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United States**

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Notice

To provide a comprehensive overview of Comptroller General decisions, the Office of General Counsel has expanded its monthly pamphlet of *Digests of Unpublished Decisions of the Comptroller General of the United States* to include the digests of all decisions printed in the annual volume of *Decisions of the Comptroller General of the United States*. Effective immediately, the digests of all substantive legal decisions rendered by the Comptroller General will be presented in one publication retitled *Digests of Decisions of the Comptroller General of the United States*. We hope you find this unified pamphlet a useful means for researching Comptroller General decisions.

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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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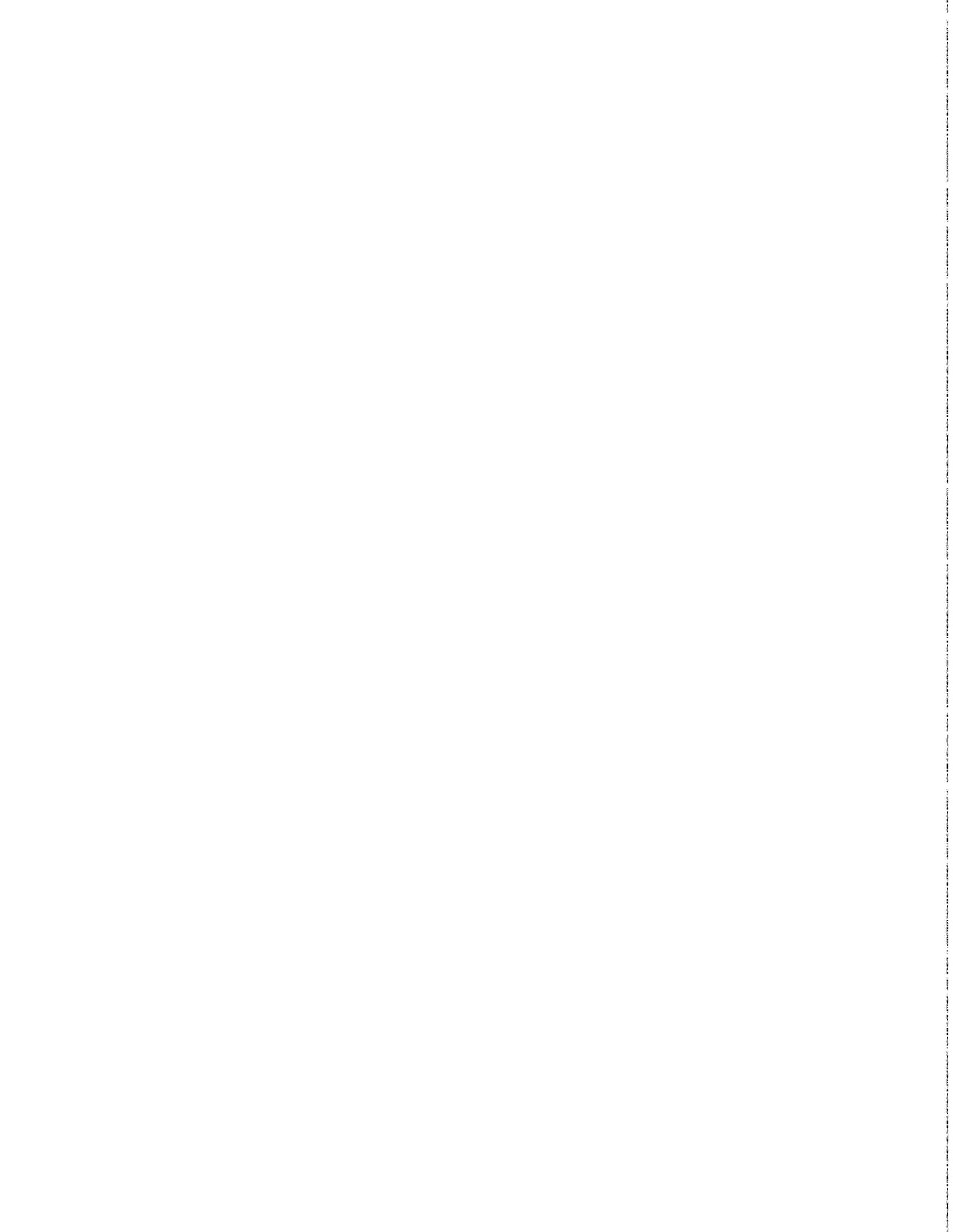
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Appropriations/Financial Management

B-233880, November 3, 1989

Appropriations/Financial Management

Budget Process

- Funding
- ■ Agricultural programs
- ■ ■ Foreign countries
- ■ ■ ■ Foreign currencies

The Department of Agriculture may use foreign currencies received through the sale of agricultural commodities to friendly developing countries to fund its programs abroad (unless otherwise restricted by law, international agreement, or by Office of Management and Budget decision) where the equivalent dollar amount is charged against the agency's regular appropriations.

B-234813, November 9, 1989

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Meals

Expenses incurred for food served to law enforcement personnel at a staging area before they were dispatched to execute search warrants may not be paid by the Federal Bureau of Investigation (FBI), even though provision of the food helped the FBI ensure the security of a large-scale organized crime investigation by preventing participants from leaving the premises and leaking information.

B-237700, November 9, 1989

Appropriations/Financial Management

Budget Process

- Part-year appropriation
- ■ Sequestration

Section 252 (f)(2)(A) of the Balanced Budget and Emergency Deficit Control Act, as amended, instructs how to sequester part-year appropriations enacted after the issuance of a final sequestration order. The Act does not provide for reducing the sequestration by the amount of savings expected when the part-year appropriation, as projected for the full fiscal year, is less than the sequesterable base identified in the final order.

Appropriations/Financial Management

Accountable Officers

- **Disbursing officers**
- ■ **Records management**
- ■ ■ **Computer software**

The provisions of 31 U.S.C. § 3528(a)(1) governing the responsibilities of a certifying official and 31 U.S.C. § 3325(a) governing the responsibilities of a disbursing official would not preclude Treasury disbursing officials from using an automated software system to correct addresses and ZIP Codes contained in certified payment vouchers to qualify checks processed for mailing for reduced Postal Service rates.

Appropriations/Financial Management

Accountable Officers

- **Disbursing officers**
- ■ **Relief**
- ■ ■ **Illegal/improper payments**
- ■ ■ ■ **Computer software**

In the rare event that a disbursing official incurs liability for an improper payment that results from the use of a reliable automated address and ZIP Code correction software system, we may relieve a disbursing official from liability under the provisions of 31 U.S.C. § 3527. If relief is to be granted, the improper payment cannot result from bad faith or a lack of due care. Disbursing officials can demonstrate due care by showing that the automated system made payments that were accurate and legal, functioned properly, and was reviewed at least annually to ensure its effectiveness.

Appropriations/Financial Management

Accountable Officers

- **Disbursing officers**
- ■ **Relief**
- ■ ■ **Illegal/improper payments**
- ■ ■ ■ **Computer software**

Because the liability of disbursing officials for improper payments is governed by federal statutory provisions contained in 31 U.S.C. § 3325(a) and 31 U.S.C. § 3527 a proposed memorandum of understanding between the Treasury and client agencies to shield Treasury disbursing officials from liability for improper payments would be ineffectual.

Civilian Personnel

B-234696, November 3, 1989

Civilian Personnel

Relocation

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

The Veteran's Administration (VA) authorized reimbursement under the commuted rate method for an employee's shipment of household goods. Subsequent to the employee's completion of the shipment of his household goods, the VA found that had a cost comparison been made it would have shown that the Government Bill of Lading method would have been more cost effective. Since there was a proper basis under the regulations for authorization of the commuted rate method, the original travel order was not in error and the employee may be reimbursed under that method.

B-233673, November 7, 1989

Civilian Personnel

Relocation

- Residence transaction
- ■ Miscellaneous expenses
- ■ ■ Reimbursement

Senior Executive Service (SES) employee requests reimbursement for a real estate purchase deposit forfeited as a result of an involuntary second transfer ordered before the purchase could be completed. The forfeited deposit may not be reimbursed as real estate transaction expenses, however, it was properly reimbursed as miscellaneous expenses, subject to the general limitations established for miscellaneous expense reimbursements which is based on the maximum rate for GS-13. Employee's appointment under the SES does not afford any additional miscellaneous expense reimbursement in excess of this maximum rate.

