
GAO

United States General Accounting Office
Office of General Counsel

October 1993

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

Vol. V, No. 1

For sale by the Superintendent of Documents,
U.S. Government Printing Office, Washington, D.C. 20402

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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.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

Late case

B-251061.3, September 29, 1993

Appropriations Financial Management

Judgment Payments

- Availability
- ■ Claim settlement

The Farm Credit Administration (FCA) is advised that GAO declines to modify its previous decision, B-251061.2, Feb. 10, 1993, which held litigative awards against FCA payable from FCA funds, not the Judgment Fund, 31 U.S.C. § 1304 (1988).

Appropriations Financial Management

Claims Against Government

- Claim settlement
- ■ Permanent/indefinite appropriation
- ■ ■ Purpose availability

The requirement that lawsuits under the Federal Tort Claims Act, 28 U.S.C. § 2672 (1988) and the Freedom of Information Act, 5 U.S.C. § 552(a) (4) (F) (1988), be brought against the United States, rather than particular agencies, does not alter the need to satisfy the requirements of 31 U.S.C. § 1304(a) (1988) before awards under those acts may be paid from the Judgment Fund established by section 1304.

Current cases

B-250935, October 12, 1993***

Appropriations/Financial Management

Appropriation Availability

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

The United States Department of Agriculture may pay sewer charges assessed by a local government entity since they are akin to service charges rather than taxes which cannot be paid by the government. However, the charges may be paid only if the amounts due are calculated so that they reflect the fair and reasonable value of the services received by the government.

Appropriations/Financial Management

Claims Against Government

■ Statutes of limitation

Generally, statutes or other legislative enactments take effect at the time of their enactment. Thus, billing for previous 3 years of sewage service charges by a local government may not be paid unless local ordinance is made retroactive by express language or by necessary implication.

Appropriations/Financial Management

Appropriation Availability

■ Time availability

■ ■ Time restrictions

■ ■ ■ Advance payments

Sewer service charges established by a local government and required to be paid in advance, with a penalty if not paid when due, may be paid in advance, notwithstanding the advance payment prohibition in 31 U.S.C. § 3324, since danger of loss is minimized when State or an agency thereof is the contractor requiring the advance payment.

B-249060.2, October 19, 1993

Appropriations/Financial Management

Appropriation Availability

■ Claim settlement

■ ■ Fiscal-year appropriation

■ ■ ■ Availability

Air Force is advised that there is no authority to suspend implementation of the requirement that its funds must be used to pay the first \$100,000 of each "claim" allowed by it under the Military Claims Act, 10 U.S.C. §§ 2733, 2734 (1988), because that requirement arises by operation of law, rather than GAO policies.

B-251015, October 21, 1993

Appropriations/Financial Management

Accountable Officers

■ Disbursing officers

■ ■ Relief

■ ■ ■ Illegal/improper payments

■ ■ ■ ■ Fraud

Where a disbursing officer maintains an adequate system of procedures and controls to avoid errors and the procedures that were in place could not have prevented the type of fraud that was perpetrated, and where there is no indication that bad faith or lack of due care on the part of the disbursing officer was the proximate cause of the loss, relief from liability for the fraudulent payments may be granted.

Civilian Personnel

Late case

B-252088.2, September 29, 1993

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Forfeiture
- ■ ■ Restoration

Employee requested annual leave from his agency during June that, if granted, would have avoided forfeiture of annual leave. Agency denied request because of employee's pending assignment to training at Industrial College of the Armed Forces for the remainder of the year. Since the Industrial College has a restrictive leave policy for its students, it could grant him only 40 hours leave during school year and before academic recess period from December 18, 1992 to January 1, 1993, leaving employee with 80 hours of leave subject to forfeiture. Employee elected not to take annual leave during the academic recess period. Employee's claim for restoration of annual leave may be granted only to the extent the employee's "use or lose" leave balance of 80 hours exceeds the leave the employee could have taken during academic recess period.

Current cases

B-253095, October 5, 1993

Civilian Personnel

Travel

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

An IRS employee authorized a reduced per diem rate for an extended temporary duty assignment claims the full rate because other employees from her office received the full rate for similar travel and because the amount authorized was insufficient to meet her expenses. The claim is denied. Agencies are to reduce per diem rates for extended temporary duty assignments where meals and lodgings can be secured at a reduced cost. 41 C.F.R. 301-7.12(b) (1993). Once travel is performed, valid travel orders may not be amended to increase the rights of the employee. Also, agencies have no legal obligation to authorize identical per diem rates for different employees.

B-253485, October 7, 1993

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Broker fees
- ■ ■ Reimbursement

An employee on an authorized "house-hunting trip" was unable to find a rental apartment in the area of Boston, Massachusetts, without paying a real estate broker a fee to find her one. The employee extensively documented her efforts, and the agency accepts her evidence and wishes to re-

imburse her. While the Federal Travel Regulation does not have any provision for the reimbursement of that type of fee as such, we find that such a fee may be allowed as a miscellaneous expense under the special provisions of 41 C.F.R. § 302-3.3(b) (1992) provided that the agency determines the use of a real estate broker to find a rental apartment is customary in the Boston area.

B-253810, October 7, 1993

Civilian Personnel

Relocation

- Household goods
- ■ Weight restrictions
- ■ ■ Liability
- ■ ■ ■ Computation

When an employee is subject to overweight charges under section 302-8.3(b)(5) of the Federal Travel Regulation for the shipment of his household goods incident to his transfer, the weight used to determine the overweight charges when a reweigh has been performed is the reweigh weight, regardless of whether that weight is lower or higher than the weight obtained at the origin of the shipment.

B-253202, October 8, 1993

Civilian Personnel

Relocation

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

A transferred employee, whose old duty station was in Tucson, Arizona, and whose new duty station was in San Pedro, California, but who shipped household goods from Corona, California, to the new duty station, claims entitlement to that shipment at government expense. The claim is allowed. The fact that the shipment originated from a location other than the old duty station would not defeat the employee's entitlement. Section 302-8.2(e) (1992) of the Federal Travel Regulation authorizes such goods to be shipped from any point to any other point. The only restriction is that the cost to the government shall not exceed the cost of transporting the property in one lot by the most economical route from the old official station to the new official station.

