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United States General Accounting Office

**Office of General Counsel**

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

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# Preface

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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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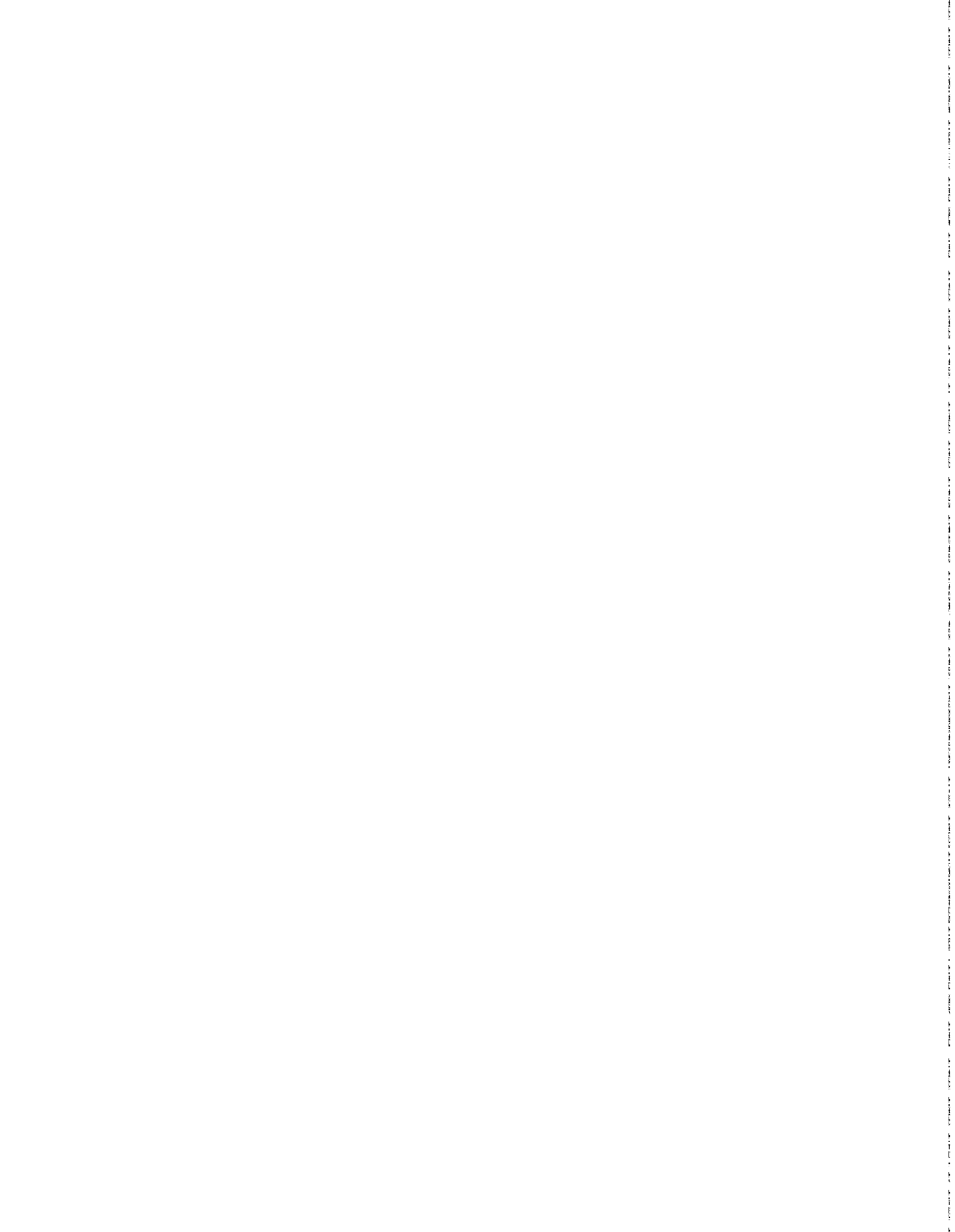
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# Appropriations/Financial Management

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**B-248804.2, July 5, 1994**

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## **Appropriations/Financial Management**

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### **Accountable Officers**

#### **■ Relief**

#### **■ ■ Physical losses**

#### **■ ■ ■ Burden of proof**

Naval officer requests that we re-characterize loss of \$998.35 as an overpayment instead of a physical loss. We previously declined to review Navy's characterization of loss as a physical loss since Secretary's determinations under 31 U.S.C. § 3527(b) are binding on Comptroller General. The officer now suggests that the loss was caused by an improper payment to an Italian contractor for work performed in the Naples, Italy port. The burden of proof lies with the officer requesting relief. In this case, the officer has not provided any documentary evidence to support his theory of the loss. Nor has the Navy approved of this theory of the loss. Thus, since the officer has not met his evidentiary burden, we decline to grant his request.

