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General of the  
United States**

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# Preface

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This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition In Contracting Act, Pub. L. No. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by file number and date, e.g., B-248928, Sept. 30, 1992. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 71 Comp. Gen. 530 (1992).

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# Appropriations/Financial Management

## Late cases

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**B-250450, May 3, 1993**

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### Appropriations/Financial Management

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#### Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Entertainment/recreation

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### Appropriations/Financial Management

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#### Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Meals

Invoice for food and entertainment provided at the grand opening of a government cafeteria may not be certified for payment because of the long-standing prohibition against using appropriated funds to feed and entertain government employees. Nor does the event qualify as a "traditional ceremony." However, the invoice may be paid from unobligated reception and representation funds available at the time the expenses were incurred provided the event otherwise qualifies as an "official reception."

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**B-246304.8, B-246304.9, May 4, 1993**

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### Appropriations/Financial Management

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#### Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Foreign sources
- ■ ■ ■ Fuel cells

Protest that Air Force improperly waived the Berry Amendment—a statutory prohibition on the expenditure of appropriated funds for certain foreign-manufactured items—is denied where the waiver was based on the agency's urgent need to acquire helicopter fuel cells in order to minimize the dangers to flight crews and passengers from crashes that may occur during the high-risk missions for which the helicopter is used.



# Current case

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**B-247966, June 16, 1993**

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## **Appropriations/Financial Management**

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### **Appropriation Availability**

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Meals

Both federal and non-federal personnel attending an On Scene Coordinator/Regional Response Team training exercise sponsored by the Coast Guard consumed coffee break refreshments contracted for by the Coast Guard. Where the coffee breaks are an integral part of the training, the expense for federal personnel is considered a necessary expense payable under the Training Act, 5 U.S.C. § 4109, and 14 U.S.C. § 469. While the training for the non-federal personnel is authorized under another statute, such authority is not sufficient to incur refreshment expenses for them.

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# Civilian Personnel

## Late cases

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**B-249337, May 6, 1993**

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### Civilian Personnel

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#### Relocation

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Transferred employee was authorized to move his household goods under the commuted rate method but no cost comparison was done between that method and the actual expense (GBL) method prior to shipment. Agency's failure to perform cost comparison prior to shipment was a clear violation of the Joint Travel Regulations, Vol. 2 para. C8001-4c(3). This failure justifies exception to the rule against retroactive modification of travel orders after travel is performed. Subsequent cost comparison showed that GBL method was substantially less expensive than commuted rate method. Employee's claim for commuted rate payment is denied, and he is entitled only to his out-of-pocket receipted expenses.

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### Civilian Personnel

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#### Travel

- Travel expenses
- ■ Documentation procedures
- ■ ■ Burden of proof

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### Civilian Personnel

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#### Relocation

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

Employee's request for reimbursement of temporary quarters subsistence expenses, *i.e.*, meals and miscellaneous expenses for boarding his children with a friend at a site away from his permanent duty station is allowed to the extent that the agency determines it is reasonable. The boarding constitutes unusual circumstances since the employee was a single parent, and the boarding was necessitated by the transfer.

## Current cases

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**B-251852, June 4, 1993\*\*\***

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### **Civilian Personnel**

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#### **Travel**

- Bonuses
  - ■ Acceptance
  - ■ ■ Propriety
- 

### **Civilian Personnel**

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#### **Travel**

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

A government employee received a one-time round-trip airfare certificate as an incentive to obtain a personal credit card. He used the certificate in conjunction with his temporary duty travel so that his wife could accompany him on the trip. The certificate was obtained separately and not incident to the use of official travel and, therefore, is not the property of the federal government. See, *Use of Discover Charge Cards*, B-236219, May 4, 1990. The employee is entitled to reimbursement of his airfare.

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**B-251636, June 11, 1993**

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### **Civilian Personnel**

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#### **Compensation**

- Overtime
  - ■ Eligibility
  - ■ ■ Compensation restrictions
- 

### **Civilian Personnel**

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#### **Compensation**

- Overtime
- ■ Substitution
- ■ ■ Compensatory time

Former USIA employees at the U.S. Pavilion, Expo 92, in Spain, claim compensatory time on the basis that they worked additional hours and that such time was informally authorized. However, no records of overtime work performed by the employees were maintained as required by regulations. Moreover, the overtime work was not ordered or approved or induced by Pavilion officials, but was left to the discretion of the employees with the understanding that, if possible, at the end of Expo 92 some "informal" time off with pay would be granted, but this was not possible. The time claimed does not qualify under applicable regulations as overtime for which compensatory time may be substituted.

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**B-252445, June 15, 1993**

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**Civilian Personnel**

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**Relocation**

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

A transferred employee secured the services of a real estate broker to assist him in locating a permanent residence at his new duty station. He seeks reimbursement for the fee he paid the broker as a miscellaneous expense allowance item under Part 302-3 of the Federal Travel Regulation (FTR). The claim is denied. Section 302-3.1(c) of the FTR provides that the miscellaneous expense allowance shall not be used to reimburse an employee for expenses incurred which are disallowed elsewhere in the regulations. Section 302-6.2(a) of the FTR provides that a broker's fee or commission paid by the employee in connection with the purchase of a residence at the new station may not be reimbursed. *James A. Holmes*, B-241986, Aug. 15, 1991.

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**B-252103, June 17, 1993**

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**Civilian Personnel**

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**Relocation**

- Household goods
- ■ Shipment costs
- ■ ■ Waiver

An employee who shipped excess weight of household goods incident to his transfer argues that the agency representative refused to give him the agency relocation packet which presumably would have informed him of the weight limits, and therefore he should not be responsible for the resulting debt. Unlike in some circumstances, where active erroneous oral advice upon which the employee reasonably relies to his detriment has been considered as erroneous agency authorization of service not permitted by law, and the agency's payment for which may be considered an "erroneous" payment subject to waiver, the agency's failure to provide the packet is not sufficient to constitute erroneous authorization of shipment of excess weight so as to make the payment to the mover an "erroneous" payment subject to waiver under 5 U.S.C. § 5584.

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**B-252488, June 17, 1993**

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**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Reimbursement
- ■ ■ Interviewees

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**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Reimbursement
- ■ ■ Amount determination
- ■ ■ ■ Administrative discretion

Apparently due to a miscommunication between a pre-employment interviewee and agency travel officials, the interviewee, contrary to the Federal Travel Regulations, purchased his own airline ticket on a non-contract air carrier. The interviewee may not be reimbursed the excess cost of his ticket. The fact that he may have received incomplete or erroneous advice from an official may not serve as the basis to allow a claim that otherwise is barred by statutory regulations.

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**B-252291, June 18, 1993**

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**Civilian Personnel**

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**Travel**

- Lodging
- ■ Reimbursement
- ■ ■ Government quarters
- ■ ■ ■ Availability

A civilian employee of the Air Force who failed to obtain a nonavailability certificate may be partially reimbursed his lodging costs. The employee attended a training course at an Air Force base where on-base quarters were not available, so the agency procured hotel rooms for each participant at a discounted rate. However, due to a misunderstanding, the employee obtained his own lodgings at another hotel at a higher cost. Because the employee's original room reservation was canceled without cost to the agency, the employee may be reimbursed the lesser amount the agency would have incurred had the employee stayed in the agency-procured lodgings.

