

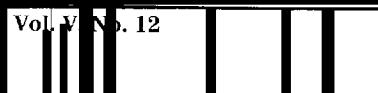


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of the United States

Vol. V No. 12

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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget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

Accountable Officers      B-236214 Sept. 5, 1989  
Disbursing officers  
Relief  
Illegal/improper payments  
Fraud

Relief granted accountable officer pursuant to 31 U.S.C. § 3527(c) where improper payment resulted from fraudulent activities of payee and record establishes that accountable officer properly supervised her subordinates.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

Accountable Officers      B-235037 Sept. 18, 1989  
Certifying officers  
Relief  
Illegal/improper payments  
Overpayments

The Financial Management Service of the Department of the Treasury requested GAO to relieve an accountable officer both for the amount of an overpayment and for interest and penalties which have accrued on that amount. Accountable officers are only insurers of funds which were in the possession of the United States. Since interest and penalties accruing on amounts owed to the United States have never been in its possession, accountable officers are not strictly liable for those amounts. Therefore, the Financial Management Service did not need to seek relief for the interest and penalty charges.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers            B-235037 Con't**

**Certifying officers            Sept. 18, 1989**

**Relief**

**Illegal/improper payments**

**Overpayments**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**Disbursing officers**

**Relief**

**Account deficiency**

**GAO authority**

Requests for GAO to relieve supervisory accountable officers must contain the evidence necessary for GAO to independently determine whether the standards for relief have not met. For supervisory accountable officers, the standards to grant relief are whether the officer maintained a system of controls to prevent the loss and took steps to ensure that the controls were implemented. GAO cannot grant relief based upon an agency's unsubstantiated determination that these standards were met.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**  
**Accountable Officers              B-234962 Sept. 28, 1989**  
**Disbursing officers**  
**Relief**  
**Illegal/improper payments**  
**Travel allowances**

Five improper travel advances, totalling \$10,692, paid to a U.S. Navy deserter who presented fraudulent travel orders were not the result of the bad faith or lack of reasonable care of a U.S. Marine Corp Finance and Accounting Officer or his subordinates. The Finance and Accounting Officer exercised proper supervision through maintaining and enforcing an informal policy requiring his subordinates to bring to his attention any orders which were not marked "ORIGINAL ORDERS." The record also shows the subordinates questioned the fraudulent orders presented by the deserter and only paid the advances when authorized by the Finance and Accounting Officer.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**  
**Accountable Officers**  
**Illegal/improper payments**  
**Fraud**  
**Debt collection**  
**Statutory compliance**

The U.S. Navy satisfied the collection requirements of GAO's accountable officer cases by referring fraudulently obtained travel advances to the Naval Investigative Service. The Finance and Accounting Officer referred the fraud to the Naval Investigative Service. Since the Naval Investigative Service is required by a Memorandum of Understanding between the Department of Justice and the Department of Defense Directive on fraud cases against the Defense Department, we view the referral to the Naval Investigative Service as sufficient compliance with the Federal Claims Collection Standards for purposes of this request for relief.

**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**  
Relocation  
Household goods  
Temporary storage  
Expenses  
Weight certification

**B-231590 Sept. 1, 1989**

**CIVILIAN PERSONNEL**  
Relocation  
Household goods  
Weight restrictions  
Liability  
Computation

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**  
Compensation  
Overpayments  
Debt collection  
Statutes of limitation

**B-232454 Sept. 1, 1989**

Since an agency may not initiate salary offset to collect a debt more than 10 years after the government's right to collect it first accrued, an employee's debt based on salary overpayments that began in 1973 can only be collected for 10 years back from the date that the agency notified him of the debt. See 5 C.F.R. § 550.1106.

**CIVILIAN PERSONNEL**

B-232454 Con't  
Sept. 1, 1989

Compensation  
Overpayments  
Error detection  
Debt collection  
Waiver

Employee was overpaid salary due to the agency's mistake in setting step within his grade upon his promotion from one position to another. Waiver is not granted, however, because the employee was furnished with a personnel record which on its face showed the existence of the error which led directly to the incorrect step placement. Therefore, the employee is partially at fault for the overpayment.

