

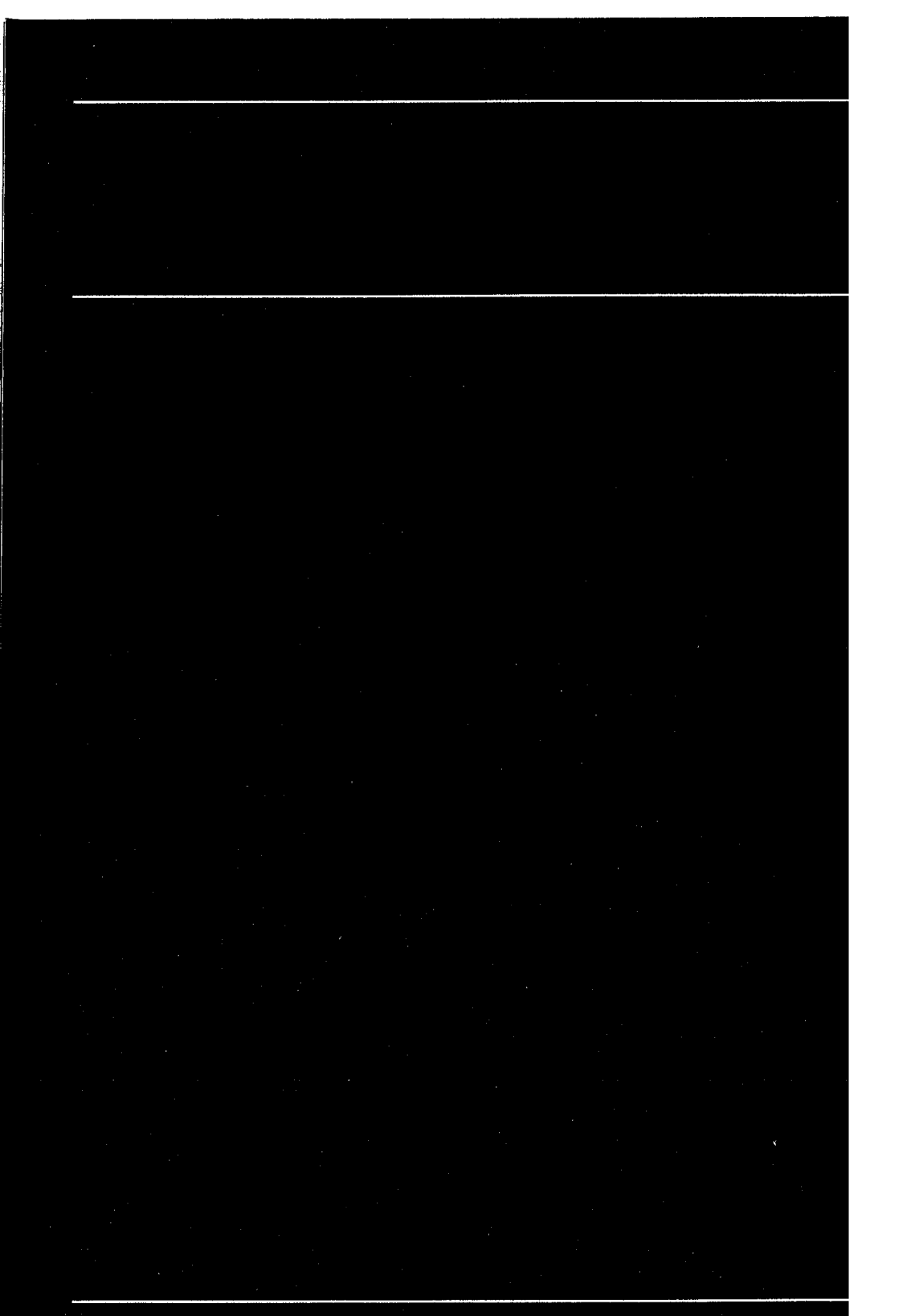
GAO

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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-257405, Sept. 30, 1994. 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., 72 Comp. Gen. 347 (1993).

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Civilian Personnel

B-256731, November 8, 1994

Civilian Personnel

Relocation

- Allowances
 - ■ Military pensions
 - ■ ■ Federal taxes
 - ■ ■ ■ Computation
-

Civilian Personnel

Relocation

- Taxes
- ■ Allowances
- ■ ■ Eligibility

An employee claims an additional amount for Relocation Income Tax (RIT) allowance because his agency did not include his military retired pay in the calculation of his gross income which is to include earned income. The Federal Travel Regulation (FTR) defines "earned income" to include salary, wages or other compensation that is reported on IRS Form W-2. Although at the time the FTR provision was written retired pay was required to be reported on Form W-2, it is now reported on IRS Form 1099. However, the basic characterization of retired pay as earned income has not changed. Therefore, if the employee is able to document the amount of taxable military retired pay he received in the relevant year, the agency should include this in his total earned income and recompute his RIT allowance accordingly.

