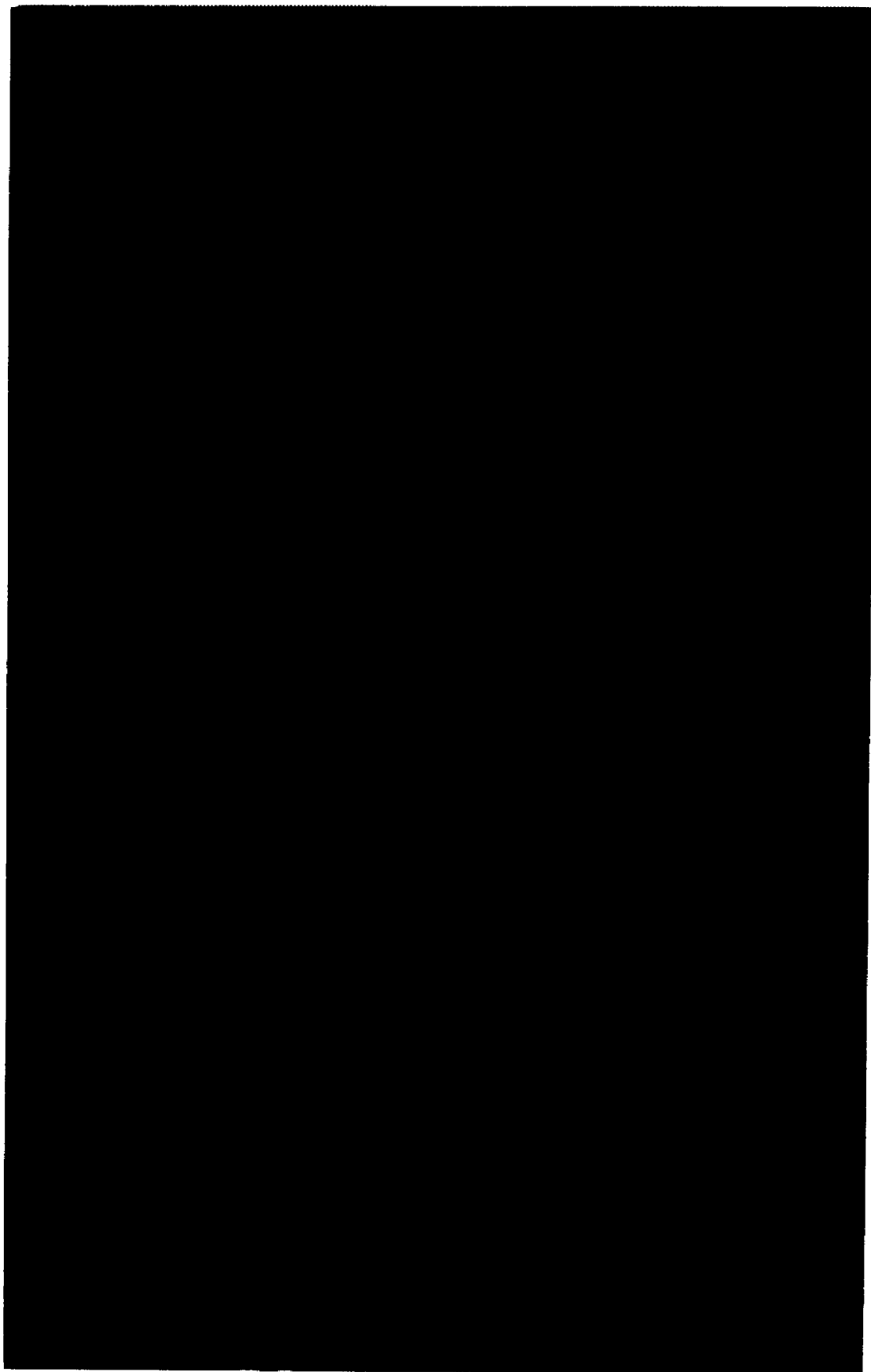


August 1988

Digests of Unpublished  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



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# United States General Accounting Office

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**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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## **PREFACE**

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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**

### **APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-229069.2 Aug. 1, 1988**

**Purpose availability**

**Specific purpose restrictions**

**Lobbying**

A National Security Council memorandum indicating that a public interest grass roots lobbying organization is scheduled to lobby Congress to renew funding for the Nicaraguan Contra Forces, does not constitute a violation of 18 U.S.C. § 1913, in as much as there is no evidence to indicate that NSC expended federal funds to assist the public interest group in its lobbying efforts.

Information contained in an affidavit by Mr. Edgar Chamorro, former Nicaraguan Contra leader, submitted to the International Court of Justice, alleging that CIA Representatives instructed the Contra leaders to lobby Congress is insufficient to support a conclusion that the antilobbying statute 18 U.S.C. § 1913 has been violated by CIA officials, when these allegations are contradicted by other Contra leaders and when CIA officials refuse to discuss the issue with GAO investigators.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Budget Process**

**B-230954 Aug. 1, 1988**

**Funds transfer**

**Loans**

**Authority**

The Public Law 84-130 Program, 43 U.S.C. § 421b, authorizes the Secretary of the Interior to loan funds to irrigation or water districts for local water distribution and drainage systems. A loan to the Yolo-Zamora Water District (District), California, for wells is not barred just because the wells may also serve a secondary water supply function. A hydroelectric power plant that is to supply power for the local water distribution system, is not part of the system, and, therefore, the District is ineligible for a Public Law 84-130 loan for the power plant's construction. However, on the facts before us, the District is ineligible for a Public Law 84-130 loan for either the purchase of wells or the construction of a hydroelectric power plant.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims by Government**                      **B-229068.4 Aug. 3, 1988**  
**Debt collection**  
**Compromise authority**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims by Government**  
**Past due accounts**  
**Debt collection**  
**Penalties**  
**Interest**

Under section 402 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1232, coal mine operators pay a reclamation fee for coal produced by surface or underground mining. The fee is deposited in the Abandoned Mine Reclamation Fund, a trust fund established by section 401 of SMCRA, 30 U.S.C. § 1231. The Department of the Interior (DOI) may with certain exceptions, compromise the government's claim for reclamation fees of \$20,000 or less. Claims exceeding \$20,000, not counting interest, may be compromised only by the Department of Justice unless the claim arose because of a GAO audit exception. The DOI has discretion to waive all or part of interest, penalties, and processing and handling charges in accord with the Claims Collection Standards jointly issued by the Attorney General and the Comptroller General (4 C.F.R. Parts 101-105). With certain exceptions, DOI may accept non-monetary settlements of the government's claims.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Obligation**                                      **B-231673 Aug. 8, 1988**  
**Payments**  
**Advances**  
**Subscriptions**  
**Authority**

Advance payment authority for subscriptions to publications contained in 31 U.S.C. § 3324(d)(2) extends to verification reports of physicians' board certifications.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-232253 Aug. 12, 1988**

**Relief**

**Physical losses**

**Theft**

Agent of Bureau of Alcohol, Tobacco and Firearms gave \$900 to confidential informant for purpose of renting an apartment to be used in undercover operation. Informant absconded with the money. There was no negligence on part of agent. Under 61 Comp. Gen. 313 (1982), loss of this type may be treated as program expense, and there is no need to seek relief from GAO under 31 U.S.C. § 3527.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims Against Government B-210857.4 Aug. 24, 1988**

**Claim settlement**

**Amount determination**

**Tax liability**

Normally this Office will not rule on tax matters since a decision as to what is and what is not taxable lies with the Internal Revenue Service. However, we will make an independent determination if the matter is within our jurisdiction, i.e., Davis-Bacon Act payments. Further, Claims Group is advised that FICA tax deductions should not have been made to a Davis-Bacon Act payment made to the estate of a former employee after the calendar year in which the employee died since such payments are specifically precluded from the definition of wages for FICA tax deduction purposes by 26 U.S.C. § 3121(a)(14).



**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Budget Process**

**B-228777 Aug. 26, 1988**

**Appropriated funds**

**Definition**

The Commission on the Bicentennial of the United States Constitution (Commission) may spend commercial licensing revenues for authorized Commission purposes. However, such revenues are considered to be appropriated funds and are subject to the various restrictions and limitations applicable to appropriated funds.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Budget Process**

**Funds**

**Deposit**

**Miscellaneous revenues**

The Commission on the Bicentennial of the United States Constitution (Commission) has statutory authority to retain and spend commercial licensing revenues but the legislative language does not include revenues from sales of publications prepared by the Commission with appropriated funds. The Commission must deposit sales revenues in the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(a).

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-232351 Aug. 31, 1988**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Overpayments**

A supervising disbursing officer is relieved of liability arising from a subordinate issuing a \$500 travelers checks instead of a \$100 checks, upon showing that he maintained an adequate system of procedures and controls for the avoidance of errors and took steps to ensure that the system was functioning effectively.



## **CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**

**B-231785 Aug. 3, 1988**

**Relocation**

**Houseboats**

**Shipment costs**

**Reimbursement**

**Distance determination**

An employee wishes to have his boat transported from Florida, his old duty station, to the Virgin Islands, his new duty station, at government expense. Because 5 U.S.C. § 5724(b) (1982) and the Federal Travel Regulations do not authorize transportation of mobile dwellings outside the continental United States or Alaska, the employee may not be reimbursed for transporting the boat to the Virgin Islands.

**CIVILIAN PERSONNEL**

**B-228663 Aug. 4, 1988**

**Compensation**

**Retirement compensation**

**Computation**

**Service credits**

In 1960 Congress amended the retirement laws applicable to Public Health Service (PHS) officers to permit them to receive credit for "all active service in any of the uniformed services" for retirement purposes. The amendment was intended to provide PHS officers with a retirement system parallel to the existing retirement systems of military and naval officers. Since military and naval officers were then prohibited from receiving retirement credit for academy attendance, the same prohibition was, by implication, necessarily intended to remain in effect for PHS officers. Hence, academy attendance may not be counted as "active service" under the PHS retirement laws, and a PHS officer may not be allowed payment on his claim for an increase in his retired pay based on his earlier attendance at the Coast Guard and Naval Academies.

**CIVILIAN PERSONNEL****B-229427 Aug. 4, 1988****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Permanent duty stations****CIVILIAN PERSONNEL****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Permanent residences**

Under 5 U.S.C. § 5724c and its implementing regulations, in order to participate in the Guaranteed Homesale Program, an employee's dwelling must be his actual residence at the time he was first definitely informed by appropriate authority of his transfer to a new duty station. An employee leased his dwelling and lived in rental housing as a result of overseas transfer orders that were later revoked. He seeks to participate in the Program incident to a subsequent transfer about 15 months later to a location within the United States. Since he had leased his house as a result of the government's action he was unable to occupy it at the time of the subsequent transfer. Thus, he comes within the exception to the rule requiring occupancy at the time of transfer and is eligible to participate in the Program.

**CIVILIAN PERSONNEL****B-229026 Aug. 8, 1988****Relocation****Residence transaction expenses****Loan origination fees****Reimbursement**

A transferred employee claims reimbursement for a loan origination fee he paid on behalf of the buyer of his old duty station residence. Federal Travel Regulations authorize reimbursement in such cases only where the seller customarily pays the fee. Since it was the local custom here for the buyer to pay the loan origination fee, the agency's disallowance of the claim is sustained.

