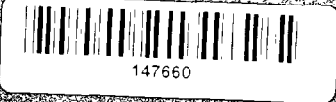


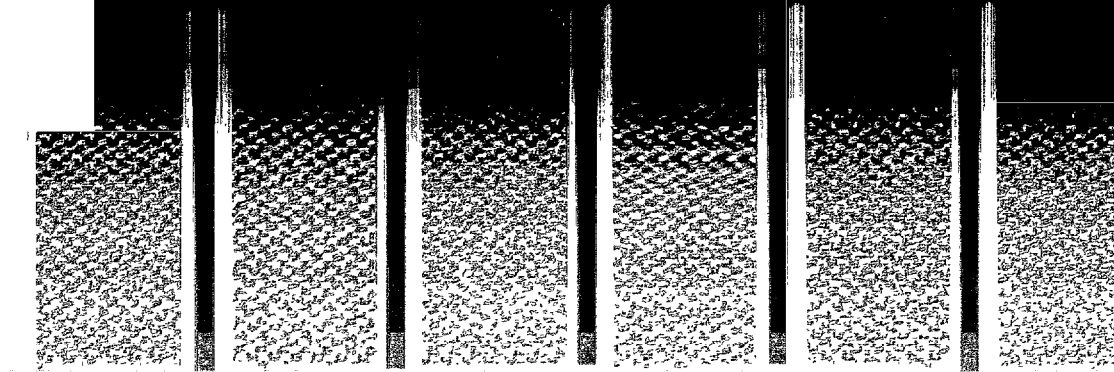
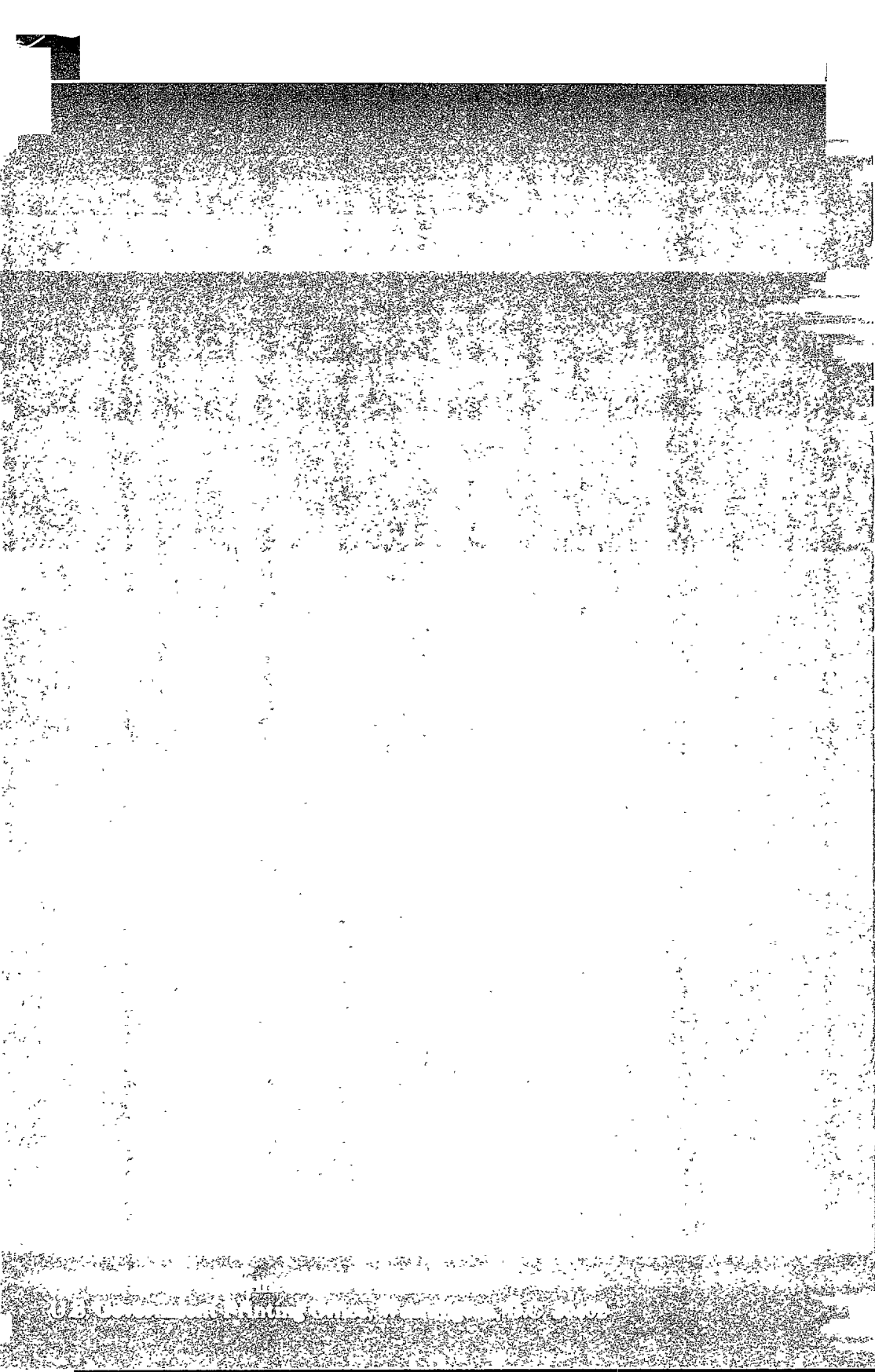
GAO

Office of General Counsel



May 1992

**Digests of Decisions
of the Comptroller
General of the
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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. Code § 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. 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 the file number and date, e.g., B-229329.2, Sept. 29, 1989. 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, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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Appropriations/Financial Management

B-247501, May 4, 1992

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 Colorado because the charge is a tax, the legal burden of which falls directly on the federal government as a user of telephone services.

B-246502, May 11, 1992***

Appropriations/Financial Management

Federal Assistance

- Grant recipients
- ■ Unauthorized loans
- ■ ■ Interest

Interest earned by grantees on unauthorized loans of grant funds belongs to the United States and must be deposited in the Treasury as miscellaneous receipts.

B-245712.3, May 20, 1992

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Attorney fees

Employee, subject to an Inspector General investigation, caused by a third party, may not be reimbursed for the attorney's fees he incurred since the agency, having decided to investigate the employee, did not have a common interest with him.

B-247058 , May 20, 1992

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Taxes
- ■ ■ ■ State/local governments

The Equal Employment Opportunity Commission (EEOC) asks whether it may pay the District of Columbia personal property tax assessed against the Haworth Company and its assignee on furni-

ture which the EEOC is leasing from Haworth under the terms of the Federal Supply Schedule. Since the tax at issue is a tax on the lessor and EEOC as the lessee is not constitutionally immune from paying it, it appears that under paragraph (n) of the Federal Supply Schedule EEOC has obligated itself to pay the amount of the tax unless otherwise excused by the terms of the rental contracts. Since the record did not contain the rental contracts, EEOC is advised to review the contracts to determine whether payment of this tax was specifically waived. Otherwise, EEOC is required to pay the invoices as presented.

B-245541, May 21, 1992***

Appropriations/Financial Management

Appropriation Availability**■ Purpose availability****■ ■ International research**

The Department of Labor, Employment and Training Administration, appropriation for "Training and Employment Services" was available to fund international research projects that could assist the Secretary of Labor in finding solutions to the Nation's employment and training problems. The Job Training Partnership Act requires the Secretary of Labor to establish a comprehensive program of employment and training research to help find solutions to the Nation's employment and training problems. 29 U.S.C. § 1732.

Appropriations/Financial Management

Appropriation Availability**■ Purpose availability****■ ■ Foreign countries****■ ■ ■ Training****■ ■ ■ ■ Manuals/guidelines**

The Department of Labor, Employment and Training Administration, appropriation for "Training and Employment Services" is not available to fund a project to provide developing countries with access to instructional training materials. The Department's appropriation is only available to pay for international research projects to the extent the projects relate to the Department's mission under the Job Training Partnership Act to find solutions to the Nation's employment and training problems.

