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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-240001.2, January 9, 1992***

Appropriations/Financial Management

Claims Against Government

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Creative Advertising by Russ Vollmer, Inc. is not entitled to payment for T-shirts provided to certain Internal Revenue Service (IRS) employees contributing to the 1989 Combined Federal Campaign since IRS' procurement of T-shirts was not authorized under applicable statutes and regulations.

B-245760, January 16, 1992

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Losses
- ■ ■ Foreign currencies
- ■ ■ ■ Exchange rate

Deficiency in disbursing officer's account which is solely attributable to currency devaluations in foreign exchange transactions may be restored by the Department of the Treasury as authorized by 31 U.S.C. § 3342. It is not necessary or appropriate for federal agencies to seek relief from GAO for such a loss.

Civilian Personnel

B-245811, January 9, 1992

Civilian Personnel

Relocation

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

A transferred employee executed a 1-year lease on a furnished apartment at his new duty station for his own use when he reported for duty. He occupied it for more than 1 year before he vacated it, went on annual leave moved to another location 148 miles from his duty station and retired. Since there is no showing that the employee intended that the apartment occupied was to be other than his only residence at his new station and thus, permanent, subsistence expenses authorized by the Federal Travel Regulations incident to occupancy of temporary quarters may not be paid.

Civilian Personnel

Relocation

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

A transferred employee reported for duty in July 1988 and leased a furnished apartment for his own use for 1 year at his new duty station. His immediate family did not vacate the residence at his old duty station until August 1989 when they joined the employee at a location approximately 148 miles from his new duty station, after he vacated the apartment at his new duty station and went on annual leave for the month of September 1989, in anticipation of his retirement on September 30 at that new location. Since there was no demonstrable connection between the quarters occupied by the employee's family in September 1989 and the employee's duty station, subsistence expenses incident to temporary quarters occupancy may not be paid on their behalf.

B-244473, January 13, 1992

Civilian Personnel

Compensation

- Training expenses
- ■ Meals

Expenses of meals and snacks for civilian employees and uniformed service member participants at a Personnel Officers Training Conference sponsored by Coast Guard Headquarters may be paid as a training expense under 5 U.S.C. § 4109 for civilian employees and 14 U.S.C. § 469 for uniformed members since the meals were incidental to a formal conference that extended outside the meal session; the participants attendance at the meals was necessary to full participation in the business of the conference; and the participants were not free to partake of meals elsewhere without being absent from an essential part of the program.

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem rates
- ■ ■ Amount determination
- ■ ■ ■ Meals

Where civilian employees and uniformed service members are authorized travel away from their duty station to attend a training conference in a high rate geographical area and meals are provided as an integral part of the training, they may receive the meals, but their reimbursement for subsistence expenses must be reduced by the value of the meals as prescribed in the travel regulations. Employees and members who are not away from their duty station attending the conference may receive the meals without charge to them.

B-245117, January 21, 1992

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Cancellation
- ■ ■ Restoration

Even though an employee may have submitted a schedule for use of annual leave prior to expiration of the 1986 leave year, his annual leave may not be restored where he cancelled the leave requested for reasons other than exigency or sickness.

B-238271.2, January 31, 1992***

Civilian Personnel

Relocation

- Expenses
- ■ Debt collection
- ■ ■ Waiver

Civilian Personnel

Relocation

- Expenses
- ■ Liability
- ■ ■ Breach of service agreements

An employee left the federal service to accept a position with a local government after completing only 10-1/2 months of service under an agreement to remain in government service for 1 year incident to receiving relocation benefits or to repay such benefits as required by 5 U.S.C. § 5724(i) (1988). The debt for his relocation benefits is not subject to waiver under 5 U.S.C. § 5584 (1988) because the payment of the benefits was not erroneous when made, but became a debt when he failed to complete the service.

Civilian Personnel

Compensation

- Sick leave
 - ■ Debt collection
 - ■ ■ Waiver
 - ■ ■ ■ Breach of service agreements
-

Civilian Personnel

Compensation

- Weekends/holidays
- ■ Debt collection
- ■ ■ Waiver
- ■ ■ ■ Breach of service agreements

An employee in effect abandoned his federal position on the date he began a job with a local government, prior to completing a required year of service incident to a relocation he received from his federal employer. To give the appearance of completing the required year of service, the employee submitted documents purporting to show him on annual leave, sick leave, and leave without pay through the end of the required time in service. Pay for sick leave and a holiday he received after abandoning federal employment were erroneous payments subject to collection. Waiver of these payments is denied because the employee has not met the standards for waiver under 5 U.S.C. § 5584 (1988).

Military Personnel

B-244473, January 13, 1992

Military Personnel

Pay

- Training expenses
- ■ Meals

Expenses of meals and snacks for civilian employees and uniformed service member participants at a Personnel Officers Training Conference sponsored by Coast Guard Headquarters may be paid as a training expense under 5 U.S.C. § 4109 for civilian employees and 14 U.S.C. § 469 for uniformed members since the meals were incidental to a formal conference that extended outside the meal session; the participants attendance at the meals was necessary to full participation in the business of the conference; and the participants were not free to partake of meals elsewhere without being absent from an essential part of the program.

Military Personnel

Travel

- Temporary duty
- ■ Per diem rates
- ■ ■ Meals

Where civilian employees and uniformed service members are authorized travel away from their duty station to attend a training conference in a high rate geographical area and meals are provided as an integral part of the training, they may receive the meals, but their reimbursement for subsistence expenses must be reduced by the value of the meals as prescribed in the travel regulations. Employees and members who are not away from their duty station attending the conference may receive the meals without charge to them.

B-244505, January 14, 1992

Military Personnel

Pay

- Dual compensation restrictions
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Military Personnel

Pay

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

Although a retired Air Force officer held a position at a Veteran's Administration hospital, no Dual Compensation deductions were made from his retired pay for almost 3 years. His waiver request is denied, since he did not personally notify the Air Force of his employment status. The Air Force's delay in initiating deductions does not provide grounds for waiver.

B-246890, January 15, 1992

Military Personnel

Travel

- **Travel expenses**
- ■ **Eligibility**
- ■ ■ **Travel orders**
- ■ ■ ■ **Modification**

Member who had arranged for purchase and delivery of an automobile in California incident to a change of station from Greece to Arizona was notified within 24 hours of his departure that he was to be redirected. He received amended orders and left shortly thereafter for his new duty station in Virginia. Member claims travel expenses incurred when he traveled to obtain the automobile in California. The Claims Group and service properly denied the claim since there is no authority when a vehicle has not been shipped at government expense which would authorize payment of travel expenses under these circumstances.

B-244829, January 24, 1992

Military Personnel

Travel

- **Travel allowances**
- ■ **Eligibility**

Upon retirement, a member moved to Texas and shipped household goods there. He had designated Thailand as his home of selection. He travelled there within a year of retirement but remained only a short time. He is not entitled to travel allowances to Thailand because he did not travel there with the intent of making a home there at the time of his travel.

Miscellaneous Topics

B-244564, January 17, 1992***

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Federal procurement regulations/laws

■ ■ Authority

■ ■ ■ Federal research facilities

■ ■ ■ ■ Establishment

Federally Funded Research and Development Centers (FFRDCs) are contractors of the United States. The government's policies on the establishment of FFRDCs were issued under the Office of Federal Procurement Policy's statutory authority to prescribe governmentwide procurement policies. Also, the contractual relationship between the government and FFRDCs is reflected in legislation and cases involving FFRDCs.

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Agencies

■ ■ Statutory restrictions

■ ■ ■ Applicability

■ ■ ■ ■ Contract awards

The provision of the Government Corporation Control Act stating that agencies may only establish or acquire corporations to act as agencies as specifically authorized by law (31 U.S.C. § 9102) does not apply to agency contract awards to sponsor Federally Funded Research and Development Centers (FFRDCs). However, certain agencies are statutorily required to consult with the Congress before sponsoring new FFRDCs.

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Government agents

■ ■ Definition

■ ■ ■ Federal research facilities

Federally Funded Research and Development Centers (FFRDCs) would generally not be considered "agents or instrumentalities of the United States." "Agents and instrumentalities of the United States" generally refers to parts of the federal government which are legally vested authorities to act on behalf of the United States or fulfill a statutory mission of the federal government. In contrast, FFRDCs perform limited duties as are specified in the contracts, and are prohibited from performing duties of a policy, decision-making, or managerial nature which are the responsibility of agency officials.

B-239201.2, January 21, 1992

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ **Administrative agencies**

■ ■ **Audits**

■ ■ ■ **Financial information**

Memorandum to file and attachments summarize the results of research on the effects of the Chief Financial Officers Act of 1990, Pub. L. No. 101-576, 104 Stat. 2838 (1990), on certain government entities subject to financial audit requirements.

Procurement

B-244404.2, January 2, 1992

92-1 CPD 1

Procurement

Socio-Economic Policies

■ Disadvantaged business set-asides

■ ■ Use

■ ■ ■ Administrative discretion

Contracting agency's refusal to set aside a procurement for small disadvantaged business (SDB) concerns was proper where contracting officer reasonably concluded that the agency could not reasonably expect to receive offers from two responsible SDB concerns.

Procurement

Contractor Qualification

■ Responsibility criteria

■ ■ Organizational experience

Definitive responsibility criteria establishing experience requirements contained in solicitation are not unduly restrictive of competition where, due to past problems on similar construction, the agency needed assurance that the awardee under the solicitation would be able to successfully perform renovation work.

