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of the United States

United States General Accounting Office

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NOTICE

Effective October 1, 1986, a new controlled vocabulary is being used to index the documents of GAO's Office of General Counsel. Changes in the vocabulary in this publication are reflected in the chapter titles and the index entries (headings). Copies of the vocabulary with introductory material explaining how to use the vocabulary to retrieve documents will be mailed early in 1987 to all individuals currently on GAO's distribution list for this publication.

PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code 3529 (formerly 31 U.S.C. 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code 3702 (formerly 31 U.S.C. 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g. B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-224832 July 2, 1987

Cashiers

Relief

Illegal/improper payments

Fraud

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing officers

Relief

Illegal/improper payments

Fraud

U.S. Army Finance and Accounting Officer and his Deputy are relieved of liability for improper payments actually certified and disbursed by subordinates because they both maintained and supervised an adequate system of procedures to prevent improper payments. The improper payments in this case were the result of an officer making fraudulent travel vouchers. The cashiers responsible for making payment are accountable officers as well and are relieved because there is nothing in the record which suggests the cashiers should have been suspicious of the fraudulent nature of the transaction. A cashier who is presented a properly certified document may rely on that certification.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226393 July 2, 1987

Disbursing officers

Illegal/improper payments

Liability restrictions

Statutes of limitation

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Liability

Statutes of limitation

Effective dates

Illegal/improper payments

Since the 3-year statute of limitations, set forth in section 3526(c) of title 31 of the United States Code governing this Office's disposition of accountable officer relief requests has run, there is no longer a need for us to grant relief to Navy disbursing officer for a \$1,421.29 loss resulting from improper payments. In forged Treasury check cases, the 3-year period of limitation begins to run when the agency first receives the Treasury's debit voucher informing them about the loss.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Accountable Officers **B-227412** **July 2, 1987**
Cashiers
Relief
Illegal/improper payments
Computation errors

APPROPRIATIONS/FINANCIAL MANAGEMENT
Accountable Officers
Disbursing officers
Relief
Illegal/improper payments
Computation errors

A supervising disbursing officer is relieved of liability upon showing that he maintained an adequate system of procedures and controls for the avoidance of errors and took steps to ensure that the system was functioning effectively. A newly appointed cashier who made the improper payments was adequately trained and supervised. Therefore, the improper payments were not the result of bad faith or lack of due care on behalf of the supervisor.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227436 July 2, 1987
Cashiers
Relief
Illegal/improper payments
Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing officers
Relief
Illegal/improper payments
Forgeries

U.S. Army Finance and Accounting Officer is relieved of liability for improper payment made by unidentified subordinate cashier in cashing a fraudulently endorsed check. Although the Standard Operating Procedures did not fully comply with Army Regulations, these procedures appear to have been adequate to prevent losses of this type from occurring. The loss in this case was the result of criminal activity outside the control of the finance and accounting officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-217769 July 6, 1987
Purpose availability
Liability insurance

Notwithstanding authorization in section 1419 of Panama Canal Act to purchase insurance coverage against catastrophic marine accidents, purchase by Panama Canal Commission of broader "full scope" coverage would not be illegal since government's general policy of self-insurance does not apply to Commission. Commission may therefore purchase insurance based upon an administrative determination of necessity.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227538** **July 8, 1987**
Account deficiency
Administrative reports
GAO procedures
Deadlines

Agencies are required to report financial irregularities to GAO within 2 years after the date the accounts are made available to GAO for audit (that is, the date the agency has substantially complete accounts). 7 GAO Policy and Procedures Manual for the Guidance of Federal Agencies, 28.14. This time-frame provides the agencies time to try to resolve the irregularities on their own, as well as our Office an adequate opportunity to determine whether relief should be granted or denied prior to the expiration of the 3-year statute of limitation period.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Liability
Statutes of limitation
Effective dates
Illegal/improper payments

It is not necessary for our Office to grant relief in a case where the 3-year statute of limitation period has expired. Under these circumstances, the accountable officer involved cannot be held liable for any erroneous payments. 31 U.S.C. 3526(c).

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227549 July 8, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, the General Accounting Office will no longer grant relief if Army delays more than 3 months in forwarding the debt to your collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-213824 July 13, 1987

Disbursing officers

Relief

Illegal/improper payments

Travel allowances

Relief is granted to accountable officer and her subordinate upon reconsideration where the record shows that proper procedures and controls were in place at the time the loss occurred, the accountable officer took steps to ensure that those procedures were being followed and the cashier followed them. The loss resulted from a combination of skillfully executed criminal activity, an inoperative telephone system and the failure on the part of certifying personnel to properly verify accounting data on a bogus travel voucher.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-226198 July 21, 1987

Time availability

Time restrictions

Fiscal-year appropriation

The United States Geological Survey may not use fiscal year 1986 funds to contract to purchase microcomputer equipment in fiscal year 1987 to replace equipment purchased in 1986 that was stolen from its loading dock. The fiscal year 1986 purchase order was completed even though the equipment never reached the ordering office. Therefore, the purchase of additional equipment to replace the ill-fated fiscal year 1986 purchase order would constitute a new, rather than a replacement, contract.

The United States Geological Survey received an annual lump-sum appropriation for fiscal year 1986. This appropriation has expired and is no longer available for the procurement of additional microcomputer equipment in fiscal year 1987 since a valid obligation was not incurred prior to appropriation's expiration.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227548 July 22, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute 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 subsequent collection attempts are being pursued. However, for cases involving notices of loss received after June 1, 1986 we will deny relief if Army delays more than 3 months in forwarding debt to its Collection Division. We also remind the Army of the requirement to promptly report financial irregularities in order to avoid any statute of limitations problems.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227672; B-227674**
Disbursing officers **July 22, 1987**
Relief
Illegal/improper payments
Substitute checks

Relief is granted two Army disbursing officials under 31 U.S.C. 3527(c) from liability for improper payments resulting in each case from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the substitute check, there were no indications of bad faith on the part of the disbursing officials and subsequent collection attempts are being pursued. However, for cases involving notices of loss received after June 1, 1986, where the payee has left the Army of its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to its collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227564 July 23, 1987**
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and certified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued. However, in duplicate check cases where a member or employee resigns from the Army still indebted to the Army, the finance officer should refer the loss to Army's Collection Division within 3 months from the debtor's resignation date.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226947 July 27, 1987

Relief

Physical losses

Embezzlement

Relief is granted to present and former Officers in Charge at the San Francisco Assay Office (SFAO), United States Mint, from liability for two losses resulting from theft by former employees. Security measures did not afford adequate protection and were beyond the officers' control and SFAO determined that the losses occurred without fault or negligence on the part of the Officers in Charge.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227668 July 27, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified 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 subsequent collection attempts are being pursued.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226769 July 29, 1987
Disbursing officers
Liability
Illegal/improper payments

A subordinate who had authority to issue checks using a finance officer's signature stamp and who did, in fact, issue the erroneous payment in question is also financially liable for the loss along with the person in whose name the account is officially held at the time the wrongful payment is made.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment caused when a subordinate issued a substitute check for the wrong amount after he referred to the wrong record of the original check. Despite absence of evidence in the record that the disbursing official supervised his subordinate by maintaining an adequate system of procedures and controls to safeguard government funds and took steps to see that such a system was being effectively implemented, the error by the subordinate appears to be the subordinate's and not the result of bad faith or lack of reasonable care by the supervisor.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-227236 July 2, 1987

Compensation

Employment offers

Revocation

Administrative discretion

The Federal Aviation Administration (FAA) selected and cleared a current federal employee for the position of air traffic controller under a merit promotion program but did not hire him because of a lack of funds to pay relocation expenses. We advised the interested congressman that we find no basis for questioning the FAA's determination that the employee is entitled to receive PCS expenses because his transfer would be in the interest of the government; furthermore, the employee cannot waive the receipt of those expenses because an employee generally may not waive salary or benefits to which he is legally entitled. Since federal agencies have discretion in their hiring procedures, we have no authority to question the FAA's decision not to hire the employee.

CIVILIAN PERSONNEL

B-224131 July 8, 1987

Travel

Overseas travel

Travel time

Annual leave

Charging

When return travel from temporary duty overseas is interrupted by annual leave, employee may not claim as a recoupment day under Volume 2 of the Joint Travel Regulations, para. C1058-3, the day immediately following a constructive travel day. The employee did not actually cross four time zones on the constructive travel day, and the agency was correct in charging annual leave for the next day. The fact that the employee may have been given erroneous advice does not create a right to restoration of annual leave where it was properly charged.

CIVILIAN PERSONNEL

B-224131 Con't

Travel

July 8, 1987

Temporary duty

Per diem

Eligibility

CIVILIAN PERSONNEL

Travel

Travel time

Work hours

Eligibility

Employee who traveled during working hours on Friday to report for temporary duty overseas the following Tuesday, the day after a Monday holiday, may not be paid per diem and may be assessed annual leave for Friday, where the agency determines that Friday departure was not warranted and Saturday was the constructive day of travel.

CIVILIAN PERSONNEL

B-224767 July 10, 1987

Travel

Foreign service personnel

Separation travel

Reimbursement

Eligibility

A State Department employee retired from the Foreign Service on December 31, 1983, and timely performed domestic separation travel from McLean, Virginia, to his designated place of residence, Tucson, Arizona. The State Department questions whether he may be reimbursed since he did not establish a residence in Tucson, but returned to his residence in McLean. The Foreign Affairs Manual states that an employee who retires from the Foreign Service is entitled to travel to a designated place of residence in the United States, provided that the travel is performed within 6 months of separation, unless extended. Since the employee traveled before the extended deadline, he is entitled to be reimbursed his travel expenses even though he did not establish a residence in Tucson.

