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**Digests of Decisions
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United States**

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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, Pub. L. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by the file number and date, e.g., B-229329.2, Sept. 29, 1989. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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Appropriations/Financial Management

B-244113, November 1, 1991

Appropriations/Financial Management

Accountable Officers

■ Relief

■ ■ Physical losses

■ ■ ■ Embezzlement

Internal Revenue Service official accountable for a loss of tax collections is relieved from liability under 31 U.S.C. § 3527(a). The record indicates that the loss was directly attributable to embezzlement by a former cashier and occurred without fault or negligence on the part of the accountable officer.

B-243670, November 5, 1991***

Appropriations/Financial Management

Claims Against Government

■ Government liability

■ ■ Property damages

A property owner claims that flooding caused by a hydroelectric plant constructed as part of an Army Corps of Engineers water redirection project has destroyed the value of his land. The owner has not established a claim under the Fifth Amendment's "taking" clause because the project was a legitimate exercise of the government's dominant servitude over navigable waterways under the Commerce Clause. The government's dominant servitude applies to the entire area below the ordinary high water mark of the waterway, within which this land lies, and the hydroelectric plant is an appropriate collateral project to the water redirection.

B-245616, November 8, 1991

Appropriations/Financial Management

Claims Against Government

■ Interest

GAO declines to review an interest provision in a settlement agreement arising from an employment discrimination complaint because the interest provision is currently under reconsideration by the Equal Employment Opportunity Commission.

B-245586, November 12, 1991

Appropriations/Financial Management

Accountable Officers

■ **Certifying officers**

■ ■ **Relief**

■ ■ ■ **Illegal/improper payments**

■ ■ ■ ■ **Overpayments**

Relief is granted Department of the Treasury disbursing official under 31 U.S.C. § 3527 for a duplicate check overpayment. The overpayment occurred after 392,000 checks were reissued because of improper processing. One original check was delivered to the payee rather than shredded. The overpayment was not the result of bad faith, an adequate system of procedures and controls was maintained, and diligent collection actions were taken.

B-233997.3, November 25, 1991

Appropriations/Financial Management

Accountable Officers

■ **Cashiers**

■ ■ **Relief**

■ ■ ■ **Illegal/improper payments**

■ ■ ■ ■ **Forgeries**

Relief is granted U.S. Army cashier under 31 U.S.C. § 3527(c) for an improper payment resulting from the payee's forged endorsement on a check. The cashier complied with existing procedures and the loss resulted from a criminal activity over which the cashier had no control.

Civilian Personnel

B-245015, November 4, 1991***

Civilian Personnel

Relocation

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

A transferred employee filed a claim for temporary quarters subsistence expenses. The daily per meal cost claimed for himself, his wife, and 21-month-old child was questioned by the agency as not reasonable because the amounts stated were repetitious, excessive and could not be substantiated. Where the cost of home prepared meals cannot be substantiated, the agency may establish reasonableness of home meal costs by using statistics and other information gathered by government agencies regarding living costs in the relevant area, including the Department of Agriculture Human Nutrition Information Service food cost schedule, and may reduce the claim accordingly.

B-244351, November 7, 1991

Civilian Personnel

Relocation

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

While on a househunting trip, a transferred employee purchased a residence at his new duty station which was not scheduled for settlement and occupancy until 14 days beyond his authorized 40-day period for temporary quarters subsistence expenses (TQSE). The agency denied his request for reimbursement for the additional 14 days since the employee knew when he contracted to purchase the house that he would not go to settlement and move into the house until after his TQSE period had ended. Under the Federal Travel Regulation, an agency has broad discretion to limit or extend the period for occupancy of temporary quarters, especially where the employee has taken a househunting trip. We are unable to conclude that the agency acted arbitrarily or abused its discretion in denying the requested 14-day extension of TQSE.

B-245616, November 8, 1991

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Interest

GAO declines to review an interest provision in a settlement agreement arising from an employment discrimination complaint because the interest provision is currently under reconsideration by the Equal Employment Opportunity Commission.

B-244551, November 18, 1991

Civilian Personnel

Relocation

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee's cost of installing a radon gas control system incident to the sale of his residence in connection with his transfer cannot be reimbursed because it is a home maintenance expense precluded from reimbursement under 41 U.S.C. § 302-6.2(d)(2)(iv) (1990).

B-244508, November 26, 1991

Civilian Personnel

Travel

- Advances
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Employee received a travel advance in excess of his allowable expenses. His debt does not constitute an erroneous payment which might be subject to waiver consideration under 5 U.S.C. § 5584 (1988), since he did not receive a travel advance to cover erroneously authorized allowances, and he did not spend the advance in detrimental reliance on the erroneous authorization.

B-244589, November 26, 1991

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Property titles

A transferred employee purchased an apartment at his new duty station with his nondependent father and claims real estate expense reimbursement based on his 99 percent ownership interest in the property conveyed by an apartment deed. His father was conveyed a 1 percent ownership interest in the apartment. Since title to the property was in both of their names as tenants in common and the recorded deed of title specifically designated their respective ownership interests of a 99 percent undivided interest and a 1 percent undivided interest respectively, the employee may be reimbursed 99 percent of the total allowable real estate expenses incurred incident to the purchase of the apartment in accordance with the provisions of the apartment deed.

B-243712, November 27, 1991***

Civilian Personnel

Travel

- Overseas travel
- ■ Indirect travel
- ■ ■ Spouses
- ■ ■ ■ Reimbursement

The spouse of an AID employee stationed overseas, performed indirect travel during December 1988 and January 1989 to an authorized alternative rest and recuperation point in lieu of travel to the primary designated relief area. The regulations then in effect governing rest and recuperation travel (3 FAM §§ 698.7a and 698.10-3) authorized travel to an alternative point not to exceed the

cost of travel to the primary relief area. Since the agency's Committee on Exceptions found that nothing in the regulations prohibited indirect travel to the alternative point, and since the spouse's expenses actually incurred did not exceed the cost of travel to the primary relief area, the cost of her indirect travel is reimbursable.

