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Current GAO Officials

Comptroller General of the United States
Charles A. Bowsher

Deputy Comptroller General of the United States
Vacant

Special Assistant to the Comptroller General
James F. Hinchman

General Counsel
Robert P. Murphy (Acting)

Deputy General Counsel
Vacant

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Preface

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

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Appropriations/Financial Management

B-240264, February 7, 1994***

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Research/development contracts
- ■ ■ Funding
- ■ ■ ■ Necessary expenses rule

The Fish and Wildlife Service may not incrementally fund research work orders performed across fiscal years because the research work orders are considered entire for purposes of the *bona fide* need rule, and thus chargeable to the appropriation available at execution rather than funds current at the time the research is performed. The Service should charge subsequent modifications increasing the amount allotted to the original appropriation because the Service anticipated increasing the funding available for the research when the research work order was issued.

B-255237, February 8, 1994

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Substitute checks

Former U.S. Marine Corps disbursing officer is relieved of liability pursuant to 31 U.S.C. § 3527(c) for the improper payment of both original and recertified checks. The disbursing officer followed the proper procedures in the issuance of the successor check; there is no indication of bad faith on the part of the disbursing official; and collection action was initiated in a timely and adequate manner.

B-253291.2, February 14, 1994

Appropriations/Financial Management

Claims Against Government

- Claim settlement
- ■ Interagency debts

The Wyoming National Guard has the authority to pay claim made by the Western Area Power Administration (WAPA) for costs of repairing an electrical transmission structure that collapsed when struck by a National Guard truck during training exercises. Since WAPA's power operations are wholly consumer-financed and WAPA's customers would ultimately bear the costs of a disallowed claim, the interdepartmental waiver doctrine does not apply. 71 Comp. Gen. 1 (1991).

B-254712, February 14, 1994

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Utility services
- ■ ■ ■ Use taxes

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone charge imposed by the state of North Carolina because the charge is a vendee tax, the legal burden of which falls directly on the federal government as a user of telephone services.

B-255092, February 14, 1994

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Utility services
- ■ ■ ■ Use taxes

The federal government is constitutionally immune from paying the 9-1-1 emergency telephone surcharge imposed by the state of Wyoming because the surcharge is a vendee tax, the legal burden of which falls directly on the federal government as a user of telephone services.

B-251428, February 16, 1994***

Appropriations/Financial Management

Claims By Government

- Termination costs
- ■ Service contracts

The General Services Administration may recover costs associated with an agency's withdrawal from local service through termination charges assessed on the agency. The termination charges may include direct as well as other costs associated with the agency's departure. See Comp. Gen. decisions cited. However, we are unable to conclude on the record before us whether a common distributable (CD) termination charge computed by multiplying the CD rate (GSA's annually estimated monthly overhead cost per line) in effect on the date an agency departs, by the number of lines disconnected, by 12 months, reasonably approximates GSA's cost to efficiently adjust (reduce staffing) to the agency's departure. Nor is such a CD termination charge supported when it is rationalized on the basis of budgetary impact on remaining users. Finally, the record before us does not permit us to conclude whether such a CD termination charge, when predicated on providing stability to GSA's rate structure, is reasonable (cost and other factors considered).

B-251466, February 25, 1994***

Appropriations/Financial Management

Judgment Payments

- Permanent/indefinite appropriation
- ■ Availability

The U.S. Information Agency must bear from its own appropriations the costs (including the costs of temporary legal staff) it has incurred in assisting the Justice Department defend sex discrimination lawsuit because those costs reflect the proper provision of federal agency support to Justice Department litigators.

Civilian Personnel

B-254371, February 2, 1994

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

An employee who is entitled to return transportation and related expenses under 5 U.S.C. §§ 5722 and 5724(d) (1988), is not entitled to real estate and related expenses which are authorized only under the separate statutory provisions of 5 U.S.C. §§ 5724 and 5724a (1988).

B-254625, February 10, 1994

Civilian Personnel

Compensation

- Severance pay
- ■ Eligibility

An employee received a general notice of a reduction in force, and resigned prior to receiving any specific notice of his own separation. Under these circumstances, we consider the employee's resignation to be voluntary, and we deny the employee's claim for severance pay because the employee here is not considered to be involuntarily separated, for purposes of eligibility to receive severance pay, since the circumstances of his resignation did not fulfill either one of the two separate criteria for receiving severance pay under 5 C.F.R. §§ 550.706(a)(1) or (a)(2) (1993).

B-255603, February 10, 1994

Civilian Personnel

Relocation

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

The Federal Travel Regulations allow the initial 60-day period for temporary quarters subsistence expenses (TQSE) to be extended due to circumstances which have occurred during the initial period that are beyond the employee's control and acceptable to the agency. A housing shortage that exists prior to the initial TQSE period and continues to occur during that period may be given consideration by the agency as a basis for an extension of TQSE. However, whether and for what periods to grant TQSE initially and to grant extensions of TQSE are matters within the discretion of the employing agency, and GAO will not disturb such determinations unless they are arbitrary, capricious or contrary to law.

B-253504, February 14, 1994

Civilian Personnel

Travel

- Travel expenses
- ■ Travel orders
- ■ ■ Modification

The Department of the Navy issued an employee a 365-day temporary duty order for duty in Italy on the basis of a cost comparison which showed that temporary duty was less expensive than a permanent change of station. The Navy's action was based on then-existing agency policy guidance. The Navy subsequently questioned the validity of the temporary duty assignment in view of later-issued guidance on long-term temporary duty and retroactively revoked his temporary duty orders and converted them to permanent change-of-station orders. The well-established general rules are that legal rights and liabilities in regard to travel allowances vest as and when travel is performed under competent orders, and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have become fixed under the applicable statutes and regulations. Therefore, the employee is not indebted to the Navy for the temporary duty expenses involved.

B-254267, February 14, 1994

Civilian Personnel

Compensation

- Overtime
- ■ Substitution
- ■ ■ Compensatory time

An Air Force Reserve Colonel, who was employed as a civilian Air Reserve Technician (ART), was granted compensatory time off which caused his pay to exceed the amount authorized by 5 U.S.C. § 5547 (1988) (maximum rate of GS-15), and § 5308 (maximum amount for Level V of the Executive Schedule). This constitutes an erroneous payment. His civilian position was created by a memorandum of understanding between the Air Force and the then Civil Service Commission in 1957, and as such his pay and allowances are subject to the provisions of title 5 of the United States Code the same as other federal employees. *See*, court cases cited.

Civilian Personnel

Compensation

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

Air Force Reserve Technician's request for waiver under the provisions of 5 U.S.C. § 5584 (1988), for erroneous payment of compensatory time, may be allowed since there is no indication in the record that he was at fault in the matter.

B-255551, February 14, 1994

Civilian Personnel

Compensation

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

An agency erroneously continued to pay an employee at a special rate of pay after the employee transferred from a position for which a special rate had been approved to a position for which a special rate was not applicable. The Claims Group granted waiver for that portion of her debt that accrued before she received a Notification of Personnel Action (SF-50) stating that she was not entitled to the special rate, but denied waiver for the remaining debt. On appeal, the employee asserts that the agency should have continued her pay at her former rate based on the "highest rate of pay" rule. The agency determined that this rate would not be applied to the employee's new position. We have no authority to reverse this determination, which is a matter within the agency's discretion. A special rate of pay later was authorized for the employee's new position; however, this occurred after the period of the overpayment, and therefore, does not apply to this case. Finally, although collection of the debt may cause some hardship, hardship is not a basis for waiver.

B-254626, February 17, 1994

Civilian Personnel

Travel

- Lodging
- ■ Expenses
- ■ ■ Noncommercial lodging

An employee on temporary duty exchanged a week he owned at his home timeshare resort for a week at a timeshare resort at his temporary duty location. For the purpose of establishing lodging cost, he claimed the annual maintenance fee he was required to pay at his home resort and the additional exchange fee he had to pay to arrange the timeshare trade. The agency disallowed all expenses claimed. On appeal, the exchange fee paid by the employee to acquire use of the timeshare lodgings at the temporary duty point may be used to establish his daily lodging rate for per diem purposes, but not the annual maintenance fee he paid to his home resort.

B-255520, February 23, 1994

Civilian Personnel

Relocation

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

An employee whose household goods are authorized to be moved by the GBL method incident to his transfer but who chooses to make his own arrangements for household goods movement may be reimbursed his "actual expenses," which include the reasonable cost of laborers to help with the move. When an agency responsibly determines what that reasonable cost is and declines to reimburse the employee based on a higher per-hour cost plus charges for the laborers' travel, lodging, and meals, the General Accounting Office will not disturb the agency's determination.

Civilian Personnel

Relocation

- Household goods
- ■ Shipment
- ■ ■ Insurance
- ■ ■ ■ Reimbursement

Since it is the policy of the government to assume its own risks of loss, an employee who made his own arrangements to move his household goods may not be reimbursed the costs of insurance on a vehicle he leased to transport his household goods and insurance on the household goods themselves.

