

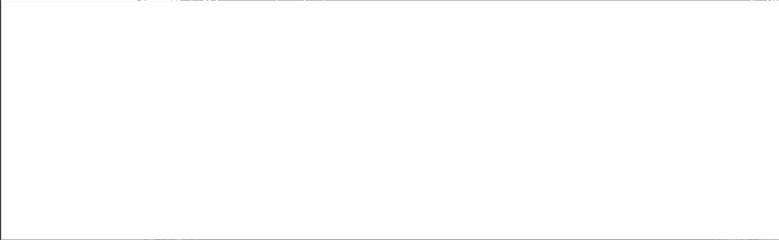
**GAO**

**Office of General Counsel**



102

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



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# Current GAO Officials

---

**Comptroller General of the United States**  
Charles A. Bowsher

---

**Deputy Comptroller General of the United States**  
Vacant

---

**Special Assistant to the Comptroller General**  
Milton J. Socolar

---

**General Counsel**  
James F. Hinchman

---

**Deputy General Counsel**  
Vacant

---

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# Contents

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Preface	iii
Table of Decision Numbers	iv
Digests	
Appropriations/Financial Management	1
Civilian Personnel	3
Military Personnel	8
Miscellaneous Topics	10
Procurement	11

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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).

# Table of Decision Numbers

	Page		Page
B-244992.2, November 16, 1993	17	B-253640, November 4, 1993	1
B-249742.2, November 24, 1993	2	B-253640, November 4, 1993	4
B-250074.2, et al., November 4, 1993	13	B-253698.2, November 19, 1993	22
B-251902.3, November 8, 1993***	16	B-253745, November 5, 1993	4
B-252453.4, B-253373.3, November 4, 1993	13	B-253811.2, et al., November 24, 1993	25
B-252490.2, November 30, 1993	27	B-253833.2, B-253833.3, November 3, 1993	12
B-252787, November 8, 1993***	8	B-253833.2, B-253833.3, November 3, 1993	10
B-252947.4, November 4, 1993	14	B-253875, November 1, 1993	11
B-252993.2, October 6, 1993	11	B-253876, November 1, 1993	12
B-253033, November 16, 1993	5	B-253891.2, et al., November 24, 1993	25
B-253066.3, November 8, 1993	16	B-253900, November 4, 1993	8
B-253152.3, November 19, 1993	22	B-253911, November 29, 1993	6
B-253159, November 22, 1993	6	B-253957.3, November 8, 1993	17
B-253179, November 29, 1993***	2	B-253966, November 5, 1993	15
B-253275.2, November 2, 1993	12	B-253967, November 30, 1993	7
B-253295.2, November 8, 1993***	16	B-253969, November 1, 1993	3
B-253338, November 23, 1993	2	B-254024, November 16, 1993	18
B-253390.2, November 4, 1993	14	B-254032.2, November 23, 1993	24
B-253492.2, November 16, 1993***	18	B-254044, B-254044.2, November 16, 1993	18
B-253514, November 19, 1993	5	B-254046, November 17, 1993	21
B-253551, November 5, 1993	4	B-254068, November 16, 1993	19
B-253558, November 30, 1993	9	B-254092, November 16, 1993	19
B-253559, November 4, 1993	3	B-254093, et al., November 16, 1993	19
B-253591.2, November 23, 1993	24		
B-253614.2, et al., November 29, 1993	26		

\*\*\*(notes published decisions) Cite published decisions as 69 Comp. Gen. —

---

Table of Decision Numbers

---

	Page		Page
B-254137, November 4, 1993	14	B-254377, November 22, 1993	24
B-254152, November 19, 1993	23	B-254394, November 24, 1993	26
B-254201, November 16, 1993	19	B-254454, November 19, 1993	1
B-254229, November 30, 1993	27	B-254522, November 19, 1993	23
B-254250, November 16, 1993	20	B-254525, November 17, 1993	22
B-254286, November 16, 1993	20	B-254666, November 18, 1993***	1
B-254295, November 26, 1993	2	B-255194, November 26, 1993	26
B-254296, November 23, 1993	6	B-255721, et al., November 16, 1993	21
B-254328, November 17, 1993	8		

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# Appropriations/Financial Management

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**B-253640, November 4, 1993**

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**Appropriations/Financial Management**

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**Claims Against Government**

- Claim settlement
- ■ Compromises
- ■ ■ Approval

An employee seeks to compromise the amount of the required repayment of a debt because he was only found to be partially at fault. Where there is a present or prospective ability by an employee to pay a debt which is not waived, such as continued employment, recovery of the entire debt is to be pursued. *James A. Schultz*, 59 Comp. Gen. 28 (1979).

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**B-254666, November 18, 1993\*\*\***

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Telephones

The Commodity Futures Trading Commission may use appropriated funds to pay the costs of installing, maintaining, and removing call forwarding telephone service on the office telephone of a Commission employee temporarily working from her home.

