

**GAO**

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Office of General Counsel

October 1991

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

Vol. III, No. 1

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# Contents

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|                                     |     |
|-------------------------------------|-----|
| Preface                             | iii |
| Table of Decision Numbers           | iv  |
| Digests                             |     |
| Appropriations/Financial Management | 1   |
| Civilian Personnel                  | 3   |
| Military Personnel                  | 5   |
| Miscellaneous Topics                | 8   |
| Procurement                         | 10  |

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# Preface

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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).

# Table of Decision Numbers

|   | Page |                                 | Page |
|---|------|---------------------------------|------|
| B-218497.2, October 22, 1991            | 1    | B-243361, October 21, 1991      | 8    |
| B-218497.2, October 22, 1991            | 35   | B-243382.3, October 29, 1991    | 49   |
| B-220507.24, October 31, 1991***        | 9    | B-243431, October 23, 1991      | 8    |
| B-234430.3, October 8, 1991             | 18   | B-243437.2, October 24, 1991    | 40   |
| B-238352, October 4, 1991***            | 6    | B-243489, October 2, 1991       | 5    |
| B-238464.3, October 3, 1991             | 13   | B-243514.4, October 22, 1991    | 36   |
| B-239510, October 17, 1991***           | 1    | B-243603.3, October 7, 1991     | 16   |
| B-240590.3, October 22, 1991            | 36   | B-243624.2, October 10, 1991*** | 22   |
| B-240666.2, October 11, 1991            | 23   | B-243631.3, October 31, 1991    | 57   |
| B-240789.6, October 11, 1991            | 24   | B-243651, October 4, 1991       | 6    |
| B-241319, October 3, 1991***            | 8    | B-243702.2, October 29, 1991    | 49   |
| B-241764.2, October 3, 1991             | 14   | B-243803, October 8, 1991       | 18   |
| B-241850.2, October 21, 1991            | 32   | B-243866.1, October 3, 1991***  | 1    |
| B-242358.4, B-242358.6, October 4, 1991 | 15   | B-243881, October 2, 1991       | 5    |
| B-242411, October 22, 1991***           | 4    | B-243882, October 11, 1991      | 6    |
| B-242415.7, October 1, 1991             | 10   | B-244007.2, October 24, 1991*** | 41   |
| B-242568.2, October 28, 1991            | 46   | B-244079, October 9, 1991       | 3    |
| B-242633.3, October 21, 1991            | 32   | B-244135.2, October 7, 1991     | 16   |
| B-242650.4, October 28, 1991            | 46   | B-244189, October 25, 1991      | 4    |
| B-242734.2, October 29, 1991            | 48   | B-244213, October 2, 1991       | 12   |
| B-242743.3, October 3, 1991             | 14   | B-244241, October 24, 1991***   | 2    |
| B-242819.4, B-242819.5, October 9, 1991 | 20   | B-244299, October 1, 1991       | 10   |
| B-242836.4, October 29, 1991            | 48   | B-244326, October 11, 1991      | 24   |
| B-242902.3, October 30, 1991            | 54   | B-244339, October 10, 1991      | 23   |
| B-243037.3, October 30, 1991            | 54   | B-244353, October 15, 1991      | 25   |
| B-243180, October 4, 1991***            | 3    | B-244360, October 7, 1991       | 16   |
|   |      | B-244366, October 15, 1991      | 25   |
|   |      | B-244368, October 11, 1991      | 24   |

\*\*\* (notes published decisions) Cite published decisions as 71 Comp. Gen.—

Table of Decision Numbers

|   | Page |  | Page |
|---|------|--|------|
| B-244385, October 8, 1991               | 19   | B-244559, October 29, 1991             | 50   |
| B-244386, October 16, 1991              | 27   | B-244561, October 16, 1991             | 30   |
| B-244392, October 15, 1991              | 26   | B-244566, October 29, 1991             | 51   |
| B-244394, October 3, 1991               | 14   | B-244572, October 28, 1991             | 46   |
| B-244395, October 17, 1991              | 31   | B-244573, October 2, 1991              | 13   |
| B-244398, October 11, 1991              | 24   | B-244579.2, October 29, 1991           | 51   |
| B-244400, B-244400.2, October 15, 1991  | 26   | B-244583, October 30, 1991             | 54   |
| B-244406, et al., October 16, 1991      | 28   | B-244584, October 16, 1991             | 30   |
| B-244410, October 17, 1991              | 31   | B-244592, October 23, 1991             | 39   |
| B-244432, October 16, 1991              | 29   | B-244598, October 2, 1991              | 5    |
| B-244456, October 21, 1991              | 32   | B-244636.2, October 30, 1991           | 55   |
| B-244461, October 21, 1991              | 33   | B-244649, October 28, 1991             | 47   |
| B-244467, October 22, 1991              | 36   | B-244662, October 28, 1991             | 47   |
| B-244471.2, B-244471.3, October 8, 1991 | 19   | B-244677, October 30, 1991             | 55   |
| B-244471.4, October 7, 1991             | 17   | B-244682.2, October 30, 1991           | 55   |
| B-244475.2, October 23, 1991            | 38   | B-244683, October 7, 1991              | 18   |
| B-244475.3, October 23, 1991            | 38   | B-244690, October 29, 1991             | 52   |
| B-244478, October 24, 1991              | 6    | B-244693, B-244693.2, October 21, 1991 | 34   |
| B-244490, October 7, 1991               | 17   | B-244695, October 28, 1991             | 47   |
| B-244492, October 21, 1991              | 33   | B-244696, October 1, 1991              | 11   |
| B-244510, October 21, 1991              | 33   | B-244699, October 29, 1991             | 52   |
| B-244512, October 23, 1991              | 39   | B-244707, B-244707.2, October 31, 1991 | 57   |
| B-244522, B-244522.2, October 24, 1991  | 41   | B-244711, October 16, 1991             | 30   |
| B-244539.2, October 22, 1991            | 37   | B-244741, October 22, 1991             | 37   |
| B-244546, October 25, 1991***           | 43   | B-244744, October 23, 1991             | 40   |
| B-244555, October 29, 1991              | 50   | B-244790, October 29, 1991             | 53   |

---

Table of Decision Numbers

---

|   | Page |                              | Page |
|---|------|------------------------------|------|
| B-244817, October 29, 1991              | 53   | B-245715, October 24, 1991   | 42   |
| B-244852, October 24, 1991              | 42   | B-245780.2, October 29, 1991 | 53   |
| B-244884, October 25, 1991              | 44   | B-245819.2, October 29, 1991 | 54   |
| B-244908, October 30, 1991              | 55   | B-245823, October 8, 1991    | 19   |
| B-244986, October 29, 1991              | 53   | B-245885, October 3, 1991    | 15   |
| B-244992, October 25, 1991              | 44   | B-245889, October 4, 1991    | 15   |
| B-244993.2, B-245521.2, October 9, 1991 | 20   | B-245899, October 8, 1991    | 20   |
| B-245021, B-245035, October 2, 1991     | 13   | B-245914, October 29, 1991   | 54   |
| B-245081, October 30, 1991              | 56   | B-245955, October 9, 1991    | 21   |
| B-245144, October 9, 1991               | 3    | B-246001, October 8, 1991    | 20   |
| B-245179.2, October 24, 1991            | 42   | B-246050, October 25, 1991   | 45   |
| B-245284.2, October 1, 1991             | 11   | B-246065, October 31, 1991   | 58   |
| B-245405.2, October 2, 1991             | 13   | B-246109, October 16, 1991   | 30   |
| B-245420, October 17, 1991              | 32   | B-246114, October 31, 1991   | 58   |
| B-245462, October 1, 1991               | 11   | B-246141, October 21, 1991   | 35   |
| B-245492, October 9, 1991               | 21   | B-246155, October 21, 1991   | 35   |
| B-245524, October 30, 1991              | 56   | B-246167, October 24, 1991   | 43   |
| B-245532, October 22, 1991              | 37   | B-246188, October 30, 1991   | 56   |
| B-245659, October 23, 1991              | 40   | B-246215, October 24, 1991   | 43   |
| B-245687, October 1, 1991               | 12   | B-246235, October 31, 1991   | 58   |
|   |      | B-246351, October 25, 1991   | 46   |



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# Appropriations/Financial Management

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**B-243866.1, October 3, 1991\*\*\***

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## Appropriations/Financial Management

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### Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Leasehold improvement
- ■ ■ ■ Private property

The Drug Enforcement Administration (DEA) may use appropriated funds to enclose and secure a carport at the Administrator's residence in response to a legitimate concern for the Administrator's safety. Generally, agencies may not use appropriated funds to make permanent improvements to private property. However, an agency may expend appropriated funds for such improvements if 1) the proposed alterations are incidental to and essential for the accomplishment of the purpose of the appropriation; 2) the cost of the alterations are reasonable; 3) the improvements are used for the principal benefit of the government; and 4) the government's interest in the improvements is protected.

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**B-239510, October 17, 1991\*\*\***

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## Appropriations/Financial Management

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### Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Tax returns
- ■ ■ ■ Electronic filing

The IRS may use its "processing tax returns" appropriation to cover the cost of a program to allow its employees to electronically file their tax returns free of charge.

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**B-218497.2, October 22, 1991**

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## Appropriations/Financial Management

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### Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Applicability
- ■ ■ ■ Vessels

Navy determination that the Tollefson-Byrnes Amendment to the "Shipbuilding and Conversion, Navy" appropriation prohibiting foreign shipyard construction of naval vessels or major components of the hull or superstructures of naval vessels applies only to vessels appearing on the Naval Vessel Register, and not to boats as defined in Navy Regulations, is not unreasonable and therefore entitled to substantial deference. Therefore, Tollefson-Byrnes Amendment does not apply to inflatable, or rigid hull inflatable boats.

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

- **Purpose availability**
- ■ **Specific purpose restrictions**
- ■ ■ **Applicability**
- ■ ■ ■ **Vessels**

Navy determination that 10 U.S.C. § 7309(a) prohibiting foreign shipyard construction of vessels for any of the armed forces or major components of the hull or superstructure of any such vessels applies only to vessels that have fixed and rigid hulls and superstructures, is not unreasonable and therefore entitled to substantial deference. Therefore, 10 U.S.C. § 7309(a) does not apply to inflatable boats but does apply to rigid hull inflatable boats.