B-255550, February 25, 1994

Civilian Personnel

Compensation

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

For about 21 months, an agency paid a special salary rate applicable to positions requiring a certified typist to an employee whose job classification did not qualify for the special rate. The employee inquired about his entitlement to the special rate and received erroneous advice from his personnel office that he was entitled to the special rate. Since his job description and his actual duties included some typing, and the agency issued the employee five Notifications of Personnel Action (SF 50) prior to and during the period erroneously stating his job classification as including typing, the employee had no reason to doubt the explanation given to him by the personnel office. Accordingly, the amount of the overpayments received during the first 20 months, before he received notice of the error, is waived.

Military Personnel

B-254705, February 15, 1994

Military Personnel

Pay

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

Navy member who was entitled to an Overseas Housing Allowance (OHA) received two retroactive OHA payments, one of which was erroneous. The record shows that the member (1) had been given erroneous information regarding retroactive payment of OHA and, on that basis, expected to receive a large sum that was reasonably consistent with the total of the two payments, and (2) was assured upon questioning the statement of indebtedness that followed the payments that the payments were correct and the situation would be remedied. In these circumstances, the member acted in good faith and without fault in accepting the erroneous payment, and the debt therefore may be waived under 10 U.S.C. § 2774.

B-252990, February 24, 1994

Military Personnel

Pay

- **Retirement pay**
- ■ **Waiver**
- ■ ■ **Service credits**

Administrative Office of the United States Courts is advised legislation or congressional approval should be sought for retired military members to waive receipt of military retired pay to receive credit for military service in the calculation of an annuity under the Judicial Survivors' Annuities System, 28 U.S.C. § 376.

B-255005, February 25, 1994

Military Personnel

Pay

- **Additional pay**
- ■ **Eligibility**
- ■ ■ **Statutes of limitation**

Claim for Sea Duty Pay which allegedly accrued between 1943 and 1945 and which was first received in GAO on July 21, 1993, is barred under 31 U.S.C. § 3701(b)(1) since it was not filed within 6 years of the date of accrual.

Miscellaneous Topics

B-251481.3, February 15, 1994

Miscellaneous Topics

Federal Administrative/Legislative Matters

■ Statutory restrictions

■ ■ Printing

Modification to Department of Defense-wide contract for design and implementation of a computer-aided logistics and support system, requiring the contractor to provide design and engineering services so that the Department can develop camera-ready copies of technical manuals and other documents, does not in itself violate the restrictions on printing at other than the Government Printing Office in section 207 of the Legislative Branch Appropriations Act, 1993, and 44 U.S.C. § 501, and is not on that basis outside the scope of the contract.

Procurement

Late cases

B-254797, B-254797.2, January 21, 1994

94-1 CPD ¶ 167

Procurement

REDACTED VERSION

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protests that evaluation of awardee's proposal was impermissibly based on an inflated assessment of its technical merit are denied where the record shows that the evaluation was reasonably based on the information in the awardee's proposal and was consistent with the stated evaluation criteria.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Allegation substantiation

Protests alleging preferential and unequal treatment of offerors and other improper conduct are denied where nothing in the record shows that the awardee improperly received information or gained an improper competitive advantage as a result of communications between the awardee's representative and the source selection chairman acting within the scope of his duties as point of contact for providing technical clarification to prospective offerors.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

The agency satisfied its obligation to conduct meaningful discussions where through a series of questions the agency reasonably led the offeror into the deficient areas in its proposal.

Current cases

B-252362.4, February 1, 1994

94-1 CPD ¶ 56

Procurement

Competitive Negotiation

- **Offers**
- ■ **Price competition**
- ■ ■ **Adequacy**
- ■ ■ ■ **Fixed-price contracts**

Where solicitation contemplated award of a fixed-price contract, there was adequate price competition, and cost and pricing data was not requested or submitted, agency was only required to perform a price analysis, not a cost analysis, to determine whether prices offered were fair and reasonable.

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Cost estimates**

Price analysis was proper where it consisted of comparing proposed prices with an independent government cost estimate based on prior contracts for similar services.

Procurement

Competitive Negotiation

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

Protest that awardee's proposal failed to comply with solicitation requirements regarding technical data rights is denied where awardee had obtained the required data rights, its proposal took no exception to the solicitation requirements, and agency had no reason to question awardee's intention to comply with the solicitation requirements.

Procurement

Special Procurement Methods/Categories

- **Computer equipment/services**
- ■ **Contract awards**
- ■ ■ **Authority delegation**

Protest that agency exceeded delegation of procurement authority (DPA) is denied where record demonstrates that contracts awarded were within the authority granted by the DPA.

Procurement**REDACTED VERSION**

Competitive Negotiation

- Requests for proposals
- ■ Cost data
- ■ ■ Administrative discretion

Protest of agency selection of single ship class on which to base cost model is denied where agency has reasonably established that selected ship class is the one most similar to the strategic sealift ships being procured for which detailed, reliable and useful cost data were available, and thus, the class most likely to provide useful cost estimating relationships; agency reasonably determined that addition of dissimilar ships for which useful and reliable cost data was not available could not reasonably be expected to improve the model.

B-254995, February 1, 1994**94-1 CPD ¶ 57**

Procurement**Sealed Bidding**

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Where first article items are identical to and part of the initial quantity to be delivered, and the submission of an enhanced first article price operates as a device to obtain unauthorized contract financing, the bid is materially unbalanced and must be rejected as nonresponsive where acceptance of the bid would compromise the government's rights to terminate the contract.

Procurement**Bid Protests**

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

Protester who submitted nonresponsive bid is not an interested party for the purpose of challenging the responsiveness of the awardee's bid where there are other responsive bids in line for award if the protest were sustained.

B-255015, February 1, 1994**94-1 CPD ¶ 58**

Procurement**Specifications**

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

Protest that specifications requiring installation of a shallow concrete trench steam system without permitting, as an option, the use of a direct buried underground system, are overly restrictive of competition is denied, where the agency has reasonable bases for the restriction based on its considerable past experience with both types of systems that it is easier, faster, and cheaper to repair a shallow concrete trench system.

Procurement

Specifications

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

A procuring agency's decision to combine several tasks to support a modification to a weapon trainer system is reasonable where agency has shown that this combination represents its minimum needs to obtain necessary systems integration and the record shows that any further breakdown of the procurement would shift the ultimate burden for successful performance from the contractor to the Navy.

Procurement

Competitive Negotiation

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

Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the offeror had no chance of award because of numerous deficiencies in its product demonstration model.

Procurement

Sealed Bidding

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

Where bidder completed and signed procurement integrity certificate for contract modifications, but failed to sign required procurement integrity certificate applicable to the underlying contract, the bid must be rejected as nonresponsive because execution of only the certificate applicable to modifications that have not yet been issued does not bind the bidder to perform the underlying contract in accordance with the substantial legal obligations imposed by the certificate of procurement integrity.

Procurement

Bid Protests

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

Where protester is in possession of facts that would establish the timeliness of its request for reconsideration, but does not include this information in the request, the General Accounting Office will not consider such information on a second request for reconsideration filed after the first request is denied because it appeared to be untimely.

B-254197, February 2, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Carrier liability
- ■ ■ ■ Presumptions

A carrier may be liable for transit damage to an item not listed on the inventory if there is substantive evidence that the shipper tendered it to the carrier for transport.

B-254976, February 2, 1994

94-1 CPD ¶ 66

Procurement

Competitive Negotiation

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

Under a "public/private" competition for the repair of aircraft components, where the request for proposals (RFP) stated that the government would analyze the apparent successful offer to determine whether the proposal reflected a realistic estimate of the total price required to satisfy the work requirement, the Navy contracting officer was legally obligated to so analyze the successful offeror's proposal. Where Defense Contract Audit Agency (DCAA) conducted audit of depot's proposal and determines that the depot's proposal is acceptable for evaluation and states that it did not perform cost realism analysis, DCAA's report does not satisfy the RFP's requirement to ascertain the realism of the successful offeror's costs.

B-254979, February 2, 1994

94-1 CPD ¶ 67

Procurement

Specifications

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

Protest that requirement for cleaning chemical in solicitation for tank washer degreasing machine which requires that the chemical be capable of cleaning a number of different types of metals without discoloring the metals and without leaving residue on the metals is impossible to meet is sustained where the agency does not rebut protester's evidence that no such chemical exists and the record otherwise suggests that the specifications overstate the agency's needs.

B-255090, February 2, 1994

94-1 CPD ¶ 68

Procurement

Sealed Bidding

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

Bid which did not include bid bond was properly rejected despite bidder's assertion that bond was included with its bid package submitted to the agency prior to bid opening. In absence of independent evidence to establish validity of bidder's assertion, bid may not be considered responsive.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Compliance time periods
- ■ ■ ■ Adequacy

Allegation that solicitation amendment did not afford the protester sufficient time to respond before submitting its best and final offer is denied where record shows that the amendment merely relaxed an existing requirement contained in the solicitation.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Procurement

Competitive Negotiation

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

Where agency is procuring the lease of office space and is currently housed in protester's building, allegation that agency improperly required, during discussions, that the protester propose temporary "swing space" which agency could occupy while protester performed necessary renovations is denied since record shows that agency has not, in fact, required that protester propose such space.

