

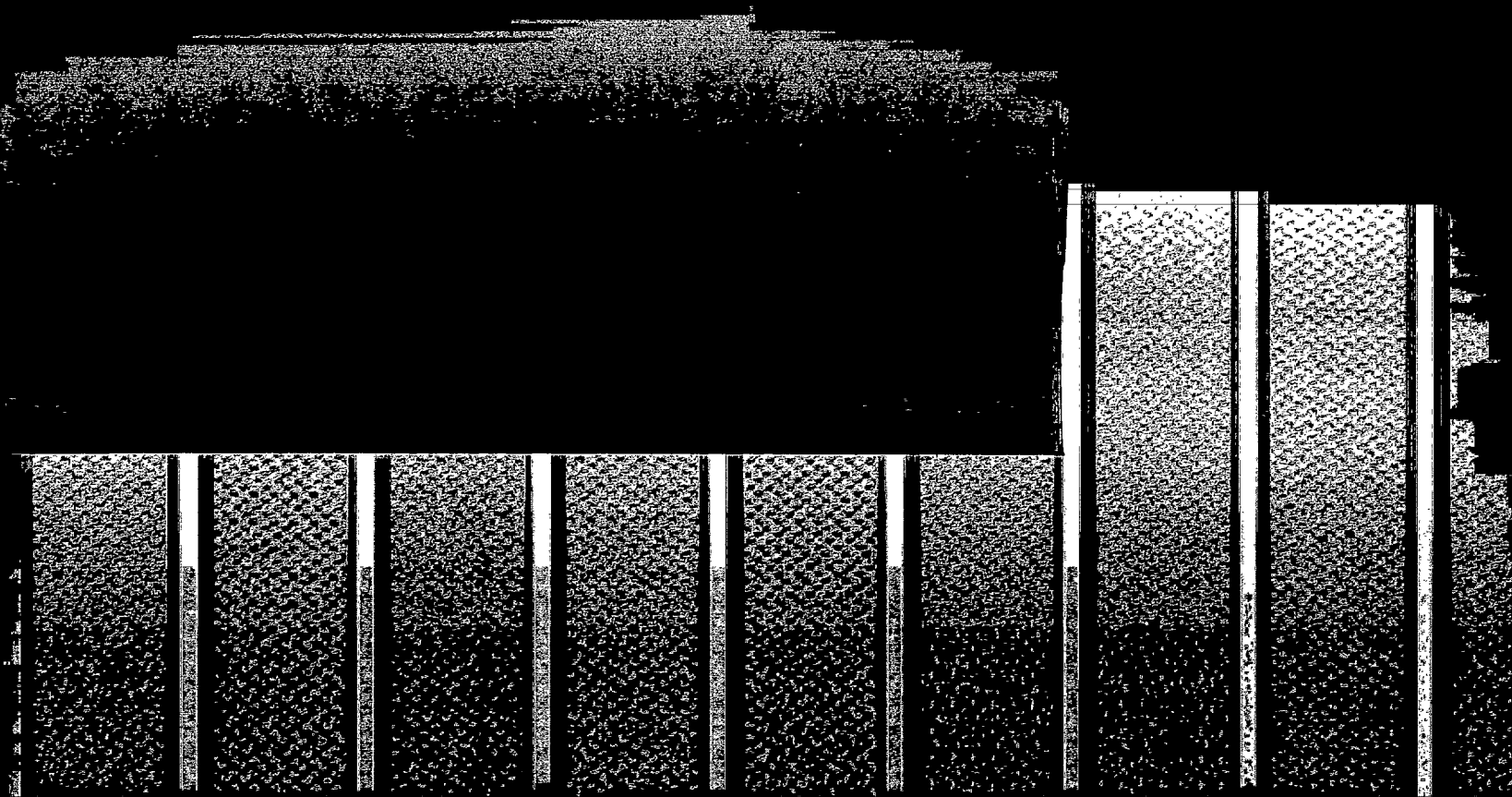
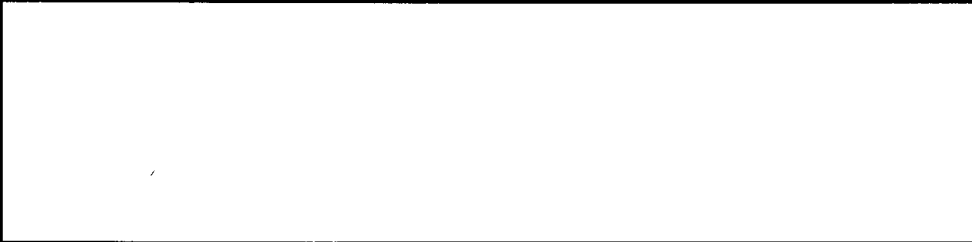
GAO

United States General Accounting Office
Office of General Counsel



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Digests of Decisions of the Comptroller General of the United States



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Preface

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

B-249060, April 5, 1993

Appropriations/Financial Management

Judgment Payments

■ Claims

■ ■ Definition

For purposes of payment from the Judgment Fund of claims under the Military Claims Acts, 31 U.S.C. § 1304(a)(3)(D), we understand "claim" to refer to a "cause of action" or a "demand for money or property as of right."

