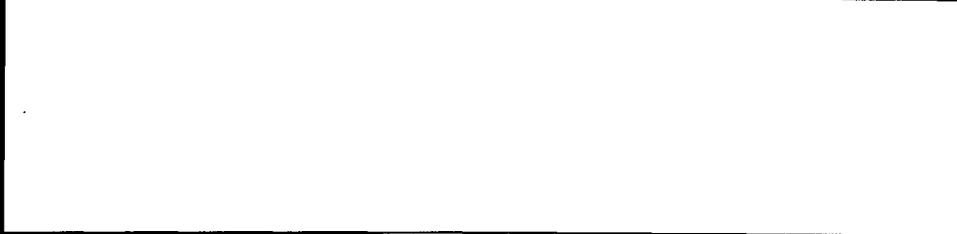


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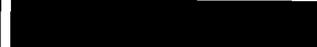
Office of General Counsel



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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.C. § 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. No. 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 file number and date, e.g., B-248928, Sept. 30, 1992. 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 and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 71 Comp. Gen. 530 (1992).

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Appropriations/Financial Management

B-251905, July 2, 1993***

Appropriations/Financial Management

Accountable Officers

- Certifying officers
- ■ Liability
- ■ ■ Vouchers
- ■ ■ ■ Emergencies

A State Department certifying officer could have certified an emergency or extraordinary expense voucher, submitted by a Defense Attache, even though the certifying officer was not allowed to view the classified supporting documentation. Under 10 U.S.C. § 127, a certification by the Secretary of Defense or a designee as to the confidentiality of an emergency or extraordinary expense "is sufficient voucher for the expenditure of that amount." The certifying officer, as part of the later administrative processing of the voucher, is responsible only for errors made in his own processing of the voucher, and not for the Defense Attache's prior certification as to the propriety of the payment.

B-251710, July 7, 1993

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Security safeguards

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Appropriation restrictions
- ■ ■ Leasehold improvement

The U.S. Customs Service may use appropriated funds to purchase home and automobile security devices for agents stationed in Puerto Rico and the U.S. Virgin Islands based on Customs' determination that such devices are needed to address safety concerns arising from Customs' law enforcement activities. Customs may use funds for permanent improvements to private property to the extent the four factors identified in our cases are present. *See, e.g.*, 69 Comp. Gen 673 (1990)

B-251228, July 20, 1993

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Penalties

The Forest Service is not authorized to use appropriated funds to pay penalties and interest assessed by Nevada County, California, against a Forest Service employee for a delay in payment of

possessory interest tax due while the employee occupied government-owned quarters. The penalties and interest assessed are personal liabilities of the employee and not the federal government.

B-251887, July 22, 1993

Appropriations/Financial Management

Appropriation Availability

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

Forest Service may use appropriated funds to pay for newspaper advertisements informing the public of activities reasonably related to the Forest Service's statutory authority for administering the national forests for outdoor recreation.

B-253695, July 28, 1993

Appropriations/Financial Management

Appropriation Availability

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

The Department of Agriculture may not pay a 9-1-1 charge imposed by the Commonwealth of Pennsylvania. The federal government is constitutionally immune from paying the 9-1-1 emergency telephone charge because the charge is a tax, the legal burden of which falls directly on the federal government as a user of telephone services.

Civilian Personnel

B-252142, July 6, 1993

Civilian Personnel

Travel

- Commuting expenses
- ■ Liability

An employee claims mileage for driving 80 miles each way to his new duty station because, he alleges, the agency failed to issue him the necessary order to relocate. However, as a general rule, employees may not be reimbursed for normal home-to-work travel, and the record indicates that the employee was at least partially responsible for the non-issuance of the order. Accordingly, the claim may not be allowed.

B-250069, July 14, 1993***

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Travel time

The claims of four employees for overtime pay may not be paid for travel during nonduty hours going to or returning from contractors' manufacturing sites to witness acceptance tests of equipment purchased under contract by the employees' agency. Because the tests were scheduled or controlled administratively within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) (1988), overtime for the travel time is not allowable.

B-249696, July 19, 1993***

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Adverse personnel actions
- ■ ■ Attorney fees
- ■ ■ ■ Eligibility

The attorney's fees provision of the Whistleblower Protection Act (WPA) may not be used to authorize payment of the attorney's fees of an employee who alleged a violation of that Act as part of the settlement reached through the agency's informal grievance procedures. That provision applies only to actions appealed to or from the Merit Systems Protection Board.

B-251228, July 20, 1993

Civilian Personnel

Compensation

- Taxes
- ■ Penalties
- ■ ■ Reimbursement

The Forest Service is not authorized to use appropriated funds to pay penalties and interest assessed by Nevada County, California, against a Forest Service employee for a delay in payment of possessory interest tax due while the employee occupied government-owned quarters. The penalties and interest assessed are personal liabilities of the employee and not the federal government.

B-252355, July 20, 1993

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Broker fees
- ■ ■ Listings
- ■ ■ ■ Termination costs

Employee's claim for reimbursement of \$1,000, as part of his relocation expenses, which he paid to terminate a 6-month exclusive right-to-sell listing agreement on his residence at his old duty station so that he could use his agency's relocation service contractor is not authorized by statute or regulation, and thus his claim may not be paid.

