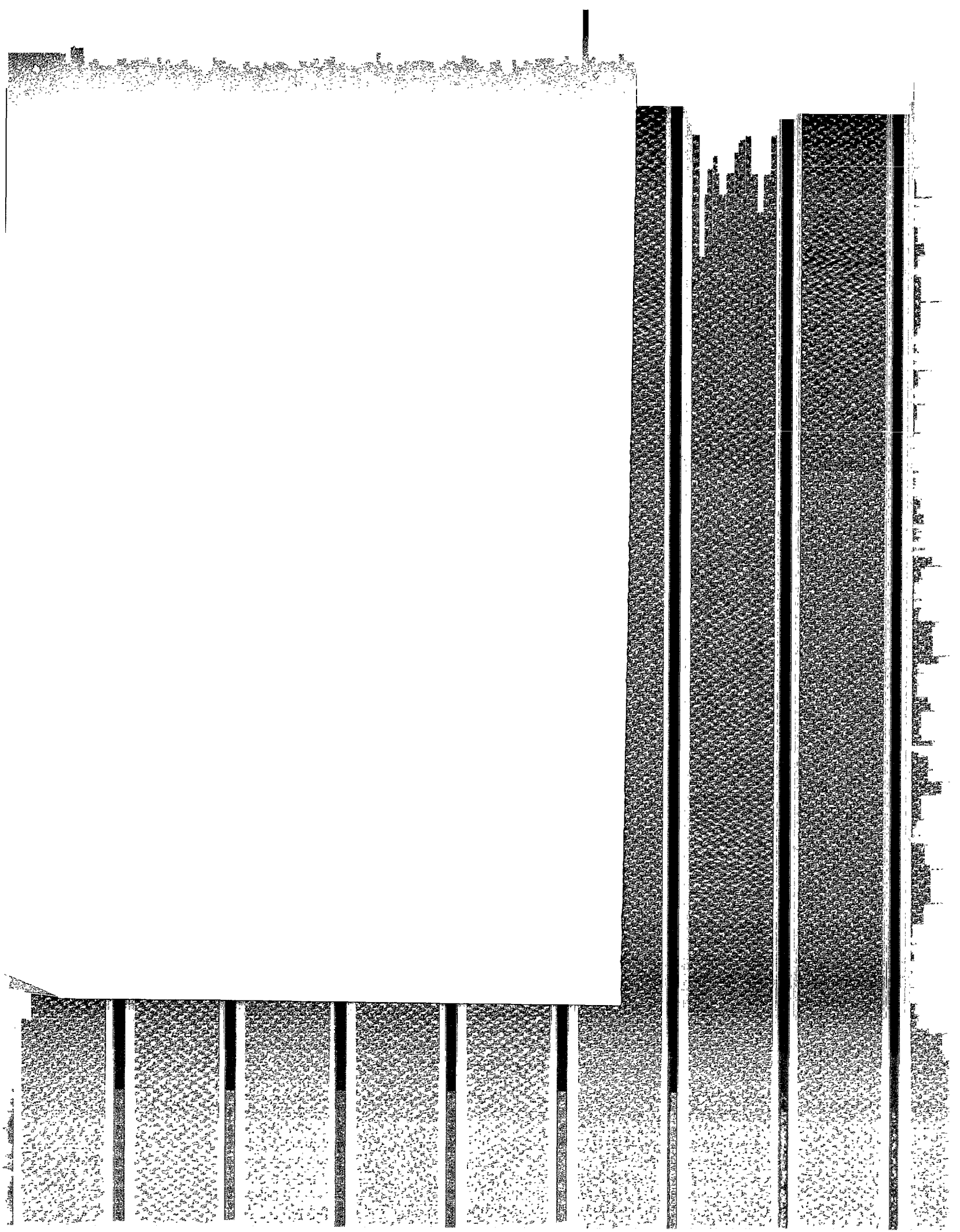


GAO

Office of General Counsel



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



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

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Preface

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

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Appropriations/Financial Management

B-192567.3, August 1, 1990

Appropriations/Financial Management

Accountable Officers

- Illegal/improper payments
- ■ Liability restrictions
- ■ ■ Compromises

An agency's agreement with an accountable officer to settle adverse personnel action has no effect on the accountable officer's liability to the United States in the amount of the loss and does not restrict the agency's authority to recover that amount from the accountable officer by taking appropriate collection action.

Appropriations/Financial Management

Accountable Officers

- Liability
- ■ Statutes of limitation
- ■ ■ Effective dates
- ■ ■ ■ Illegal/improper payments

In the absence of any indication in the statute or its legislative history to the contrary, a statute governing government employees applies to former employees who fell within its scope during employment. Therefore, Department of Treasury's authority under 26 U.S.C. § 7803(c) (1988) to recover amounts collected by an employee in connection with the internal revenue laws for which the employee has failed to account does not lapse once the employee leaves Treasury employment. No statute of limitations applies to an action against an accountable officer under Internal Revenue Code section 7803(c).

Appropriations/Financial Management

Accountable Officers

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

This Office will reverse a prior decision denying an accountable officer relief where the prior decision was based on a material error of fact or law. An accountable officer's good faith and lack of willful intent to disregard established procedures do not preclude a finding of negligence and, thus, provide this Office with no basis on which to reverse a previous denial of relief.

B-236549, August 13, 1990***

Appropriations/Financial Management

Federal Assistance

- Grant recipients
- ■ Advances
- ■ ■ Interest

In the Urgent Supplemental Appropriations Act, Pub. L. No. 99-349, 100 Stat. 710, 725 (1986), which directed that Syracuse University receive a research grant, Congress did not evidence a clear intent that the University have the benefit of interest earned on grant funds. The general rule therefore applies that interest earned by a grantee on funds advanced by the United States belongs to the United States rather than the grantee and must be paid to the United States. *See* 42 Comp. Gen. 289, 293 (1962).

Appropriations/Financial Management

Federal Assistance

- Grants
- ■ Interest
- ■ ■ Computation

In absence of evidence documenting actual interest earned, Navy properly computed interest by using the 6-month Treasury rate provided in 4 C.F.R. § 102.13(c) (1989). *See* 31 U.S.C. § 3717 (1982).

B-239520, August 16, 1990***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Appropriation restrictions
- ■ ■ Leasehold improvement

The Federal Aviation Administration may award a contract for permanent improvements to a leasehold because Congress has specifically appropriated money for the alterations. The appropriation is thus available despite the policy prohibition against government improvements to privately owned property.

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Contracts

The Federal Aviation Administration may award a contract for permanent improvements to a leasehold because Congress has specifically appropriated money for the alterations. The appropriation is thus available despite the policy prohibition against government improvements to privately owned property.

B-235458, August 23, 1990

Appropriations/Financial Management

Accountable Officers

■ Cashiers

■ ■ Relief

■ ■ ■ Physical losses

■ ■ ■ ■ Theft

Under the provision of 31 U.S.C. § 3527(a), we grant relief from liability for a loss of \$28,960 to a Veterans Administration (VA) Medical Center Alternate Agent Cashier. The loss resulted from a robbery by an unknown assailant. The FBI determined that the Alternate Agent Cashier was not implicated in the robbery and the agency head concluded he was carrying out his duties and was not at fault at the time of the incident.

B-235887, August 30, 1990

Appropriations/Financial Management

Claims Against Government

■ Statutes of limitation

A federal employee who retired in 1987, seeks reimbursement for annual leave not credited him in 1968 when he transferred from the Panama Canal Company to the Atomic Energy Commission. A claim for undercredit of annual leave is a continuing claim and, if not credited during the employee's period of service, eventually merges into a claim for payment of its lump-sum value upon separation from federal service. The employee was separated by reduction in force on September 28, 1981, and received a lump-sum payment for annual leave. Thus, any claim he had for a prior undercredit of annual leave merged into a claim for a lump-sum payment that accrued on that date. Since the claim was not received here until June 16, 1989, more than 6 years after it accrued, the claim is barred from consideration under 31 U.S.C. § 3702(b) (1988) and may not be paid.

