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# United States General Accounting Office

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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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

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

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

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## NOTICE

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

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**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers          B-225939    Feb. 9, 1987**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Forgeries**

U.S. Army Finance and Accounting Officer is relieved of liability for improper payment made by unidentified subordinate cashier because he maintained and supervised an adequate system of procedures to prevent improper payments.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers          B-226124    Feb. 9, 1987**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Substitute checks**

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

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers      B-222048 Feb. 10, 1987**

**Certifying officers**

**Liability**

**Illegal/improper payments**

**Quantum meruit/valebant doctrine**

Certifying officer erroneously charged and paid obligation from an improper account and the error was not detected until all funds in proper account had been spent. While error was negligent, relief may be granted to certifying official under alternate ground of 31 U.S.C. § 3528(b)(B), since the obligation was incurred in good faith, the Government received value for the payment, and, at the time for obligation arose and was paid, there was no law specifically prohibiting the payment.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Obligation**

**Overobligation**

**Reports**

Where funds to pay prior obligation for reception and representation expenses were not charged to the proper account and reserved for payment, and subsequent obligations exceeded a congressional limit for such expenses, the agency has violated the Antideficiency Act, 31 U.S.C. § 1341(a), and should take actions necessary to report the violation to the President and the Congress under 31 U.S.C. § 1351.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Federal Assistance**

**B-149441 Feb. 17, 1987**

**Grants**

**Matching funds**

**Administrative regulations**

**Authority**

Proposal from National Endowment for the Humanities (NEH) to condition grant awards to state humanities councils upon the councils providing matching funds that would endow the councils with a capital fund that would provide a source of income to the councils is not authorized since NEH grant legislation does not provide authority to make such grants. Matching funds are required under the NEH grant legislation and such matching funds are subject to the same restrictions on their use as the federal grant funds.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**B-226148 Feb. 19, 1987**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Substitute checks**

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

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation**

**B-223725 Feb. 20, 1987**

**Availability**

**Amount availability**

**Augmentation**

**Gifts/donations**

**Watershed projects**

Several local entities will contribute to the construction cost of the Plan 6 alternatives to Orme Dam and Reservoir, Central Arizona Project, which was approved by the Secretary of the Interior. Such contributions are permitted by the Contributed Funds Act, 43 U.S.C. § 395. In the absence of contrary statutory provision, these non-federal expenditures should be excluded from the authorized federal appropriation ceiling as well as from the estimated cost of Plan 6.

Several local entities will contribute to the construction cost of the Plan 6 alternative to Orme Dam and reservoir, Central Arizona Project, which was approved by the Secretary of the Interior. The cost-sharing agreement does not indicate the revenue sources for the entities. Some of the funds used for the contributions may be derived from a federal project. If the funds are properly received by an entity, and do not belong to the federal government, are not subject to a federal claim, or are otherwise restricted as to use, the funds' origin does not require that they be counted against the federal cost ceiling.

**APPROPRIATIONS/FINANCIAL MANAGEMENT B-223725 Con't**

**Appropriation**

**Feb. 20, 1987**

**Availability**

**Purpose availability**

**Specific purpose restrictions**

**Watershed projects**

**Reclamation**

The Secretary of the Interior approved Plan 6 as the alternative to Orme Dam and Reservoir, Central Arizona Project (CAP). Under Plan 6, Safety of Dams (SOD), funds will be used to construct Cliff Dam. In B-215782, April 7, 1986, we concluded that SOD funds are only available to improve existing dams. If SOD funds are used for dam improvement they should not be counted as reclamation project costs against the reclamation project cost ceiling since the Reclamation Safety of Dams Act, Pub. L. No. 95-578, as amended, provides a separate authorization distinct from the CAP authorizations.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Budget Process**

**Funding**

**Watershed projects**

**Statutory regulations**

**Cost controls**

Since the Central Arizona Project (CAP) was authorized in 1968, several general laws, such as the National Environmental Policy Act of 1969 were enacted, causing project construction costs to increase. Under section 309(a) of the Colorado River Basin Project Act, Pub. L. No. 90-537, 82 Stat. 885, 893, the authorization of appropriations for CAP construction may be increased only because of inflationary cost increases. In the absence of other statutory authority to increase the Cap construction cost ceiling, it may not be increased.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers      B-226116   Feb. 20, 1987**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Substitute checks**

Relief is granted Army disbursing official under 31 U.S.C. § 3527(c) from liability for improper payment resulting from vendor's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. However, we think that the Army should develop guidelines on when it is appropriate to delay issuing a recertified payment. In addition, for cases involving notices of losses received after June 1, 1986, we will deny relief of Army delays more than 3 months in forwarding the debt to Army collection division.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers      B-226150   Feb. 20, 1987**

**Disbursing officers**

**Relief**

**Illegal/improper payments**

**Substitute checks**

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

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-223741 Feb. 24, 1987**

**Purpose availability**

**Specific purpose restrictions**

**Personal expenses/furnishings**

Purchases of cold weather clothing by member of surveillance team while performing temporary duty for extended period of time during which weather changed cannot be considered the purchase of special clothing and equipment for which reimbursement could be authorized under 5 U.S.C. § 7903, nor can such purchases constitute miscellaneous expenses necessarily incurred by a traveler in connection with official business under the Federal Travel Regulations.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers B-223911 Feb. 24, 1987**

**Determination criteria**

Internal Revenue Service Center Director is not an accountable officer with regard to funds collected by financial institution under lockbox arrangement. The arrangement eliminates the traditional role of IRS Center in collecting and processing taxpayer remittances and provides for the financial institution to collect remittances directly from taxpayers and process them.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-223857 Feb. 27, 1987**

**Amount availability**

**Antideficiency prohibition**

**Violation**

Once the borrowing authority of the Commodity Credit Corporation (CCC) was depleted and it had no funds available to pay for the meat it had ordered under the red meat purchasing program authorized by section 104 of the Food Security Act of 1985, the Antideficiency Act required CCC to take action to mitigate or minimize the magnitude of a possible Antideficiency Act violation. To the extent CCC entered into new contracts with meat suppliers or required and accepted deliveries of meat on existing contracts during the period in which its borrowing authority was depleted, CCC violated the Antideficiency Act.



**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**

**B-223374 Feb. 17, 1987**

**Relocation**

**Residence transaction expenses**

**Taxes**

**Reimbursement**

**Eligibility**

Employee who sold his residence when transferred to a new duty station requests reimbursement for state income taxes incurred on the profit realized in the sale of his residence at his old duty station. Claim is denied. Under 5 U.S.C. § 5724a (1982), only taxes or expenses necessary for the completion of the real estate transaction itself are reimbursable, and this item is not reimbursable under 5 U.S.C. § 5724b (Supp. III 1985), or any other authority.

**CIVILIAN PERSONNEL**

**B-225289 Feb. 17, 1987**

**Relocation**

**Actual expenses**

**Eligibility**

**Adverse personnel actions**

**Reinstatement**

Employee of Office of Surface Mining Reclamation and Enforcement requests reimbursement for relocation expenses incurred to return to his former duty station after his reinstatement was directed by Merit Systems Protection Board. During the time he had been separated, he had relocated to accept other employment. Neither the Back Pay Act, 5 U.S.C. § 5596, which prescribes allowable payments when an employee undergoes an unwarranted personnel action, nor the regulations implementing section 5596, authorize consequential relocation and moving expenses when an employee is erroneously separated. Although such expenses may result from an improper personnel action, they do not represent benefits an employee would have received had the personnel action not occurred.

**CIVILIAN PERSONNEL****B-222763 Feb. 24, 1987****Compensation****Overpayments****Error detection****Debt collection****Waiver**

Civilian employee of the Navy who was temporarily promoted to grade GS-13 was erroneously overpaid when she continued to receive grade GS-13 salary after being returned to her former grade GS-12 position. Since employee may reasonably have believed that her temporary promotion had been extended, this portion of the debt may be waived. Employee was subsequently erroneously overpaid a second time due to an erroneous step increase. Waiver of this resulting debt is also allowed since employee acted properly in notifying the agency of overpayments and the employee may reasonably have assumed that such an increase was a result of the merit pay system put into effect in October 1981.

**CIVILIAN PERSONNEL****B-223186 Feb. 27, 1987****Travel****Overseas travel****Visas****Travel expenses****Reimbursement**

Employee who traveled between Norfolk and Arlington, Virginia, to obtain a visa in time to perform scheduled travel to Spain is entitled to reimbursement of the travel costs thereby incurred. Reimbursement is authorized under para. 1-9.1d of the Federal Travel Regulations based on the agency's determination that the employee's travel to Washington was necessary to the transaction of official business. B-153103, January 21, 1964.

**CIVILIAN PERSONNEL**  
**. Leaves of Absence**  
**Annual leave**  
**Forfeiture**  
**Restoration**

**B-223238 Feb. 27, 1987**

An employee scheduled annual leave for use in November because he was told that no leave requests would be granted in December and January but became ill so that he was unable to take annual leave as scheduled. He returned to work from sick leave 10 workdays before the end of the leave year but did not request rescheduling of annual leave for that period and, thus, forfeited 80 hours of leave. He is entitled to restoration of his leave under 5 U.S.C. § 6304 and Office of Personnel Management guidelines since he scheduled the leave in advance and his illness occurred late in the year and was for such duration that by the time he returned to work his leave would have not been approved, even if he had formally requested it, because of the exigencies of the public business.

**CIVILIAN PERSONNEL**  
**Compensation**  
**Overtime**  
**Eligibility**  
**Burden of proof**

**B-224094 Feb. 27, 1987**

A FLSA exempt civilian nurse claims entitlement to overtime for periods of time during which she allegedly performed pre-shift duties, attended mandatory meetings and worked through lunch. Her claim may not be allowed since there was no showing the overtime was actually performed or that if it was, it was ordered, approved, or induced by an official with authority to do so. The employee's claim for working through lunch may not be allowed since she worked an 8-hour shift which had no provision for a duty-free lunch.

