

**GAO**

United States General Accounting Office  
**Office of General Counsel**

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

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Vol. I, No. 1

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## Notice

To provide a comprehensive overview of Comptroller General decisions, the Office of General Counsel has expanded its monthly pamphlet of *Digests of Unpublished Decisions of the Comptroller General of the United States* to include the digests of all decisions printed in the annual volume of *Decisions of the Comptroller General of the United States*. Effective immediately, the digests of all substantive legal decisions rendered by the Comptroller General will be presented in one publication retitled *Digests of Decisions of the Comptroller General of the United States*. We hope you find this unified pamphlet a useful means for researching Comptroller General decisions.

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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 in connection with 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, 98 Pub. L. 369, July 18, 1984. Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-229329.2, Sept. 29, 1989. The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1989).

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# Appropriations/Financial Management

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**B-234815, October 3, 1989**

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**Appropriations/Financial Management**

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**Accountable Officers**

■ **Relief**

■ ■ **Account deficiency**

Demand letters were not issued and referral to a collection division was not made in accordance with the Federal Claims Collection Standards. *See* 62 Comp. Gen. 476 (1983). An accountable officer's disagreement with legal advice over how to characterize a loss will not justify a failure to take diligent collection actions, particularly when the finance office has been advised repeatedly by legal counsel of the need to refer losses to a collection division within 3 months, cited to relevant authority, and warned that relief may be denied if diligent collection is not pursued. Collection action should have continued while questions on how to characterize a loss were being pursued. Thus, diligent collection efforts were not taken and relief is denied under 31 U.S.C. § 3527(c).

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**B-236958, October 3, 1989**

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**Appropriations/Financial Management**

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**Judgment Payments**

■ **Interest**

■ ■ **Appeals**

GAO has long maintained that 31 U.S.C. § 1304 is only a conditional appropriation of funds to pay certain judgments, along with interest (both pre- and post-judgment) as otherwise authorized by law against the United States, and that the reference in that law to "interest . . . specified in the judgments [payable from that appropriation]" refers to pre-judgment interest on the claim under some other statutory or contractual provision, rather than post-judgment interest on the court's order. GAO therefore recommends the Justice Department take an appeal from a district court judgment holding that, where no other statutory or contractual waiver of sovereign immunity applies, the provisions of section 1304, in and of themselves, waive federal sovereign immunity from interest awards and give district courts discretion to include in their orders post-judgment interest awards payable from that appropriation.

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**B-232357, October 10, 1989\*\*\***

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**Appropriations/Financial Management**

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**Claims Against Government**

■ **Unauthorized contracts**

■ ■ **Quantum meruit/valebant doctrine**

A claim against the Army, arising from its continued use of rental automated data processing equipment and services for nearly a year after the applicable contract had expired, may be paid on a *quantum meruit/quantum valebant* basis. However, since the equipment and services at issue could have been procured under a nonmandatory General Services Administration (GSA) Federal Supply Schedule, the amount of the claim is reduced to that which would have been paid had the items been properly procured under the relevant schedule.

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**B-232772, October 17, 1989**

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**Appropriations/Financial Management**

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**Accountable Officers**

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

Request for relief of finance officer for loss resulting from an improper payment when both the original and recertified check have been cashed is moot when funds are recovered from the bank that negotiated the original check and the finance officer's account is credited.

---

**Appropriations/Financial Management**

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**Accountable Officers**

- Disbursing officers
- ■ Relief
- ■ ■ Account deficiency
- ■ ■ ■ GAO authority

Record submitted with relief request did not contain adequate documentation for us to properly evaluate whether the agency's collection actions were diligent when it suspended collection action in response to a request from the Office of Command Security, for over 10 months from when the loss occurred.

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**B-235036, October 17, 1989**

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**Appropriations/Financial Management**

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**Accountable Officers**

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

Relief is granted Treasury disbursing official under 31 U.S.C. § 3527(c) from liability for an erroneous payment resulting from payee's negotiation of both the original and replacement checks. The original check was mistakenly issued along with the replacement when a computer operator failed to pull the original during verification procedures. The disbursing official maintained and enforced an adequate system of procedures and controls to avoid errors and there was no indication of bad faith or a lack of due care. Collection efforts were unsuccessful due to the death of the payee shortly after the finance center was notified of the loss.

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**B-233607, October 26, 1989\*\*\***

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Awards/honoraria

The spouse of an employee was issued invitational travel orders to attend a Departmental Awards Ceremony honoring the employee. Her travel expense claim may be paid. Under 5 U.S.C. § 4503 (1982), each agency head has the discretion to determine the award to be given and the ceremony commensurate with that award and to incur necessary expenses to that end. If the agency determines that the presence of the employee's spouse would further the purposes of the awards program, travel expenses for the spouse may be considered a "necessary expense" under 5 U.S.C. § 4503. 54 Comp. Gen. 1054 (1975) is overruled.

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**B-233993, October 27, 1989\*\*\***

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Time availability
- ■ Fiscal-year appropriation
- ■ ■ Claim settlement
- ■ ■ ■ Retroactive compensation

Agency should charge back pay claims awarded pursuant to an administrative determination to the fiscal year or years to which the award related.

---

**Appropriations/Financial Management**

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**Judgment Payments**

- Permanent/indefinite appropriation
- ■ Availability

Back pay claims awarded by judicial determination resulting in a final judgment should be paid from the judgment fund established by 31 U.S.C. § 1304.

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Time availability
- ■ Fiscal-year appropriation
- ■ ■ Claim settlement
- ■ ■ ■ Interest

Effective December 22, 1987, interest on back pay claims applies to periods before and after that date and is chargeable to the same appropriations and in the same manner as is the back pay upon which the interest is paid.

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**B-233276, October 31, 1989**

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**Appropriations/Financial Management**

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**Accountable Officers**

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

A State Department Disbursing Officer who approved an overpayment as a result of an omitted decimal point is not relieved of liability where the voucher had been manually altered and the accompanying schedule did not spell out the dollar amount in words as was the usual practice.

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**B-236229, October 31, 1989**

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**Appropriations/Financial Management**

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**Accountable Officers**

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

Relief from liability is granted Army disbursing official and his deputy pursuant to 31 U.S.C. § 3527(c) for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no in-

dication of bad faith on the part of the disbursing official and his deputy, and collection actions were initiated in a timely and adequate manner.

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# Civilian Personnel

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**B-230726, October 3, 1989**

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## Civilian Personnel

### Relocation

- Household goods
- ■ Actual expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

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## Civilian Personnel

### Relocation

- Household goods
- ■ Definition
- ■ ■ Restrictions

A transferred employee was authorized to move his household goods under a government bill of lading (GBL), and he chose to move himself. He is entitled to be reimbursed only for his actual expenses not to exceed what the government would have paid to move the goods by commercial carrier. The reimbursement, however, may not include the rental cost of an automobile trailer used to transport his car, since cars are not included in the definition of household goods which may be transported at government expense. The fact that the employee loaded the car with household goods is not a basis for payment, since the rental of the trailer was primarily to transport the car.

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**B-234692, October 3, 1989**

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## Civilian Personnel

### Travel

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

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## Civilian Personnel

### Travel

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

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

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**B-235291, October 3, 1989**

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**Civilian Personnel**

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**Compensation****■ Prevailing rate personnel****■ ■ Wage rates****■ ■ ■ Determination**

In response to constituent's concern that his overtime pay was reduced 26 percent by MSC, Congresswoman is advised that MSC sets pay rates for its civilian mariners according to the prevailing rate system set out in 5 U.S.C. § 5348(a) (1982), and MSC's discretionary authority to set rates of pay consistent with the public interest is acknowledged and well settled by decisions of this Office and of the courts. See cases cited.

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**B-235720, October 3, 1989**

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**Civilian Personnel**

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

An Army employee whose use of his privately-owned vehicle was not determined to be advantageous to the government by competent authority is not entitled to mileage for travel on a daily basis between his place of abode and his alternate duty station during his temporary assignment.

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**B-233391, October 4, 1989**

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**Civilian Personnel**

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**Relocation****■ Temporary quarters****■ ■ Actual expenses****■ ■ ■ Fraud****■ ■ ■ ■ Burden of proof**

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**Civilian Personnel**

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**Relocation****■ Temporary quarters****■ ■ Actual subsistence expenses****■ ■ ■ Reimbursement****■ ■ ■ ■ Eligibility**

In support of his appeal of a Claims Group settlement denying payment of his voucher claiming temporary quarters subsistence expenses, an employee submits as new evidence a decision of the Merit Systems Protection Board which held that the charge of fraud against the employee was not supported by a preponderance of the evidence. In view of this decision, we conclude that the agency has not met its burden of establishing fraud, and reverse the Claims Group denial on that basis. However, we return the voucher to the agency for a determination as to the reasonableness of the expenses claimed.



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**B-234993, October 5, 1989**

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**Civilian Personnel**

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**Travel**

- Overseas allowances
- ■ Tour renewal travel
- ■ ■ Eligibility

An employee stationed in Alaska who served only 17 months of a 24-month service agreement is not eligible for tour renewal agreement travel under 5 U.S.C. § 5728 (1982) and may not be reimbursed for travel performed at personal expense.

