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Office of General Counsel



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Unpublished  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

GAO



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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget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

**Budget Process B-233847 Apr. 14, 1989**

**Working capital funds**

**Reimbursement**

40 U.S.C. § 293 (1982), which authorizes the establishment of a working capital fund (fund) within the General Services Administration, does not require the GSA fund to be reimbursed with the net proceeds from transfers to other federal agencies of excess equipment originally purchased by the fund.

The Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 483 and 485 (1982), grants the General Services Administration the discretion to request reimbursement from a federal agency to which excess equipment originally purchased by a GSA working capital fund has been transferred.

**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-234135 Apr. 21, 1989**

**Relocation**

**Household goods**

**Weight restrictions**

**Liability**

**Waiver**

10 U.S.C. § 2774 authorizes waiver of a claim against a service member arising out of an "erroneous" payment of travel and transportation allowances. The Joint Federal Travel Regulations provide for the shipment of a member's household goods (HHG) at government expense upon a permanent change of duty station, not in excess of the member's maximum authorized HHG weight allowance. An Air Force officer's request for waiver of collection of an indebtedness arising from excess weight charges for shipment of HHG, incurred because of a delay in the issuance of his orders and his alleged resulting inability to dispose of the HHG which caused the excess, cannot be considered under the waiver statute since no "erroneous" payment by the government was involved.



**PROCUREMENT**

**PROCUREMENT** **B-233541.2 Apr. 3, 1989**  
**Bid Protests** **89-1 CPD 341**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

General Accounting Office will not consider a protest filed more than 10 working days after the protester receives oral notification of the denial of its agency-level protest.

**PROCUREMENT** **B-233709 Apr. 3, 1989**  
**Bid Protests** **89-1 CPD 342**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

Where doubt exists concerning the date on which a protester became aware of the basis of its protest, the doubt is resolved in favor of the protester.

**PROCUREMENT**  
**Contract Management**  
**Contract modification**  
**Cardinal change doctrine**  
**Criteria**  
**Determination**

Protest that a contract modification was beyond the scope of the contract is denied where the modification did not result in the procurement of services materially different from the services competed under the original contract.



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

**B-234311 Apr. 3, 1989**  
**89-1 CPD 345**

Protest by sixth low bidder that all lower-priced bidders are nonresponsible is premature with respect to intervening bidders that are not currently in line for award.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Responsibility**  
**Competency certification**  
**GAO review**

General Accounting Office will consider protests by third parties concerning the Small Business Administration's issuance of a certificate of competency only upon a prima facie showing that government officials acted fraudulently or in bad faith or willfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria.

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

**B-234614 Apr. 3, 1989**  
**89-1 CPD 346**

Protest alleging solicitation deficiencies (failure to issue solicitation as a small business set-aside) which is not filed before the bid opening date is untimely.



**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Anticipated profits**

**B-233904.2 Apr. 4, 1989**  
**89-1 CPD 353**

Protester is not entitled to reimbursement for costs incurred in anticipation of being awarded a government contract which it did not receive.

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

**B-233628.4 Apr. 5, 1989**  
**89-1 CPD 354**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Technical acceptability**  
**Deficiency**  
**Blanket offers of compliance**

An agency can reasonably conclude an offer is technically unacceptable and exclude it from the competitive range where the offer contains significant informational deficiencies. Although a technical evaluation of a proposal must be based on information submitted with the proposal, a blanket offer of compliance is not sufficient to comply with solicitation requirements for descriptive information which an agency deems necessary for evaluating the technical acceptability of proposals.

**PROCUREMENT**

**B-234616.2 Apr. 5, 1989**

**Bid Protests**

**89-1 CPD 356**

**GAO procedures**

**GAO decisions**

**Reconsideration**

A bidder whose bid was properly found nonresponsive due to insertion of a 60-day acceptance period rather than the 90-day minimum required in the solicitation may not correct its acceptance period after bid opening, because allowing a bidder to change its bid acceptance period after bid opening would give the bidder an unfair advantage over other bidders who initially offered the required minimum time. Bidder's reiteration, in its request for reconsideration, that it is willing to change its acceptance time is irrelevant and serves no basis for us to reverse our prior decision dismissing protest.

**PROCUREMENT**

**B-233166.3 Apr. 6, 1989**

**Bid Protests**

**89-1 CPD 357**

**GAO procedures**

**GAO decisions**

**Reconsideration**

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

**PROCUREMENT**

**B-233354.3 Apr. 6, 1989**

**Bid Protests**

**89-1 CPD 358**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Allegation that the specifications were defective is dismissed as untimely where alleged defect was apparent in the specifications but was not raised until after the closing date for receipt of proposals.

