

**GAO**

United States General Accounting Office  
Office of General Counsel

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August 1993

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

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Vol. IV, No. 11

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U.S. Government Printing Office, Washington, D.C. 20402

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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.C. § 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. No. 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 file number and date, e.g., B-248928, Sept. 30, 1992. 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 and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 71 Comp. Gen. 530 (1992).

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# Appropriations/Financial Management

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**B-254133, August 23, 1993**

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## **Appropriations/Financial Management**

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### **Judgment Payments**

- **Permanent/indefinite appropriation**
- ■ **Purpose availability**
- ■ ■ **Tax returns**

The Judgment Fund, 31 U.S.C. § 1304, is not available for payment of judgments for tax refunds. The Internal Revenue Service has a separate, permanent, indefinite appropriation for that purpose. 62 stat. 650, 561 (1948).

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**B-251863, August 27, 1993**

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## **Appropriations/Financial Management**

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### **Federal Assistance**

- **Grants**
- ■ **Interest**
- ■ ■ **Use**

Interest earned on grant funds may not be retained and used by a grantee; the interest must be deposited promptly into the United States Treasury.

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**B-242666, August 31, 1993\*\*\***

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

- **Time availability**
- ■ **Fiscal-year appropriation**
- ■ ■ **Substitute checks**

Department of the Treasury is responsible for the payment of settlement checks issued to replace checks paid over forged endorsements and such payments must be charged against the Check Forgery Insurance Fund (Fund). There is nothing either in the text or legislative history of the Competitive Equality Banking Act of 1987 that indicates that the Congress intended to eliminate the Fund or change the established process for issuing settlement checks to replace checks paid over forged endorsements.

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## **Appropriations/Financial Management**

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### **Budget Process**

- **Permanent/indefinite appropriation**

Under 31 U.S.C. § 1555 an appropriation account available for obligation for an indefinite period shall be closed if the head of an agency or the President determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the account for two consecutive years. The purposes for which appropriations were made for the

Fund continue to exist and FMS has not shown sufficient justification for closing the account under 31 U.S.C. § 1555. Treasury should restore balances in the Fund and charge all claims against the Fund or seek permanent indefinite appropriations or Congressional authority to repeal the Fund.

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# Civilian Personnel

## Late case

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**B-252352, June 22, 1993**

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### Civilian Personnel

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#### Travel

- Temporary duty
- ■ Annual leave
- ■ ■ Return travel
- ■ ■ ■ Constructive expenses

Where circumstances during temporary duty necessitated that the original travel orders authorizing return from temporary duty by commercial aircraft be changed to return by charter flight provided by the government, travelers who did not travel by the changed mode of transportation on their return because of taking annual leave that had been approved before their temporary duty began, must pay the extra costs to the government resulting from not using the charter flight.

## Current cases

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**B-252373, August 2, 1993**

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### Civilian Personnel

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#### Compensation

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

A reemployed annuitant's salary was reduced by an amount consistent with her estimated annuity which had been erroneously computed. The error was later discovered and corrected through issuance to her of an SF-50 "Notification of Personnel Action," showing that the annuity to be deducted from her salary was being underdeducted approximately \$9,000 annually or about \$300 a pay period. When salary payments thereafter were not further reduced consistent with the corrected SF-50, the employee should have inquired of her payroll office about the accuracy of her pay. Having failed to do so, she is considered at least partially at fault, thus, precluding waiver of that part of her debt. 5 U.S.C. § 5584(b) (1988).

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### Civilian Personnel

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#### Compensation

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

A reemployed annuitant who was receiving the salary of step 2 of her grade, was erroneously given a within-grade increase to step 3 of her grade. Since she was not aware of being placed in step 3 of her grade until after the error was discovered administratively and corrected, waiver is

granted for that part of her debt representing the difference between the pay of step 2 and step 3 of her grade received during the period in question.

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**B-252849, August 3, 1993**

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**Civilian Personnel**

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**Compensation**

- **Retroactive compensation**
- **Eligibility**

A GS-13 employee of the Social Security Administration voluntarily transferred to a GS-12 position with the Department of the Army in Germany. The Army had erroneously found him qualified for the GS-12 position. Since no other position was available for him in Germany, the Army subsequently returned him to the United States in another GS-12 position. The employee claims backpay at the GS-13 level under 5 U.S.C. § 5596 (1988) on the basis that he would not have left his GS-13 position but for the opportunity of the position in Germany. His claim may not be paid since the administrative error did not prevent his hiring as a GS-12 from taking effect as originally intended, and since he continued to receive the same salary and overseas allowances until his reassignment back in the United States. Thus, he suffered no loss of pay or allowances during the period of the erroneous personnel action remediable under the Back Pay Act.

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**B-252836, August 4, 1993**

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**Civilian Personnel**

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**Travel**

- **Travel orders**
- ■ **Retroactive adjustments**

**Civilian Personnel**

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**Travel**

- **Permanent duty stations**
- ■ **Actual subsistence expenses**
- ■ ■ **Prohibition**

An agency assigned an employee to temporary duty within the same metropolitan area as the employee's official duty station and issued travel orders authorizing per diem. Later, after the duty was performed and expenses incurred, the agency determined that authorization of per diem was contrary to agency regulations and policy prohibiting per diem at a location within the vicinity of the employee's residence and refused payment on the employee's outstanding claims and began collection action on amounts already paid. Authorization of per diem under the circumstances was not specifically barred by the regulations but was within agency discretion. The authorization in the travel orders was an exercise of that discretion, and thus, the employee's travel orders were valid when issued, and valid travel orders may not be retroactively amended so as to increase or decrease the rights of employees.

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**B-250378, August 5, 1993**

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**Civilian Personnel**

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**Relocation**

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

Transferred employee claims reimbursement for 100 percent of expenses incurred in the sale of a residence at her old duty station on the basis of a Divorce Decree, which awarded the home to her husband, a member of her family when she was first notified of the transfer. Title at date employee was first notified of the transfer was in the name of the employee's husband and his former

wife which limits reimbursement to 50 percent of the total expenses. *William J. Fitzgerald*, 66 Comp. Gen. 95 (1986).

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**B-252599, August 5, 1993**

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**Civilian Personnel**

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**Leaves Of Absence**

- Annual leave
- ■ Delays
- ■ ■ Official business
- ■ ■ ■ Additional expenses

A special government employee, who had arranged to take a vacation trip and had already incurred air travel expenses, may not be reimbursed for additional personal expenses incurred when his official duties caused him to delay his travel and make alternate flight reservations. *John W. Keys, III*, 60 Comp. Gen. 629 (1981), and decisions cited.

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**B-241196.7, August 13, 1993**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Permanent residences

An employee requests reconsideration of prior decisions denying her claims for real estate expenses associated with the sale of a residence at her old duty station. The record includes contradictory statements regarding which of two residences had been her actual residence at the time she first learned of her transfer and whether her husband, with whom she held joint title, was a member of her household when the residence for which she claims reimbursement was sold. The contradictory statements render the claim too doubtful for the General Accounting Office to authorize payment.