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**B-244241, October 24, 1991\*\*\***

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

- **Time availability**
- ■ **Matching funds**
- ■ ■ **Grants**

The National Endowment for the Arts' appropriation for matching grants is only available for obligation until September 30, 1992, as provided in the Department of the Interior and Related Agencies Appropriations Act, 1991, notwithstanding a provision in the National Foundation on the Arts and the Humanities Act of 1965 which provides that the funds are available until expended.

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# Civilian Personnel

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**B-243180, October 4, 1991\*\*\***

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## Civilian Personnel

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### Travel

- Travel expenses
- ■ Spouses
- ■ ■ Training
- ■ ■ ■ Security safeguards

Federal Aviation Administration (FAA) may reimburse travel expenses of spouses of its employees who attend security training provided by the State Department to FAA employees and their spouses prior to permanent duty assignments overseas. Since this training clearly furthers the government's interests, those who attend, including employee spouses, provide a direct service to the government. Accordingly, the spouses may be issued invitational travel orders for the training and allowed travel expenses under 5 U.S.C. § 5703. Reimbursement of their expenses does not violate 31 U.S.C. § 1345. 55 Comp. Gen. 750 (1976); B-193644, July 2, 1979, clarified.

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**B-244079, October 9, 1991**

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## Civilian Personnel

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### Travel

- Permanent duty stations
- ■ Rental vehicles
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

The Federal Highway Administration directed an employee return by airplane from his extended temporary duty site to attend a conference at his official duty station, and thus employee had to leave his privately owned vehicle at his extended temporary duty site. Under 41 C.F.R. § 301-3.2(a) (1990), the Administration may certify the employee's claim for payment of car rental expenses for official business at his official duty station if it finds that the car rental was advantageous to the government.

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**B-245144, October 9, 1991**

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## Civilian Personnel

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### Relocation

- Actual expenses
- ■ Eligibility
- ■ ■ Retired personnel
- ■ ■ ■ Reinstatement

An erroneously retired employee seeks reimbursement for the relocation expenses he incurred upon his reinstatement to the federal service. Though the agency promised to pay such expenses, the claimant is not entitled to payment. An employee's decision to relocate upon retirement is a personal one and is not attributable to the agency's error.

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**B-242411, October 22, 1991\*\*\***

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**Civilian Personnel**

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**Compensation****■ Overtime****■ ■ Eligibility****■ ■ ■ Advance approval**

FBI Special Agents, who receive administratively uncontrollable overtime pay under 5 U.S.C. § 5545(c)(2) (1988), were called upon to respond to a prison riot. They claim regularly scheduled overtime pay for the period of November 29–December 4, 1987, in which they were rescheduled to 12-hour shifts. We deny their claims for regularly scheduled overtime pay since the 12-hour shifts were a one-time, on-the-spot response to a short-term emergency situation and were not regularly scheduled overtime within the intent of the statute and the implementing regulations in 5 C.F.R. § 550.151 (1991).

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**B-244189, October 25, 1991**

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**Civilian Personnel**

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**Travel****■ Travel expenses****■ ■ Fraud****■ ■ ■ Effects**

Claimant knowingly presented materially false information in support of his claim by placing the name of a taxicab company which he did not use on the receipts which he submitted. In view of the Federal Travel Regulation, 41 C.F.R. § 301-11.1 (1990), and 4 C.F.R. § 31.7 (1991), the knowing submission of any materially false information in support of a claim constitutes sufficient grounds for considering the claim to be of doubtful validity and for denying payment.

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# Military Personnel

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**B-243489, October 2, 1991**

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## **Military Personnel**

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### **Pay**

- Survivor benefits
- ■ Underdeductions
- ■ ■ Retirement pay
- ■ ■ ■ Set-off

Where the widowed spouse of a member was not notified that the member declined to participate in the Survivor Benefit Plan (SBP), subsequently makes the election through a correction of the member's military records, the member's retired pay, to the extent it was not reduced by SBP premiums, was erroneous and subject to waiver. However, where the collection of such premiums is not against equity and good conscience by virtue of the protection afforded the spouse had the coverage been in effect, as of the date of the constructive election, neither the erroneous retired pay or annuity payments may be waived and they should be offset against SBP benefits subsequently received by the spouse.

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**B-243881, October 2, 1991**

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## **Military Personnel**

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### **Pay**

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

Where a member reasonably should have recognized that he was being overpaid because of the failure to impose the pay cap limitations of the Civil Service Reform Act of 1978, waiver is not appropriate.

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**B-244598, October 2, 1991**

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## **Military Personnel**

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### **Pay**

- Retroactive pay
- ■ Eligibility

A Navy member's claim for an increased retroactive allowance which is based on his assertion that the Navy erred in transferring him on a particular date must be denied because the assignment of personnel is within the discretion of the military department and because the action of the Board for Correction of Naval Records, which denied his correction request, is final and conclusive on all officers of the United States.

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**B-238352, October 4, 1991\*\*\***

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**Military Personnel**

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**Travel**

- Travel expenses
- ■ Dependents
- ■ ■ Training
- ■ ■ ■ Security safeguards

Joint Federal Travel Regulations may be amended to allow payment of travel of military dependents to attend briefings and training when the Department of Defense determines it to be necessary to prepare them for life in countries where they may be endangered by terrorism or political unrest due to the member's service in that country.

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**B-243651, October 4, 1991**

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**Military Personnel**

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**Pay**

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

A former member of the United States Navy is precluded from obtaining waiver of the collection of erroneous overpayment where he failed to question erroneous pay deposits to his bank account. The fact that he was away from home as well as his erroneous expectation that he would be paid again after separation does not excuse his failure to inquire into the correctness of the payments.

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**B-243882, October 11, 1991**

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**Military Personnel**

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**Pay**

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

Where a former member received successive allotments for savings subsequent to his discharge from the United States Navy, his request for waiver of collection of the erroneous overpayments may be granted for the overpayment he received at the time of separation since he may not have reasonably known what amounts he was entitled to. But collection of the second erroneous pay allotment may not be waived where the member failed to question the payment after it appeared on his credit union statement.

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**B-244478, October 24, 1991**

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**Military Personnel**

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**Pay**

■ **Overpayments**

■ ■ **Error detection**

■ ■ ■ **Debt collection**

■ ■ ■ ■ **Waiver**

Where the Navy remitted a portion of erroneous overpayments of Base Allowance for Quarters with Dependents and Variable Housing Allowance with Dependents based upon a member's statements that he supported his wife during the time the payments were made, a request for full waiver is denied where additional evidence of non-support was received from his wife which was not considered when the initial waiver was granted and he has submitted no additional proof of support payments.

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# Miscellaneous Topics

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**B-241319, October 3, 1991\*\*\***

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## Miscellaneous Topics

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### Federal Administrative/Legislative Matters

- Administrative agencies
  - ■ Interagency waiver
  - ■ ■ Property damages
- 

## Miscellaneous Topics

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### Federal Administrative/Legislative Matters

- Administrative agencies
- ■ Interagency waiver
- ■ ■ Rent

The interdepartmental waiver doctrine prohibits the Bonneville Power Administration (BPA) from charging the National Weather Service (NWS) rent for its noninterfering use of a radio station site, but does not prohibit it from charging for the costs or damages resulting from such use.

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**B-243361, October 21, 1991**

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## Miscellaneous Topics

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### Human Resources

- Health care
- ■ Personnel
- ■ ■ Student loans
- ■ ■ ■ Debt waiver

A medical doctor attended medical school under the Armed Forces Health Professions Scholarship program, 10 U.S.C. § 2120-27, which covered part of her tuition expenses. The remainder of her tuition was paid under a state program, whereby the student promises the state to perform medical services in the state upon completion of her military obligation, or to repay the state for its tuition payments. The Navy may not pay the doctor's debt to the state because the obligation to the state is a personal matter resulting from her state residence and choice of a medical school.

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**B-243431, October 23, 1991**

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## Miscellaneous Topics

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### Environment/Energy/Natural Resources

- Environmental protection
- ■ Air quality
- ■ ■ Standards
- ■ ■ ■ Enforcement

Although literal reading of Clean Air Act, § 218 would require that ban on nonroad engines using leaded gasoline apply to aircraft, the better reading of the statute is that the ban does not apply to aircraft. Congress placed the ban within Title II, Part A of the Clean Air Act, which applies to motor vehicles, but not in Part B, which covers aircraft. General language of statute will not pre-



vail over matters specifically dealt with in another part of the same enactment. Also, legislative history strongly suggests that Congress did not intend ban to apply to aircraft.

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**B-220507.24, October 31, 1991\*\*\***

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**Miscellaneous Topics**

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**Housing/Community Development**

■ **Mortgages**

■ ■ **Securities**

■ ■ ■ **Purchases**

■ ■ ■ ■ **Authority**

Federal Agricultural Mortgage Corporation (Farmer Mac) is not authorized to purchase securities issued by poolers of agricultural mortgage and rural housing loans. It is limited to guaranteeing the timely payment of principle and interest on such securities. The purpose clause of a statute does not constitute a grant of authority to an agency to conduct its activities. Also, Farmer Mac has implied power to borrow funds to purchase FmHA guaranteed loans when it acts as a pooler of such loans.

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# Procurement

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**B-242415.7, October 1, 1991**

**91-2 CPD 273**

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## Procurement

### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where factual information submitted adds nothing to the record and therefore provides no basis for reconsideration.

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## Procurement

### Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Duties
- ■ ■ ■ Information request

---

## Procurement

### Bid Protests

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

An interested party to a protest has an affirmative obligation to diligently pursue information which would aid in the resolution of the protest; information that was not diligently pursued may not form the basis for a request for reconsideration.

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**B-244299, October 1, 1991**

**91-2 CPD 274**

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## Procurement

### Bid Protests

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

Protest that improper actions by the contracting agency evidence bias in favor of the proposed awardee is denied where the record shows that alleged improper actions were unobjectionable or did not occur, and contains no other evidence of bias on agency's part.

