

GAO

Office of General Counsel



900

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

Vol. I, No. 9

ale by the Superintendent of Documents,

Government Printing Office Washington D C 20402

Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
Milton J. Socolar

General Counsel
James F. Hinchman

Deputy General Counsel
Vacant

Contents

Preface	iii
Table of Decision Numbers	iv
Digests	
Appropriations/Financial Management	1
Civilian Personnel	5
Military Personnel	12
Miscellaneous Topics	13
Procurement	14

Preface

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

Table of Decision Numbers

	Page		Page
B-198930.3, June 25, 1990	9	B-237503.2, B-237503.3, June 22, 1990	39
B-217114.5, June 8, 1990	1	B-237615, June 4, 1990	5
B-228396.7, June 22, 1990	38	B-237618.3, June 15, 1990	36
B-228785, June 5, 1990	19	B-237742.2, June 11, 1990	25
B-230405, June 29, 1990***	11	B-237749.2, June 14, 1990	31
B-230743, June 29, 1990	13	B-237852, June 18, 1990	8
B-230743, June 29, 1990	4	B-237920.2, June 26, 1990	47
B-233276, June 20, 1990	3	B-237927, June 1, 1990***	5
B-233352, June 11, 1990	2	B-237938.2, June 25, 1990	43
B-233352, June 11, 1990	7	B-237963, June 28, 1990	11
B-234628.3, June 20, 1990	37	B-238046.2, B-238046.3, June 6, 1990	20
B-235150, June 20, 1990	8	B-238086, June 8, 1990	6
B-235886, June 4, 1990	17	B-238122, June 12, 1990	7
B-235933, June 15, 1990***	12	B-238136.2, June 1, 1990	14
B-236238.2, June 28, 1990	48	B-238242, June 21, 1990	9
B-236334.7, et al., June 11, 1990	25	B-238347.2, June 14, 1990	32
B-236687.3, June 20, 1990	37	B-238369, June 4, 1990	6
B-236746.3, June 8, 1990***	23	B-238374, June 13, 1990	7
B-236893.2, June 1, 1990	14	B-238436, B-238436.2, June 5, 1990	19
B-236991, June 25, 1990***	10	B-238436.3, June 4, 1990	17
B-237075.2, June 8, 1990	23	B-238468, June 6, 1990***	21
B-237107.2, June 13, 1990	28	B-238490, et al., June 8, 1990***	24
B-237186, June 27, 1990	4	B-238504, June 1, 1990***	15
B-237268.2, et al., June 14, 1990	31	B-238522, B-238522.2, June 12, 1990***	26
B-237432.2, June 8, 1990	23	B-238527, June 13, 1990	28
B-237464, June 25, 1990	10		
B-237495.2, June 20, 1990	37		

***(notes published decisions) Cite published decisions as 69 Comp. Gen.—

Table of Decision Numbers

	Page		Page
B-238542, June 13, 1990	28	B-238844, June 12, 1990***	27
B-238583, B-238584, June 1, 1990	15	B-238882, June 1, 1990	16
B-238585, June 4, 1990	18	B-238931, June 19, 1990***	37
B-238590, June 13, 1990	29	B-238932, June 13, 1990	31
B-238617, B-238618, June 14, 1990***	32	B-238970, June 22, 1990	40
B-238633, June 13, 1990	30	B-238976.2, June 14, 1990	36
B-238646, June 8, 1990	24	B-238982, June 22, 1990	41
B-238652, June 20, 1990	38	B-239017, June 22, 1990	41
B-238655, June 25, 1990	44	B-239031, June 22, 1990	3
B-238661, June 25, 1990	45	B-239037, June 11, 1990	25
B-238672, June 25, 1990	46	B-239092, June 13, 1990	2
B-238685, June 28, 1990	48	B-239094, June 13, 1990	2
B-238689, June 29, 1990	48	B-239133, June 13, 1990	2
B-238690.2, June 14, 1990***	33	B-239141, June 1, 1990	16
B-238694, B-238694.2, June 4, 1990***	18	B-239212, June 22, 1990	42
B-238705, June 14, 1990***	34	B-239213, June 29, 1990	49
B-238706.2, June 14, 1990	34	B-239232.2, June 25, 1990	47
B-238744, June 13, 1990	30	B-239267, June 1, 1990	16
B-238754, June 14, 1990	35	B-239360, June 6, 1990	21
B-238756, June 12, 1990	27	B-239371, June 13, 1990	3
B-238777, June 14, 1990	35	B-239378.2, June 20, 1990	38
B-238783.2, June 26, 1990	47	B-239420, June 7, 1990	22
B-238784, June 15, 1990	8	B-239544, June 20, 1990	8
B-238791, June 29, 1990	49	B-239581, et al., June 4, 1990	19
B-238824, June 22, 1990	39	B-239621.2, June 1, 1990	17
B-238842.2, B-238842.3, June 25, 1990	46	B-239641, June 7, 1990***	6
		B-239729, June 6, 1990	22
		B-239744, June 7, 1990	22

Table of Decision Numbers

	Page		Page
B-239780, June 18, 1990	3	B-239858, June 7, 1990	23
B-239783, June 7, 1990	22	B-239863, June 18, 1990	36
B-239821, June 22, 1990	43	B-239879, June 1, 1990	17
B-239832, June 21, 1990	38	B-240076, June 29, 1990	49
B-239845, June 12, 1990	27	B-240081, June 20, 1990	9

Overruled, Modified and Distinguished

	<u>Page</u>
<u>B-222700, Oct. 17, 1986</u>	<u>11</u>

Appropriations/Financial Management

B-217114.5, June 8, 1990

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Fraud

An accountable officer argues, upon reconsideration, that he should be relieved for travel fraud losses because withholding reimbursements would have violated federal employees' due process rights. Even if the U.S. Constitution protects federal employee travel expense reimbursements, the ability of all federal employees to appeal agency denials of travel expense claims to GAO provides, in our view, whatever due process protection is necessary.

Upon reconsideration, an accountable officer argues that he instituted sufficient procedures after he became aware of the travel fraud scheme affecting his accounts. Lodging providers had supplied inflated lodging receipts and then verified the inflated amounts during telephone calls from travel clerks. After learning of the fraud, the accountable officer required written rather than telephone verifications. In our view, requesting written verification from a participant in the fraud is not reasonable. The request for reconsideration on this basis is denied.

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Illegal/improper payments
- ■ ■ GAO decisions
- ■ ■ ■ Reconsideration

A request that GAO reconsider a decision denying an accountable officer relief is denied in part because the request failed to show that GAO's prior consideration of the arguments for relief was based on either a mistake of fact, or a misapplication of the applicable law.

An accountable officer argues, upon reconsideration, that he should be relieved for travel fraud losses because withholding reimbursements would have violated federal employees' due process rights. Even if the U.S. Constitution protects federal employee travel expense reimbursements, the ability of all federal employees to appeal agency denials of travel expense claims to GAO provides, in our view, whatever due process protection is necessary.

Upon reconsideration, an accountable officer argues that he should be relieved for losses because he diligently pursued collection efforts. We deny this basis of the request for reconsideration. When we have concluded that a deficiency is the result of an accountable officer's lack of good faith or due care, we cannot grant relief solely on the basis of the diligent collection efforts.

Upon reconsideration, an accountable officer argues that he instituted sufficient procedures after he became aware of the travel fraud scheme affecting his accounts. Lodging providers had supplied inflated lodging receipts and then verified the inflated amounts during telephone calls from travel clerks. After learning of the fraud, the accountable officer required written rather than

telephone verifications. In our view, requesting written verification from a participant in the fraud is not reasonable. The request for reconsideration on this basis is denied.

B-233352, June 11, 1990

Appropriations/Financial Management

Claims Against Government**■ Statutes of limitation**

That portion of an employee's claim for travel expenses for the period from 1974 to 1982 which accrued more than 6 years from the date the claim was filed in our Office is barred by 31 U.S.C. § 3702(b) (1982). Although the agency did not authorize payment for such expenses until 1982 due to administrative error, that does not serve to enlarge the time for filing the claim, which accrues when the travel was performed.

