3, July 27, 1992**

**92-2 CPD 51**

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## **Procurement**

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### **Socio-Economic Policies**

- **Small business8(a) subcontracting**
- ■ **Eligibility**
- ■ ■ **Administrative determination**

The General Accounting Office (GAO) will not review a decision by the Small Business Administration (SBA) that a firm satisfies the eligibility requirements for a competitive award under section 8(a) of the Small Business Act; SBA, not GAO, has conclusive statutory authority to determine such matters for federal procurements under the 8(a) program.

**Procurement**

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**Competitive Negotiation**

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

Agency reasonably eliminated proposal (for an automated tracking telemetry antenna system) from the competitive range where the proposal was technically unacceptable as a result of its failure to address essential, material specification requirements and was not susceptible of being made acceptable without major revisions.

**Procurement**

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**Contractor Qualification**

- Corporate entities
- ■ Determination
- ■ ■ Misleading information
- ■ ■ ■ Allegation substantiation

Contention that award was improper because the agency had actual knowledge that the awardee had falsely represented itself in its offer as a corporation under the laws of Kansas is denied where the record fails to establish that the president of the protesting party told the contract specialist in a private meeting that the awardee lacked good standing as a corporation under the laws of Kansas.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Contractor Qualification**

- Corporate entities
- ■ Existence
- ■ ■ Determination

Protest that award was improper because the offeror's articles of incorporation had been forfeited for failure to file an annual corporate report is denied where the awardee took steps to become reinstated and the firm would not have been permitted to avoid the government's acceptance of its offer even during the period of forfeiture.

---

**Procurement**

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**Sealed Bidding****■ Invitations for bids****■ ■ Terms****■ ■ ■ Options**

Where bids were to be evaluated on the basis of a 1-year performance period and 4 option years, bid including a price for a fifth option year properly could be accepted for the period specified in the solicitation.

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**Procurement**

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**Competitive Negotiation****■ Discussion****■ ■ Adequacy****■ ■ ■ Criteria**

Where agency advised protester during discussions that its initial proposal lacked evidence of experience with and knowledge of real estate principles and practices, as well as other deficiencies, all of which the solicitation required offerors to demonstrate, agency conducted meaningful discussions.

---

**Procurement**

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**Socio-Economic Policies****■ Small businesses****■ ■ Competency certification****■ ■ ■ Applicability**

Small Business Administration's certificate of competency procedures do not apply where technical proposals are evaluated comparatively to determine most advantageous proposal.

---

**Procurement**

---

**Sealed Bidding****■ Bids****■ ■ Responsiveness****■ ■ ■ Brand name/equal specifications****■ ■ ■ ■ Salient characteristics**

Agency properly rejected bid received in response to brand name or equal solicitation as nonresponsive where item offered did not conform to listed salient characteristics.

---

**Procurement**

---

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

Protest that attribute listed as a salient characteristic is not a significant feature of the item to be acquired is dismissed as untimely where not filed prior to bid opening date.

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## **Procurement**

---

### **Bid Protests**

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

Protest that brand name model does not possess required salient characteristics is dismissed as untimely where not filed prior to bid opening date.

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## **B-248223.2, B-247193.3, July 29, 1992**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Where a protester files its own separate protest concerning a matter which is different, albeit related, to the subject of another protest, the protester cannot rely on the fact that it has filed its own protest in order to establish that it is entitled to request reconsideration of the decision issued pursuant to the other protest

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## **B-245289.3, July 30, 1992**

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## **Procurement**

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### **Competitive Negotiation**

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

## **Procurement**

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### **Competitive Negotiation**

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

In a negotiated, best value procurement, the procuring agency's quantification of the value of the higher-rated, higher-priced offeror's greater manning level of effort was not inconsistent with the stated evaluation scheme but was simply and properly a tool to assess whether the greater manning, upon which the offeror's technical superiority was based, was worth the associated cost premium.

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## **B-246736.4, July 30, 1992**

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**92-2 CPD 62**

## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where party requesting reconsideration does not demonstrate that decision was based on an error of fact or law.

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**B-248112, July 30, 1992**

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation****■ ■ ■ Subcriteria**

Protest is denied where protester fails to demonstrate that agency unreasonably determined that awardee's proposal was technically acceptable under evaluation subfactors governing the availability of spare parts and repair manuals and the training and experience of service personnel.

---

**B-248219, July 30, 1992**

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**Procurement**

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**Sealed Bidding****■ Unbalanced bids****■ ■ Materiality****■ ■ ■ Responsiveness**

Agency improperly determined that apparent low bid under a requirements-type solicitation was materially unbalanced where the solicitation's maximum estimated quantities were reasonably accurate representations of the agency's anticipated actual needs and the bid would have resulted in the lowest cost to the government.

---

**B-248303, July 30, 1992**

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**92-2 CPD 63****Procurement**

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

Protest that award was improperly made without discussions is untimely where the protester did not file its protest within 10 working days of being advised of the agency's decision to award without discussions.

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**B-246304.2 et al., July 31, 1992**

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**Procurement**

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**Socio-Economic Policies****■ Preferred products/services****■ ■ Domestic products****■ ■ ■ Applicability****■ ■ ■ ■ Fuel cells**

Under the so-called Berry Amendment provisions of the Department of Defense (DOD) Appropriations acts, DOD is prohibited from spending appropriated funds to purchase foreign-manufactured fuel cells where the fuel cells contain layers of synthetic fabric, an American product protected under the "Buy American" restriction of the Berry Amendment.

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**Procurement**

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**Sealed Bidding**

- Bid opening
- ■ Extension
- ■ ■ Refusal
- ■ ■ ■ Competition sufficiency

Although the contracting agency initially provided protester an incorrect bid opening date, the agency was not required to delay bid opening where the incorrect information was provided to only one bidder and the error was inadvertent; the agency made good-faith efforts to publicize and distribute the solicitation; adequate competition was obtained; the protester was informed of the correct date 2 weeks prior to bid opening; and the protester did not request an extension of bid opening until the day before opening. Late Cases in June 1992

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**B-247241.2, June 4, 1992**

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that agency improperly evaluated proposal which allegedly satisfied solicitation requirements as technically unacceptable is denied where record establishes that, in fact, proposal was given full consideration through the source selection process, and award was made on the basis of detailed cost/technical tradeoff analysis.

---

**Procurement**

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**Competitive Negotiation**

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

Protest that agency improperly downgraded proposal for use of particular system architecture is denied where agency reasonably concluded that the architecture restricted the usefulness of the system for purposes encompassed by the solicitation requirements.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that discussions were not meaningful is denied where agency repeatedly conveyed its concern about the restrictions inherent in the offeror's proposed system architecture.

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