B-248225, April 6, 1993***

Appropriations/Financial Management

Appropriation Availability

■ Amount availability

■ ■ Amount determination

■ ■ ■ Computation

■ ■ ■ ■ Interagency agreements

Department of Energy (DOE) is authorized to include 3.2 percent "added factor" for departmental administrative costs in charges currently paid by Nuclear Regulatory Commission (NRC) to DOE for research performed on reimbursable basis by DOE on behalf of NRC under section 205(c) of Energy Reorganization Act 1974, 42 U.S.C. § 5845(c)

Appropriations/Financial Management

Appropriation Availability

■ Amount availability

■ ■ Amount determination

■ ■ ■ Computation

■ ■ ■ ■ Interagency agreements

There is no clear statement in Energy Reorganization Act or its legislative history that section 205(c) of the act requires NRC or DOE to limit elements of costs to be included in NRC's reimbursements for research performed under the act by DOE for NRC.

Appropriations/Financial Management

Appropriation Availability

■ Amount availability

■ ■ Amount determination

■ ■ ■ Computation

■ ■ ■ ■ Interagency agreements

Provisions in 1978 interagency agreements contemplate pricing will omit "added factor" and will accord with DOE's current general pricing policy, which today includes added factor charges. Now

policy is consistent with GAO recommendations, with statutory requirement that NRC reimburse DOE for research services, and with fundamental agreement of DOE and NRC that DOE pricing policy governs pricing of DOE charges for services to NRC.

B-249006, April 6, 1993

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Warranties

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Advance payments
- ■ ■ Warranties

Payments for warranties presented as separately priced items are not prohibited by the advance payment statute so long as they represent a reasonable charge for the vendor's acceptance of deferred liability and are not designed to provide periodic maintenance service. Agreements for the provision of periodic maintenance service, even if labelled as extended warranties, are prohibited by 31 U.S.C. § 3324.

B-252809, April 7, 1993

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Account deficiency

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Embezzlement

A request for relief from liability for an uncollected balance of \$1,062.38 is returned to the agency for administrative action. The amount of the loss falls within the \$3,000 threshold for administrative resolution and is thus properly considered by the agency.

B-251189, April 8, 1993

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Personal expenses/furnishings

The Agency for International Development may not use appropriated funds to purchase business suits for its chauffeurs because business suits do not qualify as "uniforms" under section 636(a)(12) of the Foreign Assistance Act of 1961 and because government employees are personally responsible for reporting to duty properly attired.

B-247644, April 9, 1993***

Appropriations/Financial Management

Budget Process

■ Miscellaneous revenues

■ ■ Treasury deposit

■ ■ ■ Purpose Availability

Certain moneys received by the Secretary of the Treasury, as successor to the United States Synthetic Fuels Corporation, were properly credited to the Energy Security Reserve rather than as miscellaneous receipts. These receipts are available to defray expenses incurred by Treasury in administering financial assistance contracts and carrying out the duties of the Corporation, as directed by the provisions of the Energy Security Act

B-251921, April 14, 1993

Appropriations/Financial Management

Appropriation Availability

■ Purpose availability

■ ■ Invitees/guests

■ ■ ■ Travel expenses

Representative John Dingell asked whether the Environmental Protection Agency (EPA) could pay the travel costs of 16 private citizens to attend a United Nations-sponsored conference at which EPA was a participant. The Congressman is advised that, although 5 U.S.C. § 5703 authorizes so-called invitational travel, a separate statute (31 U.S.C. § 1345) expressly bars the use of appropriated funds to pay the travel costs of private citizens to attend meetings. Absent specific statutory authority or a direct benefit to the agency, the expenditures questioned are improper.

B-248111.2, April 15, 1993

Appropriations/Financial Management

Federal Assistance

■ Grants

■ ■ Terms

■ ■ ■ Purpose availability

Letter further discusses our view in B-248111, Sept. 9, 1992, that USIA is responsible for ensuring that the National Endowment for Democracy's privately funded activities comply with the requirements of the National Endowment for Democracy Act

Civilian Personnel

B-251667, April 2, 1993

Civilian Personnel

Compensation

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

Where an employee's pay records were transferred to a different payroll department and he complained to the agency about errors and confusion with his records, he is found not to be at fault initially for not recognizing that the amounts being deducted from his pay for health insurance were incorrect. Therefore, partial waiver of his resulting debt is granted. However, the amount of the debt accruing after the next open season may not be waived since he received booklets showing the premium for each insurance plan, and his leave and earning statements showed a lesser amount being deducted for the health plan he had selected. At that time he should have noticed the discrepancy and brought it to the attention of the agency, which he did not do.

B-251103, April 5, 1993

Civilian Personnel

Travel

- Overseas travel
- ■ Travel modes
- ■ ■ Terrorist threats

Two employees of the Arms Control and Disarmament Agency need not be charged the cost of their travel on a foreign flag air carrier. A high-level official of the agency made a specific determination in their case authorizing the foreign flag travel because of a security threat. Although the record is not entirely clear as to the basis for that determination, considering the emergent circumstances, including that the travel was performed at the beginning of the Persian Gulf conflict, it is considered a sufficient determination that U.S. flag air carriers were "unavailable," and therefore the travel did not violate the Fly America Act.

B-251142, April 21, 1993

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem
- ■ ■ Additional expenses
- ■ ■ ■ Rest periods

Two agency employees took a day of informally approved annual leave after an authorized rest stop upon completion of an overseas temporary duty assignment. Since an agency has the discretionary authority under 41 C.F.R. § 301-7.11(a) (1991), to authorize or approve rest stops, and since it is Department of Defense policy to negate a rest period when taken in conjunction with annual leave, reimbursement of per diem for the rest period is not authorized. *See* 2 JTR paras. C1058-3 and C2000, Feb. 1, 1991, and May 1, 1989, respectively.