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**B-256092, July 6, 1994\*\*\***

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

#### **■ Purpose availability**

#### **■ ■ Medical examination**

The National Transportation Safety Board may use appropriated funds to reimburse Air Safety Investigators for the costs of physical examinations for a Federal Aviation Administration (FAA) medical certificate performed by FAA certified private physicians where there are no FAA certified physicians at available public health facilities and the examination is performed for the sole purpose of obtaining a current FAA medical certificate.

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**B-212463.3, July 29, 1994**

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

#### **■ Amount availability**

#### **■ ■ Fiscal-year appropriation**

#### **■ ■ ■ Deductions**

#### **■ ■ ■ ■ Audits**

In response to Congressman's inquiry as to apparent discrepancy in FY 1982 disbursement records between our 1983 report pertaining to the U.S. Customs Service account of the Virgin Islands and our subsequent letter of December 13, 1991, Congressman is advised that Customs has furnished this Office with clarification indicating that the amount stated in the 1991 letter included both amounts deducted for costs incurred by the U.S. Customs Service and amounts remitted to the Virgin Islands government as net duty proceeds.

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# Civilian Personnel

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**B-253967.2, July 5, 1994**

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**Civilian Personnel**

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**Compensation**

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

An employee, who was transferred and promoted with an accompanying pay increase, was erroneously granted an additional merit pay increase on October 5, 1990. The agency now advises that the SF-50 issued to rescind that action, although dated 2 days later, was not executed until much later. The personnel officer executed the rescinding SF-50 in August 1991, after the error was discovered in late July 1991. Based on this new information, decision B-253967, Nov. 30, 1993, is reversed and waiver of the debt due to the overpayment of merit pay is hereby granted.

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**B-256736, July 8, 1994**

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**Civilian Personnel**

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**Travel**

- **Overseas travel**
- ■ **Foreign air carriers**
- ■ ■ **Use**
- ■ ■ ■ **Prohibition**

The Claims Group's denial of a claim for reimbursement of airfare for travel on a foreign carrier by an employee of the U.S. Information Service who was not aware of the provisions of the Fly America Act, 49 U.S.C. App. § 1517 (1988), is sustained, notwithstanding that it involved emergency travel arrangements made with a travel agent who was unaware of the Act's provisions requiring use of available U.S. air carriers.

---

**B-256794, July 20, 1994**

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**Civilian Personnel**

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**Travel**

- **Temporary duty**
- ■ **Travel expenses**
- ■ ■ **Privately-owned vehicles**
- ■ ■ ■ **Mileage**

An employee who chose for personal reasons to use his privately-owned vehicle, in lieu of an available government-owned vehicle, is limited to reimbursement at 9.5 cents per mile, as authorized and approved by his agency. Federal Travel Regulation, 41 C.F.R. § 301-4.4(c) (1993).

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**B-252405.2, July 21, 1994**

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**Civilian Personnel**

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**Compensation****■ Arbitration decisions****■ ■ GAO review**

An agency, in forwarding an employee's claim to the GAO Claims Group as a doubtful claim, did not advise the Claims Group that the employee was covered by a negotiated grievance procedure under which a grievance had been filed, and the Claims Group issued a settlement certificate denying the claim. The Claims Group's settlement certificate is withdrawn as improvidently issued. Under *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992), the negotiated grievance procedure is the exclusive remedy for such employee claims, and our Office has no jurisdiction to accept such claims.

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**B-256401, July 29, 1994**

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**Civilian Personnel**

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**Travel****■ Bonuses****■ ■ Acceptance****■ ■ ■ Propriety**

General Counsel, Railroad Retirement Board, is advised, in response to suggestion that its employees be allowed to use mileage credits earned through both personal and official use for personal use when United Airlines issues certificates at 20,000 miles, that we cannot agree based on the longstanding rule that mileage credits earned for official travel remain the property of the federal government, and employees who use both personal and government mileage credits for their own use are responsible for the full value of the credits used. United Airlines has announced that it will no longer issue its "AwardCheques" automatically at 20,000 miles, effective February 1, 1995. The miles remain in the member's account until the member is ready to claim an award or until the miles expire. However, this Office is considering the general commingling issue in decision B-257525, and will furnish General Counsel with a copy when it is released.

