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# Digests of Decisions of the Comptroller General of the United States

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# Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S. 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-239592.2, September 1, 1992

### Appropriations/Financial Management

**Accountable Officers**

■ **Relief**

■■ **Illegal/improper payments**

■■■ **GAO decisions**

■■■■ **Reconsideration**

Upon reconsideration, prior decision holding individual who signed as approving official liable for the payment of relocation fees in violation of 5 U.S.C. § 5724, is reversed based on new information regarding the duties and responsibilities of the official. Former employees who received the relocation fees is still liable for the improper payment.

## B-248248.2, September 1, 1992

### Appropriations/Financial Management

**Appropriation Availability**

■ **Purpose availability**

■■ **Reprogramming**

### Appropriations/Financial Management

**Budget Process**

■ **Funds transfer**

■■ **Authority**

Reprogramming of United States Information Agency's Radio Construction appropriation for a purpose having no relationship to that appropriation appears to have violated the "purpose" statute, 31 U.S.C. § 1301. Although congressional subcommittee approval was obtained for the reprogramming, informal congressional approval of an unauthorized transfer of funds between appropriation accounts does not have the force and effect of law.

## Appropriations/Financial Management

**Appropriation Availability**
■ **Amount availability**
■■ **Antideficiency prohibition**
■■■ **Violation**

## Appropriations/Financial Management

**Budget Process**
■ **Funds transfer**
■■ **Amount availability**
■■■ **Appropriation restrictions**

If there are no funds available in the United States Information Agency's Salaries and Expenses appropriation for an expenditure properly chargeable to that account, reprogramming of Radio Construction appropriation funds to cover the expenditure violated the Antideficiency Act, 31 U.S.C. § 1341.

# B-248111, September 9, 1992

## Appropriations/Financial Management

**Federal Assistance**
■ **Grants**
■■ **Purpose availability**
■■■ **Democracy programs**

The National Endowment for Democracy may use grant funds to carry out certain activities that clearly are consistent with the Endowment's purposes as described in the National Endowment for Democracy Act. Since the activities in question are identified, or closely related to functions identified, in the legislative history of the Act as functions envisioned for the Endowment, they are not "programs" within the Act's prohibition against the Endowment directly carrying out programs.

## Appropriations/Financial Management

**Federal Assistance**
■ **Grants**
■■ **Terms**
■■■ **Purpose availability**

The National Endowment for Democracy Act provides the authority for the National Endowment for Democracy to use grant funds to carry out authorized activities directly even if the use is not within an "item of expenditure" listed in the grant agreement between the Endowment and the United States Information Agency. Nevertheless, future grant agreements should be modified to contain the "items of expenditures" which clearly capture the authorized activities of the Endowment.

# B-247730, September 21, 1992***

## Appropriations/Financial Management

**Appropriation Availability**
■ **Purpose availability**
■■ **Office space**
■■■ **Use**
■■■■ **Eldercare services**

Without specific statutory authority, funds appropriated to the Internal Revenue Service (IRS) are not available to provide space for eldercare facilities for adult relatives of IRS employees. IRS appropriated funds are available, however, to undertake employee referral and counseling programs.

## B-241856.2, September 23, 1992

## Appropriations/Financial Management

### Accountable Officers

### ■ Determination criteria

Air Force contracting officer and contract specialist generally cannot be held liable as accountable officers for improper payments.

## Appropriations/Financial Management

### Accountable Officers

### ■ Determination criteria

Under 31 U.S.C. § 3526, an agency's accounts must be settled within 3 years of the date when they are substantially complete and ready for audit. For purposes of an improper payment to an assignor (instead of to the assignee), the period generally starts to run on the date of payment. Once the 3-year period has expired, the account is considered settled, and there is no need for our Office to consider whether to grant relief.

# Civilian Personnel

## B-248868, September 2, 1992

### Civilian Personnel

**Travel**

■ **Temporary duty**

■■ **Per diem rates**

■■■ **Amount determination**

### Civilian Personnel

**Travel**

■ **Travel expenses**

■■ **Constructive expenses**

■■■ **Reimbursement**

An employee departed his permanent duty station on a Sunday for official business commencing on a Tuesday. He lodged with friends on Sunday night at no cost, and was on annual leave on Monday. Although employee was on annual leave on Monday, and per diem is not normally reimbursable when an employee is on annual leave, Monday would have been the employee's normal travel day. Therefore, he may be reimbursed per diem on a constructive basis in accordance with the Federal Travel Regulation, 41 C.F.R. §§ 301-2.5(b), and 301-7.15(c) (1991).

## B-249730, September 2, 1992

### Civilian Personnel

**Compensation**

■ **Executive Branch**

■■ **Appointment**

■■■ **Congressional recommendations**

### Civilian Personnel

**Compensation**

■ **Presidential appointment**

■■ **Temporary appointment**

■■■ **Time restrictions**

To fill a position covered by the Vacancies Act, the President may appoint an executive branch official to perform duties on a temporary basis for 120 days. During that time period, the President must also forward to the Senate his nomination of an individual to fill the position permanently. Meanwhile, the officer serving in an acting capacity may continue until the Senate concludes its deliberations on the pending nomination. 5 U.S.C. §§ 3345 - 49. 65 Comp. Gen. 626 (1989).

## B-245962, September 3, 1992

### Civilian Personnel

**Relocation**

■ **Residence transaction expenses**

■■ **Reimbursement**

■■■ **Eligibility**

■■■■ **Property titles**

Employee was reimbursed for two-thirds of the relocation services company fee incurred in the sale of his residence at his old duty station. He may not be reimbursed for the remaining one-third of the fee since, at the time he was first officially notified of his transfer to a new duty station, title to the residence was in the names of himself, his wife, and his nondependent father who was not a member of his immediate family. *See* Federal Travel Regulation, 41 C.F.R. §§ 302-6.1(c) and 302-1.4(f) (1991).

## B-247711, September 8, 1992

### Civilian Personnel

**Relocation**

■ **Miscellaneous expenses**

■■ **Reimbursement**

■■■ **Eligibility**

■■■■ **Insurance**

**Relocation**

■ **Temporary quarters**

■■ **Actual subsistence expenses**

■■■ **Reimbursement**

■■■■ **Amount determination**

### Civilian Personnel

The lodgings portion of subsistence expenses incurred while occupying a rented house on a short-term basis as temporary quarters incident to a transfer includes services ordinarily included in the price of a hotel or motel room. Since cleaning the hotel or motel room is a service provided to a guest and ordinarily included in the price of the room, the cost of cleaning a rug required under the lease agreement for the house may be reimbursed as part of lodgings expense. However, charges to mow the lawn of the temporary quarters and the employee's personal renter's insurance may not be reimbursed because they are not services ordinarily provided to a hotel or motel guest.

## B-248013, September 8, 1992

### Civilian Personnel

**Travel**

■ **Travel expenses**

■■ **Reimbursement**

■■■ **Eligibility**

Employee who traveled from Anchorage, Alaska, to Del Ray Beach, Florida, shortly after retirement from federal service, returned to Alaska and still resides there over 2 years after his separation, is not entitled to reimbursement of the costs of the trip to Florida. The trip was personal in nature and not incidental to his separation.

## B-244558, September 10, 1992***

### Civilian Personnel

**Leaves Of Absence**
■ **Annual leave**
■■ **Lump-sum payments**
■■■ **Eligibility**
■■■■ **Legislative/judicial personnel**

### Civilian Personnel

**Leaves Of Absence**
■ **Statutory regulations**
■■ **Officers**
■■■ **Definition**

An Air Force employee with annual leave to his credit received a presidential appointment as a judge of the United States Court of Military Appeals, incident to which the judge claimed payment for his annual leave. A judge of this court is an "officer" as that term is defined in 5 U.S.C. § 2104(a) (1988), and therefore he is exempt from the leave act. Accordingly, his claim may not be paid because an employee with annual leave to his credit who receives an appointment to a position exempt from the leave act is not considered separated from the federal service for the purpose of receiving a lump-sum leave payment under 5 U.S.C. § 5551 (1988). The leave remains credited to him until he either separates from the federal service or returns to a position covered by the leave act.

## B-248948, September 16, 1992

### Civilian Personnel

**Relocation**
■ **Taxes**
■■ **Allowances**
■■■ **Eligibility**

A transferred employee claims entitlement to an additional relocation income tax (RIT) allowance payment contending that the computation formula used in 41 C.F.R. Part 302-11 (1991) is not consistent with the provisions of 5 U.S.C. § 5724b (1988), which calls for reimbursement of substantially all additional income taxes paid. The authority to promulgate RIT allowance regulations under that law has been delegated to the Administrator of General Services and we have concluded that the regulations, including the computation formula described therein, are reasonable and proper. Since we have determined that the payment made to the employee was correctly calculated under those regulations, no additional payment may be made. *Frayne W. Lehman*, 69 Comp. Gen. 258 (1990).

## B-248479, September 18, 1992

### Civilian Personnel

**Relocation**
■ **Residence transaction expenses**
■■ **Reimbursement**
■■■ **Eligibility**
■■■■ **Permanent residences**

An employee maintaining rented living accommodations in the immediate vicinity of his duty station in Whitehall, Wisconsin, who claims reimbursement for selling expenses for his family residence in Sauk City, 135 miles away, from which he claimed to commute to Whitehall two or occasionally three times weekly, is not entitled to those expenses because he has not shown that he commuted "regularly" to and from Whitehall from Sauk City as required by 41 C.F.R. § 302-1.4(j) (1990) and § 302-6.1 (1990).

## Civilian Personnel

**Relocation**

■ **Residence transaction expenses**

■■ **Reimbursement**

■■■ **Eligibility**

■■■■ **Permanent residences**

Despite residence selling expenses being specifically authorized on the form that authorized relocation, and regardless of advice that may have been given regarding the selling expenses, those expenses may not be reimbursed to an employee who does not "regularly" commute to and from the residence from his worksite because they are strictly limited to those authorized by statutes and the Federal Travel Regulations. *Hollis Whitaker*, B-245933, Feb. 28, 1992.