Civilian Personnel

B-238372, August 1, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Finance charges

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-238537, August 1, 1990

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Amount determination
- ■ ■ Part-time employment
- ■ ■ ■ Work schedules

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-238623, August 1, 1990

Civilian Personnel

Travel

- Temporary duty
 - ■ Determination
-

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem
- ■ ■ Eligibility

Whether an assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders under which the assignment is made, the character of the assignment, its duration, and the nature of the duties. Thus, an employee's 18-month assignment meets the criteria for designation as temporary duty, so as to entitle him to reimbursement of per diem, where his initial assignment was for 120 days, with several 120-day extensions, and when he had varying short-term duty assignments of the type normally associated with temporary duty assignments.

B-240095, August 1, 1990

Civilian Personnel

Travel

- Temporary duty
- ■ Travel 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-220542.12, August 2, 1990***

Civilian Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

The Department of Health and Human Services, Region VI, maintains airline frequent flyer accounts for its employees who travel on official government business. Since GSA regulations do not provide for a system in which the agency may return these materials to employees and employees have no property rights in the materials, the accounts may not be returned to employees upon separation or retirement even if the agency determines it has no use for the benefits.

B-238653, August 2, 1990

Civilian Personnel

Compensation

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

Waiver of overpayment of salary is granted to an employee who accepted a position at a lower rate of pay and continued to receive the higher pay of her prior position. There is no indication that the employee was at fault where she questioned her pay and was led to believe that she was entitled to retained pay.

B-238725, August 14, 1990

Civilian Personnel

Compensation

- Training expenses
- ■ Reimbursement
- ■ ■ Breach of service agreements

An employee who resigned from her position after receiving training in a non-government facility but prior to completing her service obligation mandated by 5 U.S.C. § 4108(a) (1988), is obligated to repay the government a proportional amount of the training expenses as required by statute and regulation. Furthermore, there is no indication in the record that the agency was arbitrary or capricious in denying the employee's request for waiver of the training expenses under the provisions of 5 U.S.C. § 4108(c) (1988). However, due to ambiguity in the employee's written service agreement, her service obligation should be limited to the minimum time required by law.

B-227411.2, August 21, 1990

Civilian Personnel

Compensation

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

Foreign Service Nationals employed by the United States in foreign areas pursuant to local labor agreements are considered employees for the purposes of the waiver statute, 5 U.S.C. § 5584 (1988). Waiver of erroneous overpayments of night differential pay is granted where all the qualifications for waiver have been met and the employees were unaware of any error in the payments prior to our decision, *VOA Relay Station, Antigua*, B-227411, May 19, 1988.

B-232657, August 22, 1990

Civilian Personnel

Travel

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Experts/consultants

An intermittent consultant, while traveling, may not be paid for lodging in a condominium which the consultant owns and holds as rental property, leased to a corporation of which he is president, absent clear and convincing evidence that the consultant incurred expenses in addition to ownership lodging expenses

B-238129, August 22, 1990

Civilian Personnel

Compensation

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

Civilian Personnel

Leaves of Absence

- Annual leave
- ■ Computation errors
- ■ ■ Error correction
- ■ ■ ■ Unused leave balances

Due to the Smithsonian Institution's error in calculating one of its General Schedule employee's service computation date, the number of hours of leave that the employee accrued each pay period was overstated and, thus, the employee's annual leave account was overcredited. While we have not decided whether the Smithsonian is an agency within the meaning of the waiver statute, 5 U.S.C. § 5584, since there was a positive balance remaining in the employee's leave account for each year after the agency adjusted her account to correct the error, the overcredit of leave does not amount to an overpayment of pay which may be considered for waiver.

B-239155, August 24, 1990

Civilian Personnel

Relocation

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

Transferred employee may be reimbursed for only 50 percent of his real estate sales expenses since he and his wife held title jointly with her in-laws who had provided downpayment for house and were not members of his immediate family *Thomas A. Fournier*, B-217825, Aug 2, 1985, *distinguished*.

B-238304, August 27, 1990***

Civilian Personnel

Compensation

- Compensation retention
- ■ Eligibility

A former Postal Service employee claims grade and pay retention as a result of his transfer to the Air Force. The grade and pay retention provisions in 5 U.S.C §§ 5362 and 5363 do not apply to an employee transferring from the Postal Service to a covered agency. Hence, the claim is denied.

B-231061.3, August 28, 1990

Civilian Personnel

Compensation

- Compensation retention
- ■ Eligibility

A grade GS-12 employee of the Air Force stationed overseas was subject to a reduction in force, refused a grade GS-9 position, and chose to go on discontinued service retirement. Approximately 6 months later, he accepted a grade GS-9 position with the Department of the Army in the same area. Since the employee did not have a right to reemployment or restoration, we agree with an earlier Office of Personnel Management determination that the employee's discontinued service retirement constituted a break in service and that he is not entitled to grade and pay retention. *John T. Zervas*, B-231061, Jan. 26, 1989, reversed in part

Civilian Personnel

Relocation

- Overseas personnel
- ■ Quarters allowances
- ■ ■ Amount determination
- ■ ■ ■ Administrative discretion

Employee was denied quarters allowance on the basis that he was a local hire. The issue is remanded to the agency to make a factual determination in accordance with its regulations as to employee's actual residence in order to determine if he was a local hire. Erroneous payments, if any, may be considered for waiver under 5 U.S.C. §§ 5584, 5922(b).

B-237542, August 28, 1990

Civilian Personnel

Relocation

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

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-238093, August 28, 1990

Civilian Personnel

Travel

- Lodging
- ■ Expenses
- ■ ■ Noncommercial lodging

Civilian employee of Department of Defense, on temporary duty, may be reimbursed cost of non-commercial lodging provided by a stranger in his home provided the employee shows that the costs were paid and the agency determines that such costs were reasonable under the circumstances. The applicable regulation, C4552-2n, Joint Travel Regulations, Vol. 2, prohibiting reimbursement of lodging expenses when an employee obtains lodging from friends or relatives is not applicable to this claim.

B-238729, August 29, 1990

Civilian Personnel

Compensation

- Severance pay
- ■ Amount determination
- ■ ■ Computation

Plain meaning of the wording of 5 C.F.R. § 550.704(b)(2) (1990) is that in computing severance pay the agency shall credit the employee with each full year of creditable civilian service and with 25 percent of a year for each 3 months of creditable civilian service that exceeds 1 or more full years. Claimant contends that this regulation entitles him to a quarter-of-a-year credit for each of his 20 years of service. Claimant's interpretation is clearly mistaken, and his claim for additional severance pay is denied.

B-235887, August 30, 1990

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Statutes of limitation

A federal employee who retired in 1987, seeks reimbursement for annual leave not credited him in 1968 when he transferred from the Panama Canal Company to the Atomic Energy Commission. A claim for undercredit of annual leave is a continuing claim and, if not credited during the employee's period of service, eventually merges into a claim for payment of its lump-sum value upon separation from federal service. The employee was separated by reduction in force on September 28, 1981, and received a lump-sum payment for annual leave. Thus, any claim he had for a prior undercredit of annual leave merged into a claim for a lump-sum payment that accrued on that date.

Since the claim was not received here until June 16, 1989, more than 6 years after it accrued, the claim is barred from consideration under 31 U.S.C. § 3702(b) (1988) and may not be paid.

B-240281, August 31, 1990

Civilian Personnel

Travel

■ **Advances**

■ ■ **Overpayments**

■ ■ ■ **Debt collection**

■ ■ ■ ■ **Waiver**

Our Claims Group granted waiver to an Army employee for the amount erroneously advanced to him for per diem. He requests waiver of the expenses he incurred that exceeds the amount advanced and for which there is no statutory entitlement. Since there is no debt owed to the United States as a result of his out-of-pocket expenses, waiver cannot be used as authority to reimburse him for the amount spent in excess of the erroneous travel advance.