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**Procurement**

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**Sealed Bidding**

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

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Deviation

Bid that omits standard form 1442, "Solicitation, Offer and Award," which contains several material provisions including a minimum bid acceptance period, is nonresponsive where the bid does not otherwise indicate agreement to acceptance period.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The request for reconsideration is denied where the initial protest was untimely on its face, and the protester seeks on reconsideration to introduce facts that would establish the timeliness of its protest, but were not included in its initial protest to the General Accounting Office.

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**Procurement**

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**Bid Protests**

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

Protest alleging that solicitation failed to designate option prices to be evaluated, and that agency therefore improperly evaluated option prices in determining low bid, is untimely as it essentially concerns an apparent solicitation defect, and therefore should have been filed before bid opening.

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**Procurement**

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**Bid Protests**

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

Protest challenging terms in invitation for bids related to asbestos removal is untimely when filed after bid opening.

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
  - ■ **Protest timeliness**
  - ■ ■ **Delays**
  - ■ ■ ■ **Agency-level protests**
- 

## **Procurement**

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### **Bid Protests**

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

Even assuming that letter submitted to contracting agency prior to bid opening requesting clarification of terms of invitation for bids (IFB) can reasonably be considered a timely filed agency-level protest challenging the terms of the IFB, General Accounting Office will not consider a protest filed more than 10 working days after the protester receives oral notification of initial adverse agency action on its agency-level protest.

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**B-244213, October 2, 1991**

**91-2 CPD 283**

## **Procurement**

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### **Competitive Negotiation**

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

Protest alleging that agency failed to conduct meaningful discussions and to evaluate protester's proposal properly is denied where discussion questions led protester into areas of proposal deficiency and where protester has not demonstrated that evaluators' judgments were unreasonable or not in accord with listed evaluation criteria.

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## **Procurement**

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### **Bid Protests**

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

Where record shows that even if protester's proposal had received the maximum possible score on certain evaluation factors associated with allegedly inadequately discussed issues, it would still not have been in line for award, General Accounting Office is unable to conclude that any inadequacy in discussions prejudiced the protester by depriving it of an opportunity for award.

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**B-244573, October 2, 1991**

**91-2 CPD 284**

## **Procurement**

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### **Bid Protests**

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

Protest against listing of competitor's item as an approved product is dismissed as untimely where product was first approved by agency in 1984 and has been repeatedly included in solicitations since then, and protester first protested the method of approval to the General Accounting Office approximately 7 years after the approval was granted.

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**Procurement**

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**Bid Protests**

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

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Size determination
- ■ ■ GAO review

Protester is not an interested party at this time to challenge the evaluation of its proposal where the procurement has been reserved for exclusive small business participation and a regional office of the Small Business Administration (SBA) has determined that the protester is other than small for purposes of this procurement, although the regional office size determination is currently being appealed to SBA's Office of Hearings and Appeals.

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**B-245405.2, October 2, 1991**

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**Procurement**

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**Bid Protests**

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

Protest that agency improperly rejected protester's bid because it was unreasonable in price is dismissed as untimely when not filed within 10 working days after the protester received notice of the reason that the bid was rejected.

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**B-238464.3, October 3, 1991**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Pending litigation
- ■ ■ GAO review

General Accounting Office (GAO) will not consider a protest against the allegedly improper increase of office space under a lease, where there is a pending appeal before the United States Court of Appeals for the District of Columbia Circuit concerning the initial award of the lease, and the court's decision could render a decision by GAO academic.

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**B-241764.2, October 3, 1991**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Additional information

Decision denying protest on ground that award of a contract for maintenance of automatic data processing equipment under a nonmandatory, General Services Administration schedule was proper where the agency had determined that the scheduled items provided the lowest overall cost

alternative is reversed where information, not previously considered, demonstrates that the agency, in violation of the Federal Information Resources Management Regulation (FIRMR), compared the protester's quote to a nonexistent schedule price instead of issuing a solicitation under full and open competition.

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## **Procurement**

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### **Noncompetitive Negotiation**

#### **■ Contract awards**

#### **■ ■ Sole sources**

#### **■ ■ ■ Justification**

Sole-source award based on determination that only the original equipment manufacturer (OEM) could perform repair and maintenance of its automatic data processing equipment because of OEM's statement to the Army that only the OEM could furnish replacement parts, is not justified where the OEM reports that its statement was misunderstood and that parts are available to third party vendors.

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**B-242743.3, October 3, 1991**

**91-2 CPD 288**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Protest timeliness**

#### **■ ■ ■ 10-day rule**

Protest by the original awardee of corrective action taken by agency in response to protest of initial award which results in new award to another firm is untimely, when filed more than 10 working days after notice of corrective action.

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**B-244394, October 3, 1991**

**91-2 CPD 289**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Interested parties**

#### **■ ■ ■ Direct interest standards**

Protester is not an interested party to object to agency's failure to notify unsuccessful offerors under a small business set-aside of the successful offeror's identity prior to award where it would not be next in line for award even if its protest were sustained.

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**B-245885, October 3, 1991**

**91-2 CPD 290**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Protest timeliness**

#### **■ ■ ■ Apparent solicitation improprieties**

Protest of solicitation format is dismissed as untimely where initial agency-level protest was not filed prior to the time established for receipt of quotations.

**Procurement**

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**Contractor Qualification**

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

A contracting officer may not disqualify a firm from the competition for an appearance of impropriety and apparent conflict of interest where the agency's internal investigation established that no wrongdoing occurred.

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**Procurement**

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**Bid Protests**

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

Where General Accounting Office sustains protest against termination of protester's contract and disqualification of protester from competition, protest by second disqualified firm is dismissed, since second protester is not in line for award and therefore does not have the direct economic interest to be considered an interested party under General Accounting Office's Bid Protest Regulations.

**Procurement**

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**Sealed Bidding**

- **Contract awards**
- ■ **Line items**
- ■ ■ **Costs**
- ■ ■ ■ **Statutory restrictions**

A low lump-sum bid for replacement of parts of energy management control system that contains a line item price which exceeds statutory cost limitation was properly rejected since no award can be made on basis of that bid.

**Procurement**

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**Bid Protests**

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

Protester's late receipt of the agency report is not a basis for reopening a protest dismissed for failure to file comments in response to the agency report or express continued interest in the protest within the time required by Bid Protest Regulations, where the protester failed to notify the General Accounting Office (GAO) that it had not received the report until after the due date shown on the GAO notice acknowledging receipt of the protest.

**Procurement**

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**Bid Protests**

- GAO procedures
  - ■ Preparation costs
- 

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to protester's allegation of a conflict of interest, the agency took corrective action less than 3 weeks after being notified of the allegation.

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protester's proposal was properly rejected as unacceptable where firm took exception in its best and final offer to material term of the solicitation which would have compromised the agency's rights under the proposed contract.

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**Procurement**

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**Bid Protests**

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

Protest that specifications are restrictive or otherwise defective is dismissed as untimely when not filed before the closing date for the receipt of proposals following the incorporation of the allegedly restrictive specifications into the solicitation.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Shipment
- ■ ■ ■ Packing

Bid was properly rejected as nonresponsive where shipping information included in bid indicated that product offered would not meet solicitation's packaging requirement.



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**Procurement**

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**Sealed Bidding**

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

Protest challenging rejection of bid for failure to acknowledge material amendment due to protester's failure to receive amendment is denied where, even assuming failure to receive the amendment was the result of misaddressing by contracting agency, there is no evidence that contracting agency failed in its obligation to use reasonable methods for the dissemination of solicitation documents to prospective contractors.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Evaluation
- ■ ■ Price reasonableness
- ■ ■ ■ Administrative discretion

Contracting officer's determination concerning price reasonableness is a matter of administrative discretion that will not be questioned unless there is a showing that the determination itself is unreasonable, or that it is based on bad faith or fraud. The fact that a nonresponsive bid is much lower than the awardee's bid, standing alone, does not render the other bids unreasonable where the contracting officer reasonably based his determination of price reasonableness on past procurement history.

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**Procurement**

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**Bid Protests**

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

Protest that agency allowed the bidders' bid acceptance periods to lapse before making award is dismissed as untimely where protester raises this contention more than 10 working days after its notification of the award.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Protest challenging agency's evaluation of price and technical proposals on the basis that the agency did not follow the evaluation scheme set forth in the solicitation is denied where the record shows that the agency's evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted meaningful discussions where it directed protester to an area in which its proposal was deficient; agency is not required to notify offerors of deficiencies remaining in their best and final offers or conduct successive rounds of discussions until such deficiencies are corrected.

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## **B-234430.3, October 8, 1991**

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## **Procurement**

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### **Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Notification

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## **Procurement**

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### **Payment/Discharge**

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

Where a vendor ships an item to a government consignee on a commercial bill of lading with charges prepaid, and the intent to convert to a Government Bill of Lading (GBL) is not evident from the commercial documentation as required by 41 C.F.R. § 101-41.303-1, we will not assume that both parties contemplated conversion of the commercial bill to a GBL. Accordingly, the commercial bill's 9-month limit for filing damage claims applies to any loss or damage claim presented by the government.

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## **B-243803, October 8, 1991**

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## **Procurement**

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### **Payment/Discharge**

- Shipment
- ■ Carrier liability
- ■ ■ Amount determination

A tender that offers lower charges to transport a shipment applies in preference to an otherwise applicable tariff involving higher charges. Also, if the charges in the tender are not subject to released valuation and none is stated on the bill of lading, then the carrier is liable for the full value of any damages for which it is responsible notwithstanding the released valuation provisions of the tariff that otherwise would have applied.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Competitive Negotiation**

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

Protest is sustained where, despite solicitation evaluation scheme providing that technical merit was four times more important than cost, source selection decision was made to award to lower-scored technical, lower-cost proposal and record does not provide a reasonable basis to support the agency's determination that protester's apparently significant technical advantage was offset by relatively minor price advantage; award decision was inconsistent with evaluation scheme.

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**B-244471.2, B-244471.3, October 8, 1991**

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**Procurement**

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**Bid Protests**

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

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**Procurement**

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**Bid Protests**

- Moot allegation
- ■ GAO review

Request for reconsideration of original protest and subsequently filed second protest are dismissed as academic where, after their filing, challenged bids are either rejected as nonresponsive or withdrawn, and protester is in line for award of a contract under disputed procurement.