Civilian Personnel

B-244202, May 5, 1992

Civilian Personnel

Compensation

- Rates
- ■ Determination
- ■ ■ Highest previous rate rule

FAA employee, who has performed continuous, career-conditional federal service since 1963 to the present, is entitled upon repromotion to application of the highest previous rate rule. Therefore, upon repromotion to GS-9 in June 1990, she is entitled to have her salary rate based upon her highest previous salary rate of grade GS-8, step 9. See 5 C.F.R. §§ 531.203(c)(1) and (d) (1991) and ch. 1, paras. 4d and 12, FAA Order 3550.14, Jan. 15, 1985.

B-246928, May 6, 1992

Civilian Personnel

Travel

- Lodging
- ■ Cancellation
- ■ ■ Miscellaneous expenses
- ■ ■ ■ Reimbursement

An employee made a nonrefundable room deposit incident to official travel to Rio de Janeiro, Brazil. Subsequently, the employee learned from the U.S. Embassy that the hotel he had chosen was in an area with critical crime levels and the Embassy recommended avoiding that hotel. The employee changed hotels, but forfeited the deposit. The employee may be reimbursed for the deposit because the forfeiture occurred for reasons acceptable to the agency and the employee had acted reasonably and prudently.

B-247061, May 6, 1992

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

When an employee receiving reimbursement for temporary quarters subsistence expenses (TQSE) rents a room at a monthly rate, the daily rate is calculated by dividing the monthly rate by the number of days in the authorized TQSE period, regardless of the fact that he took several days of personal leave during the period.

B-245772, May 7, 1992

Civilian Personnel

Compensation

- Overtime
 - ■ Eligibility
 - ■ ■ Weekends/holidays
-

Civilian Personnel

Compensation

- Overtime
- ■ Night differentials
- ■ ■ Eligibility

Federal Aviation Administration employees who are authorized under a flexible work schedule established pursuant to a collective bargaining agreement, to report to work between 11:45 p.m. and midnight Sunday for an 8-hour shift claim premium pay for the entire shift. While under *Cecil E. Riggs, et al.*, B-229263.3, April 23, 1992, GAO no longer renders decisions on matters subject to grievance procedures under a collective bargaining agreement, the following views are provided. An employee who performs any part of a regularly scheduled 8-hour period of service on Sunday is entitled to premium pay for the whole shift. In this case, the Office of Personnel Management concluded that under the employees' flexible work schedule any work performed between 11:45 p.m. Sunday and 8:00 a.m. Monday is regularly scheduled work for the purpose of Sunday premium pay. Therefore, the employees are eligible for Sunday premium pay if they report to work between 11:45 p.m. and midnight Sunday.

B-246653, May 8, 1992

Civilian Personnel

Compensation

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

Employee, who was entitled to indefinite pay retention, should have been paid only 50 percent of the 1990 annual pay comparability increase. The agency erroneously paid the claimant the full 100 percent comparability increase for approximately 8 months, resulting in an overpayment of salary. Employee's request for waiver of debt arising from overpayment is denied since facts and circumstances show that he should have been aware of the error and collection of debt is not against equity and good conscience.

B-247553, May 8, 1992

Civilian Personnel

Compensation

- Rates
- ■ Determination
- ■ ■ Highest previous rate rule

Employee claims a salary rate adjustment under the highest previous rate rule. An agency is not under a legal obligation to set an employee's salary at the highest previous rate, unless it has affirmatively relinquished its discretion through the adoption of a mandatory policy, which is not the case here. Furthermore, we cannot say that the agency's actions constituted an abuse of discretion. Thus, employee's claim is denied.

B-244197, May 12, 1992***

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual substance expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

Federal Travel Regulations governing reimbursement of temporary quarters subsistence expenses (TQSE) grant agencies discretion to determine whether transferred employee who obtains permanent-type quarters at new duty station intends to occupy those quarters only on a temporary basis, so as to qualify for TQSE. Employee has burden of providing evidence of such intent which is satisfactory to agency. Agency's determination that evidence is insufficient will not be overturned unless it lacks any reasonable basis in the record and thus constitutes an abuse of discretion. Agency's determination in this case that employee failed to provide satisfactory evidence of intent to occupy permanent-type quarters only temporarily is not without basis in the record, and, therefore, is affirmed.

B-247042, May 12, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Miscellaneous expenses
- ■ ■ Reimbursement

A transferred employee may be reimbursed the costs of having water filtration and electronic security systems disconnected at his old residence and installed at his new residence as a miscellaneous expense. The employee may also be reimbursed, as a miscellaneous expense, for the postage costs for mailing documents to the relocation company handling the exchange of his residences. See Federal Travel Regulations, 41 C.F.R. Part 302-3 (1990).

B-247345, May 12, 1992

Civilian Personnel

Travel

- Temporary duty
- ■ Health insurance
- ■ ■ Additional costs

An employee while traveling on temporary duty may not be reimbursed the increased health care costs for medical treatment under his health insurance plan due to the employee's absence from the local duty station area.

B-246829, May 18, 1992

Civilian Personnel

Travel

- Temporary duty
- ■ Miscellaneous expenses
- ■ ■ Reimbursement
- ■ ■ ■ Child care services

Fees for child care are not reimbursable expenses in connection with an employee's travel or relocation since neither the governing statutes nor the Federal Travel Regulation authorize such an entitlement.

B-247315, May 18, 1992

Civilian Personnel

Relocation

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

An employee may not be reimbursed for the real estate broker's fee he paid incident to the purchase of a new residence. The services provided by the broker, including negotiating on behalf of the employee, are within the scope of services that licensed real estate brokers provide by definition under the applicable state law. Moreover, the broker did not act as a neutral party in conducting the settlement, and, therefore, may not be considered a settlement agent.

B-246270, May 19, 1992

Civilian Personnel

Travel

- **Temporary duty**
- ■ **Travel expenses**
- ■ ■ **Reimbursement**

Civilian Personnel

Travel

- **Travel expenses**
- ■ **Voluntary expenditure**
- ■ ■ **Reimbursement**

An employee of the Forest Service agreed to attend an agency training session at his own expense due to his supervisor's mistaken belief that funds were not available to pay for the employee's travel. The supervisor subsequently learned that funds had been available and has now requested that the employee be paid his travel expenses. The agency is advised by the General Accounting Office that it may approve payment of employee's travel expenses at this time.

B-247072, May 20, 1992

Civilian Personnel

Travel

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

Civilian employee of the Department of the Army on temporary duty may not be reimbursed for commercial lodging and meals where government lodging and meals were available. Employee failed to obtain a certificate of nonavailability of government furnished quarters in accordance with 2 Joint Travel Regulation (2 JTR), para. C1055. Army Regulation 210-50, Family Housing Management, cited by employee in support of his claim, is not applicable.

B-247382, May 20, 1992

Civilian Personnel

Travel

- Actual subsistence expenses
- ■ Eligibility

An employee on extended temporary duty received a temporary promotion that erroneously listed his temporary duty station as his permanent duty station. We hold that a temporary promotion while on extended temporary duty does not, in and of itself, effect a change of permanent duty station, that the employee is entitled to his temporary duty subsistence expenses, and that the Interior Department may correct its official documents to show the employee's correct permanent duty station.

B-248434, May 26, 1992***

Civilian Personnel

Leaves Of Absence

- Lump-sum payments
- ■ Administrative agencies
- ■ ■ Liability

Civilian Personnel

Leaves Of Absence

- Lump-sum payments
- ■ Eligibility

The Copyright Royalty Tribunal is obligated to make the lump-sum annual leave due a retiring Commissioner. Although none of the leave was earned at the Tribunal because the Commissioner is a presidential appointee serving in a position in the legislative branch not subject to the Annual and Sick Leave Act, he has leave to his credit carried over from service in a prior position in another agency. An employee's right to a lump-sum payment for accrued annual leave vests upon the employee's separation from the federal service, and it is the employing agency at the time of separation that must pay the employee for accrued annual leave to the employee's credit at the time of separation notwithstanding that the leave was earned in another agency.