B-258033, November 8, 1994

Civilian Personnel

Relocation

- Temporary quarters
 - ■ Interruption
 - ■ ■ Actual expenses
 - ■ ■ ■ Temporary duty
-

Civilian Personnel

Travel

- Travel regulations
- ■ Implementation
- ■ ■ Statutory compliance

Amendment to Standardized Regulations (Government Civilians, Foreign Areas), to permit reimbursement for temporary quarters subsistence allowance (TQSA) when an employee is also in receipt of per diem for official travel, may not be given retroactive effect so as to reimburse employee for TQSA incurred prior to the effective date. The regulation in effect prior to the amendment was promulgated by the Secretary of State pursuant to statutory authority and neither this Office nor any agency has the authority to waive it. *Paul G. Thibault*, 69 Comp. Gen. 72 (1989), distinguished.

B-257355, November 14, 1994

Civilian Personnel

Relocation

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

A Department of Defense employee disputes her agency's computation of the commuting distance between her old residence and the duty station to which she is being transferred for the purpose of determining whether she meets the 40-mile eligibility requirement for temporary quarters subsistence allowance. The agency relied on the DOD Official Table of Distances (OTD), which uses a route via ferry. The employee argues that a longer all-land route is the appropriate route. Such factual determinations are left to the employing agency; GAO will not overturn the agency's determination unless it is arbitrary, capricious or contrary to law. Although the agency may rely on the OTD as a matter of general policy, the agency also may use a distance by an alternate route if it finds that to be more appropriate in a particular case.

B-257704, November 14, 1994

Civilian Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

As a "gesture of concern" for the inconvenience caused by a 5-hour flight delay, an airline gave a government employee traveling on official business a complimentary ticket good for one round trip to any destination served by the airline. Because the ticket is a gift that was received incident to official travel, the ticket belongs to the government, and the employee may not use the ticket for personal travel.

B-257518, November 15, 1994

Civilian Personnel

Relocation

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

A transferred employee secured the services of a real estate firm to assist him in selling his residence in the vicinity of his old duty station. Instead of the traditional way of charging a commission, the firm allowed the employee to participate in some of the work involved and charged him an hourly fee for the services the firm performed. The firm helped set the sales price, negotiate the sale, prepare contracts, open escrow, and review closing documents. Under 41 C.F.R. § 302-6.2(a), a broker's fee or real estate commission may be reimbursed to an employee for services performed in selling his residence, but not in excess of the rates generally charged by brokers in the locality. In Oregon, any firm which engages in the activities performed on behalf of the employee must be licensed to perform any professional real estate activity. If the consulting firm is so licensed and the fee charged does not exceed the amount generally charged for selling a residence by brokers in the area, the fee may be reimbursed.

B-256452, November 21, 1994

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Charging
- ■ ■ Amount determination

An employee in a travel status voluntarily returned home for weekends, but occasionally traveled during duty hours immediately before or following the nonworkdays. Since it was determined that he performed no official duties on those workday travel days, the agency charged him up to 8 hours annual leave for each such workday. On appeal, we sustain the agency's action. Under 41 C.F.R. § 301-7.11(b)(4) (1990), voluntary return home travel is to be performed during nonduty hours. When an employee is voluntarily absent from duty on a workday, it is within the discretion of the agency to charge the employee annual leave to cover the duty hours not worked that day.

Civilian Personnel

Travel

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

An employee in a travel status voluntarily returned home for weekends. To establish travel reimbursement entitlement, the agency included per diem for the workdays he traveled before or after the nonworkdays for cost comparison purposes. Such method of computing the employee's constructive cost entitlement is incorrect. Under 41 C.F.R. § 301-7.11(b)(4) reimbursement for the voluntary return travel may not exceed the per diem and other allowable expenses which would have been paid had the employee remained at the temporary duty site. Therefore, the constructive cost comparison to be used is limited to the per diem and other allowable expenses for the nonwork days actually involved.

B-258257, November 28, 1994

Civilian Personnel

Compensation

- Compensation restrictions
- ■ Rates
- ■ ■ Amount determination

A new appointee's salary should be set at the minimum rate for the grade of the appointment. 5 C.F.R. § 531.203(a) (1993). Agencies may pay a higher rate only upon the determination that the applicant possesses certain criteria. These so-called "superior qualifications" appointments must be submitted and approved on a case-by-case basis. 5 C.F.R. § 531.203(b). Further employees may only be paid the salaries of the positions to which they are appointed. 54 Comp. Gen. 263 (1975) and 61 Comp. Gen. 336 (1982). A retroactive administrative change in salary may not be made in the absence of statutory authority. *Susan E. Murphy*, 63 Comp. Gen. 417, 418 (1984). Therefore, an employee who started at the minimum rate for his grade, but who was under the impression that he would be receiving a higher salary, may not have his salary retroactively adjusted to the higher rate.