B-236750, November 7, 1989

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Advance approval

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Advance approval

An employee of the Bureau of Prisons may not be paid overtime under 5 U.S.C. § 5542 (1982) for activities related to firefighting while performing his job as safety manager. Such overtime was

not ordered or approved and there was no inducement by the employee's supervisor to continue to perform overtime work.

B-236012, November 8, 1989

Civilian Personnel

Travel

- **Non-workday travel**
- ■ **Travel time**
- ■ ■ **Overtime**

Federal Railroad Administration employees, who traveled outside their regular duty hours to temporary duty inspection sites are not entitled to compensatory time or overtime pay. The travel did not result from an event which could not be scheduled or administratively controlled, and the fact that the employees carried equipment to their assignment does not authorize the payment of overtime or compensatory time.

B-232503, November 9, 1989***

Civilian Personnel

Relocation

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

A transferred employee claims reimbursement for 3,541 miles for relocation travel based on his odometer reading for the route he traveled. The claim is limited to 2,853 miles which represents the most reasonably direct point-to-point routing between his old and new duty stations based on a standard highway mileage guide.

Civilian Personnel

Relocation

- **Per diem**
- ■ **Reimbursement**
- ■ ■ **Amount determination**

Entitlement to relocation travel per diem under paragraph 2-2.3d(2) of the Federal Travel Regulations is not dependent on the actual distance the employee traveled each day. Per diem is allowed on the basis of the actual time used to complete the entire trip, not to exceed the number of days established by dividing the total authorized mileage by not less than 300 miles a day.

Civilian Personnel

Relocation

- **Temporary quarters**
- ■ **Interruption**
- ■ ■ **Actual expenses**
- ■ ■ ■ **Temporary duty**

A transferred employee, while occupying temporary quarters at his new permanent duty station, was required to perform several days temporary duty away from that duty station. He retained his temporary quarters during that absence and seeks reimbursement as part of his temporary quarters subsistence expenses in addition to per diem received for his temporary duty. His claim for temporary quarters lodging expenses may be allowed if the agency determines that the employee acted reasonably in retaining those quarters. 47 Comp. Gen. 84 (1967); and B-175499, Apr. 21, 1972, are overruled.

B-233733, B-233735, November 9, 1989

Civilian Personnel

Relocation

- Temporary quarters
 - ■ Interruption
 - ■ ■ Actual subsistence expenses
 - ■ ■ ■ Amount determination
-

Civilian Personnel

Relocation

- Temporary quarters
- ■ Interruption
- ■ ■ Actual expenses
- ■ ■ ■ Temporary duty

Employees, who are occupying temporary quarters and who must perform temporary duty away from their permanent duty stations, may be reimbursed for the lodging expenses portion of their temporary quarters subsistence expenses as well as lodging expenses at their temporary duty stations, provided the agency determines the employees acted reasonably in retaining the temporary quarters. *Paul G. Thibault, B-232503, dated today.*

B-235402, November 9, 1989

Civilian Personnel

Relocation

- Temporary quarters
 - ■ Interruption
 - ■ ■ Actual subsistence expenses
 - ■ ■ ■ Amount determination
-

Civilian Personnel

Relocation

- Temporary quarters
- ■ Interruption
- ■ ■ Actual expenses
- ■ ■ ■ Temporary duty

An employee, who is occupying temporary quarters and who must perform temporary duty away from the permanent duty station, may be reimbursed for the lodging expenses portion of her temporary quarters subsistence expenses as well as lodging expenses at the temporary duty station, provided the agency determines the employee acted reasonably in retaining the temporary quarters. *Paul G. Thibault, B-232503, dated today.*

B-236362, November 9, 1989

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Finance charges

A transferred employee who purchased a residence near his new duty station claims real estate closing costs. Where the local custom for conventionally financed housing is that the buyer and seller negotiate the payment of closing costs, the employee may be allowed those costs to the extent that they are otherwise reimbursable under the Federal Travel Regulations and not in excess of amounts customarily paid in local area.

B-236571, November 9, 1989

Civilian Personnel

Relocation

- Residence transaction expenses
 - ■ Finance charges
-

Civilian Personnel

Relocation

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

Civilian Personnel

Relocation

- Residence transaction expenses
 - ■ Loan origination fees
 - ■ ■ Reimbursement
-

Civilian Personnel

Relocation

- Residence transaction expenses
 - ■ Relocation service contracts
 - ■ ■ Use
-

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Hazard insurance
- ■ ■ Reimbursement

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

B-231779, November 14, 1989

Civilian Personnel

Compensation

- Occupational illnesses/injuries
- ■ Service credits
- ■ ■ Step increase
- ■ ■ ■ Reinstatement

A grade GS-12 employee, who was separated following a job-related injury, resumed employment nearly 4 years later at the grade GS-9 level after partial recovery from his injury. The employee was entitled to service credit during his absence for purposes of a within-grade increase at his former grade GS-12 level only up to the date he was reemployed, even though he continued to receive partial workers' compensation after he was reemployed.

B-235279, November 15, 1989

Civilian Personnel

Relocation

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

A transferred employee who occupied temporary quarters at the home of a relative claimed expenses for this lodging and the costs of restaurant meals itemized at the same daily amount. The employee's lodging claim is denied because she has not furnished evidence showing that her relative incurred additional expenses as a result of the employee's stay. The employee's claim for meal costs may not be allowed based on the present record because her listing of identical daily amounts for meals appears to be an estimate, and estimates are not acceptable evidence of actual expenses.

B-232836, November 16, 1989

Civilian Personnel

Relocation

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

Civilian Personnel

Relocation

- Temporary quarters
- ■ Determination
- ■ ■ Criteria

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

B-233806, November 16, 1989

Civilian Personnel

Relocation

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

A transferred employee reclaims amount of subsistence expenses disallowed by his agency as unreasonable in accordance with the Federal Travel Regulations and Department of Agriculture statistics for grocery expenses for the size of the employee's family. To the extent that the employee can present specific evidence showing that he ate some meals in restaurants and their costs, the agency should re-evaluate his claim based on a determination of the reasonable cost of restaurant meals in the area.

Civilian Personnel

Compensation

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

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

Civilian Personnel

Relocation

- **Residence transaction expenses**
- ■ **Property titles**
- ■ ■ **Insurance premiums**
- ■ ■ ■ **Reimbursement**

In obtaining the title insurance necessary to secure financing for a new residence, a transferred employee may have received a reduced rate on his purchase of mortgagee's title insurance because it was purchased in conjunction with an owner's title insurance policy. If the employee can provide clear evidence that this was the case, the employee is entitled to reimbursement of an amount equal to the charge for the mortgagee's title insurance if purchased separately since that amount reflects the costs of title search and other costs properly reimbursable in connection with mortgagee's title insurance.

Civilian Personnel

Relocation

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

A transferred employee claims reimbursement for a mortgage insurance premium required by the lender to protect against default and paid at settlement on purchase of a residence at his new duty station. Reimbursement for mortgage insurance, as distinguished from mortgage title insurance, is considered a finance charge under Regulation Z and is specifically precluded from reimbursement under the Federal Travel Regulations (FTR), paras. 2-6.2d(2)(a) and (e).

Civilian Personnel

Relocation

- **Residence transaction expenses**
- ■ **Loan origination fees**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Amount determination**

The agency was not in error when it allowed reimbursement of 1 percent loan origination fee, based upon the loan amount, in connection with the purchase of a residence at the employee's new duty station. The employee did not present evidence indicating that the higher rate he was charged did not include prepaid interest, points, or a mortgage discount and that it is the customary rate in the area, as required by FTR, para. 2-6.2d(1)(b).

Civilian Personnel

Relocation

- **Travel expenses**
- ■ **Privately-owned vehicles**
- ■ ■ **Multiple vehicles**

Where the use of no more than one privately-owned automobile is allowable under the FTRs except for certain specifically described reasons, and the reason given by the employee for needing a second vehicle is not one of those listed in FTR, para. 2-2.3e, there was no basis to authorize an allowance for the second car and the travel orders doing so were erroneous.

Civilian Personnel

Relocation

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

Where the use of a privately-owned automobile is determined to be advantageous to the government for permanent change-of-station travel, mileage reimbursement is limited to the cost by the usually traveled route between the employee's old and new official stations, which distance is generally derived from the standard highway mileage guides. FTR, paras. 1-4.1b and 2-2.2a.

