

July 1991

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

Vol. II, No. 10

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Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
Milton J. Socolar

General Counsel
James F. Hinchman

Deputy General Counsel
Vacant

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Preface

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

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Appropriations/Financial Management

B-243685, July 1, 1991

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses
- ■ ■ ■ Counterfeit bills

Cashier is denied relief from liability for physical loss of \$1,000.00 due to his acceptance of ten counterfeit \$100.00 notes. The record does not contain evidence adequate to support the agency's determination that the loss occurred without fault or negligence by the cashier. Further, the cashier failed to present sufficient affirmative evidence that he exercised the requisite degree of care.

B-239483.2, July 8, 1991***

Appropriations/Financial Management

Accountable Officers

- Account deficiency
- ■ Check cashing
- ■ ■ Losses
- ■ ■ ■ Adjustments

Deficiencies in an accountable officer's account from cashing uncollectible checks do not have to be treated as either physical losses or erroneous payments to adjust the accounts for the deficiencies. Under 31 U.S.C. § 3342, which authorizes check cashing, agencies have independent authority to adjust the officers' account for such losses. Prior cases, 27 Comp. Gen. 211 (1947), 61 Comp. Gen. 649 (1982), B-82565, June 1, 1949; B- 82108, Jan. 17, 1949, indicating that such losses must be submitted to GAO as erroneous payments under 31 U.S.C. § 3527 are modified.

Appropriations/Financial Management

Accountable Officers

- Account deficiency
- ■ Check cashing
- ■ ■ Adjustments
- ■ ■ ■ Administrative discretion

Agencies have the discretion under 31 U.S.C. § 3342 to refuse to adjust a disbursing officer's account for check cashing and other accommodation exchange losses. GAO will view that discretion as properly exercised when the agency cannot determine that official acted in good faith or with due care. Cases indicating that adjusting accounts under section 3342 is dependent upon such a finding, 27 Comp. Gen. 211 (1947), 61 Comp. Gen. 649 (1982), B-82565, June 1, 1949; B-82108, Jan. 17, 1949, are modified.

Appropriations/Financial Management

Accountable Officers

- Account deficiency
- ■ Check cashing
- ■ ■ Adjustments
- ■ ■ ■ GAO review

When an agency decides not to adjust a disbursing official's account for a loss from cashing an uncollectible check under 31 U.S.C. § 3342, the case must be sent to GAO for review as an erroneous payment under 31 U.S.C. § 3527.

Appropriations/Financial Management

Accountable Officers

- Liability
- ■ Check cashing
- ■ ■ Account deficiency
- ■ ■ ■ Statutes of limitation

GAO responds to a number of questions about the effect of the 3-year statute of limitations on agencies' abilities to collect amounts from accountable officers who are responsible for losses or erroneous payments out of their accounts.

B-242444, July 8, 1991

Appropriations/Financial Management

Accountable Officers

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

Appropriations/Financial Management

Accountable Officers

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

U.S. Army finance officer and his cashier are relieved of liability under 31 U.S.C. § 3527(c) for improper payments made when cashing fraudulently endorsed personal checks for a service member. The officer's standard operating procedures for cashing personal checks, which were followed by the cashier, were adequate, although improvements could be made. The loss was the result of criminal activity beyond the control of either the officer or cashier. If other cashiers were involved then relief should also be requested for them for the amounts they cashed.

B-239907, July 10, 1991

Appropriations/Financial Management

Federal Assistance

- Grants
- ■ Matching funds
- ■ ■ Administrative regulations
- ■ ■ ■ Authority

Community Development Block Grants may be used for eligible activities, one of which is providing "non-Federal share" to match other "Federal grant-in-aid program[s]." 42 U.S.C. § 5305(a)(9). To be eligible for matching, a federal grant program must have been listed in the community's annual CDBG application document. This document, formerly the Community Development Program, now called the Statement of Activities and Review is prepared locally to obtain CDBG funds. Once eligibility is determined, and a match made, HUD lacks a statutory basis on which to continue to supervise activities of receiving grant through application of CDBG program regulations, if the effect of applying those regulations is to dissolve the matched grant and disqualify a previously approved match.

B-238863, July 11, 1991

Appropriations/Financial Management

Accountable Officers

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

Relief is granted to accountable officer where record shows that proper controls were in place at the time loss occurred, that the accountable officer took steps to ensure that controls were being followed, and that the error was the result of carelessness by subordinates.

B-242413, July 12, 1991

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Advertising

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Voluntary expenditure
- ■ ■ ■ Reimbursement

Claim for reimbursement of personal funds used to pay for newspaper advertisements for National Guard recruitment activities may be paid under "public necessity" exception to prohibition against reimbursing voluntary creditors where underlying expenditure is authorized, failure to act would have resulted in disruption of federal activity and transaction satisfies criteria for *quantum meruit*. Payment is not precluded by 44 U.S.C. § 3702 where authority to approve advertisements had been delegated by Chief, National Guard Bureau to U.S. Property and Fiscal Officers.

B-244093, July 19, 1991

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Stocks
- ■ ■ Purchases

Appropriations/Financial Management

Budget Process

- Funding
- ■ Securities
- ■ ■ Proceeds

The Farms for the Future Act of 1990 directs the Secretary of the Treasury to purchase stock offered by the Secretary of Agriculture and designates proceeds from the sale of securities issued under chapter 31 of Title 31 as a source of funds.

B-237601, July 22, 1991***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Attorney fees

The Forest Service may not use appropriated funds to reimburse a federal employee for attorney's fees and other expenses incurred as a defendant in a criminal proceeding that was prosecuted by the Department of Justice. The reimbursement of attorney's fees is not predicated on the outcome of judicial proceedings and is not available where the fees incurred do not advance the interests of the United States.

B-239774, July 22, 1991

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Cable television

The Federal Trade Commission (FTC) may use its appropriated funds to reimburse employee for cable television service installed in the employee's home; the cable service primarily benefitted the government by enabling the FTC to increase its monitoring of advertising.

B-242412, July 22, 1991

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Voluntary expenditure
- ■ ■ ■ Reimbursement

The Army may use its imprest fund to reimburse employee who used her own funds to purchase picture mats during the course of a remodeling project, so long as the Army's imprest fund regulations otherwise authorize reimbursement of this sort.

B-240895, July 23, 1991***

Appropriations/Financial Management

Appropriation Availability

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

Agencies may not reimburse federal employees participating in a mandatory work-at-home program the incremental costs of utilities associated with the residential workplace, because such costs cannot be said to primarily benefit the government. See 68 Comp. Gen. 502 (1989). We find no compelling reason to distinguish between mandatory and voluntary programs.

B-240276, July 26, 1991***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule

Under 31 U.S.C. § 1348, an agency may pay long distance telephone charges only when required "for official business" and certified as "necessary in the interest of the Government." The Soil Conservation Service may not reimburse the telephone company for charges incurred by an unidentified computer hacker; the agency may pay for charges incurred during an investigation to identify the hacker, however, as incident to the operations of the agency.

B-244304, July 26, 1991

Appropriations/Financial Management

Claims Against Government

- Burden of proof

Claims for supplies and services allegedly delivered to the Navy may not be paid where the record fails to show that the supplies and services were actually received and accepted by the Navy. The burden is on the claimant to furnish evidence to substantiate delivery and acceptance.

B-241970.2, July 29, 1991***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Attorney fees

Appropriated funds of the Smithsonian Institution are not available to provide litigative services to federal employees unless the Attorney General determines that representation of the employee would be in the interest of the United States but cannot be provided by the Justice Department. Based on the record submitted to this Office, we conclude that the Smithsonian should not have used appropriations to finance the legal defense of a Department of the Interior employee detailed to the Smithsonian who became the subject of multiple federal civil and criminal investigations, and should not spend any additional appropriated funds for this purpose unless the Justice Department, based on evidence not made available to us, certifies that representing this employee is in the government's interest.

B-243411, July 30, 1991

Appropriations/Financial Management

Appropriation Availability

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

The Defense Mapping Agency may not use its imprest fund to pay for an electric shoe polisher because the shoe polisher is a personal furnishing and the claim does not meet the standards set forth in 3 Comp. Gen. 433 (1924).

Civilian Personnel

B-243686, July 2, 1991

Civilian Personnel

Compensation

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

An employee requests waiver of duplicate salary payments. Waiver is denied since the employee had both informal and formal notice of the erroneous payments. An employee who accepts payments known to be erroneous cannot reasonably expect to retain them and should make provision for eventual repayment.