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**B-232179, October 6, 1989**

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**Civilian Personnel**

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**Travel**

- Overseas travel
- ■ Eligibility
- ■ ■ Service contracts
- ■ ■ ■ Contract renewal

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

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**B-232394, October 6, 1989**

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**Civilian Personnel**

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**Relocation**

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee on permanent change-of-station transfer from Colorado to Puerto Rico incurred early termination fees incident to his termination of a lease and purchase of the automobile pursuant to an automobile lease agreement where the lease prohibited taking the car out of the continental United States. The claim for reimbursement is denied since Federal Travel Regulations (FTR) paragraph 2-6.2h, which authorizes reimbursement of the cost of settling an unexpired lease, applies only to leases on residences, not automobiles. Also, FTR paragraph 2-3.1(c)(1) specifically excludes from miscellaneous expense coverage losses and costs incurred in selling or buying personal property.

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**B-233428, October 6, 1989**

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**Civilian Personnel**

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**Leaves Of Absence**

- Annual leave
  - ■ Forfeiture
  - ■ ■ Restoration
- 

**Civilian Personnel**

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**Leaves Of Absence**

- Leave repurchase
- ■ Procedures
- ■ ■ Occupational illnesses/injuries

An employee who used annual and sick leave in leave years 1979, 1980, 1984, and 1985 incident to a work-related illness, elected to buy back leave used and accept workers' compensation. Upon reconstruction of the employee's leave record to show the recredit of the leave as of the time it was used, there is a loss of accrual of leave for the period changed. Further, annual leave reinstated in excess of the maximum carryover stated in 5 U.S.C. § 6304(a) is subject to forfeiture and may not be restored under 5 U.S.C. § 6304(d)(1).

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**B-234528, October 6, 1989**

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**Civilian Personnel**

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**Leaves Of Absence**

- Annual leave
- ■ Forfeiture
- ■ ■ Restoration

An employee's claim for restoration of forfeited annual leave is denied since the agency's failure to counsel him about possible forfeiture of annual leave does not constitute administrative error under 5 U.S.C. § 6304(d)(1)(A) (1982).

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**B-235070, October 6, 1989**

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**Civilian Personnel**

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**Travel**

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

Where an employee combines personal travel with official travel, transportation reimbursement is limited to the constructive cost of direct travel by the mode of transportation authorized, or the actual cost of transportation, whichever is less.

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## **Civilian Personnel**

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### **Travel**

- Rental vehicles
- ■ Expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

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## **Civilian Personnel**

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### **Travel**

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

An employee used a rental car for part of indirect travel to temporary duty location. Even though rental car was not authorized for official travel, the cost of the rental car may be included as part of the employee's actual transportation costs for comparison to the constructive cost of direct travel. Only that portion of the rental car fee which reasonably relates to transportation for official business may be reimbursed.

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**B-233562, October 10, 1989\*\*\***

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## **Civilian Personnel**

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### **Compensation**

- Labor standards
- ■ Exemptions
- ■ ■ Administrative determination
- ■ ■ ■ GAO review

Pursuant to 4 C.F.R. Part 22, an agency and a union jointly request a determination from the Comptroller General on the exempt/nonexempt status for overtime compensation under the Fair Labor Standards Act (FLSA) of a grade GS-12 Audio Visual Production Officer. Since the Office of Personnel Management has the authority to administer the FLSA under 29 U.S.C. § 204(f) (1982) for federal employees, including the authority to make final determinations as to whether employees are covered by its various provisions, the General Accounting Office will not consider overtime claims under FLSA where the employee's position has been classified by OPM as exempt. Appeals of classification status should be directed to OPM.

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## **Civilian Personnel**

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### **Compensation**

- Overtime
- ■ Claims
- ■ ■ Statutes of limitation

The fact that an employee's grievance concerning overtime pay was untimely filed under the terms of a collective bargaining agreement does not preclude consideration of his claim for such pay by the General Accounting Office provided it is filed within the 6 years prescribed in 31 U.S.C. § 3702.

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## Civilian Personnel

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### Compensation

#### ■ Overtime

#### ■ ■ Eligibility

#### ■ ■ ■ Travel time

Entitlement to overtime compensation by federal employees while in a travel status under 5 U.S.C. § 5542(b)(2)(B)(iv) requires that travel result from an event which could not be scheduled or controlled administratively. Travel performed by an employee to attend an event scheduled and conducted by the employee's agency clearly does not meet this requirement, and the employee may not be paid overtime compensation for that travel.

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## B-234721, October 10, 1989

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## Civilian Personnel

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### Relocation

#### ■ Temporary quarters

#### ■ ■ Actual subsistence expenses

#### ■ ■ ■ Reimbursement

#### ■ ■ ■ ■ Eligibility

A transferred employee claims temporary quarters subsistence expense (TQSE) reimbursement during a period when he was required to remain at his old duty station after his immediate family moved out of their residence, traveled to his new permanent duty station, and occupied permanent quarters at that location. His claim is denied. Paragraph 2-5.2f of the Federal Travel Regulations (Supp. 10, Nov. 14, 1983), provides, without exception, that a period of authorized TQSE terminates for a transferred employee and immediate family whenever the employee or any member of his family occupies permanent quarters in connection with the transfer. *Glenn R. Dunavan*, B-188005, May 19, 1977; *Kenton L. Culbertson*, B-188604, Feb. 14, 1978.

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## B-234964, October 10, 1989

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## Civilian Personnel

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### Relocation

#### ■ Household goods

#### ■ ■ Shipment

#### ■ ■ ■ Reimbursement

#### ■ ■ ■ ■ Eligibility

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## Civilian Personnel

---

### Relocation

#### ■ Household goods

#### ■ ■ Temporary storage

#### ■ ■ ■ Reimbursement

#### ■ ■ ■ ■ Eligibility

An employee who incurred expenses for temporary storage and transportation of household goods prior to issuance of a travel authorization, but after written confirmation of selection to a new position at a new duty station, is eligible for reimbursement of such expenses since they were incurred after the agency exhibited a clear intention to transfer the employee. Reimbursement must be limited to a maximum of 180 days for temporary storage and the constructive cost of shipping the goods in one shipment by the most economical route from the old to the new duty station. However, reimbursement for the shipment and storage of a sleep sofa acquired after temporary storage of household goods began may not be allowed.

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**B-236283, October 12, 1989**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Lot sales

A transferred employee who divides his property into two parcels may not be reimbursed for losses incurred in the preparation for sale of the parcel that was not reasonably related to his residence.

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**B-232546, October 17, 1989**

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**Civilian Personnel**

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**Compensation**

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

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

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**B-231924, October 24, 1989**

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**Civilian Personnel**

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**Compensation**

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

An employee, who failed to review his leave and earnings statements and notice an unexplained step increase and the significant increase in his salary, is denied waiver of the resulting overpayment of salary.

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**B-233826, October 24, 1989**

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**Civilian Personnel**

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**Travel**

- Advances
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A transferred employee was issued travel orders erroneously authorizing reimbursement of temporary quarters subsistence expenses (TQSE) and was given a travel advance. After he incurred expenses in reliance on the orders and submitted a voucher, the agency discovered the error. Repayment of that portion of his travel advance for TQSE still outstanding is waived under 5 U.S.C. § 5584, as amended, since the advance was made to cover expenses erroneously authorized and the employee actually spent the advance in good faith reliance on the erroneous travel orders.

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**B-235467, October 24, 1989**

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**Civilian Personnel**

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**Compensation**

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

An employee who was subject to the Civil Service Retirement Offset System received overpayments of pay because his agency failed to deduct the correct retirement amount from his salary. Waiver is granted under the provisions of 5 U.S.C. § 5584 (1982), notwithstanding the fact that the amount of the overpayments could be withdrawn from the retirement fund, where there is no indication of fault and where the overpayments occurred over a period of time so that the employee had a reasonable basis to rely upon receipt of the money.

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**B-234180, October 25, 1989**

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**Civilian Personnel**

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**Compensation**

- Employment status
- ■ De facto employment

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

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**B-214767.2, October 26, 1989**

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**Civilian Personnel**

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**Relocation**

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

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

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**B-235336, October 26, 1989**

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**Civilian Personnel**

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**Relocation**

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

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

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**B-230880.2, October 27, 1989**

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**Civilian Personnel**

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**Relocation**

- Expenses
- ■ Debt collection
- ■ ■ Waiver

Waiver is granted for an erroneous payment of relocation expenses where the employee relied on the agency's misinterpretation of the applicable relocation regulations and where there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee.

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**B-233993, October 27, 1989\*\*\***

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**Civilian Personnel**

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**Compensation**

- Retroactive compensation
- ■ Interest

Effective December 22, 1987, interest on back pay claims applies to periods before and after that date and is chargeable to the same appropriations and in the same manner as is the back pay upon which the interest is paid.

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**B-231703, October 31, 1989**

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**Civilian Personnel**

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**Travel**

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

Reduction in the per diem allowance of an employee who attends a conference for which the conference fee includes meals is not appropriate where the employee, for clearly *bona fide* reasons beyond personal taste, cannot consume the conference provided meals and cannot arrange for the conference to provide acceptable substitute meals. Therefore, Orthodox Jew who could not obtain kosher meals at the conference and was required to purchase substitute meals is entitled to full per diem.

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# Military Personnel

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**B-234767.2, October 6, 1989**

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## **Military Personnel**

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### **Relocation**

■ Household goods

■ ■ Shipment

■ ■ ■ Eligibility

A member ordered to vacate government quarters and relocate to other government quarters without a change of station may not be reimbursed for the cost of moving a bamboo fence to the new quarters, since the fence is not essential to the occupation of his quarters and is matter of personal convenience to the member.