B-252405, October 14, 1993

Civilian Personnel

Travel

- Mileage
- ■ Regulations
- ■ ■ Collective bargaining
- ■ ■ ■ Agreements

A disbursing officer questions the effect of provisions in collective bargaining agreements that are contrary to provisions of the Joint Travel Regulations (JTR) governing the computation of local mileage allowances. Although bargaining over provisions that are contrary to statute or government-wide regulations is generally prohibited, the Federal Labor Relations Authority, which has the authority to decide such issues, has held that negotiated agreements may supersede provisions in agency-wide regulations, such as the JTR provision in question here. Therefore, GAO will not question local mileage payments made in accordance with these negotiated agreements although they are contrary to the JTR provision.

B-253460, October 22, 1993

Civilian Personnel

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

At the time she was officially notified of her transfer to a new duty station, employee held title to a residence at her old duty station with her nondependent mother as joint tenants. The employee claims reimbursement for 100 percent of the expenses of selling the residence, contending that her mother had no financial interest in the residence and that the inclusion of her name on the title was in substitution for a will. Where title to a residence is in the name of an employee and another individual, that individual must be a member of the employee's immediate family in order for the employee to be reimbursed 100 percent of the sales expense. Since a nondependent parent does not so qualify, reimbursement is limited to 50 percent of the allowable sales expenses.

B-245117.4, October 29, 1993

Civilian Personnel

Leaves Of Absence**■ Annual leave****■ ■ Cancellation****■ ■ ■ Restoration**

United States Senator is advised that in two prior decisions of this Office, *George H. Mikos*, B-245117, Jan. 21, 1992, and upon reconsideration, *George H. Mikos*, B-245117.2, June 19, 1992, the employee's claim for restoration of 172 hours of annual leave which was forfeited during the 1986 leave year was disallowed. It was held that even though the employee may have submitted a schedule for use of annual leave prior to the expiration of the 1986 leave year, his annual leave could not be restored since he canceled the leave requested for reasons other than exigency of the public business or sickness as required by 5 U.S.C. § 6304(d)(1) (1988).

Military Personnel

B-251084, October 12, 1993

Military Personnel

Pay

■ Retired personnel

■ ■ Foreign employment

Employment during a period of terminal leave and after retirement of an Air Force member as a teacher in a local borough high school in the United Kingdom, which school is a component of a foreign local government, is prohibited employment during terminal leave and requires approval of employment under 37 U.S.C. § 908 after retirement since this is employment by a "foreign state." Active duty and retired pay received before the member obtained approval may be waived under 10 U.S.C. § 2774 because of member's good faith effort to obtain a legal opinion regarding the status of the teaching position.

Military Personnel

Pay

■ Dual compensation restrictions

■ ■ Overpayments

■ ■ ■ Debt collection

■ ■ ■ ■ Waiver

Air Force member, on terminal leave before effective date of retirement and therefore still on active duty, should not have accepted employment with Saudi Arabian Airline, a corporation owned by the Kingdom of Saudi Arabia, until retirement and receipt of Secretarial approvals under 37 U.S.C. § 908. Compensation received before retirement is considered received for the United States and creates a debt of the member in favor of the United States. Debt may not be waived under 10 U.S.C. § 2774 because member was not without fault.

B-252098.2, October 18, 1993***

Military Personnel

Relocation

■ Dislocation allowances

■ ■ Eligibility

A member above the pay grade of E-6 without dependents who elects not to occupy assigned government quarters on a ship as authorized in 37 U.S.C. § 403 is entitled, subject to the limitations found in 37 U.S.C. § 407, to a dislocation allowance when he makes a permanent-change-of-station move.

B-253223, October 19, 1993

Military Personnel

Pay

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

Member of the uniformed services had surgery involving a biopsy of a cyst on his brain which disqualified him from flight status and Aviation Career Incentive Pay (ACIP) after the 6-month grace period had expired. Since the member knew of the strict requirements for eligibility for ACIP and should have known that the surgery could affect his entitlement, he is not without fault in the matter and waiver of the debt created by his receipt of erroneous ACIP payments after disqualification is not appropriate.

B-253799, October 20, 1993

Military Personnel

Pay

- Survivor benefits
- ■ Annuities
- ■ ■ Set-off
- ■ ■ ■ Social security

Social Security offset was properly applied to widow's Survivor Benefit Plan annuity when widow attained the age of 62, whether or not she had applied for Social Security benefits, because SBP law requires that offset begin when widow "would be entitled".

B-252391, October 22, 1993***

Military Personnel

Pay

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

A military officer elected Survivor Benefit Plan (SBP) coverage when he qualified for retired pay. He began receiving retired pay in 1991, but it was suspended when he became a United States District Court judge in 1992. His SBP coverage is irrevocable; and as long as he has an eligible beneficiary, he must continue to pay premiums even though he is not receiving military retired pay.

B-252857, October 26, 1993

Military Personnel

Travel

- Per diem
- ■ Eligibility

Member's orders were modified on March 29, 1991, and the member was verbally informed of them on April 8, 1991 making Norfolk, Virginia, his permanent duty rather than temporary duty station. However, the modified orders were not received by his new duty station until June 1991. Member continued to receive per diem until June 1991. Since per diem is not payable at permanent duty station and member was aware that he was not entitled to per diem, waiver of debt because of erroneous payment may not be granted.

Miscellaneous Topics

B-253214, October 21, 1993

Miscellaneous Topics

Environment/Energy/Natural Resources

- Environmental protection
- ■ Air quality
- ■ ■ Standards
- ■ ■ ■ Deadlines

In imposing sanctions against a state after a finding of inadequacy with respect to a plan revision required under Part D of the Clean Air Act, EPA is required, under section 179 of the Act, to allow the state 18 months to correct the deficiency before imposing the sanctions.

