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

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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition In Contracting Act, Pub. L. No. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by file number and date, e.g., B-257405, Sept. 30, 1994. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies and in annual volumes. Decisions in these volumes should be cited by volume, page number, and year issued, e.g., 72 Comp. Gen. 347 (1993).

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Appropriations/Financial Management

B-253988, October 11, 1994

Appropriations/Financial Management

Claims Against Government

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

An agency entered into an Intergovernmental Personnel Act (IPA) agreement to detail a university employee to the agency with the agency reimbursing the university for the employee's salary and benefits. Several months after the employee began work, the agency determined that the agreement was invalid because the individual selected for the assignment had not been a university employee for at least 90 days as required by IPA regulations. Accordingly, the agency declined to reimburse the university. Payment to the university is approved on a *quantum meruit* basis.

B-257068, October 22, 1994

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Account deficiency
- ■ ■ Relief
- ■ ■ ■ GAO authority

A person who by virtue of his responsibilities and custody of funds as Head Cashier is an accountable officer and liable for the loss or shortage of funds in the cashier operation. The presumption of the accountable officer's negligence is, however, rebuttable with sufficient evidence to the contrary. However, when employing agency does not make findings required by 31 U.S.C. § 3527(a), the matter of relief is not properly before GAO, regardless of the merits, and we have no authority to grant relief.

B-257895, October 28, 1994

Appropriations/Financial Management

Appropriation Availability

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

The National Security Agency may use appropriated funds to obtain commercial drivers' licenses for communication team members if NSA administratively determines that it would be advantageous to the government to do so and the licenses are not for the purpose of qualifying for the employees' position.

Civilian Personnel

B-257421, October 3, 1994

Civilian Personnel

Compensation

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

Employee received overpayments of pay because agency failed to deduct full life insurance premiums from his pay. Waiver of employee's overpayments is denied because employee was partially a fault. When employee changed his coverage, he expected an increase in his premiums, and he has the responsibility of reviewing his earnings statements to ascertain whether his life insurance premiums were being properly deducted.

B-254584, October 5, 1994

Civilian Personnel

Travel

- Permanent duty stations
- ■ Actual subsistence expenses
- ■ ■ Prohibition

A transferred employee moved out of his residence at his old duty station and began an authorized period of temporary quarters occupancy at his new duty station. He returned to his old duty station in an approved annual leave status and temporarily reoccupied his old residence with his family. His claim for subsistence expenses during that time is denied. Since his immediate family continued to reside there, the residence was not vacated and the employee is not entitled to subsistence expense reimbursement while there.

B-253988, October 11, 1994

Civilian Personnel

Compensation

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

A federal agency terminated an employee's federal appointment and replaced it with an assignment under an Intergovernmental Personnel Act (IPA) agreement with a university whereby the individual would be assigned to the agency as an employee of the university. However, because the appointments overlapped for 2 weeks, the employee was paid by both the agency and the university for the same work. Upon beginning work under the IPA assignment, the employee's federal appointment would be considered as terminated. Thus, the federal pay she received while working under the IPA agreement is an erroneous payment subject to collection by the agency.

B-256957, October 11, 1994***

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Forfeiture
- ■ ■ Restoration

An employee forfeited annual leave at the end of the 1978 leave year because he could not use it due to the exigency of public business. The agency restored the annual leave to the employee in 1979, and advised him it would be placed in a separate account. Subsequently, the employee transferred to another agency and the restored leave was recorded as a higher accumulation ceiling, rather than as restored leave, and was not used within the prescribed time period. The employee later transferred to another agency where the erroneous ceiling also was adopted. The error was not discovered until 1991, at which time it was determined that the excess leave in the employee's account had been forfeited. The employee argues that the forfeited leave should be restored on the grounds of administrative error. The claim is denied because forfeited leave that is not used within the prescribed time period is again forfeited and may not be restored, except under specific extenuating circumstances not present in this case.

B-258548, October 14, 1994***

Civilian Personnel

Compensation

- Board members

The statute establishing a specified rate of basic pay of members of the General Accounting Office Personnel Appeals Board permits compensation on an hourly basis for time spent carrying out the duties of the Board. *Federal Retirement Thrift Investment Board, B-230685, October 6, 1988, and related cases overruled.*

B-257146, October 18, 1994

Civilian Personnel

Relocation

- Household goods
- ■ Definition
- ■ ■ Restrictions

Civilian Personnel

Relocation

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

Even though the exclusion of live animals from the definition of "household goods" in the Federal Travel Regulation precludes shipping pet dogs as household goods, ordinary dog houses in which those animals may live are included within the definition of household goods for shipment at government expense incident to an employee's relocation.

