

GAO

Office of General Counsel



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

No. 7

Superintendent of Documents  
U.S. Government Printing Office, Washing

100242



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# Preface

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

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# Appropriations/Financial Management

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**B-237240, April 9, 1990**

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## **Appropriations/Financial Management**

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### **Federal Assistance**

- Grants
- ■ Cooperative agreements
- ■ ■ Equipment
- ■ ■ ■ Property disposal

The appropriate disposition of equipment purchased with U.S. funds provided by the Agency for International Development (AID) to aid the Nicaraguan Resistance depends upon the terms of the assistance instruments between AID and the recipients of the funds. The two contracts in question provide that equipment should be turned over to AID on termination or completion of the contracts or disposed of in accordance with AID's instructions. The grant agreement and cooperative agreement, however, vest title in the U.S.-funded equipment in the recipient organization, subject to certain restrictions on the disposition of equipment with an appraised value of \$1,000 or more.

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# Civilian Personnel

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**B-237622, April 2, 1990**

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## Civilian Personnel

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### Compensation

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

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

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**B-229373, B-232443, April 4, 1990\*\*\***

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## Civilian Personnel

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### Compensation

- Overtime
- ■ Eligibility
- ■ ■ Travel time

Two Navy employees are not entitled to overtime or compensatory time for time spent in travel outside normal work hours to ships in response to messages requesting technical assistance to correct equipment breakdowns. The employees have not presented sufficient evidence or documentation which would indicate that travel was of an immediate official necessity and to an event that was unscheduled and administratively uncontrollable so as to permit payment under 5 U.S.C. § 5542 (1988). The burden of proof is upon the claimants to establish the liability of the United States and the claimant's right to payment.

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**B-238509, April 9, 1990**

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## Civilian Personnel

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### Compensation

- Fringe benefits
- ■ Health insurance
- ■ ■ Insurance premiums
- ■ ■ ■ Underdeductions

A new temporary Schedule C employee who was erroneously excluded from the Federal Employees Life and Health Benefits Programs for approximately 5 months may not be reimbursed for the difference in the cost of premium payments she made for private life and health insurance coverage during that period.

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**B-236570, April 13, 1990**

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**Civilian Personnel**

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**Relocation**

- Travel expenses
  - ■ Rental vehicles
  - ■ ■ Reimbursement
- 

**Civilian Personnel**

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**Travel**

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

A transferred employee was issued orders erroneously authorizing reimbursement for rental car expenses at his new duty station while awaiting authorized shipment of a privately owned vehicle, and was given a travel advance. Payment of rental car expenses at a new permanent duty station while awaiting arrival of one's privately owned vehicle is not authorized under 5 U.S.C. § 5724a (1988). After he incurred expenses in reliance on the erroneous orders the error was discovered. Repayment of the travel advance to the extent of the amount specifically authorized for rental car expenses is waived under 5 U.S.C. § 5584, since the employee actually spent the advance in good faith reliance on the erroneous travel orders.

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**B-237567, April 13, 1990\*\*\***

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**Civilian Personnel**

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**Travel**

- Temporary duty
- ■ Return travel
- ■ ■ Administrative discretion

A construction employee who is required to perform long periods of temporary duty away from his official station and does not maintain a permanent residence at his official station may be reimbursed for the expenses of periodic, authorized return travel for nonworkdays to his permanent residence, not to exceed the constructive cost of travel to his official station.

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**B-238759, April 13, 1990**

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**Civilian Personnel**

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**Travel**

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

Presidential Exchange Executives may not personally retain frequent flyer mileage credits since their travel expenses are paid for out of appropriated funds, and therefore are the property of the government.

---

**B-237908, April 18, 1990**

**Civilian Personnel**

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**Travel**

- Overseas travel
- ■ Tour renewal travel
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

The Forest Service properly limited reimbursement for an employee's Overseas Tour Renewal Agreement Travel to the less-costly actual expenses he incurred for travel between his overseas post of duty and the location indicated on his travel authorization as an alternate, rather than the constructive cost of returning to his actual place of residence. The Federal Travel Regulations, para. 2-1.5h(2)(c), provides that the cost payable by the government for travel to the alternate location is restricted to the cost *actually incurred* and may not exceed the constructive cost of travel to the actual place of residence.

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**B-234476, April 23, 1990\*\*\***

**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

Employee was transferred from Columbus to Dayton and then back to Columbus within 1 year. She sold her Columbus residence within 1 year from effective date of first transfer and prior to official notice of retransfer. Subsequent transfer does not extinguish the right to reimbursement created by the initial transfer. Employee is entitled to reimbursement of residence sale expenses incident to initial transfer to Dayton. Further, employee is entitled to residence purchase expenses incident to the retransfer to Columbus.

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**Civilian Personnel**

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**Relocation**

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

A transferred employee claimed temporary quarters subsistence expenses for herself for 4 days when inclement weather prevented her from returning to her residence at old duty station which she had not vacated in order to allow daughter to complete school session. Her claim is disallowed since she had not vacated her old residence as required by the Federal Travel Regulations before temporary quarters expenses may be reimbursed.

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**Civilian Personnel**

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**Relocation**

- Temporary quarters
- ■ Determination
- ■ ■ Criteria

Employee whose old and new residences were in Columbus occupied temporary quarters for 30 days in connection with successive transfers. She acquired a new permanent residence but was unable to occupy new residence immediately because of a holdover provision allowing the sellers to remain in possession. Paragraph C13006 of the Joint Travel Regulations, volume 2 (FTR para. 2-5.2h), which generally prohibits payment of TQSE for short distance transfers, is not a bar to payment since this provision was not intended to apply to situations where the old residence sale

is under one transfer order and the new residence purchase is under another order as the timing of the sale and purchase are no longer within the employee's control.

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**B-238109, April 25, 1990**

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**Civilian Personnel**

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**Relocation**

- Overseas personnel
- ■ Household goods
- ■ ■ Shipment
- ■ ■ ■ Privately-owned vehicles

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

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**B-233397, April 27, 1990\*\*\***

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**Civilian Personnel**

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**Relocation**

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

**Civilian Personnel**

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**Relocation**

- Travel expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee, permanently transferred to the place where he was on a temporary duty assignment, returned to his old duty station by privately owned vehicle to retrieve stored household goods. The employee is entitled to en route per diem and mileage expenses for the round-trip since relocation travel by privately owned vehicle is deemed advantageous to the government under the Federal Travel Regulations, para. 2-2.3a.

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**B-237667, April 27, 1990**

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**Civilian Personnel**

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**Relocation**

- Expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Manpower shortages

**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Eligibility
- ■ ■ Administrative determination
- ■ ■ ■ Errors

An individual was appointed from the private sector to a manpower shortage category position with the national Oceanic and Atmospheric Administration. Instead of being limited to the travel and transportation expenses authorized by 5 U.S.C. § 5723 (1988), his travel authorization erroneously permitted him real estate expenses as though he was transferring employee. The claim in excess of the limited entitlements may not be paid. However, since the real estate expenses in-

curred were significant and the individual acted in good faith reliance on erroneous travel orders, we submit the matter to the Congress for favorable consideration under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1988).