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**B-252531, August 13, 1993**

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**Civilian Personnel**

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**Relocation**

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

A transferred employee used the services of a relocation service company to sell his residence at his old official station. The relocation service company retained legal counsel to perform a title search, document processing, and related services needed, which costs have been paid for by the agency. The employee secured the services of an attorney to review the legal documents involved and to provide him with legal advice and assistance. The employee may not be reimbursed for the attorney's fee he paid because the services performed were analogous or similar to those provided by the relocation service company. 41 C.F.R. § 302-12.5(b) (1992).

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**B-252602, August 16, 1993**

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**Civilian Personnel**

**Relocation**

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Determination

---

**Civilian Personnel**

**Relocation**

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

Transferred employee is not entitled to reimbursement of temporary quarters subsistence expenses after making a downpayment on the purchase of and moving his family and household goods into a house he rented which he later purchased. These facts support the agency's determination that the house became his permanent residence, even though its purchase was contingent upon obtaining funds from the sale of his residence at his old duty station.

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**B-252629, August 17, 1993**

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**Civilian Personnel**

**Relocation**

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

Employee was transferred from Connecticut to Louisiana in the interest of the government. Due to small amount of household goods, nonavailability of trailers for rent, and significant cost savings to the government, the employee purchased a trailer kit and miscellaneous supplies, constructed a trailer, and moved himself. There is no provision in the Federal Travel Regulation which authorizes reimbursement for the purchase of a conveyance, such as a truck or trailer, as part of the relocation expenses of a civilian federal employee. Thus we deny the employee's claim for purchase of a trailer kit and miscellaneous supplies in connection therewith.

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**B-252723, August 17, 1993**

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**Civilian Personnel**

**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

The National Park Service required an employee to move from his private residence to government-owned quarters as a condition of employment in another position. The employee's claim for limited relocation expenses may be allowed since the relocation was clearly required as a condition of his new position, notwithstanding that the transfer occurred within the boundaries of a national park. See *Gregory Stiles*, B-230365, July 25, 1988.

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**B-249930.2, August 19, 1993**

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**Civilian Personnel**

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**Travel**

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

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

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**B-250002, August 26, 1993**

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**Civilian Personnel**

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**Relocation**

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

An employee whose household goods are authorized to be moved by the GBL (actual expense) method incident to his transfer but who chooses to make his own arrangements to move his goods rather than use the low cost GSA-approved commercial mover may be reimbursed his verifiable actual costs not to exceed what the low cost commercial mover would have charged the government. However, where the employee's claim for actual expenses is supported only by a receipt for a cash payment he indicates he made to a friend to move the goods, and without a certified weight certificate, the claim is too doubtful to be paid.

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**B-252000, August 30, 1993**

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**Civilian Personnel**

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**Relocation**

- **Overseas personnel**
- ■ **Family separation allowances**
- ■ ■ **Eligibility**

The travel orders of a Navy employee transferred overseas authorized delayed travel of his dependents and did not authorize a separate maintenance allowance (SMA) for them. Upon arrival at his overseas post, the employee attempted to elect an SMA for his dependents until their arrival 2-1/2 months later. The SMA should not be paid since section 264.2(2) of the Standardized Regulations (Government Civilians, Foreign Areas) provides that an election by an employee to include his dependents on his travel orders to his post of duty overseas and not request an SMA may not be changed for the employee's first 90 days at post. Also, the DOD Civilian Personnel Manual states that a voluntary SMA for personal convenience, such as in this case, is in lieu of any travel and transportation entitlements for family members for whom an SMA is paid. In this case the dependents were authorized and received the dependents travel and transportation allowances. Accordingly, the SMA is not payable.

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# Military Personnel

## Late case

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**B-253020, June 10, 1993**

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### Military Personnel

#### Leaves Of Absence

- **Unused leave balances**
- ■ **Lump-sum payments**

Former Army member who had been paid for 36 and one half days of accrued leave during active service and was paid for 23 and one half days at the time of discharge may not be paid for additional accrued leave at time of discharge because 37 U.S.C. § 501(f) and implementing Department of Defense regulations provide that a member may only be paid for 60 days accrued leave during military career. Desert Storm/Desert Shield exception to limitation in Section 1115(b) of Public Law 101-510 does not apply to member notwithstanding member received erroneous advice that exception did apply.

## Current cases

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**B-251851, August 4, 1993**

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### Military Personnel

#### Pay

- **Death gratuities**
- ■ **Eligibility**

Special Persian Gulf Death Gratuity benefits are payable to beneficiaries of Servicemen's Group Life Insurance (SGLI) insurance policies. The initial determination that a deceased member's father was a proper beneficiary under the son's SGLI policy became questionable when a lawsuit challenging the father's eligibility was settled by the defendant insurance company by paying the plaintiff the full amount requested in the lawsuit. Accordingly, since doubt exists concerning his eligibility under the SGLI program the Special Death Gratuity payment may not be made to him in the absence of court of competent jurisdiction ruling on the matter.

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**B-252123, August 4, 1993**

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### Military Personnel

#### Pay

- **Survivor benefits**
- ■ **Underdeductions**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

A retired member elected to change Survivor Benefit Plan (SBP) spouse coverage to the maximum level after marrying his second wife. The Air Force noted the change in the member's records, but did not make the change in its computerized payroll system, and deductions from retired pay for SBP premiums, begun for his first wife at reduced level, continued at the lesser amount. Member sought to verify added coverage for his second wife, and accepted the repeated explanation that second wife had reduced coverage and that unchanged deduction was therefore correct. On discov-



ery of its error 9 years later, Air Force may nonetheless collect the unpaid extra premium, because member should have known in 1982 that amount of the extra premium was not being deducted from his pay, and because, despite error in payroll system, no error occurred in records governing SBP benefits, and member's wife would have received the higher benefit in the event of the member's death before correction of pay records.

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**B-252190, August 4, 1993**

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**Military Personnel**

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**Relocation**

- Dislocation allowances
- ■ Eligibility

Retiring Air Force member stationed in California selected Erie, Pennsylvania, as his home in retirement, and claims the cost of a trip there to locate a residence, affirming his intention to complete relocation to Pennsylvania prior to the expiration of the 1-year limit on allowances for relocating to a retirement residence. Member continued to reside in California after the trip. He is not entitled under current regulations to travel and transportation allowances until he completes the move to the new residence and becomes a continuing and actual resident there.

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**B-252368, August 19, 1993**

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**Military Personnel**

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**Relocation**

- Household goods
- ■ Shipment costs
- ■ ■ Waiver

When the Government contracts with a moving company to move a member's household goods, it is standard business practice for the Government to pay the entire cost and then bill the member for any excess weight charges. Since no erroneous payment is made in that situation, the resulting debt of the member cannot be considered for waiver.