**CIVILIAN PERSONNEL****B-229165 Aug. 8, 1988****Compensation****Rates****Determination****Highest previous rate rule**

A former United States Small Business Administration employee seeks a retroactive salary adjustment to her highest previous rate of pay. Whether to authorize a salary adjustment based on highest previous rate is discretionary with the agency. The employee is not entitled to the salary adjustment, in the absence of a showing that the agency abused its discretion in not authorizing the salary adjustment.

**CIVILIAN PERSONNEL****B-229403 Aug. 8, 1988****Relocation****Temporary quarters****Actual subsistence expenses****Reimbursement****Eligibility**

A transferred employee claimed temporary quarters subsistence expenses for her daughter who stayed in the employee's former residence at the old duty station in order to complete a school grading period. The agency disallowed the claim, noting that reimbursement of such expenses is allowable only where residence at the old duty station has been vacated. We concur since absent unforeseeable circumstances, an employee may not be paid temporary quarters subsistence expenses for a family member who remains in the old duty station residence.

**CIVILIAN PERSONNEL****B-231475 Aug. 12, 1988****Compensation****Overtime****Eligibility****Commuting time**

An employee claims overtime compensation for excess travel time incurred in driving from his home to his temporary worksite over the course of a year. Entitlement to overtime compensation by the employee while in a travel status under 5 U.S.C. § 5544(a)(iv) (1982) requires that travel result from an event which is totally beyond the control of the government arising from a compelling reason of an emergency nature. Temporary relocation of employee's worksite for 1 year under the direction of the government resulting in additional travel time during that period does not meet statutory requirements of 5 U.S.C. § 5544(a)(iv). Therefore, employee is not entitled to overtime compensation for excess travel time under that statute.

**CIVILIAN PERSONNEL****B-229191 Aug. 17, 1988****Relocation****Household goods****Shipment****Restrictions****Privately-owned vehicles**

An employee who transferred from Michigan to Hawaii did not ship his privately owned vehicle (POV) to Hawaii. The employee now seeks reimbursement for the expenses of shipping a vehicle from Hawaii to California upon transfer back to the continental United States. The employee may not be reimbursed these shipping expenses since para. 2-10.3b of the Federal Travel Regulations authorizes such reimbursement only if this POV was initially shipped to the employee's overseas post of duty at government expense.

**CIVILIAN PERSONNEL****B-228661 Aug. 18, 1988****Compensation****Overpayments****Error detection****Debt collection****Waiver**

An employee, whose position was reclassified from prevailing rate to the General Schedule (GS), was entitled to pay retention and should have received 50 percent of the annual comparability increases paid to GS employees. The agency erroneously paid the claimant the full prevailing rate comparability increases for 2 years, resulting in an overpayment of salary. Under 5 U.S.C. § 5584 (1982), repayment of that portion of the overpayment which occurred on or before June 27, 1984, when he made a written request for waiver of the overpayment, is waived since there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. However, waiver is denied for the overpayment of pay occurring after June 27, 1984, when the employee became aware that he was being overpaid.

**CIVILIAN PERSONNEL****B-226519 Aug. 22, 1988****Relocation****Actual expenses****Eligibility****Retired personnel****Reinstatement**

An employee stationed in Oregon decided to retire in lieu of accepting a directed reassignment to another duty station. After retirement, she moved to the state of Washington. The employee was later reinstated retroactively since the agency had erroneously determined she was eligible for retirement. She was offered employment near her new residence. Her claim for relocation expenses after her retirement is denied since these expenses are not allowances the employee would have received but for the erroneous retirement.

An employee who moved after retirement was reinstated when it was determined that the agency erroneously computed her eligibility for retirement. She was offered employment near her new residence and was later reassigned to her former duty station. Her claim for relocation expenses back to her former duty station may be allowed since the reassignment constituted a permanent change of duty station.

**CIVILIAN PERSONNEL****B-226876 Aug. 22, 1988****Relocation****Residence transaction expenses****Loan origination fees****Amount determination**

A transferred employee who purchased a residence at his new duty station under a conventional loan claims reimbursement for a 3.25 percent loan origination fee. Absent evidence that the customary charge in the area was greater, our decisions have limited reimbursement of 1 percent. Since the employee has not submitted sufficient evidence to satisfy this requirement, his claim must be limited to 1 percent.



**CIVILIAN PERSONNEL****B-229352 Aug. 22, 1988****Relocation****Residence transaction expenses****Loan origination fees****Amount determination**

A transferred employee claimed a loan origination fee of 3 percent, but the agency limited reimbursement to 1 percent. Absent a definitive showing that the customary charge in the area was greater, our decisions have limited reimbursement to 1 percent. Since the employee has not submitted sufficient evidence to satisfy this requirement, he may not be reimbursed for the additional 2 percent charged.

**CIVILIAN PERSONNEL****B-229279 Aug. 25, 1988****Travel****Temporary duty****Per diem****Eligibility**

An employee who was assigned as a crew member aboard National Oceanic and Atmospheric Administration (NOAA) aircraft to perform weather reconnaissance flights out of Miami, Florida, claims per diem for the food he brings and consumes during the flights. The claim is denied since per diem may not be paid to the employee at his permanent duty station. Since the flights take off and land at Miami, both the aircraft and its airbase are the employee's permanent duty station.

**CIVILIAN PERSONNEL****B-227567 Aug. 26, 1988****Relocation****Residence transaction expenses****Finance charges**

A transferred employee may not be reimbursed for the buyer's closing costs he paid in the sale of his residence in the absence of evidence that such costs were customarily paid by the seller in the locality at that time.



## MILITARY PERSONNEL

MILITARY PERSONNEL

B-229438 Aug. 10, 1988

Pay

Survivor benefits

Cost reimbursement

The Survivor Benefit Plan (SBP) is an income maintenance program for the surviving dependents of deceased service members. Military retirees who elect to participate in the SBP program are assessed costs to defray the expenses of annuity payments. The SBP law prohibits any refund of properly assessed costs, except in limited circumstances when an SBP participant is survived by a widow or widower whose SBP annuity is reduced or eliminated because of a concurrent entitlement to Dependency and Indemnity Compensation from the Veterans Administration. Hence, an Air Force sergeant who elected to provide SBP annuity coverage for his wife may not be allowed, based on the termination of their marriage by divorce, a refund of the costs he paid for that coverage over an 11-year period.

**MILITARY PERSONNEL****B-229438 Con't****Pay****Aug. 10, 1988****Survivor benefits****Cost reimbursement**

Survivor Benefit Plan (SBP) elections are irrevocable, SBP participants who are determined by the Veterans Administration to have a total service-connected disability for 10 consecutive years may, however, suspend previously elected SBP annuity coverage for a spouse and stop paying the costs of coverage. The reason for this is that the laws governing veterans benefits give the surviving spouse of those SBP participants a vested entitlement to Dependency and Indemnity Compensation, so that the spouse's SBP entitlement is then either substantially reduced or totally eliminated. Until the 10-year period has elapsed, the spouse's ultimate entitlement to Dependency and Indemnity Compensation remains uncertain, so that SBP coverage during that 10-year period provides genuine and substantial income maintenance protection. Thus, an Air Force sergeant may not be allowed a refund of SBP costs he paid during such 10-year period on the basis of a theory that his payments "purchase[d] absolutely nothing."

**MILITARY PERSONNEL****B-229296 Aug. 17, 1988**

Pay  
Overpayments  
Error detection  
Debt collection  
Waiver

**MILITARY PERSONNEL**

Pay  
Retirement pay  
Overpayments  
Debt collection  
Waiver

Service member who received an excessively large final separation payment upon retirement which included a duplicate semimonthly pay and allowances payment should have known that the payment was erroneous, since it properly should have included only lump-sum leave, the approximate amount of which he knew. Since he accepted the payment without questioning it, he is not without fault in the matter so as to permit waiver of his debt.

**MILITARY PERSONNEL****B-232052 Aug. 19, 1988**

Pay  
Survivor benefits  
Annuities  
Eligibility  
Former spouses

The former spouse of a participant in the Survivor Benefit Plan is not entitled to an annuity simply as the result of having been married to the participant at the time he became eligible for and elected to participate in the Plan. Where they are subsequently divorced and there is not a specific provision in the divorce settlement, the former spouse is entitled to an annuity only if the participant elects to designate that former spouse as the Plan beneficiary.

**MILITARY PERSONNEL**

**B-229464 Aug. 22, 1988**

**Relocation**

**Relocation travel**

**Dependents**

**Eligibility**

An Army officer claimed his stepchildren as dependents for transportation allowances; however, the stepchildren received monthly income independent of the officer and the officer's contribution toward the stepchildren's support, maintenance and education was less than 22 percent of the total costs. Under the law stepchildren are required to be "in fact" dependent on the member to qualify for the allowances, and Army regulations require the member to show that he contributed not less than 30 percent of the costs before the stepchildren may be viewed, in fact, as dependents. Therefore, the Army's disallowance of the member's claim for the stepchildren's travel allowance is sustained.

## PROCUREMENT

PROCUREMENT	B-229765.2 Aug. 1, 1988
Bid Protests	88-2 CPD 102
GAO procedures	
Preparation costs	

Where contracting agency issues amendments in response to recommendation contained in a previous decision by the General Accounting Office (GAO), and the amendments have the effect of unreasonably excluding the protester from the competition, GAO finds the firm entitled to proposal preparation costs and the costs of filing and pursuing its protests, including reasonable attorneys' fees, as no other corrective action is appropriate.

PROCUREMENT	B-230598.2 Aug. 1, 1988
Bid Protests	88-2 CPD 103
GAO procedures	
GAO decisions	
Reconsideration	

Request for reconsideration is denied where the protester fails to show any error of fact or law that would warrant reversal or modification of prior decision, but essentially reiterates arguments initially raised and merely expresses disagreement with the original decision.

PROCUREMENT	B-230724.4 Aug. 1, 1988
Sealed Bidding	88-2 CPD 104
Bids	
Responsiveness	
Determination criteria	

A bid to provide a helicopter for fighting fires and other services is responsive where the bid does not qualify or limit the offeror's obligation to supply a helicopter that is below the maximum weight limitation certified by the Federal Aviation Administration.

PROCUREMENT	B-231844 Aug. 1, 1988
Bid Protests	88-2 CPD 105
GAO procedures	
Protest timeliness	
Deadlines	
Constructive notification	

PROCUREMENT  
Bid Protests  
GAO procedures  
Protest timeliness  
10-day rule

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

PROCUREMENT	B-228916.4; B-228916.5
Bid Protests	Aug. 2, 1988
GAO procedures	88-2 CPD 106
Preparation costs	

PROCUREMENT  
Competitive Negotiation  
Offers  
Preparation costs

Protester may recover the costs it incurred in filing and pursuing its initial protest and its proposal preparation costs where agency's improper evaluation of protester's best and final offer tainted the procurement, as a result of which the protester was unreasonably denied the opportunity to receive the award, and no other remedy is now available since the procurement has been canceled.