**PROCUREMENT** **B-233354.3 Con't**  
**Sealed Bidding** **Apr. 6, 1989**  
**Invitations for bids**  
**Post-bid opening cancellation**  
**Resolicitation**

Contracting officer properly canceled invitation for bids after bid opening and resolicited on the basis of revised specifications where original specifications overstated the government's minimum needs in several respects.

**PROCUREMENT** **B-233726.2 Apr. 6, 1989**  
**Sealed Bidding** **89-1 CPD 359**  
**Invitations for bids**  
**Terms**  
**Contractor personnel**  
**Training**

Protest of solicitation requirement that guards receive 80 hours of training prior to assignment to duty is denied where protester does not show that required training exceeds the government's minimum needs.

Protest that refresher training should be required on a monthly, rather than an annual, basis is denied where protester does not show that annual training would be insufficient to keep guards up-to-date with regard to their job responsibilities.

**PROCUREMENT** **B-234116 Apr. 6, 1989**  
**Competitive Negotiation** **89-1 CPD 360**  
**Contract awards**  
**Administrative discretion**

In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting agency enjoys a reasonable range of discretion, and we will not question a determination of the technical merit of proposals unless there is a clear showing of unreasonableness or abuse of discretion.





**PROCUREMENT**  
**Bid Protests**  
**Competition**  
**Adequacy**

**B-234019 Apr. 7, 1989**  
**89-1 CPD 363**

Protest that agency failed to obtain full and open competition because only two firms, one of which is the incumbent contractor, submitted proposals is without merit where agency made a good faith effort to obtain competition by publicizing the requirement, and any competitive advantage to the incumbent was not the result of any preferential or unfair action by the government.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Adequacy**  
**Criteria**

Protest that agency failed to conduct meaningful discussions with offeror is without merit where agency conducted oral discussions with protester and provided protester with detailed questions that informed the protester of areas in its proposal with which the agency was concerned, and the protester was given an opportunity to revise its proposal in response to these questions.

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

**B-234082 Apr. 10, 1989**  
**89-1 CPD 365**

A low bid for a requirements type contract is not materially unbalanced unless it can be shown that the government's estimates are so unreliable that award to the low bidder will not result in the lowest cost to the government.



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

**B-234936 Apr. 10, 1989**  
**89-1 CPD 367**

Protest of the rejection of a bid as late is untimely when filed more than 10 working days after basis of protest is known.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

**B-232666.3 Apr. 11, 1989**  
**89-1 CPD 368**

Protest that awardee's subcontractor failed to meet definitive responsibility criteria concerning experience in performing similar services is denied where record indicates that awardee submitted adequate objective evidence of its subcontractor's past experience from which the contracting officer could reasonably conclude that the criteria were met.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility criteria**  
**Organizational experience**

Protest that firm did not meet 3 years experience requirement set forth in solicitation is denied where contracting officer reasonably considered that the prior experience of the corporation's principal officers satisfied the requirement.



**PROCUREMENT** **B-234916 Apr. 11, 1989**  
**Socio-Economic Policies** **89-1 CPD 373**  
**Small businesses**  
**Disadvantaged business set-asides**  
**Preferences**  
**Eligibility**

Solicitation requirement that ultimate contractor agree to award subcontracts consistent with the federal policy of providing small disadvantaged business concerns (SDBs) the maximum practicable opportunity to participate in performing contracts does not entitle bidder to receive an evaluation preference based on its SDB status.

**PROCUREMENT** **B-230430 Apr. 12, 1989**  
**Payment/Discharge**  
**Shipment costs**  
**Additional costs**  
**Bills of lading**  
**Ambiguity**

A carrier filed a supplemental claim for additional charges with the General Services Administration (GSA) on the theory that the articles transported were not "sensitive" within the meaning of the rate tender originally applied, and, therefore, the rate from that tender did not apply. GSA's disallowance of the claim is sustained, since the articles required signature and tally record service, a separate category of articles also specifically covered by the tender, regardless of whether the articles are "sensitive."



**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Preparation costs**

**B-226941.3 Con't**  
**Apr. 13, 1989**

Protester awarded the costs of pursuing its protest is not entitled to be reimbursed costs associated with meeting with or writing to congressmen seeking their assistance in the protest or in substantiating and pursuing the claim for the costs.