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**B-252995, June 22, 1993**

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**Civilian Personnel**

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**Compensation**

- Deductions
- ■ Government-subsidized housing
- ■ ■ Foreign duty stations

**Civilian Personnel**

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**Relocation**

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

The Deputy Chief of Mission, Bangkok, Thailand, is advised that we are not aware of any authority to reimburse him for the 5 percent of his salary that was withheld for household expenses during a 2-month period that the embassy was closed for renovation. The funds were withheld in accordance with applicable provisions of the Standardized Regulations (Government Civilians, Foreign Areas), and such regulations, promulgated by the Secretary of State pursuant to his statutory authority to issue such regulations, are not unreasonable or otherwise contrary to law.

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**B-252501, June 24, 1993**

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**Civilian Personnel**

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**Leaves Of Absence**

- Annual leave
- ■ Forfeiture
- ■ ■ Restoration

Where the former Office Administrator for an Independent Counsel failed to accept requests for the scheduling of annual leave and inconsistently handled excess annual leave in the employees' leave accounts, we conclude that leave in excess of the 240-hour ceiling may be restored on the basis of administrative error under the provisions of 5 U.S.C. § 6304(d)(1)(A).

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## Civilian Personnel

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### Compensation

- Severance pay
- ■ Eligibility
- ■ ■ Involuntary separation
- ■ ■ ■ Determination

Employees of an Independent Counsel who were appointed as temporary or intermittent employees would generally not be entitled to severance pay. However, temporary employees who commenced work within 3 days after separation from an appointment that would entitle them to severance pay may receive severance pay, provided they have been employed for a continuous period of 12 months and are involuntarily terminated. *Wanda Pleasant*, 67 Comp. Gen. 300 (1988).

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## Civilian Personnel

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### Compensation

- Overtime
- ■ Night differentials
- ■ ■ Eligibility

Under 5 U.S.C. § 5545(a), an employee who is regularly scheduled to perform "night work," that is work between 6 p.m. and 6 a.m., is entitled to a 10 percent differential. Therefore, an employee whose work schedule each day included 4 hours of night work is entitled to the differential for these hours.

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## B-252830, June 25, 1993

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## Civilian Personnel

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### Compensation

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

An employee received erroneous payments of overtime compensation because the symbol used to signify his pay status under the Fair Labor Standards Act was erroneously changed from exempt (symbol "E") to nonexempt (symbol "N") on his personnel and pay records. Since this change caused a significant increase in the hourly rate of pay he received for each overtime hour performed, had he examined his Earnings and Leave Statement he would have been alerted to the possibility of error. Since he failed to do so and failed to bring the matter to the attention of an appropriate official, he is considered partially at fault, thereby precluding waiver under 5 U.S.C. § 5584 (1988).

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## B-252674, June 29, 1993

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## Civilian Personnel

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### Compensation

- Awards/honoraria
- ■ Eligibility
- ■ ■ Statutory regulations
- ■ ■ ■ Amendments

An employee was rated outstanding under the Performance Management Recognition System during 1991, but was not granted an annual performance award by his agency. He argues that, even though the law governing the award (5 U.S.C. § 5406) was amended to change the law from the mandatory "shall be paid" to the permissive "may be paid", since the regulations governing payment had not been formally changed to reflect the amendment, those regulations continued to

control until officially changed. The claim is denied. The amendments made to section 5406 by Public Law 102-22 became effective on April 1, 1991. When a law is amended, any substantive part of an existing regulation implementing the replaced law which does not conform to the new law must be regarded as having been modified accordingly. 36 Comp. Gen. 40 (1956).

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## **Civilian Personnel**

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### **Compensation**

#### **■ Awards/honoraria**

#### **■ ■ Eligibility**

#### **■ ■ ■ Administrative discretion**

Public Law 102-22, amended 5 U.S.C. § 5406, effective April 1, 1991, to grant each agency discretionary authority to pay or not to pay a performance award. Absent a clear showing that an agency acted arbitrarily or capriciously in the exercise of that discretion, we will not substitute our judgment for that of the agency. Employee's claim for annual performance award for 1991 is denied.

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## **B-250379.2, June 30, 1993**

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## **Civilian Personnel**

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### **Compensation**

#### **■ Overseas personnel**

#### **■ ■ Educational allowances**

#### **■ ■ ■ Eligibility**

An employee stationed overseas may not receive educational allowances for his four children who reside with their mother, the employee's former wife, in Little Rock, Arkansas, where they attend a private school. Educational allowances are provided only to reimburse employees stationed at foreign posts of duty the extraordinary and necessary expenses they incur to educate their children. While by mutual consent of the parties, the legal custody of the children was changed from the mother to the employee to meet technical provisions of authorizing regulations, the children's living arrangements and residence remained unchanged. Also, the employee's decision to send his children to a private school instead of the Little Rock public schools is personal to the employee, and not incident to his service overseas.

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# Military Personnel

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**B-252140, June 3, 1993**

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**Military Personnel**

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**Pay**

- Claim settlement
- ■ Finality

In the absence of a mutual mistake in numerical computation or similar undisputed error which remains undetected at the time of settlement, acceptance of settlement by Air Force member incident to administrative action to correct his military records bars pursuit of further claims, including a claim for an offset of interim civilian earnings, which were properly taken in any event.

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**B-249740, June 4, 1993**

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**Military Personnel**

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**Pay**

- Survivor benefits
- ■ Benefit election
- ■ ■ Modification

A member divorced and remarried prior to retirement. Pursuant to a court order, he provided Survivor Benefit Plan (SBP) coverage for his former spouse and children when he retired. When his former spouse died, the court order was no longer effective. Under these circumstances full coverage for his current spouse attached upon the death of the former spouse. Appropriate deductions from member's retired pay should be made to reimburse the Plan for current spouse's SBP coverage.

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**B-247508.2, June 14, 1993**

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**Military Personnel**

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**Pay**

- Survivor benefits
- ■ Annuities
- ■ ■ Designated beneficiaries
- ■ ■ ■ Orders

**Military Personnel**

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**Pay**

**Survivor benefits**

- Cost reimbursement

Upon reconsideration, prior decision holding that modification of final divorce decree which awarded Survivor Benefit Plan annuity to former spouse and former spouse's request for "deemed election" which was accepted by service was proper, is affirmed.



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**Military Personnel**

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**Relocation**

■ Household goods

■ ■ Weight restrictions

■ ■ ■ Liability

■ ■ ■ ■ Reconsideration

Member exceeded his weight allowance for a Permanent Change of Station move. The Army declined to reduce the weight of his household goods shipment after the fact to account for professional books, papers, and equipment which the member said were included, but should not be counted in the total weight. This Office will not question the Army's decision, since questions regarding excess weight and the classification of items as professional materials are generally matters for administrative determination.

