

**GAO**

United States General Accounting Office  
Office of General Counsel

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February 1993

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

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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).

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# Appropriations/Financial Management

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**B-249429, February 4, 1993\*\*\***

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## Appropriations/Financial Management

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### Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Taxes
- ■ ■ ■ State/local governments

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## Appropriations/Financial Management

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### Claims Against Government

- Contract terms
- ■ Taxes
- ■ ■ Reimbursement

Under a contract which provides that the government pay "the actual direct costs" for the materials used under the contract, the government is not constitutionally immune from Utah state sales taxes paid by the contractor for such materials. The legal incidence of the state sales tax falls on the contractor as the purchaser of supplies in the state and the government may therefore reimburse the contractor for the taxes.

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**B-251056, February 4, 1993**

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## Appropriations/Financial Management

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### Claims Against Government

- Travel expenses
- ■ Reimbursement
- ■ ■ Statutes of limitation

To reduce his indebtedness for travel advances, retired member submitted documentation of expenses claimed to have been incurred on temporary duty travel 9 years previously. Employee's travel advance debt may be reduced by the amount of allowable expenses member can prove even though a direct claim against the government for reimbursement of allowable expenses would be barred by 31 U.S.C. § 3702.

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**B-249796, February 9, 1993**

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## Appropriations/Financial Management

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### Accountable Officers

- Account deficiency
- ■ Administrative settlement

A request for relief from liability for a shortage in an imprest fund is returned to the agency for administrative action. The agency may be able to adjust for the loss under the foreign exchange offset provisions of 31 U.S.C. 3342(c). Alternatively, the amount of the loss falls within the \$3,000 threshold for administrative resolution and is thus properly considered by the agency.

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**B-251061.2, February 10, 1993**

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**Appropriations/Financial Management**

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**Judgment Payments**

- Availability
- ■ Claim settlement

The Judgment Fund is not available to pay judgments and settlements of the Farm Credit Administration (FCA). Such awards are "otherwise provided for" by the FCA Administrative Expenses Account, a nonappropriated fund available for all expenses of FCA operation.

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**B-249705, February 18, 1993**

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**Appropriations/Financial Management**

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**Budget Process**

- Interest
- ■ Accounting principles
- ■ ■ Applicability

Our accounting standard regarding imputed interest costs does not apply to the U.S. Army Corps of Engineers' delivery of excess hydroelectric power to federal power marketing agencies under 16 U.S.C. § 825s. The standard only applies to determining the cost of selling goods or services outside the federal government.

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**B-217913.2, February 19, 1993\*\*\***

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Time availability
- ■ Time restrictions
- ■ ■ Fiscal-year appropriation
- ■ ■ ■ Rebates

**Appropriations/Financial Management**

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**Obligation**

- Fiscal-year appropriation
- ■ Expiration
- ■ ■ Rebates

Rebates from Travel Management Centers redistributed to paying federal agencies must be credited to the appropriation initially charged the cost of employee travel, including a paying account that has expired for the purpose of incurring new obligations. Therefore, rebates initially charged to expired accounts may not be deposited to the credit of the fiscal year travel accounts current at the time the rebates are received.

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**B-251481, February 23, 1993**

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**Appropriations/Financial Management**

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**Claims Against Government**

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Claimant may not be paid on a *quantum meruit/valebant* basis for graphic design and printing services performed for an Army Reserve Command without a valid contract since the services could not have been lawfully procured in light of the provisions of 44 U.S.C. § 501.

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# Civilian Personnel

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**B-249311.2, February 4, 1993**

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## Civilian Personnel

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### Relocation

- Residence transaction expenses
- ■ Attorney fees
- ■ ■ Reimbursement

Employee claims full reimbursement of an attorney fee paid incident to closing on the purchase of a residence at the new duty station. The employee used a mortgage company owned by the agency's relocation services contractor which required that a local attorney perform certain services and act as closing agent for the residence purchase. The agency partially denied the claim because the amount claimed exceeded the amount customarily paid by buyers in the area. The agency's denial of additional reimbursement is upheld since the amount claimed exceeds the amount customarily paid by buyers in the area to close a residence purchase.

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**B-251211, February 4, 1993**

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## Civilian Personnel

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### Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Permanent duty stations
- ■ ■ ■ Distance determination

Employee who transferred from Culpeper, Virginia, to Richmond, Virginia, purchased a residence in Cary, North Carolina, approximately 160 miles from Richmond. The employee states that he selected Cary because he knew he would soon be reassigned from Richmond (he believed near Cary), and because he needed to settle his family in for a new school year and reestablish employment opportunities for his wife. Employee may not be reimbursed for real estate purchase expenses because Cary is not within commuting distance from Richmond.

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**B-250044, February 5, 1993**

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**Civilian Personnel**

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**Compensation**

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

**Civilian Personnel**

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**Travel**

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement

Erroneous payments to Independent Counsels and their staff for compensation, travel expenses, compensatory time, and annual leave are waived under 5 U.S.C. § 5584 since there is no indication of fraud, misrepresentation, fault, or lack of good faith with respect to the overpayments. Moreover, the payment of certain travel expenses, which are not currently authorized as result of an oversight in the law, may continue while Congress considers the issue. *See* 62 Comp. Gen. 438 (1983).

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**B-251043, February 8, 1993**

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**Civilian Personnel**

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**Compensation**

- Retroactive compensation
  - ■ Eligibility
  - ■ ■ Arbitration decisions
  - ■ ■ ■ GAO review
- 

**Civilian Personnel**

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**Compensation**

- Retroactive compensation
- ■ Statutes of limitation

Supervisor's backpay claim for environmental differential pay (EDP) is partially barred from consideration by the 6-year limitation provision of the Barring Act, 31 U.S.C. § 3702(b)(1) (1988). A claim for EDP is considered to be a continuing claim that accrues on the date the services were performed by the employee, and not on the date that other employees who were members of a collective bargaining unit were found by an arbitrator to be entitled to payment.

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**B-251716, February 10, 1993**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Time restrictions

A transferred employee's real estate expense claim was disallowed by his agency because he failed to file his claim within 3 years of the date he reported for duty. The time limit expressed in 41 C.F.R. § 302-6.1(e) (1992) and paragraph C14000-2 of 2 JTR, relates to the period within which real estate transactions must be completed after the effective date of the transfer. Since the employee bought and sold residences within 2 years after reporting for duty at his new official station and

filed his claim for reimbursement timely thereafter, he may be reimbursed the expenses incurred as authorized by 41 C.F.R. § 302-6.2 (1992).

---

## **B-250176, February 17, 1993**

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### **Civilian Personnel**

#### **Relocation**

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

After subletting her leased residence, an employee reoccupied it for 10 days until she moved into temporary quarters. Subsequently, she moved to another residence near her new duty station. In accordance with 41 C.F.R. § 302-5.2(c) (1991), she is not entitled to temporary quarters subsistence expenses (TQSE) during the 10-day period in which she had not vacated the leased residence at her old duty station. However, she is entitled to TQSE for the period in which she lived in temporary quarters.

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## **B-251784, February 19, 1993**

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### **Civilian Personnel**

#### **Compensation**

- Arbitration decisions
- ■ GAO review

President, AFGE Local 2096, is advised that Claims Group settlement declining to take jurisdiction of FLSA overtime claims received by GAO on October 22, 1992, because of change in our regulations in 4 C.F.R. Parts 22 and 30, is affirmed. The change in regulations resulted from a decision of the Comptroller General, *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374, April 23, 1992, which held that GAO will no longer take jurisdiction of a claim where the claimant is subject to negotiated grievance procedures under a collective bargaining agreement. Since the subject claims are covered by negotiated grievance procedures, GAO does not have jurisdiction under the *Riggs* decision to accept the claims.

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## **B-250228, February 22, 1993**

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### **Civilian Personnel**

#### **Leaves Of Absence**

- Annual leave
- ■ Computation errors
- ■ ■ Error correction
- ■ ■ ■ Adjustments

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### **Civilian Personnel**

#### **Leaves Of Absence**

- Annual leave
- ■ Credits
- ■ ■ Overpayments
- ■ ■ ■ Waiver

An employee's annual leave account was overcredited due to agency error as to his service computation date. Where the overcredit of annual leave has occurred during years prior to the year in which the error was discovered, the employee's leave account is to be reconstructed for each separate year involved to arrive at the proper current leave balance, and to determine whether an erroneous payment of salary occurred in any year where excessive use of leave resulted in a negative leave balance, the value of which becomes a debt due the United States subject to waiver.