A successful protester who was not represented by an attorney can be reimbursed for the time its employees spent pursuing the protest, where it documents the number of hours/days spent by each employee on activities directly related to pursuing the protest and the cost elements of each claimed employee's hourly/daily charge.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Preparation costs**  
**Attorney fees**  
**Amount determination**

Where a procuring agency challenges the legitimacy and reasonableness of invoices for consultant services, including attorneys' fees, submitted in support of a claim for reimbursement of the costs of pursuing a protest, and the protester does not substantively respond, the claim for these invoiced costs will not be allowed in the absence of other evidence that the consultant service costs were reasonable and incurred for activities directly related to the pursuit of the protest.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Preparation costs**  
**Interest**

**B-226941.3 Con't**  
**Apr. 13, 1989**

Payment of interest on a claim for reimbursement of costs of pursuing a sustained protest is not authorized.

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

**B-233885.3; B-233885.4**  
**Apr. 13, 1989**  
**89-1 CPD 377**

Protests that contracting agency failed to give preaward notice of award to a lower bidder and that it made award to a firm whose bid had expired are dismissed under authority of 4 C.F.R. § 21.3(m) (1989) without obtaining a report from the contracting agency where: (1) agency fulfilled its responsibilities under applicable regulation by giving protesters prompt notification of award by letter dated the day of award; and (2) successful bidder was properly requested to extend its bid acceptance period, prior to expiration of its bid acceptance period, because of delay in processing award prompted by filing of an earlier protest by another firm.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Research/development contracts**  
**Offers**  
**Evaluation**

**B-233892 Apr. 13, 1989**  
**89-1 CPD 378**

General Accounting Office review of agency selection of research proposals solicited pursuant to the Small Business Innovation Research Act is limited to determining whether agency violated any applicable regulations or solicitation provisions and whether the agency acted fraudulently or in bad faith.



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

**B-233623.2 Apr. 14, 1989**  
**89-1 CPD 379**

Prior dismissal of protest is affirmed where action taken by the agency has rendered issues raised therein academic.

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

**B-233773 Apr. 14, 1989**  
**89-1 CPD 380**

An agency may not give undue weight to the fact that an offeror will perform work with its own forces, rather than subcontract for some of the work, when the evaluation criteria of a request for proposals do not indicate such a preference.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation errors**  
**Organizational experience**

An offeror on a request for proposals (RFP) for a contract for the rehabilitation of a movable bridge has not been reasonably evaluated where it receives a perfect score for the "mechanical machinery" subcriterion of the "experience and qualifications" criterion of the RFP, notwithstanding that its last known experience is 12 years old and the offeror does not show compliance with the specific criteria that the contractor and its supervisory personnel have certain minimum experience in the repair or rehabilitation of movable bridge mechanical machinery, and where the protester, who has identified several recent movable bridge projects, receives a significantly lower score because of a stricter application of these criteria.



**PROCUREMENT** **B-233793 Con't**  
**Socio-Economic Policies** **Apr. 18, 1989**  
**Preferred products/services**  
**Domestic products**  
**Interpretation**

In the absence of any specific guidance on the definition of manufacturing found in the Department of Defense Federal Acquisition Regulation Supplement (DFARS) which requires that no appropriated funds be used to purchase machine tools unless manufactured in the United States or Canada, an agency's evaluation of a product as domestically manufactured will not be disturbed where a foreign manufactured machine iron is transformed into a finished milling machine by a domestic manufacturer who installs domestically manufactured electrical components and the domestic components constitute more than 50 percent of the cost of the end product.

**PROCUREMENT** **B-234001; B-234140**  
**Specifications** **Apr. 18, 1989**  
**Minimum needs** **89-1 CPD 384**  
**standards**  
**Competitive restrictions**  
**Design specifications**  
**Overstatement**

Protests that solicitations for pressure gauges are overly restrictive because they allow direct drive but not C-spring, gear drive gauges are denied where: (1) C-spring gauges are being over-requisitioned, leading agency to conclude that the gauges are failing at an unacceptable rate; (2) agency made technical determination that direct drive gauges will be more reliable due to fewer moving parts, as confirmed by limited testing; and (3) gauges are for use on shipboard and failure could result in fire hazard or failure of vital system.



**PROCUREMENT** **B-234471.2 Apr. 18, 1989**  
**Bid Protests** **89-1 CPD 387**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**  
**Additional information**

Prior dismissal as untimely of protest asserting that agency improperly did not reconsider nonresponsibility determination based on alleged new information submitted by protester is affirmed where protest was filed more than 10 working days after protester learned of initial adverse agency action on agency-level protest.