Procurement

Sealed Bidding

■ Use

■ ■ Criteria

Use of competitive negotiation procedures was appropriate where contracting officer reasonably determined that discussions were necessary to gauge offeror understanding of specifications on renovation project and to obtain offeror input to ensure that the specifications would accurately reflect the agency's needs.

B-245361, January 2, 1992

92-1 CPD 2

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Personnel experience

Protest challenging subjective evaluation of personnel is denied where solicitation listed specific experience and educational requirements that personnel proposed by protester failed to meet.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest challenging agency's determination that proposal was technically unacceptable is denied where record indicates protester failed to understand the scope of the work contemplated by the solicitation.

B-245364, January 2, 1992

92-1 CPD 3

Procurement

Contractor Qualification

- De facto debarment
- ■ Non-responsible contractors

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Criteria

Where contracting agency determined that offeror was nonresponsible under two solicitations because of an unsatisfactory record of integrity, the determinations did not constitute a *de facto* debarment or suspension and the protester's due process rights were not violated by the agency's failure to grant the firm notice and an opportunity to respond because the two nonresponsibility determinations involved practically contemporaneous procurements for similar services and were based on current information indicating a lack of responsibility.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Pre-award surveys

Contracting agency reasonably determined protester was nonresponsible based upon preaward survey and information from various state agencies which showed a history of environmental violations.

Procurement

Government Property Sales

- Timber sales
 - ■ Bids
 - ■ ■ Certification
-

Procurement

Sealed Bidding

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

Cancellation after bid opening of a sealed bid timber sale because the bid packet sent to prospective bidders did not include Form FS-2400-43, Certification of Nonsubstitution of Domestic Timber, which bidders were required to submit with their bids, was improper since an award to the high bidder, whose bid was responsive and contained an executed certification, would have satisfied the government's needs, and there is no showing of prejudice to other bidders.

Procurement

Competitive Negotiation

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

Protest against exclusion of proposal for research support activities from the competitive range is denied where technical evaluation of proposal which was not challenged by protester was reasonable and consistent with evaluation criteria established in the solicitation and contracting agency determined that the proposal had no reasonable chance of being selected for award, and protester does not contest deficiencies in proposal.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Evaluation
- ■ ■ Point ratings
- ■ ■ ■ Propriety

Contention that agency acted unreasonably in failing to upgrade protester's evaluation as a result of changes made in its best and final offer (BAFO) is denied where the record shows that the evaluation of the protester's initial proposal was based on a conclusion that the protester would, in its BAFO, both clarify its relationship with a major subcontractor and increase the number of proposed hours for the subcontractor.

Procurement

Competitive Negotiation

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

Protester's claim that evaluators unreasonably assessed awardee's proposal as low risk is denied where protester fails to challenge the basis for the evaluation conclusions, and offers arguments that, even if true, fail to establish that the conclusions were unreasonable.

Procurement

Competitive Negotiation

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

Protest against decision to award to higher cost, higher technically evaluated offeror is denied where the solicitation provided for award to offeror whose proposal was determined most advantageous to the government and where agency made a reasonable determination that the technical superiority and lower risk of the awardee's proposal outweighed its higher cost.

B-245451, January 2, 1992

92-1 CPD 7

Procurement

Sealed Bidding

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

Procurement

Specifications

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

Bid proposing an "or equal system" under solicitation for brand name or equal product is non-responsive where the descriptive literature submitted with the bid fails to establish that the product would meet all of the listed solicitation requirements.

B-245452, January 2, 1992

92-1 CPD 8

Procurement

Sealed Bidding

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

Agency reasonably denied request for correction of a mistake in bid resulting from the alleged failure to add all of the line items where the protester failed to supply documentation evidencing that the line item rates shown on its worksheets are, in fact, the rates that were used to arrive at

its initial bid, and the corrected total bid price does not equal the sum of the line items in the protester's worksheets.

B-245469, January 2, 1992

92-1 CPD 9

Procurement

Competitive Negotiation

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

Although agency may use traditional responsibility factor, such as corporate experience, as a comparative technical evaluation factor, agency's elimination of small business offeror's proposal from the competitive range was improper where agency's rejection did not reflect a relative assessment of the proposal, but instead effectively constituted a finding of nonresponsibility.

B-245543, January 2, 1992

92-1 CPD 10

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Bid guarantees

Agency properly rejected bid as nonresponsive where bidder failed to submit a bid guarantee, required under the solicitation for base bids in excess of 125,000, and protester's base bid, calculated in accordance with the solicitation formula, exceeded the \$25,000 threshold.

B-245847, January 2, 1992

92-1 CPD 11

Procurement

Sealed Bidding

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Prices
- ■ ■ ■ Options

Protest that firm should have been awarded contract because its price for basic requirement was low is denied where, in accordance with solicitation terms, the agency made award on basis of total price including options.

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Oral notification
- ■ ■ ■ Adverse agency actions

Protest filed more than 10 working days after the protester was orally informed of the basis of its protest is untimely since oral information is sufficient to put the protester on notice of the basis of its protest; written information is not required.

B-244702, January 3, 1992

Procurement

Payment/Discharge

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

Rules Publication governing Department of Defense Guaranteed Traffic Program provided that shipments to the same "activity" tendered on the same day would be billed at the applicable rate for the total weight of the shipments. General Services Administration properly concluded that all shipments delivered to the same destination thus had to be consolidated for billing purposes, and that the ultimate consignee location was irrelevant for this purpose.

B-245488, January 3, 1992

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

In order to conduct meaningful discussions, agencies must generally point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling. However, agencies are not obligated to point out inherent weaknesses in a firm's basic technical approach.

Procurement

Competitive Negotiation

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

Where contracting agency determined that second low-priced proposal was technically acceptable and thus had a reasonable chance for award, contracting agency reasonably included the proposal within the competitive range even if the proposal had some deficiencies.

Procurement

Competitive Negotiation

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

Where solicitation provided that the lowest-priced offeror would not necessarily receive award, and that award would be made to the offeror whose proposal was most advantageous to the government considering price and other factors, agency properly awarded to higher-priced offeror since agency reasonably determined that the technical advantage associated with higher-rated proposal warranted the price premium.

B-245820.2, January 3, 1992

92-1 CPD 22

Procurement

Sealed Bidding

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

Where solicitation incorrectly indicated wrong city for delivery of hand-carried bids, government action was the paramount cause of a hand-carried bid's late delivery; since record demonstrates that bidder relinquished control over its bid prior to bid opening, consideration of late bid would not compromise the integrity of the competitive procurement system, and agency's acceptance of late bid was therefore proper.

B-246156.2, January 3, 1992

92-1 CPD 23

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed where protester filed protest concerning a defective specification after award.

Procurement

Bid Protests

- Dismissal
- ■ Definition

Procurement

Contract Management

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

Protest of agency's termination of contract is dismissed where protester provides no basis to challenge agency's conclusion that initial contract award was improper.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Letters of credit
- ■ ■ ■ Adequacy

The requirement in an irrevocable letter of credit (ILC) that the agency submit to the issuer a written statement that the bidder is in default under the terms and conditions of Federal Acquisition Regulation (FAR) part 28, as a precondition to payment under the ILC, does not limit the issuer's liability; consequently, firm's bids were improperly determined to be nonresponsive for failing to provide unconditional ILCs.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that solicitation which provides for award of an indefinite-quantity contract is defective because it does not state minimum quantities for line items for certain overtime work and for servicing of new government-furnished property is denied where agency cannot guarantee any overtime work or that any new equipment will be put into service and minimum order quantities necessary to support an indefinite-quantity contract are provided under other line items.

Procurement

Specifications

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

Estimated minimum and maximum quantities for operation and maintenance services are properly based on historic information reasonably adjusted to reflect known anticipated quantities, financial constraints, and agency reassessment of its requirements.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Risks**

Broad ranges between minimum and maximum estimated quantities do not impose an impermissible risk on the contractor where agency breakdown of minimums, estimates and maximums are based on best available information.

B-245408, January 6, 1992

92-1 CPD 27

Procurement

Competitive Negotiation

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

Protest alleging that a vibration test of generators was not performed in a manner consistent with established testing specification is denied where test was performed within frequency displacement limits established in the specification and, where choices in the manner in which the test was performed were permitted by the specification, the agency reasonably exercised its judgment in making those choices.

B-245454, January 6, 1992

92-1 CPD 28

Procurement

Specifications

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

Specification requirement for certification by testing laboratory, prior to installation, of satisfactory performance of a radio fire alarm system does not unduly restrict competition, where specification was reasonably based on agency's initial need to ensure compatibility between transmitters and existing receivers already installed under a previous contract and provide immediate, reliable fire alarm protection for agency personnel.

B-245958, January 6, 1992

Procurement

Sealed Bidding

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

Contracting agency had compelling reason to cancel solicitation after bid opening where agency reasonably concluded that solicitation for mess attendant services did not reflect significant change in requirements and that award under the solicitation would no longer meet the government's actual needs.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where agency advised protester that its proposed manpower was well below the government estimate and subsequently identified to protester the precise area, service work calls, where its manpower appeared deficient, agency conducted meaningful discussions since it properly alerted protester to perceived deficiency in its proposal.