Military Personnel

B-238589, August 13, 1990

Military Personnel

Travel

- Commercial carriers
- ■ Travel expenses
- ■ ■ Reimbursement

Service member properly used commercial air carrier to fly from West Germany to the U.S. where the military plane on which he departed had to return because of mechanical difficulties and the member did not have adequate opportunity to make alternate arrangements on another military flight. The member also is entitled to reimbursement at the commercial carrier's coach rate for his flight 3 days later back to West Germany if he had no adequate opportunity to arrange for military transportation, or if no such flights were available

Military Personnel

Travel

- Commercial carriers
- ■ Travel expenses
- ■ ■ Reimbursement

Service member who properly traveled by commercial carrier because military flight was not available, but flew in business class, is entitled to reimbursement only at the coach rate where coach seats were available on the same flight.

B-240221, August 14, 1990

Military Personnel

Pay

- Death gratuities
- ■ Eligibility

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-231799, August 21, 1990

Military Personnel

Pay

- Retirement pay
- ■ Distribution
- ■ ■ Personnel death

Sister-in-law of deceased member claims unpaid retired pay of member as "sole survivor" of the deceased. Since payment of such pay upon the death of a member is limited to those listed in the applicable statute and the sister-in-law does not qualify under that statute, the claim may not be paid.

B-236018, August 22, 1990

Military Personnel

Pay

- **Basic quarters allowances**
- ■ **Rates**
- ■ ■ **Determination**
- ■ ■ ■ **Dependents**

Under the provisions of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), para. 30221, a divorced service member who pays child support for his daughter is not entitled to Basic Allowance for Quarters while he lives in quarters which exceed the minimum standard for his rank unless the only quarters available exceed the minimum standard and unless they are made available for joint occupancy.

B-238540, August 30, 1990

Military Personnel

Pay

- **Survivor benefits**
- ■ **Annuities**
- ■ ■ **Eligibility**
- ■ ■ ■ **Former spouses**

A member who elected Survivor Benefit Program (SBP) coverage for his wife and child upon his retirement from the Air Force in 1977, who was divorced in 1985 with a property settlement agreement awarding the spouse 40 percent of his retirement income cannot be "deemed" to have elected coverage for the former spouse since he had not executed a voluntary written agreement to provide such coverage. Further, a *Nunc Pro Tunc* order issued by a state court in 1988 after the member's death purporting to amend the prior 1985 divorce decree to award an annuity to the former spouse is without effect since at that time no authority existed for a court to order SBP coverage incident to a divorce proceeding.

B-240337, August 30, 1990

Military Personnel

Pay

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

Navy member requested waiver of his debt to the United States which arose when an extra paycheck was issued upon his separation from active duty. Since the member accepted the payment without questioning it even though he should have recognized that he was being overpaid, waiver is denied.

B-232527, August 31, 1990

Military Personnel

Travel

- Temporary duty
- ■ Return travel
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

A service member who for personal reasons returned to his permanent duty station and was informed that he would be reimbursed under Volume 1 of the Joint Federal Travel Regulations, paragraph U4135 (now U4130), is entitled to reimbursement notwithstanding the fact that he reported for duty at his permanent station and the fact that instruction indicating he could be reimbursed was rescinded later.

B-233663, August 31, 1990

Military Personnel

Pay

- Survivor benefits
- ■ Annuities
- ■ ■ Eligibility
- ■ ■ ■ Former spouses

A retired service member entered into a stipulation to provide Survivor Benefit Plan (SBP) annuity for his ex-wife pursuant to their divorce. Although he did not sign the transcript of the stipulation, it constitutes a voluntary written agreement. Therefore, his ex-wife is entitled to a deemed SBP election under 10 U.S.C. § 1450(f)(3)(A).

Miscellaneous Topics

B-234347, August 6, 1990

Miscellaneous Topics

Environment/Energy/Natural Resources

- Watershed projects
- ■ Alternatives
- ■ ■ Statutory compliance
- ■ ■ ■ Authorizing legislation

The Water Supply Act of 1958, 43 U.S.C. § 390b, authorizes municipal and industrial (m&i) water storage to be included in any reservoir project of the Bureau of Reclamation or the Army Corps of Engineers. The act's purpose is to add additional reservoir capacity either prior to additional reservoir capacity either prior to original reservoir construction or by additional construction. It does not authorize the reallocation of water from an authorized project purpose to m&i water supply. Accordingly, the contracts reviewed are not authorized by the Water Supply Act.

Miscellaneous Topics

Environment/Energy/Natural Resources

- Watershed projects
- ■ Alternatives
- ■ ■ Statutory compliance
- ■ ■ ■ Authorizing legislation

Miscellaneous Topics

Environment/Energy/Natural Resources

- Watershed projects
- ■ Surplus water
- ■ ■ Use

Section 6 of the Flood Control Act of 1944, 33 U.S.C. § 708, authorizes the Secretary of the Army to supply surplus reservoir water for municipal and industrial uses. This authority applies only to water that is excess to the needs of authorized project purposes. It cannot be determined from the facts made available whether the water subject to the contract reviewed qualifies as surplus.

Procurement

B-239056, August 1, 1990

90-2 CPD 88

Procurement

Competitive Negotiation

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

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic sources
- ■ ■ Foreign products
- ■ ■ ■ Price differentials

Although the protester argues that an evaluation differential under the Buy American Act should not have been applied to its low-priced offer for South African chamois, the protest is denied since the Trade Agreements Act of 1979 (TAA) properly applied to the procurement in lieu of the Buy American Act and the TAA bars the agency from accepting South African products; therefore, the protester was not prejudiced by the award to a higher priced domestic competitor.

B-239189, August 1, 1990

90-2 CPD 89

Procurement

Bid Protests

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

Protest is untimely where filed more than 10 working days after the basis of protest, an alleged improper demonstration of another offeror's product, is known.

B-240043, August 1, 1990

90-2 CPD 90

Procurement

Bid Protests

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

Significant issue exception to the General Accounting Office's timeliness requirements will be invoked only where the protest involves a matter which has not been considered on the merits in previous decisions and which is of wide-spread interest to the procurement community.

Procurement

Bid Protests

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

Protest is untimely when filed more than 10 working days following publication of agency's intention to open the procurement from which protester was disqualified to all 8(a) companies under the 8(a) competitive procedures, and more than 10 working days following direct notification to the protester by the agency of its intentions.

B-240193, August 1, 1990

90-2 CPD 91

Procurement

Bid Protests

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

A protester is presumed to be aware that an agency decision to request revised proposals may work to its competitive disadvantage, and thus may not delay filing its protest against such a request until the release of prices after award, but must protest the decision no later than the closing date for receipt of revised proposals.

B-238857, B-238857.2, August 2, 1990

90-2 CPD 93

Procurement

Competitive Negotiation

- **Offers**
- ■ **Cost realism**
- ■ ■ **GAO review**

Agency cost realism analysis had a reasonable basis where the agency reviewed the awardee's proposed costs in light of: (1) its prior performance costs as the incumbent; (2) a comparison between the awardee's costs and those of the protester; and (3) the Department of Labor certificate of exemption from the Service Contract Act for handicapped organizations

Procurement

Contract Management

- **Contract administration**
- ■ **GAO review**

Protest challenging awardee's ability and intention to comply with the requirement that 75 percent of the work be performed by handicapped individuals is dismissed as it challenges issues of responsibility and contract administration, respectively, which we do not generally review.

Procurement

Socio-Economic Policies

- **Small business set-asides**
- ■ **Contract awards**
- ■ ■ **Propriety**

Protest challenging the award under a small business set-aside on the ground that the awardee is a nonprofit organization is denied where the awardee qualifies as an organization for the handicapped and the regulations provide that such organizations may compete in acquisitions set aside for small business concerns.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Non-prejudicial allegation

Protest that agency's failure to conduct an impact study on small disadvantaged firms before awarding contract to a nonprofit organization is improper is denied where there is no such requirement.