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# Procurement

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**B-236114, October 2, 1989\*\*\***

**89-2 CPD ¶ 287**

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## Procurement

### Socio-Economic Policies

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

The General Accounting Office will not question a contracting agency's determination that a small business concern is nonresponsible, or the agency's subsequent reassessment of new information regarding the concern's responsibility, where, following the agency's referral of the nonresponsibility determination to the Small Business Administration (SBA), the protester fails to apply to the SBA for a certificate of competency despite urging by the contracting agency that it do so.

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**B-235818, October 3, 1989**

**89-2 CPD ¶ 288**

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## Procurement

### Competitive Negotiation

- Quotations
- ■ Evaluation
- ■ ■ Technical acceptability

Quote was properly rejected where it did not meet one of the requirements of the request for quotations and the agency considered this feature necessary to meet its minimum needs.

---

## Procurement

### Bid Protests

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

Protest against requirement set forth in request for quotations is untimely when filed after delivery order is placed and raised for the first time in response to agency report.

---

## Procurement

### Bid Protests

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

Protest challenging responsiveness of awardee's quote based on information in agency report is dismissed as untimely because the protester failed to diligently pursue the information by examining the awardee's Federal Supply Schedule contract which has been available to the public since 1986.

**Procurement**

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**Competitive Negotiation**

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

**Procurement**

---

**Competitive Negotiation**

- Initial offers
- ■ Rejection
- ■ ■ Propriety

Where protester submitted required descriptive literature indicating that product did not meet requirements of commercial item description, the agency's rejection of that proposal without discussions and its award of a contract, on the basis of initial proposals, to the lowestpriced, technically acceptable offeror, is not unreasonable.

**Procurement**

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**Bid Protests**

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

Protest that specification is impossible to meet is dismissed as untimely when not filed before initial closing date for receipt of proposals.

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**Procurement**

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**Bid Protests**

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

Contention first raised in comments on agency report that agency should have held discussions with the protester before rejecting its proposal as technically unacceptable is dismissed as untimely where it is not filed within 10 working days after the protester receives notice of the rejection of its proposal.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration was properly dismissed as untimely where it was filed more than 10 working days after the protester received the initial dismissal of the protest.

**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Justification
- ■ ■ ■ Urgent needs

Sole-source award of a contract is not objectionable where procuring activity reasonably determined that the using activity had a *bona fide* urgent need for the items and protester does not dispute agency's finding that only one firm could meet the required urgent delivery schedule.

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Allegation that urgent need for supplies was created by procuring activity's failure to conduct advance procurement planning is denied where record does not support protester's contention.

**Procurement**

---

**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Justification
- ■ ■ ■ Procedural defects

Agency's award of a sole source reprocurement for guard services, covered by a contract which was defaulted, for the remainder of the base contract period and 2 option years, to the second low bidder under the original solicitation was not reasonable since the agency did not justify any urgent and compelling need to noncompetitively procure the option requirements.

**Procurement**

---

**Competitive Negotiation**

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Protest that agency allowed insufficient time for preparation of proposals is denied where period allowed exceeded the statutorily mandated minimum time and did not preclude full and open competition.

---

**Procurement**

---

**Specifications**

- Minimum needs standards
- ■ Total package procurement
- ■ ■ Propriety

Agency determination to procure by means of a total package rather than by separate procurements for divisible portions of total requirement was reasonable where agency sought to assure

interchangeability and compatibility between components of two computer systems and to assure integration of new technologies.

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**B-235745, October 4, 1989**

**89-2 CPD ¶ 305**

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**Procurement**

**Sealed Bidding**

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Requests for proposals

Protest that after cancellation of a sealed bid procurement, award following negotiations at a price higher than the lowest rejected bid is precluded by Federal Acquisition Regulation (FAR) § 15.103(c), is denied; prohibition applies only where cancellation is based on unreasonable prices or collusive bidding, not the case here.

---

**Procurement**

**Sealed Bidding**

- Invitations for bids
- ■ Cancellation
- ■ ■ Federal procurement regulations/laws
- ■ ■ ■ Authority delegation

Protest that General Services Administration (GSA) failed to comply with FAR provision requiring agency head to authorize cancellation of invitation for bids, is denied; GSA Acquisition Regulation delegates cancellation authority, and determination to cancel was signed by the proper official.

---

**Procurement**

**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that oral discussions were inadequate is dismissed where protester's best and final offer (BAFO) was rejected not for the alleged discussion deficiencies, but instead for a deficiency first introduced in the firm's BAFO.

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**B-235755, October 4, 1989**

**89-2 CPD ¶ 306**

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**Procurement**

**Competitive Negotiation**

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

Proposal may be downgraded if offeror fails to provide required corporate or individual employee references. Where contracting agency specifically requested offeror to provide "references, names and phone numbers of agencies or companies who [could] verify employees' [five in all] or the company's experience" on computer equipment to be maintained under proposed contract, and company submitted only one name and phone number of individual who allegedly could confirm only one employee's experience with now-defunct concern, contracting agency properly downgraded protester's proposal.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation**

#### **■ ■ ■ Downgrading**

#### **■ ■ ■ ■ Propriety**

General Accounting Office (GAO) will not attribute prejudicial motive to contracting agency on basis of mere suggestion. Where contracting agency was justified in downgrading protester's proposal for failure to furnish required references, GAO concludes that agency did not exhibit bias against protester.

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**B-236038, October 4, 1989**

**89-2 CPD ¶ 307**

## **Procurement**

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### **Socio-Economic Policies**

#### **■ Small businesses**

#### **■ ■ Competency certification**

#### **■ ■ ■ Applicability**

Certificate of competency (COC) procedures do not apply when a small business concern's offer in a negotiated procurement is considered weak under technical evaluation factors relating to experience and expertise; the COC program is reserved for reviewing nonresponsibility matters, not the comparative evaluation of technical proposals.

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**B-236181, October 4, 1989**

**89-2 CPD ¶ 308**

## **Procurement**

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### **Sealed Bidding**

#### **■ Bids**

#### **■ ■ Responsiveness**

#### **■ ■ ■ Bid guarantees**

#### **■ ■ ■ ■ Facsimile**

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

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**B-236766, B-236887, October 4, 1989**

**89-2 CPD ¶ 309**

## **Procurement**

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### **Bid Protests**

#### **■ Moot allegation**

#### **■ ■ GAO review**

Protests are academic where agency acted reasonably in issuing corrective amendments satisfying protester's objections to ambiguous and restrictive solicitations.

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Preparation costs**

Protester is not entitled to bid protest costs where there are no decisions on the merits.

**Procurement**

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**Bid Protests**

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

Protest that agency improperly failed to send a protester a solicitation is untimely when filed more than 10 working days after the closing date for receipt of offers which was originally published in the *Commerce Business Daily* and subsequently postponed 2 weeks by an amendment to the solicitation.

**Procurement**

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**Socio-Economic Policies**

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

Protest that Small Business Administration (SBA) improperly refused to issue a certificate of competency is dismissed where protester fails to make a showing of possible fraud or bad faith on the part of the SBA which is a prerequisite for review of SBA's action by the General Accounting Office (GAO) under GAO's Bid Protest Regulations.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Additional information

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Protester is entitled to recover the costs of filing and pursuing its protest and request for reconsideration where the protester was improperly denied a fair opportunity to compete for award.

**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Competition enhancement

Compelling reason exists for canceling an invitation for bids after bid opening, where agency determines that needs of the government can be satisfied by products meeting less restrictive specifications and award to protester would not be fair to competitors.

**Procurement**

---

**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Omission
- ■ ■ ■ Incorporation by reference

A bid which omits required Standard Form 1442 (Solicitation, Offer and Award) is nonresponsive when the bid otherwise does not include the material provisions of the omitted form.

**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions were meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct any deficiencies in its proposal.

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**Procurement**

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**Competitive Negotiation**

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

Protest alleging that contracting agency officials acted unfairly and in bad faith in determining what option quantities would be used in evaluation of price proposals is denied, where there is no evidence that contracting officials intended to harm the protester and the record shows that the decision concerning what option quantities to use for evaluation purposes was made well before offerors were required to submit initial proposals.

**Procurement**

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**Special Procurement Methods/Categories**

- Research/development contracts
- ■ Contract awards
- ■ ■ Foreign sources

Agency did not violate statutory prohibition against contracting with foreign corporations for research and development where proposal of United States firm, while found acceptable, was not evaluated as essentially equal from a technical standpoint to successful proposal of foreign firm.

**Procurement**

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**Competitive Negotiation**

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

Award to higher priced, higher technically rated offeror is not objectionable where the solicitation award criteria made technical considerations more important than price, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

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**Procurement**

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**Competitive Negotiation**

- **Technical evaluation boards**
- ■ **Conflicts of interest**
- ■ ■ **Corrective actions**

Contracting agency's action in convening a second technical evaluation panel was reasonable where the agency considered the chairperson of the first panel to have a potential appearance of conflict of interest because of the individual's prior working relationship with the chief executive officer of the protester.

**Procurement**

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**Sealed Bidding**

- **Invitations for bids**
- ■ **Cancellation**
- ■ ■ **Justification**
- ■ ■ ■ **Minimum needs standards**

A compelling reason exists for canceling an invitation for bids (IFB) for a magnetic field microwave irradiator after bid opening, and completing the acquisition using negotiated procedures where the agency's lack of experience with, and the very specific needs for the machine, render the IFB specifications inadequate to assure the minimum needs of the government are met.

