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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-233243 Aug. 3, 1989

Time availability

Time restrictions

Fiscal-year appropriation

Training

The entire amount of the cost of a training course for employees of the Department of Agriculture, Food and Nutrition Service, is properly chargeable to fiscal year 1987 appropriations, the appropriations available when the need for the course was determined, the obligation was entered into, and performance was begun.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-234603 Aug. 11, 1989

Purpose availability

Business cards

The Parklawn Computer Center, Department of Health and Human Services, may not use its funds to purchase business cards for its employees. Business or calling cards are personal in nature, and may not be purchased using appropriated funds without statutory authority. The fees that Parklawn collects from other agencies are appropriated funds because it has statutory authority to collect and use them to cover its expenses.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims by Government

B-235853 Aug. 14, 1989

Liens

Release

Under 29 U.S.C. § 2410(e) the Comptroller General may issue a certificate releasing property from a junior lien held by the United States when the statutory requirements have been met. The contract seller's interest is a senior lien arising from a contract for deed. In that contract for deed for the sale of property, the buyer agreed to pay the purchase price in installments and the seller retained legal title to the property as security for such payment until payment is completed and the seller transfers legal title to the buyer. The United States Attorney for the Northern District of Iowa, who is responsible for the administration of the laws giving rise to the lien of the United States in this matter, has reported to the Comptroller General that the lien of the United States is junior to the applicant's senior lien and is not a tax lien. The United States Attorney has also reported that the proceeds from the sale of the property will be insufficient to satisfy in whole or in part the junior lien of the United States. The statutory requirements have been met and the Comptroller General has issued a certificate of release.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-236330 Aug. 14, 1989

Purpose availability

Necessary expenses rule

Voluntary expenditure

Reimbursement

Army Colonel at remote location in Saudi Arabia may be reimbursed for purchase of safe drinking water for his detachment under the public necessity exception to the voluntary creditor rule. The purchase was necessitated by receipt through regular channels of a contaminated water shipment, and in view of historical problems in receiving timely shipments, there was a real need to act promptly to protect the government's interest.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-232178 Aug. 3, 1989

Compensation

Overpayments

Error detection

Debt collection

Waiver

Waiver of an overpayment of a merit pay increase is granted to a grade GM-13 employee where the employee received a merit pay increase based on grade and pay retention rights which had expired. There is no indication that the employee knew or should have known of the overpayment.

CIVILIAN PERSONNEL

B-232600 Aug. 3, 1989

Relocation

Household goods

Actual expenses

Reimbursement

Amount determination

An employee, who was authorized to move under the actual expense method, claims reimbursement for \$353 he paid a friend for assisting him in packing and moving his household goods over a 4-day period. The employing agency questions whether this amount is reasonable. It is the agency's responsibility initially to determine whether the amount is reasonable, although under the circumstances of this case, we would not object to employee being reimbursed the entire \$353 if the agency found it to be an appropriate amount.

CIVILIAN PERSONNEL

B-232309 Aug. 14, 1989

Travel

Temporary duty

Per diem

Claims

Statutes of limitation

Seven employees of the Forest Service claim per diem and other temporary duty expenses based on our decision in Mason E. Richwine, B-224811, Sept. 25, 1987. Since these seven claims were first received here on August 16, 1988, they are time-barred with respect to the period prior to August 16, 1982. 31 U.S.C. § 3702(b) (1982).

CIVILIAN PERSONNEL

Travel

Travel expenses

Illegal/improper payments

Debt waiver

Erroneous payments of per diem and mileage allowances to eight other Forest Service employees for periods more than 6 years prior to the date their claims were received by the General Accounting Office may be subject to waiver. See 5 U.S.C. § 5584 (Supp. IV 1986).

CIVILIAN PERSONNEL

B-234157 Aug. 17, 1989

Relocation

Expenses

Reimbursement

Eligibility

Manpower shortages

CIVILIAN PERSONNEL

Relocation

Travel expenses

Manpower shortages

An individual was appointed from the private sector to a manpower shortage category position. Instead of being limited to the travel and transportation expense reimbursements authorized by 5 U.S.C. § 5723 (1982), his travel authorization erroneously permitted him the full range of relocation expense reimbursements as though he was a transferring employee. The claim in excess of the limited entitlements may not be paid. However, since the total expenses incurred were significant and the individual acted in good faith reliance on the erroneous representations of agency officials, we submit the matter to the Congress for favorable consideration under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

CIVILIAN PERSONNEL

B-231813 Aug. 22, 1989

Compensation**Retroactive compensation****Adverse personnel actions****Attorney fees****Eligibility**

A civilian employee of the United States Coast Guard filed a grievance contesting her annual performance rating. The final agency decision upgraded the employee's performance rating and granted her request for attorney fees. Before attorney fees may be paid, the agency must determine that the employee's rating was "affected by an unjustified or unwarranted personnel action" as required by the Back Pay Act, as amended, 5 U.S.C. § 5596 (1982), and that the award of attorney fees would be in the interest of justice as required by the governing regulations under the Act. The case is remanded to the Coast Guard to make the necessary determinations.

An employee claims reimbursement for her attorney's photocopying costs as part of an award of attorney fees under the Back Pay Act. The courts have specifically denied reimbursement for photocopying expenses under the Act, since such "taxable costs" are excluded from the concept of "attorney fees."

CIVILIAN PERSONNEL**Compensation****Retroactive compensation****Adverse personnel actions****Litigation expenses****Interest**

An employee seeks payment of an interest charge she incurred on a loan secured to pay her attorney for services in connection with a grievance contesting her annual performance rating. We know of no authority which would permit reimbursement of the interest charge.

CIVILIAN PERSONNEL
Leaves of Absence
Annual leave
Forfeiture
Restoration

B-232269.2 Aug. 22, 1989

In an attempt to avoid forfeiture of annual leave at the end of the year, an employee of the National Weather Service scheduled leave in August and September 1987. The leave was approved in writing, then canceled due to public exigencies, and was not rescheduled by the agency prior to the end of the leave year, resulting in forfeiture of 48 hours of the employee's annual leave. Where an employee demonstrates that, but for an agency's failure to reschedule properly requested leave, he would be entitled to restoration of leave under 5 U.S.C. § 6304(d)(1)(B), such leave may be restored under the administrative error provision of 5 U.S.C. § 6304(d)(1)(A).

CIVILIAN PERSONNEL**B-198510.3 Aug. 23, 1989****Relocation****Temporary quarters****Interruption****Actual subsistence expenses****Amount determination**

An employee under permanent change-of-station orders interrupted occupancy of temporary quarters at his new duty station to travel to his old duty station to complete the transfer of his household goods and the relocation of his family. He stayed in his old residence for 3 days and in a motel for 2 days. Except for the actual round-trip travel en route between the new duty station and the old duty station, the employee is not entitled to per diem for purposes of completing transfer arrangements. However, since the tolling of the temporary quarters subsistence expenses (TQSE) period is interrupted only by the travel time for which the employee receives per diem, TQSE may be available to cover the days spent in the motel if the agency determines that the allowable period in this case had not expired.

CIVILIAN PERSONNEL**Travel****Local travel****Travel expenses****Reimbursement**

While an employee occupies temporary quarters at his old duty station to make arrangements for the transfer of his household goods and family to his new duty station, he is not entitled to local transportation expenses.

CIVILIAN PERSONNEL
Compensation
Special allowances
Computation

B-230401 Aug. 23, 1989

An employee who exercised his reemployment rights with the U.S. Customs Service after a transfer to an international organization is not entitled to additional payment for an equalization allowance where the record shows the computation was made in accordance with the governing statute and regulations.

CIVILIAN PERSONNEL
Relocation
Temporary quarters
Actual subsistence expenses
Eligibility
Extension

B-235177 Aug. 23, 1989

An agency acted within its discretion when it denied an employee a 30-day extension of temporary quarters. Under the Federal Travel Regulations, an agency has broad discretion to limit the period of temporary quarters, or extensions, especially where an employee has taken a househunting trip.

CIVILIAN PERSONNEL
Travel
Local travel
Travel expenses
Reimbursement

B-233218 Aug. 24, 1989

Two employees, who were temporarily assigned to an alternate duty site approximately 1 mile from their regular place of work, claim mileage reimbursement for their commuting between their residences and that location. Under the Joint Travel Regulations, such travel must be approved as advantageous to the government. Absent such approval, these claims may not be paid.