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# Military Personnel

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**B-230492.2, April 2, 1990**

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**Military Personnel**

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**Pay**

- **Readjustment pay**
- 

**Military Personnel**

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**Pay**

- **Separation expenses**

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

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**B-238612, April 16, 1990**

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**Military Personnel**

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**Travel**

- **Temporary duty**
- ■ **Travel expenses**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Fines**

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

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**B-230318, April 18, 1990\*\*\***

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**Military Personnel**

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**Pay**

- **Variable housing allowances**
- ■ **Amount determination**

A member who is entitled to Basic Allowance for Quarters (BAQ) at the with-dependent rate, based on his payment of child support, and who is also entitled to a Variable Housing Allowance (VHA), may not receive VHA at the higher with-dependent rate solely by reason of a separation agreement that also awards "primary custody" of dependent children to the former spouse, but with "temporary" and "physical" "secondary custody" to the member at other times. However, the member is entitled to VHA at the with-dependent rate where he can demonstrate that he had actual physical custody of the children for periods in excess of 3 months. The computation of such VHA should take into consideration only the member's direct housing costs and not the costs incurred by the former spouse.

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# Miscellaneous Topics

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**B-237240, April 9, 1990**

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## Miscellaneous Topics

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### National Security/International Affairs

- Cooperative agreements
- ■ Equipment
- ■ ■ Property disposal

The appropriate disposition of equipment purchased with U.S. funds provided by the Agency for International Development (AID) to aid the Nicaraguan Resistance depends upon the terms of the assistance instruments between AID and the recipients of the funds. The two contracts in question provide that equipment should be turned over to AID on termination or completion of the contracts or disposed of in accordance with AID's instructions. The grant agreement and cooperative agreement, however, vest title in the U.S.-funded equipment in the recipient organization, subject to certain restrictions on the disposition of equipment with an appraised value of \$1,000 or more.

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**B-230545.2, April 19, 1990**

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## Miscellaneous Topics

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### Science/Technology

- Scientific experiments
- ■ Animals
- ■ ■ Use
- ■ ■ ■ Restrictions

The Public Health Service Act (42 U.S.C. § 201 *et seq.*), the Animal Welfare Act (AWA) (7 U.S.C. § 2131 *et seq.*), and applicable regulations do not prohibit the National Institutes of Health (NIH) from reviving experiments on monkeys first used in medical research by a grantee whose grant was terminated. NIH's proposal to euthanize the monkeys does not violate the AWA's prohibition against multiple experimentation because the animals will not be allowed to recover.

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**B-238290, April 20, 1990\*\*\***

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## Miscellaneous Topics

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### Environment/Energy/Natural Resources

- Environmental protection
- ■ Recycled materials
- ■ ■ Use
- ■ ■ ■ Cost increase

Award to lowest bidder offering to comply with mandatory solicitation requirement for 50 percent waste paper content, even though there was lower bid not meeting requirement, is consistent with Resource Conservation and Recovery Act of 1976 and Environmental Protection Agency implementing Guideline; although narrative accompanying Guideline indicates EPA's view that higher price for paper meeting minimum waste paper content requirement is unreasonable, neither statute nor Guideline prohibits paying such a premium.



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# Procurement

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**B-237868, April 2, 1990**

**90-1 CPD 346**

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## Procurement

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### Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety
- ■ ■ ■ Price reasonableness

Protest is sustained where, due to improper cost evaluation, the record does not clearly demonstrate that agency made award on initial offers to low cost offeror.

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## Procurement

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### Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety
- ■ ■ ■ Price reasonableness

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## Procurement

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### Competitive Negotiation

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

Agency improperly accepted initial offer from firm which proposed to compensate certain employees at an hourly rate which was less than the minimum rate prescribed by the Department of Labor's wage rate determination.

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**B-237938, April 2, 1990\*\*\***

**90-1 CPD 347**

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## Procurement

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### Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Prior contract performance

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## Procurement

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### Contractor Qualification

- Responsibility criteria
- ■ Organizational experience

Agency may properly consider manufacturing experience of parent corporation in finding that awardee subsidiary corporation met definitive responsibility criterion (5-year manufacturing expe-

rience requirement), where bid stated that product would be manufactured at parent corporation's facilities.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Where the identity of the bidder is clear from the bid as submitted and there is no indication that the bidder will not perform in accordance with the requirements of the solicitation, the bid is responsive.

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**B-233796.4, April 3, 1990**

**90-1 CPD 350**

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## **Procurement**

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### **Bid Protests**

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

General Accounting Office has no basis to question agency's decision to permit upward correction of low bid where the work sheets the lowest bidder submitted to support its allegation of mistake establish the mistake and the claimed intended bid by clear and convincing evidence.

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**B-237716.2, April 3, 1990\*\*\***

**90-1 CPD 351**

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## **Procurement**

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### **Bid Protests**

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

Protester's objection to the use of negotiated rather than sealed bid procedures is untimely when filed after award rather than prior to the closing date for receipt of proposals.

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## **Procurement**

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### **Competitive Negotiation**

- Contracting officer duties
- ■ Information evaluation
- ■ ■ Fairness

While contracting officer, acting in good faith, may ordinarily rely on information provided by transportation rate specialists in calculating transportation costs on f.o.b. origin offers, he may not automatically do so if it leads to an improper or unreasonable evaluation of the offered prices.

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## **Procurement**

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### **Competitive Negotiation**

- Multiple offers
- ■ Acceptance
- ■ ■ Propriety

Multiple offers from commonly owned and/or controlled companies may be accepted unless the acceptance of such offers is prejudicial to the interests of the government or other offerors.

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## **Procurement**

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### **Competitive Negotiation**

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

Even though evaluation of transportation costs on f.o.b. origin supply solicitation appears unreasonable, protest against the evaluation is denied, where the protester would not be in line for award, even assuming the application of its own transportation calculations.

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## **Procurement**

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### **Socio-Economic Policies**

- Small businesses
- ■ Size status
- ■ ■ Self-certification
- ■ ■ ■ Good faith

Contracting officer properly accepted, at face value, the awardee's self-certification that it was a small business, in the absence of information that reasonably impeached the awardee's certification.

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**B-237865, April 3, 1990\*\*\***

**90-1 CPD 352**

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Cost estimates

Contention that where solicitation contemplates award of a fixed-price, time and materials contract and requires the submission of cost and pricing data, agency must perform a cost analysis, is denied where adequate price competition was obtained, permitting agency to waive further submission of such cost data and perform a price analysis in lieu of a cost analysis.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Personnel

Where none of the personnel required to perform the statement of work were "professional employees" as defined in the Federal Acquisition Regulation (FAR), contracting officer was not required to evaluate proposed professional employee compensation as specified in the standard FAR clause regarding evaluation of such compensation.