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Overpayments
- ■ ■ ■ Debt waiver

Employee seeks waiver of erroneous payments for temporary quarters expenses where he was not reasonably aware of a requirement to vacate residence at his old duty station and where he helped to fulfill his agency's needs by remaining temporarily at his old duty station and covering both his old duty station position and his new duty station position, as needed by the agency. The payments were erroneous because agency officials knew he was working at both places and had not moved his residence. Waiver is granted.

Military Personnel

B-256956, October 27, 1994

Military Personnel

Relocation

- Relocation travel
- ■ Reimbursement
- ■ ■ Circuitous routes

A member ordered to make a permanent change of station with temporary duty and consecutive overseas tour leave en route chose to travel by a circuitous route and purchase his own airline tickets. While military transportation was not available for the first leg of the travel, it was available for the other segments. Under 1 Joint Federal Travel Regulations paragraph U5116, reimbursement at the lowest commercial rate was proper for the first leg of the travel. For subsequent segments the proper amount for reimbursement was the amount it would have cost the government or a monetary allowance based on mileage.

Miscellaneous Topics

B-255548, October 18, 1994***

Miscellaneous Topics

Environment/Energy/Natural Resources

■ Environmental protection

■ ■ Air quality

■ ■ ■ Standards

■ ■ ■ ■ Waiver

The Clean Air Act authorizes the Environmental Protection Agency (EPA) to exempt clean fuel fleet vehicles from high-occupancy vehicle (HOV) restrictions. However, the clean fuel provision of the Clean Air Act do not authorize EPA to establish ILEV standards for the purpose of granting the HOV exemption only to those vehicles qualifying as ILEVs.

Procurement

Late cases

B-256609.3, B-256609.5, September 1, 1994

94-2 CPD ¶ 251

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that procuring agency unreasonably evaluated protester's proposal as having a high performance risk is denied where the decision is based on the agency's reasonable determination that the protester's proposed salaries were low and its proposed uncompensated overtime was excessive, thus creating a risk that it would be unable to retain qualified personnel.

Procurement

Competitive Negotiation

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

Procuring agency reasonably found that protester's proposed use of 10 subcontractors created a critical deficiency in the protester's management proposal where solicitation specifically stated that proposal would be downgraded in evaluation for proposing a high number of subcontractors.

Procurement

Competitive Negotiation

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

Protest that agency treated offerors unequally and evaluated awardee's proposal unreasonably based on protester's assertion that both proposals contained similar deficiencies is denied where there were significant differences between the proposals which warranted the different evaluation results.

Procurement

Competitive Negotiation

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

Agency properly awarded contract without holding discussions with the protester where solicitation indicated agency's intention to award the contract without discussions and the agency reasonably determined that discussions were not necessary because the protester's proposal contained critical deficiencies and the awardee's proposal contained no deficiencies and was reasonably priced.

Procurement

Competitive Negotiation

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

Protest that agency improperly awarded contract at a price \$15 million greater than that offered by the protester is denied where the agency reasonably determined that the protester's price was unrealistic and that the awardee's technically superior and realistically priced proposal was worth the additional expense.

B-256609.4, September 1, 1994

95-1 CPD ¶ 166

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that procuring agency unreasonably evaluated protester's proposal as having a high performance risk is denied where the decision is based on the agency's reasonable determination that the protester's proposed salaries were low and its proposed uncompensated overtime was high.

Procurement

Competitive Negotiation

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

Agency properly awarded contract without holding discussions with protester where solicitation indicated agency's intention to award the contract without holding discussions, and the agency reasonably determined that discussions were not necessary because the protester's proposal was unrealistically priced and presented a high performance risk and the awardee's proposal contained no deficiencies and was realistically priced.

Procurement

Competitive Negotiation

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

Protest that agency improperly awarded contract at a price [deleted] higher than that offered by the protester is denied where the agency reasonably determined that the protester's price was unrealistic and that the awardee's technically superior and realistically priced proposal was worth the additional expense.

