



129824

UNITED STATES GENERAL ACCOUNTING OFFICE

CHARLES A. BOWSHER  
Comptroller General of the United States

MILTON J. SOCOLAR  
Special Assistant  
to the Comptroller General

HARRY R. VAN CLEVE  
General Counsel

JAMES F. HINCHMAN  
Deputy General Counsel

February 1986

## Contents

	<u>Page</u>
Table of Decisions	I
Digests:	
General Government Matters:	
Appropriations and Miscellaneous	A-1
Personnel Law: Civilian Personnel	B-1
Personnel Law: Military Personnel	C-1
Procurement Law	D-1
Special Studies & Analysis	E-1
Transportation Law	F-1
Index	i

Compiled in the  
Index-Digest Section  
Office of the General Counsel

Telephone research service regarding Comptroller  
General decisions: (202) 275-5028

For Copies of cases: (202) 275-6241

**TABLE OF DECISIONS**

**February 1986**

	<u>Feb.</u>	<u>Page</u>		<u>Feb.</u>	<u>Page</u>
B-118622	19...	A- 3	B-220421	6...	D-11
B-156482	19...	B- 3	B-220444	14...	D-32
B-209790	21...	A- 4	B-220574.2	7...	D-15
B-212222	11...	A- 2	B-220580.2	4...	D- 6
B-215958	18...	F- 1	B-220613	5...	D- 8
B-217564	28...	B- 4	B-220618.3	10...	D-15
B-217893	7...	E- 1	B-220620	10...	D-16
B-218513	28...	B- 4	B-220630.2)		
B-218620.2	6...	D-10	B-220642.2)	3...	D- 2
B-218889	13...	A- 3	B-220641	11...	D-22
B-219028.4	24...	D-44	B-220649	21...	D-44
B-219060	19...	C- 2	B-220659	19...	D-37
B-219147	11...	B- 1	B-220660	11...	D-25
B-219259	11...	C- 1	B-220671	4...	D- 6
B-219312.6	3...	D- 1	B-220677	5...	D- 9
B-219439.2	20...	D-39	B-220682	21...	E- 2
B-219565	11...	B- 1	B-220713,		
B-219644.3	21...	D-43	et al.)	3...	D- 3
B-219661.2	14...	D-31	B-220724	12...	D-27
B-219676.2)			B-220772	4...	D- 7
B-219676.3)	25...	D-47	B-220794)		
B-219817	21...	B- 3	B-220795)	20...	D-40
B-219850	19...	C- 3	B-220848	5...	D- 9
B-219886.2	5...	D- 8	B-220849	28...	D-57
B-219998.2	18...	D-35	B-220856	3...	D- 3
B-220000.3	24...	D-45	B-220890	27...	D-53
B-220017.2	14...	D-31	B-220935.2	26...	D-50
B-220058.2)			B-220949	25...	D-48
B-220058.3)	11...	D-20	B-220957	7...	D-15
B-220085.2	19...	D-36	B-220973	27...	D-54
B-220282.2	7...	D-14	B-220976	13...	D-30
B-220289	28...	B- 5	B-220987	6...	D-11
B-220295.2	13...	D-28	B-221004	27...	D-55
B-220367	20...	D-39	B-221026	6...	D-12
B-220369	5...	D- 8	B-221028	11...	D-26
B-220381	28...	D-56	B-221054.2	14...	D-34
B-220384	11...	D-20	B-221096	3...	D- 4
B-220394	11...	D-22	B-221173.2	18...	D-36
B-220395	3...	D- 2	B-221186	24...	D-45
B-220413	19...	D-37	B-221190	11...	C- 1

**TABLE OF DECISIONS - Con.**

	<u>Feb.</u>	<u>Page</u>		<u>Feb.</u>	<u>Page</u>
B-221222	26...	D-51	B-221710	20...	D-43
B-221226	6...	A- 1	B-221715	11...	D-26
B-221229	11...	B- 2	B-221723	10...	D-18
B-221230	13...	D-31	B-221723.2	26...	D-52
B-221230.2, et al.)	24...	D-46	B-221735	4...	D- 7
B-221279.2	25...	D-48	B-221739.2, et al.)	26...	D-53
B-221317	28...	D-58	B-221798	12...	A- 2
B-221340	25...	D-49	B-221825	24...	D-46
B-221346	28...	D-59	B-221836.2	10...	D-19
B-221377.2	14...	D-34	B-221850	28...	D-60
B-221412	12...	E- 1	B-221942	12...	A- 3
B-221414	27...	D-55	B-221954	27...	D-56
B-221423	20...	D-41	B-221961	19...	D-38
B-221492.2	3...	D- 5	B-221995	28...	D-61
B-221523.2	20...	D-42	B-221999	24...	D-47
B-221556	10...	A- 1	B-222005	25...	D-49
B-221560.2	10...	D-17	B-222043	26...	D-53
B-221609	28...	F- 1	B-222102	26...	A- 5
B-221628	26...	D-51			
B-221695 et al.)	10...	D-18			

**GENERAL GOVERNMENT MATTERS:  
Appropriations and Miscellaneous**

**PAYMENTS** **B-221226 Feb. 6, 1986**  
**Quantum Meruit/Valebant Basis**  
**Absence, etc. of Contract**  
**Authority to Pay Lacking**

Heritage Visual Sales' quantum valebant claim for payment for its distributor's erroneous shipment of an extra videotape set may not be allowed. Heritage has failed to make the requisite showing of quantifiable benefit to the Government in that record fails to establish receipt, acceptance, and use of the tapes.

**GENERAL ACCOUNTING OFFICE** **B-221556 Feb. 10, 1986**  
**Jurisdiction**  
**State Law Applicability**  
**No Authority to Determine**

Member of Senate has requested GAO review of constituent correspondence concerning controversy in Wythe County, Virginia, over land subdivision ordinance. Response (1) advises that GAO cannot resolve the controversy, and (2) summarizes Virginia subdivision control law and outlines available options should the landowner wish to seek judicial review of county action. To Sen. Tribble.

**INTEREST**

B-212222 Feb. 11, 1986

**Debts Owed U.S.  
State, etc. Debts  
Authority**

Sections 10 and 11 of the Debt Collection Act of 1982 define the word "person" for the purposes of those sections to exclude agencies of state and local governmental bodies. The Federal Claims Collection Standards and several GAO decisions accord those definitions their "plain and ordinary meaning," and conclude that they did not affect the Government's preexisting common law authority to assess interest and take administrative offset to collect delinquent debts owed by the states. GAO urges the Justice Department to seek rehearing or appeal (as appropriate) of Pennsylvania v. Block, Nos. 85-5186 through 5198 & 85-5269 through 5271, slip op. (3rd Cir. Jan. 6, 1986), which held that the definition in section 11 resulted in the abrogation of the Government's common law authority against states.

**DISBURSING OFFICERS**

B-221798 Feb. 12, 1986

**Relief****Erroneous Payments****Not Result of Bad Faith or Negligence**

Relief is granted Army disbursing official and his supervisor under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his superior, and subsequent collection attempts are being pursued. However, in the future, we will deny relief if Army delays more than 3 months in processing the debit voucher.

**CERTIFYING OFFICERS****B-221942 Feb. 12, 1986****Relief****Erroneous Payments****Basis for Relief**

Relief is granted Army Finance and Accounting official under 31 U.S.C. § 3528 from liability for certification of improper payment resulting from payee's negotiation of both original and substitute Treasury check. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute check.

**OFFICE OF FEDERAL****B-218889 Feb. 13, 1986****PROCUREMENT POLICY****Jurisdiction****Policy Formulation****Procurement Matters****Statutory Changes****Implementation**

The Office of Federal Procurement Policy would be the appropriate agency to work on a codification of laws relating to defense procurement in view of its statutory authority concerning consolidation of procurement systems and its earlier legislative proposal in this regard.

**COMMODITY CREDIT CORPORATION B-118622 Feb. 19, 1986****Price Support Programs**

Public Law 99-198 makes the Secretary of Agriculture, through the Commodity Credit Corporation, liable to pay sugar beet growers maximum price support benefits, less benefits previously received, on demand of the growers and subject to such assurances as the Secretary requires, in situations where a sugar beet processor is bankrupt or otherwise insolvent and cannot fulfill contractual commitments to growers.



**APPROPRIATIONS****B-209790 Feb. 21, 1986****Availability****Contracts****Research and Development****Small Business Innovation Development Act****Operational v. R&D Activities**

Section 4 of the Small Business Innovation Development Act of 1982, Pub. L. No. 97-219, defines the term "research and development" (R&D). Department of Defense (DOD) reports of extramural R&D to the Small Business Administration (SBA) under the Act do not include activities under "Operational System Development," category 6.6, even though they are reported as R&D under similar definitions, to the National Science Foundation and the Office of Management and Budget. DOD's explanation is that the development work is for weapons systems already in production thus affording little opportunity for a new contractor, including small businesses, to do this work. Since "Operational System Development," category 6.6, is development within the statutory definition of R&D, DOD's report to SBA should include the extramural portion of these activities.

**APPROPRIATIONS****B-220682 Feb. 21, 1986****Allocations****Not Specified in Appropriations Acts**

The DOD Authorization Act, 1985, provides that \$45 million and \$37.795 million of Navy research and development (R&D) funds "is available only for" the RACER and MK-92 programs. This provision requires the sums be made available, and expended, for the programs in question. However, the authorization act must be read in concert with the DOD Appropriations Act, 1985, unless they are clearly inconsistent. Here we found no inconsistency between a lump-sum appropriation for Navy R&D and a provision in the authorization act which set aside specific amounts of the total appropriation for one of the purposes covered in the appropriation act.

**CONTRACTS**

**B-222102 Feb. 26, 1986**

**Negotiation**

**Anti Kickback Act Violations**

Letter to Chairman and ranking minority member of the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, discusses GAO's authority and experience in conducting audits under the Anti-Kickback Act, 41 U.S.C. §§ 51-54.

**PERSONNEL LAW: CIVILIAN PERSONNEL**

**SUBSISTENCE** **B-219147 Feb. 11, 1986**

**Actual Expenses**  
**Maximum Rate**  
**Reduction**  
**Meals, etc. Cost Limitation**  
**Lodging Costs not Incurred**

In June 1984 the Army rented a block of hotel rooms for employees assigned to temporary duty in Newport Beach, California, during the time of the 1984 Summer Olympics. The cost of the rooms should have been treated as a lodging cost for the purpose of determining the employees' actual subsistence expense entitlement. However, in this case we will not object to the Army treating the cost of the hotel rooms as an administrative expense since at the time the arrangements were made agencies had been erroneously advised that a recent Comptroller General decision allowed this procedure for lodgings secured in the vicinity of the 1984 Summer Olympics. The employees, therefore, may be reimbursed meal and incidental expenses in an amount not to exceed 46 percent of the actual subsistence expense rate authorized for the high-cost area.

**OFFICERS AND EMPLOYEES** **B-219565 Feb. 11, 1986**

**De Facto**  
**Compensation**  
**Retention of Compensation Received**

A temporary employee was promoted to a competitive position at GS-4, step 1. It was later discovered that the promotion was erroneous since she did not have competitive status. However, she was retained in the position pending a request for a variation. The request was denied and she was returned to her prior position. Since she performed the duties of the GS-4 position, she is entitled to retain the pay of the GS-4 position as a de facto employee and is not indebted for the additional compensation received in that position.

**Jurisdiction**

**Civil Service Matters**

**Adverse Personnel Actions**

The Comptroller General has no jurisdiction to review personnel grievance matters relating to disciplinary actions against Government employees, and consequently will not consider the question of whether an administrative charge of misconduct and a resulting letter of reprimand assessed against a civilian employee of the Department of the Army should be affirmed or set aside.

**LEAVES OF ABSENCE**

**Granting**

**Administrative Determination**

The question of whether an employee who is late in returning to duty from a period of leave should be placed in a nonpay status (either AWOL or LWOP) is a matter primarily within the discretionary authority of the employing agency, and the agency's determination will not be overruled unless shown to be erroneous by a preponderance of evidence. Hence, an agency's withholding of salary from an employee placed in an AWOL status for being absent over leave is approved, where there was evidence that the employee overstayed the leave period after being advised that no additional leave would be approved, and there were no extenuating circumstances which might justify the delayed return.

There is no regulation or rule that might operate to authorize Government employees unilaterally to alter or extend scheduled leave termination dates by delaying their departure on leave. Therefore, in the case of an employee placed in a nonpay status for being absent over leave, the leave termination date was properly determined to be June 12 as scheduled, notwithstanding employee's argument that the date had been changed to June 13 on account of his 1-day delay in departing on leave.