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## **Procurement**

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### **Contract Management**

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

Whether awardee actually complies with its contractual obligations is a matter of contract administration that is not reviewable under General Accounting Office's bid protest function.

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## **Procurement**

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### **Contractor Qualification**

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

General Accounting Office will not review a protest of an affirmative determination of responsibility absent a showing that it may have been made fraudulently or in bad faith, or that definitive responsibility criteria set out in the solicitation were not met.

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**B-237900, April 3, 1990**

**90-1 CPD 353**

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## **Procurement**

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### **Sealed Bidding**

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

General Accounting Office has no basis to question agency's decision to permit upward correction of low bid where the work sheets the lowest bidder submitted to support its allegation of mistake establish the mistake and the claimed intended bid by clear and convincing evidence.

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**B-237965, April 3, 1990\*\*\***

**90-1 CPD 354**

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## **Procurement**

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### **Socio-Economic Policies**

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

Agency decision not to set aside procurement for small disadvantaged business (SDB) concerns is unreasonable where agency made no effort to ascertain SDB interest and capabilities and it appears that the agency reasonably should have expected to obtain offers from at least two responsible SDBs and make award at a price not exceeding the fair market price by more than 10 percent.

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**B-237968, April 3, 1990**

**90-1 CPD 355**

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Errors
- ■ ■ Error substantiation

Agency's decision to reject an obviously mistaken bid was reasonable where the bidder failed to submit its original work sheets to support its bid calculations and there is reasonable doubt that the bid price included all costs associated with the work required by the solicitation.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Options
- ■ ■ ■ Prices

Where solicitation provided that offers would be evaluated for award "by adding the total price for all options to the total price for the basic requirement," contracting agency reasonably included in the evaluation the prices for option quantities of artillery fuzes that were not included in the basic requirement.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where evaluation under technical evaluation criteria for proposed facilities and production approach was based on detailed information in proposal and in-plant survey, protester's disagreement with agency determination that awardee's approach was acceptable does not establish that the determination was unreasonable.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Prices
- ■ ■ Rent
- ■ ■ ■ Government property

In calculating imputed rental evaluation factor to be added to offeror's price to account for rent-free use of government-furnished property, agency reasonably relied upon period of use entered by offeror in evaluation clause, rather than authorized period of use on delivery schedule, where solicitation provided for evaluation based on period entered by offeror and where offeror would be required to pay rent if its use exceeded entered period.

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**Procurement**

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**Competitive Negotiation**

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

Awardee's offer of base and option quantities is not subject to rejection as materially unbalanced where there is no showing that the offer is unbalanced or that the award will not result in lowest ultimate cost to government.

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**B-208159.21, April 4, 1990**

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**Procurement**

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**Bid Protests**

- Forum election
  - ■ Recommendation
- 

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties

General Accounting Office (GAO) supports a proposed bill to expand the class of interested parties eligible to file bid protests with GAO under the Competition in Contracting Act to include federal employees affected by a contracting agency's decision to contract out for services. In view of the possible existence of several other forums for the resolution of contracting out disputes, GAO recommends that one forum be selected so that resolution of decisions to contract out can be accomplished quickly and efficiently.

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**B-236564.3, April 4, 1990**

**90-1 CPD 357**

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester fails to show any error of law or fact in prior decision holding that agency may accept a bid that did not include a signed Certificate of Procurement Integrity at the time of bid opening since, even assuming the bid was nonresponsive for failure to comply with the certification requirement, acceptance of the bid would serve the actual needs of the government and would not prejudice other bidders.

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**B-238103, April 4, 1990**

**90-1 CPD 358**

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that proposal was improperly rejected is denied where review of agency's technical evaluation, which concluded that protester's proposal was technically unacceptable, shows that evaluation was reasonable and consistent with solicitation's evaluation scheme.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Propriety

Cancellation of request for proposals set aside for small business and resolicitation on unrestricted basis are proper where all small business proposals are found technically unacceptable.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Preparation costs

Where agency negligently prepares government specifications for a procurement which results in agency cancellation of invitation for bids, after bid opening, claim for bid preparation costs is denied since mere negligence or lack of due diligence by the agency standing alone, does not provide a basis for the recovery of bid preparation costs.

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**B-238430, April 4, 1990**

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**Procurement**

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**Contract Management**

- Contract modification
- ■ Leases
- ■ ■ Propriety

Real property owner who leases property to Postal Service seeks increase in rent due to increased costs of maintaining property. If further adequate consideration flows to Postal Service from owner to support contract modification, then rent conceivably could be increased; however, such a matter is for negotiation solely between Postal Service and the property owner.

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**B-238829, April 4, 1990**

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**Procurement**

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**Contract Management**

- contract administration
- ■ Convenience termination
- ■ ■ Federal procurement regulations/laws
- ■ ■ ■ Revision

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 90-07, a proposal to increase or delete a number of dollar-value thresholds in FAR Part 49, which concerns contract terminations.

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**B-236597.3, April 5, 1990**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties

General Accounting Office affirms its prior dismissal of a protest allegation challenging contract award where protester previously was properly found technically unacceptable and is therefore not an interested party since it would not be in line for award if allegation were resolved in its favor.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision, based on General Accounting Office's failure to conduct a fact-finding conference before deciding the protest, is denied because the fact-finding procedure is used only when a material factual dispute cannot be resolved on the written record and the protest allegations were resolvable on the written record.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester fails to show any error of fact or law which warrants reversal or modification of initial decision but essentially reiterates arguments considered and rejected in initial decision.

**Procurement**

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**Noncompetitive Negotiation**

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

**Procurement**

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**Noncompetitive Negotiation**

- Use
- ■ Justification
- ■ ■ Urgent needs

Agency reasonably limited a procurement of hospital generators to the one source known not to require extensive first article testing where record shows that a continuing supply of items was urgently required to protect lives and that no other sources, including the protester, could make timely delivery.



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## **Procurement**

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### **Noncompetitive Negotiation**

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

## **Procurement**

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### **Noncompetitive Negotiation**

- **Use**
- ■ **Justification**
- ■ ■ **Urgent needs**

Agency properly elected not to synopsise a solicitation restricted to the one source known to be able to meet urgent delivery requirements; protester, who could not meet urgent delivery requirements, was not prejudiced by a failure to synopsise the solicitation or to timely synopsise contract award.

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**B-237960, April 5, 1990**

**90-1 CPD 364**

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## **Procurement**

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### **Competitive Negotiation**

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

Discussions are meaningful where discussion questions should reasonably have led firm into deficient areas of its proposal.

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## **Procurement**

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### **Competitive Negotiation**

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

Firm was reasonably eliminated from competitive range where, after round of discussions, firm's proposal continued to have significant deficiencies first identified during initial evaluation.

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**B-238010.2 , April 5, 1990\*\*\***

**90-1 CPD 365**

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## **Procurement**

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### **Contractor Qualification**

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

Protester properly was found nonresponsible where it failed to provide sufficient information to permit finding that individual sureties on its bid bond were acceptable and the record shows the contracting officer's nonresponsibility determination was reasonable.