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Broker fees
- ■ ■ Reimbursement

Employee's claim for reimbursement of \$850 for a mortgage broker's fee paid in connection with the purchase of the employee's residence at his new duty station is not authorized by statute or regulation, and thus his claim may not be paid.

B-251541, July 21, 1993

Civilian Personnel

Compensation

- Outside employment
- ■ Leave-without-pay

The Coast Guard contracted with a civilian employee and an Air Force officer to provide interpreter services for a fee while on leave. Payment of the fee to the civilian employee for services performed while on leave from her position as a secretary is not precluded by 5 U.S.C. § 5536. As to the Air Force officer, the contractual arrangement violates the rule prohibiting military members from holding government employment in addition to their military positions. Therefore, payment to the officer under the contract is precluded, and neither may he be paid on a *quantum meruit* basis since a valid contract could not have been made with him for this service.

Civilian Personnel

Compensation

■ **Deposit**

■ ■ **Contract cancellation**

■ ■ ■ **Fees**

■ ■ ■ ■ **Reimbursement**

The Army may reimburse an employee whose credit card account was used in lieu of a cash deposit to assure room availability for an agency-sponsored dinner for foreign dignitaries. When the dinner reservations had to be canceled at the last moment, the restaurant assessed a cancellation charge against the employee's account. Since the agency was liable for the forfeiture, the employee may be reimbursed from agency funds.

Military Personnel

B-252125, July 20, 1993

Military Personnel

Pay

- Dual compensation restrictions
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A retired Coast Guard member who did not notify the Coast Guard Pay and Personnel Center when he took a federal position and subsequent retired pay was not reduced as it should have been under the Dual Compensation Act is not entitled to waiver of the debt resulting from erroneous overpayment because he was not without fault under 10 U.S.C. § 2774.

B-251541, July 21, 1993

Military Personnel

Pay

- Civilian office prohibition

The Coast Guard contracted with a civilian employee and an Air Force officer to provide interpreter services for a fee while on leave. Payment of the fee to the civilian employee for services performed while on leave from her position as a secretary is not precluded by 5 U.S.C. § 5536. As to the Air Force officer, the contractual arrangement violates the rule prohibiting military members from holding government employment in addition to their military positions. Therefore, payment to the officer under the contract is precluded, and neither may he be paid on a *quantum meruit* basis since a valid contract could not have been made with him for this service.

B-251968, July 22, 1993

Military Personnel

Pay

- Retroactive pay
- ■ Personnel death
- ■ ■ Effective dates

Where evidence exists that a military member died on a particular date several years before the date of presumptive death declared by a state court, his arrears of pay only through the earlier date of suspected death are payable to his designated beneficiary under 10 U.S.C. § 2771.

B-251520, July 22, 1993

Military Personnel

Pay

- Survivor benefits
- ■ Eligibility

Survivor Benefit Plan (SBP) annuity may be paid to member's second wife whom he married 2-1/2 years prior to obtaining divorce from first wife because under Kentucky law, second marriage was

not challenged within 1 year and therefore was valid. While member died 3 months after divorce, prior 2-1/2 years of marriage may be counted to fulfill SBP requirement that "eligible widow" be married to member for at least 1 year.

B-251866, July 30, 1993

Military Personnel

Relocation

- Leases
- ■ Termination costs
- ■ ■ Reimbursement

Member may be reimbursed monies withheld from rent paid in advance for painting and repairs on leased residence under lease clause which stated that if tenant vacated within first 2 years of lease, residence had to be repainted because member had to vacate due to closing of military facility.

Military Personnel

Relocation

- Leases
- ■ Termination costs
- ■ ■ Reimbursement

Where member departed leased residence prior to lease term because of member's request to join Warrant Officer Training program, rent paid in advance with advance housing allowance which was withheld by landlord became a debt of member which may not be waived because waiver is only proper when an erroneous payment is made and the advance of housing allowance was proper when made.

Procurement

Late case

B-250957, B-250957.2, Feb. 25, 1993 REDACTED VERSION

Procurement

93-2 CPD 24

Competitive Negotiation

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

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of the proposal from the competitive range is denied where the record shows the agency's evaluation was conducted in accordance with the solicitation evaluation criteria and that the agency's decision to exclude the proposal was reasonable.

Procurement

Bid Protests

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

New and independent grounds of protest are dismissed where the later-raised issues do not independently satisfy the timeliness requirements of the General Accounting Office's Bid Protest Regulations.

Current cases

B-252479, July 1, 1993

93-2 CPD 1

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Procedural defects

Protest is sustained where agency decision not to set aside operation and maintenance services procurement for small business concerns was based on insufficient efforts to ascertain small business capability to perform the contract.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Protest that agency should have rejected apparent low bid as nonresponsive because it failed to include descriptive literature is denied where the solicitation effectively did not require descriptive literature; it thus would be improper for the procuring agency to reject a bid as nonresponsive for failure to include descriptive literature.

Procurement

Specifications

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

Protest challenging as unduly restrictive a solicitation provision requiring that offerors be certified by the International Olympic Committee to perform anabolic steroid testing is denied where agency does not itself have the expertise to qualify offerors and, at the time the solicitation was issued, there were no other equivalent certifying bodies for anabolic steroid testing.