Military Personnel

B-243745, November 6, 1991

Military Personnel

Relocation

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

Due to a change in travel regulations which neither the Air Force nor the member were aware of when he made change of station moved which made boat shipment reimbursable as household goods, the member did not obtain authorization under the Do-It-Yourself (DITY) move program prior to transporting the board. Under AFR 75-25 para. 11-3(b), such authorization is required before incentive under DITY program is payable and therefore claim is denied. Actual expenses may be reimbursed under DITY program where prior authorization is not obtained. GAO will not object to payment of actual expenses if claimant can reconstruct them to the satisfaction of the Air Force.

B-244882, November 15, 1991

Military Personnel

Pay

- Overpayments
- ■ Direct payroll deposit
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A former member who was overpaid by direct deposit on two occasions subsequent to his separation, who questioned the overpayment when he examined his bank statement but was advised to wait until he heard from the Navy Finance Center, may not have the claim against him waived, based on the fact that repayment will cause financial hardship.

B-239348.2, November 18, 1991

Military Personnel

Pay

- Retirement pay
- ■ Amount determination
- ■ ■ Post-retirement active duty

A military member retired in 1960. During 4 years in the Army Reserve, he received retired pay but waived it periodically to receive reserve pay. He is entitled to include the number of days of qualifying active duty he served in the Army Reserve from the date of his retirement until September 30, 1963, for computation of the multiplier factor in his retired pay.

Procurement

B-242644.4, November 1, 1991

91-2 CPD 417

Procurement

Contractor Qualification

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

Protest is denied where there is no support in the record for the allegation that an Air Force sergeant who served as a technical consultant on the protested solicitation and who was hired as the awardee's project manager upon retirement from the government improperly influenced the contracting officer's determination of the awardee's responsibility or the award decision.

B-244475.5, November 1, 1991

91-2 CPD 418

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office (GAO) affirms dismissal of protest for failure to file comments within 10 days of the agency report due date, where protester argues that it lacks experience and understanding of the bid protest process and did not recognize agency report as such, since GAO had in writing advised protester of report due date and its obligation to notify GAO if it did not receive report by due date.

B-244614, November 1, 1991

91-2 CPD 419

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that contracting agency improperly evaluated protester's proposal is denied where protester's proposal failed to meet all of the solicitation requirements.

Procurement

Bid Protests

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

Protest challenging solicitation specifications is untimely where alleged impropriety was apparent from the face of the solicitation prior to the time set for submission of proposals and protest was not filed until after that time.

Procurement

Competitive Negotiation

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

Protester's creation of an alternative evaluation system which was not contemplated by the RFP and which is inconsistent with the relative importance of evaluation factors established in the RFP provides no basis for questioning the evaluation scheme applied by the agency.

B-244638, November 1, 1991

91-2 CPD 420

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Contracting agency is not required to conduct discussions with protester concerning its proposed labor escalation rates simply because such discussions were conducted with the awardee. The protester's proposed rates had been determined to be reasonable, while the awardee (but not the protester) had been provided by the agency during previous discussions with erroneous information concerning these rates, which appeared to have affected the rates which the awardee subsequently proposed.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Technical evaluation of awardee's second best and final offer was reasonable where the agency increased the awardee's technical score primarily because it obtained a firm commitment from its proposed project manager to accept that position, where the agency had previously downgraded the proposal because it failed to include such a commitment.

B-245244, November 1, 1991

91-2 CPD 421

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Protest against agency's cancellation of solicitation line items for abrasive grain in order to create new purchase descriptions for newly manufactured and reprocessed grain is dismissed because protester's bid under the solicitation was properly rejected as nonresponsive and new solicitation with altered purchase description has not yet been issued.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

General Accounting Office affirms its dismissal of protest against agency's failure to issue an amendment to solicitation where protester has not shown that it was prejudiced by the agency's allegedly improper action.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision denying protest against sole-source acquisition is denied where protester merely disagrees with our conclusions and complains that our Office should have conducted an independent investigation of the technical matters alleged in the protest, without showing any error of fact or law in the decision.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest challenging agency's technical evaluation is sustained where evaluation record, consisting solely of evaluation worksheets with very few substantive comments, does not support agency's substantial reductions to protester's technical score under heavily weighted evaluation factors.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest alleging that agency failed to conduct meaningful discussions with protester is sustained where agency's discussion letter, which merely reiterated solicitation's proposal preparation instructions, did not point out specific perceived deficiencies and misled protester into addressing areas that were not of concern to evaluators.

Procurement

Bid Protests

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

The General Accounting Office will consider a protest of a procurement of punch list items for the account of a construction contractor under the inspection clause, notwithstanding a pending claim by the contractor in the United States Claims Court concerning the propriety of the withholding of moneys for the punch list work and the propriety of the agency's exercise of its rights under the inspection clause.

Procurement

Competitive Negotiation

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

Construction contractor's protest that agency improperly failed to solicit it for punch list work under a solicitation issued, for the contractor's account, pursuant to the inspection clause is denied, where the record indicates that the contractor evidenced to the agency no interest in performing or submitting a proposal for the work.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Affiliates
- ■ ■ ■ Notification

Protest by an affiliate of a construction contractor of the agency's failure to solicit it for the procurement, for the contractor's account, of punch list work under the inspection clause is sustained, where the affiliate expressly requested the solicitation and an opportunity to compete, and the agency has provided no legitimate reason why the affiliate should not have been permitted to compete.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protester that would not be eligible for contract award in the event its protest were sustained is not an interested party to maintain a protest.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Clerical errors

A bid must be rejected, even though responsive on its face, where, despite bidder's denial, it is apparent that a mistake has been made.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Cancellation of a solicitation is proper when no award can be made under the invitation for bids because no eligible bidder exists due to the rejection of the low bid submitted and the expiration of the remaining bids.