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# Procurement

## Late case

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**B-246304.8, B-246304.9, May 4, 1993**

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### Procurement

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#### Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Availability
- ■ ■ ■ Fuel cells

Protest that Air Force improperly waived the Berry Amendment—a statutory prohibition on the expenditure of appropriated funds for certain foreign-manufactured items—is denied where the waiver was based on the agency's urgent need to acquire helicopter fuel cells in order to minimize the dangers to flight crews and passengers from crashes that may occur during the high-risk missions for which the helicopter is used.

## Current cases

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**B-250186.2, et al., June 2, 1993**

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**93-1 CPD 415**

### Procurement

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#### Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Decision recommendation to delete a line item for 43 diffuser cases from awardee's contract and resolicit that quantity, which the record showed was not urgently required, is modified to allow the contract award for the quantity to stand; new information shows that only the awardee can provide the items in the time required, and that cancellation and resolicitation would therefore not be in the best interests of the government.

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**B-252072, June 2, 1993**

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**93-1 CPD 416**

### Procurement

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#### Socio-Economic Policies

- Preferred products/services
- ■ American Indians
- ■ ■ Joint ventures

A joint venture, comprised of an Indian-owned firm and a firm which was not Indian-owned, does not qualify as an Indian economic enterprise eligible for award under Buy Indian set-aside procurement 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.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Descriptive literature

Protest alleging that one of awardee's offered products does not meet solicitation requirements is denied where agency found that descriptive literature submitted with awardee's proposal indicated compliance with specifications, and protester has not shown that agency's conclusion was unreasonable.

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**Procurement**

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**Competitive Negotiation**

- Technical transfusion/leveling
- ■ Determination criteria

Protest alleging that agency engaged in technical leveling with awardee by informing it twice during discussions that an offered product did not meet solicitation requirements is denied where the agency's discussions did not provide awardee with the opportunity to correct weaknesses that were due to the firm's lack of diligence, competence, or inventiveness, but instead merely informed awardee that proposed improvement over specified configuration was not acceptable for the item's intended use.

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**Procurement**

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**Socio-Economic Policies**

- Preferred products/services
- ■ Domestic products
- ■ ■ Certification

---

**Procurement**

---

**Socio-Economic Policies**

- Preferred products/services
- ■ Domestic sources
- ■ ■ Foreign products
- ■ ■ ■ Price differentials

Protest alleging that two of awardee's offered products are foreign end products, and therefore should have been subjected to application of a Buy American Act price differential in the evaluation, is denied; the contracting officer properly relied on the awardee's certification that it was offering domestic end products in the absence of any information to the contrary.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Line items

Protest challenging rejection of bid for refuse disposal services as nonresponsive is denied where the bid price is ambiguous due to the bidder's submission of one bid schedule indicating a low bid and its submission of another bid schedule that failed to include both a bid price for one line item and a total bid price for all the line items.

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## **Procurement**

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### **Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest alleging that contracting officials were motivated by racial prejudice is dismissed where there is nothing in the record that suggests that the award decision was motivated by prejudice.

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## **Procurement**

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### **Bid Protests**

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

Protester lacks requisite interest to protest responsiveness of awardee's bid where protester's bid was properly found nonresponsive and there are other bidders that could be awarded the contract if the awardee were found ineligible.

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**B-252526, June 2, 1993**

**93-1 CPD 419**

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## **Procurement**

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### **Competitive Negotiation**

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

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Contracting agency had reasonable basis to reject protester's proposal as technically unacceptable where protester in its best and final offer failed to provide resumes to support the qualifications of six replacement personnel; failed to address security requirements with respect to the six replacement personnel; and failed to adequately support a significant reduction in manhours.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion reopening
- ■ Propriety

Agency was not required to reopen discussions after the submission of best and final offers (BAFO) in order to afford the protester an opportunity to cure deficiencies first introduced in its BAFO.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Claimant may recover costs of filing and pursuing General Accounting Office protest to the extent they are documented and were reasonably incurred in pursuing the protest.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Agency-level appeals
- ■ ■ Preparation costs

Costs incurred in filing and appealing agency's denial of Freedom of Information Act request are disallowed where request and associated costs were incurred after the filing of protest to the General Accounting Office (GAO) and the information requested was not necessary nor reasonably incurred for the filing and pursuit of the protest.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Legal expenses claimed as costs of filing and pursuing a protest may only be recovered to the extent that they are adequately documented and show not only that they were incurred, but the purposes for which the costs were incurred and how they relate to the protest.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Under Bid Protest Regulations in effect at the time the protester filed its protest, the protester is not entitled to recover the costs of pursuing its claim for protest costs.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs
- ■ ■ Profits

A protester may not recover profit on its own employees' time in pursuing the protest as awarded costs of pursuit of protest.

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**Procurement**

---

**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Omission

A bidder's failure to sign its bid may be waived as a minor informality when the bid is accompanied by a document bearing the bidder's signature, since the signature demonstrates the bidder's intent to be bound.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision dismissing a protest based on an allegation of improper government disclosure of proprietary information more than 11 years ago is affirmed, where the protester has not shown any errors of law or fact that warrant reversing or modifying our prior decision.

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Sureties
- ■ ■ ■ Liability restrictions

Agency properly determined that a bid bond was defective and that the bid therefore was nonresponsive under a sealed bid procurement where the bond contained language that it was "subject to agreement to assist in business development efforts" which the agency reasonably determined created uncertainty as to whether the bond would be enforceable against issuer.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination time periods

Since a bid guarantee provision in a sealed bid procurement is a material requirement which must be met at the time of bid opening, a bid which is nonresponsive, due to a defective bid bond, cannot be made responsive by the surety's post-bid-opening offer to remove the conditional language.

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**B-248336.2, June 4, 1993\*\*\***

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**Procurement**

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**Bid Protests**

- GAO procedures
  - ■ Preparation costs
  - ■ ■ Travel expenses
- 

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Preparation costs

Claim for bid preparation costs and costs of filing and pursuing protest at the General Accounting Office (GAO) may not be paid to the extent that the protester's claim filed with the GAO repudiated the claim filed with the contracting agency more than 4 months earlier. However, claim for travel expenses incurred in preparing bid may be paid because the protester's timely claim with the contracting agency for these expenses has been adequately documented and has been affirmed by the protester in filing its claim with GAO.

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**B-250465.6, et al., June 4, 1993\*\*\***

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**Procurement**

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**Socio-Economic Policies**

- Preferred products/services
  - ■ Handicapped persons
- 

**Procurement**

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**Special Procurement Methods/Categories**

- Service contracts
- ■ Food services
- ■ ■ Statutory regulations
- ■ ■ ■ Applicability

Department of the Air Force correctly determined that Randolph-Sheppard Act, which affords a priority to blind licensees for contracts to operate cafeterias, was applicable to a requirement for full food service at an Air Force base since the requirement is for providing meals at base dining halls operated essentially as cafeterias and therefore is within the scope of cafeteria contracts contemplated by statute, notwithstanding that services incidental to cafeteria food services also are required.