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**B-253023, August 27, 1993\*\*\***

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**Military Personnel**

---

**Pay**

- Survivor benefits
- ■ Annuities
- ■ ■ Eligibility
- ■ ■ ■ Former spouses

A provision in a property settlement agreement incorporated into a final divorce decree which states that the husband will not oppose the wife's right to perfect survivor benefits is unclear regarding whether the agreement is in regard to a Survivor Benefit Plan (SBP) annuity and therefore, is not definite enough to provide a basis for the former spouse's deemed election request under SBP.

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**B-252523, August 27, 1993**

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**Military Personnel**

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**Pay**

- Dual compensation restrictions
- ■ Retired personnel

Where retired officer fails to notify military finance office of employment at the Veterans Administration, even though he did notify VA of prior military service, he cannot be said to be without

fault under 10 U.S.C. § 2774 so that waiver may be granted of overpayment of retired pay because of the failure to apply the Dual Compensation Act reduction.

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**B-252856, August 30, 1993**

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**Military Personnel**

---

**Pay**

- Retirement pay
- ■ Overpayments
- ■ ■ Debt collection
- ■ ■ ■ Waiver

The Air Force continued to send retired pay to a member's address after his death. His widow's request for waiver of the resulting debt is denied because she did not make the request within 3 years after the erroneous payments were discovered.

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# Procurement

## Late cases

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**B-252322, June 9, 1993**

**93-1 CPD 447**

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### Procurement

#### Competitive Negotiation

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

Protest against technical evaluation is denied where agency reasonably downgraded protester's proposal, and rated it unacceptable under single most important subfactor, due to lack of specific information on each proposed instructor, as required by the solicitation.

---

### Procurement

#### Bid Protests

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

Allegations that solicitation did not include certain required provisions and contained improper specifications is dismissed as untimely where not raised prior to closing date for receipt of initial proposals, or prior to next closing date after inclusion of provisions in solicitation.

---

### Procurement

#### Bid Protests

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

Allegation that discussions were inadequate is untimely where not filed within 10 working days after debriefing during which protester learned information on which argument is based.

---

**B-251586.2, June 22, 1993**

**93-1 CPD 480**

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### Procurement

#### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request essentially raises the same matters on reconsideration as were raised in the original protest; protester has not demonstrated that decision was based on error of fact or law.

**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Offers
- ■ ■ Clarification
- ■ ■ ■ Propriety

Where the procuring agency, after receipt of offers in a negotiated procurement, determines that an alternate approach not reasonably contemplated by the solicitation is acceptable, the agency properly apprised other offerors through discussions that the solicitation authorized alternate proposals, without suggesting a particular design approach or disclosing another offeror's proposal information.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Bias

Protest that the procuring agency engaged in unequal discussions is denied, although the agency questioned the awardee, but not the protester, as to its consideration of alternate proposals under a clause that required offerors to notify the procuring activity of deviations from the solicitation specifications, since the protester had already invoked this clause in its initial proposal to submit an alternate proposal.

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**Procurement**

---

**Competitive Negotiation**

- Alternate offers
- ■ Acceptance
- ■ ■ Propriety

Awardee's alternate proposal submitted during discussions and at the request of the procuring agency is not barred by the solicitation's late proposal provision.

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**Procurement**

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**Competitive Negotiation**

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

In a negotiated procurement that provided for award to the lowest-priced, technically acceptable proposal, protest that the awardee's alternate technical proposal exceeded the solicitation's page limits is denied, where the protester's proposal was found to be technically acceptable within the confines of these page limits, but was not selected for award because of its higher price and therefore the protester was not prejudiced even accepting the protester's interpretation of the solicitation page limitation provision.

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## **Procurement**

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### **Competitive Negotiation**

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

The procuring agency reasonably did not conduct a cost realism analysis in a negotiated procurement for a fixed price contract, where the solicitation, although informing offerors that low "cost" would be considered in the technical evaluation, did not provide for the submission of any cost data that would permit a cost realism analysis and only solicited offerors' proposed prices.

## **Current cases**

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**B-244837.2, August 2, 1993**

**93-2 CPD 64**

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## **Procurement**

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### **Contract Types**

- Requirements contracts
- ■ Use

Protest that solicitation which consolidates requirements for laboratory services for 21 medical clinics unduly restricts small businesses from competing for the services is denied where the agency reasonably determined that a consolidated contract is necessary to satisfy its minimum needs.

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**B-252807, August 2, 1993**

**93-2 CPD 65**

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## **Procurement**

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### **Competitive Negotiation**

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

Award to a higher priced offeror is reasonable where record shows that source selection authority reasonably concluded that magnitude of protester's price advantage was insufficient to offset awardee's technical superiority under the two technical factors and where solicitation stated that the price was the least important factor.

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**B-252891, B-252891.2, August 2, 1993**

**93-2 CPD 66**

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## **Procurement**

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### **Sealed Bidding**

- Unbalanced bids
- ■ Contract awards
- ■ ■ Propriety

Where the apparent low bid is not unreasonably overstated and the proposed awardee's price for mobilization and demobilization does not constitute an advance payment, the bid need not be rejected as unbalanced and front-loaded.

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**Procurement**

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**Contractor Qualification**

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

Where protester alleges that agency officials engaged in a bad faith effort to discredit protester, resulting in a nonresponsibility determination that rendered protester ineligible for award under follow-on solicitation, protest is denied; since the record reasonably supports contracting officer's determination that protester's performance record was unsatisfactory; protester has refused to provide details to support its allegations of bad faith; and raised these allegations after bid opening and apparently only after it became aware it might lose the competition based on its prior performance.

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**B-253094, August 2, 1993**

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly rejected proposal as technically unacceptable and outside competitive range where request for proposals required offerors to submit sufficient technical literature to establish conformance with specifications and, for requirements at issue, protester submitted either no or conflicting descriptive literature, and therefore failed to meet this standard.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency's failure to inform protester of two proposal deficiencies did not prejudice protester since its proposal was properly rejected solely on the basis of two other proposal deficiencies of which the agency clearly notified the protester.

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**B-251501.3, August 3, 1993**

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**Procurement**

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**Competitive Negotiation**

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

Even though the protester correctly argues that awardee's proposal did not meet certain solicitation requirements concerning equipment reliability, the General Accounting Office will not sustain the protest where the protester likewise does not comply with the equipment reliability requirements since the agency has treated the offerors equally by considering both proposals technically acceptable, and where the actual minimum needs of the government are being satisfied by the award.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of protest against award to allegedly below cost proposal is denied where protester essentially disagrees with prior decision and reiterates arguments raised initially.

**Procurement**

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**Competitive Negotiation**

- Requests for quotations
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Agency reasonably canceled a negotiated procurement without evaluating proposals where it no longer had an immediate need for the requirement.