Miscellaneous Topics

Environment/Energy/Natural Resources

- Environmental protection
- ■ Air quality
- ■ ■ Rulemaking

EPA may not, consistent with the statutory scheme for sanctions imposition under the Clean Air Act and the notice and comment requirements for rulemaking under the Administrative Procedure Act, propose sanctions against a state before the state has submitted its SIP.

B-234590.5, October 28, 1993

Miscellaneous Topics

Environment/Energy/Natural Resources

- Environmental protection
- ■ Vehicle emission inspection
- ■ ■ Rulemaking

Because Environmental Protection Agency (EPA) did not implement changes to its cross-border policy on sale of California vehicles, rulemaking is not required by the Administrative Procedure Act (APA). If EPA changes its long-held policy, rulemaking is required because the policy changes do not constitute non-binding statements of agency policy nor do they qualify as interpretative rules.

Miscellaneous Topics

Environment/Energy/Natural Resources

- Environmental protection
- ■ Vehicle emission inspection
- ■ ■ Rulemaking

We are not aware of any basis, in the Administrative Procedure Act (APA) or otherwise, to conclude that a petition for rulemaking limits an agency's discretion to take action related to issues covered by the petition. The APA requires only that an agency respond to a rulemaking petition.

Procurement

Late cases

B-253719, et al., June 16, 1993

93-1 CPD 467

Procurement

Bid Protests

- Administrative policies
- ■ GAO review

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Protests of agency intention to start charging a fee for solicitations are dismissed since they relate only to an announced policy and are not related to any specific solicitation; a protest must relate to a solicitation or to an award or proposed award thereunder.

B-253198.2, September 30, 1993

93-2 CPD 198

Procurement

Sealed Bidding

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

The contracting agency properly allowed an upward correction of the awardee's low bid where the agency reasonably concluded that the awardee's work papers—hard copies of computer spreadsheets printed before bid opening—presented clear and convincing evidence of the claimed mistake in the awardee's bid and the intended bid price.

Current cases

B-253882, October 1, 1993

93-2 CPD 200

Procurement

Sealed Bidding

- Bids
- ■ Post-bid opening periods
- ■ ■ Error correction
- ■ ■ ■ Propriety

The General Accounting Office will not consider a post-award mistake in bid allegation raised by the contractor that received the award because allegation is essentially a claim "relating to a contract" within the meaning of the Contract Disputes Act of 1978, and should be resolved pursuant to that Act.

Procurement

Sealed Bidding

- Bids
- ■ Post-bid opening periods
- ■ ■ Error correction
- ■ ■ ■ Propriety

General Accounting Office will not consider a protest that a lower-priced bid was mistaken and should not have been accepted, since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.

Procurement

Sealed Bidding

- Below-cost bids
- ■ Contract awards
- ■ ■ Propriety

Protest that agency should not have accepted protester's bid because it is too low, is dismissed since there is no legal basis on which to object to the submission or acceptance of a below cost bid.

Procurement

Competitive Negotiation

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

Contracting agency reasonably downgraded protester's technical proposal where the record shows that the agency determined that the proposal did not adequately respond to the agency's requirements under the solicitation's technical evaluation criteria and the protester, whose protest only reflects its disagreement with the evaluation, has not shown the evaluation to be unreasonable.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical superiority

Contracting agency's award of a contract to the highest technically rated offeror with the highest evaluated cost is reasonable and consistent with the solicitation's evaluation criteria where the awardee was rated technically superior under every technical evaluation criterion including the most important, cost was the least important factor, and the agency determined that the technical superiority of the awardee justified the higher cost.

Procurement

Bid Protests

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

Protest objecting to agency decision to make partial award under an invitation for bids (IFB) to other than the low bidder is dismissed as untimely where it was clear on the face of the solicitation that despite its denomination as an IFB, the agency intended to consider factors other than price in selecting an awardee or awardees, and protester failed to protest the discrepancy prior to award.

B-254205, et al., October 5, 1993**93-2 CPD 208**

Procurement

Bid Protests

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

Protester is not an interested party to challenge agency's evaluation of proposals where protester submitted conditional extension of offer, thereby rendering itself ineligible for award.

B-253220.2, October 6, 1993 REDACTED VERSION

Procurement

Contractor Qualification

- Organizational conflicts of interest
- ■ Determination

An offeror's provision of advisory services to a procuring agency prior to the issuance of a solicitation did not result in an organizational conflict of interest where the material provided by the offeror did not lead directly, predictably and without delay to the solicitation's specifications or work statement.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Contention that the awardee had an unfair competitive advantage because of its provision of advisory services to the procuring agency prior to the issuance of a solicitation is denied where the record does not show that the awardee received competitively useful information not available to the protester.

Procurement

Competition Negotiation

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

Protest that the procuring agency unreasonably evaluated the protester's experience as the incumbent contractor and the awardee's overall higher technical score is denied where the record shows that the protester received full credit for its incumbent experience and where the protest of the awardee's evaluation was no more than mere disagreement with the agency's conclusions.

Procurement

Competitive Negotiation

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

Protest that a procuring agency's evaluation was the result of bias is denied where the protester's allegations are based on no more than supposition and inference, and the protester fails to show that the alleged bias translated into agency action that unfairly affected the protester's competitive position.

B-253615, October 6, 1993

93-2 CPD 209

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Disadvantaged business set-asides**
- ■ ■ **Joint ventures**
- ■ ■ ■ **Administrative determination**

Agency reasonably determined that joint venture comprised of a small disadvantaged business (SDB) and a non-SDB was ineligible to receive contract set aside for SDB concerns where, although the joint venture agreement provided the SDB with a 51 percent interest, the SDB would not control management and daily business operations of the project because the non-SDB joint venturer could effectively veto any action by the SDB.

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Size status**
- ■ ■ **Self-certification**
- ■ ■ ■ **Post-bid opening periods**

Firm must demonstrate status as a small disadvantaged business concern at time of bid opening; post-bid opening amendment to joint venture agreement changing legal relationship of joint venturers is immaterial for purposes of establishing status, since it cannot affect status as of bid opening.

