

United States General Accounting Office

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Office of General Counsel

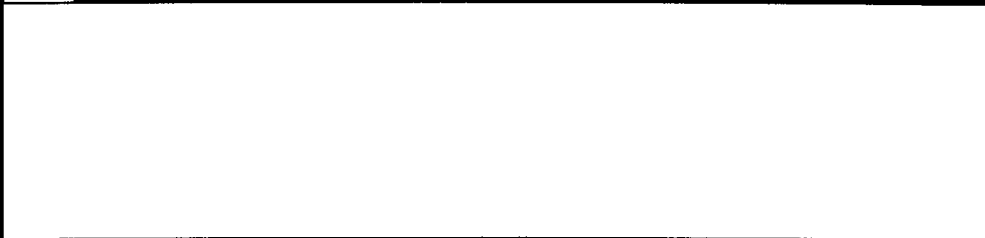


151333

January 1993

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

Vol. IV, No. 4



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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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Late Case

B-249539, December 2, 1992

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Technical acceptability

Agency properly rejected as technically unacceptable a proposal which did not evidence a full understanding of the technical requirements of the solicitation and failed to demonstrate a reasonable probability of performing the technical aspects of the required work.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Adequacy

■ ■ ■ Criteria

Agency reasonably led protester to area of its proposal that was rated "unacceptable," thereby conducting meaningful discussions, where the agency sought responses to 20 technical questions, several of which were relatively broad, and the protester's responses to at least two of those questions specifically addressed that aspect of its proposal that was rated "unacceptable," evidencing the protester's recognition of the agency's area of concern.

Appropriations/Financial Management

B-248376, January 11, 1993

Appropriations/Financial Management

Accountable Officers

■ **Determination criteria**

GAO advises a military officer whose pay has been subjected to salary offset that his case will not be referred to the Justice Department for initiation of litigation pursuant to 5 U.S.C. § 5512(b) because the officer is not an "accountable officer" with respect to the debt being collected from him.

B-248715, January 13, 1993

Appropriations/Financial Management

Appropriation Availability

■ **Amount availability**

■ ■ **Imprest funds**

■ **Adjustments**

■ ■ **GAO authority**

Appropriations/Financial Management

Appropriation Availability

■ **Purpose availability**

■ ■ **Necessary expenses rule**

■ ■ ■ **Operating losses**

United States Marine Corps may restore deficiency in Brig Officers Safekeeping Fund from the appropriation account supporting the administration of the Fund. 31 U.S.C. § 3530.

B-248907, January 19, 1993

Appropriations/Financial Management

Appropriation Availability

■ **Purpose availability**

■ ■ **Specific purpose restrictions**

■ ■ ■ **Utility services**

■ ■ ■ ■ **Use taxes**

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone charge imposed by the state of Wisconsin because the charge is a vendee tax, the legal burden of which falls directly on the federal government as a user of telephone services.

B-249007, January 19, 1993

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Utility services
- ■ ■ ■ Use taxes

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone surcharge and the dual-party relay surcharge imposed by the state of Nebraska because the surcharges are vendee taxes, the legal burden of which fall directly on the federal government as a user of telephone services.

B-249869, January 25, 1993

Appropriations/Financial Management

Claims Against Government

- Government liability
- ■ Fraud
- ■ ■ Contractor misrepresentation

Where the government has received notice of the termination of an agent's association with a company; that the individual was suspected of fraud in connection with the company's management; and that he was improperly representing that his new company was a successor to the former principal; the improper subsequent delivery to him of checks made out to the former principal does not serve to discharge the government's obligation to the company, and the government therefore remains liable for all sums due.

B-249888, January 28, 1993

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Substitute checks

U.S. Navy disbursing official is relieved of liability pursuant to 31 U.S.C. § 3527(c) for the improper payment resulting from payee's negotiation of both original and recertified checks. The disbursing official followed the proper procedures in the issuance of the successor check; there is no indication of bad faith on the part of the disbursing official; and he initiated collection action in a timely and adequate manner.

B-250377, January 28, 1993

Appropriations/Financial Management

Appropriation Availability

- Cost controls
- ■ Statutory restrictions
- ■ ■ Inventories

Agency charges based on standard cost for items provided from inventory may be made consistent with the minimum legal requirements of the Economy Act. 31 U.S.C. §§ 1535, 1536. The standard cost may be based on the last acquisition cost of the specific kind of item provided to the requesting agency, not the last acquisition cost of a similar item. Charging standard cost for transportation and labor under Economy Act may be reasonable depending upon factors considered in establishing standard costs.

Civilian Personnel

B-250175, January 6, 1993

Civilian Personnel

Leaves Of Absence

- Sick leave
- ■ Communicable diseases
- ■ ■ Dependents

Employee who was away from work in order to provide care and assistance for his seriously ill son claims sick leave should be granted instead of the annual leave granted by the agency. Employee may be granted sick leave only if the son's illness is contagious and his movement is restricted by the health authorities. Since the son's illness is not contagious and his movement was restricted because of the nature of the illness and not because the health authority restricted movement to prevent spread of a contagious illness, the employee may not be granted sick leave.

B-249451, January 7, 1993

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee sold his residence after notice that the Air Force Base at which he worked would be closed, but before he accepted a transfer to another base and signed a transportation agreement. The employee's agency denied his claim for real estate expenses because he incurred them before signing a transportation agreement. The employee was enrolled in the agency's priority placement program under which the agency committed itself to assist in locating another federal job for him and paying relocation expenses incident to the necessary relocation. He may be reimbursed the real estate expenses because in these circumstances the base closure notice was evidence of a clear administrative intent to transfer him upon the location of a new position for him.

B-249621, January 19, 1993

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Mortgage insurance
- ■ ■ Reimbursement

A transferred employee claims reimbursement for a mortgage insurance premium, the payment of which was required at settlement. The Federal Travel Regulation, 41 C.F.R. § 302-6.2(d)(2)(i) (1991), specifically prohibits reimbursement of this type of charge. Claim is denied.

B-249649, January 22, 1993

Civilian Personnel

Compensation

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

Civilian Personnel

Compensation

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

A new, part-time employee was informed that the government prorated its contribution to his health benefits premium based on his work schedule so that he would have to pay a larger premium than a full-time employee. Although he was not informed what his health benefit premium would be, he was informed what a full-time employee's premium would be, and his leave and earnings statements showed that his premium was only that of a full-time employee rather than the higher premium of a part-time employee. Since he had records which, if reviewed, would have indicated an overpayment, he is not without fault, and waiver under 5 U.S.C. § 5584 is denied.