B-234866, November 17, 1989

Civilian Personnel

Compensation

- **Fringe benefits**
- ■ **Health insurance**

A Presidential appointee who was erroneously excluded from the Federal Employees Health Benefits Program for over 6 months may not be reimbursed for the difference in the cost of premium payments made for private health insurance coverage during that period.

B-235128, November 17, 1989

Civilian Personnel

Relocation

- **Household goods**
- ■ **Actual expenses**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Amount determination**

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

B-233653, November 20, 1989

Civilian Personnel

Relocation

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

Where the record supports an agency's explanation that an employee's claim for an additional period of temporary quarters was denied on the basis of the employee's circumstances, and the Federal Travel Regulations provide for a reduction or denial of temporary quarters under such circumstances, this Office will not disturb the agency's action. However, an agency policy limiting temporary quarters to 30 days for all transferred employees who elect relocation services is contrary to the Federal Travel Regulations and should not be enforced.

B-234257.2, November 20, 1989

Civilian Personnel

Leaves of Absence

- Suspension
- ■ Disciplinary actions
- ■ ■ Propriety
- ■ ■ ■ AWOL

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

B-235787, November 20, 1989***

Civilian Personnel

Relocation

- Relocation service contracts
- ■ Eligibility

Civilian Personnel

Relocation

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

An agency policy limiting temporary quarters to 30 days for all transferred employees who elect relocation services is contrary to the Federal Travel Regulations and should not be enforced. An employee's claim for an additional period of temporary quarters, denied on the basis of the agency policy, is remanded to the agency for reconsideration in light of the employee's particular circumstances.

B-231351, November 21, 1989

Civilian Personnel

Relocation

- Temporary quarters
 - ■ Interruption
 - ■ ■ Actual subsistence expenses
 - ■ ■ ■ Amount determination
-

Civilian Personnel

Relocation

- Household goods
- ■ Temporary storage
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

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

B-225985.2, November 24, 1989

Civilian Personnel

Travel

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

Upon reconsideration, decision 66 Comp. Gen. 631 (1987), holding that Army employees on temporary duty in Saudi Arabia were not entitled to amounts in excess of the reduced per diem authorized by regulation when government-furnished meals were available, is sustained. Although the employees contend that the available meals were not adequate, they have not presented compelling evidence contrary to the material facts of record. Amendment of the employees' travel orders by officials at the employees' permanent duty station, purporting to authorize higher per diem rates on the basis that use of the government-furnished meals would adversely affect the mission, provides no legal basis for relief since the applicable regulation authorizes only the commanding officer at the temporary duty point to make relevant determinations concerning the availability of government-furnished meals and their impact on the employees' mission.

Civilian Personnel

Travel

- Travel expenses
- ■ Illegal/improper payments
- ■ ■ Debt waiver

Employees' claims for full per diem for periods when government-furnished meals were available at their temporary duty stations in Saudi Arabia are not appropriate for reporting to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982). The agency may consider the employees' requests for waiver to the extent payments were made after December 28, 1985, the effective date of the amendment to the waiver statute allowing erroneous travel allowances to be considered for waiver. However, based on the record before us, it does not appear that the equitable standards for waiver are met in this case.

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Permanent duty stations

An employee's claim for real estate expenses arising from the sale of a home in Tucson, Arizona, his residence at the time he accepted a new appointment in St. Louis, Missouri, may not be reimbursed in connection with his subsequent transfer from St. Louis to Kansas City. The residence did not qualify for real estate expenses pursuant to the transfer because it was not located at the employee's old official duty station, and the expenses are not payable based on his initial appointment because as a general rule new appointees are not eligible for any relocation expenses. The claim is not appropriate for submission to Congress as a meritorious claim under 31 U.S.C. § 3702(d), because although the employee was erroneously authorized real estate expenses the record does not demonstrate reasonable reliance on the authorization.

Procurement

B-236024, November 1, 1989

89-2 CPD ¶ 406

Procurement

Competitive Negotiation

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

Protest that agency improperly canceled a negotiated solicitation is denied where the agency offers a reasonable basis for its decision to cancel the solicitation.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety
- ■ ■ Pending protests

Protest that agency improperly made award of a contract during the pendency of a protest is denied where award was made under another contract for a different requirement than as stated in the solicitation.

B-236028, November 1, 1989

89-2 CPD ¶ 407

Procurement

Competitive Negotiation

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

Agency determination to make award to high technically rated, high cost offeror under request for proposals, giving more weight to technical factors, was rationally based and consistent with the evaluation criteria, where the agency found the awardee was significantly more technically qualified than the lower cost protester.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Prior contracts
- ■ ■ ■ Contract performance

Agency may consider negative reports on past and present contract performance on relevant work to assess performance risk, where this criterion is specified among the evaluation criteria of the solicitation.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency generally satisfied its obligation to conduct meaningful discussions by leading an offeror into the specific areas of its proposals which were found deficient.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Although agency failed during discussions to point out a deficiency in a protester's proposal as it should have done under Federal Acquisition Regulation § 15.610 (FAC 84-16), the protester was not prejudiced so as to justify sustaining the protest where the awardees still have a significant technical advantage over protester's low cost proposal, even assuming this deficiency was corrected.

B-236187, November 1, 1989***

89-2 CPD ¶ 408

Procurement

Contract Types

- Supply contracts
- ■ Options
- ■ ■ Construction contracts

Protest that solicitation should be for supply contract rather than construction contract is denied where agency, to meet congressional limitation on construction in Philippines, obtains proposals to supply generators with option for construction of power plant and includes clauses applicable to both supply and construction contracts and protester fails to show how it was prejudiced thereby.

Procurement

Socio-Economic Policies

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

Allegation that solicitation requirement that materials and supplies be Philippine sourced conflicts with a Balance of Payments Clause which establishes a ceiling of \$156,000 for non-qualifying country items is denied, since the clauses read together require Philippine products, then U.S. products and if such items are not available, non-qualifying country products up to \$156,000 in value.

Procurement

Bid Protests

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

Protest alleging that a set-aside for small disadvantaged business concerns was improper is untimely where not filed until after proposals, including best and final offers, had been submitted and the contract awarded.

Procurement

Contract Management

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

Contracting agency's decision to terminate the contract which it had awarded and to make no award to any other offeror, including the protester, is reasonable where as the result of post-award protests it concludes that no technically acceptable proposal was received.

Procurement

Competitive Negotiation

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

Contracting agency has the authority to decide when the negotiation and offer stage of a procurement is finished and an offeror has no legal right to insist that negotiations be reopened and attempt to modify its technically unacceptable proposal after best and final offers are submitted.

Procurement

Competitive Negotiation

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

Contracting officer has constructive knowledge of a mistake in an offer before award where, based on offeror's pricing pattern in prior submissions, contracting officer should have suspected a mistake and requested clarification prior to contract award.

Procurement

Competitive Negotiation

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

Agency properly allowed offeror to correct a mistake in an extended price in its second best and final offer without reopening discussions with the displaced awardee where offeror's pricing pattern

throughout the negotiation process clearly indicated intent to offer the stated unit price rather than the extended price.

Procurement

Competitive Negotiation

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

Where offeror's prices for step-ladder quantities of option items are added to its price for the basic requirement and offeror remains low when its total price is evaluated against another offeror's total price, which included single unit prices for option quantities, contracting agency properly concluded that offeror proposing step-ladder quantities of option items was offering lowest price notwithstanding its higher prices for certain quantities of the option items.

B-236218, November 2, 1989

89-2 CPD ¶ 415

Procurement

Sealed Bidding

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

Agency properly may reject as nonresponsive a bid accompanied by a bid guarantee in the form of an irrevocable letter of credit which expires prior to such time as is reasonably necessary to enable government to exercise its rights in the event bidder fails to comply with the solicitation requirement to furnish performance and payment bonds.

B-236792.3, November 2, 1989

89-2 CPD ¶ 416

Procurement

Bid Protests

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

Where a firm initially filed an agency-level protest requesting extension of at least 30 days in closing date for receipt of proposals, agency's receipt of proposals on closing date which was extended only 7 days constitutes initial adverse agency action; subsequent protest to the General Accounting Office (GAO), 4 months later, is untimely under GAO's Bid Protest Regulations.