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# Military Personnel

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**B-256600, July 14, 1994**

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**Military Personnel**

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**Pay**

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

Air Force member erroneously continued to receive Basic Allowance for Quarters and Variable Housing Allowance while he occupied government quarters during a temporary duty assignment. Since the member should have questioned the accuracy of his pay when it did not decrease during the period he occupied the quarters, his waiver request is denied. The fact that he had purchased a home and had begun making mortgage payments while he lived in government quarters did not create an entitlement to the amounts erroneously paid.

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**B-256270, July 15, 1994\*\*\***

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**Military Personnel**

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**Relocation**

- Travel expenses
- ■ Constructive expenses
- ■ ■ Reimbursement

**Military Personnel**

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**Travel**

- Overseas travel
- ■ Foreign air carriers
- ■ ■ Use
- ■ ■ ■ Prohibition

Where member and family used foreign flag vessel for permanent change of station transoceanic travel, rather than U.S. flag airline as member initially had elected, and transportation officer has certified that no U.S. flag vessel was available, member may be reimbursed based on the constructive cost of direct airfare from Europe.

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**B-256295, July 15, 1994**

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**Military Personnel**

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**Travel**

- Overseas travel
- ■ Dependents
- ■ ■ Travel expenses
- ■ ■ ■ Reimbursement

Member states that he purchased frequent flyer coupons from his father to secure airline tickets for two dependents in connection with a permanent change of station. Member may not be reim-

bursed the purchase price, however, since although the airline's frequent flyer program allows the transfer of coupons among family members, it prohibits the sale of coupons.

---

**B-256298, July 18, 1994**

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**Military Personnel**

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**Relocation**

- Leases
- ■ Termination costs
- ■ ■ Reimbursement

A member who was living in government quarters with his family received permanent change of station orders and, so that his family could remain in the area, he immediately leased a house and paid a security deposit and rent. The orders were then revoked, however, and the member remained in government quarters at the same duty station. Claim for reimbursement for the security deposit and rent, neither of which the landlord refunded, is denied since there is no provision in the law or applicable regulations that would allow payment.

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**B-256417, July 22, 1994**

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**Military Personnel**

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**Pay**

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

Navy member expected his pay to decrease when he moved into government quarters. When it did not decrease, he says that he brought the matter to the attention of disbursing clerks who assured him that his pay was correct. The member, however, was erroneously paid a Basic Allowance for Quarters and Variable Housing Allowance for almost 4 years. Because there is nothing in the record to corroborate the member's version of events, and (1) the member's leave and earnings statements clearly showed that he was being overpaid and why, but (2) he did not pursue the overpayments with senior disbursing officials until the payments were terminated, he is not without fault. The debt therefore may not be waived.

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# Procurement

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**B-254901.2, B-255102.2, July 1, 1994**

**94-2 CPD ¶ 1**

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## Procurement

### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request fails to demonstrate that prior decision contained an error of fact or law or to present information not previously considered which would warrant reversal or modification of the decision.

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**B-253455.5, July 5, 1994**

**94-2 CPD ¶ 4**

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## Procurement

### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester has not shown that the decision contained errors of fact or law and instead merely repeats arguments which were previously considered by our Office.

---

**B-254761.4, July 5, 1994**

**94-2 CPD ¶ 5**

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## Procurement

### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester essentially repeats arguments made and considered in initial protest.

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**B-255268.2, July 5, 1994**

**94-2 CPD ¶ 6**

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## Procurement

### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show that prior decision denying its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our prior decision.

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**Procurement**

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**Special Procurement Methods/Categories**

- Construction contracts
- ■ Costs

In a sealed bid procurement for construction services in which bidders were requested to propose their shortest practicable performance period and in which the basis for award was evaluated total cost, the agency's award to the highest priced, but lowest evaluated cost, bidder was not improper.

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**Procurement**

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**Bid Protests**

- Non-appropriated funds
- ■ GAO review

General Accounting Office will consider a protest concerning procurement conducted by an agency's employees' association, a non-appropriated fund instrumentality, where protester alleges that agency is diverting vending machine requirements to employees' association in order to avoid applicable procurement statutes and regulations.

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest contending that agency is improperly channeling vending machine requirement through employees' association in order to avoid applicable procurement statutes and regulations is denied where the employees' association is a distinct and separate entity from the agency; the vending machine requirement is not part of the agency's requirement but instead constitutes a benefit for agency employees and visitors which has been historically provided by the employees club; and any benefit to the agency is incidental and minor in nature.