B-251181, January 22, 1993

Civilian Personnel

Compensation

- Board members
- ■ Intermittent employment
- ■ ■ Conversion
- ■ ■ ■ Temporary appointment

Nuclear Regulatory Commission is advised of our opinion that a Civil Service retirement annuitant who is serving as a member of the Commission's Advisory Committee on Reactor Safeguards in an intermittent employment status may not have his employment status converted to a temporary, regular part-time employment status. Section 29 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2039 (1988), which governs his appointment and compensation entitlement does not grant the Commission authority to provide additional compensation or other benefits. *Advisory Committee on Reactor Safeguards*, B-207515, Oct. 5, 1982.

B-246538.2, January 27, 1993

Civilian Personnel

Relocation

- Expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Personal convenience

A Special Assistant to a member of the Civil Rights Commission, who was employed in California for about 2-1/2 months on an intermittent basis claims relocation benefits for his move to Washington, D.C., incident to receiving an appointment to a full-time position. The claim is denied since, in any event, no travel orders were issued incident to his Washington appointment evidencing that he was being transferred in the interest of the government, and the agency subsequently has declined to do so.

B-249930, January 27, 1993

Civilian Personnel

Travel

- **Temporary duty**
- ■ **Travel expenses**
- ■ ■ **Business-class travel**

Under the Federal Travel Regulation, 41 C.F.R. § 301-3.3(d)(1) (1992), the government's policy is that employees shall use coach-class or equivalent air accommodations and premium-class air accommodations (such as business or first-class or equivalent accommodations) may be used only under specified circumstances listed in 41 C.F.R. § 301-3.3(d)(3) (1992). In this case, none of the specified circumstances were fulfilled and the employee chose to use business class without authorization. Thus, his claim for reimbursement of the higher business-class airfare is denied.

B-249820, January 28, 1993

Civilian Personnel

Travel

- **Training**
- ■ **Privately-owned vehicles**
- ■ ■ **Shipment**
- ■ ■ ■ **Reimbursement**

An employee may not be reimbursed for shipping a privately owned vehicle to or from a training assignment location since the law governing that training (5 U.S.C. § 4109 (1988)), does not provide that authority nor may such expense be used to establish a cost comparison to determine travel reimbursement on a constructive basis. *Michael G. Pond*, 58 Comp. Gen. 253 (1979), and *Reconsideration of Pond*, B-193197, Jan. 10, 1980; *Paul S. Begnaud*, B-214610, Feb. 19, 1985.

Civilian Personnel

Travel

- **Rental vehicles**
- ■ **Expenses**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Eligibility**

An employee may not be authorized use of a rental vehicle at a training assignment location while waiting for her shipped privately owned vehicle to arrive unless there was official business to be conducted which required the use of a rental vehicle. *Kenneth A. Cucullu*, B-236570, Apr. 13, 1990, and decisions cited.

B-251045, January 28, 1993

Civilian Personnel

Relocation

- **Residence transaction expenses**
- ■ **Reimbursement**
- ■ ■ **Eligibility**

An employee hired by the Merchant Marine Academy in Kings Point, New York, who was not eligible to have the expenses of selling his family residence in East Lansing, Michigan, reimbursed at the time of hiring, may not have those selling expenses reimbursed incident to his transfer from the Academy to Bremerton, Washington, because he did not regularly commute to and from the residence to his worksite at the Academy. Although the employee was required to live on the Academy premises as a condition of employment and family housing never became available at the Academy as promised during recruitment, the Claims Group's determination is correct that

the remote worksite exception to the commuting requirement does not apply because the Academy is not a remote worksite.

B-249170.3, January 29, 1993

Civilian Personnel

Travel

- Actual subsistence expenses
- ■ Reimbursement
- ■ ■ Amount determination

Civilian Personnel

Travel

- Lodging
- ■ Expenses
- ■ ■ Reimbursement

Claimants seek reimbursement of temporary duty expenses. Although there are minor discrepancies as to which rooms the employees occupied, the investigative report relied upon by the agency does not contain evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Further, investigation by the Department of Justice established that the employees actually paid the amounts for lodging reflected in their vouchers to the apartment complex where they were staying while on temporary duty. Under these circumstances, the employees are entitled to reimbursement of subsistence expenses and any amounts recouped should be returned.

B-249835, January 29, 1993

Civilian Personnel

Compensation

- Compensation restrictions
- ■ Compensatory time
- ■ ■ Training

An agency's denial of an employee's request for compensatory time for non-duty hours spent in rural appraisal training courses related to his duties is sustained. With limited exceptions not applicable here, overtime pay is prohibited under the Training Act for time spent in training, and compensatory time which is granted in lieu of overtime pay is similarly prohibited.

Military Personnel

B-248376, January 11, 1993

Military Personnel

Pay

■ **Debt collection**

■ ■ **Set-off**

GAO advises a military officer whose pay has been subjected to salary offset that his case will not be referred to the Justice Department for initiation of litigation pursuant to 5 U.S.C. § 5512(b) because the officer is not an "accountable officer" with respect to the debt being collected from him.

B-251025, January 19, 1993

Military Personnel

Pay

■ **Disability status**

■ ■ **Combat disabilities**

■ ■ ■ **Determination**

Military Personnel

Pay

■ **Disability pay**

■ ■ **Eligibility**

An enlisted member of the Pennsylvania National Guard who developed a medical condition was declared medically unfit for retention in the Guard and was honorably discharged. The former member has filed a claim for incapacitation pay, pursuant to 37 U.S.C. § 204. However the National Guard determined that the condition was not service-connected. Determination of such matters is within the jurisdiction of the pertinent service, and without a determination that the disability was incurred in the line of duty, no entitlement exists for incapacitation pay. Thus, we affirm the determination of the Claims Group.

Miscellaneous Topics

B-248956, January 8, 1993

Miscellaneous Topics

Law Enforcement

- Statutory interpretation
 - ■ Criminal law matters
 - ■ ■ Council members
 - ■ ■ ■ Government agents
-

Miscellaneous Topics

Federal Administrative/Legislative Matters

- Council members
- ■ Agents

Members of the Competitiveness Policy Council (CPC) established under 15 U.S.C. §§ 4801-09 may not serve as agents for a foreign principal, but the law is silent as to members of CPC subcouncils. In view of the broad sweep of a recent Justice Department opinion on whether advisory committee members are "public officials" within the meaning of the Foreign Agents Registration Act, 18 U.S.C. § 219, we believe that the most prudent course of action is for the CPC to assume that members of CPC subcouncils also are "public officials" and, therefore, may not serve as agents for a foreign principal. We express no view on the merits of the Justice Department opinion and emphasize that only Justice can provide definitive advice on the issue since it involves the interpretation of a criminal statute.