B-244454, May 27, 1992

Civilian Personnel

Relocation

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

A transferred employee's temporary quarters subsistence expense (TQSE) claim, was administratively disallowed because the employee executed a 9-month and 14-day lease and continued to live there after expiration of the lease period. On appeal, we sustain the agency's action. While we consider a 6-month lease as being short term, and thus describing temporary quarters, where a longer term lease is involved, and the employee resides there for a protracted period, there must be a clear indication that the initial period of occupancy was intended only to be temporary. Since there is no strong evidence to show a concerted effort to find other quarters, the quarters occupied must be considered permanent from the outset.

Civilian Personnel

Compensation

- Weekends/holidays
 - ■ Eligibility
 - ■ ■ Employment agreements
-

Civilian Personnel

Travel

- Travel expenses
- ■ Mileage
- ■ ■ Eligibility
- ■ ■ ■ Local travel

Although students at institutions of higher learning who provide technical support for defense research under contracts authorized by 10 U.S.C. § 2360 are not federal employees, there is no prohibition on including terms in the contracts to provide holiday pay and mileage payments for local business travel, which normally accrue to federal employees, without violating the intent of the statute.

Military Personnel

B-244577, May 8, 1992

Military Personnel

Travel

- Per diem
- ■ Eligibility

A member who following graduation from Officer Candidate School in Newport, Rhode Island, is ordered to perform recruiting duty near his home at no cost to the government and then perform temporary duty at Newport prior to reporting to his new permanent station is entitled to a per diem allowance for the temporary duty.

B-246475 , May 13, 1992

Military Personnel

Travel

- Per diem
- ■ Eligibility

Member of Marine Corps is entitled to per diem at temporary duty station, Camp Lejeune, prior to receipt of orders naming Camp Lejeune as permanent duty station, since although the member was undergoing follow-on training after induction and basic training which would normally preclude receiving per diem during such training, prior course of instruction at Twentynine Palms, California exceeded 20 weeks and subsequent transfer to Albany, Georgia for instruction in excess of 20 weeks constituted a permanent change of station. Thus, he was in a travel status away from his permanent duty station when he traveled to Camp Lejeune.

B-245773, May 14, 1992

Military Personnel

Travel

- Travel advances
- ■ Losses

Officer may not be relieved of liability for advance travel funds which were taken from hotel safe deposit box in Kuwait during Iraqi invasion since such funds are in the nature of a loan rather than government funds and there is no authority for waiver. Possible other relief under 31 U.S.C. § 3721 and § 8138 of Pub. L. No. 102-172 is under the discretion of the Secretary of Defense or Department Head and not for review by GAO.

B-243436.2, May 18, 1992

Military Personnel

Relocation

- Household goods
- ■ Weight restrictions
- ■ ■ Liability
- ■ ■ ■ Computation

A member shipped a large amount of radio equipment with his household goods. Although members are entitled to ship Military Affiliated Radio System equipment as professional equipment without charge to their authorized weight allowances, the Navy classified only 4,000 pounds of his equipment as professional. In the absence of clear error, we will not question the Navy's determination. The balance was properly added to the weight of his household goods, which then exceeded his weight allowance. He is liable for the costs of shipping the excess weight.

B-243146, et al., May 21, 1992***

Military Personnel

Pay

- Retirement pay
- ■ Claim accrual dates
- ■ ■ Continuing claims
- ■ ■ ■ Statutes of limitation

Five widows' annuity claims were submitted to us in light of *Hart v. United States*, 910 F.2d 815 (Fed. Cir. 1990), which prohibited use of the continuing claim theory as an exception to the 6-year Claims Court statute of limitations in a situation where all events necessary to establish the claim had occurred more than 6 years previously. We will henceforth follow *Hart* in similar situations. In light of this change in statutory interpretation, we will not disturb the services' prior establishment of annuities in three of the cases. Two other claims must be denied.

B-243864.2, May 26, 1992***

Military Personnel

Pay

- Dual compensation restrictions
- ■ Exemptions

Public Law 101-86, dated August 16, 1989, suspended for an aggregate period of 6 months the dual compensation laws for regular retired officers who were given temporary appointments on or after that date to work on the 1990 census. Public Law 101-86 further provided, however, that if the appointee's retired pay was being reduced immediately before being placed in the temporary position the 6-month exemption would not apply. Thus, a retired officer who was originally appointed to a temporary position with the Census Bureau prior to August 16, 1989, and whose retired pay was subject to reduction prior to that date, is not entitled to the exemption even though his pay erroneously was not being reduced prior to that date and his position was changed after August 16, 1989.

B-247071, May 28, 1992

Military Personnel

Travel

- Separation travel
 - ■ Agency officials
 - ■ ■ Errors
-

Military Personnel

Travel

- Separation travel
- ■ Expenses
- ■ ■ Reimbursement
- ■ ■ ■ Time restrictions

The claim of a former Naval Reserve petty officer for travel and transportation expenses is denied because travel was not completed prior to the 181st day following separation as required for payment under the applicable regulations. Claimant's assertion that he was told by Navy personnel that he had 12 months following separation to complete his travel does not alter this conclusion, since it is established that the government is not bound by erroneous information given by its officers, agents, and employees.

Procurement

B-244007.4, B-244007.5, May 1, 1992

92-1 CPD 408

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Factual errors

Procurement

Bid Protests

- Private disputes
- ■ GAO review

Under its Bid Protest Regulations, the General Accounting Office (GAO) will reverse a prior decision on reconsideration only where the requester shows that it contains errors of fact or law or that GAO failed to consider relevant information.

Procurement

Bid Protests

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

Protest challenging the noncompetitive award of a follow-on contract on the basis that awardee has an organizational conflict of interest that renders it ineligible for award is dismissed as untimely where the protest was not filed with General Accounting Office within 10 working days after the protester knew or should have known of its protest basis.

B-244767.2, May 1, 1992

92-1 CPD 409

Procurement

Competitive Negotiation

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

Where technical factor was substantially more important than cost under stated evaluation criteria, agency reasonably selected for award offeror whose proposal, although potentially of higher cost, offered the greatest likelihood of satisfying urgent need for vital, life-safety system—inflatable body and head restraint system for deployment during helicopter crashes—within required expedited delivery schedule.

Procurement

Bid Protests

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

Procurement

Sealed Bidding

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

Request for reconsideration is denied where protester fails to show any error of law or fact warranting reversal of finding that agency reasonably denied request for correction of mistake in bid.

Procurement

Bid Protests

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

Protest challenging the agency's evaluation of the protester's proposal is dismissed as untimely where, despite being advised orally and in writing at the debriefing and in the written debriefing follow-up of the many specific deficiencies in its proposal, the protester waited to raise any objections concerning these matters until it filed its comments to the agency report more than 10 working days after receiving the debriefing and debriefing follow-up.

Procurement

Competitive Negotiation

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

Award to a technically superior, higher evaluated cost offeror was reasonable and represented the best overall value to the government in accordance with the solicitation's stated evaluation methodology where the agency reasonably determined that despite the awardee's higher evaluated cost, the awardee's proposal was significantly superior to the protester's marginally acceptable proposal and offset the protester's lower evaluated cost.

Procurement

Specifications

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

Protest that solicitation requirement that unit containers for abrasive wheels destined for indefinite storage be weather resistant exceeds the agency's minimum needs is denied where the re-

quirement reflects the applicable industry standard, which the agency reasonably concluded was appropriate for its needs.

B-247400, May 1, 1992

92-1 CPD 413

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Pre-award surveys

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

A procuring agency's determination of nonresponsibility for a prospective contractor that has filed for bankruptcy is not unreasonable or made in bad faith when the determination relies on a pre-award survey that did not recommend the contractor for award because a review of the financial information submitted by the contractor and Dun and Bradstreet reports revealed substantial financial deficits and an uncertain financial future; the weight given to the effects of a proposed bankruptcy reorganization plan, which was unconfirmed as of the time of the nonresponsibility determination, is within the discretion of the agency.

B-247106, B-247106.2, May 4, 1992

92-1 CPD 415

Procurement

Special Procurement Methods/Categories

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

Solicitation specifications for local area network reasonably allow for awardee's software approach notwithstanding protester's more restrictive view of the specifications.

