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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition In Contracting Act, Pub. L. No. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by file number and date, e.g., B-248928, Sept. 30, 1992. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 71 Comp. Gen. 530 (1992).

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Appropriations/Financial Management

B-256194, June 1, 1994***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Registration fees
- ■ ■ Sporting events

The Department of Energy may not use appropriated funds to pay the registration fees of employees participating in competitive fitness promotions, team activities and sporting events. Although the Department may include physical fitness activities in the health service program it provides employees under 5 U.S.C. § 7901, participation in competitive fitness or sporting events are personal activities of the employees involved, the costs of which should be borne by the employees.

B-252467, June 3, 1994***

Appropriations/Financial Management

Appropriation Availability

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

The Air Force, in its discretion, may expend appropriated funds to reimburse its members for licensing or certification fees required to perform their assigned duties whenever federal law compels the members to comply with state regulations requiring the license or certificate.

B-217913.3, June 24, 1994***

Appropriations/Financial Management

Budget Process

- Rebates
- ■ Deposit
- ■ ■ Miscellaneous revenues

The General Services Administration may deposit commission rebate checks from Travel Management Center contractors to the general fund of the Treasury where, because of the processing costs and time involved, the agency elects not to credit rebates to appropriation originally charged.

Civilian Personnel

B-255966, June 1, 1994

Civilian Personnel

Relocation

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

An employee who had been authorized a transfer with full relocation benefits entered into a property agreement with his spouse to sell their property and divide the proceeds incident to their separation. By the time of the real estate settlement, the couple had divorced. The employee claims full reimbursement for the closing costs based on his marital status at the time of property settlement. However, the general rule is that the amount of employee's reimbursement for real estate expenses is determined on the date of settlement. The agreement in this case did not convey full title to the employee, or assign the full closing costs to him, and it is presumed that such costs were shared. Therefore, his reimbursement is limited to 50 percent of reimbursable costs, the extent of his interest in the property at the time of settlement.

B-256002, June 2, 1994

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ New residence construction

An employee signed a contract in September 1990 for a new residence to be constructed near the location which eventually became his new permanent duty station. On April 30, 1991, the agency notified him of possible transfer, and on May 14, 1991, he settled on his new residence. The agency eventually transferred the employee on April 22, 1992. Employee's claim for real estate expense reimbursement is denied since there was no existing administrative intent to transfer the employee at the time he became obligated under the construction contract to purchase the new residence.

B-255997, June 3, 1994

Civilian Personnel

Relocation

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

A transferred employee was authorized to move his household goods under a government bill of lading (GBL). He chose to move himself, and, although directed by the agency to do so, did not obtain weight certificates. The agency denied his claim due to the lack of weight certificates. The lack of a weight certificate does not affect the employee's reimbursement for moving his own

goods when the GBL method is authorized so long as the evidence indicates that he actually incurred the expenses incident to the move and his total actual expenses do not exceed what the government estimates it would have paid to move the estimated weight of the goods by commercial carrier under a GBL.

B-256982, June 10, 1994***

Civilian Personnel

Travel

- Lodging
- ■ Reimbursement
- ■ ■ Government quarters
- ■ ■ ■ Availability

A civilian employee of the Navy may not be reimbursed the lodging expenses she incurred in non-government quarters while on a temporary duty assignment because adequate government quarters were available for her, in which case payment is prohibited by 10 U.S.C. § 1589 (1988). *Robert Samalis*, B-252291, June 18, 1993, distinguished.

B-256392, June 13, 1994

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Eligibility
- ■ ■ Classification

The Claims Group's denial of an employee's claim for a retroactive promotion with backpay for a period of alleged erroneous classification and delay in having his position reclassified is sustained. No error of fact or law is found in the Claims Group's settlement which is based on the general rule that even though a position which an incumbent occupies is subsequently reclassified to a higher grade, the employee's entitlement to the salary of the higher grade does not commence until he is actually promoted to that grade, and neither the Classification Act, 5 U.S.C. §§ 5101-5115 (1988), nor the Back Pay Act, 5 U.S.C. § 5596 (1988), create a substantive right to backpay for periods of wrongful classification actions.

