
GAO

United States General Accounting Office
Office of General Counsel

April 1994

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

Vol. V, No. 7

For sale by the Superintendent of Documents,
U.S. Government Printing Office, Washington, D.C. 20402

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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).

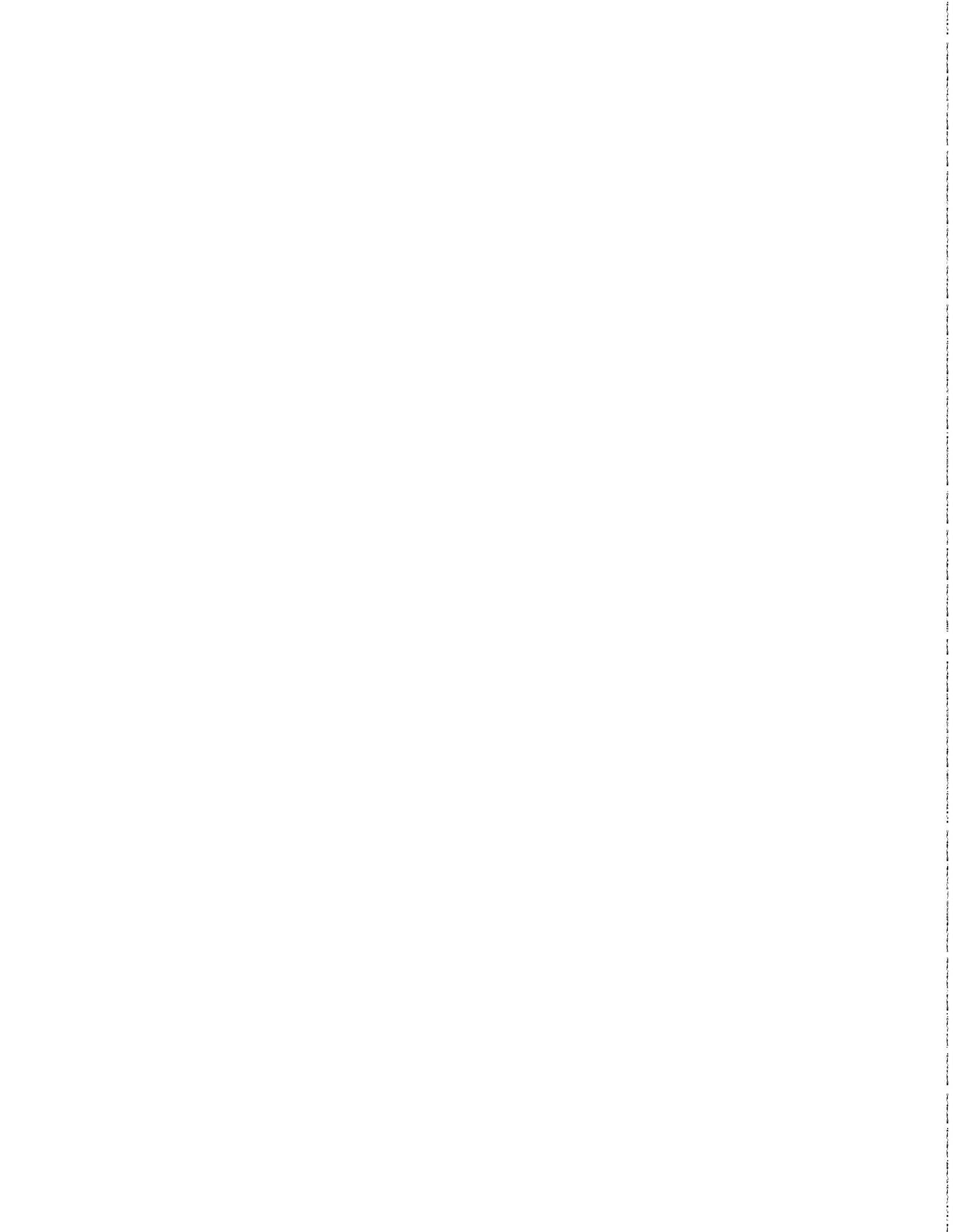
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Appropriations/Financial Management

B-254628, April 7, 1994

Appropriations/Financial Management

Appropriation Availability

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

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

B-252872, April 19, 1994***

Appropriations/Financial Management

Claims Against Government

- Statutes of limitation

In 1972, the United States Agency for International Development (A.I.D.) awarded a contract in Vietnam to the My Anh Company. On April 27, 1975, the My Anh Company requested that A.I.D. refund its security deposit on that contract. The My Anh Company states that before A.I.D. could do so, the personnel of the A.I.D. office in Saigon were evacuated on April 29, 1975. Since the claim accrued on or about April 27, 1975, and was not filed in the General Accounting Office until 1993, payment of this claim is time-barred by the 6-year Barring Act, 31 U.S.C. § 3702(b)(1) (1988).