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## **Civilian Personnel**

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### **Leaves Of Absence**

- **Annual leave**
- ■ **Computation errors**
- ■ ■ **Error correction**
- ■ ■ ■ **Adjustments**

An employee's annual leave account was overcredited due to agency error as to his service computation date. Where the overcredit of annual leave has occurred in the year in which the error was discovered, since an employee may be advanced annual leave for his use during the year so long as the erroneous leave already credited him has not caused his leave accrual to exceed his maximum entitlement for the year, the overcredit may remain to his credit and be adjusted from proper leave earnings during the balance of the year.

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**B-249992, February 23, 1993\*\*\***

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## **Civilian Personnel**

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### **Relocation**

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

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## **Civilian Personnel**

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### **Relocation**

- **Household goods**
- ■ **Shipment**
- ■ ■ **Reimbursement**
- ■ ■ ■ **Eligibility**

An employee who was transferred in the interest of the government to a new duty station remained there only for about 5 months before being transferred for his own convenience to another duty station. Although he had not exercised his entitlement to have his household goods shipped incident to the first transfer prior to his subsequent transfer for his own convenience, he is not entitled to have his goods shipped subsequent to the second transfer because such a transfer for the employee's convenience terminates that entitlement.



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# Military Personnel

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**B-251056, February 4, 1993**

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## Military Personnel

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### Travel

- Advances
- ■ Debt collection
- ■ ■ Set-off
- ■ ■ ■ Retirement pay

To reduce his indebtedness for travel advances, retired member submitted documentation of expenses claimed to have been incurred on temporary duty travel 9 years previously. Employee's travel advance debt may be reduced by the amount of allowable expenses member can prove even though a direct claim against the government for reimbursement of allowable expenses would be barred by 31 U.S.C. § 3702.

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**B-249667, February 8, 1993**

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## Military Personnel

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### Pay

- Allowances
- ■ Eligibility
- ■ ■ Dependents
- ■ ■ ■ Determination

Under 37 U.S.C. § 403(h), Secretary of Air Force has the final determination regarding dependency for basic allowance for quarters (BAQ) for enlisted members of the Air Force. Thus, when the Secretary acting through the Air Force Board for Correction of Military Records corrected the member's records to show that he had applied for BAQ at the with-dependent rate retroactively and the application had been approved, finance official should give effect to the correction by paying the claim.

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**B-249668, February 8, 1993**

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## Military Personnel

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### Pay

- Death gratuities
- ■ Eligibility
- ■ ■ Spouses
- ■ ■ ■ Criminal law matters

A service member's wife shot and killed him. She was initially charged with voluntary manslaughter but was not indicted. Her claim for his unpaid compensation and death gratuity is denied because there is no evidence in the record to negate felonious intent on her part.

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**B-249968, February 16, 1993**

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**Military Personnel**

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**Pay****■ Claims****■ ■ Statutes of limitation**

A service member died in August 1977 from gunshot wounds. The claim for unpaid retired pay and Survivor's Benefit Plan (SBP) annuity submitted to this Office by the member's spouse 15 years after the slaying is barred by 31 U.S.C. § 3702, which requires that a claim must be received by the Comptroller General within 6 years after the claim accrues, and which grants this Office no authority to waive this limitation, regardless of the reasons the claim was not submitted within the required time.

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**B-251039, February 24, 1993**

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**Military Personnel**

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**Relocation****■ Household goods****■ ■ Weight restrictions****■ ■ ■ Liability****■ ■ ■ ■ Computation**

A service member who was transferred overseas, was authorized to ship his unaccompanied baggage and later, household goods to that location in two lots under separate authorizations specifying 1000 pounds and 4000 pounds. On retransfer he was only authorized a 4000-pound administrative weight allowance. Under paragraph 5-8c of Army Regulation 55-71 when a member's administrative weight allowance has been increased for overseas shipments, the weight allowance as increased (*i.e.*, 5,000 pounds) is authorized on retransfer. Therefore, since he shipped 5635 pounds of goods on retransfer, the proper charge to be assessed for excess net weight is limited to 635 pounds and all sums collected from him for a greater excess weight are to be reimbursed to him.

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# Procurement

## Late case

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**B-250398, January 22, 1993**

**93-1 CPD 56**

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### **Procurement**

#### **Competitive Negotiation**

##### **■ Contract awards**

##### **■■ Propriety**

Contention that agency awarded contract in anticipation of not enforcing certain solicitation requirements is denied where record shows that awardee's contract was not modified to change requirements which were in solicitation and awardee did, in fact, perform the questioned requirements.

---

### **Procurement**

#### **Contractor Qualification**

##### **■ Responsibility**

##### **■■ Contractor officer findings**

##### **■■■ Affirmative determination**

##### **■■■■ GAO review**

Whether lower-priced bidder understands solicitation requirements and can successfully perform them at its bid price are questions of bidder responsibility which the contracting agency resolved in the affirmative and which the General Accounting Office will not review absent circumstances not present in this protest.

---

### **Procurement**

#### **Contract Management**

##### **■ Contract administration**

##### **■■ GAO review**

Speculative assertion that awardee may increase its contract price through post-award mistake-in-bid claims because agency allegedly failed to obtain an unequivocal waiver of all such claims is dismissed because it concerns a matter of contract administration not for review by the General Accounting Office under its bid protest function.

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation****■ ■ ■ Personnel experience**

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**Procurement**

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

Where protester's proposal did not demonstrate previous Superfund contract experience involving the cleanup of substantially similar contaminated site and materials as in the current Superfund solicitation, and awardee's proposal did, agency properly rated awardee's proposal superior to protester's in this respect even though prior Superfund contract experience was not specifically required by the solicitation since such experience was appropriately considered under solicitation's past project experience evaluation factor.

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**Procurement**

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**Competitive Negotiation****■ Discussion****■ ■ Adequacy****■ ■ ■ Criteria**

Agency conducted meaningful discussions where it reasonably led the protester into areas of its proposal that required amplification or clarification. Agency is not required to request of offeror, during discussions, the submission of other possibly relevant past project experience information where solicitation specifically requested and stated the importance of such information; agency could reasonably assume protester had presented its most relevant prior experience (and that the failure to provide substantially similar contract information demonstrated that the firm did not have such experience) or did not fully understand the requirements of the solicitation.

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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 priced, technically superior proposal under request for proposals which gave greater weight to technical merit than to price is justified where contracting agency reasonably determined that acceptance of the superior proposal was worth the additional cost.

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**B-250645.2, February 1, 1993**

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**Procurement**

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**Sealed Bidding**

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

**Procurement**

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**Sealed Bidding**

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Bid containing line item prices which may be below cost is not unbalanced where bid does not contain overstated prices for any line item.

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**B-250686, February 1, 1993****93-1 CPD 84**

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price data
- ■ ■ ■ Minor deviations

In a procurement for the purchase of up to 1,500 notebook computers where the schedule in the invitation for bids required bidders to submit single unit prices for estimated line item quantities of computers and where the protester split the agency's estimated line item quantities of computers to what it considered quantities most economically advantageous to the firm and separately priced these quantities, the protester's bid was properly rejected as nonresponsive. The protester's pricing scheme permits it to structure its bid to obtain maximum profits and to limit its economic risks in the event the agency does not purchase its estimated item quantities of computers, thus affording the protester an unfair pricing advantage over the other bidders.

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**B-250792, February 1, 1993****93-1 CPD 85**

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency improperly evaluated protester's proposal is denied where the record shows that the evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

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**Procurement**

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**Specifications**

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

Protest that specifications for helicopter crewseats were improperly relaxed to permit consideration of a competitor's equipment and that the agency allegedly ignored the conclusions found in a report concerning the crashworthiness of the seats, is dismissed because the General Accounting Office will not entertain arguments that agencies should use more restrictive specifications.

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**B-248007.3 B-248007.4, February 2, 1993****93-1 CPD 90**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the request is based on information that was available to, but not proffered by, the requester during consideration of the initial protest.

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**Procurement**

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**Bid Protests**

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Request that recommendation not to allow bid correction be modified to exempt work already performed is denied where requester explicitly offered to begin performance with the understanding that such a decision would apply to the work being performed and now merely expresses disagreement with recommendation of our Office, which took into account that offer.

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**B-249131.3, February 2, 1993****93-1 CPD 91**

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**Procurement**

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**Bid Protests**

- GAO authority

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office (GAO) will not reconsider decision dismissing protest of building site selection because the procuring agency abandoned the procurement by proceeding to obtain property under condemnation authority; site acquisition conducted pursuant to condemnation authority is not subject to GAO bid protest jurisdiction.