**DEBT COLLECTIONS****B-156482 Feb. 19, 1986****Waiver****Civilian Employees****Compensation Overpayments****Collection not Against Equity and Good  
Conscience, etc.**

A former Government employee's request for waiver of his debt to the United States arising out of overpayments of salary is denied, where it appeared that he knew his personnel file contained an erroneous record, and that record caused the overpayments. Under the governing provisions of statutory law, waiver of salary overpayments is not allowed if the employee knew or should have known of the error that caused the overpayments but failed to take corrective action. Consequently, in this case, there is no basis for waiving collection of the overpayments.

**OFFICERS AND EMPLOYEES****B-219817 Feb. 21, 1986****Overseas****Reemployment Rights**

Army's regulations concerning criteria and procedures to be used to decide if civilian employee working overseas will receive a tour extension or renewal do not violate any general or specific laws.

**GENERAL ACCOUNTING OFFICE      B-217564    Feb. 28, 1986**

**Decisions**

**Reconsideration**

**Error of Fact or Law Basis**

**Not Established**

A Comptroller General decision sustained the Claims Group's settlement disallowing a former Agency for International Development employee's claim for additional payment on account of the sale of his automobile overseas. The settlement sustained a Department of State determination under its policy against profiteering to exclude all but the constructive commercial transportation cost from the transportation factor of the automobile's acquisition cost. While the former employee claims that additional travel expenses incurred in personally driving an automobile from Germany to India while on leave should have been included, on review the claim is rejected in view of the authority of local officials to make determinations under this Department of State regulation.

**OFFICERS AND EMPLOYEES              B-218513    Feb. 28, 1986**

**Transfers**

**Temporary Quarters**

**Entitlement**

Since the change of permanent duty station increased the employee's commuting distance from his old residence by only 28 miles, there is no entitlement to temporary quarters expenses requiring under travel regulations an increase greater than 40 miles. The employee paid a travel advance predicated in part upon unauthorized temporary quarters expenses. Such a travel advance is considered a loan to the employee and must be paid back to the Government unless it is offset by allowable travel expenses.

**Transfers****Real Estate Expenses****House Title in Name of Another**

A transferred employee who provided part of the funds to purchase a residence at his new duty station arranged to have title placed in a friend's name at the time of the purchase. Although the employee subsequently married his friend and acquired joint ownership of the residence, his claim for real estate purchase expenses may not be allowed. He did not meet the requirement of the applicable regulations that title to the residence purchased be in the name of the employee or a member of his immediate family.

**PERSONNEL LAW: MILITARY PERSONNEL**

**QUARTERS ALLOWANCE** **B-219259 Feb. 11, 1986**  
**Occupancy of Private Quarters**  
**Rent Ceiling**

A member of the uniformed services who was authorized to move to local economy housing in Heidelberg, Germany, may be authorized "rent plus" housing allowance retroactively under the circumstances presented. Due to an error by the service, a ceiling allowance for the member had not been established, and the member was not authorized the allowance until after he had occupied the local quarters for several months. Since the failure to establish the ceiling was an administrative error, the regulation may be retroactively corrected to allow payment.

**GARNISHMENT** **B-221190 Feb. 11, 1986**  
**Military Pay, etc.**  
**Alimony or Child Support**  
**State Court Order**  
**Regular on its Face**  
**Government's Compliance**

Absent facial invalidity of the court order, the Government is not liable with respect to any payments made in conformity with a state court order under authority of the Uniformed Services Former Spouses' Protection Act. Therefore, the Department of the Army is obligated to apportion the military retired pay of a retired officer in accordance with a Washington state court divorce decree, notwithstanding the officer's contention that the court order did not conform to Washington statutes.



**GENERAL ACCOUNTING OFFICE      B-221190    Con't**  
**Jurisdiction                      Feb. 11, 1986**  
**Constitutionality of Act of Congress**

It is not the function of the Comptroller General to decide the constitutionality of statutes. Consequently, arguments by a retired military member that the Uniformed Services Former Spouses' Protection Act unconstitutionally deprived him of his due process and equal protection rights will not be considered.

**STATUTES OF LIMITATION              B-219060    Feb. 19, 1986**

**Claims**  
**Military Matters and Personnel**  
**Pay and Allowances**  
**Forfeiture Under Courts-Martial**

Former member of the United States Marine Corps was discharged from the service in 1972 with a bad conduct discharge which was later found to have been invalid. A valid discharge was executed in 1984. The former member claims backpay from the date of the invalid discharge to the date of the validly issued discharge. Although he might have been entitled to backpay from the date of the invalid discharge in 1972 to the date of the expiration of his enlistment in 1976, any claim he had accrued in 1976. Since the claim was not presented to this Office until 1985, it is barred by the statute of limitations set out in 31 U.S.C. § 3702(b)(1), which requires that the Comptroller General receive a claim within 6 years after it accrues.

**Air Travel****Fly America Act****Members' Liability****Travel by Noncertificated Air Carriers**

Statement by a service member that U.S. air carrier serving Okinawa was overbooked and, therefore, unavailable does not provide adequate justification for his travel by foreign air carrier from California to Honolulu, and from there to Tokyo, en route to Okinawa. Adequacy of justification is to be determined in accordance with the Fly America Act standards of unavailability set forth in Joint Travel Regulations, vol. 1, para. M2150. When a U.S. air carrier cannot provide through service between origin and destination, these standards require the member to use U.S. air carrier service available at point of origin to the farthest practicable interchange point on a usually traveled route.

**PROCUREMENT LAW**

**CONTRACTS** B-219312.6 Feb. 3, 1986  
**Protests** 86-1 CPD 116  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Error of Fact or Law**  
**Not Established**

Prior decision, affirming the dismissal of an untimely request for reconsideration, is affirmed where protester fails to show that the decision (or the dismissal) was based on any errors of fact or law.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Timeliness**

A request for reconsideration of a dismissal of a protest, filed (received) at GAO more than 10 working days after the protester received the protest dismissal notice, is untimely under GAO Bid Protest Regulations and will not be considered.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Regular Mail Delay**

A protester makes use of the mail service at its own risk and a delay or loss in the mails does not serve as a basis for considering untimely filed materials.

**CONTRACTS**                                    **B-219312.6 Con't**  
**Protests**                                    **Feb. 3, 1986**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Time/Date Stamp Effect**

In the absence of affirmative evidence to show actual earlier receipt, GAO's time/date stamp is accepted as evidence of the time of receipt of materials relating to protests at GAO.

**BONDS**                                        **B-220395 Feb. 3, 1986**  
**Bid**                                          **86-1 CPD 117**  
**Surety**  
**Net Worth**

Contracting officer's reliance upon tax value, rather than fair market value, of individual bid bond surety's real estate holdings in computation of his net worth is reasonable where surety failed to provide the contracting officer with adequate information regarding the location and value of these holdings. It was the surety's responsibility to provide the contracting officer with sufficient information upon which to base a determination of responsibility.

**CONTRACTS**                                    **B-220630.2; B-220642.2 Feb. 3, 1986**  
**Protests**                                    **86-1 CPD 118**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Error of Fact or Law**  
**Not Established**

Request for reconsideration of prior decision--denying protest challenging rejection of protester's bid based on continuing pattern of nondisclosure of outstanding bond obligations by individual sureties on protester's bid bond--is denied where the record clearly disproves protester's contention on reconsideration that sureties' nondisclosures occurred only after the date on which protester's bid bond was submitted.

**CONTRACTS** B-220630.2; B-220642.2 Con't  
**Protests** Feb. 3, 1986  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**New Issues**  
**Unrelated to Original Protest Basis**

Ground of protest raised for first time in comments on agency report is untimely where it was or should have been known to the protester at the time the protest was filed.

**CONTRACTS** B-220713, et al.  
**Negotiation** Feb. 3, 1986  
**Requests for Proposals** 86-1 CPD 119  
**Specifications**  
**Minimum Needs**  
**Not Overstated**

Protests that computer equipment offered by protester will reasonably satisfy the agency's need even though it is incompatible with portions of the agency's existing system are denied, since agency's asserted need for complete system integration has not been shown to be unreasonable and solicitations specifically required compatibility.

**CONTRACTS** B-220856 Feb. 3, 1986  
**Negotiation** 86-1 CPD 120  
**Awards**  
**Price Determinative Factor**

Although RFP evaluation criteria stated that technical factors were more important than price, where the offerors were advised of the agency's price goal and thus were on notice that proposals exceeding the price goal would not be favorably considered, agency decision to award to the lowest priced, technically acceptable offer which came closest to meeting agency's price goal, rather than selecting technically superior, higher cost offer is justified.

**CONTRACTS**                                                **B-220856 Con't**  
**Protests**                                                 **Feb. 3, 1986**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest is timely and for consideration by GAO when filed 10 days after protester learned how evaluation criteria in request for proposals were applied by the procuring agency notwithstanding that protester may have known that award would not be made to it more than 10 days before the protest was filed.

**BIDS**                                                         **B-221096 Feb. 3, 1986**  
**Invitation for Bids**                                    **86-1 CPD 121**  
**Specifications**  
**Defective**  
**Allegation not Sustained**

Wage determination that is deficient for failing to include federal holiday for Martin Luther King's birthday is not a basis for finding solicitation fatally defective where it appears addition of holiday would have no more than a minor impact on the prospective contractor and all bidders competed on an equal basis.

**BIDS**  
**Invitation for Bids**  
**Specifications**  
**Minimum Needs Requirement**  
**Administrative Determination**  
**Reasonableness**

Solicitation's delivery order limitations on man-hours to be ordered under contract are unobjectionable where based on agency's analysis of present needs and the fact that fewer than the maximum hours were ordered from protester under prior contract does not render the maximum limitation inaccurate; the limitation is a maximum, not an estimate of actual hours to be ordered under the contract.

**BONDS**

B-221096 Con't

**Requirement**

Feb. 3, 1986

**Bid, Performance, etc.****Administrative Determination**

Bonding requirement for guard services procurement is justified where previous contractors experienced financial difficulties and did not pay guard employees on time and agency reasonably determines that bonding will help eliminate such problems, thereby helping to ensure that guard services will be performed without interruption at facility in need of high level of security.

**CONTRACTS****Protests****Interested Party Requirement****Direct Interest Criterion**

Protester has sufficient direct economic interest in contract award to qualify as an interested party eligible to protest solicitation requirements where, although protester at one time advised contracting agency it no longer would compete under such procurements, protester has performed similar services in the recent past; appears to be interested in competing now; and is not otherwise precluded from competing.

**CONTRACTS**

B-221492.2 Feb. 3, 1986

**Protests**

86-1 CPD 122

**General Accounting Office Procedures****Reconsideration Requests****Error of Fact or Law****Not Established**

Prior dismissal of a protest as untimely is affirmed where the protester's request for reconsideration clearly fails to meet the firm's burden to show that the prior dismissal was legally or factually erroneous.

**CONTRACTS**                                    **B-220580.2 Feb. 4, 1986** ,  
**Protests**                                    **86-1 CPD 125**  
**Interested Party Requirement**  
**Direct Interest Criterion**

Request by consultant for reinstatement of protest against requirements of request for proposals, dismissed because of filing of parallel case with General Services Board of Contract Appeals, is dismissed because consultant lacks direct interest in procurement.

**BONDS**                                        **B-220671 Feb. 4, 1986**  
**Bid**                                         **86-1 CPD 126**  
**Surety**  
**Affidavit (Standard Form 28)**  
**Deficiencies**  
**Nondisclosure of Other Bond Obligations**

An agency may properly find a bid bond deficient when one of the bidder's individual sureties fails to disclose other outstanding bond obligations and the total amount of those obligations exceeds the surety's net worth.

A continuing pattern of nondisclosure of outstanding bond obligations by an individual surety provides a reasonable basis for finding a bidder nonresponsible.

**BONDS**  
**Bid**  
**Surety**  
**Net Worth**

Net worth of individual sureties on a bid bond need only be equal to the difference between the price stated in the bid and the price stated in the next low acceptable bid.



**CONTRACTS**

B-220772 Feb. 4, 1986

Negotiation

86-1 CPD 127

Awards

Propriety

Evaluation of Proposals

Where the RFP gives equal weight to price and technical factors, a protest against an agency's award to an offeror whose technical proposal was rated 25 percent below that of the protester whose price was only 2 percent more than the awardee is sustained since evaluation gave controlling weight to price.

**CONTRACTS**

Negotiation

Requests for Proposals

Evaluation Criteria

Price Consideration

Relative Importance

Where the RFP does not clearly indicate the relative importance of price to technical factors, they must be given equal weight in the evaluation.

**CONTRACTS**

B-221735 Feb. 4, 1986

Protests

86-1 CPD 128

General Accounting Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

Protest is untimely where not filed within 10 days after protester knew or should have known the basis of its protest. Protester's apparent lack of actual knowledge of 10-day filing requirement is not a defense to dismissal of its protest as untimely since protesters are held to have constructive notice of GAO Bid Protest Regulations through their publication in the Federal Register.