Procurement

Bid Protests

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

Protest challenging award of subcontract by Department of Housing and Urban Development prime contractor is dismissed as outside General Accounting Office bid protest jurisdiction where subcontractor selection was not made "by or for" the government.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester's proposal was properly rejected as technically unacceptable and outside the competitive range where agency reasonably found that the proposal lacked the level of detailed information required by the RFP to demonstrate the protester's abilities and understanding of the requirements and would require major revisions to become technically acceptable.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Protester's low bid was properly rejected as materially unbalanced where it contained mathematically unbalanced prices and the agency had a reasonable doubt, in light of the uncertainty associated with the solicitation estimates, that award on the basis of protester's bid would result in the lowest overall cost to the government.

Procurement

Bid Protests

- Allegation
- ■ Abandonment

In procurement for countermeasures receiving sets, allegation that agency failed to hold meaningful discussions is considered abandoned where agency's report specifically addressed argument raised in initial protest and protester failed to rebut the agency's position in its comments on the report.

Procurement

Bid Protests

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

Protest that agency improperly evaluated protester's technical proposal—a new and independent ground of protest first raised in protester's comments on agency's report—is dismissed as untimely, where later-raised issue does not independently satisfy requirement of General Accounting Office's Bid Protest Regulations that a protest be filed within 10 working days after basis for protest is known or should have been known.

Procurement

Bid Protests

- Dismissal

Protest that award of a reprocurement contract is improper because it will prevent the defaulted contractor, should it win its appeal of the default, from completing performance of the contract does not provide a valid basis for protest since a successful appeal of a default results in a termination for convenience, not a reinstatement of the contract.

Procurement

Sealed Bidding

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

Where the penal sum of the protester's bid bond was listed as 20 percent of its total evaluated bid price, but the attorney-in-fact executing the bid bond on behalf of the protester's corporate surety did not have authority to execute the bid bond for this amount, the contracting officer reasonably determined that the protester's bid bond was defective on its face and of questionable enforceability since, in the event of a default by the protester if the firm were awarded the contract, it was not clear that the surety would be liable on the bid bond in any amount.

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Where agency reasonably concluded that the awardee presented clear and convincing evidence of a mistake in its bid and the intended bid price and the bid is low with or without correction, agency properly allowed bidder to correct the mistake and increase its price.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Award to the only qualified supplier under the authority of 10 U.S.C. § 2304(c)(2) (1988) was not the result of inadequate advance planning or otherwise improper, where the agency had attempted to conduct a competitive procurement for more than a year prior to execution of sole-source justification and approval but ultimately determined that specifications were inadequate to allow completion of qualification process in time to meet urgent requirements. Where solicitation defined a qualified source as one who had provided an item produced in accordance with the specifications, which the protester admits were not adequate to allow it to prepare a response, protester had no reasonable basis for considering itself a qualified source.

Procurement

Competitive Negotiation

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

While relevance of prior contracts was not explicitly identified in the solicitation as an evaluation criterion, it may nonetheless properly be considered in evaluating proposals, where the solicitation

states that the agency will evaluate the offerors' past performance in order to assess the likelihood that the procurement will be successfully performed, because relevance is logically encompassed in that evaluation criterion.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Agency methodology for assessing the relevance of past performance is unreasonable where it excessively favors offerors which performed at least one relevant prior contract, irrespective of the quality of the performance under that contract.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency failed to conduct meaningful discussions where it did not raise during discussions its concerns that the protester's proposal did not satisfy the solicitation requirements in various areas and that lack of detail in other areas constituted a weakness.

Procurement

Competitive Negotiation

- Discussion
- ■ Bias

Agency treated offerors unequally during the conduct of discussions by addressing specific areas with one offeror but failing to raise identical concerns with another offeror.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance
- ■ ■ ■ Rebuttal

Where solicitation stated that offerors would be provided the opportunity to rebut derogatory performance evaluation comments provided by agencies with which the offerors had held prior contracts, agency may not fail to solicit rebuttal to negative comments on the basis that submission of proposal provided offerors an opportunity for rebuttal "in advance."

Procurement

Competitive Negotiation

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

Where cost/technical tradeoff was based on incomplete and inaccurate information, our Office will not infer that there was no prejudice to the protester where the impact of the errors on the trade-off decision is not clear from the record.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Agency properly eliminated protester's proposals from the competitive range where agency reasonably determined that the proposals contained multiple weaknesses and deficiencies and would require major revisions in order to become eligible for contract awards.

Procurement

Competitive Negotiation

- Requests for quotations
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Where solicitation issued by procuring entity on behalf of the Department of Energy contemplated the award of a contract which would allow the successful offeror to use non-hazardous chemicals to demonstrate its ability to remove metals, radioactivity, and organic contaminants from soil particles, and procuring entity later determines that its needs could best be met through entering into a contract requiring the contractor to demonstrate its ability to "wash" the soil using a water-only system, cancellation of the solicitation is not improper.

Procurement

Specifications

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

Protest alleging that solicitation requirement for soil washing using a water-only system is unduly restrictive of competition is denied where there has been no showing that competition for the requirement is restricted in any way and where the procuring entity has shown that the alleged restriction is necessary to meet its needs.

B-249367.10, July 13, 1993

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administration discretion

Agency evaluation of proposals is proper where it is reasonable and consistent with the solicitation's evaluation criteria.