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**B-250384.3, February 2, 1993**

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**Procurement**

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**Sealed Bidding**

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

Protest that agency improperly permitted low bidder to correct a mistake in its bid is denied where agency reasonably found that there was clear and convincing evidence of the mistake (transposing subcontractor quote to work paper) and the intended bid, and the bid is low with or without correction.

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**B-250555, February 2, 1993**

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**93-1 CPD 92**

**Procurement**

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**Bid Protests**

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

Protest challenging the evaluation of protester's bid samples is dismissed as untimely because it was not filed within 10 working days after the protester learned the bases for its objection to the evaluation.

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**Procurement**

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**Specifications**

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

Protest challenging the agency's acceptance of the awardee's bid samples for automatic weapons is denied where agency reasonably interpreted the specification in a nonrestrictive manner as a functional description which did not limit the design of bolt operation and locking systems to two particular types and where the protester does not argue that the awardee's weapon is not capable of meeting the needs of the agency.

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**B-250628, B-251152, February 2, 1993**

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**93-1 CPD 93**

**Procurement**

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**Competitive Negotiation**

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

Contracting officer reasonably canceled a negotiated procurement and resolicited the requirement where only one offer was received and the contracting officer only became aware of the potential for increased competition just hours prior to the closing time which did not permit an extension of the closing time.

**Procurement**

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**Bid Protests****■ Competition****■ ■ Adequacy**

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**Procurement**

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**Competitive Negotiation****■ Requests for proposals****■ ■ Competition rights****■ ■ ■ Contractors****■ ■ ■ ■ Exclusion**

Where agency synopsisized in the *Commerce Business Daily* (CBD) its requirement for the replacement of a fire alarm system under the CBD classification code, "maintenance, repair, and rebuilding of equipment," agency met its obligation to synopsisize the requirement in a manner reasonably expected to provide potential offerors with actual notice of the pending procurement since the classification code chosen by the agency reasonably fit the requirement and record does not show that protester's failure to participate in procurement resulted from agency's choice of classification code.

**Procurement**

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**Contract Management****■ Contract administration****■ ■ Default termination****■ ■ ■ Propriety****■ ■ ■ ■ GAO review**

General Accounting Office will not consider the propriety of a contracting agency's decision to terminate a contract for default, since that is a matter to be resolved under the disputes clause of the contract.

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**Procurement**

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**Contract Management****■ Contract administration****■ ■ Default termination****■ ■ ■ Resolicitation****■ ■ ■ ■ GAO review**

Agency had reasonable basis for limiting the competition in a reprocurement action to only one known source capable of producing the required items and in excluding protester where there was a shortage of the items being acquired and agency reasonably determined that protester's failure to deliver items under the prior contract (which necessitated the reprocurement) indicated that the protester could not currently satisfy the requirement.



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**Procurement**

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**Competitive Negotiation**

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

Agency properly awarded contract to lowest priced, technically acceptable offeror where award on that basis was consistent with solicitation's evaluation criteria.

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**Procurement**

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**Bid Protests**

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

Third lowest offeror is not an interested party to protest the award to a small disadvantaged business concern because the protester would not be in line for award even if the protest were upheld.

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**B-250489, February 3, 1993\*\*\*****93-1 CPD 97**

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**Procurement**

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**Specifications**

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

Where competitive 8(a) procurement included an experience requirement which exceeded the reported capabilities of 8(a) firms in the procuring activity's "local buy" region, Small Business Administration (SBA) reasonably determined that there was not a reasonable expectation that at least two 8(a) firms located in the local buy region would submit offers; accordingly, SBA's decision to expand 8(a) procurement's geographic area to include firms located in region adjacent to the local buy region is unobjectionable since applicable SBA regulation authorizes such an expansion under these circumstances.

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**B-250666, February 3, 1993****93-1 CPD 98**

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**Procurement**

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**Special Procurement Methods/Categories**

- Architect/engineering services
- ■ Offers
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest that agency should have selected the protester, the fourth-ranked firm, as the most highly qualified firm with which to negotiate an architect-engineer contract is denied where the record shows that the agency reasonably evaluated the protester's qualifications in accordance with the stated evaluation criteria.

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**Procurement**

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**Bid Protests**

- Dismissal
- ■ Definition

Protest raising same issue that was resolved in a recent decision on a protest by the same protester and involving the same agency is dismissed as no useful purpose would be served by further consideration of the matter.

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**B-247655.2, February 4, 1993****93-1 CPD 133**

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**Procurement**

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**Competitive Negotiation**

- Source selection boards
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Propriety

The source selection official in a negotiated procurement is not bound by the recommendations and evaluation judgments of the lower-level evaluation board, and may properly conduct his own independent evaluation of proposals.

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**Procurement**

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**Contractor Qualification**

- Responsibility criteria
- ■ Organizational experience

In a negotiated procurement in which offerors were informed that the firms' experience in managing comparable facilities and in providing similar services would be evaluated, the source selection official (SSO) could properly consider the incumbent's specific experience since such specific experience was intrinsically related to the general experience evaluation factors; the SSO could reasonably select the incumbent's proposal as the most advantageous to the government based upon the incumbent's specific experience advantage where the proposals were otherwise essentially technically equivalent and the firms' evaluated costs were essentially equivalent.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that the agency did not conduct meaningful discussions with the protester concerning its experience is denied where, although the agency was concerned with some aspects of the protester's experience, the protester's proposal was found technically acceptable and its overall experience viewed as good and not to be a significant weakness.

**Procurement**

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

Statement by chairman of agency evaluation panel that "price was an overwhelming consideration" in selection decision" does not demonstrate that evaluators gave greater weight to price than technical merit in the evaluation, contrary to the solicitation provision under which technical merit was more important than price, since there is no evidence that contracting officials reversed or otherwise varied from the evaluation scheme in solicitation. Statement that price was an overwhelming consideration is simply a reflection of the large disparity between the protester's price of \$416,873 and the awardee's price of \$228,692.

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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****■ Contract awards****■ ■ Initial offers**

Where protester fails to timely protest defect in solicitation's initial proposal award provision (failure to include one of two mandatory alternate clauses which indicate either the intent to award without discussions or the intent to hold discussions), award on basis of initial proposals was proper since it was consistent with the terms of the solicitation.

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**Procurement**

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**Contractor Qualification****■ Responsibility criteria****■ ■ Performance capabilities**

Solicitation requirements that equipment be installed by Underwriters Laboratory (UL) listed company and that firm have installers with security clearances are performance requirements. Whether the awardee can become UL listed and obtain required security clearances in time to perform the contract is a matter pertaining to its responsibility which the General Accounting Office will not review.

**REDACTED VERSION**

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**B-250486, February 4, 1993**

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation errors****■ ■ ■ Allegation substantiation**

Where solicitation provided for consideration of modularity and commonality between designs for theater and national missile defense systems, protest that awardee's proposal providing to use solid-state technology in theater defense and traveling wave tube technology in national defense

should have been rejected is denied where solicitation provided that commonality was only one portion of a comparative evaluation, and record shows that while recognizing lack of commonality as a weakness in the awardee's proposal, evaluators gave a high rating to awardee's proposal based on strengths in other areas.

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## **Procurement**

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### **Bid Protests**

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

Specific allegations, pertaining to evaluation of protester's proposal, first raised in comments on agency report were untimely filed where not raised within 10 days of learning the basis for protest. In any event, the information forming basis of protest was included in agency document disclosure dated a month prior to the filing of the agency report.

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## **Procurement**

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### **Competitive Negotiation**

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

Agency "bottoms-up" analysis of cost, which involved breakdown of work and material required for each element of effort, estimate of associated hours and cost, and adjustment of protester's estimated costs based on experience of evaluators supplemented by information obtained from suppliers and other agencies, provided a reasonable basis for determining most probable cost to agency of each proposal.

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## **Procurement**

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### **Competitive Negotiation**

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

Where record shows that awardee's proposal of mixed-technology approach, offering solid-state technology for theater missile defense radar to be delivered first and traveling wave tube technology for national missile defense radar to be delivered last, was not the agency's preferred solution but only one of many considered in the source selection, agency had no obligation to advise protester of the awardee's approach during discussions. In any event, it would have been improper to disclose competitor's innovative approach to other firms in competitive range.

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## **Procurement**

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### **Competitive Negotiation**

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

Selection of higher cost, higher rated proposal was consistent with selection factors in solicitation that placed emphasis on technical factors, where proposal was rated significantly higher in technical merit than protester's proposal and was only slightly higher in cost.