B-239413, July 3, 1991

Civilian Personnel

Travel

- Travel orders
- ■ Retroactive adjustments

Employees who were on long-term training assignments may have their travel orders retroactively modified to allow reimbursement at 55 percent of the maximum per diem for the locality as authorized in 2 Joint Travel Regulations C4552-2h(3)(b) (Ch. 272, June 1, 1988), instead of the reduced per diem rate that they were originally authorized. The travel orders were issued in violation of 2 JTR para. C4550 (Ch. 274, Aug. 1, 1988), which required prior approval by the Per Diem, Travel and Transportation Allowance Committee before the 55 percent per diem rate could be further reduced.

B-242677, July 3, 1991

Civilian Personnel

Relocation

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

Transferred employee claims reimbursement of lodging expenses incurred while occupying temporary quarters for 60 days. The employee paid rent of \$1,800 per month for an apartment owned by his son. Other apartments in the building rented for \$600 monthly, plus utilities. The \$1,800 monthly rent charged by the employee's son and paid by the employee was not reasonable when compared with the three times lesser amount paid for other apartments in the building.

B-235641.2, July 18, 1991

Civilian Personnel

Compensation

- Compensation restrictions
 - ■ Rates
 - ■ ■ Amount determination
-

Civilian Personnel

Compensation

- Overtime
- ■ Standby overtime
- ■ ■ Eligibility

Employee, a firefighter, is advised that his agency has complete discretion in determining an employee's workweek and the scheduling within the workweek. In response to his specific question concerning Sunday work in return for additional annual premium pay for standby overtime, the employee is advised that Office of Personnel Management regulations in 5 C.F.R. § 550.144(a)(4) (1991), clearly bases any increase in the basic rate of premium pay over 20 percent upon the average number of Sundays worked over a calendar year.

B-240143, July 22, 1991

Civilian Personnel

Travel

- Overseas travel
- ■ Tour renewal travel
- ■ ■ Dependents

An employee stationed in Alaska, obtained a divorce from his wife, an employee of another agency. His former wife then left Alaska, but their children remained in Alaska with the employee. Several years later, his former wife retransferred to Alaska and moved into the residence of the employee and their children. The employee thereafter claimed and was paid tour renewal agreement travel benefits on behalf of the children. The agency questions his entitlement to be paid for the children's travel because the former wife may have also received tour renewal travel allowances for the children. However, in the absence of evidence of actual duplication, the employee is entitled to the payments he received because the children were members of his household for tour renewal agreement travel purposes.

B-240895, July 23, 1991***

Civilian Personnel

Compensation

- Compensation restrictions
- ■ Off-site work
- ■ ■ Utility services
- ■ ■ ■ Reimbursement

Agencies may not reimburse federal employees participating in a mandatory work-at-home program the incremental costs of utilities associated with the residential workplace, because such costs cannot be said to primarily benefit the government. See 68 Comp. Gen. 502 (1989). We find no compelling reason to distinguish between mandatory and voluntary programs.

B-243128, July 23, 1991

Civilian Personnel

Travel

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

An employee on temporary duty at a government training facility traveled to place which was not her official station or place of abode over a weekend for personal reasons. Her claim for transportation expenses is denied since 41 C.F.R. § 301-7.11(b)(4) (1990) and her department's own regulation limit reimbursement for transportation expenses to voluntary weekend return travel to the employee's official station or place of abode.

B-238663, July 29, 1991***

Civilian Personnel

Travel

- Travel expenses
- ■ Official business
- ■ ■ Privately-owned horses/mules

Absent specific statutory authority, an agency may not pay its employees on a fee basis for the use of privately owned transportation, including horses and mules, while conducting official business. However, the agency may reimburse employees on an actual expense basis.

B-239153, July 30, 1991

Civilian Personnel

Relocation

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

A transferred employee, while occupying temporary quarters at the new duty station, was required to take a 6-week period of approved annual leave to care for her ill husband at her old duty station. Even though that interruption of temporary quarters occupancy did not involve "official necessity" as used in 41 C.F.R. § 302-5.2(a) (1989), under the principle stated in *Bobby L. Cook*, 63 Comp. Gen. 222 (1984), that the taking of sick leave for an extended period of surgery and recuperation permitted extension of the authorized temporary quarters period, the period of temporary quarters occupancy is to be extended here, based on the extended recuperation from surgery of the employee's husband. *Luther S. Clemmer*, B-199347, Feb. 18, 1981, is distinguished.

Civilian Personnel

Relocation

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

A transferred employee requested and was authorized an additional 60 days of temporary quarters occupancy. On review of the claim, the additional period was disallowed because the employee had not sought permanent quarters. The claim may be allowed. Under 41 C.F.R. § 302-5.2(a)(2), an additional period of temporary quarters may be allowed where the circumstances requiring the additional period are found to be beyond the employee's control and acceptable to the agency. Since

agency approval was based on the employee's continuing need to care for her ill husband, thus, effectively precluding her from seeking permanent quarters, an additional period of temporary quarters occupancy, not to exceed 60 days, may be allowed.

B-241953, July 30, 1991***

Civilian Personnel

Travel

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

An employee, who traveled by an indirect route and combined an extended period of annual leave with temporary duty travel from Anchorage, Alaska, to Oklahoma City, Oklahoma, and return, was not authorized a rest stop under 41 C.F.R. § 301-7.6(c)(6)(i) since the scheduled travel, if performed by a usually traveled route, would have been less than 14 hours. However, the employee was permitted a reasonable rest period with per diem at the temporary duty location before reporting for duty under 41 C.F.R. § 301-7.6(c)(6)(v). Per diem may be paid on a constructive basis beginning the last quarter of the day the employee could have left to arrive at the temporary duty station the evening before temporary duty was to begin and ending on the quarter day the employee would have arrived home had return travel been performed timely and expeditiously.

Civilian Personnel

Travel

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

An employee performed temporary duty travel from Bethel, Alaska, to Oklahoma City, Oklahoma, by usually traveled route several days prior to the date travel was scheduled, and returned home timely and expeditiously immediately following completion of the temporary duty assignment. Since scheduled outbound travel was in excess of 14 hours, a rest stop with per diem could have been authorized under 41 C.F.R. § 301-7.6(c)(6)(i) at an intermediate point. Even though a rest stop was not authorized under 41 C.F.R. § 301-7.6(c)(6)(v), the employee was permitted a reasonable rest period with per diem at the temporary duty location before reporting for duty there. On a constructive basis, per diem may be paid beginning the last quarter of the day the employee could have reasonably left to arrive at the temporary duty station the day before temporary duty was to begin and ending on the quarter day the employee arrived home following the temporary duty assignment.

Civilian Personnel

Travel

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

Under the provisions of the Federal Travel Regulation governing authorized rest stops for travel where one or more duty points are outside the continental United States, 41 C.F.R. § 301-7.6(c)(6)(i)-(v) (1989), a reasonable rest period, not to exceed 24 hours, may be permitted as a matter of agency discretion at destination before reporting for duty when a rest stop is not authorized en route even if annual leave is taken en route.

B-244897, July 30, 1991

Civilian Personnel

Relocation

■ **Overseas personnel**

■ ■ **Quarters allowances**

■ ■ ■ **Eligibility**

Counsel for overseas employee has requested a decision regarding the employee's entitlement to a living quarters allowance that was denied by his employing agency on the basis that the employee was a local hire. Counsel is advised that the determination of an employee's place of actual residence is the administrative responsibility of the employing agency, and we will not question any reasonable determination made by the agency unless it is plainly erroneous or inconsistent with the law or regulations. *See cases cited.* Claim may be filed at a later date in accordance with our regulations.

Military Personnel

B-238482, July 5, 1991***

Military Personnel

Pay

- **Claims**
 - ■ **Statutes of limitation**
-

Military Personnel

Pay

- **Retirement pay**
- ■ **Claims**
- ■ ■ **Trust funds**
- ■ ■ ■ **Statutes of limitation**

Settlement by the Claims Group that 31 U.S.C. § 3702(b) barred claim by son for arrears of military retired pay that were owed but never paid to his father, a retired Navy member living in China, and survivor's benefits, if any, owed his spouse is reversed. The claim is for moneys withheld in accordance with 31 U.S.C. § 3329 which authorizes the Secretary of the Treasury to hold moneys in trust if the Secretary determines that the payee lives in a country where it is unlikely that he or she will receive checks from the United States or be able to negotiate them for full value. Claims to recover moneys held in trust by the government are not barred under 31 U.S.C. § 3702(b).