B-247181, et al., May 4, 1992

Procurement

Payment/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Evidence sufficiency

A carrier's claim for reimbursement for tarpaulin or other additional services is denied where the record contains no indication that the shipper ever requested such services.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

Where agency advises protester that he has been proposed for debarment and that, pending the debarment action, he is precluded from receiving awards under solicitations for which he previously has submitted offers, protest of agency's failure to further consider his offers because of proposed debarment action must be filed within 10 working days of receipt of notice of proposed debarment that precludes him from award under the current solicitations

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

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

Request for reconsideration is denied where, with one exception, request merely repeats arguments made by protester during consideration of the original protest and disagrees with original decision. In the single exception, protester argues that original decision incorrectly applied regulation which allows award without discussions to other than the lowest cost offeror, even though that regulation was not in effect. Nonetheless, regardless of the regulation in effect at the time, the agency was permitted to award the contract without discussions with the protester even though its price was lower than the awardee's since protester submitted a quotation that took exception to delivery deadline in solicitation and the firm subsequently confirmed that it could not meet that deadline.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Bid Protest Regulations require party requesting reconsideration of prior decision to show that decision contains errors of fact or law or to present information not previously considered that warrants reversal or modification of decision: repetition of arguments made during consideration of the original protest and mere disagreement with decision do not meet this standard.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Samples

Where solicitation required submission with bids of samples which conformed to the solicitation specifications, protester's bid was properly rejected as nonresponsive where its bid samples failed to comply with the specifications.

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

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

Protest is sustained where agency made award to low priced, technically acceptable offeror despite solicitation evaluation scheme providing that technical merit was more important than price, without providing a reasonable basis for finding that protester's apparently significant technical advantage was not worth a cost premium.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Contractor Qualification

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

The General Accounting Office will review an agency's evaluation of an offer as technically acceptable under a responsibility-type evaluation factor—specifically, the availability of offeror's warehouse facility—where offeror whose evaluation is at issue is not a small business, since policy behind decisions prohibiting use of responsibility-type factors in a go/no-go evaluation scheme—to prevent possible encroachment by contracting agencies on the statutory protection afforded small businesses—does not apply where a small business is not involved.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Leases
 - ■ ■ ■ Availability
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protest allegation that the awardee's proposal should have been rejected as technically unacceptable because the awardee offered to perform using a warehouse which the protester claims to have leased is denied where the agency reasonably relied on an intent to lease agreement between the owner of the warehouse and the awardee, even though a close reading of the protester's current lease would have shown that the protester had an option right in its lease that could prevent the awardee from gaining access to the warehouse.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ GAO review

Cancellation of solicitation after extensive discussions was proper, and not indicative of bad faith, where discussions led agency to believe it could not obtain a reasonable price; only one firm had been able to submit a technically acceptable proposal; and the agency determined after reexamining specifications that testing requirements had restricted competition and added significant addi-

tional cost to the government and that resolicitation without testing would enhance competition and reduce cost.

B-247357, May 5, 1992

92-1 CPD 424

Procurement

Sealed Bidding

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

Agency properly allowed correction of a mistake in bid by the low bidder where the existence of the mistake and the intended bid price were clearly established from the bidder's original bid preparation papers and the corrected bid remains significantly below the next low bid.

B-247188, May 6, 1992

Procurement

Payments/Discharge

- Shipment costs
- ■ Additional costs
- ■ ■ Evidence sufficiency

A carrier's claim for tarpaulin service is denied where the record contains no indication that the shipper ever requested such additional service.

B-247342, May 6, 1992

92-1 CPD 425

Procurement

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Discussion reopening
- ■ Propriety

Agency reasonably rejected offeror's revised best and final offer (BAFO), which was submitted more than 2 months late, because nothing in an amendment (which called for an extension of the offer acceptance period) issued after BAFOs had been submitted necessitated reopening discussions and requesting submission of another round of best and final offers.

Procurement

Scaled Bidding

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

Procurement

Specifications

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

Where the solicitation required the submission of descriptive literature to establish the acceptability of equal products and the descriptive literature clause cautioned that the failure to provide such literature would result in rejection of the bid, the procuring agency properly rejected the protester's bid as nonresponsive where the protester offered multiple alternate equal products, but did not include descriptive literature on all of the multiple products

Procurement

Competitive Negotiation

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

Agency properly rejected protester's proposal because its staffing, both in terms of numbers and skills, was less than the minimum required to perform the contract work, where staffing is a "go/no-go" evaluation criterion under the solicitation and the proposed level of staffing was significantly below the government estimate and other offerors' staffing levels.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to point out deficiency of protester's inadequate proposed staffing during discussions is denied where the agency, three times during discussions, advised the protester that its staffing was deficient.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Request for reimbursement of costs incurred in filing challenge to elimination of protester's proposal from the competitive range on ground that contracting officer failed to timely notify protester of its elimination is denied where there was no timely protest of the failure to notify and protester suffered no prejudice from the delayed notification.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Samples

Agency properly rejected bid as nonresponsive where bid samples failed to conform to characteristics listed in solicitation, which warned bidders that submission of nonconforming bid samples with their bids would result in rejection

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Procurement

Bid Protests

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

The General Accounting Office will not modify its previous award of attorneys' fees involved in pursuing both an initial protest and a reconsideration where, upon reconsideration, the initial decision was reversed and the protest was sustained, because a reconsideration is, in essence, a continuation of the same protest, involving the same procurement, the same parties, and the same issues, and the award of attorneys' fees in this instance merely provides the protester with the remedy which should have been awarded initially.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Level-of-effort contracts

As part of reassessment performed in response to General Accounting Office decision sustaining a protest where the awardee's proposed level-of-effort (LOE) appeared to be inconsistent with the government's estimate, the agency concluded that the awardee's proposal is within 3 percent of the government's revised estimate of the required LOE. Under these circumstances, the agency reasonably determined that the contract should remain with that awardee

Procurement

Bid Protests

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

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
-

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Request to modify earlier decision sustaining protest and finding protester entitled to proposal preparation and bid protest costs to recommend a directed award to protester is denied where record shows that protester's proposal was technically unacceptable and its proposed costs exceeded the amount of available funding.

Procurement

Competitive Negotiation

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

In a negotiated best value procurement—in which technical considerations are more important than price—award may properly be made to the higher-rated, higher-priced awardee where the source selection authority weighed the protester's price advantage but determined that the awardee's evaluated technical superiority was worth the price premium.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest allegation that the agency did not conduct meaningful discussions is denied where there is no reasonable possibility that the protester was prejudiced by the agency's failure to inform the protester of a proposal deficiency.

Procurement

Competitive Negotiation

- Technical evaluation boards
- ■ Bias allegation
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protest allegation that the agency's evaluation was biased because of an alleged conflict of interest involving an evaluation panel member, who is a former employee of the awardee's subcontractor,

is denied where there is no evidence that the panel member exercised improper influence in the procurement for the awardee or against the protester.

B-247184, May 11, 1992

92-1 CPD 434

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Administrative discretion

Protest against Government Printing Office's nonresponsibility determination is denied, where contracting officer reasonably determined that protester did not comply with solicitation requirement that bidder meet contract printing requirements using its own facilities and equipment.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

Procurement

Socio-Economic Policies

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

The Government Printing Office's (GPO) nonresponsibility determination of a small business properly was not referred to the Small Business Administration (SBA) for review as GPO is a legislative branch agency not subject to SBA jurisdiction.

B-247198, May 11, 1992

92-1 CPD 435

Procurement

Specifications

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

The Department of the Army's determination that its minimum needs for refuse collection services include off-post washing of refuse collection trucks and collection of all refuse left for collection, regardless of its size, weight, or quantity, has a reasonable basis.

B-247212, May 11, 1992

92-1 CPD 436

Procurement

Small Purchase Method

- Small business set-asides
- ■ Requests for quotations
- ■ ■ Cancellation
- ■ ■ ■ Propriety

Agency properly canceled small business-small purchase set-aside and completed the purchase on an unrestricted basis, where the only quotation submitted by a small business exceeded both the government estimate and a large business "courtesy" offer by approximately 20 percent.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Where protester abandons original basis for challenging agency's nonresponsibility determination, and raises new challenge to determination for the first time in comments on supplemental agency report, new challenge is untimely because not filed within 10 days after basis of protest was known; since nonresponsible protester is not eligible for award, it does not have standing to protest the award on other grounds.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Invitations for bids
- ■ ■ ■ Identification

Protest of agency's rejection of bid as nonresponsive due to defective bid bond is dismissed where bid bond did not contain any information other than bid opening date to identify bond to solicitation; stapling bond to bid is not sufficient assurance to government that surety intends to be bound under particular solicitation.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Bid offering to furnish the exact thing called for in the invitation for bids was properly found responsive notwithstanding post-bid opening notice from bidder that it intended to supply non-conforming item; whether a bid is responsive, and therefore eligible for award, must be determined from contents of the bid itself at bid opening, without reference to information submitted after bid opening.