B-251301, April 23, 1993

Civilian Personnel

Compensation

- Classification
 - ■ Appeals
 - ■ ■ Statutes of limitation
-

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Eligibility
- ■ ■ Adverse personnel actions
- ■ ■ ■ Classification

A former employee of the Bureau of Alcohol, Tobacco and Firearms should have been appointed as an Inspector at grade 11, step 6, under the nondiscretionary administrative regulation then in effect, but was mistakenly appointed at grade 11, step 3 in 1977. The Bureau discovered this error in October 1992, and the former employee seeks backpay. The former employee's compensation claims for the time prior to October 1986, i.e., 6 years prior to the discovery of the mistake in October 1992, are barred by the general 6-year statute of limitations in 31 U.S.C. § 3702(b) (1988).

B-250889, April 28, 1993

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Travel time

Employees were assigned to temporary duty in Florida in the aftermath of Hurricane Andrew to help in the cleanup effort. Conditions of travel in the early days of the effort were chaotic. Roads from the employees' temporary lodgings to the temporary work sites were often partially blocked by debris and clogged with traffic because other roads were completely blocked; the work sites varied daily and often at considerable distance from each other; and the employees, who were working as much as 12-14 hours daily, sometimes had to travel round-trip as much as 4 hours a day commuting. In these circumstances, the agency may pay overtime to employees who traveled under these arduous conditions, in accordance with 5 U.S.C. § 5542(b)(2)(B)(iii) or § 5544(a).

B-251775, April 29, 1993

Civilian Personnel

Leaves Of Absence

- Annual leave
 - ■ Eligibility
 - ■ ■ Military service
 - ■ ■ ■ Definition
-

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Service credits
- ■ ■ Military service
- ■ ■ ■ Computation

Office of Personnel Management's interpretation in Federal Personnel Manual Supplement 296-33 of the language in 5 U.S.C. § 6303(a)(3)(B) (1988) which gives credit for prior military service in

computing an employee's entitlement to annual leave is not unreasonable in distinguishing between service "during" a war and service "in" a campaign or expedition. Although OPM's definition is different than that in 38 U.S.C. § 101 (1988), which concerns veteran's benefits, OPM has the statutory authority to administer the leave system and its determination will not be disturbed by GAO.

Military Personnel

B-249371.2, April 30, 1993

Military Personnel

Pay

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

Former member of the Army was overpaid accrued leave upon separation, creating a debt of \$4,670.65. When requesting reconsideration of the denial of his request for waiver of the debt, the former member provided additional information which indicates he was clearly aware of the overpayment made to him. When an individual knows that a payment is erroneous, collection of the payment is neither against equity or good conscience nor contrary to the interests of the United States, and our previous denial of waiver is affirmed.

B-251182, April 30, 1993

Military Personnel

Pay

- Balances
- ■ Personnel death
- ■ ■ Payees
- ■ ■ ■ Determination

Upon the death of a Navy member, his wife was charged with second degree murder, but was not indicted. When local authorities indicated that she would not be prosecuted, the Navy paid her a death gratuity. We conclude that, given the circumstances of the member's death, this payment was in error and should be collected from the payee if possible. In accordance with the member's alternate designation, the death gratuity should be paid to his father, whether or not collection of the erroneous payment is successful. The unpaid compensation should be paid to his parents in equal shares.

Procurement

B-249250.2, April 1, 1993

93-1 CPD 282

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request does not set forth errors of fact or law or present information not previously considered which would warrant reversal or modification of earlier decision.

B-251366, April 1, 1993

REDACTED VERSION

93-1 CPD 306

Procurement

Competitive Negotiation

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

Protest that agency failed to evaluate proposals in accordance with the evaluation criteria stated in the solicitation is denied where review of the record shows that the agency did in fact follow the stated evaluation criteria.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where proposal was considered technically acceptable, agency was not required to discuss with protester each area of the proposal that received less than the maximum possible rating.

Procurement

Competitive Negotiation

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

Selection of awardee on the basis of its overall technical superiority, notwithstanding its 13 percent higher price, is unobjectionable where solicitation provided that technical considerations were more important than price and the agency reasonably concluded that technical superiority of awardee's proposal was worth the price premium.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Justification

Protest of agency's award of a sole-source contract for the repair of F-16 head-up display optic modules is denied where the agency reasonably determined that it was necessary to limit competition in order to ensure the safe, dependable and effective operation of the modules and reasonably concluded that only the single source was qualified to repair the modules.

Procurement

Competitive Negotiation

- Contract awards
- ■ Qualified offers
- ■ ■ Propriety

Procurement

Noncompetitive Negotiation

- Sole sources
- ■ Alternate sources
- ■ ■ Qualification

Allegation that agency should have determined that protester is a qualified source for repair of F-16 optic modules is denied where agency tested head-up display optic module which protester repaired in order to show its capability and agency reasonably determined that repaired module did not meet qualification requirement that the repaired unit "demonstrate full operational serviceability."

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest alleging that offer was improperly rejected as technically unacceptable is denied where protester's proposal did not conform to required specifications for a radiological laundry system.

Procurement

Competitive Negotiation

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

Protest that agency improperly evaluated qualifications of two of protester's proposed personnel is denied where record supports the technical scores assigned to the proposal based upon the resumes submitted for the individuals

Procurement

Competitive Negotiation

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

Agency's conclusion that the incumbent would perform more efficiently than a new contractor at the beginning of the contract in balancing price and technical considerations was not the improper application of an unstated evaluation factor but simply a tool in performing the cost/technical tradeoff.

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Acceptability

Agency properly considered an unsigned, downward bid modification that yielded the low bid under an invitation for bids, since the bidder included this document in the bid envelope as part of the bid with other signed documents, such as the standard form 1442 and bid bond, that clearly evidenced the bidder's intent to be bound by its modified bid price.