Procurement

B-250065, January 4, 1993

93-1 CPD 1

Procurement

Competitive Negotiation

- Requests for proposals
 - ■ Terms
 - ■ ■ Technical information
 - ■ ■ ■ Design specifications
-

Procurement

Specifications

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

Contracting agency properly employed "Products Offered" clause in solicitation where purchase description was necessarily limited to one manufacturer's part number because the item being procured was an item for which the government did not possess technical data.

Procurement

Bid Protests

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

Protest that solicitation's purchase description failed to contain sufficient information to allow protester to prepare an alternate proposal under the agency's "Products Offered" clause is dismissed as untimely when filed after the closing date for receipt of initial proposals.

B-244691.3, January 5, 1993

93-1 CPD 2

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where requesting party for the most part merely expresses disagreement with General Accounting Office's finding of fact; the only new element in the request for reconsideration fails to support the requester's argument and, in any event, could have been raised during consideration of the initial protest.

Procurement

Bid Protests

- Antitrust matters
- ■ GAO review

Procurement

Bid Protests

- Private disputes
- ■ GAO review

Protester's contention that one offeror is receiving preferential treatment over other offerors because an insurance company has agreed to provide the same coverage to the one offeror as the insurance company provides to the incumbent protester is dismissed because any favorable treatment received here is the result of action by a private party, not the government, and the protester's allegation that the insurance company's actions possibly violate the antitrust laws is a matter for the Department of Justice.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Decision dismissing protest as untimely is affirmed where protester's pre-bid opening letters to agency were clearly labeled as requests for clarification and information, respectively, and at a minimum did not contain the expression of dissatisfaction which is required to render them agency-level protests.

Procurement

Competitive Negotiation

- Contract awards
- ■ Non-appropriated funds

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Documentation procedures
- ■ ■ ■ Compliance

Protest of source selection in procurement not involving appropriated funds is denied where the record contains adequate documentation of the agency's evaluation of proposals and that documentation indicates that the source selection process was reasonable.

Procurement

Competitive Negotiation

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

Agency properly determined that awardee's proposal satisfied a mandatory solicitation requirement where the solicitation, reasonably interpreted, provided the flexibility to use the awardee's proposed alternative with respect to the specification at issue.

B-250096, January 5, 1993

93-1 CPD 6

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where agency conducted three rounds of discussions with the protester, focusing on staffing and price deficiencies in the protester's proposal, agency was not required in its request to the protester for a best and final offer to advise the protester of its continuing concerns with deficiencies remaining in its proposal.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Competitive ranges

Procurement

Competitive Negotiation

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

Agency reasonably eliminated the protester's low priced best and final offer from the competitive range as technically unacceptable, without reopening discussions, where previously disclosed staffing and price deficiencies were not resolved by the protester in its best and final offer.

B-250162, January 5, 1993

93-1 CPD 7

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Price negotiation

Since the contracting agency did not consider offeror's price to be too high for the technical approach proposed, the contracting agency was not required to conduct discussions concerning the offeror's price.

B-250182, January 5, 1993

Procurement

Socio-Economic Policies

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

Procurement

Specifications

- Form letters
- ■ Clerical errors
- ■ ■ Restrictive markings

Contracting agency's inadvertent check mark next to the statement, "THIS PROCUREMENT IS UNRESTRICTED," on solicitation cover sheet does not require that the procurement be considered unrestricted where the solicitation includes provisions which clearly provide that the procurement is intended to be a small business set-aside.

B-250199, January 5, 1993**93-1 CPD 9**

Procurement

Contractor Qualification

- Approved sources
- ■ Qualification
- ■ ■ Delays

Protest that agency failed to provide reasonable opportunity for offeror to qualify its alternate product is denied where agency reasonably was unable to complete the requisite review before it was necessary to make an award because of backorders and increasing demand for the item.

B-250201, January 5, 1993**93-1 CPD 10**

Procurement

Contractor Qualification

- Accreditation
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest of solicitation for logistics courses requirement that the contractor possess post-secondary accreditation as unduly restrictive of competition because no college credit is to be awarded for any of the courses being procured is denied where solicitation does, in fact, require college credit to be given and protester has not shown that accreditation requirement is not reasonably related to agency's needs.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Where proposal fails to comply with material solicitation requirement for a parking facility located within a 2-block area of government office and fails to include any information that responds to the solicitation's self-parking requirement, contracting agency reasonably concluded the offer is technically unacceptable and should be excluded from the competitive range.

Procurement

Competitive Negotiation

- Contract awards
 - ■ Initial offers
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where low offeror unequivocally offered to perform the contract and took no exception to the terms of the solicitation specifications, the firm's offer was acceptable.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Contract Management

- Contract administration
- ■ Contract terms
- ■ ■ Christian doctrine

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business-asides
- ■ ■ Preferences
- ■ ■ ■ Applicability

Clause providing for evaluation preference for small disadvantaged business concerns omitted from solicitation may not be read into solicitation under the "Christian Doctrine" since that doctrine provides only that mandatory contract clauses may be read into an otherwise properly awarded contract.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Where agency initially listed a "suggested" source of supply for two items called for under invitation for bids (IFB) but subsequently canceled the IFB and issued a new solicitation which requires the use of the designated source, claim for cost of preparing bid submitted under the canceled IFB is denied since there is no evidence of bad faith or that the agency acted arbitrarily or capriciously in issuing the IFB.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

General Accounting Office will not consider information offered to establish interested party status that is first presented in request for reconsideration of decision dismissing protest because protester was not an interested party since protester is obligated to provide such information when filing the protest.

Procurement

Bid Protests

- GAO procedures
 - ■ Interested parties
 - ■ ■ Subcontractors
-

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Suppliers

Potential subcontractor or supplier is not an interested party eligible to protest solicitation specifications.

Procurement

Contract Types

- Requirements contracts
 - ■ Use
-

Procurement

Specifications

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

Protest that agency should not use requirements contract to procure instructional services is denied where protester did not show agency's choice of contract type to be unreasonable. The contracting agency has the primary responsibility for determining its needs and the method of accommodating them.

Procurement

Competitive Negotiation

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

Procurement

Specifications

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

Solicitation that required offerors to provide a single unit price for an instruction session and that grouped several sessions together for purposes of award did not unreasonably restrict competition. The solicitation structure was necessary to meet the agency's needs for flexibility, uniformity and administrative simplicity.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Administrative discretion

Protest that agency should use termination for convenience clause relating to fixed-price contracts instead of clause used for service contracts is denied. The service contract clause is proper since a successful offeror will not incur substantial charges in preparing for and carrying out the contract.