B-243002, July 11, 1991

Military Personnel

Pay

- **Retirement pay**
- ■ **Overpayments**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

Member of the uniformed services, employed in a civilian capacity by the government and thereby subject to 5 U.S.C. § 5532, which requires a reduction in military retired pay, received substantial increases in his retired pay due to the failure of the finance center to make appropriate pay cap deductions. Since member should have been aware of the overpayment and should have taken action to have the matter corrected, he is not without "fault" in the matter and waiver must be denied under 10 U.S.C. § 2774. Waiver of an additional overpayment resulting from erroneous estimates of monthly deduction required to comply with the pay cap (for a different period) is granted.

B-237117, July 12, 1991

Military Personnel

Pay

- **Dual compensation restrictions**
- ■ **Applicability**
- ■ ■ **Personal services**

The Dual Compensation Act, 5 U.S.C. § 5531 *et seq.* (1988), is applicable to retired Air Force officers coaching under personal services contracts with the Air Force Academy Athletic Association.

Military Personnel

Pay

- **Dual compensation restrictions**
- ■ **Applicability**
- ■ ■ **Personal services**

Coaches with the Air Force Academy Athletic Association who initially occupy their positions under personal services contracts which terminate in 1 year or less qualify for a 30-day exception from dual compensation deductions under 5 U.S.C. § 5532(d)(2).

B-242335, July 12, 1991

Military Personnel

Pay

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

A member of the armed services has a duty to check his bank account balance for discrepancies when he is paid by direct deposit to his bank account and is responsible for repayment of overpayments resulting from his failure to do so.

Military Personnel

Leaves Of Absence

- **Accrual**
- ■ **Leave records**
- ■ ■ **Error detection**
- ■ ■ ■ **Debt collection**

A member has a responsibility to be aware of his accrued leave balance and to question any discrepancies which appear on his Leave and Earnings statement prior to taking leave and will be responsible for overpayments resulting from his failure to do so.

B-242295, July 16, 1991

Military Personnel

Relocation

- **Relocation travel**
- ■ **Eligibility**
- ■ ■ **Administrative determination**
- ■ ■ ■ **Errors**

A Service member was misinformed as to his entitlement to ship household goods. Since in the absence of specific statutory authority the government is not liable for the negligent or erroneous

acts of its agents, he is entitled to transportation allowances only in the amount authorized by the Joint Federal Travel Regulations and applicable Navy regulations.

B-242597, July 22, 1991

Military Personnel

Pay

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

A member of the United States Navy who failed to examine his direct bank deposits and his Leave and Earnings Statements which showed he was being erroneously paid separate rations in addition to receiving free meals aboard ship may not have the overpayment waived, particularly when he failed to insist on a satisfactory explanation of why his pay had not decreased as he had anticipated.

B-244596, July 22, 1991

Military Personnel

Pay

- Survivor benefits
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Request for waiver under 10 U.S.C. § 2774 of indebtedness for retroactive Survivor Benefit Plan premiums is denied as statute is inapplicable where there is no payment of pay or allowances since retired member had waived retired pay in lieu of Civil Service Retirement.

B-238189.2, July 26, 1991***

Military Personnel

Pay

- Retirement pay
- ■ Computation
- ■ ■ Dual compensation restrictions
- ■ ■ ■ Bonuses

Military Personnel

Pay

- Retirement pay
- ■ Reemployed annuitants
- ■ ■ Dual compensation restrictions
- ■ ■ ■ Bonuses

A payment characterized as a bonus made to a retired member of a uniformed service employed by the government which is awarded by raising his rate of pay temporarily must be included in computing the reduction in retired pay required by 5 U.S.C. § 5532(c) where cognizant authorities have concluded that there is no statutory authority for the payment of bonuses and the payment is treated as basic pay for other purposes. 69 Comp. Gen. 338 (1990) is overruled.

B-243907, July 26, 1991

Military Personnel

Pay

■ **Retirement pay**

■ ■ **Personnel death**

■ ■ ■ **Beneficiaries**

Brother of deceased member claims unpaid compensation pursuant to 10 U.S.C. § 2771 because the member's children were adopted by their stepfather and, under state law, adoption severs all ties to the biological parent. However, state law also provides that for purposes of succession, the relationship between parent and child is not affected by adoption by the spouse of one of the biological parents. Thus, the children of the deceased are entitled to the unpaid retired pay and the claim of the brother must be denied.

Miscellaneous Topics

B-239201.3, July 25, 1991

Miscellaneous Topics

Federal Administrative/Legislative Matters

- Administrative agencies
- ■ Audits
- ■ ■ Financial information

Letter to the Inspector General of the Federal Deposit Insurance Corporation discusses the financial audit requirements contained in section 220 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and section 305 of the Chief Financial Officers Act of 1990 (CFO Act) and concludes that the Inspector General need not conduct the financial audit required by the CFO Act.

B-244177, July 26, 1991

Miscellaneous Topics

National Security/International Affairs

- Foreign sales
- ■ Military assistance
- ■ ■ Prohibition
- ■ ■ ■ Desert Storm

Responding to a question regarding the prohibition in section 109 of Pub. L. No. 102-28 against providing sales, credits, or guarantees for defense articles or services under Arms Export Control Act to countries that have not fulfilled their commitments to share burden of Operation Desert Storm, GAO finds no basis for legal objection to the view of the Department of State that: (1) the prohibition does not extend to activities undertaken prior to the consummation of the transaction, and (2) the prohibition does not require that the entire commitment be paid before foreign military sales transactions may be consummated.

Procurement

B-242585.3, July 1, 1991

91-2 CPD 1

Procurement

Competitive Negotiation

- Discussion
- ■ Determination
- ■ ■ Personnel changes

While the agency's acceptance of the substitution of one dental hygienist for another after best and final offers constituted discussions, protester, who was not given a similar opportunity for discussions, was not prejudiced since the substitute did not impact upon the relative standing of offerors and there was no effect on price.

B-242755.2, July 1, 1991

91-2 CPD 2

Procurement

Competitive Negotiation

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

Protester was properly excluded from competitive range where agency reasonably concluded that firm had no reasonable chance for award because of significant technical deficiencies identified in its proposal which was rated by the agency's technical evaluators as "unacceptable" under two of the solicitation's four technical evaluation factors.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ ■ GAO review

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Evaluation criteria
- ■ ■ ■ Modification

Protest that agency improperly changed requirements after excluding protester from the competitive range is denied where, contrary to protester's contention, changed requirements did not alter the basic contract objective of miniaturizing and packaging electronics into a fabricated expendable decoy meeting performance and compatibility requirements, and protester was not prejudiced by not having an opportunity to submit a proposal based on changed requirements.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Contracting officer duties
- ■ Contract award notification

Agency's failure to promptly notify unsuccessful offeror of award is a procedural defect that does not affect the validity of a contract award.

B-243080, July 1, 1991

91-2 CPD 3

Procurement

Contract Management

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

Protest of contract modification changing style and grade of power cable assemblies is denied where item that agency accepted as a result of the modification is not fundamentally different from the item described in the solicitation and where there is no evidence in the record that field of competition was materially changed by modification.

B-243123, July 1, 1991

91-2 CPD 4

Procurement

Sealed Bidding

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

A procuring agency could properly accept a late bid on a sealed bid procurement where the bid was sent to a contracting office in the United States by certified mail more than 5 calendar days prior to the specified bid receipt date and evidence of the date on which the bid was sent consists of a legible postmark of the U.S. Postal Service on the bid envelope and on the certified mail receipt.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Protest fails to state valid basis of protest where the paramount cause of the late submission of proposal was the protester's failure to allow sufficient time for timely delivery of its proposal.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ GAO review

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

Procurement

Contract Management

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

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Performance capabilities

Whether a potential contractor can comply with limitation on subcontracting provision in a solicitation issued under Section 8(a) of the Small Business Act is a matter of responsibility not reviewable by the General Accounting Office absent a showing of possible fraud, bad faith, or misapplication of definitive responsibility criteria on the part of contracting officials; whether the contractor in fact complies is a matter of contract administration, also not reviewable under the bid protest function.

Procurement

Competitive Negotiation

- Below-cost offers
 - ■ Contract awards
 - ■ ■ Propriety
-

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Allegation that awardee's offer is unrealistically low and represents a buy-in provides no basis for overturning award, since buy-ins are not inherently improper; whether the awardee can perform at the price offered is a matter of responsibility generally not for review by the General Accounting Office.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Subcontractors
- ■ ■ Prior contracts

Allegation that employees of a subcontractor of awardee shared office space with contracting agency prior to award, and that awardee may have gained unfair competitive advantage as a result, is dismissed, since the allegation of impropriety amounts to no more than unsupported speculation.