**GENERAL ACCOUNTING OFFICE**      **B-219886.2 Feb. 5, 1986**  
**Recommendations**              **86-1 CPD 129**  
**Contracts**  
**Prior Recommendation**  
**Affirmed**

Request that GAO revise recommendation that agency not exercise any options under awarded contract and instead recommend termination for convenience is denied since record shows that termination of current contract and resolicitation would not be in the government's best interests.

**BIDS**                                      **B-220369 Feb. 5, 1986**  
**Responsiveness**                      **86-1 CPD 130**  
**Descriptive Literature**  
**Unsolicited**  
**Allowing for Nonconforming Equipment**  
**Bid Responsive**

Protest contending that awardee's bid was nonresponsive because it was accompanied by unsolicited technical brochures describing systems not in compliance with the specifications is denied. The bid when read with the brochures was not ambiguous because the brochures cannot reasonably be interpreted as describing systems the awardee intended to deliver.

**BIDS**                                      **B-220613 Feb. 5, 1986**  
**Invitation for Bids**                  **86-1 CPD 131**  
**Cancellation**  
**After Bid Opening**  
**Not Required**  
**Defective Solicitation**

Cancellation, after bid opening, of invitation for bids to provide radio repair and maintenance services, because of discrepancies in the amount of radios to be serviced, is unreasonable where award would result in satisfying the government's needs and would not prejudice bidders.

**CONTRACTS**

B-220677 Feb. 5, 1986

**Negotiation**

86-1 CPD 132

**Offers or Proposals****Evaluation****Technical Acceptability****Administrative Determination**

Where protester proposes meeting peripheral plug-to-plug compatibility requirement with an "intermediate device" consisting of a computer, data format conversion device, modem, and a telecommunications line, agency properly rejected proposal as technically unacceptable because it reasonably interpreted the solicitation as only allowing an intermediate device in the nature of an adapter.

**BIDS**

B-220848 Feb. 5, 1986

**Invitation for Bids**

86-1 CPD 133

**Amendments****Failure to Acknowledge****Waived as Minor Informality**

A low bidder's failure to acknowledge an amendment that decreases the cost of performance should be waived since there is clearly no prejudice to other bidders.

**BIDS****Invitation for Bids****Amendments****Failure to Acknowledge****Waiver****Significance of Amendment**

An IFB amendment that corrected a configuration designation in the schedule for prices and specification to conform to the drawings and manuals included in the IFB was not material since it neither added nor subtracted from the required work. Thus, the low bidder's failure to acknowledge receipt of the amendment should have been waived.

**CONTRACTS**

B-218620.2 Feb. 6, 1986

Negotiation

86-1 CPD 134

Offers or Proposals

Evaluation

Technical Transfusion Prohibition

An agency, during discussions, requested additional information or justification from an offeror concerning a technically complex item that is being procured for the first time and noted instances where the proposal was not in accordance with the RFP requirements. This was not improper coaching with the intent of bringing the offeror's proposal up to the protester's level, i.e., technical leveling, in violation of FAR, 48 C.F.R. § 15.610(d)(1), even though the offeror, which had initially been found technically unacceptable, modified its design in its revised proposal during discussions such that its proposal was found acceptable and the protester's proposal was always considered acceptable.

**CONTRACTS**

Protests

General Accounting Office Procedures

In Camera Inspection of Records, etc.

GAO will consider, in camera, relevant but sensitive documents concerning an ongoing procurement action that were submitted to GAO, but not the protester, although this limits GAO's discussion of the contents of such documents.

**CONTRACTS**

Protests

General Accounting Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

Protest that conduct of discussions with awardee constituted technical leveling, technical transfusion and improper auction techniques is timely if filed within 10 working days of when the protester became aware of the results of such discussions.

**CONTRACTS**

B-220421 Feb. 6, 1986

**Protests**

86-1 CPD 136

**General Accounting Office Procedures****Timeliness of Protest****Date Basis of Protest Made Known to Protester**

Protest against the placement of an order for a personal computer system with the General Services Administration's computer store, the Office of Technology Plus, at a price allegedly higher than that quoted by the protester, is timely where filed within 10 days of when the protester learns of the price paid for the computer system.

**CONTRACTS****Requests for Quotations****Specifications****Brand Name Requirement**

Protest that an agency failed to consider a brand name or equal quotation before ordering a computer system from the General Services Administration's Computer Store is without merit where the agency specified a brand name system and the offer was for an "equal" system that was not identified or described in any way.

**BIDS**

B-220987 Feb. 6, 1986

**Invitation for Bids**

86-1 CPD 138

**Cancellation****After Bid Opening****Nonresponsive Bids**

Cancellation of invitation for bids is proper where contracting officer determines that no responsive bid was received from a responsible bidder.

**BIDS** **B-220987 Con't**  
**Responsiveness** **Feb. 6, 1986**  
**Failure to Furnish Something Required**

Bid of Canadian firm properly was found nonresponsive where the firm failed to submit the required endorsement from the Canadian Commercial Corporation and submitted its bid in Canadian rather than American dollars.

**BIDS** **B-221026 Feb. 6, 1986**  
**Competitive System** **86-1 CPD 139**  
**Preservation of System's Integrity**  
**Pecuniary Disadvantage to Government**

A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system.

**BIDS**  
**Responsiveness**  
**Failure to Furnish Something Required**  
**Prices**

Determination that bid was nonresponsive because unit prices for indefinite-quantity portion of contract were not submitted with bid was proper because such unit prices are necessary to set material terms of the contractor's obligation. Since these prices are material, the failure to submit them cannot be waived or corrected after bid opening.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Bias**  
**Unsubstantiated**

Allegation that bid was rejected because of bias fails because proper application of procurement principles requires bid to be rejected as nonresponsive.

**CONTRACTS**

**B-221026 Con't**

**Protests**

**Feb. 6, 1986**

**General Accounting Office Procedures**

**Timeliness of Protest**

**New Issues**

**Unrelated to Original Protest Basis**

Where protester supplements its protest with a new ground of protest in its response to the contracting agency report more than 10 days after the basis for the new argument should have been known, the new ground is untimely.

**CONTRACTS**

**Small Business Concerns**

**Awards**

**Size Status**

**Recertification**

**Eligibility for Award**

Question regarding bidder's status as small business under total small business set-aside for maintenance services is not matter of bid responsiveness since question does not relate to bidder's commitment or obligation to provide required services in conformance with material terms of solicitation, but rather to bidder's status and eligibility for award. Thus, contracting agency was correct in permitting agency to correct erroneous certification indicating bidder was large business in order to reflect bidder's actual status as small business.

**BIDS**

B-220282.2 Feb. 7, 1986

**Responsiveness**

86-1 CPD 140

**Failure to Furnish Something Required  
Prices**

Bid which indicated "no bid" for one subitem and only offered bid on the alternative subitem is nonresponsive where the contract awarded included the subitem for which the "no bid" notation had been entered. By not bidding on both subitems, each of which requested a different material, the bidder assumed the risk that its bid would be unacceptable if the subitem not bid upon was included in the contract awarded.

**CONTRACTS****Protests****General Accounting Office Procedures****Timeliness of Protest****Date Basis of Protest Made Known to Protester**

Protest alleging improper actions of contracting officer at bid opening is untimely where protest was filed over 1 month after bid opening.

**CONTRACTS****Protests****General Accounting Office Procedures****Timeliness of Protest****Solicitation Improprieties****Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protest of alleged ambiguities and defects in solicitation is dismissed as untimely where the alleged ambiguities and defects were apparent on the face of the solicitation but were not protested until after the bid opening.



**BIDS** **B-220574.2 Feb. 7, 1986**  
**Invitation for Bids** **86-1 CPD 141**  
**Amendments**  
**Failure to Acknowledge**  
**Materiality Determination**

An irregularity in a bid is material when the irregularity is a variation from the exact requirements of the invitation for bids (IFB); therefore, a bid which fails to acknowledge an IFB amendment that increased a warranty from 15 to 20 years is nonresponsive.

**BIDS** **B-220957 Feb. 7, 1986**  
**Invitation for Bids** **86-1 CPD 142**  
**Amendments**  
**Failure to Acknowledge**  
**Wage Determination Changes**

Bid which failed to acknowledge amendment requiring upward wage rate revision was properly rejected as nonresponsive notwithstanding fact that revision was based on rejected bidder's collective bargaining agreement. Failure to acknowledge amendment could not be waived as minor informality because the effect of the amendment on bid price cannot be said to be clearly de minimus.

**CONTRACTS** **B-220618.3 Feb. 10, 1986**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest which appeared untimely on its face was properly not reopened as a timely appeal to an agency denial of the protest, where the protester failed to mention in its initial GAO protest that it had previously protested to the agency.

**BIDS** B-220620 Feb. 10, 1986  
**Acceptance Time Limitation** 86-1 CPD 143  
**Extension**  
**After Expiration**  
**Acceptance of Renewed Bid**  
**Effect on Competitive System**

Where the agency requests bid extensions 1 day prior to bid expiration and a bidder responds to the agency's request for bid extension on the next working day, which is 2 days after the expiration of its bid, the revival of the expired bid is proper because the bidder responded reasonably promptly and gained no unfair competitive advantage over other bidders. Although the extension contained the wrong solicitation number, it showed the bidder's intention to extend the bid.

**BIDS**  
**Evaluation**  
**Delivery Provisions**  
**F.O.B. Origin**  
**Omitted From Bid**

Where a bidder fails to state the f.o.b. origin or shipping point for the items to be provided but that information can be ascertained from a reading of the bid as a whole, and the IFB also provides that if the bidder fails to provide the shipping point the government would assume delivery from the plant at which the contract would be performed, the failure to provide the f.o.b. origin information does not render the bid unacceptable.

**BIDS**

B-220620 Con't

**Evaluation**

Feb. 10, 1986

**Delivery Provisions****Guaranteed Shipping Weight****Bidder's Understatement**

Where an IFB's "Guaranteed Maximum Shipping Weights and Dimensions" clause requires shipping information for the determination of transportation costs of items to be shipped and a bidder underestimates guaranteed weights or dimensions, our Office has recognized that a bidder may guarantee a weight or dimension which is less than actual rather than reduce the price for the item itself.

**BIDS****Responsiveness****Solicitation Requirements Satisfied****Offered Products on Qualified Products List**

Where an invitation for bids requires a standard current product, but allows modifications to that product, a bid offering a modified current model is responsive. Allegation that the needed modifications to low bidder's product are so substantial that the product will no longer be a standard current product has no merit. The IFB placed no limitations on modifications that could be made. Under the circumstances, there is no basis for our finding the modifications to the offered model unacceptable.

**CONTRACTS**

B-221560.2 Feb. 10, 1986

**Protests**

86-1 CPD 144

**General Accounting Office Procedures****Reconsideration Requests****Error of Fact or Law****Not Established**

Decision dismissing protest against restriction in solicitation as untimely is affirmed where protester did not file its protest with the contracting agency or this Office prior to the closing date for the receipt of proposals.

**CONTRACTS**                      B-221695, et al. Feb. 10, 1986  
**Protests**                      86-1 CPD 145  
**Allegations**  
**Unsubstantiated**

Protest that agency improperly rejected proposal is dismissed as clearly without merit where offerors were restricted to mobilization base producers and protester is not a mobilization base producer.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest that RFP improperly restricted competition is dismissed as untimely where not filed before the closing date for the receipt of initial proposals.

**CONTRACTS**                      B-221723 Feb. 10, 1986  
**Protests**                      86-1 CPD 146  
**Allegations**  
**Speculative**

Where a protester fails to offer any evidence that the agency disclosed proposed prices to other offerors, its contention in this regard is mere conjecture and provides no basis to sustain a protest.

**CONTRACTS**

**B-221723 Con't**

**Negotiation**

**Feb. 10, 1986**

**Offers or Proposals**

**Best and Final**

**Discussions**

**All Offerors Requirement**

In a negotiated procurement, all offerors in the competitive range generally must be given an opportunity to revise their proposals and to submit best and final offers. Request for such offers, even though one offeror is rated superior to another, therefore is not improper since ranking may change on the basis of best and finals.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Evaluation**

**Technical Superiority v. Cost**

**Solicitation Provision**

Unless the solicitation so provides, in a negotiated procurement there is no requirement that award be made on the basis of lowest proposed price or cost.

**CONTRACTS**

**B-221836.2 Feb. 10, 1986**

**Protests**

**86-1 CPD 147**

**Interested Party Requirement**

**Suspended, Debarred, etc. Contractors**

Suspended firm is not an "interested party" under GAO Bid Protest Regulations since firm is not eligible for award.

**CONTRACTS**                                    B-220058.2; B-220058.3  
**Federal Supply Schedule**            Feb. 11, 1986  
**Order Limitation**                     86-1 CPD 148  
**Excess of Limitation**

Where contractor's General Services Administration Federal Supply Schedule contract sets forth a maximum order limitation (MOL) on the "total dollar value of any order" placed with the contractor and where the agency places an order with the contractor in excess of the contractor's MOL, that order is improperly placed.