Civilian Personnel

B-254163, April 4, 1994

Civilian Personnel

Relocation

- Mobile homes
- ■ Shipment
- ■ ■ Actual expenses
- ■ ■ ■ Reimbursement

An employee who moved his mobile home incident to his transfer may not be reimbursed as a transportation expense for the cost of leveling (grading) the property on which he located the home. If he can show that he incurred a cost for leveling the mobile home itself, incident to blocking and anchoring it, he may be reimbursed that amount. Also, costs of permits and charges for installation of utilities and materials for installation of a new power pole are not reimbursable as transportation expenses.

Civilian Personnel

Relocation

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee who moved his mobile home incident to his transfer may not be reimbursed under the miscellaneous expenses allowance for leveling (grading) the property on which it was placed or for material to install a new power pole. These costs are for site alterations and new items not covered by the allowance. Claims for utility permits and fees may be covered in part under the allowance if the employee provides appropriate explanation and receipts for expenditures, but in their absence he is limited to the flat \$700 allowance he has been paid.

B-253928, April 12, 1994

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Forfeiture
- ■ ■ Restoration

Employee seeks restoration of 4 more hours of forfeited annual leave for December 24, 1992. This leave was not forfeited due to exigencies of the public business, as 5 U.S.C. § 6304(d)(1)(B) (1988) requires for restoration. Rather, it was forfeited because the employee's leave was scheduled so late in the 1992 leave year that there was no time remaining in which he could schedule annual leave after the half-day holiday of December 24, 1992, was declared by the President. Claim is denied.

B-253636, April 20, 1994

Civilian Personnel

Compensation

- Lump-sum payments
- ■ Overpayments
- ■ ■ Debt collection

Employee was erroneously paid his salary for two pay periods following his retirement at which time he was owed over \$11,000 for accrued annual leave and other pay. Four months later, he received a lump-sum check of about \$2,300 which was erroneously calculated, and then a second check of about \$5,900 which corrected the calculations of the initial check and included a deduction of about \$2,800 for the overpayment of salary paid after his retirement. Employee was not furnished an explanation of the computation of the two checks, and several months later, after he made written inquiries concerning errors in his W-2, wage and taxes statement, the agency discovered he had been overpaid \$2,300, for which he seeks waiver. Waiver is denied since after receiving two erroneous salary payments after retirement and two unexplained lump-sum leave payments he should have been aware of the strong possibility he had been overpaid. He was obligated to hold the funds for possible refund pending review by the agency.

B-255496, April 20, 1994

Civilian Personnel

Relocation

- Breach of service agreements
- ■ Expenses
- ■ ■ Liability

Employee of the Bureau of Reclamation transferred in the interest of the government from Sacramento to Willows, California. She is obligated to repay the government the amount paid by the agency in connection with her transfer because she resigned prior to fulfilling her service agreement. The employee alleges that harassment and discrimination forced her to resign and that the agency should waive her debt. However, she has not provided sufficient evidence to show that her separation was for reasons beyond her control and acceptable to the agency concerned, as provided by 5 U.S.C. § 5724(i) (1988).

B-255585, April 20, 1994

Civilian Personnel

Travel

- Permanent duty stations
- ■ Actual subsistence expenses
- ■ ■ Prohibition

Employee was erroneously authorized per diem at her official duty station. Without specific authority of law, the government may not pay per diem or subsistence expenses to civilian employees at their official duty stations regardless of unusual circumstances. Furthermore, an authorization contrary to law or regulation does not create an entitlement to reimbursement. Employee's claims are denied.

B-255745, April 20, 1994

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Property titles

Where, as here, an employee holds title to a residence with a person who is not a member of his/her immediate family, the employee may be reimbursed for residence transaction expenses at his/her new official duty station only to the extent of his/her interest in that residence, as determined by the deed of record.

B-255791, April 25, 1994***

Civilian Personnel

Travel

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

An employee performed international travel in excess of 14 hours through several time zones. He was authorized a return rest stop in London. He claimed an additional day as a rest stop in the London area in connection with the return flight. A rest stop authorized under section 301-7.11 of the Federal Travel Regulations is an approved enlargement of travel time, the purpose of which is to help the traveler overcome the effects of long, wearisome, and sometimes arduous travel. Where flight scheduling is such that the employee has a stopover of more than 20 hours, including overnight, and has access to lodging and meals, the purpose of the authorized rest stop has been satisfied and an additional rest stop period at government expense may not be reimbursed.

B-256262, April 25, 1994

Civilian Personnel

Compensation

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

A civilian employee who was called to active duty in connection with Operation Desert Shield/Storm and who was not entitled to receive civilian pay during that period, erroneously received his civilian salary for three successive pay periods by direct deposit to his bank account, and seeks waiver of the resulting debt. Although the employee argues lack of knowledge of these deposits the record shows he had the opportunity to retrieve his mail several times monthly. When he did so, he ignored his bank statements. Had he examined his bank statements he would have been alerted to the possibility of error. Since he failed to do so and make inquiry of an appropriate official at his civilian agency, he is considered to be partially at fault, thereby precluding waiver under 5 U.S.C. § 5584 (1988).