CIVILIAN PERSONNEL **B-235329 Aug. 25, 1989**
Relocation
Temporary quarters
Actual subsistence expenses
Reimbursement
Eligibility

A transferred employee's claim for temporary quarters subsistence expenses is denied for the period when he continued to occupy his residence at the old duty station after residence had been sold.

CIVILIAN PERSONNEL **B-232679.2 Aug. 29, 1989**
Relocation
Residence transaction expenses
Loan origination fees
Reimbursement

Upon reconsideration, we affirm our prior decision that an employee may be reimbursed only a 1 percent loan origination fee rather than a 2.5 percent fee. Although initial fees and charges totalling 2.5 percent were customary in the locality based on a Federal Home Loan Bank survey, the survey included not only loan origination fees, but also discounts and points which are not reimbursable expenses.

CIVILIAN PERSONNEL **B-234499 Aug. 29, 1989**
Relocation
Travel expenses
Reimbursement
Escorts

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General Decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL**B-235616 Aug. 29, 1989****Relocation****Residence transaction expenses****Loan origination fees****Reimbursement****Amount determination**

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL**B-235411 Aug. 30, 1989****Travel****Rental vehicles****Property damages****Claims****Payments**

Under the car rental program negotiated by the Military Traffic Management Command, Department of Defense, with various car rental companies for government employees performing official business, participating companies have agreed to provide full comprehensive and collision insurance by including Collision Damage Waiver protection in the basic rate charged and assume the risk for all loss and damage to the vehicle, except that the employee's agency shall pay when the loss and damage results from an employee's violation of certain vehicle use restrictions. Budget Rent a Car is a participating company. The company is advised by letter that, since there is no showing that any use restriction was violated, neither the employee nor the government is liable for the loss and damage in question.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-233529.2 Aug. 16, 1989

Pay

Additional pay

Eligibility

Evidence sufficiency

MILITARY PERSONNEL

Pay

Claims

Statutes of limitation

A claim by the spouse of a World War II Army Air Force veteran, on the veteran's behalf, for unpaid additional pay due to combat and aviation service activities of that veteran, cannot be paid where the spouse does not present facts which clearly evidence the veteran's right to the additional pay entitlements, along with their lack of payment, and where as here, the claim is barred in any event by the statute of limitations since it was not received in this Office for more than 43 years after it accrued.

MILITARY PERSONNEL

Pay

Claims

Statutes of limitation

Recently, regulations issued under 31 U.S.C. § 3702(b)(1) were modified to provide that a claim can be filed with the agency out of whose activities the claim arose to toll the 6-year Barring Act. However, this amendment affects only those claims not barred as of June 15, 1989. Personnel claims arising out of military service during World War II which had been barred for many years because they had not been filed in this Office prior to statute of limitations, are not revived by virtue of the fact that they had been filed with the agency prior to the bar date.

MILITARY PERSONNEL

B-235536 Aug. 29, 1989

Travel

Emergencies

Commercial carriers

Travel expenses

Reimbursement

A member who is not granted emergency leave upon the death of his grandmother and travels to the funeral at his own expense is entitled to reimbursement under 37 U.S.C. § 411d when his orders are amended putting him in an emergency leave status.

MILITARY PERSONNEL

Travel

Overseas travel

Foreign air carriers

Use

Prohibition

The Fly America Act prohibits the use of appropriated funds for government financed air transportation on a foreign air carrier unless service by U.S. carrier is not available. A member on emergency leave is entitled to the reimbursement in accordance with 37 U.S.C. § 411d for use of a foreign carrier when it can be demonstrated that a U.S. carrier was not available as defined in the regulations.

MILITARY PERSONNEL

B-236252 Aug. 29, 1989

Pay

Survivor benefits

Annuities

Eligibility

Former spouses

Congressman requests information on behalf of the first wife of a deceased service member regarding her entitlement to a Survivor Benefit Plan (SBP) annuity. The member remarried, but no record of a final decree ending his first marriage can now be located. Because there is uncertainty regarding the identity of his legal widow, GAO cannot authorize payment of an SBP annuity to either woman until a court of competent jurisdiction determines which is the legal widow.

PROCUREMENT

PROCUREMENT

B-234141.9 Aug. 1, 1989

Bid Protests

GAO procedures

Protest timeliness

10-day rule

A protest alleging that the contracting agency improperly failed to solicit an offer from the protester, that was dismissed by General Accounting Office (GAO) as untimely because the protester failed to file the protest within 10 days after the closing date for receipt of proposals, i.e., no later than 10 days after the basis of the protest was known or should have been known, as is required by GAO Bid Protest Regulations, will not be reopened. GAO's longstanding position is that where a contracting agency has properly synopsized a proposed procurement in the Commerce Business Daily (CBD) a potential contractor is on constructive notice of the solicitation and its contents and has a duty to make reasonable efforts to obtain a copy of the solicitation in order to ensure that the firm is included in the competition; generally, an agency is not required to place advertisements of proposed procurements in other publications unless it is anticipated that effective competition will not otherwise be obtained.

PROCUREMENT

B-234992 Aug. 1, 1989

Bid Protests

89-2 CPD 93

GAO procedures

Protest timeliness

10-day rule

Protest not filed within 10 days of knowledge of protest basis made known in agency report is untimely.

PROCUREMENT

B-234992 Con't

Competitive Negotiation

Aug. 1, 1989

Offers

Cost realism

GAO review

Cost realism analysis of an offeror's labor rates is to determine if they are realistic and reasonable and we will not disturb agency's informed judgment absent a showing it was unreasonable. Where total standard wage rate using solicitation's wage determinations is \$47.28, proposed awardee's offered rate is \$52 and protester's is \$53.81, agency determination that proposed awardee's costs were realistic is not unreasonable.

PROCUREMENT

Competitive Negotiation

Offers

Debriefing conferences

An offeror is not entitled to a debriefing until after award is made.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Evaluation criteria

Cost/technical tradeoffs

Price competition

Protest that agency failed to evaluate offered discount is denied since discount would still not make protester low where award is to be made to technically acceptable lowest priced offeror.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-235768.3 Aug. 1, 1989

89-2 CPD 94

Request for reconsideration of dismissal of protest challenging awardee's allegedly below-cost bid is denied since submission of a below-cost offer or "buy-in" does not provide a basis for challenging an award.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Contention that awardee will not comply with terms of a collective bargaining agreement incorporated in solicitation constitutes a challenge to agency's affirmative determination of responsibility, which General Accounting Office does not review absent a showing of possible fraud or bad faith or failure to apply definitive responsibility criteria.

PROCUREMENT**B-234383.2 Aug. 2, 1989****Bid Protests****89-2 CPD 96****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration of prior decision upholding cancellation of a solicitation and a resolicitation because the price of the protester, the sole bidder eligible for award, was unreasonably high, is denied where protester: (1) does not challenge that holding; (2) expresses general disagreement with another aspect of the decision without alleging that it is factually or legally erroneous; (3) pursues a factual matter irrelevant to the legality of the procurement; and (4) reiterates its speculation that the release of certain pricing information to its competitors was not inadvertent as the contracting agency maintains, yet does not dispute prior conclusion that the agency's action did not prejudice the protester because at no time was its price competitive with those otherwise available.

PROCUREMENT**B-234945 Aug. 2, 1989****Competitive Negotiation****89-2 CPD 97****Contract awards****Administrative discretion****Cost/technical tradeoffs****Technical superiority**

Contracting agency may properly make award to a higher-cost, higher-rated offeror where solicitation lists cost as the least important factor and it was determined that the technical merit of awardee's proposal justifies the higher cost.

PROCUREMENT **B-235204 Aug. 2, 1989**
Socio-Economic Policies 89-2 CPD 98
Small businesses
Preferred products/services
Certification

Contracting agency's rejection of bid as nonresponsive under total small business set-aside solicitation was proper where bidder failed to certify intention to furnish products manufactured or produced by small business concerns; although the solicitation omitted Federal Acquisition Regulation (FAR) clause 52.219-6, "Notice of Total Small Business Set-Aside," which provides that by submitting an offer a bidder agrees to furnish only end items manufactured by small business concerns, bidders were on constructive notice of the Small Business Administration regulations requiring that end items be manufactured or produced by small business concerns.

PROCUREMENT **B-235332 Aug. 2, 1989**
Sealed Bidding
Invitations for bids
Amendments
Notification

Protest that bidder did not receive an amendment to solicitation is denied absent evidence that the failure resulted from a deliberate attempt on the part of the agency to exclude firm or that full and open competition was not obtained.