## B-248698, September 18, 1992

## Civilian Personnel

**Relocation**

■ **Expenses**

■■ **Agencies**

■■■ **Liability**

■■■■ **Personnel death**

An employee who was authorized to perform a permanent change of station incident to a transfer from the Department of the Navy to the National Aeronautics and Space Administration (NASA), died before reporting for duty at his new duty station. NASA, as the gaining agency, is responsible for payment of any travel and relocation expenses incurred prior to the employee's death.

## Civilian Personnel

**Relocation**

■ **Expenses**

■■ **Reimbursement**

■■■ **Personnel death**

An employee died before reporting to his new duty station. At the time of his death his household goods had been shipped by the agency. Subsequent to his death, his surviving dependents moved to the location of the new duty station, and the widow has claimed reimbursement for their travel and relocation expenses. Under these circumstances, the costs of shipping and storing the deceased employee's household goods are allowable expenses, since the shipment was initiated in anticipation of the transfer and the need for storing the shipment continued after the employee died. The other travel and relocation expenses that were incurred after the employee's death may not be reimbursed.

## B-244824, September 21, 1992

## Civilian Personnel

**Compensation**

■ **Computation**

■■ **Retirement**

■■■ **Retirement plans**

■■■■ **Reservists**

A civilian agency's contribution toward the retirement program of an employee serving as a reservist is not part of the employee's income from non-military compensation. Thus, a reservist who was injured while on active duty and received pay and allowances pursuant to 37 U.S.C. § 204 may not be reimbursed for the retirement program contributions he would have earned from his civil-

ian employer during the period he was unable to work. However, he may be reimbursed his 6 percent retirement contribution since they are deducted from his monthly pay.

## B-248422, September 21, 1992

## Civilian Personnel

**Travel**

**■ Temporary duty**

**■ ■ Actual subsistence expenses**

**■ ■ ■ Lodging**

**■ ■ ■ ■ Maximum rates**

The reimbursement of an employee performing travel within the continental United States on an actual subsistence expense basis may not exceed 150 percent of the maximum per diem rate authorized for the travel assignment location. *See* 41 C.F.R. § 301-8.3(a)(1) (1991). An employee who incurred lodging expenses in excess of that amount may not be reimbursed that additional cost, even though the excessive cost was caused by agency error in making hotel reservations.

## B-223828.3, September 22, 1992

## Civilian Personnel

**Travel**

**■ Travel expenses**

**■ ■ Constructive expenses**

**■ ■ ■ Reimbursement**

When an employee uses a privately owned vehicle for official travel as a matter of personal preference in lieu of common carrier transportation, paragraphs 1-2.2d and 1-4.3 of the Federal Travel Regulations dictate a comparison of the total constructive cost of travel using common carrier transportation including constructive per diem by that method of transportation to the total actual mileage and per diem costs of travel by the privately owned vehicle, but only for the travel to, from, and between the temporary duty sites. Once the employee is at the TDY area, he may only be reimbursed based on his actual lodging expenses incurred—not higher constructive lodging expenses that he may have incurred had he traveled by common carrier. *Dale M. Anderson*, B-223828.2, Jan. 29, 1991, affirmed.

## B-248232, September 22, 1992

## Civilian Personnel

**Compensation**

**■ Retroactive compensation**

**■ ■ Overtime**

**■ ■ ■ Burden of proof**

A retired wage board employee claims compensation for 5,371 hours of overtime work he allegedly performed over an approximate 4-year period. The employee may not be paid overtime under 5 U.S.C. § 5544 (1988), since he has not met his burden of proving that the overtime work was authorized or approved or that there was inducement on the part of the supervisor for the employee to perform the overtime work. 4 C.F.R. § 31.7 (1992).

## Civilian Personnel

**Compensation**

**■ Retroactive compensation**

**■ ■ Unused leave balances**

A retired wage board employee claims compensation for 284 hours of annual leave which was forfeited over an approximate 4-year period. The employee did not schedule the use of his annual

leave in writing before the start of the third biweekly pay period prior to the end of the leave years in question. *See* 5 C.F.R. § 630.308 (1992). Further, the employee's use of his annual leave was never approved in writing by his supervisor. 5 U.S.C. § 6304(d)(1)(B) (1988). The employee also claims compensation for 324 hours of annual leave which he signed for and allegedly did not use. There is no supporting evidence of record to substantiate that the employee actually worked on the days in question.

## B-248538, September 24, 1992

### Civilian Personnel

**Relocation**

**■ Residence transaction expenses**

**■ ■ Loan origination fees**

**■ ■ ■ Reimbursement**

**■ ■ ■ ■ Amount determination**

If an employee retains a mortgage broker who performs necessary administrative services that assist the ultimate lender in processing a loan, the employee may be reimbursed for the loan origination fees charged by both the broker and lender. The employee's total reimbursement, however, is limited to one percent of the loan amount unless the employee shows by clear and convincing evidence including an itemization of the lender's administrative charges that a higher rate does not include prepaid interest, points, or a mortgage discount, and the higher rate is customarily charged in the locality where the residence is located. Furthermore, the services of the broker must not be duplicated by the lender and must not increase the loan origination fee over what the lender would have charged in the absence of a broker having been involved.

## B-249707, September 24, 1992

### Civilian Personnel

**Relocation**

**■ Expenses**

**■ ■ Debt collection**

**■ ■ ■ Waiver**

### Civilian Personnel

**Relocation**

**■ Breach of service agreements**

**■ ■ Expenses**

**■ ■ ■ Liability**

Claimant was a civilian employee of the Department of the Air Force in California who transferred to the Army Corps of Engineers in Aberdeen, Maryland. He is obligated to repay the government the amount paid by the government in connection with his transfer when he resigned prior to fulfilling his service agreement. The employee alleges that medical reasons forced him to resign and that the agency should waive his debt. However, he has not provided sufficient evidence to show that his separation was for reasons beyond his control and acceptable to the agency concerned, as provided by 5 U.S.C. § 5724(i) (1988).

## B-248301, September 25, 1992

### Civilian Personnel

**Relocation**

■ **Residence transaction expenses**

■■ **Taxes**

■■■ **Reimbursement**

■■■■ **Eligibility**

Transferred employee who sold his cooperatively owned apartment may be reimbursed for the cost of a stock transfer tax in accordance with the FTR, 41 C.F.R. § 302-6.2(d)(1)(iv) (1991), and our decision, *Zera B. Taylor*, 61 Comp. Gen. 136 (1981).

### Civilian Personnel

**Relocation**

■ **Residence transaction expenses**

■■ **Attorney fees**

■■■ **Reimbursement**

Transferred employee utilized the services of a relocation services company in selling his cooperatively owned (Co-op) apartment and paid an attorney to prepare a contract of sale and negotiate with the Co-op Board prior to negotiating with the relocation company. The employee may not be reimbursed for the attorney's fee unless he can show that the legal services were not similar to those provided by the relocation services company. *See* the FTR, 41 C.F.R. § 302-12.5(b) (1991).

## B-244796, September 29, 1992

### Civilian Personnel

**Relocation**

■ **Residence transaction expenses**

■■ **Reimbursement**

■■■ **Eligibility**

■■■■ **Overseas personnel**

### Civilian Personnel

**Relocation**

■ **Overseas personnel**

■■ **Home service transfer allowances**

■■■ **Eligibility**

An Agriculture Department employee, assigned under a service agreement with the Agency for International Development pursuant to the Foreign Assistance Act, was transferred to and from an overseas post of duty under the Foreign Service Act of 1980. He may not be reimbursed for real estate expenses incident to sale of his former residence in Kansas City, Missouri, nor purchase of a new residence in Washington, DC. The Foreign Service Act and implementing regulations provide no reimbursement in these circumstances, and 5 U.S.C. § 5724(g) (1988) and the Federal Travel Regulations, 41 C.F.R. § 302-1.2(b)(1) (1990), which do provide for real estate expense reimbursement, specifically exclude employees who are transferred under the Foreign Service Act of 1980. However, the employee is eligible for a home service transfer allowance.

## B-248457, September 29, 1992

### Civilian Personnel

**Relocation**

**■ Miscellaneous expenses**

**■ ■ Reimbursement**

**■ ■ ■ Eligibility**

When an employee's household goods are shipped by the government incident to a transfer, charges by the mover for appliance servicing and grandfather clock packing are charges for services incident to preparing these items for transportation and are payable by the agency as transportation expenses, not expenses covered by the miscellaneous expense allowance.

### Civilian Personnel

**Relocation**

**■ Residence transaction expenses**

**■ ■ Loan origination fees**

**■ ■ ■ Reimbursement**

**■ ■ ■ ■ Amount determination**

A certification by a settlement agent on a HUD-1 Settlement Statement, which includes a 2-percent charge as a loan origination fee, that the amounts shown thereon are true is not an itemization of the lender's administrative charges as required by the Federal Travel Regulations to support reimbursing an employee more than one percent of the lender's loan origination fee.

### Civilian Personnel

**Relocation**

**■ Residence transaction expenses**

**■ ■ Finance charges**

An underwriter's fee and a tax service fee charged by a lender in connection with a mortgage loan are considered to be finance charges rather than appraisal fees or title insurance fees and are therefore not reimbursable residence transaction fees.

# Military Personnel

## B-247508, September 2, 1992

### Military Personnel

**Pay**
■ **Survivor benefits**
■■ **Annuities**
■■■ **Designated beneficiaries**
■■■■ **Court orders**

Where state court issues order modifying terms of prior final divorce decree (which was silent regarding Survivor Benefit Plan) and orders retired member to elect former spouse as beneficiary of Plan, action taken by service to make such designation following proper "deemed election" request by former spouse is not objectionable as 10 U.S.C. § 1450(f)(4) permits such action by court.