**CONTRACTS**  
**Protests**  
**Preparation**  
**Costs**  
**Compensable**

Recovery of the cost of filing and pursuing its protest, including attorney's fees, is permissible where the agency unreasonably has excluded the protester from the procurement, except when our Office recommends that the contract be awarded to the protester and protester ultimately receives the award.

**CONTRACTS**                                    B-220384 Feb. 11, 1986  
**Negotiation**                                86-1 CPD 149  
**Awards**  
**To Other Than Low Offeror**

Agency decision to award to higher cost, technically superior proposal is proper so long as it is consistent with stated evaluation criteria and rationally based.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Reasonable**

**B-220384 Con't**  
**Feb. 11, 1986**

Agency's downgrading of proposal in which costs of developing software are not specified is reasonable where the protester does not indicate anywhere in its proposal that it intends to absorb such costs itself.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Technical Acceptability**  
**Administrative Determination**

Agency determination that offeror's lack of an existing software package to operate with a particular computer is a technical weakness is reasonable where the solicitation identified compatible software as desirable and listed proven technology as an evaluation factor.

**BIDS**  
**Invitation for Bids**  
**Cancellation**  
**After Bid Opening**  
**Compelling Reasons Only**

**B-220394 Feb. 11, 1986**  
**86-1 CPD 150**

Contracting agency lacked compelling reason to cancel invitation for bids (IFB) for waste collection services where alleged inconsistency between two IFB provisions--the bid schedule calling for a lump sum bid for numerous items including trash containers, and another provision calling for the trash containers to be bid as a separate item--is resolved by a reasonable interpretation of the IFB, and award under IFB as so interpreted would meet agency's needs without prejudice to any bidder.

**BIDS** **B-220394 Con't**  
**Invitation for Bids** **Feb. 11, 1986**  
**Cancellation**  
**After Bid Opening**  
**Compelling Reasons Only**

Omission of standard descriptive literature clause is not a compelling reason to cancel an IFB where IFB contains a provision requiring submission of descriptive literature showing compliance with detailed specifications also included in the IFB, and contracting agency makes no showing that failure to use language in standard clause resulted in prejudice to bidders or affected agency's ability to determine whether a bidder's product met the IFB specifications.

**CONTRACTS** **B-220641 Feb. 11, 1986**  
**Awards** **86-1 CPD 152**  
**Separable or Aggregate**  
**Single Award**  
**Propriety**

Protest against aggregate award instead of award on line-item basis is sustained where solicitation failed to indicate the contracting agency's intent to make a single aggregate award and the majority of bidders, including the protester, bid on fewer than all line items based on solicitation language indicating that award would be on an item basis; award under such a solicitation is improper where bidders were misled by the deficiency.



**CONTRACTORS**

B-220645 Feb. 11, 1986

**Responsibility**

86-1 CPD 153

**Determination**

**Review by GAO**

**Affirmative Finding Accepted**

Contracting officer's affirmative determination of responsibility will not be reviewed absent a showing of fraud or bad faith and mere fact that protester is dissatisfied with agency's investigation or believes that contracting officer lacked sufficient information to determine awardee responsible does not suffice to show bad faith.

**CONTRACTS**

**Protests**

**Allegations**

**Bias**

**Unsubstantiated**

A protester fails to prove that the proposal evaluation process was biased or that technical evaluations were unreasonable where no independent evidence of bias is provided and the record reasonably supports the contracting agency's technical judgment.

**CONTRACTS**

**Protests**

**Allegations**

**Unsubstantiated**

Protest alleging that agency deliberately and fraudulently changed the technical evaluation criteria set forth in the RFP is denied where record shows the agency evaluation conformed to the solicitation's requirements.

**CONTRACTS**

B-220645 Con't

**Protests**

Feb. 11, 1986

**General Accounting Office Procedures****Timeliness of Protest****Date Basis of Protest Made Known to Protester**

Protest alleging that agency should not have convened a second evaluation board and that protester is entitled to an award based on the initial technical evaluation results is untimely since protest was not filed within 10 working days of date protester was advised that initial evaluation results would be disregarded and that a new award decision would be made based on the reevaluation.

**CONTRACTS****Protests****General Accounting Office Procedures****Timeliness of Protest****Significant Issue Exception****Not for Application**

GAO will not consider the merits of an untimely protest nor invoke the "significant issue" exception to our timeliness regulations where the untimely protest issues are not matters of first impression which would have widespread significance to the procurement community.

**CONTRACTS****Protests****Propriety Data****Mishandling****Allegation Unsupported**

Allegation that agency improperly disclosed protester's proprietary data outside the government by employing two consultants to evaluate proposals is denied since agency may properly release proposals outside the government for evaluation purposes and no evidence of any improper disclosure has been submitted.

**CONTRACTS****B-220645 Con't****Protests****Feb. 11, 1986****General Accounting Office Procedures****Timeliness of Protest****Adverse Agency Action Effect**

Contention that protest alleging that agency should not have convened a second technical evaluation board and that protester is entitled to an award based on the initial technical results is timely filed at GAO because no adverse action to agency protest was received is without merit. Record shows that protester never protested the convening of the second board to the agency in a timely manner and letter to protester indicated that award in accordance with the rescored technical results would be made.

**CONTRACTS****B-220660 Feb. 11, 1986****Negotiation****86-1 CPD 154****Offers or Proposals****Evaluation****Criteria****Unstated**

In view of closeness of final evaluation scoring, where protester's proposal was downgraded by agency for failure to meet unstated solicitation requirement and where agency did not make requirement known to protester during negotiations, negotiations should be reopened on basis of agency's actual needs.

**CONTRACTS**                                                 **B-221028 Feb. 11, 1986**  
    **Small Business Concerns**         **86-1 CPD 155**  
    **Awards**  
    **Set-Asides**  
    **Administrative Determination**

Since a contracting officer's determination as to whether adequate small business competition may reasonably be expected under a prospective total set-aside is basically a business judgment within the contracting officer's broad discretion, GAO will uphold a set-aside determination absent a clear showing of abuse of discretion.

A contracting officer did not abuse her discretion in determining to set aside a majority of solicitation items for exclusive small business competition where the prior procurement history of the same items created the reasonable expectation that bids would be received from at least two responsible small business concerns and that awards would be at reasonable prices.

**CONTRACTS**                                                 **B-221715 Feb. 11, 1986**  
    **Negotiation**  
    **Requests for Proposals**  
    **Aggregate v. Separable Items, Prices, etc.**  
    **Award Basis**

The determination to split an award generally is based on the agency's needs. However, the solicitation should advise offerors that the award may be made to one contractor for the entire requirement or that the requirement may be divided among several contractors.

**CONTRACTS** **B-221715 Con't**  
**Negotiation** **Feb. 11, 1986**  
**Requests for Proposals**  
**Evaluation Criteria**  
**Price Consideration**  
**Relative Importance**

Negotiated solicitation advised offerors that award would be made on the basis of price and "other factors." Generally, in a negotiated procurement, "other factors" refer to noncost or technical considerations which are considered in addition to price in determining the successful offeror.

**CONTRACTORS** **B-220724 Feb. 12, 1986**  
**Responsibility**  
**Determination**  
**Review by GAO**  
**Affirmative Finding Accepted**

General Accounting Office will not review a challenge to a contracting agency's affirmative responsibility determination where there is no allegation or showing that the contracting officials acted fraudulently or in bad faith or that the solicitation contained definitive responsibility criteria that have not been met.

**CONTRACTS**  
**Negotiation**  
**Competition**  
**Equality of Competition**  
**Minority Status of Offeror**  
**Competitive Advantage Consideration**

Protest that a firm performing contracts under the Indian Self-Determination Act has an unfair financial advantage competing for a contract awarded under the Buy Indian Act is denied, since the government has no obligation to equalize a competitive advantage that results from the performance of other government contracts.

**CONTRACTS**                            **B-220724 Con't**  
**Negotiation**                        **Feb. 12, 1986**  
**Conflict of Interest Prohibitions**

Employment of procuring agency official by awardee does not itself establish an impropriety in the procurement, and the mere potential for improprieties does not provide a basis to question an award.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Bias**  
**Unsubstantiated**

The protester has the burden of proving bias or favoritism on the part of procuring officials, and the protester fails to meet this burden where it presents only bare allegations.

**CONTRACTS**                            **B-220295.2 Feb. 13, 1986**  
**Negotiation**                        **86-1 CPD 157**  
**Awards**  
**To Other Than Low Offeror**

In negotiated procurement there is no requirement that award be made on the basis of the lowest cost. The procuring agency has the discretion to select a higher rated technical proposal instead of a lower rated, lower cost proposal if doing so is consistent with the evaluation scheme in the solicitation.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Speculative**

**B-220295.2 Con't**  
**Feb. 13, 1986**

Allegation that procuring agency rewrote procurement records after the fact and, in response to protest, provided false and misleading information to justify its position is denied as merely speculative where not supported by any evidence of record.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Unsubstantiated**

Where record indicates that evaluation of protester's proposal was in accordance with established criteria set forth in solicitation and the evaluation was reasonable, protest based on offeror's disagreement with the evaluation is without merit.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest filed after the closing date for receipt of proposals, that solicitation requirement for nursing supervisor unduly favors the incumbent contractor is untimely since it concerns a defect apparent on the face of the solicitation and should have been filed prior to closing.

Where solicitation clearly states the value of all the evaluation criteria, protest against the relative weight given to two of these criteria is untimely when filed after the date for receipt of proposals.

**CONTRACTS**

B-220295.2 Con't

**Protests**

Feb. 13, 1986

**Procedures****Information Disclosure**

Authority to determine which documents should be released to a protester is vested in the contracting agency.

**CONTRACTS**

B-220913 Feb. 13, 1986

**Requests for Quotations**

86-1 CPD 158

**Evaluation****Improper****Termination and Resolicitation**

Where evaluation method in solicitation limits evaluation to addition of unit prices without regard to total contract cost, which encourages unbalanced bidding and provides no assurance that award will result in the lowest actual cost to the government, the solicitation is defective.

**BIDS**

B-220976 Feb. 13, 1986

**Unbalanced**

86-1 CPD 159

**Propriety of Unbalance****"Mathematically Unbalanced Bids"****Materiality of Unbalance**

The apparent low bid for a contract contemplating a base year and 2 option years was mathematically unbalanced where there was a 90-percent differential between the base year and second option year prices, and the bidder made no credible showing that its pricing structure reflected the actual costs to be incurred in each contract year. Since the agency had a reasonable doubt that acceptance of the bid, which did not become low until into the second option year, would ultimately result in the lowest overall cost to the government, the bid was properly rejected as materially unbalanced.



**CONTRACTS**

**B-221230 Feb. 13, 1986**

**Protests**

**86-1 CPD 160**

**Interested Party Requirement**

**Protester not in Line for Award**

GAO will not consider a protest against an agency's failure to conduct discussions by a protester clearly outside the competitive range.

**CONTRACTS**

**B-219661.2 Feb. 14, 1986**

**Protests**

**86-1 CPD 161**

**Interested Party Requirement**

**Direct Interest Criterion**

Protest is dismissed where protester is not an "interested party" as defined in the Competition in Contracting Act and GAO's Bid Protest Regulations. Protest was submitted by the supplier of the items to be procured and not by the firm which submitted the bid.

**BIDS**

**B-220017.2 Feb. 14, 1986**

**Invitation for Bids**

**86-1 CPD 162**

**Specifications**

**Qualified Products**

**Listing**

**Removal From List**

Whether a product should have been removed from a qualified products list before bid opening is a matter for the determination of the qualifying agency, and the General Accounting Office will not question the agency's judgment unless it is shown not to have a reasonable basis.

Protest after bid opening that product should be removed from a qualified products list is not a basis for questioning responsiveness of the bid.

**BIDS** **B-220017.2 Con't**  
**Responsiveness** **Feb. 14, 1986**  
**Solicitation Requirements Satisfied**  
**Offered Products on Qualified Products List**

Where an invitation requires that offered products be on a qualified products list, a bid of an item on the list is responsive notwithstanding competitor's complaint that the product does not comply with the specification and, thus, should not be on the list, since bid did not take exception to the specification.

**CONTRACTS**

**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Additional ground of protest concerning agency's minimum needs is untimely where it is initially raised in comments to the agency report more than 10 working days after the protester knew or should have known of the basis for the protest.

**CONTRACTS** **B-220444 Feb. 14, 1986**  
**Negotiation** **86-1 CPD 163**  
**Conflict of Interest Prohibitions**  
**Disclosure of Conflict Requirement in RFP**  
**Propriety**

Where a contracting agency has a reasonable basis to exclude a firm from the competition because of an organizational conflict of interest, this determination properly may be made during the actual evaluation and source selection process when the conflict becomes clear to the agency, even though the solicitation itself did not expressly provide that the firm or other offerors of the same status would be ineligible to receive the award.