**Procurement**

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**Bid Protests**

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

Protest properly was dismissed as untimely where it was based on rejection letter from agency that was received more than 10 working days before protest was filed; assertion that the protest was timely based on subsequent correspondence does not warrant reconsidering matter where it is clear that protest in fact was based on rejection letter.

**Procurement**

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**Bid Protests**

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

Protest is untimely where not filed within 10 working days after protester knew of basis for protest; continued pursuit of matter with agency does not extend time for filing protest at General Accounting Office.

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**Procurement**

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**Small Purchase Method**

- Federal supply schedule
- ■ Leases
- ■ ■ Equipment

Agency properly placed rental order with Federal Supply Schedule vendor offering the lowest price for the equipment meeting its minimum needs.

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**Procurement**

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**Competitive Negotiation**

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Corrective actions

Where agency conducts discussions with proposed awardee, after submission of best and final offers, in order to ensure uninterrupted supply of quantities of multi-dose vials of vaccine, it must also conduct discussions with other offeror in competitive range.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Personnel
- ■ ■ ■ Resumes

Protest generally challenging the evaluation of protester's proposed personnel is denied where the solicitation unambiguously required offerors to submit resumes for their proposed personnel; advised offerors that their proposed personnel must meet the solicitation's minimum education and experience requirements; stated that personnel was the most important evaluation factor; and a large percentage of the protester's proposed personnel did not meet the minimum experience and education requirements.

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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 priced offeror is not objectionable where the award is consistent with the solicitation evaluation criteria and the agency reasonably determined that the awardee's technically superior proposals were worth the additional cost.



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**Procurement**

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**Contractor Qualification**

- Licenses
- ■ Determination time periods

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Contract awards
- ■ ■ Non-responsible contractors
- ■ ■ ■ Competency certification

Protest of agency's rejection of bid from small business firm on the basis that firm did not possess, at the time of award, license required under state law for firm to engage in the business of providing security guard services is sustained since the rejection was, in fact, a determination that a small business bidder was nonresponsible—a matter which was required to be referred to the Small Business Administration for certificate of competency review but was not.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Transportation contracts
- ■ ■ ■ Rates

Where solicitations for negotiated contracts seeking ocean and intermodal rates for transporting Department of Defense cargo state that agency will evaluate proposals by comparing offered rates to commercial prices in publicly available "comparable service contracts," there is no requirement that the agency disclose in solicitations the specific commercial contracts or rates it intends to use in its evaluation.

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**Procurement**

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**Bid Protests**

- Premature allegation
- ■ GAO review

Where solicitations for negotiated contracts seeking ocean and intermodal rates for transporting Department of Defense cargo state that the agency will evaluate proposals by comparing offered rates to commercial charges in "comparable service contracts" but do not specifically identify any service contracts the agency might use in its evaluation, protest allegation that the agency will improperly evaluate proposals is dismissed as speculative and premature, since the agency has not yet identified the comparable service contracts or applicable commercial rates it intends to use in evaluating proposals.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Modification
- ■ ■ Corporate entities
- ■ ■ ■ Agents

Company may not change an offer submitted in its own name after the closing date to make itself only the agent of another company since award to an entity other than that named in the original offer is improper.

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**B-252447, August 11, 1993**

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**Procurement**

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**Payment/Discharge**

- Substitute checks
- ■ Certification
- ■ ■ Authority

The Library of Congress has no authority to certify a second payment to a corporation since the Library fulfilled its legal obligation by properly executing a check for payment and delivering it to the appropriate corporate address where it was subsequently intercepted by someone affiliated with the corporation and deposited into his account.

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**B-252589.2, August 11, 1993**

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**Procurement**

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**Competitive Negotiation**

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

Preaward samples were properly rejected as technically unacceptable where record shows samples were evaluated in accordance with the solicitation's evaluation factors and after the submission of three samples, protester's samples still contained uncorrected deficiencies.

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**Procurement**

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**Competitive Negotiation**

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

Protest that agency treated offerors unequally by allowing awardee to cure deficiencies in its preaward sample through the use of a certification letter while protester's samples were rejected as technically unacceptable is denied where the record shows that agency evaluated samples in accordance with the solicitation and concluded that awardee's deficiencies were slight problems with the finish and workmanship, whereas protester's samples had design problems.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Agency properly rated protester's proposal below those of the two awardees where protester had greater past and current contract delinquency problems, and those problems could have a negative effect on protester's ability to perform as promised in its proposal.

**Procurement**

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**Government Property**

- Sales
- ■ Invitations for bids
- ■ ■ Line items
- ■ ■ ■ Withdrawal

Withdrawal of item from surplus property sale, and the rejection of bids submitted with respect to it, was proper where contracting officials discovered during prebid opening inspection of property that 20 of 36 trucks identified under item did not conform to item description in the solicitation, raising question whether bidders were competing on equal basis.

**Procurement**

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**Competitive Negotiation**

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

Where the solicitation stated that price was the least important factor in determining the most advantageous offeror, an award to a higher priced offeror was reasonable where the source selection authority reasonably concluded that the awardee's proposal was technically superior to the protester's proposal and was worth a 7 percent higher price.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Approved sources

Protest that solicitation improperly deprives nonapproved sources of a reasonable opportunity to compete is denied where specified product is required to be produced in accordance with a proprietary drawing revision which the contracting agency does not possess, and where contracting agency has inquired to the original equipment manufacturer as to the nature of the revisions and determined their materiality.

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**Procurement**

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**Sealed Bidding**

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

Bidder's failure to designate to which of two locations it intended to deliver did not render its bid nonresponsive where invitation for bids permitted delivery to either location and bidder committed to deliver to one of the two by signing its bid.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties

Where interested party was aware of protest but did not actively participate in process by presenting or responding to arguments until after the record was closed, party is not eligible to request reconsideration of decision sustaining protest.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

In considering protests against an agency's evaluation, our Office will not make an independent determination of the merits of an offeror's proposal, or in the case of a demonstration, the performance of the offeror's product; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with stated evaluation criteria.

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**Procurement**

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**Competitive Negotiation**

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

Selection of awardee's higher cost helicopter on the basis of its superiority in other evaluation areas, such as training effectiveness, management, and past performance, is unobjectionable where the solicitation did not state that the award would be based on low cost and where the agency reasonably concluded that the overall superiority of the awardee's aircraft was worth the additional cost.

**Procurement**

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**Sealed Bidding**

- Bids
  - ■ Bid guarantees
  - ■ ■ Omission
  - ■ ■ ■ Responsiveness
- 

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Contractors
- ■ ■ ■ Identification

There is no ambiguity in the identity of the bidder identified in the bid as a division of a Delaware corporation with the same tax identification number as the Delaware parent corporation, notwithstanding that there is an inactive Ohio corporation with the same name that was not referenced in the bid.

