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United States**

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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-242082, June 17, 1991

Appropriations/Financial Management

Appropriation Availability

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

The Defense Logistics Agency may properly reimburse employees who work in industrial environments where heavy objects are moved and lifted using various types of equipment for purchases of safety shoes where, in accordance with agency regulations, the employees' supervisors verify that safety shoes are needed and authorize the employees to buy them prior to the actual purchase by the employees.

B-239955, June 18, 1991

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Operating losses

Appropriations/Financial Management

Claims Against Government

- Operating losses

Department of Treasury may pay claim arising from loss of currency in Treasury mailroom out of funds available for the operation of the mailroom where the loss occurred.

Appropriations/Financial Management

Accountable Officers

- Determination criteria

Appropriations/Financial Management

Accountable Officers

- Liability
- ■ GAO authority

Currency delivered to Department of Treasury mailroom is loss for which mailroom personnel are accountable.

B-238024, June 28, 1991***

Appropriations/Financial Management

Appropriation Availability

- Amount availability
 - ■ Antideficiency prohibition
 - ■ ■ Violation
-

Appropriations/Financial Management

Budget Process

- Funds transfer
- ■ Authority

The Office of the Assistant Secretary for Administration and Management violated 31 U.S.C. § 1301 and 1532 when it used appropriated funds of nine agencies within the Department of Labor (Department) to purchase computer equipment for a communications system in amounts in excess of actual costs of equipment provided eight of the agencies. Although the Economy Act and 31 U.S.C. § 1534 authorize transfers between agencies to fund certain shared activities or needs, the Department's cost allocation methodology exceeded the authority granted by these statutes because it required several agencies to subsidize costs allocable to Departmental Management and the Pension Benefit Guaranty Corporation appropriations.

B-239903, June 28, 1991***

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Augmentation
- ■ ■ Commercial carriers
- ■ ■ ■ Computer equipment/services

The ICC did not improperly augment its appropriations by allowing private carriers to install computer equipment at the ICC's headquarters. The computers are used to give both the public and ICC staff access to tariffs which are electronically filed by the carriers. The ICC has broad statutory authority to prescribe the form and manner in which carriers must file tariffs and make them available to the public. Requiring carriers to provide computer equipment to access electronic tariff information is within the ICC's authority. However, the ICC should adopt the controls necessary to reasonably assure that the equipment is used only to access the tariff information.

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Augmentation
- ■ ■ User fees

The ICC has satisfied the requirement in 40 U.S.C. § 303b that it charge carriers for the space used by the carrier's computer equipment placed within the ICC's headquarters. ICC already charges the carriers user fees under 31 U.S.C. § 9701. The record shows that the user fees compensate the ICC for the space used by the computers. GAO will not use section 303b to examine the nature of a fee established within the proper use of ICC's discretion under section 9701.

B-242199, June 28, 1991***

Appropriations/Financial Management

Appropriation Availability

- Amount availability
 - ■ Augmentation
 - ■ ■ Maintenance/operation accounts
 - ■ ■ ■ Cost allocation
-

Appropriations/Financial Management

Budget Process

- Funds transfer
- ■ Authority

The U.S. Army Civilian Appellate Review Agency (USACARA) does not improperly augment its appropriations by directly charging to another Army activity's funding authority travel and per diem costs incurred to investigate civilian employee grievances. The direct citation of another activity's funding authority is authorized because in most situations the "Operation and Maintenance, Army" appropriation account provides all the funds. However, where more than one Army appropriation account is involved, 31 U.S.C. § 1534 authorizes the allocation of common service type costs among the appropriation accounts.

Appropriations/Financial Management

Appropriation Availability

- Amount availability
 - ■ Augmentation
 - ■ ■ Maintenance/operation accounts
 - ■ ■ ■ Cost allocation
-

Appropriations/Financial Management

Budget Process

- Funds transfer
- ■ Authority

USACARA's open ended authority to cite another activity's funds for travel and per diem costs incurred when investigating civilian employee grievances is not improper since amounts involved are relatively small and activities can assure that funds are available by reserving sufficient amounts to cover estimated travel and per diem costs.

Civilian Personnel

B-242804, June 3, 1991

Civilian Personnel

Travel

- Travel expenses
- ■ Reimbursement
- ■ ■ Interrupted leave

An employee on annual leave was recalled to duty, but became ill before he could respond. He remained at the leave point in a sick leave status and required his wife's assistance for his return travel. His claim for his wife's travel expenses and for his return travel at the conclusion of the illness is denied. An employee on annual leave is required to return to duty at his own expense, even when officially recalled to duty. His need for assisted travel due to illness which occurred while on annual leave does not alter that conclusion.

B-242854, June 5, 1991

Civilian Personnel

Compensation

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

Civilian Personnel

Compensation

- Payroll deductions
- ■ Health insurance
- ■ ■ Insurance premiums
- ■ ■ ■ Underdeductions

A reemployed annuitant serving in a temporary position accepted a permanent position. As a result, her health insurance premiums should have then been deducted from her salary, but her agency failed to do so. For that period of time, after the Office of Personnel Management notified her that responsibility for her health insurance deductions had been transferred to her agency, we deny her request for waiver of the overpayment because she should have questioned the fact that no health insurance deductions were being withheld from her pay.

B-243818, June 7, 1991

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Eligibility
- ■ ■ Adverse personnel actions
- ■ ■ ■ Classification

The employee's claim for a retroactive promotion with backpay for a 9-month period of alleged erroneous classification and delay in having his position reclassified, may not be paid. The general rule is that even though a position which an incumbent occupies is subsequently reclassified to a higher grade, the employee's entitlement to the salary of the higher grade does not commence until he is actually promoted to that grade. Neither the Classification Act, 5 U.S.C. § 5101-5115 (1988), nor the Back Pay Act, 5 U.S.C. § 5596 (1988), create a substantive right to backpay for periods of wrongful classification actions. See *United States v. Testan*, 424 U.S. 392 (1976).

B-240561, June 12, 1991***

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Interest

No interest is due on an arbitrator's award of backpay which became final before December 22, 1987, the effective date of the amendment to the Back Pay Act which provided for interest on final decisions granting backpay, even though the award was clarified after that date. Although several compliance issues were not resolved until later, such issues which arise during the implementation phase of an award do not affect the finality of an award in which liability and remedy had been decided.

B-242946, June 12, 1991

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Inspection fees
- ■ ■ Reimbursement

The employee paid for the cost of a radon test incurred incident to the purchase of a residence at his new duty station. His expense is not customarily paid by purchasers in the area and was not necessary to complete the transaction. The radon test was for the employee-purchaser's own personal benefit and protection of his property interest and, hence, is not reimbursable.

B-238990, June 17, 1991

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Interest

An amendment to the Back Pay Act, 5 U.S.C. § 5596, which allows interest on backpay granted to an employee, applies only to administrative determinations to pay backpay which become final on or after December 22, 1987. Where personnel correction forms authorizing backpay for an employee were sent to an agency payroll office for an audit, and that audit is the final administrative review of a backpay grant in that agency, the audit conducted by the payroll office in August 1987 constitutes an agency determination which is final for purposes of the Back Pay Act. Thus, inter-

est is not due on the employee's backpay when the determination to pay it became final in August 1987, even though actual payment did not occur until 1988.