Procurement

Contractor Qualification

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

Where the contracting officer determined the prospective awardee to be a responsible contractor based on a pre-award survey and where there is no showing that this determination was made in bad faith, there is no basis to object to the agency's affirmative determination of the prospective awardee's responsibility.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Rejection
- ■ ■ Cost reduction
- ■ ■ ■ Effects

Procurement

Competitive Negotiation

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

There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge the low offeror's failure to explain a reduction in its best and final offer price where the agency increased the offeror's risk rating for failing to explain its reduction in some areas and nevertheless found that the low-priced, responsible offeror understood the solicitation requirements and proposed an approach that provided an acceptable risk of performance, notwithstanding its low proposed price.

Procurement

Bid Protests

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

Protest that agency was biased in favor of awardee is denied where the protester gives no persuasive support or specific details for its allegation of bias and where there is no corroborating evidence that supports the protester's speculative claim.

B-240969.2, November 6, 1991

91-2 CPD 430

Procurement

Sealed Bidding

- Invitations for bids
- ■ Interpretation
- ■ ■ Terms

Protester's low bid on a guard services procurement that was based on the protester's mistaken interpretation of the required guard wage rates was properly rejected since the protester's interpretation of the solicitation is unreasonable and the mistake is not one which may be corrected through the mistake in bid procedures.

B-244633, November 6, 1991

91-2 CPD 431

Procurement

Bid Protests

- GAO authority

The General Accounting Office has jurisdiction to decide a protest of an award under a tender of service for the transportation of motor vehicles.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Where a tender of service for transportation services does not specify whether single or multiple rates can be utilized in tenders, an award to a tenderer who submitted a multiple rate tender will not be disturbed where that tenderer would be in line for award under a worst case evaluation, assuming the highest rates of its tender, since the protester was not prejudiced by the tender of service's lack of specificity as what rates would be acceptable.

B-244680, November 6, 1991

91-2 CPD 432

Procurement

Competitive Negotiation

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

Protest is sustained where contracting agency made awards based on initial proposals to other than the lowest overall cost offeror, who was technically acceptable.

Procurement

Bid Protests**■ GAO authority**

Dismissal of protest concerning agency's actions under the Section 8(a) program is affirmed since the General Accounting Office has no jurisdiction to review Small Business Administration's stewardship of the disadvantaged small business contracting program, absent circumstances not present here.

Procurement

Contractor Qualification**■ Responsibility****■ ■ Contracting officer findings****■ ■ ■ Bad faith****■ ■ ■ ■ Allegation substantiation**

Allegation that agency acted in bad faith by not giving the protester an opportunity to cure its negative responsibility determination is dismissed since there is no requirement that the agency afford an offeror such an opportunity.

B-244686, et al., November 7, 1991***

Procurement

Special Procurement Methods/Categories**■ Federal supply schedule****■ ■ Purchases****■ ■ ■ Misclassification****■ ■ ■ ■ Cargo containers**

Agency reasonably classified general purpose, general cargo containers within a Federal Supply Classification group subject to the Trade Agreements Act; such containers are not war materials or purchases indispensable for national security or national defense purposes exempt from the Act's application.

Procurement

Socio-Economic Policies**■ Preferred products/services****■ ■ Domestic products****■ ■ ■ Waiver****■ ■ ■ ■ Administrative discretion**

Agency reasonably exercised its discretion not to process a "national interest" waiver to the provisions of the Trade Agreements Act, where the agency received acceptable offers of domestic and eligible products.

Procurement

Competitive Negotiation

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

Agency properly determined proposals offering nondesignated country end products (Korea and Poland, respectively) on a procurement, for which the Trade Agreements Act is applicable, were unacceptable and eliminated them from the competitive range.

Procurement

Bid Protests

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

Where agency properly eliminated protester from the competitive range, protester is not an interested party to protest the award to another offeror.

B-244782, November 7, 1991

91-2 CPD 435

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Wage rates

Allegation that agency misled protester during discussions by questioning its low wage rates, which resulted in the protester raising the rates to its prejudice, is denied where the awardee's direct wage rates were, in fact, higher than protester's.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Wage rates
- ■ ■ ■ Overtime

Allegation that awardee proposed significant amounts of prohibited uncompensated overtime is denied where solicitation does not prohibit offering uncompensated overtime, and if the awardee had structured its workweek to include significant amounts of uncompensated overtime its proposal would have been downgraded for offering low wage rates.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Allegation substantiation

Allegation that awardee's proposal is unbalanced because its price decreases significantly for the option years is denied where awardee's price is lower than offeror's for base period and for option years.

B-245173, November 7, 1991

91-2 CPD 436

Procurement

Bid Protests

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

Protest filed with General Accounting Office more than 10 working days after the protester should have been on notice of the basis of its protest from a written notification of award is dismissed as untimely.

B-245183, November 7, 1991

91-2 CPD 437

Procurement

Bid Protests

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

Protest must be filed with either the agency or the General Accounting Office no later than 10 working days after protester is orally notified of basis of rejection of its proposal.

B-244570.2, November 8, 1991

91-2 CPD 439

Procurement

Bid Protests

- Dismissal

Procurement

Bid procedures

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

Protest of contract award on the basis that awardee's price was "ridiculously low" is dismissed since an allegation that an awardee submitted an unreasonably low price does not form a valid basis for protest; allegation that protester has more experience than the awardee is untimely because protester waited more than 10 working days after being notified that another offeror had been selected as the highest rated proposer before filing protest.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed since protest of defective specifications must be filed prior to bid opening, and protester, despite having sufficient time to do so, did not file protest until after bids were opened.

B-246112, November 8, 1991**91-2 CPD 441**

Procurement

Sealed Bidding

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

Bid modification submitted by facsimile transmission in response to an invitation for bids that provided that facsimile bids, modifications, or withdrawals would not be considered was properly rejected by the agency.