CIVILIAN PERSONNEL

B-225311 July 13, 1987

Travel

Actual subsistence expenses

Additional expenses

Dependents

Eligibility

A Department of the Army employee who was selected to attend the Armed Forces Staff College in Norfolk, Virginia, may not be reimbursed subsistence expenses based on the rate for family-type government quarters he and his family occupied in Norfolk when they accompanied him during his training. The Army follows a policy of not paying for family quarters for its civilian employees selected to attend the staff college. Although he was invited to bring his family, he was advised in advance that only the single-type quarters rate was authorized for him. Consistent with this advice, he was paid on the single-rate basis, as provided in Volume 2 of the Joint Travel Regulations (JTR), para. C4552. This is in accord with the general rule that agencies are obligated to pay only the subsistence expenses of their employees in such cases. Betty D. Gardner, B-214482, September 7, 1984, distinguished.

CIVILIAN PERSONNEL

B-225992 July 13, 1987

Travel

Overseas travel

Passports

Travel expenses

Reimbursement

Employee was scheduled for overseas temporary duty assignment on very short notice. Employee's travel required her to have a passport but time was not available for the normal 30 days required for passport processing. To ensure timely delivery of her birth certificate, which was necessary to obtain passport, employee wired fee through Western Union and seeks reimbursement for wire service fee. Reimbursement is authorized under para. 1-9.1d of the Federal Travel Regulations based on the agency's determination that the employee's action was necessary to the transaction of official business.

CIVILIAN PERSONNEL

B-226136 July 13, 1987 *

Compensation**Labor standards****Exemptions****Administrative determination****GAO review**

International Association of Firefighters, Local F-48, requests a determination from this Office on the exempt/nonexempt status under the Fair Labor Standards Act (FLSA) of supervisory grade GS-7 firefighters. Under 29 U.S.C. 204(f) the Office of Personnel Management (OPM) is authorized to administer the FLSA with respect to federal employees. Consistent with prior decisions recognizing that the role granted to OPM in administering FLSA necessarily carries with it the authority to make final determinations as to whether employees are covered by its various provisions, this Office will not consider the claims.

CIVILIAN PERSONNEL**Compensation****Overtime****Standby overtime****Eligibility**

Supervisory federal firefighters who are exempt from the Fair Labor Standards Act but who receive premium pay under 5 U.S.C. 5545(c)(1) on an annual basis for regularly scheduled standby duty are not entitled to additional overtime pay under 5 U.S.C. 5542 for work that is part of the firefighters' regularly scheduled administrative workweek.

CIVILIAN PERSONNEL

B-225155 July 16, 1987

Travel**Lodging****Cancellation****Miscellaneous expenses****Reimbursement**

An employee made confirmed reservations at a motel by using her credit card for nine other employees and herself who were scheduled for temporary duty. The employee and seven of the other employees made reasonable attempts to locate the motel on the first night but could not do so due to an erroneous address in a General Services Administration (GSA) Directory. The employee incurred liability of \$276.48 for eight no-show reservations, and her agency has determined that she acted in a reasonable manner and in her official capacity. We grant her claim in these circumstances in which the failure to locate the proper motel and consequent liability for no-show reservations was due to an erroneous address in the GSA Directory.

CIVILIAN PERSONNEL

B-226693 July 16, 1987

Compensation**Arbitration decisions****GAO review**

In accordance with 4 C.F.R. Part 22 GAO will not accept jurisdiction of an accounting officer's request for an advance decision regarding the implementation of a final and binding arbitration award.

Compensation

Retroactive compensation

Eligibility

Adverse personnel actions

Determination

A civilian employee, separated for voluntary retirement, was later restored to the agency rolls because he did not meet the conditions for optional retirement under 5 U.S.C. 8332(c). The employee now claims backpay for the period he was off the rolls. Under the facts of this case, the employee did not undergo an unjustified or unwarranted personnel action for which backpay is authorized since he was properly informed, prior to his separation, of the requirements for retirement. Even though the agency was aware the employee did not intend to waive his military retired pay, there was a basis for retiring him on the face of his retirement application which stated that his retired pay was for Reserve duty, thus exempting him from the waiver requirement. Therefore, the employee's claim for backpay must be denied.

Relocation**Residence transaction expenses****Reimbursement****Personnel transfer****Cancellation**

Employee seeks reimbursement of real estate expenses incident to cancelled transfer. Employee was reassigned from Buffalo, New York, to New York City, effective September 1, 1985, in connection with an agency determination that its Buffalo office would be closed. After the sale of his house in Buffalo, and completion of a househunting trip to New York City, the employee was notified on August 30, 1985, of an offer of a position with another Government agency in Buffalo which employee accepted. Losing agency agreed to reassign and detail employee back to Buffalo District Office until September 22, 1985, predicated on employee's acceptance of new Government position in Buffalo. Where cancellation of transfer was determined to be in the best interest of the Government and employee remains in Government service for 12 months following the cancellation date of the transfer, relocation expenses may be paid. Since duty station has not changed, employee is treated as if transfer was completed and employee was retransferred to former duty station.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-222382 July 10, 1987

Relocation

Household goods

Weight restrictions

Liability

Computation

The question of whether and to what extent authorized weights have been exceeded in the shipment of household goods by members of the uniformed services is a matter primarily for administrative determination. Ordinarily, the administrative determination will not be questioned in the absence of evidence showing it to be clearly in error.

Evidence of the weight of household goods when placed in nontemporary storage is not determinative of the weight of these goods when taken out of storage so as to relieve the member of his liability for excess weight based on the higher line-haul shipment. The heavier line-haul weight may be due to several factors including the use of different scales, the use of storage materials which are not removed before shipping, and moisture absorption while in storage.

The longstanding practice of the government to accept the lesser weight when the same household goods are reweighed does not apply separately to a shipment in storage and to a line-haul shipment so as to relieve the member of his liability for excess weight. The rule applies only to the line-haul shipment, which was not reweighed. 49 C.F.R. 1056.7 (1985).

PROCUREMENT

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225578.2 July 1, 1987
87-2 CPD 1

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Protester is not entitled to bid preparation costs or the costs of filing and pursuing a protest where there was no violation of statute or regulation.

PROCUREMENT
Bid Protests
Non-prejudicial allegation
GAO review

The imposition of an interport differential in bid evaluation did not prejudice the protester where the results of the bidding show that the awardee's bid was low by a significant amount with or without the differential.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification
Ambiguous specifications

B-225790.2 July 1, 1987
87-2 CPD 2

Determination to cancel invitation for bids (IFB) for space for an Army Reserve facility after bid opening was reasonable; IFB's failure to specify that some warehouse space was required or to identify required proportion of warehouse space to office space prejudiced bidders by leading them to believe that only more expensive office space was required.

PROCUREMENT B-225576.2 July 2, 1987
Bid Protests 87-2 CPD 6
GAO procedures
GAO decisions
Reconsideration

Prior decision is affirmed where the protester has failed to show that we erred in concluding that the protester was not prejudiced even though its technical proposal was erroneously scored since the proposal was otherwise unacceptable.

PROCUREMENT B-226773 July 2, 1987
Sealed Bidding 87-2 CPD 7
Hand-carried bids
Late submission
Acceptance criteria

Protest of rejection of late bid is denied where preponderance of the evidence in the record indicates that hand-carried bid was not delivered to bid depository prior to bid opening.

PROCUREMENT B-226841 July 2, 1987
Bid Protests 87-2 CPD 8
GAO procedures
Minor deviations
Remedies
Information sufficiency

Failure to state the remedy desired as required by the General Accounting Office's Bid Protest Regulations is a minor procedural defect which does not require dismissal of a protest.

PROCUREMENT

B-226841 Con't

Bid Protests

July 2, 1987

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of rejection of offer and request for new offer is untimely when made after the closing date for the new offer.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Protest filed April 22, 1987, that agency allegedly improperly extended a prior contract is untimely where the contract was extended on the expiration of the old contract on September 31, 1986.

PROCUREMENT

Competitive Negotiation

Discussion reopening

Propriety

The Federal Acquisition Regulation permits a contracting officer to reopen negotiations by requesting new best and final offers when it is clearly in the government's best interest to do so. Where the government finds it necessary to make a significant clarification of the performance work statement it has not abused its discretion in requesting another round of best and final offers.

PROCUREMENT

B-227141.3 July 2, 1987

Bid Protests

87-2 CPD 9

GAO procedures

GAO decisions

Reconsideration

Dismissal as untimely of contention, based on observations by protester's employees, that Air Force failed to safeguard proposal is affirmed where original protest gave no hint that such employees had no reason to recognize the impropriety or that protester's management was not aware of their observations. In any event, protester has provided no evidence of prejudice, that is, that any other offeror saw the firm's proposal.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Failure to consult with counsel or delay in doing so does not provide a basis to extend the period for filing bid protest.

PROCUREMENT

B-227490 July 2, 1987

Bid Protests

87-2 CPD 10

Allegation substantiation

Lacking

GAO review

Protest contending that there is no good reason for the agency's request for best and final offers under a request for quotations (RFQ) does not provide a valid basis for protest. While a request for best and final offers under a RFQ is a misnomer because a quotation received in response to a RFQ is not a binding offer that can be accepted by the government, such a request is not illegal and may be a useful means of negotiation to determine the firm the government will offer a contract to for acceptance.

PROCUREMENT **B-227511 July 2, 1987**
Bid Protests **87-2 CPD 11**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that receipt of the solicitation 6 days before the closing date for receipt of proposals did not allow protester adequate proposal preparation time is untimely, since it was filed after the closing date.

PROCUREMENT
Competitive Negotiation
Hand-carried offers
Late submission
Acceptance criteria
Acceptance

Proposal that was delivered late to the contracting office because it was misplaced by Federal Express properly was rejected as late.

PROCUREMENT **B-227554 July 2, 1987**
Contract Management **87-2 CPD 12**
Contract administration
Options
Use
GAO review

The General Accounting Office (GAO) will not review an incumbent contractor's allegation that an agency should exercise an option under an existing contract since such determinations are a matter of contract administration and are outside the scope of GAO's bid protest function.