### Military Personnel

**Pay**
■ **Survivor benefits**
■■ **Cost reimbursement**

Since order of court ordering former spouse to be designated beneficiary of Survivor Benefit Plan and stating that former spouse is to pay the cost of such coverage is clear, GAO would pose no objection to an adjustment reflecting such premium cost to be deducted from former spouse's share of retired pay even though 10 U.S.C. § 1408(a)(4)(D) requires such deduction to be made in computation of "disposable retired pay," before division of retired pay is made, since the intent of the court is clear.

## B-247264, September 8, 1992

### Military Personnel

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

Member of the Navy who continues to accept housing allowance during pendency of his challenge to a determination he was not entitled to them cannot obtain a waiver of his debt to repay them, when his nonentitlement to them is subsequently confirmed. Member knew or should have known that continued entitlement to allowances was in doubt. Erroneous information initially provided to him by the Navy does not provide a basis to allow waiver. Accordingly, waiver must be denied.

## B-244827, September 9, 1992

### Military Personnel

**Pay**

**■ Retirement pay**

**■ ■ Claim accrual dates**

**■ ■ ■ Continuing claims**

**■ ■ ■ ■ Statutes of limitation**

A retired Army member, who subsequently retired in 1981 under the Civil Service Retirement System from a civilian agency and waived his military retired pay to increase his civil service annuity, succeeded in having his civilian records changed in 1989 to reflect government service through July 1984. He then filed a claim for accrued but unpaid military retired pay for the period up to July 1984. He filed this claim with the Army on December 6, 1989, and with this Office May 18, 1990. Retired pay accrued after December 6, 1983, (6 years from the date the claim was first filed) may be paid to him, but the portion accrued before that date is time barred by 31 U.S.C. § 3702. The pendency of legal action on the term of his civilian employment does not waive the 6-year statute of limitations.

### Military Personnel

**Pay**

**■ Survivor benefits**

**■ ■ Waiver**

A retired member may waive participation in military survivor benefit program if he elects participation in the civil service survivor benefit plan and Survivor Benefit Plan (SBP) premiums need not be deducted from military retired pay. However, if waiver is no longer effective for any reason, previously elected military SBP participation is resumed and military retired pay is reduced. Thus, when member's civilian records were changed to reflect continued service rather than retirement, the existing waiver of retired pay and SBP participation was rendered ineffective for that period and SBP deductions were properly resumed.

## B-248213, September 9, 1992

### Military Personnel

**Pay**

**■ Basic quarters allowances**

**■ ■ Rates**

**■ ■ ■ Determination**

**■ ■ ■ ■ Dependents**

Member whose with-dependent Basic Allowance for Quarters was terminated by the Air Force on a show of clear evidence that member, contrary to previous determination by a court of law, was not in fact the father of a child born out of wedlock, may nonetheless continue to be subject to garnishment of pay for child support until court order requiring garnishment is vacated.

## B-248293, September 10, 1992

### Military Personnel

**Relocation**

**■ Temporary quarters**

**■ ■ Allowances**

**■ ■ ■ Time restrictions**

**■ ■ ■ ■ Statutory regulations**

Member of the Air Force whose permanent change of station was put on administrative hold so that he could testify in a court-martial proceeding may be reimbursed for 2 days temporary lodg-

ing only, as provided by law under the circumstances, and is not entitled to further reimbursement.

## B-248353, September 10, 1992

## Military Personnel

**Pay**

**■ Survivor benefits**

**■■ Benefit election**

**■■■ Modification**

Once a former spouse is validly designated the beneficiary under the Survivor Benefit Plan pursuant to a divorce decree, a subsequent change of beneficiary can only be made following the submission of a modifying court order to the Secretary concerned which permits such a change of election.

## B-248017, September 16, 1992

## Military Personnel

**Pay**

**■ Survivor benefits**

**■■ Benefit election**

**■■■ Election time periods**

**■■■■ Former spouses**

Where divorce decree stated that member's former spouse was to be designated beneficiary under Survivor Benefit Plan (SBP) and both member and former spouse, under deemed election provisions, fail to take action to effect such election within 1-year period after divorce, subsequent court order holding member in contempt for failing to make such an election is without effect to extend or open a new 1-year period for such an election. Subsequent court order imposed no new obligation on member regarding SBP coverage.

## B-238482.2, September 18, 1992

## Military Personnel

**Pay**

**■ Death gratuities**

**■■ Eligibility**

**■■■ Statutes of limitation**

**■■■■ Applicability**

The Uniformed Services Contingency Option Act of 1953, 67 Stat. 501 (1953), currently codified at 10 U.S.C. § 1431 *et seq*, does not provide for retroactive establishment of survivor benefits where retired member failed to elect coverage within the law's deadline of 180 days after its passage. There are no exceptions to the filing requirement for situations beyond the member's control that may have contributed to missing the deadline. Survivor benefits therefore may not be provided for the survivors of a retired U.S. Navy member who failed to timely elect coverage while resident in China during a period when diplomatic relations between China and the United States had been severed.

## B-244824, September 21, 1992

### Military Personnel

**Pay**
■ **Computation**
■ ■ **Reservists**
■ ■ ■ **Retirement plans**

A civilian agency's contribution toward the retirement program of an employee serving as a reservist is not part of the employee's income from non-military compensation. Thus, a reservist who was injured while on active duty and received pay and allowances pursuant to 37 U.S.C. § 204 may not be reimbursed for the retirement program contributions he would have earned from his civilian employer during the period he was unable to work. However, he may be reimbursed his 6 percent retirement contribution since they are deducted from his monthly pay.

## B-248267, September 24, 1992

### Military Personnel

**Relocation**
■ **Household goods**
■ ■ **Weight restrictions**
■ ■ ■ **Liability**
■ ■ ■ ■ **Waiver**

Where member was authorized to ship 1,300 pounds of household goods overseas to weight restricted country but due to surface carrier restrictions at overseas base on the weight that could be returned to United States (600 pounds) and fact that initial orders did not note this restriction, claim for excess weight charges which normally are not for waiver as erroneous payment under 10 U.S.C. § 2774(a) may be waived as exceptional case under 67 Comp. Gen. 484 (1988).

## B-247872, September 25, 1992

### Military Personnel

**Travel**
■ **Advances**
■ ■ **Overpayments**
■ ■ ■ **Debt collection**
■ ■ ■ ■ **Waiver**

Former member of the Navy requests waiver under 10 U.S.C. § 2774 of his debt which arose when he was erroneously given travel advances at his permanent duty station. The member was a newly commissioned officer who believed he was entitled to per diem and spent the funds on food and lodgings. Partial waiver is granted for payments made to the member prior to the time he was informed of the error. The portion of the debt paid to him after he became aware that he was not entitled to it is not appropriate for waiver.

## B-248781, September 29, 1992

### Military Personnel

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

Waiver under 10 U.S.C. § 2774 may not be granted where an enlisted member of the Navy Reserve should have known he was not entitled to retain bonus payments received after he was commis-

sioned as an officer. Member signed a reenlistment contract which states that his bonus entitlement would end if he became "separated from the selected reserve for any reason as an enlisted person" prior to the fulfillment of his obligation.

## Military Personnel

**Pay**

**■ Overpayments**

**■ ■ Error detection**

**■ ■ ■ Debt collection**

**■ ■ ■ ■ Waiver**

The Comptroller General is authorized by 10 U.S.C. § 2774 to waive a claim of the United States arising from an erroneous payment of pay and allowances. The portion of a debt arising from a bonus that was proper at the time it was paid is not a debt arising out of an erroneous payment, even though the portion was subsequently deemed to be unearned. Accordingly the waiver statute does not apply, and waiver may not be granted.

## B-245318, September 30, 1992

## Military Personnel

**Relocation**

**■ Leases**

**■ ■ Termination costs**

**■ ■ ■ Reimbursement**

A member who was ordered to make a local move from private, leased quarters to government housing was required to pay his landlord for the remaining 27 days under the lease. He and his dependents occupied government quarters during that period. Basic allowance for quarters and overseas housing allowance are payable for the 27 days, since the member was ordered to move into government quarters but still incurred rental expenses thereafter.

# Miscellaneous Topics

## B-249730, September 2, 1992

### Miscellaneous Topics

**Federal Administrative/Legislative Matters**

■ **Executive branch personnel**

■■ **Vacancies**

■■■ **Temporary appointment**

■■■■ **Durations**

To fill a position covered by the Vacancies Act, the President may appoint an executive branch official to perform duties on a temporary basis for 120 days. During that time period, the President must also forward to the Senate his nominaiton of an individual to fill the position permanently. Meanwhile, the officer serving in an acting capacity may continue until the Senate concludes its deliberations on the pending nomination. 5 U.S.C. §§ 3345 - 49. 65 Comp. Gen. 626 (1989).

## B-245134, September 25, 1992

### Miscellaneous Topics

**Federal Administrative/Legislative Matters**

■ **Congressional committees**

■■ **Rulemaking**

■■■ **Acceleration**

■■■■ **Authority**

Section 1102(a)(6) of the Omnibus Trade and Competitiveness Act of 1988 provides a basis for the application of the congressional fast-track procedures contained in section 1103 of the Act to bills implementing multilateral free trade agreements which include tariff modification provisions requiring congressional approval, such as the proposed North American Free Trade Agreement (NAFA).

### Miscellaneous Topics

**Federal Administrative/Legislative Matters**

■ **Congressional committees**

■■ **Rulemaking**

■■■ **Acceleration**

■■■■ **Amendments**

If a Member of Congress is granted a rule to offer an amendment during consideration of a bill implementing a multilateral trade agreement such as the NAFTA under fast-track procedures, he/she is not precluded from offering such an amendment by the prohibition on amendments imposed by the fast-track procedures. Section 1103(d)(2) of the Omnibus Trade and Competitiveness Act of 1988, which provides for consideration under fast-track procedures, specifically recognizes the right of either House to change the rule relating to the procedures of that House at any time.