B-253675, October 7, 1993

93-2 CPD 210

Procurement

Competitive Negotiation

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

A protest against allegedly improper evaluation of proposals for channel extenders under a procurement conducted by the Tennessee Valley Authority (TVA) is denied where protester's proposed configuration required the installation of software and awardee's did not and TVA reasonably determined that the awardee submitted a technically superior proposal and, based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical and price most advantageous to the government.

Procurement

Competitive Negotiation**■ Competitive advantage****■ ■ Non-prejudicial allegation**

Protest by incumbent contractor that awardee gained unfair competitive advantage by obtaining names and telephone numbers of two of incumbent's employees from an agency employee who was the awardee's prospective contract manager is denied where there is no evidence that the agency employee engaged in any prohibited procurement practice, nor any indication that his actions resulted in any unfair advantage accruing to the awardee.

B-253668, October 8, 1993

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation errors****■ ■ ■ Organizational experience**

Evaluation was reasonable, even though agency failed to consider one aspect of offerors' past performance, where information permitting comparative analysis of that aspect of past performance was not available and where solicitation evaluation criteria did not require that the area be considered in the evaluation of proposals.

Procurement

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

Protest of evaluation of proposals is denied where the protester merely disagrees with the agency's technical judgment, and the record provides no basis to conclude that the agency's evaluation was unreasonable.

Procurement

Competitive Negotiation**■ Contract awards****■ ■ Source selection boards****■ ■ ■ Bias allegation****■ ■ ■ ■ Allegation substantiation**

Allegation of evaluator bias is denied where allegation is based on one evaluator's comments concerning protester's performance under an earlier contract and those comments had no impact on the source selection decision.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation errors****■ ■ ■ ■ Non-prejudicial allegation**

Source selection was reasonable, despite agency error in one minor aspect of evaluation of proposals, where that error did not affect the award decision.

Procurement

Socio-Economic Policies

- Labor standards
- ■ Construction contracts
- ■ ■ Wage rates
- ■ ■ ■ Amount determination

Protest that contracting agency improperly failed to comply with Federal Acquisition Regulation concerning the incorporation of wage determinations into solicitations where the place of performance is unknown is denied where, though agency did not comply with the regulation in a number of specific ways, protester was not prejudiced by this failure.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates
- ■ ■ ■ Labor costs

Protest that solicitation did not contain sufficient information concerning labor category requirements is denied where procedures set forth in the solicitation provided a reasonable basis for bidders to estimate their labor costs and to compete on an equal basis.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ ■ Competitive system integrity

Defense Logistics Agency reasonably determined that noncompetitive sale of surplus government property—contractor inventory obtained from a defaulted contractor because of progress payments made—should be canceled because it was conducted in a manner inconsistent with competition requirements of 40 U.S.C. § 484 (1988 & Supp. IV 1992).

Procurement

Contract Management

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

Claim that valid sales contract of contractor inventory existed that should be honored or that the government should be liable for damages if it is not honored, involve matters of contract administration not subject to review by the General Accounting Office, but are for consideration by a contract appeals board or a court of competent jurisdiction.

Procurement

Competitive Negotiation

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

Agency properly excluded protester's proposals from the competitive range where record establishes that proposals were evaluated in accordance with the solicitation's evaluation criteria and the agency reasonably concluded that the proposals would require major revisions to become acceptable.

Procurement

Competitive Negotiation

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

Partial cancellation of solicitation after discussions was proper where agency reasonably determined that no technically acceptable offers were received for the services in question.

Procurement

Noncompetitive Negotiation

- Sole sources
- ■ Justification
- ■ ■ Agency officials
- ■ ■ ■ Authority

Health Care Financing Administration is not barred from awarding a Medicare Part B carrier contract without competition where: (1) the Social Security Act expressly provides such authority; (2) the agency's failure to comply with a provision of the Act requiring that guidance to carriers be published in the *Federal Register* has no effect on the agency's authority to award such contracts without competition; and (3) a test program to competitively award a limited number of carrier contracts in no way removes the agency's continuing authority to award such contracts without competition.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ First-article testing
- ■ ■ Waiver
- ■ ■ ■ Propriety

Protest that agency improperly failed to grant waiver of first article testing (FAT) requirement for protester is denied where solicitation stated that FAT evaluation factor would be added to offers where only one price was furnished and there was no indication that offer was based on FAT waiver, and protester submitted only one price in revised offer in space for price including FAT, leaving space for FAT waiver price blank.

Procurement

Competitive Negotiation

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

Agency reasonably concluded that protester's proposal presented a high performance risk where protester received poor performance evaluations under three similar contracts and a favorable evaluation under only one similar contract.

Procurement

Bid Protests

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

Where both protester's and awardee's proposals were technically acceptable but protester's proposal presented high performance risk while awardee's proposal was rated low risk in all areas, and protester's price was less than 1 percent lower than awardee's, General Accounting Office will not review allegation that agency misevaluated protester's technical proposal risk, since any improvement in protester's proposal risk rating would not place it in line for award.

Procurement

Competitive Negotiation

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

Protest that agency's decision to award to higher-priced offeror lacked an adequate basis is denied where record clearly supports agency's conclusion that awardee's lower-risk proposal was worth the price premium of less than 1 percent.

Procurement

Socio-Economic Policies

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

Absent clear judicial precedent, General Accounting Office will not consider protester's challenge to the constitutionality of agency's small disadvantaged business set-aside program since issues involved are more appropriate for resolution by the courts.

Procurement

Noncompetitive Negotiation

- Industrial mobilization bases
- ■ Contract awards
- ■ ■ Propriety

The sole-source award of a contract to operate and maintain an ammunition plant was unobjectionable where the record shows the agency's action was based on its industrial mobilization needs and only one contractor had the requisite experience with the facility to assure a prompt production response.