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Extension
- ■ ■ ■ Propriety

Extension of closing date for receipt of best and final offers was proper, even though it was in response to one offeror's request and extension amendment was not transmitted to offerors until shortly after prior closing time had passed; agency properly may extend closing date at request of a particular offeror in order to enhance competition.

B-247545.2, May 12, 1992

Procurement

Bid Protests

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

Dismissal of protest as untimely is affirmed where protest to the General Accounting Office was filed more than 10 working days after the protester knew the basis of its protest; filing of protest with General Services Administration Board of Contract Appeals that is subsequently dismissed does not toll the time for filing a protest with the General Accounting Office.

B-247556, May 12, 1992

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Foreign currencies

Protest that solicitation for embassy guard services calling for payment to the contractor to be made in local currency rather than dollars violates 22 U.S.C. § 4864(c)(2) (Supp. II 1990) is denied since the protested provision is not the type covered by the statute, which requires the Department of State to establish procedures to ensure that appropriate measures are taken to assure that United States persons are not disadvantaged during the solicitation and bid evaluation process due to their distance from the post.

Procurement

Socio-Economic Policies

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

Contracting agency's decision not to set aside a procurement for embassy guard services for small business concerns is proper where there is no reasonable expectation of receiving offers from at least two responsible small business concerns.

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Determination criteria
-

Procurement

Sealed Bidding

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

Bid for ship repair was properly rejected as nonresponsive where language in unsolicited milestone schedule included in the bid imposed a condition on the government to complete fuel on-load by a specific date where solicitation provided the government the unilateral right to schedule fuel on-load on 48 hours advance notice.

Procurement

Sealed Bidding

- Bids
 - ■ Responsiveness
 - ■ ■ Determination criteria
-

Procurement

Sealed Bidding

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

Each procurement is a separate transaction and the action taken on any one procurement does not govern the conduct of all similar procurements. Prior acceptance of bids with allegedly similar discrepancies does not require continued acceptance under other solicitations.

B-247646, May 12, 1992**Procurement**

Sealed Bidding

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

Contracting agency properly rejected protester's bid as nonresponsive where protester submitted a bid bond containing certain conditions impermissibly limiting the liability of the protester and its surety. Protester may not cure defective bid by offering a substitute bond after bid opening.

B-247915.2, May 12, 1992

Procurement

Bid Protests

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

Protester is not entitled to the costs of filing and pursuing its protest where the agency canceled the solicitation approximately 3 weeks after it was protested with the General Accounting Office.

B-246736, et al., May 13, 1992**92-1 CPD 443**

Procurement

Contract Management

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

Protest that awardee is not complying with solicitation provision, which prohibits the awardee and any subcontractor of the awardee from representing any foreign government during the period of performance, involves a matter of contract administration for consideration by the procuring agency, not the General Accounting Office.

Procurement

Competitive Negotiation

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

Protest that agency improperly awarded contract on the basis of initial proposals, without establishing a competitive range and holding discussions, is sustained where agency could not reasonably conclude that the awardee's initial proposal was superior to the other acceptable proposals received.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Procurement

Competitive Negotiation

- Discussion
- ■ Offers
- ■ ■ Error correction

By allowing one offeror to revise a provision of its subcontracting plan that was material to its status as the successful offeror, the contracting agency engaged in discussions with the offeror and therefore was required to give a similar opportunity to revise their proposals to the other offerors in the competitive range.

B-248236.2, May 13, 1992

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Dismissal of protest is affirmed where contrary to protester's claim that solicitation was merely a market survey, request for proposals clearly provided that the agency intended to award a contract based upon the solicitation; protest of the intended use of the solicitation as the basis for an award therefore was required to have been filed before the closing time for receipt of proposals.

Procurement

Bid Protests

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

Company that did not submit an offer under a solicitation is not an interested party to protest award to another firm.

B-247334.2, May 14, 1992***

92-1 CPD 444**Procurement**

Bid Protests

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

Procurement

Bid Protests

- Subcontracts
- ■ GAO review

The General Accounting Office does not have jurisdiction to consider the protest of an award of a second-tier subcontract to another offeror by a subcontractor to a government management and operating contractor; the acquisition of title to the equipment by the government does not in itself establish the procurement as "by or for the government."

B-244653.3, May 15, 1992

92-1 CPD 445**Procurement**

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Agency's request for reconsideration is denied where request relies on factual assertions contrary to the record before the General Accounting Office.

Procurement

Bid Protests

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

Protest of cancellation of solicitation filed more than 10 working days after protester learned of the cancellation is untimely.

Procurement

Bid Protests

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

Procurement

Bid Protests

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

Request for reinstatement of protest challenging award of a contract because agency did not take proposed corrective action (partially terminating contract for convenience and reopening discussions with protester) which formed the basis for dismissal of protest as academic, is untimely, where protester knew basis for dismissal, but filed request for reinstatement of protest more than 10 working days after protester learned that the agency canceled the solicitation, and therefore, was not taking proposed corrective action.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision sustaining a protest is affirmed where the procuring agency's request for reconsideration is based on the agency's assertion that the protest was sustained on an issue that the General Accounting Office raised *sua sponte* and that the agency did not have an opportunity to respond, but the protest was sustained on an issue specifically raised by the protester, and to which the agency had not responded

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Cost estimates

The General Accounting Office affirms prior decision, which sustained a protest on the basis of the agency's failure to properly evaluate offerors' costs for required spare/repair parts, where the agency argues that the protester was not prejudiced by the agency's admitted procurement improprieties since the offerors' costs for the parts should be normalized, because the offerors' proposed costs for these parts were not normalized and the record indicates that the protester's cost advantage would be far greater than that considered by the source selection authority, even if these costs were normalized.

B-247248, et al., May 18, 1992

92-1 CPD 448

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Quality control
-

Procurement

Competitive Negotiation

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

Where protester's quality control plans contained only a general discussion of how it instructed employees to double-check mathematical calculations in reports to be delivered to the agency regarding credit renewals, evaluators did not act unreasonably in downscoring protester's proposals under the technical evaluation factor related to quality control.

Procurement

Competitive Negotiation

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

Contracting officer acted reasonably in reducing protester's quality control scores assigned by an inexperienced panel of evaluators to conform to lower scores assigned by experienced evaluators for identical plans submitted with other proposals because the ratings of the experienced evaluators were reasonable and conformed to the evaluation criteria relating to quality control.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Point ratings

Protester's disagreement with agency's decision not to award it additional technical points under quality control evaluation factor for its best and final offers does not provide a basis for questioning the agency's determination that the revised offers remained weak under this factor.

Procurement

Contract Management

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

Allegation that an awardee is not performing in accordance with its contracts is dismissed because it involves a matter of contract administration this Office does not review.

Procurement

Competitive Negotiation

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

The fact that awardee hired protester's employee after award does not indicate that awardee had insufficient resources to perform as of the time of award.

Procurement

Competitive Negotiation

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

Record does not support protester's contention that an awardee's low score after the evaluation of initial proposals should have eliminated it from the competitive range or that its high score after best and final offers was unreasonable.

Procurement

Bid Protests

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

Allegation that agency failed to issue preaward notices of its intention to make awards under solicitations which were set aside for small businesses is dismissed as untimely since it was not filed within 10 working days after protester learned of the defect.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Shipment costs

Protest alleging that agency miscalculated cost of transporting items solicited on an F.O.B. (free on board) origin basis to agency destinations is denied where record does not support protester's assertion that rates relied on by agency in its evaluation are not obtainable.