# Procurement

**B-242353.3, September 1, 1992** **92-2 CPD 144**

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Preparation costs**
■■■ **Amount determination**

Protester is entitled to reimbursement for time spent by its employees in preparing the proposal and in pursuing the protest at employees' actual rates of compensation, plus reasonable overhead and fringe benefits.

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Preparation costs**
■■■ **Burden of proof**

Protester is not entitled to recover the proposal preparation costs of its subcontractors where there is no evidence that the protester and the subcontractors acted as a team throughout the bidding process.

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Preparation costs**

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

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Preparation costs**
■■■ **Amount determination**

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Preparation costs**
■■■ **Attorney fees**

Protester is not entitled to reimbursement for the time spent by its employees and attorneys pursuing federal court review of the agency decision not to suspend contract performance pending resolution of the protest.

## B-248474, September 1, 1992 — 92-2 CPD 145

### Procurement

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

Protest that agency deprived incumbent contractor of opportunity to compete because agency did not provide it with a copy of the solicitation is sustained where record shows that contracting officer failed to properly list protester on solicitation's mailing list, protester had a reasonable expectation that it would receive a solicitation, and only minimal competition was obtained.

## B-247576, September 2, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Carrier liability**
■■■ **Burden of proof**

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Evidence sufficiency**

A carrier does not overcome the government's *prima facie* case of liability against it for damaged household goods by asserting that the owner denied the carrier the right to inspect the damaged items by repairing them prior to the end of the inspection period, where the firm did not even pursue its inspection rights within the inspection period.

## B-247576.2, September 2, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Carrier liability**
■■■ **Burden of proof**

*Prima facie* case of carrier liability for the loss of clothing from an undelivered carton labeled "linen" is established where the agency points out that it would not have been unusual for the clothing to have been packed in that carton, and the carrier packed the shipment and was responsible for preparing the inventory; it is not reasonable to conclude simply from the carrier's own labeling and inventorying decisions that the items never were tendered to the carrier.

## B-248185, September 2, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Carrier liability**
■■■■ **Presumptions**

Loss of or damage to goods that pass through the hands of several custodians is presumed to have occurred in the custody of the last one.

## B-249321, September 2, 1992 — 92-2 CPD 147

### Procurement

**Sealed Bidding**
■ **Bid guarantees**
■■ **Responsiveness**
■■■ **Signatures**
■■■■ **Omission**

Bid was properly rejected as nonresponsive where the Certificate of Procurement Integrity contained the hand-printed name and title of the officer responsible for the bid but not the officer's signature, thus failing to unequivocally commit the bidder to the certificate's terms.

## B-249673, September 2, 1992

### Procurement

**Sealed Bidding**
■ **Bids**
■■ **Responsiveness**
■■■ **Certification**
■■■■ **Ambiguity**

Bid accompanied by completed Certificate of Procurement Integrity, which was executed by the same individual who signed the bid, is responsive, where an unambiguous abbreviation of the bidder's complete name, appears in the certification as the name of the bidder.

## B-249933, September 2, 1992 — 92-2 CPD 149

### Procurement

**Bid Protests**
■ **Allegation substantiation**
■■ **Lacking**
■■■ **GAO review**

Protest that solicitation for refuse collection and transportation is defective is summarily dismissed for failure to state a valid basis of protest; contrary to protester's contention that bid schedule is confusing and ambiguous, and provides for payment to the contractor on the basis of an arbitrary estimated tonnage figure, the solicitation unambiguously requests bidders to enter unit prices based on tonnage hauled, and provides for payment on the basis of actual tonnage.

## B-247919.5, B-247919.6, September 3, 1992 — 92-2 CPD 150

### Procurement

**Competitive Negotiation**
■ **Requests for proposals**
■■ **Terms**
■■■ **Compliance**

Award of a contract was improper where the awardee's proposal did not show that the product offered met the material requirement regarding the proposed product's maximum weight.

## B-248007.2, September 3, 1992 — 92-2 CPD 151

### Procurement

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

Agency improperly allowed correction of two mistakes in apparent low bids where there is no reasonable basis to determine the amount of the intended bid, either precisely or within a narrow range.

## B-248572, September 3, 1992 — 92-2 CPD 152

### Procurement

**Contractor Qualification**
■ **De facto debarment**
■■ **Non-responsible contractors**

Protester's allegation that agency, to avoid award to a minorityowned firm, acted arbitrarily in proposing firm for debarment is denied where the record is devoid of any evidence of improper motives and is replete with evidence, namely, the prior criminal convictions of the protester's president, to show that the agency's actions were reasonable.

## B-248600, September 3, 1992 — 92-2 CPD 153

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation**
■■■ **Transportation contracts**
■■■■ **Rates**

General Accounting Office will not disturb the award where there is no evidence in the record that an agency's reliance on a single informational quote for barge transportation services in evaluating the protester's f.o.b. origin offer for fuel did not represent the lowest, best available rate.

## B-248654, September 3, 1992 — 92-2 CPD 154

### Procurement

**Competitive Negotiation**
■ **Contract awards**
■■ **Administrative discretion**
■■■ **Technical equality**
■■■■ **Cost savings**

### Procurement

**Competitive Negotiation**
■ **Contracting officer findings**
■■ **Offers**
■■■ **Technical equality**

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation**
■■■ **Technical equality**

The General Accounting Office will not disturb award to lower cost offeror where the record shows that difference in point totals between competing proposals was insignificant and that the technical proposals were reasonably considered to be essentially equal in technical merit by the agency's technical evaluators.

## B-247767, September 4, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Evidence sufficiency**

A *prima facie* case of liability against a carrier for damage to a service member's household goods is not established where the supporting damage estimate is unreliable because it reflects the costs of repairing items nearly 2 years after discovery of the damage and involves repairs that, in part, appear to be inconsistent with the damages noted on the Joint Statement of Loss or Damage at Delivery (DD Form 1840).

## B-248575, et al., September 4, 1992 — 92-2 CPD 155

### Procurement

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

Protest against short delivery schedule in solicitation for satellite communications services is denied where the record demonstrates that the schedule reflects the agency's minimum needs, which are based on national security.

## Procurement

**Bid Protests**

■ **GAO procedures**

■■ **Interested parties**

■■■ **Direct interest standards**

Where protester cannot meet procuring agency's required delivery schedule, protester is not an interested party to challenge alleged procedural irregularities in procurement of satellite communications services.

## B-248584, B-248584.2, September 4, 1992 — 92-2 CPD 156

## Procurement

**Competitive Negotiation**

■ **Offers**

■■ **Evaluation**

■■■ **Downgrading**

■■■■ **Propriety**

Protests that agency unreasonably downgraded protesters' proposals in the area of experience are denied where record shows that agency reasonably downgraded the protesters' proposals in that area because of the firms' performance under prior relevant contracts.

## B-245243.2, September 8, 1992 — 92-2 CPD 157

## Procurement

**Competitive Negotiation**

■ **Offers**

■■ **Evaluation errors**

■■■ **Non-prejudicial allegation**

In a negotiated procurement for glove inserts, where offerors were informed that "[a]ward may be made on the basis of best delivery," in addition to the evaluation of past performance and price, the procuring agency improperly failed to evaluate the offerors' delivery terms or to inform offerors that delivery would not be evaluated; however, the protester, which offered the best delivery terms, was not prejudiced where the record shows that delivery was no longer an agency concern and does not show that the protester would have changed its proposal in any way if it was aware that the government did not need accelerated delivery, and where the protester's proposal was higher priced and significantly lower technically rated in past performance than the awardee's.

## B-247429, September 8, 1992

## Procurement

**Payment/Discharge**

■ **Shipment**

■■ **Carrier liability**

■■■ **Burden of proof**

The listing of an item on the inventory constitutes evidence of its tender to a carrier for purposes of a *prima facie* case of carrier liability for the item's loss in transit.

## Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Carrier liability**
■■■ **Burden of proof**

The failure to specify in a notice of loss, timely-dispatched to the carrier, the inventory carton number in which the allegedly lost items had been packed does not relieve the carrier of liability where the carton was specified later and the record shows that the items were tendered to the carrier and packed as claimed.

## B-247923.3, September 8, 1992 — 92-2 CPD 158

## Procurement

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

Agency reasonably excluded protester's proposal from the competitive range, under solicitation which emphasized technical merit, where the significant weaknesses in the protester's proposal coupled with the evaluated technical superiority of the proposal which was included in the competitive range provided an appropriate basis for the agency's determination that the protester's proposal had no reasonable chance of being selected for award.

## B-248182, September 8, 1992

## Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Carrier liability**
■■■ **Burden of proof**

## Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Carrier liability**
■■■■ **Presumptions**

Damage to goods that passed through the hands of several bailees is presumed to have occurred in the hands of the last one, who then has the burden of proving that the damage did not occur while in its custody.

## Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Carrier liability**
■■■ **Burden of proof**

To escape liability for damage on the grounds that goods were improperly packed by the shipper or his agent, a carrier must show not only that the goods were improperly packed but also that the improper packing was the sole cause of damage.

## Procurement

**Payment/Discharge**

■ **Shipment**

■■ **Damages**

■■■ **Notification**

Failure to notify a carrier of damage to a shipper's goods within 75 days of delivery creates a rebuttable presumption that the carrier is not responsible for the damage.

## B-248187, September 8, 1992

## Procurement

**Payment/Discharge**

■ **Shipment**

■■ **Carrier liability**

■■■ **Burden of proof**

Shipper makes *prima facie* case of liability against a carrier for the loss of 40 cases of bananas in a shipment of 1,016 cases of foodstuffs pursuant to a bill of lading where the driver, responsible for loading and counting the shipment, acknowledged receipt of 1,016 cases. Record does not support carrier's contention that driver was mistaken and that he never actually received the bananas from the warehouse.

## B-248565, B-248565.2, September 8, 1992*** 92-2 CPD 159

## Procurement

**Bid Protests**

■ **GAO procedures**

■■ **Protest timeliness**

■■■ **Apparent solicitation improprieties**

Protest of agency's improper evaluation under the Buy American Act is dismissed as untimely where evaluation was consistent with reasonable interpretation of Buy American Act evaluation provisions; any inconsistency in evaluation provisions was apparent on the face of the solicitation and thus had to be protested prior to bid opening.