PROCUREMENT **B-227554 Con't**
Special Procurement **July 2, 1987**
Methods/Categories
In-house performance
Administrative discretion
GAO review

General Accounting Office will not review an agency's determination to perform services in-house rather than by contracting out unless the agency has issued a solicitation for purposes of cost comparison under Office of Management and Budget Circular No. A-76, and there is an allegation that the resulting cost comparison is faulty or misleading.

PROCUREMENT **B-227881; B-227882**
Bid Protests **July 2, 1987**
GAO procedures **87-2 CPD 13**
Interested parties
Direct interest standards

Protester who did not submit a quotation under a request for quotations, even though it could have done so, would not be eligible for award if protest were resolved in its favor and, therefore, lacks the requisite direct economic interest to be considered an interested party under our Bid Protest Regulations.

PROCUREMENT **B-227884 July 2, 1987**
Contractor Qualification **87-2 CPD 14**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest contending an awardee produces only a product that will not meet the solicitation's specifications concerns a matter of the responsibility which the General Accounting Office does not review except under limited circumstances that are not present here.

PROCUREMENT

B-221226 July 6, 1987

Payment/Discharge

Unauthorized contracts

Quantum meruit/valebant doctrine

In response to Heritage Visual Sales' request for reconsideration of B-221226, February 6, 1986, denying quantum valebant claim for payment for its distributor's erroneous shipment of an extra set of videotapes, Defense Logistics Agency investigated to determine whether the government had physical possession of the tapes or ever received quantifiable benefit. Inability to locate tapes and Heritage's failure to show more than receipt of package that may have contained tapes falls short of requisite showing of benefit to the government necessary for recovery.

PROCUREMENT

B-225735.2, et al.

Bid Protests

July 6, 1987

GAO procedures

87-2 CPD 15

GAO decisions

Reconsideration

Request for reconsideration is denied where protester reiterates argument from original protest, which was rejected in General Accounting Office's decision, but presents no argument or information establishing that decision was legally or factually erroneous.

PROCUREMENT

B-225793 July 6, 1987

Competitive Negotiation

87-2 CPD 16

Contract awards

Propriety

Corporate entities

Corporate dissolution

There is no basis to object to the award of a contract to a corporation which at the time of submission of proposals and award had been automatically terminated because of the apparently inadvertent failure to pay an annual registration fee but took steps to become reinstated immediately when the situation was brought to its attention by a protesting competitor after award, because the same firm which submitted the proposal will perform the contract and it does not appear that the firm would have been permitted to avoid the government's acceptance of its offer.

PROCUREMENT

Contractor Qualification

Corporate entities

Determination

Misleading information

Allegation substantiation

Protest that awardee had intentionally misrepresented in its proposal its corporate status, labor rates and personnel classification is denied where the protester has not affirmatively proven its case and the evidence of record does not support a finding of intentional misrepresentation.

PROCUREMENT

B-226934 July 6, 1987

Bid Protests

87-2 CPD 17

Agency-level protests

Oral protests

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest against alleged lack of time to consider agency's response to questions about the solicitation is untimely when the response was received 2 working days before the closing date for receipt of proposals and the protest was filed after the closing date. Protester's oral complaint to agency before proposal due date did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation.

PROCUREMENT

Competitive Negotiation

Offers

Modification

Late Submission

Agency may not consider in its competitive range determination proposal modifications submitted after closing date for receipt of initial proposals when none of the exceptions to the rule against considering late proposals or modifications to late proposals applies.

PROCUREMENT

B-227547 July 6, 1987

**Small Purchase Method
Below-cost quotations
Purchases
Propriety**

87-2 CPD 18

Protest against the submission of a below-cost quotation on the basis that it constitutes a "buy-in" is dismissed since the possibility of a buy-in is not illegal and does not provide a basis upon which an award may be challenged.

PROCUREMENT

**Socio-Economic Policies
Preferred products/services
Manufacturers/dealers
Federal procurement regulations/laws
Applicability**

Protest that certain procurements should be set aside for dealers (with distributors not permitted to compete) is dismissed since restrictions on competition are permissible only to the extent authorized by law or regulation and there is no provision authorizing such a restriction.

PROCUREMENT

B-227082 July 7, 1987

**Bid Protests
GAO procedures
Interested parties**

87-2 CPD 20

Protester who cannot comply with a proper equipment size limitation is not an interested party to challenge other solicitation provisions.

PROCUREMENT B-227082 Con't
Specifications July 7, 1987
Minimum needs standards
Competitive restrictions
Design specifications
Burden of proof

Protest that maximum size limitation unduly restricts competition is denied where agency explains that the limitation is based on available space and protester presents no evidence to dispute the agency position.

PROCUREMENT B-227097 July 7, 1987
Bid Protests 87-2 CPD 28
Bias allegation
Allegation substantiation
Burden of proof

A protester bears a heavy burden of proof when alleging bad faith on the part of government officials; it must show by virtually irrefutable proof that these officials had a specific or malicious intent to injure the protester.

PROCUREMENT
Competitive Negotiation
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

Even if it is assumed that a technical evaluation panel member was biased, protester must show that this translated into action which adversely affected the protester's competitive position.

PROCUREMENT

B-227097 Con't

Specifications

July 7, 1987

Performance specifications

Adequacy

A solicitation for a requirements type contract that provides that written course material must be furnished at a school-grade level acceptable by the agency without identifying the specific grade level that will be required is appropriate since the agency will identify the specific grade level of future requirements in individual delivery orders to be issued under the contract.

PROCUREMENT

B-227146 July 7, 1987

Specifications

87-2 CPD 21

Minimum needs standards

Competitive restrictions

Performance specifications

Justification

Protest that solicitation requirement for laboratory bred rhesus monkeys for use in research is unduly restrictive is denied where the record supports the procuring agency's determination that while laboratory breeding does not ensure disease free monkeys, laboratory bred monkeys are more likely to have fewer health problems than those captured in the wild.

PROCUREMENT

Sealed Bidding

Contract awards

Multiple/aggregate awards

B-226623 July 8, 1987

87-2 CPD 23

Protester's contention that it should have received a partial award for 600 units of wood piling based on its low unit price is without merit where the protester conditioned its price for the last 600 units on receipt of award of the first 600 units at higher prices, and an aggregate award to the protester would have resulted in an award price of \$2,094 more than the combined prices of the multiple awards made to other bidders.

PROCUREMENT

Sealed Bidding

Invitations for bids

Interpretation

Terms

Solicitation permitting bids for less than the total 1,200 unit solicitation quantity and providing that award quantities based on less than the total quantity will be prorated equally to each of the four delivery dates, cannot reasonably be interpreted as requiring bid prices to be based on 300 piece lots, i.e. the total required quantity (1,200), divided by the four deliveries; allegation of solicitation ambiguity is rejected where it is based on such an unreasonable interpretation.

PROCUREMENT
Bid Protests
Courts decisions
Merits adjudication
GAO review

B-227839 July 8, 1987
87-2 CPD 135

General Accounting Office will dismiss protest which raises issue already decided by a court of competent jurisdiction.

PROCUREMENT
Competitive Negotiation
Unsolicited offers
Acceptability

The regulations do not require an agency to make an award based on an unsolicited proposal just because that proposal meets the criteria necessary for consideration of an unsolicited proposal.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227432.2 July 9, 1987
87-2 CPD 25

Protest against procurement set aside for small business concerns is untimely when filed after bid opening.

PROCUREMENT

B-227432.2 Con't

Bid Protests

July 9, 1987

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception to timeliness rules where the protest does not raise an issue of first impression that would have wide-spread significance to the procurement community.

PROCUREMENT

Socio-Economic Policies

Small businesses

Size determination

GAO review

Since the Small Business Administration has conclusive statutory authority to determine small business status for federal procurement purposes, the General Accounting Office does not review size status determinations.

PROCUREMENT

B-227573 July 9, 1987

Socio-Economic Policies

87-2 CPD 26

Small businesses

Competency certification

Eligibility

Criteria

Protester's objection to comprehensive scope of review by Small Business Administration (SBA) in connection with protester's application for a certificate of competency (COC) is without merit since SBA may review all elements of a firm's responsibility in considering a COC application and is not limited to elements relied on in contracting agency's nonresponsibility determination.

PROCUREMENT **B-227573 Con't**
Socio-Economic Policies **July 9, 1987**
Small businesses
Responsibility
Competency certification
Negative determination

General Accounting Office will not review contracting agency's underlying nonresponsibility determination where protester fails to pursue SBA review of COC application by failing to submit information requested by SBA.

PROCUREMENT **B-223934.2 July 10, 1987**
Bid Protests **87-2 CPD 29**
GAO procedures
Protest timeliness
10-day rule
Effective dates

Protest based upon information received under Freedom of Information Act (FOIA) is timely, notwithstanding failure of protester to seek information under FOIA until 3 months after award, where the record shows that the protester made a consistent effort to obtain information regarding its basis of protest.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Bad faith
Allegation substantiation

A showing of bad faith on the part of a contracting officer in conducting responsibility determination of awardee requires virtually irrefutable proof of specific and malicious intent to harm the protester. A showing that the contracting officer may have acted negligently in reaching this determination is not sufficient to carry this burden, and our Office's scope of review of affirmative responsibility determinations does not extend to cases involving negligence.

PROCUREMENT

B-223934.2 Con't

Sealed Bidding

July 10, 1987

Two-step sealed bidding

Contract awards

Propriety

Allegation substantiation

Protest that contracting agency improperly allowed the awardee to change place of manufacture specified in both steps of a two-step sealed bidding procurement is denied where the record discloses that the preaward requested change was not incorporated into the contract.

Allegation that awardee fraudulently represented its intention to furnish an item manufactured entirely in the United States is denied as the evidence presented by the protester, which consisted of the awardee's performance of other contracts, does not conclusively demonstrate that the awardee could not have manufactured the item in the United States.