**PROCUREMENT** **B-233832 Apr. 19, 1989**  
**Competitive Negotiation** **89-1 CPD 389**  
**Offers**  
**Competitive ranges**  
**Exclusion**  
**Administrative discretion**

Where offeror fails to furnish sufficient information in its proposal to determine its technical acceptability, an agency can reasonably conclude that the offer is technically unacceptable and exclude it from the competitive range.

**PROCUREMENT** **B-233877 Apr. 19, 1989**  
**Sealed Bidding** **89-1 CPD 390**  
**Contract awards**  
**Multiple/aggregate awards**

Protest alleging agency improperly made an aggregate award for midday and rush-hour shuttle bus services is denied where it is clear that the agency intended to make one award for the services.



**PROCUREMENT** B-235140 Apr. 19, 1989  
Bid Protests 89-1 CPD 392  
GAO procedures  
Interested parties  
Direct interest standards

Fourth low bidder, on a solicitation under which award was made to the low responsible, responsive bidder, is not an interested party under General Accounting Office Bid Protest Regulations to protest propriety of award to bidder which allegedly submitted an unbalanced bid, where protester has not also protested against any possible award to the intervening bidders.

**PROCUREMENT** B-232431.4 Apr. 20, 1989  
Bid Protests 89-1 CPD 393  
Award pending appeals  
Propriety

While agency generally may not proceed with award under procurement subject to General Accounting Office protest, there is nothing which prohibits the agency from proceeding with bid opening and all other steps up to the point of award.

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

Where full and open competition and a reasonable price are obtained and the record does not show a deliberate attempt by the contracting agency to exclude the firm from the competition, the firm's nonreceipt of a solicitation amendment establishing a new bid opening date does not require cancellation and resolicitation of the procurement.

**PROCUREMENT**

**Sealed Bidding  
Performance bonds  
Justification**

**B-234108 Apr. 20, 1989  
89-1 CPD 394**

Performance bond requirement for medical center warehouse services contract is justifiably imposed to protect the government's interest where the contractor will be responsible for up to \$2 million worth of buildings, property and warehouse inventory including medical supplies, pharmaceuticals, equipment and subsistence and continuous operation of the warehouse is an essential service, which if not performed, could jeopardize patient care at medical center.

**PROCUREMENT**

**Special Procurement Methods/Categories  
In-house performance  
Government property  
Use  
Contractors**

There is no requirement that agency make available to private contractors equipment currently used in an in-house operation. Under Office of Management and Budget Circular A-76, agencies are to determine whether to make available to contractors facilities, equipment and real property based on an informal cost-benefit analysis of what is most advantageous to the government.



**PROCUREMENT** **B-234178, et al.**  
**Payment/Discharge** **Apr. 20, 1989**  
**Federal procurement regulations/laws**  
**Revision**  
**Payment procedures**

General Accounting Office (GAO) comments on Federal Acquisition Regulation (FAR) case No. 88-69, a proposal to revise FAR Subpart 32.9, and to revise several contract clauses in FAR Part 52 and add others, to implement the Prompt Payment Act Amendments of 1988, Pub. L. 100-496. GAO suggests changes relating to adjustments to the payment due date, disagreements over invoices, and Office of Management and Budget Circular A-125.

**PROCUREMENT**  
**Sealed Bidding**  
**Federal procurement regulations/laws**  
**Revision**  
**Bid guarantees**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 88-61, a proposal to revise FAR section 28.101-1 concerning the requirement for bid guarantees.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Preferred products/services**  
**Domestic products**  
**Federal procurement regulations/laws**  
**Revision**

General Accounting Office has no objection to Federal Acquisition Circular 84-41, an interim rule revising Federal Acquisition Regulation (FAR) Part 25 and the contract clause at FAR section 52.225-3 to implement the United States - Canada Free - Trade Agreement and the United States - Canada Free - Trade Agreement Implementation Act of 1988, Pub. L. 100-449.



**PROCUREMENT**  
**Sealed Bidding**  
**Contract awards**  
**Quantity reduction**  
**Propriety**

**B-232144.3; B-232144.4**  
**Apr. 21, 1989**  
**89-1 CPD 398**

An award of less than all line items in solicitation is not improper where an earlier protest delayed award process beyond end of fiscal year and available funds for certain items expired, preventing award on those items, and where, in any event, solicitation provides that the government may accept any item or group of items of a bid.