**CONTRACTS**

B-220444 Con't

**Negotiation**

Feb. 14, 1986

**Conflict of Interest Prohibitions****Organizational****Agency Responsibilities**

An agency reasonably determined that a potential organizational conflict of interest existed where the protester's status as the current contractor for a related effort would tend to impair its objectivity in performing the subsequent contract and the steps taken by the protester to eliminate the conflict were deemed to be inadequate.

**CONTRACTS****Negotiation****Offers or Proposals****Preparation****Costs****Denied**

Where a solicitation provision clearly puts offerors on notice not to rely on the oral representations of agency personnel, an offeror must suffer the consequences of its reliance upon such advice. Therefore, although a firm may have detrimentally relied upon oral advice into submitting a proposal for a contract it was ultimately precluded from receiving because of a potential organizational conflict of interest, the firm is not entitled to recover its proposal preparation costs since it was reasonably excluded from the competition.

**BONDS****B-221054.2 Feb. 14, 1986****Requirement****86-1 CPD 164****Bid, Performance, etc.**

Protest alleging that requirements for performance and payment bonds in solicitation for vehicle operation and maintenance unduly restrict competition and burden small businesses is without merit, since awardee will have the use of government-owned property and any interruption in service would be detrimental to operation of installation, due to the critical nature of the services being procured.

Proposal bond requirement is valid where performance and payment bonds are also required and the services covered are essential to operation of government installation.

**BIDS****B-221377.2 Feb. 14, 1986****Acceptance****86-1 CPD 165****Not Prejudicial to Other Bidders**

Bid of bidder, which alleged and then withdrew allegation of mistake, should be accepted where (1) there is no evidence that a mistake was made; (2) the bid prices are not so far out of line as to obviously be an error; and (3) the integrity of competitive bidding system is not adversely affected. Rejecting the bid under the circumstances would undermine the "firm bid" rule and the integrity of the sealed bid system.

**ADVERTISING**

B-219998.2 Feb. 18, 1986

**Advertising v. Negotiation****Advertising When Feasible and Practicable**

The use of sealed bidding is not appropriate under the Competition in Contracting Act of 1984 where award will be made on the basis of technical as well as price-related factors.

**CONTRACTS****Negotiation****Competition****Equality of Competition****Incumbent Contractor's Advantage**

Contracting agency has no obligation to compensate for advantages of incumbent, advantages which are not the result of preferential or unfair government action in order to equalize the competitive position of all potential offerors.

**CONTRACTS****Negotiation****Requests for Proposals****Specifications****Site Inspection, Conference, etc.****Attendance Optional**

Protest that agency's refusal to permit unlimited site visits precludes submission of intelligent proposal is denied where solicitation contains sufficient information to prepare proposals and there is no obligation on the part of the agency to accommodate individual preferences of every prospective offeror by providing unlimited access to facilities for site visitations.

**CONTRACTS** B-221173.2 Feb. 18, 1986  
**Protests** 86-1 CPD 170  
**General Accounting Office Procedures**  
**Timeliness of Comments on Agency's Reports**

GAO will not reopen case which was dismissed because the protester's comments to contracting agency's report were received after the 7-day period for filing comments even though the protester's comments were mailed to GAO within the 7-day period.

**BIDS** B-220085.2 Feb. 19, 1986  
**Invitation for Bids** 86-1 CPD 172  
**Specifications**  
**Restrictive**

Protest alleging that agency should not have eliminated a geographic restriction is without merit where agency reasonably determines that its needs could be met without imposing such a restriction and agency determines that requirement constitutes an unjustified restriction on competition.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Unsubstantiated**

Allegation that awardee's bid should have been found nonresponsive because awardee's facility is not located within a 110 mile radius of the Capitol is without merit where solicitation only specified that pickup and delivery locations must be within that geographic area.

**CONTRACTS**  
**Protests**  
**Authority to Consider**  
**Contract Administration Matters**

Whether an awardee performs in compliance with contract requirements is a matter of contract administration not for consideration under Bid Protest Regulations.

**BIDS**

B-220413 Feb. 19, 1986

**Invitation for Bids**

86-1 CPD 173

**Cancellation****After Bid Opening****Not Required****Defective Solicitation**

Post-bid opening cancellation of solicitation based on agency determination that a requirements contract with estimated quantities should have been used instead of a contract specifying fixed quantities is unreasonable where (1) solicitation included "Additions or Deletions of Equipment" clause which would have allowed some fluctuations in quantities; and (2) record does not show that the stated fixed quantities so misrepresented the agency's needs that bidders would be misled or an award would not satisfy the government's minimum needs even with the clause.

**APPROPRIATIONS**

B-220659 Feb. 19, 1986

**Restrictions**

86-1 CPD 174

**Committee Reports****Statements of Intent**

Recommendation in the report of the conference committee considering the contracting agency's appropriation that the agency award multiple contracts does not establish any legal requirement for the agency to do so where Congress appropriates a lump-sum amount without statutorily restricting what can be done with those funds.

**CONTRACTS**                                    **B-220659 Con't**  
**Negotiation**                                   **Feb. 19, 1986**  
**Requests for Proposals**  
**Aggregate v. Separable Items, Prices, etc.**  
**Award Basis**

Agency determination to procure by means of a total package rather than by separate procurements for divisible portions of the total requirement was reasonable where the agency reasonably concluded that award of a single contract could result in (1) economies of scale accruing to the benefit of the government under the cost-type contract and (2) enhanced flexibility in accommodating likely television network programming and scheduling changes over the 3-year contract term.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest that solicitation is unduly restrictive of competition is untimely where not filed until after the closing date for receipt of initial proposals. Alleged impropriety in a solicitation which is apparent prior to the closing date for receipt of initial proposals must be protested prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1985).

**CONTRACTS**                                    **B-221961 Feb. 19, 1986**  
**Protests**                                     **86-1 CPD 175**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

A protest submitted after bid opening that challenges the propriety of an IFB's bid bond requirement is dismissed as untimely since the alleged impropriety was apparent before bid opening and should have been protested before the bid opening.



**CONTRACTS** **B-219439.2 Feb. 20, 1986**  
**Protests** **86-1 CPD 176**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Additional Evidence Submitted**  
**Available but not Previously Provided to GAO**

Parties to a bid protest, including contracting agencies, that withhold or fail to submit all relevant evidence to GAO in the expectation that GAO will draw conclusions beneficial to them, do so at their peril, since it is not GAO's function or province to prepare defenses to allegations raised in a protest record.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Error of Fact or Law**  
**Not Established**

Decision is affirmed on reconsideration where it is not shown to be factually or legally wrong.

**CONTRACTS** **B-220367 Feb. 20, 1986**  
**Negotiation** **86-1 CPD 177**  
**Administrative Determination**  
**Advertising v. Negotiation**

Protest against use of negotiated procurement procedures for acquisition of food services is denied where complexity of requirements and need to assure quality of performance provided reasonable basis for use of negotiated procedures.

**CONTRACTS**                            **B-220367 Con't**  
**Negotiation**                        **Feb. 20, 1986**  
**Cost-Type**  
**Technical/Cost Justification**

Determination to use cost-type contract, based on uncertainties attributable to lack of prior experience with contracting for food services, complexity and breadth of requirements, initiation of new recycling program, and awareness of local landfill problems which could complicate disposal and recycling efforts to an unknown degree, is reasonable.

**CONTRACTS**  
**Negotiation**  
**Requests for Proposals**  
**Submission Date**  
**Administrative Determination**

Contention that request for proposals did not allow enough time for preparation of response and unfairly favored participants in prior procurement is without merit where agency received 12 proposals, 8 from firms which did not participate in prior procurement.

**CONTRACTS**                            **B-220794; B-220795 Feb. 20, 1986**  
**Protests**                            **86-1 CPD 178**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**New Issues**  
**Unrelated to Original Protest Basis**

Where initial protest letter sets forth one basis for protest but is followed more than 6 weeks later by letters which indicate that real basis for protest is an entirely different one than that which was stated in initial protest letter, and where real basis of protest was known to protester when initial protest was filed, protest is untimely.

**CONTRACTS** **B-220794; B-220795 Con't**  
**Protests** **Feb. 20, 1986**  
**Interested Party Requirement**  
**Protester not in Line for Award**

A protester challenging whether the awardee's equipment meets the agency's needs is not an "interested party" under GAO's Bid Protest Regulations, and its protest is therefore dismissed, where even if its protest were upheld it would not be in line for award because (1) the protester's bid is nonresponsive as the result of its inclusion of a standard commercial quotation form containing terms and conditions conflicting with the government's solicitation and (2) because there are two, lower priced bids which have not been protested.

**BUY AMERICAN ACT** **B-221423 Feb. 20, 1986**  
**Bids** **86-1 CPD 181**  
**Foreign Product Proposed**

Contracting officer's reliance on blank Buy American/Balance of Payments Program certification which obligates bidder to supply domestic source end product is not objectionable where, contrary to protest allegation, contracting officer had no actual knowledge that color monitors offered were in fact of foreign origin.

**CONTRACTS**  
**Protests**  
**Preparation**  
**Costs**  
**Compensable**

When a protest is without merit, GAO will deny a claim for bid preparation expenses and the costs of pursuing the protest.

**CONTRACTS** B-221523.2 Feb. 20, 1986  
Protests 86-1 CPD 182  
General Accounting Office Procedures  
Filing Protest With Agency

Where protest is not timely filed with contracting agency under General Accounting Office Bid Protest Regulations, subsequent protest filed with General Accounting Office is untimely.

**CONTRACTS**  
Protests  
General Accounting Office Procedures  
Not Waivable by Agencies, etc.

Contracting agency may not waive General Accounting Office timeliness rules, which may be waived only in instances, not here applicable, set forth in Bid Protest Regulations.

**CONTRACTS**  
Protests  
General Accounting Office Procedures  
Timeliness of Protest  
Date Basis of Protest Made Known to Protester  
What Constitutes Notice

Oral notification of basis for protest is sufficient to start 10-day period for filing protest running and protester may not delay filing protest until receipt of written notification of protest basis.

**CONTRACTS**

**B-221710 Feb. 20, 1986**

**Protests**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Congressional Transmittal of Protest**

Bid Protest Regulations regarding timeliness of protests and kinds of protests that GAO will consider apply even if protest is filed by or referred to GAO by a Member of Congress.

**CONTRACTS**

**B-219644.3 Feb. 21, 1986**

**Negotiation**

**86-1 CPD 183**

**Awards**

**Price Determinative Factor**

Protest that awardee's proposed equipment was not comparable to the allegedly more capable but also more expensive equipment offered by the protester is denied where the solicitation provided that award would be made on the basis of the low, technically acceptable offer and did not make provision for award on the basis of a technically superior but also more expensive proposal.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Discussion With all Offerors Requirement**

**"Meaningful" Discussions**

Where the contracting agency fails during discussions to inform the protester of a deficiency in the telephone system offered under its initial, alternate proposal, but informs another offeror proposing the same model system of the deficiency and then rejects the protester's best and final alternate offer for failure to include the equipment needed to remedy the deficiency, the agency has failed to conduct meaningful discussions with the protester.

**CONTRACTS****B-219644.3 Con't****Protests****Feb. 21, 1986****General Accounting Office Procedures****Timeliness of Protest****Date Basis of Protest Made Known to Protester**

Protest that contracting agency improperly found alternate proposal to be technically deficient for failure to meet a particular specification and that, in any case, the agency had failed to disclose the purported deficiency during discussions was not untimely where filed within 10 working days of when the protester learned that the agency had rejected its alternate proposal for failure to meet the specification in question.

**BIDS****B-220649 Feb. 21, 1986****Prices****86-1 CPD 184****Item Pricing**

A low lump-sum bid that exceeds the statutory price limitation for a line item may be corrected to reallocate prices to another item where the lump-sum price remains unchanged, no prejudice to the competition or the competitive bid system occurs as a result of correction and the bid, as corrected is not materially unbalanced.

**CONTRACTS****B-219028.4 Feb. 24, 1986****Protests****86-1 CPD 185****General Accounting Office Procedures****Reconsideration Requests****Error of Fact or Law****Not Established**

Second request for reconsideration is denied where protester merely reiterates argument raised in first request for reconsideration.

**CONTRACTS** **B-220000.3 Feb. 24, 1986**  
**Negotiation** **86-1 CPD 186**  
**Offers or Proposals**  
**Discussion With all Offerors Requirement**  
**"Meaningful" Discussions**

Protest that meaningful discussions were not conducted with the protester concerning the inadequacies in its experience is denied. The solicitation called for, and the protester submitted, detailed information in this regard. Therefore, GAO agrees with the agency's apparent determination that the inadequacies in the proposal represented weaknesses in the firm's actual experience that could not be remedied during discussions, rather than inadequacies in the firm's demonstration of its experience in its proposal.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Technical Acceptability**  
**Scope of GAO Review**

GAO will not disturb a determination by a contracting agency of the relative desirability and technical adequacy of proposals absent a clear showing that the determination was arbitrary or unreasonable.