Procurement

Competitive Negotiation

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

Agency properly found unacceptable a proposal that offered less manpower than evaluators reasonably found was necessary to meet requirements; agency properly considered protester's performance under current contract where protester tried to justify its manning estimates based on its performance as incumbent.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Prices
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Although the number of full-time equivalent personnel listed in the awardee's schedule was significantly below the government estimate for adequate manning for service call work, agency could properly find awardee's proposal acceptable where technical proposal independently demonstrated awardee's understanding of requirements, showed an intent to use personnel listed elsewhere in the schedule to perform service call work if needed, and contained overall manning sufficient to accomplish contract requirements.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Apparent low bid was properly rejected as materially unbalanced where the bid, which is for a constant level of services for 1-year base period and 2 option years, includes a substantially front-

loaded base year price to cover equipment cost and does not become low until the next to last month of the second option year, thereby raising a reasonable doubt that the bid would result in the lowest actual cost to the government.

B-245445.3, B-245483.2, January 7, 1992**92-1 CPD 31**

Procurement

Contractor Qualification

- Licenses
- ■ State/local laws
- ■ ■ Compliance

Solicitation requirements for contractor to comply with state law are not ambiguous where state law sets forth requirements but also requires compliance with local county ordinances (that establish higher minimum requirements) since the only reasonable reading of the requirements is that the contractor must meet state requirements and any applicable, more stringent local requirement.

B-245684, January 7, 1992**92-1 CPD 32**

Procurement

Bid Protests

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

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 where protester did not submit an expression of interest to the agency showing, at least minimally, its ability to meet the agency's needs and protester does not argue that allegedly restrictive specifications prevented it from submitting a preliminary proposal detailing its ability to satisfy the requirements.

B-245762, January 7, 1992**92-1 CPD 33**

Procurement

Contract Management

- Contract administration
- ■ Domestic products
- ■ ■ Compliance
- ■ ■ ■ GAO review

Procurement

Socio-Economic Policies

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

Protest that awardee has not complied with the Buy American Act requirement to furnish domestic product is dismissed where current evidence shows that awardee's machines are more than 50 percent comprised of domestic components, and contracting agency asserts that it will audit proposed bread slicing machines for Buy American Act compliance prior to acceptance of the items pursuant to its contract administration function.

B-245833.2, et al., January 7, 1992

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protests are dismissed as academic where agency is canceling underlying solicitations due to a change in mission requirements.

B-247055, January 7, 1991

92-1 CPD 34**Procurement**

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ Information submission
- ■ ■ Timeliness

Where protester filed agency-level protest of solicitation and agency delayed procurement to take corrective action, General Accounting Office (GAO) will not consider protests of further alleged solicitation improprieties filed with contracting agency more than 2 months after submission of first protest, even though bids had not yet been opened, as consideration of such piecemeal submissions is inconsistent with GAO's mandate under the Competition in Contracting Act of 1984 to resolve protests quickly with only minimal disruption to the procurement process.

B-247160, January 7, 1992

92-1 CPD 35**Procurement**

Bid Protests

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

Protest that receipt of final amendment to a request for proposals, which was received 3 working days before the proposal due date, did not allow sufficient proposal response time, is untimely where the protest was not filed within 10 days of the date that the protester received the amendment and was apprised the closing date would not be extended.

B-245319.2, January 8, 1992

92-1 CPD 36**Procurement**

Competitive Negotiation

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

Exclusion of a proposal for the microfilming of medical library documents from the competitive range, where solicitation stated that technical factors were paramount, was proper, where record shows agency had reasonable basis for finding the proposal technically unacceptable.

Procurement

Competitive Negotiation

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

A technically unacceptable offer properly may be excluded from the competitive range irrespective of low price.

B-245450, January 8, 1992

92-1 CPD 37

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Justification
- ■ ■ ■ Urgent needs

Allegation that agency failed to justify an urgent sole-source determination is denied where agency properly determined that only the proposed awardee could meet its urgent needs for off-the-shelf noise canceling antennas in order to begin retrofitting helicopters to improve tactical communications.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Allegation that protester was unfairly denied an opportunity to qualify its antennas for a possible dual-source procurement is denied where agency had tested protester's antennas in developing its requirements and they had failed to meet the government's needs, and where the protester failed to submit additional antennas in a timely manner for testing even though the deadline for their submission was extended twice by the agency.

B-245466, January 8, 1992***

92-1 CPD 38

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Submission methods
- ■ ■ ■ Facsimile

Bidder's hand delivery of a facsimile copy of a bid modification is not a facsimile submission and thus is not precluded by the prohibition against facsimile submissions in the invitation for bids.

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Modification**
- ■ ■ **Photo copy**
- ■ ■ ■ **Signatures**

Bidder's submission of a bid modification in the form of a photocopy of a facsimile of a signed letter satisfies the requirement for a signed bid document because the copy submitted serves as a duplicate of the original document and evidences the signer's intent to be bound by the obligation created by the bid modification.

Procurement

Sealed Bidding

- **Bids**
- ■ **Modification**
- ■ ■ **Submission methods**
- ■ ■ ■ **Procedural defects**

A bidder's failure to enclose a bid modification in a sealed envelope with the specified number of copies and its hand delivery of the modification to the bid opening official instead of the bid depository box as required by the invitation for bids do not require rejection of the bid, since there is no prejudice to the other bidders.

B-245705, January 8, 1992

92-1 CPD 39

Procurement

Competitive Negotiation

- **Best/final offers**
- ■ **Modification**
- ■ ■ **Acceptance criteria**

Procurement

Competitive Negotiation

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

Competition was not conducted on a common basis and the resulting award was improper where solicitation language provided that firms offering brokerage services at a rate less than that prevailing in the area must provide evidence of having sold property at the discounted rate during the previous year, and where agency continued to adhere to this requirement when requesting best and final offers but ultimately accepted an offer at a discounted rate submitted without such evidence.

B-245792, January 8, 1992

92-1 CPD 40

Procurement

Contract Management

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

Contracting agency has no obligation to exercise an option in an existing contract.

Procurement

Competitive Negotiation

■ Incumbent contractors

■ ■ Determination

Firm that transported government-owned fuel under Air Force service contract is not "incumbent contractor" which the Defense Logistics Agency (DLA) is required to solicit when DLA issues a request for proposals for a fuel supply requirement, even though performance of DLA's contract will involve some of the fuel transportation requirements that the firm previously performed under the Air Force contract.

B-245851, January 8, 1992

92-1 CPD 41

Procurement

Bid Protests

■ Allegation substantiation

■ ■ Burden of proof

Protest is denied where record fails to support protester's allegation that low bid was nonresponsive for failure to satisfy subcontractor listing requirement, and, in any event, subcontractor listing requirement should not have been included in the solicitation.

B-245909, January 8, 1992

92-1 CPD 42

Procurement

Bid Protests

■ GAO procedures

■ ■ Protest timeliness

■ ■ ■ Apparent solicitation improprieties

Protest that solicitation amendment improperly disclosed identity of manufacturer to awardee by revealing name of newly approved part's manufacturer, manufacturer cage code number, and the newly approved part's identification number is dismissed as untimely where this information was apparent from the face of the amendment but not protested until after the closing time set for receipt of best and final offers.

Procurement

Contract Management

■ Contract administration

■ ■ Contract terms

■ ■ ■ Compliance

■ ■ ■ ■ GAO review

Protest that awardee is using unapproved source to manufacture offered part is dismissed where solicitation expressly permits pre-approved source to use a different manufacturer.

Procurement

Competitive Negotiation

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

Cancellation of request for proposals after submission of offers was proper where agency determined it no longer had requirement for items.

B-240001.2, January 9, 1992

Procurement

Payment/Discharge

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Creative Advertising by Russ Vollmer, Inc. is not entitled to payment for T-shirts provided to certain Internal Revenue Service (IRS) employees contributing to the 1989 Combined Federal Campaign since IRS' procurement of T-shirts was not authorized under applicable statutes and regulations.

B-244701, January 9, 1992

Procurement

Payment/Discharge

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

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Notification

To establish a *prima facie* case of carrier liability for damage to a shipment of household goods, the shipper must report the damage within 75 days of delivery. While the damage generally is to be reported on the Joint Statement of Loss or Damage At Delivery (DD Form 1840/1840R), it may be reported on other forms if it is timely furnished and gives the carrier sufficient information upon which a prompt and complete investigation can be based.

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Notification

In the shipment of a service member's household goods, where the statement of damage at delivery on DD Form 1840 indicated that the legs of a dresser were chipped, but subsequent documentation indicated that they were broken, the DD Form 1840 provided adequate notice of the damage. Notice is sufficient if it is written, timely and contains sufficient content to alert the carrier that damage has occurred for which reparation is expected.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency satisfied obligation to conduct meaningful discussions with offeror where it reasonably led offeror into areas of its proposal requiring clarification and offeror's responses resulted in rating of technical acceptability. Alleged failure to provide more exact identification of perceived weaknesses in proposal is not objectionable, since requirement to conduct discussions does not obligate agency to identify every aspect of a technically acceptable proposal that receives less than a maximum score.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Where agency's evaluation that protester's proposed approach was acceptable with low to moderate risk was reasonably based and protester's arguments to the contrary essentially constitute disagreement with the judgment of the evaluators, protester has not shown that its proposal was evaluated inequitably.

Procurement

Competitive Negotiation

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

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

Procurement

Sealed Bidding

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

Where the bid opening officer received a hand-carried bid after declaring the arrival of the bid opening time as shown on the bid opening room clock, the agency properly rejected the bid as late. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where protester's proposal under broad agency announcement failed to include sufficient technical information to show viability of proposed research, agency reasonably determined that technical success was improbable and decision to reject proposal for funding was proper.