**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation****■ ■ ■ Cost data**

Request for proposals for research and development effort that only contained a single reference to evaluation of "overall program" costs did not reasonably contemplate the evaluation of present and future anticipated costs of rights in numerous technical data items in components not yet developed.

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**Procurement**

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

Where grounds of protest concerning alleged lack of meaningful discussions are based on information contained in report filed by contracting agency in response to the protest, comments raising these new grounds of protest are untimely when filed by the protester more than 10 working days after it received the agency report.

**Procurement**

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

Protest against agency decision to exclude proposal from competitive range for award under Small Business Innovation Research Program is denied where record shows that evaluation which resulted in the firm's proposal being ranked 20 out of the 26 proposals evaluated was reasonable.

**Procurement**

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**Socio-Economic Policies****■ Small businesses****■ ■ Disadvantaged business set-aside****■ ■ ■ Joint ventures****■ ■ ■ ■ Administrative determination**

Agency properly determined that joint venture qualified as a small disadvantaged business (SDB) where procuring agency reasonably found that the SDB member has control over the joint venture; joint venture agreement indicates that the SDB member controls at least 51 percent of venture, contributes 51 percent of working capital, controls the venture bank accounts, makes day-to-day operational decisions, and provides all necessary labor and materials for performing the requirement.

**Procurement**

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**Bid Protests**

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

Protest that agency improperly relaxed specification for conveyor controls is dismissed where allegation was not raised with General Accounting Office within 10 days of initial adverse action on agency-level protest and, in any event, the relaxation increased competition.

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**Procurement**

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**Contract Management**

- Contract performance
- ■ GAO review

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

In procurement for shipboard vertical package conveyors, where awardee's proposal did not take exception to solicitation requirements or indicate those requirements would not be met, agency reasonably concluded that proposal was technically acceptable; protest that awardee may furnish a noncomplying product is dismissed, since whether a contractor performs in accordance with solicitation requirements is a matter of contract administration, not for consideration by the General Accounting Office.

**Procurement**

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**Bid Protests**

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

Protest allegation that agency failed to apply evaluation differential to awardee's bid as required by Balance of Payments Program is untimely where solicitation did not provide for such an evaluation, but protest was not filed until after bid opening.

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## **Procurement**

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### **Bid Protests**

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

## **Procurement**

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### **Bid Protests**

- Moot allegation
- ■ GAO review

Where there is no merit to allegation that agency improperly evaluated awardee's bid, protester is not in line for award and therefore is not an interested party to allege that the award violates statute concerning use of appropriated funds.

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**B-250372.2, B-250372.3, February 5, 1993****93-1 CPD 106**

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## **Procurement**

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### **Sealed Bidding**

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Prices
- ■ ■ ■ Overhead costs

Provision in solicitation for construction contract requiring bidders to propose overhead rates to which they will be bound in negotiation of change orders does not subject contractors to unreasonable risk; formula for evaluating impact of each bidder's proposed delivery schedule and overhead on price is neither contrary to Competition in Contracting Act of 1984, which requires that award decision consider only price and price-related factors, nor unreasonable where agency bases estimate of increase in cost of performance due to change orders on best historical data available.

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**B-250487, February 5, 1993****93-1 CPD 107**

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## **Procurement**

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### **Sealed Bidding**

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

Under the invitation for bids for a construction project, submission of a document captioned "CONTRACTOR'S QUALIFICATIONS AND EXCLUSIONS"—that excluded certain fees from the prices set out in the accompanying sealed bid—renders the bid nonresponsive, since these exceptions limited the bidder's liability to obtain permits and pay testing, inspection and certification fees, which are the bidder's responsibility.

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**B-250538, February 5, 1993****93-1 CPD 108**

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## **Procurement**

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### **Sealed Bidding**

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Requests for proposals

Where a canceled invitation for bids (IFB) has been converted to negotiated procedures pursuant to Federal Acquisition Regulation §15.103, the contracting agency may properly include in the ne-

gotiations an offer from a responsible bidder whose bid was nonresponsive to the IFB; agency adequately apprised bidders which firms were eligible to compete in the negotiations when it provided each bidder with a copy of the bid abstract.

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**B-250284.2, February 8, 1993**

**93-1 CPD 110**

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**Procurement**

**Competitive Negotiation**

■ **Contract awards**

■ ■ **Administrative discretion**

■ ■ ■ **Cost/technical tradeoffs**

■ ■ ■ ■ **Technical superiority**

Agency's decision to award a contract to an offeror whose proposal is higher rated and higher priced than the protester's was reasonable where it reasonably determined that the awardee's technical superiority, based on excellent past performance in contrast to the protester's marginal past performance, outweighed the price differential.

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**B-250480, February 8, 1993**

**93-1 CPD 111**

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**Procurement**

**Sealed Bidding**

■ **Bids**

■ ■ **Responsiveness**

■ ■ ■ **Certification**

■ ■ ■ ■ **Signatures**

Where there is no evidence that the individual that signed the Certificate of Procurement Integrity was authorized to bind the company at the time the bid was submitted and another individual, who was authorized to bind the company, signed the bid, the bid cannot be accepted for award, since it cannot reasonably be found that the company would be bound to the certificate's terms.

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**Procurement**

**Sealed Bidding**

■ **Invitations for bids**

■ ■ **Cancellation**

■ ■ ■ **Resolicitation**

■ ■ ■ ■ **Propriety**

Invitation for bids (IFB) should be canceled and the requirement resolicited, where the low bidder's Certificate of Procurement Integrity is executed by the individual responsible for preparing the bid, but this person did not have the authority to bind the bidder at the time of bid opening; bidder was reasonably misled by the Federal Acquisition Regulation § 52.203-8 certificate included in the IFB, which requests the certifier to be the "officer or employee responsible for the preparation of this offer," but does not state that the individual executing the certificate must have the authority to bind the bidding entity.



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**B-250497.2, February 8, 1993**

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**Procurement**

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**Sealed Bidding**

- Bids
  - ■ Certification
  - ■ ■ Signatures
  - ■ ■ ■ Contract modification
- 

**Procurement**

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**Sealed Bidding**

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

There is no requirement that a bidder, in addition to submitting with its bid a completed and signed Certificate of Procurement Integrity, also complete and sign the procurement integrity certificate for contract modifications included in the solicitation.

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**B-250629, February 8, 1993**

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**93-1 CPD 112****Procurement**

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**Competitive Negotiation**

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

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**Competitive Negotiation**

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

Elimination of technically acceptable, lower cost initial proposal from the competitive range without discussions, leaving a competitive range of one, was unreasonable where the record shows that weaknesses in the lower cost proposal could have been easily addressed during discussions.

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**B-250647, B-250647.2, February 8, 1993**

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**93-1 CPD 113****Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Preferred products/services
- ■ ■ ■ Foreign country classification

Protest that awardee is a foreign corporation and ineligible to receive construction contract under the American Preference Policy is denied where record establishes that corporation qualifies as a United States contractor.

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**Procurement**

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**Sealed Bidding**

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

Agency properly accepted a bid using the bidder's trade name, instead of the formal corporate name, where it was possible to identify the actual bidder with sufficient certainty that the bidder would not be able to avoid the obligations of the bid.

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**Procurement**

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**Bid Protests**

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

Protest that agency improperly failed to amend solicitation to provide that contract's basic period would be for 12 months from time of award (rather than for 8-month period remaining in original-contemplated base period) is dismissed as untimely because it was filed after bid opening.

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**Procurement**

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**Sealed Bidding**

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

Hand-carried bid which was brought to the designated location for hand-carried bids is not late, although it was time/date stamped at 2:01 p.m., where the record shows that the bidder relinquished control of the bid to the appropriate agency official by 2 p.m., the exact time called for in the solicitation, and prior to the bid opening officer's declaration of the time for bid opening.

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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**

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

Where bidder acknowledges amendment to solicitation changing, among other things, the minimum bid acceptance period from 60 to 90 calendar days, but inserts 60 in the bid form blank for proposing an acceptance period, the bid is nonresponsive, since the offered bid acceptance period, a

material solicitation requirement, is at best ambiguous. *Alaska Mechanical, Inc.*, B-225260.2, Feb. 25, 1987, 87-1 CPD ¶ 216; *RG & B Contractors, Inc.—Recon.*, B-225260.4; B-225260.5, Apr. 20, 1987, 87-1 CPD ¶ 425; and *Ingenieria Y Construcciones Omega*, B-233277, Jan. 25, 1989, 89-1 CPD ¶ 85 are overruled.