B-242082, June 17, 1991

Civilian Personnel

Compensation**■ Personal expenses/furnishings****■ ■ Reimbursement**

The Defense Logistics Agency may properly reimburse employees who work in industrial environments where heavy objects are moved and lifted using various types of equipment for purchases of safety shoes where, in accordance with agency regulations, the employees' supervisors verify that safety shoes are needed and authorize the employees to buy them prior to the actual purchase by the employees.

B-241706, June 19, 1991

Civilian Personnel

Compensation**■ Physicians****■ ■ Membership fees**

A physician who is commissioned officer in the Public Health Service may be reimbursed annual membership dues to obtain hospital admission privileges for treatment of its patients as necessary in the agency's performance of its mission and directly related to the conduct of Public Health Service business where the government was unable to secure membership in its own name.

B-242558, June 19, 1991

Civilian Personnel

Relocation**■ Residence transaction expenses****■ ■ Reimbursement****■ ■ ■ Eligibility**

Employee transferred to Brasilia, Brazil, from Grand Junction, Colorado, and returned to his former duty station upon completion of the overseas assignment. He is not entitled to reimbursement of expenses incurred in the sale of his Grand Junction residence since both the old and new official stations are not located within the United States, or other specified areas, nor did he return to a different duty station in the United States. See 5 U.S.C. § 5724a(a)(4)(A) (1988); 41 C.F.R. § 302-6.1(a) (1989).

B-233397.2, June 21, 1991***

Civilian Personnel

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

On reconsideration, our prior decision, *James R. Stockbridge*, 69 Comp. Gen. 424 (1990), which held that an employee who was permanently transferred to the place where he was on temporary duty, is entitled to round-trip en route per diem and mileage expenses for return to his old duty station by privately owned automobile to retrieve stored household goods, is affirmed. Interest is not payable on the claim in the absence of an express statutory or contractual authorization.

Military Personnel

B-228671.2, June 7, 1991

Military Personnel

Pay

- Personnel death
- ■ Balances
- ■ ■ Payees
- ■ ■ ■ Designated beneficiaries

When a beneficiary has been designated by a deceased armed forces member to receive unpaid salary and allowances, the designee is the only party entitled to them, regardless of whether or not the designee was the decedent's spouse. *See* 10 U.S.C. § 2771(a).

Military Personnel

Pay

- Death gratuities
- ■ Eligibility
- ■ ■ Spouses
- ■ ■ ■ Common law marriage

Death gratuity may be paid to parents of deceased armed forces member rather than common-law spouse where at time of death member and spouse resided in state that did not recognize such marriages.

B-242195, June 14, 1991

Military Personnel

Pay

- Waiver
- ■ Unauthorized charges

Air Force members who were erroneously directed by their unit commander to charge Foreign Military Sales accounts to purchase prescription sunglasses for themselves and their dependents are not eligible for waiver under 10 U.S.C. § 2774 since claims did not result from erroneous payment of pay or allowances.

B-242852, June 14, 1991

Military Personnel

Pay

- Survivor benefits
- ■ Annuities
- ■ ■ Eligibility
- ■ ■ ■ Common law marriage

Claimant who presented a final judgment by a court of competent jurisdiction and other evidence of a valid common law marriage existing between herself and a retired armed services member for over 1 year before the member's death is eligible to receive military survivor's benefits.

B-238127, June 28, 1991

Military Personnel

Pay

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

A retired Air Force officer subject to the income limitations of the Dual Compensation Act who was erroneously overpaid retired pay when the Air Force could not obtain his civilian pay records may not have his debt waived where he failed to notify the Air Force of his employment for 4 years and asked for an exemption from the Act during the time he was being overpaid.

Procurement

B-238982.2, June 3, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

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

Procurement

Payment/Discharge

- Shipment
- ■ Losses
- ■ ■ Common carriers
- ■ ■ ■ Notification

When a shipper provides timely notice of loss of an item, the carrier is liable for loss unless the record establishes delivery.

B-242751, June 3, 1991***

91-1 CPD 521

Procurement

Competitive Negotiation

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

Agency's cost realism analysis is reasonable where agency made probable cost adjustments based upon the government's requirements as embodied in an independent government cost estimate as well as the agency's assessment of the costs associated with each firm's particular technical approach.

Procurement

Bid Protests

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

Protest against solicitation workload estimates is untimely where first filed months after closing date for receipt of initial proposals.

Procurement

Competitive Negotiation

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

Cost realism analysis was not required where contracting agency properly did not require offerors to submit cost proposals because of anticipated price competition for service requirements which were not new but had been previously contracted for and where quality or service shortfalls were not concerns in view of past contract cost experience.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement

Competitive Negotiation

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

Protest that agency does not have a reasonable basis to cancel request for proposals set aside for small businesses is sustained where basis for cancellation is that protester, the only offeror remaining in the competitive range, submitted unreasonably high proposed costs, but agency improperly failed to conduct meaningful discussions with protester relating to its proposed costs.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the requesting party does not show that decision contains either errors of fact or law or does not present information not previously considered which would warrant reversal or modification of our decision.

B-241771, June 5, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination
- ■ ■ ■ GAO review

Damages to a mobile home are measured by the difference in market value between what the home would have been worth in its undamaged condition and what it was worth in its damaged condition at the time and place of delivery. Where a mobile home has sustained damage that compromises its future transportability, but remains habitable and later is sold, an appropriate measure of such damages is the difference between the market value of an undamaged mobile home at the time and place of sale and the sale price.

B-242602, June 5, 1991***

91-1 CPD 529

Procurement

Contractor Qualification

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

Agency reasonably determined that offerors which had received prior production contracts for items being procured, completed in-house testing and appeared to be making satisfactory progress under the contracts, satisfied solicitation provision restricting procurement to "producers with a proven ability to produce the item(s) under a previous procurement."

B-242767, B-242767.2, June 5, 1991

91-1 CPD 530

Procurement

Bid Protests

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

Protest that an agency improperly conducted procurement by using alternative source selection procedures is dismissed as untimely under the General Accounting Office Bid Protest Regulations, where the protester learned the basis of its protest from an agency letter that opened discussions and did not protest the agency's use of the procedures until several months after agency had both closed discussions and received best and final offers.

Procurement

Competitive Negotiation

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

Agency properly evaluated proposals where the agency's scoring of the proposals was reasonable and related to the solicitation's stated evaluation criteria.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions where the agency's questions were sufficient to direct the protester to the primary area of concern about its proposal.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Inclusion
- ■ ■ ■ Administrative discretion

Protest that agency improperly included protester's proposal in the competitive range is denied where all offerors had significant omissions in their initial proposals and the protester could have become substantially more competitive as a result of discussions.

B-242782, June 5, 1991***

91-1 CPD 531

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Protest against issuance of delivery order under existing contract is denied where record establishes that the order for engineering services to replace circuit card assemblies and redesign the F-16 Control Air Data Computer was within the scope of an existing contract to provide engineering services for the microelectronics technology support program.

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Indefinite quantities

The Federal Acquisition Regulation does not prohibit the use of an indefinite-quantity contract for the acquisition of other than commercial items or prohibit the issuance of a cost-plus-fixed fee indefinite-quantity contract.

Procurement

Sealed Bidding

- Bids
 - ■ Minor deviations
 - ■ ■ Government advantage
 - ■ ■ ■ Acceptability
-

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Omission

Failure by bidder to submit with its bid completed standard representations and certifications under section "K" of the solicitation, Standard Form LLL "Disclosure of Lobbying Activities," and the corporate certificate does not render the bid nonresponsive; those omissions do not affect the material obligations of the bidder and therefore may be corrected as minor irregularities.