B-250106, January 6, 1993

93-1 CPD 23

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Protest that agency failed to provide reasonable opportunity for offeror to qualify its alternate product is dismissed as premature where agency has not yet completed evaluation of offers.

Procurement

Competitive Negotiation

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

Agency reasonably determined to require preaward qualification testing, instead of first article testing procedures, for approval of alternate manufactured item, in view of excessive cost, inability to release proprietary technical information, and other complications associated with first article testing.

B-250465.2, et al., January 7, 1993

93-1 CPD 24

Procurement

Bid Protests

- GAO procedures
- ■ Administrative appeals
- ■ ■ GAO review

Where Administrator of the Small Business Administration (SBA) has appealed withdrawal of 8(a) set-aside to the head of the contracting agency pursuant to Federal Acquisition Regulation (FAR) § 19.810, and that appeal is still pending, General Accounting Office will not consider protest on same grounds.

B-250110, January 8, 1993

93-1 CPD 25

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protest that agency improperly failed to obtain a signed receipt for a bid which was returned to bidder before bid opening and subsequently timely resubmitted after modification by the bidder is denied, since provision requiring agency to obtain receipt is designed to protect the government and bidders against the possibility of an unauthorized withdrawal of a bid and has no application where the bid is merely returned for purposes of making timely prebid opening modifications.

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Allegation substantiation
- ■ ■ ■ Burden of proof

Speculation that agency contracting officials improperly permitted apparent low bidder to modify bid after bid opening is denied where agency denies that modification was permitted and there is no evidence showing that late modification in fact was permitted.

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Price reasonableness

Omission in cost breakdown document provided to agency after bid opening for purposes of price reasonableness review does not affect responsiveness of bid; information was not required to be submitted as part of bid and did not affect firm's unequivocal offer to meet all solicitation requirements.

B-249365.2, January 11, 1993

Procurement

Bid Protests

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

Protester which submitted an unacceptable initial proposal and a late best and final offer is interested party to protest the acceptability of the proposal of only remaining offeror.

Procurement

Competitive Negotiation

- Alternate offers
- ■ Acceptance
- ■ ■ Propriety

Awardee's alternate offer which proposed a reduction in hours to perform the work from the government estimate of required hours was reasonably found acceptable where solicitation invited alternate proposals and agency found that awardee could perform work with fewer total hours.

B-250234, January 11, 1993

93-1 CPD 26**Procurement**

Sealed Bidding

- Bid opening
- ■ Extension
- ■ ■ Refusal
- ■ ■ ■ Justification

Contracting officer's decision not to delay bid opening despite protester's request for clarification was not unreasonable where contracting officer promptly responded to protester's clarification request and the protester fails to show why it could not, based on the information furnished, prepare its bid by the scheduled opening.

Procurement

Sealed Bidding

- Use
- ■ Criteria

Where all elements enumerated in the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(2) (1988), for the use of sealed bidding procedures are present, agencies are required to use those procedures and do not have discretion to employ negotiated procedures.

B-250241, B-250241.2, January 11, 1993**93-1 CPD 27**

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that awardee's proposal materially misrepresented commitment of key personnel is denied where awardee provided firm letters of commitment with consent of the listed individuals, confirmed the availability of these individuals prior to submitting its best and final offer, and nothing in the record suggests that the names were submitted in other than in good faith.

B-250304, January 11, 1993**93-1 CPD 28**

Procurement

Sealed Bidding

- Bids
- ■ Minor deviations
- ■ ■ Acceptability

Procurement

Sealed Bidding

- Modification
- ■ Signatures
- ■ ■ Omission

Bidder's failure to sign telecopied bid modification may not be waived where no other document evidencing an intent to be bound and signed by the bidder accompanied the modification.

B-250417.2, January 11, 1993**93-1 CPD 29**

Procurement

Bid Protests

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

Protest to GAO that invitation should not have required bonds for contract's option years as well as base period properly was dismissed as untimely, since it was filed more than 10 working days after the agency opened bids despite the company's pre-opening, agency-level protest.

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Options
- ■ ■ ■ Prices

Protest filed after award that agency should not have evaluated option prices in determining lowest overall priced proposal is untimely where the solicitation included a clause which stated that option prices would be evaluated and, under the General Accounting Office Bid Protest Regulations, protests based on alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of proposals must be filed prior to that time.

Procurement

Bid Protests

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

Protest filed after award that the agency was required to evaluate awardee's prior year production special tooling and production special test equipment costs is untimely where the solicitation did not provide for the evaluation of these costs and protester was specifically advised prior to the closing time for receipt of proposals that these costs would not be included in the evaluated prices of proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Certification
- ■ ■ ■ Time/date notations

Awardee's failure to date its certificate of procurement integrity does not require rejection of proposal where certificate was properly executed by company official responsible for the preparation of the proposal and the certificate's applicability to the particular proposal is clear. Submission of a properly executed certificate imposes a continuing obligation upon firm and certifying individual during the conduct of entire procurement.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Bid guarantees
- ■ ■ ■ Facsimile

Where bidder has submitted only a facsimile copy of a bid bond and power of attorney as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected

as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bond subsequent to bid opening.

B-250796, January 11, 1993

93-1 CPD 32

Procurement

Sealed Bidding

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

Agency properly allowed correction of the mistake in bid by the low bidder where the existence of the mistake and the intended bid price were clearly established from the bidder's original bid preparation papers and the corrected bid remains significantly below the next low bid.

B-250901.2, January 11, 1993

93-1 CPD 33

Procurement

Bid Protests

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

Dismissal of the original protest because the protester failed to respond to the agency report is affirmed notwithstanding the protester's explanation that the failure was inadvertent and was based on its belief that the filing of comments was not necessary since General Accounting Office (GAO) Bid Protest Regulations require response to agency report in order for GAO to further consider protest.

B-250133, January 12, 1993

93-1 CPD 34

Procurement

Competitive Negotiation

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

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Cancellation
- ■ ■ Unrestricted resolicitation
- ■ ■ ■ Propriety

Agency properly canceled a total small business set-aside, and determined to recompute the purchase on an unrestricted basis, where the sole eligible small business price exceeded the lowest priced offer from an ineligible offeror by 18 percent.

Procurement

Competitive Negotiation

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

Where solicitation advised that award may be based on initial offers, the contracting officer had no obligation to hold negotiations with offeror.

B-250282, January 12, 1993

93-1 CPD 35

Procurement

Contractor Qualification

- **Responsibility/responsiveness distinctions**

Question concerning bidder's status as an Indian economic enterprise so as to be eligible for award of a contract with an Indian set aside provision is not a matter of bid responsiveness since question does not relate to bidder's obligation to provide required services in conformance with material terms of solicitation, but rather is a matter of bid responsibility. Consequently, bidder may clarify and explain its status up to award of the contract.