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## Procurement

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### Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Even though an individual surety may have been accepted by a contracting agency, another agency is not required to accept the surety where it reasonably finds the surety to be unacceptable based on information submitted to it.

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**B-238027, April 5, 1990\*\*\***

**90-1 CPD 366**

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## Procurement

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### Contract Management

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

Where timely size protest is filed after small business-small purchase set-aside award and awardee does not contest Small Business Administration finding that it is other than a small business, intent of Small Business Act and integrity of competitive system is served by terminating the contract and, if otherwise appropriate, making award to only small business quoter.

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**B-238090, April 5, 1990\*\*\***

**90-1 CPD 367**

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## Procurement

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### Sealed Bidding

- Bids
- ■ Acceptance time periods
- ■ ■ Expiration

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## Procurement

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### Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Where contracting officer deliberately allowed bid acceptance period to expire without making award in order to effect cancellation of solicitation which she had determined was warranted, General Accounting Office will review propriety of the decision to cancel.

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## Procurement

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### Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Contracting agency lacked compelling reason to cancel invitation for bids (IFB) for rental of construction equipment where apparent inconsistency between IFB provisions—which described certain requirements in terms of hourly and daily rates, but called for pricing on the basis of daily and weekly unit rates—did not prejudice any bidder, all bidders understood that daily and weekly unit pricing was required, they provided such pricing which was evaluated on a common basis, and an award under the IFB would meet the agency's actual needs.

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**Procurement**

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**Sealed Bidding**

- Invitations for bids
  - ■ Terms
  - ■ ■ Performance bonds
- 

**Procurement**

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**Sealed Bidding**

- Justification

Protest against performance bond requirement in solicitation is denied where agency required bond to assure a constant supply of natural gas to naval station, and protester does not establish that the determination to require a performance bond was unreasonable.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Propriety

Protest that contracting agency improperly awarded duplicate contracts to two bidders under solicitation contemplating one award is denied where, although a vendor other than the protester was listed inadvertently in the agency's automated records as the awardee, the agency states that only one award (to the protester) was made, and the protester fails to present sufficient evidence to substantiate its claim of improper agency action.

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**Procurement**

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**Contract Management**

- Contract performance
- ■ GAO review

Protester's arguments concerning performance of contract involves contract administration and is not for consideration by the General Accounting Office. 4 C.F.R. § 21.3(m) (1989).

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**Procurement**

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**Bid Protests**

- Agency-level protests
- ■ Information adequacy

The fact that, under an agency's protest regulations, an agency-level protest may be untimely or the protester may lack interested party status, does not provide a basis for questioning the agency's subsequent determination to undertake corrective action based on information presented in connection with the protest.

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**Procurement**

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**Socio-Economic Policies**

- Preferred products/services
- ■ American Indians

Determination of Bureau of Indian Affairs that joint venture comprised of Indian-owned concern and concern not Indian-owned does not qualify as a 51 percent Buy Indian Act concern, as required by the solicitation, is not unreasonable where, although the Indian firm controls 51 percent

of the joint venture, only 55 percent of the Indian firm is owned by Indians and the aggregate total of Indian ownership of the joint venture therefore amounts to only 28 percent.

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**B-238309, April 5, 1990**

**90-1 CPD 371**

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**Procurement**

**Bid Protests**

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

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

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**Procurement**

**Competitive Negotiation**

- **Contract awards**
- ■ **Low offers**
- ■ ■ **Propriety**
- ■ ■ ■ **Competitive system integrity**

It is not permissible to make award to an offeror whose technical proposal may have been lost by the government prior to opening of proposals; to do so would be inconsistent with protecting the integrity of the competitive bidding system.

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**Procurement**

**Competitive Negotiation**

- **Offers**
- ■ **Evaluation**
- ■ ■ **Technical acceptability**

Protester's acknowledgment of a solicitation amendment containing agency's specifications in itself is not an adequate basis to find its proposal technically acceptable in the absence of a detailed written proposal as required by the solicitation establishing how the protester would meet the government's requirements.

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**B-238334, April 5, 1990**

**90-1 CPD 372**

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**Procurement**

**Contractor Qualification**

- **Responsibility/responsiveness distinctions**
- ■ **Approved sources**
- ■ ■ **Compliance time periods**

Where solicitation clause provides that qualification of product may be completed up to time of award, compliance with clause is matter of responsibility, not responsiveness, and detailed information on product qualification, if needed, may be provided to agency any time before award.

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## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Approved sources**
- ■ ■ ■ **Identification**

Failure of bidders to identify a product they were bidding under qualified products requirement does not render bids nonresponsive where the bidders took no exception to solicitation requirement that products be qualified.

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**B-238428, April 5, 1990**

**90-1 CPD 373**

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## **Procurement**

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### **Sealed Bidding**

- **Invitations for bids**
- ■ **Amendments**
- ■ ■ **Acknowledgement**
- ■ ■ ■ **Waiver**

Contracting agency properly may accept low bid that failed to acknowledge solicitation amendments making changes that were merely a matter of form, imposing no new legal obligations.

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**B-238484, April 5, 1990**

**90-1 CPD 374**

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## **Procurement**

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### **Bid Protests**

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

Protest based upon protester's knowledge of allegedly improper and allegedly prejudicial best and final offer request to competitor is untimely where filed more than 10 days after protester learns of contents of request.

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**B-238877, April 5, 1990**

**90-1 CPD 375**

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## **Procurement**

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### **Sealed Bidding**

- **Below-cost bids**
- ■ **Contract awards**
- ■ ■ **Propriety**

Protest against submission of an alleged below-cost bid on the basis that it constitutes a "buy-in" is dismissed since a buy-in is not illegal and does not provide a basis upon which an award may be challenged.

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**B-238333, April 6, 1990**

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**Procurement**

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**Contractor Qualification**

- Federal procurement regulations/laws
  - ■ Revision
- 

**Procurement**

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**Contractor Qualification**

- Organizational conflicts of interest
- ■ Corporate ownership

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-82, a proposal to revise FAR section 3.601 to exempt special government employees appointed as advisors, consultants, or members of advisory committees from the general rule that government contracts may not be awarded to government employees or firms they substantially own or control. GAO suggests, however, that consideration be given to adding a sentence to section 3.601 to make it clear that agencies have the discretion to decline to enter into a contract whenever the agency determines that such action is necessary to preserve the integrity of the procurement process.

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**B-236266.5, April 10, 1990**

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**90-1 CPD 376**

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

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**B-237369.2, April 10, 1990**

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**90-1 CPD 377**

**Procurement**

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**Bid Protests**

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

**Procurement**

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**Socio-Economic Policies**

- Small businesses set-asides
- ■ Approved sources
- ■ ■ Applicability

Prior decision, holding that a bid submitted under a total small business set-aside is nonresponsive when it is not clear from the bid whether the bidder will comply with the requirement to supply items manufactured or produced by small business concerns in the United States, is affirmed where protester fails to show any error of fact or law in prior decision.