**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-225984 Feb. 17, 1987**

**Pay**

**Basic quarters allowances**

**Rates**

**Determination**

**Dependents**

Congressman asks for comments on an Air Force sergeant's concerns over the loss of basic allowance for quarters at the "with-dependent" rate. The constituent and another service member who are married to each other also reside together with dependent children, but he makes support payments for two other dependents from a previous marriage who live elsewhere. Under these circumstances the constituent contends that two Comptroller General decisions that deny dual BAQ at the "with-dependent" rate are unfair and result in substantial burdens to married service members living together. There is no entitlement to dual BAQ at the "with-dependent" rate under the described circumstances because the law is intended to reimburse members for one set of non-government quarters when adequate government quarters are not available. The law does not authorize payment of a gratuity for members who make payments for the support of dependents who live elsewhere for personal reasons.

**Travel****Emergencies****Commercial carriers****Travel expenses****Reimbursement**

In 1983 an Army officer stationed in Pennsylvania, whose permanent home of record is Puerto Rico, was authorized emergency leave for the purpose of returning to Puerto Rico to attend a funeral. Due to time constraints he was unable to use cost-free government air transportation, and instead he paid for commercial airline tickets to provide transportation for himself and the members of his immediate family to Puerto Rico. Since the applicable statutes in effect in 1983 did not provide authority for reimbursement of travel expenses incurred by personnel of the uniformed services in such circumstances, his claim for reimbursement of the cost of the airline tickets may not be paid. In addition, the subsequent amendment of the applicable statutes in 1984 to provide authority for reimbursement of transportation expenses incurred in such circumstances does not provide a basis for allowing payment on the officer's claim, since the legislation cannot be applied retroactively.

**Pay****Dual compensation restrictions****Overpayments****Debt collection****Waiver**

A retired Navy officer who was aware of the Dual Compensation Act did not notify the Navy Finance Center when he obtained a civil service position with the Department of Energy. As a result his retired pay was not reduced as it should have been under the Dual Compensation Act, and he was overpaid \$26,024.45. Since he should have notified the Navy of his Federal civil service employment, he was not without fault in accepting the resulting overpayments. Such fault precludes favorable consideration of his application to be relieved of his repayment obligations under the provisions of the waiver statute, 10 U.S.C. § 2774.

**PROCUREMENT**

**PROCUREMENT** B-224182 Feb. 2, 1987  
**Competitive Negotiation** 87-1 CPD 105  
**Offers**  
**Cost realism**  
**Evaluation**  
**Administrative discretion**

Since an agency's cost realism evaluation necessarily involves the exercise of informed judgment as to what costs may be incurred by accepting a proposal to perform a cost-type contract, GAO will not disturb the results of that evaluation unless shown to be unreasonable.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical acceptability**

The awardee's prior problems in performing its incumbent contract were not grounds to downgrade its technical proposal for comparative evaluation purposes where the agency reasonably determined that the firm's ultimate resolution of these problems demonstrated its capability with regard to the current effort.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Personnel experience**  
**Contractor misrepresentation**  
**Intent**

The fact that the successful offeror, with knowledge prior to award that a proposed key employee had accepted other employment, did not take steps to withdraw her qualifications statement and substitute a similarly qualified individual for the position provides no basis to sustain the protest where the evidence of record does not convincingly established that the misrepresentation was intentional.

**PROCUREMENT**

B-226081 Feb. 2, 1987,

**Bid Protest**

87-1 CPD 106

**GAO procedures****Protest timeliness****10-day rule**

Protest addressed in manner other than that set forth in General Accounting Office (GAO) Bid Protest Regulations is dismissed as untimely where, because of the failure to address the protest properly, it was not received at the GAO Washington, D.C. Office within 10 days after protester learned the basis of its protest.

**PROCUREMENT**

B-224203 Feb. 4, 1987

**Bid Protest**

87-1 CPD 109

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

Protest alleging that product offered by bidder was not properly listed on the Qualified Products List need not have been filed before the agency notification of the award to that bidder since the grounds for protest do not arise until the protester has learned of the agency action or intended action adverse or inimical to the protester's position.

**PROCUREMENT****Contractor Qualification****Approved sources****Listings****Administrative determination****GAO review**

Whether a product should have been kept on the Qualified Products List (QPL) without being retested is a matter for the determination of the agency responsible for the QPL, and the General Accounting Office will not question the agency's judgment unless it is shown not to have a reasonable basis.



**PROCUREMENT** **B-224203 Con't**  
**Contractor Qualification** **Feb. 4, 1987**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

Allegation that awardee intends to furnish a nonqualified component in its qualified product will not be considered where bidder was not required to identify manufacturers of the components of the product in its bid and bid did not take any exceptions to the specifications. Allegation involves the bidder's affirmative responsibility which generally is not for consideration by the General Accounting Office.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Labor standards**  
**Supply contracts**  
**Manufacturers/dealers**  
**Determination**

Bidder certifying itself under the Walsh-Healey Act as a manufacturer is permitted to subcontract for the manufacturing effort; therefore, the fact that a subcontractor will actually perform the work does not mean that the certification was false.

**PROCUREMENT**  
**Bid Protest**  
**GAO procedures**  
**Preparation costs**

**B-224237 Feb. 4, 1987**  
**87-1 CPD 110**

Recovery of the costs of pursuing a protest may not be allowed where the protest has been found to be without merit.

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

Contention that the sole responsive bid received under a small business set-aside is unreasonably priced is without merit where the contracting officer determined that the price was reasonable and the protester has not shown this determination to be unreasonable.

**PROCUREMENT**  
**Competitive Negotiation**  
**Suspended/debarred contractors**  
**Offers**  
**Rejection**  
**Propriety**

**B-224567 Feb. 4, 1987**  
**87-1 CPD 112**

Offeror is no longer entitled to be considered for award under request for proposals where offeror is suspended from government contracting before best and final offers are due, and contracting agency does not make written finding under applicable regulation that compelling reason exists for continuing consideration of offeror's proposal.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Interpretation**  
**Intent**  
**Evidence**

**B-224804.2 Feb. 4, 1987**  
**87-1 CPD 113**

Fact that protester may have meant to bid on a basis other than that reflected in the bidding documents is irrelevant to the award decision, since a firm's bidding intent must be determined solely from those documents.

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

**B-225055 Feb. 4, 1987**  
**87-1 CPD 114**

Although the General Accounting Office will closely scrutinize an agency decision which results in the inclusion of only one proposal in the competitive range, an initial proposal was properly excluded from the competitive range where it enjoyed no significant technical advantage over that of its closest competitor and where its proposed cost to perform a specified level of effort was some 30 percent higher than the cost of the selected proposal--a quantum differential of more than \$600,000--with no reasonable chance that significant cost reductions would be achieved if discussions were held and a best and final offer requested.

**Socio-Economic Policies 87-1 CPD 115**  
**Small business 8(a) subcontracting**  
**Prime contractors**  
**Liability restrictions**

There is no basis to find the Small Business Administration (SBA) liable to a procuring agency for reprocurement costs for defective goods delivered by a defaulted small business subcontractor under a contract awarded to SBA pursuant to section 8(a) of the Small Business Act. SBA's responsibility as a "prime contractor" under the 8(a) program is only as a conduit in the award process between the procuring agency whose needs are in issue and the small business subcontractor that will meet those needs; SBA does not guarantee satisfactory performance by the subcontractor.

Sealed Bidding  
Bids  
Responsiveness  
Conflicting terms  
Ambiguity

To be responsive a bid must reflect an unequivocal offer to provide the exact product or service called for in the invitation for bids (IFB) so that its acceptance would bind the contractor to perform in accordance with the IFB's material terms and conditions. Where a bid took exception to a material term of the IFB but also stated that it accepted all terms and conditions of the IFB without exception, conflicting statements in bid created ambiguity and bid was properly rejected as nonresponsive.

**PROCUREMENT**  
**Bid Protest**  
**GAO procedures**  
**Agency notification**

**B-226034.2 Feb. 4, 1987**  
**87-1 CPD 117**

Dismissal of protest for failure to file a copy with the contracting officer within 1 day after filing with General Accounting Office is affirmed where agency never received copy and otherwise had no knowledge of protest basis; the fact that the protester may have forwarded a copy within the necessary period is not relevant, since the requirement is for receipt by the agency.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Responsibility**  
**Negative determination**  
**GAO review**

**B-226107 Feb. 4, 1987**  
**87-1 CPD 118**

The General Accounting Office will not review an allegation concerning a contracting officer's negative responsibility determination of a small business concern where the small business fails to file an application for certificate of competency with the Small Business Administration.

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

**B-224221; B-224221.2**  
**Feb. 5, 1987**

Protest that procuring agency did not grant preference to existing organizations in area, either by restricting competition or including an evaluation criterion reflecting preference, is dismissed as untimely because it was not filed until award was made since it was apparent from solicitation and amendment thereto that preference was not being granted.

**PROCUREMENT**                      **B-224221; B-224221.2, Con't**  
**Competitive Negotiation**      **Feb. 5, 1987**  
**Contract awards**  
**Propriety**

Contrary to protester's allegation, clauses which were changed or added to awarded contract regarding use of consultants and release of information gathered during performance of contract did not alter evaluation criteria nor encourage occurrence of an organizational conflict of interest. Use of consultants was not prohibited by solicitation and clauses were merely added to ease contract administration.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical acceptability**

The determination of the relative merits of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the procuring agency otherwise violated procurement statutes or regulations. Protest is denied where the record shows a reasonable basis for the procuring agency's evaluation of the protester's technical proposal as unacceptable and therefore not in the competitive range.

**PROCUREMENT**                      **B-224226 Feb. 5, 1987**  
**Competitive Negotiation**      **87-1 CPD 119**  
**Offers**  
**Competitive ranges**  
**Exclusion**  
**Administrative discretion**

Agency conclusion that protester's proposal was not within the competitive range was reasonable where the protester's technical score was significantly lower than the scores of the offerors in the competitive range, and its price was significantly higher.

<b>PROCUREMENT</b>	<b>B-224228; B-224228.2</b>
<b>Bid Protest</b>	<b>Feb. 5, 1987</b>
<b>GAO procedures</b>	<b>87-1 CPD 120</b>
<b>Protest timeliness</b>	
<b>Apparent solicitation improprieties</b>	

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

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

GAO will not consider the merits of an untimely protest by invoking the significant issue exception to timeliness rules where the protest does not raise an issue of first impression that would have widespread significance in the procurement community.

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

A protest filed with the General Accounting Office more than 10 working days after the contracting agency denied the firm's agency-level protest is untimely and will not be considered.