PROCUREMENT

B-225722.3 July 10, 1987

Bid Protests

87-2 CPD 30

GAO procedures

Information submission

Timeliness

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

General Accounting Office (GAO) will not consider protest of alleged solicitation improprieties filed more than 4 months following submission of initial, related protest, even though bids have not yet been opened, bid opening having been extended because of the initial filing. Consideration of piecemeal submissions jeopardizes GAO's ability to resolve protests quickly with only minimal disruption to the orderly process of government procurement, as contemplated by the Competition in Contracting Act of 1984.

PROCUREMENT

B-225830 July 10, 1987

Bid Protests

87-2 CPD 32

GAO procedures

Interested parties

Protester who did not submit a bid under challenged invitation for bids (IFB) is an interested party to protest IFB specification as unduly restrictive where the protester states that it would submit a bid if the specification were amended.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Under Bid Protest Regulations, where an alleged solicitation defect is initially timely protested to the contracting agency, a subsequent protest to the General Accounting Office after bid opening is timely when filed within 10 working days of notification of initial adverse agency action on the protest.

PROCUREMENT

B-225830 Con't

Specifications

July 10, 1987

Minimum needs standards

Competitive restrictions

Design specifications

Justification

Protest that invitation for bids (IFB) for roofing repair is unduly restrictive because it requires fibrous glass insulation, which the protester contends is produced by only one firm, is denied where the agency determined that its minimum needs require that insulation to be used in repair be compatible with existing fibrous glass insulation and the protester has not shown that determination to be unreasonable.

Standard Material and Workmanship clause in Federal Acquisition Regulation, permitting substitution of equivalent materials during contract performance with contracting officer's approval, does not limit contracting agency's authority to draft specifications as restrictively as necessary to meet its minimum needs.

PROCUREMENT

B-226605 July 10, 1987

Bid Protests

87-2 CPD 33

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of alleged solicitation deficiencies is untimely where not filed with General Accounting Office or contracting agency prior to closing date for receipt of offers.

PROCUREMENT **B-226605 Con't**
Socio-Economic Policies **July 10, 1987**
Preferred products/services
Veterans

Where solicitation does not provide for special consideration of disabled veteran-owned firms, there is no basis for giving preferential treatment to such firms in award process.

PROCUREMENT
Special Procurement Methods/Categories
Federal supply schedule
Offers
Rejection
Propriety

Noncompliance with solicitation provisions requiring prices to be based on current published price list and substantial sales at those prices warrant rejection of an offer since the procuring agency needs this information to establish that price of item offered to be included on Federal Supply Schedule is most advantageous to the government.

PROCUREMENT **B-227048 July 10, 1987**
Bid Protests **87-2 CPD 34**
Allegation substantiation
Burden of proof

It would not be appropriate to dismiss protest for failure to cite any supporting legal authority where the protest provides all the information essential to the protest.

PROCUREMENT

B-227048 Con't

Bid Protests

July 10, 1987

GAO procedures

Agency notification

Evidence sufficiency

Dismissal for failure to furnish agency copy of protest within 1 working day of filing at General Accounting Office (GAO) as required by GAO Bid Protest Regulations, 4 C.F.R. 21.1(d) (1986), is not warranted where agency is able to submit protest report on time.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Contractor liability

Liability restrictions

Bid which took exception to warranty requirement in invitation for bids is nonresponsive, since, in order to be considered responsive, a bid must be an unequivocal offer to provide the exact thing described, in total conformance with the material terms of the solicitation, and warranty requirements are material.

PROCUREMENT

B-227207; B-227208

Socio-Economic Policies

July 10, 1987

Small businesses

87-2 CPD 35

Size determination

GAO review

General Accounting Office does not consider protests relating to small business size status because the Small Business Administration has conclusive authority to decide such matters.

PROCUREMENT B-227629 July 10, 1987
Bid Protests 87-2 CPD 36
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

Alleged improper rejection of offer due to inadequate sureties is not significant issue warranting review despite untimeliness of protest.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest of cancellation of procurement--based on rejection of protester's low bid due to unacceptable sureties--and resolicitation of the requirement is dismissed as untimely where not filed within 10 working days after protester knew reason for rejection of its bid.

PROCUREMENT B-227871 July 10, 1987
Bid Protests 87-2 CPD 37
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Post-award protest of agency's negotiation with protester of revisions to the statement of work, taken verbatim from the protester's technical proposal and incorporated in its best and final offer, filed on the basis that those revisions placed the protester at a potential competitive disadvantage, is untimely because the protester failed to file its protest before the closing date for receipt of revised proposals. GAO finds unreasonable the protester's assumption that the request for best and final offers, to which it now objects, need not have been protested earlier because this open, non-sole-source procurement would not be subject to competition from others.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-227871 Con't
July 10, 1987

Protest of events which occurred during conduct of procurement is untimely where protester knew of the basis for its protest more than 10 days before filing protest with General Accounting Office (GAO).

PROCUREMENT
Bid Protests
GAO procedures
Agency notification
Deadlines
Constructive notification

B-226978 July 13, 1987
87-2 CPD 38

Purpose of requirement in Bid Protest Regulations that protester serve procuring agency with a copy of the protest within 24 hours of filing with the General Accounting Office (GAO) is to inform the agency promptly of the basis of protest and to enable it to prepare a report within the required 25 working days. When an agency has actual notice of the basis of protest and delivers its report in a timely fashion, GAO will not dismiss the protest in the absence of a showing that the agency was prejudiced by the late receipt.

PROCUREMENT **B-226978** **Con't**
Competitive Negotiation **July 13, 1987**
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

When an agency regards proposals as essentially equal technically, price may become the determinative factor in making an award notwithstanding that in the evaluation criteria price was of less importance than technical considerations. A protester's mere disagreement with the determination that proposals are essentially equal does not itself render the evaluation objectionable.

PROCUREMENT **B-226992.2** **July 13, 1987**
Special Procurement **87-2** **CPD** **39**
Methods/Categories
Requirements contracts
Validity
Determination

Requirements contracts constitute valid contractual arrangements even though there is no maximum and/or minimum limitation on the estimated requirements of such a contract.

PROCUREMENT **B-227135** **July 13, 1987**
Small Purchase Method **87-2** **CPD** **40**
Quotations
Evaluation
Technical acceptability

Procuring agency's evaluation of alternate product as technically unacceptable was not unreasonable where the protester failed to supply sufficient information to establish the acceptability of its product as required by the solicitation.

PROCUREMENT

B-227499.2 July 13, 1987

Bid Protests

87-2 CPD 41

GAO procedures

Protest timeliness

Good cause exemptions

Applicability

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

General Accounting Office (GAO) will not consider the merits of an untimely protest under either the good cause or significant issue 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.

PROCUREMENT

B-227599 July 13, 1987

Bid Protests

87-2 CPD 42

Private disputes

GAO review

A protest which speculates that a proposed award may be improper and which contains a request for information concerning the award is dismissed because protest does not meet requirement under General Accounting Office Bid Protest Regulations that protesters set forth a detailed statement of the legal and factual grounds of protest.

PROCUREMENT **B-227599 Con't**
Competitive Negotiation **July 13, 1987**
Contract awards
Government delays
Procedural defects

An agency's alleged delay in awarding a contract is purely a matter of procedure which alone does not provide a basis of protest because it does not affect the validity of the procurement.

PROCUREMENT **B-227018 July 14, 1987**
Bid Protests **87-2 CPD 43**
GAO procedures
Protest timeliness
10-day rule

Protester's allegation of conflict of interest on the part of a technical evaluation panel member is dismissed as untimely where it is clear from the record that the protester was aware of the alleged conflict nearly 2 months before filing the protest.

PROCUREMENT
Competitive Negotiation
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

Where the record contains no evidence that the technical evaluation panel chairman was biased and unduly influenced the panel members evaluating the protester's proposal, the protester has not met his burden of proving bias on the chairman's part in favor of another offeror.

PROCUREMENT
Bid Protests
Antitrust matters
GAO review

B-227539 July 14, 1987
87-2 CPD 44

General Accounting Office will not consider an allegation of collusive bidding. Such an allegation is, in the first instance, a matter to be considered by the contracting officer in the context of a responsibility determination. Should collusion be suspected in a particular case, the matter should be referred to the Attorney General, since collusion constitutes a criminal offense.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225369.2 July 15, 1987
87-2 CPD 45

Although protester will have an opportunity to compete for award under resolicitation, it is entitled to recover the costs of filing and pursuing its protest, including reasonable attorney's fees, where the schedule for resolicitation deprives the protester of the opportunity to compete, and be awarded a contract, for the basic contract period.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Resolicitation
Propriety

Resolicitation under revised specifications, rather than award to protester, is appropriate remedy where solicitation requirements exceeded agency's minimum needs and unduly restricted competition.

PROCUREMENT B-225621.4 July 15, 1987
 Bid Protests 87-2 CPD 46
 GAO procedures
 GAO decisions
 Reconsideration

Decision denying protest of cancellation of solicitation after bid opening, where contracting officer determined that cancellation and resolicitation would increase competition and was in the best interest of the government, is affirmed because protester has not shown that the decision was based on any error of fact or law.

PROCUREMENT B-226550 July 15, 1987
 Sealed Bidding 87-2 CPD 47
 Hand-carried bids
 Late submission
 Acceptance criteria

Where record does not establish that a hand-carried bid was received in the office designated in the invitation for bids before the time set for opening, the bid properly was rejected as late.

PROCUREMENT B-226955 July 15, 1987
 Competitive Negotiation 87-2 CPD 48
 Offers
 Evaluation
 Royalties
 Cost evaluation

Although regulations provide only that patent royalties must be evaluated and are silent on evaluation of technical data royalties, General Accounting Office believes technical data royalties must be evaluated the same as patent royalties since both types of royalty represent cost to government in case of award to other than owner of patent and data rights.