B-257525, November 30, 1994***

Civilian Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety

Self-sustaining status of Panama Canal Commission does not provide basis for exception to long standing rule that a federal employee is required to account for any gift, gratuity, or benefit received from a private source incident to the performance of official duty. Therefore, any payment or benefits tendered to the Commission's employees are viewed as having been received on behalf of the government. Bonus coupons, tickets, and credits received by Commission's employees as a result of travel paid for by the Commission from its revolving fund are the property of the government and must be turned in to the appropriate agency official.

Civilian Personnel

Travel

- Bonuses
- ■ Apportionment
- ■ ■ Official business

Employees who participate in a frequent flyer program should maintain separate accounts for personal travel and official travel if permitted by the airline. If, however, the airline permits only one account per customer, the employee does not forfeit the right to use personal credits for personal travel, provided that the employee keeps adequate records which clearly separate personal travel from official travel so that the employee can clearly document that the credits used for personal travel were earned on personal travel and not on official travel.

B-259071, November 30, 1994

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Claims
- ■ ■ Statutes of limitation

A civilian Department of Defense employee who transferred to a new duty station following a base closure was unable to sell his old residence within the maximum 3-year time limit prescribed by the Federal Travel Regulation. 41 C.F.R. § 302-6.1(e) (1993). Although the base closure may have depressed the market and contributed to the employee's inability to sell his residence within the time limit, that does not provide any grounds on which to extend the time limit which has the force and effect of law.

Military Personnel

B-256663, November 9, 1994***

Military Personnel

Travel

■ **Per diem**

■ ■ **Eligibility**

Military Personnel

Travel

■ **Temporary duty**

■ ■ **Courts-martial**

■ ■ ■ **Amended orders**

■ ■ ■ ■ **Travel regulations**

A member was ordered to perform temporary duty (TDY) away from his permanent duty station. Initially, he traveled under blanket TDY orders which provided for payment of per diem. While the member was on TDY, court-martial charges were preferred against him. He continued to perform military duties except on days when he attended the court-martial. Six months after the blanket TDY orders expired, but while the member was still on TDY, retroactive orders were issued altering the stated purpose of the member's travel to indicate that the travel was to attend his court-martial. The contention that his travel under the revised travel order was "disciplinary travel" for which payment of per diem would be prohibited is incorrect for two reasons. First, the member continued to perform military duty during the period in question. Second, retroactive travel orders cannot operate to decrease a member's entitlements because the entitlements vest when the travel is performed. In this case, payment of per diem for meals and incidental expense is proper for periods during which the member performed military duties away from his permanent duty station. Payment is not proper for days on which he attended his court-martial.

Procurement

B-257722, November 1, 1994

94-2 CPD ¶ 165

Procurement

Competitive Negotiation

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

Protest that contracting agency improperly evaluated awardee's cost proposal is denied where proposal was evaluated in accordance with the evaluation method set forth in the solicitation and the protester has not provided any basis to find the contracting agency's determinations unreasonable.

Procurement

Bid Protests

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

Protester is not an interested party to assert that the contracting agency failed to fulfill its responsibilities under the Service Contract Act where the protester would not be in line for award even if the allegations were correct.

B-258272, November 1, 1994

94-2 CPD ¶ 166

Procurement

Bid Protests

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

Protest challenging agency's evaluation of protester's proposal is dismissed where the protester would not be in line for award even if the protester is correct and its technical proposal were to receive the maximum number of points available under the RFP for the one aspect of the agency's evaluation that was challenged by the protester.

Procurement

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

Procurement

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

Agency may properly include requirements that offerors submit past experience and performance information in proposals submitted in response to letters of interest issued under Financial Management Software Systems mandatory Multiple Award Schedule (FMSS Schedule); these requirements do not conflict with FMSS Schedule's provision that orders placed under the Schedule must fall within the scope of the terms and conditions of applicable Schedule contract.

Procurement

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

Procurement

Special Procurement Methods/Categories**■ Computer equipment/services****■ ■ Competitive restrictions****■ ■ ■ Federal procurement regulations/laws****■ ■ ■ ■ Compliance**

Protest that agency failed to obtain full and open competition in obtaining computer maintenance services is sustained where agency only provided copies of the solicitation to four firms considered to be industry leaders and failed to make any effort to distribute the solicitation to other potential sources, including the protester.