Procurement

Specifications

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

Protest that specifications are unduly restrictive of competition because they require forklifts with side stance operator compartments without permitting as an option forklifts with fore and aft stance operator compartments is denied where the record shows that restriction is based reasonably on health and safety concerns.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Protest that awardee's proposal did not comply with solicitation requirement that offeror satisfy applicable tax requirements is denied where awardee's proposal evidenced tax-exempt status of nonprofit offeror and, consistent with this tax-exempt status, did not include inapplicable taxes in its proposal.

Procurement

Contractor Qualification

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

The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation were misapplied.

Procurement

Competitive Negotiation

- Pre-award surveys
- ■ Purposes

An agency is not required to conduct a preaward survey if information available to the agency is sufficient to allow the contracting officer to make an affirmative determination of responsibility.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Wage rates
- ■ ■ Amendments
- ■ ■ ■ Acknowledgment

Contracting agency properly rejected as nonresponsive a bid that failed to acknowledge an amendment correcting a prior amendment that defined worker classifications in a manner inconsistent with the Davis-Bacon Act, effectively decreasing wage rates; the correct classifications and corresponding wage rates are mandated by the Davis-Bacon Act and absent acknowledgment of the amendment stating the correct classifications, the bidder was not legally required to pay its employees the wage rates for the correct classifications.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Challenge to contracting agency's determination that protester's second-low bid was nonresponsive is academic where protester has not presented any viable basis to disturb the award to the low bidder.

Procurement

Socio-Economic Policies

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

Contracting officer properly may rely on a bidder's agreement to provide a domestic machine tool as required by the solicitation where there is no indication in the bid that a foreign product will be provided.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Bids
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Protest that late bids should be considered because their late receipt was due to government mishandling is denied where paramount cause of late receipt was not government mishandling, but rather bidder's failure to properly address its bid package, as well its failure to allow reasonable time for bids to be delivered from the point of receipt to the location designated for receipt of bids.

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Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Options
- ■ ■ ■ Prices

Protest alleging that contract option exercise was improper because agency's requirements have changed to include services being performed under a reprocurement contract awarded on a sole-source basis to the same contractor is an improper piecemeal allegation that General Accounting Office will not consider; protester should have known of this protest basis at the time it filed an earlier protest, and therefore was required to raise the issue at that time.

Procurement

Contract Management

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

Protest alleging that agency's informal market survey was inadequate to support decision in favor of option exercise is denied where protester has not established that any changes have occurred in the market for the required services, and the survey results reasonably support agency determination to exercise option.

Procurement

Contract Management

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

Fact that protester advised agency that it would provide services for less than option price did not require agency to issue new solicitation in lieu of exercising option where: (1) prices had been tested a year earlier by competition in which the protester offered the same price; (2) protester was found nonresponsible in the initial competition, based in part on concerns related to realism of its price; (3) there was no indication that prior concerns were resolved; and (4) agency's price analysis showed that the option price was still the best price obtainable.

Procurement

Competitive Negotiation

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

Protest that agency improperly downgraded protester's proposal for inadequate manning and failed to consider protester's unique labor saving approach is denied, where record shows that agency's doubts regarding the effectiveness of protester's labor saving approach in certain areas were reasonable and protester received credit in other areas where labor saving techniques were recognized as effective.

Procurement

Competitive Negotiation

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

Agency reasonably found that high risk of nonperformance in one area created potential for non-performance in other areas where area of concern was central to effective performance in other areas.

Procurement

Competitive Negotiation

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

Agency reasonably made award to higher priced, technically superior offeror where award to protester involved potential risk of inadequate performance in at least one area, even though other areas of protester's proposal were highly rated.

Procurement

Bid Protests

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

Protest that agency improperly denied bidder's request to extend the bid opening date after protester's late receipt of solicitation amendment is untimely where filed after bid opening.

Procurement

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

Agency fulfilled its responsibility to conduct meaningful discussions concerning unreasonably low proposed price by advising protester that certain of its prices were significantly at variance with the agency's price analysis

Procurement

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

Where agency had recently obtained protester's response concerning termination for default in connection with the past performance evaluation on a similar procurement, protester was not prejudiced by agency's decision to consider that response rather than requesting a new response in evaluation of protester's past performance.

Procurement

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

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

Procurement

Contractor Qualification**■ Responsibility criteria****■ ■ Organizational experience**

Protest that proposed awardee failed to meet a solicitation definitive responsibility criterion requiring 5 years of experience in performing the type of work required under the current solicitation is denied where, although proposed awardee itself had been in business for limited time, record indicates that it submitted evidence showing it had acquired all assets and employees of another firm with sufficient experience, and that several of its supervisory employees had extensive experience; contracting officer reasonably concluded from this information that the criterion had been met.

Procurement

Bid Protests

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

Protest of cancellation of solicitation is dismissed as untimely where not filed within 10 working days after protester knew or should have known basis for protest.