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**B-251166, February 9, 1993**

**93-1 CPD 118**

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**Procurement**

**Bid Protests**

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

Protest that agency improperly combined requirements for computer hardware and software maintenance in a single procurement is untimely where not raised until time of exercise of option, 15 months after closing date for receipt of proposals for the original award.

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**Procurement**

**Bid Protests**

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

Protester is not an interested party to allege improprieties in agency's exercise of an option extending a computer maintenance contract, where protester acknowledges it would not be able to meet the requirements of that contract.

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**B-251232.2, February 9, 1993**

**93-1 CPD 119**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Comments timeliness

Request for reconsideration of dismissal of protest is denied where protester failed to file comments within 10 days of the agency report due date.

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**B-251566, February 9, 1993**

**93-1 CPD 120**

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**Procurement**

**Bid Protests**

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

Protest that awardee's product could not comply with solicitation's technical specifications, since protester believes awardee has no acceptable product, is untimely where notice of awardee's technical acceptability was published in the *Commerce Business Daily* 6 months earlier, and protester did not raise the objection within 10 days thereafter.

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**Procurement**

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**Sealed Bidding**

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

A bid, although acknowledging an amendment providing a new schedule page and revising the specifications, was properly rejected as nonresponsive when the bid was submitted on the original schedule page and therefore raised doubt as to whether the bidder intended to comply with the revised specification or with the unamended specification as it was referenced on the original schedule page.

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**Procurement**

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**Bid Protests**

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

Protest is timely when filed within 10 working days of agency notification that issue of bid timeliness had been decided against protester, even though protest was not filed within 10 working days of earliest indication that bid was not timely.

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**Procurement**

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**Sealed Bidding**

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

Protest of agency rejection of late bid is denied where protester does not show that it had delivered hand-carried bid before the bid opening.

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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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**Sealed Bidding**

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

Where bidder failed to sign required Certificate of Procurement Integrity on designated signature line, bidder is not unequivocally committed to certificate's terms and bid must be rejected as non-responsive; under these circumstances, bidder is not an interested party to challenge agency's rejection of its bid due to an inadequate bid guarantee since bidder's failure to sign the required certificate renders it ineligible for award even if protest were sustained.

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**B-238982.6, February 11, 1993**

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**Procurement**

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**Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Notification
- ■ ■ ■ Deadlines

Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods provides that a carrier will accept written notice of loss/damage discovered after delivery as overcoming the delivery receipt's presumed correctness if the agency dispatches the notice within 75 days after delivery. The fact that a notice did not actually leave the installation until the 77th day, evidenced by the installation's postage meter stamp, is irrelevant, since dispatch from the installation's claims office was adequate for purposes of the 75-day requirement.

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**B-249834, February 11, 1993**

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**Procurement**

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**Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Carrier liability
- ■ ■ ■ Presumptions

Where goods pass through the hands of several bailees, any loss or damage is presumed to have occurred in the hands of the last one.

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**Procurement**

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**Payment/Discharge**

- Shipment
- ■ Damages
- ■ ■ Notification

Written notice to the carrier of in-transit damage is adequate where a specific shipment is identified and the shipper lists several particular inventory items that were "damaged." Under such circumstances, the carrier is alerted to the need to investigate the facts.

**REDACTED VERSION**

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**B-249858.2, B-249858.3, February 11, 1993**

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Pre-award surveys

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that in evaluating awardee's technical proposal procuring agency failed to consider information obtained during a preaward survey is sustained to the extent the solicitation contained

responsibility type technical evaluation factors which concerned an offeror's capability to perform the contract.

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**B-250637, February 11, 1993**

**93-1 CPD 124**

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**Procurement**

**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

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**Procurement**

**Sealed Bidding**

- Contracting officers
- ■ Bad faith
- ■ ■ Allegation substantiation

The General Accounting Office (GAO) will not reverse a contracting officer's determination that a bidder who proposes to subcontract most work to a company that failed to perform under an earlier government contract is nonresponsible unless the officer made the determination without any reasonable basis or in bad faith. The settlement of an earlier contract dispute did not preclude the contracting officer from finding a bidder nonresponsible for using the subcontractor who had caused the earlier non performance.

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**B-250658, February 11, 1993**

**93-1 CPD 134**

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**Procurement**

**Sealed Bidding**

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

Protest that agency deprived protester of opportunity to compete because agency did not timely provide it with a copy of solicitation amendment establishing bid opening date is sustained where record shows that agency used incorrect mailing address for protester, protester took reasonable steps to obtain amendment, and agency received only one bid.

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**B-250662, February 11, 1993**

**93-1 CPD 125**

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**Procurement**

**Competitive Negotiation**

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

Protest that agency did not properly evaluate the relative strengths and weaknesses of proposals under a solicitation which provided for a relative evaluation of technical proposals is denied where the record shows that the agency did in fact assess strengths and weaknesses in its technical evaluation.

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## **Procurement**

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### **Bid Protests**

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

Protest that awardee improperly substituted personnel after award is untimely because it was raised in protester's comments to the agency report and protester knew of its basis of protest at the time it filed the protest.

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**B-250788, February 11, 1993**

**93-1 CPD 126**

## **Procurement**

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### **Competitive Negotiation**

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

## **Procurement**

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### **Competitive Negotiation**

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

Awardee's failure to provide certain pricing information called for under section L of the solicitation did not preclude its consideration for award where the information was intended for use in agency's fixed price analysis (provided for under section M) and the information furnished was sufficient to permit adequate analysis.

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## **Procurement**

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### **Competitive Negotiation**

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

Selection of awardee's technically acceptable proposal under price/technical tradeoff, despite protester's lower-priced technically acceptable proposal was proper where technical factors were more important than price, and despite same overall rating, protester's proposal contained several relative weaknesses that warranted paying 5 percent premium to awardee.

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**B-250797, et al., February 11, 1993**

**93-1 CPD 127**

## **Procurement**

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### **Sealed Bidding**

- Suspended/debarred contractors
- ■ Bids
- ■ ■ Rejection
- ■ ■ ■ Propriety

Agency reasonably determined that no compelling reason existed to consider the bid of a debarred contractor.

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**Procurement**

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**Sealed Bidding**

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

Bid was properly rejected as nonresponsive where statement included in bid modification imposed conditions that modified material solicitation requirements.

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**Procurement**

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**Contract Management**

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

Where agency's exercise of an option is based on an informal market survey that expressly considered the price and terms offered by the protester, protest that informal market survey was inadequate is without merit.

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**Procurement**

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**Bid Protests**

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

Protest that agency failed to perform a "fair market cost analysis" in support of an award under section 8(a) of the Small Business Act, in lieu of a "fair market price" analysis, is dismissed as untimely since the protester knew the basis for the protest more than 10 working days before the protest was filed.

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency's "fair market price" analysis was improper because it failed to include the protester's courtesy "offer" and other historical data is denied where record shows that the analysis was conducted reasonably.



**Procurement****Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Brand name/equal specifications
- ■ ■ ■ Equivalent products

Under brand name or equal solicitation, bid of an "equal" product was nonresponsive and should have been rejected by the contracting agency where the bid failed to identify and offer all optional accessories necessary to meet the specifications of the solicitation.

**Procurement****Sealed Bidding**

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

Agency rejection of bid as nonresponsive because of uncertainty as to the identity of the actual bidder is proper where bid did not contain name of firm that actually submitted the bid.

**Procurement****Special Procurement Methods/Categories**

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

**Procurement****Special Procurement Methods/Categories**

- Federal supply schedule
- ■ Purchases
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Agency properly purchased higher-priced mailing equipment on Federal Supply Schedule (FSS), instead of protester's less expensive FSS equipment, where the agency reasonably determined that the protester's equipment did not meet its minimum needs.

**Procurement****Contractor Qualification**

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

Offeror was deprived of a reasonable opportunity to qualify its alternate product and compete for purchase order, where procuring agency did not promptly forward offeror's technical data package

to agency responsible for evaluation of such products, and failed to promptly notify offeror of deficiencies in its product.

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**B-246236.3, February 16, 1993**

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**Procurement**

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**Bid Protests**

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

Protest not filed within 10 working days of closing date for proposal receipt, which constituted initial adverse action on agency-level protest raising same issues, is untimely. Contracting officer's alleged comment, made more than a week after closing date for receipt of proposals and after denying agency-level protest, that protester had 10 days within which to file protest to GAO, does not mandate an exception to that rule.

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**Procurement**

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**Bid Protests**

- Premature allegation
- ■ GAO review

Contention before award that competitors failed to provide required certification is grounded in speculation that agency may take improper action and therefore is premature.