Procurement

Competitive Negotiation

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

Where agency reasonably evaluated competing proposals as essentially equal technically, cost could properly be used as the discriminator on which the award decision was based, even though cost was stated to be a less important evaluation criterion than technical factors.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates

Challenges to the cost evaluation are denied where the protester has not demonstrated that the agency evaluated cost unreasonably.

B-250045.3, July 13, 1993**93-2 CPD 15**

Procurement

Contract Management

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

Where agency terminates contract awards because it determined that it failed to conduct meaningful discussions with all offerors, it is not required to make award to the protester, the lowest-priced offeror, where awards were to be based on technical concerns as well as price and contracting officer could not conclude, prior to discussions, that the protester's offer will provide the best value to the government.

Procurement

Contract Management

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

Agency decision to correct failure to conduct meaningful discussions by resoliciting the requirement is proper where protester will suffer no prejudice from such corrective action; resolicitation will place all offerors in the same competitive posture they enjoyed prior to the defective award.

Procurement

Specifications

- **Minimum needs standards**
- ■ **Geographic restrictions**
- ■ ■ **Office space**

Determination to limit consideration of proposals for office space to those offering space within an urban area's central business district is proper where determination is based on agency's consideration of social, economic, environmental, and cultural factors as required by Executive Order.

Procurement

Special Procurement Methods/Categories

- **Federal supply schedule**
- ■ **Purchases**
- ■ ■ **Justification**
- ■ ■ ■ **Minimum needs standards**

Agency properly purchased equipment from Federal Supply Schedule vendor where the agency reasonably determined that only that equipment will satisfy the agency's minimum needs.

Procurement

Competitive Negotiation

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

Contracting agency properly excluded from the competitive range a quotation which the agency properly concluded had no reasonable chance for award since technically it was ranked 11 out of the 12 quotations submitted and it was only the fifth low in price.

Procurement

Bid Protests

- **Moot allegation**
- ■ **GAO review**

Protest is dismissed as academic where agency issued solicitation amendment to address protester's allegations, and protester, despite request to do, so declined to identify any issues that in its view remained after agency's action.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Protests challenging agency's decision to make a sole-source purchase of a complete tester system are sustained where record shows that vendors other than the sole source can supply testers meeting the agency's needs.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Validity

Agency properly rejected as nonresponsive a bid accompanied by a defective bid bond, where the penal amount of the bond had been typewritten over a whited-out amount, without evidence in the bid documents or the bond itself that the surety had consented to the alteration.

Procurement

Sealed Bidding

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

Agency properly rejected as nonresponsive bid which did not comply with solicitation requirement for a bid guarantee where none of the exceptions for rejection provided in the Federal Acquisition Regulation apply.

Procurement

Bid Protests

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

Protesters whose bids were properly rejected as nonresponsive under canceled solicitation are not interested parties under the General Accounting Office's Bid Protest Regulations eligible to challenge the cancellation, since protesters would not be in line for award were the protests sustained.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Organizational experience

Protest that agency improperly evaluated experience of two lower priced offerors is denied where record supports the agency's finding of technical acceptability based upon the proposals submitted by each offeror.

Procurement

Bid Protests**■ Dismissal**

Procurement

Competitive Negotiation**■ Below-cost offers****■ ■ Acceptability**

Protest that competitor's prices are unreasonably low does not constitute a valid basis for protest since there is no legal basis on which to object to submission of a below-cost offer

B-252660, July 15, 1993**93-2 CPD 23**

Procurement

Contract Management**■ Contract administration****■ ■ Contract terms****■ ■ ■ Modification****■ ■ ■ ■ Propriety**

Procurement

Contract Management**■ Contract administration****■ ■ Options****■ ■ ■ Use****■ ■ ■ ■ GAO review**

Contract modifications related to engineering change proposals, subcontracting arrangements, and equitable adjustments to price and delivery schedule associated with engineering change proposals and government caused delay do not invalidate agency's exercise of contract option, where contract modifications, subcontracts, and equitable adjustments are within the scope of the contract.

Procurement

Contract Management**■ Contract administration****■ ■ Options****■ ■ ■ Use****■ ■ ■ ■ GAO review**

In deciding to obtain fuzes by exercising an existing contract option, contracting officer properly determined that option exercise was most advantageous to the government where: (1) option price was evaluated in original competitive procurement; (2) contracting officer believed that new solicitation would result in higher prices because future procurements will be limited to mobilization base producers; and (3) option price is only slightly more than protester's option price and agency is willing to pay premium to maintain the mobilization base.

Procurement

Socio-Economic Policies

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

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Information disclosure

Protest is sustained where protester was denied a fair opportunity to obtain certificate of competency review by the Small Business Administration based upon incorrect information provided by the agency during the course of the review.

Procurement

Competitive Negotiation

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

Where request for proposals provided for award to the offeror whose proposal represented the best overall value to the government, giving equal weight to quality, past performance, and price, the agency was not required to award to the lowest priced, technically acceptable offeror.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Samples

Agency reasonably assigned the protester's proposal a rating of acceptable rather than excellent under evaluation factor concerning quality where agency records showed that the protester's first articles had been rejected under one recent contract and that its quality verification samples had been rejected under another.

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Amount determination

The General Accounting Office will not question an agency's calculation of the value of the damages to items in the shipment of an employee's household goods unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

Procurement

Competitive Negotiation

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

Failure of request for proposals to explicitly indicate the relative weight to be given to cost and technical considerations in the evaluation of proposals gives rise to presumption that cost and technical considerations would be accorded approximately equal weight and importance in the evaluation.