Procurement

Specifications

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

Protest that agency's invitation for bids for metal components of the 155mm Field Artillery Projectile Pallet is overly restrictive and biased against wood pallets is denied where the agency reasonably determined that only metal pallets meet the agency's minimum needs.

Procurement

Government Property Sales

- Timber sales
- ■ Bids
- ■ ■ Certification

Under a combined sealed bid/auction timber sale, where protester did not provide an executed FS-2400-43 certification with its bid as required by the prospectus, agency properly rejected protester's bid.

Procurement

Competitive Negotiation

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

Protester's allegation that contracting agency improperly evaluated its proposal is denied where record shows that the agency reasonably evaluated the proposal under each of the solicitation's evaluation criteria.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Burden of proof

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Expenses claimed as bid preparation costs and 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. Where claim is not adequately documented, claimant is not entitled to recovery.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester forfeited its right to recover the costs of filing and pursuing its protest at the General Accounting Office where the protester failed to file its claim with the contracting agency detailing and certifying the time expended and costs incurred in connection with the protest within 60 days after receipt of the decision sustaining its protest.

Procurement

Competitive Negotiation

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

Protest of agency's evaluation of technical and cost proposals is denied where evaluation was reasonable and consistent with the solicitation evaluation criteria.

Procurement

Small Purchase Method

- Purchase orders
- ■ Cancellation

After issuing purchase orders to a particular firm for equipment on the Federal Supply Schedule (FSS) and then concluding that the request for quotations did not specify all of the agency's minimum needs, the agency properly took corrective action by suspending the firm's performance of the purchase orders, advising the firms which initially submitted quotes of the agency's additional requirements, and then requesting revised quotes from these firms. Upon receiving revised quotes, based on a standard clause contained in FSS contracts, the agency was not precluded from considering promotional discounts which made another firm's quote low priced.

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation
- ■ ■ Technical acceptability

Protest that awardee's training course does not meet requirements set forth in a request for quotations (RFQ), issued in conjunction with a multiple award Federal Supply Schedule contract, is denied where the record shows that the awardee's schedule contract included courses meeting the requirements of the RFQ.

Procurement

Small Purchase Method

- Quotations
- ■ Price adjustments

Under the price reduction clause incorporated into every Federal Supply Schedule (FSS) contract, an FSS supplier may issue a price reduction at any time and by any method.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates

Protest that agency's cost evaluation was flawed due to awardee's alleged failure to comply with Defense Federal Acquisition Regulation Supplement (DFARS) clause which was not included in solicitation, but which protester asserts should be "read into" the solicitation, is denied, since there is no legal authority to incorporate the clause into the solicitation and, in any event, awardee's proposal complied with the requirements of the clause.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Protest that agency was required to give evaluation preference or additional credit for protester's past performance as the incumbent contractor is denied where solicitation did not state that an offeror's past performance would be an evaluation factor.

B-255179; B-255179.2, February 7, 1994

94-1 CPD ¶ 77

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester's contention that agency improperly rejected its proposal for local telecommunications equipment and services as technically unacceptable is denied where the record reasonably supports the agency's conclusion that, despite several rounds of discussions, the protester failed to demonstrate in its proposal that it would provide an integrated services digital network, a mandatory solicitation requirement.

Procurement

Bid Protests

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

Allegation that agency unreasonably required protester to demonstrate compliance with allegedly "unfinalized" industry standards and recommendations contained in request for proposals (RFP) for telecommunications equipment and services is dismissed as untimely where the RFP clearly set forth the standards and recommendations and agency stressed the importance of demonstrating compliance during several rounds of discussions, and allegation was not raised until 3 years after the closing date for receipt of initial proposals, and nearly 7 months after the protester submitted its best and final offer.

Procurement

Competitive Negotiation

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

Technically unacceptable proposal cannot be considered for award regardless of any potential cost savings to the government.

Procurement

Sealed Bidding

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

Agency determination to allow bidder to correct an alleged mistake in its low bid prior to award was proper where the bidder presented clear and convincing evidence establishing both the existence of its mistake and its intended bid price, and the corrected bid would remain low as corrected.

Procurement

Sealed Bidding

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

Agency properly rejected as nonresponsive a bid that failed to acknowledge an amendment containing a revised Davis-Bacon Act wage determination with an increased wage rate for plumbers; amendment was material, and thus had to be acknowledged for the bid to be responsive, since (1) agency reasonably anticipated that plumbers could be used in performance of the contract, and (2) bidder's employees were not covered by a collective bargaining agreement binding the firm to pay the minimum wage prescribed for plumbers under the wage determination.

Procurement

Small Purchase Method

- Quotations
- ■ Competitive ranges
- ■ ■ Exclusion

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation
- ■ ■ Technical acceptability

Agency properly excluded the protester's quote from the competitive range under a small purchase acquisition for the preparation of financial analysis training materials and the planning of a 1-day seminar after reasonably concluding that the proposal was technically unacceptable where the protester's quote failed to discuss the firm's conference planning experience, provided no description of the firm's specific experience with local and regional financial institutions and regulatory agencies, and failed to include a detailed training curriculum.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Price reasonableness

Agency's cancellation of an invitation for bids after bid opening on the basis that the only bid received was unreasonable as to price was proper where the protester's bid exceeded the government estimate by a significant amount and the protester fails to show that the government estimate is unreasonable.

Procurement

Sealed Bidding

- Hand-carried bids
- ■ Late submission
- ■ ■ Acceptance criteria

Contracting agency properly rejected as late a hand-carried bid received after the bid opening officer declared the time for bid opening as shown on the bid opening room clock.

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Organizational experience

Protest that proposed awardee did not meet definitive responsibility criteria set forth in solicitation requiring 10 years general contracting experience and two projects in the last 2 years similar to the proposed project, is denied where contracting officer reasonably considered that prior experience of the firm's principal officers satisfied the experience requirement and the firm's recently completed contracts satisfied the project requirement.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protester bears the risk of nonreceipt of an amendment, which accelerated the bid opening date by a week, where the agency has provided evidence that it properly distributed the amendment to the protester.

Procurement

Bid Protests

- Allegation
- ■ Abandonment

Where protester submits a response to the agency report and fails to address certain issues raised in the protest and responded to in the report, General Accounting Office considers such issues abandoned.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency misevaluated protester's technical/management proposal does not provide a basis for overturning the award where, even if agency had evaluated proposal in manner asserted, awardee's technical/management score remained 16.8 percent higher, technical/management was weighed more highly than cost in the evaluation, and its slightly higher cost was determined reasonable and worth the premium.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest against evaluation of protester's proposal for overhaul of howitzers is denied where review shows that the evaluation was reasonable and protester has merely put forth its disagreement with the agency evaluation.

Procurement

Sealed Bidding

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

Bid for roof replacement, including asbestos removal and disposal, was properly rejected as nonresponsive where required bid bond included a notation that stated the bond was void if the contract work included the removal of asbestos materials.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Joint ventures
- ■ ■ ■ Administrative determination

Agency properly determined that joint venture did not qualify as a small disadvantaged business (SDB) where agency reasonably found that SDB member of joint venture did not control the management and daily business operations of the activity.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of a decision denying a protest that the specifications in a commercial item acquisition for raingear are unclear and preclude competition on an equal basis is denied where the request fails to show that the original decision erroneously concluded that the specifications adequately describe the products sought.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to the costs of filing and pursuing its protest under 4 C.F.R. § 21.6(e) (1993) by virtue of an agency's issuance of an amendment during the pendency of the protest that incorporates the proper warranty provision in place of an inappropriate warranty provision where the protester at no time argued that the solicitation failed to contain the proper warranty provision.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Protest that the awardee received inside information is denied where the protester submits no evidence, and there is none in the record, to support the allegation; the fact that the awardee applied for a visa for one of its employees to visit Mozambique, the country in which the contract would be performed, prior to being awarded the contract provides no basis for finding improper action on the part of agency officials.

Procurement

Competitive Negotiation

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

Protest that agency engaged in technical leveling where best and final offers (BAFO) were requested twice is denied because there is no evidence supporting the protester's speculative assertion and agency reports that it reopened negotiations and requested a second round of BAFOs in order to allow offeror whose proposal had previously been mistakenly rejected back into the competitive range.

Procurement

Competitive Negotiation

- Offers
- ■ Subcontracts
- ■ ■ Use
- ■ ■ ■ Propriety

Protest that award of a contract to a firm that will subcontract part of work to be performed in Mozambique to foreign nationals violates the Buy American Act is denied where the solicitation did not include Buy American Act provisions and the contract is not subject to the Act because the work is to be performed outside the United States.

B-254392.8; et al., February 9, 1994

94-1 CPD ¶ 92

Procurement

Competitive Negotiation

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

Where solicitation stated that high quality guard services were required and that quality would be equated in the evaluation with the level of the proposed compensation package, but the solicitation also provided for considering other factors in evaluating personnel quality, the agency was not required to conclude that only protester was acceptable, based on fact that it proposed highest compensation.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency's failure to advise protester during discussions that various proposed rates exceeded the government estimate for those rates was unobjectionable where protester's overall price was not too high.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester's argument that it was entitled to more than a one-point scoring advantage over award-ee under a technical subfactor is without merit where solicitation did not provide that a certain level of qualifications would receive a certain point score, and protester neither alleges nor shows that agency was inconsistent in scoring similarly superior areas of proposals; General Accounting Office will not reevaluate proposals.