## Procurement

**Bid Protests**

■ **GAO procedures**

■■ **Protest timeliness**

■■■ **Apparent solicitation improprieties**

## Procurement

**Socio-Economic Policies**

■ **Preferred products/services**

■■ **Foreign products**

■■■ **Acceptability**

■■■■ **Foreign country classification**

Where solicitation specifically advised that bids offering Canadian products would be considered "qualifying" for purposes of applying the Buy American Act, post-bid opening protest that agency should have considered Canadian product bid to be "domestic" rather than "qualifying" for purpose of applying Act is untimely; protests of alleged deficiencies apparent on the face of the solicitation must be filed prior to bid opening in order to be timely.

## B-248611, September 8, 1992 — 92-2 CPD 160

### Procurement

**Noncompetitive Negotiation**
■ **Contract awards**
■■ **Sole sources**
■■■ **Propriety**

Proposed sole-source award under the authority of 10 U.S.C. § 2304(c)(1) (1988) is not objectionable where the agency reasonably determined that only one source was available to supply the required equipment and the protester fails to show that it had currently available equipment which could meet the agency's requirements.

## B-231357.2, September 9, 1992

### Procurement

**Contract Disputes**
■ **Shipment costs**
■■ **Freight charges**

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Amount determination**
■■■ **GAO review**

Carrier claim for transportation charges that had been withheld in connection with the shipment of two items that were damaged in transit is denied where the record now shows that the items were destroyed within the meaning of the applicable regulation.

## B-250236, September 9, 1992

### Procurement

**Payment/Discharge**
■ **Payment terms**
■■ **Contracts**
■■■ **Refinancing**
■■■■ **Authority**

A proposal by the General Services Administration to refinance purchase contracts entered into for the construction of public buildings by substituting the Federal Financing Bank for the current debt holders, thereby reducing interest charges, is permissible under 40 U.S.C. § 602a. The prohibition in 40 U.S.C. § 602a(g) against entering into purchase contracts after June 30, 1975 does not apply to refinancing debt as proposed by GSA because no "new" building projects or other substantive modifications are contemplated.

## B-246732.2, September 10, 1992 — 92-2 CPD 161

### Procurement

**Competitive Negotiation**
■ **Best/final offers**
■■ **Technical acceptability**
■■■ **Negative determination**
■■■■ **Propriety**

Agency reasonably found protester's best and final offer (BAFO) technically unacceptable where protester's BAFO failed to provide the requested detailed technical information, which was neces-

sary to establish the protester's compliance with the solicitation's design and performance specifications.

## B-248326.2, September 10, 1992 — 92-2 CPD 162

### Procurement

**Sealed Bidding**
■ **Bids**
■■ **Responsiveness**
■■■ **Prices**
■■■■ **Line items**

Bid in which the low bidder inserted prices for certain services as additional, separate line items, even though the pricing scheme in the solicitation contemplated inclusion of these items as part of the schedule line item pricing, need not be rejected as nonresponsive because the bid took no exception to the material solicitation requirements, the pricing scheme was unambiguous and the manner of pricing did not prejudice the other bidders.

## B-248514, September 10, 1992

### Procurement

**Payment/Discharge**
■ **Unauthorized contracts**
■■ **Quantum meruit/valebant doctrine**

Company that provided unauthorized moving services to the government at request of government employee may be paid on a *quantum meruit* basis because government was otherwise authorized to procure moving services, the government received and accepted the services' benefit, the company acted in good faith, and the amount of the claim represents the reasonable value of the benefits received.

## B-248597, September 10, 1992 — 92-2 CPD 163

### Procurement

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

Agency was justified in selecting a slightly higher priced proposal, which had demonstrated acceptable mission suitability—the primary technical evaluation factor under the solicitation—where the agency reasonably determined that the lower priced proposal was technically inferior because it did not provide specifically requested mission suitability information, a response that the agency reasonably interpreted as indicating inferior mission suitability.

## B-248631, September 10, 1992 — 92-2 CPD 165

### Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Protests timeliness**
■■■ **Apparent solicitation improprieties**

Protest that challenges the propriety of solicitation evaluation provisions which were apparent from the face of the solicitation is untimely where first filed after contract award.

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Interested parties**
■■■ **Direct interest standards**

Where solicitation provided for award on the basis of technical, management and price factors, protester is not an interested party to challenge the agency's cost-technical tradeoff where there are two other unsuccessful offerors whose proposals offered prices lower than the protester and were higher rated under technical and management factors than the protester's.

## B-248664, September 10, 1992 — 92-2 CPD 166

## Procurement

**Small Purchase Method**
■ **Quotations**
■■ **Evaluation**
■■■ **Technical acceptability**

Protest that quotation under procurement conducted using small purchase procedures should have been rejected as technically unacceptable is denied where quoter indicated it would comply with all solicitation requirements and agency verified quoter's intended compliance prior to issuing the purchase order.

## B-248751, B-248751.3, September 10, 1992 — 92-2 CPD 167

## Procurement

**Sealed Bidding**
■ **Bids**
■■ **Responsiveness**
■■■ **Descriptive literature**
■■■■ **Adequacy**

## Procurement

**Sealed Bidding**
■ **Qualified bids**
■■ **Responsiveness**

Agency improperly awarded contract to bidder whose bid was nonresponsive both because it did not contain required descriptive literature for an offered equal product and because it was improperly qualified.

## B-248653, September 11, 1992 — 92-2 CPD 173

## Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation errors**
■■■ **Evaluation criteria**
■■■■ **Application**

Agency's evaluation of revised offers and the subsequent award decision cannot be found reasonable where the record includes only technical point scores unaccompanied by any contemporaneous evaluation documentation or other explanation that would support the scores awarded to the protester and the awardee.

## B-250277, September 11, 1992 — 92-2 CPD 174

### Procurement

**Bid Protests**
**■ GAO authority**

General Accounting Office is without jurisdiction to consider a protest of a procurement by the Federal Deposit Insurance Corporation (FDIC) because FDIC is defined by statute as a mixed-ownership corporation and is therefore not a federal agency for bid protest purposes.

## B-248219.2, September 14, 1992 — 92-2 CPD 175

### Procurement

**Bid Protests**
**■ GAO procedures**
**■ ■ GAO decisions**
**■ ■ ■ Reconsideration**

When determining feasibility of termination of a contract upon sustaining a protest, General Accounting Office, in absence of contrary indication in the record, properly considered performance schedule as a valid indication of the extent of likely contract performance.

## B-248477.2, September 14, 1992 — 92-2 CPD 176

### Procurement

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

### Procurement

**Competitive Negotiation**
**■ Offers**
**■ ■ Evaluation errors**
**■ ■ ■ Evaluation criteria**
**■ ■ ■ ■ Application**

Where request for proposals to expand and upgrade hardware and software for existing training system required offerors to provide detailed technical proposals describing their approach to meeting the agency's requirements and stated that those proposals would be evaluated under various specific technical evaluation criteria, offerors were on notice that qualitative distinctions would be made among the proposals in the evaluation of offers. Agency properly awarded contract to offeror proposing superior technical approach which in some respects exceeded the minimum solicitation requirements, where the agency reasonably concluded that the technical superiority outweighed a minimal price premium.

## B-248640, B-248640.4, September 14, 1992

### Procurement

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

Agency reasonably concluded that proposal was technically unacceptable for failure to comply with a mandatory solicitation requirement where the offeror's best and final offer explicitly with-

drew its commitment, made earlier in response to a deficiency report, to comply with that requirement.

## B-248640.2, B-248640.3, September 14, 1992 — 92-2 CPD 200

### Procurement

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

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

### Procurement

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

Allegation that consensus evaluation did not reflect the individual evaluators' notations is denied where the record indicates that the consensus reasonably reflects the collective view of the evaluators and the characteristics of the proposal, and there is no credible evidence that the consensus evaluation was unreasonable.

## B-248640.5, September 14, 1992

### Procurement

**Competitive Negotiation**
■ **Best/final offers**
■ ■ **Clerical errors**

Agency has no obligation to seek clarification of an alleged clerical mistake in a proposal where the agency could not reasonably have been expected to know that a clerical error had occurred.

## B-249367.5, September 14, 1992 — 92-2 CPD 177

### Procurement

**Bid Protests**
■ **GAO procedures**
■ ■ **Preparation costs**
■ ■ ■ **Administrative remedies**

Protester is not entitled to award of the costs of filing and pursuing its protest where the agency determined to take corrective action within 3 weeks of the filing of the protest.

## B-249475, B-249475.2, September 14, 1992 — 92-2 CPD 178

### Procurement

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

Protest of cancellation of solicitation is dismissed as untimely where not filed within 10 working days after protester knew or should have known basis for protest.

## Procurement

**Bid Protests**

**■ GAO procedures**

**■ ■ Interested parties**

**■ ■ ■ Direct interest standards**

Protest alleging that agency failed to apply evaluation differential to foreign low bid as required under Federal Acquisition Regulation balance of payments provisions is dismissed where protester is third low bidder, and therefore is not an interested party to challenge evaluation of low bid.

## Procurement

**Bid Protests**

**■ Allegation substantiation**

**■ ■ Lacking**

**■ ■ ■ GAO review**

Protest alleging that agency improperly included protester's proprietary data in solicitation is dismissed where protester has not established the proprietary nature of the information.

## B-248686, September 15, 1992 — 92-2 CPD 180

## Procurement

**Competitive Negotiation**

**■ Offers**

**■ ■ Cost realism**

**■ ■ ■ Evaluation errors**

**■ ■ ■ ■ Allegation substantiation**

## Procurement

**Competitive Negotiation**

**■ Offers**

**■ ■ Evaluation errors**

**■ ■ ■ Evaluation criteria**

**■ ■ ■ ■ Application**

Protest that evaluation of cost proposals was not in accordance with solicitation's evaluation and award criteria is sustained where solicitation provided for evaluation of "total costs" and agency excluded from consideration some 40 percent of contract's overall cost.