B-239092, June 13, 1990

Appropriations/Financial Management

Accountable Officers**■ Disbursing officers****■ ■ Relief****■ ■ ■ Illegal/improper payments****■ ■ ■ ■ Overpayments**

Relief is granted Department of the Treasury disbursing official under 31 U.S.C. § 3527 for duplicate check overpayment. The overpayment was not the result of bad faith or lack of reasonable care, an adequate system of procedures and controls was maintained, and diligent collection actions were taken.

B-239094, June 13, 1990

Appropriations/Financial Management

Accountable Officers**■ Disbursing officers****■ ■ Relief****■ ■ ■ Illegal/improper payments****■ ■ ■ ■ Overpayments**

Relief is granted Department of the Treasury disbursing official under 31 U.S.C. § 3527 for duplicate check overpayment. The overpayment was not the result of bad faith or lack of reasonable care, an adequate system of procedures and controls was maintained, and diligent collection actions were taken.

B-239133, June 13, 1990

Appropriations/Financial Management

Accountable Officers**■ Cashiers****■ ■ Relief****■ ■ ■ Physical losses****■ ■ ■ ■ Theft**

Cashier is relieved of liability for loss by theft of funds in the amount of \$1,044.85. Presumption of negligence on the part of the accountable officer is rebutted since the evidence shows that a theft took place and an investigation reveals no connection between the accountable officer and the theft.

B-239371, June 13, 1990

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Overpayments

Relief is granted Department of the Treasury disbursing official under 31 U.S.C. § 3527 for a duplicate check overpayment. The overpayment was not the result of bad faith or lack of reasonable care, an adequate system of procedures and controls was maintained, and diligent collection actions were taken.

B-239780, June 18, 1990

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses
- ■ ■ ■ Theft

We grant relief from liability to Ms. Maimuna Sanyang, cashier, U.S. Embassy, Banjul, The Gambia, for the physical loss of 19,780 dalasis (U.S. dollar equivalent of \$2,997), apparently the result of a burglary. We grant relief in instances such as this when the evidence is clear that a theft took place, and the investigation reveals no connection between the theft and the accountable officer.

B-233276, June 20, 1990

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Overpayments

Upon reconsideration, we reaffirm our decision, B-233276, Oct. 31, 1989, to deny relief to disbursing officer who did not exercise reasonable care by failure to question alterations evident on the face of the voucher. The examples of vouchers provided by the State Department show the diversity of format of vouchers, underscoring the need to clarify elements of vouchers that appear to be erroneous or are otherwise confusing.

B-239031, June 22, 1990

Appropriations/Financial Management

Budget Process

- Funds transfer
- ■ Authority

The restrictions on the transfer of funds contained in section 103 of the Treasury, Postal Service and General Government Appropriations Act of 1990, Pub. L. No. 101-136, 103 Stat. 783, apply only to transfer authority contained in that section. Therefore, the Treasury Secretary may transfer funds without regard to those restrictions if he is otherwise authorized.

B-237186, June 27, 1990

Appropriations/Financial Management

Federal Assistance

- Grants
- ■ Allocation
- ■ ■ Census data

Section 183 of title 13 of the United States Code (13 U.S.C. § 183 (1988)), does not require agencies to use the most recent population estimates published by the Bureau of the Census in the allocation of federal grant funds.

Grant program authorizing statutes which specify use of "census" data may be properly construed by grant administrators as requiring the use of decennial census data.

B-230743, June 29, 1990

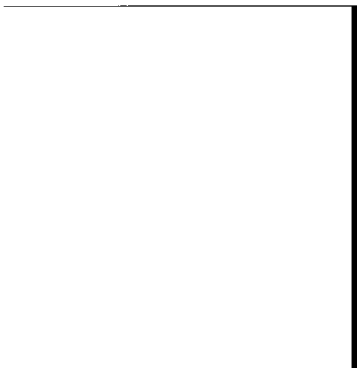
Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Lobbying

By spending Legal Services Corporation (LSC) funds, at the direction of its Board of Directors, to prepare and send a resolution and cover letter to the Senate Judiciary Committee on the confirmation of Robert Bork to the U.S. Supreme Court, Wayne County (Michigan) Neighborhood Legal Services violated restriction in 42 U.S.C. § 2996f(a)(5) on using LSC funds to influence legislation.

The use of Legal Services Corporation (LSC) funds by Wayne County Neighborhood Legal Services to send a resolution and cover letter of its Board of Directors to the Senate Judiciary Committee on the confirmation of Robert Bork to the U.S. Supreme Court, violated an LSC regulation prohibiting the use of LSC funds for legislative lobbying. 45 C.F.R. § 1612.4 (1987).



Civilian Personnel

B-237927, June 1, 1990***

Civilian Personnel

Relocation

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

A transferred employee's claim for temporary quarters subsistence expense (TQSE) at his new duty station was terminated by his agency because his family moved into permanent quarters elsewhere. The employee may be reimbursed TQSE as a single individual for the period authorized since his dependents' occupancy of quarters away from his duty station was not related to his transfer.

B-237615, June 4, 1990

Civilian Personnel

Compensation

- Compensatory damages
- ■ Authority

Civilian Personnel

Leaves Of Absence

- Administrative leave
- ■ Eligibility
- ■ ■ Settlement terms
- ■ ■ ■ Adverse personnel actions

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

Employee may not be reimbursed for economic losses pursuant to a resolution agreement made under the Age Discrimination in Employment Act and/or Title VII of the Civil Rights Act since there is no authority for reimbursement of compensatory damages under either statutory authority. Further, employee may not be placed on administrative leave with pay for an extended period, and there is no authority for payment of travel and relocation expenses where the employee was transferred for retirement purposes. Erroneous overpayments may be subject to waiver.

B-238369, June 4, 1990

Civilian Personnel

Relocation

- Relocation travel
- ■ Dependents
- ■ ■ Eligibility

A transferred employee had an unmarried child, age 20, who was residing with her mother. While en route to his new permanent duty station, he picked up his daughter and continued on to his new duty station where she resided with him as his dependent. His claim for relocation expenses on her behalf may be allowed. Under the Federal Travel Regulations (FTR), the status of a child as a member of an employee's immediate family is determinable on the date he reports for duty at his new station. Since the daughter was over age 18, she was under no legal disability and could choose to accompany him as his dependent. Having done so, she is fully qualified as a member of his family under the FTR.

B-239641, June 7, 1990***

Civilian Personnel

Relocation

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

Corps of Engineers' employees stationed in Germany, who are to be transferred to positions in the United States, may not be reimbursed lease termination expenses as miscellaneous expenses since the FTR provides that the miscellaneous expense allowance may not be used to reimburse employees for costs or expenses which are disallowed elsewhere in the regulations.

Civilian Personnel

Relocation

- Overseas personnel
- ■ Leases
- ■ ■ Termination costs
- ■ ■ ■ Reimbursement

Corps of Engineers asks whether employees stationed in Germany, who are to be transferred to positions in the United States due to a reduction in staffing levels, may be reimbursed for expenses incurred in settling unexpired leases in Germany. The employees may not be reimbursed such expenses since 5 U.S.C. § 5724a(a)(4)(A) (1988) does not allow reimbursement of lease termination expenses at a duty station outside the United States or certain other areas specified in the statute.

B-238086, June 8, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Residency

Transferred employee purchased a residence in Fairfield, Ohio, approximately 108 miles from his new duty station in Indianapolis, Indiana. On 9 workdays of each pay period, he stays in an apartment in Indianapolis and commutes to his official station. He lives at the Fairfield residence on every other Monday and on weekends. The employee is not entitled to reimbursement of expenses

incurred in the purchase of the Fairfield residence. This Office has consistently held that the requirement under FTR para. 302-1.4(j), that the employee "regularly commute" from the residence in question, contemplates commuting on a daily basis, not just on weekends or occasionally during the week.

B-233352, June 11, 1990

Civilian Personnel

Travel

- Travel expenses
- ■ Reimbursement
- ■ ■ Statutes of limitation

That portion of an employee's claim for travel expenses for the period from 1974 to 1982 which accrued more than 6 years from the date the claim was filed in our Office is barred by 31 U.S.C. § 3702(b) (1982). Although the agency did not authorize payment for such expenses until 1982 due to administrative error, that does not serve to enlarge the time for filing the claim, which accrues when the travel was performed.