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Rejection
- ■ ■ ■ Propriety

An agency's reasons for rejection of an attempted bid modification, stated in response to the protester's agency-level protest, does not estop the agency from rejecting the bid modification for other, legitimate reasons.

B-246346, November 8, 1991**91-2 CPD 442**

Procurement

Bid Protests

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

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

Procurement

Sealed Bidding**■ Bids****■ ■ Responsiveness****■ ■ ■ Acceptance time periods****■ ■ ■ ■ Deviation**

Rejection of bid on basis that bidder offered an extension period of shorter duration than requested and thereafter offered additional short extensions was proper because it is unfair to permit a bidder to limit its risk of increased performance costs and thereafter extend at its option while others face that risk by complying in full with the agency's request. Prior case which permitted multiple bid extensions of shorter duration than requested is overruled.

Procurement

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

Protest issue filed 7 weeks after award challenging responsiveness of awardee's bid based on information obtained in agency report in response to other protest issue is dismissed as untimely because protester failed to diligently pursue information.

Procurement

Competitive Negotiation**■ Contract awards****■ ■ Administrative discretion****■ ■ ■ Cost/technical tradeoffs****■ ■ ■ ■ Cost savings**

Agency properly awarded contract on the basis of the low cost, technically acceptable proposal where record does not support protester's allegations that awardee's proposal failed to satisfy certain solicitation specifications.

Procurement

Competitive Negotiation**■ Contract awards****■ ■ Award procedures****■ ■ ■ Procedural defects**

Procurement

Contractor Qualification**■ Responsibility****■ ■ Financial capacity****■ ■ ■ Contractors**

Award decision that significantly relied on the awardee's relative financial stability—a specific request for proposals (RFP) evaluation factor—is not reasonable and reflects unfair treatment of offerors, where the decision was based on financial information submitted by the awardee, that was

unrelated to the awardee's capabilities and which did not comply with the RFP requirement to submit audited financial statements, and where one offeror's financial stability was significantly downgraded because its compliance with the requirement subjected it to a more critical review and another offeror's financial stability was downgraded because of its failure to submit audited statements.

B-244714, November 12, 1991

91-2 CPD 447

Procurement

Contractor Qualification

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

Agency reasonably found the protester nonresponsible on solicitation for an indefinite-quantity construction contract where the firm has no current contract of this type, the firm's past experience did not establish that it could successfully perform a contract of this type and magnitude with its own resources, and the firm's other contract work is not readily transferable; notwithstanding the fact that, after the negative preaward survey, the protester submitted letters from subcontractors indicating a willingness to work for the protester if the protester received award, the agency reasonably found this arrangement insufficient since the protester expressly retained the right to perform the entire contract with its own resources.

B-244794, November 12, 1991

91-2 CPD 448

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Organizational experience

Protest against an alleged failure to evaluate private construction experience consistent with stated evaluation factors is denied where solicitation factors relating to experience placed principal emphasis on government construction experience.

B-245237, B-245238, November 12, 1991

91-2 CPD 449

Procurement

Bid Protests

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

Protest challenging the two lower bidders' compliance with the certificate of independent price determination clause, filed in our Office more than 10 months after protest was filed with the contracting agency, is dismissed as untimely where the protester failed to diligently pursue its agency-level protest.

Procurement

Bid Protests

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

Third low bidder is not an interested party to challenge cancellation of invitation for bids where its objection to the eligibility of the low bidder for award is untimely and thus it would not be in line for award if its protest was sustained.

B-245490, November 12, 1991

91-2 CPD 450

Procurement

Bid Protests

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

Protest that agency allowed insufficient time for submission of best and final offers after issuance of a material amendment to the solicitation is dismissed as untimely where the protest was not filed before the due date for receipt of best and final offers.

B-245545.2, November 12, 1991

91-2 CPD 451

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to protest, the agency took corrective action by awarding the contract at issue to the protester, approximately 1 month after the protest was filed.

B-244710, November 13, 1991

91-2 CPD 452

Procurement

Contract Types

- Fixed-price contracts
- ■ Equitable adjustments

Procurement

Sealed Bidding

- Invitations for bids
- ■ Defects
- ■ ■ Quantity estimates
- ■ ■ ■ Equitable adjustments

Protest is sustained where fixed-price solicitation for construction services did not include a clause for equitable adjustments for ordered amounts varying from estimated amounts, as required by regulation.

Procurement

Competitive Negotiation

- Offers
- ■ Additional information
- ■ ■ Late submission
- ■ ■ ■ Facsimile

Offeror bears responsibility for conveying its offer, including source control drawings required to evaluate proposed alternate, to the designated government office on time; where drawings were allegedly transmitted by telefacsimile, but agency denies receipt and there is no proof of receipt, offeror bears risk of nonreceipt.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Contracting agency reasonably evaluated protester's past performance as marginally acceptable based on protester's performance as incumbent contractor during which the protester's work was repeatedly cited for recurring problems in areas which the agency considered particularly sensitive because of an environmental consent decree under which the agency operates.

Procurement

Competitive Negotiation

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

Agency properly awarded contract to higher-priced offeror which had a better rated past performance record where the price/technical tradeoff was reasonably based and consistent with the solicitation's evaluation scheme.

Procurement

Contractor Qualification

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

Protest of contracting officer's determination that protester is nonresponsible to perform contract is denied where determination was reasonably based on protester's delinquent performance under two contracts for similar items.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protest alleging that specifications are unduly restrictive and favor a particular contractor is denied where protester fails to provide specifics to support its allegation and solicitation is based on functional specifications and is the result of extensive discussions with industry.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Extension
- ■ ■ ■ Administrative discretion

In light of agency's broad discretion to decide to contract or not contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988), there is no legal basis to object to agency's decision not to award to the protester under the section 8(a) program absent a showing of fraud or bad faith or that laws or regulations were violated.