B-244567, July 1, 1991

91-2 CPD 7

Procurement

Bid Protests

- Dismissal
- ■ Definition

Where protest allegations do not establish likelihood that agency's decision was contrary to applicable regulations, protest of decision not to set aside procurement for exclusive participation by small business concerns is dismissed for failure to set forth a legally sufficient basis of protest as required by General Accounting Office Bid Protest Regulations.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

On reconsideration, General Accounting Office has no basis to change corrective action recommendation that the agency reopen the competition, amend the solicitation to state its requirement clearly, and request new best and final offers, where protester was not entitled to the award because the agency did not find protester's product acceptable in all material respects.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Invitations for bids
- ■ ■ ■ Defects

Procurement

Sealed Bidding

- Invitations for bids
- ■ Interpretation
- ■ ■ Terms

Award of an indefinite quantity contract for construction services under an invitation for bids (IFB) was improper where the IFB bid schedule was susceptible of two reasonable interpretations and the protester's bid could have been low under that firm's reasonable interpretation of the bid schedule.

Procurement

Competitive Negotiation

- Contracting officer duties
- ■ Contract awards
- ■ ■ Review

Contention that award determination was improperly made by other than contracting officer is denied where record indicates that contracting officer did make the award selection. Review of this selection decision by the contracting officer's supervisor was appropriate.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee's offer did not comply with the solicitation lease requirements because its offer included an additional 5-year renewal option which was not a solicitation requirement is denied where this additional option was not evaluated by the agency or considered in the award selection.

Procurement

Competitive Negotiation

- Offers
- ■ Leases
- ■ ■ Clerical errors
- ■ ■ ■ Correction

Lease term correction is proper where the agency made a clerical error in drafting the original lease agreement, the correction is ratified by both the awardee and the contracting officer and the terms of the corrected lease conform to the solicitation terms.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions is denied where the protester was reasonably advised of the general area of deficiencies in its proposal and was given an opportunity to cure those deficiencies.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Where base operating costs are subject to escalation over the term of a contract, allegation that awardee listed unrealistically low operating costs does not provide a basis to protest since submission of a below-cost offer is legally unobjectionable, and the record establishes that the awardee will merely escalate operating costs based on the consumer price index applied to the items which it included in this category, an option permitted by the solicitation.

B-243197, July 2, 1991

91-2 CPD 14

Procurement

Specifications

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

Protest that awardee's property is "functionally" located in a base flood plain and thus that award is inconsistent with the terms of the solicitation is denied where the solicitation merely prohibits the agency from leasing property that is in fact located in a base flood plain and does not mention or include property that is "functionally" located there.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement

Competitive Negotiation

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

Protest that agency improperly conducted discussions with only one offeror after best and final offers were submitted and engaged in technical leveling during these discussions is denied where there is nothing in the record to support these allegations.

Procurement

Competitive Negotiation

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

Challenge of an award as improper on the basis that the agency's actions during the course of negotiations created a "technical auction by transfusion" is denied where the protester gives no support or specific details for its allegation of technical transfusion and where there is no corroborating evidence that supports the protester's speculative claim that the agency used improper auction techniques.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protest that contracting agency conducted procurement in a way that fostered unequal competition, based on claims that the agency required only the protester, and not the awardee, to include electricity costs in its offer and that the agency miscalculated the protester's rates, is denied where the protester and the awardee were afforded the same opportunity to either include or exclude electricity costs and where the protester concedes that, even based upon its own calculations, the awardee's rates were still lower than its rates.

B-244580, July 2, 1991

91-2 CPD 16

Procurement

Bid Protests

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

Protest filed at the General Accounting Office more than 10 days after initial decision denying agency-level protest is dismissed as untimely; protester's continued pursuit of protest with the agency does not toll timeliness requirements.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of protest as untimely is affirmed where the protester knew the basis of its protest (rejection of its quote) more than 10 working days prior to filing its protest. Protester may not delay filing protest until after receipt of notice of award of contract when it is the rejection of its quote and not the award which forms the protest basis.

Procurement

Payment/Discharge

- Payment procedures
- ■ Set-off rights

A set-off against receivables otherwise owed to a carrier by the government to recover for loss or damage to a member's household goods in transit is proper even though some of the recovery must be remitted to the member's insurer.

Procurement

Socio-Economic Policies

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

Agency's decision to set aside procurement for base housing maintenance for small disadvantaged business (SDB) concerns was proper where contracting officer determined that there was a reasonable expectation that offers would be obtained from two responsible SDB firms at a price within 10 percent of the fair market price and where the application of that 10 percent price differential did not generally deny nondisadvantaged small businesses a reasonable opportunity to compete for contracts in the industry category that encompasses base housing maintenance.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest against agency issuance of modification to a purchase order is dismissed as academic where the agency determines that the modification was issued in error and seeks to recoup sums paid under the modification.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration motions
- ■ ■ ■ Interested parties

Where interested party was aware of protest but did not actively participate in process by presenting or responding to arguments, party is not eligible to request reconsideration of decision on protest.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract, under the authority of 10 U.S.C. § 2304(c)(1) (1988), to the only known qualified source is not objectionable where the agency does not have the necessary technical data to conduct a competitive procurement or sufficient time to permit reverse engineering of the item and required testing of an alternate source's ultimate product, and thus reasonably determined that only one source could supply the desired item within the critical time constraints of the procurement which were not the result of a lack of advance planning.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest of allegedly improper sole-source procurement as untimely is denied; protester's pursuit of its basis of protest with agency's competition advocate did not toll General Accounting Office timeliness requirements where competition advocate's representation that it would recommend competition did not provide protester a reasonable basis to believe that agency was reconsidering its decision to proceed with sole-source acquisition.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing as untimely protest of cancellation of solicitation is denied where initial, agency-level protest challenging cancellation was filed more than 10 working days after protester received notice of cancellation.

Procurement

Socio-Economic Policies

- **Labor standards**
- ■ **Service contracts**
- ■ ■ **Wage rates**
- ■ ■ ■ **Errors**

Protest that awardee's quote on small purchase violates Service Contract Act (SCA) because one quoted hourly rate was below the SCA-specified wage rate is denied where record does not show the awardee intended to violate the SCA in the performance of contract.

B-243195, July 5, 1991

91-2 CPD 24

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Samples**

Bid samples of dispatch cases were reasonably found unacceptable because they did not present a neat, finished appearance as required by the workmanship provision in the commercial item description referenced in the solicitation.

B-243215, July 5, 1991

91-2 CPD 25

Procurement

Competitive Negotiation

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

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

Procurement

Competitive Negotiation

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

Where acceptance period expired on all proposals at time provided in RFP, contracting officer may allow proposed awardee to extend proposal acceptance period without conducting discussions with offerors.

Procurement

Bid Protests

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

Protest against technical evaluation of proposal, raised for the first time in protester's comments on agency report, is dismissed as untimely filed under Bid Protest Regulations because protest was filed more than 10 working days after incumbent contractor learned its basis of protest (*i.e.*, when

protester was told its proposal was ranked fifth out of six technical proposals and was ranked technically much lower than the proposed awardee's proposal).

B-243229, July 5, 1991

91-2 CPD 26

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Salient characteristics
- ■ ■ ■ Allegation substantiation

Protest that contracting agency improperly rejected protester's proposed "equal" products in a brand name or equal procurement is denied where protester concedes that the information it submitted does not establish that its proposed "equal" products meet all the required salient characteristics of the specified brand name product.

B-243247, July 5, 1991

91-2 CPD 27

Procurement

Competitive Negotiation

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

Decision to award to higher-priced offeror rather than protester was unobjectionable where agency reasonably concluded in cost/technical tradeoff that awardee's proposal, which offered more personnel than protester's and was rated more highly in areas of management and experience, represented a significant performance advantage that outweighed its 2 percent cost premium.

Procurement

Competitive Negotiation

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

Protest that agency improperly relied on undisclosed criteria in technical evaluation of proposals is denied where matters considered in evaluation were reasonably related to the stated evaluation factors.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency improperly discussed with awardee areas of its proposal that were not deficient without conducting similar discussions with protester, is denied where record shows that discussions only concerned deficiencies in proposal.