Procurement

Sealed Bidding

- Bids
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest that agency improperly accepted awardee's calculation of use-evaluation factor, added to bid price to reflect rent-free use of government-furnished property, is denied; record shows the factor was derived in accord with solicitation and with Federal Acquisition Regulation.

Procurement

Specifications

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

Protest that specifications for a modular sleeping bag system were too vague to place offerors on notice of the agency's actual requirements is denied where the record shows that the specifications include performance requirements (rather than more restrictive design requirements) that may be met in a variety of ways and tend to enhance, rather than restrict, competition.

Procurement

Specifications

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

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Shipment schedules

Protest challenging as restrictive of competition a technical specification for a coating on an airport navigational-type structure and the number of days for project completion after issuance of

the notice to proceed is denied where the specification and the project completion period reasonably reflect the agency's minimum needs.

B-253805, October 13, 1993

Procurement

Competitive Negotiation

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

Where the solicitation stated that in determining the offeror submitting the most advantageous proposal, technical quality would be given paramount consideration over cost, the contracting officer reasonably awarded a contract to an offeror submitting a technically superior, higher-cost proposal after determining that the proposal's technical superiority was worth the payment of a cost premium.

B-251317.4, October 14, 1993

93-2 CPD 224**Procurement**

Socio-Economic Policies

- Labor surplus set-asides
- ■ Geographic restrictions
- ■ ■ Contractors
- ■ ■ ■ Eligibility

Protest that offeror is a *de facto* labor surplus area (LSA) concern because of the composition of its workforce is denied; in order to be considered an LSA concern eligible for award under LSA set-aside, a firm must agree to substantially perform the contract at a location within the geographic boundaries of a Department of Labor-designated labor surplus area, notwithstanding composition of workforce.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Competitive system integrity

Protest that agency should be precluded from terminating a contract for the convenience of the government because of its prior course of dealings and the costs incurred by the protester in contemplation of performing the terminated contract is denied where the record shows that the agency's decision to terminate the contract was proper because the protester was ineligible for award.

B-252305.2, October 14, 1993

93-2 CPD 225**Procurement**

Competitive Negotiation

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

Notwithstanding that awardee's cost to perform under the prior contract was significantly higher than costs proposed under the current solicitation, contracting officer reasonably concluded that awardee's proposed costs were realistic where current solicitation differed in material respects

from prior contract, awardee's lower cost reflected its extensive prior experience and more efficient approach to work.

Procurement

Competitive Negotiation

■ Contract awards

■ ■ Cost savings

■ ■ ■ Technical superiority

Despite protester's contention to the contrary, agency properly considered effect of cost reductions from initial offer incorporated into awardee's best and final offer and reasonably concluded that cost reductions did not affect awardee's superior ratings.

B-253117.2, October 14, 1993

93-2 CPD 226

Procurement

Competitive Negotiation

■ Contract awards

■ ■ Source selection boards

■ ■ ■ Documentation procedures

■ ■ ■ ■ Compliance

Protest that agency's documentation supporting source selection decision is internally inconsistent is denied where contracting officer testified that inconsistency was caused by a clerical error in drafting the source selection statement and record does not otherwise indicate any disagreement within the agency regarding the basis for the source selection decision.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Offers

■ ■ ■ Clarification

■ ■ ■ ■ Propriety

Clarifying information obtained from the offerors during oral discussions may provide a valid basis for adjusting technical scores prior to requesting best and final offers.

Procurement

Competitive Negotiation

■ Source selection boards

■ ■ Offers

■ ■ ■ Evaluation

■ ■ ■ ■ Propriety

Protest that source selection official failed to consider all ratings and rankings of technical evaluation committee is denied where record indicates that documentation regarding all of the committee's ratings and rankings was provided to the source selection official prior to the source selection decision.

Procurement

Contractor Qualification

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

Protest that awardee does not have adequate resources to perform the contract constitutes a challenge to awardee's responsibility and will not be considered.

Procurement

Bid Protests

- Information disclosure
- ■ Competitive advantage

Protest that information regarding the evaluation of proposals "may have" been disclosed to awardee is denied where protester provides no evidentiary support for the allegation.

B-252879.2, B-252879.3, October 15, 1993

93-2 CPD 227

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Protest is sustained where contracting agency conducted misleading discussions by informing the protester that its initial price was too low when, in fact, the protester, which submitted the highest-rated technical proposal, did not receive the award because its price was considered to be too high.

B-253541, October 18, 1993

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Bills of lading
- ■ ■ ■ Ambiguity

When there is a discrepancy in the released valuation rate on the original Government Bill of Lading (GBL) and on the shipping order, billing should be based on the original GBL, since the original is given to the carrier at the tender of the shipment to be used to support the billing.

B-253717, October 18, 1993

93-2 CPD 231

Procurement

Specifications

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

Protest that specifications in amended invitation for bids for 14-channel instrumentation tape recorder are unduly restrictive is denied where record shows that requirements reflect agency's min-

imum needs and protester merely argues without support that the requirements are not the best method for satisfying the agency's needs.

B-251225.3, October 19, 1993

93-2 CPD 232

Procurement

Competitive Negotiation

■ **Discussion**

■ ■ **Adequacy**

■ ■ ■ **Criteria**

Agency conducted meaningful cost discussions by questioning protester on specific areas within its cost proposal without disclosing its relative cost standing, and by providing it with opportunities to submit a revised cost proposal.

B-251698.6, October 19, 1993

93-2 CPD 233

Procurement

Bid Protests

■ **GAO procedures**

■ ■ **GAO decisions**

■ ■ ■ **Reconsideration**

Request for reconsideration of prior decision is denied where request contains no facts or legal grounds warranting reversal but merely restates arguments raised earlier and disagrees with the original decision.

B-253501.5, et al., October 19, 1993

93-2 CPD 234

Procurement

Bid Protests

■ **GAO authority**

■ ■ **Protective orders**

■ ■ ■ **Information disclosure**

The General Accounting Office (GAO) will not admit an interested party's counsel to a GAO protective order where the counsel represented the interested party at a pre-solicitation conference and participated in price discussions between the interested party and the agency in the course of the protested procurement.

