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Digests of Unpublished Decisions of the

Comptroller General

the United States

United States General Accounting Office

Charles A. Bowsher

Comptroller General of the United States

Milton J. Socolar

Special Assistant to the Comptroller General

James F. Hinchman

General Counsel

Vacant

Deputy General Counsel

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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

B-217114.2 Feb. 3, 1988

APPROPRIATIONS/FINANCIAL MANAGEMENT

Reimbursement

Accountable Officers
Disbursing Officers
Relief

Illegal/Improper Payments
Travel Allowances

Supervisory U.S. Army Finance and Accounting officer is relieved of liability for improper payments because he maintained and supervised an adequate system of procedures to prevent improper payments. The improper payments were the result of criminal activity outside the control of the finance officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability B-226581 Feb. 18, 1988
Purpose Availability
Necessary Expenses Rule
Voluntary Expenditures

Geological Survey employee may be reimbursed \$15,136 for personal expenditures made for services and equipment in support of an Economy Act agreement project in South

expenditures were made in furtherance of a public necessity.

Africa, provided that the agency involved finds that the

APPROPRIATIONS/FINANCIAL MANAGEMENT
Obligation B-228732 Feb. 18, 1988
Contracts
Authority

Subsection 317(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. No. 100-17, provides contract authority to the Department of Transportation to obligate funds for the establishment of a bus testing facility. The language used in the provision is virtually identical to the language used by the Congress to create contract authority in section 21 of the Urban Mass Transportation Act of 1964, as amended. The Congress will be required to pass a subsequent appropriation to liquidate any obligation incurred under this authority.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance Student Loans Debt Waiver

B-226466 Feb. 25, 1988

The Health Professions Loan Repayment Program authorized financial assistance for physicians in repaying debts incurred in medical school as an inducement for them to enter into agreements committing themselves to serve in physician shortage areas for extended periods after the agreements were executed. The program was not designed to provide payments as a gratuity for past services. Hence, no payment may be allowed to a physician on an application submitted after the program was phased out for benefits predicated on his past service in a shortage area.

APPROPRIATIONS/FINANCIAL MANAGEMENT Accountable Officers B-217114 Feb. 29, 1988 Liability Debt Collection

Collection of amounts owed by an accountable officer whose retirement account has been flagged for repayment may be held in abeyance pending resolution of government claims against individuals liable for the same debt. Collection of corresponding interest and penalty charges also may be held in abeyance.

APPROPRIATIONS/FINANCIAL MANAGEMENT Claims Against Government Interest

The United States generally may not pay accountable officers interest on amounts refunded to them.

APPROPRIATIONS/FINANCIAL MANAGEMENT Claims by Government

Past Due Accounts
Debt Collection
Penalties
Interest

Interest and penalties assessed against an accountable officer pertaining to monies for which he is liable to the government may be returned to the extent the accountable officer's liability is subsequently decreased by (1) a determination that the accountable officer was not responsible for the entire amount initially assessed, or (2) through collections from the individuals who fraudulently procured the monies from the accountable officer and the collections include amounts for interest and penalties at least equal to the amounts assessed against the accountable officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Appropriation Availability B-225980 Feb. 29, 1988
Amount Availability
Fiscal-Year Appropriation
Additional Compensation

Consumer Product Safety Commission (Commission) questioned whether a \$250,000 limitation on the Commission's 1987 fiscal year appropriation on the total amount of salaries and benefits payable to the Commissioners during the 1987 fiscal year would prohibit them from receiving pay raises that went into effect during the year if, as a result of such raises, their total salaries and benefits would exceed \$250,000. The question was resolved, however, for the 1987 fiscal year by the enactment of the Supplemental Appropriations Act, 1987, which made an additional \$20,000 available to pay salaries and benefits to the Commissioners. Moreover, since this issue is not likely to arise in the 1988 fiscal year, there is not current need for a substantive response to the Commission's inquiry.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL
Compensation
Overpayments
Error Detection
Debt Collection
Waiver

B-229394 Feb. 2, 1988

B-227581 Feb. 16, 1988

After leaving government service in August 1982, an employee received payment for 2 hours of overtime and 90 hours of lump-sum leave. Due to an administrative error, the employee received another check in October 1982, representing an overpayment of 80 hours of regular pay. When the employee brought this overpayment to the attention of proper authorities, she was told the payment was correct and represented additional payment for leave not taken. Waiver is granted since employee, who had no special knowledge of personnel law or payroll processes, reasonably relied on information provided her and was not advised that the payment was erroneous until nearly 2 years later.

CIVILIAN PERSONNEL
Relocation
Household Goods
Weight Restrictions
Liability
Waiver

An employee may not be relieved of his debt for excess weight of his household goods shipped incident to an official change of station. The weight allowance was established by law and there is no authority to exceed it notwithstanding that the carrier may have underestimated the weight, or that the agency may not have fully counseled the employee as to his entitlements.

CIVILIAN PERSONNEL
Relocation
Household Goods
Weight Restrictions
Liability
Waiver

B-227581 Con't Feb. 16, 1988

The carrier's method of assessing transportation charges (billing 11,720 pounds as 12,000 pounds at a lower rate) does not provide a basis for permitting payment by the government for a shipment of household goods in excess of an employee's authorized 11,000-pound weight allowance where the statutory regulations prescribe the specific method of assessing charges for excess weight. This method is based on a ratio of the excess weight to the total weight of the shipment applied to the total charges for the shipment.

CIVILIAN PERSONNEL
Compensation
Conflicts of Interest
Pending Resignations

B-229215 Feb. 22, 1988

The Deputy Assistant Secretary of Commerce for Automotive Affairs and Consumer Goods who was planning to leave government and sent letters to 32 foreign-owned vehicle manufacturers seeking to form and head a trade association to represent their interests should have recused himself from participation in International Trade Administration matters affecting their interests as soon as he dispatched those letters. Although he would not be deemed to be negotiating for employment under 18 U.S.C. § 208(a) until he received a response to one of those letters, he violated the Standards of Conduct and the Office of Government Ethics guidelines by participating in a meeting concerning the development of a system to analyze data to be provided by the Japanese under the MOSS Agreement, data potentially revealing of the auto parts purchasing habits of Japanese-owned vehicle manufacturers to whom he sent his letters.

CIVILIAN PERSONNEL
Compensation
Retroactive Compensation
Amount Determination
Reinstatement

The Merit Systems Protection Board (MSPB) found that an agency had improperly removed an employee and granted him reinstatement with backpay. During the period of removal, the employee was subsequently arrested several times and, as a result of one arrest, was incarcerated. The MSPB seeks our Office's advisory opinion on the proper period of backpay. We conclude that the employee hould be considered "unavailable" for work only during those periods when he was actually incarcerated. We believe it is too speculative to determine that the agency would have suspended and removed the employee upon one of his arrests during this period.

CIVILIAN PERSONNEL B-227331 Feb. 29, 1988
Compensation
Retroactive Compensation
Eligibility
Discretionary Authority

Two employees claim retroactive promotions and accompanying backpay for the 5-month period that their career-ladder promotions were delayed due to a reclassification review. Generally, a career-ladder promotion is discretionary with the agency unless there is a mandatory agency regulation or policy which states otherwise. In this case, the claims are denied since the job announcement indicating a promotion potential to a particular grade for the employees' positions did not constitute a nondiscretionary administrative regulation or policy which if not carried out would constitute an "unjustified or unwarranted personnel action" by the agency under the Back Pay Act, 5 U.S.C. § 5596 (1982).

PROCUREMENT

PROCUREMENT
Bid Protests

B-228287 Feb. 1, 1988 88-1 CPD 93

Contract Performance Work Suspension

The contracting agency is not required to order suspension of contract performance where the protest is filed on the 10th calendar day after award but the agency receives General Accounting Office notification of the protest on the 11th calendar day after award.

PROCUREMENT

Bid Protests
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest alleging that the solicitation improperly directed that lack of past performance would not be considered negatively in the evaluation of proposals is untimely, where the protest was filed after the closing date for receipt of initial proposals.

PROCUREMENT

Bid Protests
GAO Procedures
Protest Timeliness
10-Day Rule

Protest that the agency improperly included certain of the protester's (the incumbent contractor) proprietary plans used in an earlier contract in an offerors' library available to all offerors in the present procurement is untimely, where the protester waited 5 months after it knew this basis of protest to raise the issue. PROCUREMENT B-228287 Con't
Bid Protests Feb. 1, 1988
Information Disclosure
Administrative Determination
GAO Review

Dispute between the protester and the contracting agency over what information the agency was required to give the protester during a debriefing conference is a procedural matter that does not affect the competitive standing of offerors or the validity of the award.

PROCUREMENT

Competitive Negotiation
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Technical Superiority

In a negotiated procurement, award to a higher priced, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

PROCUREMENT B-228287 Con't
Competitive Negotiation Feb. 1, 1988
Offers
Evaluation
Personnel
Adequacy

Protest that the procuring agency misled the protester by including in the solicitation an estimate of the staffing levels needed to perform the statement of work when, in fact, the agency intended to accept only a proposal offering the exact staffing levels stated in the solicitation is denied, where: (1) the agency accepted a proposal which offered staffing levels below the solicitation's estimated levels; (2) the agency told the protester during discussions that its proposed staffing was inadequate in several areas and gave the protester a chance to revise its proposal or explain lower staffing levels; and (3) the evaluation examined the protester's staffing resources in light of the protester's proposed methodologies and still found the personnel levels to be inadequate.