Procurement

Bid Protests

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

Protest against selection of firm for negotiations leading to possible award of an architect-engineer contract on the basis that such firm is a large business is dismissed as untimely where notification of the project expressly allowed for proposals from large business firms.

B-244545, July 5, 1991

91-2 CPD 30

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest is dismissed where it states disagreement with agency's rejection of bid, but sets forth neither reason agency gave for rejection nor specific basis for challenging rejection; absent such information, protest fails to establish likelihood that agency violated applicable procurement laws or regulations.

B-244578, July 5, 1991

91-2 CPD 31

Procurement

Bid Protests

- Antitrust matters
- ■ GAO review

Procurement

Sealed Bidding

- Bids
- ■ Minor deviations
- ■ ■ Government advantage
- ■ ■ ■ Acceptability

A bidder's failure to submit affiliation information as required by the Federal Acquisition Regulation § 52.214-7 is a minor informality which may be waived or cured after bid opening because the information does not affect the responsiveness of the bid. Although the protester suggests that the absence of affiliation information may indicate illegal collusive bidding, that issue is a matter for consideration by the contracting officer in the context of determining the bidder's responsibility and by the Department of Justice.

B-243630; B-243804, July 8, 1991

91-2 CPD 32

Procurement

Bid Protests

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

Protest that agency's disclosure of protester's prices under original solicitation and immediate issuance of a revised solicitation for the same requirement will result in an auction is untimely where protester did not file protest until 2 months after denial of its agency-level protest.

Procurement

Competitive Negotiation

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

Protest that an agency improperly evaluated protester's and awardee's proposals is denied where record shows that the agency's evaluation of the proposals was reasonable and in accordance with the solicitation's evaluation criteria.

Procurement

Contractor Qualification

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

Allegation that the awardee does not have the financial resources needed to perform the contract concerns the agency's affirmative determination of the awardee's responsibility which the General Accounting Office will not review where there is no indication of possible fraud, bad faith, or misapplication of a definitive responsibility criterion.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Offers
- ■ ■ ■ Minor deviations

Protest that award is improper because three of the awardee's certifications in the solicitation contain errors or omissions is denied where the alleged failure to properly complete the certifications constitutes a minor defect that can be corrected prior to award.

Procurement

Special Procurement Methods/Categories

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

Protest that agency should have selected protester as the most qualified firm under an architect-engineer procurement is denied where record does not demonstrate that the agency's evaluation was unreasonable or not consistent with the evaluation criteria.

Procurement

Bid Protests

- Allegation
- ■ Abandonment

Where agency in its report responds in detail to issues raised in the initial protest, and the protester admits in its rebuttal comments on the agency report that one issue had been clarified, and does not rebut the agency's response to the other issues, the issues are deemed abandoned.

B-243743, July 8, 1991

91-2 CPD 33

Procurement

Bid Protests

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

Protest filed with the General Accounting Office more than 10 working days after the protester learned of the denial of its protest to the contracting agency is untimely notwithstanding the fact that the untimely filing was due to incorrect advice given to the protester by the agency regarding the forum in which its protest should be filed.

B-244174, July 8, 1991

91-2 CPD 34

Procurement

Bid Protests

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

Protester is not an interested party to challenge the evaluation of its proposal under a small business set-aside solicitation where the Small Business Administration determines that the protester is other than small for the procurement.

B-239199.2, July 9, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Administrative appeals
- ■ ■ Claim settlement
- ■ ■ ■ Precedents

The settlement of an individual claim by the Claims Group disposes of that claim only. Although settlements often are useful in providing guidance for the future, they do not constitute decisions of the Comptroller General and thus are not necessarily to be followed as precedent.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester has not shown that previous decision, in which protest issues were dismissed as untimely, was erroneous, and the protest issues do not present significant issues.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Offers

Protest is sustained where, despite solicitation provisions indicating that some aspects of real estate closing services were required to be performed by an attorney, agency made award on the basis of a proposal which expressly stated that these services would not be performed by an attorney.

Procurement

Competitive Negotiation

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

Agency properly excluded the protester's proposal from the competitive range where the protester did not provide required information under two of the solicitation's four evaluation factors.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Awardee's argument that agency improperly evaluated protester's proposal as offering a domestic end product for Buy American Act purposes does not provide a basis for reconsidering decision that award was improper because agency had improperly evaluated awardee's proposal as offering a domestic end product; General Accounting Office will not consider new arguments raised by interested party in request for reconsideration where those arguments could have been raised during consideration of the initial protest.

Procurement

Competitive Negotiation**■ Unbalanced offers****■ ■ Materiality****■ ■ ■ Determination****■ ■ ■ ■ Criteria**

Protester's low evaluated offer for food services, with prices based on incremental ranges of number of meals served, was properly rejected as materially unbalanced where protester offered significantly lower prices for the middle volume meal range compared to its prices for the lower and higher volume meal ranges and where agency had a reasonable doubt that protester's offer represented the lowest ultimate cost to the government.

B-243289, July 10, 1991**91-2 CPD 40**

Procurement

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

Agency's decision not to set aside a procurement for small disadvantaged business (SDB) concerns was proper where the contracting officer determined on the basis of information submitted by interested SDB concerns that reasonable expectation did not exist that offers would be received from at least two responsible SDB concerns at acceptable prices and the agency's Small and Disadvantaged Business Utilization Specialist concurred in this determination.

B-243292, July 10, 1991**91-2 CPD 41**

Procurement

Contractor Qualification**■ Responsibility****■ ■ Corporate entities****■ ■ ■ Certification**

Procurement

Government Property Sales**■ Timber sales**

Bid submitted in corporate name may be accepted under a sealed bid timber sale even though the corporation had not submitted its annual report to the state of incorporation as required, since the firm finally submitted the required report, and in any event, the failure to submit the report on time did not impact the legal viability of the corporation.

B-243855.2, July 10, 1991**91-2 CPD 42**

Procurement

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

Request for reconsideration of prior decision is denied where protest of specifications accompanying proposal does not constitute timely protest of alleged solicitation improprieties.

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
- ■ Use
- ■ ■ Administrative discretion

General Accounting Office will not review an agency's actions under the Section 8(a) program absent a showing that agency officials have violated regulations or engaged in fraud or bad faith.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Failure of bid to include signed certificate of procurement integrity is a material deficiency in the bid requiring that it be rejected as nonresponsive; argument that certificate was not required because guaranteed minimum amount under indefinite quantity contract was less than \$100,000 is without merit where protester's bid was for more than \$100,000.

Procurement

Bid Protests

- Bias allegation
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest that relaxation of specifications by amendment issued after receipt of initial proposals evidences agency bias against protester and in favor of awardee is dismissed; there is nothing inherently biased or otherwise improper in agency's relaxing specifications to increase competition, and record shows relaxation benefited three offerors. General Accounting Office generally will not entertain argument that agency should have used more restrictive specifications.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protest alleging entitlement to evaluation preference under Buy American Act is dismissed for lack of interest where firm's offer properly was determined technically unacceptable due to qualification of option offer; even if the protest on this basis were sustained, protester would not be eligible for award.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Typewritten terms

Contracting officer properly rejected as nonresponsive a bid which contained a "retyped" Certificate of Procurement of Integrity where the retyped certificate omitted a paragraph from the required text as set forth in the solicitation and Federal Acquisition Regulation, because without the omitted paragraph it was unclear whether the bidder would be bound to all of the solicitation's requirements.

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed where basis for protest was filed more than 10 working days after the protester initially received actual or constructive knowledge of initial adverse agency action.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Protester's speculation regarding contracting agency's evaluation of proposals and eventual award is premature and thus provides no basis for protest where the agency has not made a determination regarding the acceptability of proposals or award.

Procurement

Special Procurement Methods/Categories

- In-house performance
- ■ Administrative appeals

Protest concerning validity of cost comparison made pursuant to Office of Management and Budget Circular A-76 will not be considered where the protester has not exhausted the administrative appeals procedure provided by the agency.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Protest against award of 6-month contract for lawn maintenance services using limited competition is sustained where record indicates that the "urgency" which was used to justify limited competition was the result of the contracting agency's lack of advance planning, in particular its failure to commence the selection process until 6 months after the incumbent's contract had expired.

B-243483, July 12, 1991

Procurement

Payment/Discharge

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

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

A carrier is not relieved of liability for in-transit damage to an item of household goods simply because the carrier was not able to inspect the damage.

B-243979.2, July 12, 1991

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to the protest, the agency amended the solicitation in less than 1 month after the protest was filed.