Procurement

Competitive Negotiation

■ **Contract awards**

■ ■ **Multiple/aggregate awards**

■ ■ ■ **Propriety**

Under a solicitation contemplating multiple awards of moving and storage service contracts which includes a contract clause limiting the percentage of the total agency business that can be given to any single company but does not prohibit affiliated companies from submitting separate offers, the agency may make awards to affiliated companies if such awards do not either prejudice the government or give the affiliated companies an unfair competitive advantage.

Procurement

Contractor Qualification

■ Licenses

■ ■ Interstate transportation

The General Accounting Office has no basis to object to an agency's acceptance under a household goods movement services contract of a joint venture awardee's proffered Interstate Commerce Commission (ICC) operating authority of one of the joint venture partner's ICC license, in the absence of any authority that prohibits a joint venture from using such authority to perform the contract.

Procurement

Competitive Negotiation

■ Requests for proposals

■ ■ Terms

■ ■ ■ Interpretation

Where a solicitation could reasonably be interpreted as contemplating separate awards for two types of services and this interpretation is confirmed by the agency's written response to a question that was distributed to the offerors, the agency is required to evaluate proposals with the view of making separate awards in accordance with the solicitation's evaluation scheme; protest of the agency's failure to make separate awards is sustained where the protester, which relied upon the agency's advice, was prejudiced by the fact that a combined award was made.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation errors

■ ■ ■ Evaluation criteria

■ ■ ■ ■ Application

Agency departed from the evaluation scheme announced in the solicitation for moving and storage services where the agency only made awards to the lowest-priced offerors without conducting a reasonable technical evaluation consistent with the announced evaluation criteria or making a cost/technical tradeoff.

B-253503.2, October 19, 1993

93-2 CPD 235

Procurement

Bid Protests

■ GAO procedures

■ ■ Preparation costs

■ ■ ■ Administrative remedies

Where, in response to protest against terms of solicitation, agency issues amendment addressing all of protester's concerns prior to time for submission of agency report, protester is not entitled to the costs of filing and pursuing protest.

Procurement

Bid Protests

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

Dismissal of protest against award by a government prime contractor to a subcontractor which allegedly is not qualified to provide food services to a multi-family housing project is affirmed, since the General Accounting Office has no jurisdiction to review subcontracts awarded by a prime contractor when the subcontract award is not made "by or for" the government.

Procurement

Specifications

- Brand name/equal specifications
- ■ Equivalent products
- ■ ■ Salient characteristics
- ■ ■ ■ Minor deviations

Protest is sustained where agency excluded protester's equipment from solicitation based on that equipment's need for external grounding, but protester represents that its equipment is integrally (*i.e.*, internally) grounded, and record shows agency never evaluated protester's equipment.

Procurement

Competitive Negotiation

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

Award to technically lower-rated, lower-cost offeror is unobjectionable where, although the solicitation emphasized technical factors over cost, the solicitation did not provide for award on the basis of highest technical point score and the agency reasonably concluded that paying a 37 percent premium for the protester's higher-rated proposal was not warranted in light of the acceptable level of competence available at the lower cost.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency improperly failed to consider awardee's proposed use of uncompensated overtime (UCOT) is denied where the record shows that agency evaluators considered the awardee's proposed use of UCOT and reasonably downgraded the awardee's proposal in the area of personnel—the second most important evaluation factor.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Cost realism

■ ■ ■ ■ Rates

Agency reasonably relied on Defense Contract Audit Agency (DCAA) recommendations in performing its cost realism analysis of the awardee's proposed costs where the DCAA relied on recently audited rates rather than the awardee's estimates to project estimated future costs, and the contracting agency had no reason to question the validity of DCAA's methodology or recommendations.

B-253737, October 19, 1993

93-2 CPD 239

Procurement

Competitive Negotiation

■ Requests for proposals

■ ■ Evaluation criteria

■ ■ ■ Cost/technical tradeoffs

■ ■ ■ ■ Technical superiority

Award to technically superior, higher-priced offeror is unobjectionable where award on that basis is consistent with the solicitation evaluation criteria and selection officials reasonably determined that the superior technical merit of successful proposal was sufficiently significant to justify award at higher price.

B-253740, October 19, 1993

93-2 CPD 228

Procurement

Competitive Negotiation

■ Offers

■ ■ Competitive ranges

■ ■ ■ Exclusion

■ ■ ■ ■ Justification

Agency reasonably excluded protester's proposal from the competitive range where proposal was so lacking in detail and otherwise deficient that it would have required substantial revision to be made acceptable.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Cost/technical tradeoffs

■ ■ ■ ■ Weighting

Protester's contention that agency deviated from the evaluation criteria in the solicitation, which provided that staffing and cost were the two most important evaluation factors, by not taking its proposed costs into account before concluding that its proposal was technically unacceptable and excluding it from the competitive range is denied since a technically unacceptable proposal may be excluded from the competitive range regardless of the weight accorded cost in the solicitation and regardless of the offeror's lower proposed costs.

Procurement

Competitive Negotiation

■ Offers

■ ■ Competitive ranges

■ ■ ■ Exclusion

■ ■ ■ ■ Justification

Contention that agency's decision to exclude the protester's proposal from the competitive range was made in bad faith is dismissed where the record establishes that the rejection was properly based only on the presence of numerous deficiencies in the protester's proposal.

B-253751, October 19, 1993

93-2 CPD 240

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Technical acceptability

Protest that awardee's technical approach was noncompliant with the solicitation requirements because it relied heavily on the use of automatic data processing tools is denied where the solicitation identified functional tasks to be performed and did not mandate any particular technical approach to be employed in accomplishing those tasks.