PROCUREMENT B-226955 Con't
Competitive Negotiation July 15, 1987
Offers
Evaluation errors
Evaluation criteria
Application

Where an authorized deviation from the Federal Acquisition Regulation requirement to evaluate royalty fees is applicable when "significant future competitive (re)procurement is anticipated," the contracting agency improperly applied the deviation to a solicitation that is the last in a series of procurements for the item.

PROCUREMENT B-227072.2 July 15, 1987
Bid Protests 87-2 CPD 49
GAO procedures
Preparation costs

Where a procuring agency takes the corrective action requested by the protester and the General Accounting Office (GAO) consequently dismisses the protest as academic, there is no decision on the merits by GAO and, therefore, no basis on which claimed protest costs may be recovered.

PROCUREMENT B-227920 July 15, 1987
Socio-Economic Policies 87-2 CPD 50
Labor surplus set-asides
Propriety
Competition sufficiency

A Labor Surplus Area (LSA) set-aside is proper when the contracting agency has a reasonable expectation of competition from a sufficient number of LSA concerns so that award may be made to an LSA concern at a reasonable price.

PROCUREMENT
Bid Protests
Agency-level protests
Protest timeliness
GAO review

B-226552.2 July 16, 1987
87-2 CPD 51

Protest which was initially untimely filed with the contracting agency will not be considered by the General Accounting Office.

PROCUREMENT
Sealed Bidding
Bids
Modification
Timeliness
Time/date notations

Protest is denied where evidence before our Office shows that time-date stamp in Army Communication Center is set for "Zulu" time (Greenwich Meridian time) and, therefore, telex modification of bid was received prior to bid opening.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Handicapped persons

B-227593 July 16, 1987
87-2 CPD 52

Protest that large corporation will benefit from inclusion of particular commodity on procurement list for noncompetitive purchase from handicapped concerns under the Wagner-O'Day Act, and that commodity thus should not be included on the list, is dismissed, since the Committee for Purchase from the Blind and Other Severely Handicapped, not the General Accounting Office, has exclusive authority to determine the suitability of items for inclusion on the list.

PROCUREMENT B-227797 July 16, 1987
Bid Protests 87-2 CPD 53
GAO procedures
Interested parties
Suspended/debarred contractors

The General Accounting Office will not consider a protest from a firm subject to debarment proceedings since the firm is ineligible for a contract award and, therefore, is not an interested party to protest.

PROCUREMENT B-227923 July 16, 1987
Bid Protests 87-2 CPD 54
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest challenging specifications in invitation for bids as unduly restrictive of competition is untimely when filed after bid opening.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Terms
Deviation

Protester's bid was properly rejected as nonresponsive where, as protester concedes, the product it offered did not meet specifications in invitation for bids.

PROCUREMENT B-226956 July 17, 1987
Bid Protests 87-2 CPD 55
Allegation substantiation
Burden of proof

Protester has not carried its burden of proof of showing agency misled it during negotiations where the protester's version of what was said in the negotiations is no more persuasive than the agency's version of negotiations.

PROCUREMENT B-226970 July 17, 1987
Bid Protests 87-2 CPD 56
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest of allegedly defective specification in the solicitation for the first step of a two-step sealed bid procurement, filed after the closing date for receipt of step-one technical proposals, is untimely.

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Offers
Rejection
Propriety

Rejection of a proposal under the first step of a two-step sealed bid procurement was reasonable, where the proposal lacked a clear explanation how the offeror intended to comply with the government's requirements, and changes needed to make the proposal competitive would have constituted a major revision to the original offer.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-227037.2 July 17, 1987
87-2 CPD 57

Protest that agency was biased toward a specific contractor is dismissed as academic where that contractor is not eligible for an award.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Pre-award samples
Acceptability

B-227134 July 17, 1987
87-2 CPD 58

Where a solicitation for bed pads required samples to be submitted with bids which conform to the size requirements listed in the solicitation, protester's bid was properly rejected as nonresponsive where bid sample did not conform to the listed specifications.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-227553.2 July 17, 1987
87-2 CPD 59

Federal employees are not interested parties eligible to protest a procurement action because they are not actual or prospective offerors under the solicitation.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-227835 July 17, 1987
87-2 CPD 60

Protest is dismissed where action taken by the agency subsequent to the filing of the protest has rendered the issues raised therein academic. The General Accounting Office (GAO) will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by GAO's decision.

PROCUREMENT

B-227862.4 July 17, 1987

Bid Protests

87-2 CPD 61

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that RFP's delivery date was impossible for any firm except the previous supplier to meet is untimely when delivery date was apparent from RFP amendment but was not protested until after the amendment's closing date.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception to timeliness rules where the protest does not raise an issue of first impression that would have wide-spread significance to the procurement community.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest that agency should have referred question of protester's responsibility to the Small Business Administration for consideration under certificate of competency procedures is untimely when filed more than 2 months after protester was advised of ineligibility for award based on negative preaward survey.

PROCUREMENT

B-227914 July 17, 1987

Bid Protests

87-2 CPD 62

GAO procedures

Interested parties

Direct interest standards

Protester who did not submit a quotation under a request for quotations, even though it could have done so, would not be eligible for award if protest were resolved in its favor and, therefore, lacks the requisite direct economic interest to be considered an interested party under our Bid Protest Regulations.

PROCUREMENT

B-227951 July 17, 1987

Bid Protests

87-2 CPD 63

Cooperative agreements

GAO review

Protest against the cancellation of a solicitation issued to award a cooperative agreement, not significantly controlled by procurement statutes and regulations, will not be considered where the protester has neither alleged nor shown that a contract rather than a cooperative agreement should have been used or that a conflict of interest was involved.

PROCUREMENT

B-225570.2 July 20, 1987

Bid Protests

GAO procedures

GAO decisions

Reconsideration

Prior decision in which GAO sustained protest that agency erroneously disqualified protester's proposal is affirmed where, upon request for reconsideration, agency presents no basis for reversing conclusion that protester's proposal met all of the RFP's requirements.

PROCUREMENT
Bid Protests
Licensing
GAO review

B-225570.2 Con't
July 20, 1987

Award of a franchise contract for cable television services concerns procurement of property or services by federal agency and thus is subject to General Accounting Office's (GAO) bid protest jurisdiction.

PROCUREMENT
Bid Protests
Evidence evaluation
Factual issues
Discrepancies
Burden of proof

B-225823 July 20, 1987
87-2 CPD 65

Where agency's and protester's version of facts conflict, General Accounting Office (GAO) generally resolves disputes over whether the protest was timely filed in accordance with GAO's Bid Protest Regulations in the protester's favor if there is at least a reasonable degree of evidence to support the protester's version showing that the protest was timely.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Competition rights
Contractors
Exclusion

Where contracting agency did not provide protester/incumbent contractor with a copy of the solicitation, despite being aware that the protester was one of only three firms that have supplied the agency with the precise product called by the solicitation, and where record suggests the agency should have known that the protester would want to compete, the protester was improperly excluded from the competition in violation of the Competition in Contracting Act of 1984, which requires full and open competition.

PROCUREMENT B-225825.2 July 20, 1987
Contractor Qualification 87-2 CPD 66
Certification
Renewal
Administrative proceedings
Public notification

Where protester knew or should have known that its certification as a vocational rehabilitation counselor was about to expire CBD notice which calls for applications for certification by the agency was not ambiguous simply because it stated that the agency wished to "add to its list" of certified individuals since it had actual notice that the requirement to apply for certification also applied to previously certified individuals whose certification was to expire.

PROCUREMENT B-226949.2 July 20, 1987
Bid Protests 87-2 CPD 67
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of decision is denied where it raises no new factual or legal grounds that warrant reversing the decision.

PROCUREMENT B-226960 July 20, 1987
Sealed Bidding 87-2 CPD 68
Ambiguous bids
Determination criteria

Unsolicited identification of manufacturer in bid, unlike offer of a specific type of equipment, does not create ambiguity as to whether bidder is offering to comply completely with the specifications, rendering bid nonresponsive. This is information of a general nature and simply represents an offer to meet the specifications with the identified manufacturer.

PROCUREMENT
Bid Protests
GAO procedures
Agency notification

B-227450.2 July 20, 1987
87-2 CPD 69

Dismissal of protest for failure to file a copy with the contracting officer within 1 day after filing with GAO is affirmed. While protester claims to have mailed a copy at the time it mailed the protest to GAO, the notice requirement which specifies receipt of the protest by the contracting agency has not been met.

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

B-227596 July 20, 1987
87-2 CPD 70

Protest that quote was improperly rejected as technically unacceptable filed more than 1 year after contract award is dismissed as untimely because the protester failed to diligently pursue the information that formed the basis of its protest.

PROCUREMENT
Bid Protests
Court decisions
Merits adjudication
GAO review

B-227839.3 July 20, 1987
87-2 CPD 71

General Accounting Office dismissed protest which raises an issue already decided by a court of competent jurisdiction.

PROCUREMENT

B-227839.3 Con't

Bid Protests

July 20, 1987

GAO procedures

Protest timeliness

Significant issue exemptions

General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO Bid Protest Regulations where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest objecting to contracting agency's decision to exclude the protester from procurement for production of chemical/biological masks based on determination that protester's mask did not comply with agency's technical requirements is untimely when not filed within 10 days after protester knew or should have known, based on notice from agency and publication in Commerce Business Daily, that it had been eliminated from the competition.

PROCUREMENT
Contract Management
Shipment
Theft
Replacement
Fiscal-year appropriation

B-226198 July 21, 1987

The United States Geological Survey may not use fiscal year 1986 funds to contract to purchase microcomputer equipment in fiscal year 1987 to replace equipment purchased in 1986 that was stolen from its loading dock. The fiscal year 1986 purchase order was completed even though the equipment never reached the ordering office. Therefore, the purchase of additional equipment to replace the ill-fated fiscal year 1986 purchase order would constitute a new, rather than a replacement, contract.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Effective dates

B-227139 July 21, 1987
87-2 CPD 72

Publication of a procurement in the Commerce Business Daily (CBD) constitutes constructive notice to potential offerors of the solicitation and its contents. Therefore, protest based on agency's failure to send protester a copy of the solicitation, which was publicized in the CBD, is untimely when it is filed more than 10 working days after the closing date for receipt of proposals.