B-251865, April 28, 1994

Civilian Personnel

Travel

- Advances
- ■ Debt collection
- ■ ■ Waiver
- ■ ■ ■ New appointment

A new appointee in the foreign service was assigned to an initial 30 days of training in the Washington area before her assignment overseas. She received travel orders providing for per diem at the training location subject to travel regulations and a travel advance for per diem for the 30 days. Subsequently, she was held not entitled to per diem because she remained at her residence in Waldorf, Maryland, and commuted to the training location. Her debt for the travel advance is not subject to waiver because it does not appear to have been based on erroneous orders, and even if the orders are considered erroneous, she did not incur expenses in detrimental reliance on the travel advance living in her own house, or while living in a motel in Waldorf after sale of the house.

B-255806, April 29, 1994

Civilian Personnel

Relocation

- Travel expenses
- ■ Rental vehicles
- ■ ■ Reimbursement

A transferred employee's privately owned vehicle (POV) had a major breakdown while en route to the new permanent duty station. The agency authorized her to rent a vehicle for local travel while waiting for repairs to her POV to be completed. The employee claims reimbursement for the rental costs. Under chapter 301 of the Federal Travel Regulation (FTR), rental vehicles may be authorized for the performance of temporary duty. There are no similar provisions in connection with relocation travel under chapter 302 of the FTR. Since the employee was not performing temporary duty at the location where her POV was being repaired, the vehicle rental costs may not be reimbursed. However, at the discretion of the agency, all or part of the local miles traveled may be included and reimbursed as part of her relocation mileage claim.

Military Personnel

B-255672, April 6, 1994

Military Personnel

Pay

■ **Retroactive pay**

■ ■ **Eligibility**

Military Personnel

Pay

■ **Retroactive pay**

■ ■ **Set-off**

Correction of Coast Guard member's military record, based on finding of improper separation, resulted in entitlement to retroactive pay and allowances for period following such separation. The payment should not be offset by civilian wages earned during the period after separation, since those wages were from off-duty, full time employment the member also had performed while still in the service. The member thus would have received the civilian wages during the period covered by the back pay, and therefore would not be enriched unjustly by not offsetting.

B-255778, April 18, 1994

Military Personnel

Pay

■ **Retroactive pay**

■ ■ **Military correction boards**

■ ■ ■ **Correction procedures**

■ ■ ■ ■ **Finality**

Where a member has sought correction of military records under 10 U.S.C. § 1552 and the Correction Board has denied the relief sought, such action is not subject to review by the General Accounting Office.

Procurement

B-253691.2, April 1, 1994

Procurement

Competitive Negotiation

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

Where solicitation provides that award will be based on the technically acceptable, low-priced offer, protester's assertion that awardee's product would not perform as well as protester's own proposed product does not invalidate award decision where the agency reasonably determined that the awardee's product was technically acceptable.

B-253350.3, et al., April 4, 1994

94-1 CPD ¶ 226

Procurement

Contract Management

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

Agency's terminating contract and reopening acquisition to provide offerors an opportunity to submit revised proposals—rather than leave the award intact or make award to another offeror—is appropriate where agency determined after award that the awarded contract was based on an approach which was not prohibited under the solicitation, but did not reflect the agency's actual minimum needs.

B-255205.2, April 4, 1994 REDACTED VERSION

94-1 CPD ¶ 305

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Organizational conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Protest that awardee had an organizational conflict of interest and gained an unfair competitive advantage in procurement by proposing to use a subcontractor that had previously evaluated protester's performance on a prior contract for the contracting agency is denied where the record contains no evidence to support protester's speculative assertion that proposed subcontractor's employee obtained protester's proprietary or confidential business information and gave it to awardee for use in preparing its proposal for the present procurement.

Procurement

Competitive Negotiation

- **Competitive advantage**
 - ■ **Conflicts of interest**
 - ■ ■ **Allegation substantiation**
 - ■ ■ ■ **Lacking**
-

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Subcontractors**
- ■ ■ **Prior contracts**

Awardee's proposed use of a subcontractor that had performed evaluation services for the contracting agency on an earlier contract involving some of the same work required in the present procurement did not result in an organizational conflict of interest requiring the agency to exclude the awardee and its subcontractor from the present competition where the record shows that agency employees prepared the solicitation's statement of work (SOW) and the subcontractor's earlier work did not lead directly, predictably, and without delay to the present solicitation's SOW.

Procurement

Competitive Negotiation

- **Best/final offers**
- ■ **Evaluation errors**
- ■ ■ **Technical evaluation boards**
- ■ ■ ■ **Omission**

There is no requirement that all evaluators of initial proposals must reconvene to evaluate best and final offers.

Procurement

Competitive Negotiation

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

Alleged improper downgrading of protester's initial technical proposal by two evaluators was cured during procurement process because protester was considered in competitive range, discussions were held with protester, and the two evaluators alleged to have improperly downgraded protester's initial proposal did not participate in evaluation of best and final offers.