B-256156, June 15, 1994

Civilian Personnel

Compensation

- Deposit
- ■ Contract cancellation
- ■ ■ Fees
- ■ ■ ■ Reimbursement

Employee acting in her official capacity as a Special Events Coordinator for her agency was authorized to make reservations at a hotel on behalf of her agency well in advance of the time when accommodations were needed in order to ensure that accommodations would be available for agency staff. Since the reservations were later canceled, the agency became liable for the canceled reservations. On the basis of *Gary L. Fryman*, B-252195, July 26, 1993, the agency may reimburse the employee for the cost of the unused lodging which was charged to the employee's credit card.

B-256946, June 20, 1994

Civilian Personnel

Relocation

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

Civilian Personnel

Relocation

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

An agency's failure to comply with requirement in the Federal Property Management Regulations to make a cost comparison before household goods were shipped does not automatically entitle an employee to reimbursement at the commuted rate, absent specific authorization to ship household goods by that method. Employee's reimbursement may not exceed his actual expenses.

B-256399, June 27, 1994

Civilian Personnel

Compensation

- Awards/honoraria
- ■ Eligibility
- ■ ■ Administrative regulations

Under the Government Employees Incentive Awards Act, 5 U.S.C. §§ 4501-4507 (1988), and the implementing regulations in 5 C.F.R. Part 451, our Office advises an agency that we see no legal objection to the use of non-monetary awards, such as tickets to local sporting events or amusement parks, as part of an agency's awards program.

Military Personnel

B-255962, June 7, 1994

Military Personnel

Relocation

- Household goods
- ■ Weight restrictions
- ■ ■ Liability
- ■ ■ ■ Waiver

Incident to a permanent change of station, a member's shipment of household goods exceeded his weight allowance because the carrier loaded and transported hazardous materials that the member had told the carrier had been sold and therefore should not be transported (and which should not have been included in the shipment anyway because they did not constitute household goods). Although waiver of the member's debt resulting from the excess weight charge is not available because no erroneous payment was made, the carrier, not the member, should be held responsible for the excess weight since the carrier knew it improperly was including non-government, non-member items in the shipment.

B-256296, June 14, 1994

Military Personnel

Pay

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

A retired Marine Corps reserve officer received additional payments of reserve retired pay under two social security numbers. Waiver of the resulting debt under 10 U.S.C. § 2774 is denied because the member was at fault for not pursuing the matter until the extra payments were terminated.

B-257000, June 14, 1994***

Military Personnel

Pay

- Retirement pay
- ■ Garnishment
- ■ ■ Alimony/child support

The former spouse of a retired member served the Defense Finance and Accounting Service (DFAS) with legal process to enforce payment of court-ordered child support. Since the legal process was valid on its face, DFAS was required to honor it, and the claim of the member for refund of amounts withheld from his retired pay (and related expenses) is denied.

B-255963, June 14, 1994

Military Personnel

Pay

■ Retirement pay

■ ■ Annuities

■ ■ ■ Claims

■ ■ ■ ■ Statutes of limitation

Payment of a Retired Serviceman's Family Protection Plan annuity on behalf of an incapacitated adult was suspended because a legal guardian had not been appointed. When a guardian was appointed 10 years later, the annuity was properly reinstated with retroactive payment for 6 years prior to the appointment of the guardian; payment for earlier periods is barred under 31 U.S.C. § 3702(b).

Procurement

B-254831, June 1, 1994

Procurement

Payment/Discharge

- **Shipment costs**
- ■ **Additional costs**
- ■ ■ **Bills of lading**
- ■ ■ ■ **Ambiguity**

Government bill of lading (GBL) stated that a shipment was released to a value not to exceed \$250 per pound article, and it is not clear from the GBL and/or other contractual documents that this was simply a typographical error and that the released value intended actually was \$2.50 per pound. The carrier therefore should be paid excess valuation charges, but based only on an amount that does not exceed the value of the article.

B-255861.2, June 1, 1994

94-1 CPD ¶ 338

Procurement

Competitive Negotiation

- **Best/final offers**
- ■ **Technical acceptability**
- ■ ■ **Negative determination**
- ■ ■ ■ **Propriety**

Protest against rejection of best and final offer as technically unacceptable is denied where solicitation required offeror to establish that it could furnish all necessary items of support and test equipment and tooling necessary to perform depot-level aircraft maintenance; and agency reasonably determined that protester's identification of essential, required equipment as not required indicated that protester did not fully understand the complexity and scope of the depot maintenance requirements and cast doubt on its ability to accomplish the work load while meeting safety and technical requirements.