B-239034, August 2, 1990***

90-2 CPD 94

Procurement

Bid Protests

- GAO authority

The Federal Reserve Board is a federal agency whose procurements are subject to the General Accounting Office's bid protest jurisdiction.

Procurement

Contractor Qualification

- Licenses
- ■ Determination time periods

Where the solicitation requires the acquisition of necessary licenses prior to award, this is ordinarily a performance requirement encompassed in a contracting officer's subjective affirmative responsibility determination, which is not subject to review by the General Accounting Office, except in limited circumstances

Procurement

Contractor Qualification

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

Where a requirement that subcontractors be listed is to determine the offerors' affirmative responsibility rather than for the purposes of evaluation, the General Accounting Office will not review that determination except in limited circumstances.

B-239119, August 2, 1990

90-2 CPD 95

Procurement

Competitive Negotiation

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

Exclusion of proposal from competitive range after two rounds of discussions was unobjectionable where agency reasonably relied on body of data presented in proposal and determined that proposal was technically unacceptable because it evidenced offeror's failure to satisfy a mandatory, material performance requirement.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Information submission
- ■ ■ ■ Contractor duties

Where revised proposal did not indicate that model test data values were being presented as substitute for values used in calculations in original proposal and did not include new calculations based on the model test values, agency reasonably concluded that the new data was being furnished to validate original calculations.

B-239120, B-239120.2, August 2, 1990

90-2 CPD 96

Procurement

Bid Protests

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

Protester is not an interested party for purpose of objecting to award to another offeror where the protester, whose proposal was excluded from the competitive range, would not be eligible for award even if its protest were to be sustained.

Procurement

Competitive Negotiation

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

Proposal properly was excluded from the competitive range for failure to provide required commitment of key individual to be technical director for contract for "design and prototyping" of component of microwave aircraft landing system.

B-239172, August 2, 1990

90-2 CPD 97

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Protest that awardee failed to comply with the 50 percent subcontracting limitation in the solicitation as issued is denied where the requirement was deleted by an amendment changing the procurement from a small business set-aside to an unrestricted procurement.

Procurement

Contract Management

- Contract performance
 - ■ GAO review
-

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Bid which takes no exception to solicitation requirement for repair or maintenance by manufacturer authorized service representatives obligates bidder to provide authorized service representatives and therefore is responsive; requirement is merely part of the general specifications concerning how and by whom work is to be accomplished and does not establish a definitive responsibility criterion or precondition to award.

B-240533, August 2, 1990

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination time periods

Procuring agency's rejection of protester's bid as nonresponsive is upheld where bid was accompanied by a quotation from which stated that "freight and applicable taxes not included" when the solicitation required that taxes be included in the bid price.

B-237676.2, August 3, 1990

90-2 CPD 98

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester restates arguments previously raised and considered and raises new arguments which do not warrant reversal or modification of that decision.

B-239219, August 3, 1990

90-2 CPD 99

Procurement

Competitive Negotiation

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

Contracting agency improperly made award on the basis of initial proposals without discussions, where the record does not clearly show that the agency's decision to restrict the competitive range to one firm was reasonable, since offers rated "excellent" or "good" were lower priced and record shows discussions could have resolved weaknesses in proposal.

Procurement

Bid Protests

- Dismissal
- ■ Definition

Protest of agency's refusal to extend date for receipt of proposals and of defective solicitation is dismissed for failure to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office's Bid Protest Regulations

Procurement

Bid Protests

- GAO authority

Protest of agency contracting practices in general is not within the scope of the General Accounting Office's bid protest function

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show that challenged decision is inconsistent with other decisions issued by General Accounting Office.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is dismissed where issues raised have been decided on the merits by a court of competent jurisdiction.

Procurement

Socio-Economic Policies

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

Where a small business concern protests a contracting officer's nonresponsibility determination, and the Small Business Administration (SBA) has declined to issue a certificate of competency to the firm, the General Accounting Office will not review the protest because the firm did not make a showing of either possible fraud or bad faith on the part of the SBA or that the SBA failed to consider vital information bearing on the firm's responsibility

Procurement

Bid Protests

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

Dismissal of protest due to protester's failure to file timely comments on agency report is affirmed as protester's 2-week absence from office and alleged unawareness of comment filing requirements does not excuse failure to comment.

Procurement

Bid Protests

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

In a negotiated procurement in which award was made to the offer representing the best value to the government, a protester is an interested party under the General Accounting Office Bid Protest Regulations to protest the evaluation of proposals, even where the protester's offer is second highest priced of five offers, since, if its protest were sustained, it could be in line for award.

Procurement

Competitive Negotiation

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

The source selection official could properly select for award the low priced, lower rated offeror in a negotiated procurement where the solicitation provided that, although cost was less important than technical evaluation factors, award would be on a best value basis to that offeror submitting an acceptable proposal with appropriate consideration given to cost and other factors.

Procurement

Competitive Negotiation

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

The source selection official reasonably determined, contrary to the recommendations of lower-level evaluators, that the technical advantages of the highest rated proposal did not reflect significant technical superiority out-weighting the awardee's price advantage, given the awardee's acceptable level of technical competence available at the lower cost.

Procurement

Competitive Negotiation

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

Agency did not waive specification requirements regarding seat adjustments in making an award for a centrifuge trainer.

B-239178, August 6, 1990

90-2 CPD 108

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Corporate entities
- ■ ■ ■ Merger

Agency properly awarded contract to low bidder's successor in interest, where the original bidder, a wholly owned subsidiary of the parent-successor, merged with the parent company after bid opening. Since the assets of the original bidder (apart from this low bid) which were transferred in the merger were not negligible, the merger did not constitute a sale of a bid.

B-239190, August 6, 1990

90-2 CPD 109

Procurement

Competitive Negotiation

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

Procurement

Contractor Qualification

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

Protest is denied where protester has, at best, established its technical disagreement with agency evaluators who concluded that awardee's score should not be downgraded as the result of alleged conflicts of interest arising out of the firm's performance on other contracts.

B-239209, August 6, 1990

90-2 CPD 110

Procurement

Competitive Negotiation

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

Protest challenging agency's evaluation of protester's proposal as unacceptable and the exclusion of proposal from the competitive range is denied where review of agency's technical evaluation of proposal shows it was evaluated in accordance with solicitation's evaluation criteria and that agency reasonably concluded that the proposal would require major revisions to become acceptable.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Samples

Agency properly rejected low bid as nonresponsive where rejected bidder's bid sample syringes failed to conform to characteristics listed in invitation for bids, which warned bidders that submission of nonconforming bid samples with their bids would result in rejection.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Procurement

Socio-Economic Policies

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

Where the record shows that the Small Business Administration (SBA) considered all information provided to it by the protester during the certificate of competency (COC) proceeding, and the record indicates that the protester is only in disagreement with the result that the SBA reached after considering the evidence, there is no evidence that the SBA acted in bad faith in declining to issue a COC.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Protest that contracting agency acted in bad faith in determining the small business protester nonresponsible is denied where there is no evidence that the agency's actions resulted from bad faith or in the denial of the protester's opportunity to seek a certificate of competency review at the Small Business Administration, the agency which has the statutory authority to conclusively determine an offeror's responsibility.

B-240121.2, August 6, 1990

Procurement

Bid Protests

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

Protest that agency improperly used new plans and specifications in reprocurement to complete work under a defaulted contract is untimely because it was filed 2 months after the closing date for proposals.

Procurement

Contract Management

- Contract administration
- ■ GAO review

Defaulted contractor's protest that contracting agency's use of new plans and specifications under reprocurement will increase backcharges that contracting agency will charge protester and its bonding company is a matter of contract administration and is not for consideration by the General Accounting Office under its bid protest function.

B-240382.2, August 6, 1990

90-2 CPD 113**Procurement**

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of protest for failure to state a basis of protest is affirmed; the agency's failure to select protester for award, together with the fact that the protester purportedly developed the specifications, does not by itself indicate that, as alleged, offerors were not competing on equal basis.