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**B-245823, October 8, 1991**

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**Procurement**

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**Sealed Bidding**

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

Where bidder has submitted only a facsimile copy of a bid bond as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bid bond subsequent to bid opening.

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**Procurement**

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**Competitive Negotiation**

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

Where award was based on factors other than price, unsupported protest allegation that award to higher-priced offeror was improper because protester's proposal "clearly offered the best value to the government" does not constitute legally sufficient basis for protest.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Size determination
- ■ ■ GAO review

Protest of agency's failure to enforce solicitation's small business set-aside provisions in awarding a contract amounts to protest of awardee's size status, a matter that General Accounting Office will not consider.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester merely repeats arguments previously made and expresses disagreement with our prior decision.

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**Procurement**

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**Bid Protests**

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

New protest based on information obtained pursuant to a Freedom of Information Act request is not timely because the protester did not diligently pursue the information in that the information could have been obtained 2 months earlier had it been requested under the document request provisions of the Bid Protest Regulations during the pendency of a prior protest.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Preferred products/services
- ■ ■ Certification

Bidder's failure under a total small disadvantaged business (SDB) set-aside to certify that all end items to be furnished will be manufactured or produced by a small business concern does not

render the firm's bid nonresponsive where the bidder is obligated by another solicitation provision to furnish only SDB end items in its performance of the contract.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsibility
- ■ ■ Certification
- ■ ■ ■ Omission

Standard bid representations and certifications, such as the Certificate of Independent Price Determination, the Taxpayer Identification clause, and Certificate of Authority to sign corporate bids, concern bidder responsibility, not bid responsiveness, and therefore may be supplied after bid opening.

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**B-245492, October 9, 1991**

**91-2 CPD 323**

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## **Procurement**

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### **Competitive Negotiation**

- Requests for proposals
- ■ Amendments
- ■ ■ Propriety

Agency reasonably determined to amend rather than cancel request for proposals after receipt of initial proposals where decreased agency requirement is *de minimis* in nature.

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**B-245955, October 9, 1991**

**91-2 CPD 324**

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## **Procurement**

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### **Socio-Economic Policies**

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

Protest alleging that agency improperly applied 12 percent Buy American Act evaluation factor to protester's bid is dismissed where, although the protester allegedly intended to provide domestic products, its bid clearly indicated that all end items being provided were produced in countries other than the United States.

**Procurement**

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**Competitive Negotiation**

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

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee did not propose commercial-off-the-shelf (COTS) equipment in response to solicitation for radio communications system is denied where solicitation, as reasonably interpreted, did not make COTS equipment a mandatory requirement.

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**Procurement**

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**Competitive Negotiation**

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

Protest is denied where source evaluation board reasonably determined, contrary to the recommendations of the technical evaluation team, that the technical advantages of the highest rated proposal did not reflect significant technical superiority relative to the agency's overall mission which outweighed the awardee's price advantage, given the awardee's acceptable level of technical competence available at the lower cost.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that total technical evaluation point scores failed to reflect the actual differences in technical merit between proposals is denied where record demonstrates that technical evaluation was reasonable and consistent with the evaluation scheme set forth in the solicitation and point scores reflected the relative weights indicated in that scheme.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Protest that awardee did not price all of the required equipment in its proposal, thus rendering the cost/technical tradeoff analysis performed by the agency invalid is denied, where protester's allegation is specifically refuted and record does not support a conclusion that agency's price evaluation was inconsistent with a reasonable interpretation of the RFP or was otherwise unreasonable.

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

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**Procurement**

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**Contract Management**

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

Protest that task assignment for support of geostationary operational environmental satellite (GOES) project is outside the scope of contract for mission support services is denied where agency issued competitive solicitation for such services advising offerors that it was issuing solicitation in an effort to consolidate existing support service contracts, specifically identifying GOES support previously provided by protester as falling within contractual effort.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Protester's assertion that only its employees have the expertise to perform support services for geostationary operational environmental satellite project is not reviewable by General Accounting Office (GAO), since it amounts to an argument that the protester is the only firm capable of performing; the purpose of the GAO's bid protest function is to insure full and open competition.

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Record contains no evidence that in issuing task order, agency depended upon any improper representation or promise by the awardee to employ protester's personnel.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Contractor personnel
- ■ ■ ■ Security clearances

Where solicitation required that certain of the offeror's personnel possess specific high-level security clearance in order to be considered for award, agency properly eliminated protester from competition when protester's responses in discussions indicated that it could not obtain clearance until after award.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency satisfied obligation to conduct meaningful discussions with regard to protester's lack of security clearance by questioning protester as to status of clearances and its contingency plans for access to secured area.

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**B-240789.6, October 11, 1991**

**91-2 CPD 328**

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## **Procurement**

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### **Socio-Economic Policies**

- Small business set-asides
- ■ Contract awards
- ■ ■ Price reasonableness

Agency properly found awardee's price reasonable for a contract competitively solicited under section 8(a) of the Small Business Act, as awardee's price was less than the government's estimated fair market price.

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**B-244326, October 11, 1991**

**91-2 CPD 329**

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## **Procurement**

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### **Government Property Sales**

- Timber sales
- ■ Price omission
- ■ ■ Line items

Protester's high timber sale bid was properly rejected where the protester failed to bid on one specie of low grade timber at the announced fixed rate and the protester's bid was not high if the specified rate were used.

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**B-244368, October 11, 1991**

**91-2 CPD 330**

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Allegation that agency improperly evaluated proposal is denied where protester's proposal was reasonably determined unacceptable because it took express exception to operating hours required by the solicitation.

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**B-244398, October 11, 1991**

**91-2 CPD 331**

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Modification
- ■ ■ Late submission
- ■ ■ ■ Determination

Telegraphic bid modification, which was not received by bid opening, was properly rejected as late, where the protester transmitted its bid modification to a telex number it had obtained from a so-



licitation issued the previous year, which was no longer in operation at the agency installation, and where the solicitation did not indicate that it had the installation capability to receive telex bid modifications.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Modification
- ■ ■ Timeliness
- ■ ■ ■ Time/date notations

Since only the government's time/date stamp or other evidence of receipt maintained at the government installation is sufficient to establish timely receipt of a bid modification, a copy of the modification furnished after bid opening that indicates that it was transmitted directly to an agency telex prior to bid opening does not allow its acceptance.

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**B-244353, October 15, 1991**

**91-2 CPD 332**

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## **Procurement**

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### **Contract Management**

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

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## **Procurement**

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### **Specifications**

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

Protest against agency plans to augment a portion of an installation's power system by linking it to the existing power system is denied where the decision is reasonably based and the proposed use of an existing requirements contract does not exceed the scope of that contract.

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**B-244366, October 15, 1991**

**91-2 CPD 333**

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Risks
- ■ ■ Pricing

Neither the Federal Acquisition Regulations nor any other applicable regulation precludes an agency from issuing a request for proposals that requires net, rather than separate, pricing of the base and option periods; such required pricing does not impose an unreasonable risk on offerors.

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## **Procurement**

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### **Specifications**

- Ambiguity allegation
- ■ Specification interpretation

Agency has provided sufficient breakdown of its requirements for indefinite quantity line items by furnishing offerors with detailed performance standards, layout drawings, opportunities for site visits, and access to all work orders issued under the incumbent's contract.

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Preparation costs**

Protester is not entitled to award of the costs of filing and pursuing its protest, where the contracting agency promptly acted upon protest alleging certain ambiguities in the specifications and has diligently endeavored to clarify the matter by amending the solicitation.

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**B-244392, October 15, 1991**

**91-2 CPD 334**

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## **Procurement**

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### **Sealed Bidding**

#### **■ Bids**

#### **■ ■ Acceptance time periods**

#### **■ ■ ■ Extension**

#### **■ ■ ■ ■ Agency notification**

Bidder which desires to extend its bid acceptance period is responsible for assuring that the agency receives its express extension, unless the bidder takes some other affirmative step which provides clear evidence of an intent to extend; communication from bidder's supplier to agency preaward survey team regarding supplier's intention to provide item to bidder does not constitute action which conveys bidder's intent to extend.

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## **Procurement**

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### **Sealed Bidding**

#### **■ Bids**

#### **■ ■ Acceptance time periods**

#### **■ ■ ■ Expiration**

#### **■ ■ ■ ■ Reinstatement**

Protest that contracting agency improperly awarded contract to a higher bidder instead of allowing protester to revive expired bid more than a month after bid expiration is denied since revival would prejudice other bidders who timely extended their bids.

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**B-244400, B-244400.2, October 15, 1991**

**91-2 CPD 335**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Price disclosure**

#### **■ ■ ■ Allegation substantiation**

#### **■ ■ ■ ■ Evidence sufficiency**

Protest that agency improperly disclosed protester's price proposal or relative price standing to awardee is denied where record does not substantiate allegation.

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## **Procurement**

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### **Socio-Economic Policies**

- **Small businesses**
- ■ **Contract award notification**
- ■ ■ **Notification procedures**
- ■ ■ ■ **Pre-award periods**

Protest against agency's failure to provide preaward notification to unsuccessful offeror in small business set-aside procurement is sustained where protester was thereby deprived of an opportunity to challenge before the Small Business Administration the awardee's compliance with the "50 percent rule."

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**B-244386, October 16, 1991**

**91-2 CPD 336**

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## **Procurement**

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### **Sealed Bidding**

- **Invitations for bids**
- ■ **Wage rates**
- ■ ■ **Amendments**

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## **Procurement**

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### **Socio-Economic Policies**

- **Labor standards**
- ■ **Service contracts**
- ■ ■ **Wage rates**
- ■ ■ ■ **Applicability**

Solicitation which initially provided that Service Contract Act (SCA) wage-rate determination was not applicable, but which subsequently incorporated SCA wage determination by amendment, is not ambiguous with respect to SCA wage determination applicability; solicitation, when read as a whole, clearly contemplates performance of service contract to which wage determination applies.