Current cases

B-257426, October 4, 1994

94-2 CPD ¶ 115

Procurement

Sealed Bidding

- Bids
- ■ Public opening

Awardee's bid was reasonably and properly considered for award where the bid was received by the contracting officer 5 days prior to bid opening, at which time the contracting officer placed the bid in a safe which was exclusively within the agency's custody and control, and that solely as a result of government mishandling after receipt of the bid, specifically, the contracting officer's failure to remove the bid from the safe just prior to bid opening, the bid was not opened by the contracting officer at the public bid opening.

B-257431.3, October 4, 1994

94-2 CPD ¶ 152

Procurement

REDACTED VERSION

Contractor Qualification

- Responsibility criteria
- ■ Organizational experience

Protest asserting generally that protester's experience in government contracting warranted an "exceptional" rating for corporate capability and experience rather than the "good" rating given it by agency evaluation panel is denied where evaluation documents show that evaluators gave protester credit for its lengthy corporate history and experience, but protester lacked corporate experience relevant to performing tasks comparable to those required in the solicitation's statement of work. Protester's mere disagreement with agency evaluators does not render the evaluation unreasonable.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Price adjustments

Protest alleging that agency made improper upward adjustments to proposed best and final costs under cost-reimbursement solicitation is denied where agency had a reasonable basis for the adjustments.

Procurement

Noncompetitive Negotiation

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

Agency properly justified on the basis of urgency a sole-source acquisition of limited quantities of overhauled critical helicopter parts from the original manufacturer where no other source, including the protester, possessed or would reasonably have access to the appropriate test stand, which is necessary for testing overhauled parts, in time to meet the required schedule.

Procurement

REDACTED VERSION**Competitive Negotiation**

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

Contracting agency may consider offeror's efficiency in performing the required work when evaluating the relative merits of proposals, even where the request for proposals (RFP) does not specifically list efficiency as an evaluation factor.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency was not required to hold discussions regarding protester's proposed management structure, about which the evaluators were concerned, since the protester's proposal was rated as acceptable or better on all evaluation factors/subfactors under which management structure was evaluated, and agencies are not required to point out elements of proposals that receive less than full evaluation credit.

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Telecommunications

Protest alleging that the National Aeronautics and Space Administration (NASA) must immediately either award a separate contract for international calls or instead place such calls via a non-mandatory contract awarded by a Department of Defense (DOD) entity is denied where: (1) NASA is participating in an upcoming governmentwide procurement for such services conducted by the General Services Administration (GSA); (2) GSA expects to complete its procurement by the third quarter of fiscal year 1995; and (3) NASA reasonably concluded that the cost of placing its international calls using the DOD contract will exceed the cost of continuing to use its noncompetitively selected international carrier, AT&T, until GSA awards a governmentwide contract.

B-252754, October 6, 1994

Procurement

Contract Disputes

- Liquidated damages
- ■ Amount determination

GAO will examine GSA's allocation to executive agencies of liability incurred in settlement of contract claim to determine legal errors in the allocation.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Mandatory use

Securities and Exchange Commission was exempt from mandatory use provision in FSS contract based on GSA's actions in connection with a proposed contract modification.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Mandatory use

Federal Maritime Commission's existing contract for court reporting services exempted the Commission from mandatory use of FSS contract for period that existing contract was in effect.

Procurement

Contract Disputes

- Liquidated damages
- ■ Amount determination

GAO will entertain claims regarding allocation of settlement liability in this matter for 30 days from the date of this decision. In order to render a final determination of liability, no claims will be considered after that date.

B-257236.2, October 6, 1994

94-2 CPD ¶ 117

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Pricing

Protest that solicitation fee schedule is "cumbersome, unwieldy, and impractical" is denied where the fee schedule was required by applicable law and regulation.

B-257463, B-257463.2, October 6, 1994

94-2 CPD ¶ 128

Procurement

Sealed Bidding

- Invitations for bids
- ■ Responsiveness
- ■ ■ Descriptive literature

Agency properly rejected as non-responsive protester's bid which contained descriptive literature showing that the product offered did not comply with material specifications.

Procurement

Bid Protests

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

Protest that awardee's bid was non-responsive is dismissed as untimely where allegation was first raised after protester's receipt of agency report and the protester made no post-bid opening attempt to examine awardee's bid; protesters who do not act promptly after public bid opening to obtain information on bids received so that, upon learning of agency's award decision, the protester will be aware of any alleged defect in winning bid, do not meet requirement to act diligently to identify bases of protest.

B-257485, October 6, 1994

94-2 CPD ¶ 124

Procurement

Specifications

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

Protest challenging unit of issue quantities and pallet dimension packaging specifications as unduly restrictive is denied since challenged specifications are necessary to enable General Services Administration to fulfill its inventory mission on the most cost-effective, efficient basis.