B-244380, July 12, 1991

Procurement

Bid Protests

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

Protest alleging that agency's inadvertent disclosure to awardee of deficiencies in protester's proposal gave awardee unfair competitive advantage is untimely where filed within 10 working days after the basis of protest was known.

Procurement

Bid Protests

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

Protest alleging that provisions of the Service Contract Act should have been included in the request for proposals is untimely where it was clear from the face of the solicitation that it did not contain Service Contract Act provisions and protest was not filed prior to the closing date for receipt of initial proposals.

B-244413, July 12, 1991

91-2 CPD 52

Procurement

Bid Protests

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

Allegation that solicitation was improperly set aside for small and disadvantaged businesses is dismissed as untimely since it was raised more than 10 days following bid opening—an event which constituted notice of adverse action with regard to an earlier protest filed with the agency.

Procurement

Bid Protests

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

Allegation that awardee will not perform in accord with subcontracting restrictions set forth in the solicitation is dismissed because protester is not eligible for award under the set-aside solicitation and is, thus, not an interested party to protest.

B-244634, July 12, 1991

91-2 CPD 53

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- **Terms**
- ■ **Materiality**
- ■ ■ **Integrity certification**

Failure of bid to include signed certificate of procurement integrity is a material bid deficiency requiring that it be rejected as nonresponsive; argument that failure to sign certificate was a waivable minor informality is without merit, since applicable regulations require, without exception, rejection of bid that does not include signed certificate.

Procurement

Bid Protests

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

Protest alleging that solicitation estimated quantities were inaccurate and resulted in materially unbalanced bids is dismissed as untimely where not filed until after bid opening.

Procurement

Bid Protests

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

Protester is not an interested party to challenge contracting officer's acceptance of price reduction from one bidder after bid opening where another bidder would be in line for award if reduction were disallowed.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Cancellation of invitation for bids after opening was unobjectionable where agency's requirement for specific counseling services not enumerated in the solicitation arose due to the deployment of large numbers of service personnel overseas into a hostile zone of operations; it was necessary to both revise the specifications to reflect the changed requirements, and convert from sealed bidding to negotiated procedures to permit consideration of quality and other non-price factors in selecting a contractor.

Procurement

Competitive Negotiation

- Use
 - ■ Criteria
-

Procurement

Sealed Bidding

- Use
- ■ Criteria

Use of negotiation rather than sealed bidding procedures was unobjectionable in procurement for military counseling services where the contracting officer reasonably determined that the substantial deployment of service personnel to a hostile area of operations enhanced the importance of obtaining the highest quality counseling services, and thus required consideration of technical factors as well as price and rendered discussions likely.

Procurement

Competitive Negotiation

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

Proposals delivered by U.S. Postal Service Express Mail to agency approximately 2 hours before time established for receipt of proposals but not routed to contracting office until after time set for receipt of proposals were properly rejected as late where envelopes did not contain the solicitation numbers and times specified for receipt of proposals as required by solicitations. Lack of identification markings rather than agency mishandling was paramount cause of late deliveries.

Procurement

Competitive Negotiation

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

Agency's decision to eliminate protester from the competitive range before requesting a best and final offer was reasonable where solicitation gave primary consideration to delivery schedule and price, and other offerors proposed shorter delivery schedules and lower prices than did the protester.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Shipment schedules

Procurement

Contractor Qualification

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

Firm's ability to meet delivery schedule is a matter of responsibility which generally is not for review by the General Accounting Office.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Bidder's failure to complete Certificate of Procurement Integrity incorporated in an invitation for bids by an amendment renders the bid nonresponsive because the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound by merely acknowledging the amendment.

Procurement

Sealed Bidding

- Alternate bids
- ■ Use
- ■ ■ Administrative discretion

Protest is dismissed where second low bidder seeks to compel agency to select alternate bid rather than base bid; choice is within the discretion of the agency.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Offeror was afforded reasonable opportunity to correct deficiencies in its proposal, and proposal was subsequently properly eliminated from the competitive range, where during discussions the agency asked how off-line equipment in proposed satellite communications system could be replaced without causing interruption to communications. as required by the solicitation, and the offeror responded that not all equipment could be so replaced; offeror's refusal to comply with mandatory solicitation requirement rendered its proposal technically unacceptable

Procurement

Competitive Negotiation

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

Proposal for production art services was properly excluded from the competitive range where technical evaluation involving subjective review of art samples was reasonable and consistent with evaluation criteria established in the solicitation, and contracting agency determined that the proposal did not have a reasonable chance of being selected for award.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where agency promptly took corrective action within 1 week of when the protest was filed.

Procurement

Sealed Bidding

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

The failure to provide a bid bond with a bid is a failure to meet a material requirement of a solicitation which makes the bid nonresponsive. Provision of a bid bond after bid opening cannot cure the nonresponsiveness of the bid, nor does it constitute an acceptable late modification.

Procurement

Bid Protests

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

The General Accounting Office properly dismissed as untimely a protest of a cancellation of a solicitation where the record indicated that the protester was aware of the agency's intent to cancel and did not file the protest until it received written confirmation of the cancellation.

Procurement

Sealed Bidding

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

Agency properly declined to consider a copy of a quote for award purposes, where protester alleged the agency lost its quote, but failed to prove that the quote actually arrived at designated office in the procuring agency.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ GAO review

Protest that awardee does not meet the small business requirement set forth in the request for quotations is dismissed, since the *General Accounting Office* lacks jurisdiction to review size protests.

Procurement

Sealed Bidding

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

Agency properly rejected as nonresponsive a bid that acknowledged an amendment to the solicitation but failed to submit prices for the option year that was added by the amendment, where the invitation for bids required such prices and provided that they would be evaluated for award.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protest that agency failed to disseminate a complete solicitation amendment, but only the first page, is denied where that page clearly indicates that the amendment consists of multiple pages and the protester's assertion is otherwise contradicted by the record.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Personnel experience
-

Procurement

Specifications

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

Solicitation requirement for resumes of key personnel to operate and maintain specialized, high-speed naval research support vessels is not unduly restrictive of competition; agency reasonably concluded that individuals already having specialized training and experience with the same type of vessels were needed, and that consideration of resumes as part of proposal was necessary to ascertain whether prospective contractor could operate and maintain the vessels without interruption.

Procurement

Competitive Negotiation

- Competitive advantage
 - ■ Non-prejudicial allegation
-

Procurement

Specifications

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

Fact that incumbent may enjoy competitive advantage by virtue of employing personnel already possessing highly specialized skills required by solicitation does not render skill requirements improper, and requirements need not be relaxed by agency, where agency reasonably concluded they were necessary to avoid interruption of naval research programs due to inadequately trained personnel.

Procurement

Bid Protests

- Allegation
- ■ Abandonment

Where agency in its administrative report responds in detail to issues raised by protester, and where protester in its comments to the agency's administrative report does not rebut the agency's responses, these issues are deemed abandoned.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee is not in compliance with military standard for production of custom hybrid microcircuits is dismissed where solicitation did not require compliance with the standard specified by protester, and protester has not shown that compliance with that standard is necessary to meet solicitation requirements.

Procurement

Bid Protests

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

Protest that solicitation is defective because it did not require compliance with military standard for production of custom hybrid microcircuits is untimely where not filed prior to time set for receipt of initial proposals.

Procurement

Bid Protests

- Dismissal
- ■ Definition

Where protester does not specifically challenge agency's reasons for rejecting protester's proposal as technically unacceptable, protest of rejection is dismissed for failure to set forth a legally sufficient basis of protest as required by General Accounting Office Bid Protest Regulations.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Where protester's proposal was determined technically unacceptable, and protester has offered no argument that would warrant disturbing the agency's conclusion, protester is not an interested party to protest award to another offeror.

Procurement

Bid Protests

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

Protest is dismissed as untimely where initial agency-level protest of award was filed more than 4 months after protester learned of basis for protest.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protest challenging the cost realism of the awardee's proposal by offeror not in line for award if the protest is sustained is dismissed since the protester lacks the direct and substantial interest with regard to the contract award to be considered an interested party.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Inclusion
- ■ ■ ■ Administrative discretion

Contracting agency reasonably included proposal in the competitive range given the proposal's technical acceptability and the agency's belief that significant cost reductions could be achieved through discussions.

Procurement

Bid Protests

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

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

Procurement

Special Procurement Methods/Categories

- In-house performance
- ■ Administrative discretion
- ■ ■ GAO review

Decision to perform services in-house is a matter of executive branch policy, and agency need not conduct a cost comparison under Office of Management and Budget Circular No. A-76 to make such a decision.