Procurement

Sealed Bidding

- Bids
- ■ Options
- ■ ■ Evaluation

Where bids, including option prices, exceeded the available funding and requiring activity declined to make additional funds available to exercise the option because the work was no longer needed, the contracting activity, in accordance with the solicitation provision for evaluation of options, reasonably determined that evaluation of options would not be in the best interest of the government.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Competition enhancement

Procurement

Sealed Bidding

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

Where agency failed to comply with statutory and regulatory requirements regarding notice and distribution of solicitation materials by failing to solicit an incumbent, and received only one bid, agency properly determined to cancel the solicitation, correct its mailing deficiencies and resolicit.

Procurement

Competitive Negotiation

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

Protest by the incumbent contractor that it improperly was excluded from the competition because it did not receive a copy of the solicitation is denied where the solicitation was synopsisized in the *Commerce Business Daily*; the protester was included in the agency's bidders mailing list.

which shows that the solicitation and its amendments were mailed to the firm; there is no evidence that the agency deliberately excluded the protester; and the agency received five bids and made award at a reasonable price.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Company that did not enter the competition for a contract is not an interested party to protest the acceptability of the low bid of the five bids received.

B-247201, January 10, 1992

92-1 CPD 50

Procurement

Bid Protests

- Dismissal
- ■ Definition

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

B-245461, January 13, 1992

92-1 CPD 51

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Unit prices

First article unit prices that are not even twice production unit prices are not so grossly front-loaded so as to involve an improper advance payment requiring rejection of the proposal.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Unbalanced offers

Although the concept of unbalanced bidding is not always relevant in a negotiated procurement, where award is based upon the evaluation of cost and technical factors with technical factors considered more important than price, the agency is required, under a solicitation clause providing for the evaluation of price reasonableness, to consider the reasonableness of allegedly unbalanced first article and production unit prices.

B-245515, January 13, 1992

92-1 CPD 52

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Performance bonds

Protest against solicitation performance bond requirement is denied where record shows that agency reasonably determined that a bond was necessary to insure timely delivery of cryogenic

pumps to be utilized in a coordinated project to construct a large blast thermal simulator and where solicitation provided that contractor was to be paid 96 percent of its bid price prior to the delivery of the pumps.

B-245528, B-245528.2, January 13, 1992

92-1 CPD 53

Procurement

Competitive Negotiation

- All-or-none offers
- ■ Acceptance

Protest that agency improperly awarded all solicitation line items to offeror submitting all-or-none price is denied even though request for proposals reserves the right to make multiple awards, because the solicitation does not prohibit such prices and because the all-or-none price offered the lowest aggregate cost to the government.

Procurement

Bid Protests

- Antitrust matters
- ■ GAO review

Protester's complaint that awardee engaged in predatory pricing is a matter reserved for the Department of Justice, not our Office.

Procurement

Bid Protests

- Dismissal

Contention that agency improperly proceeded with contract performance notwithstanding a protest is dismissed where the agency complied with its statutory requirement to inform our Office of that decision.

B-245572, January 13, 1992

Procurement

Sealed Bidding

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

Protest that agency improperly rejected protester's bid as nonresponsive for failure to furnish a signed Certificate of Procurement Integrity with its bid is denied where bid package received by protester advised that completed certificate was required, even if it did not contain a blank certificate as the protester alleges, since completion of the required certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Low bid, which fails to properly extend unit markup prices for certain line items as contemplated by the invitation for bids, was properly rejected, where a proper computation of these extended prices under the most reasonable interpretation of the bid causes that bid to no longer be low.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Protest that agency improperly added estimated cost of additional personnel for sufficient work force without downgrading proposal for lack of understanding of solicitation requirements is denied where agency reasonably concluded that awardee's proposal demonstrated a thorough and comprehensive understanding of the requirements. An agency's evaluation of an offeror's proposed costs in a cost-type contract is intended to provide a more reliable estimate for cost evaluation and comparison purposes and agency's increase in estimated overall costs does not establish proposal's technical unacceptability.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency failed to properly evaluate awardee's professional employee compensation plan and awardee's ability to recruit and retain employees is denied where agency properly considered total benefit package proposed by awardee and reasonably concluded that awardee proposed excellent policies and benefits.

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Protest that the agency improperly rejected apparent low bid as nonresponsive is sustained where the protester omitted the last digit of the solicitation number in its bid bond but otherwise properly completed its bid bond by referencing the bid opening date, the type of project work, and a specific penal sum, thus identifying the bid bond to the solicitation for which the protester submitted a bid, and there were no other ongoing procurements for which the protester's bid bond reasonably could have been intended.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Conflicting terms
- ■ ■ ■ Ambiguity

Where named bidder and principal named in the bid bond are different, contracting officer properly rejected bid as nonresponsive due to the uncertainty of the actual bidder and was not required to investigate further whether the named entities were the same legal entity since bidder has primary responsibility for unambiguously identifying itself and there was insufficient evidence in the bid documents or in information submitted after bid opening and before award to demonstrate that the named entities were the same legal entity.

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
- ■ Contract awards
- ■ ■ Propriety

Since agency may properly award contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1991), for a base year and four options to a firm scheduled to graduate from the 8(a) program shortly after award, such an award does not constitute an act of bad faith.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protester which is a large business is not an interested party to challenge Small Business Administration's actions in a procurement that has been set aside for small disadvantaged business concerns under section 8(a) of the Small Business Act.

Procurement

Bid Protests

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

Protest that agency's alleged failure to provide bid bond form caused protester to submit nonresponsive bid is dismissed as untimely where protest was filed more than 10 working days after protester learned that its agency-level protest on this ground had been denied.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Contracting agency acted reasonably in evaluating the protester's offer based on \$315 per hour for a mandatory service, notwithstanding that the firm, which did not price the service in its best and final offer, says it intended to provide the service at no charge. The solicitation required an entry of "N/C" if a firm intended no charge for a mandatory item, and the offeror (1) had indicated in its initial proposal that the "prevailing price" for the service was \$315 per hour; and (2) had submitted a second table that appeared to confirm the \$315 figure.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

Where agency reasonably evaluated best and final offer (BAFO) with respect to the charge for a mandatory service for which the firm failed to specify a price in the BAFO, based on pricing information contained in the initial offer and provided in discussions, the offeror had no legal right to a reopening of negotiations to further explain its pricing.

Procurement

Bid Protests

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

Protest by firm that would not be in line for award if the protest were sustained is dismissed; 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's Bid Protest Regulations.

Procurement

Contractor Qualification

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

Protest alleging generally that awardee has not complied with Federal Acquisition Regulation provisions regarding payment of gratuities and protection of government property is dismissed as it concerns matters of awardee's responsibility; General Accounting Office will not review contracting officer's affirmative determination of awardee's responsibility absent circumstances not alleged here.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest alleging that awardee is ineligible for award due to conflict of interest, but offering no support for allegation, is dismissed for failure to state a legally sufficient basis for protest.

B-243626.3, January 14, 1992

92-1 CPD 63

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied when based on arguments that should have been but were not raised by the protester in the course of the original protest because protester failed at that time to diligently obtain relevant documents.

B-244674.2, B-247202, January 14, 1992

92-1 CPD 64

Procurement

Bid Protests

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

Protest of post-bid opening cancellation of solicitation is untimely where filed more than 10 days after protester is presumed to have received cancellation notice.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest allegation that agency failed to respond to agency-level protest challenging government estimate of project cost is without merit where cancellation of solicitation constituted adverse agency action on protest.

B-245592, January 14, 1992

92-1 CPD 65

Procurement

Socio-Economic Policies

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

The contracting agency reasonably determined that the protester was subject to the Walsh-Healey Act and therefore must qualify as a manufacturer or regular dealer to be eligible for award, where there is no evidence that the protester offered as an agent of a foreign manufacturer or that foreign-made goods will be shipped directly to the government.

Procurement

Socio-Economic Policies

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

The General Accounting Office will not consider whether an offeror qualifies as a "regular dealer" under the Walsh-Healey Public Contracts Act.

B-245907, January 14, 1992

92-1 CPD 66

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Omission

Agency properly determined that bid was nonresponsive where bid was unsigned; no other documentation submitted with the bid had an original signature; and bidder had not, prior to bid opening, submitted corporate resolution authorizing rubber-stamp signatures on other bid documents.

B-245922, January 14, 1992

92-1 CPD 67

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Procurement

Competitive Negotiation

- Discussion
- ■ Bad faith
- ■ ■ Allegation substantiation

Site visit by alleged representative of successful offeror, which included a conversation with contracting officer's representative, did not provide basis to overturn award. Conversation did not constitute improper competitive range discussions since it did not involve communication of information essential for determining acceptability of proposal nor did it provide offeror an opportunity to revise its proposal. Further, site visit was not otherwise prejudicial to protester.

B-246240, January 14, 1992

92-1 CPD 68

Procurement

Small Purchase Method

- Quotations
- ■ Descriptive literature
- ■ ■ Adequacy

Protest that request for quotations (RFQ) did not properly specify requirement for plate-mounting in connection with description of requirement for abrasive wheels is denied where RFQ expressly set forth the term "plate-mounted" in an applicable standard for the wheels, and contained sufficient technical data to describe the requirement.

Procurement

Bid Protests

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

Protest filed at the General Accounting Office more than 10 days after receipt of initial decision denying agency-level protest is dismissed as untimely; protester's continued pursuant of protest with agency does not toll timeliness requirements.