B-238122, June 12, 1990

Civilian Personnel

Relocation

- House-hunting travel
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Civilian Personnel

Travel

- Rental vehicles
- ■ Liability insurance
- ■ ■ Expenses
- ■ ■ ■ Reimbursement

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

B-238374, June 13, 1990

Civilian Personnel

Compensation

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

An employee transferred to another agency and that agency inadvertently stopped deducting health insurance premiums from her salary. Her leave and earnings statements, which she should have reviewed, clearly showed that her health insurance premiums were not being deducted from her salary; thus, she must be considered partially at fault for continuing overpayments of salary, and her debt may not be waived under 5 U.S.C. § 5584.

B-238784, June 15, 1990

Civilian Personnel

Leaves Of Absence

- Sick leave
- ■ Communicable diseases
- ■ ■ Dependents

An employee residing in Alaska claims sick leave for the time he remained at home to care for his child who was suffering from conjunctivitis. The governing regulations allow sick leave when an employee is required to attend to an immediate family member with a contagious disease. 5 C.F.R. § 640.401(c) (1988). They define such a disease as one for which public officials require the child to be quarantined, isolated, or restricted in movement for a specified period. Since in this case a state public health official stated that conjunctivitis would preclude the child from attending the day care facility while the child was exhibiting the disease's acute symptoms, the child's freedom of movement was substantially restricted and agency allowance of sick leave would be appropriate.

B-237852, June 18, 1990

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Travel time

Nine employees, exempt from the Fair Labor Standards Act, were designated to drive government vans transporting other employees between lodgings and temporary duty worksites. Their claims for title 5 overtime pay for driving time are denied because their travel to and from lodgings does not meet any of the four conditions for overtime set forth in 5 U.S.C. §§ 5544(a) and 5542(b)(2)(B).

B-235150, June 20, 1990

Civilian Personnel

Travel

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

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

B-239544, June 20, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Amount determination

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

B-240081, June 20, 1990

Civilian Personnel

Compensation

- Increase
- ■ Applicability

A proposed pay increase under 5 U.S.C. § 5305 for General Schedule employees effective on or after January 1, 1991, will not be applicable to senior officials in the Executive Schedule, Members of Congress, and federal judges in light of the amendments contained in section 704 of the Ethics Reform Act of 1989, Public Law 101-194.

B-238242, June 21, 1990

Civilian Personnel

Relocation

- Overseas personnel
- ■ Post differentials
- ■ ■ Eligibility

Civilian Personnel

Relocation

- Overseas personnel
- ■ Quarters allowances
- ■ ■ Eligibility

Our Office will not substitute its judgment for that of agency officials responsible for making determinations on living quarters allowances and foreign post differentials, absent clear evidence that their determinations were arbitrary, capricious or unreasonable. We agree with the reasonableness of the determinations made by the agencies involved that the claimant's presence in Okinawa was not fairly attributable to his government employment. His contention that he was actively searching for government employment for a 13-year period is not persuasive in view of the long period of time involved, his voluntary residence in Okinawa, and his long-time employment in the private sector.

B-198930.3, June 25, 1990

Civilian Personnel

Travel

- Overseas allowances
- ■ Educational travel
- ■ ■ Dependents
- ■ ■ ■ Alternate destinations

Educational travel allowance may not be used to reimburse employee where children traveled from their school in Florida to join their parents in California during Christmas recess in lieu of joining them at their overseas post in Honduras. The allowance is available only for trips to visit their parents at overseas points.

Civilian Personnel

Travel

- Overseas travel
- ■ Travel modes
- ■ ■ Domestic sources
- ■ ■ ■ Air carriers

Employee may be reimbursed for the cost of his 15- and 16-year old dependent children's travel between their school in Florida and his post in Honduras during spring recess on a foreign air carrier. While there was a U.S. carrier that might have provided service, its service was unreliable (often late and flights cancelled without notice), and its use would have required an overnight stay in a hotel. Therefore, considering the ages of the children and the fact they were traveling without an accompanying adult, use of the foreign carrier is considered to have been necessary.

B-236991, June 25, 1990***

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Deductions
- ■ ■ Outside employment

The employee worked on his mother's farm during the period of an unjustified or unwarranted personnel action and received no wages, salary, or monetary payments for his services. The agency may not deduct from the backpay award the monetary value of the food and lodging he received in kind since the food and lodging were furnished for the convenience of the employer and are excludable from gross income for federal income tax purposes. 26 U.S.C. § 119 (1988). Therefore, the meals and lodging do not constitute "amounts earned . . . through other employment" within the meaning of 5 U.S.C. § 5596(b)(1)(A)(i) (1988).

B-237464, June 25, 1990

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Determination

A transferred employee, whose orders authorized 60 days temporary quarters subsistence expenses, moved into temporary quarters at his old duty station after receiving approval to do so from his supervisor and station manager based on leasing agent's request to vacate leased residence early and other circumstances. We find his vacating of residence and occupancy of temporary quarters was reasonably necessary and his claim for 30 days temporary quarters subsistence expenses is allowed.

B-237963, June 28, 1990

Civilian Personnel

Compensation

- Advance payments
 - ■ Prohibition
-

Civilian Personnel

Compensation

- Compensation/pay periods
- ■ Weekends/holiday

The Nuclear Regulatory Commission may administratively reschedule its Commissioners' pay days that occur on holidays and weekends to the preceding working day. However, the prohibition against advance payments, 31 U.S.C. § 3324 (1982), prohibits the advance payment of salary to federal employees. Therefore, the amount paid on such a rescheduled pay day may not include an advance payment of salary.

B-230405, June 29, 1990***

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Travel time

Employees who traveled away from their official duty stations on Sunday and returned on Friday evening in order to take training courses at a private institution may be allowed overtime pay or compensatory time for their travel. The government had no control over the content or scheduling of the courses, and, thus, the travel resulted from an event which could not be scheduled or controlled administratively. See 5 U.S.C. § 5542(b)(2)(B)(iv) (1988) and Federal Personnel Manual Supplement 990-2, Book 550, S1-3b. *Gerald C. Holst*, B-222700, Oct. 17, 1986, *overruled*.

Military Personnel

B-235933, June 15, 1990***

Military Personnel

Relocation

■ Relocation travel

■ ■ Reimbursement

■ ■ ■ Circuitous routes

Service member was assigned on an emergency, permissive basis to a unit near his family en route to a permanent change of station from Germany to Seneca, New York, and subsequently was directed to report to Seneca. Member should be reimbursed for his travel in accordance with the orders issued to him, which authorized reimbursement for travel from Germany to St. Louis, which facilitated the permissive assignment, and per diem and mileage limited to that applicable for travel to Seneca from Philadelphia, the port to which he otherwise would have flown from Germany.

Miscellaneous Topics

B-230743, June 29, 1990

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Legislation

■ ■ Lobbying

Wayne County (Michigan) Neighborhood Legal Services did not violate the prohibition in 42 U.S.C. § 2996e(e)(1) against employees of recipients intentionally identifying it with a political activity because the mailing to the Senate Judiciary Committee of a resolution and letter opposing a judicial nomination was the action of the recipient's Board of Directors, who are not subject to the restrictions applicable to "employees" and the recipient's executive director and secretaries, who are employees, merely provided administrative support for the Board's action.

Based on an agency regulation interpreting the term (45 C.F.R. § 1612.1(f) (1987)), we construe "legislation" as used in 42 U.S.C. § 2996f(a)(5) to encompass Senate deliberations on the confirmation of a judicial nominee.

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Political activities

■ ■ Restrictions

■ ■ ■ Applicability

Wayne County (Michigan) Neighborhood Legal Services did not violate the prohibition in 42 U.S.C. § 2996e(e)(1) against employees of recipients intentionally identifying it with a political activity because the mailing to the Senate Judiciary Committee of a resolution and letter opposing a judicial nomination was the action of the recipient's Board of Directors, who are not subject to the restrictions applicable to "employees" and the recipient's executive director and secretaries, who are employees, merely provided administrative support for the Board's action.

It is not clear that the Hatch Act's proscription against participating in "an election or a nomination for office" (5 U.S.C. § 1502(a)(1)) was intended to apply to participation in judicial nominations.