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## **Procurement**

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### **Special Procurement Methods/Categories**

- Service contracts
  - ■ Food services
  - ■ ■ Administrative regulations
  - ■ ■ ■ Interpretation
- 

## **Procurement**

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### **Special Procurement Methods/Categories**

- Service contracts
- ■ Food services
- ■ ■ Statutory regulations
- ■ ■ ■ Applicability

Where Department of Education, charged with issuing and enforcing regulations under Randolph-Sheppard Act, and Department of Defense, having issued its own regulations to implement the Act, each interpreted the statute and its own regulations as applying to a procurement for full food services, those interpretations are entitled to deference unless found to be unreasonable.

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## **Procurement**

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### **Socio-Economic Policies**

- Small business set-asides
  - ■ Withdrawal
  - ■ ■ Bad faith
  - ■ ■ ■ Allegation substantiation
- 

## **Procurement**

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### **Socio-Economic Policies**

- Small business set-asides
- ■ Withdrawal
- ■ ■ Propriety

Cancellation of a solicitation and withdrawal of a section 8(a) set-aside for purpose of conducting an unrestricted procurement pursuant to the Randolph-Sheppard Act was unobjectionable since doing so did not violate regulations and there is no showing that withdrawal was made in bad faith.

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**B-251612.3, June 4, 1993**

**93-1 CPD 432**

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Information submission
- ■ ■ ■ Contractor duties

Where protester submitted minimal information responding to solicitation requirements that offerors provide information regarding their preperformance plan and past experience, and protester instead relied on its status as the incumbent contractor to demonstrate its capability to meet those solicitation requirements, agency reasonably rated protester's proposal no higher than "green/acceptable" regarding those solicitation requirements.



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## Procurement

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### Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably found awardee's proposal technically acceptable where, read as a whole, award-ee's proposal demonstrated compliance with solicitation requirements.

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## Procurement

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### Competitive Negotiation

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

Where protester's and awardee's proposals were properly evaluated as technically equal and awardee's proposed price was approximately 11 percent lower than protester's, agency reasonably determined that awardee's proposal represented the best value to the government.

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**B-252198, June 4, 1993**

**93-1 CPD 433**

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## Procurement

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### Bid Protests

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

Protest of agency failure to solicit a small business concern that requested a copy of a solicitation in July, prior to the agency's October issuance of the solicitation, is denied where protester knew from a *Commerce Business Daily* synopsis that the agency anticipated a September bid opening date and did not avail itself of every reasonable opportunity to obtain the solicitation before either the anticipated bid opening date or the actual late December bid opening date.

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**B-249365.3, June 7, 1993**

**93-1 CPD 434**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision denying protest against acceptability of awardee's proposal is denied where request identifies no errors of law or fact in the previous protest; where protester submitted unacceptable initial proposal and late best and final offer, protester was not an interested party to object to comparative ranking of proposals or failure to conduct meaningful discussions.

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**Procurement**

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**Sealed Bidding**

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

Contracting agency properly rejected as nonresponsive a bid that failed to acknowledge material solicitation amendment which specified type and increased rating of required transformer arrestors; amendment had a significant impact on the contractor's obligations under the solicitation and bidder who failed to acknowledge amendment is not obligated to furnish solicited items in accordance with the government's exact specifications in the amendment.

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**Procurement**

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**Sealed Bidding**

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

The General Accounting Office will not object to Defense Logistics Agency's award of surplus property sales contract to the high bidder that is currently suspended by the Army for procurement contracts, notwithstanding a solicitation provision that declares all suspended firms ineligible for award, where (1) the high bidder has not been suspended from sales contracts; (2) the solicitation provision is defective because its applicability to procurement program suspensions—made by an agency lacking authority to suspend firms from the sales program—conflicts with due process requirements and applicable suspension/debarment regulations that require firms to be specifically suspended for sales contracts; and (3) nothing in the record suggests that the protester was competitively prejudiced.

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**Procurement**

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**Competitive Negotiation**

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

In procurement for telephone communication system and fiber optic data network, agency properly found proposal technically unacceptable for failure to meet a mandatory specification where, even after agency advised protester of the deficiency in its initial proposal, protester failed to show in its proposal that its proposed item met the specification.

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**Procurement**

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**Contractor Qualification**

- Responsibility
  - ■ Corporate entities
  - ■ ■ Affiliates
  - ■ ■ ■ Suspended/debarred contractors
- 

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**Procurement**

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**Special Procurement Methods/Categories**

- Service contracts
- ■ Contract awards
- ■ ■ Corporation ownership
- ■ ■ ■ Suspended/debarred contractors

Rejection of low quotations from an entity which is a sole proprietorship owned by a currently debarred contractor was proper since the debarred individual is ineligible to receive a government contract.

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**Procurement**

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**Special Procurement Methods/Categories**

- In-house performance
- ■ Administrative discretion
- ■ ■ GAO review

General Accounting Office will not review a bid protest challenge to an agency's intention to perform a manufacturing effort in-house instead of contracting with the private sector where no competitive solicitation has been issued for cost comparison purposes since the matter is one of executive branch policy.

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**Procurement**

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**Competitive Negotiation**

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

Where contracting agency did not provide protester/incumbent contractor with a copy of solicitation for office space because, in the agency's view, the firm would be unable to offer space that would be considered more advantageous than that offered by the awardee, incumbent contractor was improperly excluded from the competition in violation of the Competition in Contracting Act of 1984 requirement for full and open competition.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the requesting party fails to show any legal or factual basis warranting reconsideration of our prior decision.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Competitive Negotiation**

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

Where a solicitation for the lease of office space stated that the lease would be awarded to the most advantageous offeror, technical evaluation factors and price considered of equal importance, and where one offeror submitted the low price and was clearly more advantageous than the protester under two technical evaluation factors and, to a lesser degree, more advantageous than the protester under a third technical evaluation factor, the agency reasonably awarded the lease to that offeror.

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**Procurement**

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**Bid Protests**

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

Protester is not entitled to costs of filing and pursuing its protest even though the agency did not take corrective action for nearly 2 months after the protest was filed when: (1) the agency promptly acknowledged that the protest had merit; (2) the protester thus was not required to expend resources to convince the agency, or our Office, of the merits of the protest; and (3) the agency's corrective action was reasonably prompt given the complexity of certain issues associated with implementing a remedy to the protest.

**Procurement**

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**Competitive Negotiation**

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

In a federal procurement for publishing a civilian enterprise (CE) newspaper, to which the Armed Services Procurement Act and the Federal Acquisition Regulations are not applicable, the General Accounting Office will review the contracting agency's actions to determine whether they were reasonable and consistent with laws and regulations which specifically apply to CE newspaper procurements.

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**Procurement**

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**Competitive Negotiation**

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

An agency is not required to conduct discussions or permit proposal revisions, so long as all offerors are treated fairly and equally, under a procurement to select a civilian enterprise (CE) newspaper publisher, where the solicitation states that the agency intends to award on the basis of initial proposals without discussions; while oral presentations were made by the offerors shortly after initial proposals were submitted, the regulations governing CE newspaper publishing contract selections provide for oral presentations to be considered as part of the proposal evaluation and do not require that either discussions or proposal revisions will occur during or as a result of the oral presentations.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Weighting
- ■ ■ ■ Bias allegation

Agency did not give the proposed use of computers inordinate weight in its award decision, where the use of computer equipment was stressed in the stated evaluation factors and statement of work.