Procurement

Sealed Bidding

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

Agency properly allowed correction of four alleged mistakes in low bid where three were extension errors in calculating line item totals amounting to a downward correction of \$1,401, one involved a misplaced decimal point in a unit price where the original worksheets provided clear and convincing evidence of the intended unit price and showed that the extended total was correct as stated, and downward correction of low bid did not prejudice other bidders or compromise integrity of competitive bidding system.

Procurement

Competitive Negotiation

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

Contracting agency's determination that protester's quote of an alternate item as technically unacceptable was reasonable where the protester failed to submit sufficient information to establish that its alternate item was equivalent to the specified product.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Certification
- ■ ■ Signature lines
- ■ ■ ■ Omission

Invitation for bids (IFB) is defective where the IFB's Certificate of Procurement Integrity clause failed to provide a signature line or directions as to the precise manner in which bidders were to certify compliance with the certification requirements, which reasonably misled the protester and other bidders to believe a separate signature on the certificate was not required.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Evaluation criteria

Cancellation of solicitation after bid opening was proper where solicitation was defective because evaluation did not ensure that award would be based on lowest cost to the government.

Procurement

Bid Protests

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

Protest alleging that solicitation provision requiring bidders to include applicable taxes in their bid prices was ambiguous and confusing is dismissed as untimely where the protest is not filed prior to bid opening.

Procurement

Contractor Qualification

- Licenses
- ■ State/local laws
- ■ ■ GAO review

The necessity for a business license in a particular state or locality is generally a matter between the contractor and the issuing authority (although it can be considered by the contracting officer in making a determination of responsibility) and will not be a bar to a contract award, absent a specific licensing requirement in the solicitation.

Procurement

Sealed Bidding

- Bids
- ■ Acceptance time periods
- ■ ■ Expiration

Bid properly was rejected as nonresponsive where it offered 60-day acceptance period instead of required 90 days; offer of shorter than required acceptance period, even where allegedly due to typographical error, cannot be changed after bid opening.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Fixed-price offer by the low, technically acceptable offeror is not unbalanced where there is no convincing evidence of overstated pricing for line item which the protester asserts is enhanced.

Procurement

Competitive Negotiation

- Below-cost offers
- ■ Acceptability

While the protester contends that the awardee cannot perform the services required under one line item for the price proposed for these services, since in awarding the contract the agency concluded that the awardee could perform at the offered price and determined that the firm was responsible, the alleged below-cost pricing does not provide a basis to overturn the award.

Procurement

Payment/Discharge

- Shipment costs
- ■ Standard measurements

Where an agency solicitation for air freight services specifies that rates quoted by carriers shall be in "gross lbs" the term "gross lbs" should be interpreted in the sense in which it is generally used and understood, *i.e.*, scale weight, not volume weight.

Procurement

Payment/Discharge

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

Carriers have the burden of proving that special services were not only performed but also were requested.

Procurement

Payment/Discharge

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

Generally, a carrier is not entitled to charges in addition to line-haul charges in the absence of a specific tariff or tender provision providing for them.

Procurement

Payment/Discharge

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

Where a carrier is awarded only certain destinations of a series for which quotations were solicited, payment for shipments ordered to other destinations should not be based on the carrier's unsuccessful quotations.

Procurement

Payment/Discharge

- Shipment
- ■ Common carriers
- ■ ■ Attorney fees

There is no legal authority to pay a carrier attorney's fees incurred in pursuing a transportation claim before the General Accounting Office.

B-242717, June 6, 1991

91-1 CPD 540

Procurement

Sealed Bidding

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

Agency properly rejected bidder's request to correct a mistake in its bid based upon an error in a subcontractor's quote, where the requested correction would be based on a quote from a subcontractor other than the one upon which the original bid was based and would bring the bid to within 1.2 percent of the next low bid.

B-242793, June 6, 1991

91-1 CPD 541

Procurement

Socio-Economic Policies

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

Calculation of domestic content of milling machine listed under Federal Supply Class (FSC) 3417 by including accessory items listed under FSC 3460 was improper, since statute separately prohibits procurement other than domestic or Canadian origin milling machines and accessories by referring to the separate FSC of each; separate calculation of the domestic content of each therefore is required. However, the improper calculation here does not provide a basis to sustain the protest,

since the corrected calculation does not reduce the domestic content of the milling machine below 50 percent.

B-243477, June 6, 1991

Procurement

Payment/Discharge

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

A carrier who picked up an Army member's household goods, stored them in its own warehouse, and subsequently delivered them to the member's new address, is not automatically relieved of liability as a carrier for loss/damage, to be held to a warehouse's more limited liability, simply because it listed exceptions for loss/damage on the warehouse's inventory.

B-243517, June 6, 1991

91-1 CPD 542**Procurement**

Bid protests

- GAO procedures
- ■ Interested parties

Protester that refuses to extend its bid acceptance period is not an interested party to protest rejection of its bid.

B-244144, B-244145, June 6, 1991

91-1 CPD 543**Procurement**

Sealed Bidding

- Bids
- ■ Bid guarantees
- ■ ■ Omission
- ■ ■ ■ Responsiveness

Failure to furnish bid guarantee with a bid requires rejection of the bid as nonresponsive.

B-244303, June 6, 1991

91-1 CPD 544**Procurement**

Sealed Bidding

- Bids
- ■ Bid guarantees
- ■ ■ Omission
- ■ ■ ■ Responsiveness

Procurement

Sealed Bidding

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

Submission of bid guarantee effective for 30 days after bid opening rather than 60 days as required by the solicitation rendered the guarantee defective, and agency therefore properly rejected the bid as nonresponsive.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Joint ventures
- ■ ■ Administrative determination

Agency properly determined that joint venture qualified as a small disadvantaged business (SDB) where agency reasonably found that the SDB member has both control over the joint venture pursuant to a joint venture agreement which indicates that the SDB member controls at least 51 percent of venture, contributes 51 percent of the working capital, determines venture working capital requirements, controls the venture bank accounts, makes all day-to-day operational decisions, purchases all necessary supplies and equipment for performing requirement, and has the financial capability to obtain necessary bonds.

Procurement

Competitive Negotiation

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

Award to higher technically-rated offeror, while not the lowest-priced offeror but lower priced than protester, is not objectionable where solicitation award criteria made technical considerations more important than price, and the agency reasonably concluded that the awardee's proposal was the most advantageous.

Procurement

Competitive Negotiation

- Below-cost offers
- ■ Acceptability

Where agency concluded that awardee could perform at the offered price and was responsible, awardee's allegedly below-cost offer is no basis to disturb the award.

B-241192, June 7, 1991

Procurement

Payment/Discharge

- Shipment
- ■ Storage charges

The General Services Administration properly disallowed the claimant's storage charges under Item 1100(1) of the agency's National Rules Tender 100 since none of the shipments appeared to have been held in storage by reason of an act of the consignor or consignee and, for nearly half the shipments, the goods the claimant was to deliver were not in its possession when it made the delivery appointments.

The General Services Administration properly disallowed the claimant's storage charges under Item 1100(2) of the agency's National Rules Tender 100 because the shipments were not being stored at the claimant's destination terminal; the claimant was not detained in making its deliveries at the consignees' facilities; and the claimant failed to follow the required notification procedures.

The General Services Administration properly disallowed storage charges under Item 375 of the agency's National Rules Tender 100 because storage charges under Item 375 are to be assessed in accordance with Item 1100, and storage charges are not payable under Item 1100.