Procurement

Competitive Negotiation

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

Protest that contracting agency improperly included protester's proposal in the competitive range, resulting in unwarranted additional expense and effort, is denied where agency in fact found the proposal to have technical merit, and advised protester several times during negotiations that failure to correct informational deficiencies would preclude any chance for award.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Benchmark testing

Agency properly reran benchmark of all offerors' equipment after an offeror—that had pre-tested and certified its modem in accordance with the solicitation's detailed benchmark parameters—failed a benchmark conducted by the agency where the solicitation provided for retesting if benchmark failure was attributable to causes other than a failure of the offeror's equipment and the failure appears to have resulted from unanticipated test conditions and variations in the capabilities of the different test equipment used by the offerors and the agency.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Benchmark testing

Award to a firm, which failed the agency's first benchmark test, based on its passing of a second benchmark, was improper where the benchmark was a fundamental government requirement and the second benchmark was so technically flawed that it could not reasonably form a basis for award.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Where solicitation lists several evaluation factors and states that a failure to meet any single requirement may render the proposal unacceptable notwithstanding its overall score and offeror provides no information to demonstrate compliance with at least one of the requirements, agency reasonably determined that the proposal was unacceptable in that area and excluded the firm from the competition on that basis.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Where letter of protest is first routed to the General Accounting Office (GAO) regional audit office charged with responsibility for letter's subject matter because the letter itself was not readily identifiable as a protest and because the protester failed to mark the envelope to the attention of the Procurement Law Control Group as required by the GAO Bid Protest Regulations, the protest was properly found untimely when it was received by the Procurement Law Control Group more than 10 working days after the protester learned of its basis of protest.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where based on new information that is speculative and, even if protester were correct that new information would have affected evaluation had agency considered it, information at most would have made protester's proposal equal to awardee's under one requirement; awardee would remain in line for award based on otherwise superior rating and substantially lower offered price.

Procurement

Bid Protests

- GAO procedures
- ■ Administrative reports
- ■ ■ Comments timeliness

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Protest argument based on information contained in the agency report was properly dismissed as untimely where the argument was made more than 10 working days after receipt of the report; fact that extension was granted for filing report comments does not waive timeliness requirements.

Procurement

Bid Protests

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

Protester is not entitled to reimbursement of the costs of filing and pursuing protest under section 21.6(e) of Bid Protest Regulations based on agency corrective action, where corrective action was prompt—within 10 calendar days after protest was filed.

Procurement

Contractor Qualification

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

Agency had a reasonable basis upon which to conclude that awardee whose headquarters facility was accredited met a definitive responsibility criterion requiring that a contractor be accredited to perform home oxygen services

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ Pre-awards surveys

Agency reasonably based its affirmative determination of the awardee's responsibility on a plant facilities survey performed after bid opening at the firm's headquarters in conjunction with the award of a contract for similar services to those sought by the solicitation.

Procurement

Contractor Qualification

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

The fact that agency and the incumbent contractor agreed that the incumbent would perform phase-in house oxygen services for 1 month at the beginning of the awardee's contract does not indicate an inability on the awardee's part to successfully perform and, even if the awardee had performance problems, this does not necessarily lead to the conclusion that agency's affirmative responsibility determination was made in bad faith.

B-251560, April 13, 1993

93-1 CPD 315

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Cancellation
- ■ ■ Price reasonableness

Agency properly canceled small purchase, small business set-aside, and purchased the requirement from other than a small business, where the only quotation received from a small business exceeded an offer from other than a small business by approximately 12 percent and the government estimate by approximately 22 percent.

B-251608, April 13, 1993

93-1 CPD 316

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Procurement

Specifications

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

Protest challenging feasibility of solicitation requirement for equipment capable of processing 90 cubic yards of debris per hour is denied where solicitation identified a particular piece of equipment which the agency reasonably concluded, based on the manufacturer's literature, was capable of meeting the stated requirement.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest that agency refused to correct "typographical error" in solicitation for wood debris chipper is denied where agency, in fact, corrected the error by amending solicitation to state contract requirements in terms of input rather than output.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Contract performance
- ■ ■ ■ Evaluation

Agency was not obligated to specify crew size required to operate chipping equipment where solicitation provides a performance requirement and individual crew members could reasonably be expected to perform at different rates depending on their levels of experience and expertise and on the type of equipment the bidder intended to use.

B-251674, April 13, 1993

93-1 CPD 317

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Deviation

Proposal which explicitly took exception to a material solicitation requirement was properly rejected as technically unacceptable.

Procurement

Competitive Negotiation

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

Contracting agency which is a nonmandatory user of the Federal Supply Schedule (FSS), and reasonably determined that the equipment offered by the protester who has an FSS contract for that item will not satisfy the agency's needs, properly made award for higher priced equipment to a non-FSS vendor.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Applicability

Award to a firm offering a product made in the United Kingdom did not violate the Buy American Act because the United Kingdom is a qualifying country under the Act and exempt from its application.

Procurement

Bid Protests

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

A protester is not entitled to the costs of filing and pursuing its protest where the agency took corrective action as a result of the protest within 1 week after it was filed; alleged delay in agency-level processes occurring prior to the protest is not a basis for entitlement to costs under our Bid Protest Regulations.

Procurement

Bid Protests

- GAO authority

The General Accounting Office will not consider a protest challenging a specification in solicitation issued on a sole-source basis under the Small Business Administration's (SBA) section 8(a) program since negotiating the terms and conditions of a proposed section 8(a) contract on behalf of the proposed subcontractor is properly left to SBA.

Procurement

Competitive Negotiation

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

Agency's undisclosed source-selection plan and resulting proposal evaluation were unreasonable where offerors' experience, a critical evaluation criterion, was evaluated in an arbitrary and unsupported manner which effectively ignored the evidence in proposals of the actual extent of the competing offerors' relevant experience.

Procurement

Competitive Negotiation

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

Cost/technical tradeoff is unreasonable where it fails to set forth a reasonable basis for selecting a higher cost proposal and offers no explanation of what benefit the agency can realize from the fact that even though a higher percentage of the awardee's prior projects were of a size and type similar to the current procurement, the protester offered more experience, in absolute terms, in such projects.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester repeats arguments made in its protest submissions and disagrees with original decision.