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**B-248050.3, February 16, 1993**

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**93-1 CPD 138****Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Adequacy

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**Procurement**

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**Specifications**

- Performance specifications
- ■ Adequacy

Protest by an incumbent contractor that the solicitation does not present adequate information to permit offerors to compete is denied where the solicitation provides sufficiently detailed information on the agency's anticipated requirements to enable offerors to intelligently prepare an offer on relatively equal terms.

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**B-250289.2, February 16, 1993**

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**93-1 CPD 139****Procurement**

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**Bid Protests**

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

Protester whose bid is nonresponsive because it included an unsigned Certificate of Procurement Integrity is not an interested party to challenge award to another firm where the protester would not be eligible for the award if the protest were upheld.

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## **Procurement**

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### **Bid Protests**

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

Supplemental protest issue which is raised more than 10 days after protester knew, or should have known, of basis for protest is untimely.

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**B-250663, et al., February 16, 1993**

**93-1 CPD 140**

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Best-buy analysis

Agency award selection was consistent with the solicitation's "best value" evaluation formula that mathematically balanced technical and price scores, where the awardee, notwithstanding its higher price, surpassed the protesters' applicable experience, which was a primary element of the majority of the evaluation factors.

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## **Procurement**

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### **Competitive Negotiation**

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

Where a request for proposals seeks detailed technical proposals and sets forth weighted evaluation criteria to enable the agency to make comparative judgments about the relative merits of competing proposals, an offeror is on notice that the agency will make qualitative distinctions among proposals under the various evaluation criteria.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion Adequacy
- ■ Criteria

Meaningful discussions were conducted where the questions asked by the agency reasonably suggested the perceived deficiencies in the offeror's proposal; all-encompassing discussions are not required.

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**B-250685, February 16, 1993**

**93-1 CPD 141**

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## **Procurement**

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### **Sealed Bidding**

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

Protest of the upward correction of a low bid to within .53 percent of the next low bid is denied where record shows that agency had a rational basis to conclude that there was clear and convincing evidence of the existence of a mistake and the intended bid price.

**Procurement**

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**Sealed Bidding**

- Unbalanced bids
- ■ Rejection
- ■ ■ Propriety

Apparent low bid was properly rejected where agency reasonably concluded that bid was grossly unbalanced and Federal Acquisition Regulation § 15.814(b) authorizes rejection of such a bid because its acceptance would be tantamount to allowing an advance payment.

**Procurement**

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**Bid Protests**

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

Protest to the General Accounting Office (GAO) filed more than 10 working days after the protester learned of the initial denial of its agency-level protest is untimely. The fact that the protester submitted an expanded version of its original protest for further agency consideration after learning of initial denial does not toll the running of the 10-day limitation period.

**Procurement**

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**Contractor Qualification**

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

Protest challenging agency's determination that the awardee will be able to perform the contract concerns the agency's affirmative determination that the awardee is responsible. The General Accounting Office will not review a procuring agency's affirmative determination that a bidder is responsible absent a showing of possible fraud or bad faith on the part of the contracting agency or that definitive responsibility criteria in the solicitation were misapplied.

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**Procurement**

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**Contractor Qualification**

- Responsibility criteria
- ■ Performance capabilities

Solicitation requirement that bidder submit prior to the commencement of performance evidence that its employees have obtained certain training concerns a performance requirement and is part of the general responsibility determination which the General Accounting Office will not review.

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## **Procurement**

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### **Contractor Qualification**

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

## **Procurement**

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### **Contractor Qualification**

- Responsibility criteria
- ■ Performance capabilities

General Accounting Office (GAO) will review the contracting officer's determination that awardee met solicitation requirement that certificates of training be submitted because the requirement is a definitive responsibility criteria. GAO concludes that the contracting agency reasonably determined that the awardee met the definitive responsibility criteria where copies of the certificates submitted by awardee demonstrate that the certificates are sufficient to show compliance with IFB definitive criteria.

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**B-250786, February 16, 1993**

**93-1 CPD 145**

## **Procurement**

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### **Competitive Negotiation**

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

Award to a higher rated, higher priced offeror was proper under a solicitation in which price was less important than technical merit and the agency reasonably concluded that the technical advantages associated with the awardee's proposal outweighed the higher price.

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**B-250851, February 16, 1993**

**93-1 CPD 146**

## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protest contending that bid was erroneously rejected as nonresponsive is denied where under a proper evaluation the protester was not the low bidder and thus would not be in line for award if its bid were found responsive.

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**B-246784.4, February 17, 1993**

**93-1 CPD 147**

## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Agency's request for reconsideration of initial decision sustaining in part a protest challenging as ambiguous the terms of a solicitation is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the agency in response to the original protest and previously considered by the General Accounting Office.

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ Preparation costs
- ■ ■ Attorney fees

The General Accounting Office will not limit the award of attorneys' fees to successful protesters unless part of their fees is allocable to a protest issue which is so clearly severable as to essentially constitute a separate protest.

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**B-250689, February 17, 1993**

**93-1 CPD 148**

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## **Procurement**

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### **Competitive Negotiation**

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

Contract award to other than the low offeror is not objectionable where the award is consistent with the solicitation evaluation criteria and the agency reasonably determined that awardee's higher rated technical proposal was worth the additional cost.

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**B-250690, February 17, 1993**

**93-1 CPD 149**

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## **Procurement**

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### **Bid Protests**

- GAO authority

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## **Procurement**

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### **Bid Protests**

- Prime contractors
- ■ Contract awards
- ■ ■ Subcontracts
- ■ ■ ■ GAO review

Protest challenging award of subcontract by Department of Housing & Urban Development prime contractor is dismissed as outside General Accounting Office (GAO) jurisdiction where subcontractor selection was not made "by or for" the government.

## **REDACTED VERSION**

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**B-250699, et al., February 17, 1993**

**93-1 CPD 150**

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## **Procurement**

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### **Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Sole-source award is proper where procurement involves a foreign military sale and foreign government on whose behalf procurement was conducted requested that award be made to a specific source.

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## **Procurement**

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### **Bid Protests**

- Bias allegation
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest alleging unequal treatment, bias and other improper conduct is denied where nothing in the record shows that awardee received improper information or other improper advantages as a result of its receipt of a sole-source award for the same item as a foreign military sale.

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## **Procurement**

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### **Competitive Negotiation**

- Competitive advantage
- ■ Allegation substantiation

The government is under no obligation to eliminate an advantage which a firm may enjoy because of its particular circumstances, including the award of other contracts by the government, unless the advantage has resulted from unfair action on the part of the government.

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**B-250807, February 17, 1993**

**93-1 CPD 151**

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## **Procurement**

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### **Sealed Bidding**

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

Agency properly canceled solicitation after bid opening on the basis that all otherwise acceptable bids were unreasonable in price where the low responsive bid exceeded both the government estimate and the current contract by a significant amount.

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**B-250850, February 17, 1993**

**93-1 CPD 152**

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## **Procurement**

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### **Competitive Negotiation**

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

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## **Procurement**

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### **Competitive Negotiation**

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

Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because of numerous deficiencies in its preaward sample.

**Procurement**

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**Sealed Bidding**

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

Agency's cancellation of solicitation after bid opening on the basis that all bids received are unreasonable in price is proper where the protester's low bid exceeded the government estimate by a significant amount, and even if the government estimate is adjusted upward to the amount that the protester argues is correct, its bid remains 14.3 percent higher than the estimate.

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**B-249565.2, February 18, 1993****93-1 CPD 154**

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Cancellation
- ■ ■ ■ Justification

Agency properly canceled a solicitation designated as a disadvantaged small business set-aside where the sole remaining bid substantially exceeded the prior contract price without a significant change in scope of work and where, although the bid did not exceed the agency price estimate by more than 10 percent, the agency price estimate was determined to be excessive.

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**B-250625.3, February 18, 1993****93-1 CPD 155**

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Responsibility
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Contracting agency has no authority to independently make an affirmative or negative determination of responsibility of an 8(a) firm but must refer "substantial doubts" that it has concerning the firm's responsibility to the Small Business Administration (SBA) for its consideration. The General Accounting Office will review an agency's failure to refer to the SBA a firm's capability deficiencies, but only to the extent of determining whether the failure to refer was motivated by bad faith or fraud.



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## **Procurement**

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### **Bid Protests**

#### **■ Non-prejudicial allegation**

#### **■ ■ GAO review**

Protest that award was predicated on a relaxed delivery schedule is denied where record contains no evidence that the award was made in contemplation of a contract modification and any such relaxation would not have prejudiced the protester.