Procurement

Competitive Negotiation

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

Price/technical tradeoff was reasonable where agency considered protester's technical advantage in light of awardee's lower price, and determined that technical advantage was relatively insignificant, while price advantage was significant; fact that technical factors were more important than price did not preclude agency from determining that lower-cost proposal represented best value to government.

B-255103, February 9, 1994

94-1 CPD ¶ 93

Procurement

Sealed Bidding

- Contract awards
- ■ Multiple/aggregate awards

Agency is required to make multiple awards, rather than an aggregate award, under an invitation for bids (IFB) for weather observation services which contains four separate items, each covering a separate weather observation location, where the IFB permitted bids on single locations and did not require an aggregate award, and where multiple awards will result in a lower price than an aggregate award.

B-255115, February 9, 1994

94-1 CPD ¶ 94

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Contracting agency's mechanical application of an undisclosed government estimate of minimum staff-hours to evaluate offers was unreasonable where the approach: (1) failed to assess whether a firm's proposed work force was particularly skilled or efficient, (2) failed to assess whether because

of a unique approach the firm could satisfactorily perform the work with different staffing than estimated by the agency, (3) awarded the same score for proposals that were both above and below the government estimate, and (4) overemphasized deviations in less important functions at the expense of more important requirements.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Non-prejudicial allegation**

Absent any evidence that awardee's personnel, who had previously worked for the government, had access to information not available to all offerors, agency's determination that there was no reason to disqualify awardee was reasonable.

B-255118, February 9, 1994***

94-1 CPD ¶ 95

Procurement

Sealed Bidding

- **Bid guarantees**
- ■ **Responsiveness**
- ■ ■ **Sureties**
- ■ ■ ■ **Adequacy**

Where bids for indefinite delivery, indefinite quantity contract were stated as multipliers rather than dollar amounts, contracting officer properly exercised discretion in deciding not to waive protester's inadequate bid guarantee where contracting officer reasonably determined that protester's bid guarantee was less than the difference between the value of the protester's and the awardee's next-higher bid to the government.

B-253957.2, February 10, 1994

94-1 CPD ¶ 96

Procurement

Bid Protests

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

Request for reconsideration is denied where request essentially raises the same matters on reconsideration as were raised in the original protest; protester has not demonstrated that decision was based on error of fact or law.

B-255122, February 10, 1994

94-1 CPD ¶ 97

Procurement

Competitive Negotiation

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

General Accounting Office review of an agency's technical evaluation is limited to ensuring that the evaluation is fair, reasonable, and consistent with the evaluation criteria; mere disagreement with the agency does not itself render the evaluation unreasonable.

Procurement

Bid Protests

- Patent infringement
- ■ GAO review

Allegation that awardee will violate another firm's patents in performing a contract is dismissed because the matter is for consideration by the courts, not the General Accounting Office.

Procurement

Contractor Qualification

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

Contracting officer's determination that awardee is a responsible contractor will only be disturbed upon a showing that the contracting officer acted in bad faith or failed to properly apply definitive responsibility criteria in the request for proposals.

B-255165, February 10, 1994

94-1 CPD ¶ 98

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel
- ■ ■ ■ Availability

Protest that award was improper because the contracting officer knew, or should have known, that the awardee did not have authority to use the credentials package of a proposed dentist is denied where record does not establish that contracting officer had reason to suspect awardee had no authority to propose individual and, in fact, awardee received individual's credentials package from recruiter who had permission to use credentials package and individual discussed his employment for proposed position with awardee.

B-255186, February 10, 1994

94-1 CPD ¶ 106

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably determined that a proposal for active electronic buoys was technically unacceptable because it lacked technical detail with regard to the protester's approach to system design, and did not propose an acceptable approach to satisfy one of the buoy's subsystems.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protester was provided meaningful discussions where it was reasonably led into the deficient areas of its proposals that were found deficient due to lack of technical detail or unacceptable technical approach.

Procurement

Bid Protests

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

Protest challenging the bundling of services in a single procurement is untimely where not raised until the agency's exercise of a contract option, nearly 18 months after the closing date for receipt of proposals for the original award.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protest challenging contract award for court and conference reporting services is dismissed where basis for award was consistent with basis for award in request for quotations; having solicited quotations on basis of low price to public for transcripts, agency could not then make award on materially different basis of protester's "bonus bid" (offering a per page bonus to the government for every page reported).

Procurement

Bid Protests

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

The inadvertent disclosure to the protester during discussions that the awardee was also in the competitive range did not inform the protester that the awardee had been determined to satisfy a statutory domestic content restriction or mandatory qualification criteria contained in the solicitation, such that the protester was required to protest the awardee's alleged noncompliance within 10 working days of the disclosure; a protest of these matters filed within 10 working days of the date the protester learned of the award (which was the earliest date on which the protester learned that the awardee was considered eligible for award) is timely under General Accounting Office's Bid Protest Regulations.

Procurement

Socio-Economic Policies

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

The procuring agency reasonably accepted the awardee's certification and worksheets as establishing compliance with domestic content restrictions of the Foreign Relations Authorization Act in the absence of information indicating that the certification or worksheets are inaccurate.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic sources
- ■ ■ Evaluation
- ■ ■ ■ Preferences

In a negotiated procurement in which lowest evaluated price became the basis for award, protest that the awardee is not entitled to a statutory domestic price evaluation preference is denied, where the record shows that neither the awardee nor the protester was accorded such a preference and where even if the protester was accorded the price preference, and the awardee was not, the protester's price would not be lower than the awardee's.

Procurement

Competitive Negotiation

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

The procuring agency reasonably considered the experience of the awardee's proposed subcontractor and an affiliated corporation in determining that the awardee satisfied a definitive responsibility criterion, where the solicitation did not restrict the satisfaction of the particular experience requirement to only the prime contractor's experience.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Price negotiation

The procuring agency was not required to inform the protester during discussions that its price was too high, where the protester's price, which was less than the government estimate, was found fair and reasonable.

B-247576.4, February 14, 1994

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

The General Accounting Office will deny a carrier's request for reconsideration of a decision involving transit damages to a service member's household goods when the carrier merely restates arguments in its original request for review, and does not present evidence demonstrating an error of fact or law in the prior decision.

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Amount determination

The General Accounting Office will not question an agency's calculation of the value of damages to items in a shipment of household goods unless the carrier presents clear and convincing evidence that the agency's calculation was unreasonable.

B-255159, February 14, 1994

94-1 CPD ¶ 108

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions is sustained where agency concedes that meaningful discussions were not held and the record does not clearly demonstrate that protester was not prejudiced as a result of the failure.

B-255176, February 14, 1994

94-1 CPD ¶ 101

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Evaluation criteria
- ■ ■ ■ Defects

Protest challenging award under invitation for bids (IFB) for home oxygen respiratory equipment and services is sustained where IFB failed (1) to identify oxygen cylinder rental charges as a price-related factor to be considered in the evaluation of bids, (2) to advise bidders how the charges would factor into the evaluation, and (3) to provide bidders with the agency's estimate of the number of cylinders to which rental charges would apply.

B-255178; B-255178.2, February 14, 1994

94-1 CPD ¶ 102

Procurement

Competitive Negotiation

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

Protest that agency engaged in technical leveling is denied where: (1) agency requested only one round of best and final offers; (2) protester has provided no evidence to support its speculative assertion; and (3) General Accounting Office review of record provides no evidence that agency officials gave awardee more favorable treatment than protester during the course of the procurement.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost realism
- ■ ■ ■ Analysis

Protest that agency's probable cost analysis was inadequate is denied where the General Accounting Office review shows that agency's analysis was reasonable in the three specific instances raised by the protester and there is nothing else to discredit agency's probable cost analysis.

B-255183, February 14, 1994

94-1 CPD ¶ 103

Procurement

Sealed Bidding

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

Agency decision to permit upward correction of mistake in bid, based on its determination that mistake is supported by clear and convincing evidence, will not be disturbed unless there is no reasonable basis for it.

B-251481.3, February 15, 1994

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Modification to Department of Defense-wide contract for design and implementation of a computer-aided logistics and support system, requiring the contractor to provide design and engineering services so that the Department can develop camera-ready copies of technical manuals and other documents, does not in itself violate the restrictions on printing at other than the Government Printing Office in section 207 of the Legislative Branch Appropriations Act, 1993, and 44 U.S.C. § 501, and is not on that basis outside the scope of the contract.

B-254623.2, February 15, 1994

94-1 CPD ¶ 132

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest challenging technical evaluations is denied where those evaluations are reasonable and consistent with the solicitation's evaluation criteria.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency evaluation of technical proposal as deficient was reasonable where: (1) sample task response was limited to generalized discussion of unproven and undeveloped technology; (2) protester provided three vague resumes and failed to provide required letters of commitment for proposed key personnel; and (3) proposal failed to discuss elements of protester's management approach as required by the solicitation.