Because the National Legal Aid and Defender Association did not provide legal assistance to eligible clients under the legal services program, it was not a "recipient" under 2 U.S.C. § 2996e(a)(1)(A) and was therefore not prohibited from engaging in political or lobbying activities during 1987, by statutes applicable to "recipients" in effect at that time.

Procurement

B-236893.2, June 1, 1990

90-1 CPD 516

Procurement

Bid Protests

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

Procurement

Contractor Qualification

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

Prior decision holding that agency did not violate protester's procedural due process rights when the agency found the protester nonresponsible based on an unsatisfactory record of integrity is affirmed where protester has not shown that the decision was based on an error of law.

B-238136.2, June 1, 1990

90-1 CPD 517

Procurement

Competitive Negotiation

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

Contracting agency may accept a technically lower rated proposal to take advantage of its lower costs, where agency reasonably decides that cost premium involved in an award to a higher rated, higher cost offeror is not warranted.

Procurement

Competitive Negotiation

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

Contracting agency's cost realism analysis had a reasonable basis where the agency reviewed awardee's responses to agency cost discussions, verified awardee's estimated cost with specialist within the agency and at the Defense Contract Audit Agency, verified awardee's past performance costs under a similar cost reimbursement contract, and awardee was able to demonstrate to agency's satisfaction how it could perform contract at the costs proposed.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Administrative discretion
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

General Accounting Office will review challenges to technical evaluations of proposals to determine whether they were fair and reasonable and consistent with stated evaluation criteria. Protester's mere disagreement with selecting official's conclusion concerning the technical rating of its proposal does not render evaluation unreasonable.

B-238504, June 1, 1990*****90-1 CPD 518**

Procurement

Contractor Qualification

- Approved sources
- ■ Government delays

Protest that agency took an unreasonable amount of time to qualify protester's transmitters is denied where the record shows that the agency continually evaluated the protester's submissions but the transmitters never passed all required qualification tests.

B-238583, B-238584, June 1, 1990**90-1 CPD 519**

Procurement

Contractor Qualification

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

The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible bad faith or fraud or misapplication of definitive responsibility criteria.

Procurement

Competitive Negotiation

- Offers
 - ■ Quantities
 - ■ ■ Multiple/aggregate awards
-

Procurement

Competitive Negotiation

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

Protest is denied where protester has not shown that the agency's decision, based on the solicitation's stated evaluation criteria, not to award a split contract for a total of 100 x-ray security screening systems between protester and another firm was unreasonable.

Procurement

Bid Protests

- Fraud
- ■ Investigation
- ■ ■ Administrative proceedings

Protest is dismissed where allegation that proposed sole-source award for jet engine modification kits is improper is under review by the agency's Inspector General and where agency has not yet executed justification and approval for sole-source award, subject to the protester's right to reinstate the protest later.

Procurement

Bid Protests

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

Protest that solicitation should have included an evaluation preference for small disadvantaged business concerns is untimely, since it alleges a solicitation impropriety apparent before bid opening but was not filed before that time.

Procurement

Sealed Bidding

- Bids
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Evaluation of bids based on application of an evaluation preference not provided for by solicitation would be improper.

Procurement

Contractor Qualification

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

Protest that awardee's price is unreasonably low is dismissed as essentially a challenge against contracting officer's affirmative determination of responsibility, which General Accounting Office will not review absent circumstances not present here.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest that award to the low bidder is improper because it is not a small business is without merit where the procurement was not set aside for small business.

Procurement

Payment/Discharge

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

Military Traffic Management Command's Freight Traffic Rules Publication No. 1A precludes a carrier from assessing an additional charge for exclusive use of vehicle service when "per mile per vehicle used" rates apply.

Procurement

Bid Protests

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

Protest concerning the responsiveness of the proposed awardee's bid is dismissed as untimely when filed more than 10 working days after the protester knew the basis of its protest allegation.

Procurement

Contractor Qualification

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

Protest allegation that proposed awardee cannot meet the solicitation requirements concerns the agency's affirmative determination of responsibility, which will not be reviewed by the General Accounting Office except in limited circumstances not present here.

B-238585, June 4, 1990**90-1 CPD 529**

Procurement

Competitive Negotiation

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

Award to the higher priced, higher rated offeror is proper where the solicitation provides that award could be made to other than the lowest priced offeror and that the rating for non-cost factors was more important than cost, and the agency reasonably determined that the 26 percent difference between the awardee's and the protester's ratings outweighed any possible cost savings to the government.

Procurement

Contractor Qualification

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

Award of a contract to a firm which has engineering, production, and fabrication capabilities to conduct an engineering shortfall analysis for an artillery fired atomic projectile and to develop a proposed approach (production and inspection plans) for the fabrication of related hardware (balance beams) does not create an organizational conflict of interest because the fabrication requirement was a sample task for technical evaluation purposes only, the agency does not contemplate any actual fabrication of the hardware, and the agency does not contemplate that work under the contract will lead to future competitive production of the items.

B-238694, B-238694.2, June 4, 1990*****90-1 CPD 530**

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest against award of a small business set-aside contract on the basis of initial proposals is sustained where awardee's proposal was unacceptable as submitted because the proposal failed to in-

clude required resumes and took exception to the mandatory requirement of the RFP to expend, on a small business set-aside solicitation for services, at least 50 percent of the cost of personnel for the successful contractor's own employees.

B-239581, et al., June 4, 1990

Procurement

Bid Protests

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

Protest against rejection of unsolicited proposal is untimely and not for consideration when not filed within 10 working days after protester received letter setting forth basis for rejection of the proposal.

Procurement

Bid Protests

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

Protest against alleged solicitation impropriety apparent on the face of the solicitation is untimely and not for consideration when not filed prior to the closing date for receipt of initial proposals.

B-228785, June 5, 1990

Procurement

Payment/Discharge

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

Complaint that does not include any new evidence or raise legal arguments that were not considered in prior decision generally provides no basis for overturning that decision.

B-238436, B-238436.2, June 5, 1990

90-1 CPD 531**Procurement**

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Significant issue exemptions
- ■ ■ ■ Applicability

Untimely protest allegations that the proposed awardee's bid is materially unbalanced and contained an improper payment term will not be considered under the significant issue exception to the General Accounting Office timeliness rules where these issues are not of widespread significance to the procurement community.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Procurement

Contract Management

- Contract performance
- ■ GAO review

Protest that the proposed awardee will not provide a motorcycle helmet with a face shield, as required, is denied where the proposed awardee unequivocally offered to provide the helmets equipped with face shields in accordance with the requirements of the invitation for bids, and the proposed awardee's descriptive data showed that the offered helmet would be equipped with a face shield.

Procurement

Contractor Qualification

- Licenses
- ■ Applicability

Procurement

Contractor Qualification

- Licenses
- ■ Environmental protection

Proposed awardee satisfied the solicitation requirement for an Environmental Protection Agency certificate of conformity to air emissions standards for its offered motorcycle where the proposed awardee provided the certificate issued to the motorcycle engine manufacturer.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Procuring agency reasonably determined that the proposed awardee's offered D-ring motorcycle helmet retention system satisfied the invitation's requirement for a quick-release chin strap, and the protester's mere disagreement with the agency's determination does not establish that the agency's conclusions lacked a reasonable basis.

B-238046.2, B-238046.3, June 6, 1990**90-1 CPD 532**

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Suspended/debarred contractors

The General Accounting Office will not consider a protest against an award from a firm that was suspended from contracting with the government on bid opening date since the firm is ineligible for a contract award and, therefore, is not an interested party.

Procurement

Sealed Bidding

- Suspended/debarred contractors
- ■ Bids
- ■ ■ Rejection
- ■ ■ ■ Propriety

A bid received from a firm which at the time of bid opening is suspended from contracting with the government, may not be considered for award even if the suspension is no longer in effect at the time of award.

B-238468, June 6, 1990*****90-1 CPD 533**

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Bids
- ■ ■ ■ Price disclosure

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Propriety

Where two of 42 bids submitted are prematurely opened and publicly exposed, the improper exposure does not warrant restricting consideration for award to the two opened bids since other bidders would thereby be prejudiced. Under the circumstances, agency reasonably determined to cancel the invitation for bids.