PROCUREMENT B-228494 Feb. 1, 1988
Bid Protests 88-1 CPD 94
Non-Prejudicial Allegation
GAO Review

Protest is denied where protester was not prejudiced even if there was a lack of meaningful discussions since meaningful discussions would not have cured technical deficiencies which resulted in protester's proposal being excluded from the competitive range. PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges
Exclusion
B-228494 Con't
Feb. 1, 1988

Administrative Discretion

A technically unacceptable proposal may be excluded from the competitive range irrespective of its low offered price.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation Errors
Allegation Substantiation

Protest that agency improperly evaluated proposal is denied where the protester indicates its disagreement with the agency's evaluation but does not demonstrate that the evaluation was unreasonable.

PROCUREMENT B-229571 Feb. 1, 1988
Bid Protests 88-1 CPD 95
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest alleging apparent defects in a request for proposals is untimely where it was not filed prior to the closing date for receipt of initial proposals.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Administrative Discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

PROCUREMENT

Contract Management
Contract Performance
GAO Review

Protest concerning awardee's performance of the contract is dismissed since this involves a matter of contract administration which is not reviewed by the General Accounting Office.

PROCUREMENT
Competitive Negotiation
Below-Cost Offers
Acceptability

B-229619 Feb. 1, 1988
88-1 CPD 96

Submission and acceptance of a below cost offer is not legally objectionable.

PROCUREMENT

Competitive Negotiation Competitive Advantage Non-Prejudicial Allegation

A protester alleging that another offeror has an unfair competitive advantage must show that the advantage is the result of unfair action by the government. PROCUREMENT
Contract Management
Contract Performance
GAO Review

B-229619 Con't 'Feb. 1, 1988

Once an offeror promises to perform in accordance with a solicitation's requirements, whether the contractor performs as contractually required is a matter of contract administration which is the responsibility of the procuring agency and is not subject to review by the General Accounting Office under its bid protest function.

PROCUREMENT

Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

Where an offeror promises to comply with the requirements of a solicitation, a contention that the offeror will be unable to do so at the offered price constitutes an allegation that the offeror is not responsible; General Accounting Office generally does not review affirmative determinations of responsibility.

PROCUREMENT B-229729; B-229730
Competitive Negotiation Feb. 1, 1988
Federal Procurement Regulations/Laws
Amendments
Offers

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 87-37, a proposal to amend FAR Subparts 14.2, 15.4, 52, and 53 to provide for a new Standard Form in connection with a simplified contract format and annual representations and certification or to FAR Case No. 87-42, a proposal to permit the synopsizing of advance notice of agency interest in potential research and development programs.

PROCUREMENT

Sealed Bidding
Federal Procurement Regulations/Laws
Amendments
Bids

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 87-37, a proposal to amend FAR Subparts 14.2, 15.4, 52, and 53 to provide for a new Standard Form in connection with a simplified contract format and annual representations and certification or to FAR Case No. 87-42, a proposal to permit the synopsizing of advance notice of agency interest in potential research and development programs.

PROCUREMENT

Special Procurement

Methods/Categories

Research/Development Contracts

Public Notification

Federal Procurement Regulations/Laws

Amendments

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 87-37, a proposal to amend FAR Subparts 14.2, 15.4, 52, and 53 to provide for a new Standard Form in connection with a simplified contract format and annual representations and certification or to FAR Case No. 87-42, a proposal to permit the synopsizing of advance notice of agency interest in potential research and development programs.

PROCUREMENT

B-230087 Feb. 1, 1988

Bid Protests

88-1 CPD 97

Allegation Investigation GAO Review

The General Accounting Office does not conduct investigations as part of its bid protest function to provide support for a protester's allegations.

PROCUREMENT

Bid Protests Non-Prejudicial Allegation GAO Review

An agency's alleged failure to properly send solicitation materials to the incumbent provides no legal basis to object to an award where no prejudice resulted because incumbent ultimately obtained the materials and was able to submit a bid.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions

B-228919.2 Feb. 2, 1988 88-1 CPD 101

To be considered, a request for reconsideration of a prior decision of the General Accounting Office, must indicate that the decision contained errors of fact or of law or information not previously considered that would warrant its reversal or modification. The repetition of arguments made during resolution of the original protest, or mere disagreement with the decision, does not meet this standard.

PROCUREMENT

B-228002.2 Feb. 3, 1988

Competitive Negotiation
Offers

88-1 CPD 102

Payment Terms
Progress Payments

Reconsideration

Agency determination to employ progress payments, in response to request by selected offeror, did not amount to change in agency requirements necessitating discussions or material deviation from basis of competition where accepted offer was not conditioned upon receipt of progress payments and otherwise complied with terms of solicitation, and awardee was not afforded opportunity to alter terms of its offer.

PROCUREMENT
Sealed Bidding
Bids

B-228232.2 Feb. 3, 1988

88-1 CPD 103

Errors

Error Substantiation

The General Accounting Office will not question procuring agency's denial of bidder's request to correct a mistake in its bid where correction would require recalculation of the bid (based on a different subcontractor's price) and the corrected bid would be less than one percent below the next low bid.

PROCUREMENT B-228467 Feb. 3, 1988
Contractor Qualification 88-1 CPD 104
Licenses
Determination Time Periods

Nonresponsibility determination, based on conclusion that there was substantial risk that protester would not be able to obtain required permit in time for performance, was reasonable. Solicitation required compliance with specific aviation regulations and procuring agency was advised by licensing authority that protester would not be able to comply in time for performance. Procuring agency was entitled to rely on this advice and was not obligated to provide protester an opportunity to respond.

PROCUREMENT

Contractor Qualification
Responsibility
Contracting Officer Findings
Negative Determination
GAO Review

Nonresponsibility determination, based on conclusion that there was substantial risk that protester would not be able to obtain required permit in time for performance, was reasonable. Solicitation required compliance with specific aviation regulations and procuring agency was advised by licensing authority that protester would not be able to comply in time for performance. Procuring agency was entitled to rely on this advice and was not obligated to provide protester an opportunity to respond.

PROCUREMENT

Competitive Negotiation

Offers

Competitive Ranges

Exclusion

Administrative Discretion

Absent a showing that an agency's evaluation is unreasonable, and not consistent with the solicitation's evaluation factors, exclusion of the protester's proposal from the competitive range is warranted where agency finds proposal unacceptable in two areas identified for evaluation in RFP as "critical", and finds that deficiencies are not susceptible to correction through discussions.

PROCUREMENT B-229679 Feb. 3, 1988
Competitive Negotiation 88-1 CPD 107
Use
Criteria

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire vehicles is justified where offerors are expected to take a variety of exceptions to the specifications and discussions are necessary to resolve those matters and to define the terms of each offer.

PROCUREMENT B-229680 Feb. 3, 1988
Socio-Economic Policies 88-1 CPD 108
Small Businesses
Research/Development Contracts
Offers
Evaluation

In light of agency discretion under Small Business Innovation Research Program to fund or reject proposals, General Accounting Office review of decision to reject protester's proposal is limited to determining whether agency complied with any applicable regulations and solicitation provisions and whether agency acted fraudulently or in bad faith.

PROCUREMENT
Bid Protests
Bias Allegation
Allegation Substantiation
Evidence Sufficiency

Protester's mere conjecture is insufficient to establish that an agency conducted a procurement in a biased manner.

PROCUREMENT

Bid Protests
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Bid protest based upon alleged apparent solicitation impropriety must be filed prior to the closing date for the receipt of initial proposals.

PROCUREMENT

Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Administrative Discretion

Procuring agency has the discretion to exclude from the competitive range a proposal with significant informational deficiencies which would require major revision to be considered technically acceptable.

PROCUREMENT

Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Discussion

Procuring agency is required to hold discussions only with offerors within the competitive range.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical Acceptability

B-228576 Feb. 4, 1988

88-1 CPD 110

Offers

Protest that offer was unacceptable because the item offered is not a standard commercial product as required by the solicitation specifications is denied where offer is acceptable on its face.

PROCUREMENT

Contractor Qualification
Responsibility
Contracting Office Findings
Affirmative Determination
GAO Review

General Accounting Office does not review contracting officers' affirmative determinations of responsibility absent a showing of fraud or bad faith or that definitive responsibility criteria have not been applied.

B-226665.3 Feb. 5, 1988

88-1 CPD 111

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

General Accounting Office affirms previous decision recommending that item to be acquired in an option be the subject of competition, where the agency requesting reconsideration of the decision has not demonstrated any error of fact or law. PROCUREMENT
Specifications

B-228376 Feb. 5, 1988

· 88-1 CPD 113

Brand Name/Equal Specifications
Equivalent Products
Acceptance Criteria

In a "brand name or equal" procurement, the offeror of an equal product has the burden of proving that the product is equal to the brand name product. This burden is not met by the submission of a printed description of the product which gives no indication of compliance with the solicitation's list of salient characteristics of the brand name product. The fact that the protester's proposal and its amendments promised blanket compliance does not take the place of technical descriptions of the approach used by the protester to meet the salient characteristics.

PROCUREMENT

B-228409 Feb. 5, 1988

88-1 CPD 114

Sealed Bidding
Invitations for Bids
Amendments
Acknowledgment
Responsiveness

Oral acknowledgment of material amendment after the contracting officer states that the time for receiving bids has passed may not be considered, and subject bid therefore is nonresponsive.