Procurement

Socio-Economic Policies

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

Agency's decision not to set aside a procurement for small disadvantaged business (SDB) concerns was proper where the contracting officer determined on the basis of information concerning interested SDB concerns that a reasonable expectation did not exist that offers would be received from at least two responsible SDB concerns and the agency's Small and Disadvantaged Business Utilization Specialist concurred in this decision.

Procurement

Contractor Qualification

- Responsibility
- ■ Employment practices
- ■ ■ Clearances
- ■ ■ ■ Pre-award periods

List of potential subcontractors submitted in response to solicitation provision requesting bidders to submit list of suppliers requiring Equal Employment Opportunity (EEO) preaward clearance, relates to bidders' responsibility, where that information was submitted only to assist the contracting agency in administering its EEO program; information was not necessary to determine whether bidder unequivocally offered to deliver items in accordance with the material terms of solicitation, and list of potential subcontractors may be submitted at any time prior to award.

Procurement

Bid Protests

- **Non-prejudicial allegation**
- ■ **GAO review**

Protest that contracting agency improperly awarded a contract with the intention of materially modifying it after award by adding two new approved suppliers to source control drawings which were not listed on drawings issued with solicitation is denied, where protester was not prejudiced by agency's actions since even if protester could have relied on quotes obtained from new sources in preparing its bid, protester has failed to show that it would have possibly displaced the low bidder.

B-246108.2, November 13, 1991

91-2 CPD 458

Procurement

Bid Protests

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

Procurement

Contract Management

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

Where original protest, alleging that changed site conditions provided a basis for withdrawal of a bid rather than subsequently terminating the contract for default, was dismissed because it concerned matter of contract administration, request for reconsideration, focusing on bid withdrawal issue initially raised by protester in 1986, is untimely.

B-246183, November 13, 1991

91-2 CPD 459

Procurement

Bid Protests

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

Protest that agency should not have requested best and final offers (BAFO) and should not have disclosed that protester was the apparent awardee is dismissed as untimely since protester received the request for BAFOs 2-working days before closing date for receipt of BAFOs and therefore had a reasonable time to protest before the closing date.

B-246253, November 13, 1991

91-2 CPD 460

Procurement

Socio-Economic Policies

- **Preferred products/services**
- ■ **Handicapped persons**

Since the Committee for Purchase from the Blind and Other Severely Handicapped is vested with exclusive authority to determine whether particular commodities or services should be acquired from qualified workshops for the blind or other severely handicapped individuals under the Javits-Wagner-O'Day Act, 41 U.S.C. § 46-48c (1988), and since procuring agencies are required to obtain such commodities or services from workshops designated by the Committee, the General Accounting Office has no basis to object to the agency's purchase of its needs from a designated workshop.

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Propriety**

Byrd Amendment, 31 U.S.C. § 1352 (Supp. I 1989), which requires disclosure of lobbying expenditures paid for with other than appropriated funds, is not violated when an agency awards a contract to a corporation that did not report any such expenditures where there is no evidence that expenditures required to be disclosed were made.

Procurement

Specifications

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Performance specifications**
- ■ ■ ■ **Geographic restrictions**

Agency reasonably did not initially reject an offeror's significantly lower-priced proposal that was based on performance outside the permissible geographical area, since the agency was cognizant of pending legislation that would make the offeror's proposed place of performance acceptable.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Payment terms**
- ■ ■ **Progress payments**

Agency properly did not reject proposal that included a request for progress payments since solicitation permitted offerors to request such payments.

Procurement

Competitive Negotiation

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

While cost realism ordinarily is not considered in evaluating fixed-priced proposals, an agency may use a cost realism analysis as a gauge of the offerors' understanding of the solicitation requirements.

Procurement

Competitive Negotiation

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

Source selection official reasonably selected lowest cost proposal for award where no other proposal was significantly better technically and selection involved savings of approximately \$40 million.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Federal procurement regulations/laws
- ■ ■ ■ Deviation

Protest that solicitation improperly included agency clause inconsistent with Federal Acquisition Regulations is dismissed, where the contracting agency was granted a deviation from the regulations.

Procurement

Bid Protests

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

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

Procurement

Bid Protests

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

Allegation that solicitation for mine detectors failed to define the term "affordability," resulting in a flawed evaluation of protester's proposal, is dismissed as untimely; the alleged defect was apparent on the face of the solicitation and therefore should have been protested prior to the submission of proposals.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Contractors
- ■ ■ Notification

Assertion that contracting agency improperly departed from stated evaluation criteria by evaluating cost of proposed mine detector on the basis of highest possible cost to the government is dismissed as untimely; the allegation should have been raised within 10 days of the time the agency advised the protester that the criterion would be applied in the manner objected to, several months earlier.

Procurement

Bid Protests

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

Protest that agency improperly rejected proposal due to high cost despite solicitation provision stating that cost would not be an award consideration under certain circumstances is untimely where allegation is based on "information and belief" that the specified circumstances existed, and there is no indication why the same allegation could not have been raised at time of an earlier protest based on the same unspecified information and belief.

B-243605.2, B-244819, November 18, 1991

91-2 CPD 465

Procurement

Bid Protests

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

Request for reconsideration is denied where protester fails to demonstrate that agency lacked a reasonable basis for requiring integration of a building management and control system (BMCS) to be installed in a federal building in Baton Rouge, Louisiana, with an existing BMCS located at a federal building in New Orleans.

Procurement

Bid Protests

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

Protest raising the same issues as those resolved in a recent protest decision and current reconsideration decision by the same protester and involving the same agency is dismissed as no useful purpose would be served by further consideration of these issues.