Procurement

Competitive Negotiation

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

Protest that agency misinterpreted solicitation's evaluation scheme by according greater weight to technical considerations than to cost and by conducting cost/technical tradeoff analysis on the basis of that misinterpretation is denied where record shows protester suffered no prejudice from agency's action; agency contention that significant technical superiority of awardee's proposal would have rendered the outcome of the competition the same even if the agency had evaluated cost and technical considerations on an equal basis was reasonable.

Procurement

Competitive Negotiation

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

Protest that technical proposal was improperly downgraded and that agency based its evaluation on factors not specified in the solicitation is denied where record demonstrates that proposal was properly evaluated and award to technically superior, higher priced offeror was consistent with solicitation evaluation criteria and the agency reasonably determined that the superior technical merit of successful proposal was sufficiently significant to justify award at higher price.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Price reasonableness

Prior decision denying protest challenging agency's decision to cancel solicitation on the basis that all bids received were unreasonable as to price is affirmed where protester's contention—that the applicable statute requires agency to make award if the low-priced responsive bid is within 25 percent of a reasonable government estimate—is contrary to the plain language of the statute. The fact that the Claims Court in one decision ordered relief consistent with the protester's position does not compel a conclusion that the statute is properly so interpreted, given the inconsistency

between the remedy ordered by the court and the statutory language, and the lack of any stated rationale for the court's action.

B-250991.2, July 19, 1993

93-2 CPD 32

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Bidder that is reasonably found not able to perform at its bid price and that in fact expects an increase in bid price is not eligible for award and thus is not an interested party to protest the cancellation of the invitation for bids.

B-252541.2, July 19, 1993

93-2 CPD 33

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Offers
- ■ ■ Evaluation errors
- ■ ■ ■ Non-prejudicial allegation

Protest of allegedly improper evaluation of firm's past performance under architect-engineer selection procedures is dismissed where even if firm received a high score for past performance as specifically requested by the firm, it would not have been selected for negotiations but still would have been the 25th ranked firm.

B-252632, July 19, 1993

93-2 CPD 34

Procurement

Contractor Qualification

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

The General Accounting Office will not consider an allegation that the awardee will be unable to provide software support services and software upgrades in accordance with the solicitation requirements, notwithstanding its proposal to meet the requirements, since whether the awardee can and will perform the contract are matters of responsibility and contract administration.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Cost/technical tradeoffs
 - ■ ■ ■ Weighting
-

Procurement

Competitive Negotiation

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

Where the solicitation did not require firms to offer all line items, but stated that firms offering all line items would be considered more advantageous to the government than firms not offering all line items, and where it appeared from the solicitation that line items for which bonus technical points were available were weighted equally, the protester was not prejudiced by the agency's award of more points to the awardee for offering all line items even though all line items were not weighted equally.

B-252789, July 19, 1993

93-2 CPD 35

Procurement

Sealed Bidding

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

Any bid that does not conform to specifications as stated in the invitation for bids must be rejected as nonresponsive.

Procurement

Bid Protests

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

A protest of the propriety of an invitation for bids specification is untimely where protested after bid opening.

Procurement

Bid Protests

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

Procurement

Sealed Bidding

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

Protester's bids, which arrived at the bid opening room after bid opening, were properly rejected as late, where the bidder's commercial carrier hand-carried them to the agency mailroom, rather than to the bid depository for hand-carried bids in accordance with solicitation instructions, and where the protester misaddressed the bid package, giving the wrong room number for the bid depository, since these actions, not government mishandling, reasonably appear to have been the cause of the late receipt at the bid opening.

Procurement

Contract Management

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

Protest against issuance of delivery order under existing contract is sustained where the order for support of agency computerized information system was not within the scope of the existing contract which was intended to provide engineering support for agency's information resources management systems, and the original solicitation for this contract did not adequately advise offerors of the potential for this type of delivery order.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision denying protest of contract award for cockpit voice recorders (CVR) to firm whose product allegedly does not meet certain RFP requirements is denied where protester essentially merely disagrees with General Accounting Office's conclusions that the solicitation did not require a technical evaluation, that the awardee submitted an unequivocal offer to furnish CVRs in accordance with the solicitation requirements, and that nothing on the face of awardee's proposal established noncompliance with the requirements.

Procurement

Competitive Negotiation

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

While a solicitation must advise offerors of the broad method of scoring to be employed and give reasonably definite information concerning the relative importance of the evaluation factors, the precise numerical weights to be used in evaluation need not be disclosed. Once the relative importance of the technical and cost factors is announced in the solicitation, the agency may reasonably establish the specific numerical weight distribution between technical and cost factors.

Procurement

Competitive Negotiation

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

Where an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/non-cost tradeoffs

An agency's cost/technical trade-off decision represents a discretionary business judgment by contracting officials; technical and cost trade-offs are permitted, and the extent to which one factor may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors.

Procurement

Bid Protests

- GAO procedures
- ■ Anticipated profits

Even where a protester is wrongfully denied a contract, there is no legal basis to allow the recovery of lost profits.