B-239113.3, January 15, 1992

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

The record does not support allegations of bias in award to a lower-priced, lower-rated domestic firm where the agency's concerns regarding award to the higher-priced, higher-rated foreign firm on the basis of initial proposals without discussions were based upon the agency's determination that the exclusion from the competitive range of significantly lower-priced offerors was not reasonable and where the ultimate award to the domestic firm was supported by a comprehensive and rational cost/technical tradeoff.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Subcriteria

The record does not establish that the protester was prejudiced by the change in the awardee's technical scores for four critical subfactors of one technical factor where the awardee's overall technical score for that evaluation factor was unchanged and the source selection authority, in making his selection decision, was aware of and concurred in the change in subfactor evaluation scores.

Procurement

Competitive Negotiation

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

There is no legal requirement that the change in a written competitive range determination from excluding several offerors to including all offerors be in writing, since the purpose of the competitive range determination is to determine with which offerors discussions will be conducted and discussions were conducted with all offerors.

B-244939.2, January 15, 1992

92-1 CPD 71

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ Allegation substantiation

Protest against agency's use of undisclosed manning model in evaluation of proposals for firm, fixed-price contract for aerostat operation and maintenance services is denied where manning model, which was developed by individuals with substantial technical aerostat experience on the basis of available historical and current contract information, was reasonable and agency used model as an evaluation tool which remained reasonably flexible in application.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Rejection of proposal as technically unacceptable for failure to propose adequate manning to meet solicitation requirements, which reasonably caused agency to question protester's understanding of requirements, is upheld where protester's written responses to agency's clarification requests and deficiency reports did not cure deficiency pointed out to offeror and protester has not shown that agency's determination of unacceptability was unreasonable.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency reasonably communicated its concern with protester's proposed site manning and satisfied the requirement for meaningful discussions when it issued several deficiency reports to the offeror stating that its site manning was considered inadequate to meet all of the solicitation's performance requirements and offered the protester a reasonable opportunity to explain why its manning was adequate or to revise its approach.

B-245385, January 15, 1992

Procurement

Payment/Discharge

- Shipment
- ■ Tenders
- ■ ■ Applicability

For military motor shipments of 10,000 pounds or more governed by the Department of Defense (DOD) Standard Tender of Freight Services and the Military Traffic Management Command's Rules Publication No. 1A, the government may alternate from rates in the 10,000 pounds or greater category to the same carrier's rates under the less-than-10,000 pound category when lower overall charges will result. The carrier's indication on the face the lower-charge tender that it should be distributed to routing authorities having jurisdiction over the routing of shipments of less than 10,000 pounds does not preclude alternation, because alternation requirements in the contract of carriage are unrelated to the tender's distribution.

B-245507, January 15, 1992

92-1 CPD 72**Procurement**

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Protest against the agency's failure to resolicit its revised requirements and its decision to award a sole-source contract, after the cancellation of the initial solicitation for ship repairs, is denied where the repair work was urgent and critical to ship operations and the ship's limited availability did not permit resolicitation on either a competitive basis or on the basis of a limited competition.

B-245530.2, January 15, 1992

92-1 CPD 73**Procurement**

Bid Protests

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

Letter from contracting officer denying agency-level protest constitutes initial agency action, and a subsequent protest filed with our Office more than 10 days after receipt of letter is untimely.

B-245561, January 15, 1992

92-1 CPD 74**Procurement**

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Multiple/aggregate awards
- ■ ■ Propriety

It was reasonable for an agency whose requirements must be satisfied through a mandatory multiple-award supply schedule to issue a delivery order to a firm whose schedule contract included all the agency's requirements—including services such as installation and training—rather than to a firm whose schedule contract does not include such services.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Bidder's failure to include information with its bid concerning labor overhead and general and administrative costs did not render bid nonresponsive since the information was not relevant to bid evaluation and did not affect the bidder's performance obligation.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester has not shown that our prior decision contains either errors of fact or law, and the protester merely disagrees with our prior decision.

Procurement

Competitive Negotiation

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

Agency properly excluded proposal from competitive range where the initial proposal failed to meet the solicitation requirements in 72 out of 83 evaluation areas and, following discussions and submissions of revised proposals, the proposal still failed to comply with the solicitation requirements in 30 evaluation areas.

Procurement

Bid Protests

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

Protester's new and independent grounds of protest first filed with the General Accounting Office (GAO) after denial of protest filed with the agency are dismissed as untimely where later raised issues do not independently satisfy GAO's timeliness rules.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Revision**
- ■ ■ **Evaluation errors**
- ■ ■ ■ **Allegation substantiation**

Allegation that agency devoted insufficient time to evaluate revised proposals is denied where revisions were not extensive, agency used the same evaluators to review the revised proposals, and protester has not specifically challenged any aspect of the reviewers' evaluation.

B-245010.3, B-245010.4, January 16, 1992

92-1 CPD 78

Procurement

Socio-Economic Policies

- **Preferred products/services**
- ■ **Domestic source**
- ■ ■ **Foreign products**
- ■ ■ ■ **Price differentials**

Protester's bid was subject to Buy American Act differential where cost of qualifying components of its end product did not exceed by 50 percent cost of nonqualifying foreign country components. In determining applicability of Buy American Act differential, agency properly excluded such items as overhead and profit from protester's qualifying component cost.

Procurement

Socio-Economic Policies

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

The fact that a manufacturer of a domestically manufactured end product may be foreign owned is not a factor to be considered in determining whether to apply the Buy American Act differential.

B-245534, January 16, 1992

92-1 CPD 79

Procurement

Specifications

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Intellectual property**

Protest against agency's failure to provide potential offerors with access to technical data necessary to submit a competitive proposal as an undue restriction on competition is denied where the agency has reasonably concluded that it does not own the necessary rights in the data which would allow the agency to provide offerors with access thereto.

Procurement

Competitive Negotiation

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

Protest is sustained where agency made award based on initial proposals to other than the low-priced, technically acceptable offeror.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

Although an agency may use a traditional responsibility factor, such as corporate experience, as a technical evaluation factor where its needs warrant a comparative evaluation of proposals, an agency's rejection of a small business concern's proposal as technically unacceptable based solely on the offeror's lack of the specified minimum number of years of experience, without referring the matter to the Small Business Administration for consideration under the Certificate of Competency procedures, was improper since the agency's decision was not based on a relative assessment of the proposal but effectively constituted a finding of nonresponsibility.

Procurement

Competitive Negotiation

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

Procurement

Special Procurement Methods/Categories

- Requirements contracts
- ■ Pricing

Agency properly required offerors on a request for proposals (RFP) for a requirements contract for hazardous waste removal and disposal services to propose as their prices a single percentage factor that the agency would apply to the RFP's agency pre-priced line items to calculate the contractor's compensation for services provided under the contract; this is a legitimate method to prevent deliberate unbalancing of prices by offerors and to assure award to the low offeror under the contract, regardless of quantities ordered.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Cost realism**
- ■ ■ **Evaluation errors**
- ■ ■ ■ **Allegation substantiation**

Protest challenging agency price estimates for hazardous waste removal and disposal services is denied where the agency properly prepared price and quantity estimates for the line items—to which a single percentage offer would be applied—on the basis of historic information and there is no evidence indicating the prices are incorrect.

Procurement

Bid Protests

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

Protest against amended solicitation provision, that the agency materially amended because of the protester's objections to the terms of the initial provision, is untimely filed under the Bid Protest Regulations, where the amendment, issued after that closing date for submission of the proposals, did not provide for a new closing date and protester did not protest the amended provision within 10 days of its receipt of the amendment.

B-245600, B-245602, January 16, 1992

92-1 CPD 83

Procurement

Competitive Negotiation

- **Requests for quotations**
- ■ **Cancellation**
- ■ ■ **Justification**
- ■ ■ ■ **Minimum needs standards**

Agency's decision to cancel request for proposals (RFP) for tugboat services after receipt of best and final offers is reasonable where a pre-award survey revealed that the RFP contained specifications that did not accurately describe the agency's actual minimum needs.

Procurement

Specifications

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

Protest challenging, as unduly restrictive of competition, a requirement in request for proposals for tugboat services that tugboats have a minimum specified pulling power is denied, since the agency demonstrates that the requirement is reasonably related to its minimum needs.

Procurement

Bid Protests

- **Bad faith**
- ■ **Allegation substantiation**
- ■ ■ **Lacking**

The General Accounting Office will not attribute fraud or bad faith to contracting agency on the basis of unsupported allegation, inference, or supposition.

Procurement

Specifications

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

Protest that specification requiring a maximum tensile strength limit for suspension bands used to hold torpedoes on fixed-winged aircraft and helicopters is unduly restrictive is denied where agency states requirement is necessary to ensure the safety of personnel and aircraft and protester fails to show that agency's technical judgment is unreasonable.

Procurement

Specifications

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

Protest based on incumbent's experience, that an unspecified number of the products will not meet tensile strength specification because of the manufacturing process and will have to be replaced at the contractor's expense, and that other offerors not having its knowledge and experience might underprice the protester, does not render specification improper. The incumbent's failure to consistently meet the specification does not show that the specification does not reasonably reflect agency needs for the safest product achievable, and the record shows that other potential contractors are aware of the difficulty and risks of meeting specifications.

Procurement

Sealed Bidding

- **Low bids**
- ■ **Rejection**
- ■ ■ **Propriety**

Agency properly rejected low bid as nonresponsive, where it contained material deficiencies, and allowed second low bidder to correct an immaterial deficiency in its bid which had a negligible impact with respect to the cost of the items to be supplied.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Technical acceptability**

Where protester's proposal failed to address specific requirements of the request for proposals, agency's evaluation of the proposal as technically unacceptable was reasonable.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest as untimely is denied where request for reconsideration provides no evidence that protest was timely filed but merely expresses disagreement with policy underlying General Accounting Office Bid Protest Regulations.