Procurement

Bid Protests

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

Protest against alleged solicitation improprieties apparent prior to the closing date for receipt of proposals is untimely where filed after closing.

Procurement

Bid Protests

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

An untimely protest will not be considered under the significant issue or good cause exceptions to the bid protest timeliness requirements where the issue raised is not of widespread interest to the procurement community or a matter of first impression and there is no indication of any compelling reason beyond the protester's control that prevented it from filing a timely protest.

Procurement

Socio-Economic Policies

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

The General Accounting Office does not consider challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act.

Procurement

Sealed Bidding

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

Post bid opening explanation that a bidder intended to offer a different complying model, rather than the nonresponsive model which it did offer, cannot be accepted to render the bid responsive.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Procurement

Competitive Negotiation

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

Record provides no basis on which the General Accounting Office can conclude that samples of vehicle armoring materials submitted by the protester for testing were improperly determined to not meet all specification requirements.

Procurement

Bid Protests

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

Allegations that testing standards for armored vehicles stated in request for proposals could not be met because of weight restrictions and that there was insufficient time to obtain conforming armoring material, are untimely under the General Accounting Office's Bid Protest Regulations, since they constitute alleged solicitation defects first raised after the closing date for receipt of proposals, and in any event, are not supported by the record.

Procurement

Bid Protests

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

Allegation that the evaluation scheme in a negotiated procurement encourages bias and favoritism on the part of contracting officials because it allegedly affords a broad range of subjectivity is untimely raised after the closing date for receipt of proposals.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Privileged information
- ■ ■ Disclosure

Protest allegation that contracting officials improperly disclosed confidential or competition sensitive information concerning protester's proposal is denied where protester, referring only to rumor and speculation in support of the allegation, fails to meet its burden of proof.

B-236364, November 3, 1989

89-2 CPD ¶ 420

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Protest that awardee submitted a materially unbalanced bid that should have been rejected as nonresponsive is denied where the awardee's prices for the base and option periods were not reasonably related to the costs to be incurred during each period and the awardee's bid will result in the lowest ultimate cost to the government.

B-236408, November 3, 1989***

89-2 CPD ¶ 421

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Shipment
- ■ ■ ■ Risk allocation

Bid proposing delivery on an f.o.b. origin basis with freight allowed, contrary to solicitation requirement for delivery on an f.o.b. destination basis, is nonresponsive since it reduces the

contractor's responsibility by shifting the risk of loss of or damage to goods during transit from the contractor to the government.

Procurement

Sealed Bidding

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

Bid which is ambiguous—because bidder included conflicting delivery terms in cover letter and bid form—was properly rejected as nonresponsive since under one interpretation the bid takes exception to a material term of the solicitation.

Procurement

Sealed Bidding

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

Where bidder creates an ambiguity in its bid by offering different f.o.b. term than required by invitation for bids (IFB), ambiguity may not be waived or corrected as a minor informality, since offering a different f.o.b. term than required by the IFB is a material deviation.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination time periods

A bid that is nonresponsive may not be corrected after bid opening to be made responsive, since the bidder would have an unfair advantage over other bidders by being able to choose to make its bid responsive or nonresponsive.

B-236936.2, November 3, 1989

89-2 CPD ¶ 422

Procurement

Bid Protests

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

Protest filed with the General Accounting Office more than 10 working days after the protester learned of the denial of its protest to the agency is untimely notwithstanding the fact that the untimely filing was due to incorrect advice given the protester regarding the forum in which its protest should be filed.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of dismissal of protest as untimely is denied where the protest of an alleged solicitation defect was filed with the agency prior to closing, but was not filed at the General Accounting Office within 10 days after closing, where the agency accepted proposals and did not take any corrective action with respect to the agency-level protest.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

Bid for nursing services at hourly rates was properly rejected as nonresponsive where material submitted with the bid indicated that the protester intended to charge more for overtime and thus rendered its price uncertain.

Procurement

Socio-Economic Policies

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

General Accounting Office will not review a contracting officer's finding of nonresponsibility of a bidder where the Small Business Administration declines to consider issuance of a certificate of competency on the ground that the bidder is not eligible where it would not be performing a significant portion of the contract.

Procurement

Specifications

- Brand name specifications
- ■ Equivalent products
- ■ ■ Acceptance criteria

Procuring agency's evaluation of alternate product as technically unacceptable was reasonable where the protester failed to supply sufficient information to establish the acceptability of its product as required by the solicitation.

Procurement

Bid Protests

- Patent infringement
- ■ GAO review

Protest relating to the government's rights to use drawings covered by a patented system will not be considered by General Accounting Office because questions of patent infringement are not encompassed by bid protest function but by statute are for resolution in the Claims Court.

Procurement

Competitive Negotiation

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

Where an offeror fails to comply with a solicitation requirement for detailed information which an agency deems necessary for evaluation purposes, the agency properly may eliminate the proposal from the competitive range.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that contracting agency failed to conduct meaningful discussions with offeror is denied where offeror's proposal was not determined to be within competitive range; agency's communications with offeror during initial evaluation regarding proposal deficiencies constituted clarifications which were part of the evaluation and on which the agency ultimately relied, in part, in excluding the offeror from the competitive range.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Agency evaluation of proposal of below-ground record storage facility, following stipulation in dismissal of court action that above-ground facility could not be a mandatory requirement, but could be considered in evaluation, was reasonable as offered below-ground facility impacted on offeror's ability to comply with other specification requirements.

Procurement

Specifications

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

Agency is not required to reopen competition, following court ordered deletion of allegedly restrictive specification, where protester could have submitted proposal under initial solicitation that did not contain restriction, agency received five proposals under solicitation and protester has failed to demonstrate to agency what it would offer as a viable alternative.

B-236117, November 6, 1989***

89-2 CPD ¶ 430

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Determination criteria**

Bidder's failure to inspect material from core borings in procurement for excavation work, even where the solicitation so requires, provides no basis to reject an otherwise responsive bid that takes no exception to solicitation requirements.

B-236382, November 6, 1989

89-2 CPD ¶ 431

Procurement

Socio-Economic Policies

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

Protest against the proposed award of a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), is denied where the protester, which alleged that the procuring agency improperly favored a particular 8(a) contractor, has failed to show that the procurement officials acted fraudulently or in bad faith.

B-237396, November 6, 1989

89-2 CPD ¶ 432

Procurement

Bid Protests

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

Protest by offeror which would not be in line for award if its protest were upheld is dismissed because the protester does not have the requisite direct economic interest required to be considered an interested party under the General Accounting Office's Bid Protest Regulations.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions were meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct any deficiencies in its proposal.

Procurement

Competitive Negotiation

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

Contracting officer properly decided to award a firm, fixed-price contract to the offeror of the higher rated, higher priced proposal, where: (1) the solicitation stated that technical factors would be considered significantly more important than price; (2) the awardee's proposal was rated higher than the protester's in every technical evaluation factor; and (3) the awardee's proposal received a higher overall evaluation score when the weighted technical and price evaluation scores were combined.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Competitive Negotiation

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

Consideration of quality as an aspect of an evaluation of proposals is not required by the 1987 National Defense Authorization Act and its implementing regulation; statutory and regulatory language and legislative history indicate that use of quality as a technical evaluation criterion is permissive, not mandatory.

Procurement

Bid Protests

- GAO authority

General Accounting Office (GAO) will consider protest against General Services Administration (GSA) solicitation to provide public pay telephones in government controlled property under GAO's bid protest authority where awards under solicitation will provide a service to government employees and will satisfy GSA mission needs, and thus the solicitation is a procurement of services by a federal agency.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Geographic restrictions
- ■ ■ ■ Justification

Requirement that offers to provide public pay telephones cover specific General Services Administration regions only unduly restricts competition where requirement excludes Regional Bell Operating Companies from competing in their regular course of business and otherwise is not a legitimate need of the agency.

B-236041, November 7, 1989***

89-2 CPD ¶ 436

Procurement

Competitive Negotiation

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

Protest is sustained where agency evaluation gave greater weight to technical factors than was reasonably consistent with the solicitation evaluation criteria by using a scoring formula which accorded only 10 percent to price, and 90 percent to technical, which resulted in award to a firm whose price was 67 percent higher than the protester's but whose technical score was only 9 percent higher than the protester's.