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**B-254454, November 19, 1993**

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**Appropriations/Financial Management**

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**Accountable Officers**

- Disbursing officers
- ■ Liability restrictions
- ■ ■ Statutes of limitation

**Appropriations/Financial Management**

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**Claims Against Government**

- Claim settlement
- ■ GAO authority

Accountable official's account is settled by operation of law after the expiration of the 3-year statute of limitations. 31 U.S.C. § 3526(c). Because the Internal Revenue Service did not submit the deficiency in question to GAO for settlement until more than 3 years after the loss was discovered, the account is therefore settled and relief of the accountable officer is unnecessary.

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**B-253338, November 23, 1993**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Telephones

At agency request, an employee used an agency modem to transmit data via telephone line from her home to her office while at home caring for an incapacitated child. As a result, the employee incurred long-distance telephone charges for which she seeks reimbursement. Under 31 U.S.C. § 1348(b) (1988), the agency may use appropriated funds to pay for the long-distance telephone charges the employee incurred on her personal telephone line, provided the appropriate agency official determines that the calls were required for official business and certifies that they were necessary in the interest of the government.

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**B-249742.2, November 24, 1993**

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**Appropriations/Financial Management**

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**Accountable Officers**

- Relief
- ■ Physical losses

Supervisory accountable officer is relieved of liability for physical loss of funds upon a showing that he properly supervised his subordinates by maintaining an adequate system of procedures and controls to safeguard the funds, and taking steps to ensure the system's implementation and effectiveness.

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**B-254295, November 26, 1993**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Cable television

The San Antonio Missions Historical Park may use the Operation of the National Park Service appropriation to subscribe to a cable television service which broadcasts local government affairs programming. The subscription is a permissible necessary expense because it would reduce employee time away from the office needed to attend local government proceedings and would assist in dealings with the other governmental entities which also operate the Park.

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**B-253179, November 29, 1993\*\*\***

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**Appropriations/Financial Management**

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**Judgment Payments**

- Permanent/indefinite appropriation
- ■ Availability

The Justice Department is advised that litigative awards against the United States to reimburse claimants for the government's share of response costs and natural resource damages paid or payable under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-75 (1988), are payable from the permanent, indefinite Judgment Fund appropriation created by 31 U.S.C. § 1304 (1988), to the same extent as are other litigative awards against the United States.

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# Civilian Personnel

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**B-253969, November 1, 1993**

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**Civilian Personnel**

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**Compensation**

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

Failure to note an unexpected substantial increase in net pay received, even though leave and earnings statements may have been received irregularly, and promptly question appropriate officials about the amount renders the employee partially at fault, precluding waiver of salary overpayments under 5 U.S.C. § 5584.

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**B-253559, November 4, 1993**

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**Civilian Personnel**

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**Compensation**

- Claim settlement
- ■ Property damages

**Civilian Personnel**

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**Compensation**

- Claim settlement
- ■ Property damages
- ■ ■ Finality

An employee appealed a Claims Group letter declining to assert jurisdiction over the employee's claim arising under the Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. § 3721 (1988), which he filed after a portion of his household goods were lost or damaged incident to a transfer. The Claims Group's determination is affirmed. Settlements under that Act are final and conclusive. The GAO does have jurisdiction, however, over claims by carriers who have had payments offset to satisfy employee settlements under that Act because the Act applies only to the claims of uniformed personnel and civilian employees of the federal government.

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**B-253640, November 4, 1993**

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**Civilian Personnel**

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**Compensation**

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

**Civilian Personnel**

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**Compensation**

- Payroll deductions
- ■ Health insurance
- ■ ■ Insurance premiums
- ■ ■ ■ Underdeductions

An employee transferred from one agency to another. Although his health benefits coverage was also transferred, the gaining agency failed to deduct premiums for that coverage for approximately 11 months. Had the employee examined his earnings and leave statements issued by the gaining agency, he would have discovered the error. Since he failed to examine those documents, he must be considered partially at fault, thereby precluding waiver under 5 U.S.C. § 5584(b) (1988).

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**B-253551, November 5, 1993**

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**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Constructive expenses
- ■ ■ Reimbursement

An employee performing official travel chose to combine it with personal travel. The cost of the actual transportation was less than it would have been had only official travel been performed. The employee seeks reimbursement on a constructive basis as though only official travel was performed. The claim is denied. Where an employee combines personal travel with official travel, reimbursement for transportation is limited to the actual cost of transportation or the constructive cost of direct travel, whichever is lesser.

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**B-253745, November 5, 1993**

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**Civilian Personnel**

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**Relocation**

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

A transferred employee executed an agreement to purchase a residence in the vicinity of his new duty station and moved into it on a rental basis pending settlement. He claims temporary quarters subsistence expenses for the rental period. The claim may not be allowed. Section 302-5.2 of the Federal Travel Regulation authorizes reimbursement only while the employee is in temporary quarters. Where an employee initially occupies a residence with the intention of making it his permanent residence, he is not entitled to the subsistence expenses during the rental period. *Kent N. Rosenlof*, 66 Comp. Gen. 701, and decisions cited.