---

**Procurement**

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**Competitive Negotiation**

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

Where the agency reasonably evaluated the protester's proposal as marginally acceptable and the awardee's proposal as acceptable, the agency reasonably determined that the awardee offered the most advantageous proposal to the government and that the technical advantages inherent in the awardee's proposal warranted the payment of an overall, approximate 1-percent price premium.

**Procurement**

---

**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Integrity certification
- ■ ■ ■ Identification

Bid was properly rejected as nonresponsive where its certificate of procurement integrity identified one person as the certifier but was signed by a different person; the improperly executed certificate failed to unequivocally bind the bidder to perform in accordance with the substantial legal obligations imposed by the certificate.

**Procurement**

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**Sealed Bidding**

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Awardee's low bid under a requirements-type solicitation is not materially unbalanced where the solicitation's maximum estimated quantities are reasonably accurate representations of the agency's anticipated actual needs and the bid will result in the lowest cost to the government.

---

**Procurement**

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**Bid Protests**

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

Allegations that invitation for bids (IFB) contemplating the award of an indefinite quantity paving and construction contract contained defective estimates and that the agency should evaluate bids by combining contract line items that correspond to individual projects are untimely where protester could have discovered allegedly defective estimates during pre-bid opening site visits, the IFB stated that the agency would evaluate bids on the basis of total price for all line items, and protest was not filed until after bid opening.

**Procurement**

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**REDACTED VERSION**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions by not advising offeror of adverse reports regarding its past performance is sustained where the agency concedes that discussions were not held and the record does not clearly demonstrate that the protester was not prejudiced as a result of the failure.



**Procurement**

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**Special Procurement Methods/Categories**

- In-house performance
  - ■ Cost estimates
  - ■ ■ GAO review
- 

**Procurement**

---

**Special Procurement Methods/Categories**

- In-house performance
- ■ Cost evaluation
- ■ ■ Government estimates
- ■ ■ ■ Computation errors

Protest that contracting agency improperly conducted cost comparison between the government's in-house proposal and protester's proposal to justify agency determination to convert a support services contract to in-house performance is denied where agency followed applicable procedures in conducting the cost comparison and protester fails to show that the methodology used was unreasonable or inconsistent with Office of Management and Budget Circular No. A-76 and other related guidelines.

**Procurement**

---

**Competitive Negotiation**

- Requests for proposals
  - ■ Cancellation
  - ■ ■ Justification
  - ■ ■ ■ GAO review
- 

**Procurement**

---

**Special Procurement Methods/Categories**

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

Absent any provision in the solicitation for conducting a cost comparison between proposals from commercial sources and in-house estimate, General Accounting Office does not review an agency's decision to cancel a solicitation in order to perform services in-house because such decisions are a matter of executive branch policy.

**Procurement**

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**Contractor Qualification**

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

Agency reasonably determined that protester was nonresponsible based upon conclusion that the protester's recent performance on contracts for similar work was inadequate, notwithstanding that the protester disputes the agency's interpretation of the facts, where the nonresponsibility determination is based on circumstances present at the time the decision was made.

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation****■ ■ ■ Shipment schedules**

Agency reasonably rejected the protester's proposal as technically unacceptable where the proposal deviated from the request for proposal's (RFP) required delivery schedule and lacked information required to show how the firm would perform a number of functions (*e.g.*, quality control) that were set forth in the RFP's evaluation scheme for evaluation purposes.

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**B-255631, July 11, 1994**

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**Procurement**

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**Payment/Discharge****■ Shipment****■ ■ Tenders****■ ■ ■ Applicability**

Carrier tariff that imposes significantly higher charges for deliveries to an "ocean port facility" does not apply to a delivery to a warehouse at a military ocean terminal where the record is not clear that an "ocean port facility" as contemplated by the tariff is involved, and the carrier has not shown that delivery to the warehouse imposed additional costs/delay usually associated with deliveries to docks, piers, and wharves, which is the basis for the higher charges.

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**B-256279.2, July 11, 1994**

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**Procurement**

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**Sealed Bidding****■ Invitations for bids****■ ■ Cancellation****■ ■ ■ Justification****■ ■ ■ ■ Minimum needs standards**

Agency properly canceled solicitation in order to reevaluate alleged unduly restrictive specification.

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**Procurement**

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**Bid Protests****■ GAO procedures****■ ■ Preparation costs****■ ■ ■ Administrative remedies**

Agency took prompt corrective action in response to protest challenging solicitation requirements, and protester therefore is not entitled to reimbursement of the costs of filing and pursuing its protest, where: (1) protest required resolution of complex technical issue; (2) agency initiated an investigation of protest allegations at the outset of the protest; and (3) agency provided a responsive, in-depth review of the specifications—in the form of an agency report—which subsequently enabled the protester to introduce additional information and analysis which would not have been otherwise known to either party, and which provided a basis for reevaluation of the restrictive specification.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester fails to demonstrate that prior decision contained error of law or fact.