Procurement

Contractor Qualification

- **Responsibility**
- ■ **Contracting officer findings**
- ■ ■ **Pre-award surveys**
- ■ ■ ■ **Administrative discretion**

An agency is not required to conduct a preaward survey if there is sufficient evidence in the record for the contracting officer to make a determination of responsibility, especially since it is the duty of the bidder to provide the necessary documentation for such a determination.

Procurement

Socio-Economic Policies

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

Bureau of Indian Affairs determination that a joint venture comprised of an Indian-owned firm and a firm not Indian-owned does not qualify as Buy Indian concern, as required by the Bureau, is not unreasonable since protestor failed to establish that Indian owner is involved in daily management of the firm or will receive majority of the venture's earnings.

Procurement

Socio-Economic Policies

- **Preferred products/services**
- ■ **American Indians**

An agency's determination that a bidder qualifies as an Indian economic enterprise relates to the time such determination was made and evidence of prior or subsequent matters regarding the Indian ownership of the enterprise, but not directly relating to the time of the agency's determination, generally will not be considered in reviewing the agency's determination.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protest that awardee's bid for thermal imaging targets should have been rejected as nonresponsive for failure to contain a hit sensing device is denied since solicitation did not include a requirement for hit sensing.

Procurement

Bid Protests

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

Protest alleging that solicitation was deficient for not requiring a "hit sensing" device is untimely when not filed prior to bid opening.

Procurement

Bid Protests

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

Protest that bid could not be rejected for taking exception to invitation for bids specification, which was assertedly unduly restrictive, is untimely under the General Accounting Office Bid Protest Regulations where the protest is filed after bid opening.

Procurement

Contractor Qualification

- Corporate entities
- ■ Corporate ownership
- ■ ■ Determination
- ■ ■ ■ GAO review

Procurement

Contractor Qualification

- Organizational conflicts of interest
- ■ Corporate ownership

Procuring agency properly rejected the bid of a firm, whose president is a government employee, where the agency reasonably concluded that the government employee, as president, substantially controlled the firm's business.

Procurement

Contractor Qualification

- Approved sources
- ■ Alternate sources
- ■ ■ Approval
- ■ ■ ■ Government delays

Protest is sustained where, in procurement limited to approved sources, agency proceeded with award of divisible, non-urgent quantity of required item before approval of significantly lower priced alternate source, due to erroneous determination that the quantity in fact was urgently needed.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Responsiveness
- ■ ■ Descriptive literature

Agency could not properly disregard unsolicited descriptive literature in a sealed bid procurement where the cover letter included with the bid referenced the solicitation number and expressly included the literature as pertinent information; since the phase-in schedule contained in the unsolicited literature reasonably raised a question whether the bid complied with a material solicitation requirement, the bid was properly rejected as nonresponsive.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Contention that, when tenth calendar day after award falls on a federal holiday, agency should allow the period to run until the end of the next working day for purposes of suspension of performance is denied where regulations clearly state that suspension of contract performance is only required when agency receives notice within 10 calendar days of award.

Procurement

Payment/Discharge

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

The time limit set out in a carrier's standard airbill for filing a claim for loss of property does not apply where the Department of Defense acquired the service under a government bill of lading.

Procurement

Competitive Negotiation

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

Contracting agency properly evaluated the protester's proposal as technically deficient and excluded the firm from the competitive range after the agency reasonably found that the firm had no reasonable chance for award because the firm's proposal contained significant technical deficiencies, including the unacceptability of four of its five proposed key personnel.

Procurement

Bid Protests

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

Protest concerning alleged procurement integrity violations by agency personnel is untimely where protest was not filed until more than 10 days after protester knew or should have known of basis of protest.

Procurement

Competitive Negotiation

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

In a negotiated "best value" procurement, in which technical considerations were stated to be more important than price, the agency's source selection of the awardee's proposal that had a higher technical point score, but which was significantly higher-priced than the protester's technically acceptable proposal, is unreasonable where the agency did not consider the offerors' proposed prices or consider whether the awardee's higher technical point score reflected any actual technical superiority that was worth the price premium.

Procurement

Competitive Negotiation

- Contractors
- ■ Exclusion
- ■ ■ Justification

Agency properly eliminated protester's proposal from the competitive range for informational deficiencies relating to plans to establish a contracting office, the experience and qualifications of the protester's proposed staff and the training of that staff, where record shows that these requirements were set forth in the solicitation and reiterated during discussions and that the protester failed to provide the information requested.

Procurement

Competitive Negotiation

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

Award did not have to be made to the protester on the basis of its low price where protester's proposal was properly eliminated from competitive range on the basis of technical deficiencies.

B-250549, January 14, 1993

93-1 CPD 44

Procurement

Bid Protests

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

Protest is dismissed where protester is third low bidder and, therefore, not an interested party.

B-249036.3, January 15, 1993

93-1 CPD 45

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Contention that agency improperly evaluated protester's proposal and excluded protester from competitive range is denied where the record shows that the agency evaluation was reasonable and in accordance with stated evaluation criteria, and where the decision to exclude protester from the competitive range was based on protester's technical ranking of 8th out of the 11 offerors—several places behind the 4th ranked offeror, which was expressly found technically unacceptable.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protester is not an interested party to challenge an agency's decision to make award based on initial proposals to the lowest-priced offeror in the competitive range where the agency has reasonably evaluated protester's proposal and concluded, as a result, that the protester has no chance of award, because the remedy if the protester succeeded would be to hold discussions and seek revised proposals from competitive range offerors, not the protester.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to reimbursement of the costs of filing and pursuing protest under section 21.6(e) of Bid Protest Regulations where the agency took prompt—within 6 working days—corrective action in response to additional protest (of improper post-best and final offer discussions with only one of the firms in the competitive range) filed after receipt of the agency report.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to reimbursement of the costs of filing and pursuing protest under section 21.6(e) of Bid Protest Regulations after agency takes corrective action where protest concerning proper interpretation of the solicitation's print requirements was not clearly meritorious.

Procurement

Competitive Negotiation

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

Solicitation evaluation scheme does not provide for award to the low-priced, technically acceptable offeror where, despite the inclusion of a confusing paragraph concerning technical acceptability, the solicitation states that technical merit is to be evaluated on the basis of three factors in descending order of importance, technical merit is to be weighted more than price and award is not necessarily to be made to low-priced offeror.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Organizational experience

Protest that awardee lacked experience in conducting courses similar in scope and difficulty to the courses which are the subject of the solicitation is denied where awardee's experience in teaching courses involving different subject matter was reasonably regarded by the agency as involving courses of similar complexity and difficulty to courses to be taught under the solicitation.