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**Procurement**

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**Sealed Bidding**

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

There is no discrepancy between the nominal bidder and the bid bond principal justifying the rejection of the bid as nonresponsive where both the bid and bid bond entities are identified as a division or a company of a Delaware corporation, and there is no other legal entity that could reasonably be considered the bid bond principal.

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Powers of attorney

A bidder may submit evidence establishing the authority of an individual to sign a bid after bid opening.

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**Procurement**

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**Bid Protests**

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

Protest that agency denied protester a reasonable opportunity to compete under current procurement by failing to promptly commence evaluation of its technical data package is dismissed as untimely where not filed within 10 working days after protester received letter from agency stat-

ing that there was insufficient time to evaluate protester's alternate product for current procurement.

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## **Procurement**

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### **Competitive Negotiation**

- **Contract awards**
  - ■ **Multiple/aggregate awards**
  - ■ ■ **Propriety**
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## **Procurement**

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### **Competitive Negotiation**

- **Offers**
- ■ **Quantities**
- ■ ■ **Multiple/aggregate awards**

Agency reasonably made award for more than minimum quantity under solicitation, instead of buying only the minimum and competing additional quantity upon "assumed" approval of protester's alternate item, where record shows that minimum quantity would not meet government's needs.

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**B-253195, August 13, 1993**

**93-2 CPD 99**

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## **Procurement**

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### **Bid Protests**

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

Protest that awardee's alternate product is not interchangeable with name brand product specified in solicitation, and thus was unacceptable alternate product, is dismissed where four offerors other than awardee proposed lower priced, alternate products determined by agency to be acceptable, and protester does not challenge their acceptability; under these circumstances, protester is not interested party.

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**B-248982, August 16, 1993**

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## **Procurement**

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### **Payment/Discharge**

- **Shipment**
- ■ **Damages**
- ■ ■ **Amount determination**
- ■ ■ ■ **Depreciation**

Common law principles, supplemented by the Joint Military-Industry Memorandum of Understanding and Depreciation Guide, govern a carrier's liability for transit loss or damage to a service member's household goods, and provide for depreciation in the calculation. Even though Air Force regulations provide that in reimbursing the owner of a damaged item, depreciation normally should not be assessed for time in nontemporary storage, it is improper to ignore the possibility of depreciation in recovering from the carrier.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision concluding that agency had a compelling basis to cancel a solicitation after bid opening where the specifications overstated the government's minimum needs is denied where the protester fails to show any error in the decision's analysis supporting that conclusion.

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**B-248150, August 17, 1993**

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**Procurement**

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**Payment/Discharge**

- Payment time periods
- ■ Fast payment procedures
- ■ ■ Penalties
- ■ ■ ■ Interest

U.S. Army Corps of Engineers Disbursing Officer may not use the Corps' "General Expenses" appropriation to pay Prompt Payment Act interest penalties incurred while executing civil works programs since the act requires that the penalty be paid out of the appropriation available to carry out the program.

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**B-250699.9, August 17, 1993**

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**Procurement**

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**Bid Protests**

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

Dismissal as untimely of a request for entitlement to protest costs based on agency corrective action is affirmed where the request was filed more than 10 days after the protester was advised of the alleged corrective action, and the protester has presented no evidence that demonstrates that the request was timely filed.

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**B-250377.5, August 18, 1993**

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Default termination
- ■ ■ Resolicitation

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**Procurement**

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**Contract Management**

- Contract administration
- ■ Default termination
- ■ ■ Resolicitation
- ■ ■ ■ GAO review

An agency reasonably awarded a defaulted contract, including options, to the next low, acceptable offeror from the original competition at its best and final price, since only 80 days passed between

the original competition and the default, such that the prior competitive prices could reasonably be said to reflect what a recompetition of the requirement would achieve.

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**B-253199, B-253199.2, August 18, 1993**

**93-2 CPD 103**

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**Procurement**

**Sealed Bidding**

- **Unbalanced bids**
- ■ **Rejection**
- ■ ■ **Propriety**

In a solicitation for a requirements contract, the agency reasonably rejected the apparent low bid as materially unbalanced where the bid included nominal prices for many line items and an enhanced price for the most important line item, and because of uncertainty concerning the reliability of the solicitation quantity estimates, there was a reasonable doubt that the unbalanced bid would actually represent the lowest price to the government.

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**Procurement**

**Bid Protests**

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

Protest challenging propriety of a solicitation provision is untimely where the protester was aware prior to bid opening that the provision appeared to conflict with other solicitation provisions.

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**B-252282.4, August 19, 1993**

**93-2 CPD 104**

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**Procurement**

**Competitive Negotiation**

- **Discussion reopening**
- ■ **Propriety**

Where several offerors' proposals included in the competitive range failed to meet the solicitation's type size restriction, the procuring agency took appropriate corrective action in response to protest of an offeror who adhered to the type size requirement by reopening discussions and advising offerors during discussions to ignore any page or type size restrictions in submitting revised best and final offers.

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**B-252778, August 19, 1993**

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**Procurement**

**Payment/Discharge**

- **Unauthorized contracts**
- ■ **Quantum meruit/valebant doctrine**

Claimants that provided advisory and assistance services to the government on the basis of oral instructions from a government contracting officer may be paid on a *quantum meruit* basis, because, in each case, obtaining the services by contract would have been a permissible procurement; the government received and accepted a benefit; the claimant acted in good faith; and the amount claimed represents the reasonable value of the benefit received.



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## Procurement

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### Sealed Bidding

- Non-responsive bids
- ■ Acceptance
- ■ ■ Propriety
- ■ ■ ■ Competitive system

Because interest is generally not recoverable against the United States in the absence of express authorization by contract or statute, claimant who recovers from the government under the equitable theory of *quantum meruit* is not entitled to interest.

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**B-252884.2, August 19, 1993**

**93-2 CPD 105**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates argument made by protester and previously considered by General Accounting Office.

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**B-253129, August 19, 1993**

**93-2 CPD 106**

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## Procurement

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### Socio-Economic Policies

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

In a procurement for a multibeam sonar mapping system that is subject to a domestic manufacture funding restriction, the procuring agency improperly accepted the awardee's promise that it would provide a domestically manufactured system, where the solicitation provided that more than 50 percent of aggregate costs of the systems components must be domestically produced or manufactured and cost information in the awardee's proposal evidenced that more than 50 percent of the aggregate costs of the components in the awardee's systems would be of foreign manufacture.