PROCUREMENT B-230309.2 Aug. 2, 1988  
Competitive Negotiation 88-2 CPD 107  
Offers  
Evaluation  
Technical acceptability

Protest that agency acted unreasonably in determining the proposed awardee to be technically acceptable with regard to an evaluation factor involving minimum experience requirements is denied where resumes submitted by the firm provided a sufficient basis for the technical evaluators to reasonably conclude that the requirements had been met.

PROCUREMENT  
Contractor Qualification  
Responsibility  
Contracting officer findings  
Affirmative determination  
GAO review

Protester's challenge to the agency's determination of responsibility is dismissed because there is no allegation of fraud or bad faith and the solicitation does not contain definitive responsibility criteria.

PROCUREMENT B-230601.2 Aug. 2, 1988  
Bid Protests 88-2 CPD 108  
GAO procedures  
GAO decisions  
Reconsideration

Request for reconsideration is denied where the protester merely disagrees with prior decision and reiterates arguments raised initially.

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

**B-231093 Aug. 2, 1988**

Protest that contracting agency did not conduct a proper cost realism analysis of the awardee's proposal is denied where the agency relied upon information from the Defense Contract Audit Agency and there is no evidence that the agency's cost realism analysis was unreasonable.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-231388.2 Aug. 2, 1988**

Request for reconsideration is denied where protester fails to demonstrate factual or legal error or provide any new information warranting reconsideration of initial decision.

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

**B-231669.3 Aug. 2, 1988**  
**88-2 CPD 109**

Although prior decision dismissing protest as untimely was based on an error of fact used to establish the timeliness period, the protest is still found to be untimely since, even based on the corrected facts, it was filed in the General Accounting Office outside the 10-day deadline.

PROCUREMENT  
Small Purchase Method  
Quotations  
Modification  
Acceptability

B-231767 Aug. 2, 1988  
88-2 CPD 110

Agency's request for verification of a firm's quotation and acceptance of revised quotation is not legally objectionable under the informal procedures permitted for small purchases. The language requesting quotations by a certain date cannot be construed as establishing firm closing date for the receipt of quotations absent a late quotation provision expressly providing that quotations must be received by that date to be considered.

PROCUREMENT  
Bid Protests  
GAO procedures  
Protest timeliness  
10-day rule

B-231853 Aug. 2, 1988  
88-2 CPD 111

Protest that agency improperly failed to send protester a solicitation is untimely when filed more than 10 working days after bid opening date as published in the Commerce Business Daily.

PROCUREMENT  
Bid Protests  
Allegation investigation  
GAO review

B-232086; B-232087  
Aug. 2, 1988  
88-2 CPD 112

The General Accounting Office does not conduct investigations to establish the validity of a protester's allegations.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**B-232086; B-232087 Con't**

**Aug. 2, 1988**

A protest filed with a contracting agency more than 6 weeks after the basis for protest is known is untimely and will not be considered on the merits.

**PROCUREMENT**

**Bid Protests**

**Non-prejudicial allegation**

**GAO review**

Protest of possible conflict of interest is without merit where protester does not allege any bias or preferential treatment towards awardee.

**PROCUREMENT**

**Competitive Negotiation**

**Contract awards**

**Propriety**

Award made on the basis of the total price quoted is not objectionable where request for quotations did not request firms to show breakdown of prices.

**PROCUREMENT**

**Contract Management**

**Contract administration**

**Contract terms**

**Compliance**

**GAO review**

Whether contractor performs in accordance with the contract terms is a matter of contract administration which General Accounting Office does not review.

**PROCUREMENT**

**B-230980 Aug. 4, 1988**

**Competitive Negotiation**

**88-2 CPD 113**

**Competitive advantage**

**Conflicts of interest**

**Post-employment restrictions**

**GAO review**

The General Accounting Office will not question award to offeror on the basis of an alleged conflict of interest where record does not demonstrate: (1) that the contracting agency was unreasonable in finding the offeror's employment of a former government employee was consistent with post-employment restrictions, or (2) that any action of the former government employee resulted in prejudice for or on behalf of the offeror.

**PROCUREMENT**

**Competitive Negotiation**

**Contract awards**

**Administrative discretion**

**Cost/technical tradeoffs**

**Technical superiority**

Award to technically superior higher priced offeror is legally unobjectionable where record shows that source selection decision was rationally based and made in accordance with the stated evaluation criteria.

**PROCUREMENT**

**Competitive Negotiation**

**Discussion**

**Adequacy**

**Criteria**

Protest that agency failed to conduct meaningful discussions is denied where protester was reasonably advised through discussions of the general areas of deficiencies found in its proposal and was given an opportunity to cure those deficiencies.

**PROCUREMENT** **B-231453 Aug. 4, 1988**  
**Competitive Negotiation 88-2 CPD 114**  
**Requests for proposals**  
**Terms**  
**Service contracts**  
**Applicability**

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**Service contracts**  
**Applicability**

Although solicitation for rental of washers and dryers contains requirement for maintenance and installation, the Service Contract Act does not apply because the proposed contract is not principally for services.

**PROCUREMENT** **B-231552 Aug. 4, 1988**  
**Bid Protests 88-2 CPD 116**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest against conversion from sealed bid to negotiated procedures is untimely when filed after the closing date for receipt of proposals.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Protest timeliness**  
**Significant issue exemptions**  
**Applicability**

General Accounting Office will not consider the merits of untimely protest issues under the significant issue exception to our timeliness requirements where the issues are not unique and of widespread interest to the procurement community.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**B-231552 Con't**

**Aug. 4, 1988**

Protest that bid was improperly rejected is dismissed as untimely when filed more than 10 working days after protester was notified of the rejection and provided with sufficient information to know its basis for protest.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Contracting officer findings**

**Affirmative determination**

**Prior contract performance**

Agency reasonably determined that offeror met a definitive responsibility criterion for experience in constructing a specific type of facility where record shows that the offeror submitted evidence that its proposed subcontractor satisfies the experience requirement, and the solicitation does not prohibit consideration of subcontractor's experience in fulfilling this requirement.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Interested parties**

**B-231995 Aug. 4, 1988**

Where firm would not be in line for award were its protest sustained, protest is dismissed; protester does not have the required direct economic interest in the contract award to be considered an interested party under Bid Protest Regulations.

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

**B-231596.2 Aug. 5, 1988**  
**88-2 CPD 117**

Protest filed more than 10 working days after the basis for protest was known or should have been known is untimely and will not be considered on the merits.

**PROCUREMENT**  
Sealed Bidding  
Bids  
Evaluation  
Price reasonableness  
Administrative discretion

**B-230659.3 Aug. 8, 1988**

**PROCUREMENT**  
Sealed Bidding  
Contract awards  
Propriety  
Price reasonableness

Since regulations require that low responsive bidder's price must be considered reasonable before award can be made, we have no basis to object to rejection of the protester's bid as unreasonably high based on a comparison with award prices for similar items for the prior year.

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

**B-231101; B-231101.2**  
**Aug. 8, 1988**  
**88-2 CPD 118**

Protester's new and independent grounds of protest are dismissed where the later-raised issues do not independently satisfy the timeliness rules of the General Accounting Office's Bid Protest Regulations.



PROCUREMENT B-231101; B-231101.2 Con't  
Contractor Qualification Aug. 8, 1988  
Responsibility/responsiveness distinctions

Submission of vendor letter even though required by the solicitation is a matter of responsibility rather than responsiveness; therefore, protester's allegation that bids submitted without vendor letters are nonresponsive is without merit.

PROCUREMENT	B-231131 Aug. 8, 1988
Bid Protests	88-2 CPD 119
Moot allegation	
GAO review	

Protester's allegation that it was unreasonably found to be nonresponsible is without merit where protester was not solicited in noncompetitive procurement based on urgency not because it was found nonresponsible but because there was insufficient time for the first article testing that would have been required of it.

PROCUREMENT

- Noncompetitive Negotiation
- Contract awards
- Sole sources
- Justification
- Urgent needs

Urgent sole-source award is reasonable where there is a critical inventory shortage and awardee is the incumbent currently producing the item and is the only firm which would not need to submit a first article prior to production.

**PROCUREMENT**

**B-231131 Con't**

**Noncompetitive Negotiation Aug. 8, 1988**

**Use**

**Justification**

**Urgent needs**

Protest that urgent situation requiring other than competitive procedures was a result of lack of agency advance planning is denied where agency engaged in planning by attempting to procure the item through a total set-aside for small disadvantaged businesses, which was mandated by regulation, but agency plans were disrupted and failed to achieve the expected results.

**PROCUREMENT**

**Socio-Economic Policies**

**Disadvantaged business set-asides**

**Use**

**Administrative discretion**

Although Department of Defense (DOD) set-aside program for small disadvantaged businesses (SDB) does not contain a provision for an economic impact analysis of other small businesses affected by a total SDB set-aside, such an impact analysis is not prohibited and is within DOD's discretion to perform in attempting to reconcile the statutory goal of increasing SDB participation while also increasing overall small business participation, as well as maintain a sufficient industrial mobilization base.

**PROCUREMENT****B-231413 Aug. 8, 1988****Small Purchase Method****88-2 CPD 120****Purchases****Propriety**

Since Federal Acquisition Regulation permits purchases under \$1,000 to be made without securing competitive quotations if the contracting officer considers the prices to be reasonable, contracting officer was not required to solicit quotation from previous supplier of the services and issuance of a purchase order to another firm was proper where firm's price quotation was reasonable on its face.

**PROCUREMENT****B-231944 Aug. 8, 1988****Bid Protests****88-2 CPD 121****GAO procedures****Protest timeliness****10-day rule****PROCUREMENT****Sealed Bidding****Bids****Responsiveness****Bid guarantees****Omission**

Protest of rejection of bid as nonresponsive is untimely where filed more than 10 working days after protester was orally advised that bid could not be accepted because of failure to include required bid bond; contracting officer's advice to delay filing protest does not alter untimeliness of protest.

PROCUREMENT B-232059 Aug. 9, 1988  
Socio-Economic Policies 88-2 CPD 122  
Small business set-asides  
Applicability  
Preferences

Protest by second low bidder, a small disadvantaged business (SDB) concern, that award to low bidder on total small business set-aside is contrary to agency policy of granting an evaluation preference to SDBs, is dismissed because policy does not apply to total small business set-aside.

PROCUREMENT B-231344 Aug. 10, 1988  
Special Procurement 88-2 CPD 126  
Methods/Categories  
Federal supply schedule  
Multiple/aggregate awards  
Mandatory use  
Cost/technical tradeoffs

When placing an order under a mandatory, multiple-award Federal Supply Schedule contract, a contracting agency is not required to select the lowest priced vendor where the agency reasonably determines that only the higher priced vendor's product offers features necessary to obtain effective performance.

PROCUREMENT B-231469 Aug. 10, 1988  
Sealed Bidding 88-2 CPD 127  
Invitations for bids  
Post-bid opening cancellation  
Justification  
Competition enhancement

PROCUREMENT  
Sealed Bidding  
Invitations for bids  
Post-bid opening cancellation  
Justification  
Price reasonableness

Where pricing schedule does not reflect agency's desire for separate item prices to take advantage of economies of scale and, as a result, separate prices are not received, there is compelling reason to cancel invitation for bids after bid opening; award would not have been based upon maximum competition and most likely would not have enabled the government to obtain the required services at the lowest possible prices.