**Procurement**

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**Competitive Negotiation**

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

Protest that agency improperly downscored proposal is denied where agency reasonably determined that, based on the maximum dollar amount and number of awards contemplated by solicitation for indefinite delivery/indefinite quantity contracts, protester's proposed bonding capacity was insufficient to assure that it could meet a solicitation requirement to furnish a performance bond equal to the amount of any delivery orders that may be issued during contract performance.

**Procurement**

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**Competitive Negotiation**

- Below-cost offers
- ■ Acceptability

Protest that procuring agency improperly awarded contract to offeror that submitted a below-cost offer is dismissed as there is no legal objection to the submission or acceptance of a below-cost offer where a fixed-price contract is to be awarded. Whether offeror can perform at offered price concerns the contracting officer's affirmative determination that the offeror is responsible, a matter not subject to review under the circumstances.

---

**Procurement**

---

**Competitive Negotiation**

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

Notwithstanding solicitation award criteria that gave greater weight to technical factors than to price, procuring agency properly awarded contract to lower-priced, lower technically rated offeror where source selection official reasonably determined that protester's technically superior proposal was not worth the price premium associated with it.

**Procurement**

---

**Sealed Bidding**

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

Where it can be reasonably determined from the bid itself that the bidder mistakenly omitted negative signs from percentage factors quoted in its bid, agency properly permitted bidder to correct its bid price.

**Procurement**

---

**Sealed Bidding**

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

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

**Procurement**

---

**Sealed Bidding**

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

Agency properly denied request for bid correction where the bidder was unable to show clear and convincing evidence of the intended bid.

**Procurement**

---

**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price omission

The failure of the low bidder to recompute its total bid price after submitting a price revision to certain line items in response to a solicitation amendment does not render its bid nonresponsive where the bid as originally submitted and revised included prices on all line items and the omitted total can be calculated from line item prices submitted.

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## **Procurement**

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### **Socio-Economic Policies**

- Labor standards
- ■ Service contracts
- ■ ■ Wage rates
- ■ ■ ■ Applicability

A bidder offering hourly rates below those specified in a Service Contract Act (SCA) wage determination is eligible for contract award where its bid does not evidence an intent to violate the SCA and the firm is otherwise determined to be responsible.

---

## **Procurement**

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### **Sealed Bidding**

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

Protest that low bid should be rejected as unbalanced due to its allegedly understated bid for a portion of the contract requirements is without merit where the protester does not identify any portion of the low bid which contained overstated prices.

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**B-257618.2, July 14, 1994**

**94-2 CPD ¶ 24**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Mere allegation of improper agency evaluation, made "on information and belief," without any supporting explanation or documentation, does not satisfy the requirement that a protest provide a detailed statement of legal and factual grounds.

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**B-252406.3, July 15, 1994**

**94-2 CPD ¶ 32**

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## **Procurement**

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### **Competitive Negotiation**

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

Agency reasonably selected a slightly higher-priced, technically superior, low risk proposal instead of the protester's lower-priced, acceptable proposal which was reasonably found to have a higher "proposal risk" because of legitimate safety and schedule concerns.

---

## **Procurement**

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### **Competitive Negotiation**

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

Agency reasonably selected a higher-priced, technically superior, low risk proposal instead of the protester's much lower-priced, acceptable proposal where the source selection authority was rea-

sonably concerned that the protester's low price for a major item of work that accounted for the cost differential between the proposals may reflect a lack of understanding on the part of the protester and created an increased risk of nonperformance of this work.

---

**B-254372, et al., July 15, 1994**

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**Procurement**

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**Payment/Discharge**

- Shipment costs
- ■ Rate schedules
- ■ ■ Applicability

When the Military Traffic Management Command issued a letter to the industry stating that it no longer would route wheeled vehicles as Freight All Kinds (FAK) shipments, it clearly indicated that wheeled vehicles were excluded from the FAK commodity description. Accordingly, the General Services Administration cannot rate a subsequent wheeled-vehicle shipment as FAK.