Procurement

Bid Protests

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

Protester is not entitled to reimbursement of the costs of filing and pursuing its protests where agency corrective action—termination of awardee's contract—was taken less than 3 weeks after the filing of the first protest and 10 days after the filing of the second protest.

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

The General Accounting Office's Bid Protest Regulations do not provide for award of proposal preparation costs in cases where agency has taken corrective action.

B-252555.3, July 20, 1993

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed where protest to the General Accounting Office was filed more than 10 working days after the protester knew the basis of its protest.

B-252646, July 20, 1993

Procurement

Sealed Bidding

- Invitations for bids
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protest alleging that Government Printing Office (GPO) improperly failed to solicit protester is denied where GPO had never procured the services before, was not previously responsible for maintaining the mailing list of potential bidders, and reasonably relied on the mailing list of the agency which previously procured the services.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester has not shown that our prior decision contained errors of fact or law, nor has it presented information not previously considered.

Procurement

Sealed Bidding

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

Hand-carried bid delivered after bid opening by Federal Express properly was rejected as late where the bidder required that the carrier obtain a signed receipt before the bid could be delivered, thereby causing the carrier to decline to deliver the bid to the bid box in accordance with the solicitation instructions.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly found protester's offer to be technically unacceptable because it posed an unacceptable performance risk to the government where protester offered [deleted].

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Price adjustments

Procurement

Discussion reopening

- Propriety
- ■ Best/final offers
- ■ ■ Price adjustments

An agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer since the offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates
- ■ ■ ■ Labor costs

Prior decision concluding that contracting officer reasonably chose not to upwardly adjust award-ee's proposed labor costs by calculating the effect of a German labor statute is affirmed where the issue was considered in great detail, and the contracting officer's position was supported by the record and by the Army's reasonable interpretation of developing case law on the application of the statute.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Brand name/equal specifications
- ■ ■ ■ Salient characteristics

Bid of an equal item under a brand name or equal procurement was properly determined to be responsive where the bid and associated descriptive literature reasonably establish that a listed model number expressed the dimensions of the proposed equal building, and that these dimensions satisfy the dimensional requirement set forth under the solicitation's salient characteristics.

Procurement

Bid Protests

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

Protest filed 11 working days after firm received debriefing is dismissed as untimely; Inauguration Day is considered a working day of the federal government for purposes of determining the timeliness of a protest where it does not fall on the tenth day of the filing period.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Cost estimates**
- ■ ■ ■ **Labor costs**

Protest that agency used inappropriate labor mix in calculating estimated costs of contract performance under indefinite delivery, indefinite quantity (IDIQ) contract is denied, where record shows that labor categories used were consistent with solicitation's description of the work to be performed during IDIQ portion of contract.

Procurement

Competitive Negotiation

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

Protest that agency failed to adequately document evaluation and source selection results is denied where evaluation materials adequately show the bases for the evaluators' judgments and conclusions.

B-252288, July 23, 1993

93-2 CPD 47

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Format/Instructions**

Protest that total small business set-aside solicitation's proposal format instructions are overly burdensome to small business offerors is denied where: (1) protester has not shown that particular format requirements are unreasonable; (2) General Accounting Office review of instructions shows that agency's format requirements are generally reasonable; and (3) because all offerors are required to be small businesses, protester suffers no competitive prejudice.

Procurement

Competitive Negotiation

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

The only reasonable interpretation of several provisions in request for proposals is that certified cost or pricing data need not be submitted with initial proposals, but, depending upon the degree of competition obtained, such data might be required at a later time.

Procurement

Competitive Negotiation

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

Request for proposals (RFP) that states agency's needs in terms of performance requirements and includes very detailed evaluation scheme, including significant factors and relative importance of

each, need not include statement of internal agency standards to be taken into account under stated evaluation factors where it is clear from RFP what is expected of offerors and how proposals will be evaluated.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Risks**

Protest that total small business set-aside solicitation's 180-day proposal acceptance period exposes small business contractors to unnecessary risk of inflation is denied where 180 days represents agency's best estimate of how long it will take to complete all necessary procurement actions and there is no evidence that the agency estimate is erroneous or that the risk placed upon knowledgeable offerors is unreasonable.

Procurement

Competitive Negotiation

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

Where request for proposals (RFP) for generator sets requires first article units to be tested first by the contractor and then by the government, but tests contain different acceptability criteria, RFP is not ambiguous where generator sets must comply with RFP's overriding engineering performance specifications which will insure compliance with both tests' acceptability criteria.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Purposes**
- ■ ■ **Competition enhancement**

As the objective of the General Accounting Office's (GAO) bid protest function is to ensure full and open competition for government contracts, GAO will not review a protest that a solicitation should contain more restrictive specifications. Therefore, protest that request for proposals is deficient because it does not contain a specific test for product acceptability is dismissed.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Contractors**
- ■ ■ **Prior contracts**

Protest that agency officials tested one offeror's generator sets prior to issuing the current solicitation for generator sets thereby giving that offeror inside information concerning performance requirements is denied where: (1) tests were performed as standard acceptance tests in an earlier procurement for generator sets with similar but not identical performance requirements; (2) agency issued draft of specification used in current procurement to potential offerors, including protester, 6 months prior to conducting acceptance tests on competitor's product; and (3) any advantage enjoyed by competitor was the result of its incumbency in earlier contract and agency was not required to take any action to nullify that advantage.