**Procurement**

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**Bid Protests**

- **GAO procedures**
- ■ **Interested parties**

Large business is an interested party to challenge contracting agency's decision to conduct procurement as total small business set-aside rather than including partial set-aside for labor surplus area (LSA) concerns since if protest were sustained and solicitation reissued with a partial LSA set-aside, firm would be eligible for award under the LSA portion of the solicitation.



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## **Procurement**

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### **Socio-Economic Policies**

#### **■ Small business set-asides**

##### **■ ■ Use**

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

Contracting agency's decision to conduct procurement as total small business set-aside rather than as partial labor surplus area set-aside was proper where based upon prior procurement history, contracting officer reasonably determined that severance of acquisition into two or more production runs would not be economical.

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**B-236062, B-236063, October 5, 1989**

**89-2 CPD ¶ 319**

## **Procurement**

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### **Socio-Economic Policies**

#### **■ Disadvantaged business set-asides**

##### **■ ■ Use**

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

The decision to set aside a procurement for small disadvantaged business is a business judgment within the broad discretion of the contracting officer which will not be questioned unless a clear showing is made that the contracting officer abused his discretion.

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**B-236276, October 5, 1989**

**89-2 CPD ¶ 320**

## **Procurement**

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### **Sealed Bidding**

#### **■ Bid guarantees**

##### **■ ■ Responsiveness**

##### **■ ■ ■ Letters of credit**

##### **■ ■ ■ ■ Adequacy**

Where a letter of credit submitted as a bid guarantee incorporates terms that create uncertainty as to whether the letter would be enforceable against the issuing bank, the letter is unacceptable as a firm commitment within the meaning of the standard bid guarantee clause included in the solicitation, and the bid is nonresponsive.

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**B-237026, October 5, 1989**

**89-2 CPD ¶ 321**

## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

##### **■ ■ Protest timeliness**

##### **■ ■ ■ 10-day rule**

##### **■ ■ ■ ■ Adverse agency actions**

Protest filed with General Accounting Office (GAO) more than 10 working days after protester received contracting officer's denial of its agency-level protest is dismissed as untimely. The fact that the contracting officer allegedly failed to advise the protester as to its right to protest at the GAO does not toll the time for filing at the GAO as prospective government contractors are on constructive notice of GAO's Bid Protest Regulations because they are published in the Federal Register.

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**Procurement**

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**Contractor Qualification**

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

Protest that contracting officer's affirmative determination of awardee's responsibility was made in bad faith is dismissed where the protester fails to allege facts that reasonably indicate the government actions complained of were improperly motivated.

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**B-234785, October 6, 1989**

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**Procurement**

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**Payment/Discharge**

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

A travel agency provided an employee with an airline ticket for travel to a training course, based on erroneous advice from the employee's supervisor that the costs of the ticket could be billed to the training sponsor. The travel agency may be paid for the costs of the employee's air travel under the *quantum meruit* theory, since it incurred the costs in good faith and the government benefited from the employee's travel. The travel agency may not recover the amount it paid the employee for an unused portion of her ticket since that payment was retained by the employee and did not benefit the government.

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**B-235016.2, October 6, 1989**

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**Procurement**

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**Socio-Economic Policies**

- Preferred products/services
- ■ Domestic sources
- ■ ■ Foreign products
- ■ ■ ■ Price differentials

Whether the dollar threshold for applying the Trade Agreements Act properly has been met is determined by reference to the estimated value of the entire acquisition, not the potential value of an offeror's individual contract.

---

**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Contract awards
- ■ ■ Preferences
- ■ ■ ■ Applicability

Solicitation clause that instructs procuring agency to resolve tie offers in favor of small business concerns does not establish a preference program for such concerns which would remove the procurement from application of the Trade Agreements Act.

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## **Procurement**

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### **Socio-Economic Policies**

#### **■ Preferred products/services**

#### **■ ■ Foreign/domestic product distinctions**

Foreign product which is substantially transformed into a different item in the United States does not become a designated country end item for purposes of the Trade Agreements Act.

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**B-235717, B-235717.2, October 6, 1989**

**89-2 CPD ¶ 324**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Cost realism**

#### **■ ■ ■ Evaluation**

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

Where offeror fails to furnish pricing documentation expressly requested and necessary for agency to conduct price realism analysis, agency properly rejected proposal on ground it could not find proposed price realistic despite offeror's assertion that it could perform the required work at that price.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Discussion**

#### **■ ■ Adequacy**

#### **■ ■ ■ Criteria**

Where offeror fails to furnish information specifically requested by agency in request for best and final offers (BAFOs), the agency need not reopen negotiations and request another round of BAFOs to afford the offeror another opportunity to submit the requested information.

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**B-235761, October 6, 1989**

**89-2 CPD ¶ 325**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Cost realism**

#### **■ ■ ■ Evaluation**

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

Contracting agency's life-cycle cost analysis involves the exercise of informed judgment and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation errors**

#### **■ ■ ■ Non-prejudicial allegation**

Protest that agency's acceptance of fixed escalation rate for fuel cost proposed by awardee was not in accordance with solicitation requirement that offeror's fuel costs be escalated by the Department of Energy regional industrial fuel price indices is denied. Although amendment of the solicitation to indicate that fixed rates were acceptable would have been appropriate, the protester has

not shown that the outcome of the competition would have been different if an amendment had been issued.

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## **Procurement**

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### **Contractor Qualification**

#### **■ Licenses**

#### **■ ■ Environmental protection**

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## **Procurement**

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### **Contractor Qualification**

#### **■ Responsibility**

#### **■ ■ Contracting officer findings**

#### **■ ■ ■ Affirmative determination**

#### **■ ■ ■ ■ GAO review**

Protest that awardee is unlikely to obtain the permits required to operate the coal-fired power plant that it proposed concerns a matter of responsibility. Our Office will not review a affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria were misapplied.

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**B-235885, October 6, 1989**

**89-2 CPD ¶ 326**

## **Procurement**

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### **Noncompetitive Negotiation**

#### **■ Contract awards**

#### **■ ■ Sole sources**

#### **■ ■ ■ Propriety**

Sole-source award is proper where procurement involves a foreign military sale and foreign government on whose behalf procurement was conducted requested that award be made to a specific source.

---

**B-235988, October 6, 1989**

**89-2 CPD ¶ 327**

## **Procurement**

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### **Competitive Negotiation**

#### **■ Hand-carried offers**

#### **■ ■ Late submission**

#### **■ ■ ■ Acceptance criteria**

Late hand-carried proposal was properly rejected as late where a preponderance of the evidence does not establish that the protester delivered the offer to the designated location prior to the time set for closing.

---

**B-236239.3, October 6, 1989\*\*\***

**89-2 CPD ¶ 328**

## **Procurement**

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### **Specifications**

#### **■ Minimum needs standards**

#### **■ ■ Competitive restrictions**

#### **■ ■ ■ Sureties**

#### **■ ■ ■ ■ Financial information**

Solicitation provision which requires offerors providing individual sureties to submit a certified public accountant's certified balance sheet(s) and income statement(s) with a signed opinion for each surety is not legally objectionable as unduly restrictive of competition where the accuracy of

sureties' net worths is often called into question by offerors' failure to submit sufficient supporting information.

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**B-237084, October 6, 1989**

**89-2 CPD ¶ 329**

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**Procurement**

**Contractor Qualification**

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

The General Accounting Office will not review an affirmative responsibility determination absent a showing of possible fraud or bad faith or that definitive responsibility criteria were not applied.

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**B-231857.6, October 10, 1989**

**89-2 CPD ¶ 330**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision denying protest which alleged, among other things, that awardee's offer was materially unbalanced because the awardee charged more for the same services in the first 3 years than it did in the last 2 years of fixed-price contract and that agency improperly determined that awardee's proposal was technically acceptable is affirmed, because uneven pricing between contract years corresponds to awardee's uneven facility rental costs, examination of subcontractor pricing is not required in fixed-price contracting, and record shows that agency's evaluation was reasonable.

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**B-232357, October 10, 1989\*\*\***

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**Procurement**

**Payment/Discharge**

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

A claim against the Army, arising from its continued use of rental automated data processing equipment and services for nearly a year after the applicable contract had expired, may be paid on a *quantum meruit/quantum valebant* basis. However, since the equipment and services at issue could have been procured under a nonmandatory General Services Administration (GSA) Federal Supply Schedule, the amount of the claim is reduced to that which would have been paid had the items been properly procured under the relevant schedule.

**Procurement**

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**Bid Protests**

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

**Procurement**

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**Socio-Economic Policies**

- Small business 8(a) subcontracting
- ■ Contract awards
- ■ ■ Administrative discretion

Agency withdrawal of requirement from section 8(a), Small Business Act program, is unobjectionable where it considered and rejected a Small Business Administration (SBA) request that the requirement be set aside prior to issuing the solicitation and the SBA declined to appeal the matter.

**Procurement**

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**Sealed Bidding**

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

Where as a result of the insertion of model numbers beside each item on the bid schedule it was necessary for the contracting agency to consider in the evaluation of bids a brochure submitted by the bidder in response to the standard descriptive literature clause, all of the brochure, including a legend stating that specifications are "subject to change without prior notice or obligation" is for consideration, and because there is nothing else in the bid indicating that the legend was not intended to affect the bidder's obligations under the bid, the bid was properly rejected as nonresponsive.

**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Preferred products/services
- ■ ■ Certification

Requirement that bidder under a small business setaside procurement for supplies perform at least 50 percent of the cost of manufacturing the supplies is a material term of the solicitation and bid which took exception to that requirement by indicating that 100 percent of manufacturing would be subcontracted thus properly was rejected as nonresponsive.