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**B-256204, 256204.2, July 15, 1994\*\*\***

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**Procurement**

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**Payment/Discharge**

- Shipment
- ■ Tenders
- ■ ■ Applicability

**Procurement**

---

**Payment/Discharge**

- Shipment costs
- ■ Overcharge
- ■ ■ Payment deductions
- ■ ■ ■ Propriety

Expired Guaranteed Traffic Tender cannot be used as basis for payment to carrier where unsigned extension sent to Military Management Traffic Command (MTMC), which MTMC argues extended the tender, was not accepted and distributed by MTMC until after the date the shipments were transported.

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**B-256616.2, July 15, 1994**

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**94-2 CPD ¶ 25****Procurement**

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**Sealed Bidding**

- Bonds
- ■ Justification
- ■ ■ GAO review

**Procurement**

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**Specifications**

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

Protest that bonding requirements in a solicitation for mechanical maintenance services were unduly restrictive because bonds must cover the 36-month base period of the contract is denied where the agency reasonably determined that the bonds were required to assure continuous efficient service and to protect government property, and that the 36-month base period would actually maximize competition and reduce contractor turnover.

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**Procurement**

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**Specifications**

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

Protest alleging that solicitation requirements for a single job site for repair and overhaul of propellers and for a certified journeyman machinist to supervise all phases of the work are unduly restrictive of competition is denied where record demonstrates that requirements are necessary in order for agency to meet its minimum needs.

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**Procurement**

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**Competitive Negotiation**

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

Agency reasonably rejected protester's best and final offer because its pricing structure appeared to be premised on a 10-year contract and to impose termination liability on the government if the contract lasted only 5 years, where the solicitation provided for a base period of 5 years with five 1-year options.

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**Procurement**

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**Competitive Negotiation**

- Discussion reopening
- ■ Propriety

Agency was not required to reopen discussions to clarify a possible ambiguity introduced for the first time in the protester's best and final offer.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request fails to demonstrate that prior decision contained an error of fact or law which would warrant its reversal; allegation that the agency's justification for other than full and open competition did not adequately support the quantity of items to be acquired does not provide a basis for reversal of decision since record supports reasonableness of the quantity.

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**Procurement**

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**Socio-Economic Policies****■ Preferred products/services****■ ■ American Indians**

General Services Administration acted properly in not including preferences for Indian-owned firms in mandatory schedule contract solicitation to acquire propane, even where activities of the Bureau of Indian Affairs and the Indian Health Service are among the using activities.

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**Procurement**

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**Competitive Negotiation****■ Requests for proposals****■ ■ Terms****■ ■ ■ Health care****■ ■ ■ ■ Review**

Solicitation provisions requiring that healthcare utilization review be conducted in a particular way are reasonably related to the agency's need to protect beneficiaries' access to appropriate health care.

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**Procurement**

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**Competitive Negotiation****■ Requests for proposals****■ ■ Government estimates****■ ■ ■ Disclosure**

Although solicitations must provide sufficient information to enable offerors to compete intelligently and on an equal basis, they are not required to disclose the government cost estimate or the precise details of the proposal evaluation process.

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**Procurement**

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**Special Procurement Methods/Categories****■ Construction contracts****■ ■ Terms****■ ■ ■ Contractor indemnification**

An agency properly included in a solicitation for construction services a clause which requires the contractor to indemnify the government for patent infringement where the record shows that the agency has a reasonable basis for concluding that patent indemnity is needed and the indemnification clause is authorized by Federal Acquisition Regulation part 27.



**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Price reasonableness

Agency's cancellation of solicitation after bid opening—on basis that bids received indicate that needs of government can be satisfied by a less expensive article differing from that for which bids were invited—was proper where protester's low bid for short order meals exceeded cost of full course meals under existing contract, leading contracting officer to exercise option under existing contract.

**Procurement**

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**Socio-Economic Policies**

- Small business set-asides
- ■ Use
- ■ ■ Justification

Protest that agency improperly decided to set procurement aside for exclusive small business participation is denied where the contracting officer reasonably anticipated that offers would be received from at least two small business concerns based upon several expressions of interest from potential small business offerors during the prior procurement for the same requirement, a market survey conducted by the contracting officer, and two site visits conducted by the agency for the benefit of potential offerors.

**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Proposed sole-source award for enhancement and implementation of automated aircraft maintenance management system under the authority of 10 U.S.C. § 2304(c)(2) (1988) is unobjectionable where protester's responses to *Commerce Business Daily* notices consisted of minimal information and firm's experience was with a system differing substantially from the required system, which therefore failed to establish that the firm could meet the agency's requirements, and as a result the agency reasonably determined that only the developer of the original system had the necessary extensive system knowledge and experience to effectively accomplish the required tasks for the technically complex system within the stringent 9-month time frame imposed by statute.