Procurement

Bid Protests

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

Protest filed with the General Accounting Office more than 10 working days after the protester knew or should have known the basis of its protest is untimely.

Procurement

Contract Management

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

Protest that contracting agency improperly exercised a contract option is denied where the protester has not shown that the agency failed to follow applicable regulations or that the determination to exercise the option was unreasonable.

Procurement

Small Purchase Method

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

Agency may use manufacturer part numbers as item descriptions in procurements conducted under Federal Acquisition Regulation (FAR) small purchase procedures so long as equal items can be offered, thus satisfying the FAR requirement that those procurements be competed to the maximum extent practicable.

Procurement

Specifications

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

General Accounting Office dismisses protest against specifications for balance/analyzer equipment for use on C-130H aircraft propellers as unduly restrictive where procurement is conducted under small purchase procedures and protester's offer of an alternate item has not yet been evaluated by the agency to determine its acceptability.

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

As a general matter, the measure of damages to repair or replace an item damaged in shipment is the reasonable cost to put it in as good a condition as it was in prior to the damage. Also, GAO will accept service administrative estimate of reasonable repair costs in the absence of competent evidence from the carrier demonstrating that the amount is unreasonable.

Procurement

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

Defense agency properly issued solicitation as a small business set-aside rather than setting aside requirement for small disadvantaged businesses where requirement was previously successfully acquired under *small business set-aside*; fact that agency did not exercise the fourth option in the prior contract does not show that requirement was not "successfully" acquired as a small business set-aside within meaning of Department of Defense Federal Acquisition Regulation Supplement.

Procurement

Socio-Economic Policies**■ Small business set-asides****■ ■ Use****■ ■ ■ Restrictions**

Agency may restrict "limited competition" acquisition to small businesses.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Administrative discretion**

Protest of award of contract for test instrumentation to be placed aboard aircraft is denied where evaluators reasonably determined that protester's proposed system made less efficient use of limited space available, offered less flexibility in installation, and would require more work to install and maintain than awardee's; although narrative evaluation did not specifically discuss every difference in scoring, point scores are merely guidelines, and the perceived significant relative weaknesses in protester's proposal supported selection of awardee's proposal.

Procurement

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

Contracting agency was not required to discuss weaknesses in protester's proposal for airborne instrumentation relative to the merits of awardee's proposal, and would have acted improperly had it disclosed awardee's approach to reducing wiring and maximizing the use of limited space aboard aircraft; agencies cannot disclose in discussions information that would result in revealing one offeror's approach to another, and need not discuss every element of a technically competitive proposal receiving less than the maximum possible score.

B-243922, July 22, 1991

Procurement

Payment/Discharge

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

Record does not establish a *prima facie* case of carrier liability for a damaged violin where the violin was not listed on the inventory of household goods, and there is no other evidence in the record to show that the item was tendered to the carrier for shipment, its condition before it allegedly was shipped, or that the damage was of the sort that likely occurred during transit.

B-244640, July 22, 1991

91-2 CPD 80

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Adequacy

Bid with bid guarantee \$31,467 (or 24 percent) lower than required amount was properly rejected as nonresponsive; deficiency was not *de minimis* and could not be corrected after bid opening.

B-244647, July 22, 1991

91-2 CPD 81

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Contract awards
- ■ ■ ■ Pending protests

Agency is not required to withhold award to second low offeror pending appeal of Small Business Administration determination that low bidder is not a small disadvantaged business (SDB) that rendered the firm ineligible for award under an SDB set-aside.

B-240647.4, July 23, 1991

91-2 CPD 82

Procurement

Competitive Negotiation

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

Protest that agency did not follow stated evaluation criteria is denied where record indicates that evaluation was reasonable and consistent with the requirements set forth in the solicitation.

Procurement

Competitive Negotiation

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

Contention that agency evaluation of protester's technical proposal was "erroneous, false, misleading, and unjustified" is denied where there is no evidence of agency bias in the record; the evaluation has a reasonable basis and is consistent with the stated evaluation criteria; and the agency's revisions to its evaluation report based on prior General Accounting Office decision provide sufficient detail to support the agency's evaluation findings.

B-241841.2, July 23, 1991

91-2 CPD 83

Procurement

Bid Protests

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

Request for reconsideration is denied where protester's arguments are legally irrelevant to the basis for the initial protest decision and, thus, provide no grounds to reverse or modify that decision.

B-243230.2, July 23, 1991

91-2 CPD 84

Procurement

Bid Protests

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

Request for reconsideration of decision dismissing protest is denied where protester fails to show that prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of the decision.

B-243346, July 23, 1991

91-2 CPD 85

Procurement

Competitive Negotiation

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

Protester's proposal was properly rejected where the specified product was required to be produced in accordance with a proprietary drawing revision which the contracting agency does not possess, and the protester's technical data package submitted for alternate source approval contained a drawing of its product which does not appear to satisfy the requisite technical specifications.

Procurement

Competitive Negotiation

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

Agency was not required to downgrade awardee's proposal because it offered a data base specialist who was working for the protester in the same position on the incumbent contract. Although the solicitation required that the awardee's personnel be available for a phase-in period 30 days before the expiration of the previous contract, the purpose of the phase-in period is to allow an orderly transition of the work from the incumbent contractor to the awardee and, since the individual proposed by the awardee as a data base specialist is already performing the same job on the incumbent contract, the purpose of the phase-in period will be served.

Procurement

Competitive Negotiation

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

Protest that agency did not evaluate whether personnel proposed by awardee met the solicitation requirement that staff be "separate, completely independent, dedicated, full-time," and not shared with other contractor accounts is denied. Awardee took no exception to requirements of the solicitation relating to availability of its proposed personnel and, while some personnel proposed by awardee were already employees of that firm and apparently were working on other projects, this was not prohibited by the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Protest that agency failed to evaluate awardee's professional employee compensation plan and awardee's ability to recruit and retain employees is denied where agency considered salary and benefits proposed by awardee, concluded that awardee has excellent policies and recruiting practices and reasonably determined that awardee's proposed compensation levels are not unrealistically low.

Procurement

Sealed Bidding

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

Where corporate surety's power of attorney form attached to bid bond failed to designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety, the agency correctly determined the bond was defective and properly rejected bid as nonresponsive, since there was no evidence at the time of bid opening that surety would be bound.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester has not shown that prior decision contains either errors of fact or law, and protester merely disagrees with our prior decision.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protester's failure to comply with requirement in solicitation, for minor construction, alteration, and repair work, that a bid guarantee be submitted by the closing date for the submission of proposals, rendered the proposal unacceptable under Federal Acquisition Regulation § 28.101-4(b), where the award was made on the basis of initial proposals without discussions.

Procurement

Competitive Negotiation

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

Protest is sustained where solicitation provided that technical factors were more important than cost and record indicates that agency made award to the low-cost, technically acceptable offeror without properly assessing relative technical merit.

Procurement

Competitive Negotiation

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

Agency's cost realism analysis of awardee's proposal was reasonable where agency relied on information provided under Defense Contract Audit Agency's audit and verified awardee's proposed labor rates, fringe benefits, overhead rates, and subcontractor costs.

Procurement

Contract Management

- Contract performance
- ■ Off-site work

Proposal to perform emergency broadcasts from an off-site location does not constitute a unique or innovative solution to contract performance where the issue was raised in a pre-proposal conference and the agency currently uses off-site locations to perform many of its broadcasts.

Procurement

Contractor Qualification

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

Protests that request for quotations was improperly issued as an emerging small business set-aside and that award was improper because of conflict of interest on the part of the contract specialist are dismissed where contracting agency is investigating protester's allegations of conflict of interest, subject to reinstatement by the protester upon receipt of the results of the investigation.

Procurement

Bid Protests

- **Premature allegation**
- ■ **GAO review**

Protest alleging that agency may improperly cancel solicitation is dismissed since it is premature.