Procurement

Bid Protests

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

Where agency received proposals without changing solicitation provision in the face of a timely protest to it, protest filed with our Office more than 10 days thereafter is untimely.

Procurement

Bid Protests

- Dismissal
- ■ Definition

Procurement

Bid Protests

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

Dismissal of protest against amended solicitation provision is affirmed where protester did not timely protest one aspect of the amended provision prior to the subsequent closing date.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Dismissal of protest as academic is affirmed where the contracting agency reported that it would address the protester's concerns by amendment and there was no evidence that the agency would not do as it promised.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Quality control
- ■ ■ ■ Testing

Request for reconsideration of prior decision denying protest of requirement for visual inspection of inflating cylinders after endurance test portion of first article test and rejection of cylinders exhibiting any unwrapping of fiberglass is denied where protester offers no evidence to contradict the agency's position that visual inspection of the cylinders and rejection of those exhibiting any unwrapping of fiberglass is required since such unwrapping results in a breach of the cylinders' barrier coating through which moisture can enter and cause the fiberglass to lose its strength.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Technical acceptability
- ■ ■ Negative determination
- ■ ■ ■ Propriety

Notwithstanding the General Accounting Office's conclusion that the agency's evaluation was in part not reasonably based, the procuring agency properly determined that the protester's proposal for computer hardware maintenance was unacceptable and not in the competitive range where the protester acknowledged in its response to a deficiency report that it did not fully understand the requirements of the solicitation and its technical proposal failed to show compliance with certain solicitation requirements concerning the maintenance of a spare parts inventory.

Procurement

Bid Protests

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

Protest that requirements concerning asbestos removal are overly restrictive of competition and that agency should waive the requirements for the protester is dismissed as untimely where not raised by the closing date for receipt of initial proposals or within 10 working days after agency denied protester's request for a waiver.

Procurement

Competitive Negotiation

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

Where neither initial proposal nor best and final offer demonstrates compliance with solicitation asbestos removal and occupancy requirements after repeated and specific requests by agency for explanation, agency reasonably concluded that proposal is technically unacceptable.

Procurement

Contractor Qualification

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

Protest that proposed awardee is nonresponsible and therefore should not receive award is dismissed; General Accounting Office will not review agency's affirmative determination of responsibility absent circumstances not present in this case.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office denies request for reconsideration of decision dismissing protest allegation challenging contract award, where protester was found technically unacceptable and presented no timely argument that would warrant disturbing the agency's conclusion in this regard, and is, therefore, not an interested party since it would not be in line for award if allegation were resolved in its favor.

Procurement

Specifications

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

Definitive responsibility criterion which overstates agency's needs may be waived where agency's actual needs will be satisfied and no other offerors will be prejudiced by award to an offeror which has not met the criterion.

Procurement

Contractor Qualification

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

The General Accounting Office will examine the record to determine whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that responsibility criteria have been met only where noncompliance with a definitive responsibility criterion is alleged.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Protests are denied where the issue of whether a small disadvantaged business set-aside conflicts with the Small Business Competitive Demonstration Program Act of 1988 recently was considered and resolved by our Office and no useful purpose would be served by revisiting the issue.

Procurement

Socio-Economic Policies

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

Agency's 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 at least two responsible SDB firms at prices which will not exceed the fair market price by more than 10 percent.

B-242858, June 10, 1991

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Leases
- ■ ■ ■ Office space

Protest of contracting agency's evaluation of proposals under solicitation for office space lease which disputes agency's conclusion that space offered by awardee is superior to protester's is denied where the record supports the ratings given to the protester and the awardee under each of the solicitation evaluation criteria and the record supports the agency's conclusion that space offered by the awardee is best suited to the needs of the user agency as set forth in the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Leases
- ■ ■ ■ Office space

Under a solicitation for the lease of office space, agency evaluation of the maintenance of protester's building under existing lease was reasonable and consistent with evaluation factor which indicated that agency would consider "building maintenance." Although an agency may consider in evaluation information outside of proposal only where consistent with long-standing procurement practice, General Accounting Office concludes that it is consistent with long-standing practice of most federal agencies to view the site and consider the maintenance condition of existing buildings.

Procurement

Bid Protests

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

Where protester raises new and independent grounds of protest in its comments on the agency's report, the newly raised allegations must independently satisfy the timeliness regulations.

B-242881, June 10, 1991

91-1 CPD 555

Procurement

Competitive Negotiation

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

Award was properly made to the higher-priced, technically superior offeror in a negotiated procurement that provided for award to the offeror with the most advantageous offer, where the contracting officer reasonably determined, in accordance with the evaluation criteria, that the award-ee's technical advantages outweighed the protester's lower-price, lower-rated offer.

B-242902, June 10, 1991

91-1 CPD 556

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Award to higher-priced offeror is proper where the protester was notified in discussions about the agency's concern regarding its low compensation rates, particularly as it affects retention and recruitment, and the protester submitted only undocumented general statements in support of its compensation rates.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions where it advised the protester of deficiencies in its proposal; procuring agency is not required to notify offerors of deficiencies remaining in their best and final offers or conduct successive rounds of discussions until such deficiencies are corrected.

B-243193, June 10, 1991

91-1 CPD 557

Procurement

Contract Types

- Cost reimbursement contracts
- ■ Use
- ■ ■ Administrative discretion

Determination to use cost-type contract for housing maintenance and management, because of unpredictable changes in the number of occupants, unforeseen requirements, and the addition of new requirements—such as a hazardous waste management program—is reasonable.

B-243785.2, June 10, 1991***

91-1 CPD 558

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where agency promptly took corrective action within 2 weeks of when the protest was filed.

B-243926, June 10, 1991

91-1 CPD 559

Procurement

Bid Protests

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

Protest that awardee was improperly allowed to correct a mistake in its bid is dismissed as untimely where the protester failed to diligently pursue information regarding whether a basis for protest existed after notice of the award was published in the *Commerce Business Daily*.

B-244252, June 10, 1991

91-1 CPD 560

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

There is no basis to award proposal preparation costs to a protester who never timely filed a protest at the General Accounting Office (GAO); a prerequisite to the award of costs is a decision by GAO on the merits of a protest.

B-242992, June 11, 1991

91-1 CPD 561

Procurement

Sealed Bidding

- Unsealed bids
- ■ Acceptance
- ■ ■ Propriety

A procuring agency may accept a bid in an open envelope despite the solicitation requirement that bid envelopes be sealed, where the record shows that there was no prejudice to the interests of any other bidder.

B-242297.2, June 12, 1991

91-1 CPD 562

Procurement

Contract Management

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

Protest is denied where contracting officer reasonably determined that conduct likely occurred during the procurement which afforded the protester an unfair competitive advantage, and that in order to protect the integrity of the competitive procurement system, the contract with the protester should be terminated for the convenience of the government.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Competitive Negotiation

- Offers
- ■ Technical acceptability
- ■ ■ Descriptive literature

Where protester would not or could not provide information to show the feasibility of its proposed small arms research project for laser transmission or activation of chemical agents under solicitation for "leap ahead technology" for small arms systems, agency reasonably found that technical success was improbable and decision not to fund protester's proposed project was proper.

Procurement

Competitive Negotiation

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

Defense Logistics Agency's award to a higher-priced offeror on its Quality Vendor List after performing a best value analysis is not objectionable where agency could reasonably find that higher probability of quality performance and timely delivery outweighed the modest price premium involved.