**PROCUREMENT**                      **B-224244 Feb. 5, 1987**  
    **Competitive Negotiation**      **87-1 CPD 122**  
        **Discussion reopening**  
            **Propriety**  
                **Best/final offers**  
                **Alternate offers**

An agency is not required to reopen discussions after receipt of best and final offers to determine the acceptability of a deficient alternate proposal first submitted with the best and final offer.

**PROCUREMENT**  
    **Competitive Negotiation**  
        **Offers**  
            **Evaluation**  
                **Information submission**  
                **Contractor duties**

Since the agency's technical evaluation in a negotiated procurement is based upon information submitted with the proposal, the burden is on the offeror to submit an adequately written proposal from the outset. Where protester's alternate proposal fails to include technical information that is called for by the solicitation and is necessary to establish compliance with the specifications, there is a reasonable basis to find the protester's proposal technically unacceptable.

**PROCUREMENT**  
    **Contract Management**  
        **Contract modification**  
            **GAO review**

Protest that modification to the delivery terms of a contract eliminating the contractor's obligation to ship items on U.S.-flag vessels is denied where there is no evidence that the modification was planned before contract award; the contractor's obligation is substantially unchanged; and the competitive position of the protester would not have changed if the solicitation had contained the modified delivery terms.



**PROCUREMENT** **B-224244 Con't**  
**Socio-Economic Policies** **Feb. 5, 1987**  
**Labor standards**  
**Supply contracts**  
**Manufacturers/dealers**  
**Determination**

The General Accounting Office does not consider whether an offeror qualifies as a manufacturer under the Walsh-Healey Act.

**PROCUREMENT** **B-224260 Feb. 5, 1987**  
**Contract Management** **87-1 CPD 123**  
**Contract administration**  
**Contract terms**  
**Compliance**  
**GAO review**

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility/responsiveness distinctions**

Whether successful bidder to supply field range lids intends to use, without authorization, government tooling furnished under another contract, or to provide used lids, does not affect the responsiveness of the bid since the bid does not take exception to the invitation's requirements. Rather, the issue involves the bidder's responsibility and, subsequent to an award, contract administration which the General Accounting Office does not generally review.

**PROCUREMENT** **B-225335.2 Feb. 5, 1987**  
**Bid Protest** **87-1 CPD 124**  
**GAO procedures**  
**Interested parties**

A union local which represents federal employees is not an interested party eligible to bring a protest because it is not an actual or prospective bidder or offeror under the solicitation.

PROCUREMENT B-225353 Feb. 5, 1987  
Competitive Negotiation  
Offers  
Evaluation  
Administrative discretion

Protest alleging that awardee's proposal does not comply with the specifications in several respects is denied, since agency's determination that awardee's proposal was acceptable had a reasonable basis and fact that protester does not agree with agency's conclusion does not itself render the evaluation unreasonable.

PROCUREMENT	B-225439.4	Feb. 5, 1987
Bid Protest	87-1	CPD 126
GAO procedures		
Protest timeliness		
Apparent solicitation improprieties		

Requirement that protest based on alleged impropriety incorporated into solicitation by amendment be filed before the next closing date for receipt of proposals applies where protester received amendment 10 days before next closing date but did not file protest until after closing date because it was allegedly unaware of deadline in General Accounting Office Bid Protest Regulations.

PROCUREMENT	B-225452.2	Feb. 5, 1987
Socio-Economic Policies	87-1	CPD 127
Small businesses		
Competency certification		
Bad faith		
Allegation substantiation		

Where protester has not shown that government officials acted fraudulently or in bad faith in refusing to issue certificate of competency, dismissal of protest is affirmed.

**PROCUREMENT**  
**Bid Protest**  
**Forum election**  
**Finality**

**B-218624.3 Feb. 6, 1987**  
**87-1 CPD 128**

Protest that raises the issue of the propriety of a particular sole-source award of refuse collection services contract is dismissed where the same issue is encompassed in the broader issues (propriety of past, current and future sole-source refuse collection procurements) of a civil action initiated by the same awardee and the court has not expressed interest in a General Accounting Office decision.

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

**B-222585.7 Feb. 6, 1987**  
**87-1 CPD 129**

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the solicitation specified that cost will be the determinative factor.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Administration discretion**

Protest that a technical proposal was improperly evaluated will not be subject to de novo review at GAO. Our review is limited to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria.

PROCUREMENT	B-222585.7	Con't
Competitive Negotiation	Feb. 6, 1987	
Offers		
Risks		
Evaluation		
Technical acceptability		

An agency may differentiate between proposals based on the degree of risk involved since the element of risk is clearly related to the evaluation of capability and approach.

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

The protester has a heavy burden of proving bias on the part of evaluators or the selection official, and unfair or prejudicial motives will not be attributed to those individuals on the basis of inference, supposition or generalized speculation.

PROCUREMENT	B-224223	Feb. 6, 1987
Socio-Economic Policies	87-1	CPD 130
Small business set-asides		
Use		
Justification		

Agency decision not to set aside procurement for small business competition is upheld where record supports contracting officer's conclusion that because of changes in packaging requirement for paper towels, it was not reasonable to expect to receive bids from two small businesses.

**PROCUREMENT****B-224223 Con't****Specifications****Feb. 6, 1987****Minimum needs standards****Competitive restrictions****Design specifications****Overstatement**

Protest that requirement for "pop-up" packaging of paper towels exceeds the agency's needs and is unduly restrictive is denied where the requirement is reasonable.

**PROCUREMENT****B-224868 Feb. 6, 1987****Bid Protest****87-1 CPD 131****GAO procedures****Agency notification****Waiver**

Where agency has in its possession missing attachments to a protest and is not prejudiced by protester's failure to supply those attachments within 1 day of protest filing, no useful purpose would be served by dismissing protest after timely receipt of agency report.

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

Protester need not anticipate improper actions by agency officials. When agency awards a contract to an allegedly nonresponsive bidder basis of protest is contract award, and protest must be filed within 10 days after the basis for protest was known or should have been known, whichever is earlier.

**PROCUREMENT**                      **B-224868 Con't**  
**Sealed Bidding**                **Feb. 6, 1987**  
**Bids**  
**Responsiveness**  
**Descriptive literature**  
**Adequacy**

Bidders need only submit with their bids descriptive literature sufficient for the stated evaluation purpose. Where solicitation requires engineering drawings of manufacturing quality to be used only to determine functional operability, sketches demonstrating functional operability are sufficient.

**PROCUREMENT**                      **B-224940 Feb. 6, 1987**  
**Sealed Bidding**                **87-1 CPD 132**  
**Bids**  
**Responsiveness**  
**Design specifications**  
**Deviation**

General Accounting Office denies protest that bid to supply tie tacks was improperly found nonresponsive, where a handwritten notation on the bid was inconsistent with the required minimum thickness for a part of the tie tack.

**PROCUREMENT**                      **B-225381 Feb. 6, 1987**  
**Specifications**                **87-1 CPD 133**  
**Minimum needs standards**  
**Competitive restrictions**  
**Design specifications**  
**Burden of proof**

Allegation that agency requirement that radio equipment be compatible with its current equipment is unduly restrictive of competition and results in a sole-source award is denied where agency requires compatibility in order to permit voice secure transmissions between various agency offices and other federal agencies and protester has not established that this requirement is unreasonable.

**PROCUREMENT**

**B-225959 Feb. 6, 1987**

**Competitive Negotiation**

**Federal procurement regulations/laws**

**Applicability**

**PROCUREMENT**

**Sealed Bidding**

**Federal procurement regulations/laws**

**Applicability**

In response to a request from IMTEC, the Office of the General Counsel concludes that the Office of the Comptroller of the Currency is a federal agency, subject to the Competition in Contracting Act and the Brooks Act and voluntarily follows the Federal Acquisition Regulation.

**PROCUREMENT**

**B-224263 Feb. 9, 1987**

**Socio-Economic Policies**

**87-1 CPD 135**

**Small businesses**

**Size status**

**Self-certification**

**Post-bid opening periods**

While the protester argues that, under combined bid and auction procedures, the timber sale officer improperly advised and permitted bidders at bid opening to execute and submit a certificate of small business status, required to be submitted with the bid but mistakenly omitted from the bid package, there is no practical basis for objecting to this procedure where its invalidation would result in canceling the sale and all bidders had a fair opportunity to compete as qualified small businesses in the auction.

**PROCUREMENT**

**B-224542 Feb. 9, 1987**

**Competitive Negotiation**

**87-1 CPD 136**

**Best/final offers**

**Evaluation**

**Samples**

**Propriety**

Request, after best and final offers, for submission of samples of offered equipment does not constitute improper discussions where evaluation prepared for selection official in advance of submission establishes that agency already considered awardee's proposal to satisfy requirements of RFP. Request did not, therefore, require submission of further best and final offers.

**PROCUREMENT**

**Competitive Negotiation**

**Discussion**

**Offers**

**Adequacy**

**Criteria**

Contention that Army failed to conduct meaningful discussions is denied where record of negotiations shows that protester was advised of proposal deficiencies and afforded opportunity to respond.



**PROCUREMENT**

**B-224542 Con't**

**Competitive Negotiation  
Offers**

**Feb. 9, 1987**

**Evaluation errors**

**Evaluation criteria**

**Application**

Contention that Army evaluated awardee's proposal on basis different from others, based on Army's acceptance of offer which allegedly did not comply with requirements of request for proposals, is without merit. Record shows that equipment in fact complied with requirements as modified by letter from contracting officer sent to competitors during negotiations, which in the circumstances had the same effect as a formal solicitation amendment.

Contention that Army changed requirements without advising offerors, premised on Army's acceptance of allegedly non-conforming proposal, is without merit where accepted offer conforms to requirements of request for proposals.

**PROCUREMENT**

**Socio-Economic Policies**

**Small businesses**

**Competency certification**

**Applicability**

Referral of matter of small business concern's responsibility to Small Business Administration under certificate of competency procedures is not required where firm was not selected for reasons other than nonresponsibility.

**PROCUREMENT**

**B-224560 Feb. 9, 1987**

**Bid Protest**

**87-1 CPD 137**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Allegation that requirement established by agency during discussions was improper because it had no technical justification and was never incorporated by amendment into the solicitation is untimely and therefore will not be considered since it was not raised prior to the next closing date for receipt of proposals.

**PROCUREMENT**

**Competitive Negotiation**

**Best/final offers**

**Technical acceptability**

**Negative determination**

**Propriety**

Agency is not bound to explain reasons for adding technical requirement during discussions, and where best and final offer essentially ignores the requirement it is proper for agency to evaluate the offer as technically deficient.