**Procurement**

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**Competitive Negotiation**

- Contract awards
  - ■ Multiple/aggregate awards
  - ■ ■ Defects
  - ■ ■ ■ Source selection boards
- 

**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Multiple/aggregate awards
- ■ ■ Propriety

Where solicitation provided for an evaluation of proposals under various award scenarios and contemplated the possibility of multiple awards based on a best value determination, protest is sustained since agency source selection decision was based on misleading and inaccurate cost estimates which significantly affected the agency's understanding of the price differences among competing award scenarios.

**Procurement**

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**Competitive Negotiation**

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

Bid delivered by the U.S. Postal Service to the government installation approximately 3 weeks prior to the scheduled bid opening, as established by agency time/date stamp, properly was considered for award where the record establishes that government mishandling after receipt of the bid package was the sole reason why the bid was not opened at bid opening.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Integrity certification
- ■ ■ ■ Identification

Fact that a certificate of procurement integrity included in a bid did not include the typed name of the certifying official who executed the certificate does not render the bid nonresponsive where the certificate is otherwise properly completed and executed.

**Procurement**

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**Socio-Economic Policies**

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

Agency properly did not apply the 10-percent preference for small disadvantaged businesses on an invitation for bids (IFB) set aside for small business, notwithstanding that the IFB erroneously

included the preference clause; the protester was on notice that under applicable regulations the preference was not applicable to small business set-asides.

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## **Procurement**

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### **Bid Protests**

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

Third-low bidder is not an interested party to protest award since even if its protest were sustained, the second-low bidder, not the protester would be in line for award.

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**B-256869, July 21, 1994**

**94-2 CPD ¶ 38**

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## **Procurement**

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### **Competitive Negotiation**

- Contract awards
- ■ Propriety
- ■ ■ Specifications
- ■ ■ ■ Defects

Although solicitation contained latent defects which misled protester into preparing its price proposal based on more labor hours and a higher wage rate than intended by the agency and used by the incumbent contractor, protest against award is denied where record shows that agency still would select awardee's proposal as the most advantageous offer.

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**B-257360.2, July 21, 1994**

**94-2 CPD ¶ 39**

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## **Procurement**

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### **Special Procurement Methods/Categories**

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

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## **Procurement**

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### **Special Procurement Methods/Categories**

- In-house performance
- ■ Cost estimates
- ■ ■ GAO review

The General Accounting Office will not consider a protest challenging the agency's cost comparison decision made pursuant to Office of Management and Budget Circular No. A-76 that in-house performance of services was more economical than contractor performance where the protester failed to exhaust the agency's administrative appeal process.

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**B-254909.2, July 22, 1994**

**94-2 CPD ¶ 40**

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## **Procurement**

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### **Bid Protests**

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Prior decision is modified to delete recommendation that awardee's contract be terminated for the convenience of the government where information provided by contracting agency subsequent to

issuance of our decision shows that terminating the contract and recompeting the requirement is not practicable.

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**B-255078.3, July 22, 1994**

**94-2 CPD ¶ 41**

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**Procurement**

**Bid Protests**

■ **GAO procedures**

■ ■ **Preparation costs**

Protester is entitled to recover the costs of filing and pursuing its protest where the agency unduly delayed taking corrective action in response to the protest.

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**B-254900.4, July 26, 1994**

**94-2 CPD ¶ 43**

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**Procurement**

**Competitive Negotiation**

■ **Offers**

■ ■ **Evaluation**

■ ■ ■ **Personnel**

■ ■ ■ ■ **Adequacy**

Agency properly rejected as technically unacceptable the protester's proposal to provide emergency medicine and ambulatory care services where despite several rounds of discussions, the protester failed to demonstrate in its proposal that it would provide staffing levels that would accomplish all required tasks.

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**B-256788, July 27, 1994**

**94-2 CPD ¶ 44**

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**Procurement**

**Sealed Bidding**

■ **Invitations for bids**

■ ■ **Amendments**

■ ■ ■ **Acknowledgment**

■ ■ ■ ■ **Responsiveness**

Agency properly rejected bid as nonresponsive where the bidder failed to acknowledge amendment which changed the legal relationship between the parties by imposing an obligation on the contractor not contained in the original solicitation, thus rendering the amendment material; absent acknowledgment of the amendment, the bidder would not be required to furnish the services in accordance with the amended specification requirements.

**Procurement****Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Justification

**Procurement****Specifications**

- Minimum needs standards
- ■ Total package procurement
- ■ ■ Propriety

Agency reasonably determined that one contractor should be responsible for providing, installing, and warranting equipment to upgrade and expand an emergency communications system where the need to coordinate between two separate contractors would likely lead to impermissible periods of downtime on the system.