PROCUREMENT B-231593 Aug. 10, 1988  
Competitive Negotiation 88-2 CPD 128  
Alternate offers  
Acceptance  
Propriety

Even though the solicitation does not authorize the submission of alternate bids, when a bidder submits a bid containing two offers, one which meets the specifications and the other which does not, the government is not precluded from accepting that offer which meets the specifications.

**PROCUREMENT**

**B-231669 Aug. 10, 1988**

**Competitive Negotiation**

**88-2 CPD 129**

**Requests for proposals**

**Evaluation criteria**

**Prior contracts**

**Contract performance**

A solicitation's evaluation scheme which places substantial weight on an evaluation factor of prior experience in similar projects is not unduly restrictive of competition where contract work is of a complex nature and involves a large magnitude of responsibilities supporting Navy fleet combat training operations.

**PROCUREMENT**

**B-231806.2 Aug. 10, 1988**

**Bid Protests**

**88-2 CPD 130**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**Adverse agency actions**

Where a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action in order to be timely. Protester's continued pursuit of protest with contracting agency, while that agency was processing requests for further information and while, the protester thought, the agency may have been investigating the matter further, does not alter this result.

**PROCUREMENT**

**B-232197 Aug. 10, 1988**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Where in contravention of solicitation provisions prohibiting the use of individual sureties bidder submits bid bond supported by two individuals, protest filed after bid has been rejected because the sureties were unacceptable is dismissed as untimely. Protest, which challenges authority of the contracting officer to include solicitation clause prohibiting use of individual sureties concerns an alleged impropriety in the solicitation and should have been filed prior to a bid opening.

**PROCUREMENT**

**Bid Protests**

**Moot allegation**

**GAO review**

Protest is clearly without legal merit where General Accounting Office recently has considered, and denied, several protests raising the identical issue.

**PROCUREMENT**

**B-227106.9 Aug. 11, 1988**

**Competitive Negotiation 88-2 CPD 131**

**Contract awards**

**Error allegation**

**Allegation substantiation**

**Lacking**

Neither the allegation that a below-cost offer has been submitted, nor a competitor's speculation that the contracting agency might try to exercise the contract options in an untimely manner, allowing the awardee to charge the government more than the fixed prices proposed for those options, provides a basis to challenge the validity of a contract award.

**PROCUREMENT**

**Competitive Negotiation**

**Contract awards**

**Errors**

**Corrective actions**

**Moot allegation**

**B-227106.9 Con't**

**Aug. 11, 1988**

The contracting agency properly modified the awardee's contract to correct a mistake in the price totals contained in the contract, where: (1) it was clear from the line item prices what the intended price total should have been; (2) the correct price total corresponding to the sum of the unit prices was set forth elsewhere in the contract, and (3) both the uncorrected and corrected price total were lower than the protester's total prices.

**PROCUREMENT**

**Competitive Negotiation**

**Contract awards**

**Propriety**

**Evaluation errors**

**Materiality**

The fact that there is a large discrepancy between the price totals in the contract documents provided to the protester and the price totals in the contract actually awarded provides no basis to invalidate the contract awarded, where: (1) the agency mistakenly sent inaccurate contract documents to the protester, and (2) the awardee's proposal was evaluated and the contract awarded on the basis of the price totals set forth in the awardee's best and final offer.



PROCUREMENT                      B-227106.9 Con't  
Competitive Negotiation      Aug. 11, 1988  
Offers  
Cost realism  
Evaluation  
Administrative discretion

Cost realism generally is not considered in evaluating proposals for a fixed-price contract. Whether an agency requests the submission of detailed cost data and conducts a cost realism analysis for the purpose of measuring an offeror's understanding of the requirements in a procurement for a fixed-price contract is a matter within the contracting officials' discretion.

PROCUREMENT                      B-230915.2; B-231780  
Bid Protests                      Aug. 11, 1988  
Non-prejudicial                  88-2 CPD 132  
allegation  
GAO review

PROCUREMENT  
Competitive Negotiation  
Requests for proposals  
Cancellation  
Resolicitation  
GAO review

Protest of cancellation of solicitation and issuance of a new one for the same item, based on allegation that these actions were taken to avoid contract award to protester under the first solicitation, is denied where the protester was not entitled to an award in the earlier procurement.

**PROCUREMENT**

**Socio-Economic Policies  
Labor surplus areas  
Applicability  
Preferences**

**B-230915.2; B-231780 Con't  
Aug. 11, 1988**

Protester, offering one of two equal prices, was not entitled to a labor surplus area evaluation preference where the contracting agency was unable to determine that 50 percent of the protester's total costs will be incurred on account of manufacturing or production in a labor surplus area.

**PROCUREMENT**

**Competitive Negotiation  
Discussion  
Adequacy  
Criteria**

**B-230971 Aug. 11, 1988  
88-2 CPD 133**

Questions concerning the availability of protester's manpower resources to perform work described in the solicitation constituted meaningful discussions because they led protester into the area of its proposal in need of amplification.

Questions indicating that protester's proposed labor rates appeared low in comparison to historical data submitted by the protester constituted meaningful discussions because they led protester into the area of its proposal in need of amplification. Agency was not required to advise protester during discussions that its forward pricing rates would be used in a cost realism analysis because this was set forth in the solicitation.

**PROCUREMENT**                      **B-230971 Con't**  
**Competitive Negotiation**      **Aug. 11, 1988**  
**Offers**  
**Cost realism**  
**Evaluation**  
**Administrative discretion**

Agency acted reasonably in using protester's recently negotiated labor rates contained in a forward pricing rate agreement to adjust the protester's proposed costs upwards during a cost realism analysis; the protester has not shown that the forward pricing rates were invalid for this purpose.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Administrative discretion**

Protester's general and unsubstantiated assurances that no outside work would conflict with work described in the solicitation and that no tradeskills would prove critical to its performance of a contract do not adequately respond to the solicitation requirements calling for the submission of detailed data on both subjects; accordingly, the agency had a reasonable basis in scoring the protester's proposal low with respect to evaluation subcategories involving the availability of manpower resources.

<b>PROCUREMENT</b>	<b>B-231016; B-231457</b>
<b>Noncompetitive Negotiation</b>	<b>Aug. 11, 1988</b>
<b>Contract extension</b>	<b>88-2 CPD 134</b>
<b>Sole sources</b>	
<b>Propriety</b>	

Sole-source extension of contract pending completion of competitive procurement was reasonable since there was inadequate time to conduct negotiated acquisition of bridge-period services and ongoing services would have been interrupted. Record shows that extension was necessitated by change in small business size standard attributable to protester's appeal to Small Business Administration and not to a lack of advance planning.

<b>PROCUREMENT</b>
<b>Socio-Economic Policies</b>
<b>Small business set-asides</b>
<b>Withdrawal</b>
<b>Propriety</b>

Withdrawal of set-aside was proper where contracting officer, based on survey of firms on bidders list and experience with prior procurement, could not conclude that there was a reasonable expectation of receipt of offers from at least two small businesses with the capacity and capability to perform the contract.

<b>PROCUREMENT</b>	<b>B-231025.5 Aug. 11, 1988</b>
<b>Bid Protests</b>	<b>88-2 CPD 135</b>
<b>Moot allegation</b>	
<b>GAO review</b>	

The General Accounting Office will not reinstate a protest where essential protest issues raised have already been decided by the General Services Administration Board of Contract Appeals and remaining protest issue that protester was denied an opportunity to protest awardee's size status to the Small Business Administration (SBA) is academic because protester has in fact filed a size status protest that the SBA is now considering.

**PROCUREMENT**

**B-231126 Aug. 11, 1988**

**Bid Protests**

**88-2 CPD 136**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest filed after award contending that solicitation is defective is untimely, since it alleges solicitation improprieties that were apparent before the initial closing date for receipt of proposals.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Competitive ranges**

**Exclusion**

**Administrative discretion**

Agency properly excluded offeror from competitive range where protester's proposal ranked sixth out of seven proposals received and the agency reasonably found that, despite the proposal's low estimated cost, its technical deficiencies were such that it had no reasonable chance of receiving the award.

**PROCUREMENT**

**B-231411 Aug. 11, 1988**

**Sealed Bidding**

**88-2 CPD 137**

**Invitations for bids**

**Amendments**

**Acknowledgment**

**Responsiveness**

Failure to acknowledge a solicitation amendment that reduces the quantity to be ordered may be waived, and the bid accepted, since the amendment imposed no additional obligations on the bidder other than those stated in the original invitation, and there is no evidence to show that the amendment would have had any impact on the firm's bid price.

**PROCUREMENT**

**B-231775.2 Aug. 11, 1988**

**Contract Management**

**88-2 CPD 138**

**Contract administration**

**Contract terms**

**Compliance**

**GAO review**

Whether or not a firm actually performs in compliance with contract requirements is a matter of contract administration, which the General Accounting Office does not review as part of its bid protest function.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Contracting officer findings**

**Affirmative determination**

**GAO review**

The General Accounting Office does not review a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith or failure to apply definitive criteria contained in the solicitation.

**PROCUREMENT**

**Socio-Economic Policies**

**Labor standards**

**Supply contracts**

**Manufacturers/dealers**

**Determination**

The General Accounting Office does not consider whether a bidder qualifies as a manufacturer or regular dealer under the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to review by the Small Business Administration (SBA), if a small business is involved, and the Secretary of Labor. Where the agency is apprised of the protester's continued disagreement with its determination, it should now refer matter to SBA as required by the Federal Acquisition Regulations.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Protest timelines**  
**10-day rule**

**B-231902 Aug. 11, 1988**  
**88-2 CPD 139**

Protest that agency violated regulations and otherwise acted improperly in withdrawing procurement from the program authorized by section 8(a) of the Small Business Act is dismissed as untimely when filed more than 10 working days after the protester learned of the basis for the protest.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-227847.3 Aug. 12, 1988**  
**88-2 CPD 140**

A request for reconsideration ostensibly based upon a newspaper article, which even if accurate, could only affect procurements in the future, does not contain the detailed statement of the factual and legal grounds upon which reversal or modification of the decision is deemed warranted or information not previously considered by this Office.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Protest timelines**  
**10-day rule**  
**Reconsideration motions**

A request for reconsideration is untimely if it is not filed within 10 days of the time the basis for the request is known or should have been known, whichever is earlier. Where the issue upon which the request is based is discussed in an agency report and in our decision, a request for reconsideration filed more than a month after the decision is issued is untimely.

**PROCUREMENT**

**B-230211.3 Aug. 12, 1988**

**Competitive Negotiation**

**88-2 CPD 141**

**Competitive advantage**

**Organizational conflicts of interest**

**Allegation substantiation**

**Lacking**

Protest that proposed awardee is ineligible for a contract because of a conflict of interest arising from its relationship with a company which assisted in preparing the solicitation, participated in proposal evaluation, and will administer the contract is denied where there is no evidence that the proposed awardee and the company in question have any relevant business affiliation.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Contracting officer findings**

**Affirmative determination**

**GAO review**

Protest that proposed awardee has an unsatisfactory safety record does not establish that the procuring agency may not make an affirmative responsibility determination in good faith where the agency has investigated the company's safety record and determined that it is satisfactory, and the alleged deficiencies are unsubstantiated.