B-239123, August 7, 1990

90-2 CPD 114**Procurement**

Competitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Although protester argues that contracting officials did not consider its alternative proposal of a unibody construction for night vision devices because it is not mentioned in evaluation documents, since the alternative was mentioned in a discussion question, the record indicates that the agency considered it but concluded that it was merely an alternative design that offered no advantage.

Procurement

Competitive Negotiation

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

Award to higher priced offeror which had higher rated proposal under nonprice factors is proper where contracting agency's selection decision is reasonable since selection officials have broad dis-

cretion in making price/technical tradeoff, so long as it is consistent with solicitation's evaluation scheme.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Administrative discretion**

The evaluation of technical proposals is primarily the responsibility of the contracting agency which is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Administrative discretion**

Under a solicitation that calls for award to offeror submitting best overall proposal, with consideration given to price and nonprice factors, and which states that proposals are to meet or exceed the solicitation requirements, the selection official in making a selection decision may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to stated evaluation criteria.

B-237596.3, August 8, 1990

90-2 CPD 115

Procurement

Competitive Negotiation

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

Award to higher priced offeror which had higher rated proposal under nonprice factors is proper where contracting agency's selection decision is reasonable since selection officials have broad discretion in making price/technical tradeoff, so long as it is consistent with solicitation's evaluation scheme.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Administrative discretion**

Under a solicitation which calls for award to the offeror submitting the best overall proposal, with consideration given to price and nonprice factors, and which states that proposals should meet or exceed the solicitation requirements, the agency in making a selection decision may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to stated evaluation criteria

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

The evaluation of technical proposals is primarily the responsibility of the contracting agency which is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation

B-240450, August 8, 1990***

90-2 CPD 116

Procurement

Bid Protests

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

A company is not an interested party to protest its alleged improper exclusion from the competitive range and to pursue claim for proposal and protest costs when (1) prior to filing its protest the firm voluntarily releases its proposed team members from their commitments to work for the firm should it receive the award, and (2) expressly rejects reinstatement in the competition and award of a contract as a remedy in the event its protest is sustained.

B-238654.2, August 9, 1990

90-2 CPD 117

Procurement

Competitive Negotiation

- Fixed-price contracts
- ■ Offers
- ■ ■ Acceptance criteria

Where request for proposals requires offerors to propose on a firm-fixed-price basis, protester's proposal, which did not contain an unequivocal offer to perform contract at firm-fixed-price could not properly be accepted for award.

B-239182, August 10, 1990

90-2 CPD 118

Procurement

Bid Protests

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

Protest that solicitation for indefinite quantity contract should have provided more information on the quantities of items the agency could reasonably expect to order under the contract is dismissed as untimely where filed after award since the allegation concerns alleged apparent solicitation impropriety which must be filed prior to the closing date for receipt of initial proposals

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Allegation that awardee's valve did not meet solicitation specifications based on protester's incorrect assumption regarding which valve model was offered is denied where record establishes that agency reasonably determined that the valve model which was actually offered satisfied all specifications.

B-239223, August 10, 1990

90-2 CPD 129

Procurement

Competitive Negotiation

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

Although solicitation provided that technical and management factors were more important than cost, agency may award to technically lower rated, lower cost offeror instead of higher cost, higher technically rated offeror, where the contracting officer reasonably determines that there is no significant technical difference between proposals and that award to lower cost offeror is most advantageous to the government.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

General Accounting Office will not object to evaluation of technical and cost proposals where review of source selection documents shows that the evaluation was fair and reasonable and consistent with the evaluation criteria in the solicitation.

B-240545, August 10, 1990

90-2 CPD 119

Procurement

Bid Protests

- Forum election
- ■ Finality

Procurement

Bid Protests

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

Timely filing of bid protest with General Services Administration Board of Contract Appeals (GSBCA), which protest was subsequently dismissed by the GSBCA, does not toll the requirement that a bid protest be timely filed with the General Accounting Office. Protest filed more than 10 days after basis of protest was known is untimely.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision is affirmed where party requesting reconsideration fails to show any error of fact or law or new information which would warrant reversal or modification of prior decision.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Contracting agency reasonably rejected proposal as technically unacceptable without discussions where the proposal contained several deficiencies and weaknesses which would have required major revisions to the proposal.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Withdrawal
- ■ ■ Propriety

Contracting agency may reasonably withdraw a small business set-aside, and resolicit the requirement on an unrestricted basis, where the only proposal received was properly determined to be technically unacceptable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Agency's three requests for price verification of low offer, after submission of initial offers and before submission of best and final offers, were not improper, coercive, or misleading when circumstances reasonably lead the agency to question whether the offeror may have made a mistake in its offer in view of the previous prices paid for the item and the low offeror's inexperience in producing the item.

Procurement

Competitive Negotiation

- Offers
- ■ Price disclosure
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protest that prices may have been disclosed to the protester's competition is denied where the allegation is primarily based on the awardee's reduction of the prices in its best and final offer to levels slightly below protester's initial prices.

B-239216, August 13, 1990

90-2 CPD 123

Procurement

Competitive Negotiation

- Offers
- ■ Technical acceptability
- ■ ■ Deficiency
- ■ ■ ■ Blanket offers of compliance

Proposal was properly found technically unacceptable where proposal did not affirmatively demonstrate that offered ultrasonic inspection system was completely compatible with the Navy's existing equipment as required by the specifications. Blanket statement of compliance does not override offeror's failure to furnish sufficient information in its proposal to enable the agency to determine its technical acceptability.

B-239313, August 14, 1990

90-2 CPD 124

Procurement

Bid Protests

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

Protester is not an interested party under Bid Protest Regulations to protest conversion of invitation for bids (IFB) to negotiated procurement because it would not be in line for contract award under its theory of how bids should be evaluated and award made under the IFB.

B-236961.6, August 15, 1990

90-2 CPD 125

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Pass/Fail sample problem on a negotiated procurement, which provided technical evaluators with a measure of the offeror's ability to independently size up a problem and propose a viable, efficient solution, is not rendered an invalid evaluation tool by the fact that the incumbent contractors did not receive the highest scores on the problem.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Corrective actions
- ■ ■ Contractors
- ■ ■ ■ Disqualification

A contracting officer may properly protect the integrity of the procurement system by disqualifying from the competition a firm which engaged in improper business conduct which may have afforded the firm an unfair competitive advantage.

Procurement

Contractor Qualification

- Responsibility
- ■ Administrative proceedings
- ■ ■ Criteria

Because maintaining the integrity of the competitive process was the basis for the contracting officer's decision to disqualify a firm from the competition, and not the firm's integrity to perform if awarded the contract, a traditional element of responsibility, the contracting officer was not required to make a finding that the firm was nonresponsible.

Procurement

Bid Protests

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

Argument that a matter raised during discussions is inconsistent with solicitation's evaluation criteria is untimely when not filed until after award.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency failed to account for alleged financial instability of subcontractor in evaluating awardee's proposal is denied where the solicitation does not contain any evaluation criteria relating to the financial condition of an offeror or its subcontractors.

Procurement

Contractor Qualification

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

Protest challenging agency's affirmative determination of responsibility is dismissed where the protester does not allege nor is there any evidence in the record of fraud or bad faith on the part of procurement officials.

Procurement

Bid Protests

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

Protest against a geographic restriction is untimely filed after bid opening, where that restriction is apparent from the face of the solicitation.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Offers
- ■ ■ ■ Minor deviations

Protest that contract improperly was awarded on the basis of a proposal that took exception to material terms of request for proposals issued by government prime contractor is denied where, even if some technical deficiency in the award process occurred, the protester was not prejudiced by the deficiency.

Procurement

Competitive Negotiation

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

Contracting agency may not award a contract on the basis of initial proposals where prices received reasonably indicate that the government could obtain savings by conducting discussions.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
 - ■ ■ ■ Tests
-

Procurement

Specifications

- Minimum needs standards
- ■ Determination
- ■ ■ Administrative discretion

A contracting agency's determination as to the type of testing necessary to measure tensile strength of couplers is unobjectionable where it is reasonable, the fact that the protester believes a better test is available does not render the determination unreasonable

Procurement

Competitive Negotiation

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

Allegation that requirement that scaffolding system components be compatible with two manufacturers' components rather than with only one firm's components will confuse potential offerors and discourage them from competing is without merit where the requirement reflects the fact that the agency's current stock consists of components from the two manufacturers, so that compatibility with either is acceptable.