---

**Procurement**

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**Bid Protests**

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

To the extent that protester contends that Small Business Administration (SBA) regulation in effect superseded provision in invitation for bids (IFB) requiring that bidder perform at least 50 percent of the cost of manufacturing the supplies called for by the IFB, protester was required to

raise the issue before bid opening, since inconsistency between SBA regulation and IFB provision was apparent from the IFB.

---

**B-236792.2, October 10, 1989\*\*\***

**89-2 CPD ¶ 334**

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**Procurement**

**Bid Protests**

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

The General Accounting Office (GAO) will not invoke the significant issue exception under its Bid Protest Regulations in order to review an untimely protest that raises an issue which GAO has previously considered on the merits.

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**B-236841, October 10, 1989**

**89-2 CPD ¶ 335**

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**Procurement**

**Bid Protests**

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

Protest alleging specification deficiencies apparent on the face of the solicitation is untimely when not filed prior to the closing date for receipt of proposals.

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**B-234035.2, B-234035.3, October 11, 1989**

**89-2 CPD ¶ 336**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration which essentially restates arguments previously considered and does not establish any error of law or provide information not previously considered is denied.

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**B-235793, October 11, 1989**

**89-2 CPD ¶ 337**

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**Procurement**

**Competitive Negotiation**

- Contract awards
- ■ Propriety
- ■ ■ Procedural defects

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**Procurement**

**Competitive Negotiation**

- Requests for proposals
- ■ Amendments
- ■ ■ Issuance
- ■ ■ ■ Lacking

Although contracting agency should have amended solicitation to indicate that it would consider offers of vaccine in single-dose vials along with the multi-dose vials specified in the solicitation, award based on single-dose vials was proper because single-dose vials will meet the agency's needs

and there is no indication that protester could have offered a lower price on single-dose vials which are more expensive to produce.

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**B-235910, October 11, 1989**

**89-2 CPD ¶ 338**

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**Procurement**

**Sealed Bidding**

■ **Bids**

■ ■ **Submission time periods**

■ ■ ■ **Compliance**

■ ■ ■ ■ **Evidence sufficiency**

Protest alleging that agency improperly accepted late bid and bid bond is denied where record shows that bidder relinquished control of all required bid documents simultaneously with the bid opening official's declaration that the time for receipt of bids had passed.

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**B-235957, October 11, 1989**

**89-2 CPD ¶ 339**

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**Procurement**

**Sealed Bidding**

■ **Invitations for bids**

■ ■ **Amendments**

■ ■ ■ **Materiality**

An amendment which incorporates into an invitation for bids a Federal Acquisition Regulation provision under which the government may withhold fees or profits from a contractor for violations of the Office of Federal Procurement Policy Act is material since it gives the government the right to impose contractual penalties which otherwise would not be available to it and therefore changes the legal relationship between the parties.

---

**Procurement**

**Sealed Bidding**

■ **Invitations for bids**

■ ■ **Amendments**

■ ■ ■ **Acknowledgment**

■ ■ ■ ■ **Responsiveness**

A bidder's failure to acknowledge with its bid a material amendment to an invitation for bids renders the bid nonresponsive.

---

**B-236490, October 11, 1989**

**89-2 CPD ¶ 340**

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**Procurement**

**Competitive Negotiation**

■ **Offers**

■ ■ **Late submission**

■ ■ ■ **Acceptance criteria**

■ ■ ■ ■ **Government mishandling**

Protester's late proposal, sent by U.S. Postal Service express mail 1 day prior to closing date for receipt of proposals, was properly rejected notwithstanding assurance by Postal Service of timely delivery. Late proposals that are not sent by registered or certified mail 5 days prior to closing date for receipt of initial proposals can only be considered if there was government mishandling after receipt at the government installation. Express mail is not the equivalent of registered or certified mail, and the term "government" in government mishandling means the contracting activity, not the Postal Service.



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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Protest timeliness**

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

Protest that agency erred in not classifying solicitation as a research and development acquisition, raised after closing date for receipt of initial proposals, is untimely because protests of alleged improprieties in a solicitation which are apparent on its face are required to be filed prior to the closing date for receipt of initial proposals.

---

**B-233496.4, October 12, 1989**

**89-2 CPD ¶ 341**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ GAO decisions**

#### **■ ■ ■ Reconsideration**

Protester's mere disagreement with prior decision does not establish a basis for reconsideration.

---

**B-234998.4, October 12, 1989**

**89-2 CPD ¶ 342**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ GAO decisions**

#### **■ ■ ■ Reconsideration**

Under the General Accounting Office Bid Protest Regulations, 4 C.F.R. § 21.12(a), a party requesting reconsideration must show that our prior decision contains either error of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard.

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ GAO decisions**

#### **■ ■ ■ Reconsideration**

Request for reconsideration is denied when based on arguments that could have been, but were not, raised by the protester in the course of the original protest.

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**B-235847, October 12, 1989**

**89-2 CPD ¶ 343**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Requests for proposals**

#### **■ ■ Terms**

#### **■ ■ ■ Shipment schedules**

Agency's rejection of protester's proposal as unacceptable was proper where the solicitation informed offerors that delivery was a critical element of the solicitation and the protester's final submission substantially qualified its intent to meet that requirement.

---

## **Procurement**

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### **Bid Protests**

- Allegation substantiation
- ■ Burden of proof

Contention that agency allowed awardee to change the place of final inspection and acceptance specified in the solicitation is not supported where the awardee confirmed its compliance with the requirement and the record shows that the requirement was not changed.

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**B-236003, October 12, 1989\*\*\***

**89-2 CPD ¶ 344**

## **Procurement**

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### **Sealed Bidding**

- Bonds
- ■ Justification
- ■ ■ GAO review

Bonding requirements in an invitation for bids for equipment used for the replenishment of supplies and the refueling of ships at sea are not unduly restrictive of competition where the agency experienced a significant percentage of defaults in prior procurements resulting in severe consequences to the Navy mission.

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## **Procurement**

---

### **Sealed Bidding**

- Bid guarantees
- ■ Waiver

Requirement for bid, performance and payment bonds can be waived for firms submitting bids through the Canadian Commercial Corporation (CCC) since the Canadian government, pursuant to a letter of agreement with the United States, guarantees all commitments, obligations, and covenants of the CCC in connection with any contract or order issued to the CCC by any contracting activity of the U.S. government.

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**B-236071, October 12, 1989**

**89-2 CPD ¶ 345**

## **Procurement**

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### **Sealed Bidding**

- Invitations for bids
- ■ Responsiveness
- ■ ■ Descriptive literature

Where it was clear from the bid that unsolicited descriptive literature submitted with the bid described equipment not meeting material solicitation requirements, and where the contracting agency reasonably determined that the bidder's intention was to qualify the bid, the bid properly was rejected as nonresponsive.

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**B-236969, October 12, 1989**

**89-2 CPD ¶ 346**

## **Procurement**

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### **Socio-Economic Policies**

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

Protest challenging agency decision to set aside procurement under section 8(a) of the Small Business Act on the basis that it violated the general requirement for full and open competition in the

Competition in Contracting Act (CICA) is dismissed because awards under the 8(a) program are exempted from CICA's competition requirement.

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**B-234250.2, October 13, 1989**

**89-2 CPD ¶ 347**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

*Request for reconsideration which essentially restates arguments previously considered, and does not establish that prior decision was based on error of fact or law, is denied.*

---

**B-235397.2, October 13, 1989**

**89-2 CPD ¶ 348**

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**Procurement**

**Bid Protests**

- Moot allegation
- ■ GAO review

*Protest challenging solicitation requirements as unduly restrictive is dismissed as academic where the protester subsequently submitted a bid which was second low, and the allegedly restrictive requirements are not alleged to have had a material impact on the protester's price.*

---

**B-235858, October 13, 1989**

**89-2 CPD ¶ 349**

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**Procurement**

**Competitive Negotiation**

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

*Proposal was properly excluded from competitive range after discussions where agency reasonably determined that proposal was technically unacceptable because it evidenced offeror's failure to satisfy a mandatory, material performance requirement under the solicitation.*

---

**Procurement**

**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

*Agency is not required to reopen negotiations to resolve a deficiency which first appears in revisions to an offeror's technical proposal or to conduct successive rounds of discussions to help an offeror to correct deficiencies or omissions in offeror's proposal.*

**Procurement**

---

**Sealed Bidding**

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

Agency determination denying a bidder's preaward request to correct an alleged mistake in its apparent low bid was not unreasonable where the bid contains a significant number of the same transposition errors from the bid worksheet, and the bidder did not present clear and convincing evidence of its intended bid.

**Procurement**

---

**Competitive Negotiation**

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

Protest that agency improperly awarded time and materials/labor hour contract to firm offering allegedly "below cost" labor hour rate is denied where record shows that agency considered reasonableness and realism of proposed rate and offers an adequate explanation for the admittedly low rate.

**Procurement**

---

**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

Bid was properly rejected as nonresponsive where in "Period for Acceptance of Bids" clause and cover letter attached to bid it was stated that bid was for acceptance within 30 days, whereas "Minimum Bid Acceptance Period" clause also included in solicitation required a 60-day bid acceptance period; IFB was not rendered ambiguous by inappropriate inclusion of "Period for Acceptance of Bids" clause since, reading solicitation as a whole, space provided in the clause for an acceptance period different than 60 days clearly meant a period longer than 60 days.