**PROCUREMENT**

**Competitive Negotiation**

**Technical evaluation boards**

**Qualification**

**GAO review**

General Accounting Office will not appraise the adequacy of the qualifications of an agency's contracting personnel absent showing of possible fraud, conflict of interest or actual bias on their part.

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

**B-225253 Feb. 9, 1987**  
**87-1 CPD 138**

An issue which is first raised in a protester's comments on an agency's report must independently meet timeliness requirements of Bid Protest Regulations.

**PROCUREMENT**  
**Bid Protest**  
**Moot allegation**  
**GAO review**

Where agency amends solicitation to remove a provision as protester requested, protest based on that provision is academic.

**PROCUREMENT**  
**Sealed Bidding**  
**Bonds**  
**Justification**  
**GAO review**

Protest that requirement for bid and performance bonds is unduly restrictive is without merit since it is within the agency's discretion whether to require bonding in a solicitation and General Accounting Office will not upset such a determination made reasonably and in good faith.

**PROCUREMENT**  
**Sealed Bidding**  
**Performance bonds**  
**Justification**

There is no requirement that there be a history of performance problems before a performance bond may be required.

Protest against the adequacy of the agency's evaluation of the awardee's experience in the type of work called for by the solicitation is denied where the record shows a reasonable basis for the evaluation that is consistent with the solicitation's technical evaluation criteria.

General Accounting Office (GAO) objects to proposed amendment of the Service of Protest clause set forth at Federal Acquisition Regulation § 52.233-2 because the proposed amendment would impose additional requirements on those who protest to GAO not contemplated by GAO's Bid Protest Regulations.

Receipt by protester of agency report on its protest 1 day after the 25 working day time allowed the agency for submitting its report to the General Accounting Office does not prejudice the protester as it is still allowed 7 working days to file its comments with GAO. Accordingly, we will consider the agency's report.

**PROCUREMENT**

**Bid Protest**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

**B-222585.8 Con't**

**Feb. 10, 1987**

A protest against the use of cost as an evaluation factor of past experience for a firm-fixed-price contract is untimely where the factor was contained in the solicitation and the protest was not filed by the closing date of the amendment which changed the contract type from cost-plus-fixed-fee to firm-fixed-price.

**PROCUREMENT**

**Competitive Negotiation**

**Discussion**

**Adequacy**

**Criteria**

The content and extent of discussions are matters within the judgment of the agency involved and are not subject to question by our Office unless they are clearly without a reasonable basis.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Administrative discretion**

Our Office limits its review of the agency's evaluation of proposals to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question a selecting official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. The fact a protester disagrees with the selecting official's conclusions does not itself render the evaluation unreasonable.

B-222585.8 Con't  
Feb. 10, 1987

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Risks**  
**Evaluation**  
**Technical acceptability**

**PROCUREMENT**  
**Competitive Negotiation**  
**Technical evaluation boards**  
**Bias allegation**  
**Corrective actions**

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**PROCUREMENT****B-224185.2 Feb. 10, 1987****Bid Protest****87-1 CPD 141****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest based upon alleged improprieties in a solicitation (allegedly unduly restrictive terms) which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals.

**PROCUREMENT****Specifications****Performance specifications****Product reliability****Performance capabilities**

Solicitation specification requirement that microwave radio equipment to be furnished have been operated successfully as a fully integrated system carrying real traffic in either military or commercial applications is not a "qualification requirement" under the Defense Procurement Reform Act of 1984, 10 U.S.C. § 2319 (Supp. III 1985) because the specification requirement does not constitute a systemized requirement for testing or other quality assurance demonstration that must be completed by offerors before award of a contract.

**PROCUREMENT****B-224220 Feb. 10, 1987****Sealed Bidding****87-1 CPD 142****Bids****Bid guarantees****Omission****Responsiveness**

Bid that failed to include bid bond is nonresponsive, notwithstanding agency's evaluation of bid as below \$25,000 threshold for bonding requirement, because agency's evaluation was in error and threshold was exceeded.

**PROCUREMENT****B-224540 Feb. 10, 1987****Competitive Negotiation****87-1 CPD 143****Best/final offers****Rejection****Cost reduction****Effects**

Protester's proposal was properly rejected as unacceptable even though proposal initially was found acceptable, where protester made significant cost reductions in its best and final offer and, despite express solicitation warnings, failed to submit detailed explanation of the impact of the technical proposal; agency therefore was left with no basis for concluding that the price reduction would have no effect on technical acceptability.

**PROCUREMENT****Competitive Negotiation****Discussion reopening****Propriety**

There is no requirement that agency reopen discussions solely to afford offeror an opportunity to furnish detailed information already specifically required in solicitation and best and final offer request.



**PROCUREMENT** **B-224578.2 Feb. 10, 1987**  
**Competitive Negotiation 87-1 CPD 144**  
**Offers**  
**Evaluation**  
**Downgrading**  
**Propriety**

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for proposals**  
**Evaluation criteria**  
**Subcriteria**  
**Disclosure**

Offeror's lack of experience in investigating discrimination complaints under regulations specific to the contracting agency, although not separately set out in the request for proposals (RFP) as a technical evaluation criterion, was not improperly considered as an undisclosed criterion where RFP indicated that investigators' knowledge of agency's regulations was important and agency-specific experience was reasonably related to more general corporate experience and personnel qualifications evaluation criteria contained in RFP. In addition, record indicates that other deficiencies, and not lack of agency-specific experience alone, contributed to downgrading of protester's proposal.

**PROCUREMENT** **B-225171 Feb. 10, 1987**  
**Socio-Economic Policies**  
**Labor standards**  
**Federal procurement regulations/laws**  
**Revision**

General Accounting Office has no comments on Federal Acquisition Regulation (FAR) case No. 83-7, a proposal to revise FAR Subparts section 1.105, Subparts 22.3 and 22.4 concerning labor standards and to add 12 labor standards clauses at FAR sections 52.222-6 through 52.222-17.

**PROCUREMENT****B-225207 Feb. 10, 1987****Bid Protest****87-1 CPD 145****GAO procedures****Protest timeliness****10-day rule****Effective dates**

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

**PROCUREMENT****Socio-Economic Policies****Small businesses****Contract awards****Pending protests****Justification**

When a size status protest has been filed with the Small Business Administration (SBA) against a prospective awardee, the regulations permit the contracting officer to make award 10 days after SBA's receipt of the protest.

**PROCUREMENT****B-225222 Feb. 10, 1987****Bid Protest****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest that the procurement should have been issued as a 100-percent small business set-aside is untimely where it was not filed until after the closing date for the receipt of initial proposals.

<b>PROCUREMENT</b>	<b>B-225222 Con't</b>
<b>Bid Protest</b>	<b>Feb. 10, 1987</b>
<b>GAO procedures</b>	
<b>Protest timeliness</b>	
<b>Good cause exemptions</b>	
<b>Applicability</b>	

<b>PROCUREMENT</b>	
<b>Bid Protest</b>	
<b>GAO procedures</b>	
<b>Protest timeliness</b>	
<b>Significant issue exemptions</b>	
<b>Applicability</b>	

Untimely protest will not be considered under the significant issue exception to the Bid Protest Regulations where the issue raised by the protester has been considered previously, or under the good cause exception where there is no showing that some compelling reason beyond the protester's control prevented the timely filing of the protest.

<b>PROCUREMENT</b>	<b>B-225858 Feb. 10, 1987</b>
<b>Sealed Bidding</b>	<b>87-1 CPD 147</b>
<b>Bids</b>	
<b>Responsiveness</b>	
<b>Clerical errors</b>	
<b>Ambiguity allegation</b>	

Where a bid, when read as a whole is susceptible of two reasonable interpretations, one of which renders the bid nonresponsive, the bid may be properly rejected as ambiguous. Such ambiguities may not be corrected after bid opening since "clerical errors" which go to the responsiveness of a bid may not be remedied through mistake in bid procedures.

**PROCUREMENT****B-225858 Con't****Sealed Bidding****Feb. 10, 1987****Bids****Responsiveness****Quantity variances****Advance approval**

Bid on a requirements-type contract in which the bidder inserted language making reductions or changes in quantity subject to the bidder's approval was properly rejected as nonresponsive since such language caused the bid to materially deviate from the terms of the solicitation.

**PROCUREMENT****Sealed Bidding****Contract awards****Prior contracts****Errors****Effects**

Fact that agency may have improperly awarded contracts to nonresponsive bidders in other procurements is irrelevant and does not justify repetition of the error.

**PROCUREMENT****B-224264 Feb. 11, 1987****Competitive Negotiation****Contract awards****Initial-offer awards****Propriety**

Contracting agency did not abuse its discretion in proceeding with award, on the basis of initial proposals, to the technically acceptable, lowest-priced offeror whose price was determined to be fair and reasonable in face of assertion made by second-low offeror 5 weeks after proposals were submitted that its competitive position had changed and it could offer a lower price representing a 7.5 percent saving. Award to low offeror was legally unobjectionable and possibility of monetary saving must be weighed against uncertainty whether it actually would be realized were competition reopened and government's interest in the timely award of a contract for the goods and services it is procuring.

**PROCUREMENT**

**B-224550 Feb. 11, 1987**

**Bid Protest**

**87-1 CPD 149**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest concerning allegedly improper reopening of discussions is dismissed as untimely where filed subsequent to the closing date for receipt of second best and final offers.

**PROCUREMENT**

**Competitive Negotiation**

**Best/final offers**

**Modification**

**Late submission**

**Acceptance criteria**

**PROCUREMENT**

**Competitive Negotiation**

**Best/final offers**

**Price disclosure**

**Allegation substantiation**

Protest that awardee may have had improper access to the protester's proposed price and that awardee submitted a late modification to its best and final offer is denied where there is no evidence of an improper price disclosure and the record shows that the awardee lowered its proposed price only after discussions had been reopened.

<b>PROCUREMENT</b>	<b>B-225453</b>	<b>Feb. 11, 1987</b>
<b>Socio-Economic Policies</b>	<b>87-1</b>	<b>CPD 151</b>
<b>Small business set-asides</b>		
<b>Use</b>		
<b>Justification</b>		

PROCUREMENT	B-225950 Feb. 11, 1987
Competitive Negotiation	87-1 CPD 153
Requests for proposals	
Cancellation	
Justification	
GAO review	

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

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**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Modification**  
**Interpretation**  
**Intent**

**B-224171.2 Feb. 12, 1987**  
**87-1 CPD 154**

Where bidder modified its bid by including an instruction to "cut total all bids \$41,000" without clearly stating whether entire \$41,000 reduction was to be taken from the base bid, from additive line items, or apportioned between base and additive line items, modification must be disregarded in determining whether bid is low.