**BIDS** **B-221186 Feb. 24, 1986**  
**Evaluation** **86-1 CPD 188**  
**Criteria**  
**Application of Criteria**

Agency properly refused to apply a 2.2 percent price differential in evaluating price offered by labor surplus area concern notwithstanding inaccurate solicitation language that payment of a price differential in favor of labor surplus area concerns was authorized by legislation at the time of solicitation issuance where statutory authority to do so had expired as of the time of award. The solicitation specifically warned bidders that "if no legislation is in effect at the time of award which authorizes payment of a price differential, no evaluation factor will be added to the bids submitted."

**BIDS**  
**Evaluation**  
**Price Analysis**

**B-221186 Con't**  
**Feb. 24, 1986**

Agency properly considered protester's price for first article testing in determining its total evaluated bid price where solicitation specifically required bidders to include a price for first article testing and provided that award would be made on the basis of price and price related factors.

**CONTRACTS**                    **B-221230.2, et al. Feb. 24, 1986**  
**Negotiation**                **86-1 CPD 189**  
**Awards**  
**To Other Than Low Offeror**

Where the top ranked offeror was suspended after proposal evaluation, but prior to award, and this suspension was terminated on same date as the award to the second ranked offeror, the contracting officer, who was unaware of the termination of suspension, properly exercised her discretion in awarding the contract to the second ranked offeror.

**BIDS**                                **B-221825 Feb. 24, 1986**  
**Invitation for Bids**            **86-1 CPD 190**  
**Amendments**  
**Failure to Acknowledge**  
**Bid Nonresponsive**

An amendment that significantly extends the period in which the government may issue delivery orders under a proposed contract is material because it changes the legal relationship between the parties by imposing an obligation on the contractor not contained in the original solicitation and therefore the protester's failure to acknowledge the amendment requires rejection of its bid as nonresponsive.



**CONTRACTS**

B-221999 Feb. 24, 1986

**Protests**

86-1 CPD 191

**Moot, Academic, etc. Questions**

Protest that agency proposes to reject the protester as nonresponsible because the agency believes that protester lacks business integrity and adequate financial resources is dismissed as premature because the agency has not yet made its final decision on the matter.

**CONTRACTS**

B-219676.2; B-219676.3 Feb. 25, 1986

**Negotiation**

86-1 CPD 192

**Awards****Multiple**

Multiple awards to two offerors responding to request for proposals limited to industrial mobilization planned producers for field rations which resulted in the lowest overall cost to contracting agency, but did not result in the protester, the lowest individual offeror, receiving an award for the maximum quantity offered, is not improper under RFP award procedure.

**CONTRACTS****Negotiation****National Emergency Authority****Expansion of Mobilization Base**

Decisions as to how many producers are to be included in the mobilization base must be left to the discretion of the military agencies, and GAO questions those decisions only if the evidence convincingly shows the military agency has abused its discretion. Protester speculates that contracting agency did not follow prescribed procedures in qualifying new, planned producer and that the lack of capacity in the producer's proposed subcontractor was such that the new producer should not have qualified. But this speculation is not convincing evidence showing that the military agency has abused its discretion in qualifying the producer.

**CONTRACTS** B-220949 Feb. 25, 1986  
**Requests for Quotations** 86-1 CPD 193  
**Preparation of Quotation**  
**Cost**  
**Recovery**

Recovery of quotation preparation costs may be allowed where the contracting agency unreasonably excluded the protester from the procurement, and other remedies are not appropriate. Recovery of costs of filing and pursuing the protest may also be allowed where the agency unreasonably excluded the protester from the procurement and GAO does not recommend that the protester be awarded the contract.

**CONTRACTS**  
**Requests for Quotations**  
**Specifications**  
**Evaluation on Basis Other Than in Invitation**

Agency may not solicit quotations on one basis and then award a contract on another basis.

**CONTRACTS** B-221279.2 Feb. 25, 1986  
**Protests** 86-1 CPD 194  
**General Accounting Office Procedures**  
**Reconsideration Requests**

Where protest was dismissed based on the protester's failure to express continued interest in the protest after receipt of the agency report, reconsideration request that addresses only the protest's timeliness and related matters provides no basis for reconsideration.

**CONTRACTS**

**B-221340 Feb. 25, 1986**

**Negotiation**

**86-1 CPD 195**

**Competition**

**Equality of Competition**

**Incumbent Contractor's Advantage**

Protest that the procuring agency is required to equalize another contractor's competitive advantage which it has gained from its prior contracting activities is denied since the government is not precluded from taking advantage of legitimate competitive advantages that a firm may have.

**CONTRACTS**

**Negotiation**

**Sole-Source Basis**

**Administrative Determination**

**Reasonable Basis**

Where an agency properly determined due to urgent circumstances that it must use noncompetitive procedures provided for under the Competition in Contracting Act, the agency properly may limit the procurement to the only firm it reasonably believes can promptly and properly perform the work.

**BIDS**

**B-222005 Feb. 25, 1986**

**Invitation for Bids**

**86-1 CPD 196**

**Amendments**

**Failure to Acknowledge**

**Bid Nonresponsive**

A bidder's failure to acknowledge receipt of material amendment renders the bid nonresponsive; the fact that the bidder may not have received the amendment until the day after bid opening is irrelevant absent evidence that the failure to receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the firm from competition.

**CONTRACTORS  
Responsibility  
Determination**

**B-220935.2 Feb. 26, 1986  
86-1 CPD 203**

**Definitive Responsibility Criteria  
What Constitutes**

Protest against an affirmative responsibility determination, based on an allegation that "corporate experience" definitive responsibility criterion was not met, is denied. "Corporate experience" was a proposal evaluation criterion to be used by the agency in assessing the merits of individual proposals, not a responsibility criterion, and the protester has not shown that the agency's proposal evaluation was unreasonable.

**CONTRACTORS  
Responsibility  
Determination  
Review by GAO**

Allegations that agency's affirmative determination of responsibility was based on fraud or bad faith because the agency knew the awardee, a newly incorporated firm, was totally lacking in experience and adequate financial resources are without merit where record shows contracting officer considered firm's pre-incorporation experience and reliance on proposed subcontractor experience and had basis for viewing the adequacy of the firm's financial resources as he did.

**CONTRACTS**

**B-221222 Feb. 26, 1986**

**Architect, Engineering,  
etc. Services**

**86-1 CPD 197**

**Procurement Practices**

**Evaluation of Competitors**

**Application of Stated Criteria**

Agency decision to terminate negotiations with small business offeror under solicitation for architect-engineer services need not be referred to Small Business Administration under certificate of competency procedures since agency decision is based on evaluation of offeror's qualifications relative to other offerors as prescribed by Brooks Act, 40 U.S.C. §§ 541-544 (1982), not a negative responsibility determination.

Agency's decision to terminate negotiations with the protester for architect-engineer services was not arbitrary or unreasonable where the agency discovered inaccuracies in the information in the protester's standard forms 254 and 255 material to the protester's ranking and, therefore, determined after evaluation of protester's actual resources and capabilities that another firm was ranked above the protester and in line for negotiations.

**BIDS**

**B-221628 Feb. 26, 1986**

**Responsiveness**

**86-1 CPD 199**

**Failure to Furnish Something Required**

**Prices**

Where a solicitation requires a bidder to bid all items, a bid which fails to include prices for an item will be rejected where evaluation and award includes the "no-bid" item.

**BIDS** **B-221628 Con't**  
**Responsiveness** **Feb. 26, 1986**  
**Offer of Compliance After Bid Opening**  
**Acceptance not Authorized**

A nonresponsive bid may not be made responsive by post-bid-opening explanations.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protest of alleged solicitation deficiencies filed after bid opening is untimely.

**CONTRACTS** **B-221723.2 Feb. 26, 1986**

**Protests** **86-1 CPD 200**

**General Accounting Office Procedures**

**Reconsideration Requests**

**Additional Evidence Submitted**

**Available but not Previously Provided to GAO**

The General Accounting Office Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1985), do not permit a piecemeal presentation of evidence, information, or analyses. Where a party submits in its request for reconsideration an argument that it could have presented at the time of the protest but did not, the argument does not provide a basis for reconsideration.

**CONTRACTORS**                      **B-221739.2, et al. Feb. 26, 1986**  
**Responsibility**  
**Determination**  
**Definitive Responsibility Criteria**  
**What Constitutes**

A purchase description or specification that serves the sole purpose of describing the items offerors are to supply in the event of award is a performance requirement, rather than a definitive responsibility criterion, since the description does not establish an objective standard related to an offeror's ability to perform the contract.

**CONTRACTS**                                      **B-222043 Feb. 26, 1986**  
**Protests**                                              **86-1 CPD 201**  
**Interested Party Requirement**  
**Direct Interest Criterion**

To be considered an interested party to have standing to protest under the Competition in Contracting Act of 1984, and GAO Bid Protest Regulations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. A manufacturer which may supply its product to bidders in a federal procurement, but which is not an actual or prospective bidder itself, is not an interested party.

**CONTRACTS**                                              **B-220890 Feb. 27, 1986**  
**Protests**                                              **86-1 CPD 202**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**New Issues**  
**Unrelated to Original Protest Basis**

Where a protest raises a new basis of protest in its comments to the agency report, and the alleged impropriety was apparent on the face of the request for proposals, the new basis of protest is untimely.

**CONTRACTS**                              **B-220890 Con't**  
**Protests**                               **Feb. 27, 1986**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Significant Issue Exception**  
**Not for Application**

General Accounting Office will not consider the merits of an admittedly untimely protest by invoking the "significant issue" exception of its Bid Protest Regulations where the protest--involving the reasonableness of an offered price--does not raise an issue of first impression that would have widespread significance in the procurement community.

**BIDS**                                      **B-220973 Feb. 27, 1986**  
**Invitation for Bids**                   **86-1 CPD 204**  
**Specifications**  
**Tests**  
**First Article**  
**Waiver Propriety**

Where the invitation required bidders seeking waiver of first article testing to identify the contract under which the item or similar items had been tested and approved, the contracting agency reasonably denied waiver where the only contract identified by the bidder was a 1968 contract. Although the invitation failed specifically to request information about items accepted by the government under more recent contracts, the bidder should have known to identify such contracts for the purpose of obtaining waiver or to raise the matter prior to bid opening.

**CONTRACTS**  
**Awards**  
**Notice**  
**To Unsuccessful Bidders**

Failure to notify protester of award to another bidder is merely a procedural deficiency and does not affect the validity of an otherwise properly awarded contract.



**CONTRACTS**  
**Negotiation**  
**Awards**

**B-221004 Feb. 27, 1986**  
**86-1 CPD 205**

**To Other Than Low Offeror**

In a negotiated procurement, award may be made to a higher priced, higher technically rated offeror as long as the decision to do so is reasonable and in accordance with the stated evaluation criteria. Protester has not shown that it was competitively prejudiced by agency's initial error in calculating protester's total price, where contracting officer and source selection officials reevaluated protester's proposal using correct price and determined that awardee's proposal still represented the greatest overall advantage to the government because of its technical superiority.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Adverse Agency Action Effect**

Protest is timely filed at GAO when it is filed within 10 working days after protester receives notice of adverse agency action on timely filed agency-level protest.

**CONTRACTS**

**B-221414 Feb. 27, 1986**  
**86-1 CPD 206**

**Protests**

**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest alleging that solicitation evaluation provisions failed to adequately provide for meaningful price/cost evaluation is dismissed as untimely since protest was not filed until after the closing date for receipt of proposals.

**CONTRACTS**

**B-221954 Feb. 27, 1986**

**Protests**

**86-1 CPD 207**

**General Accounting Office Procedures  
Timeliness of Protest**

Protester's submission to the General Accounting Office of an information copy of a mailgram sent to the contracting officer is not sufficient to constitute a timely protest to GAO when the mailgram neither sets forth any reasons why the protester believes rejection of its bid was improper nor requests a ruling by the Comptroller General.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures  
Timeliness of Protest**

**Adverse Agency Action Effect**

Protest alleging that agency should not have rejected a bid as nonresponsive is untimely when it is filed with the General Accounting Office more than 10 days after the protester receives notice of adverse action on an agency-level protest.

**CONTRACTS**

**B-220381 Feb. 28, 1986**

**Architect, Engineering,  
etc. Services**

**86-1 CPD 208**

**Procurement Practices  
Evaluation of Competitors  
Application of Stated Criteria**

The determination of the relative merits of offerors competing for architect-engineer services is primarily the responsibility of the procuring agency, and the determination and award decision will not be disturbed unless it is arbitrary or in violation of procurement laws and regulations.