**Procurement**

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**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 where the agency took prompt corrective action—25 working days after protest was filed.

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**Procurement**

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**Socio-Economic Policies****■ Small business set-asides****■ ■ Use****■ ■ ■ Administrative discretion**

Protest that solicitation improperly allows Department of Defense (DOD) depots to submit offers under a solicitation which is otherwise set aside for small business concerns is denied where current DOD Appropriations Act grants the Secretary of Defense discretion to allow depots to compete with private firms for the requirement notwithstanding any other provision of law.

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**B-252357, June 9, 1993**

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**Procurement**

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**Specifications****■ Brand name/equal specifications****■ ■ Equivalent products****■ ■ ■ Acceptance criteria**

Under a brand name or equal solicitation, a bid offering non-brand name products was properly rejected as nonresponsive where the descriptive literature furnished with the bid did not show that the offered products conformed to the salient characteristics listed in the solicitation.

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**B-251167.3, June 10, 1993**

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**Procurement**

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**Sealed Bidding****■ Bids****■ ■ Responsibility****■ ■ ■ Integrity certification****■ ■ ■ ■ Omission**

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**Procurement**

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**Sealed Bidding****■ Terms****■ ■ Materiality****■ ■ ■ Integrity certification**

Office of Federal Procurement Policy Act and its implementing regulations contemplate submission of a new Certificate of Procurement Integrity for each procurement; accordingly, a bidder's submission of a Certificate of Procurement Integrity under a prior solicitation does not cure a bidder's failure to provide a signed certificate with its bid under current solicitation.

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**Procurement**

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**Contractor Qualification****■ Responsibility****■ ■ Contracting officer findings****■ ■ ■ Affirmative determination****■ ■ ■ ■ GAO review**

Protest alleging generally that awardee's affiliate has committed various antitrust violations is dismissed because it in essence challenges the contracting officer's determination that the awardee is a responsible contractor; the General Accounting Office will not review a contracting officer's determination of an awardee's responsibility absent circumstances not alleged or evident here.

**Procurement**

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**Competitive Negotiation**

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

Protest that agency improperly evaluated proposal and impermissibly selected a higher priced offeror is denied where record indicates that the agency evaluation was reasonable and consistent with the solicitation's evaluation criteria, and where the agency reasonably concluded that the awardee's superior proposal warranted its slightly higher price.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Determination criteria

Contention that agency did not hold meaningful discussions regarding one feature of protester's proposed building is denied where the feature at issue was considered a meritorious element of protester's proposal but awardee's proposal in this respect was even better.

**Procurement**

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**Contract Management**

- Contract administration
- ■ Convenience termination
- ■ ■ Administrative determination
- ■ ■ ■ GAO review

Contracting agency's decision to resolicit its requirement for critical flight engine part items after termination of an improper contract award—rather than make award to the otherwise successful offeror for that procurement—is unobjectionable where agency's inventory demand significantly increased and the record shows that a consolidated procurement for the increased quantity offers potential cost savings as well as a reduced risk of technical delays.

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**Procurement**

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**Contractor Qualification**

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

Protest that awardee is not a responsible firm is dismissed where there is no evidence of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria were not met.

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## Procurement

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### Bid Protests

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

Protest filed after solicitation closing date challenging alternate delivery schedule provision is dismissed as untimely since alleged improprieties apparent from the face of a solicitation must be filed prior to the time set for receipt of proposals.

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## B-252430, June 10, 1993

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### Procurement

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#### Payment/Discharge

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

A delivering carrier alleging that damage was due to faulty packaging by another party has the burden of proving that the faulty packaging was the sole cause of the damage.

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### Procurement

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#### Payment/Discharge

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

A *prima facie* case of carrier liability is not established where it cannot be shown that an item suggested as the replacement for one that was broken in-transit was equivalent to the broken one.

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## B-248653.3, June 11, 1993\*\*\*

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93-1 CPD 451

### Procurement

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#### Competitive Negotiation

- GAO decisions
- ■ Recommendations
- ■ ■ Implementation

Where protester previously challenged award to lower priced offeror on the basis that the agency's technical evaluation was not adequately supported by the record and the General Accounting Office sustained the protest, recommending that the agency re-evaluate proposals, agency's affirmation of its initial award decision is unobjectionable where the agency has fully documented its technical reevaluation and where the record shows that it was reasonable.

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## B-252197, June 11, 1993

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### Procurement

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#### Payment/Discharge

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

When the value of a lost item is in question, a *prima facie* case of carrier liability is established where the shipper provides substantive evidence to support her allegation that a blanket lost by the carrier, which had been listed on the inventory only as "blankets," was an antique of considerable value.



**Procurement**

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**Bid Protests**

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

Protest that agency failed to provide sufficient time to respond to solicitation is untimely when filed after closing date for receipt of proposals, by firm which had timely submitted a proposal.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Price determination
- ■ ■ Collusion
- ■ ■ ■ Allegation substantiation

Alleged improper use of proprietary material by protester's former employees concerns dispute between private parties which, absent evidence of collusion between offerors or an indication that a firm was prevented from submitting a proposal, does not violate Certificate of Independent Price Determination.

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**Procurement**

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**Contractor Qualification**

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

Allegations that awardee lacks necessary facility security clearance and workman's compensation insurance coverage concern matters of responsibility the affirmative determination of which is not for review by our Office absent evidence of fraud, bad faith or failure to meet definitive responsibility criteria.

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**Procurement**

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**Sealed Bidding**

- Bids
  - ■ Responsiveness
  - ■ ■ Pre-award samples
  - ■ ■ ■ Acceptability
- 

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Samples

Agency properly rejected bid as nonresponsive where required bid samples included as part of the bid failed to conform to requirements listed in solicitation.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Lost bids
- ■ ■ Propriety
- ■ ■ ■ Competitive system integrity

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

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**Procurement**

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**Bid Protests**

- GAO authority
- ■ Non-appropriated funds

General Accounting Office (GAO) is without jurisdiction to consider a protest of a procurement conducted by the Navy Exchange Service Command because that Command is a nonappropriated fund activity and as such is not a federal agency over which GAO has statutory bid protest authority.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester has not shown that our prior decision contains either errors of fact or law, and the protester merely disagrees with our prior decision.

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**Procurement**

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**Specifications**

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

Protest is sustained where record shows that solicitation's specifications exceed agency's minimum needs by requiring a shiplift employing electromechanical hoisting devices, wire ropes and articulated platform.

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**Procurement**

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**Sealed Bidding**

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

Protest against acceptance of a late bid is denied where record shows that the bid was received at the agency prior to bid opening, remained in the exclusive control of the government and as the result of government mishandling was untimely delivered to the contracting activity.