Procurement

Competitive Negotiation

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

Agency properly made contract award on the basis of initial proposals without conducting discussions where: (1) solicitation clearly advised offerors that the agency intended to make contract award without discussions; (2) agency reasonably determined that protester's proposal deficiencies would require major revisions for the proposal to become acceptable; and (3) agency reasonably determined that another offeror's initial proposal was a technically superior and reasonably priced offer.

Procurement

Special Procurement Methods/Categories

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

Agency that published in the *Commerce Business Daily* (CBD) its intention to purchase a particular vendor's equipment off that vendor's nonmandatory schedule contract, properly ordered an alternative source's equipment off that source's schedule contract, after determining that the alternative source's equipment was lower priced and functionally equivalent to the CBD-listed equipment.

Procurement

Competitive Negotiation

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

Procurement

Contractor Qualification

- Organizational conflicts of interest
- ■ Determination

Agency reasonably determined that the protester was not eligible for award because of an organizational conflict of interest where, if awarded the contract for audit services, the protester would be reviewing its own audits performed for the agency's predecessor entity.

Procurement

Sealed Bidding

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

Agency properly rejected bid as nonresponsive where descriptive literature submitted with the bid raised doubt about whether the product offered conformed to the specifications.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Mandatory use
- ■ ■ Advertising

Where two purchase orders for a centralized dictation system and the related equipment are against two mandatory General Services Administration Federal Supply Schedule contracts, the agency is not required to advertise or seek further competition for the purchases.

Procurement

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.

Procurement

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

Agency had reasonable basis to reject protester's proposal as technically unacceptable where in response to solicitation contemplating the supply of newly manufactured items, protester who intended to furnish used, reconditioned material failed to submit with its proposal information and supporting data required by the solicitation for determining the acceptability of the protester's material.

B-254378, B-254820, February 16, 1994

Procurement

Payment/Discharge**■ Shipment****■ ■ Damages****■ ■ ■ Amount determination**

Where a Government Bill of Lading (GBL) for shipping a vehicle contains the notation "Released value not exceeding \$2.50 per pound per article," the carrier generally will be liable for loss or damage up to \$2.50 multiplied by the vehicle's weight even though, under applicable regulations, (1) absent a GBL notation the carrier's liability would be only \$20,000 per vehicle, at no extra charge, and (2) the noted valuation results in the shipper paying the carrier a premium for accepting such potential liability.

B-254464.3, February 16, 1994 REDACTED VERSION 94-1 CPD ¶ 230

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation****■ ■ ■ Cost estimates**

Agency's probable cost analysis was not reasonable because it credited the awardee with its major subcontractor's proposed "free" uncompensated overtime, even though the contract did not require the awardee to provide the benefit of this overtime to the government.

B-254492.2, February 16, 1994 REDACTED VERSION 94-1 CPD ¶ 168

Procurement

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

An agency failed to conduct meaningful discussions where it twice requested best and final offers from an offeror without apprising that offeror that its otherwise [deleted] proposal contained a deficiency—a level of effort that was considered unacceptably low—that rendered the proposal technically unacceptable.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Submission methods
- ■ ■ Facsimile

Agency properly rejected best and final offer (BAFO) transmitted by facsimile in response to agency's facsimile transmitted BAFO request where the solicitation did not allow for offers or modifications thereto to be so transmitted.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Protester was not misled, so as to excuse the protester's late best and final offers (BAFO), by the agency's failure to designate in a request for BAFO the room number where hand-delivered BAFOs were to be delivered, as shown by the fact that the envelope in which the protester's BAFO was contained was pre-addressed with the correct room number—the same room where the protester's initial proposal was delivered.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Agency properly rejected hand-carried best and final offer (BAFO) submitted 4 minutes after the designated 3:00 p.m. closing time, notwithstanding that the BAFO request stated that the closing time was 3:00 p.m. standard time and the agency decided the timeliness of the delivery using local time which was daylight savings time, because the Uniform Time Act of 1966, 15 U.S.C. § 260a (1988), provides for only one standard time for governmental purposes, that is, the applicable local time, regardless of whether it is referenced as standard time or daylight savings time in the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Modification
- ■ ■ Acceptance criteria

Agency may not accept a late best and final offer as a modification to an "otherwise acceptable" initial proposal that was more advantageous to the government where the initial offer cannot be accepted because it does not commit the offeror to comply with a material provision added after initial proposals were submitted.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Disadvantaged business set-asides
- ■ ■ Cancellation
- ■ ■ ■ Justification

Agency properly withdrew small disadvantaged business (SDB) set-aside after opening bids and made award to low non-SDB bidder where the low SDB bidder's bid exceeded the low non-SDB bidder's bid by 29 percent and, while the low SDB bidder's bid was within 10 percent of the original government estimate, the agency reasonably concluded that the estimate was flawed, such that the SDB bidder's bid exceeded the properly calculated estimate by more than 24 percent.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety

Award in excess of \$100,000 was properly made to a bidder, which executed a certificate of procurement integrity clause after bid opening and prior to award, where the invitation for bids did not include the standard certificate of procurement integrity clause, requiring the submission of executed certificates with bids, because the government estimate for the requirement was less than \$100,000, and where the protester did not timely protest the failure of the solicitation to require the submission of certificates with the bids.

Procurement

Competitive Negotiation

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

Protester's proposal was properly excluded from the competitive range where the agency reasonably concluded that there were significant weaknesses in the proposal which made it technically unacceptable.

Procurement

Contract Management

- **Contract administration**
 - ■ **Commercial products/services**
 - ■ ■ **Compliance**
 - ■ ■ ■ **GAO review**
-

Procurement

Contractor Qualification

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

Protest that scraper-tractor offered by low bidder does not meet the standard commercial product requirements in the invitation for bids because of the extent to which the unit will be modified, is denied where the low bidder certified in its bid the compliance of the machine with the specifications and the procurement history of this item shows that in the absence of a comparable commercial product, both past contractors for this item—including the protester—have had to make substantial modifications to their commercial products in order to meet the specification requirements.

Procurement

REDACTED VERSION**Competitive Negotiation**

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

Given the reasonableness of the agency's determination that the awardee's proposal was superior to the protester's proposal because the awardee's proposal was more detailed than the protester's and offered significant technical advantages, the agency's award selection, based on its determination that the technical advantages associated with the awardee's proposal outweighed its higher price, was reasonable and consistent with the solicitation's evaluation criteria that accorded "paramount" importance to technical merit.

Procurement

Competitive Negotiation

- **Discussion**
- ■ **Adequacy**
- ■ ■ **Criteria**

Protester was provided meaningful discussions where it was reasonably led into the areas of its proposal that were found deficient or lacking in detail; agency was not required to "spoon-feed" the protester, whose proposal was not detailed in numerous respects, with "more precise" questions regarding the proposal's ambiguities or weaknesses.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Requirement for meaningful discussions is satisfied when all competitive range offerors are advised of the weaknesses, deficiencies, and excesses in their proposal and are given the opportunity to revise their proposals through the submission of best and final offers.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Protest challenging the acceptability of the awardee's proposal on the basis that the awardee's proposed staff did not have Performance Analyzer source code experience is denied where the solicitation only requires proposed key personnel to have experience "with the Performance Analyzer software tool" and the awardee demonstrated that its proposed key personnel had the required experience.

Procurement

Competitive Negotiation

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

Protest challenging cost realism analysis of awardee's proposal based on the awardee's alleged lack of expertise is denied where the record shows that the cost analysis was reasonable and the agency assured itself that each firm proposed a technical approach that met all the solicitation requirements and that each firm's offer fairly and reasonably reflected the costs represented by that approach.

Procurement

Contractor Qualification

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

Agency contacts with Small Business Administration (SBA) during agency's consideration of protester's responsibility without any contacts with protester, does not evidence bad faith by agency; contracting agency and SBA personnel are encouraged by applicable regulations to engage in complete exchange of information during SBA's review, and regulations do not contemplate opportunity for input from contractor except in certificate of competency application.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Contracting officer reasonably declined to refer firm's nonresponsibility to SBA for a second time (after denial of certificate of competency) where only additional information provided in support of request that agency reconsider the matter was a letter from protester's attorney containing unsupported assertions that deficiencies relating to the firm's capability to perform had been resolved.

B-255316, February 17, 1994

94-1 CPD ¶ 122

Procurement

Contractor Qualification

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

Protest challenging agency's determination that awardee will be able to perform the contract by supplying an aircraft swaging tool kit conforming to the commercial item description in the solicitation involves an affirmative determination of the awardee's responsibility. General Accounting Office will not review this matter absent a showing of possible fraud or bad faith or misapplication of definitive responsibility criteria.

B-254421.2, February 18, 1994 REDACTED VERSION 94-1 CPD ¶ 204

Procurement

Competitive Negotiation

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

Agency reasonably downgraded protester's best and final offer in areas found deficient where the record shows that the protester did not adequately respond to the agency's concerns during discussions.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Price adjustments

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

Procurement

Competitive Negotiation

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

Awards to higher cost offerors are unobjectionable where the solicitation provided that technical factors were more important than cost and past performance and the agency reasonably found that the awardees' higher costs were offset by their higher-rated and lower-risk technical proposals.