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**B-253033, November 16, 1993**

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**Civilian Personnel**

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**Relocation**

- Per diem rates
- ■ Computation

An employee's official duty station was Salt Lake City, Utah, and the Army assigned him temporary duty in San Bernardino, California, which office selected him for a permanent position there. However, the employee's final period of temporary duty in San Bernardino was terminated by a return to Salt Lake City for substantial official business. The effective date of his transfer for per diem purposes is the date on which he returned to San Bernardino to stay at his new position, after his completion of official business in Salt Lake City. See *Robert W. Arndorfer*, B-214966, Dec. 27, 1984.

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**Civilian Personnel**

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**Relocation**

- Per diem
- ■ Reimbursement
- ■ ■ Amount determination

An employee's claims for a per diem allowance and other temporary duty expenses, after the effective date of his transfer for per diem purposes to his new duty station at which he had performed temporary duty are denied. See *Robert W. Arndorfer*, B-214966, Dec. 27, 1984.

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**Civilian Personnel**

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**Relocation**

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

An employee's claim for temporary quarters subsistence expenses is denied since the quarters he occupied were intended to be permanent. See 41 C.F.R. § 302-5.2(c) (1993).

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**B-253514, November 19, 1993**

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**Civilian Personnel**

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**Relocation**

- Miscellaneous expenses
- ■ Reimbursement
- ■ ■ Eligibility

Two federal employees who were covered by their spouses' private employers' health insurance "voluntarily" applied for new positions and transferred to new duty stations. Upon relocation, the spouses lost their employers' coverage. At the times of the transfers (September 1991 and April 1992), the employees were advised by the agency that they were not entitled to enroll in the Federal Employees Health Benefits Program (FEHBP) until the next open season enrollment period because their reassignments were not "directed" by the agency as then required by 5 C.F.R. § 809.301(x) (1992). The employees therefore paid premiums to retain private health insurance coverage during the period prior to their eligibility to apply for FEHBP coverage. Their claims for reimbursement of such premiums under the miscellaneous expense allowance provisions of the Federal Travel Regulation may not be paid.

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**B-253159, November 22, 1993**

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**Civilian Personnel**

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**Compensation**

- Medical examination
- ■ Expenses
- ■ ■ Reimbursement

The Centers for Disease Control (CDC) may not reimburse two employees for medical examinations by private physicians for themselves and their dependents. The examinations, which were in preparation for the employees' relocation to assignments outside the United States, were not required by the CDC nor were they primarily for the benefit of the government. Thus the expense is personal to the employee, and payment may not be made from appropriated funds.

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**B-254296, November 23, 1993**

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**Civilian Personnel**

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**Travel**

- Government vehicles
- ■ Use

An agency asks whether it may permit employees on temporary duty at a remote duty location where no other transportation is available to use government vehicles for transportation to and from recreational sites during their off-duty hours. The agency is advised that, with reasonable limitations and safeguards, such use may be authorized under a provision of the Federal Travel Regulations that authorizes the use of government-furnished vehicles for transportation to "places necessary for the sustenance, comfort, or health of the employee to foster continued efficient performance of Government business." The agency also is advised to consult with the Department of Justice regarding the extent to which such use may expand the agency's liability under the Federal Tort Claims Act.

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**B-253911, November 29, 1993**

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**Civilian Personnel**

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**Relocation**

- Relocation travel
- ■ Dependents
- ■ ■ Eligibility

Agency denied an employee's claim that her adult daughter was mentally incapable of self-support at the time of her transfer to a new duty station in 1990, and thus should be considered a member of her immediate family under 41 C.F.R. § 302-1.4(f) (1993), entitling the employee to certain additional transportation, travel, and relocation expenses. While the employee's daughter suffered from post-traumatic stress syndrome in 1983 and for a substantial period thereafter, the employee has not presented sufficient evidence in her daughter's medical records to show that her daughter was mentally incapable of self-support in 1990, some 7 years after a 1983 car accident. Agency's denial of employee's claim is sustained.

**Civilian Personnel**

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**Compensation**

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

An employee, who was transferred and promoted from grade GS-12, step 10, to grade GM-13, step 00, with an accompanying pay increase, was issued an SF-50 "Notification of Personnel Action" within 90 days thereafter erroneously granting him an additional merit pay increase. A correcting SF-50 was issued 2 days later containing a full explanation of the error, but due to a further administrative error, the merit pay increase was not canceled. This resulted in biweekly overpayments to the employee until the error was discovered 10 months later. Waiver is denied. When the employee began receiving the additional increase in pay after issuance of the correcting SF-50, he should have inquired about the accuracy of his pay. Having failed doing so, he is deemed to be partially at fault, thus precluding waiver of the debt. 5 U.S.C. § 5584(b).