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**Procurement**

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**Contractor Qualification**

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

Protest against awardee's alleged failure to satisfy definitive responsibility criteria is dismissed where requirements in question concerned performance obligations under the contract and, thus, were the subject of the contracting officer's general responsibility determination, a matter not for review absent a showing of fraud or bad faith.

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**Procurement**

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**Competitive Negotiation**

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

In a total small business set-aside negotiated procurement, the procuring agency properly considered the experience of both the prime contractor and its large business subcontractor under the relevant evaluation factors where the solicitation did not prohibit the use of subcontractors to perform the contract or prohibit the consideration of a subcontractor's experience in the evaluation of proposals.

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**Procurement**

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**Competitive Negotiation**

- Source selection boards
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Propriety

Protester's contention that source evaluation board (SEB) improperly evaluated competing proposals is denied where the record shows that the SEB evaluated proposals in accordance with the evaluation criteria announced in the solicitation and the record reasonably supports the protester's lower overall technical rating.

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## Procurement

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### Competitive Negotiation

- Source selection boards
- ■ Conflicts of interest

Contracting agency reasonably excluded one member from source evaluation board in order to avoid a potential conflict of interest and to protect the integrity of the procurement process.

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## Procurement

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### Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agencies are not obligated to afford offerors all-encompassing discussions, only to lead offerors generally into the areas of their proposals requiring amplification.

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## Procurement

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### Competitive Negotiation

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

Award to a higher priced offeror is unobjectionable under a request for proposals that stated that technical quality would be considered substantially more important than price; agency reasonably found that awardee's proposal was worth the higher price; and the selection decision was reasonably based and consistent with the solicitation's evaluation scheme

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**B-252833, June 14, 1993**

**93-1 CPD 459**

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## Procurement

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### Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Design specifications
- ■ ■ ■ Deviation

Cover letter accompanying bid that proposed a hydraulic oil motor driven screw conveyor instead of a compressed air motor driven screw conveyor, as required by the invitation for bids, rendered the bid nonresponsive.

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**B-253644, June 14, 1993**

**93-1 CPD 463**

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## Procurement

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### Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ Pending protests
- ■ ■ ■ Contract awards

Award of a contract while an appeal of a small business size status determination is pending is not improper, even where the contracting officer is notified of the appeal prior to award, since the regulations do not require award to be withheld during the appeal period.

**Procurement**

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**Competitive Negotiation**

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

Protest that proposal was improperly excluded from the competitive range is denied where the agency reasonably evaluated the proposal as containing significant weaknesses, including an overall lack of experience, that made the proposal technically unacceptable.

**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Personnel
- ■ ■ Substitution
- ■ ■ ■ Propriety

Awardee's request for substitution of two key employees after award and one after initial performance period does not by itself establish that awardee engaged in improper "bait-and-switch," and there is no basis to conclude that tactic was used where record contains no evidence suggesting awardee proposed those individuals knowing they would not be available for contract performance.

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**Procurement**

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**Competitive Negotiation**

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

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Where solicitation provided that review of offerors' performance on past government contracts for vehicle operation and maintenance would at worst result in assessment of weakness against a proposal, downgrading risk from low to moderate was reasonable means of assessing weakness; given that awardee was found to have successful experience in performing aircraft maintenance contracts, agency reasonably determined that further downgrading was not warranted.

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**Procurement**

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**Competitive Negotiation**

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

Defense Contract Audit Agency's (DCAA) criticism of awardee's cost proposal did not preclude consideration of awardee's low price in price/technical tradeoff; agency reasonably concluded that, al-

though awardee's price was unrealistic and would inject risk into performance, it remained a valid consideration for source selection since it was significantly lower than protester's price, and contract's fixed-price nature would limit the risk of higher cost to the government.

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## **Procurement**

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### **Competitive Negotiation**

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

Where agency determined that protester's proposal, although slightly superior, was essentially equal technically to awardee's, agency properly based award decision on awardee's significantly lower price.

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**B-252453, B-252453.2, June 16, 1993**

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**93-1 CPD 466**

## **Procurement**

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### **Competitive Negotiation**

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

Protest challenging agency's technical evaluation of proposals is sustained where record supports protester's allegations that the agency downgraded protester's proposal for certain deficiencies but failed to downgrade awardee's proposal for similar deficiencies, and correction of evaluation defects could affect outcome of competition.

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**B-253724, June 16, 1993**

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**93-1 CPD 468**

## **Procurement**

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### **Bid Protests**

- **GAO authority**
- ■ **Non-appropriated funds**

General Accounting Office (GAO) is without jurisdiction to consider a bid protest of a procurement by a nonappropriated fund activity of the Army since such activity, even though an Army instrumentality, is not a federal agency over which GAO has bid protest jurisdiction.

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**B-253719.6; et al., June 17, 1993**

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## **Procurement**

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### **Bid Protests**

- **Administrative policies**
- ■ **GAO review**

## **Procurement**

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### **Bid Protests**

- **Premature allegation**
- ■ **GAO review**

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

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**Procurement**

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**Bid Protests**

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

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Authority

Decision holding that the individual who signed a Certificate of Procurement Integrity did not have the required authority to bind the bidder at the time the bid was submitted is reversed, where on reconsideration the evidence establishes that the individual who signed the certificate was authorized to sign the certificate and bind the bidder.

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**Procurement**

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**Bid Protests**

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

Where solicitation designated either of two materials as acceptable in manufacture of sleeping bags, assertion that material offered by awardee should not have been considered acceptable constitutes untimely challenge to solicitation provisions; where testing resulted in agency determination that material met operational needs, the fact that different tests produced different results does not establish that agency determination was unreasonable.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Despite solicitation language indicating that evaluators would give preference to proposals for "high quality product," protester's assertion that its proposal deserved a higher rating does not show that evaluation was unreasonable, absent any showing that protester proposed a product that did any more than meet minimum requirements of specifications.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
  - ■ Evaluation
  - ■ ■ Letter contracts
  - ■ ■ ■ Subsidiaries
- 

## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Suppliers
- ■ ■ Identification

Where solicitation required letters of commitment from suppliers, agency was not unreasonable in considering a letter of commitment from a subsidiary of the awardee as valid for purposes of the solicitation.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Suppliers
- ■ ■ Identification

Requirement that offerors list their proposed suppliers of textiles and cloth, for the purpose of allowing the agency to ensure that prime contractors did not subcontract with debarred or suspended firms, relates to responsibility, not technical acceptability; protest that failure to list sole-source supplier of required continuous filament batting requires rejection of proposal is denied where there is no evidence that awardee meant to take material exception to requirement.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Evaluation of past performance was reasonable where (1) with respect to awardee, agency reasonably concluded that awardee's recent performance indicated that the rating of "marginally acceptable" fell within the high range of that rating; and (2) with respect to protester, despite protester's arguments that variation in quantity clause excuses late deliveries where quantities do not exceed specified percentage, agency's determination that late deliveries demonstrated a less than acceptable commitment to customer satisfaction and delivery schedules, and narrative assessment indicating that protester's past performance was marginally acceptable, although falling within the high range of that rating, were reasonable and consistent with the solicitation.