B-255225, February 18, 1994

94-1 CPD ¶ 123

Procurement

Competitive Negotiation

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

Agency properly eliminated proposal from consideration for award where proposal did not include price of spares in maintenance prices as required by solicitation, did not clearly indicate the protester's intention to provide spares, and failed to explain how the protester planned to meet requirement for abbreviated dialing for sets currently in use.

Procurement

Bid Protests

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

Offeror whose proposal was properly found to be unacceptable is not an interested party to protest the acceptability of the awardee's proposal where there is another, technically acceptable, offer in line for award if the protest were sustained.

B-255236, *et al.*, February 18, 1994

94-1 CPD ¶ 124

Procurement

Bid Protests

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

Protest that solicitation: (1) did not clearly state the agency's technical scoring scheme, (2) assigned inordinate weight to certain evaluation factors, and (3) deprived offerors of adequate time for site visits is untimely where it is not filed prior to the time set for receipt of initial proposals.

Procurement

Competitive Negotiation

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

Where agency reasonably determined that technical superiority of awardee's proposal outweighed its higher cost, selection of awardee's proposal as the most advantageous to the government is not objectionable.

Procurement

Competitive Negotiation

- **Discussion**
- ■ **Adequacy**
- ■ ■ **Criteria**

Protest that agency failed to conduct meaningful discussions with the protester and the awardee is denied where the record establishes that the agency identified specific deficiencies and weaknesses in each offeror's proposal and gave both offerors an equal opportunity to correct them.

Procurement

Contractor Qualification

- **Organizational conflicts of interest**
- ■ **Determination**

Protest that agency should have excluded the awardee from the competition because a proposed subcontractor has, in the protester's view, an organizational conflict of interest is denied where the subcontractor did not participate in the preparation of the statement of work and did not gain a competitive advantage that could be passed on to the awardee.

B-255318, February 18, 1994

94-1 CPD ¶ 133

Procurement

Competitive Negotiation

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

Award to higher cost, higher technically rated offeror is proper where solicitation evaluation scheme gave greater weight to technical factors than to cost and where agency reasonably found that protester's lower cost did not outweigh the technical advantages demonstrated in the awardee's higher cost proposal.

Procurement

Competitive Negotiation

- **Competitive advantage**
- ■ **Incumbent contractors**

Awardee's participation in government sponsored conference during evaluation of proposals was proper where participation was required by awardee's then current contract. Advantages due to incumbency are unobjectionable where there is no evidence of preferential or unfair action by the government.

Procurement

Competitive Negotiation

- Best/final offers
- ■ Response times
- ■ ■ Adequacy

Protest that agency's request for best and final offers (BAFO) improperly allowed only 2 hours and 15 minutes for BAFO submission is denied where record supports agency's conclusion that immediate responses were required, and protester in fact was able to modify its offer and submit it within the required time period.

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Where protest is dismissed for failure to file comments within 10 working days after receipt of agency report, protester's late receipt of report does not provide a basis for reconsidering dismissal when the protester did not notify the General Accounting Office that it did not receive the report until more than 10 working days after the report due date shown on the notice acknowledging receipt of the protest.

Procurement

Competitive Negotiation

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

Protest that procuring agency improperly included the protester's proposal in the competitive range is denied where the protester sought to have its proposal put back in the competitive range after its elimination as technically unacceptable; the protester was fully cognizant that it faced an "uphill battle," as evidenced by its unanswered request, made before its proposal was put back into the competitive range, that the agency change the ground rules of the competition to permit the protester to have an equitable chance for award; and the government's reinstatement of the protester's proposal in the competitive range reflected concern that the soundness of the original technical evaluation had not yet been established.

Procurement

Competitive Negotiation

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

Agency's exclusion of a proposal from the competitive range is reasonable where the offeror failed to establish in its proposal how its proposed building would satisfy solicitation requirements for handicapped accessibility and parking or show how flooding problems on the site would be corrected.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ American Indians

Bureau of Indian Affairs (BIA) properly found firm ineligible for award of a contract set aside for Indian economic enterprises where record shows that the individual primarily responsible for management of the enterprise's daily business has not provided evidence of Indian descent and does not possess an ownership interest in the concern.

Procurement

Socio-Economic Policies

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

Protest that BIA unreasonably found that qualifying Indian owner holding majority interest in joint venture would not be involved in the daily business management of enterprise is denied where evidence relied on by agency reasonably led it to question whether the firm's Indian owner would be involved in the daily business management of the enterprise.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ American Indians

BIA properly considered firm's affiliation with a non-Indian firm under the Department of Defense Mentor-Protege program; statute only precludes consideration of mentor-protege relationship for purposes of the Small Business Act.

Procurement

Sealed Bidding

- Bids
- ■ Public opening

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Requests for proposals

Where an invitation for bids (IFB) is converted to negotiated procedures pursuant to Federal Acquisition Regulation § 15.103, a procuring agency is not required to inform bidders of the bids received under the IFB or of the bidders that will be given an opportunity to participate in the negotiation, even where the low bid was not opened at bid opening because it was mishandled by the government.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

An offer is not mathematically unbalanced where there is no evidence that it contains both nominal and enhanced price; accordingly, such an offer cannot be rejected as materially unbalanced.

Procurement

Competitive Negotiation

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

Protest contention that agency should have downgraded awardee under the personnel evaluation factor for failing to meet solicitation's requirement for a letter of commitment from key personnel is denied where, even if the awardee had received no points under the relevant subfactor, given the virtually insignificant effect on the awardee's overall technical score, the award decision would not change.

Procurement

Competitive Negotiation

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

Allegation that agency conducted flawed cost realism analysis of awardee's proposal is denied where the record shows that the agency had no reason to question audit report on awardee's proposal obtained from the Defense Contract Audit Agency which concluded that awardee's proposed costs were acceptable as a basis for the agency's negotiation position; agency conducted independent analysis of awardee's cost proposal; and agency was reasonably assured that awardee's cost

estimate reflected the costs entailed in its technical approach. Fact that incumbent proposed higher rates than awardee provides no basis for finding awardee's proposed rates unreasonable.

Procurement

Competitive Negotiation

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

Award to technically lower-rated, lower-cost offeror is unobjectionable where, although solicitation emphasized technical factors over cost, it did not provide for award solely on the basis of the highest technical point score, and the technical evaluation board and the source selection authority considered the relative strengths and weaknesses in the protester's and awardee's proposals and could not identify strengths in the protester's higher-rated proposal sufficient to justify paying its higher costs.

Procurement

Competitive Negotiation

- Contract awards
- ■ Source selection boards
- ■ ■ Bias allegation
- ■ ■ ■ Allegation substantiation

Allegation that the source selection authority (SSA) improperly directed or otherwise influenced the technical evaluation board (TEB) to reverse its initial recommendation of award to the protester, a 20-year incumbent, is denied where there is no evidence in the record of bias in favor of the awardee; the TEB's initial recommendation, supported only by generalized conclusions regarding potential effect of award to non-incumbent offeror, reasonably led the SSA to conclude that the TEB unduly emphasized protester's long-term incumbency while discounting awardee's technical capability; and the SSA reasonably asked the TEB to identify strengths in the protester's higher-rated proposal sufficient to justify paying higher costs, and the TEB concluded that it could not.

B-255305; B-255305.2, February 22, 1994

94-1 CPD ¶ 205

Procurement

REDACTED VERSION

Competitive Negotiation

- Competitive advantage
- ■ Allegation substantiation

Protest that a conversation at a trade show between awardee's representatives and an agency official constituted a violation of statutory procurement integrity provisions and provided the awardee with an unfair advantage in preparing its proposal is denied. The configuration of the helicopter's cockpit, which was the topic discussed by the agency official, was to be determined by the agency after award of the contract (for software and engineering modifications to the helicopter) and was not the subject of the evaluation and there is no indication that the agency official's actions resulted in any advantage to the awardee.

Procurement

Competitive Negotiation

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

Protest against agency's performance risk assessment of protester's and awardee's proposal is denied where agency's evaluation and conclusions reached were reasonable and supported by the record.

B-255311, February 22, 1994

94-1 CPD ¶ 129

Procurement

Competitive Negotiation

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

In performing a probable cost analysis for the award of a cost reimbursement contract, the contracting agency properly adjusted offerors' estimated costs of contract performance in the contract's option years to account for anticipated escalation in labor costs by applying an escalation rate to the offerors' direct labor rates.

B-255331, February 22, 1994

94-1 CPD ¶ 130

Procurement

Sealed Bidding

- Bonds
- ■ Justification
- ■ ■ GAO review

Protest against bid and performance bond requirements in an invitation for bids for maintenance services, set aside for small business, is denied where the contracting officer reasonably determined that the bonding is required to ensure uninterrupted performance and for the protection of government property.