PROCUREMENT **B-235539 Aug. 2, 1989**
Bid Protests 89-2 CPD 100
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protester's post-award objection to the use of invitation for bids instead of Federal Supply Schedule is untimely since it concerns an alleged solicitation impropriety that should have been raised prior to bid opening.

PROCUREMENT **B-235539 Con't**
Contractor Qualification **Aug. 2, 1989**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Contracting officer could reasonably conclude that definitive responsibility criterion, requiring awardee to provide documentation of at least three completed projects of similar scope, has been met where prospective awardee submitted a list of three locations where it appeared the awardee had performed the same general type of work on smaller projects, and nothing on the face of the information submitted to the contracting officer prior to award called into question the correctness of that information.

PROCUREMENT **B-233793.2 Aug. 3, 1989**
Bid Protests **89-2 CPD 102**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is dismissed where funds for the procurement have been withdrawn which renders academic the issues considered under original decision.

PROCUREMENT **B-235272 Aug. 3, 1989**
Sealed Bidding **89-2 CPD 103**
Bids
Responsiveness
Terms
Deviations

Bid was properly rejected as nonresponsive where statement included in the bid imposed conditions that modified material solicitation requirements.

PROCUREMENT **B-235320 Aug. 3, 1989**
Special Procurement **89-2 CPD 104**
Methods/Categories
Federal supply schedule
Purchases
Justification
Low prices

Agency properly awarded a contract to a Federal Supply Schedule (FSS) contract vendor which offered lowest priced equipment available on the FSS which met agency needs.

PROCUREMENT **B-235421 Aug. 3, 1989**
Contract Management **89-2 CPD 105**
Contract administration
Contract terms
Compliance
GAO review

Allegation from low bidder that agency will impose conditions on payment frequency, progress payment retainage, and performance and payment bonds that were not set forth in the solicitation concerns matters of contract administration which are not reviewable under the Bid Protest Regulations.

PROCUREMENT**B-235560 Aug. 3, 1989****Sealed Bidding****89-2 CPD 106****Hand-carried bids****Late submission****Acceptance criteria**

Where the bid opening officer receives a bid hand-carried by a Federal Express courier after declaring the arrival of the 10:30 a.m. bid opening time as shown on the bid opening room clock, the agency properly rejected the bid as late, even though the courier claims that the bid actually was delivered at 10:29 a.m., based on the time displayed electronically on the courier's hand-held computer after scanning the bid package. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

PROCUREMENT**B-228695.4 Aug. 4, 1989****Competitive Negotiation****89-2 CPD 107****Offers****Price disclosure****Allegation substantiation****Evidence sufficiency**

Decision is reversed and protest sustained where subsequent investigation shows that the initial decision was based on an error of fact. Investigation shows that agency protest report incorrectly stated that no price information was disclosed during procurement when in fact awardee was improperly advised as to the difference between its high price and the protester's price on the initial offers.

PROCUREMENT B-235380 Aug. 4, 1989
Contractor Qualification 89-2 CPD 108
Responsibility
Contracting officer findings
Negative determination
Pre-award surveys

Protest against nonresponsibility determination is denied where, based on a current negative pre-award survey report, the agency reasonably concluded that protester would be unable to acquire adequate facilities and establish necessary procedures in time to meet solicitation delivery requirements for urgently-needed Human Immunodeficiency Virus testing.

PROCUREMENT B-234488.2 Aug. 7, 1989
Special Procurement 89-2 CPD 109
Methods/Categories
In-house performance
Cost estimates
Contract administration
Personnel

In a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76, an agency properly obtained a waiver permitting it to include the costs of six contract administration personnel, rather than the four assumed by the Circular, where the agency found that it needed the additional contract administration personnel in view of the technically specialized disciplines involved in the contract and the function's base-wide coverage as established by an operational audit conducted to support the waiver request.

PROCUREMENT

B-234488.2 Con't

Special Procurement

Aug. 7, 1989

Methods/Categories

In-house performance

Cost estimates

Cost evaluation

Fringe benefits

In a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76, an agency may use a mock reduction in force procedure to determine the propriety and amount of certain one-time labor conversion costs, that is, severance pay, relocation costs and retraining costs, to be added to contractor's price.

PROCUREMENT

Special Procurement Methods/Categories

In-house performance

Cost estimates

GAO review

In a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76, an agency properly included costs in its estimate to accomplish indefinite quantity work required by the statement of work.

In a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76, an agency estimate of overtime hours to be included in its cost estimate will be upheld where the overtime estimate is reasonable on its face.

PROCUREMENT**Special Procurement****Methods/Categories****In-house performance****Cost evaluation****Personnel****B-234488.2 Con't****Aug. 7, 1989**

In a cost comparison conducted pursuant to Office of Management and Budget Circular No. A-76, an agency may include, as a one-time conversion cost to be added to a contractor's price, the reasonable costs of supplementary employees necessary to conduct a reduction in force in the event a determination is made to convert an in-house function to a contract, provided the agency's need for such personnel is established.

PROCUREMENT**Socio-Economic Policies****Small businesses****Disadvantaged business set-asides****Preferences****Eligibility****B-235013; B-235014****Aug. 7, 1989****89-2 CPD 110**

Agency reasonably determined that a small disadvantaged business (SDB) was not a regular dealer in perishable food items, and thus was not eligible for SDB evaluation preference under solicitations for these goods, where record indicates that the SDB does not maintain a true inventory of these items from which sales are made on a regular basis.

PROCUREMENT

B-235247 Aug. 7, 1989

Competitive Negotiation

89-2 CPD 111

Offers

Evaluation errors

Non-prejudicial allegation

Protest that agency should have included transportation costs in its evaluation of offers is denied where protester's interpretation of apparently ambiguous solicitation terms is unreasonable and, in any event, protester has not demonstrated how it was prejudiced by agency's evaluation method.

Protest that firms were not evaluated on a common basis is denied where, although agency evaluated certain costs on the basis of protester's proposal to do work in 3 years and evaluated awardee on basis of his offer to do work in 2 years, protester would not have been low had agency evaluated protester's offer on same basis as awardee's offer.

Agency properly did not consider in its evaluation a number of alleged "benefits" resulting from protester's proposal of a longer delivery schedule where the solicitation did not provide for consideration of these alleged benefits in evaluating offers.

PROCUREMENT

B-235652 Aug. 7, 1989

Sealed Bidding

89-2 CPD 112

Invitations for bids

Cancellation

Justification

Funding restrictions

Notwithstanding the validity of the government's estimate for a procurement or the agency determination that all bid prices were excessive, an agency's cancellation of solicitation after bid opening is not legally objectionable where it determined after bid opening that sufficient funds were not available to make award to the low responsive bidder. Under such circumstances, the agency is not required to award a contract for less than the total amount of work solicited.

PROCUREMENT

B-235126 Aug. 8, 1989

Competitive Negotiation

89-2 CPD 113

Offers

Evaluation

Technical acceptability

Tests

Where solicitation required communications equipment composed of nondevelopmental items but permitted the agency to balance the risk to its program by accepting an offer based upon unproven or modified hardware, agency had discretion to accept offer of unproven equipment where evaluators reasonably determined that modifications to equipment needed to meet specifications did not present an unacceptable risk.

PROCUREMENT**B-235126 Con't**

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Sufficiency**

Aug. 8, 1989

Use of broad adjectival scoring scheme (consisting of four categories) supported by narrative assessment of proposal advantages and disadvantages is not improper so long as the contracting officer is thereby able to gain a clear understanding of the relative merit of proposals.

PROCUREMENT**B-235241 Aug. 8, 1989****Bid Protests****89-2 CPD 114****GAO procedures****Interested parties****Direct interest standards**

Where protester, as the third low bidder, does not challenge the acceptability of the second low bidder, the protester lacks the necessary direct economic interest to qualify as an interested party eligible to pursue a protest against award to the low bidder.

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

Protest of procuring agency's affirmative determination of responsibility is denied where protester does not show that agency acted in bad faith.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-235800 Aug. 8, 1989
89-2 CPD 115

Protest filed more than 10 days after protester learns of basis for protest is untimely and will not be considered.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Office space

B-234998.2 Aug. 9, 1989
89-2 CPD 116

Where solicitation for lease of facilities requires that offerors submit evidence of site ownership or control, agency could not accept proposal which included no evidence of control but merely a unilateral "agreement" to purchase which was not signed by the seller and a letter from a potential seller which merely indicated an intent to try to negotiate a sale.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

B-235254 Aug. 9, 1989
89-2 CPD 118

PROCUREMENT
Sealed Bidding
Below-cost bids
Contract awards
Propriety

The submission and acceptance of below cost offers are not legally objectionable. Whether lower priced bidders can meet contract requirements in light of their bid prices concerns the agency's affirmative responsibility determination which the General Accounting Office generally does not review.