Procurement

Bid Protests

- Allegation substantiation
 - ■ Lacking
 - ■ ■ GAO review
-

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Protest that agency, as part of systematic effort to avoid awarding contracts to protester, improperly found protester, a small business, not responsible without making the mandatory referral to the Small Business Administration is denied where record does not establish that agency made an adverse responsibility determination.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Off-schedule purchases
- ■ ■ Justification
- ■ ■ ■ Low prices

Contracting agency properly obtained waiver from mandatory use of protester's Federal Supply Schedule (FSS) contract with the General Services Administration (GSA); since contracting agency and GSA reasonably determined that substantial portion of agency's needs for acquisition and processing of lightning data cannot be met from protester's FSS contract, procurement on basis of full and open competition was proper.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision that found a proposal, which did not specify the time within which it may be accepted, had expired after 13 months and could not be accepted for award is denied, where the requester presents no evidence of errors of fact or law.

Procurement

Competitive Negotiation

- Offers
- ■ Price reasonableness
- ■ ■ Determination
- ■ ■ ■ Administrative discretion

Agency's price analyses of fixed-price offers on a solicitation containing an economic price adjustment (EPA) provision, which consisted of comparing the price elements of the various proposals of the competing offerors and the government estimate, is sufficient for the agency to reasonably determine price/cost reasonableness of the awardee's proposal, where the price elements subject to adjustment under the EPA provision are supported by firm quotes from the offerors' vendors.

Procurement

Contract Management

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

Protest that product 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

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Checks
- ■ ■ ■ Adequacy

The agency properly rejected a low bid as nonresponsive, where the bidder furnished a bid guarantee in the form of an uncertified company check.

Procurement

Sealed Bidding

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

The execution of performance and payment bonds after bid opening cannot make responsive a bid accompanied by an inadequate bid guarantee.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Contractor substitution
- ■ ■ ■ Corporate entities

Company may not change an offer submitted in its own name after the closing date to make itself only the agent of another company since award to an entity other than that named in the original offer is improper and inconsistent with the competitive system.

Procurement

Payment/Discharge

- Shipment
- ■ Tenders
- ■ ■ Terms
- ■ ■ ■ Interpretation

Where use of a carrier's tariff rates results in lower charges than those available in the carrier's government rate tender, the tariff rates set the upper limit of those chargeable since shipments made on a GBL may take a rate no higher than that chargeable had the shipment moved on commercial shipment forms.

Procurement

Competitive Negotiation

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

Protest is sustained where contracting officer has not reasonably justified agency determination that the awardee's proposed level of man-hours, which is approximately half of the government estimate, and was initially considered by the agency to constitute a high risk of failure, will satisfy the agency's minimum needs without additional expense to the government under a cost-reimbursement contract, which was awarded primarily on the basis of the awardee's proposed low cost.

B-242889, June 17, 1991

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Sample evaluation
- ■ ■ ■ Testing

Protest of unequal competition in procurement for drug testing services is denied where: (1) although protester had 7 days to complete certification testing while awardee was given second 7-day period to obtain certification, nothing in solicitation prohibited retesting and any arguable benefit to the awardee did not affect the outcome of the competition; and (2) although agency learned after award that awardee was not formally certified by testing organization prior to award, as required by solicitation, this was due solely to oversight by the testing organization, which ultimately certified awardee based on test samples submitted prior to award.

B-242902.2, June 17, 1991

Procurement

Competitive Negotiation

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

General Accounting Office has no legal basis to interfere with agency's determination that protester's offer was not realistic based on the fact that the compensation rates for physicians dramatically declined over the base and 4 option years.

B-243788, B-243789, June 17, 1991

Procurement

Special Procurement Methods/Categories

- Federal procurement regulations/laws
- ■ Trade restrictions
- ■ ■ Clarification

GAO suggests minor clarification of an item contained in Federal Acquisition Circular (FAC) 90-4, but otherwise has no objection to Federal Acquisition Regulation (FAR) case No. 90-66, an interim rule intended to implement restrictions on South African trade imposed by the Anti-Apartheid Act of 1986 (Pub. L. 99-440). This item is FAR case No. 90-66.

Procurement

Special Procurement Methods/Categories

- Federal procurement regulations/laws
- ■ Foreign products
- ■ ■ Prohibition
- ■ ■ ■ Revision

GAO has an objection to an interim rule contained in Federal Acquisition Circular (FAC) 90-4 revising the Federal Acquisition Regulation (FAR) to implement prohibitions on U.S. acquisitions of Iraqi supplies or services consistent with Executive Orders 12722 and 12724A. This item is FAR case No. 91-7.

B-244175, June 17, 1991

91-1 CPD 574

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Applicability

Procurement

Specifications

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

Where protester argues that awardee's proposal of foreign-manufactured lifeboat system is unacceptable because it violates statutory restriction on use of appropriated funds for foreign-manufactured vessels or major components of vessels, but protester likewise proposed foreign-manufactured lifeboats, and there is no basis for concluding that awardee's system will not satisfy agency's minimum needs, contracting officials have treated both offerors equally and there is no basis to sustain protest against award.

Procurement

Bid Protests

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

Where protester would not be in line for award if its protest were sustained, it is not an interested party eligible to protest the rejection of its proposal.

B-244328, June 17, 1991

91-1 CPD 575

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Protest of agency's intent to enter into sole-source contract is dismissed as premature where synopsis of procurement action in *Commerce Business Daily* invited proposals for purpose of determining whether to conduct competitive procurement, protester submitted a proposal, and agency has neither rejected protester's proposal nor determined to proceed with sole-source award.

Procurement

Specifications

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

Unsupported general assertion that agency's stated requirements are overly restrictive and ambiguous does not constitute a legally sufficient basis of protest.

B-242895, June 18, 1991

91-1 CPD 576

Procurement

Noncompetitive Negotiation

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

An agency's noncompetitive award of a contract for longeron repair kits for F-5 type aircraft is proper where (1) the record indicates that only one source had been approved to supply the requirement and no additional sources could be approved in sufficient time to meet the agency's immediate requirements; and (2) the protester had only submitted its technical package for source approval at about the time the immediate requirement arose, despite being apprised of the requirement 6 months earlier.

B-242897, June 18, 1991

91-1 CPD 577

Procurement

Competitive Negotiation

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

While a number of proposed key personnel were changed after award, agency's evaluation of offeror's key personnel was not improper where offeror provided firm letters of commitment with consent of the listed individuals, and nothing in the record suggests that the names were submitted other than in good faith.

Procurement

Competitive Negotiation

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

Protester's allegation that agency improperly downgraded its proposal which resulted in award to another offeror is denied where record demonstrates that protester was rated technically superior, and even if the protester received a perfect technical score this would not have outweighed the 30 percent cost differential between it and the awardee.

Procurement

Competitive Negotiation**■ Offers****■ ■ Cost realism****■ ■ ■ Evaluation****■ ■ ■ ■ Administrative discretion**

Challenge to agency's review of cost realism of awardee's proposal is denied where record shows that cost realism review was reasonable and thorough and where agency received favorable advice from Defense Contract Audit Agency and another activity currently contracting with awardee for similar services regarding proposed rates and acceptability of performance at those rates.