B-255346, February 22, 1994

94-1 CPD ¶ 131

Procurement

Contractor Qualification

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

Specification for rotary retort required equipment to comply with all applicable Food and Drug Administration (FDA) regulations. Protest based on allegation that awardee's product fails to comply with FDA and United States Department of Agriculture (USDA) regulations is dismissed because it concerns the agency's affirmative determination that a bidder is responsible. Absent a showing of possible fraud or bad faith on the part of the contracting agency or that definitive responsibility criteria in the solicitation were misapplied, GAO will not review protests based on such allegations.

Procurement

Contract Management

- Contract administration
- ■ GAO review

Protest based on allegation that awardee's rotary retort fails to comply with FDA and USDA regulations is dismissed because it raises issues concerning contract administration which GAO will generally not review. 4 C.F.R. § 21.3(1).

B-255361, February 22, 1994**94-1 CPD ¶ 137**

Procurement

Sealed Bidding

- Bid guarantees
- ■ Validity

Where awardee submitted an original bid bond and a photocopied power of attorney, which by its own terms is valid and binding, the agency reasonably concluded that the bid bond is enforceable.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Awardee's low bid under a requirements-type solicitation is not materially unbalanced where the solicitation's maximum estimated quantities are reasonably accurate representations of the agency's anticipated actual needs and the bid will result in the lowest cost to the government.

B-255747.2; B-255747.3, February 22, 1994**94-1 CPD ¶ 169**

Procurement

Bid Protests

- Moot allegation
- ■ Determination

Dismissal of protest as academic upon receipt of agency report indicating that appropriate corrective action had been taken, without waiting for protester's comments on report, was proper since regulations permit dismissal at time the propriety of such action becomes clear.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ GAO review

The General Accounting Office will not consider protest challenging agency's referral of protester's negative responsibility determination to Small Business Administration (SBA) under Certificate of Competency program where there is no showing that the agency acted in bad faith to deny protester opportunity to obtain SBA review.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Amendments
- ■ ■ Additional work/quantities
- ■ ■ ■ Removal

Protest that an agency decision to delete critical work items from request for proposals for ship repairs after receipt of initial proposals and to direct that those items be performed in-house was an attempt to improperly circumvent the Small Business Act's certificate of competency procedures is denied where the contracting officer reasonably determined that by removing the critical work items, the agency would be able to comply with the Act's requirements, and all offerors, including the protester, were afforded an opportunity to submit offers based on the revised solicitation.

Procurement

Sealed Bidding

- Low bids
- ■ Rejection
- ■ ■ Propriety

Agency's decision to reject bid due to suspected mistake was reasonable where the bid price is significantly lower than both the other bid prices submitted and the government estimate, and where the bidder failed to submit sufficient documentation or explanation to support its bid calculations, creating a reasonable doubt that the bid price included all costs associated with the work required by the solicitation.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Protest that contracting agency improperly rejected section 8(a) firm as nonresponsible despite determination of competency made by Small Business Administration's (SBA) Regional Office is denied where the contracting officer reasonably concluded that the Regional Office's determination did not adequately address contracting agency concerns regarding the technical capability of the firm to perform the contract, and subsequently appealed the Regional Office's decision to the SBA's Central Office, which declined to confirm the Regional Office's assessment that the protester was competent, and instead advised the contracting agency to make award to another 8(a) firm.

Procurement

Socio-Economic Policies

- **Small businesses**
- ■ **Competency certification**
- ■ ■ **Bad faith**
- ■ ■ ■ **Allegation substantiation**

Protest that contracting agency failed to provide Small Business Administration with vital information bearing on protester's responsibility and acted in bad faith is denied where the record does not support these allegations.

B-255301, February 23, 1994

94-1 CPD ¶ 141

Procurement

Competitive Negotiation

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

Protest of award of contract to original equipment manufacturer for overhaul and upgrade of M113 armored personnel carriers is denied where, although protester offered lower price, (1) awardee's proposal was more advantageous under the stated production/management and technical evaluation factors, which were significantly more important than price; and (2) solicitation placed special emphasis on past performance of similar work and awardee had successfully performed significantly more such work.

B-255530, February 23, 1994

94-1 CPD ¶ 170

Procurement

Competitive Negotiation

- **Contract awards**
- ■ **Pre-qualification**
- ■ ■ **Contractor personnel**
- ■ ■ ■ **Security clearances**

Solicitation requirement for security clearance at time of contract award does not unduly restrict competition where contract performance will involve classified material, and will be impossible if the awardee's personnel do not have clearance at that time.

B-254511.2, February 24, 1994

94-1 CPD ¶ 142

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Prior contract performance**

In evaluating the awardee's experience under the solicitation's evaluation criteria, the agency reasonably credited the awardee with the base isolation system installation experience that its sub-contractor would have by the time performance began on this contract, even though this work had not been completed at the time of the evaluation.

Procurement

Competitive Negotiation

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

Price was given appropriate weight in a formula used in making a cost/technical award selection tradeoff where the lowest-priced offer was assigned the maximum possible points and the remaining proposal prices were converted to point scores by dividing the lowest price by the evaluated offeror's price and multiplying resulting quotients by the maximum score for price, which was assigned a weight consistent with that indicated by the solicitation.

B-254692.2, February 24, 1994

94-1 CPD ¶ 143

Procurement

Competitive Negotiation

- **Offers**
- ■ **Evaluation**
- ■ ■ **Prices**
- ■ ■ ■ **Unbalanced offers**

Procurement

Competitive Negotiation

- **Unbalanced offers**
- ■ **Materiality**
- ■ ■ **Determination**
- ■ ■ ■ **Criteria**

Allegation that awardee's offer is unbalanced is denied where record does not show that the awardee's offer contained overstated prices and there thus is no basis to conclude that the offer is mathematically unbalanced.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- **Requests for proposals**
- ■ **Evaluation criteria**
- ■ ■ **Prices**

Allegation that agency should have evaluated price on the basis of present value is denied where solicitation did not provide for the evaluation of offerors' prices for future years on the basis of present value; instead, solicitation stated that the agency would evaluate price by adding the price for each option period to the price for the basic requirement, and the agency properly evaluated prices in accordance with the stated evaluation scheme.

Procurement

Contract Management

■ Contract administration

■ ■ Contract terms

■ ■ ■ Compliance

■ ■ ■ ■ GAO review

Contention that agency could not reasonably determine whether awardee would provide equipment called for by solicitation amendment because the amendment did not require offerors to submit technical proposals establishing that they would provide compliant equipment is untimely where it is not raised until after award. Whether awardee actually will comply with the requirement is a matter of contract administration for consideration by the agency.

B-255199.2; B-255199.3, February 24, 1994

94-1 CPD ¶ 144

Procurement

Socio-Economic Policies

■ Small businesses

■ ■ Disadvantaged business set-asides

■ ■ ■ Joint ventures

■ ■ ■ ■ Administrative determination

Under a solicitation set aside for small disadvantaged business (SDB) concerns, where the non-SDB and SDB participants of a joint venture have an "equal voice" in the management of the joint venture and must specifically agree to the management powers and duties to be delegated the SDB managing party, the SDB participant does not have the requisite legal or management control over the enterprise; where the SDB participant lacks such management control, the fact that the SDB joint venturer holds a majority interest or receives a majority of profits of the enterprise is insufficient for the entity to qualify as an SDB concern.

B-255321, February 24, 1994

94-1 CPD ¶ 145

Procurement

Sealed Bidding

■ Bids

■ ■ Additional costs

■ ■ ■ Per diem

Contention that agency improperly applied a foreseeable cost bid evaluation provision to protester's otherwise low bid for drydocking and repair of a Coast Guard cutter by calculating per diem costs for the cutter's crew only for bidders whose shipyards are located more than 100 miles from the crew's home port is denied where the record does not show that the agency could reasonably have foreseen that such costs would be incurred for the cutter crew at the awardee's shipyard, which was located less than 100 miles from the cutter's home port.

B-255323, February 24, 1994

94-1 CPD ¶ 146

Procurement

Sealed Bidding

■ Bids

■ ■ Responsiveness

■ ■ ■ Prices

■ ■ ■ ■ Line items

Bidder's failure to follow the bid schedule pricing format for one line item does not render the bid nonresponsive and award to the bidder was proper where the intended bid price is clear from the face of the bid and it is also clear that it covers all required work.

Procurement

Bid Protests

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

Post-award protest challenging the contracting agency's proposed use of industrial mobilization exception to requirement for full and open competition is untimely where agency use of the exception was explained in detail in four broad agency announcements published in the *Commerce Business Daily*, including one to which the protester responded.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Production capabilities
- ■ ■ ■ Quality control

Allegation that agency failed to adhere to evaluation criterion concerning production capability set forth in broad agency announcement by awarding to a firm that does not have the required production capability is denied where agency reasonably determined that, despite the awardee's performance problems under a previous contract, the awardee is capable of producing the required items as evidenced by its improved performance under that contract.

Procurement

Competitive Negotiation

- Offers
- ■ Price reasonableness
- ■ ■ Determination
- ■ ■ ■ Administrative discretion

Protester's contention that agency failed to determine that awardee's price was fair and reasonable is denied where record shows that, in fact, agency conducted multiple price analyses of awardee's price and ultimately determined that the price was fair and reasonable.