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Protest is sustained where although protester's item price exceeded by a small amount the price limitation set forth in the solicitation for that item, its bid should not have been rejected since showing has been made that the resulting bid was materially unbalanced or that either the government or the other bidders were prejudiced by the *de minimis* nature of the bidder's failure to price its bid in the manner required.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where solicitation directed offerors to submit information describing their personnel, facilities and management approach, protest that agency did not evaluate proposals in accordance with solicitation is denied where proposal was found unacceptable because the protester failed to submit the required information regarding management approach.

Procurement

Bid Protests

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

Where, prior to receipt of initial proposals, the protester alleged to the procuring activity that competitor had pressured potential subcontractors to provide unreasonable quotations to the protester, protest that the contracting officer's investigation of the allegation was inadequate should have been raised within 10 days of when the protester learned that the competitor had received award notwithstanding allegation.

Procurement

Bid Protests

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

Allegations pertaining to evaluation of the awardee's proposal and execution of certificate of independent price determination, first raised in comments on agency report, are untimely where not filed within 10 days of learning the basis for protest.

B-256686, November 7, 1994

Procurement

Payment/Discharge

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

Carrier cannot disclaim responsibility for failure to locate a member's missing lawn mower when carrier delayed effort to find mower until after the Air Force had paid the member's claim for nondelivery of the lawn mower and the member had bought a replacement mower. The member had advised the carrier at the time his household goods were delivered that the lawn mower was missing. The carrier had not properly accounted for the lawn mower at the storage facility when it picked up the shipment, and it did not seek to locate the missing mower within a reasonable time after receiving notice that it was missing. Therefore, Air Force properly recovered the value of the lawn mower from the carrier.

B-257756, November 7, 1994

94-2 CPD ¶ 175

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Protester's proposal based on unapproved alternate to the critical application item parts specified in the solicitation, which contains a products offered clause, was properly rejected where the agency could not delay the procurement because of critical supply shortages, while protester's item was undergoing evaluation.

B-257764, November 7, 1994

94-2 CPD ¶ 176

Procurement

Sealed Bidding

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

Agency properly permitted upward correction of awardee's low bid where the record contained clear and convincing evidence of both the mistake and the intended price.

B-257782, November 7, 1994

94-2 CPD ¶ 17

Procurement

Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Pricing errors
- ■ ■ ■ Line items

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Agency reasonably rejected a bid where the bidder, who requested correction of the allocation of prices among line items, was unable to provide clear and convincing evidence of the intended allocation, and the uncorrected bid was materially unbalanced.

B-257784, November 7, 1994

94-2 CPD ¶ 17

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

Bidder's failure to acknowledge an amendment to an invitation for bids, which limited the hour during which certain construction work could be performed after regular work hours, renders its bid nonresponsive.

B-257269.2, November 8, 1994

Procurement

REDACTED VERSION

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Subcriteria
- ■ ■ ■ Disclosure

Protest that agency improperly relied on undisclosed criteria in technical evaluation of proposal is denied where matters considered in evaluation were reasonably related to the stated evaluation subfactors.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Point ratings**

Agency adequately documented evaluation where record contained detailed scoring; summary statements of evaluated strengths, weakness and risks; explanations of changes in best and final offer scoring; and post-protest amplification of areas of significant evaluated difference between proposals under each technical factor.

Procurement

Bid Protests

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

New and independent grounds of protest concerning discussions are dismissed as untimely where the later-raised issues did not independently satisfy the timeliness requirements of the General Accounting Office's Bid Protest Regulations; extension of time for filing comments on agency report does not waive the timeliness requirements for filing bid protest.

Procurement

Competitive Negotiation

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

Protest that price/technical tradeoff was inadequately documented is denied where solicitation contained numerically weighted 70/30 technical/price formula, and thus, in effect, notified offerors that agency had predetermined tradeoff between technical and price factors; under these circumstances, since award decision was consistent with evaluation methodology set forth in solicitation, separate determination justifying payment of price premium was unnecessary.

B-257778, B-257779, November 8, 1994

94-2 CPD ¶ 206

Procurement

REDACTED VERSION

Competitive Negotiation

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

Protests against alleged failures of agency to perform a cost realism analysis and consider the maintenance of a mobilization base in making awards are denied where solicitations do not require that either action be taken.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Organizational experience

Protests alleging that the awardee's prior experience was misevaluated are denied where record establishes that agency reasonably considered the firm's recent successful past performance record as described by the awardee and confirmed this description in a plant facilities survey.

Procurement

Competitive Negotiation

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

Allegation that agency improperly downgraded protester's technical proposals because of failure to consider certain quality program effectiveness information included in the protester's initial technical proposals is without merit. Protester's later-submitted comprehensive revised technical proposals stated that the required information was not available, and the protester confirmed that this information was unavailable in its response to discussion questions on the issue in which the protester explained that the unavailability resulted from frequent turnover of the responsible company personnel and a company work environment conducive to records misplacement.