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# Military Personnel

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**B-253900, November 4, 1993**

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## Military Personnel

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### Pay

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

Where Reserve Officer was not properly entered in Survivor Benefit Plan in 1986 when he became eligible for retired pay at age 60 and no reduction in retired pay occurred until 1993 when error was discovered, member is liable for uncollected premiums for spousal coverage since he was covered if he had died during that period and there is no basis for waiver of debt.

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**B-252787, November 8, 1993\*\*\***

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## Military Personnel

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### Pay

- Survivor benefits
- ■ Benefit election
- ■ ■ Election time periods
- ■ ■ ■ Former spouses

Where within 1 year of divorce decree, neither member nor ex-wife filed for former spouse coverage or a "deemed election", respectively, even though divorce decree stated that member was to maintain Survivor Benefit Plan for ex-wife, subsequent *nunc pro tunc* order which declares marriage dissolved (phrase which was omitted from original decree), does not give a new 1 year period for "deemed election" request.

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**B-254328, November 17, 1993**

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## Military Personnel

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### Pay

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

Former Navy member's request for waiver of his debt to the United States which arose when an extra paycheck was issued upon his retirement from the service and automatically deposited in his bank account is denied because former member is not without fault. 10 U.S.C. § 2774, which authorizes waiver of debts to the United States in appropriate circumstances, bars waiver when the member should have been aware of the erroneous payment resulting in the debt and therefore is considered to be at fault in not returning the erroneous payment.

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**Military Personnel**

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**Relocation**

**■ Household goods**

**■ ■ Shipment**

**■ ■ ■ Restrictions**

**■ ■ ■ ■ Privately-owned vehicles**

A member was erroneously advised that he could ship his second auto with government reimbursement when he made a permanent change of station move between two Air Force bases in the continental United States. His reimbursement claim is denied because the government is not liable for the erroneous actions of its officers, agents, and employees.

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# Miscellaneous Topics

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**B-253833.2, B-253833.3, November 3, 1993 REDACTED VERSION**

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## **Miscellaneous Topics**

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### **Federal Administrative/Legislative Matters**

#### **■ Congress**

#### **■ ■ Authority delegation**

#### **■ ■ ■ Administrative agencies**

Where agency has determined that no delegation of procurement authority (DPA) was required for an acquisition of administrative support services, and this view is confirmed by the General Services Administration, General Accounting Office has no basis to object to conduct of procurement without DPA.

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# Procurement

## Late case

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**B-252993.2, October 6, 1993    REDACTED VERSION**

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### Procurement

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#### Competitive Negotiation

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

Agency acted reasonably in not downgrading the awardee's proposal for excessive personnel turnover where the agency reasonably found that the awardee's proposal, as clarified in response to agency discussions on the matter, exhibited normal personnel turnover for the type of engineering services contract involved.

## Current cases

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**B-253875, November 1, 1993**

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**93-2 CPD 252**

### Procurement

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#### Socio-Economic Policies

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

In a small business set-aside procurement, where an agency fails to give proper preaward notice, but the Small Business Administration ultimately denies the protester's challenge to the awardee's size status, the protester is not prejudiced by the lack of preaward notice.

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### Procurement

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#### Socio-Economic Policies

- Small businesses
- ■ Contract awards
- ■ ■ Size status
- ■ ■ ■ Misrepresentation

Protest that awardee's proposal contained material misrepresentations is denied where representations in proposal challenged by protester are not inconsistent with representations made by awardee to the Small Business Administration.

**Procurement**

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**Sealed Bidding**

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

Where agency received wage determination after bid opening but prior to award, agency properly canceled solicitation rather than awarding to lowest-priced bidder and then adjusting its price.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Although the evaluation of proposals is primarily within the discretion of the contracting agency, the General Accounting Office will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and will sustain the protest where the record shows that the evaluation was unreasonable.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Meaningful discussions were not conducted with the protester regarding perceived weaknesses in the protester's proposal where agency did not inform offeror of concerns which significantly affected the proposal's point scores and where protester would have had a reasonable chance of being in line for award if the areas of concern had been pointed out and corrected.

**Procurement**

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**Competitive Negotiation**

- Discussion reopening
- ■ Propriety
- ■ ■ Best/final offers
- ■ ■ ■ Non-prejudicial allegation

Where protester's best and final offer contained compensation rates significantly higher than minimum rates under revised Service Contract Act wage determination not included in solicitation, agency's failure to provide protester with opportunity to prepare offer using revised wage determination was not prejudicial.

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## **Procurement**

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### **Bid Protests**

- **Moot allegation**
- ■ **Determination**

Protest allegations are dismissed as academic where protester would not be in line for award (because of high price) even if allegations were true.

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**B-250074.2, et al., November 4, 1993**

**93-2 CPD 264**

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## **Procurement**

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### **Bid Protests**

- **Moot allegation**
- ■ **GAO review**

Protest challenging contract award which was suspended by the agency is dismissed as academic.