**CIVILIAN PERSONNEL**

B-233427.2 Sept. 6, 1989

Relocation  
Residence transaction expenses  
Reimbursement  
Eligibility  
Permanent residences

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-235927 Sept. 6, 1989

Relocation  
Residence transaction expenses  
Reimbursement  
Eligibility  
Lot sales

This summary letter decisions 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-235927 Con't**  
**Relocation**                           **Sept. 6, 1989**  
    Residence transaction expenses  
    Reimbursement  
    Eligibility  
    New residence construction

**CIVILIAN PERSONNEL**  
**Relocation**  
    Residence transaction expenses  
    Reimbursement  
    Eligibility  
    Time restrictions

This summary letter decisions 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-234968 Sept. 7, 1989**  
**Relocation**  
    Travel expenses  
    Privately-owned vehicles  
    Multiple vehicles  
    Mileage

A transferred employee, who was authorized to use two privately owned vehicles for relocation travel, may be reimbursed mileage for both vehicles where she demonstrates that one vehicle could not accommodate her family and their personal belongings.

**CIVILIAN PERSONNEL****B-235839 Sept. 7, 1989****Travel****Travel expenses****Official business****Determination****Burden of proof**

A school principal employed by Department of Defense Dependents Schools, Germany Region, claims travel allowances for expenses he incurred incident to travel he performed when he received notice of the agency's proposal to remove him. The notice provided for his right to make an oral response pursuant to agency regulation. The employee's duty station was Bremerhaven, Germany, and the agency designated Wiesbaden, Germany, as the location for the oral presentation. The oral response, as part of the proposed adverse action process constitutes official business for which travel expenses are reimbursable.

**CIVILIAN PERSONNEL****B-234065 Sept. 8, 1989****Relocation****Relocation service contracts****Reimbursement****Direct costs**

A transferred employee, whose sale of his residence at his old duty station was delayed due to the cancellation of a relocation service contract, is denied reimbursement of incidental costs associated with the delay. Under the applicable statute and regulations, losses such as those claimed by the employee are not reimbursable.

**CIVILIAN PERSONNEL**

B-230390 Sept. 13, 1989

**Relocation****Temporary quarters****Actual subsistence expenses****Eligibility****Annual leave**

After terminating temporary quarters at his old duty station in Washington, D.C., an employee and his family took a planned and approved vacation en route to the employee's new duty station in Portland, Oregon. The employee may not be paid temporary quarters subsistence expenses (TQSE) for those days he took as a vacation en route to his new duty station, even though the vacation did not delay occupancy of a permanent residence at his new duty station, since applicable Federal Travel Regulations prohibit TQSE for vacation purposes.

**CIVILIAN PERSONNEL**

B-232720 Sept. 13, 1989

**Relocation****Residence transaction expenses****Miscellaneous expenses****Reimbursement**

A transferred employee may not be reimbursed for an impact fee included in the closing costs for a newly constructed residence which the employee purchased at his new duty station. Under paragraph 2-6.2d of the Federal Travel Regulations, only expenses resulting from the construction of a residence which are comparable to expenses allowable in connection with the purchase of an existing residence may be reimbursed, and there is no indication that a comparable expense would have been paid for the purchase of an existing residence.

**CIVILIAN PERSONNEL**

**B-234027 Sept. 14, 1989**

**Relocation**

**Temporary quarters**

**Determination**

**Criteria**

An employee does not satisfy his burden of establishing intent to occupy permanent-type quarters temporarily through a bare allegation that such intent existed where there is no specific documentary or testimonial evidence on the issue. Thus, an agency's disallowance of a claim for temporary quarters is sustained.

**CIVILIAN PERSONNEL**

**B-234240 Sept. 14, 1989**

**Travel**

**Permanent duty stations**

**Actual subsistence expenses**

**Prohibition**

**CIVILIAN PERSONNEL**

**Travel**

**Temporary duty**

**Per diem**

**Eligibility**

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-234343 Sept. 14, 1989

**Relocation**

**Residence transaction expenses**

**Reimbursement**

**Eligibility**

**Effective dates**

An employee may not be reimbursed real estate expenses that were incurred prior to the agency's clearly expressed and definite intention to transfer him.

**CIVILIAN PERSONNEL**

**Relocation**

**Residence transaction expenses**

**Reimbursement**

**Eligibility**

**Retroactive approval**

Retroactive approval of TQSE is permissible provided it is consistent with agency policy and otherwise authorized by law.