B-256281, June 1, 1994

94-1 CPD ¶ 332

Procurement

Competitive Negotiation

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

Solicitation notice that award will be made to offeror whose proposal is most advantageous to the government, price and other factors considered, coupled with advice that evaluation factors are listed in descending order of importance, provides reasonably definite outline of evaluation scheme. Where solicitation does not state the relative weights of evaluation subfactors, the subfactors are understood to be of equal importance.

Procurement

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

Protest that solicitation provisions are inadequate or ambiguous is denied where the provisions reasonably describe the work to be performed, and the information provided is adequate to enable firms to compete intelligently on an equal basis; the fact that uncertain quantities under contract impose some risk upon offerors is unobjectionable where agency has provided the best available information upon which offerors can reasonably base their estimates.

Procurement

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

Bid of "equal" product under brand name or equal solicitation was properly rejected as nonresponsive where the descriptive literature submitted with the bid failed to demonstrate compliance of the "equal" products with salient characteristics listed in the solicitation.

Procurement

Payment/Discharge**■ Shipment****■ ■ Damages****■ ■ ■ Carrier liability****■ ■ ■ ■ Presumptions**

Procurement

Payment/Discharge**■ Shipment****■ ■ Damages****■ ■ ■ Notification**

Carrier is presumed liable for later-discovered loss/damage to a shipment of a service member's household goods, notwithstanding the agency's failure to dispatch notice of additional loss/damage within 75 days of delivery, where upon delivery the carrier provided the member a blank notice form that neither identified the carrier or its agent, nor provided the carrier's address.

Procurement

Competitive Negotiation

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

After terminating original awardee's contract, agency properly canceled request for proposals issued under Small Business Administration's section 8(a) program and decided to recompute the requirement instead of making contract award to the second-low offeror—who had been graduated from the 8(a) program for more than a year—where: (1) the agency reasonably concluded that the 8(a) program objectives would be best served by awarding a contract to a current 8(a) program participant; and (2) the agency's technical requirements had so substantially changed that an award under the original solicitation would no longer serve the agency's minimum needs.

B-256419, June 3, 1994**94-1 CPD ¶ 337**

Procurement

Specifications

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

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition; a solicitation may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's minimum needs.

Procurement

Specifications

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

Invitation for bids which does not permit consideration of bids offering alternative technical approach fully meeting the agency's minimum needs is unduly restrictive of competition where agency's exclusion of alternate technology is based solely on cost considerations; such cost considerations should generally be left to the marketplace.

B-256422, B-256521, June 3, 1994**94-1 CPD ¶ 344**

Procurement

Socio-Economic Policies

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

Determination of whether Financial Management Software Systems mandatory Multiple Award Schedule (FMSS Schedule) should be set aside for small business concerns is properly for resolution at the time competition for inclusion on the FMSS Schedule is conducted, and not at the time government agencies issue letters of interest to fulfill their requirements using FMSS Schedule.

Procurement

Bid Protests

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

Where protester contends that contracting officials were motivated by bias, it must submit convincing proof that the agency directed its actions with the intent to hurt the protester; mere inference and supposition is insufficient to prove its claim.

Procurement

Competitive Negotiation

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

Where request for proposals provided for award to the offeror whose proposal is most advantageous to the government, contracting agency properly made price/technical tradeoff in awarding to higher-priced, higher technically rated offeror, since record shows tradeoff was reasonably based on awardee's superior rating.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Request for declaration of entitlement to costs is denied where General Accounting Office has no legal basis for awarding costs.

Procurement

Competitive Negotiation

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

In a negotiated "best value" procurement, award to the technically superior, higher-cost offeror was proper where the source selection decision was consistent with the solicitation's evaluation factors and the agency reasonably determined that the awardee's technical advantages outweighed those in the protester's lower-rated, lower-cost proposal.

Procurement

Sealed Bidding

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

Protest against agency's disallowance of a request to make a downward correction to protester's bid price as a result of a mistake in bid is denied where allowing the correction would displace the low bidder, and the existence of the mistake and the intended price are not substantially ascertainable from the bid itself.