B-243650.2, November 18, 1991

91-2 CPD 466

Procurement

Bid Protests

- **Federal procurement regulations/laws**
- ■ **Compliance**
- ■ ■ **Joint ventures**
- ■ ■ ■ **Federal research facilities**

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Propriety**
- ■ ■ **Joint ventures**
- ■ ■ ■ **Federal research facilities**

Protest is sustained where awardee's use of a Federally Funded Research and Development Center (FERDC) as a significant partner was contrary to Federal Acquisition Regulation prohibition against FERDCs competing with private firms under government solicitations.

Procurement

Sealed Bidding

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

A certified check is not an acceptable form of bid guarantee on Department of Defense construction solicitations where the solicitation specifically limits, as permitted by regulation, acceptable types of bid guarantees to bid bonds or public debt obligations of the United States.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Defects
- ■ ■ ■ Specifications

Where solicitation references military specifications and standards, the Federal Acquisition Regulation requires applicable revisions and dates of the specifications to be indicated; solicitation that merely provides that revision in effect as of the date set for receipt of proposals shall apply is inadequate and therefore defective.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Warranties

Agency reasonably determined that warranty provision should be included in solicitation calling for the manufacture of complex circuit card assemblies used in the testing of critical aircraft systems.

Procurement

Sealed Bidding

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

Procuring agency had compelling reason to cancel solicitation for air handlers after bid opening, where the solicitation, as issued, failed to include specifications that were necessary to ensure that the agency's minimum needs for operation and maintenance manuals and concrete pads would be met.

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Protester is not entitled to submit a best and final offer after its technical proposal under modified two-step procurement is found to be unacceptable; protester was given notice of deficient areas and an adequate opportunity to make its proposal acceptable.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Contractors
- ■ ■ Notification

Where firm is informed that its technical proposal is rejected as unacceptable, its subsequent reliance on alleged oral agreement that agency would consider a best and final offer from the firm was misplaced since the solicitation (which stated that revision of proposals found to be unacceptable would not be permitted) provided that only written (and not oral) instructions were binding on the agency.

Procurement

Bid Protests

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

Protest that agency overstated its minimum needs by using brand name or equal specifications is dismissed as untimely when filed after award, rather than before the closing date for receipt of initial proposals.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Liability restrictions

Where commercial bid bond limits the surety's obligation to the difference between the amount of the awardee's bid and the amount of a reprocurement contract, the terms of the commercial bond represent a significant departure from the rights and obligations of the parties as set forth in the solicitation, which renders the bid bond deficient and the bid nonresponsive.

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Request for reconsideration based on information obtained pursuant to a Freedom of Information Act request is dismissed as not timely where the protester, by waiting more than 4 months after issuance of the initial decision on its protest to initiate a request for the information, did not diligently pursue the information.

B-242358.7, November 19, 1991

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Protest against award of contract for emergency medical services, filed more than 10 working days after the protester received a copy of General Accounting Office (GAO) decision sustaining awardee's protest against termination of its contract, is dismissed as an untimely request for reconsideration; the protest merely restates the grounds of a prior protest, which had been dismissed as academic when GAO learned of the agency's decision to terminate the awardee's contract. The protest should have been filed within 10 days of when the protester learned that GAO subsequently had recommended reinstatement of the awardee's contract.

B-243000.3, November 19, 1991

Procurement

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

Protest is denied where the procuring agency, in a negotiated, indefinite quantity procurement for construction, maintenance, and repair services, reasonably determined that the awardee's exceptional technical rating under the two most important technical evaluation factors reflected actual technical superiority; the protester was evaluated as technically acceptable with moderate risk under the same evaluation factors and the protester only challenges the agency's evaluation of the protester's and awardee's proposals under the least important technical evaluation factor.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Award to a higher-priced offeror is unobjectionable in a negotiated procurement in which technical factors were more important than cost/price since the agency reasonably concluded that the awardee's technical superiority and lower risk proposal outweighed the protester's less than 1 percent price advantage.

B-244773, November 19, 1991

91-2 CPD 476

Procurement

Sealed Bidding

- **Bonds**
 - ■ **Justification**
 - ■ ■ **GAO review**
-

Procurement

Sealed Bidding

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

Agency reasonably required bid and performance guarantee requirements in a solicitation for tree thinning services based on regional Forest Service policy mandating such bonds on labor intensive contracts because of apparent adverse past performance, including labor liens received against various contractors.

B-245095, November 19, 1991***

91-2 CPD 477

Procurement

Sealed Bidding

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

Hand-carried bid properly was considered for award where record, including time/date stamp, establishes that it was received in proper office 1 day prior to bid opening despite bidder's failure to address bid properly or to mark package as containing a bid.

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Request for reconsideration of decision dismissing a protest as untimely is dismissed, where the protester, rather than showing that the prior dismissal contained either errors of fact or law, provides documentation that allegedly "confirms" the issues previously raised, but has no bearing on the timeliness of the protest originally submitted.

Procurement

Bid Protests**■ GAO procedures****■ ■ Interested parties****■ ■ ■ Direct interest standards**

Protest that agency improperly rejected protester's proposal as technically unacceptable is dismissed since record shows that the agency intends to award based 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.

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Dismissal of protest as untimely is affirmed where protest, based on agency's improper application of evaluation criteria, essentially amounted to protest of solicitation's apparently inconsistent evaluation criteria but was not filed prior to time set for receipt of initial proposals as required by General Accounting Office Bid Protest Regulations.

Procurement

Bid Protests**■ GAO procedures****■ ■ Interested parties****■ ■ ■ Direct interest standards**

Protest of the rejection of the protester's bid as nonresponsive is dismissed where the protester, as the third-low bidder, would not be in line for award if its protest were sustained because the protester did not challenge the eligibility of the low bidder for award and the low bidder was determined to be responsive, responsible and otherwise eligible for award.

Procurement

Bid Protests

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

Request for reconsideration of decision denying protest of Small Business Administration's (SBA) refusal to issue certificate of competency is denied where request in part reasserts previous arguments that SBA failed to consider vital information regarding protester's quality control system, and in part raises untimely new allegation.