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**B-253161, August 19, 1993**

**93-2 CPD 107**

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## Procurement

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### Bid Protests

- Non-appropriated funds
- ■ GAO review

The set-aside provisions of the Federal Acquisition Regulation do not apply to procurement of concession services because expenditure of appropriated funds would not be involved; while the Small Business Act requires that agencies establish goals to assist in satisfying the requirement that a fair proportion of government contracts are awarded to small businesses, there is no requirement that an agency consider whether or not to set aside a particular concession service procurement.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

Where proposal sent via the United States Postal Service's Two Day Priority Mail service is received by the contracting agency after the time for receipt of proposals stated in the solicitation, the proposal is late and should be rejected because Two Day Priority Mail is not one of the mail services excepted from the rule requiring the rejection of late proposals, nor does mishandling by the Postal Service constitute "government mishandling."

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision is affirmed where request for reconsideration does not demonstrate that decision was based on an error of fact or law.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Protester's claim for reimbursement of estimated percentage of bid protest costs incurred in connection with winning protest issues is disallowed in part where record contains only post-protest affidavits and certification in support of claimed percentage, and there is no documentation showing that hours billed were in accordance with the estimated percentage.

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**Procurement**

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**Bid Protests**

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

Costs incurred by protester prior to filing protest at General Accounting Office (GAO) are reimbursable where costs in question were for attorneys' preliminary work in preparing GAO protest.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Costs incurred after issuance of General Accounting Office decision for other than counsel's reading and interpreting decision are not reimbursable.

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**Procurement**

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**Bid Protests**

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

Protester's attorneys' out-of-pocket expenses are not reimbursable where adequate documentation has not been provided to show the amount of each expense, the purpose of the expense, and its relationship to the protest.

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**Procurement**

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**Bid Protests**

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

Costs associated with pursuit of claim before General Accounting Office are not recoverable where record shows that agency proceeded expeditiously in responding to claim.

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**B-254321, August 23, 1993****93-2 CPD 113**

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**Procurement**

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**Bid Protests**

- Premature allegation
- ■ GAO review

Protest that agency anticipates acquiring services from the National Institute for the Severely Handicapped pursuant to the Javits-Wagner-O'Day Act will not be considered by the General Accounting Office.

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**B-251470.2, August 24, 1993****93-2 CPD 114**

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**Procurement**

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**Socio-Economic Policies**

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

Agency decision to set procurement aside for small disadvantaged business (SDB) concerns was proper where contracting officer determined there was a reasonable expectation that offers would be received from at least two responsible SDB firms at prices that will not exceed the fair market price by more than 10 percent.

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**B-252708.2, August 24, 1993****93-2 CPD 115**

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**Procurement**

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**Competitive Negotiation**

- Below-cost offers
- ■ Contract awards
- ■ ■ Propriety

Price evaluation conducted in connection with the award of fixed-price contract for trucks, was unobjectionable where the agency conducted an analysis sufficient to conclude that the awardee's low prices met the evaluation criteria of realism, reasonableness, and completeness; there is nothing objectionable in an agency's acceptance of a below cost offer.

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## Procurement

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### Competitive Negotiation

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

In evaluation of performance risk, agency reasonably evaluated protester's past performance as evidencing "moderate" risk, where that performance included various contract delinquencies.

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## Procurement

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### Competitive Negotiation

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

Agency decision to award contract to offeror with lower priced, lower technically rated proposal was reasonable where source selection authority determined that there was no significant technical difference between the proposals and that the higher technical score did not justify price premium.

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**B-252835.3, B-252835.4, August 24, 1993**

**93-2 CPD 116**

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## Procurement

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### Competitive Negotiation

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

Agency properly determined that job classifications required to perform work under a solicitation do not call for professional employees where those classifications do not require more than 2 years of post-secondary education.

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## Procurement

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### Competitive Negotiation

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Corrective actions

Agency properly decided to take corrective action by amending solicitation, reopening discussions, and soliciting revised proposals from offerors, despite the awardee's prices having been disclosed, where the agency determined that the solicitation failed to include mandatory contract clauses which might have a significant impact on offerors' proposals.

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**Procurement**

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**Socio-Economic Policies**

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

Agency decision to set procurement aside for small disadvantaged business (SDB) concerns was proper where contracting officer determined there was a reasonable expectation that offers would be received from at least two responsible SDB firms at prices that will not exceed the fair market price by more than 10 percent.

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**Procurement**

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**Sealed Bidding**

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

Protester's nonreceipt of amendment establishing new bid opening date, resulting in protester failing to submit timely bid, does not warrant resolicitation of the procurement where record shows agency followed established procedures for disseminating bid documents, including the amendment in question, and there is no evidence that agency deliberately attempted to exclude protester.

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**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Evaluation errors**
- ■ ■ **Allegation substantiation**

Protester's contention that agency unreasonably failed to downgrade awardee's proposal for including a newly-formed firm as a subcontractor is denied where the record shows that the agency did, in fact, consider the relative strengths and weaknesses of the proposed subcontractor, and appropriately considered the agency's past experience with the new firm's president as part of its review of the offeror's (and subcontractor's) past performance.

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**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Organizational experience**
- ■ ■ **Evaluation**
- ■ ■ ■ **Subcontractors**

Contention that awardee engaged in improper "bait and switch" tactics because the agency recognized the experience of the subcontractor's president, when, in fact, the proposal indicated that the president would spend little time on the effort, is denied because the proposal, on its face, disclosed the president's level of effort, and the agency evaluators were in no way misled by the proposal.

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**Procurement**

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**Competitive Negotiation**

- Suspended/debarred contractors
- ■ Contract awards
- ■ ■ Eligibility

Protester was properly excluded from competition where it had been suspended on the basis of detailed, unrebutted allegations of misconduct which were contained in a civil complaint filed by a federal government entity in United States District Court.

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**Procurement**

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**Competitive Negotiation**

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

The Department of the Army properly made award based on initial proposals without conducting discussions, where the request for proposals advised offerors of the Army's intent to award the contract based on initial proposals and the Army properly determined that discussions were unnecessary.

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**Procurement**

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**Competitive Negotiation**

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

The General Accounting Office cannot find unreasonable an agency's determination on a best value procurement that the awardee's significant technical superiority outweighs the protester's management superiority and lower price, where the record shows that the agency considered the awardee's and protester's relative strengths and weaknesses, and, in any event, the protester has not alleged how it was prejudiced by any variances from the evaluation scheme announced in the solicitation.

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**Procurement**

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**Competitive Negotiation**

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

A proposal that was the lowest rated technically and highest priced was properly excluded from the competitive range where the agency reasonably determined that the proposal contained numerous deficiencies that would require major revisions for the proposal to become acceptable.

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**Procurement**

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**Bid Protests****■ Subcontracts****■ ■ GAO review**

The General Accounting Office does not have jurisdiction to consider a protest of subcontract awards by a government prime contractor, even assuming that the government effectively directed the award selections, where the procurement is concededly not "for" the government and is not "by" the government because the prime contractor retained substantial responsibility for the conduct of the subcontract procurement such that the prime contractor is not merely a conduit for an acquisition by the government.