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## **Procurement**

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### **Competitive Negotiation**

- **Requests for proposals**
- ■ **Cancellation**
- ■ ■ **Resolicitation**
- ■ ■ ■ **Propriety**

Protest allegation that agency canceled solicitation without justification is denied where protester fails to rebut agency's explanation for its action.

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**B-252453.4, B-253373.3, November 4, 1993**

**93-2 CPD 265**

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## **Procurement**

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### **Competitive Negotiation**

- **Requests for proposals**
- **Amendments**
- ■ **Materiality**

Solicitation amendment deleting guaranteed minimum quantity for requirements contract is material as it greatly increases risk to contractor and can reasonably be expected to affect offered prices.

---

## **Procurement**

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### **Competitive Negotiation**

- **Best/final offers**
- ■ **Price disclosure**
- ■ ■ **Contractors**
- ■ ■ ■ **Competitive restrictions**

Agency's decision to amend solicitation and request revised proposals, notwithstanding exposure of offered prices in the course of a prior bid protest, was proper where amendment changed a material quantity provision, and failure to request revised proposals would have prejudiced offerors.

---

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Late submission
- ■ ■ Acceptance criteria

Agency properly rejected an offer as late where the technical proposal was timely submitted, but the required price proposal was not submitted before the closing time set for receipt of offers.

---

**Procurement**

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**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.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Factual errors

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Legal errors

General Accounting Office's resolution of protest without holding a hearing does not constitute error warranting reconsideration of prior decision where protest issues did not present sophisticated technical questions or complex legal issues requiring oral explanation; a telephone conference was held; and the written record was complete and contained no inconsistent statements or evidence suggesting questionable or incomplete testimony requiring the assessment of witness's credibility.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Clerical errors
- ■ ■ Error correction
- ■ ■ ■ Propriety

Protest that awardee's proposal did not comply with the requirements of the request for proposals because the awardee listed the wrong address for its proposed approved source supplier of bread products is denied where the record shows that the awardee made a clerical error in typing the

information on its proposal. Agency properly allowed awardee to correct this clerical error concerning its proposed approved source.

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## **Procurement**

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### **Competitive Negotiation**

- **Below-cost offers**
- ■ **Acceptability**

Submission or acceptance of a below-cost offer on a fixed-priced contract is legally unobjectionable where the agency has determined that the awardee is a responsible contractor.

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**B-253966, November 5, 1993**

**93-2 CPD 271**

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## **Procurement**

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### **Competitive Negotiation**

- **Alternate offers**
- ■ **Rejection**
- ■ ■ **Propriety**

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## **Procurement**

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### **Competitive Negotiation**

- **Requests for proposals**
- ■ **Alternate offers**
- ■ ■ **Evaluation errors**

Protest that agency evaluated only one of two proposals submitted by the protester is denied where the record shows that the only difference between the two proposals was the additional sub-contractor work that was proposed in the protester's "optional" proposal; the agency evaluated all aspects of the "optional" proposal; and the agency's evaluation of the "optional" proposal included the evaluation of the "base" proposal.

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## **Procurement**

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### **Competitive Negotiation**

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

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## **Procurement**

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### **Competitive Negotiation**

- **Offers**
- ■ **Evaluation**
- ■ ■ **Technical superiority**

Protest that agency failed to perform a cost/technical tradeoff between protester's "base" proposal and awardee's technically superior, higher cost proposal is denied where the record establishes that the protester had no reasonable chance of receiving award on the basis of its lower cost, but significantly inferior and marginally acceptable, "base" proposal.

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**Procurement**

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**Bid Protests**

- Information disclosure
- ■ Competitive advantage

Protest challenging contracting officer's decision to exclude protester from reopened competition because it possesses evaluation and competition sensitive materials provided in response to a Freedom of Information Act request filed after the initial award is sustained where the protester did not act improperly in requesting the information, and where the information at issue while usually not released to offerors could be provided to the other offerors to ameliorate any competitive advantage to the protester as a result of the release.

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**B-253066.3, November 8, 1993 93-2 CPD 307 REDACTED VERSION**

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**Procurement**

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**Competitive Negotiation**

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

In procurement for facility support services, protest that agency improperly evaluated protester's and awardee's proposals is denied where record shows the agency's evaluation of the proposals was reasonable and in accordance with the solicitation's stated evaluation criteria.

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**Procurement**

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**Competitive Negotiation**

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

There is no merit to protest that awardee engaged in improper "bait and switch" practices by proposing certain key personnel while intending instead to hire incumbent employees if awarded the contract: (1) awardee's proposal included resumes and negotiated salary information for the candidates; (2) the agency confirmed that the individuals were well qualified to perform the work; and (3) nothing in the record suggested that the names were submitted in other than good faith.