**PROCUREMENT**  
**Sealed Bidding**  
**Low bids**  
**Determination**  
**Information sufficiency**

Protest contending that agency should have rejected low bid because bidder failed to furnish complete information for evaluation of f.o.b. origin transportation costs is denied where record indicates agency had sufficient information available to evaluate transportation costs for the bidder and where bid is low even under least favorable method of shipping.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small business 8(a) subcontracting**  
**Contract awards**  
**Propriety**

**B-234015 Apr. 21, 1989**

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small business 8(a) subcontracting**  
**Use**  
**Administrative discretion**

An agency's determination that funds are not available for obligation is a sufficient reason for not awarding a contract.

**PROCUREMENT**

**Competitive Negotiation  
Below-cost offers  
Acceptability**

**B-234018 Apr. 21, 1989  
89-1 CPD 399**

An alleged "buy-in" (offering cost estimate less than anticipated costs with expectation of increasing costs during performance) by low-priced offeror furnishes no basis to challenge an award where agency knew the realistic estimated cost of contractor's performance before award and made award based on that knowledge.

**PROCUREMENT**

**Competitive Negotiation  
Offers  
Cost realism  
GAO review**

Since an agency's cost realism analysis of a time and materials contract necessarily involves the exercise of informed judgment, the General Accounting Office will not disturb the results of that analysis unless it clearly lacks a reasonable basis.

**PROCUREMENT**

**Competitive Negotiation  
Unbalanced offers  
Materiality  
Determination  
Criteria**

Awardee's proposal is not objectionable as materially unbalanced where it represents lowest price to government for all lots.

**PROCUREMENT**  
**Contract Management**  
**Contract performance**  
**GAO review**

**B-234018 Con't**  
**Apr. 21, 1989**

An offeror's ability to meet its contractual obligations at the price offered is a matter of the firm's responsibility for the contracting agency to determine before award, and the General Accounting Office (GAO) will not review an affirmative determination in that respect except in limited circumstances. Whether awardee actually performs in compliance with contract requirements is a matter of contract administration not reviewable under GAO bid protest function.

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

**B-234887 Apr. 24, 1989**  
**89-1 CPD 403**

Protest of agency's failure to include non-cost/price evaluation factors in solicitation is untimely when not filed prior to the closing date for receipt of initial proposals. Alleged improprieties that are apparent on the face of a solicitation must be filed by that date.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

Contracting officer, who is vested with a wide degree of discretion in exercising his business judgment, is not precluded from finding an offeror to be responsible simply because he initially determined the firm to be nonresponsible.

**PROCUREMENT**

**B-234895 Apr. 24, 1989**

**Bid Protests**

**89-1 CPD 404**

**GAO procedures**

**Interested parties**

**Subcontractors**

Prospective subcontractor is not an interested party to protest specifications in request for proposals.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**Adverse agency actions**

Where a firm initially protested to the contracting activity alleging that the solicitation is overly restrictive prior to the closing date for receipt of proposals, the agency's receipt of initial proposals without taking the requested corrective action constitutes initial adverse agency action on the protest, such that a protest to the General Accounting Office (GAO) more than 10 working days later, based on agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

**PROCUREMENT**

**B-235083 Apr. 24, 1989**

**Bid Protests**

**89-1 CPD 405**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest based upon alleged solicitation impropriety is untimely, when not filed until after quotations were due and a purchase order had been issued to another firm.

**PROCUREMENT**

**Bid Protests**

**Allegation substantiation**

**Burden of proof**

**B-233971 Apr. 26, 1989**

**89-1 CPD 407**

Assertion that awardee was improperly found to be responsible because it made false statements is without merit where assertion is based on a telephone conversation memorandum which, the record establishes, does not accurately reflect the conversation.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Protest that agency's disclosure of its price goals amounted to the use of an impermissible auction technique is untimely, and will not be considered where it is not filed within 10 days after the protester learned the protest basis.

**PROCUREMENT**

**B-230427 Apr. 27, 1989**

**Payment/Discharge  
Shipment costs  
Rate schedules  
Applicability**

**PROCUREMENT**

**Payment/Discharge  
Shipment costs  
Rate schedules  
Interpretation**

The General Services Administration (GSA) disallowed a motor carrier's claim for additional freight charges relating to the transportation of a shipment weighing 24,888 pounds that was originally billed based on less-truckload (LTL) rates in its tender. The carrier contends that a rules tariff, governing the tender, restricted application of the tender's lower LTL rates to shipments weighing less than 20,000 pounds. GSA, however, has shown that the edition of the tender in effect at the time the carrier received this shipment was not governed by the rules tariff containing the weight limit on LTL rates. Therefore, the lower rates originally billed were applicable, and GSA's settlement action is sustained.