B-236217, November 7, 1989***

89-2 CPD ¶ 437

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Contractors
- ■ ■ Evaluation

Protest that firm was improperly excluded from further consideration in architect-engineer acquisition is denied where record shows that preselection committee had reasonable basis for recommending firms which it ultimately recommended to the source selection board and judgment of preselection committee was consistent with stated evaluation criteria.

Procurement

Contractor Qualification

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

Protest that agency made an improper *de facto* determination of nonresponsibility is denied where record shows that firm's disqualification resulted from technical finding that firm was less qualified and experienced than other firms based on the stated evaluation criteria. Fact that certain evaluation criteria encompassed traditional elements of responsibility does not serve to convert technical finding to finding of nonresponsibility.

Procurement

Bid Protests

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

Allegation that procurement should have been set aside for small business is dismissed as untimely where not filed prior to date set for submission of architect-engineer qualifications statements.

B-236253, November 7, 1989

89-2 CPD ¶ 438

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Shipment schedules**
- ■ ■ ■ **Deviation**

Low bid for radio-tuned siren system, which effectively conditioned adherence to required delivery schedule on agency's assignment of radio frequency prior to issuance of notice to proceed, properly was rejected as nonresponsive since this condition effectively limited the agency's otherwise unlimited right, as to timing, to assign a radio frequency.

B-236545, November 7, 1989

89-2 CPD ¶ 439

Procurement

Contractor Qualification

- **Approved sources**
- ■ **Qualification**
- ■ ■ **Standards**

Whether retesting is required for the purposes of a Qualified Products List (QPL) where the offeror changes location of manufacture in a matter for the determination of the agency responsible for the QPL, and the General Accounting Office will not question the agency's judgment unless it is shown not to have a reasonable basis.

B-236674, November 7, 1989

89-2 CPD ¶ 440

Procurement

Contract Management

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

Protest seeking return of a deposit placed toward the purchase of real estate is dismissed where the record reflects that a sales contract was validly awarded so that disputes concerning its enforcement are matters of contract administration within the discretion of the contracting agency, not the General Accounting Office bid protest function.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester fails to point out any errors of fact or law or information not previously considered that warrant reversal or modification of prior dismissal.

Procurement

Bid Protests

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

Protest is dismissed where firm, subsequent to filing of protest, is reacquired by original debarred owner since the firm is ineligible for a contract award and, therefore, is not an interested party to protest.

Procurement

Contractor Qualification

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

Absent a specific solicitation licensing requirement, the lack of a license or authorization for a corporation to do business in a state or a particular locale, which state or local authorities may deem necessary, is not a bar to contract award; rather, it is a matter to be resolved between the bidder and the state and local authorities.

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed where protest, although filed within 10 working days of protester's receipt of information pursuant to Freedom of Information Act request for information concerning the procurement, was filed more than 10 working days after the basis of protest was known.

Procurement

Bid Protests

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

Where protester waits more than 1 month before requesting information which will form the basis of its protest, protester has failed to diligently pursue such information and protest is dismissed as untimely.

Procurement

Bid Protests

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

An untimely protest will not be considered under the significant issue exception to the bid protest timeliness requirements where the issue raised is not one of widespread interest to the procurement community which has not been considered on the merits in a previous decision.

Procurement

Bid Protests

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

Dismissal of protest for failure to timely file comments on agency report is affirmed, even though protester subsequently alleges late receipt of report, because protester failed to timely notify the General Accounting Office of its late receipt, despite notice of its responsibility in this regard.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of protest for failure to timely file comments on agency report is affirmed, even though protester subsequently alleges late receipt of report, because protester failed to timely notify the General Accounting Office of its late receipt, despite notice of its responsibility in this regard.

Procurement

Contractor Qualification

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

Protest is untimely where protester knew the basis for its proposal's rejection on October 4, 1989, but did not protest the rejection until October 23, more than 10 working days later.

Procurement

Bid Protests

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

General Accounting Office will not review challenge to agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were misapplied. Bald, unsupported assertion of "bias" is insufficient to show bad faith.

B-234944.2, B-234944.3, November 9, 1989

89-2 CPD ¶ 452

Procurement

Competitive Negotiation

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

Contracting officer's decision to exclude firm from the competitive range was reasonable where the firm was ineligible for award based on the agency's issuance of a Limited Denial of Participation (LDP) and a proposed debarment.

B-236266, B-236266.4, November 9, 1989

89-2 CPD ¶ 448

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Terms**
- ■ ■ **Liability insurance**

Protest that solicitation requirement for \$3,000,000 liability insurance coverage under contract for medical examinations and related services is unduly restrictive is denied where the agency determined that requirement was necessary to protect its interests, and the record supports the reasonableness of that determination.

Procurement

Contractor Qualification

- **Responsibility/responsiveness distinctions**

Solicitation requirements that bidder have experience in providing similar medical examination services and that bidder list intended place of performance are matters of responsibility, not responsiveness, and they can be satisfied at any time prior to award.

B-236396, November 9, 1989

89-2 CPD ¶ 449

Procurement

Competitive Negotiation

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

Solicitation which provides for point scoring of technical proposals and the establishment of a competitive range based on the technical evaluation scores for each qualified proposal indicates that

award will be based on a cost/technical tradeoff, rather than made to the lowest cost technically acceptable offeror.

Procurement

Competitive Negotiation

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

Solicitation which provides for point scoring of technical proposals and the establishment of a competitive range based on the technical evaluation scores for each qualified proposal indicates that award will be based on a cost/technical tradeoff, rather than made to the lowest cost technically acceptable offeror.

B-237128.2, November 9, 1989

89-2 CPD ¶ 450

Procurement

Bid Protests

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

Prior dismissal of a protest is affirmed where the protester failed to file its protest against the award of a contract within 10 working days of the date the bases of protest were known or should have been known.

Procurement

Bid Protests

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

Protest against the decision to reopen discussions and to request new best and final offers (BAFOs) limited to cost submissions is untimely when filed after the closing date for the submission of the new BAFO.

B-237333, November 9, 1989

89-2 CPD ¶ 451

Procurement

Contractor Qualification

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

Contention that the low bidder will be unable to perform at its offered price constitutes an allegation that the firm is not responsible; General Accounting Office generally does not review affirmative determinations of responsibility.

Procurement

Sealed Bidding

- **Bids**
- ■ **Errors**
- ■ ■ **Error substantiation**

A protester has no standing to claim an error in a competitor's bid, since it is the responsibility of the contracting parties—the government and the low offeror—to assert rights and bring forth the necessary evidence to resolve mistake questions.

Procurement

Bid Protests

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

A protester has no standing to claim an error in a competitor's bid, since it is the responsibility of the contracting parties—the government and the low offeror—to assert rights and bring forth the necessary evidence to resolve mistake questions.

Procurement

Bid Protests

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

A protester that did not submit a proposal is not an interested party where another intermediate party of greater interest in the propriety of the award has filed a protest.

B-235206.4, November 13, 1989

89-2 CPD ¶ 453

Procurement

Bid Protests

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

Request for reconsideration is denied where protester makes no showing of any legal error and claimed factual errors fail to provide a basis for reversal of decision.

B-236275, November 13, 1989***

89-2 CPD ¶ 454

Procurement

Sealed Bidding

- **Sureties**
- ■ **Financial capacity**
- ■ ■ **Misleading information**

Agency properly rejected low bid on the basis that the individual bid bond sureties were not responsible where the contracting officer reasonably determined that the proposed sureties claimed excessively overvalued assets and supported those claims with documents containing material omissions and inconsistencies.

Procurement

Bid Protests

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

Protest against allegedly unduly restrictive specification filed approximately 4 months after the bid opening is untimely. Even if the protester first learned of its basis for protest during an inquiry concerning the contract award which it made 3-1/2 months after bid opening, the protester did not meet its obligation to diligently pursue the basis of its protest.

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Agency's decision to permit correction of low bid will not be questioned unless it lacks a reasonable basis. Correction is proper where the work sheets submitted to support the allegations of mistake establish the mistake and the claimed intended bid by clear and convincing evidence.