**CIVILIAN PERSONNEL**

**Relocation**

**Temporary quarters**

**Actual subsistence expenses**

**Reimbursement**

**Eligibility**

An employee is not entitled to temporary quarters subsistence expenses (TQSE) at his old duty station, where the sale of his residence for personal reasons and prior to notice of transfer created the necessity for occupancy of temporary quarters.

**CIVILIAN PERSONNEL****B-234969 Sept. 14, 1989****Relocation****Residence transaction expenses****Loan origination fees****Reimbursement**

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-235407 Sept. 14, 1989****Relocation****Mobile homes****Shipment****Actual expenses****Reimbursement**

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-233829 Sept. 15, 1989****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Effective dates**

An employee may not be reimbursed real estate expenses where he contracted to sell and vacated his old residence before he was first definitely informed of his transfer.

**CIVILIAN PERSONNEL**

**B-235046 Sept. 18, 1989**

**Relocation**

**Residence transaction expenses**

**Reimbursement**

**Eligibility**

**Effective dates**

An employee may not be reimbursed real estate expenses where he entered into contract to sell his residence before there was any administrative intent to transfer him.

**CIVILIAN PERSONNEL**

**B-231512 Sept. 21, 1989**

**Relocation**

**Expenses**

**Interest**

**Eligibility**

**Delayed payments**

Since a federal employee is not a "business concern," the Prompt Payment Act may not be used as authority to pay him an interest penalty on his claim for temporary quarters subsistence expenses.

**CIVILIAN PERSONNEL**

**Relocation**

**Temporary quarters**

**Actual subsistence expenses**

**Reimbursement**

**Amount determination**

When an employee and his family stay in the home of his parents, the amount paid to the host must reasonably reflect the added expenses to the host and must not be determined on the basis of the comparative cost of commercial quarters. Since there are not, and never were, any records of the added expenses to the host, we must deny the employee's claim for the lodgings portion of his temporary quarters subsistence expenses.

**CIVILIAN PERSONNEL**

B-231512 Con't  
Sept. 21, 1989

**Relocation****Temporary quarters****Actual subsistence expenses****Reimbursement****Amount determination**

Where an employee no longer has any detailed records of meal expenses for his temporary quarters claim but merely estimates the cost, he has failed to meet his burden of proof. However, in view of the length of time between the employee's improper discharge and reinstatement, and the lack of any extant records, we are returning the meal expenses portion of his temporary quarters claim to the Army so that it may determine the reasonableness of that expenditure based on valid statistical references and thus reimburse the employee on that basis.

**CIVILIAN PERSONNEL****Relocation****Travel expenses****Reimbursement****Eligibility**

An employee, who was removed from his position in Europe in 1983, returned to the United States at his own expense. When his removal was overturned in 1985, the agency issued travel orders to reimburse him for his and his family's relocation expenses. Under the circumstances, the employee should be given a further opportunity to prove his relocation expenses.

**CIVILIAN PERSONNEL**  
**Travel**  
**Commuting expenses**  
**Reimbursement**  
**Eligibility**

**B-233591 Sept. 21, 1989**

An agency reassigned an employee for a 6-month period from one workplace to another workplace within his official duty station, which consisted of a city's corporate limits. The employee's claim for the cost of commuting to the new workplace may not be allowed because an employee must bear the costs of commuting between his residence and his workplace.

**CIVILIAN PERSONNEL**  
**Travel**  
**Advances**  
**Overpayments**  
**Debt collection**  
**Waiver**

**B-235109 Sept. 25, 1989**

**CIVILIAN PERSONNEL**  
**Travel**  
**Permanent duty stations**  
**Actual subsistence expenses**  
**Prohibition**

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-235179 Sept. 25, 1989****Relocation****Residence transaction expenses****Leases****Termination costs****Reimbursement**

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-236557 Sept. 27, 1989****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Residency**

An employee, who was not occupying her house when she received official notice of a transfer, is entitled to real estate expenses for the sale of the house where arrangements she made evinced an intention to occupy the house but she was prevented from occupying it prior to her transfer notice by circumstances beyond her control.