Procurement

Sealed Bidding

- Contract awards
 - ■ Propriety
-

Procurement

Socio-Economic Policies

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

Contracting agency's inadvertent inclusion of statement on solicitation's cover page that project is set aside for small businesses does not prohibit award to low, large business bidder where solicitation reasonably shows that the procurement was not intended to be set aside, and no bidder was prejudiced by erroneous statement.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ American Indians

Determination of Bureau of Indian Affairs that a firm meets eligibility criteria for responding to Buy Indian Act procurement will not be disturbed by the General Accounting Office where not shown to be unreasonable.

B-239467, August 16, 1990

90-2 CPD 134

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Full and open competition was not precluded by requirement that transport aircraft be pressurized—the need for which the protester does not dispute but with which it cannot comply in the time available for submission of proposals—where: agency advised potential offerors of the requirement for pressurization with reasonable promptness once the need became apparent; operational concerns did not permit any delay in the procurement; it appears responsible sources capable of meeting the government's delivery schedule were able to compete; and protester's difficulty in meeting the pressurization requirement without substantial additional time stems largely from the fact that it has a developmental aircraft and not an existing, operational one.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Foreign businesses
- ■ ■ Contract awards
- ■ ■ ■ Propriety

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Contention that agency will violate Buy American Act because its specifications effectively limit competition to two foreign firms, one of which has sold aircraft to Libya and the other of which is allegedly owned or subsidized by governments which either have committed human rights violations or have entered into a joint venture with the Soviet Union, is denied because the Buy American Act does not prohibit awards to foreign firms, but merely establishes a preferential evaluation system favoring domestic products, and there are no prohibitions against contracting with foreign firms under the circumstances the protester has identified.

Procurement

Socio-Economic Policies

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

Contracting agency's refusal to set aside a procurement of transport aircraft for small business concerns or small disadvantaged business concerns was proper where agency's action is supported

by its evaluation of the marketplace, Small Business Administration concurred with the decision, and protester admits that there is no reasonable expectation of receiving offers from at least two responsible such concerns.

B-239673, B-239844, August 16, 1990

90-2 CPD 135

Procurement

Socio-Economic Policies

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

Solicitations for the delivery, but not installation, of air-cooling chiller systems will result in supply contracts, so that under applicable regulations a small disadvantaged business (SDB) must furnish a product manufactured by a SDB or, if there is no SDB manufacturer, the product of a small business in order to be eligible for an SDB evaluation preference.

B-239858.2, August 16, 1990

90-2 CPD 136

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision is affirmed where protester does not show that initial decision dismissing protest as untimely was in error.

B-240381, August 16, 1990

90-2 CPD 137

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Protest against competitive, 1-year interim contract for telephone switchboard services is dismissed. Net effect of protest would necessarily lead to restriction of competition for services since the protester, the incumbent contractor, insists that the only appropriate alternative is to continue to award it monthly purchase orders until a new solicitation is issued. Alternatively, if the protester is asserting the interests of other potential quoters, this ground of protest is for other potential quoters to raise, not the protester, who participated in the procurement.

Procurement

Bid Protests

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

Protest that agency did not possess adequate information for soliciting quotations is dismissed as untimely where first raised in protester's comments on agency's request for dismissal, well after when quotations were due.

B-237531.3, August 17, 1990**90-2 CPD 138**

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Competition enhancement

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Cost savings

Agency may cancel a negotiated procurement based on the potential for increased competition or cost savings.

B-238117.2, August 17, 1990**90-2 CPD 139**

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration which essentially restates arguments previously considered, and does not establish any error of law or provide information not previously considered is denied

B-239142.2, et al., August 17, 1990**90-2 CPD 140**

Procurement

Competitive Negotiation

- Defaulted contractors
- ■ Competition rights

Defaulted contractor reasonably was not solicited on reprocurement of remaining quantities of defaulted contracts, where it expressly declined to perform defaulted contracts under existing conditions.

Procurement

Socio-Economic Policies

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

Where agency issues proposed regulation which establishes eligibility of small disadvantaged business (SDB) dealers for obtaining SDB evaluation preference, issuance of final rule, based on comments received, which further restricts eligibility requirements, without request for further public comment, is not improper.

B-239906, August 17, 1990**Procurement**

Competitive Negotiation

- Discussion
- ■ Determination criteria

Agency is not required to conduct discussions with offeror whose proposal properly was determined to be outside the competitive range.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency's determination that protester's proposal was technically unacceptable and therefore outside the competitive range was reasonable where proposal contained significant informational deficiencies and represented a high degree of risk.

B-240549, August 17, 1990**Procurement**

Contractor Qualification

- Responsibility
- ■ Information
- ■ ■ Submission time periods

Bidder's failure to complete Clean Air and Water Certification in its bid is a matter of responsibility and may be furnished any time prior to award.

Procurement

Bid Protests

- Court decisions
 - ■ Merits adjudication
 - ■ ■ GAO review
-

Procurement

Bid Protests

- Forum election
 - ■ Finality
-

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office will not consider protest questioning the proper scope of a contract under negotiation where the protest is a collateral attack on the orders of the Claims Court and appeals pending before the Court of Appeals for the Federal Circuit could decide the propriety of the award.

Procurement

Competitive Negotiation

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

Source selection official had reasonable basis to select a lower priced, lower technically-scored offeror where after having been fully briefed on the relative advantages of the offerors, he determined that the cost premium involved in awarding to a higher rated, higher priced offeror was not justified given the acceptable level of competence at the lower cost.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Propriety
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Adjectival ratings

Award to offeror who received adjectival rating of marginally acceptable did not violate award criteria that required offerors to receive a rating of acceptable, where source selection plan provided that proposal had to meet all requirements to receive rating of marginal, and record shows that offeror did not receive unacceptable rating.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Protest against alleged procurement improprieties leading to award of printing contract was properly dismissed as untimely filed under Bid Protest Regulations because protest was filed more than 10 working days after debriefing, 4 C.F.R. § 21.2(a)(2) (1990). Although the agency provided additional information to protester after debriefing pursuant to Freedom of Information Act request, that did not toll the filing deadline since that information did not relate to original bases of protest, and protester has not raised any new bases of protest.

Procurement

Small Purchase Method

- Quotations
- ■ Government mishandling

Protests challenging issuance of purchase orders to firms other than protester are denied where record supports protester's contention that it transmitted quotations to the contracting activity prior to the closing dates for receipt of quotations, but does not establish the prices that the protester quoted.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Price data
- ■ ■ ■ Information sufficiency

Bid which contains "n/c" (no charge) instead of dollar price for line item is responsive, as notation indicates bidder's affirmative intent to provide the requirement covered by the line item at no charge to the government.

Procurement

Sealed Bidding

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

Protest that bid is unbalanced because it offers to provide certain requirements at no charge is dismissed where protester does not allege that bid also contained overstated charges.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protester's bid for requirements contract which failed to offer at least the government's estimated peak monthly requirements as required by the invitation for bids was nonresponsive and was properly rejected.

Procurement

Bid Protests

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

When a protester raises new grounds of protest in its comments on the agency's report on the protest, the new contentions must independently satisfy the timeliness requirements in the General Accounting Office's Bid Protest Regulations.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that awardee's proposal was unacceptable and should have been rejected because it included as a proposed director of emergency care a physician that was unacceptable is denied because the record indicates that the physician, although he later was denied post-award credentialing under the contract, was considered acceptable under the technical evaluation when offered by the protester and by the awardee.

Procurement

Bid Protests

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

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Allegation that specifications were defective and that insufficient time was permitted for the submission of a quotation is dismissed as academic where the protester did not submit a quotation or a timely protest regarding its failure to receive the solicitation and the protester was not, therefore, eligible to receive the award.