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Brand name/equal specifications
 - ■ ■ ■ Salient characteristics
-

Procurement

Sealed Bidding

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

Protest that in a brand name or equal procurement the agency improperly determined that the proposed awardee's "equal" building met a particular salient characteristic is denied where descriptive literature submitted by the proposed awardee showed that its proposed building complied with the applicable specification.

Procurement

Competitive Negotiation

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

Protest of exclusion of offeror's proposal from the competitive range is denied where the agency reasonably concluded, in accordance with the solicitation evaluation criteria, that the proposal was technically unacceptable since it lacked information required by the solicitation and since it would require substantial additional information in order to become acceptable—including resumes of proposed personnel, a list of facilities at or near ports where ships are to be serviced under the contract and evidence of a contractual relationship with the firm which the offeror proposes as a joint venturer.

Procurement

Bid Protests

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

Post-bid opening protest that the requirement in an invitation for bids (IFB) that bidders offering other than the brand name products submit bid samples should be waived for the protester, which offered other than the brand name product, is dismissed as an untimely complaint of an alleged impropriety apparent on the face of the solicitation, where the bid sample requirement was clearly set forth in the IFB, which provided that the bid sample requirement would only be waived for bidders offering the brand name product.

Procurement

Bid Protests

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

Protester is not an interested party to challenge the agency's cancellation of a solicitation where the protester's bid was properly rejected by the agency as nonresponsive.

B-253950, July 23, 1993**93-2 CPD 48****Procurement**

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

Bid for the supply and installation of a radome that is accompanied by a cover letter with the statement that any installation delays attributable to agency delay "shall be billed at the rate of \$1,000 per day" is nonresponsive since the bid significantly varies from the contract provision that provides for the reimbursement of actual costs for government caused delay.

B-254155, July 23, 1993**93-2 CPD 53****Procurement**

Contract Management

- Contract administration
- ■ GAO review

The General Accounting Office will not consider a mistake in bid claim alleged after award, since it is a matter of contract administration.

B-252724, July 26, 1993**93-2 CPD 54****Procurement**

Competitive Negotiation

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

Agency properly selected awardees on the basis of their overall technical superiority, notwithstanding slightly higher prices, where solicitation provided that technical considerations were more important than price and the agency reasonably concluded that the technical superiority of the proposals was worth the extra cost.

B-252743, July 26, 1993**93-2 CPD 55****Procurement**

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Agency evaluation finding protester's offered alternate product technically unacceptable was reasonable where the protester failed to submit sufficient information demonstrating that its alternate product was the technical equivalent of the approved product listed in the solicitation.

B-252745, July 26, 1993

Procurement

Competitive Negotiation

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

Protest of exclusion of offeror's proposal from the competitive range is denied where the agency reasonably concluded, in accordance with the solicitation evaluation criteria, that the proposal was technically unacceptable since it lacked information required by the solicitation and since it would require substantial additional information in order to become acceptable—including resumes of proposed personnel, a list of facilities at or near ports where ships are to be serviced under the contract and evidence of a contractual relationship with the firm which the offeror proposes as a joint venturer.

B-252748, July 26, 1993

93-2 CPD 56**Procurement**

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Where protester concedes that agency properly canceled solicitation but nonetheless requests proposal preparation and protest costs on the ground that the agency negligently issued the solicitation and negligently explained the basis for cancellation, request for costs is denied since mere negligence or lack of due diligence by the agency does not provide a basis for the recovery of such costs absent evidence that the agency has acted in violation of statute or regulation.

B-254162, July 26, 1993

93-2 CPD 57**Procurement**

Contract Management

- Contract administration
- ■ Contract terms
- ■ ■ Modification

Agency decision not to agree to contractor's request to modify a contract to add items which did not satisfy the original contract requirements is a matter of contract administration which the General Accounting Office will not consider.

B-248706.4, July 27, 1993

93-2 CPD 70**Procurement**

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to protest costs where, although agency took corrective action, protest was not clearly meritorious.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Corporate entities
- ■ ■ ■ Legal existence

Bid submitted in the name of Budget Inns of America (BIA), a Tennessee corporation, cannot be accepted where there is no such corporation and there is no contemporaneous, publicly available evidence in the record that supports the claim that BIA was the trade or assumed name of a Tennessee Corporation, T.B.F. Enterprises, Inc., which was not mentioned in the bid, although T.B.F. Enterprises was owned by the individuals who signed the bid and was located at the same address as BIA.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Absence

Procurement

Specifications

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

Bid of "equal" items on brand name or equal invitation for bids is nonresponsive where the bid failed to include sufficient descriptive literature to demonstrate the "equal" items' compliance with the salient characteristics listed in the solicitation.

Procurement

Bid Protests

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

Protest of alleged solicitation improprieties is untimely where it is filed 2 months after the protester began performance under an interim contract with a statement of work identical to that of the solicitation at issue, and the alleged defects in the statement of work should have been apparent shortly after performance began under the interim contract.

B-251639, July 29, 1993

Procurement

Payment/Discharge

- Shipment costs
- ■ Rate schedules
- ■ ■ Applicability

Carrier filed a rate tender in response to Department of Defense solicitation for tenders to ship internal combustion engines from a contractor's plant in Cincinnati, Ohio, to a facility in Kansas. The origin plant's actual location was just outside the city, however, and the carrier already had on file a tender to ship engines from that location. The government properly used the rates in the Cincinnati tender, since it was clear from the solicitation, the responding tender, and the GBL that such rates would apply to shipments from the specified plant to the specified destination.