B-242900, June 18, 1991*****91-1 CPD 578**

Procurement

Sealed Bidding**■ Invitations for bids****■ ■ Amendments****■ ■ ■ Notification**

Procurement

Sealed Bidding**■ Potential contractors****■ ■ Exclusion****■ ■ ■ Propriety**

Agency violated provisions of Federal Acquisition Regulation governing the distribution of amendments and caused the improper exclusion of the protester from the competition where (1) unreasonable actions by agency personnel resulted in the agency mailing an amendment setting a new bid opening date to the protester's former address, which in turn caused the protester to receive the amendment 1-hour prior to bid opening; (2) the protester did not fail to avail itself of a reasonable opportunity to obtain the amendment; and (3) only one responsive bid was submitted and four prospective bidders were eliminated from the competition because of the agency's actions.

B-242962, June 18, 1991*****91-1 CPD 579**

Procurement

Sealed Bidding**■ Invitations for bids****■ ■ Amendments****■ ■ ■ Notification**

Procurement

Sealed Bidding**■ Potential contractors****■ ■ Exclusion****■ ■ ■ Propriety**

Where agency failed to send the protester two material solicitation amendments in violation of applicable regulatory requirement governing the dissemination of solicitation materials, and the record shows significant deficiencies in the contracting agency's procedures in sending out solicitation amendments which contributed to the protester's exclusion from the competition and resulted in the receipt of only two responsive bids, the protester was improperly excluded from the competition in violation of the Competition in Contracting Act of 1984, which requires "full and open" competition.

B-242986, June 18, 1991

Procurement

Payment/Discharge

- Shipment costs
- ■ Rate schedules
- ■ ■ Applicability

The government may use the rates in a carrier's Freight All Kinds tender involving area origins and destinations, in lieu of those in a tender involving specific origin points but area destinations, when the former result in lower charges.

B-243831.2, June 18, 1991

91-1 CPD 580

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior dismissal of protest against termination for convenience of protester's contract and issuance of solicitation for same services is affirmed on reconsideration since the allegation concerns a matter of contract administration which is not for review by the General Accounting Office.

B-244157, June 18, 1991***

91-1 CPD 581

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

Agency was not required to refer rejection of protester's offer based on grounds of technical unacceptability to Small Business Administration for certificate of competency determination where firm's proposal was determined not to be within competitive range, since in rejecting firm's offer agency did not reach the question of offeror's responsibility.

B-234430.2, June 19, 1991

Procurement

Payment/Discharge

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

The government's *prima facie* case of liability against a carrier for the loss of an item in a shipment of freight is not overcome if the carrier later returns overage of a different item that is not shown to be connected to the original shipment from which there was a loss. Express, Inc.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Although record demonstrates that limited opportunity for competition exists due to harsh environmental factors and a 90-day operational service requirement, protest that agency acted improperly in opening procurement to full and open competition rather than proceeding with its initial plan to make a sole-source award is denied where the agency's decision was based on protester's representations, after being advised of agency's stringent requirements, that it could compete.

B-243450.3, June 19, 1991

Procurement

Bid Protests

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

Protest that agency performed an unreasonable cost realism analysis of protester's proposal is dismissed as untimely when not filed within 10 working days after the date the protester received the documents, submitted as attachments to the agency report on the protest, revealing the protest basis. Computation by the General Accounting Office of the comment due date based on when the protester received the completed agency report did not act as an extension for the due date for filing a protest based on information revealed in the report.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Good cause exemptions
- ■ ■ ■ Applicability

Untimely protest will not be considered under the "good cause" exception to timeliness rules where no compelling reason beyond the protester's control prevented the protester from timely filing its protest with the General Accounting Office.

B-240924.3, June 20, 1991

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Reconsideration of previous decision is denied where party requesting reconsideration provides no basis, beyond some adverse performance history and speculation regarding prices to be proposed by two potential small business bidders, to refute General Accounting Office's conclusion that agency failed to reasonably determine that there was no likelihood of receiving offers from at least two responsible small businesses.

B-242056, B-242057, June 20, 1991

Procurement

Special Procurement Methods/Categories

- Federal procurement regulations/laws
- ■ Contracting officers
- ■ ■ Purchases
- ■ ■ ■ Review

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 90-53, a proposal to revise FAR sections 44.302 and 44.304 to give contracting officers more flexibility in reviewing contractor purchasing systems.

Procurement

Special Procurement Methods/Categories

- Federal procurement regulations/laws
- ■ Conflicts of interest
- ■ ■ Experts/consultants

General Accounting Office has no comments at this time on Item I of Federal Acquisition Circular 90-1 (FAR case No. 90-18), which provides conflict of interest standards for consultants. GAO work in response to statutory requirement that Comptroller General assess the effectiveness of such regulations, is not yet complete.

B-243633, June 20, 1991**91-1 CPD 585**

Procurement

Bid Protests

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

Protest by firm not in line for award if the protest were sustained is dismissed, since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under the General Accounting Office Bid Protest Regulations.

B-244100, June 20, 1991**91-1 CPD 586**

Procurement

Bid Protests

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

Protest filed at General Accounting Office (GAO) more than 10 working days after protester was orally informed of basis of protest is untimely since protester may not delay filing its protest until receipt of written notification which merely reiterates basis of protest originally orally learned; letter submitted to agency within the 10-day timeliness period stating protester's future intent to protest did not constitute agency-level protest so as to toll the 10-day timeliness period for filing a protest with GAO.

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Certification
 - ■ ■ ■ Omission
-

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Failure of bid to include completed certificate of procurement integrity is a material deficiency in the bid requiring that it be rejected as nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Contractor liability
- ■ ■ ■ Liability restrictions

Protest that rejection of bid as nonresponsive was improper because protester's failure to complete certificate of procurement integrity was caused by agency's erroneous oral advice is denied; protester was on constructive notice that its bid would be considered nonresponsive because regulation to that effect is published in the Federal Register, and bidder relies on conflicting oral advice of contracting personnel at its own risk.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show any error of fact or law, or present information not previously considered, that would warrant reversal or modification of our decision that agency properly rejected protester's bid as nonresponsive because of an ambiguity with respect to compliance with the required completion schedule.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Subcontractors

Protester, a prospective subcontractor, was properly found nonresponsive where prime contractor acting on behalf of the government reasonably determined that protester did not have a functional quality control program or adequate facilities to produce the required items.

Procurement

Contractor Qualification

- Responsibility/responsiveness distinctions
-

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Certification
 - ■ ■ ■ Omission
-

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Bid that did not include executed Certificate of Procurement Integrity was properly rejected as nonresponsive as completion of the certificate imposes substantial legal burdens on a contractor and is properly viewed as a matter of responsiveness, rather than responsibility, and cannot be waived as a minor informality.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Certification
- ■ ■ Signature lines
- ■ ■ ■ Omission

Low bidder's contention that solicitation was misleading is sustained where solicitation's Certificate of Procurement Integrity failed to provide a signature line or space, causing bidders reasonably to conclude that a separate signature on the certificate was not required.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Eighth low bidder's contention that it should receive award because it was the lowest-priced bidder to properly complete the Certificate of Procurement Integrity is dismissed as academic where low bidder's argument that solicitation was misleading is sustained and the General Accounting Office concludes that agency should cancel the solicitation and resolicit the requirement.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation errors
 - ■ ■ Prices
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Prices

Agency properly did not include protester's proposed reduced award fee in price evaluation of proposal, where it was clear from the solicitation that offerors were not intended to propose other than the fee stated on the pricing schedule, and that different award fees would not be evaluated.

Procurement

Competitive Negotiation

- Contract awards
- ■ Award procedures
- ■ ■ Procedural defects

Agency's alleged failure to provide preaward notice of intended awardee under small business set-aside is not basis for overturning award, where agency executed a written urgency determination prior to award and, in any case, protester did not file a timely post-award size protest with the Small Business Administration and was not found to be other than small, and where, in any case, agency executed a written urgency determination prior to award.