Acknowledgment of a later amendment to a solicitation does not constitute acknowledgment of prior amendments; a bidder's failure to acknowledge each material amendment renders the bid nonresponsive. PROCUREMENT

Sealed Bidding
Invitations for Bids
Amendments
Acknowledgment
Waiver

B-228409 Con't Feb. 5, 1988

Bidder's failure formally to acknowledge an amendment that clarifies agency's intention to assess liquidated damages for late performance of delivery orders rather than merely for late performance of whole contract, may not be waived as a minor informality since the amendment eliminates a reasonable, more lenient interpretation, and therefore is material.

PROCUREMENT

B-228475 Feb. 5, 1988 88-1 CPD 115

Competitive Negotiation Offers

Sample Evaluation
Testing
Administrative Discretion

Protest that agency failed to require flight test of aircraft is denied where agency had reasonable basis for its decision not to conduct flight test and protester fails to show that agency position was based on bad faith as alleged.

PROCUREMENT

Competitive Negotiation
Requests for Proposals
Evaluation Criteria
Cost/Technical Tradeoffs
Weighting

Although agency reduced the maximum number of technical points available from the number stated in the request for proposal evaluation scheme, protest of this issue is denied where the reduction does not appear to have affected the selection because the two competing technical offers were essentially equal and the awardee offered a substantially lower cost.

PROCUREMENT
Sealed Bidding
Bids

B-228500 Feb. 5, 1988 88-1 CPD 116

Error Correction

Low Bid Displacement

Propriety

Where bid contains a discrepancy between unit and extended price, bid may not be corrected where other bidder would be displaced and where nature of mistake and intent to bid differently from stated bid price are not apparent from the bid itself.

PROCUREMENT

B-228543 Feb. 5, 1988

Competitive Negotiation

88-1 CPD 117

Discussion
Adequacy
Criteria

Although contracting agency did not conduct adequate discussions, offeror was not prejudiced by agency's failure to advise it of two weaknesses agency found in its proposal where, even if offeror had resolved both weaknesses to the agency's satisfaction, offeror had no reasonable chance at award because of its higher proposed costs.

PROCUREMENT

B-224064.4 Feb. 8, 1988

88-1 CPD 118

Bid Protests
GAO Procedures
Protest Timeliness
10-Day Rule

Where protester is in receipt of information which gives rise to basis of protest, it has 10 days to file a protest and protest filed after that date is untimely.

Where protester waited 2 years after contract award before filing a protest with the General Accounting Office (GAO), the protester did not diligently pursue the matter and its protest to GAO is untimely.

PROCUREMENT B-226774.3 Feb. 8, 1988
Sealed Bidding 88-1 CPD 119
Bid Guarantees
Responsiveness
Sureties

Liability Restrictions

A low bid, which includes the required bid guarantee executed by surety in excess of its underwriting limitation without evidence of reinsurance in the bid is nonresponsive, where the amount of the surety's underwriting limitation is less than the difference between the low bid price and the next higher acceptable bid.

PROCUREMENT B-227880.4 Feb. 8, 1988
Competitive Negotiation 88-1 CPD 120
Offers
Competitive Ranges
Exclusion
Administrative Discretion

Agency may exclude a technically acceptable proposal from the competitive range and from further negotiations when the offeror's price is substantially higher than the prices of other acceptable offerors and the agency reasonably determines that the higher-priced proposal has no reasonable chance of being selected for award.

PROCUREMENT Competitive Negotiation Offers Evaluation Options

Prices

Protest that agency improperly found offerors who did not use solicitation worksheet to calculate necessary staffing levels to be technically acceptable is denied where the agency advised offerors at preproposal conference that worksheet was provided for information purposes only and where that interpretation is consistent with other solicitation provisions. PROCUREMENT
Bid Protests
GAO Procedures

B-228445; B-228582 Feb. 8, 1988 88-1 CPD 121

Interested Parties

Direct Interest Standards

A firm is not an interested party to protest award of a contract for engineering services 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

A protest concerning allegations of solicitation improprieties is untimely where it is not filed prior to the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation Errors
Allegation Substantiation

A protest of an agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a superior technical and management proposal which offered the lowest probable cost.

PROCUREMENT
B-228445; B-228582 Con't
Contractor Qualification Feb. 8, 1988
Organizational Conflicts of Interest
Allegation Substantiation
Evidence Sufficiency

The award of a contract to generate technical data packages for the Army Nuclear Munitions Program to a firm having both engineering and production capabilities does not violate the Federal Acquisition Regulation subpart 9.5 governing organizational conflicts of interest, where the record fails to show that the awardee's development type work under this contract will create a potential conflict of interest. The record indicates the work will not lead to future competitive production of items, but that production will be handled in-house.

PROCUREMENT

Contractor Qualification Responsibility Criteria Performance Capabilities

The ability to perform a contract at a particular offered price concerns the offeror's responsibility, the affirmative determination of which will not be reviewed unless there is a showing of possible fraud or bad faith or failure by the contracting officer to apply definitive responsibility criteria.

PROCUREMENT

Socio-Economic Policies Feb. 8, 1988

Small Businesses 88-1 CPD 122

Responsibility

Competency Certification

GAO Review

General Accounting Office will not review a protester's allegation of bad faith on the part of procurement officials in determining that the firm is nonresponsible where the firm had the opportunity but failed to pursue its administrative remedy of applying for a Certificate of Competency from the Small Business Administration.

PROCUREMENT B-229618 Feb. 8, 1988
Small Purchase Method 88-1 CPD 123
Competition
Use
Criteria

Since small purchases do not require maximum competition, the General Accounting Office (GAO) will review a contracting agency's approach to defining the field of competition for cleaning of military family housing units only in a case of fraud or intentional misconduct, or where it appears that there has not been a reasonable effort to secure price quotations from a representative number of responsible firms.

PROCUREMENT
Socio-Economic Policies
Small Business
Set-Asides
Use

B-229710, et al. Feb. 8, 1988 88-1 CPD 124

Justification

Protests challenging contracting officer's decision to set aside procurements for competition exclusively among small business concerns are denied where the record indicates the contracting officer had a reasonable expectation that offers would be obtained from at least two small business concerns and where protester fails to show that awards to small business bidders under prior set—aside procurements were not made at reasonable prices.

PROCUREMENT
B-229828.2 Feb. 8, 1988
Bid Protests
GAO Procedures
Protest Timeliness

Apparent Solicitation Improprieties

Post-award protest challenging experience requirement in a solicitation is untimely where the basis for protest was evident from the face of the solicitation and the protest was not filed before the closing date for receipt of proposals.

PROCUREMENT

Bid Protests
GAO Procedures
Protest Timeliness
Good Cause Exemptions
Applicability

General Accounting Office (GAO) will not consider the merits of an untimely protest under the good cause exception to GAO timeliness requirements where there is no showing of a compelling reason beyond the protester's control that prevented the timely filing of the protest.

PROCUREMENT
Sealed Bidding
Bids

B-228094.2; B-228094.3 Feb. 9, 1988 88-1 CPD 126

Responsiveness Terms Deviation

Bid that does not include one required peripheral subitem of computer system to be supplied under terms of IFB, and is ambiguous as to others, is nonresponsive as bid is not an unequivocal offer to provide system in exact conformance with material terms of IFB.

PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges

B-228535 Feb. 9, 1988

88-1 CPD 127

Exclusion

Administrative Discretion

Absent a clear showing that an agency's evaluation was unreasonable, or inconsistent with the stated evaluation criteria, exclusion of protester's proposal from the competitive range is warranted where agency evaluation finds the proposal unacceptable in two heavily-weighted evaluation factors and concludes that the proposal does not have a reasonable chance of being selected for award.

PROCUREMENT

B-229700 Feb. 9, 1988 88-1 CPD 129

Specifications

Minimum Needs Standards
Competitive Restrictions
Allegation Substantiation
Evidence Sufficiency

Protest alleging that solicitation's specification which requests individual resumes in seven separate labor categories is excessive and unduly restrictive of competition is denied where the protester merely disagrees with the agency's determination of its minimum needs and fails to show that the resume requirement is clearly unreasonable or that it exceeds the agency's minimum needs.

PROCUREMENT
Sealed Bidding
Bids

B-230124 Feb. 9, 1988 88-1 CPD 130

Bid Guarantees
Justification

Federal Acquisition Regulation §§ 28.101-1 and 28.102-1 do not preclude the government from requiring a bid guarantee for a construction contract under \$25,000 where performance and payment bonds are also required.

PROCUREMENT
Sealed Bidding

B-228339.2 Feb. 10, 1988 88-1 CPD 131

Invitations for Bids
Cancellation
Justification

Price Reasonableness

Contracting officer's decision to cancel solicitation based on price unreasonableness was proper where only bid received exceeded government estimate by more than 33 percent and protester has not established that government estimate was incomplete or inaccurate.

PROCUREMENT
B-228548 Feb. 10, 1988
Competitive Negotiation * 88-1 CPD 132
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Technical Superiority

In a negotiated procurement, award need not be made on the basis of lowest price. Agencies may make cost/technical trade-offs so long as such determinations are reasonable and in accordance with the solicitation's evaluation criteria.

PROCUREMENT

Competitive Negotiation Contract Awards Fixed-Price Contracts Foreign Currencies

In request for proposals (RFP) calling for firm fixedprices, even assuming agency erred in accepting offer which proposed "currency ranges" for purposes of reimbursing contractor for services rendered in foreign countries, without apprising other offerors of the possibility of submitting offers on this basis, protester was not prejudiced by agency's acceptance of this offer. Protester does not challenge agency's technical evaluation of its proposal and fails to show how it would revise its otherwise technically unacceptable proposal, even if allowed to introduce currency ranges into its offer. PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Prices
Additional Work/Quantities

The inclusion in an offer on a requirements contract of prices for quantities in excess of the solicitation's best estimated quantities is legally unobjectionable so long as the terms of the "additional offer" are not inconsistent with the terms of the solicitation.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Unit Prices

Protest that offer violates solicitation's integrity of unit prices clause is denied where 1) there is no evidence to suggest that per-unit costs are other than properly allocated; 2) costs are not improperly distributed between more and less expensive line items; and 3) evaluation of line items within proposals is on the basis of unit cost multiplied by estimated quantities thereby obviating possible competitive advantage to be gained from pricing individual units within a line item differently.