## Procurement

**Competitive Negotiation**

**■ Offers**

**■ ■ Evaluation**

**■ ■ ■ Cost estimates**

**■ ■ ■ ■ Indefinite quantities**

Despite uncertainty over what ultimately will be needed when an indefinite quantity, indefinite delivery contract is to be awarded, the cost of those needs must be evaluated to the extent possible.

## Procurement

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

Cost/technical tradeoff which results in award to higher priced, higher rated firm is unreasonable where agency failed to consider total cost of contract in making award decision.

## B-248954, September 15, 1992 — 92-2 CPD 181

## Procurement

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

Protest that agency (1) improperly waived a solicitation specification for the awardee, and (2) determined the awardee to be responsible in bad faith is dismissed as untimely where not filed within 10 working days of decision denying protester's agency-level protest challenging awardee's eligibility for award.

## B-249075, September 16, 1992

## Procurement

**Payment/Discharge**
■ **Unauthorized contracts**
■■ **Quantum meruit/valebant doctrine**

The Port Authority of New York and New Jersey may be paid on a quantum meruit basis for the Customs Service's use of real property without a written lease, since Customs could properly have acquired a lease, it received and accepted the benefit of the use of the real property, the Port Authority acted in good faith, and the amounts claimed represent the reasonable value of the rent.

## B-249493, September 16, 1992 — 92-2 CPD 182

## Procurement

**Bid Protests**
■ **GAO authority**

Protest concerning request for carriers' rate tenders for a one-time bill of lading shipment of vehicles falls outside the scope of the General Accounting Office's bid protest function.

## B-246185.3, September 17, 1992 — 92-2 CPD 183

## Procurement

**Specifications**
■ **Minimum needs standards**
■■ **Competitive restrictions**
■■■ **Design specifications**
■■■■ **Justification**

Protest that amended request for proposals for drill rigs unduly restricts competition because it allegedly is "written around" a competitor's drill rig is denied where the agency establishes that the amendment's standard for evaluating the reliability of a drill rig's design (requiring that the

rig has been built four times and that each of the four rigs has been in use for 5 years), which the protester cannot meet, is reasonably related to the agency's actual minimum needs.

## Procurement

**Bid Protests**

■ **Premature allegation**

■■ **GAO review**

In protest against amended specifications, filed prior to closing date for receipt of amended proposals and prior to any evaluation of offers, protester's arguments about its competitor's ability to meet the agency's requirements are dismissed as premature.

## B-247073.4, September 17, 1992 — 92-2 CPD 184

## Procurement

**Bid Protests**

■ **GAO procedures**

■■ **Protest timeliness**

■■■ **10-day rule**

Allegation that proposed awardee's price was unrealistic is dismissed as untimely where, pursuant to protective order issued under prior protest 3-1/2 months prior to filing current protest, protester's counsel received information which, together with information already in the record, was sufficient to put counsel on notice of protest basis; under these circumstances, timeliness is measured from time counsel knew or should have known protest basis, and fact that protester itself received arguably necessary information only later is irrelevant.

## B-247535.2, September 17, 1992 — 92-2 CPD 185

## Procurement

**Competitive Negotiation**

■ **Contract awards**

■■ **Administrative discretion**

■■■ **Cost/technical tradeoffs**

■■■■ **Cost savings**

Protest of the award of a contract for services in support of an attack submarine program by a firm teaming with the incumbent support contractors challenging the agency's determination that competing proposals were technically equivalent and the consequent decision to award to the nonincumbent offeror with lower evaluated costs is denied where the solicitation did not make submarine-specific experience a principal discriminating factor between competing offerors and where the record shows that the agency had a reasonable basis for favorably considering the nonincumbent awardee's related surface ship support experience.

## Procurement

**Competitive Negotiation**

■ **Offers**

■■ **Cost realism**

■■■ **Evaluation errors**

■■■■ **Allegation substantiation**

Protest alleging that agency's cost realism analysis of the competing offerors' other direct costs (ODC) and transition/start-up costs was defective is denied where, even under the protester's suggested method of properly calculating ODCs, the results yield no significant difference between the higher evaluated costs of the protester and the evaluated costs of the awardee and where the transition/start-up costs minimally affected the overall analysis.

## B-249884, September 17, 1992

### Procurement

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

Where company submits with its bid only a facsimile copy of a bid bond, the bond's enforceability is questionable and the bid must be rejected as nonresponsive.

## B-250091, September 17, 1992 — 92-2 CPD 186

### Procurement

**Sealed Bidding**
**■ Bid guarantees**
**■ ■ Sureties**
**■ ■ ■ Acceptability**

Bid accompanied by bid bond executed by corporate surety not listed in Treasury Department Circular 570 is nonresponsive.

## B-248145.2, September 18, 1992 — 92-2 CPD 187

### Procurement

**Bid Protests**
**■ Allegation**
**■ ■ Abandonment**

Protest that contracting agency failed to consider a fixed-price offer submitted under request for proposals that was issued on a cost-type basis (in spite of assurances that such offer would be considered) is dismissed as abandoned where protester fails to pursue the issue in its protest comments.

### Procurement

**Bid Protests**
**■ GAO procedures**
**■ ■ Protest timeliness**
**■ ■ ■ Apparent solicitation improprieties**

Protest that agency's award of a contract on the basis of initial proposals was improper is dismissed as untimely where it relies on information contained in the solicitation or known to the protester more than 10 days before the protest was filed; specifically, untimely portions of the protest involve: (1) the agency's failure to include the Federal Acquisition Regulation clause currently required in order for Department of Defense awards to proceed without discussions; and (2) the agency's refusal to accept a proposed reduction in the protester's price, which the agency regarded as an improper late modification.

## Procurement

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

Where protester fails to timely protest defect in solicitation's initial proposal award provision (lack of alternate clause), award on basis of initial proposals was proper where it was consistent with terms of the basic clause contained in the solicitation.

## B-248204.2, September 18, 1992 — 92-2 CPD 188

## Procurement

**Competitive Negotiation**
■ **Discussion reopening**
■■ **Competitive system integrity**
■■■ **GAO decisions**
■■■■ **Recommendations**

Contracting agency's communications with the low offeror after the closing date for the receipt of best and final offers (BAFO), that were required in order obtain certain material pricing information on work required under the solicitation, constituted post-BAFO discussions which required the contracting agency to conduct discussions with the other offeror in the competitive range.

## B-248706, September 18, 1992 — 92-2 CPD 189

## Procurement

**Competitive Negotiation**
■ **Requests for proposals**
■■ **Terms**
■■■ **Defects**
■■■■ **Specifications**

## Procurement

**Specifications**
■ **Minimum needs standards**
■■ **Competitive restrictions**
■■■ **Design specifications**
■■■■ **Burden of proof**

Protest that solicitation for inner balance seals for turbine engines is defective is sustained since the solicitation, which requires offerors to meet the "latest revision" of the original equipment manufacturer's drawing referenced in the solicitation and does not identify the applicable revision—although the agency is able to verify the latest revision—prevents offerors from competing on an equal basis.

## B-243613.11, September 21, 1992 — 92-2 CPD 190

### Procurement

**Contract Management**
■ **Contract administration**
■■ **Convenience termination**
■■■ **Administrative discretion**

### Procurement

**Socio-Economic Policies**
■ **Small businesses**
■■ **Disadvantaged business set-asides**
■■■ **Eligibility**

Where agency properly determines to waive preaward notice to unsuccessful offerors in small disadvantaged business (SDB) set-aside, post-award determination that the awardee does not qualify as an SDB applies prospectively only; therefore, agency was not required to terminate the awarded contract.

## B-247731, September 21, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Notification**

Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods directs that notification of damages discovered after delivery must be dispatched by agency not later than 75 days following delivery. Where claims officer signed and dated notification on 59th day, notification was dispatched in a timely manner and carrier properly was held liable for claimed damages.

## B-248736, September 21, 1992 — 92-2 CPD 191

### Procurement

**Competitive Negotiation**
■ **Best/final offers**
■■ **Blanket offers of compliance**

Protest that agency could not properly accept awardee's best and final offer (BAFO) because of alleged deviation of initial offer from terms of solicitation is denied where record shows that awardee's BAFO contained a blanket offer to meet all of the solicitation's terms and conditions, which was all that was required by amended request for proposals.

## B-248742, September 21, 1992 — 92-2 CPD 192

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation errors**
■■■ **Evaluation criteria**
■■■■ **Application**

Protest that agency improperly applied solicitation's technical evaluation criteria by downgrading the importance of production management/production capability is denied where the record shows

that the agency reasonably reevaluated proposals as to production capability when the quantity of units required was significantly reduced.

## B-248755, September 21, 1992 — 92-2 CPD 193

### Procurement

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

Protest against evaluation of technical proposals is denied where record indicates that the agency reasonably determined that, although protester had built the prototype of the riverine assault craft being procured, awardee also had comparable boatbuilding experience and overall submitted a more advantageous proposal.

### Procurement

**Competitive Negotiation**
**■ Unbalanced offers**
**■■ Materiality**
**■■■ Determination**
**■■■■ Criteria**

Protest that awardee's offer was materially unbalanced because of higher unit prices for option quantity of riverine assault craft (RAC) is denied where, because option was for RACs primarily intended for possible foreign military sales for which there was no current requirement, the solicitation provided that the option quantity prices would not be evaluated; agency was not required to consider unevaluated option quantity prices in determining whether awardee's offer was unbalanced.

## B-245797.4, September 22, 1992 — 92-2 CPD 194

### Procurement

**Bid Protests**
**■ GAO procedures**
**■■ Interested parties**
**■■■ Direct interest standards**

Fourth-ranked firm which offered lowest proposed costs is an interested party under the General Accounting Office's Bid Protest Regulations to challenge the evaluation of its proposal; despite the fact that there is no requirement that award be made to the lowest-cost offeror under solicitation calling for award on the basis of the "best buy" to the government, if protest were sustained, the contracting agency could determine that protester's proposal represents the best buy to the government.