B-246897.2, January 16, 1991

Procurement

Bid Protests

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

Protest against award to other offerors under air transportation services contract is untimely where protester, instead of diligently pursuing information that would form the basis of its protest when it learned of the awards, delayed filing until awardees' flight information was published in Federal Travel Directory 6 weeks after award.

B-245491.2, January 17, 1992

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Procurement

Sealed Bidding

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

Protester's nonreceipt of an amendment containing a Department of Labor wage determination does not warrant cancellation and recompetition where the record does not indicate that the agency deliberately attempted to exclude bidder from competition or otherwise violated applicable regulations governing the distribution of amendments.

B-245563, January 17, 1992

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Agency's evaluation of best and final offers and subsequent award decision cannot be found reasonable where the record includes only technical point scores unaccompanied by any contemporaneous evaluation documentation or other explanation that would support the scores awarded to the protester and the awardee or the basis for the award.

Procurement

Specifications

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

Protest that solicitation requirement for certification of fire equipment by specified testing laboratories improperly restricts competition to one fire equipment manufacturer is denied where certification specification did not prejudice protester whose equipment was not certified by any independent laboratory.

Procurement

Bid Protests

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

Protest alleging that proposed awardee's graphic design system does not comply with specification which requires access to protester's proprietary data is denied where record shows that, contrary to the protester's interpretation, the solicitation did not, in fact, require access to such data.

Procurement

Bid Protests

- **Allegation**
- ■ **Abandonment**

Protester has abandoned protest that low bidder should not be permitted to correct its bid based upon a claimed mistake where the agency specifically addressed the issue in its report and the protester failed to rebut the agency's response in its comments.

Procurement

Contractor Qualification

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

Protester's assertion that the low bidder does not intend to comply with Federal Acquisition Regulation § 52.236-1 limitation on subcontracting concerns a matter of affirmative responsibility and contract administration not for consideration by our Office under the circumstances alleged.

Procurement

Special Procurement Methods/Categories

- **Federal supply schedule**
- ■ **Contract awards**
- ■ ■ **Propriety**

Procuring agency properly issued a delivery order for a network multiuser imaging system to a higher-priced, mandatory federal supply schedule contractor where the agency reasonably determined that a lower-priced system would not meet the agency's minimum needs.

Procurement

Small Purchase Method

- Quotations
- ■ Technical acceptability
- ■ ■ Small businesses

Agency is not required to refer the rejection of a quotation on grounds of technical unacceptability to the Small Business Administration for certificate of competency consideration.

B-240726.6, January 22, 1992

92-1 CPD 94

Procurement

Contract Management

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

Contract modification which involves increase in estimated cargo tonnage under one line item of consolidation and containerization requirements contract, which does not affect unit price or contractor's responsibilities under the contract, does not constitute a cardinal change since the nature and purpose of the original contract remains unchanged.

B-243078.2, January 22, 1992

92-1 CPD 95

Procurement

Socio-Economic Policies

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

In determining whether product was "domestic end product" for purposes of the Buy American Act, agency properly applied general and administrative expense to components manufactured in-house by offeror, but not to components purchased from outside suppliers.

Procurement

Competitive Negotiation

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

Protester's representation that it could manufacture certain components at a cost approximately 35 percent lower than the awardee's cost does not establish that awardee misrepresented its costs or that those costs were otherwise unreasonable.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Sealed Bidding

- Bids
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where record shows that agency's amendment of allegedly restrictive requirement mooted the protest because of a change in the agency's needs, but corrective action was not taken in the face of a clearly meritorious protest.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of protest is affirmed where the request for reconsideration contains no statement of facts or legal grounds warranting a reversal of the dismissal, but merely restates the protester's general argument which was considered and rejected by the General Accounting Office in its dismissal of the original protest.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ American Indians
- ■ ■ Joint ventures

Determination of the Bureau of Indian Affairs that a joint venture comprised of the Indian-owned concern and a concern not Indian-owned does not qualify as a Buy Indian concern, as required by the solicitation, is not unreasonable, where protester has failed to demonstrate that Indian owner is involved in the daily business management of the enterprise and there is no evidence that the majority of the venture's earnings accrue to Indian persons.

Procurement

Sealed Bidding

- Bids
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Options

Protest that award based on total price for base and option years was inconsistent with solicitation is denied where solicitation expressly stated that the award would be based on total bid including options.

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 and possession of such a license is not a requirement for award absent a specific licensing requirement in the solicitation.

B-245877, January 22, 1992

92-1 CPD 100

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Procuring agency's cancellation of a competitive solicitation in order to conduct sole-source procurement renders academic a protest against unduly restrictive solicitation specifications based on the proposed sole-source's product; protest of proposed sole-source is premature since no solicitation has been issued for this requirement.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procuring agency's cancellation of solicitation, after receipt of the report on the protest and the protester's comments on the report, does not entitle the protester to recover protest costs, where the cancellation does not constitute corrective action in response to a protest.

B-245941, January 22, 1992

92-1 CPD 101

Procurement

Sealed Bidding

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

Agency improperly rejected protester's bid as nonresponsive for failure to acknowledge material solicitation amendment where agency violated Federal Acquisition Regulation by failing to mail protester a copy of the amendment. Agency's violation contributed to the protester's exclusion from the competition and resulted in the receipt of only one responsive bid, contrary to the full and open competition requirement of the Competition in Contracting Act of 1984.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that low bid should be rejected as nonresponsive because bidder did not submit descriptive literature with its bid is denied where solicitation did not provide that descriptive literature was required for bid evaluation purposes, and literature was not necessary to evaluate the bid.

Procurement

Contractor Qualification

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

The General Accounting Office will not review a contracting officer's affirmative determination of responsibility unless the protester shows possible bad faith or fraud on the part of the procurement officials or that the solicitation contains definitive responsibility criteria that allegedly have not been met. A decision not to conduct a pre-award survey is not indicia of bad faith; an agency is not required to conduct a pre-award survey if the information readily available to the agency is sufficient to allow the contracting officer to make a determination of responsibility.

Procurement

Bid Protests

- Administrative policies
- ■ GAO review

The General Accounting Office (GAO) will not consider protests alleging violations of internal agency policies; Federal Acquisition Regulation §§ 1.602-1 and 1.602-2 do not confer jurisdiction on GAO to review such protests.

Procurement

Bid Protests

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

Protest against award to other offerors under air transportation services contract is untimely where protester, instead of diligently pursuing information that would form the basis of its protest when it learned of the awards, delayed filing until awardees' flight information was published in Federal Travel Directory 6 weeks after award.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration based on information and arguments that protester could have, but did not, submit in initial protest is denied; General Accounting Office's Bid Protest Regulations do not contemplate piecemeal development of protest issues.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ Negative determination
- ■ ■ ■ Convenience termination

Contracting agency is not required to terminate 100 percent small business set-aside contract awarded after the Small Business Administration (SBA) regional office determined the awardee to be a small business concern, even though, on remand from SBA's Office of Hearings and Appeals, the regional office reversed itself and found the awardee to be other than a small business due to its affiliation with the incumbent large business; the agency was authorized to proceed to award based on the initial SBA size determination by Federal Acquisition Regulation § 19.302(g)(2).

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

Protest that contracting officials improperly influenced technical evaluation—resulting in the downgrading of the protester's initially high scored proposal to the point of technical equality with the awardee's proposal—is denied where the record does not establish bias, only that the agency reasonably evaluated the proposals in accordance with the evaluation criteria listed in the solicitation.

Procurement

Specifications

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Regulations**
- ■ ■ ■ **Violation**

Solicitations unduly restrict competition where agency's standard clause automatically excludes any offeror alleged to have violated asbestos regulations, without regard to validity of allegation.

Procurement

Specifications

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

Solicitation provision which requires offeror to have completed 5 asbestos abatement projects with the last 3 years but also to have 5 years of an established asbestos abatement business is unduly restrictive in the absence of any rational explanation as to why agency's needs require such a restrictive provision.

B-246157, January 24, 1992**92-1 CPD 109**

Procurement

Contractor Qualification

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

Protest that agency improperly awarded a contract for transportation services to a joint venture which included one party that did not have state operating authority is dismissed where the contracting officer made an affirmative determination that the bidder was responsible, and the solicitation did not require that a bidder hold operating authority as a prerequisite to finding the bidder responsible.

B-245642, January 27, 1992**92-1 CPD 110**

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Errors**
- ■ ■ **Corrective actions**
- ■ ■ ■ **Moot allegation**

Where agency made award based upon miscalculation of pricing to other than the low evaluated offer, it properly took corrective action of terminating the improperly awarded contract and making award to the low priced offeror.

Procurement

Competitive Negotiation

- Discussion
- ■ Offers
- ■ ■ Clarification
- ■ ■ ■ Propriety

Post-award meeting at which an unsuccessful offeror under a solicitation for chemical treatment services to ships objected to the agency's evaluation of its price proposal, thereby prompting the agency to take corrective action because of its determination that its evaluation of the unambiguous price proposal was clearly unreasonable, does not constitute improper post-best and final offer discussions, but rather is a clarification.