**PROCUREMENT**

**B-234352.2 Apr. 27, 1989  
89-1 CPD 408**

**Bid Protests  
GAO procedures  
GAO decisions  
Reconsideration**

Prior decision dismissing protest of fifth lowest bidder because it did not challenge the eligibility for award of one of the interviewing bidders and was therefore not an interested party to pursue the protest is affirmed where protester does not show that original decision was based on an error of fact or law.



**PROCUREMENT**

**B-235200 Apr. 27, 1989**

**Bid Protests**

**GAO procedures**

**Interested parties**

**Direct interest standards**

A nonresponsive bidder is not an interested party under General Accounting Office Bid Protest Regulations to protest cancellation of invitation for bids for which it was found nonresponsive.

**PROCUREMENT**

**Bid Protests**

**Moot allegation**

**GAO review**

Bidder's objection to the agency's failure to verify and permit correction of an alleged clerical error in its bid is dismissed as academic where bid was found nonresponsive.

**PROCUREMENT**

**Sealed Bidding**

**Bid guarantees**

**Post-bid opening modification**

**Propriety**

Where invitation for bids requires a bid bond, bidder's submission of bond in an insufficient penal amount renders the bid nonresponsive and defect may not be corrected after bid opening.

**PROCUREMENT**

**B-234568 Apr. 28, 1989**

**Competitive Negotiation**

**89-1 CPD 409**

**Discussion**

**Adequacy**

**Criteria**

Protest that agency did not hold adequate discussions is denied where the record demonstrates that the major deficiencies were discussed with the protester.

**PROCUREMENT**                      **B-234568 Con't**  
**Competitive Negotiation**      **Apr. 28, 1989**  
**Offers**  
**Evaluation**  
**Administration discretion**

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

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for proposals**  
**Evaluation criteria**  
**Cost/technical tradeoffs**  
**Technical superiority**

In negotiated procurements award need not be made to the offeror who proposes the lowest cost. Award to higher priced, higher technically-ranked offeror is not objectionable where the solicitation made technical considerations more important than cost and agency reasonably concluded that the technical superiority of the awardee's proposal was worth the additional cost.

**PROCUREMENT**                      **B-234997 Apr. 28, 1989**  
**Socio-Economic Policies**      **89-1 CPD 410**  
**Small businesses**  
**Preferred products/services**  
**Certification**

A bid on a total small business set-aside, which fails to indicate that all end items to be furnished would be manufactured or produced by small business concerns, is nonresponsive because the bidder is not obligated to furnish supplies from a small business.

**PROCUREMENT** B-235191 Apr. 28, 1989  
**Competitive Negotiation** 89-1 CPD 411  
**Offers**  
**Late submission**  
**Acceptance criteria**  
**Government mishandling**

Protester's late proposal, sent by United States Postal Service Express Mail 1 day prior to the closing date for receipt of proposals, properly was rejected notwithstanding Postal Service guarantee of next day delivery. Late mailed proposal that is not sent by registered or certified mail 5 or more days prior to the closing date for receipt of proposals can only be considered if there was government mishandling after receipt at the government installation.

**PROCUREMENT** B-235258 Apr. 28, 1989  
**Bid Protests** 89-1 CPD 412  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

Protest concerning proposed award of a contract on a sole-source basis is dismissed as untimely when filed more than 10 working days after the protester knew or should have known the basis of protest.

**MISCELLANEOUS TOPICS**

**MISCELLANEOUS TOPICS**

**B-234910 Apr. 14, 1989**

**Commerce**

**Mailing provisions**

**Misrepresentation**

**Determination criteria**

**MISCELLANEOUS TOPICS**

**Law Enforcement**

**Mailing provisions**

**Misrepresentation**

**Determination criteria**

Chairmen of House Ways and Means Subcommittees on Oversight and Social Security asked us to discuss the legality of mail solicitations by a private organization, the Social Security Protection Bureau. Issue generally is whether Bureau improperly used term "social security" to misrepresent itself or otherwise defrauded recipients. Memorandum discusses the possible application of: (1) Section 428 of Public Law 100-360 (classified to 42 U.S.C. § 1320b-10); (2) 18 U.S.C. § 1341; (3) 39 U.S.C. § 3005; (4) 15 U.S.C. § 45; and (5) S. 273, introduced in the 101st Congress, without attempting to determine whether violations occurred.

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