**CONTRACTS**  
**Conflicts of Interest**  
**Prohibitions**  
**Generally**

**B-220381 Con't**  
**Feb. 28, 1986**

Protest that pre-award acquisition of offeror by another firm performing work for the procuring agency established an organizational conflict of interest is without merit where the acquiring firm had no involvement in the development of the project being procured, so as to gain an unfair competitive advantage, and was not otherwise prohibited from seeking and performing the contract.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Bias**  
**Unsubstantiated**

Protester has the burden of proving bias on the part of agency evaluators, and the General Accounting Office will not attribute unfair or prejudicial motives on the basis of inference or supposition.

**CONTRACTS**  
**Negotiation**  
**Awards**  
**To Other Than Low Offeror**

**B-220849 Feb. 28, 1986**  
**86-1 CPD 209**

Although protester may have relied on oral advice that price was a major evaluation factor, where solicitation specifically advises that cost is secondary to technical considerations, the contracting agency may properly award the contract to a technically superior proposal notwithstanding its higher cost.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Best and Final**  
**Evaluation**

**B-220849 Con't**  
**Feb. 28, 1986**

Where the solicitation estimates that a full-time Project Director will be required and offeror's best and final offer (BAFO) reduced the Project Director's time on the contract to 25 percent with a parallel decrease in cost, agency conclusion that offeror's cost estimate was undesirably low for the contract and impacted unfavorably on technical ability was not unreasonable where BAFO made no mention of protester's assertion that Project Director would spend more time on the contract with no additional cost to the government.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Criteria**  
**Application of Criteria**

Protester's allegation that its proposal was improperly downgraded based on factors that were not specifically included in the solicitation's evaluation criteria is without merit where the factors were clearly part of the criteria, and were repeatedly mentioned during negotiations.

**BIDS**  
**Mistakes**  
**Evidence of Error**  
**Worksheets**

**B-221317 Feb. 28, 1986**  
**86-1 CPD 210**

Although GAO has on occasion found worksheets to be the clear and convincing evidence of a mistake, the manner in which it occurred, and the intended bid price required in order to permit correction, the worksheets must be in good order and there must be no contravening evidence.

**BIDS**  
**Mistakes**  
**Evidence of Error**  
**Worksheets**

**B-221317 Con't**  
**Feb. 28, 1986**

The worksheets of a bidder alleging a mistake in regard to construction work that do not reveal what provisions were made for profit, overhead, and insurance, do not meet the high standard of proof required before bid correction is authorized. Consequently, it is not reasonable for the contracting agency to permit correction since the bid price actually intended remains uncertain.

**BIDS**  
**Mistakes**  
**Withdrawal**  
**Burden of Proof**

By contrast with the clear and convincing evidence of a mistake, how it occurred and of the intended bid price required for bid correction, withdrawal of a bid for reason of mistake requires a lesser degree of proof and may be permitted if it reasonably appears that an error was made.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Competitive Range Exclusion**  
**Competitive Range Revision**

**B-221346 Feb. 28, 1986**  
**86-1 CPD 211**

An agency may drop an offer from the competitive range if it becomes clear from discussions that the firm no longer has a reasonable chance for the award.

**CONTRACTS** **B-221346 Con't**  
**Negotiation** **Feb. 28, 1986**  
**Offers or Proposals**  
**Evaluation**  
**Competitive Range Exclusion**  
**Not for SBA Review**

Agency's rejection of a small business offer as technically unacceptable need not be referred to the Small Business Administration since, in rejecting the offer, the agency has not reached the question of the offeror's responsibility.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Technical Acceptability**  
**Offeror's Responsibility to Demonstrate**

An offeror's view that the contracting agency should know that the firm's proposed items will meet the government's needs is not an adequate substitute for the technical information required by the solicitation and requested during negotiations to establish that what is being offered in fact will be acceptable.

**CONTRACTS** **B-221850 Feb. 28, 1986**  
**Negotiation**  
**Offers or Proposals**  
**Prices**  
**Unprofitable**

There is no legal basis to object to a below-cost offer. Whether an offeror can meet contract requirements in light of its low price is matter of offeror responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

**CONTRACTS**

**B-221850 Con't**

**Protests**

**Feb. 28, 1986**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Significant Issue Exception**

**Not for Application**

GAO will not consider the merits of an untimely protest under either the significant issue or good cause exceptions to GAO timeliness requirements, since there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of a protest, and the protest does not present a unique issue of widespread interest to the procurement community.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protest against solicitation amendments' multiple requests for best and final offers and change in location for receipt of offers is untimely when not filed with the agency until after contract award. Subsequent protest to GAO is also untimely since it was not initially timely protested to the agency.

**BIDS**

**B-221995 Feb. 28, 1986**

**Telegraphic Submission**

**86-1 CPD 212**

**Unauthorized**

Telegraphic bid submitted in response to a solicitation which did not authorize telegraphic bids was properly rejected. Language contained in solicitation which discussed late offers/modifications/withdrawals does not permit submission of a telegraphic bid where authorization language specifically references only modifications/withdrawals.

**SPECIAL STUDIES & ANALYSIS**

**HOUSING AND URBAN  
DEVELOPMENT DEPARTMENT**

**B-217893 Feb. 7, 1986**

**Housing and Community Development Act  
Allocation of Funds**

Urban Development Action Grant (UDAG) to the city of Wilmington, North Carolina, resulted in a "relocation" of a commercial plant within the contemplation of section 119(h) of the Housing and Urban Development Act of 1974, as amended. 42 U.S.C. § 5318(h) (1982). The Housing and Urban Development (HUD) Department's amendment to the initial UDAG agreement did not prevent a "relocation" so as to render unnecessary a determination by the Secretary of HUD that the "relocation" does not significantly and adversely affect the unemployment or economic base of the area from where the plant is relocating.

**APPROPRIATIONS**

**B-221412 Feb. 12, 1986**

**Impounding**

**Executive Branch's Failure to Expend Appropriated  
Funds**

Failure of Administrator of Veterans Affairs to award contracts within time limitations imposed by appropriation acts for fiscal years 1984 and 1985 (Pub. L. No. 98-45, 97 Stat. 219, 233 (1983); Pub. L. No. 98-371, 98 Stat. 1213, 1232 (1984)) does not constitute an impoundment of budget authority under the Impoundment Control Act. The Administrator's explanation for the failure indicates that various programmatic considerations led to the contracting delays.



**APPROPRIATIONS**

B-220682 Feb. 21, 1986

**Allocations****Not Specified in Appropriations Acts**

The DOD Authorization Act, 1985, provides that \$45 million and \$37.795 million of Navy research and development (R&D) funds "is available only for" the RACER and MK-92 programs. This provision requires the sums be made available, and expended, for the programs in question. However, the authorization act must be read in concert with the DOD Appropriations Act, 1985, unless they are clearly inconsistent. Here we found no inconsistency between a lump-sum appropriation for Navy R&D and a provision in the authorization act which set aside specific amounts of the total appropriation for one of the purposes covered in the appropriation act.

**TRANSPORTATION LAW**

**TRANSPORTATION**

**B-215958 Feb. 18, 1986**

**Rates**

**Exclusive use of Vehicle  
Movement Under Seal**

Under Department, of Defense regulation and the carrier's tariff provisions, the mere sealing of a carrier's vehicle by a Government shipper and noting such sealing on the bill of lading, without a written request for exclusive use or a statement prohibiting the carrier from breaking the seals, do not show intent to obtain exclusive-use service. Therefore, the carrier is not entitled to exclusive-use charges solely because the shipper sealed the vehicle and noted the seal number on the bill of lading. On reconsideration, Leonard Bros. Trucking Co., Inc., B-215958, December 5, 1984, overruled.

**TRANSPORTATION**

**B-221609 Feb. 28, 1986**

**Overcharges  
Set-Off**

Destination/billing carrier asks for review of the General Services Administration's (GSA) deduction actions relating to six Government shipments. GSA based its audit actions on the carrier's single-line tender rates. The claimant carrier contends that higher joint-line rates were applicable because other carriers picked up the shipments, but GSA concluded that the origin carriers were merely the claimant's agents. The record shows that the claimant offered the lower tender rates to the Government for single-line service and the bills of lading show that the origin carriers received the shipments as the claimant's agents. GSA's actions are sustained on the basis of recent Comptroller General precedent in similar cases.

INDEX

February 1986

		<u>Feb.</u>	<u>Page</u>
ADVERTISING			
Advertising <u>v.</u> Negotiation			
Advertising When Feasible and Practicable	B-219998.2	18...	D-35
APPROPRIATIONS			
Allocations			
Not Specified in Appropriations Acts	B-220682	21...	E- 2
Availability			
Contracts			
Research and Development			
Small Business Innovation Development Act			
Operational <u>v.</u> R&D Activities	B-209790	21...	A- 4
Impounding			
Executive Branch's Failure to Expend Appropriated Funds	B-221412	12...	E- 1
Restrictions			
Committee Reports			
Statements of Intent	B-220659	19...	D-37
BIDS			
Acceptance			
Not Prejudicial to Other Bidders	B-221377.2	14...	D-34
Acceptance Time Limitation			
Extension			
After Expiration			
Acceptance of Renewed Bid			
Effect on Competitive System	B-220620	10...	D-16

INDEX - Con.

	<u>Feb.</u>	<u>Page</u>
BIDS - Con.		
Competitive System		
Preservation of System's Integrity		
Pecuniary Disadvantage to Government	B-221026	6... D-12
Evaluation		
Criteria		
Application of Criteria	B-221186	24... D-45
Delivery Provisions		
F.O.B. Origin		
Omitted From Bid	B-220620	10... D-16
Guaranteed Shipping Weight		
Bidder's Understatement	B-220620	10... D-17
Price Analysis	B-221186	24... D-46
Invitation for Bids		
Amendment		
Failure to Acknowledge		
Bid Nonresponsive	B-221825	24... D-46
	B-222005	25... D-49
Materiality Determination	B-220574.2	7... D-15
Wage Determination		
Changes	B-220957	7... D-15
Waived as Minor		
Informality	B-220848	5... D- 9
Waiver		
Significance of Amendment	B-220848	5... D- 9
Cancellation		
After Bid Opening		
Compelling Reasons Only	B-220394	11... D-22

**INDEX - Con.**

	<u>Feb.</u>	<u>Page</u>
BIDS - Con.		
Invitation for Bids - Con.		
Cancellation - Con.		
After Bid Opening - Con.		
Nonresponsive Bid	B-220987	6... D-11
Not Required		
Defective Solicitation	B-220413	19... D-37
	B-220613	5... D- 8
Specifications		
Defective		
Allegation not Sustained	B-221096	3... D- 4
Minimum Needs Requirement		
Administrative Determination		
Reasonableness	B-221096	3... D- 4
Qualified Products		
Listing		
Removal From List	B-220017.2	14... D-31
Restrictive	B-220085.2	19... D-36
Tests		
First Article		
Waiver Propriety	B-220973	27... D-54
Mistakes		
Evidence of Error		
Worksheets	B-221317	28... D-58
Withdrawal		
Burden of Proof	B-221317	28... D-59
Prices		
Item Pricing	B-220649	21... D-44

**INDEX - Con.**

	<u>Feb.</u>	<u>Page</u>
BIDS - Con.		
Responsiveness		
Descriptive Literature		
Unsolicited		
Allowing for Nonconforming		
Equipment		
Bid Responsive	B-220369	5... D- 8
Failure to Furnish Something		
Required	B-220987	6... D-12
Prices		
	B-220282.2	7... D-14
	B-221026	6... D-12
	B-221628	26... D-51
Offer of Compliance After		
Bid Opening		
Acceptance not Authorized	B-221628	26... D-52
Solicitation Requirements Satisfied		
Offered Products on		
Qualified Products List	B-220017.2	14... D-32
	B-220620	10... D-17
Telegraphic Submission		
Unauthorized	B-221995	28... D-61
Unbalanced		
Propriety of Unbalance		
"Mathematically Unbalanced Bids"		
Materiality of Unbalance	B-220976	13... D-30
BONDS		
Bid		
Surety		
Affidavit (Standard Form 28)		
Deficiencies		
Nondisclosure of Other		
Bond Obligations	B-220671	4... D- 6

**INDEX - Con.**

		<u>Feb.</u>	<u>Page</u>
BONDS - Con.			
Bid - Con.			
Surety - Con.			
Net Worth	B-220395	3...	D- 2
	B-220671	4...	D- 6
Requirement			
Bid, Performance, etc.	B-221054.2	14...	D-34
Administrative			
Determination	B-221096	3...	D- 5
BUY AMERICAN ACT			
Bids			
Foreign Product Proposed	B-221423	20...	D-41
CERTIFYING OFFICERS			
Relief			
Erroneous Payments			
Basis for Relief	B-221942	12...	A- 3
COMMODITY CREDIT CORPORATION			
Price Support Programs	B-118622	19...	A- 3
CONTRACTORS			
Responsibility			
Determination			
Definitive Responsibility			
Criteria			
What Constitutes	B-220935.2	26...	D-50
	B-221739.2,		
	et al.)	26...	D-53
Review by GAO	B-220935.2	26...	D-50
Affirmative Finding			
Accepted	B-220645	11...	D-23
	B-220724	12...	D-27

INDEX - Con.