Procurement

Competitive Negotiation

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

Agency's downgrading of protester's best and final offer (BAFO) was proper where agency could not reasonably determine from the BAFO what mix of full-time and part-time instructors the protester offered.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions with offeror where agency had concerns about staffing levels and pointed those out in a general way. Offeror who then submitted a rewritten BAFO which was ambiguous as to the staffing proposed assumed the risk that such revisions to its BAFO might result in a less favorable evaluation.

B-250213, January 15, 1993

93-1 CPD 48

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Where solicitation provision called for evaluation of equipment relocation cost as part of nonincumbent offerors' prices, and included line item for offerors to set forth their relocation costs, but did not specifically provide for evaluation of incumbent's and government's relocation costs, agency reasonably included only offerors' stated relocation cost in their evaluated prices.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that awardee engaged in "bait-and-switch" tactic regarding proposed employee is denied where record shows awardee reasonably considered employee to be available.

Procurement

Sealed Bidding

- **Unbalanced bids**
- ■ **Materiality**
- ■ ■ **Responsiveness**

On a solicitation for rental maintenance of washers and dryers for a base year and 4 option years, agency properly rejected apparent low bid as mathematically and materially unbalanced, where the bid exhibits substantial front-loading and does not become low until the final month of the final option year.

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Price omission**
- ■ ■ ■ **Line items**

Where contract for the construction of a bridge and roadway is to be awarded as a whole to 1 bidder, the failure of the low bidder to include a price for 1 out of 60 bid schedule line items does not render the bid nonresponsive where the intention to submit the omitted price and the price itself can be determined from the total bid as submitted.

Procurement

Bid Protests

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

Dismissal of protest is affirmed where protest based upon alleged impropriety apparent on the face of the solicitation was not filed until well after the bid opening date, making it untimely; a protester is on constructive notice of Bid Protest Regulations concerning the proper time for filing a protest.

Procurement

Payment/Discharge

- **Shipment**
- ■ **Tenders**
- ■ ■ **Applicability**

Freight traffic regulations permit a carrier to file a tender setting out a premium for overwidth shipments. That premium then can be incorporated into the carrier's individual tenders; if an individual tender already contains an overwidth charge, the lower one applies.

Procurement

Specifications

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

In a negotiated procurement issued on a "brand name or equal" basis, award was improperly made to a firm offering an "equal" product where the descriptive material that the awardee submitted with its offer did not demonstrate compliance with two of the stated salient characteristics.

B-248623, January 22, 1993***

Appropriations/Financial Management

Claims By Government

- Debt collection
- ■ Unclaimed monies
- ■ ■ Information
- ■ ■ ■ Purchases

Contracting authority under the Debt Collection Act, 31 U.S.C. § 3718, is not available to the Department of the Treasury for the purchase of information identifying unclaimed property, typically cash, held by third-party financial institutions; thus, Treasury may not use recovered property to pay for the purchase of information from contractors.

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Unclaimed monies
- ■ ■ ■ Finder fees

Treasury may use its appropriations to purchase information identifying unclaimed properties belonging to the agency if it can show that the purchase of such information is a necessary expense of the appropriation charged.

B-250322, January 22, 1993

Procurement

Small Purchase Method

- Quotations
- ■ Late submission
- ■ ■ Determination

Where request for quotations issued under small purchase procedures did not contain a late quotations provision and where substantial activity in evaluating proposals had not occurred prior to receipt of a later quotation, contracting agency acted properly in seeking and accepting the later quotation.

Procurement

Sealed Bidding

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

Bid was properly rejected as nonresponsive where descriptive literature required to be submitted with bids of other than the brand names and models listed in the invitation for bids contained a legend stating that specifications were subject to change and there was nothing in the bid indicating that the legend was not intended to affect the bidder's obligations.

Procurement

Sealed Bidding

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

A bid that offers to provide the brand names and models listed in the invitation for bids (IFB) and that takes no exception to the IFB's material terms and conditions is responsive because it is an unequivocal offer to provide the exact things called for in the IFB and acceptance of the bid will bind the contractor in accordance with the IFB's material terms and conditions.

Procurement

Bid Protests

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

Protest challenging the solicitation's stated evaluation criteria is dismissed as untimely where the matter, involving an alleged solicitation impropriety, was not protested prior to the closing time for receipt of initial proposals.

Procurement

Competitive Negotiation

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

Award to a technically superior, higher priced offeror was reasonable and represented the most advantageous offer to the government in accordance with the solicitation's stated evaluation criteria where the agency reasonably determined that despite the awardee's higher price, the awardee's proposal was technically superior to the protester's proposal and offset the protester's lower price.

Procurement

Specifications

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

Protest that government's minimum acceptable daily capability requirements under solicitation for moving services exceed agency's minimum needs and are restrictive is denied where agency demonstrates reasonable basis for the requirements.

Procurement

Bid Protests

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

Agency-level protest alleging failure to conduct meaningful price discussions is timely since protest was filed within 10 days after the debriefing at which protester learned of the basis for its protest.

Procurement

Bid Protests

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

Protest to General Accounting Office within 10 days from when the protester received formal agency denial of protest is timely, since there is a dispute concerning the agency action taken at an earlier meeting and doubts concerning timeliness of a protest are resolved in favor of the protester.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Where contracting agency did not consider protester's price to be too high for the scope of effort and technical approach proposed, agency was not required to conduct discussions on the price proposed by the protester.

Procurement

Sealed Bidding

- Hand-carried bids
- ■ Late submission
- ■ ■ Determination

A hand-carried bid which is deposited in the bid box on time, but does not reach the bid opening room before bids are opened because the bid depository was not checked within a reasonable time prior to bid opening, is not a late bid and may be considered.

Procurement

Sealed Bidding

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

Protest that bid is unbalanced is dismissed where the protester does not allege that the bid contained overstated prices and there is no doubt that the acceptance of the bid will result in the lowest overall cost to the government.

Procurement

Competitive Negotiation

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

Proposal was properly excluded from the competitive range where the agency appropriately concluded that the protester had no reasonable chance for award because of several deficiencies in its technical proposal, the correction of which would have required major revisions to the proposed design.