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**B-253295.2, November 8, 1993\*\*\***

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**Procurement**

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**Noncompetitive Negotiation**

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

A procuring agency's sole-source award for missile launches was reasonably justified where, after evaluating the protester's qualification package submitted in response to the agency's *Commerce Business Daily* announcement, the agency determined that only the awardee could meet its actual program needs within the time required, and the agency's noncompetitive procurement did not arise from a lack of advance procurement planning.

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## Procurement

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### Competitive Negotiation

- Contract awards
  - ■ Multiple/aggregate awards
  - ■ ■ Propriety
- 

## Procurement

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### Specifications

- Minimum needs standards
- ■ Total package procurement
- ■ ■ Propriety

An agency's total-package procurement of several missile launches in a demonstration program, rather than separately competing the launches, was reasonable where the demonstration program requires that each missile launch exhibit identical performance parameters, and the record shows that different contractors' missiles would exhibit different performance parameters.

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**B-253957.3, November 8, 1993**

**93-2 CPD 274**

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## Procurement

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### Bid Protests

- Dismissal

Protest of agency's dismissal of agency-level protest that awardee did not submit a proposal for the contract for which it received award is dismissed where record shows it lacks a valid basis.

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Significant issue exemptions
- ■ ■ ■ Applicability

Untimely protest alleging awardee has improper subcontractor and teaming agreements, and has violated the Certificate of Independent Price Determination, will not be considered under "significant issue" exception to General Accounting Office (GAO) timeliness requirements where these issues have been considered in prior GAO decisions.

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**B-244992.2, November 16, 1993**

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## Procurement

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### Payment/Discharge

- Payment procedures
- ■ Contracts
- ■ ■ Assignment

Assignment of government contract payments to a company to which a state court ordered them assigned by a trustee appointed to act for the performing contractor does not fall within the "operation of law" exception to the Assignment of Claims Act.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest is sustained where agency conducted discussions with offerors but failed to request best and final offers; permitting offerors to submit extensive written responses during discussions did not eliminate the possible prejudice arising from the lack of an opportunity to revise proposals in response to discussions.

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**Procurement**

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**Specifications**

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

Protest that agency's drawings and specifications for an underground piping system are unreasonable and overly restrictive because their specification of numbers and locations for some system components (expansion loops and anchors) allegedly precludes the protester from offering the products of some prequalified system suppliers is denied where the agency's system configuration requirements, based on its successful existing system, are designed to achieve a long, maintenance-free life and do not overly restrict competition.

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**Procurement**

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**Small Purchase Method**

- Requests for quotations
- ■ Evaluation criteria
- ■ ■ Sufficiency

Where it is discovered that a solicitation for an indefinite quantity of photocopy services provided no basis for comparing quotations and thus was materially defective, agency may not evaluate competing prices based on newly devised criteria that deviate from the solicitation's stated terms.

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**Procurement**

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**Small Purchase Method**

- Quotations
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Although procuring agencies have broad discretion in determining the particular method of price evaluation to be applied, the chosen method must provide a rational basis for source selection.

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**Procurement**

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**Specifications**

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Design specifications**
- ■ ■ ■ **Justification**

Specification reasonably excluded polyvinylchloride pipe as an outer protective casing for replacing underground heating and chilled water lines where the record demonstrates that the agency has had unfavorable experience with the material in this particular use and that the specified casing has a longer service life.

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**B-254092, November 16, 1993**

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**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Principal/agent relationships**
- ■ ■ **Identification**

A company may not change an offer submitted in its own name after the closing date to make itself only the agent of other companies whose products are being offered since an award to an entity other than that named in the original offer is improper.

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**B-254093, et al., November 16, 1993**

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**Procurement**

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**Socio-Economic Policies**

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

Agency decision to conduct procurements for construction services at Fort Sill, Oklahoma, on an unrestricted basis and not as small disadvantaged business (SDB) set-asides is reasonable where the agency concluded, based on the consideration of the procurement history for similar services at Fort Sill, that it could not reasonably expect to receive bids from at least two responsible SDB concerns.

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**B-254201, November 16, 1993**

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**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Technical acceptability**
- ■ ■ **Descriptive literature**

Where descriptive literature submitted with protester's offer does not establish that the protester's proposed software complies with material solicitation requirement for X-acceleration software, contracting agency reasonably concluded that the offer is technically unacceptable and should not be considered for award.

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## Procurement

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### Competitive Negotiation

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

Protest that it was improper for agency to require offerors to provide certain software, given agency's alleged past practice of furnishing such software to the contractor, is denied because an agency's actions under one procurement do not affect the propriety of its actions under a different procurement.

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## Procurement

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### Bid Protests

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

Protest that the agency's requirement for a brand name product was improper because the specified product does not exist involves an alleged solicitation impropriety which, to be timely, had to have been raised prior to the time set for receipt of initial proposals rather than after award of the contract.