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## Procurement

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### Bid Protests

- GAO authority
  - ■ Protective orders
  - ■ ■ Information disclosure
- 

## Procurement

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### Competitive Negotiation

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

Where protester who obtained access to awardee's proposal under a protective order issued by the General Accounting Office does not identify any aspects of that proposal which are priced unrealistically or indicate a lack of understanding of requirements, protester has not shown that the agency should have withheld award under a solicitation for a fixed-price contract based on concerns over price realism.

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## Procurement

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### Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Adjectival ratings

Chief concern of the General Accounting Office in reviewing the application of adjectival rating scheme is whether the method in question gave the contracting officer a clear understanding of the relative merit of proposals, and protest against use of adjectival rating scheme is denied where that scheme, as supported by narrative assessments, reasonably conveyed a proper appreciation of the strengths and weaknesses of individual proposals.

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## Procurement

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### Competitive Negotiation

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

Where solicitation stated that in the event technical and cost proposals were essentially equal, agency would consider small business status of offerors in selection decision, agency was not obligated to consider protester's small business status where the protester's proposal was priced more than one-third higher than the awardee's proposal, which evaluators reasonably rated as essentially equal in technical merit.

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## Procurement

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### Competition Negotiation

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

Where the General Accounting Office concludes that the evaluation and the selection decision were reasonable, supported by the record, and consistent with the factors stated in the solicitation, contention that agency had a bias toward proposals using alternate material is without merit.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not allege errors of fact or law, or provide information not previously considered, which would warrant reversal or modification of earlier decision.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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**Procurement**

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**Bid Protests**

- Hearings

The General Accounting Office's resolution of protest without holding a hearing does not constitute error warranting reconsideration of prior decision where the written record contained no inconsistent statements or evidence suggesting questionable or incomplete testimony by the contracting agency and there were no deficiencies otherwise apparent in the record.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Information submission
- ■ ■ Timeliness

Request for reconsideration 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.

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**Procurement**

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**Socio-Economic Policies**

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

Protest against procuring agency's determination not to set aside the procurement for small business concerns is denied where the agency concluded, after researching of the procurement history and with the concurrence of the Small and Disadvantaged Business Utilization Officer and the Small Business Administration representative, that it could not reasonably expect to receive proposals from at least two responsible small business offerors.

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**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
  - ■ Sole sources
  - ■ ■ Propriety
- 

**Procurement**

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**Noncompetitive Negotiation**

- Sole sources
- ■ Justification
- ■ ■ Intellectual property

Protest against the proposed award of a sole-source, follow-on contract for weapon system support is sustained where the agency relies on the authority of 10 U.S.C. § 2304(c)(1) (1988) to support its decision, but the agency's written justification and approval is not reasonably based because its claims—that the unavailability of proprietary data and of certain equipment and facilities (both government furnished and otherwise), combined with the short term of performance and low contract value mean that only the sole-source can provide the services—have been effectively refuted by the protester who has shown that the findings are not supported by fact.

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**Procurement**

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**Contractor Qualification**

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

Contracting officer reasonably determined that protester lacked the financial resources for performance and was therefore nonresponsible where protester's financial statements reflected a lack of available working capital, deficit retained earnings, negative net worth, and a large volume of past due payments, and where protester failed to furnish references from a financial institution confirming the availability of a line of credit.

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**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Reconsideration
- ■ ■ ■ Contracting officers

Contracting officer need not reconsider a determination of nonresponsibility where there has been no material change in a principal factor on which the initial determination was based.

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**Procurement**

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**Sealed Bidding**

- Contract awards
  - ■ All-or-none bids
- 

**Procurement**

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**Sealed Bidding**

- Contract awards
- ■ Propriety
- ■ ■ Line items

Protest that agency should have evaluated bids on an item basis and made a partial award to the protester based upon its low bid for one of six line items is denied where the solicitation provided that bids would be evaluated on an all-or-none basis "for all items" and did not contain the multiple awards clause which would permit the agency to make award on an item basis.

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**B-252585, June 21, 1993**

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**Procurement**

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**Sealed Bidding**

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

Low bidder who relied on an erroneous subcontractor quotation in calculating its bid may revise its price upward after opening based on the subcontractor's revised quotation where the record clearly establishes that the original quotation was in error and that the bidder's price would remain low even after recomputation using the subcontractor's revised quotation.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Clerical errors
- ■ ■ Error correction
- ■ ■ ■ Propriety

Correction of a bid is not precluded simply because the corrected total will come within 1 percent of the next low bid where it can be clearly established that a mistake was made and that the intended bid would have been low.

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**B-253069, June 21, 1993**

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**Procurement**

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**Specifications**

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

Protest that solicitation specification for multi-frequency signaling capability allowing for precedence and preemption for telecommunication traffic in procurement for telephone switching system unduly restricts competition is denied where agency shows, and protester fails to rebut,

that the specification is reasonably related to the agency's minimum needs because only the specified capability will provide the required precedence and preemption required by the agency.

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## **Procurement**

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### **Specifications**

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

An otherwise legitimate specification requirement is not unduly restrictive simply because a potential offeror cannot meet it.

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**B-252614, June 22, 1993**

**93-1 CPD 481**

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## **Procurement**

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### **Noncompetitive Negotiation**

- **Use**
- ■ **Justification**
- ■ ■ **Urgent needs**

Protest against award of a 6-month contract for grounds maintenance services using noncompetitive procedures is sustained where record indicates, and agency concedes, that the urgency on which noncompetitive contract award was based was the result of lack of advance planning.

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**B-252970.2, June 22, 1993\*\*\***

**93-1 CPD 482**

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## **Procurement**

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### **Bid Protests**

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

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## **Procurement**

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### **Socio-Economic Policies**

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

Request to reconsider dismissal of a protest alleging that the Small Business Administration (SBA) failed to consider vital information regarding protester's past performance history in conjunction with a certificate of competency (COC) proceeding is denied where record shows that protester did not discharge its obligation to provide its own assessment of its performance history to SBA when requested to do so during the COC proceeding rather than that the procuring agency failed to furnish any required information to SBA.

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**Procurement**

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**Sealed Bidding**

- Contract awards
- ■ Propriety
- ■ ■ Line items

Agency reasonably determined, prior to issuing solicitation, that it was likely to award a contract for all line items where the agency's estimate of funds available for this project exceeded the government's independent cost estimate.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Options

Where solicitation provided that bids would be evaluated on the basis of all contract line items, including options, agency properly awarded a contract to offeror whose total bid for all line items was low.

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**Procurement**

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**Competitive Negotiation**

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

Agency properly excluded protester's proposal from the competitive range in a procurement to purchase systems furniture workstations, where the RFP designated as a minimum requirement that the panels of the workstation contain internal vertical cables and the protester instead proposed an external cable management accessory, which was reasonably found not to be functionally equivalent to the specified feature.