PROCUREMENT**B-235254 Con't****Special Procurement****Aug. 9, 1989****Methods/Categories****In-house performance****Competitive advantage****Allegation substantiation**

Allegation that, as the incumbent contractor, procuring agency enjoys an unfair labor cost advantage through the use of military personnel whose pay is lower than that required for a contractor's employees is denied since the government and commercial bidders are subject to different legal obligations. There is no requirement that an A-76 cost comparison include a factor to equalize any such inherent disparities.

PROCUREMENT**Special Procurement Methods/Categories****In-house performance****Cost evaluation****Personnel**

Protest that agency's failure to provide historical data for staffing levels to meet performance work statement requirements, under Office of Management and Budget Circular A-76 cost comparison, was prejudicial to the protester is denied where record shows that information furnished in the invitation for bids along with site visit and pre-bid conference were sufficient to allow bidders to submit competitive bids.

PROCUREMENT **B-235490.2 Aug. 9, 1989**
Contractor Qualification **89-2 CPD 119**
Responsibility
Contracting officer findings
Negative determination
GAO review

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

Contracting agency reasonably found that bidder was nonresponsible based on a finding that the bidder's individual sureties on its bid bonds were unacceptable since the contracting agency was unable to verify the financial resources of each surety and doubt was cast on the sureties' net worth.

PROCUREMENT **B-235866.2 Aug. 9, 1989**
Bid Protests **89-2 CPD 121**
GAO procedures
GAO decisions
Reconsideration

Prior decision dismissing protest is affirmed where request for reconsideration does not establish any factual or legal error in the prior decision.

PROCUREMENT **B-236045.2 Aug. 9, 1989**
Bid Protests **89-2 CPD 122**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest of agency refusal to extend time for receipt of offers filed (received) at General Accounting Office after closing date for receipt of offers was properly dismissed as untimely.

PROCUREMENT

B-231999.2; B-231999.3

Bid Protests

Aug. 10, 1989

Allegation

89-2 CPD 123

substantiation

Burden of proof

Protest is denied where review of existing record consisting of protest and contracting agency's comprehensive response thereto does not indicate that agency had acted unreasonably in its conduct of the procurement.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Non-prejudicial allegation

Protest that agency failed to obtain full and open competition because agency relaxed material requirements of request for proposals (RFP) for the benefit of the awardee without advising protester is denied where record indicates that RFP's requirements were not relaxed and awardee's proposal complied with all material requirements of the solicitation.

PROCUREMENT **B-235324 Aug. 10, 1989**
Contractor Qualification 89-2 CPD 124
Responsibility
Contracting officer findings
Negative determination
GAO review

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability
Information submission

Contracting agency reasonably found that bidder was nonresponsible based on a finding that the bidder's individual sureties on its bid bond were unacceptable due to bidder's failure to provide sufficient information for the agency to verify the financial resources of each surety, and also due to an ongoing criminal investigation of the proposed sureties, which reasonably called into question the veracity, credibility and financial acceptability of the sureties.

PROCUREMENT **B-235499 Aug. 10, 1989**
Specifications 89-2 CPD 125
Minimum needs standards
Determination
Administrative discretion

Agency decision to delete picking and bypassing requirement for locks was based on agency conclusion that a higher security lock did not reflect its minimum needs. Absent evidence of favoritism, fraud, or intentional misconduct by government officials, General Accounting Office will not question an agency's decision to relax solicitation requirements and thus enhance competition.

PROCUREMENT **B-231822.5 Aug. 11, 1989**
Bid Protests **89-2 CPD 126**
 GAO procedures
 GAO decisions
 Reconsideration

Request for reconsideration which essentially restates arguments previously considered and does not establish any error or provide information not previously considered is denied.

PROCUREMENT **B-234790.2 Aug. 11, 1989**
Bid Protests **89-2 CPD 127**
 GAO procedures
 GAO decisions
 Reconsideration

Request for reconsideration of a decision denying a protest that agency underestimated moving costs in evaluating offers for space is denied where the protester does not provide any new information or demonstrate any errors of law that would warrant reconsideration of the prior decision.

PROCUREMENT **B-235101 Aug. 11, 1989**
Bid Protests **89-2 CPD 128**
 GAO procedures
 Protest timeliness
 10-day rule

New and independent grounds of protest, concerning agency's conduct of cost realism analysis and acceptance of an allegedly late best and final offer, first raised in protester's post-conference comments are dismissed as untimely when filed more than 10 working days after protester knew the bases of protest.

Protest that awardee's proposal failed to address the cost of required material items is denied where awardee offered a proposal which agency reasonably concluded met requirements questioned by protester and the agency reasonably subjected the questioned aspects of the awardee's proposal to cost realism analysis and upward adjustment during evaluation.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Use
Administrative discretion

Agency decision to withdraw small business set-aside is unreasonable where not based upon a diligent effort to discover small business interest since responses to Commerce Business Daily notice and attendance at preproposal site visit indicated potentially extensive small business interest which agency failed to identify by its limited inquiry.

PROCUREMENT**Bid Protests****GAO procedures****Interested parties****B-235382.2 Aug. 11, 1989****89-2 CPD 131**

Protest that scope of the solicitation duplicates existing Federal Supply Service schedules is dismissed where protester is not interested to raise the issue since it would not be in line for award if its protest were sustained.

PROCUREMENT**Competitive Negotiation****Offers****Late submission****Acceptance criteria**

Protest that agency should have allowed protester to submit a late proposal is denied where protester's proposal was not sent by registered or certified mail 5 or more days before the closing date, and proposal's lateness was not due to procuring agency's mishandling after receipt at the government installation.

PROCUREMENT**Competitive Negotiation****Requests for proposals****Competition rights****Contractors****Exclusion**

Protest that agency deprived firm of opportunity to compete because protester received solicitation after closing date for receipt of proposals is denied where agency mailed solicitation materials in sufficient time to allow receipt and response, late receipt was due to misdelivery by Postal Service, adequate competition was obtained, and prices received by agency were reasonable.

PROCUREMENT **B-235399 Aug. 11, 1989**
Bid Protests **89-2 CPD 132**
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Protest to the General Accounting Office filed more than 10 working days after notice of initial adverse agency action on agency-level protest is untimely and will not be considered.

PROCUREMENT **B-236170 Aug. 11, 1989**
Bid Protests **89-2 CPD 133**
GAO procedures
Protest timeliness
10-day rule

Protest of agency nonresponsibility determination filed more than 10 working days after protester received written notice of the basis for the protest is untimely.

PROCUREMENT **B-236259 Aug. 11, 1989**
Bid Protests **89-2 CPD 134**
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

An agency's act of conducting bid opening despite a firm's timely agency-level protest constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) 11 weeks later, based on agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

PROCUREMENT
Sealed Bidding
Bids
Errors
Waiver

B-235252 Aug. 14, 1989
89-2 CPD 137

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

Where low bidder alleges a mistake in bid but then waives the mistake and agency makes award at original bid price, award was improper as bidder's worksheets show mistaken bid would not have been low and therefore bidder was not eligible for waiver.

PROCUREMENT
Sealed Bidding
Suspended/debarred contractors
Bids
Rejection
Propriety

B-235339 Aug. 14, 1989
89-2 CPD 138

Protest that firm who was proposed for debarment at time of bid opening but not at time of award should have received award is denied even though ineligibility status was subsequently terminated rather than expired. Agencies do not have discretion to make award where firm is ineligible, debarred or suspended at time of bid opening unless the Secretary of the military department concerned finds a compelling reason to waive the firm's ineligibility.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-236059 Aug. 14, 1989
89-2 CPD 139

Protest of the rejection of a bid because of a restriction against other than domestic steel is academic where the contracting agency has agreed that the award to the second low bidder was improper and proposes to make award to the protester if it is determined to be responsible. Issue raised by the protester, which will pertain only to future procurements but which has no bearing on the immediate award, will not be considered.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-236133 Aug. 14, 1989
89-2 CPD 140

Protest based upon alleged solicitation impropriety, apparent from the face of the solicitation is untimely where not filed until after the closing date for receipt of initial proposals.