Procurement

Contractor Qualification

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

The General Accounting Office will not consider allegation that awardee will be unable to perform contract at the offered price where there is no evidence that contracting officials acted in bad faith in determining that awardee was a responsible contractor.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Where awardee certifies in its offer that it is the actual manufacturer of the items covered by the solicitation and protester offers no evidence that certification is false, the General Accounting Office will not question awardee's representation.

Procurement

Bid Protests

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

Protest alleging that agency failed to guarantee confidentiality of protester's offer prior to opening is denied where agency maintains that appropriate procedures for safeguarding of offers were followed and protester presents no evidence that procedures were breached.

Procurement

Bid Protests

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

Allegations that procurement should have been conducted on a sealed bid, rather than negotiated, basis and on an F.O.B. (free on board) destination, rather than F.O.B. origin, basis are dismissed as untimely where not raised until after award.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Contention that awardee gained an unfair competitive advantage over other offerors by hiring and proposing as a key employee an individual who allegedly possessed procurement sensitive information is denied where the record shows that the employee was only briefly and remotely involved in the initial planning stages of the project contemplated by the solicitation and protester does not show that the employee had access to any procurement sensitive information unavailable to other offerors.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Contention that awardee may have gained an unfair competitive advantage because a key employee proposed by the awardee allegedly received telephone messages and personal mail at the contracting agency's office from which contract field activities will be administered is denied where the allegation of impropriety amounts to no more than unsupported speculation.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Protest that agency failed to conduct meaningful discussions by withholding information that would have permitted protester to address perceived deficiencies in its proposal is denied where, prior to oral discussions, agency provided protester with written questions about its proposal that sufficiently alerted protester to specific areas where its proposal was considered deficient, and the protester concedes that those areas were discussed during oral discussions.

Procurement

Contractor Qualification

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

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

B-244562, May 19, 1992

Procurement

Payment/Discharge

- Shipment costs
- ■ Rate schedules
- ■ ■ Interpretation

For traffic transported by an ocean carrier, General Services Administration may not assess lower charges through alternation of higher general military rates with lower specific commodity commercial rates unless the shipper met all requirements applicable to a commercial shipper shipping like goods, including the provision to the carrier of a full and complete description of the item(s) to be transported no later than the time that the goods are tendered to the carrier for transportation.

B-247229, B-247794, May 19, 1992

92-1 CPD 451**Procurement**

Competitive Negotiation

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

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Performance capabilities

Protests challenging solicitation's evaluation criteria are denied where criteria reasonably provide for consideration of offeror's demonstrated commitment to customer satisfaction and timely delivery of quality goods at fair and reasonable prices, as well as offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction, as part of the evaluation of offeror's past performance.

B-247394, May 19, 1992

92-1 CPD 452**Procurement**

Small Purchase Method

- Federal procurement regulations/laws
- ■ Amendments

Procurement

Small Purchase Method

- Requests for quotations
- ■ Terms
- ■ ■ Design specifications

Federal Acquisition Regulation (FAR) § 10.006(a) specifically exempts small purchases from the mandatory use of federal specifications, and the FAR does not prohibit the use of manufacturers' part numbers as item descriptions in small purchases.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

Protest is sustained where the solicitation for the lease of a security system expressly invited the submission of front-loaded offers, but the agency rejected the protester's low overall evaluated offer precisely because it was front-loaded.

Procurement

Bid Protests

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

Protest alleging that agency improperly failed to make award to protester based on its initial proposal, allowing the awardee to undercut protester's price in its best and final offer (BAFO), is untimely where solicitation language placed protester on notice that agency would conduct discussions and request BAFOs, and protester did not object to provision before the time set for receipt of initial proposals.

Procurement

Bid Protests

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

Protest that time allowed—1 day—for submission of best and final offers (BAFO) was insufficient is untimely where not filed either before BAFOs were due or within 10 working days after protester learned of BAFO request.

Procurement

Contractor Qualification

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

Protest challenging agency's decision to award pharmaceutical contract to awardee notwithstanding Food and Drug Administration's recommendation against contract awards to that firm because of alleged mislabeling is dismissed as it concerns the contracting officer's affirmative determination of the awardee's responsibility.

B-245385.2, May 20, 1992

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where it essentially only restates arguments in the original request for review, and presents no evidence demonstrating an error in fact or law in the prior decision.

B-246727.2, May 20, 1992

92-1 CPD 455

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

B-247368, May 20, 1992

92-1 CPD 456

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Protest issues that were initially raised with the contracting agency and were not submitted to the General Accounting Office within 10 working days after the protester received notice of adverse agency action on the agency-level protest are dismissed as untimely.

Procurement

Bid Protests

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

Protests based on other than alleged solicitation defects which are not filed within 10 working days after the bases of protest are learned are untimely.

Procurement

Bid Protests

- Allegation substantiation
- ■ Burden of proof

Where agency submits affidavit stating that it called the protester to give it the opportunity to revise its offer and protester does not submit an affidavit to support its position, even though given the opportunity to do so, the record does not substantiate protester's contention that the agency did not give the protester an opportunity to revise its offer when the expected performance period changed.

Procurement

Bid Protests

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

Protest challenging award as improper is dismissed where protester submitted the third-low bid and is, therefore, not an interested party under General Accounting Office Bid Protest Regulations because protester would not be in line for award even if its protest were sustained.

Procurement

Bid Protests

- Dismissal
- ■ Definition

Procurement

Sealed Bidding

- Invitations for bids
- ■ Cancellation
- ■ ■ Justification

Protest that agency improperly canceled solicitation because agency-level protest which prompted cancellation was untimely is dismissed since agency may properly take appropriate corrective action regardless of when the matter is brought to its attention.

Procurement

Bid Protests

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

Protest filed at least 4 months after protester first learned of protest basis properly was dismissed as untimely; protester's ongoing effort to seek resolution of the dispute with the agency and to collect corroborating evidence does not toll General Accounting Office timeliness requirements.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Profits

A protester may not recover profit on its own employees' time in preparing its proposal as awarded costs of proposal preparation.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**
- ■ ■ **Agency-level protests**

Costs incurred in filing and pursuing agency-level protests may not be reimbursed to the protester as protest costs in pursuit of protests filed with the General Accounting Office.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**

Cost of reviewing Freedom of Information Act response, after denial of an agency-level protest and in preparation of protests to the General Accounting Office (GAO), are allowable costs of pursuing GAO protests.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**

Costs incurred in seeking congressional assistance regarding grievances the protester may have with an agency's conduct during a procurement or a protest may not be reimbursed as protest costs under the Competition in Contracting Act of 1984.

Procurement

Bid Protests

- **GAO procedures**
- ■ **Preparation costs**
- ■ ■ **Injunctions**

Costs incurred in seeking injunctive relief in federal court from an agency's determination under the Competition in Contracting Act of 1984 (CICA) not to suspend performance of awarded contracts are not reimbursable under CICA as costs of pursuing a protest at the General Accounting Office

Procurement

Bid Protests

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

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

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Protest against the award of a sole-source contract is denied where the agency relies on the authority of 10 U.S.C. § 2304(d)(1)(B) to award a contract and the agency's written justification and approval includes a detailed cost analysis providing ample support for the agency's conclusion that a competitive award to another source would likely result in substantial duplication of cost to the government that would not be recovered through competition.

Procurement

Bid Protests

- GAO procedures
- ■ Purposes
- ■ ■ Competition enhancement

Protest that agency should make specification more restrictive is dismissed since the role of the General Accounting Office in resolving bid protests is to ensure that the statutory requirements for full and open competition in the award of government contracts are met, not to protect any interest a protester may have in more restrictive specifications.