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

**B-225210.2 Feb. 12, 1987**  
**87-1 CPD 155**

Protest against restrictive specifications is dismissed as untimely where protester failed to file written protest to either agency or General Accounting Office before bid opening.

**PROCUREMENT**  
**Bid Protest**  
**Non-prejudicial allegation**  
**GAO review**

Protest that contracting agency has not given protester opportunity to examine samples to determine the validity of sample defects is denied where record shows samples are available at agency for bidder examination.

**PROCUREMENT**                      **B-225210.2 Con't**  
Contractor Qualification      **Feb. 12, 1987**  
Responsibility  
Contracting officer findings  
Bad faith  
Allegation substantiation

Fact that protester may have been found responsible by other contracting officers does not show that contracting officers acted in bad faith in making nonresponsibility determination because such determinations are judgmental and based upon the circumstances of each procurement.

**PROCUREMENT**  
Contractor Qualification  
Responsibility  
Contracting officer findings  
Negative determination  
Criteria

Protest against contracting officer's negative responsibility determination is denied where the determination was based on a negative evaluation of preaward samples and the record contains documentation that provides a reasonable basis for the evaluation findings and the contracting officer's determination.

Contracting officer may base nonresponsibility determination on evaluation of preaward samples which shows protester does not have capability to produce item in compliance with applicable specifications, without affording the contractor an opportunity to explain or discuss the evidence.



**PROCUREMENT**  
**Sealed Bidding**  
**Hand-carried bids**  
**Late submission**  
**Acceptance criteria**

**B-225554 Feb. 12, 1987**  
**87-1 CPD 156**

Where address in solicitation for receipt of offers was correct for mailing purposes and included a zip code for a post office box, a late bid was properly rejected where the protester failed to inquire as to the proper place for hand-delivery of bids and where Federal Express attempted to deliver the bid to the zip code area of the post office box rather than the geographical location of the contracting activity.

**PROCUREMENT**  
**Competitive Negotiation**  
**Use**  
**Criteria**

**B-225560 Feb. 12, 1987**  
**87-1 CPD 157**

Agency decision to use negotiation procedures in lieu of sealed bidding procedures is justified where the basis for award reasonably includes technical considerations in addition to price-related factors.

Protest that agency's use of negotiation procedures for acquiring excavation work in lieu of sealed bidding procedures is unduly restrictive of competition because the excavation industry virtually always competes under sealed bidding procedures is denied where the legitimate needs of the agency reasonably dictated that a negotiated procurement be used and adequate competition was obtained.

PROCUREMENT	B-225982.2	Feb. 12, 1987
Bid Protest	87-1	CPD 158
GAO procedures		
Protest timeliness		
10-day rule		

Protest based on knowledge obtained by protester in post-award telephone conversation, in which agency employee read protester agency technical evaluation, is untimely when filed more than 10 working days after the telephone conversation.

PROCUREMENT B-223827.3 Feb. 13, 1987  
Payment/Discharge  
Fast payment procedures  
Federal procurement regulations/laws  
Revision

General Accounting Office approves of changes proposed in Federal Acquisition Regulation (FAR) case No. 86-64 to FAR Subpart 13.3, concerning the use of fast payment procedures, and to the fast payment clause at FAR § 52.213-1.

PROCUREMENT	B-224246	Feb. 13, 1987
Sealed Bidding	87-1	CPD 159
Bids		
Responsiveness		
Descriptive literature		
Absence		

Where solicitation requires descriptive literature, bidder's failure to submit descriptive literature with its bid renders the bid nonresponsive.

**PROCUREMENT****B-224246 Con't****Sealed Bidding****Feb. 13, 1987****Bids****Responsiveness****Descriptive literature****Adequacy**

Where agency makes award to bidder who submits descriptive literature with its bid, which did not conform to the specifications, but includes general statement that product will be modified to meet the specifications, bid must be rejected as nonresponsive because the descriptive literature did not contain enough information for the agency to determine that the bidder's product complies with the specifications.

**PROCUREMENT****B-224529 Feb. 13, 1987****Contractor Qualification 87-1 CPD 160****Approved sources****Information submission****Timeliness**

Procuring agency did not deny vendor a prompt opportunity to attain source approval for critical aircraft engine part in time to be eligible for award where the agency notified the vendor of the source approval requirements in ample time for the protester to have fulfilled them, but the protester failed to submit necessary information in sufficient time before the award.

**B-224551 Feb. 13, 1987**

87-1 CPD 162

## Contract awards

**Administrative discretion**

## Cost/technical tradeoffs

## Cost savings

Contracting agency can accept an offer with a lower rated technical proposal to take advantage of its lower price, even though cost is the least important evaluation criterion, so long as agency reasonably decides that the cost premium involved in an award to a higher rated, higher priced offeror is not warranted in light of the acceptable level of technical competence available at the lower cost.

## PROCUREMENT

## Competitive Negotiation

## Offers

## Cost realism

## Evaluation

### Administrative discretion

Protest that pursuant to solicitation provision concerning cost realism contracting agency should have rejected competitor's proposal for unrealistic pricing is denied where provision clearly only contemplated cost realism analysis and adjustment, not proposal rejection.

Unsupported allegation that awardee's subcontractors' labor rates included uncompensated overtime hours so that, pursuant to solicitation provision, they arguably should have been adjusted upward for cost realism purposes is insufficient basis to challenge contracting agency's cost realism analysis.

**PROCUREMENT****B-224971 Feb. 13, 1987****Competitive Negotiation  
Offers****87-1 CPD 163****Technical acceptability  
Negative determination  
Propriety**

Proposal that offered to supply one building did not meet material requirement for supplying two buildings and was, therefore, properly found to be technically unacceptable.

**PROCUREMENT****Competitive Negotiation  
Requests for proposals  
Amendments  
Notification  
Contractors**

Where full and open competition and reasonable prices are obtained by the government and the record does not show--and the protester does not allege--a deliberate attempt by the contracting agency to exclude the protester from competition, the protester's failure to receive an amendment materially changing solicitation requirements does not affect the validity of the award made to another offeror.

**PROCUREMENT****B-225679 Feb. 13, 1987****Competitive Negotiation  
Offers****87-1 CPD 165****Submission time periods  
Extension  
Propriety**

Agency's decision to extend the deadline for proposal submission due to inclement weather is unobjectionable, even though protester was not informed of extension until after original deadline had passed, where protester, who already had submitted a timely offer, was not competitively prejudiced.

**PROCUREMENT****B-225695 Feb. 13, 1987****Sealed Bidding****87-1 CPD 166****Alternate bids****Responsiveness****Criteria**

A bid that requests bids in part for the construction of a boat ramp in either a wet or a dry condition is responsive where it is based on either but not both alternatives.

**PROCUREMENT****B-222548.3 Feb. 17, 1987****Competitive Negotiation****87-1 CPD 167****Contract awards****Administrative discretion****Cost/technical tradeoffs****Technical superiority**

Protest against award to higher-priced offeror whose technical proposal was deemed "far superior" in technical merit when compared with protester's proposal, is denied where proposal evaluation standards gave greater weight to technical merit and lesser weight to cost and where protester has not shown that the contracting agency's evaluation of the submitted proposals or the award was unreasonable.

**PROCUREMENT**

**Bid Protest**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-224175.2 Feb. 17, 1987**  
**87-1 CPD 168**

Prior decision is affirmed on reconsideration where the request for reconsideration does not establish that the decision was based on errors of fact or law.

**PROCUREMENT**

**Bid Protest**  
**GAO procedures**  
**Preparation costs**

**PROCUREMENT**

**Contract Management**  
**Convenience termination**  
**GAO decisions**  
**Recommendations**  
**Withdrawal**

**PROCUREMENT**

**Sealed Bidding**  
**Bids**  
**Preparation costs**

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

**PROCUREMENT**

**B-224255 Feb. 17, 1987**

**Bid Protest**

**87-1 CPD 169**

**GAO procedures**

**Interested parties**

**Non-prejudicial allegation**

Fact that the contracting agency improperly negotiated with awardee but not with protester does not require contract termination where the protester would not have changed its price and the award was based on price.

**PROCUREMENT**

**Socio-Economic Policies**

**Small business set-asides**

**Non-prejudicial allegation**

Protester-small business would not be prejudiced by continuation of contract awarded to a lower-priced large business under a small business set-aside because contracting agency would have resolicited on an unrestricted basis due to the protester's unreasonably high price, and the protester admittedly would not have lowered its price. The fact that the agency conducted discussions solely with the large business after the submission of proposals does not affect this conclusion because the protester's offer was technically acceptable and its price would not have been reduced.



**PROCUREMENT**

**B-224255 Con't**

**Socio-Economic Policies**

**Feb. 17, 1987**

**Small businesses**

**Contract awards**

**Pending protests**

**Justification**

Where the contracting officer determines that urgency necessitates contract award without giving the unsuccessful offeror 5-day advance notice of the award to permit a protest of the successful offeror's size status, the contract award is valid. However, where a timely protest after award of the awardee's size status results in a Small Business Administration determination that the awardee was not a small business and was not eligible for award under the 100-percent small business set-aside, the agency should consider termination of the contract.

**PROCUREMENT**

**Socio-Economic Policies**

**Small businesses**

**Contract awards**

**Size status**

**Misrepresentation**

Mere contention that awardee misrepresented its small business size status, absent sufficient evidence, does not constitute a basis for questioning award.

**PROCUREMENT****B-224293.2 Feb. 17, 1987****Bid Protest****87-1 CPD 170****GAO procedures****GAO decisions****Reversal****Legal errors****PROCUREMENT****Sealed Bidding****Bid guarantees****Responsiveness****Invitations for bids****Identification**

Prior decision denying protest against nonresponsibility determination is reversed where guarantee of financial backing that contracting officer declined to consider due to its reference to an erroneous solicitation number was otherwise clearly identifiable with the procurement in question.