## Procurement

**Competitive Negotiation**
■ **Best/final offers**
■■ **Evaluation**
■■■ **Point ratings**
■■■■ **Propriety**

## Procurement

**Competitive Negotiation**
■ **Best/final offers**
■■ **Technical acceptability**
■■■ **Negative determination**
■■■■ **Propriety**

Agency properly excluded protester's proposal from further consideration after evaluation of best and final offers, where the record shows that the agency's technical evaluation panel reasonably downgraded protester's proposal in areas found deficient in accordance with the evaluation criteria announced in the solicitation, thus rating protester's proposal considerably below the three highest rated proposals.

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Protest timeliness**
■■■ **Apparent solicitation improprieties**

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation**
■■■ **Personnel experience**

## Procurement

Protest that the contracting agency should have evaluated protester's proposed site manager on the basis of his managerial and scheduling experience, rather than based upon the elements announced in the solicitation, is untimely filed and will not be considered, where the minimum experience requirements for each of seven key labor categories, including the site manager, were announced in the solicitation, and protest was not filed until after time set for receipt of proposals.

## Procurement

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

Award to a higher-cost offeror is unobjectionable where the solicitation provided that technical factors were significantly more important than cost, and the agency reasonably found that the awardee's additional costs were offset by its superior technical proposal and lower risks.

## B-249115.2, September 22, 1992 — 92-2 CPD 195

### Procurement

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

Protest challenging agency's exclusion of proposal from the competitive range, filed 6 months after agency notified firm that its proposal had been found technically unacceptable and advised protester of the bases for exclusion, is untimely; agency's subsequent letter which mistakenly indicated that protester's proposal had been found technically acceptable does not create a new basis to protest the proposal's exclusion.

## B-243483.2, September 23, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■ ■ **Carrier liability**
■ ■ ■ **Burden of proof**

A carrier is not liable for the loss of an item if the record establishes that the carrier never had custody of it.

## B-245797.3, September 23, 1992 — 92-2 CPD 196

### Procurement

**Competitive Negotiation**
■ **Competitive advantage**
■ ■ **Conflicts of interest**
■ ■ ■ **Post-employment restrictions**
■ ■ ■ ■ **Allegation substantiation**

Allegation that awardee's employment of former agency employees constitutes a conflict of interest which rendered the firm ineligible for award is denied where the record does not show that any action by the former agency employees conferred an unfair competitive advantage on the awardee.

### Procurement

**Competitive Negotiation**
■ **Offers**
■ ■ **Evaluation**
■ ■ ■ **Transition plans**

Contention that awardee's proposal was unreasonably evaluated because the awardee, who proposed to hire incumbent employees, did not demonstrate a history of successful transition of functions from an incumbent's contract to a successor contract is denied since offerors were not required to demonstrate a history of successful transitions; awardee submitted an acceptable phase-in plan as required by the solicitation.

## Procurement

**Socio-Economic Policies**

■ **Small businesses**

■■ **Disadvantaged business set-asides**

■■■ **Preferences**

■■■■ **Eligibility**

Contention that contracting agency improperly applied evaluation preference for small disadvantaged businesses (SDB) by failing to use factors listed in a Federal Acquisition Regulation (FAR) provision (referenced in solicitation's SDB preference clause) in evaluating awardee's proposal is denied since the referenced FAR provision was merely a guide for the contracting agency to use in identifying qualified potential competitors.

## B-248845, September 23, 1992 — 92-2 CPD 197

## Procurement

**Specifications**

■ **Ambiguity allegation**

■■ **Specification interpretation**

Protest that solicitation is impermissibly vague is denied where specification at issue is reasonably intended to permit offerors discretion to propose details of performance to reflect their particular approach to providing an emergency reaction force to be used to meet one aspect of the agency's security needs.

## B-249459, September 23, 1992

## Procurement

**Payment/Discharge**

■ **Shipment**

■■ **Damages**

■■■ **Repairs**

An owner of household goods damaged by a carrier is not required to use the repair firm or method selected by the carrier.

## B-250092, September 23, 1992 — 92-2 CPD 198

## Procurement

**Sealed Bidding**

■ **Bid guarantees**

■■ **Responsiveness**

■■■ **Corporate entities**

Bid is nonresponsive where principal listed on the bid bond submitted with the bid and the nominal bidder named on the bid are not the same legal entity.

## B-244522.3, September 24, 1992 — 92-2 CPD 201

### Procurement

**Bid Protests**
■ **GAO procedures**
■■ **GAO decisions**
■■■ **Reconsideration**

### Procurement

**Contract Types**
■ **Fixed-price contracts**
■■ **Price reasonableness**

Agency selection of firm-fixed-price contract type for reprocurement of electronic training devices was reasonable where majority of required work involved nondevelopmental hardware and agency could reasonably expect to be able to determine price reasonableness.

### Procurement

**Specifications**
■ **Minimum needs standards**
■■ **Competitive restrictions**
■■■ **Shipment schedules**

Protest of agency specification of 24-month delivery schedule for reprocurement of electronic training devices is denied where agency determined schedule is necessary to satisfy its minimum needs and schedule does not preclude obtaining maximum practicable competition.

## B-247734.3, September 24, 1992 — 92-2 CPD 202

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation**
■■■ **Cost realism**
■■■■ **Analysis**

Contention that agency performed an unreasonable cost realism review by accepting a very low cap on awardee's general and administrative (G&A) expenses and overlooking the effect of a "loophole" in the cap is denied where agency retained adequate controls over the alleged loophole to prevent its use to avoid the G&A cap.

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Cost realism**
■■■ **Evaluation errors**
■■■■ **Allegation substantiation**

Contention that agency cost realism analysis was improper for failing to identify direct and indirect cost pools where single-contract joint venture awardee might allocate general and administrative-type costs, and as a result, overcome any benefit of a negotiated cap on such costs, is denied where the agency acknowledges that the costs will be allocated as protester claims but shows that it reviewed the costs and reasonably considered their realism.

## B-246784.2, September 25, 1992 — 92-2 CPD 203

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation**
■■■ **Prices**
■■■■ **Auction prohibition**

Protest that proposed negotiation strategy announced in solicitation for contract seeking ocean and intermodal rates for transporting breakbulk and container cargo is defective and constitutes an impermissible auction because it provides that agency may accept some or all rates initially offered, without discussions, but reserves to the government the right to hold discussions on rates not initially accepted, is denied where (1) negotiation strategy is not prejudicial to any offeror, (2) the solicitation does not contemplate disclosing the rates that offerors must meet to be considered acceptable, and (3) agency will not disclose any offeror's rates or relative standing in the procurement.

## B-247833.2, September 25, 1992 — 92-2 CPD 204

### Procurement

**Contractor Qualification**
■ **Organizational conflicts of interest**
■■ **Allegation substantiation**
■■■ **Evidence sufficiency**

Protest that an organizational conflict of interest existed during the procurement based on allegation that the proposed awardee's chief executive officer participated in the drafting of the solicitation's specifications is denied where the record contains no credible evidence to support the allegations and no specific facts are presented that could arguably give rise to a conflict of interest requiring the firm's disqualification from the competition.

### Procurement

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

Protester's submission of detailed basis of protest filed with protest comments is untimely where record shows information relates back to events during 3 years prior to issuance of solicitation and protester knew, or should have known, of these matters when it initially filed its protest. General Accounting Office Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues.

## B-248649.2, B-248649.3, September 25, 1992 — 92-2 CPD 205

### Procurement

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

Protest against award to higher priced offeror, for upgrade of aircraft combat maneuvering instrumentation training range, is denied where: agency reasonably determined that awardee submitted the technically superior proposal, offering software improvements that would assure standardization and the documentation of software changes and facilitate future software maintenance and

upgrades; the solicitation statement of evaluation criteria indicated that the technical criterion was more important than price; and the awardee's price was only approximately 2.9 percent higher than the low offer.

## B-248783, September 25, 1992 — 92-2 CPD 206

### Procurement

**Sealed Bidding**
**■ Below-cost bids**
**■■ Contract awards**
**■■■ Propriety**

Protest that awardee's bid was nonresponsive since it contained below-cost prices for one line item is denied because there is nothing inherently improper in submitting below-cost prices and whether the prices are too low to ensure successful contract performance is a question of bidder responsibility, which the agency resolved in the affirmative—a determination the General Accounting Office does not review absent circumstances not present in this protest.

### Procurement

**Sealed Bidding**
**■ Unbalanced bids**
**■■ Allegation substantiation**
**■■■ Evidence sufficiency**

Protest that awardee's bid was unbalanced is denied where the bid contained nominal prices for some items but did not contain enhanced prices for others and therefore was not mathematically unbalanced.

### Procurement

**Sealed Bidding**
**■ Contract awards**
**■■ Propriety**
**■■■ Line items**

Protest that awardee's bid for line item covering routine maintenance services would cause the agency to make improper advance payments is denied where record does not show that awardee's line item price was overstated.

## B-248830, September 25, 1992 — 92-2 CPD 207

### Procurement

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

The failure to furnish a required bid guarantee renders a bid nonresponsive.

## B-246907, September 28, 1992

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Notification**
■■■■ **Deadlines**

Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods directs that form notifying carrier of damages discovered after delivery must be dispatched by agency not later than 75 days following delivery. Where claims officer signed and dated form on 71st day after delivery, notification was dispatched in a timely manner and carrier was properly held liable for later-claimed damages.

### Procurement

**Payment/Discharge**
■ **Shipment**
■■ **Damages**
■■■ **Carrier liability**
■■■■ **Presumptions**

Proper notice of later-discovered losses from a shipment of a military member's household goods overcomes the presumption of correct delivery even though the member did not identify lost items when the goods were delivered.