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**Procurement**

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**Socio-Economic Policies**

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

Department of Defense regulatory requirement that small disadvantaged business (SDB) regular dealers provide a product manufactured by a small business concern when there is no SDB manufacturer in order to be eligible for an SDB evaluation preference in unrestricted procurements is a reasonable implementation of its broad statutory mandate to award 5 percent of the dollar value of its contracts to SDB concerns and is within the agency's authority to impose.

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**B-237956, April 10, 1990**

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**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Evaluation**
- ■ ■ **Contingent fees**
- ■ ■ ■ **Contractor agents**

Protest that agency improperly rejected offer based on a contingent fee arrangement is denied since the agency reasonably found that the contingent fee arrangement of 20 percent of gross sales was exorbitant when compared to the customary fees paid for similar services.

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**B-238115.2, April 10, 1990**

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**Procurement**

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**Bid Protests**

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

Protest alleging bad faith must present convincing evidence that government officials had a specific and malicious intent to injure the protester.

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**Procurement**

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**Bid Protests**

- **GAO authority**

Challenge of agency's selected Standard Industrial Classification code is not for consideration by the General Accounting Office, since conclusive authority over this matter is vested in the Small Business Administration.

**Procurement**

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**Bid Protests**

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

Protest from offeror which would not be in line for award if the protest were upheld is dismissed because the protester does not have the requisite direct economic interest required to be considered an interested party entitled to maintain the protest.

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**Procurement**

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**Contract Management**

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

Protest that awardee may furnish a noncomplying product is dismissed since whether or not a contractor actually performs in accordance with the solicitation's requirements is a matter of contract administration that is the responsibility of the contracting agency and is not for consideration by the General Accounting Office under the Bid Protest Regulations.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester reiterates arguments which were considered and rejected in General Accounting Office's decision, and disagrees with decision, but presents no argument or information establishing that decision was legally or factually erroneous.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

**Procurement**

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**Bid Protests**

- Subcontracts
- ■ GAO review

Dismissal of protest against awards by a government prime contractor to subcontractors which allegedly cannot meet technical requirements for the development of an international aircraft operator database is affirmed, since the General Accounting Office has no jurisdiction to review subcontracts awarded by a prime contractor when the subcontract awards are not made "by or for the government."



**Procurement**

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**Contractor Qualification**

- **Approved sources**
- ■ **First-article testing**

The fact that the awardee had never passed tests needed to be listed on Qualified Products List (QPL) is irrelevant where military specification required purchases of cable assemblies listed on a QPL except where, as here, no sources were currently on QPL in which case the assemblies were to be purchased on the basis of first article testing.

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**Procurement**

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**Socio-Economic Policies**

- **Preferred products/services**
- ■ **Prisoners**

Purchase of cable assemblies from UNICOR, Federal Prison Industries, Inc., was proper where no evidence has been presented to substantiate the allegation that the purchase adversely impacted the cable assembly industry. Further, the applicable statutes and regulations do not prohibit purchasing critical life support items, assuming they are involved here, from UNICOR.

**Procurement**

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**Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Descriptive literature**
- ■ ■ ■ **Ambiguous bids**

Where cover letter and descriptive literature render bid ambiguous with respect to compliance with solicitation specifications, bid is nonresponsive and must be rejected.

**Procurement**

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**Contractor Qualification**

- **Responsibility**
- ■ **Information**
- ■ ■ **Submission time periods**

Protest alleging that bid which did not contain required information concerning the number of employees improperly was corrected after bid opening is dismissed because the information did not relate to the bidder's performance obligation and therefore could be furnished at any time prior to award.

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**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Interpretation
- ■ ■ Terms

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**Procurement**

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**Specifications**

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

Protest alleging that agency's interpretation of specification which requires the use of recycled paper in printing certain publications is unduly restrictive of competition is denied where contracting agency and protester agree on the interpretation and the agency has not applied a more restrictive interpretation under the solicitations in question.

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**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Pre-award surveys

Protest against contracting officer's negative responsibility determination is denied where the determination was based on the protester's failure of a preaward test and the record contains documentation that provides a reasonable basis for the negative test results and the contracting officer's determination.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Modification
- ■ ■ Interpretation
- ■ ■ ■ Intent

In procurement for printing services, agency cannot ignore portion of bid modification intended to indicate that bid prices are reversed in determining responsiveness, as reading a bid in this manner is not consistent with principle that bid, and any accompanying bid modifications, must be read in its entirety and given a reasonable interpretation in determining responsiveness.

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**Procurement**

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**Competitive Negotiation**

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

Under request for proposals calling for award to low technically acceptable offerors, agency determination that protester's proposal was outside of the competitive range was improper where

- agency determination was based on proposal's relative technical ranking, without consideration of price, and consequently agency violated Federal Acquisition Regulation § 15.609(a) (FAC 84-16) in establishing the competitive range.

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**B-238919, April 13, 1990**

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**Procurement**

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**Contract Types**

- Subcontracts
- ■ Federal procurement regulations/laws
- ■ ■ Revision

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 90-09, a proposal to revise FAR section 44.201-1(d) and the contract clause at FAR section 52.244-1 effectively to raise from \$25,000 to \$100,000 the threshold for requiring consent to specified types of subcontracts.

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**B-239007, April 13, 1990**

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**90-1 CPD 390****Procurement**

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**Bid Protests**

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

Protest that it is impossible for any offeror to meet the delivery schedules and tax assessment-related rent adjustment provisions in a solicitation for offers for the lease of office space is untimely when filed after protester's best and final offer was rejected for failing to comply with these provisions.

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**B-237249.2, April 16, 1990**

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**90-1 CPD 391****Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

**Procurement**

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**Socio-Economic Policies**

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

Decision sustaining protest challenging agency's decision to award to large business which submitted low quote on small business-small purchase set-aside—based on agency's finding that 6 percent higher quote from small business was unreasonably high—is affirmed on reconsideration where, even though price reasonableness was clearly put in issue in the protest, agency gave no explanation as to why it found small business's quote unreasonably high, and there is no evidence in the record to show that the quote was unreasonably high.

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**Procurement**

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**Competitive Negotiation**

- Competitive advantage
  - ■ Non-prejudicial allegation
- 

**Procurement**

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**Contract Qualification**

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

Contracting agency did not act unreasonably in determining not to exclude a firm, which is performing systems engineering and technical assistance work for another agency, due to an organizational conflict of interest or because of an unfair competitive advantage, where the firm was not in a position to favor its own capabilities and did not participate in the development of the statement of work.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency satisfied the requirement for meaningful discussions where it led an offeror into the areas of its technically acceptable proposal which the agency considered as reflecting a less than desirable technical approach.

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency failed to properly conduct cost evaluation is denied, where protester is not prejudiced by the evaluation.