**PROCUREMENT****B-224515 Feb. 17, 1987****Specifications****87-1 CPD 171****Defects****Post-acceptance periods****Effects**

When significant error in specifications is discovered prior to award of contract, specifications should be revised and offerors who were in the competitive range up to that point, including an offeror whose best and final offer was late, should be given an opportunity to respond to government's actual requirements.

**PROCUREMENT****B-224564 Feb. 17, 1987****Special Procurement****87-1 CPD 172****Methods/Categories****Options****Contract extension****Use****Propriety**

An agency's decision to exercise an option for an additional quantity that is based upon an examination of the option prices for this quantity available under existing contracts is reasonable and proper where the only mobilization base producers for the item participated in the competition for the base quantity, and the option for the additional quantity is exercised only 4 days after award.

**PROCUREMENT****B-225404; B-225404.2****Bid Protest****Feb. 17, 1987****GAO procedures****87-1 CPD 174****Protest timeliness****Apparent solicitation improprieties**

Contention that agency's minimum needs can be met at a reduced cost by a sewage system which deviates substantially from the request for proposal's (RFP) specifications, constitutes an allegation that the RFP is unduly restrictive. Because protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date, this contention, raised after the award, is untimely.

**PROCUREMENT****Competitive Negotiation****Contract awards****Initial-offer awards****Discussion****Propriety**

Contracting agency properly may award a contract on the basis of initial proposals, without discussions, where the solicitation advises offerors of that possibility and award will be at the lowest overall cost to the government.



**PROCUREMENT** **B-225474** **Con't**  
**Competitive Negotiation** **Feb. 17, 1987**  
**Contract awards**  
**Qualified offers**  
**Propriety**

Protest is sustained where the agency improperly awarded the contract to an offeror which failed to delete certain material qualifications from its proposal until after the closing date for receipt of best and final offers, even though the agency had earlier determined and expressly advised the firm that its offer would not be acceptable unless the qualifications were withdrawn.

**PROCUREMENT** **B-225648** **Feb. 17, 1987**  
**Bid Protest** **87-1 CPD 176**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest against solicitation requirements, apparent prior to the submission of initial proposals, is untimely when it is not filed until after award has been made.

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

Protest, based on information provided to protester at debriefing, filed with General Accounting Office more than 10 working days after debriefing is untimely.



**PROCUREMENT**  
**Bid Protest**  
**GAO procedures**  
**Preparation costs**

**B-224201.2 Feb. 18, 1987**  
**87-1 CPD 180**

Protester is not entitled to the costs of filing and pursuing a protest, including attorney's fees, where it will have an opportunity to compete under the new solicitation that more accurately reflects the contracting activity's needs than the one canceled during the pendency of the protest.

**PROCUREMENT**  
**Competitive Negotiation**  
**Contract awards**  
**Propriety**

**B-224561 Feb. 18, 1987**  
**87-1 CPD 181**

Protest of award of a contract for data transmission services to an offeror whose proposal was inconsistent on its face with material solicitation requirements is sustained because the offeror could not meet the mandatory grade of service or provide transmission as required by the solicitation and failed to include prices for all services in its proposal.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion reopening**  
**Auction prohibition**

**B-225446 Feb. 18, 1987**  
**87-1 CPD 183**

Contracting agency does not create improper auction by reopening discussions and requesting second round of best and final offers where there is no indication that agency's purpose was to give one offeror a competitive advantage or that agency established a price goal for offerors or disclosed their relative price standing.

**B-225446 Con't**

**Feb. 18, 1987**

## PROCUREMENT

## Competitive Negotiation

## Requests for proposals

### Best/final offers



**PROCUREMENT**  
**Bid Protest**  
**Moot allegation**  
**GAO review**

**B-226105 Feb. 18, 1987**  
**87-1 CPD 185**

Protest that award was made to another firm even though protester was issued a certificate of competency (COC) by the Small Business Administration is dismissed since at the time the COC was issued, the protester was no longer the low offeror.

**PROCUREMENT**  
**Bid Protest**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-224248.2 Feb. 19, 1987**  
**87-1 CPD 186**

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

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Evaluation**  
**Options**  
**Low bid displacement**

**B-224534 Feb. 19, 1987**  
**87-1 CPD 188**

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for bids**  
**Evaluation criteria**  
**Prices**  
**Options**

Contracting agency improperly displaced bidder who was low on all items except optional work in order to make an award to another bidder who only became low if the optional work was included in the evaluation where solicitation effectively indicated that option price would not be evaluated.

Where the evaluation criteria provide that technical factors have more than twice the importance of price, the agency reasonably may determine that the slight technical advantage of the protester's proposal is outweighed by a proposal 8-percent or \$56,000 lower in price.

Source selection officials are not bound by the scoring of technical evaluators and may conceptually rescore proposals subject to the test of rationality and consistency with the solicitation's evaluation criteria.

Protest that invitation for bids should be canceled and resolicited because the agency delayed 3 months before making an award and the low bidder refused to extend its bid is without merit where the other bidders were not prejudiced by the delay and award to the second-low bidder would meet the needs of the government at a reasonable price.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for bids**  
**Cancellation**  
**Justification**

**B-224991 Con't**  
**Feb. 20, 1987**

The desire of a bidder to lower its bid price after bid opening does not constitute a compelling reason that would justify cancellation of an invitation for bids and resolicitation.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Labor standards**  
**Overtime**  
**Federal procurement regulations/laws**  
**Revision**

**B-225091 Feb. 20, 1987**

Contracts subject to the Contract Work Hours and Safety Standards Act were made between an agency and a contractor before a 1983 change to a relevant DOL regulation. Where, as here, an agency engages in cross-withholding, but a contractor gives actual or constructive consent to it, the previous general prohibition on cross-withholding in 48 Comp. Gen. 387 (1968) is not applicable. Furthermore, this previous general prohibition on cross-withholding, at least insofar as it prohibits cross-withholding by the Government against a contractor, has been superseded by a 1983 change in the relevant Department of Labor regulations, now codified as 29 C.F.R. § 5.5(a)(2) (1986).

**B-225091 Con't**  
**Feb. 20, 1987**

PROCUREMENT	B-225115	Feb. 20, 1987
Payment/Discharge	87-1	CPD 191
Payment priority		
Sureties/government		

D-54

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

**B-225515.3 Feb. 20, 1987**  
**87-1 CPD 192**

Protest filed more than 10 days after the basis for protest was known or should have been known is dismissed as untimely.

**PROCUREMENT**  
**Bid Protest**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**  
**Additional information**

**B-225656.2 Feb. 20, 1987**  
**87-1 CPD 193**

Reconsideration request is dismissed where request merely provides untimely details missing from original protest, which was dismissed for absence of detailed protest grounds, and does not challenge dismissal of original protest on legal or factual grounds.

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

**B-225696 Feb. 20, 1987**  
**87-1 CPD 194**

Protest against rejection of protester's proposal under mobilization base procurement, not filed until more than 1 month after date for receipt of initial proposals, is untimely where mobilization base restriction, which excluded protester from procurement, was clearly stated in request for proposals.

Contracting agency properly rejected offer as late when lateness was not due to government mishandling but rather to offeror's failure to allow sufficient time for proposal to be delivered to procurement office from the agency's mail facility.

Where bidder transmits bid modification by Western Union to agency TWX machine at 9:48 a.m. on the day of a 10:00 a.m. bid opening, late receipt of the modification is due to the bidder's failure to allow sufficient time for delivery to the designated location for receipt of bids rather than to mishandling by the agency.

Offeror's status as woman-owned small business does not provide basis for waiver of solicitation's bid guarantee requirement.

**PROCUREMENT**

**B-226209; B-226210**

**Bid Protest**

**Feb. 20, 1987**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest against provisions of invitation for bids and agency's failure to set aside the procurement for small business concerns is dismissed as untimely when not filed until after the bid opening date.

**PROCUREMENT**

**Bid Protest**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Protest against rejection of protester's bid as excessively priced; agency's cost estimate; and agency's disclosure of elements of protester's bid, is dismissed as untimely when not filed within 10 working days after the protester knew the protest bases.

**PROCUREMENT**

**B-226238 Feb. 20, 1987**

**Contractor Qualification**

**Licenses**

**State/local laws**

**GAO review**

Where solicitation contains general licensing requirement, but does not require that successful bidder possess any specific license, contracting officer is free to make award without considering whether the bidder is licensed under state law.

**PROCUREMENT****B-224256.2 Feb. 24, 1987****Bid Protest****GAO procedures****GAO decisions****Reconsideration****Additional information**

Protest which was dismissed as untimely, for failure to be filed with the agency within 10 working days after basis of protest was known to protester, will be considered on the merits since protester provides evidence, in its request for reconsideration, which establishes that its agency-level protest was filed within the 10-day deadline.

**PROCUREMENT****Competitive Negotiation****Offers****Evaluation****Technical acceptability****PROCUREMENT****Competitive Negotiation****Requests for proposals****Amendments****Notification****Contractors**

Technical requirements, stated in clear and unambiguous terms, are presumed to be material and essential to the needs of the government. Acceptance of a proposal which does not conform to such a material solicitation requirement, without first amending the solicitation to provide an opportunity for all offerors to compete on an equal basis, is improper.



**PROCUREMENT****B-225008 Feb. 24, 1987****Government Property Sales  
Administrative agencies  
Authority**

Without express or reasonably implied statutory authorizations, the head of a department or agency of the Government is powerless to dispose of property of the United States. Under various provisions of law, law enforcement agencies seizing property, or having custody of forfeited property, may retain it for official use or dispose of it as otherwise authorized by law. However, authorized methods of disposition do not appear to include giving the property to the states for legal fund-raising activities.

**PROCUREMENT****B-225136 Feb. 24, 1987****Contract Management  
Contract administration  
GAO review**

General Accounting Office has no legal basis to require the winning bidder under one solicitation to purchase supplies from the low bidder under a related, canceled solicitation.

**PROCUREMENT****Sealed Bidding  
Invitations for bids  
Cancellation  
Justification**

Protest against cancellation of solicitation is denied where agency no longer requires the solicited item.

**PROCUREMENT****B-225182 Feb. 24, 1987****Bid Protest****Administrative policies****Violation****GAO review**

Alleged violation of a Department of the Air Force regulation setting forth internal policies for audiovisual services does not provide a valid basis for protest. Moreover, an agency may reasonably base a solicitation on a revised regulation that will become effective during the term of the contract.