**CIVILIAN PERSONNEL****B-236290 Sept. 28, 1989****Relocation****Residence transaction expenses****Litigation expenses****Attorney fees****Reimbursement**

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**  
**Relocation**  
**Residence transaction expenses**  
**Reimbursement**  
**Eligibility**

**B-236793 Sept. 29, 1989**

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.

**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-234719 Sept. 15, 1989**

**Travel**

**Overseas travel**

**Dependents**

**Travel expenses**

**Reimbursement**

**MILITARY PERSONNEL**

**Travel**

**Overseas travel**

**Foreign air carriers**

**Use**

**Prohibition**

Member may not be reimbursed for costs of dependent's travel on foreign air carrier in connection with authorized travel in the absence of showing unavailability of a U.S. carrier, even though he was unaware of the Fly America Act requirement to use a U.S. carrier. Also, he is responsible for the cost of travel regardless of any administrative error and even though a travel agent stated, subsequent to the travel, that U.S. carriers were unavailable.

**PROCUREMENT**

**PROCUREMENT**                           **B-235338 Sept. 1, 1989**  
**Bid Protests**                         **89-2 CPD 207**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest of amendments to request for proposals, and of their alleged effect on protester's competitive position are untimely since the allegations were first raised before the General Accounting Office after the closing date for receipt of proposals and, otherwise, more than 10 days after the protester knew or should have known of the protest basis.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Price disclosure**  
**Allegation substantiation**  
**Evidence sufficiency**

Protester's assertion that its price may have been disclosed to its competitor is dismissed as speculative where the allegation is based solely on the circumstances of the awardee's reduction of its price in its best and final offer and the protester's assertions that it was contacted by individuals outside the government concerning what it regarded as confidential business arrangements contained in its proposal.

**PROCUREMENT**

B-235338 Con't

Competitive Negotiation  
Requests for proposals  
Amendments  
Propriety

Sept. 1, 1989

Where agency amended the request for proposals to reflect a significant change in the initial quantity requirement and called for revised proposals after the initial closing date for receipt of proposals, we do not find that the agency's actions were unnecessary, arbitrary or capricious, or that they constituted technical leveling or auctioneering of the procurement, since the agency's actions had the intent and effect of a request for best and final offers where all offerors submitted revisions to their price proposals and no offerors were prejudiced in the competition.

**PROCUREMENT**

Contractor Qualification  
Approved sources  
Qualification  
Standards

Where, as a result of a corporate transfer in which the successor corporation to a previously approved government contractor becomes the ultimate recipient of a contract restricted to approved sources, the successor corporation may be determined to meet the qualifying requirement if the sale of assets included all aspects of the business that will be required to execute the contract properly.

**PROCUREMENT** B-235338 Con't  
**Contractor Qualification** Sept. 1, 1989  
**Responsibility**  
    **Contracting officer findings**  
    **Pre-award surveys**  
    **Administrative discretion**

Allegation that agency did not seriously consider protester's proposal for award because the agency did not conduct a pre-award survey on the protester following receipt of its low initial offer is dismissed as speculative since an agency is not required to conduct a survey, as the determination to do so is within the discretion of the contracting officer.

**PROCUREMENT** B-235690 Sept. 1, 1989  
**Sealed Bidding** 89-2 CPD 210  
**Bids**  
    **Responsiveness**  
    **Descriptive literature**  
    **Absence**

Where invitation for bids contains the standard descriptive literature clause plus other references in the Bid Schedule and Evaluation for Award provisions which emphasize the need for literature to describe how the offered item was to be constructed and the materials to be used, rejection of protester's bid, which admittedly failed to contain descriptive literature on key aspects of the offered item, was proper.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
    **Responsiveness**  
    **Descriptive literature**  
    **Absence**

A bidder may not rely upon the contract requirement of first article approval to replace the bid requirement of descriptive literature to determine responsiveness.

**PROCUREMENT**                    B-235690 Con't  
Sealed Bidding                    Sept. 1, 1989  
Competitive system integrity  
Non-responsive bids  
Acceptability

**PROCUREMENT**  
Sealed Bidding  
Non-responsive bids  
Acceptance  
Propriety  
Competitive system integrity

A nonresponsive bid may not be accepted, even where it might result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system.