PROCUREMENT B-228548 Con't
Competitive Negotiation Feb. 10, 1988
Requests for Proposals
Terms
Contractors
Travel Expenses

Contract which contemplates reimbursement of contractor's travel expenses on the basis of actual cost plus an agreed percentage thereof (representing general administrative overhead) does not constitute a cost-plus-a-percentage-of-cost contract because contractor's entitlement is not uncertain at the time of contracting. Contract provides that the cost of travel is limited to rates set out in various Federal Travel Regulations and that all travel requests by the contractor are subject to prior governmental approval.

PROCUREMENT
Bid Protests

B-229484.2 Feb. 10, 1988 88-1 CPD 133

GAO Procedures
GAO Decisions
Reconsideration

Decision is affirmed where reconsideration request shows that protester disagrees with prior decision but contains no statement of the facts or legal grounds showing that it is erroneous.

PROCUREMENT

Bid Protests
GAO Procedures
Protest Timeliness
10-Day Rule

Prior dismissal of protest as untimely is affirmed where protest was filed more than 10 working days after the basis of protest was known.

PROCUREMENT Bid Protests GAO Procedures B-229682.2 Feb. 10. 1988

88-1 CPD 134

Administrative Reports Comments Timeliness

Dismissal of original protest for failure to file comments on agency report is affirmed, even though protester alleged nonreceipt of report and misrepresentations by the agency, because despite notice of its responsibility, protester failed to timely notify the General Accounting Office of the nonreceipt of the report.

PROCUREMENT

B-229804 Feb. 10, 1988

Bid Protests

88-1 CPD 136

Premature Allegation GAO Review

Protest challenging preaward survey recommendation of nonresponsibility is dismissed as premature where there is no determination of responsibility by the contracting officer.

PROCUREMENT

Small Purchase Method Requests for Quotations lise

Information

Protest that low quoter, under request for quotations (RFQ) issued under small purchase procedures, is entitled to the award of a contract is denied where the RFO was issued for informational purposes.

PROCUREMENT
Bid Protests

B-229975.2 Feb. 10, 1988 88-1: CPD 137

Agency-Level Protests
Protest Timeliness
Waiver

Merits Adjudication

An agency's consideration of an untimely agency-level protest does not preclude the General Accounting Office (GAO) from dismissing an untimely protest even if the protest to GAO was filed within 10 days of the protester's notice of the denial of the agency-level protest.

PROCUREMENT

Bid Protests Definition

While a protester's communication to a contracting agency does not have to explicitly state that it is intended as a protest for it to be considered so, a mere request for clarification does not constitute a formal protest.

PROCUREMENT

B-228028.2 Feb. 11, 1988 88-1 CPD 138

Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

Prior decision dismissing protest of subcontract awarded by a government prime contractor is affirmed where the award was not by or for the government. PROCUREMENT

B-229902 Feb. 11, 1988

Socio-Economic Policies
Preferred Products/Services
Domestic Products
Federal Procurement Regulations/Laws
Revision

General Accounting Office has no objection to a proposal to revise the Federal Acquisition Regulation (FAR) by adding FAR § 31.205-1(g) to provide that reasonable costs incurred to promote American aerospace exports at domestic and international exhibits are allowable.

PROCUREMENT

B-227817.2 Feb. 12, 1988

88-1 CPD 141

Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

Request for reconsideration is denied where there is no showing that prior decision may have been based on factual or legal errors.

PROCUREMENT

B-227984.3 Feb. 12, 1988

88-1 CPD 142

Bid Protests
GAO Procedures

Preparation Costs

There is no basis for the award of protest costs and bid preparation costs where the protest is dismissed as academic, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest. PROCUREMENT
Sealed Bidding
Bids

B-227984.3 Gon't Feb. 12, 1988

Preparation Costs

There is no basis for the award of protest costs and bid preparation costs where the protest is dismissed as academic, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

PROCUREMENT

B-228395 Feb. 12, 1988

Competitive Negotiation 88-1 CPD 143
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Cost Savings

Where two proposals are rated acceptable in all technical and management areas, which are both weighted higher than cost under the solicitation's evaluation criteria, and the awardee's technical capabilities are rated riskier than the protester's capabilities, the source selection official, which has been apprised of the weaknesses/risks, can reasonably select the awardee based on its significant lower cost (\$6.4 million vis a vis \$9.4 million).

Where the Defense Contract Audit Agency performed audits on both offerors' cost/price proposals, including subcontractor costs and indirect costs, and offerors were provided with an opportunity to revise and/or explain their proposals based upon these comments, the agency has performed sufficient cost analysis to justify an award selection based on lower cost.

PROCUREMENT B-228395 Con't
Competitive Negotiation Feb. 12, 1988
Discussion
Adequacy
Criteria

Where an agency advised offerors in the competitive range of all technical, management and cost concerns and gave the offerors an opportunity to revise their proposals based on these concerns, agency has satisfied the requirement that meaningful discussion be conducted. Even if an offeror's price is much higher than the other offeror's price, the agency is not required to advise the high offeror of this fact if there is no indication that the agency found the price unreasonable for the proposed technical/management approach.

PROCUREMENT

Socio-Economic Policies Small Businesses Size Determination GAO Review

The General Accounting Office will not consider an allegation that the awardee's subcontractor is not a small business since the Small Business Administration has conclusive statutory authority to determine small business size status.

PROCUREMENT
B-228439 Feb. 12, 1988
Bid Protests
88-1 CPD 144
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest that series of amendments to request for proposals (RFP) was an attempt to "manipulate" RFP's terms to assure award to vendor of mainframe computer for which peripheral equipment was being purchased is untimely, where filed not prior to due date for receipt of proposals, as extended, but only after protester's proposal had been rejected.

PROCUREMENT
Special Procurement
Feb. 12, 1988
Methods/Categories
Computer Equipment/Services
Offers
Evaluation
Technical Acceptability

Rejection of protester's proposal as for the supply of "outdated" automatic data processing equipment was not unreasonable when rejection was consistent with the terms of the solicitation.

PROCUREMENT
Noncompetitive Negotiation
Use

B-229538, et al.
Feb. 12, 1988
88-1 CPD 145

Approval Justification

There is no basis to require a contracting agency to obtain a justification and approval for the use of other than competitive procedures where the agency has determined that its minimum needs can be met through full and open competition.

PROCUREMENT

Sealed Bidding
Invitations for Bids
Post-Bid Opening Cancellation
Resolicitation
Auction Prohibition

Cancellation of a bid item after competitors' prices have been revealed does not result in an improper auction upon resolicitation where the cancellation was in accordance with governing legal requirements.

PROCUREMENT

Sealed Bidding

Invitations for Bids

Post-Bid Opening Cancellation

Resolicitation

Non-Prejudicial Allegation

Protest alleging that if under IFB providing for split award item representing 60 percent of agency's requirement is awarded while item representing 40 percent is canceled and resolicited, awardee of 60 percent quantity will have an unfair advantage upon resolicitation due to its ability to combine material requirement purchases, and entire IFB therefore should be canceled, is denied where possible advantage to awardee of 60 percent item is outweighed by prejudice to the competitive bidding system of cancellation of the item after prices have been exposed.

PROCUREMENT

Sealed Bidding
Partial Contract Awards
Non-Prejudicial Allegation

Under invitation for bids (IFB) providing for split award, bidder which did not offer its lowest price on item representing 60 percent of agency's requirement because it interpreted IFB as providing for award of item representing 40 percent of agency's requirement to second low bidder was not prejudiced by agency's decision not to cancel 60 percent quantity. IFB instructed bidders to treat each item as a separate quantity and to price each accordingly, and the protester elected not to compete for 60 percent item.

PROCUREMENT

B-230143 Feb. 12, 1988 88-1 CPD 147

Competitive Negotiation
Hand-Carried Offers
Late Submission
Acceptance Criteria
Acceptance

A hand-carried proposal which is received at an improper location after the time set for receipt of proposals is properly considered a late proposal and will not be considered for award despite alleged improper government conduct which was not the paramount cause of the lateness.

PROCUREMENT

B-230379 Feb. 12, 1988 88-1 CPD 148

Sealed Bidding
Invitations for Bids
Amendments
Acknowledgment
Responsiveness

An amendment to the solicitation which alters the delivery date under the contract is material and a bidder's failure to acknowledge such amendment renders its bid nonresponsive.

A late acknowledgment of a material amendment may not be accepted as a late modification of an otherwise successful bid since the bid as originally submitted is nonresponsive.

PROCUREMENT Bid Protests GAO Procedures Administrative Reports Comments Timeliness

B-227094.5 Feb. 16, 1988 88-1 CPD 149

B-228429.2 Feb. 16, 1988

88-1 CPD 150

Dismissal of protest for failure to submit timely comments on the agency report is affirmed, where the protester did not fulfill its obligation to notify the General Accounting Office, within the required timeframe, that it did not receive the report.