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**Procurement**

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**Competitive Negotiation**

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

Proposal delivered by Federal Express which was received late at the delivery location designated in the solicitation for hand-carried proposals was properly rejected where the late delivery was caused by the protester's mistaken belief that the proposal should be sent to a location other than that specified in solicitation for delivery of hand-carried proposals, and by the protester's failure to mark the envelope containing its proposal with any identification concerning the solicitation number or deadline.

**Procurement**

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**Bid Protests**

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

Dismissal of protest as untimely is affirmed where record confirms that protest was filed more than 10 days after agency orally notified protester of basis for protest.

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**B-237598.2, B-237599.2, April 17, 1990****Procurement**

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**Competitive Negotiation**

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

**Procurement**

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**Specifications**

- Brand name/equal specifications
- ■ Salient characteristics
- ■ ■ Sufficiency

Protest in negotiated brand name or equal procurement that agency improperly made award to firm whose proposal did not meet certain salient characteristics is denied where protester does not demonstrate that agency's technical judgment that awardee's proposal meets the salient characteristics is unreasonable.

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**B-238100, April 17, 1990****Procurement**

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**Contractor Qualification**

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

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Pre-award surveys

Where contracting officer determined the prospective awardee to be a responsible contractor based on a preaward survey finding that the firm had adequate financial resources and an adequate production capability to manufacture the required product in accordance with the purchase description, and where there is no showing that this determination was made in bad faith, there is no basis to object to the agency's affirmative determination of the prospective awardee's responsibility.

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## Procurement

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### Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Where low bidder unequivocally offered to perform the contract and took no exception to the terms of the invitation for bid's technical specifications, the firm's bid was responsive.

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**B-237264.2, April 18, 1990**

**90-1 CPD 397**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision is denied where protester fails to show any error of fact or law that would warrant reversal or modification of prior decision.

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**B-238008, B-238008.2, April 18, 1990**

**90-1 CPD 398**

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## Procurement

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### Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

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## Procurement

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### Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Procuring agency, in a negotiated procurement for the lease of office space, misled the protester in discussions by informing the protester that it must either include all of the electrical utility costs in rent or exclude all of it and provide separate meters for the government, while allowing the awardee to provide for the partial exclusion of the electrical utility costs from the rent. The protester, however, was not prejudiced by the agency's misleading discussions since it would not have been the low offeror, even if it had not been misled.

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## Procurement

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### Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Where a protester disagrees with the agency's technical judgment concerning the quality of the neighborhood in which the awardee's building is located and whether the awardee has offered sufficient net usable square feet to satisfy the minimum space requirements of the solicitation for leased space, but has not shown that the agency's determinations lacked a reasonable basis, protest allegations that the procuring agency improperly evaluated the awardee's proposal are denied.

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**Procurement**

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**Contractor Qualification**

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

Protest allegation that the procuring agency improperly found the awardee to be responsible is dismissed since the General Accounting Office will not review affirmative determinations of responsibility except in limited circumstances not present here. The fact that the awardee has filed for bankruptcy under Chapter XI of the United States Bankruptcy Code does not require a finding of nonresponsibility.

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**B-238177, et al., April 18, 1990****90-1 CPD 399**

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**Procurement**

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**Small Purchase Method**

- Requests for proposals
- ■ Terms
- ■ ■ Design specifications

Agency is not prohibited from using manufacturer part numbers as item descriptions in procurements conducted under Federal Acquisition Regulation (FAR) Part 13 small purchase procedures. Small purchases are specifically excepted from the requirement that agencies use specifications in General Services Administration and Department of Defense indexes for item descriptions.

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**B-238316, April 18, 1990****90-1 CPD 400**

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**Procurement**

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**Small Purchase Method**

- Requests for proposals
- ■ Terms
- ■ ■ Design specifications

Protest that agency improperly failed to include a federal specification in item description is denied, since regulation, which provides that federal specifications are to be used when applicable, does not apply to small purchases; in any case, federal specification cited by protester does not apply to required item.

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**B-238377, April 18, 1990****90-1 CPD 401**

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**Procurement**

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**Bid Protests**

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

Protest concerning alleged defects on the face of an invitation for bids is untimely when filed after bid opening.

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## Procurement

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### Sealed Bidding

- All-or-none bids
- ■ Evaluation
- ■ ■ Propriety

Protest that all or none solicitation provision was ambiguous is denied where protester's interpretation of provision as applying to quantities within line items, rather than to all line items themselves, is unreasonable given that provision refers to 100 percent of "all items to be awarded." Since protester submitted an all or none bid but was not the low aggregate bidder, protester was properly found not in line for award.

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## Procurement

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### Sealed Bidding

- Contract awards
- ■ Multiple/aggregate awards

Protest that prospective awardee who specified \$4 million as the minimum amount for which it would accept award is ineligible for award because it was the low bidder on items totaling less than \$4 million is denied, since contracting officer properly may make multiple awards based on the combination of bids which result in the lowest overall cost to the government, taking into account any quantity limitations in the bids.

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**B-238594.2, April 19, 1990**

**90-1 CPD 402**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office (GAO) will dismiss a request for reconsideration where similar issues under the same procurement are the subject of pending litigation before a court of competent jurisdiction, unless the court requests a GAO decision, even though the protester is not a party to the suit.

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**B-236896.2, April 20, 1990**

**90-1 CPD 404**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision is affirmed on reconsideration where protester fails to show that decision was based on error of law or fact.



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**Procurement**

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**Bid Protests**

- GAO procedures
  - ■ Preparation costs
- 

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Government advantage

Protester is not entitled to recover proposal preparation costs where agency's cancellation of a replacement solicitation for critical medical services was proper since all prospective offerors were advised that award was contingent upon default by the incumbent contractor and cancellation was based upon the incumbent contractor's decision to continue contract performance.

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**Procurement**

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**Sealed Bidding**

- Bids
  - ■ Responsiveness
  - ■ ■ Determination criteria
- 

**Procurement**

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**Sealed Bidding**

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

Where invitation for bids for removal and disposal of chemical products prohibited recycling and low bid included a proposal to return certain products to a manufacturer for blending and mixing into new products, bid was properly rejected as nonresponsive to the solicitation.

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**Procurement**

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**Sealed Bidding**

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

Protester's bid for printing paper was properly rejected as nonresponsive where solicitation as a whole required bidders to agree to furnish paper with 50 percent waste paper content, and protester's bid offered zero percent content.

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## Procurement

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### Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Recycled materials
- ■ ■ ■ Cost increase

Award to lowest bidder offering to comply with mandatory solicitation requirement for 50 percent waste paper content, even though there was lower bid not meeting requirement, is consistent with Resource Conservation and Recovery Act of 1976 and Environmental Protection Agency implementing Guideline; although narrative accompanying Guideline indicates EPA's view that higher price for paper meeting minimum waste paper content requirement is unreasonable, neither statute nor Guideline prohibits paying such a premium.

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**B-237278.4, April 23, 1990**

**90-1 CPD 408**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Preparation costs

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## Procurement

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### Competitive Negotiation

- Quotations
- ■ Preparation costs

Prior decision denying claim for quote preparation and protest costs is affirmed since a decision on the merits of a protest is an essential condition to a declaration that the protester is entitled to the award of costs.