Procurement

Competitive Negotiation

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

Allegation that agency improperly failed to downgrade awardee's proposed center director in evaluation based on lack of certain knowledge and experience is without merit where record shows that awardee's proposal was in fact downgraded for this reason.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Where solicitation did not require proposal to include certain number of newsletters and training sessions, and agency considered protester's offer of high numbers of both to be acceptable based on technical approach, protester's proposal was not deficient and agency was not required to raise this matter with protester during discussions.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency's failure to advise protester during discussion that its overall cost was too high was unobjectionable where agency determined that protester's overall cost was reasonable given its approach.

B-255353, February 24, 1994

94-1 CPD ¶ 148

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates
- ■ ■ ■ Indefinite quantities

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Unit prices

Where protester's offer on an indefinite-delivery, indefinite-quantity contract based unit prices on the minimum estimated quantity, rather than on one single unit, the agency properly did not award the contract to the protester.

B-255374, February 24, 1994

94-1 CPD ¶ 149

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Competition sufficiency

Agency reasonably excluded proposal from the competitive range (leaving a competitive range of one) where the agency properly concluded that the protester's technical proposal had no reasonable chance for award because it did not show that the protester had the required experience and capability to perform the contract services.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Absence

Agency properly rejected a bid as nonresponsive where it failed to include the required descriptive literature to show the offered pump would comply with the precisely stated mounting and connection requirement.

Procurement

Competitive Negotiation

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

Contracting agency reasonably evaluated protester's performance risk as moderate based upon unfavorable information received concerning protester's performance under a similar contract, indicating performance problems significant enough to warrant such a rating, notwithstanding favorable information received concerning protester's performance under two other similar contracts.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency conducted adequate discussions with protester concerning performance risk-related issues where it led the firm to the major issues during discussions, and where any failure to conduct discussions as to the remaining issues was not prejudicial to protester.

Procurement

Competitive Negotiation

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

Agency reasonably downgraded protester under managerial capability evaluation factor between the initial and the final evaluation from an outstanding rating to a very good rating where there were no documented advantages to support an outstanding rating; protester's mere disagreement with the agency's conclusion does not make it unreasonable.

Procurement

Competitive Negotiation

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

Agency properly made award to the higher-priced offeror whose proposal was rated higher under past performance and rated essentially equal to that of the protester's under both the technical and managerial capability factors, where the tradeoff was reasonable and consistent with the solicitation's evaluation scheme.

B-255355, February 25, 1994

94-1 CPD ¶ 152

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Brand name/equal specifications**
- ■ ■ ■ **Salient characteristics**

Procurement

Specifications

- **Brand name/equal specifications**
- ■ **Equivalent products**
- ■ ■ **Salient characteristics**
- ■ ■ ■ **Descriptive literature**

Bid of "equal" product on brand name or equal invitation for bids is nonresponsive where the descriptive literature submitted with the bid failed to demonstrate the compliance of the "equal" product with the salient characteristics listed in the solicitation, but only stated that unspecified modifications would be made.

B-255379; B-255381, February 25, 1994

94-1 CPD ¶ 153

Procurement

Competitive Negotiation

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

An agency has a compelling reason to cancel a solicitation where inconsistencies between the bidding schedule and specifications render the solicitation prejudicially ambiguous and where the solicitation significantly overstates the agency's minimum needs.

B-255467.2, February 25, 1994

94-1 CPD ¶ 158

Procurement

Bid Protests

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

Request for reconsideration is denied where protest was untimely and protester has made no showing entitling it to an exception to our timeliness rules.

Procurement

Specifications

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

Protest that specifications for construction of buildings to store hazardous waste materials are unduly restrictive of competition is denied where the record shows that the requirements are necessary to meet the agency's minimum needs.

Procurement

Special Procurement Methods/Categories

- **Computer equipment/services**
- ■ **Computer software**
- ■ ■ **Technical acceptability**

Protest that agency improperly required offerors to provide communications software and training compatible with its existing software and hardware is denied where the record shows that the protester proposed alternate services and software that would have required the agency to abandon previously developed software for computer-aided design and manufacture of artificial limbs.

Procurement

Sealed Bidding

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Corporate entities**

Procurement

Sealed Bidding

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

Where the individual signing the bid included ownership and corporate titles after his name, even though the bidding entity identified itself as a joint venture, the agency properly could conclude from the bid itself, the performance history of the entity (the incumbent contractor), and information in an existing and publicly available state tax license that the identity of the bidding entity was not ambiguous.

Procurement

Sealed Bidding

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

Based on an established course of conduct with the proposed joint venture and the terms of the joint venture agreement, the agency could reasonably conclude that the individual signing the bid had the authority to bind the entity to the terms of the solicitation.

B-255426, February 28, 1994

94-1 CPD ¶ 157

Procurement

Sealed Bidding

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

Where invitation for bids provides that award will be made to the low aggregate bidder and requires bidders to submit prices for a variety of labor categories, bidder may not omit prices for certain categories that it considers inapplicable to the work; inserting "N/A" instead of a price renders the bid nonresponsive. Protester should have raised its objections to the labor categories prior to bid opening.

B-256483, February 28, 1994

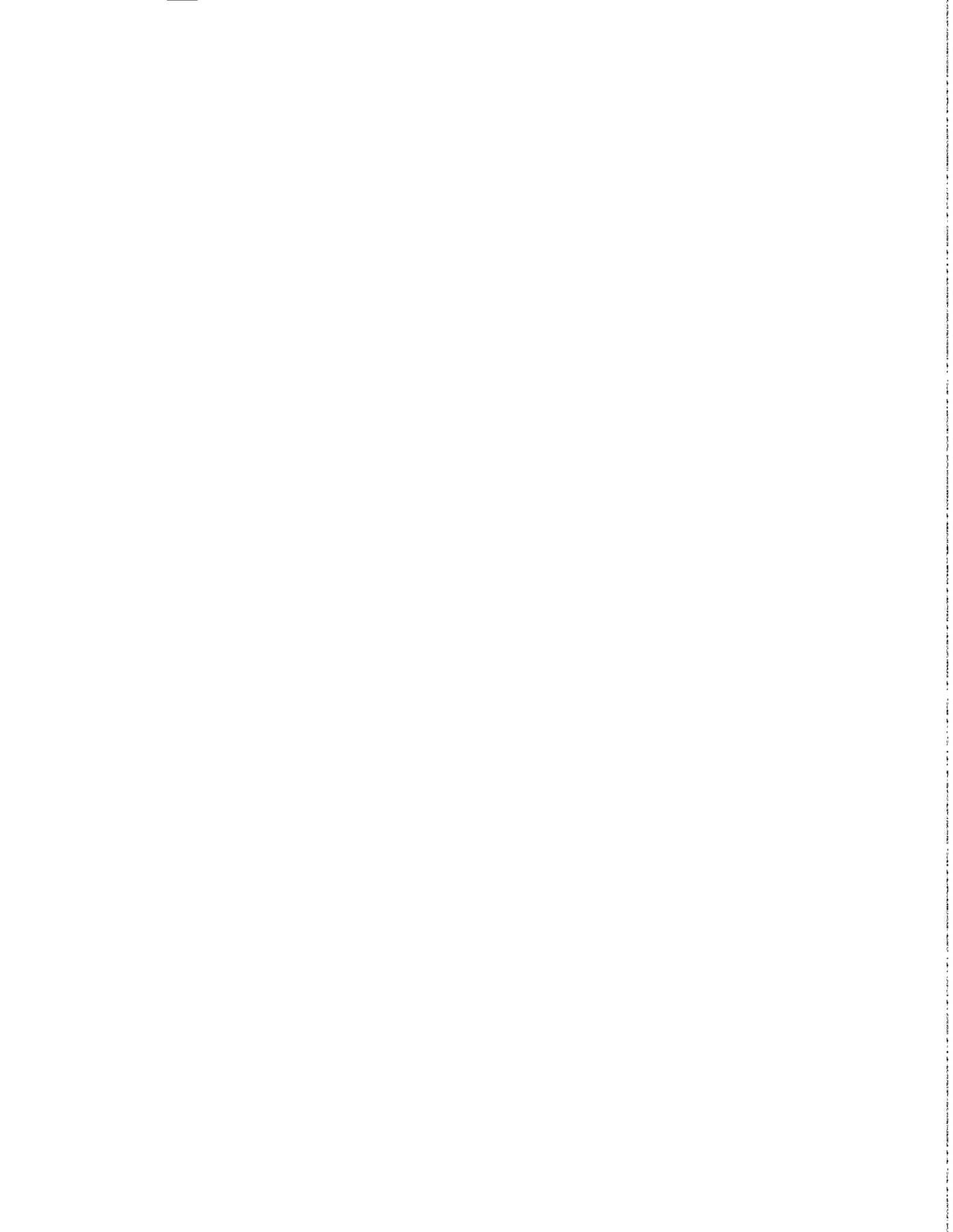
94-1 CPD ¶ 159

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Pre-award samples
- ■ ■ ■ Absence

Agency properly rejected bid as nonresponsive under an invitation for bids containing a bid sample requirement, where the bid sample was received late by the agency because of adverse weather conditions.



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