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**B-253208, B-253208.2, August 25, 1993**

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**Procurement**

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

Where solicitation provided that cost could be the deciding factor in the selection decision in the event there were no discernible differences in merit between technical proposals, and record supports evaluators' determination that two technical proposals were equal in merit, Department of Energy prime contractor could properly award a subcontract for environmental remediation efforts at a government-owned plant to the lower cost offeror.

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**Procurement**

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**Competitive Negotiation****■ Offers****■ ■ Evaluation****■ ■ ■ Personnel****■ ■ ■ ■ Cost evaluation**

Where evaluation team reasonably assumed that key personnel would perform greater part of environmental remediation effort under time and materials contract, cost evaluation that considered only the rates of key personnel was reasonable and selection of technically equal offeror who offered lower rates for all categories of key personnel was reasonable and consistent with solicitation.

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**Procurement**

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**Bid Protests****■ Moot allegation****■ ■ GAO review**

Allegation that prime contractor improperly relaxed requirement that category of labor be designated as key personnel is academic where parties modified subcontract to include category of key personnel omitted in initial award.

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## **Procurement**

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### **Competitive Negotiation**

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

Where the record supports the reasonableness of the cost/technical tradeoff, General Accounting Office will not object to failure to discuss the tradeoff specifically in the selection document.

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## **Procurement**

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### **Bid Protests**

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

Where solicitation did not provide for consideration of travel time in technical evaluation or for consideration of travel costs in cost evaluation, it would have been improper for evaluators to consider effects of travel in the award decision; to the extent that protester contends that solicitation should have provided for consideration of travel in the evaluation, such issues related to an alleged solicitation impropriety should have been raised prior to the date set for receipt of initial proposals.

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**B-253274, B-253274.2, August 25, 1993**

**93-2 CPD 121**

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## **Procurement**

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### **Competitive Negotiation**

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

Where request for proposals provided for award to the offeror whose proposal is most advantageous to the government, contracting agency properly made price/technical tradeoff in awarding contract to a higher priced, higher technically rated offeror; tradeoff was proper where record shows it reasonably was based on awardee's significantly superior rating in most important areas of evaluation.

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**B-253526, August 25, 1993**

**93-2 CPD 122**

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## **Procurement**

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### **Competitive Negotiation**

- **Offers**
- ■ **Evaluation**
- ■ ■ **Leases**
- ■ ■ ■ **Office space**

Protest that contracting agency improperly awarded lease on the basis of an offer of property that has less office space and wareyard than required by solicitation for offers (SFO) is denied where: (1) SFO specified that minimum footage requirements were only approximate, and contracting agency reasonably determined that awardee's offer met the SFO footage requirements and (2) awardee's property meets tenant agency's actual space needs and has been occupied by tenant agency for past 15 years.



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## Procurement

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### Bid Protests

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

Protest that awardee of lease inaccurately certified that no person or firm was paid a contingent fee to assist the awardee to obtain the contract and that offered building contains no asbestos is denied, where there is no evidence to support the protester's speculative allegations.

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## Procurement

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### Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance
- ■ ■ ■ Leases

Protest that award of lease was improper because lease should, but does not, include any requirement that the wareyard be resurfaced is denied, where the solicitation did not contain a requirement that the wareyard be resurfaced and the present condition of the wareyard is apparently acceptable to the contracting agency.

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**B-253852, August 25, 1993**

**93-2 CPD 123**

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## Procurement

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### Contractor Qualification

- Organizational conflicts of interest
- ■ Corporate ownership

Procuring agency properly rejected the bid of a firm listing government employees as its president and vice president since the agency had reason to believe that these government employees substantially controlled the firm's business.

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**B-251405.2, August 26, 1993**

**93-2 CPD 124**

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## Procurement

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### Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Overstatement

Protest that specifications are overly restrictive because they require side stance forklifts without permitting as an option the protester's fore and aft forklift is sustained on reconsideration where the record fails to show that the agency has a reasonable basis for this requirement.

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**B-252780, August 26, 1993\*\*\***

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## Procurement

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### Payment/Discharge

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Claimant may not be paid on a *quantum meruit* basis for printing services performed for the Internal Revenue Service (IRS) without a valid contract since the services could not have been lawfully procured by the agency in light of two statutory prohibitions. See section 308(a) of the Legislative

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**B-253203.2, B-253203.3, August 26, 1993**

**93-2 CPD 125**

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**Procurement**

**Competitive Negotiation**

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

Agency's decision to award a cost-reimbursement contract in a best value procurement to a higher evaluated cost, technically superior offeror is reasonable and consistent with the evaluation criteria where the evaluated technical superiority in the area of proposed core personnel, which was the primary subcriterion of the most important evaluation criterion, was reasonable and supported by the record; cost was the least important evaluation factor; and the source selection authority specifically determined that the evaluated superiority outweighed the difference in cost.

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**B-253271, August 26, 1993**

**93-2 CPD 138**

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**Procurement**

**Socio-Economic Policies**

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

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**Procurement**

**Socio-Economic Policies**

- **Preferred products/services**
- ■ **Domestic sources**
- ■ ■ **Evaluation**
- ■ ■ ■ **Preferences**

Protest that Department of State should not have applied statutory "United States person" preference under solicitation for United States Embassy guard services where the only offers received were from American firms is denied since the preference does not apply only where offers are received from both foreign and domestic firms; rather, the statute calls for preference to be given to firms meeting specified criteria that define "United States person."

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**B-253825, August 26, 1993**

**93-2 CPD 126**

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**Procurement**

**Bid Protests**

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

Protest that contracting agency improperly failed to set aside a request for quotations for exclusive small business concern participation is dismissed as untimely since it was not filed until after the date set for receipt of quotations.

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## Procurement

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### Bid Protests

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

Protest that contracting agency improperly failed to make award to protester under small business, small purchase set-aside after awardee's purchase order was terminated is untimely where protest was filed more than 10 working days after the basis of protest was known or should have been known.

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## B-248882.3, August 27, 1993

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### Procurement

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#### Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Justification

In response to congressional inquiry, member is advised that award of sole-source contract to McDonnell Aircraft Company for development of F/A-18E/F aircraft was permissible under § 2304(c)(1) of Competition in Contracting Act. The Navy justification and approval concludes that significant expense of developing second source could not be recovered through competition and that undue delay would result in meeting needed milestone. CICA allows use of sole-source authority for follow-on contracts in these circumstances.

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## B-253471, August 27, 1993

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93-2 CPD 139

### Procurement

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#### Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Where the protester's bid failed to mention the 5,000 additional mailing envelopes and sample sets required by the solicitation specifications, the bid was properly rejected as nonresponsive since it did not obligate the bidder to provide those envelopes; the nonresponsiveness of a bid may not be cured by a blanket statement that the bid is in conformance with the specifications, by the *de minimis* nature of the mistake where the item left from the bid is not divisible from the other requirements, or by monetary savings to the agency that would result from an award to the protester.