Procurement

Bid Protests

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

Procurement

Sealed Bidding

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

Protest of agency's rejection of bid as nonresponsive due to protester's failure to include required bid bond with the bid is dismissed as untimely where initial objection filed with the contracting officer did not meet the requirements of an agency-level protest.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing protest as untimely is denied where it is based on evidence that could have been but was not submitted by protester in the course of the original protest.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision dismissing a protest issue as untimely is denied where the protest issue was untimely raised and no basis exists for considering the protest issue under the significant issue exception.

Procurement

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

Agency properly rejected as technically unacceptable a proposal containing numerous deficiencies in areas of personnel qualifications, technical approach, and corporate experience, the correction of which would have required major revisions

Procurement

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

Protest alleging improper discussions is untimely, where the protester admittedly received information forming the basis of its allegations more than 10 days before filing its General Accounting Office protest.

Procurement

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

Protest alleging that the agency improperly evaluated the awardee's proposal is untimely, where the protester obtained all relevant proposal information on which it bases its protest from the awardee's president more than 10 days before filing its protest.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Downgrading****■ ■ ■ ■ Propriety**

Agency had a reasonable basis to significantly downgrade the protester's proposal where it did not provide the required supporting data to establish that its proposed flow transfer standard system complied with a specification concerning the maximum allowable pressure drop level for the system, which was stated to be a significant aspect of the system.

Procurement

Competitive Negotiation

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

Agency properly may consider risk of proposed technical approach in evaluation, even where risk is not a stated technical evaluation factor, since the risk involved is inherent in an offeror's technical approach.

Procurement

Competitive Negotiation

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

Where protester's technical approach involved substantially more risk than awardee's, agency reasonably considered awardee's low-risk proposal worth a 2.56 percent cost premium.

Procurement

Contractor Qualification

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

Protest allegation that agency improperly failed to consider awardee's financial condition in evaluation is dismissed as it concerns the contracting officer's affirmative determination of the awardee's responsibility, which General Accounting Office will not consider except in limited circumstances.

Procurement

Sealed Bidding

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

Where invitation for bids required the submission of descriptive literature to establish bidders' conformance to the specifications, and descriptive literature submitted by the protester showed that its product did not comply with several of the specifications, the agency properly rejected the bid as nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Evaluation
- ■ ■ Tests
- ■ ■ ■ Certification

Where invitation for bids required the submission of test data with bids and advised that the data would be used in evaluating bid responsiveness, agency properly refused to permit the protester to furnish such data after bid opening.

B-252622.2, April 16, 1993

93-1 CPD 329

Procurement

Bid Protests

- GAO authority

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior dismissal of protest is affirmed where protest concerned agency procurement practices in general, rather than a specific solicitation or award; General Accounting Office's authority to decide bid protests is limited by statute to protests of a particular solicitation or award and does not extend to general protests of agency contracting practices.

B-250438.3, April 19, 1993

93-1 CPD 330

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency had no obligation to conduct discussions with protester regarding material deficiencies in firm's primary proposal (for post-to-panel systems furniture components) where that proposal was reasonably found to be technically unacceptable and had no reasonable chance for award.

Procurement

Competitive Negotiation

- Requests for proposals
 - ■ Amendments
 - ■ ■ Post-award periods
 - ■ ■ ■ Propriety
-

Procurement

Specifications

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

Agency properly reopened solicitation after award to revise specifications and request revised offers—instead of making award to protester—where solicitation overstated the agency's actual minimum needs and required revision could affect pricing such that different offeror could be in line for award.

B-251343, April 19, 1993

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

A carrier is not *prima facie* liable for damage to an item of household goods where the carrier vigorously pursued its inspection rights within the time permitted by the Military-Industry Memorandum of Understanding; without the carrier's fault, the shipper disposed of a damaged item within the time that the carrier was permitted to inspect it and before the carrier could arrange inspection; and the record indicates that the carrier had a substantial defense involving facts discoverable by inspection.

B-251685, April 19, 1993

Procurement

Specifications

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

Specifications for various upholstery fabrics to be used by Federal Prison Industries to manufacture furniture for resale are not unduly restrictive of competition where the record establishes that the agency could reasonably conclude the specifications which are based on aesthetics and appeal were necessary to effectively compete in the marketplace and meet its customers' demands.

Procurement

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

Protest alleging that agency improperly evaluated protester's technical proposal by not assigning highest technical rating to proposal is denied where record shows that even though the agency found that the protester's proposal did not have any weaknesses, agency reasonably found that the proposal was not exceptional and thus did not warrant the highest rating

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Prior contract performance**

Protest alleging improper evaluation of protester's past performance is denied where record supports the reasonableness of the agency's determination based on its performance under the predecessor contract

Procurement

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

Selection of awardee on the basis of its overall technical superiority, notwithstanding its higher cost, is unobjectionable where solicitation provided that technical considerations were more important than cost and the agency reasonably concluded that the technical superiority of the awardee's proposal was worth the extra cost.

Procurement

Socio-Economic Policies**■ Preferred products/services****■ ■ American Indians****■ ■ ■ Joint ventures**

Bureau of Indian Affairs reasonably determined that a joint venture, comprised of an Indian-owned firm and a firm which was not Indian-owned, did not qualify as an Indian economic enterprise eligible for award under Buy Indian set-aside procurements where the joint venture failed to clearly demonstrate that the Indian-owned firm would control and be involved in the daily management of the joint venture.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protester's speculative allegation of improper contact between unidentified technical evaluator and proposed awardee is insufficient to form basis for protest.