PROCUREMENT
Contractor Qualification
Responsibility criteria
Organizational experience

B-235497 Aug. 15 1989
89-2 CPD 141

Protest alleging nonresponsiveness of bid which failed to provide information concerning experience of bidder, as required by invitation for bids, is denied where information concerns bidder's responsibility and therefore may be furnished any time before award of contract.

PROCUREMENT **B-235511 Aug. 15, 1989**
 Competitive Negotiation **89-2 CPD 142**
 Contract awards
 Initial-offer awards
 Propriety
 Price reasonableness

It was not unreasonable for a contracting agency to have awarded a negotiated contract to the lowest priced, highest technically rated offeror on the basis of initial proposals, where the solicitation informed offerors of that possibility and the competition was adequate to obtain the lowest overall cost to the government at a fair and reasonable price.

PROCUREMENT **B-236266.2 Aug. 15, 1989**
 Bid Protests **89-2 CPD 143**
 Private disputes
 GAO review

Allegation that awardee may have acquired proprietary information from former employee of the incumbent contractor involves a dispute between private parties which does not provide a basis for protest to the General Accounting Office.

PROCUREMENT
 Contractor Qualification
 Responsibility
 Contracting officer findings
 Affirmative determination
 GAO review

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

PROCUREMENT**B-233323.3, et al. Con't****Payment/Discharge****Aug. 16, 1989****Federal procurement regulations/laws****Revision****Cost accounting**

General Accounting Office supports Federal Acquisition Regulation (FAR) case No. 89-28, a proposal to add a cost principle (FAR § 31.205-52) and revise three others (FAR §§ 31.205-10, -11, and -16) to provide that when the purchase method of accounting is used for a business combination, the allowable amortization, cost of money, and depreciation would be limited to the total amounts for these items that would have been allowed had the combination not taken place.

PROCUREMENT**Payment/Discharge****Federal procurement regulations/laws****Revision****Information submission****Invoices**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 88-56, which as revised would add paragraph (d) to the clause at FAR section 52.247-65 to specify the information required to be submitted to the General Services Administration (GSA) in connection with GSA's audit of commercial freight bills.

B-233323.3, et al. Con't

Aug. 16, 1989

Federal procurement regulations/laws

Revision

Progress payments

General Accounting Office supports Federal Acquisition Regulation (FAR) case No. 89-31, a proposal to revise paragraph (d)(1) of the progress payment clause at FAR section 52.232-16 to make clear that when the government makes progress payments to a contractor, the government receives "[a]bsolute title, not a mere lien," in such property in the possession of the contractor as parts, materials, inventory, and work in process.

PROCUREMENT

Small Purchase Method

Federal procurement regulations/laws

Amendments

Small purchases

Cost evaluation

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-32, a proposal to revise FAR section 13.106 to raise from \$1,000 to 10 percent of the small purchase limitation the threshold above which competition and price reasonableness determinations are required when small purchase procedures are used.

PROCUREMENT

B-233643.2 Aug. 16, 1989

Competitive Negotiation

Offers

Competitive ranges

Exclusion

Administrative discretion

Agency may exclude a technically acceptable proposal from the competitive range where the offeror's price is so substantially higher than the prices of other acceptable offerors that the agency reasonably determines that the higher-priced proposal does not have any reasonable chance of being selected for award.

PROCUREMENT **B-233643.2 Con't**
Competitive Negotiation **Aug. 16, 1989**
Offers
Evaluation
Technical acceptability

Solicitation provision giving agency the option to request contractor to tender a substitute vessel which the agency may then accept or reject, based on vessel compliance information provided in response to the request, does not establish a requirement for the technical evaluation of possible substitute vessels where the evaluation criteria do not so provide.

PROCUREMENT **B-234290.2 Aug. 16, 1989**
Bid Protests **89-2 CPD 144**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where protester fails to indicate error of fact or law or information not previously considered that would warrant reversal or modification of prior decision. The mere restatement of arguments previously considered or mere disagreement with the initial decision is not sufficient to warrant reconsideration.

PROCUREMENT **B-235889.2 Aug. 16, 1989**
Bid Protests **89-2 CPD 145**
GAO procedures
Interested parties
Subcontractors

Protest of allegedly defective plans and specifications, filed by a firm whose interest is that of a subcontractor, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984, and the General Accounting Office's implementing Bid Protest Regulations.

PROCUREMENT
Bid Protests
Forum election
Finality

B-236069.2 Aug. 16, 1989
89-2 CPD 146

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of prior decision dismissing protest as untimely because protest was filed more than 10 working days after basis of protest was known is denied. Fact that within 10 working days of date basis of protest was known protester also filed a protest with General Services Board of Contract Appeals, which dismissed protest as not involving a matter within its jurisdiction, does not toll the time for filing with General Accounting Office.

PROCUREMENT
Contract Management
Contract administration
Options
Use
GAO review

B-231756.2 Aug. 17, 1989
89-2 CPD 147

A contractor may waive an agency's failure to provide timely written notice of its intent to exercise an option and once the condition of notice is waived, the exercise of the option results in a binding contract between the parties.

PROCUREMENT

B-235248; B-235248.2

Bid Protests

Aug. 17, 1989

GAO procedures

89-2 CPD 148

Protest timeliness

Apparent solicitation improprieties

Protest of alleged solicitation improprieties which are apparent on the face of the solicitation is dismissed as untimely where not filed until after the closing date for receipt of initial proposals.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Conflicts of interest

Post-employment restrictions

Allegation substantiation

Protest of alleged conflict of interest is denied where there is no indication that the actions of a former government employee prejudiced the award selection process.

PROCUREMENT

Competitive Negotiation

Offers

Competitive ranges

Exclusion

Administrative discretion

Where a proposal fails to include technical information called for by the solicitation, which is necessary to establish compliance with the solicitation requirements, it was proper to eliminate it from the competitive range.

PROCUREMENT

B-235299 Aug. 17, 1989

Bid Protests

89-2 CPD 149

Allegation substantiation

Lacking

GAO review

PROCUREMENT

Competitive Negotiation

Offers

Evaluation errors

Allegation substantiation

Agency reasonably relied on awardee's representations that it was a physician-sponsored organization and therefore entitled to evaluation preference in accordance with the terms of the solicitation, notwithstanding the protester's unsubstantiated allegations to the contrary.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Technical equality

Cost savings

Contracting officer had a reasonable basis for concluding that competing proposals were not technically equal and, therefore, was not required to award to the low-priced offeror in accordance with the award methodology set forth in the solicitation.

PROCUREMENT **B-235299 Con't**
Competitive Negotiation **Aug. 17, 1989**
Offers
Organizational experience
Evaluation
Propriety

Agency acted reasonably in not crediting protester's administrative experience where the stated evaluation criterion relating to experience was limited to peer review experience--the principal purpose of the procurement.

PROCUREMENT **B-236135 Aug. 17, 1989**
Socio-Economic Policies
Small business 8(a) subcontracting
Federal procurement regulations/laws
Revision

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-53, a proposal to revise FAR Parts 5 and 6, amend FAR Subpart 19.8, and add new contract clauses at FAR sections 52.219-17 and 52.219-18 to implement section 303(b) of the Business Opportunity Development Reform Act of 1988, Pub. L. No. 100-656, concerning competition requirements for procurements under section 8(a) of the Small Business Act, and section 303(d) of the Act concerning protests by the Small Business Administration of decisions made by contracting agencies in connection with the 8(a) program.

PROCUREMENT **B-235305 Aug. 18, 1989**
Competitive Negotiation **89-2 CPD 150**
Offers
Late submission
Acceptance criteria

Protester's offer was properly found late where sent by certified mail only 1 day before closing but received after closing and where no evidence exists to show that agency received telefaxed copy of offer allegedly transmitted prior to closing.

PROCUREMENT

B-235349 Aug. 18, 1989

Sealed Bidding

89-2 CPD 151

Bids

Responsiveness

Descriptive literature

Ambiguous bids

Where unsolicited descriptive literature submitted with a bid creates an ambiguity as to whether the item proposed by the bidder complies with the solicitation requirements, the bid properly is rejected as nonresponsive.

PROCUREMENT

Sealed Bidding

Invitations for bids

Interpretation

Terms

Where the term "standard" was not defined in the solicitation, agency's application of common sense definition, based on its general needs as reflected in the specifications, provided a sufficiently definite basis for assessing the acceptability of offered equipment.