Procurement

Competitive Negotiation

■ Technical evaluation boards

■ ■ Bias allegation

■ ■ ■ Allegation substantiation

■ ■ ■ ■ Evidence sufficiency

Because the composition of the technical evaluation panel is within the discretion of the contracting activity, allegation that agency's evaluators were not qualified to assess the technical aspects of proposals will not be considered where protester makes no showing of fraud, conflict of interest, or actual bias on the part of the evaluators.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Offers

■ ■ ■ Clarification

■ ■ ■ ■ Propriety

Agency's verification of the existence of awardee's proposed automatic data processing tools prior to request for best and final offers did not constitute improper discussions.

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to higher-priced, higher-rated competitor is unobjectionable where awardee's higher combined technical/price score reasonably indicated that its quotation was most advantageous under the stated evaluation factors.

Procurement

Socio-Economic Policies

- Responsibility
- ■ Competency certification
- ■ ■ GAO review

Protest alleging that the Small Business Administration (SBA) improperly determined that the protester, a bidder for a competitive section 8(a) procurement, was not competent to perform will not be considered since SBA has broad discretion under the 8(a) program and there has been no showing of a regulatory violation or possible fraud or bad faith.

Procurement

Contractor Qualification

- Responsibility
- ■ Information
- ■ ■ Submission time periods

Procurement

Contractor Qualification

- Responsibility/responsiveness distinctions

A bidder's failure to submit with its bid specified preaward information to be used to determine the bidder's ability to perform the work solicited does not render the bid nonresponsive, even where the solicitation language makes submission of this information with bids mandatory, because this information is only related to bidder responsibility, which can be determined any time up to award.

Procurement

Bid Protests

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

Protest by incumbent-lessor that contracting agency must consider moving and relocating expenses in evaluating offers under solicitation for offers (SFO) for office space is dismissed as untimely where SFO explained in detail how price was to be evaluated; evaluation factors (which did not indicate that agency will consider moving and relocating expenses) remained unchanged

during the 12 months that elapsed since protester received SFO; and protest was not filed until after submission of best and final offers.

B-253757, October 21, 1993**93-2 CPD 256**

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Preferences
- ■ ■ ■ Eligibility

Agency reasonably determined that protester did not qualify as a women-owned small business where agency had reasonable doubt that women actually had control of the firm in light of the firm's affiliation with entities that are not women-owned companies.

B-253786, October 21, 1993**93-2 CPD 242**

Procurement

Competitive Negotiation

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

Protest of agency evaluation of proposal is denied where protester has not demonstrated that evaluation was unreasonable or inconsistent with evaluation criteria set forth in the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Organizational experience

Where a solicitation lists experience as an evaluation factor, an agency may reasonably consider an offeror's experience in the particular areas to be addressed under the solicitation since such specific experience is related to and encompassed by a general experience factor.

Procurement

Competitive Negotiation

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

Where agency reasonably determined that technical superiority of awardee's proposal outweighed its higher cost, selection of awardee's proposal as most advantageous to the government is not objectionable.

Procurement

Socio-Economic Policies

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

Protest that the agency failed to notify unsuccessful offerors on a small business set-aside of the name and location of apparent successful offeror is dismissed, because the notice was not required since the contracting officer determined in writing that the award was required to be made without delay.

Procurement

Competitive Negotiation

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

Agency properly eliminated proposal from competitive range where proposal did not contain information which would demonstrate that the offered product would comply with the specifications as required by the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Justification

Protester's allegation that agency decided to reevaluate proposals with the specific intent of excluding the protester's proposal is denied where record shows that the agency's decision to reevaluate proposals was necessitated by its discovery that its previous evaluation was flawed and where the record shows that the reevaluation was conducted in accordance with the solicitation.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Allegation that agency misled protester during discussions into believing that its unacceptable technical proposal required only minor revisions to become acceptable is denied where the discussion questions posed by the agency clearly expressed the agency's serious concerns about the proposal.

B-252974, October 22, 1993

Procurement

Payment/Discharge

■ **Shipment**

■ ■ **Carrier liability**

■ ■ ■ **Burden of proof**

When damage claimed by the owner of an item of household goods is a type that cannot be observed by the carrier's inspection at tender, the record contains no proof of the good condition of the item at that time, and the record does not indicate that the damage resulted from other damage to the item for which the carrier is liable, the government has not established a *prima facie* case of carrier liability for that damage.

Procurement

Payment/Discharge

■ **Shipment**

■ ■ **Carrier liability**

■ ■ ■ **Amount determination**

■ ■ ■ ■ **GAO review**

The General Accounting Office will not question an agency's calculation of the value of the damages to items in the shipment of a member's household goods unless the carrier presents clear and convincing evidence that the calculation is unreasonable.

B-253783, October 22, 1993***

93-2 CPD 257

Procurement

Sealed Bidding

■ **Potential contractors**

■ ■ **Exclusion**

■ ■ ■ **Propriety**

Agency improperly relied on a non-current list of ineligible contractors as the basis for determining that protester was ineligible for award where the protester was included on that list because of a government computer error; the list was more than 2 months old; and the contracting officer, despite his concern about the currency of the list, failed to consult the available electronic update to the list.

B-253813, October 22, 1993

93-2 CPD 244

Procurement

Socio-Economic Policies

■ **Small businesses**

■ ■ **Contract awards**

■ ■ ■ **Propriety**

Procurement

Socio-Economic Policies

■ **Small businesses**

■ ■ **Size determination**

■ ■ ■ **Pending protests**

■ ■ ■ ■ **Contract awards**

The Forest Service may not contravene the applicable Small Business Administration (SBA) regulations by awarding a contract under a small business set-aside timber sale to a bidder which it

knows has been declared other than small by the SBA as of the time of bid opening and therefore ineligible for award, regardless of whether the bidder has certified otherwise in its bid or whether the bidder achieves small business status on appeal after bid opening.

B-253936, October 25, 1993

93-2 CPD 245

Procurement

Sealed Bidding

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

Protest that award based on low total price for base plus all option years is inconsistent with solicitation is denied where the solicitation states that bids will be evaluated on that basis, absent a determination to the contrary by a higher-level agency official.

Procurement

Bid Protests

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

Bias or improper motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or speculation.