Procurement

Competitive Negotiation

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

Agency properly rejected a late best and final offer where the offeror's initial proposal contained deficiencies which rendered it technically unacceptable.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Risks

Protest that solicitation for a requirements contract to furnish fire retardant subjects bidders to unreasonable financial risks because it does not include a minimum quantity is denied because there is no legal requirement that a solicitation eliminate all risks for the contractor. Moreover, a requirements contract is valid even though it contains no minimum limitation on the estimated requirements of such a contract.

Procurement

Specifications

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

Geographic restriction in solicitation for haul-out repairs for utility boats which limits competition to firms with facilities within a 50-mile radius of where the boats are stationed is reasonable where, in order to ensure contract coordination and quality assurance, the agency requires frequent inspections at the contractor's facility, and longer distances impose an untenable burden on the agency in delivering the boats to the facility.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Adjectival ratings

Protest that evaluation of proposals was improper is denied where the record shows that proposals were reasonably evaluated on each factor/subfactor set forth in the request for proposals and adjectival ratings given each proposal are amply documented in individual evaluators' narrative comments; protester's mere disagreement with agency evaluation is not sufficient to establish that the evaluation was unreasonable.

Procurement

Competitive Negotiation

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

Where request for proposals stated that technical factors and price were considered to be equally important, and evaluators reasonably rated protester's and awardee's proposals technically equal, contracting officer properly made award to awardee based upon its low-priced offer.

Procurement

Competitive Negotiation

- Offers
- ■ Costs
- ■ ■ Fixed-price contracts

Detailed cost analysis is not required in procurement of a fixed-price contract.

Procurement

Sealed Bidding

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

Agency improperly denied request for bid correction where bid remains low after correction, agency agrees that protester's bid reflected an error in addition, and there is clear and convincing evidence of the intended bid.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Where the agency reasonably evaluated the relevant experience of the awardee's proposed key and general personnel whose resumes contained, in accordance with the terms of the solicitation, a reference to a cumulative number of years of relevant experience, including the number of years with the awardee or its subcontractors in particular positions, and a detailed narrative description of this relevant experience, and where the agency reasonably determined the awardee's and the protester's projected costs, the agency reasonably decided, consistent with the solicitation's award methodology, to award a contract on the basis of initial proposals without conducting discussions with the awardee, a higher technically rated, lower-cost offeror in comparison to the protester.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Adjectival ratings

Where there was a "not so significant" 6-point difference in technical ratings, but the proposed awardee and the protester received the same overall adjectival rating, and where the awardee offered lower projected costs than the protester, the agency reasonably decided that the numerical difference in technical ratings did not warrant the payment of a 12-percent cost premium to the protester.

Procurement

Bid Protests

- GAO authority
- ■ Protective orders
- ■ ■ Information disclosure

General Accounting Office (GAO) denies access to protective order to three experts, even though it is not clear that granting these experts access would pose a major risk of inadvertent disclosure of protected material, where the protected material is undeniably very valuable, such that any inadvertent disclosure might cause competitive harm to the awardee, and where GAO can fairly and reasonably resolve the specific protest issues without the need for the protester's experts.

Procurement

Competitive Negotiation

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

An agency reasonably established a competitive range of one proposal where the excluded proposal was substantially inferior in demonstrating an understanding of the solicitation's technical requirements and where there was no appreciable cost difference between the two proposals to justify the inclusion of the technically inferior proposal in the competitive range.

Procurement

Competitive Negotiation

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

There is no obligation to conduct discussions with an offeror whose proposal was reasonably eliminated from the competitive range.

B-255309.4, B-255309.5, June 8, 1994

94-2 CPD ¶ 19

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Indirect costs

Contracting agency acted reasonably in accepting the awardee's proposed indirect cost rates without adjustment where the awardee's proposal contained a commitment to cap those rates.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protester was not prejudiced by the agency's failure to apprise it during discussions of permissible alternate pricing approach utilized by the awardee, where the awardee's evaluated cost, as upwardly adjusted to reflect the solicitation's pricing methodology, is still lower than the protester's evaluated cost and the protester does not contend that its cost would be lower than the awardee's cost had it proposed on the same basis.

Procurement

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

Agency properly excluded protester's proposal from the competitive range where contracting officer reasonably determined that due to number and magnitude of weaknesses, proposal did not stand a reasonable chance of being selected for award.