Procurement

Competitive Negotiation

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

Dismissal of protest challenging award to other than the low offeror without discussions is affirmed where, shortly after filing of protest, agency corrected deficiency by opening discussions with all offerors in the competitive range and requesting best and final offers; although protester's requested relief was award of contract to itself, since such relief was not appropriate, dismissal of protest as academic based on agency's appropriate corrective action was proper.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Claim for proposal preparation and protest costs where agency took corrective action remedying alleged procurement defect in response to protest is denied since award of protest costs is contingent upon issuance of decision on merits finding that agency violated a statute or regulation in the conduct of a procurement.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Contracting agency reasonably evaluated awardee's offer based on its proposed use of a component manufactured by protester, where protester refused to formally agree before award that it would make the component available, but the record, including a fact-finding conference, establishes that the protester made statements to the agency before award from which the agency reasonably concluded that the protester would make the component available in the event of an award to another firm.

B-236462, et al., November 14, 1989**Procurement**

Socio-Economic Policies

- Labor standards
- ■ Applicability
- ■ ■ Administrative determination

Initial determination of whether job classifications in a solicitation are positions subject to the Service Contract Act is for the procuring activity.

Procurement

Socio-Economic Policies

- Service contracts
- ■ Wage rates
- ■ ■ Computation
- ■ ■ ■ Collective bargaining agreements

Solicitation properly notified bidders as to applicability of collective bargaining agreement where the contracting agency incorporated into the solicitation the Department of Labor wage determination which included a provision notifying offerors that the awardee will be required to comply with the collective bargaining agreement and provided two addresses where information on the agreement could be obtained.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Service contracts
- ■ ■ Wage rates
- ■ ■ ■ GAO review

General Accounting Office does not review wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Wage rates
- ■ ■ Modification
- ■ ■ ■ Effects

The procuring agency is not required to cancel solicitation after bid opening to incorporate revised wage rates received more than 1 month after bid opening.

B-237250, B-237251, November 14, 1989

89-2 CPD ¶ 460

Procurement

Bid Protests

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

Protest filed more than 10 working days after the protester received notification of denial of its agency-level protest is untimely.

Procurement

Bid Protests

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

Protest concerning an alleged apparent solicitation impropriety must be filed prior to bid opening to be timely.

B-235957.2, November 15, 1989

89-2 CPD ¶ 461

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

A contractor adversely affected by a prior General Accounting Office decision is not eligible to request reconsideration of that decision where the firm was notified of the original protest but did not participate in the protest proceedings.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

A contractor adversely affected by a prior General Accounting Office decision is not eligible to request reconsideration of that decision where the firm was notified of the original protest but did not participate in the protest proceedings.

Procurement

Special Procurement Methods/Categories

- In-house performance
- ■ Requests for proposals
- ■ ■ Cost data
- ■ ■ ■ Omission

In Office of Management and Budget Circular No. A-76 procurement, agency properly may refuse to include in request for proposals (RFP) certain historical cost data where: (1) RFP contained comprehensive statement of work describing in detail work to be done; (2) RFP included agency's best estimates of volume of work to be done in each major work category; (3) agency reasonably was concerned that requested historical cost data would allow experienced offeror to estimate approximate amount of government's own price; and (4) historical data have not otherwise been made publicly available.

Procurement

Bid Protests

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

Protest that solicitation is overly restrictive filed with the contracting agency on the closing date for receipt of initial proposals, but prior to the hour specified, is untimely because agency's proceeding with the receipt of initial proposals in the face of the protest constituted adverse agency action such that protest to the General Accounting Office more than 2 months later based on agency's written denial of the agency-level protest is untimely.

Procurement

Payment/Discharge

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

Items not specifically listed on the inventory of household goods prepared by the carrier at the origin of the shipment must be specifically identified by the shipper in some manner as being in fact tendered to the carrier at origin in order for that carrier to be charged for their loss.

Procurement

Payment/Discharge

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

A carrier is not liable for damage to an item not shown to be greater than the pre-existing damage to that item noted on the inventory prepared at the origin.

Procurement

Specifications

- **Ambiguity allegation**
- ■ **Specification interpretation**

Where the protester and the other bidder each proposed a different method of shipping what arguably is a hazardous material, General Accounting Office sustains protest because solicitation was ambiguous as to the permissible shipping methods.

Procurement

Bid Protests

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

Request for reconsideration is denied where protester fails to show any error of fact or law in decision dismissing as untimely protest challenging responsiveness of two low bids based on evidence obtained in agency report on prior protest, where protester failed to diligently pursue information forming the basis of the protest by examining the bid documents earlier.

Procurement

Noncompetitive Negotiation

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

Military agencies need not obtain full and open competition and may use other than competitive procedures when it is necessary for industrial mobilization purposes to award the contract to a particular source or sources. Therefore, since the normal concern of maximizing competition is secondary to the needs of industrial mobilization, decisions as to which and how many producers should be included in the mobilization base are left to the discretion of the military agencies absent compelling evidence of an abuse of that discretion.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Prior contract performance**

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably found awardee's proposal to be technically acceptable where alleged shortcomings in initial technical and price proposals and subcontracting plan are unsupported by the record or were corrected in awardee's best and final offer.

Procurement

Competitive Negotiation

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

Where request for proposals provided that, in evaluating proposals, technical quality could be the deciding factor if prices were essentially equal, agency properly awarded on the basis of higher-rated, higher-priced proposal since it reasonably determined that technical advantage associated with the higher-rated proposal was worth the difference in price.

B-236255, November 16, 1989

89-2 CPD ¶ 468

Procurement

Competitive Negotiation

- Offers
- ■ Price adjustments
- ■ ■ Allegation substantiation
- ■ ■ ■ Burden of proof

Agency did not mislead or coerce protester into raising its labor rates where the agency was reasonably concerned that protester had proposed unreasonably low rates and, in discussions, offered protester the choice of proposing more realistic rates or explaining how it could absorb the cost differential between its proposed rates and the probable cost of performance.

Procurement

Socio-Economic Policies

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

Where offerors' financial capability, traditionally a matter of responsibility, is included as a technical evaluation criterion, but is not the subject of a comparative evaluation, contracting officer did not act unreasonably to resolve his doubts about small business offeror's financial capability to perform in determining that offeror was not responsible and referring the matter to the Small Business Administration under the certificate of competency procedures.

Procurement

Contractor Qualification

- **Responsibility**
- ■ **Financial capacity**
- ■ ■ **Contractors**

Where offerors' financial capability, traditionally a matter of responsibility, is included as a technical evaluation criterion, but is not the subject of a comparative evaluation, contracting officer did not act unreasonably to resolve his doubts about small business offeror's financial capability to perform in determining that offeror was not responsible and referring the matter to the Small Business Administration under the certificate of competency procedures.

Procurement

Competitive Negotiation

- **Discussion**
- ■ **Determination criteria**

Awardee's addition of new credit sources to improve financial status during Small Business Administration certificate of competency process does not constitute improper discussions requiring agency to reopen discussions with all offerors in the competitive range.

B-236713.2, November 16, 1989

89-2 CPD ¶ 469

Procurement

Small Purchase Method

- **Small business set-asides**
- ■ **Requests for quotations**
- ■ ■ **Cancellation**
- ■ ■ ■ **Propriety**

Agency decision to cancel small business-small purchase set-aside and complete the purchase on an unrestricted basis was improper where the agency received a reasonable quotation from a responsible small business.

B-236161, B-236250, November 17, 1989

89-2 CPD ¶ 470

Procurement

Sealed Bidding

- **Responsiveness**
- ■ **Contractors**
- ■ ■ **Identification**

Protests are sustained where agency rejection of protester's bids as nonresponsive due to uncertainty as to the bidder's identity was based only on minor discrepancies in the bids which did not call into question the identity of the actual bidder.

B-236251, November 17, 1989

89-2 CPD ¶ 471

Procurement

Sealed Bidding

- **Bid guarantees**
- ■ **Sureties**
- ■ ■ **Acceptability**

Rejection of protester's bid was proper where agency reasonably found that protester failed to provide sufficient information to permit finding the individual sureties on its bid bond acceptable.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Quotations
- ■ ■ Late submission

Contracting agency was not required to consider a quotation which the buyer received after award as a result of the offeror's marking an incorrect solicitation number on the envelope containing the quotation.