B-257457, October 7, 1994***

94-2 CPD ¶ 130

Procurement

Sealed Bidding

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

The procuring agency improperly allowed the upward correction of the awardee's low bid, to within .13 percent of the bid of the next apparent low bidder, where the only evidence presented by the awardee, its bid worksheet, contained significant discrepancies and inconsistencies, such that the worksheet was not in good order.

B-249969.2, October 11, 1994***

94-2 CPD ¶ 131

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Claim for costs of filing and pursuing a successful protest, including reasonable attorneys' fees, is allowed where protester and its attorneys have provided sufficiently detailed documentation to support claim.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Attorney fees
- ■ ■ ■ Amount determination

Claim for attorneys' fees charged protester for activities occurring in period after decision sustaining protest was issued is allowed where attorneys' fees are associated with analyzing and explaining decision to protester and with pursuing claim for protest costs.

B-253988, October 11, 1994

Procurement

Payment/Discharge

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

An agency entered into an Intergovernmental Personnel Act (IPA) agreement to detail a university employee to the agency with the agency reimbursing the university for the employee's salary and benefits. Several months after the employee began work, the agency determined that the agreement was invalid because the individual selected for the assignment had not been a university employee for at least 90 days as required by IPA regulations. Accordingly, the agency declined to reimburse the university. Payment to the university is approved on a *quantum meruit* basis.

B-257491, October 11, 1994

94-2 CPD ¶ 132

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Price adjustments
- ■ ■ Reduction

Agency may issue a delivery order for equipment and installation on the General Services Administration Federal Supply Schedule on the basis of a price reduction received after initial quotations were submitted where there is no evidence in the record that the agency improperly disclosed a competitor's initial lower price to the proposed awardee.

B-257634, October 11, 1994

94-2 CPD ¶ 133

Procurement

Bid Protests

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

Protest allegation challenging various terms of solicitation for offers is dismissed as untimely where the protest was not filed in the General Accounting Office until 6 months after the deadline for submission of initial offers.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest allegations are dismissed as academic where agency intends to take corrective action that responds entirely to protester's concerns.

Procurement

Bid Protests

- Allegation substantiation
 - ■ Burden of proof
-

Procurement

Bid Protests

- Dismissal

Protest that agency improperly requested information of protester that is not being requested all offerors is dismissed for failure to state a valid basis of protest; request relates to protester responsibility, and the particular information requested is unique to the protester's proposal at its offered building.

B-257656, October 11, 1994

94-2 CPD ¶ 13

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester's proposal which failed to satisfy several minimum requirements of the RFP was properly rejected as unacceptable.

B-256053.4, October 12, 1994***

94-2 CPD ¶ 13

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
-

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
 - ■ ■ Attorney fees
-

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Protester is entitled to reimbursement of reasonable costs of filing and pursuing protests when the agency did not undertake an adequate investigation of the validity of the protest grounds until more than 5 months after the protester filed the initial protest, which directly raised the issue that led to the agency taking corrective action.

Procurement**Specifications**

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

Agency reasonably bundled its requirements for pyrotechnic weapon effects signature simulators, which represent 2 of 25 subsystems of a developmental laser-based weapon simulation system to be used for military training exercises, where the agency reasonably concluded that total system integration; reliability; and operational safety necessitated one contractor to be responsible for all phases of design, development, and testing of the system components—including the simulators—and for any failures in these areas.

B-256813.5, October 14, 1994**Procurement****REDACTED VERSION****Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Small business set-asides**
- ■ ■ ■ **Compliance**

Under total small business set-aside solicitation, where offeror checked the wrong box and certified that "not all supplies to be furnished" would be manufactured by a small business concern, proposal was unacceptable under the terms of the solicitation.

Procurement**Sealed Bidding**

- **Ambiguous bids**
- ■ **Determination criteria**

Procurement**Specifications**

- **Ambiguity allegation**
- ■ **Specification interpretation**

An ambiguity exists in a solicitation if a material solicitation term is subject to more than one reasonable interpretation. Where protester relies on its own reasonable interpretation of such a material term and is materially prejudiced by agency's contrary interpretation, solicitation is defective.