PROCUREMENT Competitive Negotiation Requests for Proposals Competition Rights

> Contractors Exclusion

A prospective offeror bears the risk of nonreceipt of a complete solicitation package when it has notice of the defect in the package several weeks prior to the due date for the receipt of proposals, but makes no attempt to contact the agency to obtain the package until it has been eliminated from the competitive range.

PROCUREMENT

Socio-Economic Policies Disadvantaged Business Set-Asides

Administrative Discretion

The decision to set-aside a procurement for small disadvantaged business is a business judgment within the broad discretion of the contracting officer which will not be questioned unless a clear showing is made that the contracting officer abused his discretion.

PROCUREMENT B-228429.2 Con't Socio-Economic Policies Feb. 16, 1988
Small Business Set-Asides
Use

Administrative Discretion

Where the record indicates that the contracting officer did not have a reasonable expectation that proposals would be received from at least two responsible small disadvantaged businesses, which is later confirmed by the lack of acceptable proposals received from such firms, continuation of the procurement as a small business set—aside, instead of converting it to a small disadvantaged business set—aside, is not objectionable.

PROCUREMENT Sealed Bidding

B-228531 Feb. 16, 1988

Bids

88-1 CPD 152

Ambiguous Prices
Rejection
Propriety

Where the only interpretation of a base bid that reflects a logical sequence of base bid and deductive item prices makes the intended base bid price other than low, the base bid must be rejected.

PROCUREMENT

B-228545 Feb. 16, 1988

Competitive Negotiation

88-1 CPD 153

Discussion Adequacy

Criteria

Agency did not fail to conduct meaningful discussions where oral discussions with the protester led the protester into the general areas of its proposal which were viewed as relatively weak, but did not render the proposal technically unacceptable.

PROCUREMENT

Competitive Negotiation

Offers

Risks

Evaluation

Technical Acceptability

Where the solicitation requested proposals for an experimental investigation of promising technology and innovative approaches to improving the performance or reducing the cost of traveling wave tubes, agency did not act unreasonably in selecting a possibly riskier, more experimental approach, that offered the potential for a greater advancement in the state of the art, over an approach based upon a level of effort significantly less than both the solicitation estimate of the required effort and that proposed by the awardee.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Terms
Liquidated Damages
Propriety

B-229723 Feb. 16, 1988
88-1 CPD 154

A damages provision in a solicitation for telephone switchboard operations which permits the government to deduct from the contractor's payment an amount representing the value of the required service item does not impose an unreasonable measure of damages where the task, answering a call in a timely manner and helping to complete the call, is not divisible by separate elements or tasks for purposes of determining an acceptable quality level because such criteria in this instance are interrelated and reasonably meet the particular needs of the agency.

PROCUREMENT
Specifications
Minimum Needs Stand

B-225710.2; B-226897.2 Feb. 17, 1988 88-1 CPD 155

Minimum Needs Standards 88-1 CPD 155 Competitive Restrictions Performance Specifications Justification

Protest that low temperature test requirement for aircraft hydraulic test stand is unduly restrictive of competition is denied where the agency revised this test consistent with the terms of a recommendation made by the General Accounting Office in connection with a prior protest challenging the same requirement.

Protest that noise level test requirement for aircraft hydraulic test stand is unduly restrictive of competition is denied where the agency establishes that the requirement is based on Occupational Safety and Health Act standards as amended based on actual testing, and the protester does not establish that reliance on this amended standard is unreasonable.

PROCUREMENT Bid Protests B-228052.2 Feb. 17, 1988 88-1 CPD 175

GAO Procedures
Preparation Costs

PROCUREMENT

Competitive Negotiation Offers Preparation Costs

Where no other corrective action is practicable because agency proceeded with performance in face of protest based on urgency determination, successful protester is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including reasonable attorneys' fees.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-228052.2 Con't Feb. 17, 1988

General Accounting Office determines conduct of procurement was deficient when (1) selection determination for walk-through metal detectors was based on comparative numerical scoring analysis, which was inconsistent with the pass/fail operational equipment testing actually conducted; (2) discussions were not meaningful because the protester was not sufficiently alerted to the deficiencies in its proposal as evaluated; and (3) evaluation of awardee's proposal was inconsistent with the solicitation and lacked a reasonable basis in the area of units in operation.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical Acceptability
Equivalent Products

General Accounting Office finds unobjectionable comparative technical scoring in competitively negotiated brand name or equal solicitation in which nonbrand name equipment receives higher technical score than brand name, where its performance was technically superior to brand name; it is unreasonable to assume that a proposal offering the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified when the solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis and provided technical evaluation factors.

PROCUREMENT B-228052.2 Con't Competitive Negotiation Feb. 17, 1988 Offers

Evaluation Errors
Evaluation Criteria
Application

General Accounting Office determines conduct of procurement was deficient when (1) selection determination for walk-through metal detectors was based on comparative numerical scoring analysis, which was inconsistent with the pass/fail operational equipment testing actually conducted; (2) discussions were not meaningful because the protester was not sufficiently alerted to the deficiencies in its proposal as evaluated; and (3) evaluation of awardee's proposal was inconsistent with the solicitation and lacked a reasonable basis in the area of units in operation.

PROCUREMENT
Bid Protests
Contracts
Ratification

B-228461; B-228461.2 Feb. 17, 1988 88-1 CPD 156

General Accounting Office will not object to agency's position that, for purposes of applying the stay provisions of the Competition in Contracting Act of 1984, post-award ratification of a contract issued without required approval renders a pre-ratification protest a protest after award, since the protester is ineligible for award in any event.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness

10-Day Rule

B-228461; B-228461.2 Con't Feb. 17, 1988

Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy the General Accounting Office timeliness requirements.

PROCUREMENT

Competitive Negotiation
Partial Contract Awards
Propriety

Agency is not required to make parallel awards of single line item--that is, awards to two different offerors for parts of the line item--where the low offeror has offered to furnish the entire line-item quantity.

PROCUREMENT
Sealed Bidding
Bids

B-228493 Feb. 17, 1988 88-1 CPD 157

Responsiveness
Descriptive Literature
Adequacy

Agency determination that specific model of scoop loader offered by bidder met the standard commercial product requirements in the invitation for bids was not unreasonable where the bidder certified in its bid the compliance of the loader with the specifications and the information available to the agency did not show that any needed modifications to the loader were so substantial that the product would no longer be a standard commercial product.

PROCUREMENT
B-228537 Feb. 17, 1988
Contractor Qualification, 88-1 CPD 158
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

The specific financial qualifications to be considered in determining a contractor's responsibility are within the contracting officer's discretion and business judgment; reliance on a current independent financial report to determine that protester lacked financial capability is reasonable. Protester's attempt to submit evidence of the availability of a performance bond does not establish protester's financial responsibility.

PROCUREMENT

Contractor Qualification
Responsibility
Contracting Officer Findings
Negative Determination
Pre-Award Surveys

A contracting officer properly may base a determination of nonresponsibility on a preaward survey without affording an offeror the opportunity to explain or otherwise defend against the survey information, and the offeror need not be advised of the determination in advance of the award. PROCUREMENT
Competitive Negotiation
Contract Awards
Initial-Offer Awards
Propriety

B-228546; B-228546.2 Feb. 17, 1988 88-1 CPD 159

Award properly was made to the lowest-priced, technically acceptable offeror on the basis of initial offers where the solicitation advised all offerors that award might be based on initial proposals, and the competition demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation Errors
Non-Prejudicial Allegation

Allegation that the contracting agency improperly accepted an offer that did not meet all of the requirements set forth in the request for proposals is without merit, where a review of the record shows that the awardee's offer met all the material requirements and the only deviation in the awardee's proposal could properly be waived as a minor deviation.

PROCUREMENT

B-228579 Feb. 17, 1988 88-1 CPD 160

Competitive Negotiation
Discussion Reopening
Propriety

Best/Final Offers

Non-Prejudicial Allegation

Protester, initially selected to receive award, was not prejudiced when agency reopened negotiations (and requested a second round of best and final offers) upon discovery that protester's proposal did not include required letters of commitment from proposed employees; since the letters of commitment were material for evaluation purposes, agency could only permit protester to furnish them through discussions, and not through clarification contacts.

PROCUREMENT

B-229570.2 Feb. 17, 1988

Sealed Bidding

88-1 CPD 161

Bids

Responsiveness Price Data

Information Sufficiency

Where invitation for bids for printing services required delivery of typeset copy by 4 p.m., bidder's handwritten notation on bid that overtime period, to which premium charge in addition to basic prices applied, commenced at 3:30 p.m. made its bid nonresponsive because bidder's price could not be firmly established.

PROCUREMENT

B-229610; B-229816

Bid Protests

Feb. 17, 1988

GAO Procedures

88-1 CPD 162

Preparation Costs

Dismissal of protest as academic does not provide a basis upon which proposal preparation and bid protest costs may be awarded.

PROCUREMENT
Bid Protests
Moot Allegation
GAO Review

B-229610; B-229816 Con't Feb. 17, 1988

Where agency agrees to amend solicitation to remove a provision which was the sole basis of protest, and reinstates protester's previously rejected offer for evaluation purposes (because offer was originally rejected for failing to comply with solicitation provision which was removed by amendment), protest is academic.

PROCUREMENT

Competitive Negotiation Offers Preparation Costs

Dismissal of protest as academic does not provide a basis upon which proposal preparation and bid protest costs may be awarded.