**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Point ratings**

**B-230977 Aug. 12, 1988**

Contention that evaluation, under which award selection was based on composite point scores for technical and price factors, led to an irrational award is denied where point scores obtained by offerors appear reasonable, reflective of the technical and price differences of the offerors' respective proposals, and consistent with the solicitation's evaluation scheme.

**PROCUREMENT**  
**Bid Protests**  
**Bias allegation**  
**Allegation substantiation**  
**Evidence sufficiency**

**B-231033 Aug. 12, 1988**  
**88-2 CPD 143**

Protest alleging that prime contractor conspired to preclude protester from the procurement is denied since protester has not shown by virtually irrefutable proof that prime contractor had a specific and malicious intent to injure the protester.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**  
**Subcontractors**

The General Accounting Office will consider a protest by a potential subcontractor where prime contractor is managing and operating a government-owned facility.

**PROCUREMENT**

Bid Protests  
GAO procedures  
Protest timeliness  
10-day rule

B-231033 Con't  
Aug. 12, 1988

Where the record indicates that protester's knowledge of its bases of protest was acquired 8 working days prior to its protest to the General Accounting Office the protest is timely since it was filed within 10 working days after the basis of the protest was known.

**PROCUREMENT**

Competitive Negotiation  
Requests for proposals  
Amendments  
Propriety

Decision by prime contractor to amend rather than cancel original solicitation is reasonable where protester fails to show that the nature and scope of the changes warrant cancellation and reissuance of the solicitation.

**PROCUREMENT**

Competitive Negotiation  
Contract awards  
Initial-offer awards  
Discussion  
Propriety

B-231108 Aug. 12, 1988  
88-2 CPD 144

**PROCUREMENT**

Competitive Negotiation  
Contract awards  
Initial-offer awards  
Propriety

Protest is sustained where contracting agency awarded a contract on the basis of initial proposals for an item that did not conform to a material solicitation requirement; award made on terms different from basis on which competition was conducted is improper, even though awardee agrees after award to provide the missing component at the same total price as initial offer.

**PROCUREMENT**

**B-231499 Aug. 12, 1988**

**Competitive Negotiation  
Requests for proposals  
Cancellation  
Justification  
GAO review**

Contracting agency has reasonable basis to cancel request for proposals where specifications required domestically manufactured milling machines and no offeror can supply such machines.

**PROCUREMENT**

**B-231540 Aug. 12, 1988**

**Bid Protests  
Non-prejudicial allegation  
GAO review**

**88-2 CPD 145**

Protest that agency did not comply with regulation concerning preaward notice to unsuccessful offerors in small business set-aside provides no basis for disturbing the award where protester was not prejudiced by this procedural deficiency.

**PROCUREMENT**

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

Award to higher priced, higher technically rated offeror is not objectionable where technical considerations substantially outweighed cost in solicitation award criteria and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

**PROCUREMENT**                      **B-231540 Con't**  
    **Competitive Negotiation**      **Aug. 12, 1988**  
        **Discussion**  
            **Adequacy**  
                **Criteria**

Requirement for meaningful discussions does not obligate agencies to identify every aspect of a technically acceptable proposal that receives less than a maximum score.

**PROCUREMENT**                      **B-231879.2 Aug. 12, 1988**  
    **Bid Protests**                  **88-2 CPD 146**  
        **GAO procedures**  
            **Protest timeliness**  
                **10-day rule**

Protest based upon other than alleged improprieties in a solicitation that is filed later than 10 working days after the basis of the protest is known is untimely; agency's failure to notify protester of date of award to competitor does not excuse failure to protest within 10 days of when agency notified protester of award and of reason for rejection of protester's proposal.

**PROCUREMENT**                      **B-231905 Aug. 12, 1988**  
    **Bid Protests**  
        **Federal procurement regulations/laws**  
            **Amendments**

In response to a proposed amendment to the Federal Acquisition Regulation, the General Accounting Office has no objection to a provision which would extend the period of time contractors are required to retain certain accounting records when they fail to timely submit indirect cost rate proposals; likewise, there is no objection to a provision which expands the term "records" for retention purposes to include computer input data.

**PROCUREMENT****B-232031 Aug. 12, 1988****Bid Protests****88-2 CPD 147****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest that specifications are written around a particular vendor's equipment is dismissed as untimely where it is filed after the closing date for receipt of proposals established by the amendment that incorporated the allegedly restrictive specifications.

**PROCUREMENT****B-226378 Aug. 15, 1988****Payment/Discharge****Shipment****Vendors****Definition****PROCUREMENT****Payment/Discharge****Shipment costs****Overcharge****Payment deductions****Propriety**

A carrier's rate tender provides that its rates apply only when the "vendor" refers to the tender at time of shipment. A Government Bill of Lading (GBL), which did not refer to the tender, shows the U.S. Marine Corps as the shipper of members' personal effects, which were picked up at a commercial warehouse. The General Services Administration (GSA) applied the tender rates and deducted overcharges on the theory that "vendor" is limited in meaning to government contractors. GSA's action is sustained. Generally, "vendor" is defined as a seller of property, which neither the Marine Corps nor the warehouseman is. In any event, the use of the term creates an ambiguity, and ambiguities are construed against the carrier issuing the rate tender.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Preparation costs**

**B-229842.3 Aug. 15, 1988**

**88-2 CPD 148**

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Preparation costs**

Prior recommendation to conduct additional discussions with a view to terminating a contract award depending on the results of these discussions, based on General Accounting Office's (GAO) belief that contract performance had been suspended immediately, is withdrawn, where contracting activity erroneously permitted substantial performance to continue before suspending performance. Because additional discussions and termination are neither practicable nor in the government's best interest, GAO now finds the protester entitled to the costs of filing and pursuing the protest and of proposal preparation, but not to any anticipated profits.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Information**

**Submission time periods**

**B-231122 Aug. 15, 1988**

**88-2 CPD 149**

When a solicitation provision requiring bidders to submit make and model numbers of the helicopters offered is not intended to demonstrate bidders' conformance with specifications, the information does not relate to bid responsiveness. Rather, this information concerns how bidders will perform and as such, is a matter of responsibility. Thus, bidders may properly submit the information after bid opening.

<b>PROCUREMENT</b>	<b>B-230972; B-230972.2</b>
<b>Competitive Negotiation</b>	<b>Aug. 16, 1988</b>
<b>Offers</b>	<b>88-2 CPD 150</b>
<b>Evaluation</b>	
<b>Downgrading</b>	
<b>Propriety</b>	

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation errors**  
**Allegation substantiation**

Protest that agency's evaluation of protester's proposal was unreasonable is denied where the agency had a reasonable basis for concluding that (1) a performance risk was created by the protester's reduction of proposed costs in its best and final offer by almost 20 percent through a reduction in the fringe benefits and hourly wages of its professional employees, and (2) the protester's stated support-to-professional staffing ratio was inaccurate since research assistants (requiring only a high school diploma and 3 years experience) should have been classified as support, rather than professional, staff.

<b>PROCUREMENT</b>	<b>B-231524 Aug. 16, 1988</b>
<b>Sealed Bidding</b>	<b>88-2 CPD 151</b>
<b>Bid guarantees</b>	
<b>Responsiveness</b>	
<b>Letters of credit</b>	
<b>Adequacy</b>	

Where a letter of credit submitted as a bid guarantee contains conditional language that creates uncertainty as to whether the letter would be enforceable against the issuer, the bid is properly rejected as nonresponsive, since the letter does not provide the required firm commitment.

**PROCUREMENT**  
**Bid Protests**  
**Premature allegation**  
**GAO review**

**B-231752 Aug. 16, 1988**  
**88-2 CPD 152**

Protest that agency may have disclosed allegedly proprietary information to competitors is considered premature, where no solicitation has been issued.

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

Favorable evaluation of unsolicited proposal does not entitle the proposal's submitter to an award; the decision whether to make an award based upon an unsolicited proposal is in the agency's discretion.

**PROCUREMENT**  
**Bid Protests**  
**Moot allegation**  
**GAO review**

**B-230833.2 Aug. 17, 1988**  
**88-2 CPD 153**

Protest that solicitation for installation of furnaces and water heaters does not contain sufficiently detailed drawings is denied where protester does not show that it is disadvantaged in any way not shared by other offerors by agency's approach in the solicitation and protester does not show that that approach is unreasonable.

**PROCUREMENT**  
**Contractor Qualification**  
**Licenses**  
**State/local laws**  
**GAO review**

Solicitation provision which indicates that it is the bidder's responsibility to obtain required licenses is sufficient notice to bidders of state license requirements.



B-230833.2 Con't  
Aug. 17, 1988

**PROCUREMENT** B-230736.3 Aug. 18, 1988  
Bid Protests 88-2 CPD 154  
Dismissal  
Definition

B-230736.3 Aug. 18, 1988  
88-2 CPD 154

PROCUREMENT	B-231920	Aug. 18, 1988
Bid Protests	88-2	CPD 155
GAO procedures		
Interested parties		

B-231920 Aug. 18, 1988  
88-2 CPD 155

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PROCUREMENT	B-232155	Aug. 18, 1988
Socio-Economic Policies	88-2 CPD	156
Small business (8)a subcontracting		
Administrative regulations		
Compliance		
GAO review		

The award of a noncompetitive contract under section 8(a) of the Small Business Act is a matter within the discretion of the contracting agency. Such an award will not be reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of contracting activities or that regulations have not been followed.

An allegation that several experienced minority-owned small businesses that do not participate in the section 8(a) program will be deprived of business as a result of an 8(a) award is not tantamount to a showing of possible fraud or bad faith.

PROCUREMENT	B-232235	Aug. 18, 1988
Socio-Economic Policies	88-2	CPD 157
Small businesses		
Contract awards		
Eligibility		

Offeror on a services procurement set aside for small business, who was found ineligible for award by the Small Business Administration (SBA) because of its extensive use of a large business subcontractor, is not prejudiced by the procuring agency's failure to include in the solicitation the proper clause limiting large business subcontracting, where the SBA size decision states that the offeror is ineligible for award, whether or not the proper clause was applicable, because the large business subcontractor was an "ostensible subcontractor" and "joint venturer" with the offeror.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**GAO decisions**

**Reconsideration**

**B-224480.10 Aug. 19, 1988**

**88-2 CPD 158**

Prior decision is affirmed where protester fails to show that decision was based on error of fact or law.

**PROCUREMENT**

**Special Procurement Methods/Categories**

**In-house performance**

**Cost estimates**

**Training**

Where government-provided training is reasonably necessary to assure safe and efficient operation of cable ships, agency determination of the precise amount of training required for that purpose will not be questioned where the record does not show that the determination was made in a manner tantamount to fraud or bad faith.

**PROCUREMENT**

**Special Procurement Methods/Categories**

**In-house performance**

**Cost evaluation**

**Personnel**

Agency properly excluded from in-house cost estimate the cost of support personnel whose positions would not be eliminated if a contract were awarded; cost comparison procedures require inclusion in estimate only of costs for positions that would be eliminated.