**Procurement**

---

**Bid Protests**

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

Protest based on alleged solicitation improprieties which is not filed before the closing date for receipt of proposals is untimely and not for consideration on the merits.

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## **Procurement**

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### **Bid Protests**

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

General Accounting Office will not consider a protest under the significant issue exception to its timeliness rules where the protest does not raise an issue of first impression and is not of wide-spread interest to the procurement community.

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**B-236997, October 13, 1989**

**89-2 CPD ¶ 354**

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## **Procurement**

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### **Bid Protests**

- Antitrust matters
- ■ GAO review

Allegations of collusive bidding and antitrust violations are matters for the Justice Department, and will not be considered by the General Accounting Office under its bid protest function.

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**B-235776.2, October 16, 1989**

**89-2 CPD ¶ 355**

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## **Procurement**

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### **Competitive Negotiation**

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

Unsuccessful offeror's protest based on ground that it should have been selected for award of firm, fixed-price contract because it proposed the lowest price is denied where the solicitation made technical considerations more important than cost and agency reasonably concluded that the technical superiority of the awardee's proposal was worth the additional cost.

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**B-235814, October 16, 1989**

**89-2 CPD ¶ 356**

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## **Procurement**

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### **Competitive Negotiation**

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

Where, in response to a solicitation for a cost reimbursement level of effort contract for technical support services, two of four proposals received were evaluated as technically acceptable, agency's cost realism analysis based on similarity of proposed price and labor mix and consistency with relevant predecessor contract prices was reasonable.

**Procurement**

---

**Sealed Bidding****■ Bids****■ ■ Acceptance time periods****■ ■ ■ Extension**

Bidder that informs the contracting activity of its intention to file a bid protest in the General Accounting Office does not qualify the extension of its bid acceptance period and render itself ineligible for award.

**Procurement**

---

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

A protester has no standing to claim a mistake in a competitor's bid, since it is the responsibility of the contracting parties—the government and the low bidder—to assert rights and bring forth the necessary evidence to resolve mistake questions.

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**Procurement**

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**Sealed Bidding****■ Bids****■ ■ Responsiveness****■ ■ ■ Determination criteria**

Allegation that a competitor's bid was too low does not give rise to a responsiveness issue.

**Procurement**

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

Contracting agency properly decided to award a cost-plus-fixed-fee contract to the offeror of the higher-rated, higher-cost proposal, where: (1) the solicitation emphasized that technical factors were considered substantially more important than cost; (2) the awardee's proposal was rated higher than the protester's in every technical evaluation factor; and (3) the awardee's evaluated cost-plus-fee was only slightly higher than the protester's.

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## **Procurement**

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### **Competitive Negotiation**

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

## **Procurement**

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### **Competitive Negotiation**

- **Technical transfusion/leveling**
- ■ **Allegation substantiation**
- ■ ■ **Evidence sufficiency**

Protest alleging that (1) evaluation panel member improperly gave the awardee information concerning in part the statement of work and evaluation criteria to be used before the solicitation was issued; and (2) procurement officials improperly gave awardee information from the protester's proposal before best and final offers were due is denied, where the Naval Investigative Service investigated the protester's charges and found no evidence of any wrongdoing by procurement officials, and there is no evidence in the protest record to support the protester's bare assertions.

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**B-235348.2, October 17, 1989**

**89-2 CPD ¶ 360**

## **Procurement**

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### **Bid Protests**

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

Request for reconsideration of decision sustaining protest against cancellation of invitation for bids after bid opening is denied where protester essentially reiterates arguments initially raised and fails to show any error of fact or law that would warrant reversal or modification.

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**B-235922, October 17, 1989**

**89-2 CPD ¶ 361**

## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Determination criteria**

Where awardee under an invitation for bids has made an unequivocal offer to perform the contract and has taken no exception to the terms of the IFB's technical specifications, the firm's bid is responsive.

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**B-236469, October 17, 1989**

**89-2 CPD ¶ 362**

## **Procurement**

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### **Special Procurement Methods/Categories**

- **Federal supply schedule**
- ■ **Multiple/aggregate awards**
- ■ ■ **Mandatory use**
- ■ ■ ■ **Allegation substantiation**

Protest that agency improperly applied the Trade Agreements Act to protester's offer is denied where identical issues raised by the same protester against the same procuring activity were recently considered and rejected and the protester has not offered any additional information to warrant a different conclusion.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request presents no alleged factual or legal errors warranting reversal, but merely disagrees with original decision or restates arguments considered, and rejected, by the General Accounting Office in denying the original protest.

---

**Procurement**

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**Special Procurement Methods/Categories**

- Architect/engineering services
- ■ Federal procurement regulations/laws
- ■ ■ Applicability

In view of the revised definition of architectural and engineering services contained in amendments to Brooks Act, traditional surveying and mapping services must be acquired under Brooks Act procedures.

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**Procurement**

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**Bid Protests**

- Labor standards
- ■ GAO review

Protest that labor law requirements are not being complied with by awardee is a matter for consideration by the Department of Labor and not by the General Accounting Office.

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**Procurement**

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**Bid Protests**

- Antitrust matters
- ■ GAO review

Allegation of collusive bidding is a matter for the Justice Department, and will not be considered by General Accounting Office under its bid protest function.



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**Procurement**

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**Contract Management**

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

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Errors
- ■ ■ Error substantiation

Although contracting agency improperly allowed upward correction of bid to include additional profit, bond costs and insurance costs when the costs were not adequately substantiated, there is no evidence of fraud, bad faith or mutual mistake, the resulting contract was not plainly or palpably illegal, and the contractor may be paid at the contract price where the agency determines that it is not in the government's best interest to terminate the contract.

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**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

An amendment which incorporates into an invitation for bids for lease of a parking lot an additional requirement of minimum operating hours is material since it imposes a legal obligation on the contractor that was not contained in the original solicitation and therefore changes the legal relationship between the parties.

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**Procurement**

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**Sealed Bidding**

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

A bidder's failure to acknowledge with its bid a material amendment to an invitation for bids renders the bid nonresponsive.

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**Procurement**

---

**Sealed Bidding**

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

A bidder's intention and commitment to perform in accordance with the terms of a material amendment is determined from the acknowledgment of such amendment or constructively from the bid itself, not from the bidder's past performance under a prior contract. Where a bid does not include an essential requirement which appears only in the amendment, there is no constructive acknowledgment of the amendment.

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**Procurement**

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**Bid Protests****■ Fraud****■ ■ Investigation****■ ■ ■ Administrative proceedings**

Protest is dismissed where allegation that solicitation for a state-of-the-art, telecommunications systems has been knowingly structured to favor a particular firm has been referred to the agency's Inspector General for investigation, subject to the protester's right to reinstate the protest upon receipt of the results of the investigation.

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**Procurement**

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

Protest that solicitation is defective because it did not contain agency statement of position in matter currently before the Energy Board of Contract Appeals concerning another, related contract is denied since the solicitation provided sufficient information to enable offerors to compete.

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**Procurement**

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**Competitive Negotiation****■ Contract awards****■ ■ Propriety**

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**Procurement**

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**Competitive Negotiation****■ Requests for proposals****■ ■ Amendments****■ ■ ■ Issuance****■ ■ ■ ■ Lacking**

Where an agency changes an evaluation criterion in a request for proposals after proposals are received, without notifying the offerors within the competitive range contract award need not be disturbed where the change did not affect the selection decision or otherwise prejudice any offeror.

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**Procurement**

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**Competitive Negotiation****■ Contract awards****■ ■ Administrative discretion****■ ■ ■ Cost/technical tradeoffs****■ ■ ■ ■ Cost savings**

Source selection decision to award to the lowest cost, lowest technically evaluated offeror is not unreasonable where the source selection official determined that higher rated, higher cost proposals were not worth the cost premium.

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## **Procurement**

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### **Socio-Economic Policies**

- **Small businesses**
- ■ **Contract awards notification**
- ■ ■ **Notification procedures**
- ■ ■ ■ **Pre-award periods**

Agency's admitted failure to give preaward notice of the apparent successful offeror so as to permit a timely size protest is not prejudicial to the unsuccessful offerors where the Small Business Administration has not determined the awardee was other than small.

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**B-236406, October 23, 1989\*\*\***

**89-2 CPD ¶ 371**

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## **Procurement**

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### **Special Procurement Methods/Categories**

- **Architect/engineering services**
- ■ **Contractors**
- ■ ■ **Price negotiation**
- ■ ■ ■ **Termination**

Protest that in procuring architect-engineer services under the Brooks Act contracting agency improperly terminated negotiations with protester is denied where record clearly shows that agency and protester could not come to a mutually acceptable agreement.

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## **Procurement**

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### **Special Procurement Methods/Categories**

- **Architect/engineering services**
- ■ **Contractors**
- ■ ■ **Price negotiation**
- ■ ■ ■ **Termination**

Protest that after accepting the price breakdown in protester's proposal the contracting agency reversed its decision to protester's prejudice because protester would not have proceeded with further negotiations if it had known the breakdown was unacceptable is denied since at the time the agency did not have complete pricing data and the protester should have been aware that negotiations would be terminated if no agreement could be reached.

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## **Procurement**

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### **Bid procedures**

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

Protest that statement of work in architect-engineer contract was inadequate is untimely when not filed within 10 working days of the date protester received a draft copy of the contract in preparation for price negotiations.