**PROCUREMENT****Bid Protest****Moot allegation****GAO review**

When a solicitation requires the successful contractor to furnish equipment described by a brand name or equal, and in response to a protester's concerns, the agency states that it will amend the solicitation to include salient characteristics, protest alleging that lack of information about the equipment prevents bidding on an equal basis is rendered academic.

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

General Accounting Office denies a protest that color printing estimates in a solicitation for audiovisual services are defective, where protester fails to show that the estimates are not based on the best information available or are otherwise deficient.

**PROCUREMENT****B-225182 Con't****Socio-Economic Policies****Feb. 24, 1987****Labor standards****Service contracts****Wage rates****Errors**

When a solicitation includes wage determinations covering a list of 11 classes of service employees and incorporates a clause by which standards for wages and fringe benefits of unclassified employees may be conformed, the General Accounting Office denies a protest alleging that the solicitation is deficient because it does not also include a wage determination for a class of employee that the agency does not necessarily regard as required for contract performance.

**PROCUREMENT****B-225299 Feb. 24, 1987****Competitive Negotiation****Hand-carried offers****Late submission****Acceptance criteria****Acceptance**

Normal delay in forwarding carrier-delivered offer from mailroom to office designated for receipt, with result that offer was not received by required time, does not warrant considering the late offer where the delivery was not expedited because the carrier's envelope was not marked with information as to the solicitation number, deadline for receipt, and ultimate destination of the proposal.

**PROCUREMENT****B-225373 Feb. 24, 1987****Competitive Negotiation****Contract awards****Administrative discretion****Cost/technical tradeoffs****Technical superiority**

Army's decision to award a contract concerning a manpower staffing standards study to a higher rated, higher priced offeror was not unreasonable where the awardee's technical proposal was considered superior and worth the cost premium involved.

**PROCUREMENT****B-225420 Feb. 24, 1987****Noncompetitive Negotiation****Contractors****Notification****Procedural defects**

An agency violated the statutory requirement for adequate presolicitation notice of proposed contract actions by publishing a synopsis of its intent to issue a sole-source solicitation which only identified two out of 15 items to be acquired and gave no indication that there were other items beyond the two described.

**PROCUREMENT****Noncompetitive Negotiation****Use****Justification****Urgent needs**

The sole-source award of certain items to the only known approved source was proper under the "compelling urgency" exception of 10 U.S.C. § 2304(c)(2) where the items were indeed critical and where the agency had neither the data needed to procure the items competitively nor the time necessary to qualify a new source.

**PROCUREMENT****B-225429 Feb. 24, 1987****Sealed Bidding****Invitations for bids****Cancellation****Reinstatement****Propriety**

Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(e)(2) does not prohibit the reinstatement of a solicitation and the award of a contract thereunder where the solicitation was erroneously canceled; an award thereunder would serve the government's needs; and a resolicitation would only prejudice those bidders whose prices have been exposed and afford the protester an opportunity to improve upon its eighth-ranked competitive position.

**PROCUREMENT****B-225435 Feb. 24, 1987****Sealed Bidding****Invitations for bids****Contractors****Notification**

Protest that agency deprived incumbent contractor of opportunity to bid because agency did not provide it with a solicitation or otherwise inform incumbent that a new solicitation had been issued is denied where incumbent was informed of solicitation by Commerce Business Daily announcement and record shows that reasonable efforts were made to distribute solicitation and that four bids were received.

**PROCUREMENT**

**B-225455 Feb. 24, 1987**

**Bid Protest  
Allegation  
Abandonment**

**PROCUREMENT**

**Competitive Negotiation  
Contract awards  
Source selection boards  
Bias allegation  
Allegation substantiation**

Allegation that the source selection board in a procurement for design and construction of a family housing project improperly allowed its preference for a townhouse configuration to affect the selection process is dismissed where the protester could not have been competitively prejudiced by the board's alleged bias, because the protester itself offered only a townhouse configuration. Furthermore, since the protester did not comment upon the agency's report on this issue, the issue is considered abandoned.

**PROCUREMENT**

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

A protest that the request for proposals is defective because it does not adequately indicate the evaluation factors is untimely where filed after the contract has been awarded.

**PROCUREMENT**

**Bid Protest  
Information disclosure  
Administrative determination  
GAO review**

The General Accounting Office has no authority to determine what information the contracting agency must release to the protester under the Freedom of Information Act but will review the requested source selection documents in camera to resolve a bid protest.

**PROCUREMENT**

**B-225455 Con't**

**Competitive Negotiation**

**Feb. 24, 1987**

**Contract awards**

**Administrative discretion**

**Cost/technical tradeoffs**

**Cost savings**

Where selection officials, after evaluating proposals on a basis clearly consistent with the solicitation's stated scheme, reasonably regard technical proposals as essentially equal, cost or price may become the determinative selection factor.

Although the protester's proposal received the highest technical rating, it was not unreasonable for the contracting agency to make award to the awardee to take advantage of its lower price, where the agency considered the protester's and awardee's technical proposals to be essentially equal.

**PROCUREMENT**

**Competitive Negotiation**

**Requests for proposals**

**Evaluation criteria**

**Cost/technical tradeoffs**

**Weighting**

Where the solicitation does not expressly state the relative importance of price versus technical factors, price and technical factors will be considered to be approximately equal in importance.

**PROCUREMENT****B-225463 Feb. 24, 1987****Competitive Negotiation****Offers****Evaluation****Technical acceptability**

Under request for proposals (RFP) for aerial target towing services, contracting agency was not required to reject offeror's initial proposal as technically unacceptable for failing to meet one of the performance standards in the RFP for the towing aircraft, where the deficiency in the proposal was due to offeror's misinterpretation of provision in RFP, and proposal was reasonably susceptible to being made acceptable by substituting a different model aircraft.

**PROCUREMENT****Competitive Negotiation****Technical transfusion/leveling****Allegation substantiation****Evidence sufficiency**

Contracting agency did not engage in technical leveling by asking offeror whether aircraft it proposed for aerial target towing services complied with performance standard in RFP and later issuing a clarifying amendment to RFP once it became apparent that the offeror had misinterpreted RFP provision setting out the performance standard.

**PROCUREMENT****B-225475; B-225723****Sealed Bidding****Feb. 24, 1987****Invitations for bids****Cancellation****Justification**

Probable changes in performance costs from those reflected in already-submitted bid prices, due to a 4-month delay in the start of performance anticipated in the invitation for bids, is a reasonable basis for agency determination that award under the solicitation would prejudice bidders, and that solicitation thus should be canceled.



**PROCUREMENT**

**B-225522 Feb. 24, 1987**

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

Protest against specification modification filed more than 10 days after protester knew the basis for protest is untimely and will not be considered on the merits.

**PROCUREMENT**

**Competitive Negotiation  
Contract awards  
Quantity reduction  
Propriety**

**PROCUREMENT**

**Competitive Negotiation  
Discussion  
Propriety  
Allegation substantiation  
Evidence sufficiency**

Award of a fixed-quantity contract to the low priced offeror for a quantity less than that specified in the solicitation does not constitute discussions with that offeror which would necessitate the holding of similar discussions with the other higher-priced offerors.

**PROCUREMENT**

**B-225994.3 Feb. 24, 1987**

**Competitive Negotiation  
Offers  
Late submission  
Acceptance criteria**

Agency may consider a mailed proposal that is received after the date required in the solicitation only if one of the exceptions against considering late proposals applies.

**PROCUREMENT****B-226175 Feb. 24, 1987****Payment/Discharge****Federal procurement regulations/laws****Revision****Payment withholding**

General Accounting Office has no objection to a proposal to amend the five contract clauses set forth at Federal Acquisition Regulation §§ 15.216-8 through 15.216-12 by removing the \$100,000 limitation on the amount that may be withheld from monies otherwise due a contractor as a reserve to protect the government's interest.

**PROCUREMENT****B-224533 Feb. 25, 1987****Sealed Bidding****Bids****Clerical errors****Error correction****Propriety**

An agency may not reject a low offer that contained a condition that the government "prepay" transportation costs on a carrier of the contractor's choice where such a condition does not seem reasonable and the offeror's explanation of a claimed clerical mistake is reasonable. The agency should have clarified this minor irregularity to correct the clerical error. Since this clarification would not constitute discussions, the agency could not reasonably rely upon any anticipated further delay caused by reopening discussions to justify rejecting the low offeror's proposal.

**PROCUREMENT****B-224536 Feb. 25, 1987****Sealed Bidding****Hand-carried bids****Late submission****Acceptance criteria**

Where evidence of record establishes only that commercial carrier left bid package at military installation's central mail and receiving office as a result of the routine application of "security measures," and does not show that he made a specific attempt to deliver the parcel to the bid opening room shown on the parcel's address but was refused permission to do so by government personnel, the bid, when received late, should have been rejected since improper government action was not the sole or paramount cause of the bid's late arrival.

**PROCUREMENT****B-225260.2 Feb. 25, 1987****Sealed Bidding****Bids****Responsiveness****Acceptance time periods****Deviation****PROCUREMENT****Sealed Bidding****Invitations for bids****Amendments****Acknowledgment****Responsiveness**

Where bidder inserted 60 days as its bid acceptance period in the original bid form and also acknowledged an amendment that changed the IFB minimum acceptance period from 60 days to 90 days, the bid should not have been rejected as nonresponsive because bidder's blanket acknowledgment of the amendment indicated its acceptance of the longer bid acceptance period.

**PROCUREMENT**

**B-225357 Feb. 25, 1987**

**Bid Protest**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Specific objections to the evaluation of the protester's proposal, first raised in protester's comments on administrative report, but which are based upon information provided at a debriefing held after protester's initially filed protest but more than 10 days before comments were filed in the General Accounting Office are untimely and will not be considered on the merits.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Competitive ranges**

**Exclusion**

**Administrative discretion**

Where no basis of protest as initially filed, General Accounting Office cannot conclude that it was unreasonable of agency to exclude from the competitive range the protester's proposal, which ranked 6th of 11 technically, protester's lower estimated costs would not require that it be included in the competitive range.

**PROCUREMENT**

**B-225486 Feb. 25, 1987**

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

Protest basis first raised in protester's post conference comments which could have been raised in its initial protest filed over a month earlier is dismissed as untimely.

**PROCUREMENT**

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

Low bidder's failure to acknowledge an amendment which had a negligible affect on the quality of performance and price was properly waived.