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## **Procurement**

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### **Contract Management**

#### **■ Contract performance**

#### **■ ■ GAO review**

Protest that awardee is not performing in accordance with its contract requirements is dismissed since it involves a matter of contract administration.

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**B-250932, February 19, 1993**

**93-1 CPD 156**

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Discussion**

#### **■ ■ Adequacy**

#### **■ ■ ■ Criteria**

Contracting agency failed to conduct meaningful discussions with the protester where the agency's discussion questions did not inform the protester of the central deficiency in its proposal—the perceived lack of experience of the site manager—thereby effectively precluding the protester from having a reasonable chance for award since it did not address the deficiency in its best and final offer.

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**B-249763.3, February 22, 1993**

**93-1 CPD 157**

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## **Procurement**

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### **Bid Protests**

#### **■ GAO procedures**

#### **■ ■ Protest timeliness**

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

Protest challenging accuracy of agency's labor estimate is untimely where estimate was included in the solicitation and protest was not filed until after another offeror was selected for contract award.

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## **Procurement**

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### **Competitive Negotiation**

#### **■ Offers**

#### **■ ■ Evaluation**

#### **■ ■ ■ Cost estimates**

#### **■ ■ ■ ■ Labor costs**

Protest that agency required the protester, but not the awardee, to submit a proposal consistent with the agency's labor estimate is denied where awardee's proposal was, in fact, consistent with the labor estimate, and the record establishes that the agency did not dictate any particular level-of-effort or skill mix.

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## **Procurement**

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### **Competitive Negotiation**

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

Protest that agency failed to properly evaluate awardee's proposal for cost realism is denied where record provides ample support for agency's determination that awardee's cost proposal was realistic.

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## **B-250152.4, February 22, 1993**

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## **Procurement**

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### **Competitive Negotiation**

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety
- ■ ■ ■ Corrective actions

Agency properly decided to amend solicitation, conduct discussions, and request best and final offers where after making award on the basis of initial proposals it reasonably concluded, based on a protest by an unsuccessful offeror, that the solicitation contained ambiguities as to the factors to be evaluated for award.

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## **Procurement**

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### **Competitive Negotiation**

- Contracting officer duties
- ■ Competitive system integrity

Need to conduct a fair and impartial procurement process takes precedence over any possible competitive disadvantage to the original awardee which may result from the exposure of its price.

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## **B-250380.2, February 22, 1993**

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**93-1 CPD 158**

## **Procurement**

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### **Competitive Negotiation**

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

The agency reasonably evaluated the protester's low priced proposal as technically unacceptable in accordance with the solicitation's stated evaluation criteria and reasonably awarded a contract to the technically superior, higher priced offeror whose proposal represented the most advantageous offer to the government.

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**B-250773, February 22, 1993**

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
  - ■ Disadvantaged business set-asides
  - ■ ■ Contract awards
  - ■ ■ ■ Propriety
- 

**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Cost evaluation
- ■ ■ ■ Government estimates

Protest against award to sole bidder under solicitation set aside for small disadvantaged business (SDB) concerns on the basis that awardee's bid for base item was more than 10 percent higher than the government's estimate for that item, and funds available at bid opening were only sufficient for procurement of base item and not additive item, is denied where contract award included both base and additive items due to increase in available funding, and sole SDB bidder's total bid was only 1.34 percent higher than the revised total government estimate.

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**B-250790, February 22, 1993**

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**93-1 CPD 159****Procurement**

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**Competitive Negotiation**

- Offers
  - ■ Evaluation
  - ■ ■ Prices
  - ■ ■ ■ Leases
- 

**Procurement**

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**Sealed Bidding**

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

Procuring agency properly determined, in accordance with the solicitation provision for evaluation of options, that it would not be in the government's best interest to evaluate bids for the lease of an interim childcare facility for a fourth option year where the agency determined that the facility would be needed for only 3 of the 4 option years.

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**B-250930, February 22, 1993**

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**93-1 CPD 160****Procurement**

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**Bid Protests**

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

Protester is not an interested party to challenge the agency's cancellation of a solicitation where it would not be in line for award even if its protest were sustained because it is not the low bidder under its intended bid.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where solicitation sought proposals for services to operate and maintain an existing "information system," protest that agency improperly found protester's proposal technically unacceptable is denied where record shows that agency reasonably concluded that the proposal's emphasis on enhancing the system, which was not required under the solicitation, demonstrated that the protester did not sufficiently understand or address the solicitation's requirements.

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**B-250143.2, February 23, 1993**

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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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**Sealed Bidding**

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

Protest that awardee's bid which contained entry of "n/c" for one line item should have been rejected as nonresponsive was properly dismissed as the bid reflects the bidder's intent to provide the item at no cost to the government; the "n/c" entry does not cause the government to lose the protection of the solicitation's liquidated damages clause as the clause simultaneously provides for a deduction under another line item which was priced by the awardee, and under which the awardee may incur substantial damages.

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**B-250546.2, February 23, 1993**

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**Procurement**

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**Bid Protests**

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

General Accounting Office Bid Protest Regulations do not provide for award of proposal preparation costs in cases where the agency has taken corrective action.

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**Procurement**

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**Bid Protests**

- Dismissal
- ■ Definition

Dismissal of protest against anticipated award to another firm was proper where agency canceled request for quotations because the specifications failed to accurately reflect the agency's needs.

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**Procurement**

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**Bid Protests**

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

Protester is not entitled to recover the costs of filing and pursuing its protest where, in response to the protest, the agency terminated the awardee's contract 15 working days after the protest was filed, and plans to recompile the requirement.

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**Procurement**

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**Bid Protests**

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

General Accounting Office Bid Protest Regulations do not provide for recovery of proposal preparation costs in cases where the agency takes corrective action.

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**Procurement**

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**Bid Protests**

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

In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

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**Procurement**

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**Competitive Negotiation**

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

Technical evaluation criteria in a request for proposals (RFP) is not intended to be a detailed reiteration of RFP's statement of work and substantive technical requirements. Rather, the evaluation criteria are used to measure the offerors' experience and understanding of the unique work described in the statement of work and how well the proposals satisfy the agency's technical requirements.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

In reviewing protests concerning the evaluation of proposals, the General Accounting Office will examine the agency's evaluation to ensure that it had a reasonable basis. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.

**Procurement**

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**Sealed Bidding**

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

A hand-delivered bid given to an agency receptionist to time/date stamp and then immediately handed back to the bidder, who then hand-carries it to the bid opening room and submits it before the bid opening time, is considered submitted at the time of delivery at the bid opening room.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Prices
- ■ ■ ■ Line items

A bid containing additive bid items, most of which have been renumbered by the bidder, is responsive and eligible for award where the bid is low based on the base bid item and the additive item number which was not renumbered.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price data
- ■ ■ ■ Minor deviations

A bid including prices for both a welded tank and a bolted tank, where only a bolted tank was specified, is responsive since the bid clearly provided a price for the required item and inclusion of an alternative that does not meet specifications does not negate the responsiveness of the compliant offer.

**Procurement**

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**Sealed Bidding**

- Two-step sealed bidding
- ■ Offers
- ■ ■ Competitive ranges
- ■ ■ ■ Exclusion

Protest challenging agency's evaluation of proposal and exclusion of proposal from consideration under modified two-step procurement is sustained where record does not clearly show that the agency's decision to restrict the competition to one firm was reasonable, since questions concerning the acceptability of protester's proposal could have been resolved through relatively limited discussions.

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**Procurement**

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**Socio-Economic Policies**

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

The General Accounting Office cannot address the issue of whether the awardee meets the small business size standard in the request for proposals. The Small Business Administration has the exclusive authority to determine matters of small business size status for federal procurements.

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**Procurement**

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**Competitive Negotiation**

- Contract awards notification
- ■ Procedural defects

Protest that contracting agency improperly failed to provide notice of contract award prior to award is denied where the agency properly waived the prior notice requirement by determining in writing that the urgency of the requirement necessitated the award without delay.

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**Procurement**

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**Contractor Qualification**

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

GAO will not review a contracting officer's affirmative determination of responsibility unless the protester shows bad faith or fraud on the part of the procurement officials or that the solicitation contains definitive responsibility criteria that have not been met. An agency is not required to conduct a preaward survey if the information readily available to the agency is sufficient to allow the contracting officer to make a determination of responsibility.

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**Procurement**

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**Small Purchase Method**

- Requests for quotations
- Terms
- ■ Compliance

Protest challenging an award for cellular phone services is sustained where the request for quotations required vendors to submit prices for local phone service on a per-minute basis and did not guarantee any minimum amount of usage and awardee submitted its prices on a monthly basis with a requirement that the government pay the monthly charge regardless of how much it used the service.