Procurement

Bid Protests

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

Agency-level protest, and subsequent protest to the General Accounting Office, of an alleged solicitation impropriety—that the solicitation should have contained an evaluation preference for small disadvantaged businesses (SDB)—are untimely where the agency-level protest is filed after the bid opening date; protester is on constructive notice of the Department of Defense Federal Acquisition Regulation Supplement SDB evaluation preference provisions, which are published in the *Code of Federal Regulations*. Protest does not justify the invocation of the significant issue exception to the General Accounting Office (GAO) timeliness requirements as this issue has been discussed in numerous GAO decisions.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Second round of discussions did not constitute improper technical leveling or promote technical transfusion of proposals where agency had reasonable basis for holding additional discussions and the discussions did not impart information concerning other proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Competition sufficiency

Agency's reversal of initial decision to exclude all but protester's proposal from the competitive range was proper where agency determined that limited further discussions would allow initially excluded offerors to clear up remaining small number of deficiencies, mostly informational, and therefore would enhance competition.

B-243368; B-243368.2, July 26, 1991

91-2 CPD 95

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Prior contracts
- ■ ■ ■ Contract performance

RFP reasonably provided that cost proposals will be evaluated by applying proposed labor rates to government estimates of hours required where government's estimates are based on past contract performance of the solicited requirements and the RFP's evaluation scheme provides for consideration of offerors proposing comparatively more efficient personnel.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Contractors
- ■ ■ ■ Travel expenses

RFP properly does not provide for evaluation of travel and transportation costs where agency cannot predict with any certainty the locations where contract performance will be required.

Procurement

Competitive Negotiation

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

Contracting officer is authorized to make cost/technical trade-offs in selecting the proposal which is most advantageous to the government.

Procurement

Competitive Negotiation

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

RFP requirement that contractor obtain approval for employment of key personnel does not create a personal services contract.

Procurement

Competitive Negotiation

- Contract awards
- ■ Pre-qualification
- ■ ■ Contractor personnel
- ■ ■ ■ Security clearances

Protest alleging that RFP is ambiguous with regard to security requirements is denied where RFP expressly provides that agency will not subject an offeror's personnel to a security determination as part of the evaluation process.

B-243395, July 26, 1991

91-2 CPD 96

Procurement

Competitive Negotiation

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

Contracting agency reasonably downgraded protester's proposal for including personnel who did not possess sufficient experience with the Federal Acquisition Regulation and contract reviews that was required in the solicitation.

Procurement

Competitive Negotiation

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

Award to higher-priced offeror which had a higher-rated technical proposal is proper where contracting agency's selection was consistent with solicitation evaluation scheme and reflected a reasonable price/technical tradeoff.

B-244304, July 26, 1991

Procurement

Payment/Discharge

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

Claims for supplies and services allegedly delivered to the Navy may not be paid where the record fails to show that the supplies and services were actually received and accepted by the Navy. The burden is on the claimant to furnish evidence to substantiate delivery and acceptance.

B-243408, July 29, 1991***

91-2 CPD 97

Procurement

Specifications

- **Ambiguity allegation**
- ■ **Specification interpretation**

Where the solicitation given to protester only solicited offers for a designated model manufactured by the protester and did not indicate that equal products would be acceptable, but award was made to another offeror for its model, the specifications misled and prejudiced the protester, who assertedly could have proposed less expensive models conforming to the agency's needs.

Procurement

Specifications

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

Where the solicitation given to protester only solicited offers for a designated model manufactured by the protester and did not indicate that equal products would be acceptable, but award was made to another offeror for its model, the specifications misled and prejudiced the protester, who assertedly could have proposed less expensive models conforming to the agency's needs.

B-244118, July 29, 1991

91-2 CPD 98

Procurement

Bid Protests

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

Protest that agency improperly evaluated two time-and-material solicitation line items is untimely filed under Bid Protest Regulations, where the method of cost/price evaluation was announced in the solicitation as amended and the protest was not filed until after the closing date for receipt of proposals.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Additional information

Dismissal of protest as untimely is affirmed where protester produces for first time in reconsideration request additional information upon which the timeliness of the protest relies.

Procurement

Bid Protests

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

Protest of amended evaluation criteria in solicitation is dismissed as untimely where not filed before next closing date following amendment.

Procurement

Contract Management

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

Protest alleging that agency improperly terminated protester's contract for convenience is dismissed, as it concerns a matter of contract administration not within General Accounting Office bid protest function.

Procurement

Contract Management

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

Agency properly terminated contract for the convenience of the government and reopened negotiations where, shortly after award, the agency reasonably determined that the award had been improperly made because meaningful discussions had not been conducted, and proposals had not been evaluated in accordance with the solicitation evaluation scheme.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Auction prohibition

The reopening of negotiations after the disclosure of an offeror's price does not constitute an improper auction where the reopening was necessary to remedy an improper award.

Procurement

Socio-Economic Policies

- **Disadvantaged business set-asides**
- ■ **Use**
- ■ ■ **Administrative discretion**

Protest of a decision not to set a solicitation aside for small disadvantaged businesses (SDBs) is denied where agency reasonably determined that it would not receive offers from at least two responsible SDBs and where, for a portion of its requirements, agency reasonably concluded that its requirements for natural gas had been previously acquired successfully through small business set-asides.

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Disadvantaged business set-asides**
- ■ ■ **Preferences**
- ■ ■ ■ **Computation**

Agency is not required to apply evaluation preference for small disadvantaged businesses to contract price elements which are not evaluation factors for award.

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Disadvantaged business set-asides**
- ■ ■ **Preferences**
- ■ ■ ■ **Eligibility**

Evaluation preference for small disadvantaged businesses is authorized by statute governing the obligation of Department of Defense (DOD) funds only and, therefore, should not be used in evaluation items which are to be acquired with non-DOD funds.

Procurement

Small Purchase Method

- **Quotations**
- ■ **Government mishandling**

A small purchase contract will not be disturbed where after award the contracting agency discovers that the protester's lower quotation was misplaced and therefore not considered, since the agency's error has not been shown to be the result of a conscious or deliberate effort to exclude the protester from award consideration.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not present information not previously considered which warrants reversal or modification of prior decision denying protest.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Protest against the sole-source award of a contract for ground troop protective vests is denied where the contracting agency reasonably determined that only one known firm was capable of expeditiously meeting the urgent supply requirement caused by Operation Desert Storm.

Procurement

Competitive Negotiation

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

Notwithstanding greater importance of technical factors in overall evaluation scheme, agency may award contract to a lower-cost offeror where the record establishes that the source selection authority reasonably determined proposals to be technically equal.

Procurement

Competitive Negotiation

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

Agency cost realism analysis had a reasonable basis where the agency reviewed the awardee's proposal to ensure that the awardee proposed a sufficient level of effort; verified awardee's direct and indirect cost rates with the Defense Contract Audit Agency; and verified that in the past awardee generally performed at the cost it proposed.

Procurement

Special Procurement Methods/Categories

- Computer equipment/services
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Where request for proposals for computer disk storage system did not require identification by model number or submission of technical information for evaluation purposes, agency reasonably determined that awardee's system satisfied requirement for serviceability on the basis of a specific statement in the proposal offering to comply with the requirement.

Procurement

Specifications

- Brand name/equal specifications
- ■ Equivalent products
- ■ ■ Salient characteristics
- ■ ■ ■ Descriptive literature

In purchase of automatic data processing equipment using nonmandatory schedule contract, agency properly rejected response submitted by protester which failed to demonstrate compliance with a salient requirement.

Procurement

Bid Protests

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

Protest of an alleged price disclosure by the procuring agency in a negotiated procurement need not be filed within 10 working days of the date the protester learned of the alleged disclosure where the agency promised corrective action; however, when the protester knew from the issuance of the solicitation that the agency was not performing the promised corrective action, the protester was required to protest within 10 working days of receipt of the solicitation, thus its post-award protest, which was not filed within 10 working days of the protester's receipt of the solicitation, is untimely under the General Accounting Office Bid Protest Regulations.

Procurement

Bid Protests

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

Untimely protest alleging the disclosure of the protester's price by the procuring agency will not be considered under the significant issue exception to the General Accounting Office (GAO) timeliness requirements where the issue raised in the protest has been considered on the merits by GAO in prior decisions.

B-244239, July 31, 1991

Procurement

Special Procurement Methods/Categories

- Federal procurement regulations/laws
- ■ Amendments
- ■ ■ Helium

GAO has no objection to proposed changes in Federal Acquisition Regulation (FAR) case No. 91-09, which would implement requirements under the Helium Act, 50 U.S.C. § 167a *et seq.*, concerning the acquisition of helium.

B-244894, July 31, 1991

91-2 CPD 118

Procurement

Contract Management

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

Awardee's bid properly was considered responsive because it did not take exception to solicitation's material terms; whether awardee in fact supplies end items manufactured by a small business as required by solicitation is a matter of contract administration not for consideration by General Accounting Office.

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