B-254513, October 25, 1993

93-2 CPD 249

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Work schedules

Technical evaluation panel (TEP) reasonably downgraded protester's proposal in the area of key personnel under request for proposals (RFP) for security guard services where the RFP required that contractor's employees not work more than 12 hours within a 24-hour period; the resumes of protester's proposed shift supervisors indicated that all held more than one job; and protester's response to discussion question specifically addressing that area did not alleviate the TEP's concerns that proposed supervisors could exceed the RFP's 12-hour duty provision, potentially leading to poor performance.

Procurement

Competitive Negotiation

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

Award to a higher-priced, higher-rated offeror is unobjectionable under request for proposals for security guard services that stated that technical areas were more important than price, where agency reasonably found higher-priced proposal to be technically superior compared with the protester's lower-priced, lower-scored proposal and reasonably concluded that the protester's price advantage was outweighed by the risk of performance problems associated with the protester's proposal.

Procurement

Bid Protests

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

Protest challenging agency's evaluation of awardee's proposal is dismissed as untimely where filed more than 10 working days after protester knew, or should have known, its basis for protest.

Procurement

Contract Management

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

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

B-253493.3, October 26, 1993

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Ambiguous bids

Agency reasonably found protester's bid nonresponsive where the required descriptive literature contained two different descriptions of the offered product's capacity, one of which did not conform to the specifications, and no other information in the bid explained or resolved the inconsistency.

B-253725.4, October 26, 1993

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Technical evaluation boards
- ■ Conflicts of interest
- ■ ■ Allegation substantiation

The General Accounting Office will not consider a protester's challenge to the composition of a peer review group used to perform an initial evaluation of technical proposals absent a showing of an agency's possible abuse of discretion by ignoring a conflict of interest or bias on the part of the evaluators.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation errors

■ ■ ■ Allegation substantiation

Protester's contention that technical evaluation was flawed because the source selection decision was improperly based on the results of an initial peer group review is denied where the initial peer group review did not form the basis for the agency's selection but was instead only part of an ongoing review that included assessment by a secondary review panel, extensive written and faceto-face negotiations, and a detailed evaluation of the offeror's responses during negotiations and their final submissions.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation errors

■ ■ ■ Non-prejudicial allegation

Protester's claim that the agency erred in failing to discard the findings of a peer review group after a secondary review panel composed of agency personnel disagreed with the initial peer group assessment is denied where there was no requirement that the secondary panel rescure the peer group's evaluation; the contracting officer reasonably used both evaluations as a starting point for negotiations; and the secondary panel expressly adopted the general conclusions of the initial peer group panel.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Personnel

■ ■ ■ ■ Adequacy

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation errors

■ ■ ■ Evaluation criteria

■ ■ ■ ■ Application

Contentions that the agency technical evaluation improperly relied on unstated evaluation criteria, was inadequately documented, and permitted the awardee to offer employees who were unavailable, are denied where a review of the record shows that the agency's judgments were reasonable and consistent with the stated evaluation criteria and where none of the errors the protester claims, in fact, occurred.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Adequacy

■ ■ ■ Criteria

Protester's contention that agency conducted other than meaningful discussions because certain weaknesses enumerated in the agency's evaluation materials were not specifically raised with the

protester during negotiations is denied where the record shows that the agency raised the issue in general terms in its written discussion questions and the weaknesses themselves were minor.

Procurement

Competitive Negotiation

■ Offers

■ ■ Cost realism

■ ■ ■ GAO review

Agency review of offeror's cost proposals was reasonable where the agency did not ignore changes made by the offerors in their final submissions, as the protester claims, but instead recognized the changes, considered their impact, and reflected the outcome of that consideration in the source selection document and attachments.

B-253818, B-253819, October 26, 1993

93-2 CPD 246

Procurement

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.

B-253887, October 26, 1993

93-2 CPD 247

Procurement

Contractor Qualification

■ Corporate entities

■ ■ Corporate dissolution

Bid was properly rejected where at the time of bid opening the protester's corporate charter had been involuntarily dissolved by the state in which it had been incorporated.

B-253949, October 26, 1993

93-2 CPD 250

Procurement

Sealed Bidding

■ Invitations for bids

■ ■ Amendments

■ ■ ■ Acknowledgment

■ ■ ■ ■ Responsiveness

Contracting agency properly rejected as nonresponsive a bid that failed to acknowledge an amendment that placed additional obligations on the contractor under a management contract, increasing the contractor's responsibilities to include repairs of certain equipment and reducing the time period allotted for moving certain types of property.

Procurement

Specifications

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

Offer on a brand name or equal solicitation that proposes an "equal" product, which fails to satisfy a specifically stated salient characteristic, is unacceptable and may properly be rejected, even if the agency initially rejected the proposal for a different invalid reason and only advanced the proper reason in its report on the protest.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester does not show that prior decision denying its protest contained any errors of fact or law or present information not previously considered that warrants reversal or modification of our decision.

Procurement

Competitive Negotiation

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

Where, after receipt of best and final offers, an agency permits one offeror to submit information that makes its proposal acceptable by stating that the firm agrees to an RFP limitation on fees for cost-plus-incentive-fee work, the agency must conduct discussions with all other offerors whose proposals were in the competitive range and permit all offerors to submit revised proposals.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision denying protest of contract award for sewer rehabilitation services is denied where protester merely disagrees with General Accounting Office's conclusion that prime contractor's reliance on lower tier contractor's project experience to comply with solicitation's definitive responsibility criterion is unobjectionable.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Organizational experience**

Where solicitation provided for evaluation of offerors' past performance under similarly large and complex contracts, agency reasonably considered proposal that established such past experience to be superior to one that demonstrated experience only on smaller, less complex contracts.

Procurement

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

Where solicitation provided for award to the technically acceptable offeror considering price and past performance, where price was the most important factor, and low-priced proposal did not demonstrate performance on similar contracts, agency reasonably concluded that proposal demonstrating superior past experience was worth a 13.4 percent price premium.

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