PROCUREMENT

B-235413.2 Aug. 18, 1989

Bid Protests

89-2 CPD 152

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Significant issue exception to the General Accounting Office's timeliness requirement will be invoked only where the protest involves a matter that has not been considered on the merits in previous decisions and which is of widespread interest to the procurement community.

PROCUREMENT**Bid Protests****B-235413.2 Con't****Aug. 18, 1989****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

Prior decision holding that where a firm initially filed an agency-level protest against small business set-aside, the agency's receipt of proposals on the scheduled closing date without taking any corrective action in response to the protest constitutes initial adverse agency action, and therefore, subsequent protest to the General Accounting Office (GAO), 5 weeks later, is untimely under GAO's Bid Protest Regulations is affirmed.

PROCUREMENT**Socio-Economic Policies****B-236315 Aug. 18, 1989****89-2 CPD 153****Small businesses****Contract awards****Eligibility**

The Small Business Administration's determination that a firm is other than a small business renders firm ineligible for award under solicitation set aside for small businesses.

PROCUREMENT**Socio-Economic Policies****B-236479 Aug. 18, 1989****89-2 CPD 155****Small businesses****Preferred products/services****Certification**

Bid on a total small business set aside certifying that not all end items to be furnished would be produced or manufactured by small business is nonresponsive. The certification pertains to end items only and does not include raw materials or components which are used in the manufacturing process.

PROCUREMENT **B-234515.2 Aug. 21, 1989**
Contractor Qualification **89-2 CPD 156**
Responsibility
Contracting officer findings
Negative determination
GAO review

Protester was properly found nonresponsible where it failed to provide sufficient information to permit finding that the individual sureties on its bid bond were acceptable and the record shows the contracting officer's nonresponsibility determination was reasonable.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

Even though an individual surety may have been accepted by a contracting agency, this does not compel another agency to accept the surety where based on the information presented to it the second agency reasonably determined the surety to be unacceptable.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Substitution

A bidder may not, after bid opening, substitute an acceptable corporate surety for individual sureties found unacceptable because the liability of the sureties is an element of responsiveness established at bid opening and as such cannot be changed after bid opening.

PROCUREMENT

B-234597.3 Aug. 21, 1989

Bid Protests

89-2 CPD 157

GAO procedures

Protest timeliness

Apparent solicitation improprieties

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Grounds of new protest are untimely filed where: (1) use of negotiated, instead of sealed bid, format was not protested prior to closing date for receipt of proposals, (2) contracting agency's failure to extend closing date and refusal to send certain employees to visit contract site or meet with protester, as protester requested, were not protested within 10 working days from closing date for receipt of proposals, by which time protester should have known that it had bases of protest stemming from contracting agency's inaction on requests, and (3) allegation that awardee had taken advantage of its competitive position to offer an unreasonably high price was not filed within 10 working days from when protester first was informed of the award and the contract price.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Request for reconsideration of prior decision is untimely where request, which basically restates prior protest, is filed more than 1 month after protester's receipt of decision.

PROCUREMENT	B-235049.2	Aug. 21, 1989
Bid Protests	89-2	CPD 158
GAO procedures		
GAO decisions		
Reconsideration		

Reconsideration

bad faith failed to send the amendment to the protester.

PROCUREMENT	B-235618	Aug. 21, 1989
Bid Protests	89-2	CPD 161
GAO procedures		
Protest timeliness		
10-day rule		

Protest timeliness
10-day rule

working days after protester knew or should have known
basis of protest.

PROCUREMENT B-235620 Aug. 21, 1989
Contractor Qualification 89-2 CPD 162
Responsibility
Contracting officer findings
Negative determination
GAO review

Responsibility
Contracting officer findings
Negative determination
GAO review

that there was no reasonable basis for the determination.

PROCUREMENT **B-235717.3 Aug. 21, 1989**
Bid Protests **89-2 CPD 163**
Allegation substantiation
Lacking
GAO review

Protester's assertion that agency acted improperly if it held negotiations with other offerors after submission of best and final offer is based only on speculation that agency may have conducted such negotiations and as such is not a valid basis for protest.

PROCUREMENT
Bid Protests
Non-prejudicial allegation
GAO review

PROCUREMENT
Competitive Negotiation
Contract awards
Award procedures
Procedural defects

Where agency's failure to provide protester prompt notification of contract award did not prejudice protester, failure is mere procedural deficiency that does not affect the validity of the award.

PROCUREMENT **B-236220 Aug. 21, 1989**
Socio-Economic Policies **89-2 CPD 159**
Small business set-asides
Use
Administrative discretion

Protest filed by nondisadvantaged small business concern is dismissed where protester does not allege a valid basis for disturbing the contracting officer's decision to set aside the procurement for exclusive participation by small disadvantaged business concerns.

PROCUREMENT **B-228468.3 Aug. 22, 1989**
Bid Protests **89-2 CPD 165**
GAO procedures
Preparation costs

Request for payment of costs of pursuing claim is denied since such costs are not reimbursable.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs
Attorney fees
Amount determination

Attorneys' fees claimed by prevailing protester are determined reasonable, and thus are allowable, where the hourly rates are within bounds of rates charged by similarly situated attorneys, and the hours claimed are properly documented and do not appear to be excessive.

PROCUREMENT **B-234283.2 Aug. 22, 1989**
Bid Protests **89-2 CPD 166**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where the protester does not demonstrate any errors of law or fact in our prior decision warranting its reversal.

PROCUREMENT **B-235526 Aug. 22, 1989**
Bid Protests **89-2 CPD 167**
GAO procedures
Protest timeliness
10-day rule

New grounds of protest raised for the first time in the protester's comments on the agency report are untimely where the protester received the information which formed the basis for the new grounds of protest over a month before the comments were filed.

PROCUREMENT **B-235526 Con't**
Competitive Negotiation **Aug. 22 1989**
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

In a negotiated procurement the contracting agency has broad discretion in making cost/technical tradeoffs. Award to higher rated offeror with higher proposed costs is not objectionable where agency reasonably concluded that cost premium involved was justified considering the technical superiority of the selected offeror's proposal.

PROCUREMENT
Competitive Negotiation
Contract awards
Award procedures
Procedural defects

Agency failure to inform the protester in the notice of award of the reason its proposal was not accepted is a procedural defect which does not provide a basis on which to sustain a protest.

PROCUREMENT **B-235934 Aug. 22, 1989**
Payment/Discharge
Shipment
Damages
Notification

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-36, a proposal to change the clause at FAR section 52.247-23 to extend from 45 to 75 days after delivery the time within which an owner of damaged or lost household goods must notify the government's contract carrier in order to hold the contractor liable for damages.

B-236212.2 Aug. 22, 1989

89-2 CPD 168

GAO decisions

PROCUREMENT

Preferred products/services

PROCUREMENT

B-234875.2 Aug. 23, 1989

89-2 CPD 169

GAO decisions

PROCUREMENT

B-235702 Aug. 23, 1989

89-2 CPD 171

Competitive ranges

Administrative discretion

PROCUREMENT**B-234103 Aug. 24, 1989**

Payment/Discharge
Payment procedures
Contracts
Assignment

Payment should not be made to purported assignee of payments due under an Army purchase order where there was no valid assignment of the right to payment under the purchase order. Notations on the purchase order listing the purported assignee as the proper addressee for payment cannot substitute for a valid assignment satisfying the requirements of the Assignment of Claims Act. Those requirements must be strictly construed to accomplish the purposes of the Act of preventing multiple claims on the government and of making unnecessary the investigation of alleged assignments.

PROCUREMENT**B-234380.2 Aug. 24, 1989**

Bid Protests
GAO procedures
GAO decisions
Reconsideration

89-2 CPD 173**PROCUREMENT**

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

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

PROCUREMENT B-235348 Aug. 24, 1989
Sealed Bidding 89-2 CPD 174

B-235348 Aug. 24, 1989
89-2 CPD 174

Cancellation

Propriety

PROCUREMENT

B-235388.2 Aug. 24, 1989

Responsibility

Negative determination

Agency's nonresponsibility determination was reasonable where it was based on protester's failure to provide complete financial information and on a negative pre-award survey of protester's proposed inspection facility which revealed that protester did not have an adequate quality control system, testing facilities or segregation control procedures for defective material.

PROCUREMENT B-224185.3 Aug. 25, 1989
Bid Protests 89-2 CPD 176

B-224185.3 Aug. 25, 1989
89-2 CPD 176

GAO decisions

General Accounting Office decision concerning a different procurement issued 2 years after a previous protest decision was denied does not provide basis to reconsider the 2-year old decision since new decision does not operate retroactively.