**PROCUREMENT**  
Sealed Bidding  
Contracting officer duties  
Contract award notification

Record does not support protester's allegation that awardee received preferential treatment with respect to advance notice of award. Moreover, contracting agency provided the "prompt" notice of award required by regulation by mailing notices to the unsuccessful bidders the day after award was made.

**PROCUREMENT**                    B-235830 Sept. 1, 1989  
Competitive Negotiation        89-2 CPD 211  
Contract awards  
Propriety

Agency properly awarded contract to low, technically acceptable, responsible offeror where protester's allegations that awardee failed to meet certain specifications of the solicitation are not supported by the record.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Responsiveness**  
**Letters of credit**  
**Adequacy**

B-235342 Sept. 5, 1989  
89-2 CPD 212

Where the issuer of a letter of credit submitted as a bid guarantee is neither a bank nor an otherwise regulated financial institution, it is appropriate for the contracting agency to examine not only the form and content of the letter of credit, but also to ascertain the financial responsibility of the issuer, and a bidder may properly be found nonresponsible if it fails to provide adequate evidence in a timely fashion indicating that the issuer of its letter of credit is financially sound.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Sureties**  
**Acceptability**

Where agency has significant unresolved doubts about financial capability of the bid guarantee surety who issued an irrevocable letter of credit, the bidder's offer that the surety place cash in an escrow account is not sufficient additional security to form an adequate basis to accept the surety.

The fact that one contracting agency may have accepted a letter of credit from the protester's surety in an earlier procurement does not compel another agency to accept a letter of credit from the same surety where based on the information presented to it the second agency reasonably determined the surety to be unacceptable.

**PROCUREMENT** B-235441 Sept. 6, 1989

**Noncompetitive Negotiation** 89-2 CPD 213

**Use**

**Justification**

**Urgent needs**

Protest against agency determination to modify prior contract rather than conduct a competitive procurement to fill urgent requirement for gas mask filter canisters is denied, where agency had previously issued and made award under a competitive solicitation to meet its future requirements, but the scheduled deliveries would be delayed as a result of a bid protest and the consequent stop work order and reopening of negotiations, and only the prior awardee could cover the expected shortfall.

**PROCUREMENT** B-235559.2 Sept. 6, 1989

**Bid Protests** 89-2 CPD 214

**GAO procedures**

**Interested parties**

**Direct interest standards**

Dismissal of protest of fifth low offeror in procurement in which price is only evaluation factor is affirmed where protester would not be in line for award even if protest were sustained and, thus, is not an interested party eligible to pursue a protest against award to low, responsible offeror.

**PROCUREMENT** B-235568 Sept. 6, 1989

**Sealed Bidding** 89-2 CPD 215

**Two-step sealed bidding**

**Offers**

**Rejection**

**Propriety**

The General Accounting Office will not question the exclusion of the protester's step-one proposal as unacceptable in two-step negotiated procurement where the proposal was reasonably found deficient, requiring major revisions to make the proposal acceptable.

**PROCUREMENT** B-235587 Sept. 6, 1989  
**Bid Protests** 89-2 CPD 216  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

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

**PROCUREMENT** B-235666, et al.  
Sealed Bidding Sept. 6, 1989  
Invitations for bids 89-2 CPD 217  
Evaluation criteria  
Adequacy

Protest that agency did not provide sufficient information for protester to submit competitive technical proposal is denied where solicitation provided sufficient information to allow offerors to compete intelligently and where protester did not comply with agency direction to request additional information under the Freedom of Information Act.

- PROCUREMENT
  - Special Procurement Methods/Categories
    - In-house performance
    - Cost evaluation
    - Government advantage
    - Allegation substantiation

Protest that solicitation requirements concerning insurance and use of government-owned equipment bias cost comparison against potential contractors is denied where the agency determined that requirements were necessary, and protester presents no evidence that this determination was unreasonable.

**PROCUREMENT** B-235723 Sept. 6, 1989  
**Contractor Qualification** 89-2 CPD 218  
**Responsibility**  
**Contracting officer findings**  
**Negative determination**  
**GAO review**

Agency properly found protester not responsible and rejected its bid where protester failed to provide sufficient information to permit a finding that the individual sureties on its bid bond were acceptable and the record shows the contracting officer's nonresponsibility determination was reasonably based.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Sureties**  
**Acceptability**

Agency properly rejected protester's individual sureties as unacceptable where the accuracy of the sureties' representations has been called into question and where the information submitted by protester was insufficient to establish that its bid guarantee was equal to or greater than the difference between its bid and the next acceptable bid.