**Procurement**

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**Bid Protests**

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

Neither protester's alleged oral complaints to the agency, nor notations accompanying its initial proposal identifying noncompliance with the specifications, suffice to constitute a timely agency-level protest of solicitation provisions.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Leases
- ■ ■ ■ Loan commitments

Agency has properly justified the requirement included in a solicitation for leased space that offerors submit evidence of a conditional loan commitment in an amount sufficient for the offeror to prepare the leased premises for occupancy; such information was reasonably necessary to ensure award only to a firm that had the financial tools to satisfy the solicitation requirements.

**Procurement**

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**Special Procurement Methods/Categories**

- Architect/engineering services
- ■ Offers
- ■ ■ Technical acceptability

Agency's determination that protester's proposal was technically unacceptable was reasonable where proposal failed to explain how the firm would meet certain solicitation requirements, or to show that proposed architect/engineering firm possessed the required experience.

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**Procurement**

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**Special Procurement Methods/Categories**

- Architect/engineering services
- ■ Offers
- ■ ■ Evaluation errors
- ■ ■ ■ Non-prejudicial allegation

Agency's evaluation of proposed architect/engineering firm based on a requirement for five references instead of the two required in the solicitation did not prejudice the protester where the two references offered by the protester did not meet the requirements, and protester does not argue that any additional references it might have offered, had it known the agency actually wanted five references, would have met the requirements.



**Procurement**

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**Sealed Bidding**

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

Bid sent by U.S. Postal Service Express Mail 1 day prior to bid opening that arrived at the U.S. Post Office for the government installation 40 minutes before bid opening, but, as a result of the installation's normal mail delivery procedures, did not arrive at the place designated in the solicitation for receipt of bids until after bid opening, was properly rejected as late where the late receipt was not the result of government mishandling.

**Procurement**

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**Competitive Negotiation**

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

Where the two highest scored technical proposals are within one percentage point in score and reasonably are determined to be essentially equal technically, award may properly be made to the low cost offer notwithstanding the solicitation's emphasis on technical merit as more important than price.

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**Procurement**

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**Competitive Negotiation**

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

Award on the basis of initial proposals was proper where it was consistent with the terms of the basic contract award clause contained in the solicitation.

**Procurement**

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**Payment/Discharge**

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Claimant may not be paid on a *quantum meruit/valebant* basis for graphic design and printing services performed for an Army Reserve Command without a valid contract since the services could not have been lawfully procured in light of the provisions of 44 U.S.C. § 501.

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**B-250037.2, February 24, 1993**

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**Procurement**

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**Sealed Bidding****■ Bids****■ ■ Modification****■ ■ ■ Submission methods****■ ■ ■ ■ Facsimile**

Where a telecopied bid modification was received at the contracting agency's facsimile machine at 1:57 p.m., and bid opening was scheduled for 2 p.m. on the same day in a different room, late receipt of the modification was due primarily to the bidder's "last minute" transmission of the modification and to the bidder's addressing the modification to an engineer designated in the IFB as a technical adviser rather than to the exact address specified in the IFB.

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**B-250785.2, B-250785.3, February 24, 1993**

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**Procurement**

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**Noncompetitive Negotiation****■ Use****■ ■ Justification****■ ■ ■ Urgent needs**

When using other than competitive procedures due to unusual and compelling urgency, the agency has the authority to limit the procurement to the only firm it reasonably believes can properly meet its needs within the time available.

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**B-250875, et al., February 24, 1993**

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**93-1 CPD 174****Procurement**

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**Competitive Negotiation****■ Discussion reopening****■ ■ Propriety****■ ■ ■ Best/final offers****■ ■ ■ ■ Corrective actions**

Agency's proposed corrective action of reopening discussions and requesting best and final offers from all competitive range offerors to correct its failure to properly evaluate the awardee's proposal, which was noncompliant with RFP requirements, and to conduct meaningful discussions with regard to that proposal, is proper where the proposal deficiencies were reasonably regarded as being susceptible to correction through discussions.

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**Procurement**

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**Bid Protests****■ GAO procedures****■ ■ Preparation costs****■ ■ ■ Administrative remedies**

Protester is not entitled to protest costs where agency promptly took corrective action in response to supplemental protest, which for the first time identified what aspects of the awardee's proposal were unacceptable.

## REDACTED VERSION

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**B-250897, February 24, 1993**

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### **Procurement**

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#### **Competitive Negotiation**

##### **■ Contract awards**

##### **■ ■ Propriety**

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### **Procurement**

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#### **Competitive Negotiation**

##### **■ Offers**

##### **■ ■ Evaluation**

##### **■ ■ ■ Cost estimates**

##### **■ ■ ■ ■ Labor costs**

Agency properly accepted offer to provide technical support services which proposed a reduction in labor hours from the government's estimates, where the solicitation advised offerors that they could independently propose the amount of professional and support staff they believed necessary to perform the work.

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**B-251132, February 24, 1993**

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**93-1 CPD 175**

### **Procurement**

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#### **Noncompetitive Negotiation**

##### **■ Sole sources**

##### **■ ■ Justification**

##### **■ ■ ■ Intellectual property**

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) is not objectionable where the agency reasonably determined that only one source could provide the required services because that source holds proprietary rights for the systems to be serviced under the contract. The protester has failed to prove its allegation that access to the proprietary information is unnecessary to perform the contract.

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**B-249560.2, February 25, 1993**

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**93-1 CPD 176**

### **Procurement**

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#### **Competitive Negotiation**

##### **■ Offers**

##### **■ ■ Competitive ranges**

##### **■ ■ ■ Exclusion**

##### **■ ■ ■ ■ Administrative discretion**

Protest that proposal improperly was eliminated from the competitive range is denied where record shows that proposal was reasonably found deficient under most evaluation factors.

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**Procurement**

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

Protest that the agency improperly evaluated proposal is denied where the record indicates that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

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**Procurement**

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

Allegation that protester was entitled to an award because it submitted a technically acceptable offer at a lower price than that of one of the awardees is denied where the solicitation provided for awards on the basis of proposals most advantageous to the government, and the agency reasonably concluded that the awardee's higher technically rated proposal warranted payment of the price premium.

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**Procurement**

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**Sealed Bidding****■ Bids****■ ■ Errors****■ ■ ■ Error substantiation**

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**Procurement**

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**Sealed Bidding****■ Low bids****■ ■ Error correction**

General Accounting Office will not disturb contracting agency's determination that low bidder had presented clear and convincing evidence permitting correction of an alleged mistake in bid where the agency's determination is supported by information contained in the bidder's detailed work-papers.

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**Procurement**

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**Competitive Negotiation****■ Requests for proposals****■ ■ Terms****■ ■ ■ Compliance**

Agency reasonably rejected protester's proposal for shelving system, which took several exceptions to the solicitation specifications, where the solicitation required offerors to demonstrate the functional equivalency of the offered system and the protester failed to do so, despite being afforded that opportunity during discussions.

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**B-250984, February 25, 1993**

**Procurement**

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**Specifications**

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

Protest challenging specifications for forklift trucks with both front and side loading capabilities as being unduly restrictive is denied where the agency demonstrates that its requirements are reasonably related to its minimum needs.

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**B-249258.2, February 26, 1993**

**93-1 CPD 180**

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

**Procurement**

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**Contractor Qualification**

- Organizational conflicts of interest
- ■ Corporate ownership
- ■ ■ Spouses
- ■ ■ ■ Contracting officers

Request for reconsideration of decision holding that contracting officer properly disqualified protester from the competition where the record showed a likelihood that a conflict of interest existed—because the spouse of the protester's president was the contracting officer's supervisor, who had access to the government estimate for the procurement—is denied where protester fails to show that the decision was erroneous in fact or law. Protester's argument that other agency employees should have alerted the contracting officer's supervisor to the possible conflict does not show that the supervisor was relieved of the primary responsibility to identify and avoid even the appearance of a conflict of interest.

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**B-250931, February 26, 1993**

**93-1 CPD 181**

**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Air Force reasonably justified sole-source award of contract for duct supports for F-100 airplane engines to original equipment manufacturer under 10 U.S.C. § 2304(c)(2) where protester had failed to deliver sufficient quantity of usable duct supports under its contract with agency, thereby causing critical shortage of parts and potential grounding of fighter airplanes.

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Advertising
- ■ ■ Omission

Where agency reasonably decided unusual and compelling urgency requires procurement of supplies, solicitation need not be synopsisized in *Commerce Business Daily*



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