B-245654, January 27, 1992

92-1 CPD 111

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole source
- ■ ■ Propriety

The proposed sole-source award of a contract under the authority of 10 U.S.C. § U 2304(c)(1) (1988) for navigational radar systems to be used at the Department of the Navy's Electronics Technician "A" School for instructional purposes is not objectionable where the agency reasonably determined that it needed a particular radar system that was the same as the other radar system already designated for use at the school.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Justification

Protest against the Department of the Navy's proposed sole-source award of contract under the authority of 10 U.S.C. § 2304(c)(1) (1988) for navigational radar systems to be used in ship overhaul and construction is sustained where the agency's justifications for the proposed sole-source award are not reasonably based or not supported by the record.

B-245701, January 27, 1992

92-1 CPD 112

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably determined proposal to be technically acceptable where offeror explicitly agreed to satisfy all solicitation requirements and provided a plan to satisfy warehouse space requirement by constructing necessary additional facilities and making available acceptable alternate facilities while construction was being completed.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that agency personnel did not make information concerning possible increase in business available to all offerors is denied where, during site visits, agency informed all offerors in a functionally similar manner of the possible increase.

B-245796, January 27, 1992

92-1 CPD 113

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Advice in request for proposals that offerors must respond with information showing successful experience in performing the kinds of tasks contemplated under the solicitation is sufficient to put offerors on notice that experience would be weighed qualitatively. Offerors were treated equally where agency relied on knowledge of incumbent's past performance and contacts with references for other offerors in order to verify assertions of experience in proposals.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Although agency may have improperly accorded cost greater importance in evaluation than identified in request for proposals (RFP), protester, as low cost offeror, was not prejudiced. Also, agency reasonably determined not to adjust awardee's labor costs for learning curve where awardee had extensive experience in tasks and technology similar to those contemplated under current RFP.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
 - ■ ■ ■ Samples
-

Procurement

Competitive Negotiation

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

Agency did not improperly inflate importance of responses to sample problems in evaluating technical and management approach. Offerors' understanding of the technology and tasks was critical element in ability to perform engineering and technical support tasks and RFP specifically identified sample problems as basis for evaluating this area.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agencies must identify deficiencies in offerors' proposals, but are not required to conduct all-encompassing discussions or point out every area where an acceptable proposal may have received less than the maximum technical score. Moreover, agencies need not disclose deficiencies in sample tasks used to provide a basis for evaluating an offeror's understanding.

B-245857, January 27, 1992

92-1 CPD 114

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Samples
- ■ ■ ■ Absence

An agency properly rejected a protester's offer to supply calcification tablets when the offer did not contain a sample of the tablets, as required by the solicitation.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Terms
- ■ Materiality
- ■ ■ Integrity certification

Where bidder's Certificate of Procurement Integrity indicates that bidder possesses no information regarding procurement violations and is otherwise complete, the bidder's failure to insert the word "none" in the certificate, which confirms a lack of violations, is not a material omission which would make the bid nonresponsive.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

The apparent low bid on a contract for rental and maintenance of washers and dryers for a 1-year base period and two 1-year options is mathematically unbalanced where there is a price differential of 1000 percent between the base year and either option year and the requirement is essentially the same for all 3 years. Since the agency has reasonable doubt that the acceptance of a bid which does not become low until well into the last option year ultimately would result in the lowest overall cost to the government, the bid was properly rejected as materially unbalanced.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Apparent low bid was properly rejected as mathematically and materially unbalanced where the bid, which is for a constant level of services for the base year and 2 option years, includes a substantially front-loaded base year price to cover equipment costs, and does not become low until the 10th month of the second option year, thereby raising a reasonable doubt that the bid would result in the lowest actual cost to the government.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Procurement

Sealed Bidding

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

Low bid is responsive where bidder submitted its bid on the original bid schedule instead of an amended bid schedule since the bidder acknowledged the amendment, and the change in the bid schedule language merely clarified a requirement which was clearly contained in the original solicitation specifications.

Procurement

Specifications

- Brand name specifications
- ■ Interpretation

Invitation for bids (IFB) clearly conveyed to bidders that only bids offering the brand name items of equipment listed in the IFB would be considered responsive, where IFB: (1) specifically stated that the contractor must furnish the major items of equipment listed by brand name and model; (2) did not include brand name or equal clause or any other reference to bids based upon alternative items of equipment; (3) did not list the salient characteristics of the brand name equipment listed in IFB; and (4) did not include any space to state the brand name/model or request descriptive literature for offers of alternative equipment.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Brand name specifications
- ■ ■ ■ Compliance

Where the protester submitted a bid offering major items of equipment other than the brand names/models that were listed in the invitation for bids (IFB), but the IFB specified that the contractor must furnish the major items of equipment listed by brand name and model, the bid was properly rejected as nonresponsive because it did not represent an offer to supply the exact thing required by the IFB.

Procurement

Contractor Qualification

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

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Compliance

Where bid represented an unqualified offer to do work and supply equipment in accord with the invitation's material requirements, the bid properly was found responsive, and its acceptance obligated the bidder to meet those requirements. Whether the bidder is capable of doing so involves the firm's responsibility, a matter that GAO generally does not review where, as here, the contracting agency finds the bidder responsible.

B-246260.2, January 28, 1992

92-1 CPD 120

Procurement

Bid Protests

- GAO procedures
- ■ GAO decision
- ■ ■ Reconsideration

Request for reconsideration is denied where protest was untimely and protester has made no showing entitling it to an exception to our timeliness rules.

B-245233.4, January 29, 1992***

92-1 CPD 121

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Post-employment restrictions
- ■ ■ ■ GAO review

The interpretation and enforcement of post-employment conflict of interest restrictions are primarily matters for the procuring agency and for the Department of Justice. The General Accounting Office's interest, within the confines of a bid protest, is to determine whether any action of the former government employee may have resulted in prejudice for, or on behalf of, the awardee. The mere employment of a former government employee who is familiar with the type of work required but not privy to the contents of proposals or any other inside information does not confer an unfair competitive advantage.

Procurement

Bid Protests

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

Contention filed after contract award that awardee should have been ineligible for award because its performance of earlier pilot contract resulted in an organizational conflict of interest is untime-

ly where a solicitation amendment issued before receipt of proposals informed offerors that the awardee had performed the pilot contract and would be permitted to compete under the current solicitation since, under the circumstances, the contention involves a solicitation impropriety, and under General Accounting Office Bid Protest Regulations protests based upon such improprieties must be filed before time set for receipt of proposals.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Incumbent contractors**

There is no requirement that an agency equalize competition with respect to the advantages that an incumbent contractor may have so long as the advantages do not result from unfair action by the government.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation errors**
- ■ ■ **Personnel experience**
- ■ ■ ■ **Point ratings**

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Technical acceptability**
- ■ ■ ■ **Point ratings**

Although the agency used in the source selection erroneous point scores for the protester that did not reflect increases in points achieved by protester's best and final offer, since contracting officer did not rely on point scores alone in making the source selection, but instead based his judgment of the technical superiority of the awardee's proposal on an assessment of the strengths and weaknesses of the proposals, use of the erroneous point scores resulted in no harm to the protester.

B-245448.3, et al., January 29, 1992***

92-1 CPD 122

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Multiple/aggregate awards**
- ■ ■ ■ **Costs**

Procurement

Special Procurement Methods/Categories

- **Federal procurement regulations/laws**
- ■ **Multiple/aggregate awards**
- ■ ■ **Cost/technical tradeoffs**

Incorporation in solicitation of standard form clause at Federal Acquisition Regulation § 52.215-34, "Evaluation of Offers for Multiple Awards," which contemplates a solicitation under which award of various items is to be made on basis of price, does not require that multiple awards be made on basis of lowest aggregate cost where solicitation specifically requires any award, including multiple awards, to be based upon a cost/technical tradeoff, and cautions that award would "not necessarily be made . . . to the offeror(s) with the lowest most probable cost."

Procurement

Competitive Negotiation

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

Allegation of deficiency in application of agency internal evaluation plan does not alone provide a basis for questioning the evaluation; protest is denied where evaluation is consistent with the evaluation scheme set forth in the request for proposals and is otherwise reasonable.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Agency's mechanical application of government estimate of labor rates, exempt from the Service Contract Act, to determine evaluated costs for each offeror does not satisfy requirement for an independent analysis of each offeror's proposed costs.

B-245709, B-245718, January 29, 1992

92-1 CPD 123

Procurement

Sealed Bidding

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

Agency's cancellation after bid opening of invitation for bids for the upgrade, or conversion, of bauxite ore into aluminum metal ingots was proper where the agency could not determine that the most favorable bid submitted was reasonable in light of its own estimates which have not been shown to be incorrect.

B-245412.3, B-245753, January 30, 1992***

92-1 CPD 124

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Ambiguous specifications

Agency properly canceled defective solicitation containing line item price limitation language which, while clear on its face, was placed in the solicitation in a misleading manner, so that 9 of 12 bidders failed to adhere to the limitation.

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Agency properly rejected low-priced bid as obviously erroneous pursuant to Federal Acquisition Regulation § 14.406-3(g)(5), where the bid was based upon a misinterpretation of the contract requirements and waiver of the mistake would prejudice other bidders; furthermore, the rejection of the bid as obviously erroneous under the mistake in bid procedures is not a matter of bidder responsibility.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

A solicitation for a requirements contract should be canceled and resolicited where the incumbent's low bid contained nominal prices for some items and enhanced prices for other items, and thus was mathematically unbalanced, and where the mathematically unbalanced bid might not result in the lowest ultimate cost to the government because the solicitation's estimates and item descriptions did not reasonably reflect the government's actual anticipated requirements.