**PROCUREMENT** B-236417 Sept. 6, 1989  
**Bid Protests** 89-2 CPD 219  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protester's contention that equipment demonstration should not have been conducted on a pass/fail basis is untimely when not filed before the closing date for initial proposals since the terms of the demonstration were clear from the solicitation.

**PROCUREMENT**                           **B-236417 Con't**  
**Bid Protests**                           **Sept. 6, 1989**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

Protester's contention that it was improperly excluded from the competitive range for failure to demonstrate during a benchmark test that its equipment had a certain feature is untimely when not filed until after protester received notice of its exclusion from the competitive range since the benchmark manual clearly identified the feature as mandatory and protester was advised during the demonstration that the feature was required.

**PROCUREMENT**                           **B-236712 Sept. 6, 1989**  
**Competitive Negotiation**              **89-2 CPD 220**  
**Hand-carried offers**  
**Late submission**  
**Acceptance criteria**  
**Acceptance**

A hand-carried proposal delivered 5 minutes late may not be accepted since protester failed to allow sufficient time to timely deliver its proposal and this was the sole cause of the proposal being late.

**PROCUREMENT**                           **B-235653 Sept. 7, 1989**  
**Noncompetitive Negotiation**          **89-2 CPD 222**  
**Contract awards**  
**Sole sources**  
**Propriety**

Allegation that contracting agency improperly solicited contract for tug and towing services on a sole-source basis is denied because the matter was previously resolved in an earlier decision involving the same parties and requirement and the protester has failed to demonstrate that any changed facts or circumstances warrant a different result.

**PROCUREMENT** B-236740 Sept. 7, 1989  
Sealed Bidding 89-2 CPD 223  
**Bids**  
**Late submission**  
**Rejection**  
**Propriety**

Late bid was properly rejected where there was no allegation or indication of government mishandling and bid, although sent by certified mail, was mailed less than 5 days before bid opening. Bid which is late under applicable regulatory standards may not be accepted under provision which permits consideration of a late modification which makes more favorable to the government the terms of an "otherwise successful" bid.

**PROCUREMENT** B-236822 Sept. 8, 1989  
Bid Protests 89-2 CPD 224  
**Administrative policies**  
**GAO review**

Contracting agency may properly charge modest fee for solicitation documents to cover costs of providing them.

**PROCUREMENT** B-233603.3; B-233606.3  
Socio-Economic Policies Sept. 11, 1989  
Small businesses 89-2 CPD 225  
**Responsibility**  
**Competency certification**  
**GAO review**

Where protester was apprised of the reasons for agency's nonresponsibility determination, General Accounting Office will not question a subsequent determination by the Small Business Administration not to issue a certificate of competency in the absence of a showing of bad faith or fraud, or that vital information was not considered.

**PROCUREMENT**                   **B-236494 Sept. 11, 1989**  
**Competitive Negotiation**      **89-2 CPD 226**  
**Requests for proposals**  
**Terms**  
**Shipment schedules**

Protest that agency improperly rejected protester's offer as unacceptable is denied where protester took exception to material requirement of the solicitation and attempted to limit liability for delinquent deliveries.

**PROCUREMENT**                   **B-234016.2; B-234017.2**  
**Special Procurement**          **Sept. 12, 1989**  
**Methods/Categories**          **89-2 CPD 227**  
**Service contracts**  
**Fixed-price contracts**  
**Options**  
**Rate changes**

Contracting agency may properly decline to include an economic price adjustment (EPA) clause in a solicitation where agency offers reasonable justification for omission of the clause since use of an EPA clause is a matter within the agency's discretion.

**PROCUREMENT**                    B-235449 Sept. 12, 1989  
Competitive Negotiation        89-2 CPD 229  
Requests for proposals  
Advertising  
Omission

**PROCUREMENT**  
Competitive Negotiation  
Requests for proposals  
Cancellation  
Resolicitation  
Propriety

Where a contracting officer learns after proposals are received that the notice of the solicitation was not published in the Commerce Business Daily (CBD), as was presumed under Federal Acquisition Regulation § 5.203(f) (FAC 84-40) since the notice was timely sent to the CBD for publication, his decision to proceed to award, rather than publishing a proper CBD notice and resoliciting the requirement, was reasonable, where there was not sufficient time for resolicitation due to compelling circumstances and where adequate competition was obtained under the RFP.