Procurement

Competitive Negotiation

- **Best/final offers**
- ■ **Evaluation**
- ■ ■ **Point ratings**
- ■ ■ ■ **Propriety**

Protest that agency failed to consider significant revisions contained in protester's best and final offer (BAFO) and to upgrade protester's technical score for those revisions is denied where the record shows that BAFO evaluators were aware of revisions and, as a result, upgraded protester's technical score for some evaluation factors but not for others; protester's mere disagreement with agency's evaluation does not render the evaluation unreasonable.

Procurement

Competitive Negotiation

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

Contracting agency properly decided to award cost-type contracts to the offeror of the higher-rated, higher-cost proposal, where the request for proposals stated that technical factors were considered more important than cost, and the agency reasonably determined that the awardee's higher technical merit was worth the additional costs.

B-255803, April 4, 1994

94-1 CPD ¶ 227

Procurement

Competitive Negotiation

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

Request for proposals which incorporates by reference the standard "Inspection of Supplies-Fixed Price" clause, as set forth at Federal Acquisition Regulation § 52.246-2, is not ambiguous as to whether the prospective contractor is required to perform tests to determine if the product offered complies with the solicitation's specifications; the standard clause requires that contractor provide only supplies that it has found to be in conformity with the requirements of the contract, with the agency having the right to inspect and test the supplies to ensure conformance if it so chooses.

Procurement

Specifications

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Design specifications**
- ■ ■ ■ **Overstatement**

Specifications for scientific instruments requiring that the instruments be provided with certain capabilities and features are not unduly restrictive of competition where the record establishes that the agency has been modifying instruments previously procured in-house to incorporate these features.

B-255304.2, April 5, 1994

94-1 CPD ¶ 228

Procurement

Competitive Negotiation

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

Allegation that awardee should have been excluded from competition due to conflict of interest is denied where there is no indication that the awardee played any role in the preparation of the solicitation or specifications, had access to the protester's proprietary information, or was involved in the evaluation of the protester's performance under another contract.

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Administrative discretion

Protest alleging that the source selection authority lacked a reasonable basis to reject the technical evaluators' finding that the protester's technical proposal was superior to the awardee's is denied where the source selection authority's contemporaneous written explanation set forth her grounds for disagreeing with the evaluators' conclusions and her explanation has a reasonable basis and is consistent with the solicitation evaluation criteria.

Procurement

Competitive Negotiation

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

Cost realism analysis is reasonable where it addressed the realism of the relevant aspects of the offerors' cost proposals and provided assurance that proposal with low proposed cost was likely to provide significantly lower cost than competing proposal.

B-255796, April 5, 1994

94-1 CPD ¶ 229

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Interpretation

Protest contending that awardee failed to offer required manufacturer's warranty for used components and subcomponents is denied where agency reasonably interpreted the solicitation's use of the term "manufacturer" in a nonrestrictive manner to include—in addition to the original equipment manufacturer—those vendors which would substantially revise used components and subcomponents to comply with the technical specifications in the solicitation.

B-255294.1, B-255294.2, April 6, 1994

94-1 CPD ¶ 239

Procurement

Sealed Bidding

- Low bids
- ■ Error correction

Low bid should be corrected upward following an allegation of mistake where there is clear and convincing evidence that a mistake was made; the intended bid price can be ascertained within a narrow range of certainty; and the bid remains low in any event.

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Extension
- ■ ■ ■ Propriety

Extension of closing date for receipt of initial offers in order to accommodate two offerors who submitted late proposals was proper, even though extension was issued after closing date had passed, because an agency may properly extend its closing date at any time in order to enhance competition.

Procurement

Competitive Negotiation

- Source selection boards
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Propriety

Protest by highest cost, lowest-rated offeror that agency's evaluation and consideration of late proposal prevented source selection official from conducting a proper cost/technical tradeoff is denied where the General Accounting Office concludes that agency properly considered proposal as timely and record supports agency's determination that the merits of the awardee's proposal were worth the additional proposed cost, while there were no benefits to the protester's proposal to justify award at its higher cost.

Procurement

Competitive Negotiation

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

An agency properly excluded from the competitive range a proposal that failed to include information which was necessary to the technical evaluation and which was expressly required by the request for proposals.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Criteria

Statement in Conference Report on the 1994 Department of Defense (DOD) Appropriations Act regarding the meaning of the 1993 DOD Appropriations Act provides no basis for the General Accounting Office (GAO) to reverse a prior decision sustaining a protest on the basis that the Defense Contract Audit Agency improperly certified the proposal of a DOD depot pursuant to section 9095 of the 1993 DOD Appropriations Act, where the 1993 Appropriations Act language was clear.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office affirms prior decision that the Defense Contract Audit Agency (DCAA) acted unreasonably in certifying, pursuant to section 9095 of the 1993 Department of Defense (DOD) Appropriations Act, a proposal submitted by a DOD depot as including comparable estimates of all direct and indirect costs at the depot's proposed price of \$14.1 million, where, based on an audit, DCAA concluded that the proposal costs were understated by \$1.3 million, primarily because DCAA found that the labor efficiencies, on which the proposal's labor hours were based, were overstated.