Procurement

Contract Management

- Contract administration
- ■ Warranties
- ■ ■ Replacement

Protest by manufacturer of allegedly defective fuzes against award of contract for rework effort to another firm is dismissed where award to protester would effectively require relinquishment of agency's right to assert claim against protester under its warranty clause.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Contractors
- ■ ■ ■ Identification

A bid bond is defective and its accompanying bid is properly rejected as nonresponsive when the bid is submitted in the name of a corporation, albeit certified as operating as a "joint venture," and the accompanying bid bond names as principal a joint venture consisting of the corporation named in the bid and a sole proprietorship, since the surety's liability to the government under the bond issued to the joint venture is unclear in the event of the corporate bidder's default.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably rejected protester's initial proposal as technically unacceptable where proposal contained informational omissions and lacked supporting data necessary to determine whether protester met the solicitation requirements; protester's assertion that it is an experienced service contractor whose proposals had never been determined unacceptable in previous solicitations is not sufficient to establish acceptability for current procurement.

Procurement

Contractor Qualification

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

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

Procurement

Bid Protests

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

Protest allegation that agency failed to synopsise sole-source procurement properly, not filed until after award of the contract, is untimely and therefore not for consideration under the Bid Protest Regulations of the General Accounting Office.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Agency decision to award sole-source contract to the only known qualified source is proper where agency does not have the necessary data to conduct a competitive procurement or sufficient time to test an unproven product.

Procurement

Noncompetitive Negotiation

- Alternate offers
- ■ Rejection
- ■ ■ Propriety

Protester has the responsibility of demonstrating that its product is an acceptable alternative to the designated solesource item, and where agency has reviewed protester's submittal and reasonably concluded that acceptability of the firm's product cannot be determined without testing, agency has fulfilled its obligation to consider protester's proposal and need not conduct discussions with the offeror.

Procurement

Noncompetitive Negotiation

- Issuance
- ■ Lacking

Protest of agency's correction of an apparent solicitation ambiguity, after receipt of proposals submitted in response to a sole-source procurement, without issuing an amendment is denied since the protester, which submitted a nonconforming proposal, was not prejudiced by the agency's action.

Procurement

Noncompetitive Negotiation

- **Alternate offers**
- ■ **Rejection**
- ■ ■ **Propriety**

Where protester failed to offer an acceptable product in response to a sole-source procurement, neither the contracting agency's delay, if any, in advising protester of the contract award, nor its decision not to conduct a debriefing, which are procedural matters, affect the propriety of its rejection of the protester's proposal.

B-236167, November 20, 1989

89-2 CPD ¶ 478

Procurement

Specifications

- **Brand name specifications**
- ■ **Salient characteristics**
- ■ ■ **Sufficiency**

The low offeror's product conforms to the salient characteristics of the brand name product, as listed in the solicitation, despite some differences in design between the two products, where industry literature establishes that the differences are immaterial and do not affect the ability of the low offeror's product to meet the solicitation requirements.

Procurement

Specifications

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

Where a request for proposals (RFP) requests offers on certain brand name products and lists specific salient characteristics of these products, other products which comply with listed characteristics can be offered, even though RFP did not contain "brand name or equal" clause, where RFP otherwise indicates that equal products could be offered.

B-236499, November 20, 1989

89-2 CPD ¶ 479

Procurement

Government Property Sales

- **Timber sales**
- ■ **Bids**
- ■ ■ **Acceptance time periods**

Where during Forest Service timber auction bidder submits an oral bid simultaneously with the auction closure statement, the auction officer properly held the auction open to allow the bidder an opportunity to submit its bid.

Procurement

Bid Protests

- Allegation
- ■ Abandonment

Where agency rebuts an issue raised in the initial protest, and the protester fails to respond to the agency's rebuttal in its comments to the agency report, the issue is deemed abandoned.

Procurement

Competitive Negotiation

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

Protest that agency had insufficient justification for considering and evaluating option prices is denied where agency reasonably expects to buy sufficient option quantities to insure that award-ee's offer will ultimately provide the lowest cost to the government.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Protest against decision to request new best and final offers (BAFOs) filed after the new closing date was properly dismissed as untimely. Verbal complaint filed with the agency prior to new closing date did not constitute a valid agency-level protest, and thus did not render later protest to General Accounting Office timely, because regulations require such complaints to be in writing.

Procurement

Bid Protests

- Agency-level protests
- ■ Oral protests

Protest against decision to request new best and final offers (BAFOs) filed after the new closing date was properly dismissed as untimely. Verbal complaint filed with the agency prior to new closing date did not constitute a valid agency-level protest, and thus did not render later protest to General Accounting Office timely, because regulations require such complaints to be in writing.

Procurement

Payment/Discharge

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

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

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Terms

Where solicitation for base operations and maintenance covered by the Service Contract Act includes language calling for the "repair or replacement" of utility systems and equipment, such repair or replacement work is considered in the context of accomplishing routine maintenance when agency has also issued a separate solicitation for indefinite quantity multi-trade construction work which it states it will utilize for work covered by the Davis-Bacon Act.

Procurement

Bid Protests

- Subcontracts
- ■ GAO review

Protest challenging propriety of a subcontract awarded by a government prime contractor is dismissed for lack of jurisdiction where the subcontract award was not made "by or for" the government; the prime contractor is not providing large-scale management services to the government or otherwise acting as a middleman or conduit for the government; and the government is not actively and directly involved in the procurement process or selection of the subcontractor.

Procurement

Competitive Negotiation

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

Protest that awardee's offer is unrealistically low does not provide a basis for the agency to reject a technically acceptable proposal offering fixed and ceiling type prices, absent a finding of nonresponsibility.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss price where the agency does not view the offeror's price as unreasonably high.

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Alternate offers

Agency is not required to reopen discussions after receipt of best and final offers to determine the acceptability of a deficient alternate proposal first submitted at that time.

B-236332, November 21, 1989**89-2 CPD ¶ 485**

Procurement

Competitive Negotiation

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

Award properly was made to the lowest priced, technically acceptable offeror on the basis of initial offers where the solicitation advised offerors of that possibility and the existence of full and open competition under the solicitation clearly demonstrated that such award would result in the lowest overall cost to the government.

B-237062.2, November 21, 1989**89-2 CPD ¶ 486**

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior dismissal of protest as untimely is affirmed where protest that solicitation should not have been set aside for small business was not filed in the General Accounting Office (GAO) until after award. The alleged advice of the contracting officer to delay filing does not result in waiver of the timeliness requirements of GAO's Bid Protest Regulations.

B-236238, November 22, 1989**89-2 CPD ¶ 487**

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

Contracting agency is not required to reopen discussions regarding extent of technical data rights proposed by offeror when cost-sharing is introduced in best and final offer (BAFO) where the work called for in the RFP falls within Defense Federal Acquisition Regulation Supplement § 227.472-3(a)(1)(ii), but the contract deliverables section of the RFP does not specify that all raw data is to be delivered to the government, and the offeror did not indicate in its cost-sharing BAFO that it would give the required unlimited data rights to the government.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Protest alleging that solicitation contained ambiguity where the alleged ambiguity was apparent from the face of the solicitation is untimely when filed after the closing date for receipt of proposals. To the extent the protester contends ambiguity was not apparent, protester is also untimely where it was filed with our Office more than 10 days after protester was on notice of agency's interpretation of allegedly ambiguous clause.

Procurement

Competitive Negotiation

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

Protest alleging that failure to timely provide test results on office furniture should not be grounds for rejection of offer, since furniture offered actually met test standards, is denied where offeror failed to submit test data with offer or within 15 days of notice of deficiency as required by the solicitation.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Sureties

Where bidder submitted bid bond which is a photocopy not containing original signatures, contracting officer properly rejected bid as nonresponsive because the bid bond is of questionable enforceability.

Procurement

Competitive Negotiation

- National defense interests
- ■ Industrial mobilization bases

Where award only to low offeror is consistent with agency defense mobilization needs, protest complaining of lack of meaningful discussions and improper rejection of best and final offer (BAFO) is denied where the record shows that, had the protester been given the opportunity to cure uncertainties in its BAFO, it would not have resulted in a reduction in the protester's price sufficient to affect the decision to award to only one mobilization base producer.

Procurement

Competitive Negotiation

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

Protest that oral advice of agency official resulted in firm failing to submit timely proposal is denied, where such oral advice was correct in terms of advising protester of extended proposal due date and, in any event, protester was not precluded by agency official's actions from earlier submitting its proposal.