B-252817, April 19, 1993**Procurement**

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

In lieu of completing an exception sheet upon securing a shipment of household goods from a storage facility for delivery, the carrier noted on the rider that it had not been given any items not "✓ off" on the inventory. Review of the inventory markings shows little difference between an entered "✓" and an entered "✓," so that the carrier is presumed to have picked up items with either annotation.

B-251614, B-251615, April 20, 1993**Procurement**

Bid Protests

- GAO authority

Since the General Accounting Office's (GAO) statutorily-based bid protest jurisdiction extends only to procurements conducted by a federal agency, the award of franchise contracts for cable television services and telephone services by a nonappropriated fund instrumentality which is not a federal agency, is beyond the scope of GAO's jurisdiction.

B-250492, April 21, 1993**Procurement**

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Repairs

Even though an item of household goods that incurred damages in transit contained pre-existing damage, GAO will not reverse the agency's administrative determinations of transit damages and repair costs without competent evidence that the determinations are unreasonable.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Where evaluation was reasonable and consistent with evaluation factors, and solicitation emphasized technical quality over price, agency could properly make award to higher rated proposal despite its higher cost.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest is denied where the record contains no evidence that the protester was prejudiced by the agency's failure to discuss its concerns over management of part-time employees, since project management was a relatively minor area of the evaluation, and the agency reasonably viewed the awardee as superior in the other three areas of the technical evaluation.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Protest that agency relaxed requirement for allocating 50 percent of staff time to training and technical assistance is denied where there is no evidence of prejudice, *i.e.*, that protester would have altered its proposal had it been given the opportunity to do so based on the agency's interpretation of the requirement.

Procurement

Competitive Negotiation

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

Contention that cost realism adjustments adding approximately \$8.2 million to protester's proposed costs are unreasonable is denied where the record provides no basis to conclude that the agency's evaluation of costs was unreasonable, or not in accordance with stated evaluation criteria.

Procurement

Competitive Negotiation

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

Allegation that agency improperly evaluated protester's proposal as offering moderate risk, and awardee's proposal as offering low risk, is denied where the protester's arguments, in essence, constitute disagreement with the evaluation decisions, and do not establish that the agency's assessments of relative technical risk were unreasonable.

B-251042, April 21, 1993

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

Once a *prima facie* case of liability is established against a carrier for transit damages, the carrier has the burden to prove that it was free from negligence and that an excepted cause (*e.g.*, the inherent vice or nature of the goods) was the sole cause of the damage. An inherent vice is an existing defect, disease or decay, or the inherent nature of the commodity, which will cause it to deteriorate over time without any outside influence.

B-251598, April 21, 1993

93-1 CPD 339

Procurement

Competitive Negotiation

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

Protest that multiple awards should be made because this would result in a lower price to the government because of the nature of the stepladder pricing of the offers is denied, where the tenor of the solicitation is that a single award in the aggregate would be made.

B-251665, April 21, 1993

93-1 CPD 340

Procurement

Competitive Negotiation

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

Where evaluators reasonably found proposals equal in technical quality, selection of the lower priced offer was reasonable and consistent with solicitation that provided that as proposals became more equal in technical quality, price would become more important in the selection decision.

B-251714, April 21, 1993

Procurement

Competitive Negotiation

■ **Offers**

■ ■ **Evaluation errors**

■ ■ ■ **Evaluation criteria**

■ ■ ■ ■ **Application**

Protest challenging one reviewer's evaluation of a proposal submitted under Small Business Innovation Research Program is denied where the record shows that although two other reviewers gave the proposal higher scores, the evaluation in question reasonably reflected weaknesses in the proposal.

B-251695.2, B-251695.3, April 22, 1993

93-1 CPD 342

Procurement

Special Procurement Methods/Categories

■ **Research/development contracts**

■ ■ **Use**

■ ■ ■ **Propriety**

Agency properly classified a procurement for a special operations craft as a research and development effort, notwithstanding the fact that it calls for modification and integration of existing non-developmental items/commercially available components, where each component—as well as the integration of the components into a system—requires significant design modification and engineering expertise to achieve the high performance standards required to meet the agency's minimum needs.

Procurement

Socio-Economic Policies

■ **Small business set-asides**

■ ■ **Use**

■ ■ ■ **Administrative discretion**

Agency's determination not to set aside for small businesses a procurement for a special operations craft prototype with unique, high performance standards is reasonable where the agency concluded from thorough consideration of specialized data bank compiled over a 10-month period—and which was directly based on numerous, extensive consultations with technical and acquisition experts in all related fields of engineering and acquisition expertise; review of all available technical literature, engineering references and market compilations; results of related worldwide market survey; and submissions received in response to request for information issued specifically to verify in-house analysis that no prototype of this type had ever been attempted by the ship-building industry—that given the technical complexity and urgent requirement for the system; the specific integration of naval, aerospace, and mechanical engineering expertise necessary to properly develop the craft; and the unproven capabilities of the ship-building industry, it could not reasonably expect to receive the best scientific and technological sources for the best mix of cost, performances, and schedules from the small business ship-building community.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Dismissal of protest challenging decision by the General Services Administration to issue a new solicitation for space to house U.S. Forest Service's offices—instead of continuing to occupy protester's building—is affirmed where regulations on which protester relies for its contention that issuance of the solicitation was improper simply set out general guidelines for use of existing leased space.

Procurement

Bid Protests

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

Protest that agency improperly used a basic ordering agreement (BOA) to disqualify the protester, an unapproved supplier of cupro-nickel clad strip, from bidding under an invitation for bids (IFB) is untimely when filed after bid opening and the rejection of the protester's bid, because the IFB stated, and the agency confirmed, that it would only accept bids from suppliers that held BOAs prior to bid opening.