B-255156.2, April 7, 1994 REDACTED VERSION 94-1 CPD ¶ 274

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Administrative discretion

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; in exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. Where low offeror's proposal was technically acceptable and represented a great savings in price, contracting agency rationally awarded to that firm based on its determination that the proposal represented the best value to the government.

B-251969.5, B-251969.6, April 8, 1994 94-1 CPD ¶ 248

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee's proposal was noncompliant with solicitation requirements is denied where agency reasonably found that awardee's proposal met solicitation requirements concerning corporate and personnel experience and a computer system.

Procurement

Bid Protests

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

Procurement

Bid Protests

- Moot allegation
- ■ Determination

Protest allegations are dismissed as academic where, even if the allegations were sustained, protester would not be in line for award because its proposed and evaluated cost was higher and its proposal's technical score was lower than that of an intervening offeror.

B-252517.5, April 11, 1994**94-1 CPD ¶ 242**

Procurement

Bid Protests

- Dismissal
-

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior dismissal of protest challenging post-award modifications of a contract for corrections services is affirmed where the record shows that the modifications, which deleted the requirement for performance within 45 days of the award, deleted the base period performance, and deleted the requirement to accept direct court commitments, did not exceed the scope of the original contract and therefore were properly determined to be beyond our review authority as matters relating to the administration of the contract.

B-255656.2, April 11, 1994**94-1 CPD ¶ 249**

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Protest was properly dismissed where it appeared untimely on its face and the facts and information purporting to establish timeliness were in the protester's possession when the protest was filed but were not timely submitted.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision contains errors of fact or law or to present information not previously considered that warrants reversal or modification of decision; neither repetition and disagreement with decision nor advancement of argument that could have been raised during consideration of initial protest meet this standard.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Where protester does not show that original decision dismissing protest for lack of a valid basis contains either an error of fact or law which would warrant its reversal, the decision is affirmed.

Procurement

Competitive Negotiation

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

While agency's technical evaluation deviated from the evaluation scheme set forth in the request for proposals (RFP), protest is denied where recalculation of protester's and awardee's technical scores in accord with RFP evaluation scheme results in insignificant changes to total technical scores and would not have changed the outcome of the competition.

Procurement

Competitive Negotiation

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

Protest alleging that evaluators improperly considered an evaluation factor, general strategy, that was not set forth in the request for proposals (RFP) is denied where the evaluation documents show that evaluation was conducted consistent with the RFP's stated criteria and that general strategy was not evaluated as a separate factor, but as confirmed in discussions, was considered as part of several technical factors.

Procurement

Competitive Negotiation

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

Award to offeror with the highest combined number of technical and cost points is not objectionable because agency may properly use the combined scores achieved under the technical/cost formula set forth in the request for proposals (RFP) as the basis for its technical/cost tradeoff; since the RFP's selection formula already accounted for both technical merit and proposed costs, the contracting officer was not required to perform any further cost/technical tradeoff analysis in support of the award decision.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions where it reasonably led the protester into areas of its proposal that required amplification or clarification. Agency was not required to hold discussions on proposal deficiencies that were due to the protester's lack of diligence or competence in preparing its proposal or to discuss every aspect of the proposal that received less than the maximum possible score.

B-255858, April 12, 1994

94-1 CPD ¶ 252

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Actual costs
- ■ ■ ■ Liability

In a procurement for janitorial and recycling services, a procuring agency may properly provide that a contractor will be liable for the government's actual costs of reinspection, after the government's initial inspection and first reinspection, that are directly related to the contractor's unsatisfactory performance or nonperformance of the contract requirements.

B-255870, April 12, 1994

94-1 CPD ¶ 253

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Compelling reason exists to cancel an invitation for bids after bid opening where the agency determines that the specifications on which the competition was based erroneously sought design of components when agency's minimum need was for commercial off-the-shelf items.

Procurement

Bid Protests

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

Protest alleging bad faith must present convincing evidence since procurement officials are presumed to act in good faith.

B-255881, April 12, 1994

94-1 CPD ¶ 243

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Shipment schedules**

Procurement

Competitive Negotiation

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

Where the solicitation advised that an offeror's failure to agree to the required delivery schedule could result in the rejection of the offeror's proposal as unacceptable, the agency properly did not award to the protester whose low-priced proposal did not meet the delivery schedule listed in the solicitation, and agency's pointing out the importance of the required delivery schedule during competitive range discussions satisfied the requirement to conduct meaningful discussions.

Procurement

Bid Protests

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

Protest filed after award that the solicitation specifications would not meet the agency's needs and that the agency "plagiarized" the protester's proprietary drawings in the production of the government's technical data package included in the solicitation is untimely.