B-239360, June 6, 1990**90-1 CPD 534**

Procurement

Sealed Bidding

- Bids
- ■ Errors
- ■ ■ Error substantiation

Responsive bid must be rejected and may not be changed or corrected based on explanations offered by the bidder after bid opening.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

Where a bid offers a minimum bid acceptance period of 90 days in response to a sealed bid solicitation requiring 120 days, the bid is nonresponsive and may not be corrected after bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protest is dismissed where protester does not identify itself as representing any bidder under the solicitation or otherwise explain its interest, and no bid was submitted in the protester's name.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Procurement

Bid Protests

- Forum election
- ■ Finality

Protest that does not set forth detailed basis of protest because its bases arise from material made available to protester pursuant to discovery procedures under a protective order at the General Services Administration Board of Contract Appeals prior to Board's dismissal of protest for lack of jurisdiction is dismissed because General Accounting Office and agency cannot sufficiently respond to protest and permitting a protest under such circumstances would encourage inappropriate protest filings with the Board.

Procurement

Bid Protests

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

Protest against award to lower-priced offeror is untimely when not filed within 10 working days after protester received written and oral notification of awardee's prices and basis of award; request for debriefing in order to determine exact nature of contracting officer's alleged error does not toll running of 10-day timeliness period.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Post-bid opening modification
- ■ ■ Propriety

Submission of a bid bond in an insufficient penal amount renders the bid nonresponsive and the defect may not be corrected after bid opening.

Procurement

Bid Protests

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

Protest challenging agency's rejection of protester's proposal is untimely where filed more than 10 days after protester was notified of rejection.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Socio-Economic Policies

- Small businesses
- ■ Contract awards
- ■ ■ Non-responsible contractors
- ■ ■ ■ Competency certification

In awarding a subcontract for the Department of Energy, a private management and operating contractor is not required to submit a nonresponsibility determination to the Small Business Administration for certificate of competency consideration.

Procurement

Bid Protests

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

Where protest that agency improperly rejected protester's proposal as late is not filed with the procuring agency or General Accounting Office until more than 10 working days after the protester received notice of the rejection, it is dismissed as untimely.

Procurement

Bid Protests

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

Protest is dismissed as untimely where protester failed to diligently pursue its grounds of protest by waiting 11 weeks to request information about a contract award.

Procurement

Bid Protests

- **Information submission**
- ■ **Delays**
- ■ ■ **Information sources**

Protester unreasonably relied on the bid protest process to provide information concerning protest grounds which were not before the General Accounting Office.

B-238490, et al., June 8, 1990***

90-1 CPD 543

Procurement

Competitive Negotiation

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

Agency decision to procure airfield paint and rubber removal and restriping services under one contract is not objectionable where agency reasonably anticipates that combining these services under one contract will reduce scheduling difficulties that significantly delayed performance and increased costs in prior procurements where the services were procured under separate contracts.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Multiple/aggregate awards**
- ■ ■ ■ **Best-buy analysis**

Agency decision to procure airfield paint and rubber removal and restriping services under one contract is not objectionable where agency reasonably anticipates that combining these services under one contract will reduce scheduling difficulties that significantly delayed performance and increased costs in prior procurements where the services were procured under separate contracts.

Procurement

Specifications

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

Requirement for regional contracts for paint and rubber removal and restriping of airfields which include up to 34 airfields in a single contract award unduly restricts competition where record does not establish that the requirement meets a legitimate need of the agency.

B-238646, June 8, 1990

90-1 CPD 544

Procurement

Competitive Negotiation

- **Bonds**
- ■ **Justification**

Performance bond requirement is unobjectionable where agency determines bond is necessary to assure continuous operation of process of excavation and incineration of contaminated soils, the interruption of which may result in contamination of surrounding area, and substantial progress payments will be made prior to completion of performance.

Procurement

Sealed Bidding

- Bids
- ■ Evaluation
- ■ ■ Price reasonableness
- ■ ■ ■ Administrative discretion

Protest that contracting agency made awards at excessive prices is denied where the agency determined the prices to be reasonable after comparing prices, considering the procurement history, and considering market conditions, and the protester has not demonstrated that the agency's determination was unreasonable.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ GAO review

The General Accounting Office will not review a contracting agency's determinations that a small business is nonresponsible or the agency's subsequent assessment of allegedly new information regarding the firm's responsibility, where the protester had the opportunity to present this information before the Small Business Administration under the certificate of competency program, but failed to do so.

B-237742.2, June 11, 1990

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office will not consider new arguments raised by agency in request for reconsideration where those arguments are derived from information available during initial consideration of protest but not argued, or from information available but not submitted during initial protest, since parties that withhold or fail to submit all relevant evidence, information, or analyses for our initial consideration do so at their own peril.

B-239037, June 11, 1990

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Under General Accounting Office (GAO) Bid Protest Regulations, where a protest is initially filed with the contracting agency, a subsequent protest to GAO must be filed within 10 working days after the protester learns of the initial adverse agency action.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ GAO review

Protest of awardee's small business size determination by the Small Business Administration (SBA) is not for consideration by the General Accounting Office, since the SBA is vested with conclusive authority over this matter.

B-238522, B-238522.2, June 12, 1990***

90-1 CPD 548

Procurement

Bid Protests

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

Arguments that agency should have considered building lease offer that included utilities, that solicitation should have contained preference for a central business district location, and should have provided for Brooks Act evaluation procedures are untimely since these matters are alleged solicitation improprieties and protest was not filed until after award.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Since letters to agency from awardee concerned only matters of responsibility and not the acceptability of the awardee's proposal, letters did not constitute discussions.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cost evaluation
- ■ ■ Evaluation criteria
- ■ ■ ■ Applicability

General Accounting Office will review an agency's evaluation of the probable cost of a proposed lease to ensure that it has a reasonable basis and is consistent with stated evaluation criteria. While protester questions just about every aspect of agency's cost evaluation, including the cost of moving, utilities and parking, there is nothing in the record which shows that the evaluation did not have a reasonable basis or was inconsistent with the solicitation's evaluation criteria.

Procurement

Contractor Qualification

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

Allegations that awardee of building lease contract cannot construct building in time for delivery date and that awardee has performed poorly on other contracts concern the awardee's ability to fulfill its contract obligations and thus relate to its responsibility. Agency's award of contract included an affirmative determination of responsibility which General Accounting Office will not

challenge absent fraud or bad faith on the part of contracting officials or the failure to apply definitive responsibility criteria.

Procurement

Contractor Qualification

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

Information relating to offeror's ability to perform contract is a matter of responsibility and, even though solicitation required submission of information with proposals, requirements that relate to responsibility may be satisfied any time prior to award.

B-238756, June 12, 1990

90-1 CPD 549

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Preferred products/services**
- ■ ■ **Certification**

A bid on a total small business set-aside, indicating that not all end items to be furnished would be manufactured or produced by small business concerns, properly was rejected by the agency as non-responsive.

Completion of plant and equipment schedule does not cure erroneous certification that not all end items will be manufactured or produced by a small business since schedule relates to responsibility, not responsiveness, of bidder and at best creates ambiguity as to bidder's intent.

B-238844, June 12, 1990***

90-1 CPD 550

Procurement

Bid Protests

- **GAO authority**

Protest concerning request for carriers' rate tenders falls outside of General Accounting Office's bid protest jurisdiction, where transportation services will be obtained through the issuance of a government bill of lading pursuant to a tender for a one-time routing under relatively informal agency procedures.

B-239845, June 12, 1990

90-1 CPD 551

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **State/local government**

Protest of award to state government entity is without merit where solicitation is issued on unrestricted basis; there is no requirement that the government equalize the competitive position of all offerors unless the advantage is the result of unfair action by the government.

Procurement

Contractor Qualification

- Responsibility
- ■ Information
- ■ ■ Submission time periods

Information bearing on bidder responsibility may be provided any time prior to award.

Procurement

Sealed Bidding

- All-or-none bids
- ■ Responsiveness

Where a contract was to be awarded on an "all or none" basis and the low bidder offered to perform all of the work described in two line items for a single, lump-sum price, the low bid is responsive, and the agency could properly waive as a minor informality the bidder's failure to individually price each line item.