**PROCUREMENT****B-231444.2 Aug. 19, 1988****Bid Protests****88-2 CPD 160****GAO procedures****Interested parties****Direct interest standards**

Where protester would not be eligible for award under a set aside pursuant to section 8(a) of the Small Business Act, protest against cancellation of procurement under the 8(a) program is dismissed. The protester lacks the requisite direct economic interest to be considered an interested party since it would not be eligible to compete for the contract even if the protest were sustained.

**PROCUREMENT****B-231575.2 Aug. 19, 1988****Bid Protests****88-2 CPD 161****Dismissal****Definition**

Protest is dismissed where essential issue raised has already been decided by the General Services Administration Board of Contract Appeals and remaining issues are either untimely, academic or concern an affirmative determination of responsibility, which the General Accounting Office generally does not review.

**PROCUREMENT****B-231648.2 Aug. 19, 1988****Bid Protests****88-2 CPD 162****GAO procedures****Interested parties**

A protester challenging a contract award is not an interested party under General Accounting Office Bid Protest Regulations, and its protest thus is dismissed, where it would not be in line for award if its protest were upheld.

**PROCUREMENT****B-231715 Aug. 19, 1988****Sealed Bidding****88-2 CPD 163****Ambiguous bids****Determination criteria**

Protest that solicitation reimbursement provision is ambiguous because it does not sufficiently limit the bidders' potential obligation to supply material without additional government reimbursement is denied where the solicitation reasonably describes the work to be performed, since the mere presence of some risk does not render a solicitation improper. Bidders are expected to consider the degree of risk in calculating their bids.

**PROCUREMENT****Sealed Bidding****Invitations for bids****Government estimates****Defects**

Protest that solicitation estimate for reimbursable materials is inaccurate and insufficiently detailed is denied where estimate is based on historical data and the record does not establish that estimate is unreasonable or not based on the best information available to the agency.

**PROCUREMENT****B-231748 Aug. 19, 1988****Competitive Negotiation****88-2 CPD 164****Contract awards****Initial-offer awards****Propriety**

Award on the basis of initial proposals is proper where the solicitation advised offerors of this possibility through incorporation by reference.

**PROCUREMENT**                      **B-231748 Con't**  
**Contractor Qualification**      **Aug. 19, 1988**  
**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 the 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 of misapplication of definitive responsibility criteria.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting officer findings**  
**Pre-award surveys**

The award of a contract constitutes an affirmative determination of responsibility; the decision of whether to conduct a preaward survey prior to such a determination, or to rely on other information, is within the contracting officer's broad discretion.

**PROCUREMENT**                      **B-232012 Aug. 19, 1988**  
**Bid Protests**                      **88-2 CPD 165**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

A protest based upon an alleged impropriety in a solicitation that is apparent before the closing date for receipt of proposals is untimely when filed after that closing date.

**PROCUREMENT**                      **B-232012 Con't**  
**Contractor Qualification**      **Aug. 19, 1988**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

Whether a prospective contractor can perform the contract with its proposed personnel relates to the firm's responsibility, and the General Accounting Office will not review an affirmative responsibility determination absent a showing of possible agency fraud or bad faith or an alleged agency failure to apply definitive responsibility criteria properly.

**PROCUREMENT**                      **B-232290 Aug. 19, 1988**  
**Bid Protests**                      **88-2 CPD 166**  
**Information request**  
**Procedures**

Offeror who relies on erroneous oral advice from agency concerning applicability of Buy American Act evaluation requirements to Canadian products does so at its own peril where solicitation warned that oral advice would not be binding. Moreover, offeror was on constructive notice of the regulation setting forth exemption for Canadian products because the regulation was published in the Federal Register.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Preferred products/services**  
**Domestic sources**  
**Compliance**

Agency's failure to apply Buy American Act evaluation factor to offer based on a Canadian product does not provide a valid basis for protest since applicable regulations exempt Canadian products from Buy American Act requirements.

**PROCUREMENT**  
**Bid Protests**  
**Moot allegation**  
**GAO review**

**B-230211.4 Aug. 22, 1988**  
**88-2 CPD 167**

Protest that proposed awardee did not comply with a solicitation qualification criterion requiring offerors to demonstrate specific Interstate Commerce Commission carrier authority is denied where the contracting agency deleted the requirement by amendment to the solicitation.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for proposals**  
**Evaluation criteria**  
**Cost/technical tradeoffs**  
**Price competition**

Contracting agency's decision to make award to lower-cost, lower-scored offeror was not unreasonable where the solicitation advised offerors that cost might be determinative, the lower cost proposal was determined to be essentially technically equal with the protester's proposal, and the contracting agency evaluated the cost realism of the lower cost proposal.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for proposals**  
**Evaluation criteria**  
**Personnel experience**

Contracting agency's decision to consider offeror's experience transporting low-level radioactive uranium mill tailings under the solicitation's hazardous waste experience evaluation factor was reasonable and consistent with the evaluation criterion, where the solicitation did not specifically define hazardous waste and the radioactive waste to be transported under the solicitation will be handled primarily by the agency in specially designed containers.



**PROCUREMENT****B-231097 Aug. 22, 1988****Competitive Negotiation****88-2 CPD 168****Contract awards****Administrative discretion****Cost/technical tradeoffs****Technical superiority**

In a negotiated procurement where the government reserves the right to award a contract to other than the low offeror, award to a higher-priced offeror is proper where it is determined that award to a technically superior offeror at a reasonable but higher price is justified.

**PROCUREMENT****B-231516 Aug. 22, 1988****Bid Protests****Allegation****Abandonment**

Where the agency specifically rebuts an issue raised in the initial protest and protester fails to address the agency's rebuttal in its comments on the agency's report, the issue is deemed abandoned.

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

Unsupported and speculative allegations that an agency may not have fully and fairly evaluated protester's proposal, raised for the first time in protester's comments, are untimely and otherwise fail to provide a basis for protest.

**PROCUREMENT** **B-231516 Con't**  
**Socio-Economic Policies** **Aug. 22, 1988**  
**Small businesses**  
**Disadvantaged business set-asides**  
**Eligibility**  
**Determination**

General Accounting Office will not consider an allegation that a firm is not a small disadvantaged business, eligible for a set-aside award, since the conclusive authority to decide such matters is vested with the Small Business Administration.

**PROCUREMENT** **B-231898.2 Aug. 22, 1988**  
**Bid Protests**  
**GAO procedures**  
**Protest timeliness**  
**Significant issue exemptions**  
**Applicability**

Untimely protest that awardee's equipment does not meet specifications in solicitation does not present a significant issue warranting waiver of timeliness requirements since issue raised is not of widespread interest or importance to the procurement community.

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

Protest filed more than 10 working days after the contracting agency denied agency-level protest is untimely; protester's continued pursuit of the protest with the agency does not toll timeliness requirements.

**PROCUREMENT****B-231184 Aug. 23, 1988****Sealed Bidding****88-2 CPD 171****Bids****Responsiveness****Pre-award samples****Acceptability**

Bid sample that does not conform to solicitation requirement that hypodermic syringes be supplied in quantity packages of 50-count does not render bid nonresponsive where solicitation did not reasonably advise offerors that packaging requirement was salient characteristic for sample evaluation, and offeror agreed in its bid to furnish packages of 50 in the event it received the award.

**PROCUREMENT****B-231353.2 Aug. 23, 1988****Socio-Economic Policies****88-2 CPD 172****Small business 8(a) subcontracting****Use****Administrative discretion**

The noncompetitive award of an 8(a) contract after an announcement is published in the Commerce Business Daily that indicated that the requirement would be acquired through competition is not evidence of bad faith on the part of contracting officials.

**PROCUREMENT****B-231639 Aug. 23, 1988****Competitive Negotiation****88-2 CPD 173****Requests for proposals****Evaluation criteria****Cost/technical tradeoffs****Technical superiority**

Agency properly selected a higher-priced, higher technically rated proposal where the request for proposals advised that technical factors were more important than cost and the agency reasonably determined that the higher-priced proposal had technical advantages that were worth the additional cost.

PROCUREMENT B-231700 Aug. 23, 1988  
Socio-Economic Policies 88-2 CPD 174  
Small business set-asides  
Use  
Administrative discretion

Protest that agency improperly awarded a contract for electric relays under a small business set-aside to a firm that proposed a price allegedly in excess of the item's fair market price is denied, since the agency's determination, in accordance with governing procurement regulations, that the awardee's offered price did not exceed the fair market price, was reasonable.

PROCUREMENT B-226540.2 Aug. 24, 1988  
Bid Protests  
GAO procedures  
GAO decisions  
Reconsideration

PROCUREMENT  
Payment/Discharge  
Payment procedures  
Joint payees  
Illegal/improper payments  
Corrective actions

In response to a request for reconsideration, we find that the Army Corps of Engineers (Corps) has not submitted evidence sufficient to warrant reversing B-226540, Aug. 21, 1987, 66 Comp. Gen. 441, in which we held that the Corps was liable to a subcontractor for the Corps' breach of a joint payment agreement between the Corps, the contractor and subcontractor, where the Corps issued a check only to one party.

**PROCUREMENT****B-226540.2 Con't****Payment/Discharge****Aug. 24, 1988****Payment procedures****Joint payees****Illegal/improper payments****Corrective actions**

Proper measure of damages for breach of a joint payment agreement between the Army Corps of Engineers, the contractor and subcontractor is the amount the subcontractor would have received had the government check been issued jointly to the contractor and subcontractor as provided by the agreement. As that amount is not clear, at a minimum the Corps should pay the subcontractor the \$5,000 mentioned in the joint payment agreement as the value of the materials to be supplied by the subcontractor to the project. Should the subcontractor be able to prove further damages, the Corps of Engineers should make additional payments attributable to the breach.

**PROCUREMENT****B-230305.2 Aug. 24, 1988****Bid Protests****88-2 CPD 175****Information disclosure****Competitive advantage**

In procurement for architectural and engineering services, contracting agency's decision that disclosure of procurement information to the protester created an appearance of impropriety and justified setting aside recommendation of the initial evaluation board and beginning a new selection process was reasonable since disclosure showed that protester had had access to information about the initial selection process which was not to be released outside the government.

**PROCUREMENT**

**Competitive Negotiation  
Offers**

**B-230305.2 Con't**

**Aug. 24, 1988**

**Evaluation  
Downgrading  
Propriety**

Where first selection process for architectural and engineering services is set aside due to appearance of impropriety created by disclosure of information about the procurement to the protester, and, as a result of second selection process, the protester's ranking is significantly lowered, contracting agency should review second evaluation of protester to ensure that it is reasonable.

**PROCUREMENT**

**Bid Protests**

**B-231787 Aug. 24, 1988**

**88-2 CPD 176**

**GAO procedures**

**Interested parties**

**Direct interest standards**

To be considered an interested party to protest under the Competition in Contracting Act of 1984 and General Accounting Office Bid Protest Regulations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract at issue. A potential supplier to the successful offeror which is not an actual bidder or offeror itself is not an interested party to challenge the contracting agency's decision regarding the technical acceptability of actual offerors' proposals.