PROCUREMENT
Bid Protests
Patent infringement
GAO review

Allegation that patent infringement may result from performance under the awarded contract is not a proper basis of protest to the General Accounting Office since the exclusive remedy for patent infringement by a government contractor is a suit against the government in the United States Claims Court.

PROCUREMENT

B-227588.2 July 21, 1987

Bid Protests

87-2 CPD 73

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Deadlines

Constructive notification

Protester's assertion that agency failed to advise it of requirement to file protest with the General Accounting Office (GAO) within 10 working days after protester received denial of its agency-level protest is not basis for consideration of the protest since the protester is charged with constructive notice of GAO's Bid Protest Regulations which are published in the Federal Register.

PROCUREMENT

B-225784.2; B-225784.3

Bid Protests

July 22, 1987

GAO procedures

87-2 CPD 74

Interested parties

Direct interest standards

Firm is not an interested party to protest award to competitor for largest award under multiple award solicitation where if protest were sustained another offeror and not the protester would be in line for that award.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-225784.2; B-225784.3 Con't

July 22, 1987

Protest that amendment unfairly benefited incumbent contractor and discriminated against first time offerors such as the protester, is untimely where filed after the closing date established by the amendment.

Protest against solicitation provisions filed after the closing date for receipt of proposals is untimely.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Questions concerning a firm's legal status pertain to matters of responsibility. General Accounting Office will not review contracting officer's affirmative responsibility determination concerning firm's eligibility for award as "a separate legal entity" where there has been no showing of fraud or bad faith on the part of procuring officials and the solicitation does not contain definitive responsibility criteria.

PROCUREMENT B-225385.2 July 23, 1987
Competitive Negotiation 87-2 CPD 75
Offers
Evaluation
Technical acceptability

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Negative determination
Propriety

Agency determination to reject proposal as technically unacceptable is unobjectionable where the proposal takes exception to several solicitation requirements and the agency reasonably concludes that the offeror's technical approach would require extensive changes to the agency's testing procedures.

PROCUREMENT B-227002 July 23, 1987
Sealed Bidding 87-2 CPD 76
Bids
Responsiveness
Terms
Deviation

A letter bid that includes preprinted terms and conditions that vary from the terms and conditions in the solicitation is nonresponsive.

PROCUREMENT
Sealed Bidding
Potential contractors
Exclusion
Propriety

Agency's possible failure to solicit potential bidder is not a basis for sustaining protest where there is no evidence agency deliberately sought to exclude bidder from competition and prices received are considered reasonable.

PROCUREMENT B-227054 July 23, 1987
Sealed Bidding 87-2 CPD 77
Federal procurement regulations/laws
Applicability

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Offers
Evaluation
Administrative discretion

The Architect of the Capitol is not subject to the terms of the Competition in Contracting Act of 1984 or the Small Business and Federal Procurement Competition Enhancement Act of 1984; however, even if these statutes were applicable, they did not require the agency to conduct discussions with an offeror whose proposal had been determined not to be susceptible to being made acceptable.

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Offers
Evaluation
Administrative discretion

The General Accounting Office (GAO) will not independently review proposals submitted on the first step of a two-step sealed bidding acquisition, since the judgment of the relative merits of proposals is in the first instance the responsibility of the contracting agency; nor will GAO question the exclusion of the protester's proposal as unacceptable where that proposal appears to have reasonably been found deficient and the protester has presented no reasons for concluding otherwise.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-226504.2 July 24, 1987
87-2 CPD 79

Protest against acceptance of low bid is academic where the low bid has expired and the bidder has refused to extend the acceptance period.

PROCUREMENT
Bid Protests
Premature allegation
GAO review

Protest challenging the contracting agency's determination that the protester is nonresponsible is dismissed as premature since the agency has not made a final determination of the protester's responsibility. In any event, since the protester is a small business concern the Small Business Administration has conclusive authority to determine the protester's responsibility.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Shipment schedules

B-226598 July 24, 1987
87-2 CPD 80

An offer that did not conform to a reasonable interpretation of a solicitation's delivery schedule was properly rejected.

PROCUREMENT

B-227008 July 24, 1987

Bid Protests

87-2 CPD 81

Administrative policies

Violation

GAO review

PROCUREMENT

Socio-Economic Policies

Small business 8(a) subcontracting

Administrative policies

Compliance

GAO review

Small Business Administration's (SBA) Standard Operating Procedure regarding the award of section 8(a) contracts represents internal agency policy and procedures without the force and effect of law; General Accounting Office thus will not review SBA's compliance with these procedures.

PROCUREMENT

Bid Protests

Bias allegation

Allegation substantiation

Burden of proof

Allegation of bad faith on the part of the contracting officer in deciding not to award a follow-on section 8(a) contract to protester is denied where protester fails to offer irrefutable proof that the contracting officer had a specific, malicious intent to cause it harm.

PROCUREMENT B-227038 July 24, 1987
Competitive Negotiation 87-2 CPD 83
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

Protest that firm's technically acceptable proposal for turbine engines should have been selected for award is denied since the successful proposal was also technically acceptable and was reasonably evaluated as offering the lowest probable cost under a life-cycle cost analysis which included evaluation of the guaranteed ceiling prices for future production quantities of the engine that were also to be provided by the successful contractor.

PROCUREMENT B-227066 July 24, 1987
Contractor Qualification 87-2 CPD 84
Responsibility
Contracting officer findings
Negative determination
GAO review

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

Contracting agency reasonably found that bidder was nonresponsible where its individual sureties failed to disclose outstanding bond obligations in their Affidavit of Individual Surety, regardless of the risk of liability on those obligations.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Responsiveness

B-227100 July 24, 1987
87-2 CPD 85

A bidder's failure to acknowledge receipt of a 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.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227166 July 24, 1987
87-2 CPD 86

Where the record of the questions and answers at the pre-bid conference is furnished to all bidders in a writing signed by the contracting officer, this letter meets the essential requirements for a solicitation amendment. Therefore, if the protester considered the solicitation as amended by this letter to be improper, it was required to protest the apparent impropriety before bid opening.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Determination time periods

B-227636 July 24, 1987
87-2 CPD 87

The responsiveness of a bid may only be determined from the material which was available to the agency at bid opening.

PROCUREMENT
Sealed Bidding
Bids

B-227636 Con't
July 24, 1987

Responsiveness
Small business set-asides
Compliance

Bid on a total small business set aside, indicating that not all end items to be furnished would be produced by small businesses, is nonresponsive because otherwise the bidder would be free to furnish supplies from a large business and therefore defeat the purpose of the set-aside.

PROCUREMENT
Bid Protests
GAO procedures
Agency notification

B-227823.2, et al.
July 24, 1987
87-2 CPD 88

Dismissal of protests is affirmed where protester concedes it failed to provide copy of protests to contracting agency within 1 day after the protests were filed with the General Accounting Office. Failure to provide copy will not be waived simply because of additional effort necessary to meet 1-day requirement when protests involve contracting activity located overseas.

Where solicitation does not specify contracting agency official to whom copy of protest is to be sent, providing copy to contracting agency official unconnected with procurement being protested does not meet requirement for service of protest on contracting agency since General Accounting Office Bid Protest Regulations require service on contracting officer if no other official is designated.

PROCUREMENT

B-227889.2 July 24, 1987

Bid Protests

87-2 CPD 89

GAO procedures

Agency notification

Dismissal of protest for failure to provide a copy to contracting agency within 1 day of filing is affirmed since neither mailing a copy nor orally advising contracting agency of protest, as protester contends it did, satisfies requirement for actual receipt of copy of protest by contracting agency within 1 day.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Significant issue exception in Bid Protest Regulations applies only to protests which are untimely filed and does not authorize waiving requirement to provide a copy of protest to contracting agency within 1 day of filing.

PROCUREMENT

B-224152.2 July 27, 1987

Bid Protests

87-2 CPD 90

Allegation investigation

GAO review

Protester's request that the General Accounting Office (GAO) conduct an independent investigation of all proposals submitted in response to the request for proposals to insure that all were treated fairly is rejected since the protester has the burden of affirmatively proving its case and GAO will not conduct investigations to establish the validity of a protester's speculations.

PROCUREMENT
Competitive Negotiation
Contract awards
Initial-offer awards
Propriety

B-224152.2 Con't
July 27, 1987

While agency may make an award to lowest priced, technically acceptable offeror on basis of initial offers, the protester was not entitled to award as it was neither low nor technically acceptable.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Personnel
Work schedules

Protest contending that the agency improperly required protester to increase its proposal price by indicating that unless the manning level was increased, its technical proposal would not be acceptable is denied, where the record shows that the agency properly pointed out in discussions that the proposal in several instances failed to provide for full time coverage of food facilities as required by the solicitation, and the protester raised its price to cover cost of increased manning to meet agency's objections to proposal.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Justification
Sufficiency

B-224480.5 July 27, 1987
87-2 CPD 91

Protest that a solicitation requirement that certain employees have prior experience aboard a cable ship is unduly restrictive is denied where the agency establishes that the requirement contributes to the safe and effective operation of cable ships, and the protester does not show otherwise.