**Procurement**

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**Bid Protests**

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

Where prior protest of specification requirement was dismissed as untimely because not raised prior to the due date for receipt of proposals, General Accounting Office will not consider the same issue when reiterated by the protester in its subsequent protest of a proposed award to another offeror.

---

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties

Protester is not an interested party to protest that agency should have permitted it to remedy two allegedly minor discrepancies in its proposal as to the equipment it offered since the awardee was lower in price than the protester and the protester has not indicated that modifying its equipment to meet the government's requirements would have resulted in a lower price.

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**Procurement**

---

**Bid Protests**

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

Protest that agency should have issued an invitation for bids and not have conducted a procurement under negotiation procedures is untimely when not filed prior to the closing date for the receipt of proposals, since the use of negotiation was an alleged deficiency that was apparent on the face of the solicitation.

**Procurement**

---

**Bid Protests**

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

Protester's allegation that bid should be rejected because individual sureties on awardee's bid bond do not own the assets claimed on their affidavits of individual surety is untimely where protester waited several months after it became aware of agency letter containing information concerning the assets and after it should have known that the agency was not going to act on the information to file Freedom of Information Act request seeking the details upon which it has based its protest.

**Procurement**

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**Sealed Bidding**

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

A late hand-carried bid may not be considered except where improper government action was the paramount cause of the late delivery. Such was not the case here where the protester's allegation that the bid was late as the result of an altercation with another bidder in the presence of agency personnel, is refuted by affidavits of the agency personnel which state that they did not see any altercation.

**Procurement**

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**Specifications**

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

Protest is sustained where agency did not provide protester with a reasonable opportunity to demonstrate the acceptability of its weapons prior to, or in conjunction with, a procurement limited to four brand name semiautomatic pistols.

**Procurement**

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**Sealed Bidding**

- **Bids**
- ■ **Bid guarantees**
- ■ ■ **Omission**
- ■ ■ ■ **Responsiveness**

Where invitation for bids requires a bid guarantee, bidder's submission of a Standard Form 24 Bid Bond, indicating that a cashier's check is being furnished, absent the actual check, is inadequate and renders the bid nonresponsive, and may not be corrected after bid opening.

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**Procurement**

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**Sealed Bidding**

- **Contracting officer duties**
- ■ **Bids**
- ■ ■ **Price determination**

Contracting officer acted properly in publicly opening all bids received under invitation for bids.

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**Procurement**

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**Bid Protests**

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

Protest that an agency representative gave protester erroneous oral advice at bid opening is untimely where first raised in protester's comments on the informal conference and agency report.

**Procurement**

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**Socio-Economic Policies**

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

The General Accounting Office does not review Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act.

**Procurement**

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**Bid Protests**

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

Protest that request for proposals should have authorized submission of telefax offers is untimely where not filed until after the due date for receipt of initial proposals.

**Procurement**

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**Competitive Negotiation**

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Post-employment restrictions
- ■ ■ ■ Allegation substantiation

**Procurement**

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**Competitive Negotiation**

- Competitive advantage
- ■ Privileged information
- ■ ■ Disclosure

Where a former government officer who had access to restricted information concerning a procurement helped prepare the awardee's proposal, the likelihood that the awardee had an unfair competitive advantage warrants corrective action, despite the good faith behavior of the parties, in order to protect the integrity of the competitive process.

**Procurement**

---

**Bid Protests**

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

Protest against agency decision to compare cost of contracting for audiovisual services with estimated cost of performing the services in-house is untimely where solicitation advised potential offerors of intended procedure, and protester failed to object prior to submission of initial offer.

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## **Procurement**

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### **Special Procurement Methods/Categories**

- **In-house performance**
- ■ **Cost evaluation**
- ■ ■ **Personnel**

Agency determination of the size of its governmental in nature staff, which is treated as a "wash cost" for cost comparison purposes, is largely a management decision involving judgmental matters that are inappropriate for General Accounting Office review.

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## **Procurement**

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### **Special Procurement Methods/Categories**

- **In-house performance**
- ■ **Cost evaluation**
- ■ ■ **Personnel**

Agency properly excluded from in-house cost estimate the cost of support personnel whose positions would not be eliminated if a contract were awarded; cost comparison procedures require inclusion in estimate only of costs for positions that would be eliminated.

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**B-236006, October 26, 1989**

**89-2 CPD ¶ 381**

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## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Error correction**
- ■ ■ **Low bid displacement**
- ■ ■ ■ **Propriety**

Fact that bid for base quantity line item is higher than option price for same item does not constitute clear and convincing evidence of mistake-in-bid, and downward correction displacing low bidder thus is not warranted, where (1) bid as submitted is in line with the other bids, and (2) agency recognizes that bidding lower price only for option quantity reasonably could have been part of purposeful bidding strategy.

---

**B-236043, October 26, 1989**

**89-2 CPD ¶ 382**

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## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Price omission**
- ■ ■ ■ **Unit prices**

Failure to submit a unit shipping price does not render proposed awardee's low bid nonresponsive since unit shipping prices were not material to determining the total price to be paid by the agency for performance in accordance with the terms of the solicitation.

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## Procurement

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### Sealed Bidding

#### ■ Bids

#### ■ ■ Responsiveness

#### ■ ■ ■ Determination criteria

Protester's disagreement—based on test results—with the agency's determination that the proposed awardee's bid which included certified engineering drawings was responsive to the solicitation's technical specifications does not establish that the agency's conclusions regarding responsiveness lacked a reasonable basis.

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**B-236412, October 26, 1989**

**89-2 CPD ¶ 383**

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## Procurement

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### Competitive Negotiation

#### ■ Discussion

#### ■ ■ Adequacy

#### ■ ■ ■ Criteria

Protest that contracting agency failed to conduct meaningful discussions of protester's proposed staffing plan, which allegedly included more staff than needed due to the failure, is denied where record indicates that the agency sufficiently explained the solicitation's staffing requirements to the protester in the course of discussions, and reasonably determined that the number of proposed staff was not too high, and thus was not a deficiency that had to be raised in discussions.

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## Procurement

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### Bid Protests

#### ■ Allegation

#### ■ ■ Abandonment

Where protester initially alleges improprieties in evaluation of proposals, but subsequently does not attempt to rebut agency's explanation (not contradicted by the record) that the evaluation was proper, the General Accounting Office considers allegations to have been abandoned and not for consideration.

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**B-236497.2, October 26, 1989**

**89-2 CPD ¶ 389**

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## Procurement

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### Bid Protests

#### ■ GAO procedures

#### ■ ■ GAO decisions

#### ■ ■ ■ Reconsideration

Prior dismissal of a protest is affirmed where the protester failed to timely file comments on the agency report or to express its continued interest in the protest. Protester's contention that its protest constituted a "request for reconsideration" of the contracting agency's denial of its agency-level protest and, as such, did not require the filing of comments on the agency report is not a basis for reopening the protest because the General Accounting Office (GAO) does not reconsider a decision initially rendered by a contracting agency and therefore, the initial submission to GAO properly was considered an initial protest.



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**Procurement**

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**Contractor Qualification****■ Responsibility/responsiveness distinctions**

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**Procurement**

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**Sealed Bidding****■ Bids****■ ■ Responsiveness****■ ■ ■ Determination criteria**

Bidder's designation of a chassis manufacturer that does not make an 8-cylinder engine meeting the solicitation's specifications does not render the bid nonresponsive because the bidder took no exception to the specifications; the manufacturer information was requested solely to provide for possible inspection during contract performance and involves a matter of responsibility, information concerning which may be provided any time prior to award.

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**Procurement**

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**Bid Protests****■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

On reconsideration, General Accounting Office affirms its prior decision that bidder's insertion of a 60-day bid acceptance period in a bid which required a minimum bid acceptance period of 120 days rendered the bid nonresponsive notwithstanding the fact that after bid opening the contracting agency erroneously requested the protester to extend its bid acceptance period and requested a pre-award survey.

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**Procurement**

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

A protest filed by a prospective supplier to a prime contractor or a subcontractor is dismissed since the protester is not an interested party eligible to have its protest considered under the Competition in Contracting Act of 1984 and the General Accounting Office's implementing Bid Protest Regulations.

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**Procurement**

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

Protest against alleged solicitation improprieties filed 7 weeks after date set for receipt of initial proposals is dismissed as untimely.

**Procurement**

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**Bid Protests****■ Information request****■ ■ Timeliness**

Protest that procuring agency violated protester's proprietary rights by using a drawing that protester furnished to the government with limited rights is dismissed since the appropriate remedy in such a case is administrative settlement of the claim or a judicial action against the government for damages rather than consideration by the General Accounting Office under its bid protest jurisdiction.

**Procurement**

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**Competitive Negotiation****■ Discussion reopening****■ ■ Propriety**

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**Procurement**

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**Socio-Economic Policies****■ Small businesses****■ ■ Contract awards****■ ■ ■ Size status****■ ■ ■ ■ Misrepresentation**

Protest of reopening of discussions with original offerors that remained in the competitive range is denied where agency terminated award to the protester under small business set-aside due to Small Business Administration's final determination that protester was other than small since conducting a new procurement in such circumstances is not required.

**Procurement**

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**Sealed Bidding****■ Invitations for bids****■ ■ Post-bid opening cancellation****■ ■ ■ Justification****■ ■ ■ ■ Price reasonableness**

Cancellation of an invitation for bids (IFB) after bid opening is proper where agency decides not to provide funding for the work to be performed under the IFB based on its view that lower bids may be received and the work thus will be performed at a lower cost to the government if the current IFB is canceled and the requirement is resolicited in the next fiscal year.