PROCUREMENT
Sealed Bidding
Bids

B-230120 Feb. 17, 1988 88-1 CPD 163

Responsiveness
Shipment Schedules
Deviation

A bid offering a delivery period of 150 days after receipt of an order, where a maximum 150-day delivery period from the date of contract was required was properly rejected as nonresponsive because it effectively added 5 days for delivery through the ordinary mails of notice of the contract award to the 150-day delivery period.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-227802.2 Feb. 18, 1988 88-1 CPD 164

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

PROCUREMENT
Special Procurement
Methods/Categories

B-228590 Feb. 18, 1988 88-1 CPD 166

thods/Categories
In-House Performance
Cost Evaluation
Personnel

Cost comparison showing that cost of the low commercial offeror exceeded the government's estimated cost of inhouse performance is invalid, and protest on that basis is sustained, where the solicitation's performance work statement included the requirement for a staff position-program manager—that the government excluded from its estimate, and the probable cost for the omitted position (as shown by an agency—sponsored management study) exceeded the in-house cost advantage.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Point Ratings

B-228718.3 Feb. 18, 1988 88-1 CPD 167

General Accounting Office finds unobjectionable comparative technical scoring in a competitively negotiated brand name or equal solicitation in which non-brand name equipment receives higher technical score than brand name, where its performance was technically superior to brand name; it is unreasonable to assume that a proposal offering the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified when the solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis and provided technical evaluation factors.

General Accounting Office finds no merit to protester's contention that improper use of undisclosed evaluation criteria resulted in awardee's evaluation scoring advantage in comparatively scored brand name or equal procurement, where record indicates that awardee's higher rating was merely based on awardee's system's capabilities beyond the minimum solicitation requirements, which properly were scored above the protester's offered system meeting the minimum requirements.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation
Technical Acceptability
Tests

Protest disputing evaluation of the relative performance merits of X-ray screening systems on the basis of descriptive literature specifications is without merit, where operational testing also was conducted, and disclosed deficiencies in protester's system not challenged by protester.

PROCUREMENT Competitive Negotiation Feb. 18, 1988 Offers

B-228718.3 Con't

Evaluation Errors Evaluation Criteria Application

General Accounting Office finds no merit to protester's contention that improper use of undisclosed evaluation criteria resulted in awardee's evaluation scoring advantage in comparatively scored brand name or equal procurement, where record indicates that awardee's higher rating was merely based on awardee's system's capabilities beyond the minimum solicitation requirements, which properly were scored above the protester's offered system meeting the minimum requirements.

PROCUREMENT

B-225051 Feb. 19, 1988

Payment/Discharge Payment Procedures Contracts Assignment

Ruling by the Equal Employment Opportunity Commission (EEOC) denying assignee's claim arising under an assignment of a purchase order contract between the EEOC and the assignor is affirmed. The EEOC was not bound by the assignment because the assignment did not comply with the requirements of the Assignment of Claims Act and was never recognized or agreed to by the EEOC.

PROCUREMENT
Payment/Discharge
Shipment Costs
Additional Costs
Bills of Lading

Ambiguity

Where a carrier originally bills the government on the basis of rates published in tenders applicable to shipments tendered at a 10 cents per pound per article valuation, and the tenders are noted on the Government Bills of Lading (GBLs), the General Services Administration properly denied supplemental bills for substantially higher tariff charges. Even though the GBLs also contained a declared valuation of \$2.50 per pound per article, the \$2.50 notation was a mistake and the carrier published no tender applicable to the \$2.50 notation. In any event, the carrier had a duty to inquire as to the government's intent if it found the GBLs to be ambiguous.

PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Administrative Discretion

Agency's exclusion of protester's proposal from the competitive range for full food service contract is reasonable where the record indicates that the proposal was deficient in all but one evaluation area and would require major revisions to become technically acceptable.

PROCUREMENT B-228492 Feb. 19, 1988
Competitive Negotiation 9 88-1 CPD 169
Discussion
Misleading Information
Allegation Substantiation

A protester has not carried its burden proving that during discussions the agency misled it, where the protester's version of the advice it received is less persuasive than the agency's version of the advice, the alleged advice was inconsistent with the RFP, and the protester specifically confirmed that portion of its proposal, to which the alleged advice was directed, after receipt of best and final offers.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-Day Rule

B-229749.2 Feb. 19, 1988 88-1 CPD 170

When a protester fails to diligently pursue information that would form the basis for its protest, a protest filed 5 months after notice of rejection of its proposal is untimely.

PROCUREMENT B-229765 Feb. 19, 1988
Competitive Negotiation 88-1 CPD 171
Offers
Prices
Discount Errors

Where an offeror submits a technically acceptable proposal which contains a flaw in its discount terms, the agency may not properly reject the entire proposal for this reason where the award is based on lowest price received, and where the proposal may be low even without consideration of the flawed discount terms.

PROCUREMENT
B-230111 Feb. 19, 1988
Bid Protests
88-1 CPD 172
Non-Prejudicial Allegation
GAO Review

Protest that awardee's bid of the brand name item is nonresponsive because the item does not meet four Federal Information Processing Standards (FIPS) referenced in the solicitation has no merit where the protester concedes that three of the FIPS are obsolete and the fourth does not apply to the type of equipment being purchased.

Contention that contracting agency improperly awarded contract to bidder that did not furnish certain information with its bid has no merit where the information clearly was not required for bid evaluation and had no effect on the bidder's promise to perform as specified.

B-230148 Feb. 19, 1988

88-1 CPD 173

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-Day Rule

Protest filed more than 10 working days after the contracting agency denied the protester's A-76 appeal is untimely. Protester's continued pursuit of the appeal with the contracting agency does not alter this result.

PROCUREMENT B-228026.2 Feb. 22, 1988
Competitive Negotiation 88-1 CPD 174
Discussion
Determination Criteria

Where breakdown of prices for base and option year quantities was required to determine whether an offer was so extremely front-loaded as to be materially unbalanced, request for breakdown constituted discussions.

PROCUREMENT

Competitive Negotiation Feb. 22, 1988

Discussion Reopening

Propriety

Best/Final Offers

Corrective Actions

Despite revelation that awardee's price was disclosed to its competitors, General Accounting Office declines to modify its recommendation that another round of best and final offers be solicited since the risk of an auction is secondary to the need to preserve the integrity of the competitive procurement system through appropriate corrective action.

PROCUREMENT
Bid Protests
GAO Procedures

B-228457.2 Feb. 22, 1988 88-1 CPD 176

Protest Timeliness
Apparent Solicitation Improprieties

Protest concerning alleged improprieties apparent on the face of the solicitation is untimely when the protest is not filed until after contract award. PROCUREMENT

Competitive Negotiation

B-228457.2 Con't

88-1 CPD 176

Best/Final Offers

Evaluation Errors

Allegation Substantiation

Evidence Sufficiency

General Accounting Office denies protest that second best and final offer was mis-evaluated as to price in that contracting agency added to the price of hardware items that for data items when it allegedly knew, or should have known, that the price of data already was included within the hardware price. There was no indication in protester's revised final cost offer that the line item prices included the price for certain subline items. Contracting officer properly evaluated final offer, as revised following discussions, without regard to any pricing pattern that may have been established in the interim offers.

PROCUREMENT

Competitive Negotiation
Discussion
Adequacy
Criteria

Protest that agency failed to conduct meaningful discussions with offeror is denied where, during two rounds of written and oral discussions, agency informed protester of certain inconsistencies in its pricing proposals and protester was given an opportunity to revise its proposals in response to these concerns.

PROCUREMENT

Special Procurement

88-1 CPD 177

Methods/Categories

Computer Equipment/Services

Federal Supply Schedule

Non-Mandatory Purchases

Where, in response to agency's announcement of intent to procure front end processors and related hardware under a nonmandatory automatic data processing (ADP) schedule contract, protester proposed equipment that is not compatible with software which agency recently adopted (the procurement of which protester elected to protest before the General Services Board of Contract Appeals during pendency its protest of the hardware procurement before the General Accounting Office), agency's rejection of protester's equipment was not improper.

PROCUREMENT B-228499 Feb. 22, 1988
Contractor Qualification 88-1 CPD 178
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

Whether offeror will deliver equipment meeting specification requirements of request for proposals is not a matter of the technical acceptability of its proposal—where technical proposals were not required—but of the offeror's responsibility. General Accounting Office will not review the contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials, or an allegation that the solicitation contains definitive responsibility criteria which have been misapplied.

PROCUREMENT B-228511 Feb. 22, 1988
Competitive Negotiation 88-1 CPD 179
Offers
Evaluation
Technical Acceptability

Proposal was properly found technically unacceptable where descriptive literature submitted with proposal established that offered printer was not the functional equivalent of the required printer.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Defects
Evaluation Criteria
Pricing
B-228524 Feb. 22, 1988
88-1 CPD 180

A sealed bid solicitation for an indefinite number of units with separate pricing for a first article unit is defective where bidders were encouraged to front load their first article prices in order to ensure recovery of their nonrecurring costs.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Defects
Evaluation Criteria
Quantities

A solicitation should not permit an award to be made for a quantity of units different from that used for the evaluation of bids. PROCUREMENT

Socio-Economic Policies

Small Businesses

Competency Certification

Bad Faith

Allegation Substantiation

Protester fails to show that denial by Small Business Administration (SBA) of a certificate of competency (COC) was the result of fraud, bad faith, or failure to consider information vital to the protester's responsibility where, in connection with solicitation for maintenance of X-ray equipment, the record shows that SBA reasonably relied on contracting agency's conclusion that the protester failed to document performance of equipment calibration services as required under the prior contract, and protester was aware that prior performance was an issue in COC proceeding and was given adequate opportunity to respond.