**PROCUREMENT****B-232071 Aug. 24, 1988****Bid Protests****Federal procurement regulations/laws  
Amendments**

The General Accounting Office has no objection to a proposal to consolidate and clarify the existing provisions of the Federal Acquisition Regulation with respect to the requirements for, and the analysis of, cost or pricing data submitted in support of proposed subcontractors.

**PROCUREMENT****B-232198 Aug. 24, 1988****Bid Protests****88-2 CPD 177****GAO procedures****Interested parties**

Protester is not an interested party to challenge award to another offeror under solicitation set aside for small business where Small Business Administration determines that protester is not a small business and therefore would not be eligible for award even if its protest were upheld.

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

Protest based upon alleged improprieties apparent from the face of a solicitation is untimely where not filed until after due date for initial proposals.

B-232198 Con't  
Aug. 24, 1988

PROCUREMENT  
Socio-Economic Policies  
Small businesses  
Size status  
Protesters  
Contracting officers

PROCUREMENT	B-232324	Aug. 24, 1988
Bid Protests	88-2	CPD 178
GAO procedures		
Purposes		
Competition enhancement		

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PROCUREMENT B-232324 Con't  
Competitive Negotiation Aug. 24, 1988  
Competitive advantage  
Non-prejudicial allegation

A protest alleging that a competing offeror had a competitive advantage based on geographic location is without merit since any competitive advantage did not result from preferential or unfair treatment by the government.

PROCUREMENT B-230736.4 Aug. 25, 1988  
Bid Protests 88-2 CPD 179  
Dismissal  
Definition

A protest of an award by a firm, which was found technically unacceptable due to understaffing, but which does not dispute the agency determination in this regard, is dismissed.

PROCUREMENT B-231618 Aug. 25, 1988  
Bid Protests 88-2 CPD 181  
Non-prejudicial allegation  
GAO review

Incumbent contractor's protest that contracting activity's conflicting advice regarding the firm's performance obligation during extension period of its contract affected the validity of the follow-on competition is denied, where neither any substantive effect on such competition, nor prejudice to protester, is discernable from the record.

**PROCUREMENT**                      **B-231618 Con't**  
**Contractor Qualification**    **Aug. 25, 1988**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

The General Accounting Office will not review a contracting officer's affirmative responsibility determination absent a showing of possible fraud or bad faith, or that definitive responsibility criteria in the solicitation were not met.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Determination criteria**

Bidder's failure to submit standard certifications and representations with the bid at bid opening does not affect the firm's material obligations and therefore does not render the bid nonresponsive and may be corrected after bid opening.

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

A bid is not mathematically and materially unbalanced unless there is reasonable doubt that award will result in the lowest overall cost to the government.

PROCUREMENT  
Bid Protests  
GAO procedures  
Protest timeliness  
10-day rule

B-231694 Aug. 25, 1988  
88-2 CPD 182

Protest filed more than 10 days after the protester was orally informed of the basis of protest is untimely; protester may not delay filing its protest until it has received, in writing, a citation to the specific provision of the Federal Acquisition Regulation on which agency relies for taking its action.

PROCUREMENT  
Competitive Negotiation  
Competitive advantage  
Incumbent contractors

Protest that startup date for contract for educational services is unduly restrictive is denied where agency states reasonable basis for requirement and protester offers no evidence to rebut the agency's showing.

PROCUREMENT  
Sealed Bidding  
Bids  
Bid guarantees  
Omission  
Responsiveness

B-231103 Aug. 26, 1988  
88-2 CPD 184

Bid bond properly signed by two individual sureties is not rendered materially deficient because of sureties' failure to list all other surety obligations on Standard Form 28.

**PROCUREMENT**

**Sealed Bidding**

**Contracting officers**

**Bad faith**

**Allegation substantiation**

**B-231103 Con't**

**Aug. 26, 1988**

Allegation that contracting officials acted in bad faith in conduct of procurement is denied where allegation is based purely on supposition and conjecture and is not supported by the record.

**PROCUREMENT**

**Sealed Bidding**

**Invitations for bids**

**Defects**

**Evaluation criteria**

Inclusion in solicitation of allegedly inaccurate estimates of level of effort necessary to perform work requirements is not a material solicitation defect where other more pertinent information is provided in solicitation which allows the bidders to prepare their bids intelligently and on a common basis.

**PROCUREMENT**

**Special Procurement**

**Methods/Categories**

**Options**

**Contract extension**

**Use**

**Propriety**

**B-231342 Aug. 26, 1988**

**88-2 CPD 185**

Agency did not act improperly in issuing a new solicitation to test the reasonableness of option prices where, due to the lapse of time since issuance of the original solicitation and the limited competition then obtained, it was reasonable to conclude that market conditions might have changed, and the complexity of the agency's requirement precluded use of an informal market survey.

**PROCUREMENT****B-231698.2 Aug. 26, 1988****Bid Protests****88-2 CPD 186****GAO procedures****GAO decisions****Reconsideration**

Protester's explanation that its inability to timely file comments to agency report was due to complexity of protest issues does not provide basis to reopen case dismissed for failure to timely file comments. The protester in such a case was required by Bid Protest Regulations to timely advise of its continued interest in the protest and request extension of time to submit comments.

**PROCUREMENT****B-231925 Aug. 26, 1988****Bid Protests****GAO authority**

The General Accounting Office does not have jurisdiction to decide a claim by S&S Truck & Tractor Parts, Inc. against the Defense Construction Supply Center because the claim falls under the Contract Disputes Act, 41 U.S.C. §§ 601-613, and should be heard by the contracting agency.

**PROCUREMENT****B-232303 Aug. 26, 1988****Bid Protests****88-2 CPD 187****Allegation substantiation****Lacking****GAO review****PROCUREMENT****Socio-Economic Policies****Small business set-asides****Use****Restrictions**

Protest that agency was required by Federal Acquisition Regulation § 19.501(g) to issue solicitation as small business set-aside because previous requirement had been successfully acquired on basis of small business set-aside is dismissed where record shows previous procurement was not a small business set-aside.

**PROCUREMENT****B-231165 Aug. 29, 1988****Competitive Negotiation****88-2 CPD 188****Competitive advantage****Privileged information****Information disclosure**

The contracting agency acted reasonably in concluding that an inadvertent disclosure of cost information relating to the protester's development contract does not warrant the exclusion of the recipient of that information from competition on a training contract in light of the likely adverse effect that exclusion would have on overall competition and because the record does not disclose that the recipient used the information in the preparation of initial proposals.

**PROCUREMENT** **B-231449 Aug. 29, 1988**  
**Competitive Negotiation 88-2 CPD 189**  
**Requests for proposals**  
**Terms**  
**Ambiguity allegation**  
**Interpretation**

Solicitation was not ambiguous as of deadline for receipt of proposals, and thus was not defective, where agency's intended interpretation was set forth in a letter signed by the contracting officer and sent to all potential offerors, including the protester, and offerors also were advised of the interpretation by telephone.

**PROCUREMENT** **B-230107.3; B-230107.4**  
**Bid Protests Aug. 30, 1988**  
**GAO procedures 88-2 CPD 190**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration of prior decision, holding that solicitation's prequalification testing requirements were not unduly restrictive of competition, is denied where the protester fails to present facts or legal arguments to establish that the prior decision was erroneous.

**PROCUREMENT**  
**Bid Protests**  
**Moot allegation**  
**GAO review**

Protest that the original equipment manufacturer (OEM) should be required to undergo the same 400-hour endurance test for the parts being procured as required of all alternate offers is denied where the solicitation did not require testing of OEM parts but only imposed testing for previously unapproved alternate parts.

**PROCUREMENT** **B-231175 Con't**  
**Noncompetitive Negotiation Aug. 30, 1988**  
**Offers**  
**Definition**

**PROCUREMENT**  
**Noncompetitive Negotiation**  
**Offers**  
**Sole sources**  
**Clarification**  
**Propriety**

Where solicitation does not call for technical proposal in any particular form or detail, a brief telegraphic offer by an unapproved source referencing proposed sole-source part number reasonably can be interpreted as a general offer to meet the requirement; offeror's clarification during subsequent source approval process that it is offering its own part thus does not constitute a material proposal modification that could necessitate holding discussions with all offerors.

**PROCUREMENT** **B-231200 Aug. 31, 1988**  
**Bid Protests** **88-2 CPD 194**  
**Allegation investigation**  
**GAO review**

**PROCUREMENT**  
**Bid Protests**  
**GAO authority**

General Accounting Office will not consider a protest that a lower-priced offer was mistaken and should not have been accepted without further inquiry, since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.



**PROCUREMENT**                      **B-231200 Con't**  
**Contractor Qualification**      **Aug. 31, 1988**  
**Responsibility criteria**  
**Price reasonableness**

Solicitation provision calling for agency evaluation of price reasonableness is not a definitive responsibility criterion, which is an objective standard stated in a solicitation to help measure an offeror's ability to perform.

**PROCUREMENT**                      **B-231448.2 Aug. 31, 1988**  
**Bid Protests**                      **88-2 CPD 195**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**  
**Effective dates**

Where protester's statement of facts as to the timeliness of its protest is essentially undisputed, any doubt as to the timeliness of the protest is resolved in favor of the protester.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for bids**  
**Amendments**  
**Acknowledgment**

Where a bidder admits receiving an IFB amendment it is not relieved of its responsibility of acknowledging receipt of the amendment even though it claims it did not receive a separate acknowledgment form which was to be used to acknowledge the amendment.

**PROCUREMENT****B-231448.2 Con't  
Aug. 31, 1988****Sealed Bidding  
Invitations for bids  
Amendments  
Acknowledgment  
Responsiveness**

The failure to acknowledge receipt of an amendment increasing wage rates cannot be cured after bid opening by a bidder whose employees are not already covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor.

**PROCUREMENT****B-231473.2 Aug. 31, 1988  
88-2 CPD 196****Specifications  
Minimum needs standards  
Competitive restrictions  
GAO review**

A solicitation which called for a pipe organ, excluding electronic organs, is not unduly restrictive where the organ is to be placed in a chapel specially designed and constructed to complement the architecture of a building listed in the National Register of Historical Places. The design of the organ is inherently linked to the functional purpose of harmonizing the instrument with its environment.

**PROCUREMENT****B-231772 Aug. 31, 1988****Socio-Economic Policies 88-2 CPD 197  
Small business set-asides  
Use  
Administrative discretion**

When, in response to a solicitation conducted under a small disadvantaged business (SDB) set-aside, offerors all proposed prices that exceeded the fair market price for the item in question by more than 10 percent, the agency did not act improperly in withdrawing the SDB set-aside and deciding to resolicit the procurement under a small business set-aside.

**PROCUREMENT**

**B-231823 Aug. 31, 1988**

**Sealed Bidding  
Invitations for bids  
Amendments  
Acknowledgment  
Responsiveness**

Where an amendment to an invitation for bids imposes a new and more stringent obligation on prospective contractors, the amendment is material, and an agency may properly reject a bid as nonresponsive for failure to acknowledge the amendment.

**PROCUREMENT**

**Sealed Bidding  
Invitations for bids  
Amendments  
Notification**

The fact that bidder may not have received the amendment to an invitation for bids until after bid opening is irrelevant absent evidence that the failure to timely receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the bidder from competition.