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**B-254250, November 16, 1993**

**93-2 CPD 279**

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## Procurement

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### Sealed Bidding

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

In the absence of any allegation or evidence that awardee's bid contains overstated prices for specific line items, or that agency is unlikely to exercise options for additional performance periods, there is no basis to conclude that awardee's bid is materially unbalanced.

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**B-254286, November 16, 1993**

**93-2 CPD 280**

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## Procurement

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### Competitive Negotiation

- Contract awards
- ■ Lost bids
- ■ ■ Propriety
- ■ ■ ■ Competitive system integrity

Protest that agency lost and thus failed to consider the protester's low bid is denied. The agency is not permitted to make award to a firm whose bid may have been lost by the agency prior to bid opening date; to do so would be inconsistent with preserving the integrity of the competitive bidding system.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ GAO review

Where protest of the Small Business Administration's (SBA) denial of certificates of competency (COC), which was based on the misdemeanor conviction and probation status of the protester's vice president, represents a challenge to the reasonableness of the SBA's decisionmaking process rather than a showing of possible bad faith on the part of the SBA, the matter is properly for review by the federal courts rather than the General Accounting Office, which has no jurisdiction to review the SBA's judgments concerning issuance of COCs.

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**B-254046, November 17, 1993**

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Amendments
- ■ ■ Evaluation criteria
- ■ ■ ■ Weighting

Solicitation's technical evaluation criteria that provide that more credit will be given for proposals offering products that exceed the specifications in certain respects within the designated relative evaluation weights is not improper.

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**Procurement**

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**Bid Protests**

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

Protest that solicitation was defective for failing to disclose the relative evaluation weight of cost, which was first raised in the protester's comments on the contracting agency's report after the closing date for receipt of proposals, is dismissed as untimely.

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**Procurement**

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**Specifications**

- Performance specifications
- ■ Adequacy

Protest that solicitation specification for accelerometers does not provide sufficient details regarding the required quality control plan requirement is denied where the specifications were intended to be flexible with regard to the specific details of the quality control plan given the different processes which could be used to manufacture the item.

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## **Procurement**

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### **Competitive Negotiation**

- **Requests for proposals**
- ■ **First-article testing**
- ■ ■ **Waiver**
- ■ ■ ■ **Administrative determination**

Protest that first article test requirement is unreasonable is denied where the test is necessary to satisfy the agency that the contractor will meet agency requirements.

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**B-254525, November 17, 1993**

**93-2 CPD 281**

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## **Procurement**

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### **Specifications**

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Geographic restrictions**
- ■ ■ ■ **Justification**

Agency properly rejected from consideration for award a bid which did not offer to perform within the geographically restricted area as provided in the invitation for bids.

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**B-253152.3, November 19, 1993**

**93-2 CPD 287**

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## **Procurement**

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### **Sealed Bidding**

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

Where protester did not submit a bid because it did not receive solicitation amendment containing revised bid opening date, and nonreceipt was not due to any agency attempt to deliberately exclude the protester, protester was not prejudiced by allegedly improper award to the only bidder; General Accounting Office therefore has no basis to consider merits of protest allegations.

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**B-253698.2, November 19, 1993**

**93-2 CPD 288**

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## **Procurement**

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### **Competitive Negotiation**

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

Agency properly excluded from the competitive range a proposal which failed to provide necessary specific information in numerous areas, and instead merely parroted back material contained in the solicitation, leading the agency to reasonably conclude that the proposal would require major revisions in order to correct the deficiencies and become technically acceptable.

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## Procurement

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### Bid Protests

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

Protest that solicitation was deficient because an amendment which added additional tasks to the requirements failed to make an allegedly needed corresponding change to the evaluation criteria is untimely where it was clear from the face of the amendment that the evaluation criteria remained unchanged, and the protest was not filed until after the closing time for receipt of proposals.

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## B-254152, November 19, 1993 93-2 CPD 296 REDACTED VERSION

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## Procurement

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### Sealed Bidding

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

Where agency reasonably concluded that the awardee presented clear and convincing evidence of a mistake in its bid and the intended bid price, and the bid is low with or without correction, agency properly made award at corrected price.

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## B-254522, November 19, 1993

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## Procurement

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### Bid Protests

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

Protest that solicitation requirement that offerors submit specific information in their proposals concerning availability, past experience, and training of their proposed medical assistants unfairly favored the incumbent contractor is untimely where the requirement was apparent on the face of the solicitation and the objection was first filed after the closing time for receipt of initial proposals.

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## Procurement

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### Competitive Negotiation

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

Protest that it was improper for agency to find protester's proposal technically unacceptable due to the protester's failure to submit required information about its proposed medical assistants, based on the protester's contention that in prior procurements for similar services the agency has not required submission of such information, is denied because an agency's actions under other procurements do not affect the propriety of its actions under a different procurement.