B-257775, November 9, 1994

94-2 CPD ¶ 179

Procurement

Sealed Bidding

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

Agency determination allowing a bidder to correct a mistake (failure to include the cost of certain steel hooks) in its low bid prior to award was proper where the agency reasonably determined that clear and convincing evidence established the existence of mistake, the intended bid price can be ascertained within a narrow range of uncertainty, and the corrected bid remains low as corrected.

B-257958, November 9, 1994***

94-2 CPD ¶ 180

Procurement

Socio-Economic Policies

- Small businesses
- ■ Research/development contracts
- ■ ■ Offers
- ■ ■ ■ Evaluation

Protest against agency decision to reject proposal is denied where record shows that agency reasonably evaluated protester's proposal in accordance with the evaluation criteria set forth in the solicitation.

Procurement

Competitive Negotiation

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

Contracting agency's decision not to hold discussions or request best and final offers under solicitation issued pursuant to Small Business Innovation Research (SBIR) Program is unobjectionable since the Small Business Administration—the agency charged with implementing the SBIR Program—recognizes broad discretion of procuring agencies to promote small business participation in the program by streamlining procurement procedures, simplifying the operation of their SBIR Programs, and minimizing the regulatory and administrative burdens on offerors; and the procuring agency's decision constitutes a reasonable exercise of that discretion.

B-257841, November 10, 1994

94-2 CPD ¶ 181

Procurement

Sealed Bidding

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

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Materiality

Agency properly rejected as nonresponsive a bid that failed to acknowledge an amendment; amendment was material, and thus had to be acknowledged for the bid to be responsive, since it contained a requirement that placed an obligation on the bidder that was not imposed by the solicitation as issued, and affected the quality of the item supplied.

B-257375.2, November 14, 1994

94-2 CPD ¶ 182

Procurement

Competitive Negotiation

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

Protest that the agency improperly considered offerors' ability to perform required computer services at more than the two locations specified in the solicitation is denied where the record shows that the agency did not consider this factor in the evaluation.

Procurement

Competitive Negotiation

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

Protest that the agency improperly downgraded protester's proposal because of educational deficiencies of its proposed personnel is denied where the record shows that technical evaluators

awarded reasonable point credits based on the personnel's stated equivalent experience, as permitted by the solicitation.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation errors

■ ■ ■ Non-prejudicial allegation

Protest that the award was improperly based on consolidation of Step One and Step Two evaluation scores is denied; even if the evaluation were based solely on the Step Two technical scores—urged by the protester—the awardee would still be the highest-ranked, lowest-priced offeror, and thus there was no prejudice to the protester as a result of the alleged evaluation error.

B-257812, November 14, 1994

94-2 CPD ¶ 18

Procurement

Socio-Economic Policies

■ Small business set-asides

■ ■ Use

■ ■ ■ Administrative discretion

Procurement

Socio-Economic Policies

■ Small business set-asides

■ ■ Use

■ ■ ■ Procedural defects

Agency decision not to set aside procurement for exclusive small business participation is improper where the contracting officer did not investigate all the information available to him, an agency records showed the existence of a large number of small business bidders dealing in the items being procured. Without further investigation, the contracting officer could not reasonably conclude that there was not a reasonable expectation that bids at fair market prices could be obtained from at least two responsible small businesses.

B-257816, November 14, 1994

94-2 CPD ¶ 18

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Technical acceptability

Evaluation of proposals and resulting award determination are unobjectionable where evaluation was reasonable and in accordance with the evaluation criteria stated in the solicitation.

Procurement

Competitive Negotiation

■ Discussion

■ ■ Misleading information

■ ■ ■ Allegation substantiation

Protest that offeror was misled by agency during discussions is denied where discussions were appropriate and offeror's determination to increase its proposed manning and price in its best and final offer was the result of its own business judgment.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Integrity certification
- ■ ■ ■ Bids

Where bid does not include required Certificate of Procurement Integrity, bidder is not committed to certificate's terms and bid must be rejected as nonresponsive.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Agency correctly calculated the awardee's total proposed price by deducting the prices for two items that the agency would not be purchasing where offerors were advised in the solicitation that the prices for those items would be evaluated only if the agency decided to purchase them.

Procurement

Bid Protests

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

Protest that the agency failed to clearly convey its minimum labor requirements for an A-76 cost comparison, an argument which is based on an alleged impropriety in the solicitation apparent prior to the closing time for the submission of proposals, but not raised until after the results of the cost comparison were announced, is untimely. In any event, the solicitation clearly provided the labor requirements for commercial offerors and the government, and the record fails to support the protester's position that it did not understand what was required by the solicitation's performance work statement.