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## **Procurement**

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### **Specifications**

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

Where solicitation specifies that patrol vehicles are not required in connection with contract performance, solicitation is not defective for failure to provide detailed information regarding vehicle usage.

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## **Procurement**

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### **Sealed Bidding**

- **Invitations for bids**
- ■ **Terms**
- ■ ■ **Price adjustments**

Protest against solicitation provision relating to annual adjustments of contractor's pricing is denied, where protester's reading of clause—that contractor would be required to pay Fair Labor Standards Act minimum wages in the absence of a SCA wage determination for option periods—is unreasonable in light of solicitation's other provisions.

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ Preparation costs

Request for award of bid protest costs is denied where agency corrective action was related to the amendment of a solicitation provision not objected to by protester.

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**B-244406, et al., October 16, 1991**

**91-2 CPD 341**

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## **Procurement**

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### **Competitive Negotiation**

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

Protester's challenge to agency's evaluation of its proposal is denied where protester has not shown that the evaluation was unreasonable or inconsistent with the evaluation criteria listed in the solicitation.

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## **Procurement**

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### **Competitive Negotiation**

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

In a negotiated procurement, the contracting agency has broad discretion in making cost/technical tradeoffs. Award to higher-priced, higher-rated offeror is not objectionable where the prices of other offerors in the competitive range were 97 percent to 99 percent of the awardee's price, but their technical proposals received scores only 87 percent to 92 percent as high as the awardee's technical proposal, and the agency viewed the scores as accurately reflecting the relative technical merit.

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## **Procurement**

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### **Competitive Negotiation**

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

Agency properly excluded proposal from the competitive range where the initial technical proposal failed to meet the solicitation requirements in 39 of 83 evaluation areas and, following discussions and submission of revised proposals, the proposal still failed to comply with solicitation requirements in eight evaluation areas.

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## **Procurement**

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### **Bid Protests**

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

Protest that solicitation providing for cost/technical tradeoffs was arbitrary and that the priority of technical evaluation factors listed in the RFP was improper is untimely where these provisions were clear on the face of the solicitation, but the protest was not filed until after contract award.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct discussions with offeror regarding aspects of its proposal that met the solicitation requirements but did not receive the highest point scores possible is denied because an agency is not obligated to discuss every aspect of a proposal that receives less than the maximum possible score.

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## **Procurement**

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### **Competitive Negotiation**

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

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## **Procurement**

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### **Competitive Negotiation**

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Sufficiency

Protest that agency failed to follow stated evaluation methodology by scoring proposals during the initial evaluation and not revealing the precise scoring technique to be used is denied where the solicitation advised offerors of the broad scoring method to be employed and gave reasonably definite information concerning how proposals would be scored, and when in the process such scoring would occur.

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**B-244432, October 16, 1991**

**91-2 CPD 337**

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## **Procurement**

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### **Socio-Economic Policies**

- Small business set-asides
- ■ Use
- ■ ■ Procedural defects

Protest is sustained where agency decision not to set library services procurement aside for small business concerns was based on insufficient efforts to ascertain small business capability to perform the contract. Although numerous small businesses expressed an interest in the requirement, without contacting those firms to determine if they possess the necessary staff or were capable of hiring and retaining the necessary staff, the contracting agency concluded that no small businesses have the personnel to perform the contract.

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**B-244561, October 16, 1991****91-2 CPD 342**

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**Procurement**

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**Bid Protests**

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

Protest challenging solicitation provisions is dismissed as untimely where the alleged improprieties were apparent from the face of the solicitation and protester did not file its protest until after the closing date for submission of proposals.

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**B-244584, October 16, 1991****91-2 CPD 338**

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**Procurement**

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**Bid Protests**

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

Protest is dismissed as untimely where not filed within 10 days after protester received oral notification that its bid was being rejected due to its failure to submit descriptive literature.

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**B-244711, October 16, 1991****91-2 CPD 339**

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

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**Procurement**

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**Socio-Economic Policies**

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

Protest that in awarding a subcontract for a federal agency, a private federally funded research and development center (FFRDC) failed to submit a nonresponsibility determination to the Small Business Administration for certificate of competency consideration is dismissed because there is no requirement for such submission, and the protester has not provided any factual basis to question the FFRDC's nonresponsibility determination.

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**B-246109, October 16, 1991****91-2 CPD 340**

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bid was properly rejected as nonresponsive where a bidder submitted an unsigned Certificate of Procurement Integrity with its bid submission, even though the bidder had completed the various provisions of the certificate.

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## **Procurement**

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### **Sealed Bidding**

- **Bid guarantees**
- ■ **Responsiveness**
- ■ ■ **Signatures**
- ■ ■ ■ **Omission**

A bidder's intent to be bound by the bid was evidenced by its signature on the face of the bid document, even though that signature appeared in the wrong block on the bid form.

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**B-244395, October 17, 1991**

**91-2 CPD 343**

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## **Procurement**

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### **Sealed Bidding**

- **Invitations for bids**
- ■ **Amendments**
- ■ ■ **Notification**

Prospective bidder's failure to receive solicitation amendment does not warrant disturbing the award where there is no indication that the cause of the nonreceipt was the contracting agency's failure to comply with the Federal Acquisition Regulation requirements for notice and distribution of amendments.

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## **Procurement**

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### **Sealed Bidding**

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

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## **Procurement**

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### **Sealed Bidding**

- **Invitations for bids**
- ■ **Amendments**
- ■ ■ **Materiality**

Where an amendment to an invitation for bids for ship repair and maintenance imposes a new obligation on prospective contractors, by adding a requirement that the ship's sea chests be inspected, cleaned, and painted, and such work is both essential and integral to performance of the overall contract, the amendment is material, and an agency properly may reject a bid as nonresponsive for failure to acknowledge the amendment.

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**B-244410, October 17, 1991**

**91-2 CPD 344**

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## **Procurement**

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### **Competitive Negotiation**

- **Offers**
- ■ **Late submission**
- ■ ■ **Acceptance criteria**
- ■ ■ ■ **Government mishandling**

Where the evidence establishes that the offeror's revised proposal was received by the agency within sufficient time to permit delivery to the contracting officer prior to the closing date, but was misfiled by an agency employee, the agency action was the sole or paramount cause of the contracting officer's late receipt of the revision; consequently, consideration of the revision for award purposes was proper.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Contract awards**

#### **■ ■ Best/final offers**

#### **■ ■ ■ Acceptance time periods**

An offeror, who in submitting its best and final offer (BAFO), does not expressly extend, as requested, its proposal acceptance period, implicitly agrees to the required extension of the proposal acceptance period by its submission of the BAFO.

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**B-245420, October 17, 1991**

**91-2 CPD 345**

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## **Procurement**

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### **Bid Protests**

#### **■ Dismissal**

#### **■ ■ Definition**

Because a solicitation requirement for a bid bond in an amount related to the "contract price" obligates a bidder to submit a bond in an amount related to the base contract period only, allegation that awardee's bond is insufficient to cover option periods provides no basis for protest.

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**B-241850.2, October 21, 1991**

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## **Procurement**

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### **Payment/Discharge**

#### **■ Shipment**

#### **■ ■ ■ Carrier liability**

#### **■ ■ ■ ■ Burden of proof**

Proof of tender of lost household goods is established for purposes of a *prima facie* of carrier liability, even though the items were not specifically listed on the carrier's pick-up inventory, where the carrier packed the items and prepared the inventory; the record includes a statement by the shipper reflecting his personal knowledge of the circumstances surrounding the move; and the items are claimed to have been in specific listed cartons with labels that reasonably could include them.

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**B-242633.3, October 21, 1991**

**91-2 CPD 346**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ GAO decisions**

#### **■ ■ ■ Reconsideration**

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

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**B-244456, October 21, 1991**

**91-2 CPD 347**

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## **Procurement**

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### **Sealed Bidding**

#### **■ Alternate bids**

#### **■ ■ Acceptance**

#### **■ ■ ■ Propriety**

Where invitation for bids (IFB) requires submission of alternate bids representing different methods of performance and provides that award will be made to conforming bid that is most advantageous to government considering price and price related factors, protest that award must be made



to lowest bidder for either alternative is denied since the only reasonable interpretation of the IFB is that award will be made to low bidder on the alternative chosen by the agency.

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**B-244461, October 21, 1991**

**91-2 CPD 348**

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**Procurement**

**Competitive Negotiation**

**■ Offers**

**■ ■ Evaluation**

**■ ■ ■ Technical acceptability**

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**Procurement**

**Competitive Negotiation**

**■ Requests for proposals**

**■ ■ Terms**

**■ ■ ■ Compliance**

Agency reasonably evaluated protester's revised proposal for a color roll film recording system where record reflects that protester took exception to some of the solicitation's technical requirements and where information demonstrating compliance with specifications was either general, inadequate, or not furnished at all.

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**B-244492, October 21, 1991**

**91-2 CPD 349**

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**Procurement**

**Competitive Negotiation**

**■ Offers**

**■ ■ Competitive ranges**

**■ ■ ■ Exclusion**

**■ ■ ■ ■ Administrative discretion**

Protest is denied where agency reasonably determined to exclude protester, ranked 9th out of 13 offerors, from competitive range because, despite protester's low proposed price, its technical deficiencies were such that protester had no reasonable chance of being selected for award.

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**B-244510, October 21, 1991**

**91-2 CPD 350**

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**Procurement**

**Contractor Qualification**

**■ Responsibility**

**■ ■ Contracting officer findings**

**■ ■ ■ Negative determination**

**■ ■ ■ ■ Prior contract performance**

Protest is denied where agency reasonably determined protester was nonresponsible based upon contracting officer's conclusion that protester's recent contract deliveries for similar items were seriously deficient, notwithstanding that such prior contracts were not terminated, or protester's disagreement with the facts.

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**Procurement**

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**Competitive Negotiation**

- Discussion
  - ■ Adequacy
  - ■ ■ Criteria
- 

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that agency improperly eliminated protester's proposal from consideration for award is denied where the protester's written response to agency's discussion questions indicated that the protester failed to comply with material solicitation requirements. Once the agency learned that protester's proposal was unacceptable, it was under no obligation to conduct further discussions with the protester to give it the opportunity to convince the agency that its offered product in fact complied with the specifications.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Discussions were meaningful where questions posed by the agency led the protester into the areas of its proposal with which the agency was concerned.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Competition sufficiency

A competitive procurement is not converted into a sole-source procurement because, after proposal evaluation, only one offeror is found to meet the specifications set out in the solicitation.