PROCUREMENT**B-234162 Aug. 25, 1989****Payment/Discharge****Shipment****Carrier liability****Amount determination**

Where origin Traffic Management Officer fails to order full replacement protection in writing on a personal property shipment, but issues a Government Bill of Lading Correction Notice (SF 1200) requiring such protection and carrier's agent has notice of this change prior to pickup of the household goods, the requested protection is effective notwithstanding the failure of the agent or the carrier to acknowledge this correction in writing.

PROCUREMENT**B-235517 Aug. 25, 1989****Sealed Bidding****89-2 CPD 177****Ambiguous bids****Determination criteria**

Protester's inclusion with its bid of an unsigned government bond form with provisions which materially differed with the commercial bond contained in its bid created an ambiguity which rendered the bid nonresponsive.

PROCUREMENT**Sealed Bidding****Bid guarantees****Responsiveness****Sureties****Liability restrictions**

Protester's bid was properly rejected as nonresponsive where its commercial bid bond limited its surety's liability to the difference between its bid price and the amount of a replacement contract while the solicitation required liability covering the difference between bid price and all costs of securing replacement work.

PROCUREMENT **B-235991 Aug. 25, 1989**
Bid Protests **89-2 CPD 178**
Allegation substantiation
Lacking
GAO review

General Accounting Office will not consider protest allegation that a company is entitled to a sole-source award for a requirement which it asserts was encompassed under a prior contract where the requirement was not ordered because of limited funding, and the prior contract has expired.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

Protest that competition for a requirement added by amendment to a solicitation was improperly limited to offerors which had previously submitted initial proposals is rendered academic by agency cancellation of the requirement in question and resolicitation on an unrestricted basis.

PROCUREMENT **B-236049.2 Aug. 25, 1989**
Bid Protests **89-2 CPD 179**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest based upon alleged solicitation impropriety which is not filed before the closing date for receipt of proposals is untimely.

PROCUREMENT**B-236049.2 Con't****Bid Protests****Aug. 25, 1989****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

Protest to the General Accounting Office based on alleged solicitation impropriety is untimely when filed more than 10 working days after protester was notified of initial adverse agency action on agency-level protest.

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

Protest that awardee will be unable to furnish conforming product concerns contracting agency's affirmative responsibility determination which General Accounting Office does not review absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

PROCUREMENT**B-236379 Aug. 25, 1989****Bid Protests****89-2 CPD 180****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest filed after bid opening contending that insufficient time existed to permit compliance with amended bid guarantee requirement is untimely since the protester should have raised the matter prior to bid opening.

PROCUREMENT	B-236379 Con't
Sealed Bidding	Aug. 25, 1989
Bids	
Bid guarantees	
Omission	
Responsiveness	

Bid that did not contain a bid guarantee in the form required by the solicitation was properly found to be nonresponsive; proper bid guarantee may not be substituted after bid opening.

PROCUREMENT	B-236519, et al.
Bid Protests	Aug. 25, 1989
GAO procedures	89-2 CPD 181
Protest timeliness	
10-day rule	
Adverse agency actions	

Protests against termination of contracts for convenience of the government are untimely where filed more than 5 months after procuring agency notified protesters that since initial awards were improper agency would issue new solicitations.

PROCUREMENT	B-235661 Aug. 28, 1989
Competitive Negotiation	89-2 CPD 182
Contracting officer duties	
Contract award notification	

Agency acted promptly in notifying protester 21 days prior to award that its offer was no longer in consideration. In any event, failure to promptly notify firm that it is no longer in consideration for award is procedural in nature and does not affect validity of an otherwise properly awarded contract.

PROCUREMENT **B-235661 Con't**
Competitive Negotiation **Aug. 28, 1989**
Offers
Competitive ranges
Exclusion
Administrative discretion

Agency determination to exclude proposal from competitive range as technically unacceptable is not arbitrary, unreasonable or in violation of procurement laws or regulations where proposal for janitorial services fails to demonstrate how or when offeror will perform required services and makes a blanket offer to comply with solicitation requirements.

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Deficiency
Blanket offers of compliance

Technically unacceptable offer may be excluded from the competitive range irrespective of low offered price.

PROCUREMENT **B-231715.4 Aug. 29, 1989**
Sealed Bidding **89-2 CPD 183**
Invitations for bids
Post-bid opening cancellation
Justification
Sufficiency

A compelling reason exists for canceling an invitation for bids after opening where the agency determines that numerous changes have occurred in its requirements and that the specifications do not reflect the agency's actual needs.

PROCUREMENT **B-235327 Aug. 29, 1989**
Competitive Negotiation **89-2 CPD 184**
Offers
Evaluation
Technical acceptability

Protest that awardee is not qualified technically to perform the work under solicitation is without merit where review of the agency technical evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a technically outstanding proposal that provided the best value to the government.

PROCUREMENT **B-235425, et al.**
Bid Protests **Aug. 29, 1989**
Allegation **89-2 CPD 185**
substantiation
Lacking
GAO review

Protest that contracting officials' affirmative determinations of responsibility were biased in favor of contractors with which it previously dealt is dismissed where allegation is based solely on inference or supposition.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

Protest challenging affirmative determinations of responsibility raised by highest aggregate bidder, which would not be in line for award if the protest were sustained, is dismissed, since the protester lacks the requisite direct and substantial economic interest in the contract award to be considered an interested party under General Accounting Office Bid Protest Regulations.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-235642.2 Aug. 29, 1989
89-2 CPD 187

Protest challenging responsiveness of two low bids based on evidence obtained in agency's report is dismissed as untimely because the protester failed to diligently pursue the information by examining the bid documents 3 months prior to its receipt of agency's report.

PROCUREMENT
Bid Protests
Allegation substantiation
Burden of proof

B-235673.4 Aug. 29, 1989
89-2 CPD 188

Protest that agency imposed requirements on protester not contained in the solicitation is dismissed where there is no evidence in the record to support protester's position.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that certain equipment should have been provided as government-furnished equipment or that the government should be obligated to assist the protester in obtaining the equipment is dismissed as untimely when not filed prior to the time set for bid opening.

PROCUREMENT

B-235673.4 Con't

Bid Protests

Aug. 29, 1989

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Request for reconsideration which does not demonstrate that General Accounting Office erroneously found prior request for reconsideration untimely is denied.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Negative determination

GAO review

Absent a showing of fraud or bad faith General Accounting Office does not review the refusal by the Small Business Administration to issue a certificate of competency to a small business.

PROCUREMENT

B-235842.2 Aug. 29, 1989

Bid Protests

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration is denied where protester fails to rebut agency's position that protester is merely a potential supplier and is therefore not an interested party entitled to protest since it is not a prospective or actual offeror.

PROCUREMENT B-236470 Aug. 29, 1989
Competitive Negotiation 89-2 CPD 189
Offers
Acceptance time periods
Expiration

An agency may accept a proposal that offers the lowest overall cost to the government even though the offer may have expired and the agency is not required to issue a formal amendment requesting extension of offers.

PROCUREMENT B-230983.2 Aug. 30, 1989
Bid Protests 89-2 CPD 190
GAO procedures
Pending litigation
GAO review

The General Accounting Office (GAO) will dismiss a protest where the issues and requested relief involved are also the subject of litigation before a court of competent jurisdiction, unless the court requests a GAO decision, even if the protester is not a party to the suit.

PROCUREMENT B-234142.2 Aug. 30, 1989
Bid Protests 89-2 CPD 191
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration contending that earlier decision failed to address certain alleged violations of procurement regulations is denied where the decision, while not specifically citing the regulations, did address the relevant substantive issues relating to each.

PROCUREMENT

B-235422 Aug. 30, 1989

Bid Protests

89-2 CPD 192

GAO procedures

Protest timelines

Administrative appeals

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical acceptability

PROCUREMENT

B-235423 Aug. 30, 1989

Competitive Negotiation

89-2 CPD 193

Requests for proposals

Cancellation

Justification

Competition enhancement

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Competency certification
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PROCUREMENT	B-230171.36	Aug. 31, 1989
Competitive Negotiation	89-2	CPD 195
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PROCUREMENT **B-230171.36 Con't**
Competitive Negotiation **Aug. 31, 1989**
Offers
 Price reasonableness
 Determination
 Administrative discretion

Protest that agency improperly disallowed dealer commission costs of 10 percent of selling price during cost analysis performed to determine reasonable prices for multiple-award contract is denied where record shows that any dealer commissions were paid at between zero and 10 percent of the selling price with no apparent consistency or regularity of application, and firm provided insufficient data to support allowance of such costs.