B-252474.3, June 10, 1994 REDACTED VERSION

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Technical acceptability**

In a procurement for vehicle towing and related services, where awardee's proposal did not take exception to solicitation requirement for a 3-hour response time and, in fact, awardee's proposal affirmatively stated that the response-time requirement would be met, the contracting agency reasonably concluded that the awardee's proposal was technically acceptable.

Procurement

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

Contract was properly awarded to the lowest-priced, lower technically rated awardee rather than to the higher-priced, higher technically rated protester where: (1) the request for proposals stated that technical factors and price were equally important, but that the contract would be awarded to other than the low acceptable offeror only if the contracting officer determined that it was worth paying a premium to obtain specific, identifiable technical advantages of a higher-priced offer; (2) the contracting officer reasonably determined that the technical advantages of the protester's higher-priced proposal were not worth paying the protester's premium price; and (3) the awardee's proposal received the highest total of combined technical and price points.

B-256083, June 10, 1994

Procurement

Payment/Discharge**■ Shipment costs****■ ■ Exclusive use**

Government bill of lading notation that the carrier must receive prior consent to remove a shipper's seal and replace it with an equivalent seal, and that application of the seal is not a request for exclusive use, does not in itself constitute a request for exclusive use.

B-256084, June 10, 1994

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Evidence sufficiency

Reduced shipping charges offered by a carrier pursuant to 49 U.S.C. § 10721 for moving U.S. material cannot be applied to a government bill of lading (GBL) transaction where the GBL included a notation indicating that the shipment was part of a foreign military sale and the government offers no evidence to prove either that the notation was erroneous or that the U.S. government ultimately bore the burden of the transportation charges.

B-256323, June 10, 1994

94-1 CPD ¶ 359**Procurement**

Competitive Negotiation

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

Agency properly excluded the protester's proposal from the competitive range where the protester had no reasonable chance of award because the protester's prior experience and personnel were inadequate and because of the proposal's informational deficiencies.

B-256341, June 10, 1994

94-1 CPD ¶ 356**Procurement**

Sealed Bidding

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

Bidder's failure to acknowledge a solicitation amendment that had no material impact on certain requirements did not render its low bid for those requirements nonresponsive and, therefore, rejection of the bid was improper.

B-256343, B-256343.2, June 10, 1994

94-1 CPD ¶ 360**Procurement**

Sealed Bidding

- Two-step sealed bidding
- ■ Offers
- ■ ■ Rejection
- ■ ■ ■ Propriety

In a two-step sealed bid procurement, the protester's exception, in a cover letter submitted with its bid, to the solicitation's indemnification requirements changed the legal relationship between the parties as envisioned by the solicitation and rendered the protester's bid nonresponsive.

Procurement

Sealed Bidding

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

Protest of agency failure to solicit a small business concern that requested a copy of solicitation is denied where, although the protester knew—as a result of agency's correspondence—that the agency intended an August or September issuance date and that the current contract would expire in December, the protester delayed contacting the agency about its nonreceipt of the solicitation until the following January, and thus did not avail itself of every reasonable opportunity to obtain the solicitation.

Procurement

Sealed Bidding

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

Cancellation of invitation for bids after bid opening was proper where solicitation evaluation scheme would not ensure that award would be based on lowest cost to government.

Procurement

Sealed Bidding

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

A bid in which line item prices were omitted was properly rejected by the agency as nonresponsive where the line item prices were essential requirements of the IFB on which payments would be calculated.

Procurement

Specifications

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

Protester's contention that the awardee's failure to identify a local place of performance in its bid for radiology services renders the bid nonresponsive is denied where solicitation contains no restrictions on the geographic location of bidders, but instead contains certain time limitations applicable to emergency services that the agency concluded could be met with the use of equipment permitting electronic transmission of x-ray images to a radiologist located outside the local area.

Procurement

Competitive Negotiation

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

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

Procurement

Bid Protests

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

Protest objecting to the propriety of solicitation provisions that were incorporated by amendment is untimely where filed after contract award.

Procurement

Bid Protests

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

Allegation of bias is without merit where there is no evidence that the agency evaluated proposals in an unreasonable manner which adversely affected the protester.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Prior contract performance

Protest that procuring agency improperly assigned a good rating to the past performance of both awardee and protester is denied where a review of the record shows that the agency's evaluation was reasonable and consistent with the past performance evaluation scheme set forth in the solicitation.