Procurement

Bid Protests

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

Protest that contracting agency improperly failed to provide the protester with an opportunity to compete for a procurement is dismissed as untimely since protest was not filed within 10 working days after the protester learned the basis for its protest.

B-234434.2, August 24, 1990***

90-2 CPD 152

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Request by agency for dismissal of claim for costs of filing and pursuing a protest because claimant did not wait until agency ruled on amount of claim before filing at General Accounting Office is denied since information submitted is sufficient to determine whether claim is allowable and nothing would be accomplished by having the agency review the matter further since it is clear that the agency does not believe that the claim should be allowed.

Procurement

Bid Protests

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

Claimant is entitled to recover incurred company costs of filing and pursuing General Accounting Office protests, but not agency-level protest, where costs claimed are sufficiently documented.

Procurement

Bid Protests

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

Request for payment of costs associated with following-up agency actions pursuant to sustained decision and pursuing claim for recovery of costs of filing and pursuing protest are denied since such costs are not recoverable in the absence of express statutory or contractual authority.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Attorney fees

Attorneys' fees claimed by prevailing protester are determined reasonable, and thus are allowable, where the hourly rates are within bounds of rates charged by similarly situated attorneys, and the hours claimed are properly documented and do not appear to be excessive.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Interest

Payment of interest on claim for reimbursement of costs of pursuing a sustained protest is not authorized.

B-239457, August 24, 1990

90-2 CPD 153

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Liability restrictions

Protest that agency will improperly accept as responsive bid of firm whose bid bond was in an amount less than 20 percent of price bid for basic and option periods is denied where penal sum of bid bond is greater than difference between the firm's bid and next low bid for basic period.

B-239503, B-239503.2, August 24, 1990***

90-2 CPD 154

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Delays

Protest that agency delay during its source approval process improperly precluded protester from competing is denied where, even if the protester had received source approval, it would not have been eligible for waiver of first article testing; since the agency's urgent need for the contract item, a flight-critical part, could only be met by an approved source that was not subject to the delays involved in first article testing, the protester would not have been eligible for award of a contract to meet the agency's urgent requirement in any event

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Standards

Allegation that agency's urgent requirement for a flight-critical part was brought about by lack of acquisition planning by the agency is rejected, where the record shows that the agency was aware of and had taken measures to meet shortages of the item, but deferred actual procurement of the item primarily in order to qualify additional sources

Procurement

Bid Protests

- Price contractors
- ■ Contract awards
- ■ ■ Subcontracts
- ■ ■ ■ GAO review

Protest challenging subcontract solicitation terms is dismissed because the solicitation for subcontractor services was issued by a government prime contractor which is not acting as the government's agent and the award will not be made "by or for the government "

Procurement

Socio-Economic Policies

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

Department of Defense regulation requiring that small disadvantaged business (SDB) regular dealers provide a product manufactured by a small business concern in order to be eligible for an SDB evaluation preference is a reasonable implementation of its broad statutory mandate to award 5 percent of the dollar value of its contracts to SDB concerns.

Procurement

Sealed Bidding

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

Protest alleging that bid is unbalanced is dismissed for failure to state a valid basis for protest where the protester fails to provide either allegations or evidence sufficient to establish the likelihood that bid in fact is mathematically and materially unbalanced.

Procurement

Bid Protests

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

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

Procurement

Socio-Economic Policies

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

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.

B-239433, August 27, 1990

90-2 CPD 159

Procurement

Competitive Negotiation

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

Protest is sustained where agency did not evaluate a feature—compatibility of card access system with systems at other locations—which the solicitation termed “desirable,” where protester reasonably interpreted the solicitation as providing for evaluation of feature and had submitted a more expensive proposal in an effort to gain evaluation credit for that feature.

B-238235.3, August 28, 1990

90-2 CPD 160

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**

There is no basis for the award of proposal preparation costs where protester filed an agency-level protest resulting in corrective action, but never filed a protest at the General Accounting Office (GAO), since a prerequisite to the award of costs is a decision by GAO on the merits of a protest.

B-238625.3, August 28, 1990

90-2 CPD 161

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.

B-239386, August 28, 1990

90-2 CPD 162

Procurement

Government Property Sales

- **Timber sales**

Protest that second-low bidder under timber sale should have been given an award at its bid price, rather than offered an award at the higher price bid by the high bidder, which was determined to be nonresponsible, is denied because the applicable timber sales regulation permits the agency to offer the award to the next low bidder at the higher bidder’s price in this situation.

Procurement

Sealed Bidding

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

Head of agency reasonably determined to permit correction of awardee's bid based on a claim of mistake since the evidence submitted establishes the existence of a mistake, the manner in which it occurred, and the intended price.

Procurement

Sealed Bidding

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

Agency head vested with authority to correct mistakes in bid is not bound by contrary recommendations of contracting officer, nor is their disagreement reflective of a lack of clear and convincing evidence as determined by an independent consideration of the matter by the agency head

Procurement

Socio-Economic Policies

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

In light of agency's broad discretion to decide whether to contract or not under the section 8(a) program, there is no legal basis to object to agency's reasoned decision to delete a portion of a requirement in a solicitation reserved for an 8(a) firm.

Procurement

Socio-Economic Policies

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

General Accounting Office (GAO) denies protest concerning the proper method of applying the small disadvantaged business preference to procurement of natural gas where the identical issue was resolved in a recent GAO protest and Claims Court decisions involving the same agency and the same type of procurement.

Procurement

Socio-Economic Policies

- **Disadvantaged business set-asides**
- ■ **Use**
- ■ ■ **Administrative discretion**

The Small Business Competitiveness Demonstration Program Act of 1988, 15 U.S.C. § 644 note (1988), which provides, on a test basis, for the issuance of solicitations on an unrestricted basis in four designated industry groups where agency small business participation goals have been met, specifically exempts procurements set aside for small disadvantaged business (SDB) concerns pursuant to section 1207 of the Defense Authorization Act of 1987, 10 U.S.C. § 2301 note (1988). Therefore, protest against SDB set-aside in one of four designated industry groups is denied.

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Disadvantaged business set-asides**
- ■ ■ **Preferences**
- ■ ■ ■ **Computation**

Agency decision to set aside procurement for small disadvantaged business (SDB) concerns was proper where contracting officer determined that there was a reasonable expectation that offers would be obtained from two responsible SDB firms at a fair market price.

Procurement

Sealed Bidding

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

Protest of upward correction of low bid is denied where the record supports contracting agency's decision that there was clear and convincing evidence establishing both the existence of the mistake (transposing numbers from work-sheets to bid form) and what the bid actually intended, and the bid is low with or without correction.

Procurement

Sealed Bidding

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

Contracting officer's failure to obtain sworn statements supporting existence of mistake and amount of intended bid prior to permitting correction is not fatal to correction since nature of mistake and amount of intended bid are clear from the worksheets, the face of the bid, and the other bids and statutory penalties which provide adequate protection against false statements or representations by bidder.

Procurement

Bid Protests**■ GAO authority**

Procurement

Socio-Economic Policies**■ Small business set-asides****■ ■ Industrial code****■ ■ ■ Classification****■ ■ ■ ■ Administrative discretion**

Challenge of Standard Industrial Classification (SIC) code assigned to a procurement by the agency is not for consideration by the General Accounting Office even where the SBA declines jurisdiction of a particular SIC code appeal since conclusive authority over this matter is vested in the Small Business Administration (SBA).

Procurement

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

Protest contending that award was improperly made to a large business because procurement was a small business-small purchase set-aside is denied where the request for quotations clearly stated that the procurement was unrestricted.

Procurement

Competitive Negotiation**■ Contracting officer duties****■ ■ Information disclosure**

Protest that agency failed to inform protester that procurement was unrestricted is denied where notice of this fact was clear from the face of the request for quotations.