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## B-246536.5, August 30, 1993

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93-2 CPD 127

### Procurement

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#### Competitive Negotiation

- Initial-offer awards
- ■ Cost proposals
- ■ ■ Cost revision
- ■ ■ ■ Cost reimbursement contracts

Under a solicitation which called for the award of a cost reimbursement contract, agency properly rejected protester's proposal where, in response to the agency's request for updated proposals, protester modified various aspects of its cost proposal but failed to adequately document the basis for its modifications.

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## **Procurement**

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### **Competitive Negotiation**

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

Awardee's proposal complied with solicitation requirement for submission of letters of intent from key personnel where, although several individuals rescinded their initial agreement that they would be available exclusively to the awardee, they continued to indicate an intention to work for the awardee if it was the successful offeror.

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**B-250673.2, August 30, 1993**

**93-2 CPD 140**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester has not shown that the decision contained errors of fact or law warranting its reversal or modification.

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**B-251344.2, Aug 30, 1993**

**93-2 CPD 134**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show any errors of fact or law, or present information not previously considered, that would warrant reversal or modification of prior decision that agency properly canceled solicitation because of potential for increased competition and cost savings.

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**B-253253, August 30, 1993**

**93-2 CPD 128**

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## **Procurement**

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### **Contract Management**

- Contract administration
- ■ Contract terms
- ■ ■ Compliance
- ■ ■ ■ GAO review

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Shipping information provided by awardee as requested under solicitation did not qualify agreement to comply with pallet size and pallet load maximum height specifications, and thus did not render the bid nonresponsive, where information provided did not include all figures that would be necessary to determine compliance; since bid was signed, thereby showing agreement to comply with all specifications, bid was responsive, and whether awardee actually performs in accordance with all requirements is a matter of contract administration.

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**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgment
- ■ ■ ■ Waiver

Bidder's failure to acknowledge an amendment updating the applicable wage rate decision does not render the bid nonresponsive where the modification did not change the wage rates or benefits to be paid but changed only descriptions of equipment under certain power equipment operator categories that would not be required for the work to be performed under the contract.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest as untimely is denied where protester essentially reiterates earlier argument that it reasonably delayed filing agency-level protest based on belief that contracting officer would take the requested action.

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**Procurement**

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**Competitive Negotiation**

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

Protest against award to higher priced, higher technically rated offeror is denied where the solicitation evaluation scheme gave greater weight to technical merit than to price; agency reasonably determined that awardee's proposal was technically superior to protester's; and agency reasonably concluded that protester's lower price did not outweigh technical advantages of awardee's proposal.

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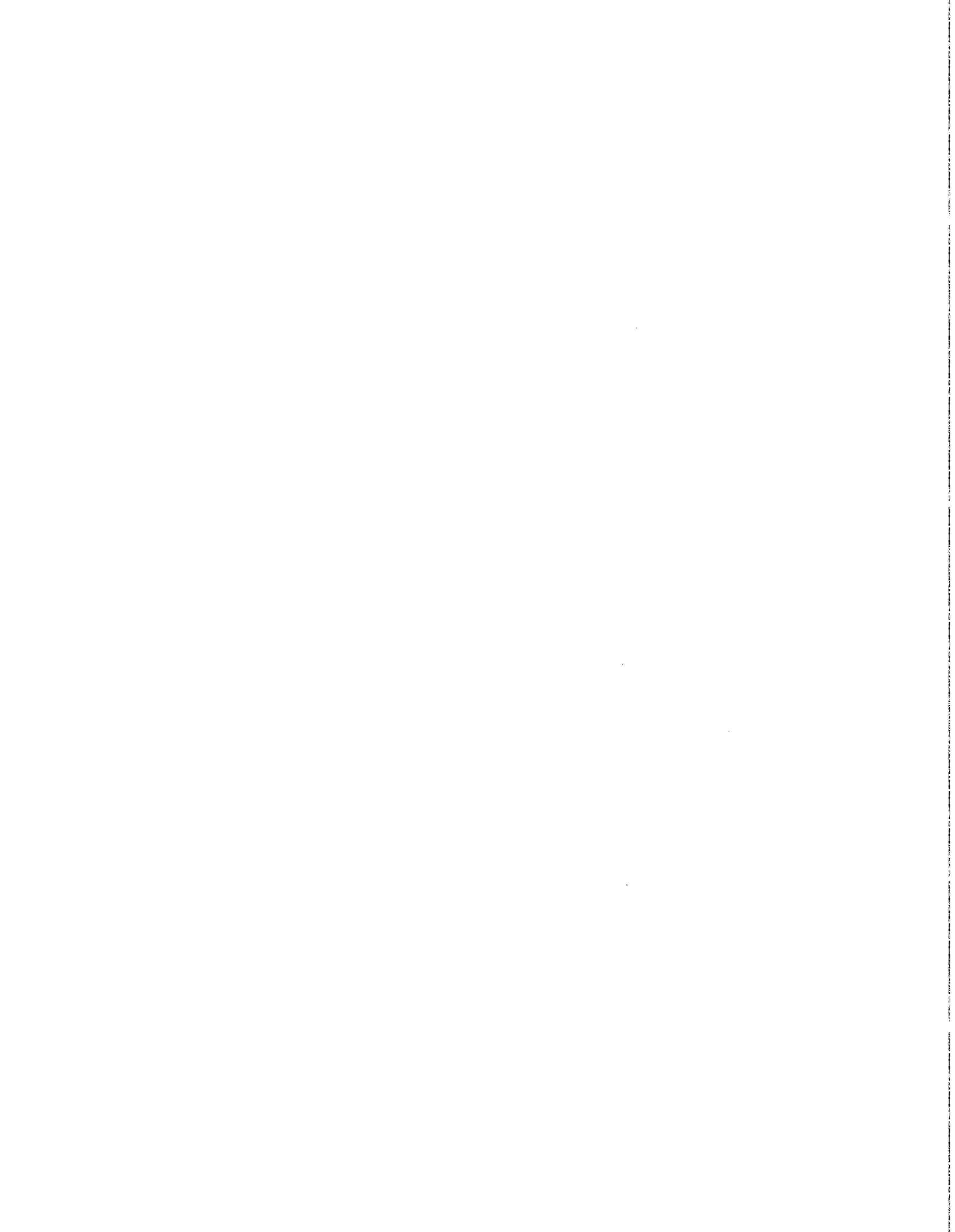
**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Defects
- ■ ■ Evaluation criteria

Protest that solicitation is defective because it included a preproduction evaluation (PPE) clause requiring offerors to factor into their prices the anticipated cost of correction of errors in the technical data package is denied where there is no indication in the record that the clause superseded the Changes clause in the solicitation or that the clause precludes equal competition among all offerors, including the contractor that prepared the technical data. Protester's supposition that the agency included the PPE clause to obfuscate its failure to inquire about defects is not supported by the record.



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