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**Procurement**

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**Specifications**

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

Where a procuring agency uses another agency's qualified products list to solicit companies that might meet its requirements, inclusion of firm's product on the list does not automatically mean that the firm's product meets the procuring agency's needs.

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**Procurement**

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**Bid Protests****■ Allegation substantiation****■ ■ Burden of proof**

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**Procurement**

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**Contractor Qualification****■ Responsibility/responsiveness distinctions****■ ■ Small business sizes****■ ■ ■ Self-certification**

Allegation that awardee failed to complete small business status certificate and related block on its timber sale bid prior to bid opening does not affect bid responsiveness and fails to establish a basis for protest.

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**Procurement**

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**Sealed Bidding****■ Bids****■ ■ Responsiveness****■ ■ ■ Bid guarantees****■ ■ ■ ■ Facsimile**

Where bidder has submitted only a facsimile copy of a bid bond as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bid bond subsequent to bid opening.

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**Procurement**

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**Socio-Economic Policies****■ Preferred products/services****■ ■ Domestic sources****■ ■ ■ Construction contracts****■ ■ ■ ■ Vessels**

Navy determination that the Tollefson-Byrnes Amendment to the "Shipbuilding and Conversion, Navy" appropriation prohibiting foreign shipyard construction of naval vessels or major components of the hull or superstructures of naval vessels applies only to vessels appearing on the Naval Vessel Register, and not to boats as defined in Navy Regulations, is not unreasonable and therefore entitled to substantial deference. Therefore, Tollefson-Byrnes Amendment does not apply to inflatable, or rigid hull inflatable boats.

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**Procurement**

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**Socio-Economic Policies****■ Preferred products/services****■ ■ Domestic sources****■ ■ ■ Construction contracts****■ ■ ■ ■ Vessels**

Navy determination that 10 U.S.C. § 7309(a) prohibiting foreign shipyard construction of vessels for any of the armed forces or major components of the hull or superstructure of any such vessels

applies only to vessels that have fixed and rigid hulls and superstructures, is not unreasonable and therefore entitled to substantial deference. Therefore, 10 U.S.C. § 7309(a) does not apply to inflatable boats but does apply to rigid hull inflatable boats.

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**B-240590.3, October 22, 1991**

**91-2 CPD 354**

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**Procurement**

**Competitive Negotiation**

■ **Offers**

■ ■ **Evaluation**

■ ■ ■ **Organizational experience**

Protest of improper evaluation of proposal, claiming that agency gave insufficient weight to incumbent's experience, is dismissed where, even giving protester maximum points in the technical areas which protester challenges, the protester would not be entitled to award since the awardee still would have had the highest total score based on technical and price proposal evaluations.

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**Procurement**

**Contractor Qualification**

■ **Licenses**

■ ■ **Determination time periods**

Where license is a contract performance requirement, because it is not required as a condition for award under the solicitation, failure to furnish license with proposal provides no basis for rejection of proposal. Awardee in its proposal reasonably showed efforts and capability to obtain license.

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**B-243514.4, October 22, 1991**

**91-2 CPD 355**

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**Procurement**

**Bid Protests**

■ **GAO procedures**

■ ■ **GAO decisions**

■ ■ ■ **Reconsideration**

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

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**B-244467, October 22, 1991**

**91-2 CPD 356**

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**Procurement**

**Competitive Negotiation**

■ **Offers**

■ ■ **Evaluation errors**

■ ■ ■ **Non-prejudicial allegation**

Protest that technical evaluation was based in part on a factor not explicitly identified in the solicitation is denied where no prejudice resulted from such evaluation.

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**Procurement**

**Contractor Qualification**

■ **Licenses**

Solicitation requirement that contractor obtain appropriate state license is a contract performance obligation and not a precondition to award.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Contract awards**

#### **■ ■ Propriety**

Awardee's failure to certify that it had developed a written affirmative action plan is not a basis to disturb award where affirmative action plan is not required because contract amount totaled less than \$50,000.

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**B-244539.2, October 22, 1991**

**91-2 CPD 357**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ GAO decisions**

#### **■ ■ ■ Reconsideration**

Dismissal of protest by a potential second-tier subcontractor of a first-tier subcontractor's procurement is affirmed since there is no evidence that second-tier subcontractor is acting "by or for" the government in conducting the procurement.

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**B-244741, October 22, 1991**

**91-2 CPD 358**

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## **Procurement**

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### **Contract Management**

#### **■ Contract administration**

#### **■ ■ Options**

#### **■ ■ ■ Use**

#### **■ ■ ■ ■ GAO review**

Protest challenging contracting agency's decision to conduct competitive procurement instead of exercising incumbent contractor's option is dismissed since decision whether to exercise option is a matter of contract administration outside the General Accounting Office's bid protest function.

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## **Procurement**

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### **Bid Protests**

#### **■ Premature allegation**

#### **■ ■ GAO review**

Protester's mere speculation regarding agency's future evaluation of its proposal or possible nonresponsibility determination does not provide basis for protest.

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**B-245532, October 22, 1991**

**91-2 CPD 359**

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## **Procurement**

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### **Sealed Bidding**

#### **■ Bids**

#### **■ ■ Responsiveness**

#### **■ ■ ■ Certification**

#### **■ ■ ■ ■ Omission**

Bid was properly rejected as nonresponsive where the bidder failed to submit a signed Certificate of Procurement Integrity with its bid.

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation errors****■ ■ ■ Evaluation criteria****■ ■ ■ ■ Application**

Evaluation of proposed specification and draft configuration management plan was in accordance with evaluation factors where, although specification called for submission of "draft" specification and configuration management plan, agency could reasonably expect documents of a certain level of quality, which would allow a contractor to deliver a document in final format within schedule set forth by the solicitation.

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**Procurement**

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**Competitive Negotiation****■ Discussion****■ ■ Determination criteria**

Agency decision not to engage in discussions with protester was reasonable where, based on technical evaluation committee findings, contracting officer determined that the proposal was unacceptable and in need of major rewriting and substantial clarification in several areas.

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**Procurement**

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**Competitive Negotiation****■ Discussion****■ ■ Determination criteria**

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation errors****■ ■ ■ Evaluation criteria****■ ■ ■ ■ Application**

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**Procurement**

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

Agency was not required to conduct discussions with protester where based on evaluators' advice that proposal was unacceptable in all three technical areas, as well as one of three management areas, contracting officer reasonably determined that proposal was technically unacceptable; protester fails to rebut agency conclusion in two of three technical areas; and in any event, evaluations of proposed specification and draft configuration management plan were in accordance with evaluation factors where, although solicitation called for submission of "draft" specification and "preliminary" configuration management plan, agency could reasonably expect documents of a certain level of quality, which would demonstrate an offeror's ability to deliver a document in final format within the schedule set forth by the solicitation.

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**Procurement**

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**Contractor Qualification**

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

Where the protester is unable prior to award to demonstrate a firm commitment for a lease of the construction site it would require for contract performance, the contracting officer's determination that the protester was nonresponsible was reasonable.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Inspection
- ■ ■ ■ Work sites

Contracting agency did not act improperly in inspecting only one of protester's three proposed locations at which travel services would be furnished where solicitation provided that agency "may conduct on-site investigation of any or all facilities" to verify proposed staffing and equipment, the agency had recently inspected the other two locations, and protester failed to request inspection of the other two locations.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Rebates

Contracting agency properly considered rebates offered the government in making competitive range determination where solicitation for travel services included rebates among the stated evaluation factors; the competitive range must be determined on the basis of cost or price and other factors stated in the solicitation.

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency was biased against protester in its evaluation of proposals is denied where protester does not show, and the record does not indicate, that evaluation of its proposal was unreasonable but instead merely speculates that the agency's knowledge of protester's offer of a lower rebate to the government prejudiced the objective evaluation of technical proposals.

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**Procurement**

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**Bid Protests**

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

Protest that agency improperly rejected protester's proposal as late is dismissed since record shows that agency intends to award on initial proposals and protester would not have been the low offeror even had its proposal been considered, thus causing the protester to lack the direct economic interest necessary to protest.

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**Procurement**

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**Sealed Bidding**

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

Bid which fails to contain a signature in block 20A of Standard Form (SF) 1442 may be accepted because a signature indicating the bidder's intent to be bound by the bid appears at block 30B of SF 1442.

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Authority

Bidder's failure to sign or affix a corporate seal to an otherwise proper bid bond may be waived when the bond is submitted with a signed bid.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of denial of protest against the sole-source award of a contract for ground troop protective vests is denied where one basis for request was available, but not submitted or argued during consideration of the initial protest, and other arguments on reconsideration are repetition of arguments previously made which do not provide any basis for reconsideration.



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**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Justification
- ■ ■ ■ Procedural defects

Protest against the proposed award of a sole-source, follow-on contract is sustained where agency relies on the authority of 10 U.S.C. § 2304(d)(1)(B) (1988) to award the contract, but agency's written justification and approval (J&A) is not reasonably based; the J&A provides no support for the agency's conclusion that a competitive award to a source other than the incumbent would likely result in either substantial duplication of cost to the government that would not be recovered through competition, or would cause delays in fulfilling the agency's needs.

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**B-244522, B-244522.2, October 24, 1991****91-2 CPD 368**

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Protest that 71-days was insufficient time for preparation of proposals is denied where solicitation is repurchase of recently defaulted contract, preparation period exceeded statutory minimum, and there is no indication period allowed precluded competition to the maximum extent practicable.

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**Procurement**

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**Bid Protests**

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

Protest alleging improprieties in solicitation as to contract type and delivery date provisions is dismissed as untimely where not filed with procuring agency or General Accounting Office prior to closing date for receipt of initial proposals.

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**Procurement**

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**Bid Protests**

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

Protest of apparent solicitation defect—agency's failure to set aside procurement for small disadvantaged business concerns—is dismissed as untimely where filed with General Accounting Office more than 10 working days after the protester received notice of denial of its agency-level protest.