PROCUREMENT

B-226995 July 27, 1987

Competitive Negotiation

87-2 CPD 92

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Unsuccessful offeror's protest based on ground that it should have been selected for award of cost type contract because its proposal was essentially equal technically and proposed the lowest cost is denied, since the agency reasonably determined that, notwithstanding the small difference in point scores, the awardee's proposal (providing better management of emergency situations) was technically superior and more advantageous to the government.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

PROCUREMENT

Competitive Negotiation

Requests for proposals

Evaluation criteria

Subcriteria

Disclosure

Protest that contracting agency failed to disclose a critical evaluation factor--ability to respond to emergency situations--and to conduct meaningful discussions is denied where the record shows that such proficiency is reasonably encompassed in the stated evaluation factors, that the protester should have been aware of the importance of promptly responding to emergencies, and that the agency raised the issue in written discussions with the protester.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-227543 July 27, 1987
87-2 CPD 93

Where protest alleges that protester was improperly denied award as low offeror and subsequent information shows that the protester was relying upon erroneous price information in concluding that it was the low offeror, the basis for protest no longer exists since the correct pricing information shows that protester was the second-low offeror.

PROCUREMENT
Competitive Negotiation
Below-cost offers
Acceptability

There is nothing illegal in the submission and acceptance of a below-cost offer. If a below cost offer has been submitted, whether the firm can perform successfully at its offered price is to be considered in the contracting officer's determination of whether the firm is responsible.

PROCUREMENT
Competitive Negotiation
Offers
Error allegation
Protesters
Standing

A protester has no standing to claim a mistake in a competitor's offer because it is the sole responsibility of the contracting parties--the government and the offeror--to assert rights and bring forth evidence necessary to resolve mistake questions.

PROCUREMENT

B-227964 July 27, 1987

Bid Protests

87-2 CPD 94

GAO procedures

Protest timeliness

10-day rule

Effective dates

Protest to the General Accounting Office filed 6 weeks after protester's receipt of agency letter advising protester of award to another firm is untimely for lack of diligent pursuit of information that formed the basis for the protest.

PROCUREMENT

B-223084 July 28, 1987

Payment/Discharge

State/local taxes

Government exemptions

Applicability

GAO has no authority to interpret a provision of state law and therefore cannot rule on the applicability of an exemption from the Florida Gross Receipts tax to purchases made by the Navy Public Works Center in Pensacola, Florida. Navy is advised to obtain an official opinion from the Florida Department of Revenue.

Unless and until the Florida Department of Revenue rules that the Navy Public Works Center is a "reseller" of telecommunication services and therefore its purchases from Southern Bell Co. are exempt from the Florida Gross Receipts tax, Southern Bell is entitled to pass on the amount of the tax to the Center in its billings as a legitimate business cost. The Center is advised to pay all previous and current billings in order to avoid the accrual of late payment charges.

PROCUREMENT

B-223990.3 July 28, 1987

Bid Protests

87-2 CPD 95

GAO procedures

GAO decisions

Reconsideration

Arguments which amount to a reiteration of those previously considered by the General Accounting Office in deciding the initial protest do not provide a basis for reconsideration.

PROCUREMENT

Noncompetitive Negotiation

Industrial mobilization bases

Competitive restrictions

Administrative discretion

Decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization will be left to the discretion of the military agencies which must continually reassess current and future weaponry needs.

PROCUREMENT

B-225474.5 July 28, 1987

Bid Protests

87-2 CPD 96

GAO procedures

Preparations costs

Where the General Accounting Office sustains protest and recommends that discussions be reopened so as to allow the protester a renewed opportunity to compete for the award under the protested solicitation, the award of the protester's costs of filing its protest, including attorney's fees, is inappropriate.

PROCUREMENT

B-225496.2 July 28, 1987

Bid Protests

87-2 CPD 97

GAO procedures

Interested parties

Protest is dismissed where protester is not an interested party since it did not submit a proposal, at least one proposal met the solicitation's requirements and thus, the protester would not be in line for award even if its protest were sustained.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Request for reconsideration filed more than 10 days after the protester received notice of denial of its protest is dismissed.

PROCUREMENT

B-225738.2 July 28, 1987

Bid Protests

87-2 CPD 98

GAO procedures

GAO decisions

Reconsideration

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

PROCUREMENT

Bid Protests

Moot allegation

GAO review

Where agency amends specifications to satisfy protester's concerns, protest that specifications are defective is academic.

PROCUREMENT

B-226728.2 July 28, 1987

Competitive Negotiation

87-2 CPD 99

Contract awards

Prior contracts

Errors

Effects

Contracting agency's acceptance of protester's equipment in prior procurement with substantially similar specifications does not justify accepting same equipment in subsequent procurement where agency concludes that protester has not shown that equipment meets specifications.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical acceptability

Where request for proposals (RFP) does not require that offerors demonstrate compliance with specifications through the submission of technical data, offeror's statement that it will comply with the specifications is sufficient to obligate it to provide equipment conforming to the RFP requirements unless the contracting officer specifically requests technical information during discussions. Once the contracting officer has requested technical data during discussions, however, offeror that fails to furnish such information may be rejected as technically unacceptable based on informational inadequacy.

PROCUREMENT B-226728.2 Con't
Socio-Economic Policies July 28, 1987
Preferred products/services
Domestic products
Applicability

Fact that awardee's equipment was manufactured abroad does not provide basis for protest where no statute or regulation prohibited the procurement of foreign-manufactured machine tools.

PROCUREMENT B-227044.3 July 28, 1987
Bid Protests 87-2 CPD 100
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Where the protester learned prior to bid opening under step two of two-step sealed bid procurement that an item model it proposed under step one was not available, protest that the agency should cancel the invitation for bids and allow the protester to revise its proposal is untimely where not filed before bid opening.

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Bids
Modification
Acceptability

Bidders do not have the option of changing their step-one proposals during step two of a two-step sealed bid procurement.

PROCUREMENT
Sealed Bidding
Bids

B-227116 July 28, 1987
87-2 CPD 101

Judgmental errors
Error correction
Propriety

Low bid may not be corrected upward based on the bidder's decision, in preparing the bid, to use an outdated rather than the current design manual required by the solicitation where the bidder later learns it will cost more to comply with the current manual. The reason is that the bid the firm submitted was the bid it intended, so that the error does not qualify as a mistake that can be corrected under the applicable regulations. The bid properly was rejected instead, since it is clear that it was not based on the specification's essential elements.

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Cancellation
Propriety

B-227119 July 28, 1987
87-2 CPD 102

PROCUREMENT
Special Procurement Methods/Categories
In-house performance
Administrative discretion
GAO review

Agency's decision to cancel solicitation 3 weeks prior to closing date for receipt of step-one technical proposals under a two-step procurement and to continue performance in-house pending future issuance of revised solicitation will not be reviewed, since decision whether to perform in-house generally is matter of executive policy not within protest function.

PROCUREMENT

B-227324 July 28, 1987

Bid Protests

87-2 CPD 103

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that specifications in an invitation for bids are unduly restrictive is untimely where the protest was filed after bid opening. Protester's alleged reliance on oral advice from procuring agency personnel that bid taking exception to IFB requirements will not be rejected as nonresponsive was unreasonable where such advice was inconsistent with the clear meaning of the specifications and with the fundamental principle that an agency may not solicit bids on one basis and then make award on another basis.

PROCUREMENT

B-227600 July 28, 1987

Bid Protests

87-2 CPD 104

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest of allegedly defective specifications filed almost 2 months after bid opening is untimely, even though the protester initially filed a timely protest with the contracting agency, since the agency's action in proceeding with bid opening without responding to the protest constituted an initial adverse agency action after which a protest to the General Accounting Office concerning the matter was required to be filed within 10 working days in order to be considered timely under the Bid Protest Regulations.

PROCUREMENT

B-227929 July 28, 1987

Bid Protests

87-2 CPD 105

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that agency did not allow adequate proposal preparation time is untimely since it was filed after the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Hand-carried offers

Late submission

Acceptance criteria

Acceptance

Proposal that was delivered late to the contracting office because of negligence by the courier service chosen by the offeror properly was rejected as late.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225455.3 July 29, 1987
87-2 CPD 107

PROCUREMENT
Bid Protests
GAO decisions
Recommendations
Convenience termination
Withdrawal

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Recommendation that contract be terminated is withdrawn on reconsideration where agency continued performance because it was notified of the protest more than 10 calendar days after award, and agency now establishes that termination is not in the government's interest. Protester, however, is entitled to bid preparation and protest costs.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-226683.2 July 29, 1987
87-2 CPD 108

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

PROCUREMENT

B-226871 July 29, 1987

Special Procurement

87-2 CPD 109

Methods/Categories

Architect/engineering services

Contract awards

Administrative discretion

General Accounting Office (GAO) review of agency selection of an architect-engineer (A-E) contractor is limited to examining whether selection is reasonable. It is not GAO's function to determine the relative merit of the submissions of A-E firms. GAO will question the agency's judgment only if it is shown to be arbitrary.

PROCUREMENT

Special Procurement Methods/Categories

Architect/engineering services

Offers

Evaluation

Personnel experience

Protester is not entitled to credit for all of the experience and other professional qualifications of another A-E firm simply because the principals who recently established the protester's firm previously worked together as a group in the other firm.

PROCUREMENT

Special Procurement Methods/Categories

Architect/engineering services

Offers

Evaluation errors

Bias allegation

Protester's contention that it has received extremely favorable evaluations of its professional qualifications by other agencies under previous competitions for A-E projects does not establish that the procuring activity was arbitrary in rating the protester lower than competing firms.

PROCUREMENT

B-226907 July 29, 1987

Bid Protests

87-2 CPD 110

GAO procedures

Interested parties

Protester is not considered an interested party under Bid Protest Regulations to protest award to offeror who offered a technically acceptable alternate to the agency-approved item, to be used with fuel cell repair system manufactured by protester, where basis of protest is protester's concern for the safety and reliability of its system and for its potential liability if the alternate part is used.

PROCUREMENT

Contractor Qualification

Approved sources

Equivalent products

Acceptance

Administrative discretion

PROCUREMENT

Small Purchase Method

Quotations

Evaluation

Technical acceptability

Protest challenging agency determination that air duct hose offered as an alternate to approved source was technically acceptable is denied since agency has primary responsibility for establishing procedures to determine product acceptability and for determining whether item will satisfy government's minimum needs, and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

PROCUREMENT
Bid Protests
Non-appropriated funds
GAO review

B-226968 July 29, 1987
87-2 CPD 111

The jurisdiction of the General Accounting Office to decide protests by federal agencies does not turn on whether appropriated funds are involved.