Procurement

Competitive Negotiation

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

Protest based upon alleged failure of offeror to receive amendment to request for proposals is denied absent evidence that failure resulted from deliberate attempt on the part of the agency to exclude firm.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Criteria

Agency reasonably determined to amend rather than cancel solicitation after receipt of initial proposals where changes to be made were *de minimis* in nature. Moreover, protester was reasonably excluded from submission of revised proposals where firm did not timely submit initial proposal for reasons unrelated to the changes made by amendment.

Procurement

Sealed Bidding

- All-or-none bids
- ■ Responsiveness

Standard clause in invitation for bids providing that bids for supplies or services other than those specified will not be considered does not constitute a prohibition on "all or none" bids so as to render nonresponsive a bid containing an "all or none" qualification.

Procurement

Sealed Bidding

- Bids
- ■ Acceptance time periods
- ■ ■ Expiration
- ■ ■ ■ Reinstatement

Expiration of bid acceptance period is tolled where bidder files protest challenging rejection of its bid and award to another bidder within the original bid acceptance period.

Procurement

Bid Protests

- Dismissal
- ■ Definition

Protest of a solicitation, which is based not on defects in that solicitation but rather on the cancellations of two prior solicitations, will not be considered since a similar protest against the two cancellations was dismissed previously due to the protester's failure to comply with procedural requirements of the General Accounting Office's Bid Protest Regulations.

Procurement

Competitive Negotiation

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

Allegation that protester is entitled to award on the basis of its low price offer is denied where the agency reasonably determined that the technical superiority of the awardee's proposal justified the cost premium.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Allegation that procuring agency failed to comply with its streamlined source selection procedures is denied since these procedures are internal agency instructions which do not provide the protester with any legal rights and, in any event, the protester has not shown that it was prejudiced by the alleged noncompliance.

Procurement

Competitive Negotiation

- Contract awards
- ■ Personnel
- ■ ■ Substitution
- ■ ■ ■ Propriety

Allegation that awardee misrepresented the availability of a key employee is denied where the record establishes that the awardee did not propose an individual whom it knew would be unavailable.

Procurement**Competitive Negotiation****■ Offers****■ ■ Technical acceptability****■ ■ ■ Negative determination****■ ■ ■ ■ Propriety**

Agency Properly Rejected Proposal as technically unacceptable where proposal did not include sufficient information to satisfy requirement for 10 years documentable slate/concrete tile roofing experience after agency gave offeror ample opportunity to correct the deficiency.

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

Protest of alleged solicitation improprieties (defective specifications) is untimely where an agency-level protest was timely filed before the closing date for receipt of quotations, but where subsequent protest to the General Accounting Office was filed more than 10 working days after initial adverse agency action with respect the protest.

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

Protest of the agency's evaluation methodology that did not include particular specifications as part of the technical evaluation and that competition was restricted is untimely where not filed within 10 working days after the protester learns of the basis for protest.

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

Protester who waits more than 6 weeks after it was notified of award and contract price, and 5 weeks after debriefing, to submit Freedom of Information Act request for information concerning possible grounds of protest, has failed to diligently pursue such information, and protest subsequently filed is therefore untimely.

Procurement

Specifications

- Performance specifications
- ■ Adequacy

Solicitation is not deficient for failure to itemize exact equipment to be cleaned under service contract where information contained in solicitation and available during site visits should be sufficient to enable prospective bidders to prepare bids intelligently and on a common basis.

Procurement

Specifications

- Performance specifications
- ■ Adequacy

Solicitation provisions do not contain conflicting requirements where one provision provides general listing of janitorial supplies to be furnished by contractor, and another section requires the contractor to furnish additional supplies not on the general list; read as a whole, solicitation clearly encompassed requirements set forth in both provisions.

Procurement

Specifications

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

Contracting agency properly may structure procurement to impose maximum risk on contractor and minimize the potential burdens on the government.

Procurement

Special Procurement Methods/Categories

- Requirements contracts
- ■ Use
- ■ ■ Criteria

Protest is denied where record supports agency determination that intelligence-related uses of certain computer equipment place that equipment within the scope of an existing requirements contract to support a multi-agency intelligence system, notwithstanding protester's unsupported assertions that the determination was incorrect and that a separate procurement should have been conducted.

Procurement

Sealed Bidding

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

Protest that agency should delay bid opening until after Department of Labor issues modified wage determination to assure competition on an equal basis is denied; since wage determination

issued after bid opening is not applicable to solicitation, all bidders are competing equally, on basis of current wage determination.

B-237351.2, November 28, 1989

89-2 CPD ¶ 501

Procurement

Competitive Negotiation

- **Below-cost offers**
- ■ **Acceptability**

Dismissal of protest is affirmed on reconsideration where protester argues that awardee would not have been found acceptable for award had technical evaluators known of awardee's allegedly extreme low price for the work; there is no requirement that evaluators have access to prices in determining proposal acceptability, and there is no basis for the contracting officer to reject an otherwise acceptable proposal from a responsible offeror on the ground that the awardee may sustain a financial loss in performing the contract.

B-236072.2 et al., November 29, 1989

89-2 CPD ¶ 502

Procurement

Specifications

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

Specifications for photocopying services requiring new or newly manufactured copiers, equipment in current production and 1 dedicated service technician for every 40 copiers provided are not unduly restrictive of competition where the agency presents a reasonable explanation of why the specifications are necessary to meet its minimum needs and the record fails to show that the restrictions are unreasonable.

Procurement

Specifications

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

Protests that solicitations contain defective quantity estimates which exceed agencies' actual needs are denied where estimates were obtained from and verified by specific user agencies as realistic estimates of their copier needs based upon historical agency use and best estimates of future demand for copying services.

Procurement

Specifications

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

Protest alleging that solicitation for diesel engine generators unduly restricts competition by specifying certain engine brake mean effective pressure and speed is denied where protester fails to show that agency's technical judgment regarding engine pressure and speed is unreasonable and at least three firms, including protester, manufacture engines that comply with specifications.

Procurement

Specifications

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

Experience requirements in solicitation that must be met by prior performance of engines under similar conditions which will be encountered during contract performance (ambient temperature/altitude and fuel) are not overly restrictive where agency is attempting to assure itself of reliability of diesel engines for continuous use.

Procurement

Socio-Economic Policies

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

Protest that specification, as amended, favors European manufacturers over American firms is denied where agency relaxed specification to obtain greater competition and solicitation contains Buy American Act and Balance of Payment clauses for use in evaluating foreign offers.

Procurement

Specifications

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

General Accounting Office does not agree with protest contention that solicitation should contain evaluation factor for oil consumption and maintenance costs where agency evaluation follows procurement guidelines in National Academy of Science technical report on diesel engines and oil consumption and maintenance costs were considered by agency in setting engine speed and size requirements.

B-236187.2, B-236187.3, November 29, 1989

89-2 CPD ¶ 503

Procurement

Specifications

- Minimum needs standards
- ■ Competitive Restrictions
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Procurement

Specifications

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

Procurement

Socio-Economic Policies

- Preferred product/services
- ■ Domestic sources
- ■ ■ Compliance

B-237613, November 29, 1989

89-2 CPD ¶ 504

Procurement

Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Protester's bid is properly rejected as nonresponsive where the corporate surety for the protester's bid bond is not listed in Treasury Department Circular 570 at the time of bid opening, and such a deficiency may not be corrected after bid opening.

B-236345, November 30, 1989***

89-2 CPD ¶ 505

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Price adjustments

Determination of whether the reopening of negotiations based on a late proposal modification is in the government's best interest is within the contracting officer's discretion; decision to reopen where the late modification showed the availability of prices significantly lower than those received in best and final offers does not constitute an abuse of discretion.

B-236403, November 30, 1989

89-2 CPD ¶ 506

Procurement

Sealed Bidding

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

Protest of contracting agency's decision not to permit the protester to correct a mistake in bid is denied where correction would have displaced the low bidder and the protester's intended bid price is not apparent from the bid itself.

B-236515, November 30, 1989

89-2 CPD ¶ 510

Procurement

Bid Protests

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

Protest against alleged improper technical evaluation under small purchase procurement is dismissed as untimely for lack of diligent pursuit where the protester waited approximately 5 months to receive the contracting agency's final response to its agency-level protest before filing its protest at the General Accounting Office.

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