B-238527, June 13, 1990

Procurement

Bid Protests

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

A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. Once an offeror is properly found to be outside of the competitive range, it is not an interested party to protest the qualifications of another offeror which was included in the competitive range.

Procurement

Competitive Negotiation

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

Technically acceptable proposal which was reasonably evaluated as significantly inferior relative to those included in the competitive range was properly excluded from the competitive range where the contracting agency determined that the proposal did not have a reasonable chance of being selected for award.

B-238542, June 13, 1990

Procurement

Competitive Negotiation

- Pre-proposal conferences
- ■ Administrative discretion

Failure to conduct a preproposal conference is not improper since preproposal conferences are held at the discretion of the contracting officer and where, as here, all questions from offerors were compiled, answered, and distributed as an amendment to the solicitation.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Liquidated damages
- ■ ■ ■ Propriety

Liquidated damages rates are not improper just because they are based on the labor rate of a government employee who will not actually perform the inadequately performed services where such rates reasonably reflect the measure of damages.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Risks

General Accounting Office denies protest that an unreasonable financial risk is posed by clause in solicitation for embassy guard services which provides for price adjustments where the contractor's costs are changed as a result of laws enacted by the host government—typically, increases in the minimum wage—where clause is not ambiguous or arbitrary or creates a risk an offeror may not be expected to assume in pricing its proposal.

Procurement

Payment/Discharge

- Payment time periods
- ■ Government delays
- ■ ■ Interest

The application of the Prompt Payment Act to an overseas contract is not unreasonable on basis that the applicable interest rate is based on the U.S. Treasury rate which may not reflect the rate of inflation in the foreign country because the Act requires every federal agency to pay an interest penalty on amounts owed to contractors when the agency fails to pay within 30 days from receipt of invoice and establishes the interest penalty by statute.

B-238590, June 13, 1990

90-1 CPD 554

Procurement

Contractor Qualification

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

The submission and acceptance of below cost bids are not legally objectionable. Whether the low-priced bidder can meet the contract requirements in light of its bid price concerns the agency's affirmative responsibility determination which the General Accounting Office generally does not review.

Procurement

Socio-Economic Policies

- Preferred products services
- ■ Domestic products
- ■ ■ Compliance

Drilling machine accessories required for the machine to meet solicitation's operational and performance requirements may properly be considered in determining whether the cost of the components of the machine manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.

An agency's evaluation of a product as domestically manufactured will not be disturbed where a foreign manufactured base machine is transformed into a finished drilling machine by a domestic manufacturer who installs domestically manufactured components and the domestic components constitute more than 50 percent of the cost of all its components.

B-238633, June 13, 1990

90-1 CPD 555

Procurement

Small Purchase Method

- Competition
- ■ Use
- ■ ■ Criteria

The General Accounting Office will not disturb an agency determination as to the best method for satisfying its needs, absent a clear showing that this determination was unreasonable.

Procurement

Small Purchase Method

- Requests for quotations
- ■ Mandatory contract terms

A procuring agency is not required to use mandatory specifications and standards when procuring an item under the small purchase procedures of the Federal Acquisition Regulation.

B-238744, June 13, 1990

90-1 CPD 556

Procurement

Sealed Bidding

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

Contracting agency properly accepted low bid that failed to acknowledge solicitation amendments making changes that either had only a minimal impact on cost or merely clarified requirements already contained in the solicitation.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

An ambiguity as to the low bidder's intended price does not render the bid nonresponsive or otherwise unacceptable when the bid would be low by a significant margin under the least favorable interpretation. The intended price may be verified after bid opening.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

A bid is not materially unbalanced where it is clear that an award based on the bid will result in the lowest cost to the government and where no advance payments will result from the bidder's pricing.

Procurement

Competitive Negotiation

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

Protests challenging cancellation of four related solicitations, each of which was to be awarded to a different offeror as part of a plan to decentralize certain building maintenance services, is sustained since the record does not provide a reasonable basis for cancellation of the four solicitations.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Contract awards
- ■ ■ Non-responsible contractors
- ■ ■ ■ Competency certification

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Reconsideration request is denied where the protester essentially reiterates arguments made in initial protest and presents no evidence that prior decision was based on factual or legal errors.

Procurement

Bid Protests

- GAO authority
-

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision dismissing protest for lack of jurisdiction is affirmed where protest does not involve the procurement of property or services within the scope of the bid protest provisions of the Competition in Contracting Act of 1984.

Procurement

Bid Protests

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

Protest challenging issuance of solicitation—on basis that an implied contract already existed for the same services—is dismissed as untimely where filed after the closing date for receipt of proposals.

Procurement

Bid Protests

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

Protest challenging the manner in which procurement was handled is dismissed as untimely where filed more than 10 working days after the bases of protest were known or should have been known.

Procurement

Competitive Negotiation

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

Protest that agency overlooked alleged staffing inadequacies in the awardee's proposal and thus insufficiently downgraded the proposal is denied where the agency's evaluation was reasonable and consistent with the solicitation, which did not specify any minimum acceptable staff size.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Technical equality
- ■ ■ ■ Cost savings

Where proposals are found technically equal, cost or price properly may become the determinative factor in making an award.

Procurement

Competitive Negotiation

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

Contracting agency properly downgraded proposal on the basis that the proposal did not describe health and/or fitness activities other than those listed in the solicitation, where the solicitation advised quoters that proposal should address the activities listed in the solicitation as well as other activities which offerors considered essential to an effective fitness program.

Procurement

Contract Management

- Contract administration
- ■ GAO review

Protest that awardee is not conforming with solicitation requirement for teaching aerobics for specified period per week is dismissed because it concerns an issue of contract administration which is not for resolution under the General Accounting Office's Bid Protest Regulations.

B-238690.2, June 14, 1990***

90-1 CPD 562

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Pending protests

Protest that contracting agency improperly continued negotiations with offerors under a request for quotations after the protester's initial protest was filed is denied, since General Accounting Office (GAO) Bid Protest Regulations do not require cessation of negotiations during the pendency of a protest; rather, the agency is only required to withhold contract award where notice of a protest is received from GAO prior to award, and to suspend contract performance where the agency receives GAO notice of a protest within 10 days of the contract award date.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Amendments**
- ■ ■ **Notification**
- ■ ■ ■ **Contractors**

Protest that contracting agency improperly failed to provide the protester with a copy of an amendment that removed a protested certification requirement from the solicitation is denied since the protester was no longer in the competitive range when the amendment was issued.

B-238705, June 14, 1990***

90-1 CPD 563

Procurement

Government Property Sales

- **Bids**
- ■ **Error correction**
- ■ ■ **High bid displacement**
- ■ ■ ■ **Propriety**

Where a bidder on a sale designates a unit price per gross ton on an item requiring a unit price per pound and the only reasonable explanation for this discrepancy is that the bidder intended to bid on another specific item in the solicitation, the bid may be corrected, even though correction will displace the high bidder, since the nature of the mistake and the intended bid are ascertainable from the face of the bid.

B-238706.2, June 14, 1990

90-1 CPD 564

Procurement

Contract Management

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

Protest that awardee's offer is not responsive and awardee is not responsible because it will not provide a new item under the awarded contract is dismissed because the question of whether the contractor will perform pursuant to the contract is a matter of contract administration and not for consideration under the General Accounting Office's bid protest function.

Procurement

Contractor Qualification

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

Protest of contract award to an offeror which indicates in the solicitation's Walsh-Healey Public Contracts Act certification, 41 U.S.C. §§ 35-45 (1988), that it is not a manufacturer and which fails to certify that it is a regular dealer within the meaning of the Act, is denied where contracting agency determines, prior to contract award, that the offeror is a regular dealer of the required item, since the certification involves a matter of responsibility which may be determined any time before award.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Supply contracts
- ■ ■ Manufacturers/dealers
- ■ ■ ■ Determination

General Accounting Office does not review challenges to the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1988), because by law this matter is to be decided by the contracting agency in the first instance, subject to review by the Small Business Administration, when a small business is involved, and the Secretary of Labor.

B-238754, June 14, 1990

90-1 CPD 565

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Technical equality
- ■ ■ ■ Cost savings

Contracting agency may properly decide in favor of lower cost proposal which it reasonably found to be technically acceptable where the protester's proposal and awardee's lower cost proposal for computer maintenance services were reasonably determined to offer essentially equal technical competence.