Procurement

Sealed Bidding

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

An ostensible copy of a power of attorney, in which the surety appointed a named attorney-in-fact to obligate it on bonds and other matters, is unacceptable for the purposes of obligating the surety to the terms of the bidder's bid bond signed by the named attorney-in-fact where the names of the surety's officers witnessing the appointment and the name of the notary public notarizing the document are merely typewritten.

Procurement

Bid Protests

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

Protester is an interested party to protest the adequacy of specifications of the invitation for bids, despite the presence of intervening bids, because the appropriate remedy (if the protest were sustained) would be resolicitation.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protester alleged that agency created unfair competition by failing to inform other interested bidders that, although there was no applicable collective bargaining agreement (CBA), a union had previously gained the right to represent employees at the site where the services were to be performed under the prospective contract. Protest is denied because there is no applicable CBA, the agency told the protester to base its bid solely upon the terms of the invitation for bids, and the other bidders were required to ascertain for themselves and take into account any CBAs.

Procurement

Sealed Bidding

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

Agency properly determined to cancel solicitation after bid opening where all bids exceeded amount agency was willing to allocate for the project.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest against determination to reissue a canceled small disadvantaged business set-aside solicitation on an unrestricted basis is dismissed as academic where subsequent solicitation also was canceled.

Procurement

Competitive Negotiation

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

Where there are potential benefits from both approaches to performing the contract, agency reasonably determined that protester's proposal to provide diagnostic services through the use of

three part-time radiologists and awardee's proposal to provide such services through the use of one full-time radiologist were equally desirable, making awardee's low cost the proper basis for award.

Procurement

Competitive Negotiation

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

Agency properly disregarded cost savings protester alleges could be realized from its proposal for radiology services, where solicitation did not provide for consideration of such cost savings in the evaluation of proposals, and where, in any event, alleged savings are not sufficient to make protester the low offeror in line for award.

B-246016, January 30, 1992

92-1 CPD 130

Procurement

Bid Protests

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

Protest allegation that agency misinterpreted solicitation requirement in determining that protester's proposal did not meet the requirement, raised for the first time in comments on the agency report, is untimely where not filed within 10 days of protester's actual knowledge of that basis of protest.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation errors**
- ■ ■ **Allegation substantiation**

Protest challenging agency's technical evaluation of proposal for air surveillance system is denied where agency reasonably determined that protester's proposal failed to meet solicitation requirements for manual tracking of targets.

Procurement

Competitive Negotiation

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

Protest alleging that agency failed to conduct meaningful discussions with protester is denied where agency's discussion letter specifically addressed perceived deficiencies, and protester was afforded second opportunity to correct deficiencies in best and final offer.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

Request for reconsideration of decision dismissing protest of agency's cancellation of solicitation is denied where record shows that protester was not in line for award based on bids received, and therefore is not an interested party to protest cancellation.

B-245761, B-245761.2, January 31, 1992***

Procurement

Competitive Negotiation

- Best/final offers
- ■ Price adjustments

The procuring agency, as a part of its cost realism analysis in a negotiated procurement for a cost reimbursement contract, properly adjusted the protester's unsupported assignment in its best and final offer of higher priced personnel from the lowest overhead cost center to the highest overhead cost center, resulting in a significant evaluated increase in the protester's proposed costs, where the agency reasonably concluded that performance of the contract would require the use of the higher priced personnel in the higher overhead cost center.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Rates
- ■ ■ ■ Cost reimbursement contracts

The procuring agency, in conducting a cost realism analysis in a negotiated procurement for a cost reimbursement contract, reasonably used the protester's actual indirect cost rates from the prior fiscal year, instead of the protester's significantly lower proposed rates, where there was a significant discrepancy between the protester's historical indirect cost rates and its proposed rates, and the proposed rates were based upon speculative projections of increased future business and unexplained reductions in overhead expenses.

Procurement

Competitive Negotiation

- Contracting officer duties
- ■ Effects
- ■ ■ Advisory opinions

The procuring agency is not bound by the audit recommendations of the Defense Contract Audit Agency since such recommendations are only advisory.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Cost realism**
- ■ ■ **Adjustments**
- ■ ■ ■ **Rates**

The procuring agency's cost realism adjustment of the overhead rates of the protester's proposed subcontractor in a negotiated procurement for a cost reimbursement contract reasonably used the rate associated with on-site performance, where the subcontractor offered, without explanation, an "off-site" overhead rate for the first time in the protester's best and final offer, but the solicitation required on-site performance.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Cost realism**
- ■ ■ ■ **Rates**

Procuring agency, in conducting a cost realism analysis in a negotiated procurement for a cost reimbursement contract, reasonably utilized the agency's labor escalation rate guideline in adjusting the inadequately supported labor escalation rate of the protester's subcontractor—which was questioned during discussions—that was lower than the agency's guideline rate, which was that used by the offerors and other subcontractors.

Procurement

Competitive Negotiation

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

The procuring agency reasonably determined—in a procurement in which technical factors were stated to be more important than cost—that the awardee's higher rated, higher priced offer was the most advantageous to the government, where the agency found that the awardee's technical superiority outweighed the protester's 2 percent evaluated cost advantage, taking into account cost realism.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Cost/technical tradeoffs
 - ■ ■ ■ Weighting
-

Procurement

Competitive Negotiation

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

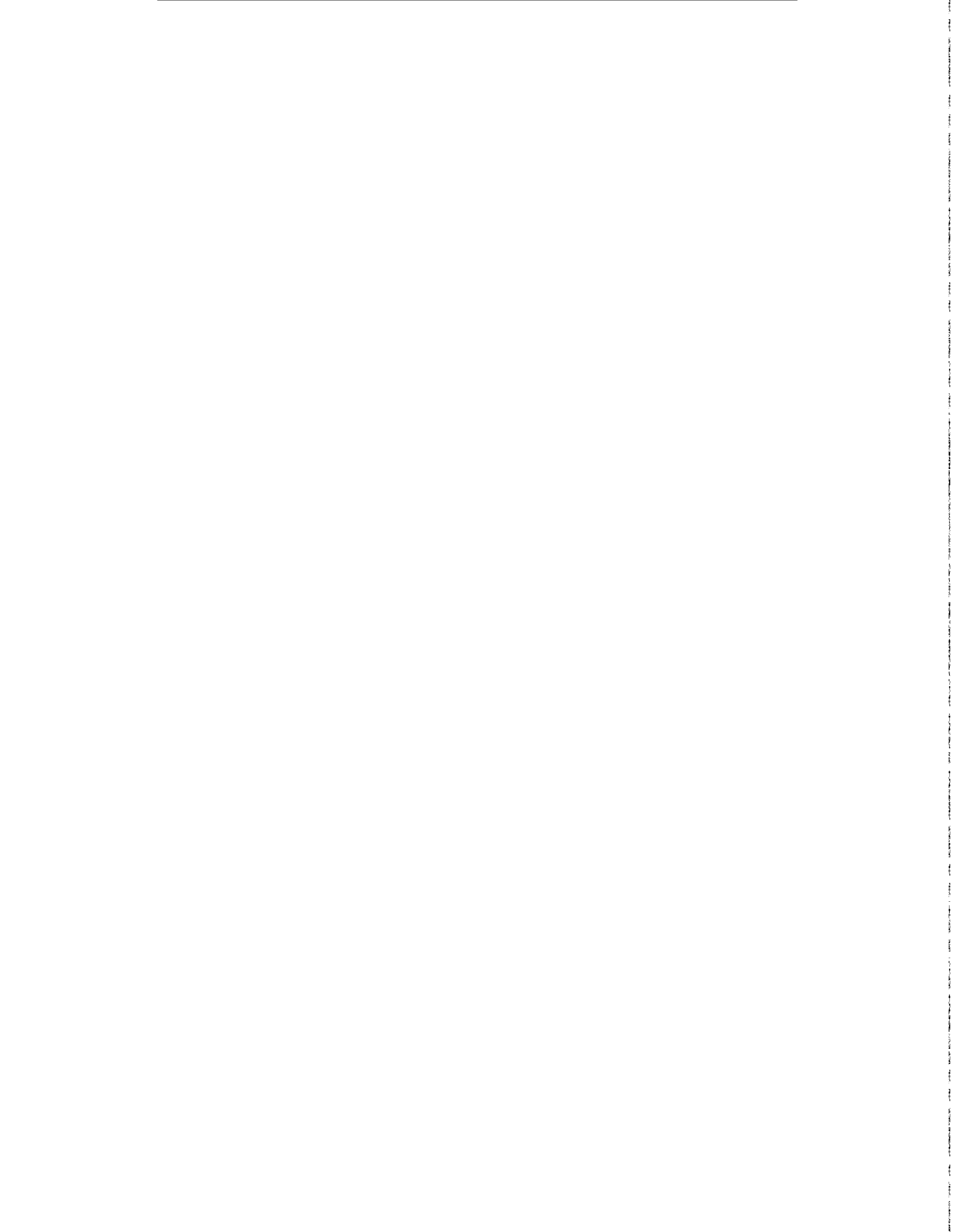
The agency's consideration of performance efficiency in balancing cost and technical considerations was not the improper application of an unstated evaluation factor but simply a tool in performing the cost/technical tradeoff.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Protest allegation that awardee received an unfair price advantage, in a negotiated procurement containing incentive awards for meeting negotiated small and small disadvantaged subcontracting plan goals, due to the fact that the procuring agency accepted the awardee's subcontracting plan goals, which were less than the 5 percent goal encouraged by the solicitation, is denied, because the plan, which was negotiable and properly approved under applicable regulations, was otherwise acceptable, and the protester was not prejudiced.



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