**Procurement**

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**Special Procurement Methods/Categories****■ Architect/engineering services****■ ■ Use****■ ■ ■ Procedures**

Contracting agency must solicit traditional surveying and mapping services by Brooks Act procedures instead of competitive proposals where the services may be logically or justifiably performed

by an architectural engineering firm, regardless of whether they are related to an architectural engineering project.

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**B-236303, October 30, 1989\*\*\***

**89-2 CPD ¶ 393**

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**Procurement**

**Special Procurement Methods/Categories**

- In-house performance
- ■ Evaluation criteria
- ■ ■ Cost estimates

Protest of determination to perform trash pickup service and operation of a construction debris landfill in house rather than by contract is denied where the protester has not shown that the agency's prorated allocation of certain government equipment operating costs, as adjusted under an administrative appeal, was inaccurate or violated Office of Management and Budget Circular A-76 procedures for determining the cost of in-house operation versus contracting.

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**B-236421.2, October 30, 1989**

**89-2 CPD ¶ 394**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of dismissal of protest is denied where dismissal was due to protester's failure to file timely comments on the agency report. A protester acts at its own risk when it relies upon the mails or private courier to deliver protest materials.

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**B-237053.2, October 30, 1989**

**89-2 CPD ¶ 395**

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**Procurement**

**Bid Protests**

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

Protest concerning alleged improprieties which were incorporated into solicitation by a negotiation letter which was filed after next closing date for receipt of proposals following incorporation was properly dismissed as untimely.

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**B-237273, October 30, 1989**

**89-2 CPD ¶ 396**

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**Procurement**

**Socio-Economic Policies**

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

Since the Small Business Administration determines whether a firm is small and disadvantaged for purposes of eligibility for Department of Defense small disadvantaged business (SDB) evaluation preference, the General Accounting Office will not consider a protest challenging awardee's SDB eligibility status for award of a contract.

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## **Procurement**

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### **Contract Management**

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

Protest of agency's termination of a contract because it inadvertently failed to apply a small disadvantaged business (SDB) evaluation preference contained in the solicitation is dismissed where the protester, which is not an SDB firm, does not allege that the initial award to it was in fact proper or that award to the SDB firm was inconsistent with the evaluation criteria.

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**B-237404, October 30, 1989**

**89-2 CPD ¶ 397**

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## **Procurement**

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### **Bid Protests**

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

Protest based on allegedly unduly restrictive specifications, which were apparent from the face of the solicitation, is untimely where not filed until after award.

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## **Procurement**

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### **Bid Protests**

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

The General Accounting Office (GAO) will not consider the merits of an untimely protest under the significant issue exception to GAO's timeliness requirements where the issue raised—allegedly unduly restrictive specifications— is not a matter of first impression or of widespread interest to the procurement community.

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**B-237422, October 30, 1989**

**89-2 CPD ¶ 398**

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## **Procurement**

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### **Sealed Bidding**

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

Where an invitation for bids requires that bids be submitted on an f.o.b. destination basis, a bid which includes a quotation form that specifies that delivery will be f.o.b. origin is nonresponsive because this change impermissibly shifts the risk of loss or damage from the contractor to the government.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

Where a bid includes a quotation form which states that prices are valid for 30 days in response to a solicitation that requires a minimum bid acceptance period of 60 days the bid is properly rejected as nonresponsive.

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## **Procurement**

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### **Sealed Bidding**

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

An offeror has no legal right to correct mistakes in its bid that would make its otherwise nonresponsive bid responsive to the solicitation.

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**B-237469.2, October 30, 1989**

**89-2 CPD ¶ 399**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of dismissal of protest as untimely filed is denied where protest alleged agency improperly would not award portion of requirement, dismissal was based on failure to file protest within 10 working days after protester was advised of cancellation of that portion of the solicitation, and request does not show otherwise.

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**B-237481, October 30, 1989**

**89-2 CPD ¶ 400**

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## **Procurement**

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### **Sealed Bidding**

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Bid was properly rejected for a defective bid bond where bond listed one company as surety and contained power of attorney and seal from another company.

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**B-234403.2, October 31, 1989**

**89-2 CPD ¶ 401**

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## **Procurement**

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### **Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Authority

Signature on bid amendment which is executed on behalf of individual authorized to sign bid by another party who was expressly instructed to do so is legally sufficient to bind firm. The mere

fact that evidence of agency was furnished after bid opening does not render the bid nonresponsive.

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## **Procurement**

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### **Sealed Bidding**

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

Failure of bidding party to properly and completely execute the representations and certifications contained in a solicitation does not render bid nonresponsive since such representations and certifications are not material terms of the bid and, thus, may be later corrected as minor irregularities.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Failure to submit Standard Form 33 with bid does not render bid nonresponsive so long as material terms contained therein are otherwise provided as part of the bid package.

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**B-235587.2, October 31, 1989**

**89-2 CPD ¶ 402**

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## **Procurement**

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### **Bid Protests**

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

Protest that sole-source award was not justified is untimely, where protest was filed with contracting agency more than 10 working days after protester was told by project engineer who was contracting activity's technical representative that contracting agency intended to make a sole-source award to another firm.

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**B-235953, B-235953.2, October 31, 1989**

**89-2 CPD ¶ 403**

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## **Procurement**

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### **Competitive Negotiation**

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

Protest that awardee's offer for the development and production of new state-of-the-art aircraft landing gear was materially unbalanced and so grossly front-loaded that contract award will provide awardee with unauthorized contract financing tantamount to improper advance payments is denied where record shows that awardee's prices reflect its reasonable technical approach to the tasks which resulted in its higher development costs early in the project.

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## **Procurement**

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### **Competitive Negotiation**

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

Allegation that awardee's offer violates the solicitation's integrity of unit prices clause is denied where record shows that awardee's high up-front prices reflect its higher costs.

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## **Procurement**

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### **Competitive Negotiation**

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

Protest that agency did not conduct cost realism analysis is denied since the solicitation contemplated the award of a fixed-price contract and adequate price competition was attained.

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**B-236034, October 31, 1989**

**89-2 CPD ¶ 404**

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## **Procurement**

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### **Specifications**

- **Performance specifications**
- ■ **Adequacy**

Protest that solicitation's estimated number of files to be stored under contract is inaccurate and that solicitation thus is defective is denied where record indicates estimate was based on the best information available, and solicitation provided information in addition to estimate that should have been sufficient to permit intelligent price calculation on an equal basis.

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## **Procurement**

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### **Specifications**

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

While contracting agency generally must give offerors sufficiently detailed information in solicitation to enable them to compete intelligently and on a relatively equal basis, a solicitation is not deficient where the statement of work reasonably describes and estimates work, even though it does not eliminate all performance uncertainties and risks or provide the same detailed knowledge as possessed by the incumbent.

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**B-236259.2, October 31, 1989**

**89-2 CPD ¶ 405**

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Conflicting evidence**
- ■ ■ ■ **Burden of proof**

When on its face a protest appears to be untimely, a protester who is in possession of facts that would establish its timeliness, but who does not initially present those facts to the General Ac-

counting Office, runs the risk of dismissal and of refusal to reconsider the matter when the protester ultimately presents all the facts.

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**B-236585, October 31, 1989**

**89-2 CPD ¶ 409**

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**Procurement**

**Competitive Negotiation**

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

Award of contract on the basis of initial proposals to other than the nominal low offeror is proper where nominal low offeror was not eligible for first article waiver and proposed an unacceptable delivery schedule, the requirement was urgent, and the solicitation specifically advised that the delivery schedule could be the basis for the award decision.

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**B-237153, October 31, 1989**

**89-2 CPD ¶ 410**

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**Procurement**

**Bid Protests**

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

Protest to General Accounting Office filed more than 10 working days after oral notification of the basis of protest is dismissed as untimely since protester is charged with constructive knowledge of Bid Protest Regulations published in the Federal Register, notwithstanding alleged incorrect advice from government agency concerning the filing of a protest.

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**B-237182, October 31, 1989**

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**Procurement**

**Competitive Negotiation**

- **Requests for proposals**
- ■ **Amendments**
- ■ ■ **Criteria**

Where letter from agency signed by the contracting officer is furnished to all offerors in the competitive range, the essential requirements for an RFP amendment are met and the information therein is therefore binding on all offerors.

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**Procurement**

**Competitive Negotiation**

- **Best/final offers**
- ■ **Price data**
- ■ ■ **Omission**
- ■ ■ ■ **Effects**

Where offeror fails to furnish in its best and final offer (BAFO) pricing information which was expressly requested and necessary to meet government requirements, contracting activity properly rejected the BAFO.



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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

##### **■ ■ Cost realism**

##### **■ ■ ■ Evaluation**

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

Protest against the failure to submit cost and pricing data is denied where the record shows that adequate price competition was obtained, and price analysis was conducted.

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**B-237322.2, October 31, 1989**

**89-2 CPD ¶ 411**

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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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### **Bid Protests**

#### **■ GAO procedures**

##### **■ ■ Protest timeliness**

##### **■ ■ ■ 10-day rule**

##### **■ ■ ■ ■ Adverse agency actions**

Dismissal of protest against a solicitation specification filed with the contracting officer prior to the closing date for the receipt of initial proposals as untimely, where the agency received proposals on the scheduled closing date without taking corrective action and the subsequent protest to the General Accounting Office was filed more than 10 working days later, is affirmed on reconsideration.

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