		<u>Feb.</u>	<u>Page</u>
<b>CONTRACTS</b>			
Architect, Engineering, etc. Services			
Procurement Practices			
Evaluation of Competitors			
Application of Stated			
Criteria	B-220381	28...	D-56
	B-221222	26...	D-51
 Awards			
Notice			
To Unsuccessful Bidders	B-220973	27...	D-54
 Separable or Aggregate			
Single Award			
Propriety	B-220641	11...	D-22
 Conflict of Interest			
Prohibitions			
Generally	B-220381	28...	D-57
 Federal Supply Schedule			
Order Limitation			
Excess of Limitation	B-220058.2)		
	B-220058.3)	11...	D-20
 Negotiation			
Administrative Determination			
Advertising <u>v.</u> Negotiation	B-220367	20...	D-39
 Anti Kickback Act Violations	B-222102	26...	A- 5
 Awards			
Multiple	B-219676.2)		
	B-219676.3)	25...	D-47
 Price Determinative Factor	B-219644.3	21...	D-43
	B-220856	3...	D- 3
 Propriety			
Evaluation of Proposals	B-220772	4...	D- 7



**INDEX - Con.**

		<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.			
Negotiation - Con.			
Awards - Con.			
To Other Than Low Offeror	B-220295.2	13...	D-28
	B-220384	11...	D-20
	B-220849	28...	D-57
	B-221004	27...	D-55
	B-221230.2, et al.)	24...	D-46
Competition			
Equality of Competition			
Incumbent Contractor's Advantage	B-219998.2	18...	D-35
	B-221340	25...	D-49
Minority Status of Offeror			
Competitive Advantage Consideration	B-220724	12...	D-27
Conflict of Interest			
Prohibitions	B-220724	12...	D-28
Disclosure of Conflict			
Requirement in RFP Propriety	B-220444	14...	D-32
Organizational			
Agency Responsibilities	B-220444	14...	D-31
Cost-Type			
Technical/Cost Justification	B-220367	20...	D-40
National Emergency Authority			
Expansion of Mobilization Base	B-219676.2) B-219676.3)	25...	D-47

**INDEX - Con.**

		<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.			
Negotiation - Con.			
Offers or Proposals			
Best and Final			
Discussions			
All Offerors	B-221723	10...	D-19
Requirement			
Evaluation	B-220849	28...	D-58
Discussion With all			
Offerors Requirement			
"Meaningful"			
Discussions	B-219644.3	21...	D-43
	B-220000.3	24...	D-45
Evaluation			
Competitive Range Exclusion			
Competitive Range			
Revision	B-221346	28...	D-59
Not for SBA Review	B-221346	28...	D-60
Criteria			
Application of			
Criteria	B-220849	28...	D-58
Unstated	B-220660	11...	D-25
Reasonable	B-220384	11...	D-21
Technical Acceptability			
Administrative			
Determination	B-220384	11...	D-21
	B-220677	5...	D- 9
Offeror's Responsibility			
to Demonstrate	B-221346	28...	D-60
Scope of GAO Review	B-220000.3	24...	D-45

**INDEX - Con.**

	<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.		
Negotiation - Con.		
Offers or Proposals - Con.		
Evaluation - Con.		
Technical Superiority <u>v.</u> Cost		
Solicitation Provision B-221723	10...	D-19
Technical Transfusion		
Prohibition B-218620.2	6...	D-10
Preparation		
Costs		
Denied B-220444	14...	D-33
Prices		
Unprofitable B-221850	28...	D-60
Requests for Proposals		
Aggregate <u>v.</u> Separable		
Items, Prices, etc.		
Award Basis B-220659	19...	D-38
B-221715	11...	D-26
Evaluation Criteria		
Price Consideration		
Relative Importance B-220772	4...	D- 7
B-221715	11...	D-27
Specifications		
Minimum Needs		
Not Overstated B-220713,		
et al.)	3...	D- 3
Site Inspection, Conference, etc.		
Attendance Optional B-219998.2	18...	D-35
Submission Date		
Administrative		
Determination B-220367	20...	D-40
Sole-Source Basis		
Administrative Determination		
Reasonable Basis B-221340	25...	D-49

INDEX - Con.

		<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.			
Protests			
Allegations			
Bias			
Unsubstantiated	B-220381	28...	D-57
	B-220645	11...	D-23
	B-220724	12...	D-28
	B-221026	6...	D-12
Speculative	B-220295.2	13...	D-29
	B-221723	10...	D-18
Unsubstantiated	B-220085.2	19...	D-36
	B-220295.2	13...	D-29
	B-220645	11...	D-23
	B-221695, et al.)	10...	D-18
Authority to Consider Contract Administration Matters	B-220085.2	19...	D-36
General Accounting Office Procedures			
Filing Protest With Agency	B-221523.2	20...	D-42
<u>In Camera</u> Inspection of Records, etc.	B-218620.2	6...	D-10
Not Waivable by Agencies, etc.	B-221523.2	20...	D-42
Reconsideration Requests	B-221279.2	25...	D-48
Additional Evidence Submitted Available but not Previously Provided to GAO	B-219439.2	20...	D-39
	B-221723.2	26...	D-52

INDEX - Con.

	<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.		
Protests - Con.		
General Accounting Office Procedures - Con.		
Reconsideration Requests - Con.		
Error of Fact or Law		
Not Established	B-219028.4	24... D-44
	B-219312.6	3... D- 1
	B-219439.2	20... D-39
	B-220630.2)	
	B-220642.2)	3... D- 2
	B-221492.2	3... D- 5
	B-221560.2	10... D-17
Timeliness	B-219312.6	3... D- 1
Timeliness of Comments on Agency's Reports	B-221173.2	18... D-36
Timeliness of Protest	B-221954	27... D-56
Adverse Agency Action Effect	B-220645	11... D-25
	B-221004	27... D-55
	B-221954	27... D-56
Congressional Transmittal of Protest	B-221710	20... D-43
Date Basis of Protest Made Known to Protester	B-218620.2	6... D-10
	B-219644.3	21... D-44
	B-220017.2	14... D-32
	B-220282.2	7... D-14
	B-220421	6... D-11
	B-220618.3	10... D-15
	B-220645	11... D-24
	B-220856	3... D- 4
	B-221735	4... D- 7
What Constitutes Notice	B-221523.2	20... D-42

**INDEX - Con.**

	<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.		
Protests - Con.		
General Accounting Office Procedures - Con.		
Timeliness of Protest - Con.		
New Issues		
Unrelated to Original		
Protest Basis		
	B-220630.2)	
	B-220642.2)	3... D- 3
	B-220794)	
	B-220795)	20... D-40
	B-220890	27... D-53
	B-221026	6... D-13
Regular Mail Delay	B-219312.6	3... D- 1
Significant Issue		
Exception		
Not for Application		
	B-220645	11... D-24
	B-220890	27... D-54
	B-221850	28... D-61
Solicitation Improprieties		
Apparent Prior to Bid		
Opening/Closing Date		
for Proposals		
	B-220282.2	7... D-14
	B-220295.2	13... D-29
	B-220659	19... D-38
	B-221414	27... D-55
	B-221628	26... D-52
	B-221695,	
	et al.)	10... D-18
	B-221850	28... D-60
	B-221961	19... D-38
Time/Date Stamp Effect	B-219312.6	3... D- 2
Interested Party Requirement		
Direct Interest Criterion		
	B-219661.2	14... D-31
	B-220580.2	4... D- 6
	B-221096	3... D- 5
	B-222043	26... D-53

**INDEX - Con.**

	<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.		
Protests - Con.		
Interested Party Requirement - Con.		
Protester not in Line for Award		
		B-220794)
	20...	D-41
		B-220795)
	13...	D-31
		B-221230
Suspended, Debarred, etc. Contractors	B-221836.2	10... D-19
Moot, Academic, etc. Questions	B-221999	24... D-47
Preparation		
Costs		
Compensable		
		B-220058.2)
	11...	D-20
		B-220058.3)
	20...	D-41
		B-221423
Procedures		
Information Disclosure	B-220295.2	13... D-30
Propriety Data		
Mishandling		
Allegation Unsupported	B-220645	11... D-24
Requests for Quotations		
Evaluation		
Improper		
Termination and Resolicitation	B-220913	13... D-30
Preparation of Quotation		
Cost		
Recovery	B-220949	25... D-48
Specifications		
Brand Name Requirement	B-220421	6... D-11
Evaluation on Basis Other Than in Invitation	B-220949	25... D-48

INDEX - Con.

	<u>Feb.</u>	<u>Page</u>
CONTRACTS - Con.		
Small Business Concerns		
Awards		
Set-Asides		
Administrative		
Determination	B-221028	11... D-26
Size Status		
Recertification		
Eligibility for Award	B-221026	6... D-13
DEBT COLLECTIONS		
Waiver		
Civilian Employees		
Compensation Overpayments		
Collection not Against Equity		
and Good Conscience, etc.	B-156482	19... B- 3
DISBURSING OFFICERS		
Relief		
Erroneous Payments		
Not Result of Bad Faith		
or Negligence	B-221798	12... A- 2
GARNISHMENT		
Military Pay, etc.		
Alimony or Child Support		
State Court Order		
Regular of its Face		
Government's		
Compliance	B-221190	11... C- 1
GENERAL ACCOUNTING OFFICE		
Decisions		
Reconsideration		
Error of Fact or Law Basis		
Not Established	B-217564	28... B- 4
Jurisdiction		
Civil Service Matters		
Adverse Personnel Actions	B-221229	11... B- 2



INDEX - Con.

		<u>Feb.</u>	<u>Page</u>
GENERAL ACCOUNTING OFFICE - Con.			
Jurisdiction - Con.			
Constitutionality of Act of Congress	B-221190	11...	C- 2
State Law Applicability			
No Authority to Determine	B-221556	10...	A- 1
Recommendations			
Contracts			
Prior Recommendation			
Affirmed	B-219886.2	5...	D- 8
HOUSING AND URBAN DEVELOPMENT DEPARTMENT			
Housing and Community			
Development Act			
Allocation of Funds	B-217893	7...	E- 1
INTEREST			
Debts Owed U.S.			
State, etc. Debts			
Authority	B-212222	11...	A- 2
LEAVES OF ABSENCE			
Granting			
Administrative Determination	B-221229	11...	B- 2
OFFICE OF FEDERAL PROCUREMENT POLICY			
Jurisdiction			
Policy Formulation			
Procurement Matters			
Statutory Changes			
Implementation	B-218889	13...	A- 3
OFFICERS AND EMPLOYEES			
<u>De Facto</u>			
Compensation			
Retention of Compensation			
Received	B-219565	11...	B- 1

INDEX- Con.

	<u>Feb.</u>	<u>Page</u>
OFFICERS AND EMPLOYEES - Con.		
Overseas		
Reemployment Rights	B-219817	21... B- 3
Transfers		
Real Estate Expenses		
House Title in Name of Another	B-220289	28... B- 5
Temporary Quarters		
Entitlement	B-218513	28... B- 4
PAYMENTS		
Quantum Meruit/Valebant Basis		
Absence, etc. of Contract Authority to Pay Lacking	B-221226	6... A- 1
QUARTERS ALLOWANCE		
Occupancy of Private Quarters		
Rent Ceiling	B-219259	11... C- 1
STATUTES OF LIMITATION		
Claims		
Military Matters and Personnel		
Pay and Allowances		
Forfeiture Under Courts-Martial	B-219060	19... C- 2
SUBSISTENCE		
Actual Expenses		
Maximum Rate		
Reduction		
Meals, etc. Cost		
Limitation		
Lodging Costs not Incurred	B-219147	11... B- 1

INDEX - Con.

		<u>Feb.</u>	<u>Page</u>
TRAVEL EXPENSES			
Air Travel			
Fly America Act			
Member's Liability			
Travel by Noncertificated			
Air Carriers	B-219850	19...	C- 3
TRANSPORTATION			
Overcharges			
Set-Off	B-221609	28...	F- 1
Rates			
Exclusive use of Vehicle			
Movement Under Seal	B-215958	18...	F- 1

United States  
General Accounting Office  
Washington, D.C. 20548

Bulk Rate  
Postage & Fees Paid

Subscription Department  
Post Office Box 3708  
Washington, D.C. 20548