Procurement

Competitive Negotiation

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

There is no requirement that a solicitation be so detailed as to completely eliminate all performance risks and uncertainties; solicitation which provides offerors with sufficient detail to adequately prepare offers need not include detailed itemized breakdowns reflecting prior contract performance.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Liability insurance**

Protest that solicitation requirement for insurance under a contract for medical laboratory services is improper is denied where the agency reasonably determined that the requirement is necessary to protect its interests.

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Terms**
- ■ ■ **Personnel**
- ■ ■ ■ **Advance approval**

Solicitation requirement that contractor obtain agency approval for changes in key personnel and facilities is not unreasonable where the solicitation required offerors to list key personnel and facilities and provided for their evaluation, and the agency determines that approval is necessary to maintain an adequate level of performance throughout the period of performance.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Allegation that solicitation requirement for cost and pricing data is unreasonable is denied where the requirement is consistent with applicable law and regulation, and offerors are permitted to request a waiver of, or exemption from, the requirement.

B-245050, et al., November 20, 1991

91-2 CPD 484

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Agency determination that specifications under invitation for bids (IFB) are inadequate to meet the government's minimum requirements constitutes a compelling reason to cancel IFB after bid opening.

Procurement

Specifications

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

Protest that proprietary specification for fire alarm radio receiver unduly restricts competition is denied where the specification was reasonably based on the agency's need for compatibility of the new receiver with transmitters already installed under other contracts.

B-245345, November 20, 1991

91-2 CPD 485

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest alleging that agency improperly made award to firm whose proposed "equal" product did not meet the stated salient characteristics set forth in the solicitation is denied where the record shows that the awardee furnished the agency with descriptive literature which showed that the proposed product complied with the specifications.

Procurement

Competitive Negotiation

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

In negotiated procurement, agency reasonably included proposal in competitive range despite failure of the initial proposal to include sufficient information to demonstrate its technical adequacy

where exclusion of the proposal would have resulted in a competitive range of one, the proposal offered a significant cost savings to the government, and the deficiency could be easily corrected.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Offers

■ ■ ■ Error correction

Agency properly kept proposal in competitive range where during discussions it brought to the attention of the awardee a perceived deficiency in its pricing and allowed the awardee to submit a revised proposal.

B-245803, November 20, 1991

91-2 CPD 486

Procurement

Small Purchase Method

■ Quotations

■ ■ Contract awards

■ ■ ■ Cost/technical tradeoffs

■ ■ ■ ■ Technical superiority

Small purchase procurement must be conducted consistent with the concern for fair and equitable competition inherent in any competition. Agency decision to award contract for credit renewal package preparation to higher-priced quoter was proper where record shows that evaluation was consistent with terms of solicitation, and support agency's conclusion that awardee's quote was superior to the protester's.

B-246101.2, November 20, 1991

91-2 CPD 487

Procurement

Bid Protests

■ GAO procedures

■ ■ Protest timeliness

■ ■ ■ 10-day rule

Protest against elimination of proposal from the competitive range was properly dismissed as untimely when filed more than 10 working days after agency notified protester of the elimination.

Procurement

Bid Protests

■ GAO procedures

■ ■ Interested parties

■ ■ ■ Direct interest standards

Protester whose proposal has been eliminated from the competitive range is not an interested party to challenge award to another firm.

Procurement

Competitive Negotiation**■ Offers****■ ■ Preparation costs**

Procurement

Competitive Negotiation**■ Offers****■ ■ Preparation costs****■ ■ ■ Interest**

In its consideration of claim for proposal preparation costs, contracting agency has not established that effort offeror expended in preparing proposal was excessive where the protester reasonably concluded that extra work would result in a superior proposal.

Procurement

Bid Protests**■ GAO procedures****■ ■ Preparation costs****■ ■ ■ Interest**

No statute or regulation authorizes payment for costs incurred in pursuing a claim for proposal preparation costs and costs of filing and pursuing a protest. Likewise, payment of interest on claim is not authorized.

B-244504, November 25, 1991

Procurement

Payment/Discharge**■ Unauthorized contracts****■ ■ Quantum meruit/valebant doctrine**

Partnership provided warehouse storage space to the government in the belief that the agency had the authority to lease it and had properly executed the lease. However, the agency did not obtain the required delegation of authority from GSA and did not engage in the formal bidding process in selecting the lessor. Upon review, the arrearage of monthly rent and the monthly rent becoming due and payable until GSA has provided the storage space needed by the agency may be paid on a *quantum meruit* basis. Obtaining the storage space by lease would have been a permissible procurement, the government accepted and used the storage space, the partnership acted in good faith, and the amounts claimed represent the reasonable value of the storage space used.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Procurement

Competitive Negotiation

- Unbalanced offer
- ■ Allegation substantiation

Protest that awardee proposed below-cost prices for ship husbanding services while intending to recoup its losses on an unpriced portion of the contract for provisioning services is denied where contract contained adequate safeguards to insure that provisions to be supplied under the contract would be reasonably priced.

Procurement

Sealed Bidding

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

In a sealed bid procurement, the reservation of the right to change product design and specifications, contained in unsolicited descriptive literature, does not render the bid nonresponsive where the bidder did not incorporate the literature into its bid or otherwise describe in its bid the same product model contained in the unsolicited descriptive literature.

Procurement

Bid Protests

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

Protest allegations challenging the responsiveness of the low bid, first raised in the protester's comments on the agency's report, which responded to earlier protest allegations that the low bid was nonresponsive for other reasons, are untimely raised under the Bid Protest Regulations, since the protester reviewed the awardee's bid at bid opening and knew or should have known the basis of these allegations when it filed its earlier protest.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest is dismissed where, despite its contention that the awardee's low bid was nonresponsive, the 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.