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**B-238159, April 23, 1990**

**90-1 CPD 409**

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## Procurement

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### Competitive Negotiation

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

Agency properly awarded contract to low, technically acceptable, responsible offeror where protester's allegations that awardee's proposals failed to meet certain solicitation specifications are not supported by the record.

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**B-235742, April 24, 1990**

**90-1 CPD 410**

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## Procurement

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### Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

A proposed sole-source award to nonappropriated fund instrumentality for lunchroom monitoring services at Department of Defense dependent schools (DODDS) in Europe is not objectionable where lunchroom monitoring services are logically related to school meal program which instrumentality currently operates and where award to another contractor would result in unnecessary duplication of DODDS administrative responsibilities and complicate performance of school meal program.

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**Procurement**

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**Bid Protests**

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

Protest that agency improperly failed to conduct a preproposal conference is dismissed as untimely where protester first raised allegation months after the time set for the submission of initial proposals.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency improperly failed to engage in oral discussions is denied since agency is under no legal obligation to conduct oral, as opposed to written, discussions.

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency contracting personnel are biased in favor of another offeror is denied where protester fails to offer probative evidence in support of its allegation.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Risks
- ■ ■ Pricing

Fact that original equipment manufacturer (OEM), the only source of necessary spare parts, is in position to influence competition by imposing restrictions upon spare parts availability does not render procurement defective where (1) the restrictions appear reasonable and have not been applied to prevent any particular firm from purchasing the parts and (2) the only alternative procurement method would be a sole-source award to the OEM, but record does not support conclusion that OEM is only acceptable source. Ability to obtain parts is matter of firm's ability to develop business relationship with OEM, a matter outside the General Accounting Office's purview.

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## Procurement

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### Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Solicitation requirement that offerors complete original equipment manufacturer's (OEM's) maintenance training prior to preaward survey is unobjectionable where OEM, the only source of acceptable spare parts, will make parts available only to firms with training and there would be risk of delay in contract performance if training was not completed prior to award.

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**B-237981.3, April 24, 1990**

**90-1 CPD 413**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Interested parties

Where a protester is one of the lowest technically rated offerors in the competitive range after an initial evaluation, it is nevertheless an interested party under the Bid Protest Regulations to protest the evaluation of its proposal.

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## Procurement

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### Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency satisfied the requirement for meaningful discussions where a letter requesting clarification and correction of deficiencies led the protester into areas of its proposal needing responses or amplification.

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## Procurement

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### Competitive Negotiation

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

An agency's determination that an offeror's proposal was not in the competitive range, made after it conducted one round of discussions, was proper where the proposal's technical rating was reasonably evaluated as marginal and offeror's proposed price was substantially higher than the lowest priced of those offerors retained in the competitive range.

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**Procurement**

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**Competitive Negotiation**

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

Agency properly determined not to include proposal in the competitive range where the agency reasonably determined that the technical proposal contained several major deficiencies, any one of which raised a serious question as to the proposal's liability, and that major revisions would be required to make the proposal technically acceptable, particularly where the proposal had no reasonable chance for award because there were numerous other higher rated proposals which were included in the competitive range.

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**Procurement**

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**Bid Protests**

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

Allegation that awardee, as the incumbent, had an unfair competitive advantage in preparation of proposals because it had access to information not made available to protester is untimely, since protester knew of basis for protest prior to submission of proposal, but failed to raise objection at that time.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Propriety

Awardee's failure to satisfy size standard requirement in solicitation was not proper basis for rejecting proposal; the procurement was not set aside for small business concerns and the size standard referenced in the solicitation (apparently by mistake) therefore was not applicable.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Evaluation was proper where source selection documents show that it was reasonably based and consistent with evaluation criteria in the solicitation.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Personnel experience
- ■ ■ ■ Point ratings

Protest challenging elimination of protester's proposal from competitive range is sustained where the contracting agency improperly evaluated the proposal, and, if it had been evaluated properly, the protester would be the lowest-priced offeror in the competitive range and would have had a reasonable chance of receiving award.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Propriety
- ■ ■ Brand name/equal specifications
- ■ ■ ■ Equivalent products

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**Procurement**

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**Specifications**

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

Protest that agency in negotiated brand name or equal procurement improperly made award to firm whose proposal did not meet certain salient characteristics is denied where protester does not demonstrate that agency's technical judgement that awardee's proposal met the salient characteristics was unreasonable.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Risks

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**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Defects
- ■ ■ Evaluation criteria
- ■ ■ ■ Pricing

Protest that solicitation is defective for failing to provide historical data on missing or damaged government furnished equipment and supplies is denied where agency does not have the requested data and this lack of information will not prevent offerors from competing intelligently and on an equal basis.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision which held that agency reasonably found individual surety on bid bond unacceptable due to qualifying language in requested escrow agreement, and thus properly rejected bidder as nonresponsible, is affirmed on reconsideration where protester presents no evidence that original decision was based on error of law or fact.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision is affirmed where protester fails to indicate error of fact or law or information not previously considered that would warrant reversal or modification of prior decision.

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**Procurement**

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**Competitive Negotiation**

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

Contracting agency's selection of the significantly higher priced awardee, based on the technical superiority of the awardee's facsimile machines, lacks a reasonable basis where the determination of technical superiority is based primarily on the awardee's higher technical point score for its operating manual, which did not address paper loading, while protester's operating manual was unreasonably downgraded for allegedly not clearly describing paper loading, and on the protester's failure to provide unrequested software with its proposal.

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**Procurement**

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**Competitive Negotiation**

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

Contracting agency failed to conduct meaningful or equal discussions with the protester in a negotiated procurement for facsimile machines where the agency failed to identify its specific technical concerns regarding the protester's operating manual and provide the protester the opportunity to offer a revised manual in response to the agency's concerns, yet did provide the awardee with this opportunity.

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**Procurement**

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**Bid Protests**

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

General Accounting Office will not consider a request for reconsideration of a protest on the basis of the protester's subsequent provision of relevant facts and information of which the protester was or should have been aware but failed to present at the time the protest was first filed.

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**Procurement**

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**Competitive Negotiation**

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Corrective actions

Contracting agency's decision not to reopen discussions after receipt of fourth round of best and final offers (BAFO), in order to give protester the opportunity to incorporate its late price modification, is unobjectionable where the record indicates that protester had an opportunity to and did submit a proposal by the closing date for receipt of final request for BAFOs, and reopening discussions would have added expense and further delayed already lengthy procurement.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

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**Procurement**

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**Competitive Negotiation**

- Unsolicited offers
- ■ Acceptability

Protester's unsolicited best and final offer (BAFO), received over 4 months after the date specified for receipt of BAFOs, was properly rejected where none of the exceptions permitting the acceptance of late submissions outlined in the solicitation applied.