PROCUREMENT
Bid Protests
Non-prejudicial allegation
GAO review

Protester's complaint that it was unfairly precluded from the competition is without merit where the protester had an opportunity to participate in the agency's well-publicized prequalification process but declined to do so.

PROCUREMENT
Special Procurement Methods/Categories
Service contracts
Custodial services
Federal procurement regulations/laws
Applicability

Protest that solicitation for custodial services for vessels does not comply with the requirements of the Federal Acquisition Regulation (FAR) is without merit where the agency has statutory authority to conduct the procurement "notwithstanding any other provision of law" and is therefore exempt from strict compliance with the FAR.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency action

B-227110, B-227111

July 29, 1987

87-2 CPD 112

Protest to General Accounting Office (GAO) against cancellation and resolicitation is untimely where the firm initially protested to the contracting activity prior to the closing date for the receipt of quotations under the resolicitation, but did not protest to GAO within 10 working days after the closing, which constituted the initial adverse agency action on the protest.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-227407.3 July 29, 1987

87-2 CPD 113

Decision dismissing protest based on information released under the Freedom of Information Act as untimely is affirmed where protester delayed more than 3 months between its receipt of the information that provided its basis for protest and its filing of the protest.

PROCUREMENT

Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-227639.2 July 29, 1987
87-2 CPD 114

PROCUREMENT

Bid Protests
GAO procedures
Protest timeliness
10-day rule

Dismissal of untimely protest is affirmed when protest was filed with the General Accounting Office before protester received written notice of award to another firm but more than 10 working days after protester knew the basis of protest.

PROCUREMENT

Competitive Negotiation
Offers
Preparation costs

B-227837.4 July 29, 1987
87-2 CPD 115

Determination by agency to set aside unrestricted procurement for exclusive small business participation, communicated by amendment on the original proposal closing date, does not entitle the protester to proposal preparation costs solely because amendment eliminated the protester, a large business, from competition, where General Accounting Office has no basis on which to legally object to the set-aside and there is no indication that the protester otherwise had a substantial chance of receiving the award.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-226531.2 July 30, 1987
87-2 CPD 116

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Claim for bid preparation and protest costs is denied because the underlying protest is denied. Further, claim for lost profits is denied since General Accounting Office does not permit the recovery of anticipated profits.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification

Protest against cancellation of invitation for bids after opening is denied where agency canceled solicitation after it properly determined that no responsive bids had been received and conceded that it had improperly asked for descriptive data after bid opening.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-227086 July 30, 1987
87-2 CPD 117

Protest filed more than 10 working days after protester knew the basis for protest is untimely.

PROCUREMENT

B-227804 July 30, 1987

Bid Protests

87-2 CPD 118

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Where a request for best and final offers is accompanied by a solicitation amendment changing the contemplated contract to a firm, fixed-price contract rather than a time-and-materials one, protest of such change filed after the closing date for receipt of best and final offers is untimely.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

In a negotiated procurement, the award of a firm, fixed-price contract to the offeror with a technically superior but higher-priced proposal is proper so long as the award is reasonable and consistent with the solicitation's evaluation criteria.

PROCUREMENT

B-227808 July 30, 1987

Small Purchase Method

87-2 CPD 119

Quotations

Evaluation

Technical acceptability

Protest is denied where protester offered alternate product but failed to provide adequate documentation establishing that its alternate product was equal to the product specified in the solicitation.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

B-227884.2 July 30, 1987
87-2 CPD 120

Allegation that awardee will not supply a product that conforms to the specifications concerns a matter of contract administration which is not reviewable by General Accounting Office.

PROCUREMENT
Bid Protests
GAO procedures
Purposes
Competition enhancement

B-227980; B-227981
July 30, 1987
87-2 CPD 121

General Accounting Office (GAO) will not review agency decision to conduct limited competitive procurement for interim needs rather than extend an incumbent's contract since purpose of GAO's role in reviewing bid protests is to ensure that all statutory requirements for free and open competition are met.

PROCUREMENT B-227980; B-227981 Con't
Competitive Negotiation July 30, 1987
Requests for proposals
Competitive restrictions
Justification
Urgent needs

PROCUREMENT
Competitive Negotiation
Requests for proposals
Competition rights
Contractors
Exclusion

Under the Competition in Contracting Act, agency may, due to urgency, properly limit the number of sources for a competition to those firms it reasonably believes can promptly and properly perform the work and is not required to solicit incumbent firm, where, based on prior work, the agency concludes it no longer can promptly and properly perform the work.

PROCUREMENT B-224782.4 July 31, 1987
Contract Management
Cost accounting
Federal procurement regulations/laws
Revision

General Accounting Office is not in favor of proposed revision of Federal Acquisition Regulation 31.204(c), which concerns application of the contract cost principles, because the proposed revision would not be sufficient to preclude the reimbursement of costs specifically made unallowable.

PROCUREMENT

B-226804 July 31, 1987

**Bid Protests
Allegation substantiation
Lacking
GAO review**

General Accounting Office will not treat in detail allegations of a protester who fails to respond to contracting agency's rebuttal of numerous issues raised in initial protest regarding alleged solicitation defects. Record shows that protester's contentions are without merit where contracting agency's unrebutted responses reasonably establish that solicitation is not defective as protester contends.

PROCUREMENT

**Bid Protests
Private disputes
GAO review**

General Accounting Office will not review challenge on constitutional grounds to provision in solicitation for search and tests of contractor's employees to detect alcohol or drugs since issues involving alleged constitutional violations are for resolution by the courts.

PROCUREMENT

B-227036 July 31, 1987

**Sealed Bidding
Invitations for bids
Service contracts
Wage increase
Risk assumption**

Where contractor sets conformed wage for employee classification not covered by wage determination, and the Labor Department, after award, makes a final determination that conformed wage was too low, there is no requirement that the government reimburse the contractor for the added cost; bidder must take risk of potentially higher costs into account in formulating bid.

PROCUREMENT

B-227756 July 31, 1987

Bid Protests

GAO procedures

Interested parties

A protester challenging a proposed contract award to a higher bidder is not an interested party under General Accounting Office Bid Protest Regulations, and its protest thus is dismissed, where even if its protest were upheld, the protester would not be in line for award because its bid is nonresponsive as the result of its failure to contain a required bid guarantee.

PROCUREMENT

B-227822 July 31, 1987

Specifications

Minimum needs standards

Competitive restrictions

Design specifications

Justification

Specifications are not unduly restrictive of competition where the agency presents a reasonable explanation of why the specifications are necessary to meet its minimum needs and the protester fails to present any evidence that the restrictions are clearly unreasonable or that they do not represent the agency's minimum needs.

Where the agency shows that specifications for components of a computer system are reasonable and necessary, the fact that only one firm can provide the items does not violate competitive procurement requirements.

PROCUREMENT
Bid Protests
Definition

B-227988 July 31, 1987
87-2 CPD 122

To be subject to review by the General Accounting Office (GAO) under the Competition in Contracting Act of 1984 (CICA), a protest must pertain to a procurement of property or services by a federal agency. Protest concerning the right to harvest brine shrimp and brine shrimp eggs at San Francisco Bay National Wildlife Refuge does not involve a procurement of property or services within the meaning of CICA, and the GAO will review it only where the federal agency involved has agreed to such review.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS **B-225832.6** **July 8, 1987**
Federal Administrative/Legislative Matters
Administrative proceedings
Deadlines
Statutory compliance

An agency's failure to taken an action (such as issue a report) prior to a statutory deadline neither precludes the agency from acting, nor relieves it of the obligation to act after the deadline, unless the statute creating the deadline both expressly requires the agency to act before that date, and specifies a consequence for failure to comply with that provision.

MISCELLANEOUS TOPICS
Federal Administrative/Legislative Matters
Advisory committees
Reports
Deadlines
Statutory compliance

The statute creating a temporary commission provided that the commission would terminate 90 days after the issuance by the commission of two reports which were to be sent to Congress by deadlines specified in the statute. However, because the statute did not specify any consequences if the report were late, the specified deadlines may be disregarded and the commission will not terminate until 90 days after the reports are actually issued. This conclusion is supported by the fact that one of the specified deadlines expired 30 days prior to the statute's enactment.

MISCELLANEOUS TOPICS **B-227508 July 10, 1987**
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

This Office has no legal objection to adopting and issuance of a Request for Records Disposition Authority (SF-115) by Defense Logistics Agency, Department of Defense, proposing to dispose of various classes of records after various periods of time with the exception of Item 38 which requires additional clarification and Items 39 and 40 upon which we express no opinion. Instead we recommend, that Items 39 and 40 be referred to EPA for its review and comment.

MISCELLANEOUS TOPICS **B-226922 July 23, 1987**
Environment/Energy/Natural Resources
Hazardous substances
Waste sites
Cooperative agreements
Statutory compliance

The EPA is authorized under section 9604(d) of CERCLA, as amended, to enter into cooperative agreements with states to undertake hazardous waste site discovery programs.

MISCELLANEOUS TOPICS
Environment/Energy/Natural Resources
Hazardous substances
Waste sites
Funding
Statutory compliance

Superfund monies may be used by the EPA and states for waste site discovery programs authorized under section 9604(d) of CERCLA, as amended. Superfund monies may also be used by the EPA for waste site discovery programs authorized under section 9605 and 9603 of CERCLA, as amended.

MISCELLANEOUS TOPICS
Environment/Energy/
Natural Resources
Hazardous substances
Waste sites
State/local governments
Rights

B-226922 Con't
July 23, 1987

A state could petition the EPA to conduct a preliminary assessment under section 9605(d) of CERCLA, as amended.

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