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**Procurement**

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**Bid Protests**

- Allegation
- ■ Abandonment

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**Procurement**

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**Bid Protests**

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

Contention that it was improper for the agency to exclude the protester's proposal from the competitive range, based on its failure to submit required information about its proposed medical assistants, in light of other alleged technical strengths in the proposal, is dismissed as an untimely piecemeal allegation when it could have been included in initial protest filing but was not raised until the protester's comments on the agency report, approximately 1 month after the protester was informed about the reason supporting the agency's rejection of its proposal.

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**B-254377, November 22, 1993****93-2 CPD 290**

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**Procurement**

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**Bid Protests**

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

Protest is dismissed as untimely where initial agency-level protest against agency's nonresponsibility determination was filed more than 10 working days after protester received contracting agency's notification that protester was found nonresponsible because its individual surety's assets did not satisfy the requirements of the solicitation and the Federal Acquisition Regulation.

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**B-253591.2, November 23, 1993****93-2 CPD 297**

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**Procurement**

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**Socio-Economic Policies**

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

In light of the exigent circumstances of the procurement, the contracting officer did not abuse her discretion in not referring a size status question to the Small Business Administration where a large business, after being found nonresponsible, asserted that it was actually a small business.

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**B-254032.2, November 23, 1993****93-2 CPD 298**

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**Procurement**

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**Competitive Negotiation**

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

Protest of technical evaluation of proposal is denied where review of proposals and evaluation record supports agency's conclusions that awardee's proposal was superior in several important areas.

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## Procurement

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### Competitive Negotiation

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

Where solicitation provided that technical evaluation factors were more than 3 times more important in award selection than price, agency reasonably determined that awardee's technical superiority was worth 53 percent higher price.

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**B-253811.2, et al., November 24, 1993**

**93-2 CPD 306**

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## Procurement

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### Competitive Negotiation

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

Agency's partial cancellation of a request for proposals is reasonable where the agency no longer has a current need for the items.

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## Procurement

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### Bid Protests

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

Protester is not entitled to the costs of filing and pursuing its protest, where the protest elicited corrective action on the part of the agency 10 days after it was filed with the General Accounting Office, even though the protester filed an agency-level protest on the same matter.

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**B-253891.2, et al., November 24, 1993**

**93-2 CPD 333**

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## Procurement

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**REDACTED VERSION**

### Contractor Qualification

- Contractor personnel
- ■ Misrepresentation

Protest against proposed contract award under solicitation requiring that offerors disclose whether proposed personnel are offered in other pending proposals is sustained where intended awardee's best and final offer misrepresents the commitments of its proposed personnel by stating that none is proposed in any other proposal when, in fact, several personnel, including all of the "key personnel," were offered as dedicated staff in another proposal.

**Procurement**

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**Specifications**

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

Protest alleging that the clause in a solicitation for repair of a naval vessel instructing prospective bidders to consider that all paint on board the naval vessel contains lead conflicts with work item's estimate of the amount of lead-containing paint expected to be generated during the performance of the contract is denied where a reasonable reading of the solicitation shows that no such conflict exists.

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that the Navy's statutory obligation to identify and quantify the hazardous waste expected to be generated during the performance of a ship repair contract includes the duty to identify the specific location or distribution of lead-containing paint is denied where the statute does not compel this conclusion.

**Procurement**

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**Competitive Negotiation**

- Initial offers
- ■ Rejection
- ■ ■ Propriety

In a negotiated procurement, the procuring agency properly rejected the protester's initial offer, which failed to include a technical proposal as required by the solicitation, because the initial offer was so deficient that in essence no meaningful proposal was submitted.

**Procurement**

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**REDACTED VERSION****Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Point ratings

Protests alleging improper technical evaluation and award decision are sustained where the evaluation documents include only point scores representing consensus of entire evaluation board but do not include contemporaneous narrative explanations showing the strengths, weaknesses, and risks associated with each proposal.

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## **Procurement**

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### **Competitive Negotiation**

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

Protest that agency official improperly influenced evaluation of proposals and award decision to prevent the protester from receiving contract is denied where there is no evidence in the record to support the allegation, named agency official was not a member of the evaluation board or an adviser to the board, and agency issued solicitation amendment specifically removing the named individual from his position as government technical representative for the procurement before receiving initial proposals in response to protester's earlier complaint.

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**B-252490.2, November 30, 1993**

**93-2 CPD 289**

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## **Procurement**

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### **Bid Protests**

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

Request for reconsideration is denied where requesting party does not identify errors of fact or law, or provide information not previously considered which would warrant reversal or modification of initial decision.

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**B-254229, November 30, 1993**

**93-2 CPD 291**

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## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Samples**

Where agency official incorrectly informed protester prior to submission of its bid that samples which it had submitted under an earlier procurement had been approved and could be used to satisfy a requirement for bid samples under current solicitation, when in fact testing of the items had not yet been completed, protester was not unfairly deprived of the opportunity to submit additional samples under current solicitation since there is no reason to think that it would have submitted modified samples had it been correctly informed that testing was still ongoing.

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