Procurement

Contractor Qualification

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

Protest challenging termination of protester's contract for archeological documentation services due to protester's involvement in preliminary work on the project is sustained where record shows that protester's activities related to the project were so minimal that they could not reasonably be construed as giving rise to a conflict of interest.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Rejection
- ■ ■ Propriety

Agency properly rejected protester's bids where bids were grossly front-loaded with respect to first article pricing. Acceptance of similarly front-loaded bids in prior procurements does not impugn agency's rejection of bids in present procurements since an individual procurement must stand on its own.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protest that amended first article provision did not expressly replace the solicitation's original first article provision requiring (according to the protester) front-loading of first article prices with preproduction costs is denied. First articles were part of production quantity and both original and amended versions of clause required that first article prices include only costs above and beyond costs of production quantity and neither version permitted front-loading first article prices with preproduction costs.

B-249182.4, January 26, 1993

93-1 CPD 64

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Information disclosure

A contracting officer acted within her discretion when she canceled a contract based on information learned after the award that the awardee failed to disclose serious problems involving earlier government contracts and other pertinent information. In these circumstances the contracting officer's decision to renegotiate the contract and exclude the participation of the initial awardee was reasonable.

B-249697.2, January 26, 1993

93-1 CPD 65

Procurement

Competitive Negotiation

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

Protest that procuring agency's evaluation of awardee's ability to hire and retain personnel is unreasonable because the awardee's proposed wage rates are below the government baseline is denied where procuring agency determined that: (1) the awardee's proposed compensation rates were reasonable for the area in which the contract would be performed; (2) the awardee could pay certain key personnel more if necessary; and (3) the awardee demonstrated in its proposal that it had a good recruitment program.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost controls

Protest that procuring agency's evaluation of protester's and awardee's proposals respecting cost and schedule control was unreasonable and evidenced unequal treatment is denied where the awardee's proposal showed that the awardee had an integrated cost and schedule control system in place and experience using it and the protester's proposal failed to demonstrate that it was proposing an integrated cost and schedule control system or that it had experience using one.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Personnel**
- ■ ■ ■ **Cost evaluation**

Protest that procuring agency's evaluation of protester's and awardee's proposals respecting cost and schedule control was unreasonable and evidenced unequal treatment is denied where the awardee's proposal showed that the awardee had an integrated cost and schedule control system in place and experience using it and the protester's proposal failed to demonstrate that it was proposing an integrated cost and schedule control system or that it had experience using one.

Procurement

Competitive Negotiation

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

Protest that agency improperly evaluated award fee schedules proposed by the awardee and the protester is denied where the record demonstrates that even if the protester is correct, the protester was not prejudiced because the award decision would be the same even if protester's suggested evaluation is used.

B-250354, January 26, 1993

93-1 CPD 66

Procurement

Competitive Negotiation

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

Contention that agency improperly used undisclosed "lack of technical detail" criterion in evaluating proposals is denied where solicitation required adequate detail to demonstrate compliance with specifications and agency reasonably determined that protester's proposal lacked such detail.

Procurement

Competitive Negotiation

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

Protest that agency failed to conduct meaningful discussions is denied where agency led protester into all areas of its offer which were deemed inadequate or noncompliant.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Cost estimates**

Protest that agency conducted improper cost evaluation is denied where record contains no evidence that agency deviated from stated evaluation method and protester did not rebut or reply to agency's detailed response to cost evaluation challenge.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Rejection
- ■ ■ Propriety

Protest that a bid must be rejected as unbalanced and front-loaded is denied where: (1) there is no reasonable doubt that award will result in the lowest cost to the government, and (2) the bid is not so grossly unbalanced as to result in an improper advance payment.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Contract awards
- ■ ■ Propriety

Proposed awardee's allocation of costs among line items did not misstate costs or improperly reserve to the proposed awardee the option of reallocating costs and receiving the award or rejecting the contract where the solicitation did not prohibit submission of unbalanced bids.

Procurement

Bid Protests

- GAO authority

General Accounting Office is without jurisdiction to consider a protest of a procurement by the National Railroad Passenger Corporation (Amtrak) because Amtrak is defined by statute as a mixed-ownership corporation and is therefore not a federal agency for bid protest purposes.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Where agency argues that protester's product was unacceptable for reason not addressed previous decision, decision is affirmed because agency knew before rejecting proposal, submitted in response to Products Offered clause in name brand procurement, that proposal could be readily modified to be acceptable without delaying the procurement.

Procurement

Competitive Negotiation

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

Protest that agency improperly determined that staffing proposed by protester was inadequate is denied where protester, after being informed during discussions that the agency was concerned

with its staffing, failed to convince the agency that it could perform the requirements of the solicitation and where the record shows that the agency's conclusions are reasonable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Analysis

Protest that agency improperly used only an independent government cost estimate in performing price analysis is denied where the Federal Acquisition Regulation provides the agency with the discretion to do so.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates

Protest that agency staffing estimate is erroneous is denied where the agency had a reasonable basis for its estimate and where, in any case, even if the estimate was inaccurate, the protester was not harmed because the agency did not evaluate the protester's proposed staffing against the estimate on a pass/fail basis.

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Bias allegation
- ■ ■ ■ Allegation substantiation

Protest that in evaluating proposals agency failed to follow source selection plan is denied since failure to follow the source selection plan, which is an internal agency instruction, does not provide a basis on which to question an evaluation.

B-250392, January 28, 1993

93-1 CPD 73

Procurement

Competitive Negotiation

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

Agency reasonably excluded protester's proposal from the competitive range where, although protester's proposed price was low, its technical deficiencies were such that proposal ranked 15th out of 16 proposals and had no reasonable chance of being selected for award.

Procurement

Noncompetitive Negotiation

- Use
 - ■ Justification
 - ■ ■ Industrial mobilization bases
-

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Agency's decision to limit urgent noncompetitive procurement for diesel engine electric power plants to one source was reasonable and not the result of a lack of advance procurement planning where the power plants were urgently needed to correct an unacceptable level of military readiness in the Patriot Missile System, the power plants were readily available from only one source and, any delay on the part of the agency in initiating the acquisition was the result of reasonable deliberation that resulted in limiting the acquisition to the minimum number of power plants necessary to satisfy the urgent requirements.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Purchases
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency properly purchased higher-priced equipment on Federal Supply Schedule (FSS) instead of protester's less expensive, non-FSS equipment where the agency reasonably determined that only the FSS equipment will satisfy the agency's minimum needs.

Procurement

Competitive Negotiation

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

Proposal which was included in the competitive range because it was considered to be capable of being made acceptable through discussions subsequently was properly excluded from competitive range after the contracting agency specifically informed the offeror of the deficiencies in its proposal, and the offeror failed to cure the deficiencies.

Procurement

Competitive Negotiation

- Information disclosure
- ■ Budget estimates

Agencies are not required to disclose budget information to potential offerors prior to the time set for receipt of proposals; allegation that a particular offeror gained access to such information does not state a basis for protest where there is nothing in the record to suggest that procurement officials aided offeror in obtaining relevant budget information.