Procurement

Specifications

- Minimum needs standards
- ■ Determination
- ■ ■ Administrative discretion

Agency requirements for submission of information, including past experience and performance information, and certification of software compatibility, are reasonable and not unduly restrictive of competition where requirements represent agency's minimum needs.

Procurement

Specifications

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

Agency letter of interest properly includes terms regarding contract type, method of performance and others which are consistent with applicable Financial Management Software Systems Schedule contract terms and conditions.

B-257183.3, November 16, 1994

94-2 CPD ¶ 11

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protests where the agency decided to take corrective action within 6 working days of when the defect warranting corrective action was first alleged.

B-257853, November 16, 1994

94-2 CPD ¶ 11

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Samples

Agency decision to require bid samples in lieu of technical proposals in procurement for test sets reasonable where the agency did not have adequate specifications to describe the facility of use characteristics it required in the test sets.

B-257857, November 16, 1994

95-1 CPD ¶ 11

Procurement

REDACTED VERSION

Contract Types

- Time/materials contracts
- ■ Labor costs

Agency properly accepted a proposal for a time-and-materials contract which set forth a pricing scheme that discounted the cost of labor to be charged to the agency during the performance of the contract depending on the [DELETED].

B-258108, November 16, 1994

94-2 CPD ¶ 11

Procurement

Competitive Negotiation

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

The fact that a solicitation does not assign a specific numerical weight to price does not mean that price is not an evaluation factor; where the relative importance of price and technical factors

not identified in a solicitation, price and technical factors are considered approximately equal in importance.

B-258146, November 16, 1994

94-2 CPD ¶ 192

Procurement

Special Procurement Methods/Categories

- Computer equipment/services
- ■ Federal supply schedule
- ■ ■ Non-mandatory purchases

Agency properly determined not to consider protester's non-compliant offer submitted in response to *Commerce Business Daily* synopsis setting forth the agency's intent to place an order under another firm's non-mandatory schedule contract.

B-257863, B-257863.2, November 17, 1994

94-2 CPD ¶ 193

Procurement

Competitive Negotiation

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

Protests that contracting agency failed to conduct meaningful discussions with the protesters under the procurement for lease of office space are denied where the record does not support these allegations.

Procurement

Bid Protests

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

New and independent protest allegation concerning the interpretation of the solicitation's evaluation scheme, raised for the first time in the protester's comments on the agency report, is dismissed as untimely where the protester possessed the information necessary to raise the argument at the time it filed its initial protest.

Procurement

Competitive Negotiation

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

Award to higher-priced, technically superior offeror was proper where, despite source selection official's failure to specifically discuss the price/technical tradeoff in the selection decision document, the record shows that the agency reasonably decided that the higher-priced awardee's proposal was worth the additional cost.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Agency properly excluded protester's proposal from the competitive range under a request for proposals for technical support services where evaluators reasonably concluded that the proposal was technically unacceptable primarily because of the lack of experience of key personnel—the most important evaluation criterion—and could not be made technically acceptable without major revisions.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protester's contention that agency improperly evaluated its proposal is denied where the record shows that the agency evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation and the record reasonably supports the protester's lower overall technical rating.

Procurement

Competitive Negotiation

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

Award to a higher-rated, higher-priced offeror is unobjectionable under a request for proposal that stated that the technical area would be considered more important than price and the agency reasonably found that awardee's superior technical proposal was worth the higher price.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protests objecting to agency's failure to furnish potential competitor with copies of solicitations are denied where record demonstrates that the agency properly synopsisized procurements in the *Commerce Business Daily*; mailed copies of a pre-solicitation notice to over 500 sources and copies of the solicitations to the sources that responded affirmatively to the pre-solicitation notice; and obtained competition and reasonable prices.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Procurement

Competitive Negotiation

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

Where both awardee's and protester's proposals were technically noncompliant for failure to satisfy the delivery terms of the solicitation and those terms were relaxed for both offerors, the protester was not prejudiced.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency improperly failed to evaluate detailed engineering aspects of awardee's proposal is denied where the solicitation, when read as a whole, did not require offerors to include—or the agency to evaluate—such details.

Procurement

Competitive Negotiation

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

Allegation that agency improperly gave awardee evaluation credit in particular area does not provide a basis to question selection decision where even if allegation were true, the resulting change in evaluation results would be negligible and would not have affected agency's source selection decision.

Procurement

Competitive Negotiation

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

Cancellation of requirement for architectural-engineering services is unobjectionable where record supports the agency's determination that its needs have changed, so that the solicited services are no longer needed.

Procurement

REDACTED VERSION**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Protest raising the same issues as those resolved in a recent decision on a protest by the same protester is dismissed as no useful purpose would be served by further consideration of the protest.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Re-evaluation
- ■ ■ Corrective actions

Procurement

Competitive Negotiation

- Discussion
- ■ Propriety
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Review by source selection officials of limited materials related to awardee's protest that result in agency re-evaluation of proposals and contract award to the awardee did not amount to improper discussions.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

The General Accounting Office will review an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria; the determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless the evaluation was arbitrary or unreasonable. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.