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**Procurement**

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**Bid Protests**

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

Protest challenging agency's alleged modification of awardee's contract, as being outside the scope of the contract, is dismissed as untimely where protest, brought by firm which competed under the solicitation for that contract, was not filed within 10 working days of protester's receipt of written notification of agency's intention to have awardee perform the additional travel services under its current contract. Further, protester did not diligently pursue its basis of protest since it waited nearly 2 months to secure additional information and confirmation from the agency regarding the stated intended action—during which time protester had no reason to believe agency would reconsider its determination.

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**Procurement**

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**Contractor Qualification**

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

Protest challenging proposed awardee's compliance with the certificate of independent price determination clause is dismissed as it concerns a matter of responsibility, which the General Accounting Office does not generally review.

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**Procurement**

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**Bid Protests**

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

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Adequacy

Protest that agency improperly rejected bid as nonresponsive due to bid bond in inadequate amount (5 percent) where solicitation did not specify amount is dismissed as untimely; absence of required amount for bid bond is an apparent solicitation defect that was required to be protested prior to bid opening, and protester could not simply make assumption as to acceptable amount in lieu of protesting, and then seek relief when agency did not act in the manner it assumed.

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**Procurement**

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**Bid Protests**

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

Protest of agency's decision to request best and final offers (BAFO) and to split award among low bidders is dismissed as untimely where not filed prior to the closing date for receipt of BAFOs.

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**Procurement**

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**Bid Protests**

- Dismissal
- ■ Definition

Where protester does not specifically challenge agency's reasons for rejecting protester's proposal as technically unacceptable, protest of rejection is dismissed for failure to set forth a legally sufficient basis of protest as required by General Accounting Office Bid Protest Regulations.

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**Procurement**

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**Bid Protests**

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

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest of agency's rejection of proposal as technically unacceptable based on exceptions taken by protester in proposal to agency's stated requirements is dismissed as essentially an untimely challenge to solicitation requirements.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency abandoned the stated evaluation criteria is sustained where solicitation provided that technical factors were more important than cost, and record indicates that agency's

scoring practice resulted in award to the low-cost, technically acceptable offerors without properly assessing relative technical merit.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation errors**

#### **■ ■ ■ Evaluation criteria**

#### **■ ■ ■ ■ Application**

Contentions that agency improperly disregarded mandatory solicitation provisions limiting offerors to modified nondevelopmental items and requiring past production experience are denied where: (1) the agency accepts an item not previously produced but for which development is complete; and (2) the solicitation clause permitted the agency to consider past experience producing optics equipment of similar complexity to determine whether the offeror possessed the capacity to manufacture at the rate required in the solicitation.

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Protest timeliness**

#### **■ ■ ■ 10-day rule**

Argument that one awardee's price contained impermissible front-end loading is dismissed as untimely where the protester had sufficient information to raise this issue prior to filing its initial protest but did not raise the issue until submitting its comments on the agency report.

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**B-244884, October 25, 1991**

**91-2 CPD 376**

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## **Procurement**

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### **Bid Protests**

#### **■ Moot allegation**

#### **■ ■ GAO review**

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## **Procurement**

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### **Sealed Bidding**

#### **■ Invitations for bids**

#### **■ ■ Cancellation**

#### **■ ■ ■ Justification**

Protest that agency improperly rejected bid as non-responsive is rendered academic where agency properly determined that none of the offerors could meet IFB requirement that end item be manufactured or produced by a small business and canceled the solicitation.

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**B-244992, October 25, 1991**

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## **Procurement**

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### **Payment/Discharge**

#### **■ Payment procedures**

#### **■ ■ Contracts**

#### **■ ■ ■ Assignment**

#### **■ ■ ■ ■ Financial institutions**

Leasing company that purchased refuse-collection equipment from its parent corporation for lease/purchase agreements with a refuse-collection company is not a financing institution under the Assignment of Claims Act for purposes of assignment of the proceeds of the refuse-collection

firm's government contract since the record shows that the prospective assignee in fact is primarily a leasing company and not a financing institution. *Alanthus Peripherals, Inc.*, 54 Comp. Gen. 80 (1974), distinguished.

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**B-246050, October 25, 1991**

**91-2 CPD 377**

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**Procurement**

**Bid Protests**

■ Allegation substantiation

■ ■ Lacking

■ ■ ■ GAO review

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**Procurement**

**Competitive Negotiation**

■ Discussion

■ ■ Determination criteria

Where solicitation provides for award to low, technically acceptable offeror without discussions, allegations that agency did not conduct discussions or perform a cost-technical trade-off do not state a valid basis for protest.

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**Procurement**

**Bid Protests**

■ GAO procedures

■ ■ Protest timeliness

■ ■ ■ 10-day rule

Challenges to solicitation award criteria and statement of requirements are untimely when not raised prior to closing date for receipt of proposals.

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**Procurement**

**Contractor Qualification**

■ Responsibility

■ ■ Contracting officer findings

■ ■ ■ Affirmative determination

■ ■ ■ ■ GAO review

Absent showing of fraud, bad faith, or misapplication of definitive responsibility criteria, General Accounting Office will not review protest against an agency's affirmative determination of an awardee's responsibility.

**Procurement****Sealed Bidding**

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

**Procurement****Sealed Bidding**

- Invitations for bids
- ■ Terms
- ■ ■ Options

Protest alleging that solicitation did not provide for evaluation of option prices, and that agency therefore improperly evaluated option prices in determining low bid, is without a valid basis where solicitation clearly provided that option would be evaluated.

**Procurement****Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Reconsideration request that seeks modification of remedy in prior decision sustaining protest is denied. Although protester argues that agency and awardee should have informed General Accounting Office that only 4,042 of 61,000 watches had been delivered under improperly awarded contract, since the decision not to terminate the contract also was supported by the urgency of the requirement and the cost of termination, the actual extent of deliveries was not itself determinative.

**Procurement****Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where agency submits for the first time in its reconsideration information which was available to the agency at the time of the initial protest, but was not submitted. In any event, information does not warrant reversal of initial decision.

**Procurement****Sealed Bidding**

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

Agency could not properly disregard unsolicited descriptive literature in a sealed bid procurement, where the literature included with the bid referenced the solicitation number and was addressed to the contracting activity; since the specifications contained in the unsolicited literature reason-

ably raised a question whether the offered product complied with a material solicitation requirement, the bid was properly rejected as nonresponsive.

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**B-244649, October 28, 1991**

**91-2 CPD 382**

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**Procurement**

**Noncompetitive Negotiation**

■ **Use**

■ ■ **Justification**

■ ■ ■ **Industrial mobilization bases**

Protest is denied where agency reasonably justified limiting competition under solicitation for grenade metal parts to mobilization base producers without a current fiscal year production contract.

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**B-244662, October 28, 1991**

**91-2 CPD 383**

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**Procurement**

**Small Purchase Method**

■ **Quotations**

■ ■ **Evaluation**

■ ■ ■ **Technical acceptability**

Agency reasonably evaluated offer as technically unacceptable where protester failed to include information required by the solicitation to evaluate offerors' experience, knowledge, and ability to perform the services being acquired under the solicitation.

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**B-244695, October 28, 1991**

**91-2 CPD 384**

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**Procurement**

**Competitive Negotiation**

■ **Offers**

■ ■ **Evaluation**

■ ■ ■ **Technical acceptability**

The determination of the merits of an offeror's technical proposal is the responsibility of the procuring agency and will be questioned only where the protester has demonstrated that it was unreasonable.

---

**Procurement**

**Competitive Negotiation**

■ **Offers**

■ ■ **Evaluation**

■ ■ ■ **Adjectival ratings**

Agency's use of broad adjectival scoring scheme to evaluate technical proposals, supported by narrative assessment of proposals' advantages and disadvantages, was proper where source selection official was able to gain a clear understanding of the relative merits of proposals.

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## **Procurement**

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### **Competitive Negotiation**

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

Where solicitation does not explicitly indicate the relative importance of price and technical factors, it must be presumed that each will be considered approximately equal in weight.

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## **Procurement**

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### **Competitive Negotiation**

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

Where selection official reasonably regards technical proposals as essentially equal, price properly may become the determinative selection factor.

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**B-242734.2, October 29, 1991**

**91-2 CPD 386**

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## **Procurement**

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### **Contractor Qualification**

- Approved sources
- ■ Testing
- ■ ■ Costs
- ■ ■ ■ Liability

Agency reasonably determined that the government would not absorb the costs of source approval testing for a small business where possible savings resulting from the increased competition would not be amortized over a reasonable period of time because the costs of testing may exceed \$100,000, while the potential annual savings from increased competition is reasonably estimated to be less than \$9,000.

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**B-242836.4, October 29, 1991**

**91-2 CPD 387**

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## **Procurement**

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### **Competitive Negotiation**

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

Agency's determination that protester's proposal was technically unacceptable was reasonable where protester expressly acknowledges validity of agency evaluation and where, following discussion and submission of revised proposals, protester's proposal fails to demonstrate adequate understanding of work to be performed.



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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions is denied where the protester was reasonably advised of the general area of deficiencies in its proposal and was given an opportunity to cure those deficiencies.

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## **Procurement**

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### **Bid Protests**

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

Protest alleging agency bias is denied where protester fails to provide specific evidence of malicious intent and the agency record reasonably supports the contracting agency's technical judgments.

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**B-243382.3, October 29, 1991**

**91-2 CPD 388**

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## **Procurement**

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### **Noncompetitive Negotiation**

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

Award for ship-to-ship refueling hoses based on limited competition pursuant to 10 U.S.C. § 2304(c)(2) (1988) is unobjectionable where, based on urgent wartime requirement, agency reasonably determined that only awardee—the only source eligible for waiver of first article testing (FAT), based on having previously completed FAT for same item and having supplied acceptable item—could supply the item within the required time frame.