Procurement

Competitive Negotiation

- Technical evaluation boards
- ■ Bias allegation
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Contention that evaluation was biased because of an alleged conflict of interest involving an evaluation panel member is denied where protester fails to show that the panel member exerted improper influence against the protester or in favor of the awardee.

Procurement

Sealed Bidding

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

Bid which constitutes an unequivocal offer to perform in accordance with terms of invitation for bids and does not take any exception to the solicitation's material terms was properly considered responsive.

Procurement

Competitive Negotiation

- Offers
- ■ Cost evaluation
- ■ ■ Records
- ■ ■ ■ GAO review

In reviewing an agency's cost evaluation and source selection, General Accounting Office will look to the entire record, including statements and arguments made in response to a protest, to determine whether evaluation and selection are supportable; that review is not limited to the question of whether the evaluation and selection decision were properly documented and supported at the time they were made.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Analysis

Although solicitation instructed offerors to submit with proposals detailed cost information, agency was not obligated to analyze that information in any greater detail than was necessary to assure the realism of cost proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical equality
- ■ ■ ■ Cost realism

Award of cost-plus-fixed-fee contracts to offerors with significantly lower costs than the protester where the difference between the technical proposals is considered small, is appropriate under request for proposals which indicated that, although technical merit was the most important consideration, cost could become relatively more important in the selection decision as the difference in technical scores decreased. Although the protester challenges the cost realism analyses based on a lack of a detailed comparison of the cost estimates, such a detailed analyses is not necessary where there is a significant disparity among the overall cost estimates. Rather, the cost analyses were reasonable since the agency assured itself that each firm proposed a technical approach that meets all the RFP requirements and that each firm fairly and reasonably reflected the costs represented by that approach in its cost estimate.

B-249466.2, January 29, 1993

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Protest that awardee's offer should have been rejected as unbalanced is denied where offer does not contain enhanced prices for any item.

B-250389, January 29, 1993

93-1 CPD 79

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Organizational experience

Protest that solicitation's provisions relating to qualifications of contractor's personnel are unduly restrictive is denied where agency demonstrates that requirements are necessary in order for it to meet its minimum needs.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Risks

Protest that provisions of solicitation relating to quantity and complexity of work are unduly vague is denied. Fact that contract's uncertain nature imposes some risk upon bidders is immaterial where bidders are provided with adequate information to intelligently prepare bids and compete on a relatively equal basis.

B-250403, January 29, 1993

Procurement

Socio-Economic Policies

- Foreign/domestics product distinctions
- ■ Preferences
- ■ ■ Trade agreements

Procurement

Socio-Economic Policies

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

The Trade Agreements Act of 1979 and implementing regulations generally prohibit contract award to a party offering products from a non-designated country, with the result that no application of the Buy American Act's differential to offers of products from non-designated countries is permitted.

B-250404, January 29, 1993

93-1 CPD 80**Procurement**

Sealed Bidding

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

Proposed awardee's bid was properly determined responsive where the firm did not take exception in its unsolicited descriptive literature submitted with its bid, or elsewhere in its bid, to the solicitation's technical requirements and where the firm's unsolicited descriptive literature shows that its offered equipment will perform in accordance with the solicitation's technical requirements.

Procurement

Sealed Bidding

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

Contracting agency may reasonably accept the apparent low bidder's bid where the bid remains low with or without correction of alleged pricing mistakes.

B-250470, January 29, 1993

93-1 CPD 81

Procurement

Competitive Negotiation

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

Protester's contention that contracting officer in effect did not perform a cost realism analysis because no adjustment was made to any offeror's proposed costs and because there was an inadequate basis in the record for such an analysis is denied where the contracting officer did, in fact, consider whether each offeror's proposed costs were realistic—and ultimately concluded that they were—based on material from the Army's Financial Services Branch and on a report from the Defense Contract Audit Agency regarding the realism of the offerors' proposed costs.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Wage rates

Protester's contention that the contracting officer acted unreasonably in failing to make an upward adjustment to the proposed labor costs of the awardee based on the possible application of a German labor statute that, if applied, would force the awardee to hire the protester's—*i.e.*, the incumbent's—employees and to pay those employees the higher wages paid by the protester, is denied where the applicability of the statute is unclear; the agency has taken the position for more than 2 years, based on recent decisions of the German courts, that the statute does not apply; and the protester has not shown that the agency's settlement of a prior lawsuit involving this issue is contrary to this position.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that agency improperly determined proposal to be technically unacceptable and eliminated it from competitive range is denied where record shows that agency evaluators reasonably concluded that the protester failed to show that it had the understanding and expertise necessary to satisfactorily complete the requirement.

Procurement

Competitive Negotiation

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

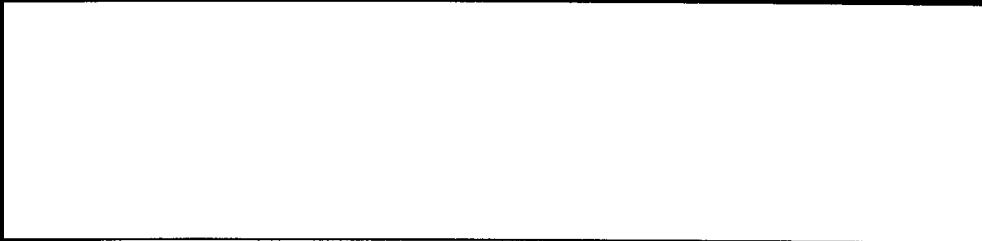
Protest against the evaluation of technical proposals is denied where that evaluation was reasonable and consistent with the solicitation's evaluation criteria.

Procurement

Competitive Negotiation

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

Award to technically superior, higher priced offeror is proper where award on that basis is consistent with the solicitation evaluation criteria and the agency reasonably determined that the superior technical merit of successful proposal was sufficiently significant to justify award at higher cost.



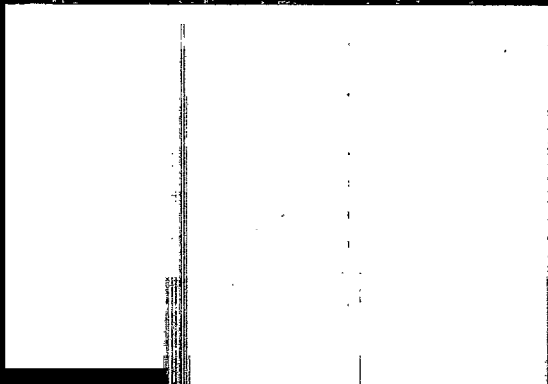
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