Procurement

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

Protest that awardee's proposal was technically unacceptable is denied where protester's position is based on an unreasonable interpretation of specification provision establishing a design goal—that multi-mode spiral antenna be of minimum height required to meet performance specifications—instead of establishing an objective, pass/fail height requirement.

Procurement

Sealed Bidding**■ Low bids****■ ■ Error correction****■ ■ ■ Price adjustments****■ ■ ■ ■ Propriety**

Agency reasonably allowed low bidder to correct its bid to include omitted labor costs, where the bidder's certified worksheets establish both the existence of a mistake and the amount, within a narrow range of uncertainty, of the intended bid.

Procurement

Sealed Bidding**■ Bid guarantees****■ ■ Responsiveness****■ ■ ■ Minor deviations****■ ■ ■ ■ Restrictive markings**

Procurement

Sealed Bidding**■ Bids****■ ■ Responsiveness****■ ■ ■ Bid guarantees****■ ■ ■ ■ Expiration**

Erasure of preprinted expiration date at the bottom of the Standard Form 24, Bid Bond, below the properly executed signature blocks, does not render bid nonresponsive because the alteration does not affect the legal liability of the surety to the government.

Procurement

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

Allegation that agency misevaluated protester's proposal is dismissed as untimely where the allegation is based on information learned at a debriefing, but was not filed within 10 working days after the debriefing.

Procurement

Bid Protests

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

Allegation that agency was biased in favor of incumbent and attempted to direct award to the contractor is denied where protester has not submitted any relevant evidence supporting its assertions.

B-258391, November 23, 1994

94-2 CPD ¶ 20

Procurement

Sealed Bidding

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

An agency's failure to solicit the protester is unobjectionable where the agency did not violate applicable regulations governing the advertisement and dissemination of the solicitation or deliberately attempt to exclude the protester from the competition; rather, the protester failed to take reasonable measures to obtain a copy of the solicitation.

B-256315.2, November 25, 1994

94-2 CPD ¶ 20

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester fails to demonstrate that prior decision contained error of law or fact.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Request for recovery of proposal preparation and protest costs is denied where protest is not found to have merit.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration that fails to show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of the decision is denied.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester essentially repeats arguments made and considered in initial protest.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that awardee's proposal is technically unacceptable is denied where protester's position is based on an unreasonably restrictive reading of solicitation requirements for graphical user interface development software, under which interpretation the protester's own proposal is also technically unacceptable.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Rejection
- ■ ■ Propriety

A proposal is not subject to rejection as mathematically unbalanced where there is no showing that it contains both nominal and enhanced pricing.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where the agency stated in its agency report that it was taking corrective action and it acted reasonably and without undue delay in its implementation of the corrective action promised.

Procurement

Competitive Negotiation

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

Where solicitation provided that technical and business management were of equal importance and combined were slightly more important than cost; agency reasonably made award to a low technically rated, lower evaluated cost offeror rather than to the protester—a higher technical rated, higher evaluated cost offeror—where the source selection official determined that there was no significant technical difference between proposals to warrant the payment of the cost premium associated with the protester's proposal.

Procurement

Sealed Bidding

- Bids
- ■ Bid deposits
- ■ ■ Late submission

Protest that bidder's failure to submit required bid deposit with bid should be waived is denied where record shows that failure to timely submit bid deposit was the result of the bidder's delay in making necessary arrangements to comply with clear instructions in the solicitation regarding acceptable forms of bid deposit.

Procurement

Bid Protests

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

Protest of agency's refusal to accept multiple credit card bid deposit is untimely where—notwithstanding solicitation's clear warning that multiple credit card bid deposit would not be accepted by the agency—protester failed to challenge this restriction until after bid opening.

Procurement

Sealed Bidding

- Bids
- ■ Bid deposits
- ■ ■ Adequacy

Protest challenging two awardees' bid deposits on ground that bid deposits do not equal 20 percent of each awardee's total bid price is denied where agency reasonably concluded that the government's interests were adequately protected since bid deposits constituted 20 percent of the actual awarded quantity.

Procurement

Sealed Bidding**■ Invitations for bids****■ ■ Terms****■ ■ ■ Risks**

Solicitation provisions for inspection and maintenance of fire protection systems reasonably describe the work to be performed, are not ambiguous, and do not place undue risk on the contractor; the mere presence of risk in a solicitation does not render it inappropriate, and bidders are expected to consider relative risk in calculating their bids.