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**Procurement**

---

**Competitive Negotiation**

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

---

**Procurement**

---

**Competitive Negotiation**

- Unsolicited offers
- ■ Acceptability

Contracting agency properly rejected protester's unsolicited best and final offer (BAFO) offering most favorable price to the government, but received over 4 months after the date specified for



receipt of BAFOs, where the protester was not the otherwise successful offeror after evaluation of timely submitted BAFOs.

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**B-238507.2, April 25, 1990**

**90-1 CPD 424**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior dismissal of protest as untimely is affirmed where evidence of timeliness, available to the protester at the time the protest was filed, is first presented to General Accounting Office in request for reconsideration.

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**B-238582, April 25, 1990**

**90-1 CPD 425**

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**Procurement**

**Bid Protests**

- Private disputes
- ■ GAO review

To the extent that protester's disagreement with the Navajo tribe's assertion of its taxing authority constitutes a dispute between private parties, it is not for resolution under the General Accounting Office bid protest jurisdiction.

---

**Procurement**

**Sealed Bidding**

- Bids
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Taxes

Where invitation for bids requires that the contract price include all applicable taxes, the responsibility for determining the applicability of Navajo tribal tax to a construction project located outside of the Navajo reservation is that of potential offerors.

---

**B-238926.2, April 25, 1990**

**90-1 CPD 426**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of protest that was dismissed as untimely is denied where the protest was filed with the General Accounting Office more than 10 working days after denial of firm's agency-level protest.

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**Procurement**

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**Bid Protests**

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

Protest against rejection of proposal and exclusion from competitive range is untimely and not for consideration when not filed within 10 working days after protester received letter detailing specific bases for rejection of the proposal; under such circumstances, request for debriefing did not toll running of 10-day timeliness period.

---

**Procurement**

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**Contractor Qualification**

- Approved sources
- ■ Information submission
- ■ ■ Timeliness

Protest that agency approved low offeror as a source of supply after submission of initial proposals is dismissed where solicitation permitted such approval prior to time of award.

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**Procurement**

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**Special Procurement Methods/Categories**

- Federal supply schedule
- ■ Multiple/aggregate awards
- ■ ■ Price reasonableness

Finding of price unreasonableness under multiple-award Federal Supply Schedule solicitation was reasonable where proposal did not offer either most favored customer pricing—prices equal to or lower than lowest commercial prices—when evaluated on a product-by-product basis or lowest net price available to the government.

---

**Procurement**

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**Competitive Negotiation**

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

Selection of the awardee on the basis of its overall technical superiority, notwithstanding its 3.8 percent higher price, is unobjectionable where agency reasonably determined awardee's higher-priced proposal was worth the additional cost, and cost/technical tradeoff was consistent with the evaluation scheme.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions were adequate where agency led protester to areas where its offer was rated less than acceptable and the firm supplied responses in its best and final offer that resulted in a rating of acceptable in all areas; agency was not required to help the firm bring its proposal up to the level of the awardee's higher-ranked proposal.

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## **B-237377.2, April 26, 1990**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ Preparation costs
- ■ ■ Sales contracts

Under the General Accounting Office Bid Protest Regulations, protest costs may not be awarded to a successful protester when sales contracts are involved.

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## **B-238320, April 26, 1990**

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**90-1 CPD 431**

## **Procurement**

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### **Sealed Bidding**

- Unbalanced bids
- ■ Allegation substantiation
- ■ ■ Evidence substantiation

Allegation that awardee's offer is materially unbalanced and violates solicitation's Integrity of Unit Prices clause is denied where protester has not shown that there is a reasonable doubt that award will result in the lowest overall cost to the government or that it was prejudiced by awardee's pricing.

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## **B-239353, April 26, 1990**

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**90-1 CPD 432**

## **Procurement**

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### **Bid Protests**

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

Protest of allegedly restrictive specifications is dismissed as untimely where allegations initially were raised in agency-level protest and subsequent protest to General Accounting Office was not filed within 10 working days after closing date for receipt of quotations, which constituted initial adverse agency action on the protest.

---

**B-226006.2, April 27, 1990**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Upon reconsideration, our prior decision is affirmed. The evidence presented does not compel a contrary conclusion and no errors of law have been found. Further, claims are not for consideration by GAO where a carrier alleges material facts for the first time in a request for reconsideration concerning 56 of 294 government bills of lading that were the subject of a decision. 31 U.S.C. § 3726 (Supp. V 1987). The bills may be presented to GSA for reaudit if they otherwise satisfy the requirements for the presentation of transportation claims.

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**B-237825, April 27, 1990**

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**Procurement**

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**Payment/Discharge**

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Claimant may be paid on a *quantum meruit* basis for services provided to the government without a written contract since the government could properly have acquired the services, the government received and accepted the benefit of the services, and the claimant acted in good faith. Payment should be made in the amount the agency determines to be the reasonable value of the benefit to the government.

---

**B-238106, B-238257, April 27, 1990\*\*\*****90-1 CPD 433****Procurement**

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**Competitive Negotiation**

- Offers
- ■ Submission time periods
- ■ ■ Time restrictions
- ■ ■ ■ Propriety

Where the protester effectively was permitted 2 hours to submit an offer due to the agency's unjustified failure to provide reasonable time to solicit offers, the protester was improperly deprived of an opportunity to compete.

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**Procurement**

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**Noncompetitive Negotiation**

- Use
- ■ Justification
- ■ ■ Urgent needs

Protest is sustained where the agency, using noncompetitive procedures to award contract extension on a sole-source basis, fails to establish that the time constraints imposed by urgency prevented the agency from soliciting offers from other potential sources including the protester.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
  - ■ Competition rights
  - ■ ■ Contractors
  - ■ ■ ■ Exclusion
- 

**Procurement**

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**Socio-Economic Policies**

- Preferred products/services
- ■ Domestic sources
- ■ ■ Competitive restrictions
- ■ ■ ■ Errors

Where solicitation erroneously indicated that competition was restricted to domestic sources, award to a foreign source was improper since it prejudiced domestic source that relied on restriction in preparing its proposal and foreign sources other than awardee that may have submitted offers in the absence of restriction.

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**Procurement**

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**Competitive Negotiation**

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

Protest against decision to award to higher cost, higher technically evaluated offeror is denied where the solicitation provided for award to offeror whose proposal was determined to present the greatest value to the government and where the agency made reasonable determination that the technical superiority and lower risk of the awardee's proposal made that proposal the better value.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct adequate discussions concerning issues revealed at debriefing conference is denied where record shows that issues either had trivial effect on award decision or were in fact raised during discussions but offeror's response did not satisfy agency's concerns.

---

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Risks
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Where agency found that offeror proposed to make a final decision on its technical approach for meeting requirements for full-scale engineering development of prototype 3 or 4 months after award and therefore presented risks of not meeting required schedules and of exceeding its pro-

posed cost, evaluation that considered both technical and cost risks involved with acceptance of offeror's proposal was reasonable and in accordance with solicitation criteria since consideration of risks involved in an offeror's technical approach is inherent in the evaluation of technical proposals.

“ ”  

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