B-255336.2, April 13, 1994

94-1 CPD ¶ 261

Procurement

Competitive Negotiation

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

Protest alleging that an agency failed to conduct meaningful discussions or evaluate the protester's proposal properly is denied where the discussion questions led the protester into all areas where the proposal was found deficient and where the protester has not demonstrated that the agency's evaluation was unreasonable or not in accord with the listed evaluation criteria.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest that the agency failed to adequately analyze the awardee's high price in making the award selection is denied where the agency's price analysis was reasonably based on comparing the awardee's proposed price with published price lists and prior procurement prices.

B-255863, April 13, 1994**94-1 CPD ¶ 254**

Procurement

Sealed Bidding

- Bids
- ■ Post-bid opening periods
- ■ ■ Error correction
- ■ ■ ■ Propriety

Bid may not be corrected after bid opening where the bidder did not intend to include in its bid any additional amounts for the work involved.

B-255883, April 13, 1994**94-1 CPD ¶ 255**

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Agency improperly awarded a contract under a solicitation requiring a steel enclosure completely enclosing specified components of a low level radioactive waste compactor, where the awardee proposed an enclosure made partly of polyethylene.

B-255884, April 13, 1994**94-1 CPD ¶ 256**

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Invitations for bids
- ■ ■ ■ Identification

Awardee's bid bond was acceptable despite citation to an incorrect solicitation number where the bond otherwise identified the correct bid opening date and the services sought by the solicitation, and there was no other on-going procurement to which the bond could refer.

Procurement

Contractor Qualification

- Licenses
- ■ State/local laws
- ■ ■ GAO review

Award to a corporate bidder that was not in good standing at the time of bid opening was proper where the bidder was a viable corporation at bid opening under applicable state law.

Procurement

Competitive Negotiation

- Initial offers
 - ■ Rejection
 - ■ ■ Propriety
-

Procurement

Competitive Negotiation

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

Where evaluation was reasonable and consistent with the evaluation scheme listed in the solicitation, and agency properly found initial proposal unacceptable, agency properly rejected proposal. Since solicitation advised offerors of the agency's intention to make award without discussions, protester could not assume that it would have the opportunity to amend its proposal in discussions.

Procurement

Bid Protests

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

Argument that procurement was too complex for award without discussions is untimely, where the agency advised offerors prior to submission of proposals of its intention to make award without discussions.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Personnel experience

Where solicitation did not state that only experience with systems with same high operating temperature range as current system would be considered to satisfy employee experience requirement, and indicated in other areas that such a strict reading of experience requirement was not intended, agency reasonably determined that requirement was met by awardee's employee's experience with lower operating temperature system.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Rejection
- ■ ■ Propriety

Offer was not mathematically unbalanced—and thus properly was not rejected as materially unbalanced—where base year price was only approximately 10 percent higher than each of the 4 option year prices, even though, due to protester's unlevel pricing, awardee's offer became low only in the fourth option year.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Agency conducted prejudicially misleading discussions on a negotiated procurement where award was to be made to the low-priced, technically acceptable offeror, when it repeatedly informed the protester that its price was well below the government estimate—which reasonably caused the protester to raise its price—and then made award to an offeror whose price was similarly below the government estimate.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest against agency's failure to explain during discussions the basis for its rejection of protester's offer of equipment which did not conform to solicitation requirement is essentially a challenge to the solicitation requirement; the protest is untimely since it was filed after closing date for receipt of proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

General Accounting Office will dismiss protest that proposal evaluation was improperly conducted where record does not support protester's contentions.

Procurement

Bid Protests

- Private disputes
- ■ GAO review

General Accounting Office has no jurisdiction concerning issues which involve dispute between private parties.

Procurement

Competitive Negotiation

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

Contracting agencies have the discretion to select a more highly rated technical proposal if doing so is reasonable and consistent with the evaluation methodology set forth in the solicitation.

B-255886, B-255886.2, April 15, 1994**94-1 CPD ¶ 263**

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Defects
- ■ ■ ■ Specifications

Protest that amended seismic safety standards compliance requirements are contrary to law or regulation, and unfairly prejudicial to offerors which can meet the original requirement is denied where the record shows that no substantive changes were actually made in the requirement and the requirement, as amended, does not conflict with any law or regulation.

B-256598, April 15, 1994**94-1 CPD ¶ 264**

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Auction prohibition

Protest that agency improperly requested a second round of best and final offers (BAFO) and created an impermissible auction is dismissed as untimely when not filed within 10 working days after the protester received the solicitation amendment requesting the BAFOs.

B-255139.3, April 19, 1994**94-1 CPD ¶ 265**

Procurement

Competitive Negotiation

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

Agency reasonably found that higher-priced awardee's proposal for an elevator maintenance contract represented the best value to the government under the solicitation evaluation scheme, based on its reasonably supported "exceptional" rating as compared to the protester's "acceptable" rating and agency's finding that this technical superiority was worth the cost premium.