Procurement

Sealed Bidding

- Contract awards
- ■ Government delays
- ■ ■ Propriety

Procurement

Socio-Economic Policies

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

Protest allegation that the contracting agency improperly delayed contract performance in order to provide the awardee with the opportunity to establish responsibility under an invitation for bids, issued under the Small Business Administration (SBA) section 8(a) set-aside program, is denied where the delay was to allow compliance with Federal Acquisition Regulation § 19.809, which requires that the awardee's responsibility be referred to SBA for its review, and where the invitation for bids permitted the contract start date to be delayed.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Bid guarantees
- ■ ■ ■ Expiration

A required bid guarantee in the form of an irrevocable letter of credit is unacceptable, and renders the bid nonresponsive, where by its terms it expires prior to the end of the bid acceptance period; a bid guarantee must remain available to the government for the entire bid acceptance period plus such time as is reasonably necessary for the government to exercise its rights if the bidder fails to furnish the required performance and payment bond.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety
- ■ ■ Price reasonableness

Where proposed awardee's bid prices are within 3.5 percent and 8.8 percent of government estimates and are lower than all other bids received except the protester's nonresponsive bid, there is no basis for objecting to agency's determination that prices were reasonable.

B-247463, May 22, 1992

Procurement

Bid Protests

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

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Allegation substantiation

Protest that the awardee's proposal was materially unbalanced is untimely when filed after receipt of initial proposals where the protester's allegation is based on inaccuracies in the government work estimates and the protester, who was the incumbent contractor, should have known of the alleged inaccuracies from its own contract experience.

B-247477, May 22, 1992

Procurement

Bid Protests

- Information disclosure
- ■ Competitive advantage

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Protest alleging that agency may have improperly disclosed protester's proprietary material is denied where the record contains no evidence which supports the protester's speculative claim.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Proposed sole-source award of contract for review, editing and publishing of results of scientific workshop in specific scientific journal is unobjectionable where agency requires most extensive dissemination of articles possible and agency reasonably determined that only publication in the specified journal will accomplish this end.

Procurement

Competitive Negotiation

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

Determination to exclude protester's proposal from the competitive range was proper where record shows that the technical evaluation panel reasonably downgraded proposal, resulting in a significantly lower rating relative to the scores of the four highest rated offerors included in the competitive range (whose proposals each offered a lower price than the protester), and where agency reasonably determined protester's proposal lacked a reasonable chance of being selected for award.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show any error of fact or law, or present information not previously considered, that would warrant reversal or modification of decision that agency properly adhered to scheduling and other requirements set forth in the solicitation in determining that awardee was the technically superior, lowest cost offeror entitled to the award.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Organizational experience

Protest that awardee's proposal should have been rejected as technically unacceptable is denied where the record shows that no prejudice resulted from the agency's waiver of an experience requirement under the solicitation.

Procurement

Competitive Negotiation

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

Protest that agency waived option to award without discussions which was provided for in solicitation by stating, in amendment, that several issues were to be addressed during negotiations is denied where language of the amendment made clear that agency continued to reserve the right to award without discussions.

B-246136.3, May 27, 1992

92-1 CPD 472

Procurement

Bid Protests

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

Request for reconsideration of decision sustaining protest on the basis that agency improperly reopened competition after making award to protester is denied where request fails to establish that General Accounting Office erred in concluding that original award was proper and reopening competition was therefore unwarranted.

B-246182.2, May 27, 1992

92-1 CPD 473

Procurement

Bid Protests

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

Recommendation that contracting agency pay protester its bid preparation costs and costs of filing and pursuing its protest is affirmed on reconsideration where the protester has not shown that our prior decision contains either errors of fact or law, and there is no legal basis for allowing the lost profits requested by the protester.

B-247627, May 27, 1992

Procurement

Noncompetitive Negotiation

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

Agency properly restricted reprourement to sole source, excluding protester, where out-of-stock ham slices were urgently needed, and agency reasonably determined that protester's furnishing of nonconforming ham slices under existing contract (which necessitated the reprourement) indicated that protester currently could not satisfy the requirement.

Procurement

Sealed Bidding

- Bids
- ■ Pre-award withdrawal

Protest that low bidder should not be allowed to withdraw a mistake in bid claim after a request for bid correction is denied is without merit where the record indicates a mistake was made and low bidder presents sufficient evidence of a reasonable estimation of omitted costs to indicate that the intended bid would have been low.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Contract awards
- ■ ■ Propriety

Protest that low bid should be rejected as nonresponsive because it is unbalanced is denied where protester fails to demonstrate that bid contained both understated prices for some items and overstated prices for others, and there is no doubt that award will result in the lowest overall cost to the government

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protest that low bid should be rejected as nonresponsive because low bidder did not accurately follow solicitation instructions with regard to calculation of state use tax is denied where low bidder did not take exception to the use tax requirement, but rather miscalculated the tax and failed to include its full costs.

Procurement

Noncompetitive Negotiation

- Sole sources
- ■ Justification
- ■ ■ Agency officials
- ■ ■ ■ Authority

Protest that individual executing required justification and approval (J&A) for sole-source award did not possess requisite authority is denied where record shows that individual was agency's acting senior procurement executive at the time J&A was executed.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Industrial mobilization bases

Protest that contracting agency improperly awarded a single, sole-source contract on mobilization base grounds is denied where record shows that agency's current requirement was sufficient to

maintain only one producer and agency properly exercised its discretion in deciding that the award was necessary to protect the industrial mobilization base.

B-245991.3, May 29, 1992

92-1 CPD 476

Procurement

Bid Protests

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

Protester is not entitled to the costs of filing and pursuing its protest where agency canceled the acquisition prior to submission of agency report; time associated with earlier unrelated protest is irrelevant to consideration of whether agency acted promptly during second protest, as is possibility that the cancellation may eliminate the protester's opportunity to compete for the requirement.

B-246869.2, May 29, 1992

92-1 CPD 477

Procurement

Bid Protests

- GAO decisions
- ■ Recommendations
- ■ ■ Modification

Prior decision is modified to delete recommendation that awardee's contract be terminated for convenience where agency demonstrates that termination of ongoing tasks would not be practical; instead, the General Accounting Office recommends that options not be exercised and that any tasks arising during portion of base year remaining after award of a contract to the protester be assigned to the protester.

B-247403, May 29, 1992

92-1 CPD 479

Procurement

Competitive Negotiation

- Use
- ■ Criteria

Procurement

Sealed Bidding

- Use
- ■ Criteria

Use of competitive negotiation rather than sealed bidding procedures is proper where the agency, based on performance problems encountered on prior contract, reasonably determines that discussions might be necessary and that award must be based on technical evaluation factors as well as price.

Procurement

Bid Protests

- Allegation substantiation
 - ■ Lacking
 - ■ ■ GAO review
-

Procurement

Specifications

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

Protest alleging that awardee's proposed location for construction of an outpatient clinic violated restriction in solicitation that no property within a 100-year flood plain would be considered is denied where agency reasonably concluded that awardee's property was not in the flood plain.

B-247560, May 29, 1992

Procurement

Socio-Economic Policies

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

Protest challenging issuance of a purchase order based on low price to firm proposing a foreign product is sustained where request for quotations incorporated the clause set forth at Federal Acquisition Regulation § 52.219-4, which required products to be manufactured or produced by domestic small businesses; contracting agency was on notice prior to issuance of the purchase order that awardee intended to provide a foreign product; and protester, a small business which submitted a slightly higher quotation, proposed a domestic product.

B-247606, May 29, 1992*****Procurement**

Competitive Negotiation

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

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Evaluation errors

Protest is sustained where agency's exclusion of the second highest rated technical proposal left only one proposal in the competitive range, since record shows that discussions with the rejected offeror reasonably could be expected to result in making the proposal acceptable without major rewrite, especially where successful offeror's proposal contained many of the same weaknesses which were corrected through discussions

Procurement

Competitive Negotiation

- Offers
 - ■ Risks
 - ■ ■ Pricing
-

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Risks

Where solicitation initially called for fixed prices for maintenance of seven general subline categories of land mobile radio equipment and communications systems, protest that solicitation did not fairly provide for equitable adjustment when agency adds or substitute equipment to inventory that is more expensive to maintain is denied where the agency proposes to amend the solicitation to provide for computing equitable adjustments by use of a weighted average that would reduce risk to an acceptable level; there is no requirement that specification be drafted in such detail as to eliminate all risk for the contractor.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Contractor personnel
- ■ ■ ■ Training

Where solicitation statement of work contains clear and precise description of tasks constituting limited maintenance, and reasonably describes skill level of employees to be trained for limited maintenance, protest that solicitation does not adequately describe the contractor's duty for training government employees is denied.