B-257536, October 14, 1994**Procurement****Competitive Negotiation**

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Prior contracts**
- ■ ■ ■ **Contract performance**

Solicitation notice that award will be made to offeror whose proposal is most advantageous to the government, price and other factors considered, coupled with advice that evaluation factors are listed in descending order of importance, provides reasonably definite outline of evaluation scheme. Where solicitation does not state the relative weights of evaluation subfactors, the subfactors are understood to be of equal importance. Solicitation statement that past performance will

not be point scored, but will be highly influential in determining relative merit of proposal (including credibility of proposal and capability of offeror), provides adequate information regarding consideration of past performance under evaluation scheme.

Procurement

Competitive Negotiation

■ Requests for proposals

■ ■ Terms

■ ■ ■ Ambiguity allegation

■ ■ ■ ■ Interpretation

Protest that solicitation provisions specifying "desired" requirements for ammunition procurement are vague and ambiguous is denied where the stated preferences relate to explicit evaluation factors and the solicitation provides offerors sufficient detail to enable them to compete intelligently and on an equal basis.

Procurement

Specifications

■ Minimum needs standards

■ ■ Determination

■ ■ ■ Administrative discretion

Protest that solicitation requirement for offerors to be members of the Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI), or demonstrate by certification from independent laboratory that offered product complies with SAAMI specifications is unduly restrictive is denied where: compliance with SAAMI standards reasonably satisfies agency's concerns of ensuring consistent high level of product safety, performance and quality assurance; requirement is reasonably related to the agency's minimum needs; and agency does not itself have capacity to perform complete testing to confirm product compliance with all SAAMI specifications.

Procurement

Specifications

■ Minimum needs standards

■ ■ Competitive restrictions

■ ■ ■ GAO review

Protest challenging as unduly restrictive solicitation requirement for offeror to submit evidence of its manufacturing capability since solicitation only states a preference for the offeror's own manufactured product is denied where requirement is reasonably related to agency's *bona fide* concern of offeror and product reliability, quality assurance, and ability to timely meet short delivery deadlines of potentially large volume ammunition orders of law enforcement agencies.

Procurement

Socio-Economic Policies

■ Small business set-asides

■ ■ Use

■ ■ ■ Administrative discretion

Agency decision not to set aside a procurement for small business concerns is proper where the agency concluded, after consideration of relevant factors, including the procurement history and the relatively complex nature and large volume of the ammunition to be procured, and with the concurrence of the Small Business Administration, that it could not reasonably expect to receive proposals from at least two responsible small business offerors.

Procurement

Competitive Negotiation

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

Evaluation of specific proposal features which are not explicitly identified under the solicitation as evaluation criteria is permissible where those features are intrinsically related to, and encompassed by, the criteria that are identified in the solicitation.

Procurement

Competitive Negotiation

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

Price/technical tradeoffs are nonobjectionable so long as they are reasonable and consistent with the solicitation evaluation criteria.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Minimum needs standards

Cancellation of request for proposals after submission and evaluation of offers is proper where the agency no longer requires the solicited services.

Procurement

Contract Management

- Contract administration
 - ■ GAO review
-

Procurement

Contractor Qualification

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

Protest that agency improperly found awardee responsible, and subsequently executed novation agreement with third-party contractor rather than recompetes requirement is dismissed; protester does not allege, and record does not show, bad faith or fraud on the part of agency officials in finding the awardee responsible, and the decision to novate contract to another firm rather than recompetes is a matter of contract administration not reviewable by General Accounting Office.

Procurement

Competitive Negotiation

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

Protest that solicitation failed to adequately notify offerors that agency intended to award on the basis of initial proposals is denied where solicitation incorporated by reference the Federal Acquisition Regulation (FAR) clause which so stated; agency was not required by FAR or otherwise include full text of that clause in the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Weighting

Price/technical tradeoff analysis was not reasonable where it failed to take into account the availability of a quantity discount associated with a technically superior proposal in determining whether that technical superiority justified paying a price higher than that offered by a technically lower-rated proposal.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Discussions were not misleading where they led the protester into the area of the proposal about which the agency had concern.

Procurement

Sealed Bidding

- Two-step sealed bidding
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Protest of selection of seven other firms for final negotiation of contracts for demonstration testing of glass melter technologies for the vitrification of low-level radioactive wastes is denied, where the protester proposed a combustion melter system which had recently been unsuccessfully demonstrated; and the source selection officials reasonably determined that the system had inherent flaws which called into question whether it could be demonstrated and implemented within the time schedule under the solicitation and the applicable environmental agreement.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Defects
- ■ ■ Evaluation criteria

Protest that solicitation is defective because it is based on faulty estimates is denied where the estimates were reasonably based on the most current information available to the agency.