B-238777, June 14, 1990

90-1 CPD 566

Procurement

Competitive Negotiation

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

Where the solicitation states that proposed price is more important than technical evaluation factors for source selection purposes but also clearly provides for evaluation of technical factors, there is nothing improper in the selection of a higher-priced offeror when the agency reasonably determines that the selected firm's evidenced technical superiority offsets the price premium associated with its offer.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of the proposal that received less than the maximum possible score. It is not the agency's responsibility to help a firm whose proposal, although acceptable, simply is not the best one in the competition to bring the proposal up to the level of other higher ranked proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Where protester's corporate resources and experience and quality control plan are evaluated in part using information obtained by the agency through contact of protester-furnished references, agency is not required to permit protester to rebut that information since it is historical in nature, and protester thus is unlikely to be able to make a significant contribution to its interpretation.

B-238976.2, June 14, 1990

90-1 CPD 567

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ Negative determination

Prior dismissal of a small business protest against contracting officer's nonresponsibility determination is affirmed where the matter was referred to the Small Business Administration which has conclusive authority to determine a small business's responsibility by issuing or refusing to issue a certificate of competency.

B-237618.3, June 15, 1990

90-1 CPD 568

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office Bid Protest Regulations do not permit a piecemeal presentation of evidence, information, or analysis. Where protester presents no evidence that the information on which it bases its reconsideration request could not have been presented prior to the closing of the original protest record, the request for reconsideration is dismissed.

B-239863, June 18, 1990

90-1 CPD 569

Procurement

Competitive Negotiation

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

Proposal delivered by Federal Express to agency 6 hours before time established for receipt of proposals but not routed to contracting office until after time set for receipt of proposals was properly rejected as late where envelope did not contain the proper address nor the solicitation number and time specified for receipt of proposals as required by solicitation. Lack of identification markings and proper address rather than agency mishandling was paramount cause of late delivery.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

Where invitation for bids (IFB) contemplates award of a firm, fixed-price contract for disposal of hazardous and nonhazardous waste and bid includes extra charge not contemplated by the IFB, which renders the total price of the bid uncertain and conditions the bidder's obligation to perform, the bid is nonresponsive and cannot form the basis for award.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Approved sources
- ■ ■ ■ Technical acceptability

Agency reasonably determined that bulk fuel foam offered as an alternate for an approved source product was technically acceptable where the agency subjected the alternate product to the tests specified in the solicitation and the test results demonstrated that the product satisfied the solicitation requirements.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of initial decision is denied where protester fails to specify any factual or legal basis warranting reversal or modification of initial decision.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

Allegation of bias in evaluation of firm's proposal is denied where the record shows the agency reasonably downgraded firm's proposal, consistent with evaluation factors, for serious weaknesses regarding the building proposed for lease to the agency.

Procurement

Socio-Economic Policies**■ Small business set-asides****■ ■ Use****■ ■ ■ Administrative discretion**

Contracting officer did not abuse her discretion by issuing an unrestricted solicitation for procurement of vehicle operation and maintenance services which had previously been acquired under a small business set-aside where the contracting officer's knowledge of the market and the procurement history did not support an expectation that proposals would be received from at least two responsible small business firms, and where the scope of the services being obtained has substantially increased since the prior set-aside procurement.

Procurement

Bid Protests**■ GAO procedures****■ ■ Interested parties****■ ■ ■ Direct interest standards**

Third low offeror is not an interested party to question low firm's eligibility for award since it would not be in line for award even if the issue were resolved in its favor.

Procurement

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

Protest which was filed with the General Accounting Office more than 10 working days after protester received notice of contracting agency's denial of earlier, identical protest is untimely filed and will not be considered.

Procurement

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

Protest allegation that agency solicited in bad faith a proposal for extension of firm's contract, filed five months after basis of protest was known, is untimely.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

On reconsideration, General Accounting Office has no basis to change corrective action recommendation that options not be exercised to a recommendation that the contract be terminated and award made to protester, where record does not show that protester in fact submitted the technically superior proposal and agency has a continuing need for training services which would be interrupted with the termination of the existing contract.

Procurement

Bid Protests

- GAO authority

General Accounting Office will consider protest concerning award of campground concessionaire special use permits for the operation and maintenance of Forest Service recreation facilities, since the permits are conditioned on the performance of tasks designed to benefit the government and to further the functions of the Forest Service.

Procurement

Contract Management

- Contract administration
- ■ Options
- ■ ■ Use
- ■ ■ ■ GAO review

Agency is not required to issue special use permits for campground concessionaire operations, where such issuance constitutes the exercise of an option as agencies are not required to exercise options under any circumstances.

Procurement

Competitive Negotiation

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

Award to higher rated, higher priced offeror was proper where price and technical factors were of equal importance and where agency reasonably determined that the technical advantage associated with the proposal was worth the difference in price.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal that receives less than the maximum possible score.

Procurement

Competitive Negotiation

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

Protest that agency evaluated proposals on basis of factors not explicitly stated in solicitation is denied where factors actually used in the evaluation were reasonably related to the stated evaluation criteria.

Procurement

Competitive Negotiation

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

Where the solicitation does not indicate in relative terms the importance of price and technical factors, they are considered approximately equal in weight.

B-238970, June 22, 1990

90-1 CPD 582

Procurement

Sealed Bidding

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

Government mishandling was not the sole or paramount reason for late receipt of a bid which was hand-delivered by commercial carrier to the agency mail room on the morning of the 3 p.m. bid opening date where it does not appear that the outer, Federal Express envelope was marked with any information identifying it as containing a bid and, as a result, the bid was delivered to the bid depository after bid opening by the agency's regular internal mail delivery, rather than by expedited mail delivery; accordingly, the bid was properly rejected as late.

B-238982, June 22, 1990

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination
- ■ ■ ■ Depreciation

Under Army claims regulations, both in compensating a member for an item lost in connection with a change of station move, and in computing the carrier's liability for the loss, the agency should not charge depreciation against the item for a storage period.

Procurement

Payment/Discharge

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

Carrier that transported a service member's goods in connection with a change of station is liable for a bicycle the member reported as missing in a post-delivery notice, even though the form the member signed at delivery had a check mark next to the item's listing that presumably indicated it was delivered. There is no evidence that the member (as opposed to the driver, for example) was the one who annotated the listing, and the military/industry loss or damage agreement specifies that proper post-delivery notice to the carrier overcomes the presumption of the delivery receipt's correctness.

B-239017, June 22, 1990

90-1 CPD 583**Procurement**

Bid Protests

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

Protests of solicitation terms are dismissed as untimely where not filed before bid opening.

Procurement

Contractor Qualification

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

Protest that awardee's price is unreasonably low is dismissed as essentially a challenge against contracting officer's affirmative determination of responsibility.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety

Protest that award based on total price for base year and option years was inconsistent with solicitation is denied where solicitation clearly informed bidders that total base plus option year periods would be basis for award.

Procurement

Contract Management**■ Contract administration****■ ■ GAO review**

Protest that product that awardee intends to furnish does not comply with specification is dismissed where request for proposals did not ask offerors to identify product they intended to supply, but instead requested only prices; by submitting a price, the awardee offered to provide the required product in conformity with the specification and acceptance of its offer obligated it to do so. Whether or not awardee complies with this obligation is a matter of contract administration not for review by the General Accounting Office.

Procurement

Contractor Qualification**■ Responsibility****■ ■ Contracting officer findings****■ ■ ■ Affirmative determination****■ ■ ■ ■ GAO review**

Protest that awardee will be unable to supply an item that meets the solicitation's requirements constitutes a challenge to the agency's affirmative determination of the awardee's responsibility, a matter which the General Accounting Office will not consider absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

Procurement

Socio-Economic Policies**■ Preferred products services****■ ■ Domestic products****■ ■ ■ Compliance**

By certifying under the Buy American Act that it would furnish end products manufactured in Canada that qualified as defense cooperation country end products, the awardee bound itself to furnish either qualifying country end products or domestic end products. Whether awardee complies with certification is a matter of contract administration not for General Accounting Office's consideration.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule****■ ■ ■ ■ Adverse agency actions**

General Accounting Office's timeliness requirements are not tolled by continued pursuit of a protest at the procuring agency after that agency has taken initial adverse action following an agency-level protest.