Procurement

Contract Types

- Requirements contracts
 - ■ Use
-

Procurement

Special Procurement Methods/Categories

- Requirements contracts
- ■ Use
- ■ ■ Criteria

Where solicitation statement of work reserves to the agency the right to perform limited maintenance, the performance of such maintenance is not inconsistent with the use of a requirements contract by which the agency obligates itself otherwise to obtain maintenance services from the successful offeror.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Sureties

Where bid does not include evidence of the authority of a surety's agent to sign the required bid bond on behalf of the surety, the bid is nonresponsive and must be rejected. Late Cases in December 1991

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Compliance
- ■ ■ ■ Leases

Protester's proposal to lease office space for a 5-year period with an option to renew lease for a second 5-year period failed to comply with the solicitation requirement that the government be permitted to cancel the lease on 60 days notice after the first 5 years.

Procurement

Contract Management

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

Protest that awardee will be unable to comply with solicitation requirements regarding handicapped restroom facility and adequate parking is dismissed as a matter of contract administration where awardee clearly offered to meet the solicitation requirements.

Procurement

Competitive Negotiation

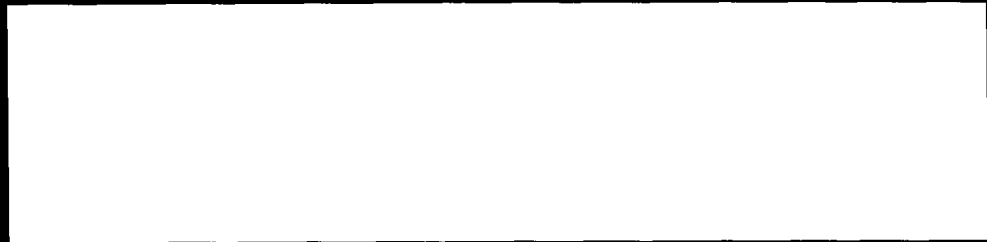
- Requests for proposals
- ■ Advertising
- ■ ■ Misleading information

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Defects
- ■ ■ Allegation substantiation

The advertisement of allegedly inaccurate information in the *Commerce Business Daily* as to the amount of allocated funds for a procurement does not render a solicitation defective, where the solicitation's terms themselves are not alleged to be misleading.



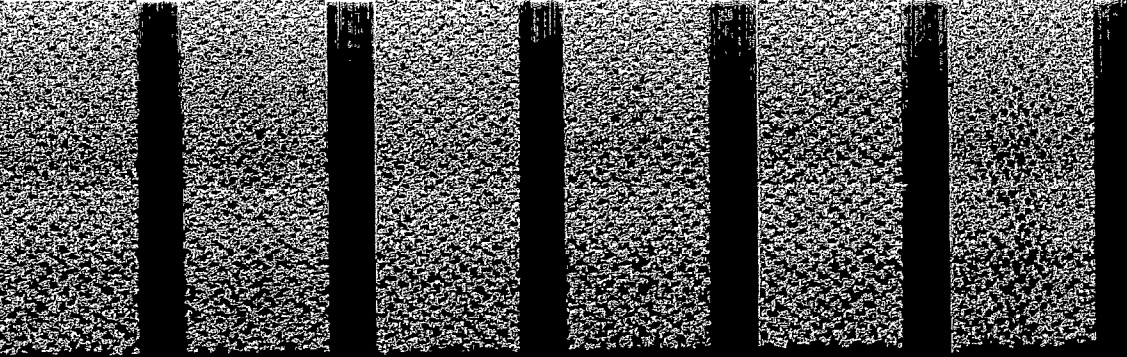
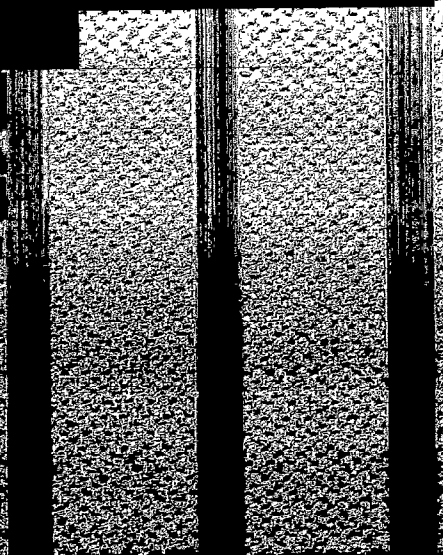
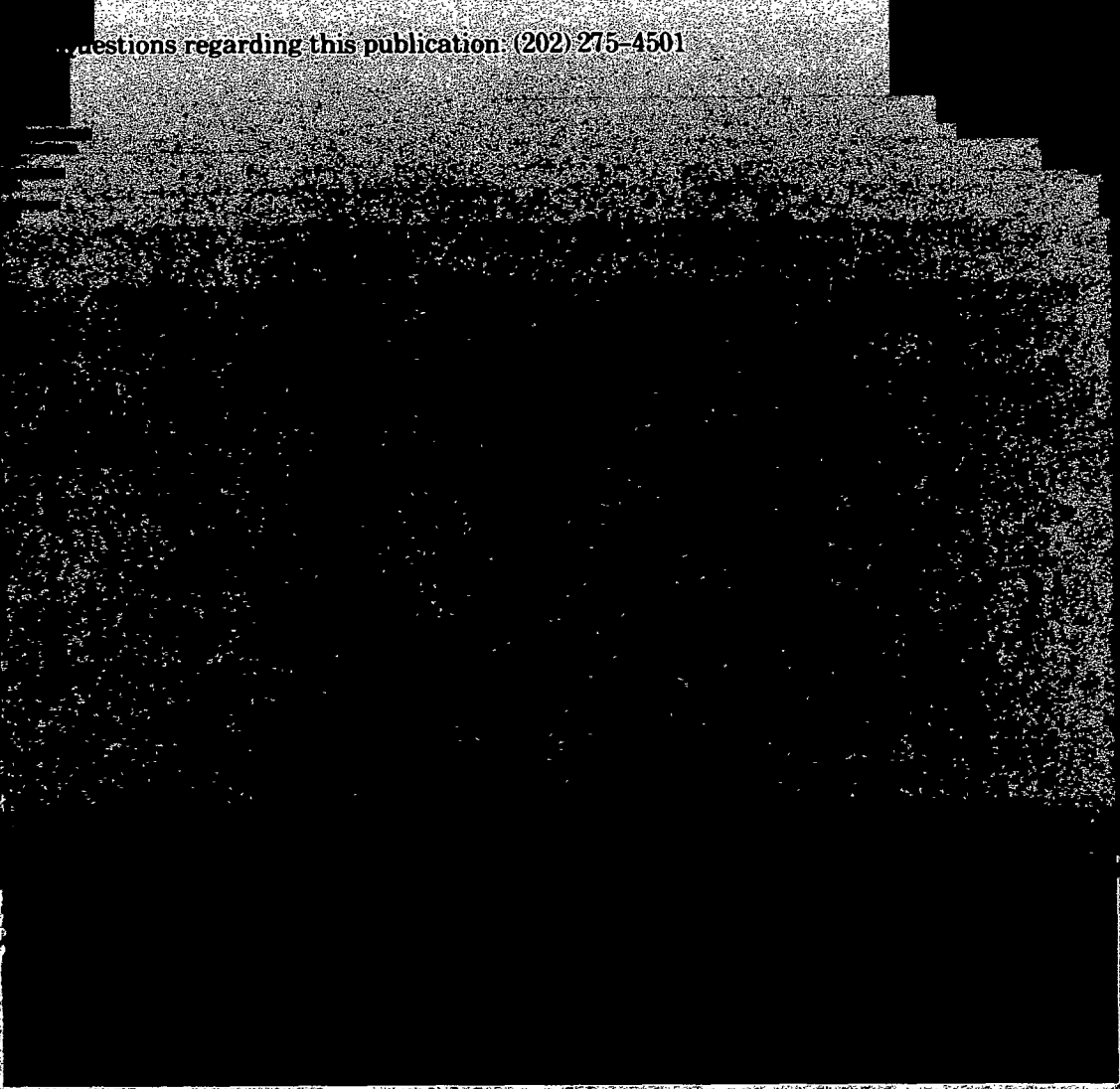
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