Procurement

Competitive Negotiation**■ Requests for proposals****■ ■ Terms****■ ■ ■ Payment deductions**

Protest against solicitation provisions relating to the deduction of contractor payments for inadequate performance is denied where record shows that deductions bear a reasonable relationship to the approximate losses the government could suffer as a result of inadequate performance.

Procurement

Sealed Bidding**■ Bid guarantees****■ ■ Responsiveness****■ ■ ■ Signatures****■ ■ ■ ■ Powers of attorney**

Where power of attorney certificate attached to bid bond specifically provided that surety agreed to be bound by facsimile signatures of its officers and the certificate was embossed with the surety's original corporate seal, contracting agency reasonably determined that awardee's submitted bid bond was acceptable and therefore responsive to solicitation's bid guarantee requirement.

Procurement

Bid Protests**■ Allegation substantiation****■ ■ Lacking****■ ■ ■ GAO review**

Protest that second round of best and final offers is prejudicial to protester because its price has been exposed is denied where, in fact, no award has been made and prices have not otherwise been exposed.

Procurement

Bid Protests**■ Moot allegation****■ ■ GAO review**

Protest bases relating to revised solicitation terms are dismissed as academic where objectionable provisions have been changed to satisfy protester's concerns.

Procurement

Bid Protests**■ Moot allegation****■ ■ GAO review**

Protest that one firm was afforded improper post best and final offer discussions is dismissed as academic where, because of changes to solicitation, procuring activity will necessarily be required to reopen acquisition and permit the submission of revised offers.

Procurement

Sealed Bidding

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

Protest against agency's acceptance of a late bid is denied where preponderance of the evidence in the record indicates that the hand-carried bid was delivered to agency on time, government's actions were the paramount cause of the bid's late receipt in bid opening room, and the integrity of the procurement system would not be compromised by consideration of the bid.

Procurement

Specifications

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

Solicitation requirement that upgrade central processing units have the same serial number as the initial processing units is unduly restrictive where it does not clearly express the agency's minimum needs.

Procurement

Specifications

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

Solicitation provisions that reference the installation site of the equipment to be procured are not unduly restrictive because that site is scheduled to be closed where uncertainty as to the timing of that closure and as to the location to which the facility's work load will be transferred creates a reasonable possibility that the equipment will be installed at that site.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Administrative determination

Agency's decision not to consider environmental factors in its determination of the most probable life cycle cost is reasonable where agency reports that it is unable to determine the realism of manufacturer's claims concerning such factors.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Defects
- ■ ■ Evaluation criteria

Solicitation clause concerning factors to be considered in a preaward survey cannot be reasonably read to convert those factors into technical evaluation factors where solicitation states that award is to be made to the lowest-cost, technically acceptable proposal; these factors are not identified as

technical evaluation factors; and offerors are not asked to include information bearing on these factors in their proposals.

B-256444, June 15, 1994

94-1 CPD ¶ 374

Procurement

Sealed Bidding

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

Contracting officer properly rejected as nonresponsive a bid that failed to acknowledge an amendment resolving a discrepancy between the bid schedule and drawings.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protester's nonreceipt of material solicitation amendment provides no basis to challenge rejection of the bid as nonresponsive for failure to acknowledge amendment where record shows agency followed established procedures for disseminating bid documents, and there is no evidence that agency deliberately attempted to exclude protester.

B-257497, June 15, 1994

94-1 CPD ¶ 370

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Where a statute precludes an agency from awarding a contract in the absence of a signed Certificate of Procurement Integrity, but the implementing regulations require a signed certificate be submitted with the bid and those regulations have been upheld by the courts, a bidder's failure to submit the required certificate with its bid may not be cured after bid opening.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

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

Even though evidence of signatory authority may be provided after bid opening, a signature itself may not be provided after bid opening since bidders would then be allowed to choose to either make a bid responsive or nonresponsive.

B-243329.2, June 16, 1994

94-1 CPD ¶ 371

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
- ■ Contractors
- ■ ■ Adverse effects
- ■ ■ ■ Determination

Small Business Administration (SBA) properly accepted requirements for guard services, which were a portion of the guard services currently contracted for from a small business, for inclusion in the section 8(a) program, where the SBA determined, in accordance with applicable regulations, that acceptance of the requirements would not constitute an "adverse impact" on the small business.