PROCUREMENT
Sealed Bidding
Bid Guarantees
Sureties
Acceptability

B-229801 Feb. 22, 1988 88-1 CPD 182

Solicitation provision which, in accordance with a deviation from the Federal Acquisition Regulation (FAR), precludes the use of individuals as security for bid, payment and performance bonds unless they deposit adequate tangible assets with the government, is not objectionable where the deviation was authorized under the FAR and is a temporary element of a pilot contracting program aimed at improving the efficiency of the agency's procurement efforts.

PROCUREMENT

B-230051 Feb. 22, 1988

Socio-Economic Policies Federal Procurement Regulations/Laws Revision

Foreign Businesses
Antitrust Matters

While General Accounting Office has no objection to proposed change to FAR § 3.103-2 instructing contracting officers to report offers from foreign suppliers for overseas requirements suspected of being collusive or containing false certificates of independent pricing, it suggests that FAR § 3.103-1(b) pertaining to the certificate be modified to conform to the new requirement.

PROCUREMENT

B-230052 Feb. 22, 1988

Socio-Economic Policies
Computer Equipment/Services
Specifications
Federal Procurement Regulations/Laws
Amendments

General Accounting Office has no objection to a proposed amendment to the Federal Acquisition Regulation (FAR), which would institute a policy encouraging industry participation in the tailoring of specifications and standards in systems acquisitions (i.e., "acquisition streamlining").

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-225449.5; B-225449.6 Feb. 23, 1988 88-1 CPD 183

Prior decision is affirmed where requests for reconsideration fail to show legal error or information not previously considered.

PROCUREMENT
Bid Protests
GAO Procedures

B-227022.3; B-227022.4 Feb. 23, 1988 88-1 CPD 184

Agency Notification

Dismissal of protest for failure to file a copy with the contracting agency within 1 working day after filing of protest with the General Accounting Office is affirmed since an attempt to transmit a copy via telefacsimile machine, as protester contends it did, does not satisfy requirement for actual receipt of protest by contracting agency within 1 day.

PROCUREMENT

Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

To be timely, protest must be filed with General Accounting Office within 10 working days of time protester knew or should have known of basis for protest.

PROCUREMENT

B-228404 Feb. 23, 1988

Bid Protests

88-1 CPD 185

Bias Allegation

Allegation Substantiation Evidence Sufficiency

Protester alleging bias on the part of procurement officials must submit virtually irrefutable proof since contracting officials are presumed to act in good faith.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-Day Rule

B-228404 Con't Feb. 23, 1988

Protest that solicitation evaluation criteria are unfair is untimely when it is not filed with either the procuring agency or the General Accounting Office before bid opening. Alleged improprieties that are apparent on the face of a solicitation must be filed by that date.

PROCUREMENT

Competitive Negotiation Contract Awards Initial-Offer Awards Propriety

Award on the basis of initial proposals to the firm judged to be most advantageous under the evaluation factors listed in the solicitation but proposing second lowest cost offeror was proper where the only lowerpriced proposal would not have been in the competitive range.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation
Technical Acceptability

The determination of the merits of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the agency violated procurement statutes or regulations.

PROCUREMENT Sealed Bidding

B-229714 Feb. 23, 1988 88-1 CPD 186

Bids

Responsiveness Price Data Minor Deviations

Where the bidder had entered the base year total price in the schedule of rates attached to the bid, thereby offering to perform as required and at a price apparent on the face of the bid, the failure of a bidder to enter a base year total price in another specified section of the bid does not render the bid nonresponsive.

PROCUREMENT Sealed Bidding Unbalanced Bids Materiality

Responsiveness

The apparent low bid on a contract for refuse and debris removal is not mathematically and materially unbalanced where there is no reasonable doubt that acceptance will result in the lowest ultimate cost to the government.

PROCUREMENT

B-229818 Feb. 23, 1988

Bid Protests

88-1 CPD 187

GAO Procedures

Interested Parties

Protest is dismissed where the protestor is, at most, a potential subcontractor to a contract awardee, and therefore is not an "interested party" under the Competition in Contracting Act.

PROCUREMENT

Bid Protests

B-230098 Feb. 23, 1988

88-1 CPD 188

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest alleging solicitation impropriety which was apparent prior to bid opening is untimely when filed after bid opening.

PROCUREMENT
Bid Protests
Non-Prejudicial Allegation
GAO Review

B-230098 Con't
Feb. 23, 1988

Protester's allegation that first and second low bidders are foreign firms from a country which may in the future pursuant to Pub. L. No. 100-202, 101 Stat. 1329 (1987), be placed on the United States Trade Representative's list of countries that discriminate against United States firms and therefore, should be ineligible for award is without merit because the law only prohibits award to foreign firms whose country is on the list.

PROCUREMENT

Sealed Bidding
Below-Cost Bids
Contract Awards
Propriety

Submission and possible acceptance of an alleged below-cost bid is not legally objectionable.

PROCUREMENT B-229489 Feb. 24, 1988
Competitive Negotiation 88-1 CPD 189
Discussion
Determination Criteria

Procuring agency need not hold discussions with offerors whose proposals are technically unacceptable and not susceptible to being made acceptable.

PROCUREMENT B-229489 Con't
Competitive Negotiation Feb. 24, 1988
Offers
Evaluation
Technical Acceptability

Based on General Accounting Office's in camera review of the record, which includes classified materials, an agency's determination that a protester failed to reasonably demonstrate certain required capabilities was reasonable.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation Errors
Evaluation Criteria
Application

Where RFP required that offerors reasonably demonstrate each essential characteristic and supplemental requirement designated for demonstration, the agency's use of a "pass/fail" system to assess demonstrated capabilities was consistent with the RFP's stated evaluation criteria.

PROCUREMENT

Competitive Negotiation
Requests for Proposals
Cancellation
Justification
GAO Review

Cancellation of a solicitation was proper where an agency determined there were no technically acceptable offers.

PROCUREMENT
Bid Protests

B-230040 Feb. 24, 1988 88-1 CPD 190

GAO Procedures
Protest Timeliness
Good Cause Exemptions
Applicability

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
Significant Issue Exemptions
Applicability

Protest which was initially untimely filed with contracting agency is untimely when subsequently filed at General Accounting Office (GAO) and will not be considered under either the good cause or significant issue exceptions to GAO timeliness requirements where there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of protest and where protest does not present a unique issue or one of widespread interest to the procurement community.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

Request for reconsideration asserting that contracting agency improperly omitted one component from list published in Commerce Business Daily (CBD) of microfiche equipment to be acquired from schedule contract presents no basis to disturb prior decision denying protest where protester offers no evidence

B-228306.2 Feb. 25, 1988

88-1 CPD 191

refuting agency's technical determination that

component was necessary to meet its minimum needs.

PROCUREMENT

Competitive Negotiation, Feb. 25, 1988

Requests for Proposals

Advertising

Misleading Information

Protest that notices in <u>Commerce Business Daily</u> were misclassified is denied where record shows the procurements were classified according to the items' national stock numbers and in accordance with similar procurements for such items.

PROCUREMENT

Competitive Negotiation
Requests for Proposals
Competition Rights
Contractors
Exclusion

Protest that agency deprived protester, an approved source for spare part being procured, of opportunity to compete because neither <u>Commerce Business Daily</u> synopsis nor solicitation listed protester's part number for the item is denied where omission of part number was inadvertent and both synopsis and solicitation, a copy of which protester received, listed protester as approved source for the part.

Protest that agency deprived protester of opportunity to compete because agency did not provide it with a copy of the solicitation is denied where record shows that the agency's failure to solicit the protester was inadvertent, otherwise reasonable efforts were made to publicize and distribute the solicitation, and three proposals were received.

PROCUREMENT B-228591 Feb. 25, 1988
Noncompetitive Negotiation 88-1 CPD 193
Contract Awards
Sole Sources

Sole-source award to only firm qualified to produce a particular aircraft part is justified where contracting agency reasonably determines that only that part will meet its minimum needs.

PROCUREMENT

sustained.

Noncompetitive Negotiation
Use
Justification

Justification
Urgent Needs

Propriety

Although under Competition in Contracting Act a justification for the award of a contract based on unusual and compelling urgency may be made after the contract is awarded, the justification should be issued within a reasonable time after the contract is awarded.

defective based on its interest as a potential offeror under a revised solicitation if the protest is

PROCUREMENT
Bid Protests
GAO Procedures
Interested Parties

Protester who does not submit an offer under a solicitation nevertheless is an interested party to challenge the specifications in the solicitation as

B-229505 Feb. 25, 1988

88-1 CPD 194

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest alleging that specifications in solicitation are defective is timely where filed before due date for initial proposals; it need not be filed within 10 days after issuance of solicitation.

PROCUREMENT

Competitive Negotiation
Federal Procurement Regulations/Laws
Additional Work/Quantities
Competition

Statutory provision calling for a "new competition" in connection with a follow-on procurement of pistols cannot reasonably be interpreted to require the contracting agency to limit the procurement to any particular sources.

PROCUREMENT

Competitive Negotiation
First-Article Testing
Prior Contractors
Waiver
Propriety

In follow-on procurement of pistols, contracting agency should not require protester's pistol to be retested on specifications which it met in connection with initial procurement, in view of agency's decision to exempt awardee under initial contract from retesting and agency's failure to justify its decision to retest the protester.

PROCUREMENT B-229505 Con't
Specifications Feb. 25, 1988
Minimum Needs Standards
Determination
Administrative Discretion

In procurement for pistols, the fact that the targeting and accuracy specifications applied in the initial testing stage of the procurement were changed in the contract ultimately awarded does not demonstrate that the testing specifications exceed the government's minimum needs where the contracting agency did not intend to relax the initial specifications. Even assuming that the contract specifications are less stringent, the defect is that the agency improperly modified the contract specifications, not that the initial testing specifications exceed the government's minimum needs.