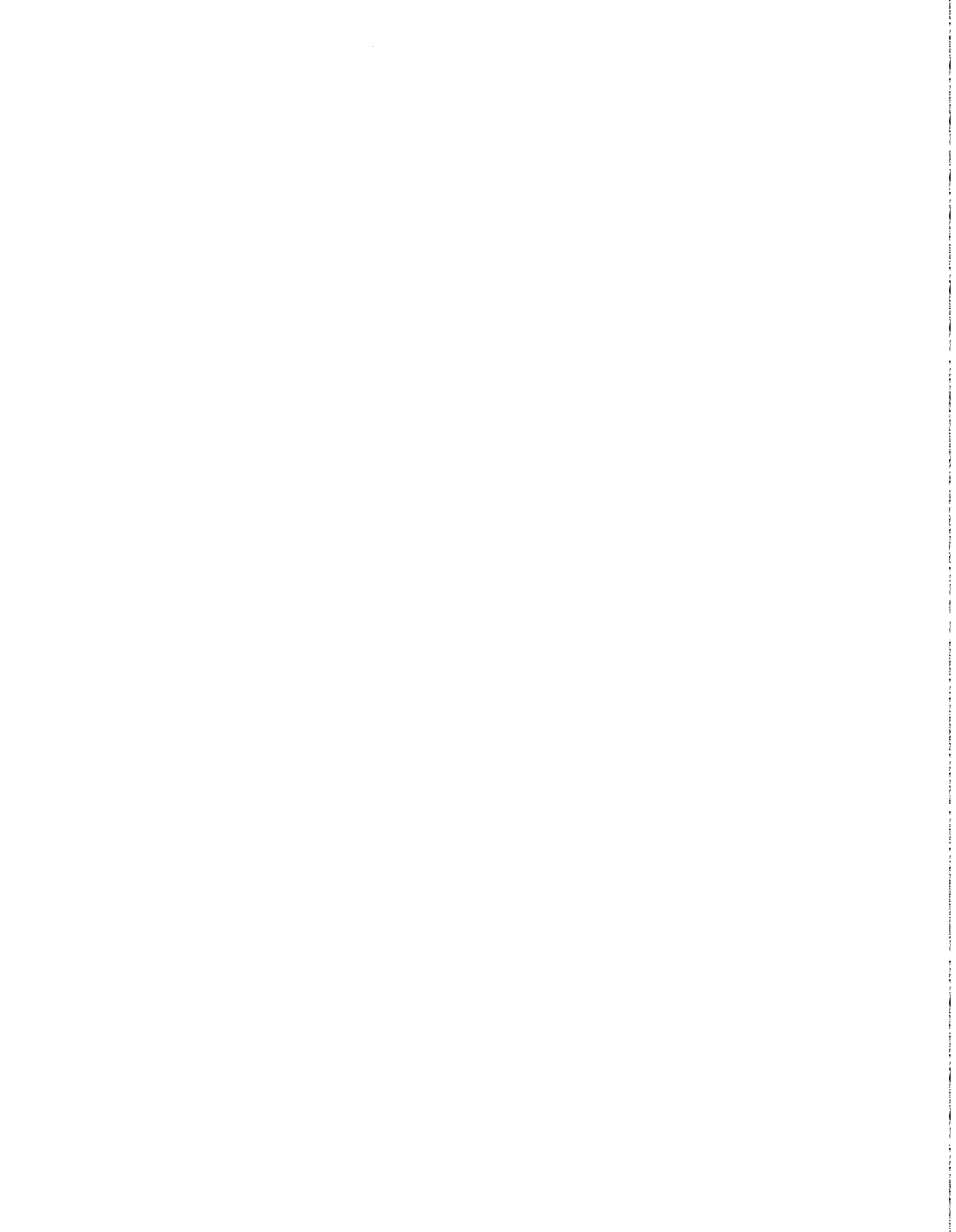
**PROCUREMENT**

**B-231987 Aug. 31, 1988**

**Bid Protests  
GAO procedures  
Interested parties**

**88-2 CPD 198**

Ninth low offeror, on a solicitation under which award was made to the lowest responsible offeror, is not an interested party under General Accounting Office Bid Protest Regulations to protest propriety of award to offeror pending debarment, where protester has not also protested against any possible award to seven intervening offerors.



## MISCELLANEOUS TOPICS

**MISCELLANEOUS TOPICS**  
**Federal Administrative/  
Legislative Matters**  
**Advisory committees**  
**Gifts/donations**  
**Acceptance**

**B-230727 Aug. 1, 1988**

No statutory mechanism exists for accepting contributions to the United States Commission on Improving the Effectiveness of the United Nations (Commission) before March 1, 1989. The statute that creates the Commission does not take effect until March 1, 1989, and fails to authorize any entity to act on behalf of the Commission.

**MISCELLANEOUS TOPICS**  
**National Security/  
International Affairs**  
**Executive powers**  
**National emergencies**  
**Private property**  
**Use**

**B-229258.2 Aug. 2, 1988**

In response to a letter from Mr. Philip J. Loree, Chairman of the Federation of American Controlled Shipping, asking the General Accounting Office to reconsider our opinion, B-229258, April 14, 1988, GAO has determined that reconsideration of our decision is not warranted at this time. Our opinion involved the scope of section 902(a) of the Merchant Marine Act of 1936, as amended. Section 902(a) provides the Secretary of Transportation with the authority, under specified conditions to requisition vessels "owned by citizens of the United States." The legislative history of the provision does not support Mr. Loree's view that the term "owned" was intended to mean "beneficially owned" Accordingly, GAO reaffirms its prior decisions.

**MISCELLANEOUS TOPICS****B-231065 Aug. 10, 1988****Agriculture****Subsidies****Eligibility****Statutory regulations**

Subtitle C of the Title XII of the Food Security Act of 1985, Pub. L. No. 99-198, makes farmers ineligible for federal farm benefits if they produce an agricultural commodity on "converted wetland" when the conversion of the wetland begins after enactment of the law. The draining or filling of wet spots which were only farmed naturally before the Act, may cause the loss of farm benefits since this was "wetland" and not "converted wetland" prior to the Act.

**MISCELLANEOUS TOPICS****Agriculture****Subsidies****Eligibility****Statutory interpretation****MISCELLANEOUS TOPICS****Agriculture****Subsidies****Eligibility****Statutory regulations**

Subtitle C of Title XII of the Food Security Act of 1985, Pub. L. No. 99-198, makes farmers ineligible for federal farm benefits if they produce an agricultural commodity on "converted wetland" when the conversion of the wetland begins after enactment of the law. House Merchant Marine and Fisheries Committee's report language dealing with the "minimal effect" exception for the conversion of wetland after the law's enactment, is at most guidance and is not binding on the Secretary of Agriculture, since it did not appear in the law nor was it incorporated by reference into the law.

**MISCELLANEOUS TOPICS**

**B-226811.2 Aug. 15, 1988**

**Federal Administrative/**

**Legislative Matters**

**Administrative regulations**

**Records management**

**Signatures**

Question of whether SF 52 must be signed in pen and ink is, in the first instance, for the consideration of the Office of Personnel Management, which administers the statutes and promulgated implementing regulations requiring use of SF 52 to initiate personnel actions. However, review of instructions accompanying SF 52 would indicate that a pen and ink signature of approving official is not required. Thus, electronic approval and transmission of information contained on SF 52 would seem to be permissible.





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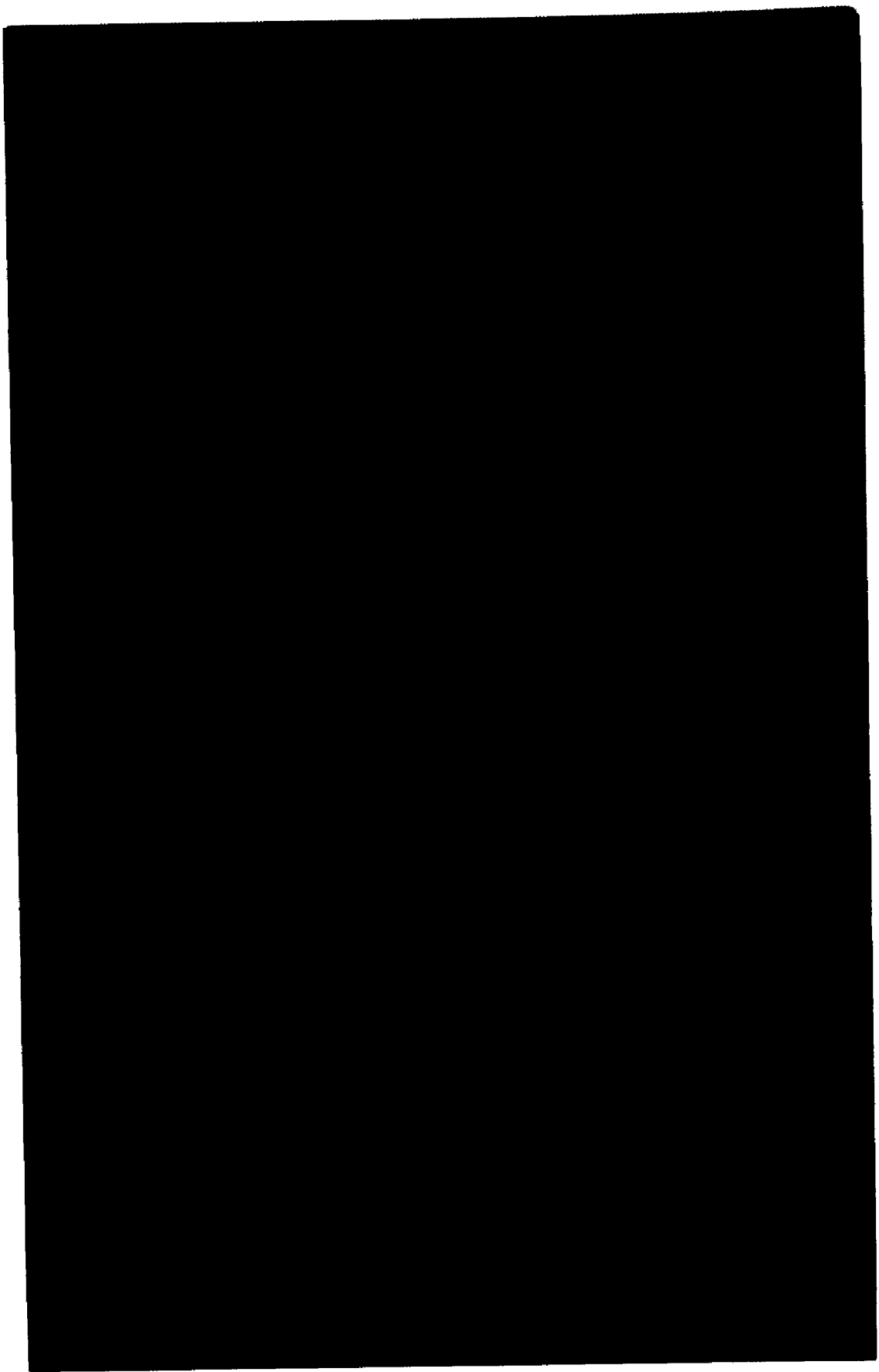
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