B-256046.2, June 20, 1994

REDACTED VERSION 94-2 CPD ¶ 3

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that agency improperly accepted proposal to provide developer manager services which did not meet "retail" requirements of the solicitation is denied where record shows that awardee's proposal specifically addressed those requirements.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency conducted prejudicially unequal discussions by providing awardee with more detailed information than was provided to protester is denied where transcripts of the respective discussion sessions show that the agency identified similar areas of concern in each of the proposals and provided each of the offerors with similar guidance in those areas.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee's product did not comply with Food and Drug Administration (FDA) approval requirement contained in solicitation is denied where FDA, after reviewing allegation independently, has advised our Office that the awardee's product, in fact, complies with the requirement.

Procurement

Specifications

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

Protest against agency determination limiting its purchase of halon—an ozone-depleting chemical—to domestic halon is denied where the record supports agency's position that its immediate minimum needs were for taxable (i.e. domestic) forms of the chemical to prevent potential suppliers from venting halon into the atmosphere in order to avoid paying taxes.

Procurement

Competitive Negotiation

- Discussion
- ■ Exclusion
- ■ ■ Administrative discretion

An offeror's exclusion from discussions because its offer contained a delivery schedule that varied from the one required by the solicitation was improper where the solicitation provided that firms with offers containing varying delivery schedules would not be excluded from discussions simply because of those schedules, and agency conducted discussions with the other offeror regarding its similarly nonconforming delivery schedule.

Procurement

Bid Protests

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

Protest allegation that solicitation was defective for failing to include detailed information concerning listed products for which alternate products could be offered is dismissed as untimely since the alleged defect was apparent from the face of the solicitation and, thus, had to be raised prior to the time set for receipt of initial offers.

Procurement

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Protest allegation that agency improperly determined that protester's offered alternate product was not equivalent to listed-approved products is denied where protester failed to address agency's concern that the unique chemical composition of its product would adversely affect its functionality.

B-255999.2, June 23, 1994

94-1 CPD ¶ 378

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Agency's determination to make a sole-source award to the only known firm that can provide a simulator satisfying the agency's requirements is not objectionable where the protester failed to submit sufficient information in response to the agency's request to show that the protester's simulator would satisfy the agency's stated requirements.

B-256429, June 23, 1994

94-1 CPD ¶ 379

Procurement

Sealed Bidding

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

Power of attorney accompanying bid bond clearly established that attorney-in-fact was authorized to bind the surety where it contained certification by surety's assistant secretary that appointment of attorney-in-fact was in full force and effect on the date of bid opening.

B-256437, June 23, 1994***

94-1 CPD ¶ 380

Procurement

Bid Protests

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

Protest against cancellation of invitation for bids filed more than 10 working days after protester knew basis for cancellation is untimely.

Procurement

Competitive Negotiation

- Use
- ■ Criteria

Agency decision to use negotiated procedures in lieu of sealed bidding procedures is justified where the basis for the award reasonably includes technical considerations in addition to price-related factors, and where the agency reasonably anticipates conducting discussions.

Procurement

Competitive Negotiation

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

Protest that solicitation's evaluation criteria are defective is denied where agency demonstrates that criteria are reasonably related to its minimum needs.

Procurement

Socio-Economic Policies

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

Agency's determination not to set aside a procurement for small business concerns is reasonable where the agency concluded, after a thorough consideration of relevant factors, including the procurement history of the prior requirement, an informal survey of 10 small business concerns, and the concurrence of the Small Business Administration's representative, that it could not reasonably expect to receive proposals from at least two small business offerors.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Pages
- ■ ■ ■ Restrictions

Protest challenging requirement that offeror submit three copies of standard form 33 cover page is denied since protester fails to show how this provision is unduly restrictive, or otherwise prejudicial to the protester.

B-251223.4, June 24, 1994

94-1 CPD ¶ 381

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Amount determination

Claim for protest costs is denied where the protester did not submit sufficient documentation evidencing the amount or purposes of claimed employees' efforts in pursuit of the protest, did not establish that the claimed hourly rates reflected actual compensation plus reasonable overhead and fringe benefits, and did not segregate allowable from unallowable costs.