Procurement

Bid Protests

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

Protester is an interested party to protest price limitations in an invitation for bids despite fact that it did not submit a bid where relief that it seeks is the opportunity to compete under a revised solicitation.

Procurement

Sealed Bidding

- Bids
 - ■ Evaluation
 - ■ ■ Prices
 - ■ ■ ■ Unbalanced bids
-

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Risks

Imposition of price limitations on lump sum work items is reasonable where, due to unreliability of government estimates of work to be performed, the opportunity exists for bidders submitting mathematically unbalanced bids to recover substantial sums under lump sum items while performing minimal work under unit price items.

B-242957, June 24, 1991

91-1 CPD 594

Procurement

Bid Protests

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

Protest challenging solicitation specifications is timely where filed prior to closing date for receipt of proposals, although filed more than 10 days after the agency responded to the protester's agency-level protest by making several modifications to the solicitation requirements.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

The *General Accounting Office* will not review a protest assertion that a solicitation should include additional, more restrictive solicitation requirements incorporating internal agency standards.

Procurement

Specifications

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

Design specifications "written around" the features of a particular item are not improper where the specifications are reasonably related to the agency's minimum needs.

Procurement

Bid Protests

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

Where a protester did not submit a proposal, and its protest alleging overly restrictive specifications is denied, the protester is not an interested party to further challenge the procurement with respect to matters which affect only the actual offerors.

B-243000, June 24, 1991***

91-1 CPD 595

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

In a negotiated, indefinite quantity procurement for construction, maintenance, and repair services, the procuring agency reasonably evaluated the protester's proposal as technically unacceptable and properly eliminated it from the revised competitive range after discussions, where the protester's model project submissions, which were evaluated under a specific evaluation criterion, failed to demonstrate the protester's understanding of the solicitation requirements or the protester's ability to use the required unit price book to price contract services.

B-243023, June 24, 1991

91-1 CPD 596

Procurement

Bid Protests

- Forum election
- ■ Finality

Procurement

Bid Protests

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

Where a protest is initially filed with the contracting agency, a protester may only wait a reasonable amount of time for a contracting agency's response to its protest before filing a protest with the General Accounting Office.

Procurement

Bid Protests

- GAO procedures
- ■ Agency notification
- ■ ■ Deadlines
- ■ ■ ■ Constructive notification

Requirement under 4 C.F.R. § 21.1(d) (1991) of General Accounting Office's (GAO) Bid Protest Regulations that the contracting officer receive copy of protest within 1 working day after filing with GAO was met by subcontractor which provided copies of the protest to the contractor conducting the procurement "by or for the government" as well as to government officials believed to be involved in the subcontractor selection.

Procurement

Bid Protests

- Subcontracts
- ■ GAO review

General Accounting Office (GAO) will consider protest of subcontract award where the government's involvement in the procurement is so pervasive that the contractor was a mere conduit for the government in selecting the subcontractor. Where government officials identify the need for the services, draft the solicitation evaluation criteria, select government officials to serve on the evaluation committee, and approve the evaluation committee's subcontractor selection, the procurement is "by or for the government" and subject to GAO's bid protest jurisdiction.

Procurement

Bid Protests

- Agency-level protests
 - ■ Protest timeliness
 - ■ ■ GAO review
-

Procurement

Bid Protests

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

Where a protest has been filed initially with contracting agency, subsequent protest to General Accounting Office is timely where filed within 10 days of initial adverse agency action, provided that the initial protest was filed in a timely manner. Where government contractor is conducting the procurement "by or for the government," protest to contractor constitutes agency-level protest.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Subcontracts

Protest against award of subcontract is sustained where proposals were not evaluated based solely on evaluation factors stated in the solicitation.

Procurement

Socio-Economic Policies

- **Small business set-asides**
- ■ **Cancellation**
- ■ ■ **Justification**

Cancellation of small business-small purchase set-aside under a request for quotations (RFQ) was proper where protester, the only small business submitting a quote, conditioned its compliance with the RFQ's 10-day completion schedule in telephone call to agency after submission of quote; although protester disputes agency's interpretation that it qualified quote, based on record agency's interpretation was reasonable.

Procurement

Bid Protests

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

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

Procurement

Socio-Economic Policies

- **Small business 8(a) subcontracting**
- ■ **Cancellation**
- ■ ■ **Resolicitation**
- ■ ■ ■ **Small business set-asides**

Procurement

Socio-Economic Policies

- **Small business set-asides**
- ■ **Use**
- ■ ■ **Propriety**

Where procurement initially was improperly included in Small Business Administration's Section 8(a) program, even though requirement had been synopsisized in the *Commerce Business Daily* as a total small business set-aside, dissolving 8(a) set-aside and instead setting the procurement aside for small business was proper.

Procurement

Socio-Economic Policies

- **Disadvantaged business set-asides**
- ■ **Incumbent contractors**
- ■ ■ **Adverse effects**
- ■ ■ ■ **Determination**

There is no requirement for study of adverse impact on small disadvantaged business concerns where procurement is set aside for small business.

Procurement

Sealed Bidding

- **Terms**
- ■ **Materiality**
- ■ ■ **Integrity certification**

Contracting officer properly added requirement for Certification of Procurement Integrity to invitation for bids prior to reinstatement of statutory requirement for such certification, since bid opening and contract award would occur after the effective date of the statute requiring certification.

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Terms**
- ■ ■ **Interpretation**
- ■ ■ ■ **Certification**

Protester's argument that it was misled by a provision in invitation for bids stating that offerors may be required to execute certificates relating to business integrity is denied because it ignores the language set forth in amendment No. 0002, which states that bidders are required to submit a signed Certificate of Procurement Integrity with their bids.

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Certification**
- ■ ■ ■ **Omission**

Bidder's failure to complete solicitation's Certificate of Procurement Integrity renders its bid non-responsive since completion of the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Interpretation**
- ■ ■ **Terms**
- ■ ■ ■ **Testing**

Protest that agency improperly determined that awardee's product complied with solicitation testing requirements and standards is denied where protester's interpretation of the testing requirements is neither reasonable nor consistent with the solicitation when read as a whole.

Procurement

Bid Protests

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

Allegation that additional testing requirements are necessary to determine compliance with the specifications is untimely where not filed until after award.

Procurement

Competitive Negotiation

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

Protest that awardee's product does not meet the specifications and that awardee's scientific data should be verified independently by agency scientists is denied where the agency evaluated the scientific data submitted by awardee and reasonably determined that the data demonstrated compliance with the specifications, and there is no evidence that the data is incorrect.

B-243064, June 25, 1991

91-1 CPD 603

Procurement

Bid Protests

- Allegation
- ■ Withdrawal

Protest is dismissed where original allegation is effectively withdrawn by protester in its comments on agency's report and subsequent allegation fails to state a valid basis for protest.

B-243101, June 25, 1991

91-1 CPD 604

Procurement

Competitive Negotiation

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

Protest that protester should have received the contract award because it submitted the low cost proposal which was technically equal to the awardee's proposal is denied where the procuring agency reasonably determined that the awardee's proposal was technically superior to the protester's proposal.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Initial offers

Protest that agency should have awarded the contract to the protester based on initial proposals is denied where after evaluating the initial proposals the agency found that another, higher cost proposal was technically superior to the protester's proposal and that the protester's proposal was not the most advantageous to the government.