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Determination criteria
-

Procurement

Sealed Bidding

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

Bid was properly rejected as nonresponsive where bid modification imposed conditions which modified the requirements of the solicitation and limited protester's liability to the government under the contract.

Procurement

Sealed Bidding

- Non-responsive bids
- ■ Post-bid opening periods
- ■ ■ Clarification
- ■ ■ ■ Propriety

A bidder may not be afforded an opportunity after bid opening to explain or clarify its bid so as to make it responsive, since the bidder's intention must be determined from the bid and material available at bid opening.

Procurement

Bid Protests

- Allegation substantiation
 - ■ Burden of proof
-

Procurement

Bid Protests

- Conferences
- ■ Justification

Protest that the General Accounting Office improperly permitted agency to change its position concerning the propriety of its actions is denied where the protester had an opportunity in its conference comments to fully respond to the agency's later position.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Fairness

Protest that protester was denied the right to a full review of its protest because the case was reassigned to an attorney who was not present at the bid protest conference is denied because General Accounting Office protests are decided on the written record and all issues were thoroughly addressed by the protester and the agency in their respective conference comments.

Procurement

Contractor Qualification

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

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Organizational experience

Decision that procuring agency properly considered the manufacturing experience of a parent corporation in finding the awardee, a subsidiary corporation, met definitive responsibility criterion requiring 5 years of manufacturing experience is affirmed where the protester has not demonstrated that the decision is factually or legally erroneous.

B-238655, June 25, 1990

90-1 CPD 588

Procurement

Bid Protests

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

Protests of failure to set aside procurement for small businesses and omission of bond requirements are untimely when not raised prior to the closing date for receipt of proposals.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Speculative allegations regarding rationale behind competitive range decision, unauthorized discussions between the agency and other offerors, and a conflict of interest of an offeror other than the awardee, are insufficient to form the basis of a protest.

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Propriety**
- ■ ■ **Pending protests**

Where an agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for a decision by the General Accounting Office (GAO) on bid protest, and notifies GAO prior to making award, the agency has complied with the Competition in Contracting Act of 1984. GAO does not review the agency's determination.

Procurement

Competitive Negotiation

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

Proposal was properly rejected from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because of deficiencies in areas of mission suitability, a poor rating for relevant experience and past performance, and its low proposed cost was found insufficient to overcome the deficiencies in its proposal.

Procurement

Competitive Negotiation

- **Technical evaluation boards**
- ■ **Qualification**
- ■ ■ **GAO review**

Composition of source evaluation board is within the discretion of the agency, and where protester has not shown fraud, bad faith, conflict of interest, or actual bias, there is no basis to question composition of the panel.

B-238661, June 25, 1990

90-1 CPD 589

Procurement

Competitive Negotiation

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

Agency properly awarded contract to higher-priced technically superior offeror where award on that basis was consistent with solicitation's evaluation criteria and the agency reasonably found that the difference in technical merit outweighed the price difference.

Procurement

Competitive Negotiation

- **Contracting officer duties**
- ■ **Contract award notification**

Agency need not give other offerors pre-award notice of its selection of awardee where solicitation is not a small business set-aside.

Procurement

Sealed Bidding

- Invitations for bids
 - ■ Terms
 - ■ ■ Risks
-

Procurement

Specifications

- Minimum needs standards
- ■ Risk allocation
- ■ ■ Performance specifications

Protest that solicitation for indefinite quantity repair to firing ranges subjects contractor to unreasonable risk due to requirement for aggregate pricing for several ranges, rather than separate prices for each range, is denied where, although estimate of work to be ordered on all ranges is considered reasonably accurate, quantities for each individual range are impossible to estimate due to unpredictability of range use; without accurate estimates, individual range prices would not permit an accurate determination of which bid ultimately would result in the lowest cost to the government.

Procurement

Bid Protests

- Allegation
- ■ Abandonment

Protest allegation that the lowest bidders' method of bidding certain line items without charge or at reduced prices will preclude the agency from enforcing deductive penalties for poor contract performance is considered abandoned, and therefore, dismissed where the protester failed to comment on the agency's report with regard to the issue.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of a decision dismissing an earlier protest as untimely is denied where, despite the protester's new statement that it had earlier advised the agency that the procurement should have been set aside for small and disadvantaged businesses, the record reflects that this was not communicated to the agency or to the General Accounting Office in writing until after bid opening.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest allegation by the third-low bidder that the second-low bid was unbalanced is dismissed as academic where the General Accounting Office has found that the low bid was properly accepted.

Procurement

Sealed Bidding

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

Protest allegation that awardee's bid was unbalanced is denied where, while containing understated prices for some items, the bid did not contain enhanced prices for other items and was, therefore, not mathematically unbalanced.

B-239232.2, June 25, 1990**90-1 CPD 592**

Procurement

Competitive Negotiation

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

Contention that in selecting an awardee the contracting agency was obligated to conduct a comparative evaluation of offers on responsibility-related standards listed in the solicitation is without merit where standards listed could not reasonably be interpreted as proposal evaluation criteria since there is no evidence offerors were required to submit information regarding these standards which, as the solicitation language itself indicated, were to be used in making responsibility determinations.

B-237920.2, June 26, 1990**90-1 CPD 593**

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

An agency's defense of its evaluation of proposals and its award selection decision at a debriefing held in response to an agency-level protest alleging that the agency's evaluation had been improper constitutes initial adverse agency action on the protest such that any subsequent protest to the General Accounting Office must be filed within 10 working days of the debriefing.

B-238783.2, June 26, 1990**90-1 CPD 594**

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Suspended/debarred contractors

Request for reconsideration of decision finding suspended offeror not to be an "interested party" under General Accounting Office's Bid Protest Regulations is denied because even though offeror is appealing suspension the offeror remains ineligible for award until suspension is lifted.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

Protest challenging agency's determination that consideration of cost-sharing arrangement first proposed by protester in its best and final offer (BAFO) required reopening discussions to determine the extent of rights in technical data the government would receive under protester's BAFO, is sustained on reconsideration since, under Department of Defense Federal Acquisition Regulation Supplement § 227.472-3(a)(1)(ii), the government would receive unlimited data rights even under protester's proposed cost-sharing arrangement and the agency did not establish a reason why reopening discussions was required in order to consider protester's BAFO.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Ambiguous specifications

Contracting officer reasonably exercised her discretion in deciding to cancel invitation for bids after bid opening where specification was at best ambiguous and failed to reflect minimum needs of agency.

Procurement

Competitive Negotiation

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

Protest against award to higher cost, higher technically-rated offeror is denied where the solicitation evaluation scheme gave greater weight to technical merit than to cost, and the contracting officer reasonably concluded that protester's lower proposed cost did not outweigh the technical advantages demonstrated in the awardee's higher-cost proposal.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

In a negotiated procurement, the requirement to conduct discussions with offerors in the competitive range does not obligate the agency to identify every aspect of a technically acceptable proposal that receives less than a maximum score.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Resolicitation

Where the agency terminated an improper aggregate award of all line items to a firm under a total small business set-aside and determined it would resolicit for certain line items on an unrestricted basis instead of awarding these line items on the basis of multiple awards to the respective low bidder for each line item under the original solicitation, protest is sustained where the agency's reason for canceling and resoliciting is not compelling.

Procurement

Bid Protests

- GAO procedures
- ■ Duplicate submission

General Accounting Office denies protest concerning the acceptability of bulk fuel foam offered as an alternate for an approved source where the identical issue was resolved in a recent and previous protest involving the same agency and the same parties.

Procurement

Bid Protests

- GAO authority

The General Accounting Office has no authority to consider, let alone issue, a stay of a reprocurement pending the outcome of the protester's appeal of a termination of default of its original contract.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Administrative determination
- ■ ■ ■ GAO review

The General Accounting Office has no authority to consider, let alone issue, a stay of a reprocurement pending the outcome of the protester's appeal of a termination of default of its original contract.

ted States
General Accounting Office
Washington, D.C. 20548

Special Fourth Class Rate
Postage & Fees Paid
GAO

Business
for Private Use \$300

Permit No. G100

Postage Correction Requested