**PROCUREMENT**

**Sealed Bidding  
Invitations for bids  
Amendments  
Materiality**

An amendment which advised bidders of certain obvious conditions affecting the removal and replacement of boilers is not material where the IFB as issued required bidders to perform the work necessary to remove existing boilers and install replacement boilers and expressly warned bidders to inspect the work site to ascertain the difficulty and cost of the work.

**PROCUREMENT****B-226186 Feb. 25, 1987****Bid Protest****GAO procedures****Agency notification**

Agency request that protest be dismissed because protester failed to furnish a copy of the protest to the contracting agency within 1 day of its filing with GAO is granted where 11 days have elapsed and contracting agency has not received a copy of the protest.

**PROCUREMENT****B-222405.4 Feb. 26, 1987****Bid Protest****GAO procedures****Preparation costs****PROCUREMENT****Sealed Bidding****Bids****Preparation costs**

Protester who unsuccessfully challenges contracting agency's grounds for canceling IFB is not entitled to recover its bid preparation costs or the costs of filing and pursuing the protest, since the cancellation was proper; or costs incurred in anticipation of receiving award under the canceled IFB, since no legal basis exists for recovering such costs.

**PROCUREMENT****Sealed Bidding****Invitations for bids****Cancellation****Justification**

Compelling reason exists to cancel invitation for bids (IFB) after bid opening where specifications do not adequately describe government's actual needs.

**PROCUREMENT****B-222405.4 Con't****Socio-Economic Policies****Feb. 26, 1987****Small businesses****Competency certification****Applicability**

While issuance of certificate of competency is conclusive as to matters of responsibility, it does not require the contracting agency to make award under a defective IFB where agency reasonably decides that a compelling reason exists for canceling the IFB.

**PROCUREMENT****B-224842.2 Feb. 26, 1987****Competitive Negotiation****Technical evaluation boards****Bias allegation****Allegation substantiation****Evidence sufficiency**

Protest alleging that contracting officials were biased and improperly rejected the protesters proposal is denied because these allegations are not supported by the record which shows that deficiencies in the protester's proposal were not corrected following meaningful discussions, and that the proposal was properly rejected as unacceptable.

**PROCUREMENT****B-225126 Feb. 26, 1987****Sealed Bidding****Bids****Responsiveness****Ambiguous prices**

Bid was properly rejected as nonresponsive when an accompanying commercial rate schedule caused bid to vary from the terms and conditions of the IFB and to fail to include a firm, fixed price.

**B-225385 Feb. 26, 1987**

## Offers

## Exclusion

**Administrative discretion**

## Competitive Negotiation

## Technical acceptability

### Negative determination

**Propriety**

## PROCUREMENT

**B-225422 Feb. 26, 1987**

## GAO procedures

## Protest timeliness

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<b>PROCUREMENT</b>	<b>B-225422 Con't</b>
<b>Competitive Negotiation</b>	<b>Feb. 26, 1987</b>
<b>Contract awards</b>	
<b>Initial-offer awards</b>	
<b>Discussion</b>	
<b>Propriety</b>	

The protester and contracting agency dispute whether there was a preaward contact to confirm the protester's proposal. If no contact was made, as the protester contends, since the solicitation permitted award on an initial proposal basis, the agency properly rejected protester's low offer which did not include a material component of the solicited target system. If there was contact, as the agency maintains, it did not constitute discussions because the protester was not afforded an opportunity to revise or modify its proposal.

<b>PROCUREMENT</b>	<b>B-225639.2 Feb. 26, 1987</b>
<b>Bid Protest</b>	
<b>GAO procedures</b>	
<b>GAO decisions</b>	
<b>Reconsideration</b>	

<b>PROCUREMENT</b>
<b>Contractor Qualification</b>
<b>Licenses</b>
<b>State/local laws</b>
<b>GAO review</b>

Prior decision is affirmed on reconsideration where the protester fails to establish that the decision erred in holding that the question of the successful bidder's alleged failure to possess the requisite state commission operating authority--which was not specifically required by the solicitation--was not a valid legal basis upon which to object to the award of a contract to the firm.

**PROCUREMENT****B-225719; B-225720****Sealed Bidding****Feb. 26, 1987****Bids****Responsiveness****Acceptance time periods****Deviation**

Bidder's insertion of a 60-day bid acceptance period in the Minimum Bid Acceptance Period clause that required an acceptance period of 120 days but provided a space for specifying a longer period, renders the bid nonresponsive notwithstanding that the bidder did not change the 120-day period stated on the solicitation cover page.

**PROCUREMENT****Sealed Bidding****Non-responsive bids****Post-bid opening  
periods****Clarification****Propriety**

A nonresponsive bid must be rejected and may not be changed or corrected based on explanations offered by the bidder after bid opening.

**PROCUREMENT**

**B-225998 Feb. 26, 1987**

**Bid Protest**

**GAO procedures**

**Information submission**

**Timeliness**

Bid Protest Regulations do not permit piecemeal presentation and development of protest evidence, information or analyses. Consequently, where protester initially asserts general allegation about quotation compliance and agency responds in report, subsequently-iterated precise details of allegation, which could have been raised initially, will not be considered.

**PROCUREMENT**

**Bid Protest**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Protest of basis on which quotations were evaluated with respect to cost is untimely where filed more than 10 working days after protester knew evaluation components and results.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation errors**

**Allegation substantiation**

Protest that agency should have evaluated protester's offered system on another basis regarding system capacity is denied where agency's evaluation was based on the capacity the protester specified in its quotation.

**PROCUREMENT****B-223857 Feb. 27, 1987****Payment/Discharge****Payment time periods****Government delays****Interest**

In accordance with the Prompt Payment Act, 31 U.S.C. § 3901-3906, the Commodity Credit Corporation (CCC) was required to pay interest to any contractor who did not receive timely payment for the meat it delivered to CCC under the red meat purchasing program the Department of Agriculture was authorized to carry out by section 104 of the Food Security Act of 1985. As specified in the the contracts, CCC was obligated to pay interest to contractors under the Prompt Payment Act when payment was made more than 10 days after delivery, even though CCC was unable to make payment when due because of the temporary depletion of its borrowing authority.

**PROCUREMENT****B-224987 Feb. 27, 1987****Bid Protest****GAO procedures****Preparation costs****PROCUREMENT****Sealed Bidding****Bids****Preparation costs**

Protester's request for reimbursement of its bid preparation costs is denied because recovery of such costs is not permissible where a decision on the merits denies the protest.

**PROCUREMENT****B-224987 Con't****Bid Protest****Feb. 27, 1987****GAO procedures****Protest timeliness****10-day rule****Effective dates**

Doubt as to when the protester first knew its basis of protest is resolved in favor of the protester for timeliness purposes.

**PROCUREMENT****Sealed Bidding****Invitations for bids****Cancellation****Justification**

Agency properly canceled an invitation for bids (IFB) where all bid prices exceeded the funds available for the construction project. The protester's contention that award is required because a provision on the cover sheet of the IFB expressed the agency's intention to fund the project either with fiscal year 1986 or fiscal year 1987 appropriations is clearly unreasonable, since no government official has the authority to award a contract or to obligate funds when to do so would violate a statute or regulation.

**PROCUREMENT****B-225669 Feb. 27, 1987****Bid Protest****GAO procedures****Interested parties****Direct interest standards**

Since as the sixth low offeror in a procurement in which price is the determining factor, the protester's direct economic interest is not affected by the award of the contract, the protester is not an interested party eligible to pursue a protest against award to the low offeror.

**PROCUREMENT**

**B-225997 Feb. 27, 1987**

**Socio-Economic Policies**

**Small businesses**

**Responsibility**

**Competency certification**

**GAO review**

Where contracting officer refers nonresponsibility determination to the Small Business Administration (SBA), but protester fails to file for a Certificate of Competency, General Accounting Office (GAO) will not review the contracting officer's determination since such a review would in effect substitute GAO for the SBA.

**MISCELLANEOUS TOPICS**

**MISCELLANEOUS TOPICS                      B-224777   Feb. 10, 1987**  
**Federal Administrative/Legislative Matters**  
**Employment discrimination**  
**Corrective actions**  
**Enforcement**  
**GAO authority**

The Equal Employment Opportunity Commission (EEOC) requests GAO's comments on a proposed regulation which assigns the Comptroller General a role in EEOC's enforcement of its appellate decisions on federal discrimination complaints. We advise EEOC that we object to the proposed regulation because: (1) we are aware of no specific legal authorization for the proposed enforcement arrangement; (2) our authority to settle claims under 31 U.S.C. § 3702(a) does not empower us to enforce other agencies' legal determinations; and (3) we have traditionally declined to become involved in federal employment discrimination matters, in view of EEOC's statutory authority for handling those matters.

**MISCELLANEOUS TOPICS                      B-223725   Feb. 20, 1987**  
**Environment/Energy/Natural Resources**  
**Watershed projects**  
**Alternatives**  
**Statutory regulations**  
**Interpretation**

The Secretary of the Interior approved Plan 6 as the alternative to the construction of Orme Dam and Reservoir, Central Arizona Project. Plan 6 includes the construction of a greatly enlarged Cliff Dam as a substitute for Orme Dam, as well as the construction of New Waddell Dam and modifications to Roosevelt and Stewart Mountain Dams. The indexed cost of Plan 6 is about \$1.1 billion and the indexed cost of Orme Dam would be \$166 million. Based on these differences, Plan 6 is not a "suitable alternative" for Orme Dam as authorized in section 301(a) of the Colorado River Basin Project Act, Pub. L. No. 90-537. However, since the Congress has known about Plan 6 and passed appropriations which included the Central Arizona Project, we see no legal basis for objecting to implementation of Plan 6.

**MISCELLANEOUS TOPICS                      B-224943   Feb. 27, 1987**  
**Finance Industry**  
**Government securities**  
**Payment procedures**  
**Treasury deposit**

Private inquirer questions provision in Bureau of Public Debt's TREASURY DIRECT Regulations which requires that payments accruing to owners of Government securities must be made by direct deposit into financial institution accounts, 31 C.F.R. §357.26 (1986). Sections 3102-04, and 3121 of title 31 expressly authorize the Secretary of the Treasury to prescribe by regulation the conditions under which securities will be offered for sale. Since the method to be used for making payment on a security is a condition pertaining to its issuance and sale, a regulation requiring payment by direct deposit is not legally objectionable.



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