Procurement

Competitive Negotiation

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

Protest that agency improperly accepted proposal that deviated from solicitation provision limiting site development for guest house (motel) is denied where there is no evidence of resulting prejudice to the protester, *i.e.*, that the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the relaxed requirement; although protester has generally alleged that it "incurred additional costs in both loss of design freedom and evaluated costs" by complying with the solicitation requirement, the protester has not explained, nor is it otherwise evident from the record, how the requirement precluded it from submitting a more advantageous design and what additional costs were allegedly incurred in complying with the requirement.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency improperly failed to advise protester during discussions that it had not furnished required details concerning subcontract provisions and number and type of tests to be performed to assure quality performance is denied; in evaluating whether there have been meaningful discussions, the focus is on whether sufficient information has been imparted to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct the deficiencies in its proposal, and an agency is not required to specifically remind an offeror during discussions to submit information that was specifically requested in the solicitation.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Price negotiation

Agency had no duty to inform a high-priced offeror during discussions that its price was high where it was neither excessive nor unreasonable.

Procurement

Payment/Discharge

- Payment procedures
- ■ Intrastate transportation
- ■ ■ Rates
- ■ ■ ■ Applicability

General Services Administration properly applied intrastate rates to the services of a motor carrier that moved a Department of Defense shipment within one state following the movement of that shipment into the state by the Department.

B-254610, April 20, 1994***

Procurement

Payment/Discharge

- Liquidated damages
- ■ Remission

An agency recommends remission of a portion of the liquidated damages it assessed against a court-reporting contractor for untimely delivery of transcripts. We concur because the agency acknowledges that one reason for the delay was that the agency awarded the contract only a few days before the first scheduled hearing.

B-255756.2, April 20, 1994

94-1 CPD ¶ 268

Procurement

Contractor Qualification

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

General Accounting Office will not review a protest against an agency's affirmative determination of an awardee's responsibility in the absence of a showing of fraud or bad faith on the part of the contracting officer.

B-255924, April 20, 1994

94-1 CPD ¶ 269

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably rejected protester's proposal as technically unacceptable where, after discussions, numerous significant deficiencies remained in the proposal.

B-255943, B-255943.2, April 20, 1994

94-1 CPD ¶ 270

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Bids
- ■ Errors
- ■ ■ Error substantiation

Agency properly denied firm's request for correction of bid where bidder's worksheets, while providing evidence that a mistake had been made, did not provide clear and convincing evidence of the intended bid.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Bidder is not an interested party to maintain protest relating to qualification of awardee where appropriate course of action requires bidder to withdraw its bid and, consequently, the firm is ineligible for the award of a contract.

B-255945, April 20, 1994

94-1 CPD ¶ 271

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Agency properly rejected low-priced bid as unreasonably low pursuant to Federal Acquisition Regulation § 14.406-3(g)(5), where the bid was based upon a misinterpretation of the contract requirements.

B-249403.2, April 21, 1994

94-1 CPD ¶ 272

Procurement

Competitive Negotiation

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

Protest challenging evaluation of protester's proposal is denied where protester was not prejudiced by apparently flawed evaluation; even if protester received maximum points available under certain contested areas of evaluation, record supports reasonableness of award determination.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contention that agency did not hold meaningful discussions regarding exterior of protester's proposed building is denied where agency found proposal acceptable in this area and only downgraded proposal slightly for minor concerns regarding aesthetics and proposed entrance and pathways.

B-255944, April 21, 1994

94-1 CPD ¶ 273

Procurement

Competitive Negotiation

- Best/final offers
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Best and final offer (BAFO) which was received late by agency was properly rejected where the offeror telefaxed its BAFO too late to allow a reasonable time for it to be timely received.

Procurement**REDACTED VERSION**

Competitive Negotiation

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

Agency decision to make award to a higher-priced proposal was proper where the agency reasonably determined that the two lower-priced proposals by offering insufficient numbers of personnel showed a lack of understanding of the scope of the solicitation work requirements and that, consequently, the higher-priced proposal offered the "best value" since it provided a management approach that would ensure the satisfactory performance of the contract.

B-255697, April 22, 1994

Procurement**Payment/Discharge**

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

A carrier can be charged with the loss of an item not specifically listed on the inventory where the item bears a reasonable relationship to the contents of the carton from which it allegedly was lost.

Procurement**Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Amount determination

GAO will not question an agency's calculation of the value of damages unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

B-255996, B-255996.2, April 25, 1994***

Procurement**Contractor Qualification**

- Licenses
- ■ State/local laws
- ■ ■ GAO review

Protest that awardee's proposal failed to comply with solicitation licensing requirement which constitutes a definitive responsibility criterion is denied where the agency had sufficient evidence to reasonably conclude that the awardee had obtained the required license and to determine that this information satisfied the solicitation requirement.

Procurement**Competitive Negotiation**

- Competitive advantage
- ■ Allegation substantiation

Allegations that awardee was given an unfair competitive advantage are dismissed where the protester does not provide a sufficient legal or factual basis to conclude that the agency gave the awardee any such advantages.