Procurement

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

Agency evaluation finding protester's offered alternate item technically unacceptable was reasonable where the protester failed to submit sufficient information demonstrating that its alternate item was the technical equivalent of the approved models listed in the request for quotations.

Procurement

Small Purchase Method**■ Notification procedures**

Contracting officer is not required to notify Small Business Administration (SBA) that small purchase procurement will not be set aside for small businesses because applicable Federal Acquisition Regulation provision does not require SBA notification, and such notification would be inconsistent with the general purpose and scheme of the small purchase procedures which are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens on agencies.

B-239620, August 28, 1990

90-2 CPD 169

Procurement

Small Purchase Method

■ **Requests for quotations**

■ ■ **Terms**

■ ■ ■ **Design specifications**

Contracting agency is not required to draft a special narrative purchase description setting forth the physical and functional characteristics of a relatively simple and common item being acquired through small purchase procedures where there is no indication that use of national stock numbers and five manufacturers' part numbers failed to adequately convey agency's needs.

B-239681, August 28, 1990

90-2 CPD 170

Procurement

Contractor Qualification

■ **Responsibility/responsiveness distinctions**

Post-bid-opening letter changing manufacturer specified in bid does not render bid nonresponsive since information concerning intended manufacturer was provided under Place of Performance Clause and related to responsibility, not responsiveness, and therefore could be changed before award.

B-239808, August 28, 1990

90-2 CPD 171

Procurement

Specifications

■ **Minimum needs standards**

■ ■ **Competitive restrictions**

■ ■ ■ **Design specifications**

■ ■ ■ ■ **Justification**

Specification which requires motorized graders to be equipped with sealed disk brakes is not unduly restrictive of competition where the record shows that the graders will be used in remote areas far from maintenance facilities and that sealed disk brakes require less maintenance and adjustment than drum brakes.

B-239919, August 28, 1990

90-2 CPD 172

Procurement

Small Purchase Method

■ **Requests for quotations**

■ ■ **Terms**

■ ■ ■ **Design specifications**

Purchase description which identifies item by National Stock Number and certain salient characteristics and includes American National Standards Institute standards is unobjectionable since it provides sufficient detail to allow offerors to compete intelligently and on an equal basis.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision is denied where the protester essentially only restates its initial arguments and expresses disagreement with initial decision

Procurement

Bid Protests

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

Allegation concerning solicitation impropriety which is raised for the first time in request for reconsideration is dismissed as untimely.

Procurement

Specifications

- Performance specifications
- ■ Waiver
- ■ ■ Propriety

Agency decision not to waive first article testing requirement for protester, a current producer of certain batteries and cells being procured for use on deep submergence rescue vehicles, was reasonable where the protester's products have never successfully completed first article testing and problems have arisen during performance by the protester's products which raise doubt as to whether they can perform in accordance with the specifications.

Procurement

Bid Protests

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

Protest of rejection of proposal and award to another firm filed within 10 working days of receipt of notice of award is timely under our Bid Protest Regulations.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

The procuring agency properly rejected the protester's proposal for automated publishing and printing systems as technically unacceptable where the protester took exception in its best and final offer to the material solicitation term that it guarantee the availability of spare parts for 5

years and where the protester did not respond to deficiencies in its software noted by the agency during discussions.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that the awardee's offered equipment does not satisfy a specification requirement that the scanner read and format subscript and superscript is denied, where the protester was not prejudiced by the agency's relaxation of this requirement.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that the awardee's equipment failed to comply with specification requirements for an automated publishing and printing system is denied where the record shows that the awardee's proposal was reasonably evaluated as meeting the requirements

B-239498, August 29, 1990

90-2 CPD 176

Procurement

Contract Management

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

In deciding to obtain a small quantity of ammunition links by exercising an existing contract option, agency properly determined on the basis of an informal market analysis that the option price was likely the lowest available for the quantity, notwithstanding the fact that the protester's basic contract price under a recently awarded contract for the items was slightly lower in price, since that price was based on a very large quantity of links and the protester's option quantity was priced higher

Procurement

Contract Management

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

Procurement

Noncompetitive Negotiation

- Industrial mobilization bases
- ■ Competitive restrictions
- ■ ■ Administrative discretion

Protester's generalized objections to agency decision to exercise a contract option in lieu of competing a requirement for ammunition links to maintain an industrial mobilization base do not demonstrate that the agency abused its discretion in exercising the option

Procurement

Small Purchase Method

- Competition
- ■ Use
- ■ ■ Criteria

In keeping with their purpose—promoting efficiency and economy in contracting—small purchase procedures are specifically excepted from the full and open competition requirements of the Competition in Contracting Act of 1984 and the mandatory use of commercial item descriptions

Procurement

Small Purchase Method

- Requests for quotations
- ■ Brand name specifications
- ■ ■ Use
- ■ ■ ■ Propriety

Agency may use manufacturer part numbers as item descriptions in procurements conducted under Federal Acquisition Regulation (FAR) small purchase procedures so long as equal items can be offered thus satisfying the FAR requirement that those procurements be competed to the maximum extent practicable.

Procurement

Bid Protests

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

Where the protester failed to insert "50%" in the offeror's percentage column on the certificate of minimum waste paper content as required by the solicitation for a firm intending to submit a certified offer to supply paper with at least 50 percent waste paper content, the agency properly interpreted the protester's offer as a noncertified offer to supply paper with no waste paper content.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest alleging solicitation impropriety apparent on the face of the solicitation for paper products (that the format of the solicitation and the certification of minimum waste paper content was ambiguous and confusing as written) is untimely when not filed prior to bid opening.

B-239904, August 30, 1990

90-2 CPD 188

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Pricing errors
- ■ ■ ■ Line items

Procuring agency improperly permitted bidder to correct a mistake in its bid where the only evidence of the alleged omitted cost is a subcontractor's quotation which, while it is evidence of the cost of the work, does not establish bidder's intended bid for the work.

B-238436.5, August 31, 1990

90-2 CPD 189

Procurement

Bid Protests

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

Request for reconsideration of decision dismissing protest as untimely is denied where protest of responsiveness of awardee's bid was not filed within 10 working days of when the protester was reasonably apprised of the agency's position that the awardee's bid was responsive.

B-239148.2, August 31, 1990

90-2 CPD 190

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

Procurement

Specifications

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

Where agency fails to show that specification restriction requiring that hot water generator control system be designed, fabricated and delivered solely by the manufacturer is reasonable, solicitation should be amended to eliminate improper restrictive specification.

Procurement

Bid Protests

- Competition
- ■ Adequacy

Procuring agency obtained full and open competition under the Competition in Contracting Act of 1984, despite having received only one proposal in response to the solicitation, where the agency made a good faith effort to obtain competition by publicizing the requirement, mailing solicitations to 36 firms, and holding 2 pre-proposal conferences attended by 5 potential offerors, and where record reasonably shows that other potential offerors did not submit proposals for business reasons.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Advertising

Where agency reasonably classified requirement for accounting and financial services for the reconciliation of contracts as miscellaneous services in its *Commerce Business Daily* (CBD) announcement of the procurement, CBD synopsis meets statutory and regulatory publication requirements.

Procurement

Competitive Negotiation

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

Where the agency published its intention of issuing a competitive solicitation in the CBD and mailed a solicitation package to the protester's correct address, the protester bears the risk of non-receipt of the solicitation in the absence of evidence that the agency deliberately attempted to exclude the protester from participating in the procurement.

Procurement

Competitive Negotiation**■ Competitive advantage****■ ■ Foreign businesses**

There is no requirement that a procuring agency equalize whatever competitive advantage a foreign firm may have because the firm is not subject to certain solicitation provisions, such as socio-economic requirements, applicable to United States concerns.

Procurement

Socio-Economic Policies**■ Preferred products/services****■ ■ Domestic sources****■ ■ ■ Foreign products****■ ■ ■ ■ Price differentials**

Offer of a foreign company is not subject to the application of the Balance of Payments Program price differential where end product is manufactured in one of the designated countries listed by regulation for exemption from the price differential.

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