Procurement

Bid Protests

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

Untimely protest that agency used a basic ordering agreement to restrict competition will not be considered under the significant issue exception to the timeliness rules, since it is not of wide-spread interest to the procurement community and has been considered on the merits in previous decisions.

Procurement

Payment/Discharge

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

Claimant may be paid on a *quantum valebant* basis for materials shipped to the Navy without a written contract where the record supports the conclusion that the government received and accepted the materials; the purchase would have been permissible if formal procedures had been followed; the claimant acted in good faith; and the amount claimed represents the reasonable value of the benefit received.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

In a negotiated procurement for the development of a computerized information management system, the stated evaluation criteria that required offerors to describe the proposed system design are not inconsistent with the solicitation's schedule that required a complete developed system design as a contract deliverable; offerors were required to provide in their proposals sufficient design details to allow the agency to evaluate the offeror's understanding and approach to the contract requirement

Procurement

Competitive Negotiation

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

Procuring agency reasonably excluded from the competitive range the protester's proposal—which failed to include a system design in sufficient detail to allow the agency to evaluate the protester's understanding and approach to the contract requirements—because a major revision of the proposal would have been required to correct the evaluated proposal deficiencies.

Procurement

Bid Protests

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

Protest that solicitation specification for construction project is restrictive of competition, filed by a manufacturing firm that is prospective supplier, not actual or prospective bidder, is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and General Accounting Office's implementing Bid Protest Regulations.

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Payment time periods
- ■ ■ ■ Statutes of limitation

Under 31 U.S.C. § 3726(a), a carrier's supplemental bill for additional charges (not involving a deduction for or refund of overcharges) must be received within 3 years of the original payment or accrual of charges, whichever is later. If a carrier timely files such a supplemental bill but later adds a new claim related to the shipment, the new claim also must be received within the 3 years.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

On a solicitation for services to test performance of form distribution centers, agency properly rejected apparent low bid as mathematically and materially unbalanced where the bid is substantially front-loaded and does not become low until the final month of the final option year.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Protest that agency improperly substantially revised solicitation requirement when only two offerors remained in the competitive range, instead of issuing new solicitation for revised requirement to all potential offerors, including the protester, is dismissed where revision merely altered price schedule and did not make any changes to the services required by the statement of work.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision denying protest is denied where protester fails to show that decision contained errors of law or fact or failed to consider relevant information.

Procurement

Socio-Economic Policies

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

Certificate of competency referral is not required prior to rejection of a small business proposal on the basis of responsibility-related factors under a proper comparative technical evaluation.

B-251719, April 29, 1993

Procurement

Competitive Negotiation

- All-or-none offers

- ■ Acceptance

Procurement

Competitive Negotiation

- Requests for proposals

- ■ Evaluation criteria

- ■ ■ Multiple/aggregate awards

- ■ ■ ■ Costs

Protest that specifications contemplating the award of a contract for photographic materials on an "all or none" package basis are unduly restrictive of competition is denied where the only indication that competition will be restricted is protester's contention that it cannot offer one item in the package because of the terms of its dealership agreement with the brand name source listed in the solicitation, and the agency reasonably concluded that the award of one contract is more cost effective than awarding multiple awards for smaller quantities of supplies.

B-252517.2, B-252517.3, April 29, 1993

93-1 CPD 349**Procurement**

Bid Protests

- GAO procedures

- ■ Protest timeliness

- ■ ■ 10-day rule

- ■ ■ ■ Reconsideration motions

Request for reconsideration of a General Accounting Office dismissal of a protest as untimely is denied as untimely where the protester failed to request reconsideration within 10 working days from its receipt of the dismissal.

Procurement

Bid Protests

- GAO procedures

- ■ Protest timeliness

- ■ ■ 10-day rule

Where a protest was dismissed as untimely, a "new" protest on the same basic grounds based upon additional information discovered after the dismissal of the prior protest, is also untimely.

B-252643.2, April 29, 1993

93-1 CPD 350**Procurement**

Bid Protests

- GAO procedures

- ■ GAO decisions

- ■ ■ Reconsideration

Request for reconsideration of dismissal of protest of agency's refusal to extend date for receipt of proposals is denied where protester has not shown that the basis for dismissal—that the protest did not establish any likelihood that agency acted improperly—was based on any error of fact or law.

B-251790, April 30, 1993

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Offers
- ■ Organizational experience
- ■ ■ Evaluation
- ■ ■ ■ Propriety

Protest allegation, that the agency's evaluation of the protester's proposal in a negotiated procurement, in which company experience was one of the stated evaluation criteria, was unreasonable and the result of bias against the protester because it is a new business without company experience, is denied where the record shows no evidence of bias and the source selection authority evaluated the protester's proposal as acceptable despite the protester's lack of company experience.

Procurement

Competitive Negotiation

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

Protest allegation that the awardee's low proposed price is unreasonable is denied where the protester, despite having access under a General Accounting Office protective order to the awardee's price proposal and to the agency's detailed price evaluation documentation, provided no substantiation for this allegation, other than noting that the awardee's price was low; the record shows that the agency, in evaluating the awardee's low price, did not find that it indicated a lack of technical understanding; and the agency accounted for the awardee's low price by increasing the awardee's proposal risk assessment from low to moderate.

B-251793, April 30, 1993

Procurement

Sealed Bidding

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

Agency reasonably determined that there was a compelling reason to cancel an invitation for bids after bid opening where certain requirements in the specifications were no longer needed because the work specified had already been performed, and it appeared that the low bidder might have obtained unfair competitive advantage by learning of this information during unescorted site visits which other bidders may have reasonably believed were not permitted by language in the solicitation.

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