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
-

Procurement

Specifications

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

Protester which challenged terms of solicitation for explosive cartridges as defective and unduly restrictive of competition is not entitled to award of the costs of filing and pursuing its protests even though agency did not take corrective action for nearly 2 months after protests were filed where, during a telephone conference between the parties, protester's numerous allegations were focused, complex technical issues were clarified, and protester's specific concerns regarding solicitation were explained, and agency promptly took corrective action within only 8 working days following that conference.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Unit prices

Using the protester's proposed unit prices and consistent with the solicitation, an agency properly calculated the protester's evaluated price as \$45 million, rather than \$38.7 million indicated in the protester's proposal, on a firm, fixed-price, indefinite quantity contract for security services where the protester's proposed total price did not include various items of work.

Procurement

Competitive Negotiation

- Accounting principles
- ■ Prices
- ■ ■ Estimates

The Cost Accounting Standards do not require an offeror's proposed, fixed prices to encompass all estimated performance costs.

Procurement

Contractor Qualification

- Licenses
- ■ Determination time periods

A solicitation provision requiring the offeror to submit evidence that it has the necessary business licenses for contract performance may be satisfied at any time prior to award.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Availability

Under a solicitation for security guard services, an agency properly determined that the awardee's proposal reflected an ability to limit employee turnover where the proposed wages and fringe benefits as described in the technical proposal reasonably demonstrated this ability.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office denies reconsideration of prior protest dismissals, which were dismissed as untimely since they were based on information that was not diligently pursued, where the requesting party merely expresses disagreement with the dismissals and provides evidence to support its protests' timeliness that was available during the initial consideration of the protests, but which was not presented at that time.

B-255648.3, April 26, 1994***

94-1 CPD ¶ 280

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Contention that contract is void because solicitation's delivery order issuance period expired prior to contract award is denied where the contention is incorrect—*i.e.*, the ordering period does not expire until approximately 1 year after the actual award date.

Procurement

Competitive Negotiation

- Partial contract awards
- ■ Propriety

Protest that agency improperly made a partial award is denied where solicitation incorporated Federal Acquisition Regulation § 52.215-16 which expressly advises offerors that the agency may award a contract for any item or group of items set forth in the solicitation unless the awardee has qualified the acceptance terms of its offer, which is not the case here.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

In procurement for retrofit of coin press machines, where awardee's proposal obligated it to replace existing crankshafts if required, agency reasonably interpreted proposal as complying with solicitation provision directing offerors to "address" need for new crankshafts.

B-257038, April 26, 1994

94-1 CPD ¶ 288

Procurement

Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Where bidder sought to act as its own surety, agency properly rejected bid as nonresponsive.

B-255944.2, April 28, 1994

94-1 CPD ¶ 289

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly rejected protester's proposal as technically unacceptable where the protester took exception to a material requirement of the solicitation.

B-256986, April 28, 1994

94-1 CPD ¶ 281

Procurement

Bid Protests

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

A protest of a sole source award is untimely under the Bid Protest Regulations where the protester fails to timely respond to the agency's notice of an intended sole source contract action published in the *Commerce Business Daily* (CBD) and protests the agency's alleged misclassification of the CBD notice more than 10 working days after it knew, or should have known, of the alleged misclassification.

B-256003, B-256003.2, April 29, 1994

94-1 CPD ¶ 282

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Line items

Under invitation for bids (IFB) for repairs to icebreaking tugs, which permitted bidders to bid on dry dock work items, dockside work items, or both, agency properly rejected bid as nonresponsive where bidder did not insert prices for either all of the dry dock line items or all of the dockside line items as required by the IFB.

Procurement

Competitive Negotiation

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

Protester's contention that contracting agency improperly rejected its proposal for chemical analyses of compressed breathing air samples as technically unacceptable is denied where the agency's technical evaluation panel (TEP) evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation, and the record reasonably supports the TEP's overall conclusion that protester's proposal failed to address specific solicitation requirements.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Where solicitation announced that the agency intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, and agency's evaluation of the protester's proposal as technically unacceptable was reasonable and in accordance with the solicitation's evaluation criteria, agency was not required to conduct discussions with the protester and properly made award on the basis of initial proposals.

Procurement

Bid Protests

- Dismissal

Prior decision dismissing protest is affirmed where on its face protest was untimely filed and additional information purporting to establish timeliness was available but not submitted by the protester in the course of the original protest.

Procurement

Payment/Discharge

- Administrative settlement
- ■ Set-off

Carrier has failed to establish that government setoff for loss and damage claim was excessive where agency based the amount of the setoff on the determination of the agency's claims examiner and a repair firm, selected by the owner of household goods, that two tables damaged in a move were not repairable. This Office will not question the agency's acceptance of that determination rather than a repair estimate from a firm chosen by the carrier unless the carrier presents clear and convincing evidence that the agency acted unreasonably.

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