Where agency reasonably determines that the protester's prices for multiple-award contract were too high based on a cost analysis (following detailed audits), additional price analysis is not required before rejecting the offer since applicable regulation generally contemplates a price analysis only to ensure that previously agreed-upon prices following a cost analysis are fair and reasonable.

PROCUREMENT
Competitive Negotiation
 Requests for proposals
 Terms
 Price certification

Contracting officer reasonably denied protester an exemption from requirement for certified cost or pricing data where agency audits showed that its offered prices were not based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

PROCUREMENT B-234629.2 Aug. 31, 1989
Competitive Negotiation 89-2 CPD 196
Competitive advantage
Conflicts of interest
Allegation substantiation
Lacking

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

Although an agency may exclude an offeror from a competition because of an apparent conflict of interest in order to protect the integrity of the competitive procurement system even if no actual impropriety can be shown, where protester argues that awardee should be excluded from competition for proposing as its "chief of party" a senior agency official but concedes that there is no evidence that actual improprieties occurred in the conduct of the procurement, General Accounting Office has no basis to disagree with the agency that no conflict of interest justifying exclusion of awardee occurred.

PROCUREMENT

Bid Protests
Non-prejudicial
allegation
GAO review

B-235344; B-235344.2

Aug. 31, 1989
89-2 CPD 197

PROCUREMENT

Competitive Negotiation
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

Protester fails to show that improper conduct occurred resulting in a conflict of interest where most of the social contacts which the protester describes between evaluation panel member and employee of awardee's consultant occurred long before the start of procurement and there has been no opportunity for information to be improperly disclosed by the evaluator or for the evaluator and the consultant to improperly discuss the procurement and the record contains no evidence of bias or preferential treatment toward awardee.

PROCUREMENT

Competitive Negotiation
Contract awards
Propriety

Alleged deficiencies in agency source selection plan do not themselves provide a basis for questioning the validity of an award selection since source selection plans are internal agency instructions and as such do not give outside parties any rights.

PROCUREMENT **B-235344; B-235344.2 Con't**
Competitive Negotiation **Aug. 31, 1989**
Contract awards
Propriety
Evaluation errors
Materiality

Although agency improperly downgraded proposal based on evaluators' erroneous conclusion that key employee would not be available to the extent proposed and agency failed to raise in discussions evaluators' concern with inflexibility of software proposed, these deficiencies in the procurement had no impact on the selection of the awardee's higher rated technical and significantly lower cost proposal.

PROCUREMENT **B-235351 Aug. 31, 1989**
Competitive Negotiation **89-2 CPL 198**
Discussion
Adequacy
Criteria

Since contracting agency did not consider protester's price to be too high for technical approach proposed, agency properly did not conduct discussions on the aggregate price proposed by the protester.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

The contracting agency's reversal of its initial decision to exclude a proposal from the competitive range for the award of a fixed-price contract is reasonable where the agency ultimately decided that with one additional round of negotiations the offeror could clear up the remaining small number of proposal deficiencies, mostly informational, without the offeror's writing a new proposal.

PROCUREMENT **B-235351 Con't**
Competitive Negotiation **Aug. 31, 1989**
Technical transfusion/leveling
Allegation substantiation
Evidence sufficiency

Improper technical leveling of proposals did not take place where the primary purpose of the contracting agency's discussions was to ascertain what the offeror was proposing to furnish rather than to raise offeror's technical proposal to level found in protester's proposal.

PROCUREMENT **B-235465 Aug. 31, 1989**
Bid Protests **89-2 CPD 199**
GAO procedures
Protest timeliness
10-day rule

Protest that the conduct of a second round of best and final offers (BAFOs), which eventually lead to the termination of a contract, created an improper auction is timely when filed within 10 days of the date the protester becomes aware of the content of such BAFOs.

PROCUREMENT
Competitive Negotiation
Best/final offers
Price disclosure
Allegation substantiation

General Accounting Office will not grant remedy to a protester, who contends improper auction techniques were employed in that its initial best and final offer (BAFOs) price was disclosed to its competitor prior to receipt of a second round of BAFOs, where the protester was admittedly aware of its competitor's prices yet made no contemporaneous complaint about potential auction techniques.

PROCUREMENT **B-235465 Con't**
Competitive Negotiation Aug. 31, 1989
Technical transfusion/leveling
Allegation substantiation
Evidence sufficiency

Where no technical discussions were conducted, an agency could not engage in the prohibited practice of technical leveling or technical transfusion.

PROCUREMENT
Contract Management
Contract administration
Convenience termination
Payments
GAO review

General Accounting Office will not second guess agency's failure to consider termination costs as determinative in deciding whether to take corrective action on an erroneously awarded contract.

PROCUREMENT **B-235496 Aug. 31, 1989**
Sealed Bidding 89-2 CPD 200
Bids
Responsiveness
Price omission
Line items

Where bidder acknowledges all amendments to the solicitation but fails to bid a unit price for an item added by an amendment that revises the bidding schedule, contracting agency properly rejects bid as nonresponsive because it does not represent a clear commitment from the bidder to furnish the item at a specified price.

B-235534.3 Aug. 31, 1989

89-2 CPD 201

GAO procedures

GAO decisions.

Reconsideration

Request that General Accounting Office reconsider dismissal of protest against submission of a below-cost offer as untimely is affirmed where, even if protest is timely, it does not provide a valid basis upon which to challenge an award.

B-235623 Aug. 31, 1989

89-2 CPD 202

Offers

Evaluation errors

Non-prejudicial allegation

Protest that agency improperly failed to evaluate transportation costs for the option quantity is denied where the protester would not be the low offeror even if such costs were considered.

PROCUREMENT

Socio-Economic Policies

Preferred products/services

Domestic sources

Foreign products

Price differentials

Protest that agency should have considered unstated factors in its evaluation (savings from employee income taxes and corporate taxes to be collected by the government by awarding to a domestic firm) is denied since evaluation is required to be made in accordance with the terms of the solicitation.

Protest that an import duty should have been applied to the proposal of the awardee, a British firm, is denied where, pursuant to a Memorandum of Understanding between the government of the United States and the government of Great Britain that waived the restrictions of the Buy American Act, no import duty was applicable.

PROCUREMENT

**Competitive Negotiation
Discussion reopening
Propriety**

**B-235654 Aug. 31, 1989
89-2 CPD 203**

An agency is not required to reopen negotiations when an offeror introduces an informational deficiency concerning newly proposed personnel at the best and final offer stage of the negotiations.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Sufficiency**

A solicitation that advises offerors of the broad evaluation scheme to be employed and refers to subfactors identified in another section of the solicitation that are reasonably related to the stated evaluation factors provides adequate notice to offerors of the evaluation criteria.

PROCUREMENT

**Sealed Bidding
Bid guarantees
Sureties
Acceptability
Information submission**

**B-235809 Aug. 31, 1989
89-2 CPD 204**

Where solicitation required bidders using individual surety bonds to submit proof of ownership and value of assets claimed in sureties' net worth, protester was properly found nonresponsible where information submitted cast doubt on sureties' net worth.

PROCUREMENT

B-235811 Aug. 31, 1989

Bid Protests

89-2 CPD 205

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

Where there is uncertainty as to when the protester was aware of the basis for its protest, the General Accounting Office will resolve doubt over whether the protest was timely in the protester's favor and consider the protest on the merits.

PROCUREMENT**Sealed Bidding****Bids****Responsiveness****Pre-award samples****Absence**

A bid which was not accompanied by a bid sample required by the solicitation was properly rejected as nonresponsive.

PROCUREMENT**Sealed Bidding****Invitations for bids****Amendments****Acknowledgement****Responsiveness**

The failure to acknowledge an invitation for bids amendment establishing wage rates pursuant to the Service Contract Act cannot be cured after bid opening by a bidder whose employees are not already covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-220184.4 Aug. 25, 1989
Environment/Energy/Natural Resources
Environmental protection
Air quality
Standards
Public notification

While the Clean Air Act itself does not require EPA to develop the MOBILE4 emission factor computer model through a rulemaking, under the Administrative Procedure Act, 5 U.S.C. § 553, if EPA treats MOBILE4 as a nonbinding policy, responding with an open mind to challenges to its application in individual cases, notice and comment are not required.

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