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**Procurement**

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**Bid Protests**

- Allegation
- ■ Abandonment

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**Procurement**

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**Bid Protests**

- GAO authority
- ■ Real property
- ■ ■ Condemnation

The General Accounting Office (GAO) will not consider protest of a building site selection where the General Services Administration (GSA) abandoned the procurement process by proceeding to obtain the property under condemnation authority; subsequent agreement by GSA and the building site owner on the terms of GSA's acquisition of the site shortly before a condemnation action was filed does not equate to a return to the procurement process such that GAO should review a protest of the building site selection.

---

**Procurement**

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**Sealed Bidding**

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

Contracting agency improperly rejected bid as nonresponsive based upon a perceived ambiguity in the identity of the bidder caused by various references to an affiliated company in the bid, where the protester's bid clearly explained the affiliation, and sufficiently and unambiguously identified the protester as the actual bidder by name, address, and taxpayer identification number.

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**Procurement**

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**Bid Protests**

- Non-prejudicial allegation
- ■ GAO review

Protest is dismissed where (1) record does not demonstrate that protester suffered competitive prejudice from awardee's allegedly improper use—in performing a software capability demonstration—of a system it had furnished under a contract with another agency, and (2) in any case, awardee's use of the equipment appears unobjectionable since nothing in solicitation prohibited offerors from proposing to use such equipment.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Commercial products/services

Where a request for proposals for automatic tank gauging systems requires equipment covered by the statement of work to be commercial off-the-shelf (COTS) equipment, the system itself need not be COTS, so long as the system equipment components are COTS.

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**Procurement**

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**Competitive Negotiation**

- Conflicts of interest
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Even though a former government employee who obtained confidential information pertaining to the protester's system is now employed as a consultant by the awardee, General Accounting Office has no basis to disagree with the procuring agency's determination that the awardee should not be excluded from the competition because of the alleged conflict of interest where the disclosure preceded the procurement and the awardee's employment of the consultant by 2 years and there is no evidence of improper disclosure to the awardee.

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**Procurement**

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**Competitive Negotiation**

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

**Procurement**

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**Competitive Negotiation**

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

Agency's use of standards contained in a rating plan provided to evaluators to downgrade the protester's proposal was improper, where the standards were actually subfactors that were not evident from or disclosed in the solicitation, or otherwise to the offerors, particularly where the standards were not equally employed in evaluating the awardees' proposals.

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**B-252484, June 25, 1993\*\*\*****93-1 CPD 495**

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**Procurement**

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**Sealed Bidding**

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

A photocopy of a completed certificate of procurement integrity form which had been manually signed by the bid signatory is a binding duplicate original which evidences the bidder's required commitment and therefore the bid containing the photocopy is responsive and may be accepted for award.

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**B-250441.2, June 28, 1993****93-1 CPD 496**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of decision that agency properly purchased higher-priced mailing equipment on Federal Supply Schedule, instead of protester's less expensive equipment, where agency reasonably determined that protester's equipment did not meet its minimum needs, is denied; since requester does not dispute findings of prior decision but merely raises arguments that could have been raised during consideration of initial protest but were not, there is no basis for reconsidering that decision.



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**Procurement**

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**Specifications**

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

Protest that solicitation unduly restricts competition by calling for larger-sized railway spotter cars capable of achieving minimum traction needed to move railcars through use of only one coupler, without permitting as an option smaller-sized railway spotter cars (*i.e.*, those requiring two couplers to achieve minimum required traction), is denied where the record shows that use of smaller-sized spotter cars would create inefficient loading and unloading procedures; restrict the agency's ability to have the entire load pushed or pulled from either end of the train; and create a situation where mounting and dismounting the track to break up the train may damage older tracks.

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**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Evaluation**
- ■ ■ **Technical acceptability**
- ■ ■ ■ **Tests**

Protest alleging that, in reevaluating proposal pursuant to recommendation in previous decision, agency should have accepted protester's offer of equipment to perform battery tests or should have accepted protester's alternate offer to perform the tests under agency supervision, is denied. Contracting agency assembled team of battery experts and arranged to conduct the tests at an agency facility with extensive experience in battery evaluations. The contracting agency was not required to allow the protester to perform the tests or to use protester supplied test equipment.

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**Procurement**

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**Competitive Negotiation**

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

Although protester argues that during reevaluation, pursuant to the recommendation in earlier sustained decision, the contracting agency unreasonably based its test of the protester's proposed batteries on an assumption that the battery-powered sonar system proposed by the protester would use a constant current discharge instead of constant impedance, agency's constant-current assumption was reasonable since the protester had itself consistently used that same assumption, without qualification, in its previous protest and had used that assumption in its submissions in the current protest.

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**Procurement**

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**Bid Protests**

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

Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the new allegations must independently satisfy the timeliness requirements in the General Accounting Office Bid Protest Regulations.

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**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Protest against sole-source awards of military rations contracts is denied where the contracting agency reasonably determined that only one known firm was capable of promptly and properly meeting the urgent supply requirement caused by Operation Restore Hope in Somalia; the agency was not required to solicit the protester where, based on the firm's delinquent and improperly performed current contract for the same item, the agency reasonably concluded that the firm is unable to perform the requirement.

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**B-252414, June 29, 1993**

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**Procurement**

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**Bid Protests**

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

Protest alleging that agency is conducting an improper sole-source procurement is untimely where the protester did not submit an expression of interest in response to either of two *Commerce Business Daily* notices announcing the agency's intent to procure on a sole-source basis, both of which contained footnote 22, giving other potential sources 45 days to submit expressions of interest in the procurement.

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**Procurement**

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**Noncompetitive Negotiation**

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Proposed sole-source award under the authority of 10 U.S.C. § 2304(c)(1) (1988) is not objectionable where the agency reasonably determined that only one source was available to supply the required equipment, and protester, who submitted a technical package for review in response to an agency invitation—despite the expiration of the time for response indicated in two *Commerce Business Daily* notices—failed to establish that it had current equipment which could meet the agency's requirements.

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**B-252425, June 29, 1993**

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**Procurement**

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**Socio-Economic Policies**

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

Protest that agency improperly decided to set aside for small business concerns procurement of court reporting services is denied where the contracting officer's decision to set the procurement aside was reasonable.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Lump-sum bids
- ■ ■ Responsiveness
- ■ ■ ■ Unit prices

Agency properly rejected as nonresponsive lump-sum bid for renovating military family housing units that contained unit prices that exceeded the statutory price limitation set forth in the solicitation for some housing units.

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**Procurement**

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**Sealed Bidding**

- Non-responsive bids
- ■ Error correction
- ■ ■ Propriety

In the absence of evidence of a mistake in allocating unit prices, bid for renovating military family housing units may not be corrected to reallocate prices so as to make nonresponsive bid compliant with solicitation's statutory price limitation, even where the total bid price would not change on reallocation; protester's contention that it would not have intentionally submitted a nonresponsive bid, but for a mistake, is not sufficient to permit a reallocation of bid prices under mistake in bid procedures.

**Procurement**

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**Socio-Economic Policies**

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

Protest that agency improperly decided to set aside for small business concerns procurement of court reporting services is denied where the contracting officer's decision to set the procurement aside was reasonable.



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