Procurement

Contract Management

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

Enforcement of solicitation housing requirements during contract performance is a matter involving contract administration which is not for review by the General Accounting Office.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where the protester fails to demonstrate errors of fact or law warranting reversal or modification of prior decision.

Procurement

Specifications

- Minimum needs standards
- ■ Leases

Where a solicitation for leased space provided an absolute preference for offered space that is in full compliance with the new construction handicapped accessibility requirements contained in the Uniform Federal Accessibility Standards, the protester's low-priced proposal of less than fully compliant space was properly rejected where the agency received an acceptable offer of space fully complying with the new construction standards.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prices
- ■ ■ ■ Leases

Agency's determination that the awardee's offered lease price was reasonable does not reflect an abuse of discretion where it was based on an independent appraisal, a market survey, present value analysis, and the proposed building's current fair annual rental.

Procurement

Contract Management

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

Where a timely size protest was filed after small business-small purchase set-aside award, and the awardee was found by the Small Business Administration to be other than a small business, the agency, in the absence of legitimate countervailing reasons, should have terminated the contract and made award to the protester—the only eligible small business.

B-256014.4, October 24, 1994

Procurement

Specifications

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

Solicitation requirement for multiple items of brand-name-or-equal safety eyeglasses and parts "as long as all items are interchangeable" does not unduly restrict competition where the challenge requirement is reasonably related to the agency's minimum needs to make quick and safe repair to broken glasses while minimizing its inventory and costs.

B-257630, October 24, 1994

Procurement

Competitive Negotiation

- Contract award notification
- ■ Procedural defects

Protest that contracting agency improperly failed to provide notice of proposed award prior to award is denied where the agency properly waived the prior notice requirement by reasonably determining (in writing) that the urgency of the requirement necessitated the award without delay.

Procurement

Competitive Negotiation

- Technical transfusion/leveling
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest that agency engaged in technical leveling by conducting successive rounds of discussion with other offerors is denied where the additional discussion questions merely sought clarification of minor points that did not affect the acceptability of proposals or address any inherent weaknesses in proposals, and where all offerors were permitted to submit best and final offers.

Procurement

Sealed Bidding

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

Protest against cancellation of invitation for bids after bid opening is denied where agency properly determined that Service Contract Act (SCA), 41 U.S.C. §§ 351-358 (1988), applies to solicitation for contract with principal purpose of furnishing of services rather than sale of property; and failure to include SCA provisions and accompanying wage rate determinations may affect bidders' pricing, thus providing a compelling reason to cancel.

Procurement**REDACTED VERSION**

Competitive Negotiation

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

Agency's failure to consider in its cost evaluation of a time-and-materials contract for engineering services the cost of unpriced "other direct cost" items proposed by an offeror that the solicitation required to be priced renders the agency's evaluation unreasonable.

Procurement

Competitive Negotiation

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

Agency acted properly in amending a solicitation and requesting a second round of best and final offers, in response to two protests, notwithstanding the disclosure of certain information about the awardee's proposal, where the record shows a reasonable possibility that the solicitation failed to adequately advise offerors of the actual basis for award as was contended by the protesters.

Procurement

Sealed Bidding

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

Agency determination to cancel unrestricted solicitation after bid opening, but prior to award, was justified where agency reasonably determined cancellation was required because of the contracting officer's erroneous initial determination not to set the procurement aside for exclusive small disadvantaged business participation.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Agency rejection of an offer on the basis that the offeror failed to commit itself to conduct required accelerated weathering tests was improper where the protester's offer makes clear that the offeror did agree to meet all test requirements by conducting in-house tests, as required by the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester neither shows that prior decision denying its protests contained errors of fact or law, nor presents information not previously considered that warrants reversal or modification of our decision.

Procurement

Noncompetitive Negotiation

- Contract extension
- ■ Sole sources
- ■ ■ Propriety

Agency improperly extended a contract on a sole-source basis where other responsible source such as the protester, would have been able to compete for the requirement had the agency engaged in adequate advance procurement planning to allow a phase-in period for a new contract.

Procurement

Contractor Qualification

- Licenses
- ■ Applicability

Requirement that contractor be accredited, under an IFB for remedial/refresher educational courses, is unobjectionable where the requirement was reasonably determined to be necessary to assure program quality and is in accord with Department of Defense policy.

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