B-252826, B-252831, July 29, 1993

93-1 CPD 61**Procurement**

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Purchases
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to higher priced vendor under the Federal Supply Schedule was not improper where agency obtained two other quotations for schedule vendors but determined that neither vendor offered a product that met the agency's minimum needs for compatibility with existing furniture.

B-252859, B-253352, July 29, 1993

93-2 CPD 61**Procurement**

Socio-Economic Policies

- Preferred products/services
- ■ Domestic sources

Agency did not abuse its discretion in determining that under the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Security Act), 22 U.S.C. § 4852 (1988), protester did not meet the definition of a "United States person" and therefore was ineligible to submit an offer for the design and construction of U.S. Embassy.

B-252941, July 29, 1993

93-2 CPD 71**Procurement**

Competitive Negotiation

- Offers
- ■ Organizational experience
- ■ ■ Evaluation
- ■ ■ ■ Subcontractors

Agency's consideration of a subcontractor's experience under relevant evaluation factors was proper where the solicitation did not prohibit the use of subcontractors to satisfy the experience requirements or to perform the contract.

B-253140, July 29, 1993

Procurement

Contract Types

- Fixed-price contracts
- ■ Price reasonableness

The General Accounting Office will not disturb an evaluation on a solicitation for a fixed-price requirements contract for engine repairs where the record shows that the agency performed a detailed cost/price analysis in determining that the awardee's low price reflected the offeror's proposed approach and that the offeror demonstrated an understanding of the solicitation requirements.

B-249375.4, July 30, 1993

Procurement

Payment/Discharge

- Shipment costs
- ■ Overcharge
- ■ ■ Payment deductions
- ■ ■ ■ Statutes of limitation

Government's collection efforts against carrier indebted for \$91,635.33 in overcharges were frustrated by carrier's involuntary dissolution for failing to re-register with the state of incorporation. The General Services Administration (GSA), in settling a carrier claim involving other transactions, determined that the government owed the carrier \$31,474.80. Set-off of that amount against overcharge debt under 31 U.S.C. § 3726(b) was improper since the statute does not authorize set-off where, as here, the bills involving the overcharges were paid more than 3 years earlier.

Procurement

Payment/Discharge

- Overcharge
- ■ Payees
- ■ ■ Determination

Even though the General Services Administration should not have set off funds found due a carrier to collect amounts the carrier owed the government, because such action was time-barred, these funds should not be released to individuals claiming to be the carrier's successors where the corporation had been involuntarily dissolved by the state of incorporation for failure to re-register and the Court of Federal Claims has denied them standing as proper assignees in connection with a related matter. The claim is doubtful and should be paid only if further litigation establishes the claimants' standing to receive the set off funds and the court finds payment otherwise proper.

B-250030.6, B-250030.7, July 30, 1993

93-2 CPD 63

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Commercial products/services
- ■ ■ ■ Certification

Protest that agency improperly accepted awardee's certification that proposed computer software (which was identified in its proposal) complied with solicitation commercial item requirement is denied where record indicates that contracting officer was unaware prior to award of any facts inconsistent with certification of commerciality, and subsequent information confirms that prod-

ucts which were either identical to the proposed software, or which differed by reason of only minor modification, were sold or licensed to the general public.

Procurement

Special Procurement Methods/Categories

- **Computer software**
- ■ **Sample evaluation**
- ■ ■ **Testing**

Protest that contracting officer acted improperly in waiving for the awardee, but not for the protester, requirement for operational capability demonstration (OCD) of proposed computer software is denied where solicitation reserved to the government the right to waive OCD, and awardee proposed commercial software programs which either the agency had previously procured and successfully used, or which differed from such programs only by reason of minor modifications.

B-252575.2, July 30, 1993

Procurement

Competitive Negotiation

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

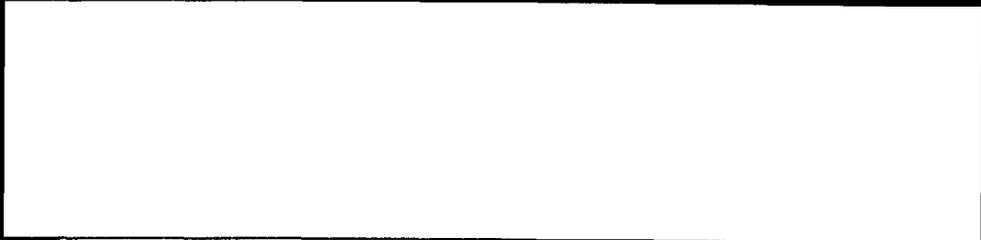
Agency properly rated protester's proposal unacceptable under personnel and resources factor for proposing insufficient number of manhours to perform requirements in the solicitation where protester, after being informed during discussions that the agency was concerned with its manhours, failed to establish that it could perform the requirements of the solicitation with its proposed manhours.

Procurement

Competitive Negotiation

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

Agency's failure to discuss every single item in protester's proposal that needed revision was of no consequence where agency directed protester to the major deficiencies in its proposal, protester's response was found not to have eliminated those deficiencies, and proposal was unacceptable based on those deficiencies alone.



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