Procurement

Competitive Negotiation

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

Protest that agency failed to conduct equal discussions with the protester and awardee because the agency did not ask each of the two offerors the same questions is denied since agencies are required to tailor the questions to each offeror on the basis of the deficiencies the agency finds in the offeror's proposal.

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Propriety**
- ■ ■ **Source selection boards**
- ■ ■ ■ **Deficiency**

Procurement

Competitive Negotiation

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

Alleged deficiencies in source selection plan do not themselves provide a basis for challenging the propriety of an award decision since source selection plan is merely an internal agency instruction which does not vest outside parties with rights; propriety of award decision is judged by whether agency adhered to the evaluation scheme outlined in the solicitation.

Procurement

Competitive Negotiation

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

Protest that agency improperly considered pages of awardee's technical proposal which exceeded the 50-page limitation set forth in the request for proposals is denied where the procuring agency reasonably interpreted the limitation as applying only to the substantive portions of the technical volume and not to the cover page and table of contents.

B-243304, June 25, 1991

91-1 CPD 605

Procurement

Contract Management

- **Contract administration**
- ■ **Default termination**
- ■ ■ **Propriety**
- ■ ■ ■ **GAO review**

The General Accounting Office will not consider the propriety of agency decision to terminate a contract for default, since this is a matter for the agency's board of contract appeals.

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Default termination**
- ■ ■ **Resolicitation**

In reprocurring a contract on account of protester/defaulted contractor, agency properly made award to the second-low offeror on the terminated contract.

B-243496, June 25, 1991

91-1 CPD 606

Procurement

Bid Protests

- **Moot allegation**
- ■ **GAO review**

Protest is dismissed as academic where agency proposes to terminate for the convenience of the government the contract previously awarded and resolicit the requirement, notwithstanding that the protester requested award of the contract in its protest, since the agency's proposed corrective action is the same as the recommendation the General Accounting Office would make under the circumstances.

B-242283.4, June 26, 1991

91-2 CPD 8

Procurement

Competitive Negotiation

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

Agency had a reasonable basis for downgrading protester's proposal for airtanker services in terms of support capability, aircraft, safety and business practices despite protester's unsupported disagreements with the technical evaluators' conclusions.

Procurement

Competitive Negotiation

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

Although agency erred in scoring the awardee's proposal with respect to safety and past availability of aircraft and the protester's proposal with respect to availability, the record reflects that, with properly adjusted scores, awardee still submitted a superior proposal so that protester was not materially prejudiced.

Procurement

Contract Management

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

Aircraft certification requirements, which were to be met shortly before contract performance began, are not preconditions to award and whether they are timely satisfied by the awardee is a matter of contract administration.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Alternate offers
- ■ ■ Evaluation errors

Awardee's claim that it also had submitted an alternate proposal that was not properly evaluated by the agency does not provide a basis for reconsidering decision that award was improper because agency had failed to evaluate protester's alternate proposal; General Accounting Office will not consider new arguments raised by interested party in request for reconsideration where those arguments could have been raised during consideration of the initial protest.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Sole-source award for chaff under 10 U.S.C. § 2304(c)(2) (1988) was unobjectionable where based on urgent wartime requirement and agency's reasonable determination that only one source was available that had proven acceptable chaff, since testing necessary for other potential sources, including protester, would cause unacceptable delay in procurement.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Facsimile

Protest repeatedly misdirected to incorrect telefax (fax) number will not be considered since General Accounting Office (GAO) did not timely receive the protest within 10 working days after the basis of protest was known or should have been known. Protester relying on fax equipment to file a protest bears the risk of untimely receipt of protest by GAO.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Deadlines
- ■ ■ ■ Constructive notification

The General Accounting Office (GAO) affirms dismissal of a protest as untimely filed, even though the protester claims it was unfamiliar with the timeliness requirements of GAO's Bids Protest

Regulations and that the procuring agency failed to inform the protester of the requirements of the regulations, since the regulations are published in the *Federal Register* and the protester is therefore on constructive notice of their contents.

Procurement

Bid Protests

- GAO procedures
 - ■ Protest timeliness
 - ■ ■ Good cause exemptions
 - ■ ■ ■ Applicability
-

Procurement

Bid Protests

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

The fact that a protester is a small business provides no basis for waiving the timeliness requirements of the General Accounting Office Bid Protest Regulations because the only two exceptions recognized by the regulations to the timeliness rules—for protests presenting significant issues and for good cause—are not applicable.

B-244531, June 27, 1991

91-1 CPD 612

Procurement

Sealed Bidding

- Ambiguous bids
 - ■ Determination criteria
-

Procurement

Sealed Bidding

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

Bid was properly rejected as nonresponsive due to the ambiguity created by two conflicting bid acceptance periods that appear in the bid. In these circumstances, the protester has no legal right to have the error corrected under the mistake in bid procedures.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

Prior decision denying protest of agency's determination that proposals were technically equal and of agency's decision to award cost reimbursement contract based on lowest proposed cost is affirmed where protester fails to show that prior decision was based on a misinterpretation of applicable law or misunderstanding of the record.

Procurement

Bid Protests

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

Request for award of portion of attorneys' fees incurred to refute agency arguments that were subsequently contradicted by agency's own witness is denied where agency's award decision ultimately was found to be consistent with statutory and regulatory requirements, since award of such costs is contingent upon a finding that the agency violated such requirements.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest as untimely filed is denied where protester does not show that dismissal was based on errors of fact or law, and does not present information not previously considered which warrants reversal or modification of prior decision.

Procurement

Bid Protests

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

General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO's Bid Protest Regulations, where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

Procurement

Competitive Negotiation

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

Technical evaluation under certain evaluation subfactors was unreasonable where offerors earned maximum scores for proposals that did not meet solicitation requirements, and where record does not support award of lower score to protester than to one of the awardees.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Agency's method of evaluating price proposals, which resulted in very closely grouped price scores, was improper where it resulted in price having virtually no weight in evaluation and thus was inconsistent with the evaluation scheme in the solicitation.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Evaluation errors

Award to higher-priced, technically superior offeror was improper where technical evaluation was flawed in certain areas and price evaluation method effectively gave no weight to price, and protester, the low-priced offeror, might have been the successful offeror despite technical deficiencies had evaluations been properly conducted.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Protest is sustained where the General Accounting Office is unable to determine from the record that the agency's evaluation of protester's proposal and its exclusion of the protester from the competitive range were reasonable as the record includes only technical point scores and lacks contemporaneous evaluation documentation, including narratives listing the strengths, weaknesses, and risks of protester's proposal, which would support the technical scores received by the protester.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Where *Commerce Business Daily* (CBD) notice announcing agency's plans to make sole-source award contains footnote 22--giving other potential sources 45 days to submit expressions of interest showing their ability to meet agency's stated requirements—a potential source must first timely respond to the CBD notice and receive a negative agency response before it can protest the agency's sole-source decision at the General Accounting Office (GAO). GAO will dismiss protest as premature where protest does not indicate that the protester submitted an expression of interest to the agency before filing the protest at GAO.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Where *Commerce Business Daily* (CBD) notice announcing agency's plans to make sole-source award contains footnote 22--giving other potential sources 45 days to submit expressions of interest showing their ability to meet agency's stated requirements—a potential source must first timely respond to the CBD notice and receive a negative agency response before it can protest the agency's sole-source decision at the General Accounting Office (GAO). GAO will dismiss protest as premature where protest does not indicate that the protester submitted an expression of interest to the agency before filing the protest at GAO.

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