Procurement

Sealed Bidding**■ Use****■ ■ Criteria**

Agency decision to use sealed bidding procedures instead of competitive negotiation to acquire fire prevention system inspection and maintenance services is justified where the agency reasonably concludes that technical proposals and/or discussions with offerors are unnecessary to ensure understanding of requirements.

Procurement

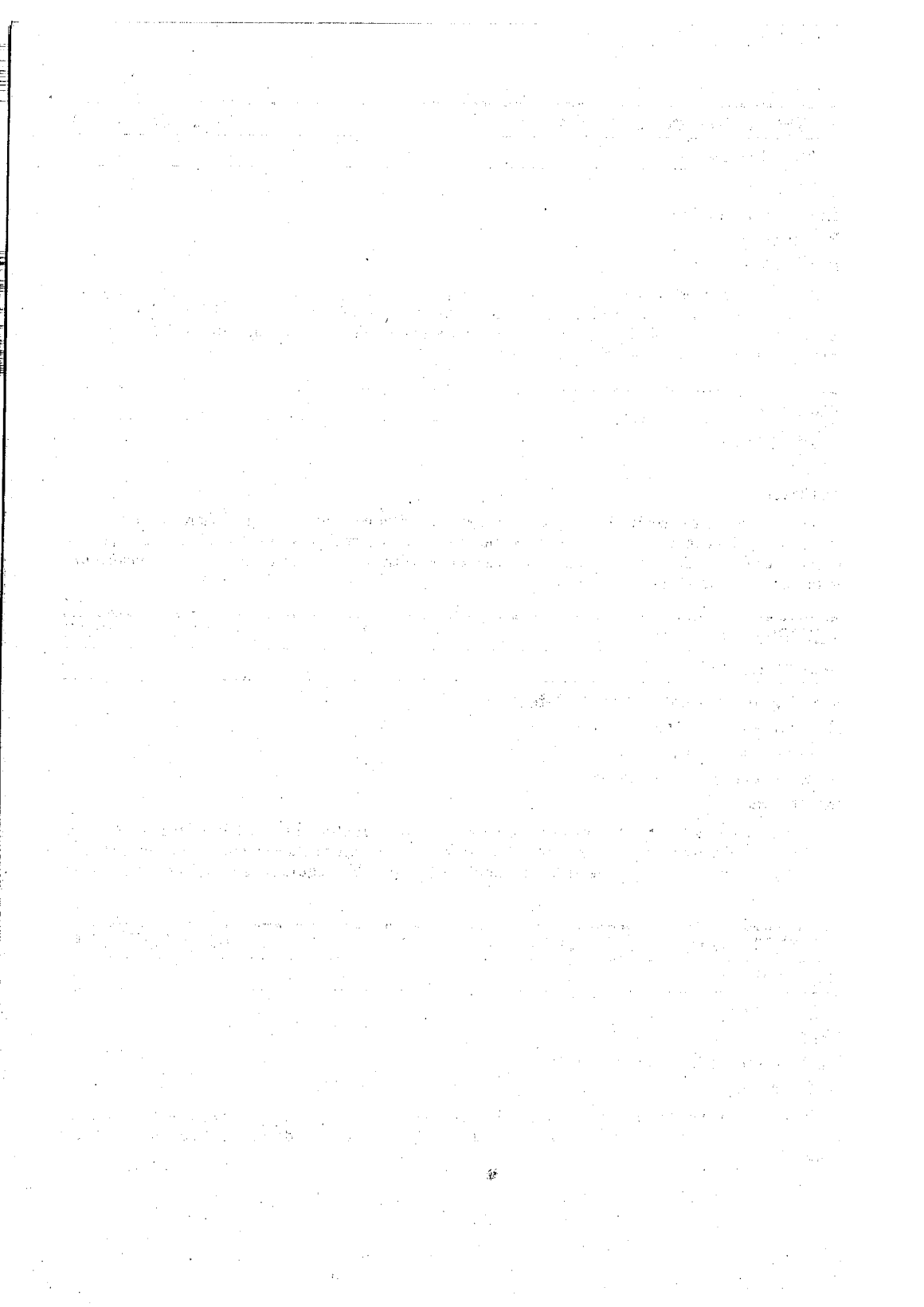
Special Procurement Methods/Categories**■ In-house performance****■ ■ Cost evaluation****■ ■ ■ Government estimates****■ ■ ■ ■ Deadlines**

Agency's decision not to fund protester's proposal for Phase II effort under Small Business Innovation Research Program procurement was proper where the record shows that the evaluation and selection decision was reasonable and compliant with applicable regulations and solicitation provisions.

Procurement

Sealed Bidding**■ Bids****■ ■ Acceptance time periods****■ ■ ■ Expiration**

Protester's bid expired, and thus could not be accepted for award, where protester offered a shorter extension period than agency requested, and award was not made until after this extension period expired.



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