B-256017.4, B-256017.5, June 27, 1994

94-1 CPD ¶ 382

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Office space

Where agency solicits offers for the acquisition of a building site under the Public Buildings Act of 1959 (PBA), 40 U.S.C. § 604 (1988), it cannot comply with the statutory requirement to acquire the site most advantageous to the United States unless it acts in such a way as to promote intelligent

competition among offerors; the process by which the General Services Administration selected a building site under the PBA was fundamentally flawed and precluded maximizing the likelihood of receiving advantageous offers responsive to its needs where the agency failed to advise offerors of the evaluation factors used in evaluating the offers submitted and their relative importance.

B-256488, June 27, 1994

94-1 CPD ¶ 383

Procurement

Competitive Negotiation

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

Agency reasonably awarded a contract to a higher-priced offeror which had a better prior performance record where prior experience was the most important evaluation criterion and where the price/technical tradeoff was reasonable and consistent with the solicitation's evaluation scheme.

B-256495, June 27, 1994

94-1 CPD ¶ 384

Procurement

Sealed Bidding

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

Where the invitation for bids required descriptive literature to establish the offered product's conformance with the specifications, a bid accompanied by descriptive literature that failed to show clearly the offered product's conformance with the specifications was properly rejected as nonresponsive.

B-254767.3, June 28, 1994

94-1 CPD ¶ 388

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision denying protest of award is denied where protester fails to show the decision contained errors of fact or law warranting reversal of the decision.

B-254797.3, June 28, 1994

94-1 CPD ¶ 389

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the request contains no statement of facts or legal grounds warranting reversal of initial decision but merely restates arguments made by the requester in the original protest and previously considered by the General Accounting Office.

Procurement

Bid Protests

- GAO procedures
- ■ Administrative reports
- ■ ■ Comments timeliness

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision dismissing protest for failure to file comments responding to agency report is affirmed on reconsideration where record shows that protester neither submitted comments nor requested extension of time for filing within 10-working-day period allotted for submitting comments.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Brand name/equal specifications
- ■ ■ ■ Equivalent products

Protester's bid offering an equal product under a brand name or equal invitation for bids for a commercial dough mixer was properly rejected as nonresponsive where the bid failed to include the required descriptive literature.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Government property
- ■ ■ ■ Cost evaluation

Agency reasonably considered for bid evaluation purposes the actual cost to the government of delivering and returning a vessel, along with the bid price, where the agency was responsible for transporting the vessel to and from the contractor's facility.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Liquidated damages
- ■ ■ ■ Propriety

Differential rates for recovery of liquidated damages are permissible where the rates are reasonably related to the actual costs the agency will incur at local versus nonlocal contractor facilities.

Procurement

Specifications

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

Protest that specifications limiting the contract performance period to 45 calendar days, including the vessel's travel time, unreasonably restrict competition, is denied where the agency reasonably determined that the specified performance period was necessary to satisfy the agency's minimum needs regarding project management.

B-256590, June 29, 1994

94-1 CPD ¶ 393

Procurement

Specifications

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

Requirement that audiometric booths have electromagnetic interference (EMI) shielding which will attenuate low frequencies of EMI at specified levels is reasonable and not unduly restrictive where the test equipment to be used in the booths is sensitive to EMI and the record suggests that the protester's booth is capable of meeting the specification.

Procurement

Sealed Bidding

- **Bids**
- ■ **Evaluation**
- ■ ■ **Tests**

Where solicitation requires tests of effectiveness of electromagnetic (EM) shielding of audiometric booths both prior to submission of bids and after installation of booths on agency premises, solicitation reasonably requires that post-installation tests be performed using the EMI source inside the booth because of space considerations and to ensure the safety of hospital patients, and that both tests be performed in the same manner to ensure consistency of results.

B-256138.3, June 30, 1994

94-1 CPD ¶ 394

Procurement

Specifications

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

Procurement

Specifications

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

Contracting agency's decision to effectively resolicit its requirement for renovation services after award is unobjectionable where initial solicitation overstated a minimum experience requirement; contracting agencies are responsible for defining their needs, and General Accounting Office will not review contention that agency's needs can only be met under specifications which are more restrictive than the agency believes necessary.

Procurement

Sealed Bidding**■ Alternate bids****■ ■ Responsiveness****■ ■ ■ Criteria**

Under a brand name or equal solicitation, a bid offering an alternative product as an "equal" was properly rejected as nonresponsive where the descriptive literature furnished with the bid did not show that the offered product was equal to the brand name product solicited, and where unsolicited samples provided with the bid were not clearly identified to permit the agency to conclude that they were equal to the brand name product.

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