PROCUREMENT
Sealed Bidding
Bids

B-229744 Feb. 25, 1988 88-1 CPD 195

Judgmental Errors
Error Correction
Propriety

Bid may not be corrected after bid opening where the bid submitted was the bid intended, even though it was later discovered that the bid was based upon an erroneous interpretation of the specifications.

PROCUREMENT
Sealed Bidding
Bid Guarantees
Responsiveness
Signatures
Sureties

B-230169 Feb. 25, 1988 88-1 CPD 196

The enforceability of a bid bond that does not include the signature of the surety's attorney-in-fact is sufficiently questionable to warrant rejection of the bid as nonresponsive. PROCUREMENT
Sealed Bidding
Bids

B-230169 Con't Feb. 25, 1988

Responsiveness
Determination Criteria

Prior dealing between the parties does not affect the responsiveness of a bid since responsiveness must be determined at the time of bid opening and generally from the face of the bid and the materials submitted with it.

PROCUREMENT

Sealed Bidding Bids

Responsiveness

Determination Time Periods

Delays of contracting agency in advising of the non-responsiveness of the bid does not affect the validity of the rejection of the bid.

PROCUREMENT

B-230173 Feb. 25, 1988

Socio-Economic Policies 88-1 CPD 197 Small Business Set-Asides

Use

Justification

Since the basis for setting a procurement aside for small businesses is the reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices, a protest based on the fact that the only large business capable of manufacturing the item will be excluded from participation does not provide a legal basis for disturbing the procurement.

PROCUREMENT

Payment/Discharge
Payment Deductions
Wage Underpayment
Reserve Funds
Sureties

A surety on a Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-5 (1982)) contract assumed and completed the contract. The surety seeks payment of the excess of funds withheld to cover underpayments to employees. A surety who completes performance of a contract or pays funds needed for completion of a contract, becomes entitled to remaining contract proceeds in the hands of the government as the government's subrogee. See Priority of Payment From Remaining Contract Proceeds, 64 Comp. Gen. 763, 765 (1985). By this memorandum, we determine that the surety is entitled to the excess of withheld funds.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-227953.2 Feb. 26, 1988 88-1 CPD 198

Request for reconsideration of decision dismissing as untimely a protest challenging request for second best and final offers (BAFOs) because it was not filed by the closing date for receipt of second BAFOs, is denied where protester fails to present evidence that original decision was based on error of fact or law.

PROCUREMENT B-228540 Feb. 26, 1988
Competitive Negotiation 88-1 CPD 199
Offers
Competitive Ranges
Exclusion

Administrative Discretion

Where demonstrated understanding is a primary evaluation criteria in a request for proposals for a project for the development of an economic analysis methodology, a proposal which does not address certain fundamental factors in conducting a proper economic analysis, can be excluded from the competitive range for failing to demonstrate in its proposal an understanding of the project.

B-229663 Feb. 26, 1988

88-1 CPD 201

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Evaluation Criteria

valuation Criteria Sample Evaluation Testing

Allegation that quality assurance testing provision in solicitation is improper because it has been used by the agency to eliminate unwanted contractors is without merit where agency reports that testing is used only where there have been problems with specific medical instruments, and there is no evidence in the record that the testing clause has been applied arbitrarily or unfairly under prior contracts.

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PROCUREMENT
Competitive Negotiation
Contract Awards
Initial-Offer Awards
Propriety

B-229917; B-229917.2 Feb. 26, 1988 88-1 CPD 202

Contracting agency's decision in response to protest challenging award on initial proposal basis to open discussions and request best and final offers from all offerors in competitive range and, if warranted, terminate awardee's contract, is appropriate even though one offeror received detailed debriefing after initial award was made, since agency properly concluded that award based on initial proposals was improper because it was not clear that awardee's proposal would result in lowest overall cost to government.

PROCUREMENT

Competitive Negotiation
Discussion Reopening
Propriety
Best/Final Offers
Competitive Ranges

Contracting agency's decision in response to protest challenging award on initial proposal basis to open discussions and request best and final offers from all offerors in competitive range and, if warranted, terminate awardee's contract, is appropriate even though one offeror received detailed debriefing after initial award was made, since agency properly concluded that award based on initial proposals was improper because it was not clear that awardee's proposal would result in lowest overall cost to government.

PROCUREMENT
B-230086 Feb. 26, 1988
Bid Protests
GAO Procedures
Interested Parties

Protest against award by firm that did not submit a bid is dismissed as protester is not an interested party entitled to protest under the General Accounting Office's Bid Protest Regulations.

PROCUREMENT

B-224782.7 Feb. 29, 1988

Competitive Negotiation
Federal Procurement Regulations/Laws
Revision
Corporate Entities
Merger

PROCUREMENT

Sealed Bidding
Federal Procurement Regulations/Laws
Revision
Corporate Entities
Merger

In response to request for suggested changes to Federal Acquisition Regulation Parts 30 and 31 concerning the allowability of costs incident to mergers and other business combinations, General Accounting Office states its belief that as a general rule the book value of an asset subsequent to a business combination should be limited to the book value of the asset when first devoted to government contracting, less accumulated depreciation; revaluations of assets should be permitted on a case-by-case basis only where it can be shown that a combination will result in corresponding benefits to the government.

PROCUREMENT
Bid Protests
Bids
Preparation Costs

B-228449.2 Feb. 29, 1988 88-1 CPD 205

PROCUREMENT

Bid Protests
GAO Decisions
Recommendations
Contract Awards
Withdrawal

Recommendation in prior decision sustaining protest that award be made to the protester is changed to grant the protester costs of filing and pursuing the protest and bid preparation costs where the record shows that contract has been substantially performed.

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Recommendation in prior decision sustaining protest that award be made to the protester is changed to grant the protester costs of filing and pursuing the protest and bid preparation costs where the record shows that contract has been substantially performed.

PROCUREMENT
B-228562; B-228562.2
Competitive Negotiation Feb. 29, 1988
Contract Awards
88-1 CPD 206
Administrative Discretion
Cost/Technical Tradeoffs
Cost Savings

Contracting agency may properly make award to a lower-priced, lower-rated offerer, although the solicitation provided that cost would be secondary to technical excellence, where solicitation provided for award on the basis of a best-buy analysis and the contracting officer reasonably determined that the technical advantage from the highest-rated proposal was less significant than the possible cost savings from a lower-rated proposal, and the cost-technical tradeoff is otherwise consistent with the evaluation scheme in the solicitation.

PROCUREMENT

Competitive Negotiation
Offers
Cost Realism
Evaluation
Administrative Discretion

Cost realism analysis is reasonable, and thus unobjectionable, where agency reviewed separate cost elements of proposal in light of historical costs and, with input from Defense Contract Audit Agency, determined that no upward adjustments of awardee's cost elements were necessary.

B-228576.2 Feb. 29, 1988

88-1 CPD 207

PROCUREMENT

Bid Protests

GAO Procedures

GAO Decisions

Reconsideration

Request for reconsideration of prior decision is affirmed where the protester has not shown any error of fact or law which would warrant reversal of the decision.

PROCUREMENT B-228593 Feb. 29, 1988
Specifications 88-1 CPD 208
Minimum Needs Standards
Administrative Regulations
Statutes
Implementation

Interim rules which implement statutory provision that allows for the elimination of unnecessary duplication of off-duty post-secondary education program course offerings are consistent with statute, even though regulations provide for a theater-wide rather that an installation-by-installation determination of what constitutes "unnecessary duplication" and establish economic and logistical criteria for making The statute does not prescribe the determination. methodology for making "unnecessary duplication" determinations and provides that duplicative course offerings need only be permitted "to the maximum extent feasible." As such, the statute does not prohibit determinations based upon economic and logistical considerations.

PROCUREMENT

Specifications
Minimum Needs Standards
Competitive Restrictions
Justification
Sufficiency

Solicitation which restricts the award of contracts for discrete course categories to single educational provider for each category is legally unobjectionable where issued pursuant to a regulation consistent with statutory allowance for the elimination of "unnecessary duplication."

B-229491 Feb. 29, 1988

PROCUREMENT
Competitive Negotiation
Contract Awards
Propriety

PROCUREMENT
Competitive Negotiation
Offers
Designs
Evaluation
Technical Acceptability

Award of a contract was improper where descriptive literature submitted with awardee's proposal indicates that the specific model of motor-generator offered by awardee failed to conform to material solicitation requirement.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS
Human Resources
Health Care
Personnel
Student Loans
Debt Waiver

B-226466 Feb. 25, 1988

The Health Professions Loan Repayment Program authorized financial assistance for physicians in repaying debts incurred in medical school as an inducement for them to enter into agreements committing themselves to serve in physician shortage areas for extended periods after the agreements were executed. The program was not designed to provide payments as a gratuity for past services. Hence, no payment may be allowed to a physician on an application submitted after the program was phased out for benefits predicated on his past service in a shortage area.

MISCELLANEOUS TOPICS B-217114 Feb. 29, 1988
Federal Administrative/Legislative Matters
Information Disclosure
Statutory Regulations
Applicability

Although GAO is not subject to the Freedom of Information Act, 5 U.S.C. § 552, GAO's disclosure policy follows the spirit of the Act, and thus we will provide claimant copies of the materials in his case file that our regulations allow to be disclosed. 4 C.F.R. pt. 81.

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