## B-247052.2, September 28, 1992 — 92-2 CPD 208

### Procurement

**Bid Protests**
■ **GAO procedures**
■■ **GAO decisions**
■■■ **Reconsideration**

Request for reconsideration is denied where it is based on information that could have been submitted during the course of the General Accounting Office's consideration of the protest but was not and where the request does not address one of the principal bases set forth in the prior decision for denying the protest.

## B-247331.2, September 28, 1992 — 92-2 CPD 209

### 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.

## B-248237, September 28, 1992 — 92-2 CPD 210

### Procurement

**Socio-Economic Policies**
■ **Preferred products/services**
■■ **Domestic products**
■■■ **Interpretation**

### Procurement

**Socio-Economic Policies**
■ **Preferred products/services**
■■ **Foreign/domestic product distinctions**

Protest that awardee does not comply with the Buy American Act because it allegedly will be performing final assembly of the item in Mexico is denied where the record shows that the awardee is offering a domestic end product manufactured in the United States and is merely performing packaging in Mexico which makes the end product easier to use, rather than assembly or manufacturing operations.

### Procurement

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

Where protester files an agency-level protest which complains about agency's failure to correct allegedly erroneous evaluation of firm's prior performance for determining performance incentive contracting rating, an issue which RFP stated would be addressed during discussions, agency's subsequent receipt of best and final offers (BAFO) without holding discussions concerning rating constitutes initial adverse agency action, and protest to the General Accounting Office filed more than 10 working days after receipt of BAFOs is untimely.

## B-248805, September 28, 1992 — 92-2 CPD 211

### Procurement

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

Protest that agency improperly precluded protester from discussing its prior experience during interview process in procurement of engineering services is denied where protester submitted substantial written information regarding its experience and record shows that all offerors were treated equally in this regard.

## B-248808.2, et al., September 28, 1992 — 92-2 CPD 212

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation errors**
■■■ **Best-buy analysis**

In a negotiated, best value procurement, in which technical considerations were stated to be more important than price, protests against the award to the higher priced, higher rated awardee were not legally insufficient where the protesters not only challenged the awardee's much higher priced

proposal, but represented their technical capability to perform the contract work and challenged the agency's evaluation of their respective past performance histories.

## Procurement

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

Protests of an agency's cost/technical tradeoff determination were not required to be filed within 10 working days of the protesters' receipt of the agency's proposed small business set-aside award, where the small business pre-award notice provided no information concerning the intended awardee's price or the basis for selection; protests filed, respectively, within 10 working days of receipt of the award notification that disclosed award price and after the agency's denial of an agency-level protest are timely.

## Procurement

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

Protest allegations challenging an agency's technical evaluation, that were not filed within 10 working days of the agency's debriefing at which the protester learned the basis of these protest allegations, are untimely under the Bid Protest Regulations and will not be considered.

## Procurement

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

Award was properly made to a higher rated, higher priced offeror where the source selection decision was consistent with the solicitation's evaluation factors and the source selection authority reasonably determined that the awardee's evaluated technical superiority and much lower proposal and past performance risk justified its higher price.

## Procurement

**Contractor Qualification**
**■ Integrity certification**
**■■ Misrepresentation**

The awardee's certification that failed to identify, as required, criminal convictions did not make the awardee ineligible to receive award where the miscertification did not appear to be made in bad faith and did not materially influence the agency's affirmative determination of the awardee's responsibility; the agency had previously entered into an administrative agreement in lieu of debarment with the awardee that considered the awardee's convictions and corrective action, and that determined that the awardee had the integrity required of a government contractor.

## B-248854, September 28, 1992 — 92-2 CPD 213

### Procurement

**Sealed Bidding**

■ **Invitations for bids**

■■ **Terms**

■■■ **Equipment**

■■■■ **Age restrictions**

Invitation for bids for the rental and maintenance of washers and dryers at a Department of the Army installation reasonably specified that contractor must furnish equipment in use for no more than 2 years, where the record demonstrates that older machines malfunction more frequently and the restriction is necessary to reduce the delay and inconvenience caused by inoperative machines.

### Procurement

**Special Procurement Methods/Categories**

■ **Service contracts**

■■ **Determination**

An invitation for bids (IFB) for the rental of washers and dryers, which contains a requirement for maintenance and installation, was reasonably determined by the procuring agency not to be covered by the Service Contract Act because the IFB is not principally one for services.

## B-248871, B-248873, September 28, 1992 — 92-2 CPD 214

### Procurement

**Small Purchase Method**

■ **Purchase orders**

■■ **Cancellation**

Agency has a reasonable basis to cancel purchase orders issued under small purchase procedures where vendor declines to accept purchase orders and leads agency to believe vendor might not enter into performance.

## B-249812, September 28, 1992

### Procurement

**Sealed Bidding**

■ **Bonds**

■■ **Justification**

■■■ **GAO review**

Protest challenging, as unduly restrictive of competition, a requirement for bid, performance, and payment bonds, in an invitation for bids for security guard services, is denied since it is within the agency's discretion to require bonding to protect the government's interest; the agency's requirement for uninterrupted performance of the security guard services is a reasonable basis for imposing the bonding requirement, especially where the previous contractor had a history of not paying wages due employees, thus risking interruption of guard services.

## B-233561.8, B-233561.9, September 29, 1992*** 92-2 CPD 215

### Procurement

**Competitive Negotiation**
**■ Contract awards**
**■■ Errors**
**■■■ Corrective actions**
**■■■■ Non-prejudicial allegation**

### Procurement

**Competitive Negotiation**
**■ Offers**
**■■ Re-evaluation**
**■■■ Corrective actions**
**■■■■ Post-award error allegation**

The General Accounting Office dismisses protest of agency's post-award decision to reevaluate proposals using technical specialists—corrective action undertaken to remedy initial evaluators' apparent lack of required technical understanding—to determine whether the award was made on a basis most advantageous to the government, where the protester produces no evidence that the agency decision to reevaluate proposals was made in bad faith or with the specific intent of avoiding an award to the protester.

## B-239199.4, September 29, 1992

### Procurement

**Payment/Discharge**
**■ Shipment**
**■■ Damages**
**■■■ Evidence sufficiency**

Report of the carrier's inspector that he could see no evidence of a claimed stain to an Air Force member's sofa transported by the carrier does not relieve the carrier of liability where the government inspection report and the repair estimate support the claim.

### Procurement

**Payment/Discharge**
**■ Shipment**
**■■ Carrier liability**
**■■■ Burden of proof**

Carrier properly is held liable for the loss of items that do not exactly fit the inventory's description of the carton in which they are claimed to have been packed if it would not have been unusual to pack those items in that carton, particularly since the carrier did the packing and prepared the inventory list.

## B-248169.2, September 29, 1992 — 92-2 CPD 216

### Procurement

**Competitive Negotiation**
■ **Contract awards**
■■ **Administrative discretion**
■■■ **Technical equality**
■■■■ **Cost savings**

Agency properly awarded contract to lower priced offeror where record supports evaluation of proposals as essentially technically equal and, as a result, selection decision was reasonably based and consistent with solicitation's evaluation scheme.

## B-248866, September 29, 1992 — 92-2 CPD 217

### Procurement

**Competitive Negotiation**
■ **Offers**
■■ **Evaluation**
■■■ **Personnel**
■■■■ **Adequacy**

### Procurement

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

Agency determination that the protester's proposal is unacceptable is reasonable where the record shows that the agency reasonably found (1) the protester's proposed personnel were unacceptable, based upon the protester's vague resumes that did not address the solicitation requirements, and (2) the protester's corporate experience was unacceptable in the highly specialized contract work.

## B-248429.2, September 30, 1992 — 92-2 CPD 218

### Procurement

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

Protest of technical evaluation of proposal is untimely where filed more than 10 working days after debriefing at which protester learned the basis for determination that its proposal was technically unacceptable.

### Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Interested parties**
■■■ **Direct interest standards**

Technically unacceptable offeror is not interested party eligible to protest award to another offeror where protest of technical evaluation of its proposal was untimely filed, and where there is an intermediate offeror which would be in line for award if the protest were sustained.

## Procurement

**Competitive Negotiation**
■ **Contract awards**
■■ **Source selection boards**
■■■ **Bias allegation**
■■■■ **Allegation substantiation**

Fact that firms awarded contracts are former contractors or employ former agency employees does not establish that the awards were based on improper bias, and absent evidence that evaluations were influenced by this fact, alleged bias amounts to no more than unsupported speculation.

## B-248928, September 30, 1992 — 92-2 CPD 219

## Procurement

**Bid Protests**
■ **GAO procedures**
■■ **Interested parties**
■■■ **Direct interest standards**

Offeror with the lowest technical rating and the highest price of the five offerors in the competitive range lacks the direct economic interest necessary to be an interested party for purposes of pursuing a bid protest since the protester would not be in line for award even if every issue raised were resolved in its favor. Late Cases

## B-227422, June 18, 1987

## Appropriations/Financial Management

**Accountable Officers**
■ **Cashiers**
■■ **Relief**
■■■ **Physical losses**

Since there is no evidence of any contributing negligence, Class B and Alternate Cashiers are relieved of liability under 31 U.S.C. § 3527(a) for loss of funds which occurred when American Embassy in Tripoli was attacked and burned in December 1979.

## B-246536.3, June 25, 1992

## Procurement

**Competitive Negotiation**
■ **Requests for proposals**
■■ **Terms**
■■■ **Personnel**
■■■■ **Advance approval**

Proposal that failed to provide letters of intent for key personnel required by the solicitation should have been rejected as unacceptable for failure to satisfy a material solicitation requirement.

## Procurement

**Competitive Negotiation**

**■ Best/final offers**

**■ ■ Reevaluation**

**■ ■ ■ Corrective actions**

Where agency properly received initial proposals, conducted meaningful discussions, and received final revised proposals, then awarded a contract to offeror whose proposal failed to satisfy material solicitation requirements, agency should reevaluate the extant final proposals and select an awardeee on the basis of those proposals.

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