**Procurement****Sealed Bidding**

- Bids
- ■ Lost bids
- ■ ■ Modification
- ■ ■ ■ Acceptance

A procuring agency properly considered a misplaced bid modification that resulted in the low bid, where the record establishes that the modification arrived at the proper office of the procuring agency 2 days before bid opening and remained in the agency's possession until it was discovered before award.

**Procurement****Sealed Bidding**

- Post-bid opening cancellation
- ■ Resolicitation
- ■ ■ Requests for proposals
- ■ ■ ■ Justification

Agency properly canceled a solicitation after bid opening and converted the procurement from sealed bid to negotiated procedures, based upon the unreasonableness of the bid prices, where the low bid exceeded the government estimate by 23 percent and there is no showing that the government estimate was in error or that the decision to cancel was made in bad faith.

**Procurement****Specifications**

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

Protest that solicitation requirement that dishwashers being procured must be white in color overly restricts competition is denied where the dishwashers are to be installed in kitchens in

family housing units in which all other major appliances already are white and the agency reasonably decided that only white dishwashers will fit in with the established color scheme and meet the aesthetic needs of the tenants.

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**B-256604, July 28, 1994**

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**Procurement**

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**Payment/Discharge****■ Shipment****■ ■ Carrier liability****■ ■ ■ Amount determination**

The General Accounting Office will not question an agency's calculation of the value of damage to an item in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable.

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**B-256849, July 28, 1994**

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**94-2 CPD ¶ 62****Procurement**

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**Bid Protests****■ Moot allegation****■ ■ Determination**

Allegations of defective specifications are dismissed as academic where agency took prompt corrective action by amending the solicitation to correct alleged defects.

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**Procurement**

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

Allegation that solicitation improperly required independent laboratory certification of radio fire alarm system is denied where agency reasonably required the certification in order to comply with applicable safety standards.

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**B-256905, July 28, 1994**

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**94-2 CPD ¶ 48****Procurement**

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**Sealed Bidding****■ Hand-carried bids****■ ■ Late submission****■ ■ ■ Acceptance criteria**

A late bid delivered by commercial carrier was properly rejected, despite the solicitation's incorrect address for the issuing office, where the paramount cause of the late delivery was the bidder's failure to properly address its bid package to the address stated in the solicitation for the receipt of hand-carried bids.

**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Late submission****■ ■ ■ Acceptance criteria**

Agency is justified in rejecting protester's proposal where there is no evidence which establishes that the proposal was timely received by the agency.

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**Procurement**

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**Bid Protests****■ GAO procedures****■ ■ Interested parties**

Where protester's offer could not be accepted, protester is not an interested party to challenge agency decision to cancel solicitation.

**Procurement**

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**Competitive Negotiation****■ Contract awards****■ ■ Propriety**

Protest that protester was entitled to award as the lowest-priced, experienced offeror is denied where the protester failed to provide any of the required past performance and experience information necessary to allow the agency to technically evaluate the protester's offer and the protester did not submit the lowest-priced proposal.

**Procurement**

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**Competitive Negotiation****■ Requests for proposals****■ ■ Terms****■ ■ ■ Pages****■ ■ ■ ■ Restrictions**

Where solicitation set forth type-size and page limitations on offerors' technical proposals and warned that violations of these limitations affording an offeror a competitive advantage would result in the return of the proposal as noncompliant with the solicitation's requirements, contracting agency properly eliminated protester's proposal from the competitive range where the typeface the firm used effectively allowed it to exceed the page limitation by 38 pages, and agency reasonably determined both that this violation gave the protester a competitive advantage and that exclusion of the extra information would render the proposal technically unacceptable absent major revision.

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**B-256165, July 29, 1994**

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**Procurement**

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**Payment/Discharge****■ Shipment****■ ■ Tenders****■ ■ ■ Applicability**

Tenders offered to the government for Department of Defense (DOD) shipments may be applied to shipments of ammunition or explosive materials from military installations for transfer to civilian agencies, which paid the shipment charges, with DOD retaining substantial responsibilities with respect to the shipments until receipt by the civilian agencies.

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**B-257773, July 29, 1994**

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**Procurement**

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**Sealed Bidding****■ Ambiguous bids****■ ■ Determination criteria**

Where two distinct and separate bid acceptance periods are contained in a bid, one of which is shorter than a required minimum acceptance period, the bid is ambiguous and is therefore nonresponsive.



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