Procurement

Bid Protests

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

Protest against apparent solicitation impropriety (failure to issue solicitation as request for proposals) is untimely, since it was not filed prior to bid opening.

B-245399, November 25, 1991

91-2 CPD 492

Procurement

Special Procurement Methods/Categories

- In-house performance
- ■ Cost estimates
- ■ ■ GAO review

The General Accounting Office will not consider a protest against the propriety of a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76 where the protester did not raise its objection in an appeal to the contracting agency.

B-244877, November 26, 1991

91-2 CPD 493

Procurement

Sealed Bidding

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

Bid for roof repairs contract must be rejected as nonresponsive where bidder fails to provide a certification by the roofing manufacturer that it agrees to a 20-year warranty required by the invitation for bids.

B-246245, November 26, 1991

91-2 CPD 494

Procurement

Bid Protests

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

Lowest ranked offeror with highest evaluated cost who does not challenge the evaluation of its own proposal or intervening offerors or seek the award is not an interested party under the Bid Protest Regulations to challenge the award to the highest ranked, low cost offeror, since the protester would not be in line for award even if the protest were sustained.

B-246350, November 26, 1991

91-2 CPD 505

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that contract for overhaul of turbogenerator should not have included options to be exercised at a later time for additional work on other turbogenerators is dismissed since the protest

does not advance a valid basis for protest. Since the solicitation included two optional line items for work on additional turbogenerators, the agency was permitted by the solicitation to award a contract that included options that could be exercised at a later time for work on the additional turbogenerators.

B-240564.2, November 27, 1991**91-2 CPD 495**

Procurement

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

Protest by eighth-technically ranked, fifth-highest cost offeror is denied where the record indicates that the evaluation was reasonable and in accord with the listed evaluation criteria, and the protester does not identify any specific area where it was wrongfully downgraded.

B-242379.2, B-242379.3, November 27, 1991

Procurement

Bid Protests**■ GAO authority****■ ■ Protective orders****■ ■ ■ Information disclosure**

Protester's counsel are properly admitted to a protective order and permitted to receive protected information under our Bid Protest Regulations, even though counsel are associated with a law firm in which the managing partner of the firm's home office serves on the protester's board of directors, because the counsel applying for admission: (1) state that they do not participate in competitive decisionmaking; (2) vow not to discuss any protected information with the individual in the firm serving on the protester's board; and (3) agree to take detailed special procedures to protect the information covered by the protective order in the protest.

Procurement

Bid Protests**■ Definition**

Although our Bid Protest Regulations require agencies to provide all relevant documents, when the protester's allegations, even if true, do not establish a valid basis for protest, documents related to such allegations are not relevant to the protest.

Procurement

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

Contention that solicitation is unduly restrictive because of abbreviated proposal response time and requirement for a technical demonstration within 30 days of proposal submission is denied where: (1) the agency allows 2 weeks more than statutorily required for proposal preparation; (2) the test data requirement in the request for proposals is not shown to be restrictive, as the protester suggests; and (3) the protester fails to show that the procurement schedule is otherwise unreasonable, or operates to preclude full and open competition.

Procurement

Bid Protests

■ GAO procedures

■ ■ Purposes

■ ■ ■ Competition enhancement

Protest that performance specifications were improperly relaxed to permit consideration of other offeror's equipment and were relaxed without a valid determination of agency's minimum needs is dismissed because the General Accounting Office will not entertain arguments that agencies should use more restrictive specifications.

Procurement

Bid Protests

■ Bias allegation

■ ■ Allegation

■ ■ ■ Evidence sufficiency

Allegations of agency bias unaccompanied by a corresponding allegation of injury—such as, in this case, by a specific allegation that some performance requirement in the specification is unduly restrictive—provide no basis for consideration of such a claim.

B-244933, November 27, 1991

91-2 CPD 496

Procurement

Specifications

■ Minimum needs standards

■ ■ Total package procurement

■ ■ ■ Propriety

Solicitation's college credit requirement, applicable only to a small portion of total services being acquired, is unduly restrictive of competition where the agency fails to establish that including the coursework for which it requires college credit under a total package contract is necessary to meet agency's minimum needs.

B-245017, November 27, 1991

91-2 CPD 507

Procurement

Competitive Negotiation

■ Best/final offers

■ ■ Contractors

■ ■ ■ Notification

■ ■ ■ ■ Facsimile

Protester's failure to receive a message requesting best and final offers sent via telefax provides no legal basis to challenge the validity of the award where the record does not indicate that regulations concerning the dissemination of solicitation materials were violated or that significant deficiencies in the dissemination process existed.

Procurement

Competitive Negotiation

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

Agency delay in canceling request for proposals after proposing to Congress a reduction in program did not render cancellation unreasonable where based upon a material reduction in the agency's requirements of as much as 60 percent from the level-of-effort set forth in the solicitation; an agency properly may cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Cancellation of solicitation after submission of proposals and selection of intended awardee is reasonable, and protesters challenging source selection therefore are not entitled to protest costs under section 21.6(e) of General Accounting Office Bid Protest Regulations, where record clearly establishes a material reduction in the agency's requirements of as much as 60 percent from the level-of-effort set forth in the solicitation and does not demonstrate that cancellation was corrective action taken in response to the protests.

Procurement

Small Purchase Method

- Quotations
- ■ Contract awards
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest that agency should not have rejected low quotation for urgently needed boiler repair services and awarded contract based on higher quotation is denied where protester's low quotation took exception to deadline for completion of work. Although after rejecting protester's quotation as unacceptable the agency added provisions to the contract—permitting a reduction of the contract price and providing for liquidated damages—there was no need to allow the protester to compete based on those provisions which did not make it easier to meet the deadline but rather only increased the financial risk to the contractor.

Procurement

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

Exclusion of a proposal from the competitive range was reasonable where the record shows that the agency properly found the protester's proposal unacceptable in 4 of the 5 technical evaluation areas and thus unacceptable overall.

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