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**B-243702.2, October 29, 1991**

**91-2 CPD 389**

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## **Procurement**

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### **Competitive Negotiation**

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

Award to offeror submitting higher-cost, technically superior proposal under request for proposals which gave greater weight to technical merit compared with cost is justified where contracting agency reasonably determined that acceptance of the proposal was worth the higher cost.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Discussion**

#### **■ ■ Adequacy**

#### **■ ■ ■ Criteria**

Contracting agency satisfied the requirement for meaningful discussions of agency's concern related to methods development where a discussion request addressed to the protester asked the firm to further demonstrate its understanding of the requirements of the statement of work, especially methods development, thereby leading the firm into the area of its proposal needing amplification.

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**B-244555, October 29, 1991**

**91-2 CPD 390**

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## **Procurement**

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### **Contract Management**

#### **■ Contract administration**

#### **■ ■ Options**

#### **■ ■ ■ Use**

#### **■ ■ ■ ■ GAO review**

Agency properly exercised contract option with the firm selected by a foreign government under foreign military sales program where the designated source was changed as the result of a limited competitive selection process which did not involve any improper agency action.

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**B-244559, October 29, 1991**

**91-2 CPD 391**

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## **Procurement**

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### **Contract Types**

#### **■ Fixed-price contracts**

#### **■ ■ Use**

#### **■ ■ ■ Administrative determination**

Agency reasonably selected a firm, fixed-price type contract with fixed-price production options for the replacement of three fuel savings advisory components for aircraft, since the solicitation does not require the development of new technology and circumscribes risk within an acceptable degree of certainty.

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## **Procurement**

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### **Contract Types**

#### **■ Supply contracts**

#### **■ ■ Options**

#### **■ ■ ■ Quantities**

#### **■ ■ ■ ■ Statutory restrictions**

Supply contract that contains production quantities for 5 option years following a 42-month basic period for first article testing and approval does not violate regulation establishing that the total of the basic and option quantities for supply contracts shall not exceed the requirement for 5 years without proper authorization under agency procedures.

---

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Responsibility
- ■ ■ ■ Negative determination

Protest of negative responsibility determination need not be filed within 10 working days of being notified of a negative pre-award survey, on which the nonresponsibility determination was based, in order to be considered timely under the Bid Protest Regulations, since the contracting officer is not bound by the pre-award survey in making his responsibility determination.

---

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Prior contract performance

Contracting officer reasonably based the nonresponsibility determination upon the protester's recent delinquent contract performance, notwithstanding the protester's contention that the delinquencies were excusable.

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**Procurement**

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**Contractor Qualification**

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

The General Accounting Office will not review a procuring agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith, or the misapplication of definitive responsibility criteria.

---

**Procurement**

---

**Sealed Bidding**

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

Bidder's failure to enter certifier's name in the first paragraph of the Certificate of Procurement Integrity form does not render its bid nonresponsive where the certifier's typed name and signature were properly inserted at the bottom of the certificate.

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## **Procurement**

---

### **Sealed Bidding**

- Responsibility
- ■ Certification
- ■ ■ Identification

Bidder's failure to enter the solicitation number on Certificate of Procurement Integrity form does not render its bid nonresponsive where the completed certificate was physically submitted with the bid and signed by the same individual as had signed the bid.

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**B-244690, October 29, 1991**

**91-2 CPD 395**

## **Procurement**

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### **Competitive Negotiation**

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

## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where an offeror fails to furnish sufficient information requested by the solicitation in its proposal to determine technical acceptability, an agency can reasonably conclude that the offer is technically unacceptable and exclude it from the competitive range.

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**B-244699, October 29, 1991**

**91-2 CPD 394**

## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Ambiguous prices

## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Clerical errors

Where a bid contains a discrepancy between the arithmetic total of bid items and total submitted for those items, so that the intended bid cannot be determined, it is generally improper to treat the mistake as an apparent clerical error.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Evaluation
- ■ ■ Prices

Where invitation for bids contains two bid items and two additive items and at the time of bid opening sufficient funds are available for award of the bid items and the additive items, low bid must be determined on the basis of the total bid price, including the additive items.

---

**Procurement**

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**Sealed Bidding**

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

Procuring agency properly canceled an invitation for bids after bid opening where the solicitation—whose award amount was expected to exceed \$100,000—failed to include mandatory requirement for Certificate of Procurement Integrity clause and certificate form.

---

**Procurement**

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**Sealed Bidding**

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

Protest that proposed awardee's bid is unbalanced based on an allegedly overstated price for a single item is dismissed because protester's comparison of its competitor's allegedly overstated price for the item with its own price for the item does not by itself establish price enhancement or that its competitor's bid is unbalanced.

---

**Procurement**

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**Specifications**

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

Solicitation is not deficient for failure to include detailed ordering data from prior contracts where information included was all that was reasonably available and the solicitation contained provisions for award on an item-by-item basis and a price premium for small orders which limited the price risk for offerors.

---

**Procurement**

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**Bid Protests**

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

Agency's opening of bids without acting on agency-level protest constituted constructive notice to protester of adverse action, notwithstanding protester's assumption that agency would not proceed with bid opening until protest was resolved; protest to General Accounting Office of agency's subsequent adverse decision, filed more than 10 days after bid opening, therefore properly was dismissed as untimely.

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**B-245819.2, October 29, 1991****91-2 CPD 400**

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**Procurement**

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**Sealed Bidding**

- All-or-none bids
- ■ Acceptance

An all-or-none bid must be considered for award of all line items where the invitation for bids does not expressly prohibit such bids and the all-or-none bid represents the lowest cost to the government.

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**B-245914, October 29, 1991****91-2 CPD 401**

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bid was properly rejected as nonresponsive where bidder submitted an unsigned Certificate of Procurement Integrity with its bid submissions, even though the bidder had completed various provisions of the certificate.

---

**B-242902.3, October 30, 1991****91-2 CPD 402**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied when based in part on an argument that could have been but was not raised by protester in the course of the original protest and where protester fails to show any error of fact or law that would warrant reversal or modification of prior decision.

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**B-243037.3, October 30, 1991****91-2 CPD 403**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision denying protest against cancellation of a negotiated procurement after proposals were received is denied where the requester does not present any evidence that its offered product would meet the minimum requirement expressed in the solicitation.

---

**B-244583, October 30, 1991****91-2 CPD 404**

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**Procurement**

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**Competitive Negotiation**

- Competitive advantage
- ■ Non-prejudicial allegation

Protest against the award of a contract for conference arrangements is denied where the record does not support protester's assertion that the awardee engaged in improper business practices, with the assistance of the agency, designed to influence the competition.

---

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

*Protest is dismissed where, contrary to protester's factually erroneous belief, protester did not submit the lowest evaluated price for oil distribution services.*

---

**Procurement**

---

**Competitive Negotiation**

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

*Contracting agency's decision to shorten the time allotted for offerors to perform test that will count as part of technical evaluation is proper where actual contract performance will involve meeting strict deadlines and test reasonably allows offerors to demonstrate their technical ability to perform the work required under the contract.*

---

**Procurement**

---

**Sealed Bidding**

- Invitations for bids
- ■ Government estimates
- ■ ■ Defects
- ■ ■ ■ Allegation substantiation

---

**Procurement**

---

**Sealed Bidding**

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

*Protest alleging that solicitation estimated quantities were inaccurate and resulted in materially unbalanced bids is denied where record supports reasonableness of agency's estimates and contains no evidence of overstated prices necessary to support allegation of unbalanced bidding.*

---

**Procurement**

---

**Bid Protests**

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

*Protest filed almost 5 weeks after protester was notified of rejection of its proposal for six of seven items is untimely since protester failed to diligently pursue information disclosing the basis for the rejection.*

---

**Procurement**

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**Competitive Negotiation**

- Oral solicitation
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Propriety

Protest that firm failed to submit timely proposal because agency official allegedly orally informed protester prior to closing that solicitation was being canceled does not state a valid basis for protest because oral advice is not binding on the government, and protester assumed the risk of relying on such advice.

---

**Procurement**

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**Competitive Negotiation**

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

Protest based upon alleged failure of offeror to receive solicitation amendments extending the original closing date for receipt of proposals is dismissed, where there is no allegation that contracting agency failed in its obligation to use a reasonable method to disseminate solicitation documents to prospective offerors.

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**Procurement**

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**Contractor Qualification**

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

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

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Authority

Evidence of the authority of a surety's agent to sign a bid bond on behalf of the surety must be furnished with the bid prior to bid opening, and the failure to furnish it renders the bid nonresponsive.



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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Where protest was dismissed as untimely, and agency subsequently takes corrective action while protester's request for reconsideration of dismissal is pending, protester is not entitled to recover protest costs where record shows that protest was in fact untimely filed since prerequisite to recovery of such costs is a clearly meritorious protest pending before the General Accounting Office at the time the procuring agency takes corrective action.

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**B-244707, B-244707.2, October 31, 1991**

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**Procurement**

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**Competitive Negotiation**

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

Award was properly made to the low cost offeror in a negotiated procurement where the procuring agency reasonably determined that the offers were technically equal.

---

**Procurement**

---

**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

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

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**Procurement**

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**Competitive Negotiation**

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

The composition of technical evaluation panels is within the discretion of the contracting agency and, as such, will not be reviewed by the General Accounting Office absent a showing of possible bad faith, fraud, conflict of interest or actual bias on the part of evaluators.

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**Procurement**

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**Bid Protests**

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

Protest is untimely when filed more than 10 working days after basis of protest was known.

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**Procurement**

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**Socio-Economic Policies**

- Labor standards
- ■ Service contracts
- ■ ■ Wage rates
- ■ ■ ■ Errors

Since the evaluation of proposals must be in accordance with the solicitation's evaluation provisions, agency was required to apply evaluation preference for small disadvantaged businesses (SDB) without exception for qualifying country offers since the SDB evaluation preference clause in the solicitation did not include an exception for qualifying country offers.

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**Procurement**

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**Bid Protests****■ Definition**

Protester fails to state a valid basis of protest where despite its contentions that the awardee's low bid was nonresponsive, protester fails to identify anything on the face of the low bid that limited, reduced, or modified the obligation of the awardee to perform in accordance with the terms of the solicitation.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Minor deviations
- ■ ■ Acceptability

Proposed awardee's failure to date its certificate of procurement integrity is properly waivable as a minor informality where the certification's applicability to the particular bid is clear.

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