**PROCUREMENT**                    B-235596 Sept. 12, 1989  
Bid Protests                      89-2 CPD 230  
Moot allegation  
GAO review

Where protester's offer was properly rejected for failing to meet the delivery schedule required by agency, General Accounting Office need not address protester's argument that approved source requirement which protester's offer did not meet is unduly restrictive of competition.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for proposals**  
**Terms**  
**Shipment schedules**

**B-235596 Con't**  
**Sept. 12, 1989**

Where agency informed offeror of amended delivery schedule when it requested a best and final offer after initial proposals failed to meet delivery schedule, it should have been clear to the offeror that it was required to meet revised schedule to be considered for award and when the firm's offer did not meet amended schedule agency was not required to reopen discussions to afford offeror yet another chance to meet the agency's delivery needs.

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

**B-236847 Sept. 12, 1989**  
**89-2 CPD 231**

Protest that bid was improperly rejected as late because agency did not furnish protester with solicitation amendment in time for protester to submit a timely bid is untimely when filed after bid opening since protester, upon receipt of amendment 3 days prior to bid opening, should have protested prior to bid opening if it regarded the time remaining as inadequate.

**PROCUREMENT** B-232072 Sept. 15, 1989  
Payment/Discharge 89-2 CPD 232  
Shipment costs  
Additional costs  
Evidence sufficiency

The General Services Administration (GSA) disallowed a carrier's bills for delivery appointment charges relating to numerous government shipments because the carrier had not shown that the services were requested and performed. The carrier has not met its burden of providing clear evidence to counter GSA's transportation audit actions and establish its claims for the charges in question. Therefore, the disallowance of the carrier's claims is sustained.

**PROCUREMENT** B-235539.2 Sept. 15, 1989  
Bid Protests 89-2 CPD 233  
GAO procedures  
GAO decisions  
Reconsideration

Request for reconsideration of prior decision is denied where protester fails to show any error of fact or law that would warrant reversal or modification of prior decision.

**PROCUREMENT** B-235608 Sept. 15, 1989  
Bid Protests 89-2 CPD 234  
GAO procedures  
Protest timeliness  
Apparent solicitation improprieties

Protester's contention that pipe bending machine specifications requiring swing arm clamp mechanism unduly restrict competition will not be considered since alleged improprieties in a solicitation which are apparent prior to the due date for receipt of proposals must be filed before that date.

**PROCUREMENT**                   **B-235608 Con't**  
**Competitive Negotiation**      **Sept. 15, 1989**  
**Offers**  
    **Technical acceptability**  
    **Negative determination**  
    **Propriety**

Contracting agency reasonably rejected technical proposal of offerors which knowingly proposed nonconforming product that did not meet solicitation requirement for swing arm style pipe bending machine.

**PROCUREMENT**                   **B-235674 Sept. 15, 1989**  
**Noncompetitive Negotiation**   **89-2 CPD 235**  
**Sole sources**  
**Justification**  
**Intellectual property**

Proposed sole-source award of a subcontract for research, development and prototype testing of software-oriented approach to upgrading meteor burst communications system is unobjectionable where the procuring activity reasonably determined that only one source could provide the required services because only that source possesses patented and proprietary software and technology which offers the potential for significantly enhanced performance capabilities with the least hardware modification.

**PROCUREMENT****B-235502 Sept. 18, 1989****Bid Protests****89-2 CPD 237****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Where solicitation provides award may be made to other than low offeror, protest of award to higher priced offeror is untimely.

Where protester contends that Buy American Act differential is nullified by evaluation scheme giving great weight to experience, which only foreign producer possessed, protest is untimely when filed after closing as the evaluation scheme was apparent in the solicitation.

**PROCUREMENT****Competitive Negotiation****Contract awards****Source selection boards****Administrative discretion**

Source selection official has discretion to determine whether technical advantage of awardee is worth its higher price notwithstanding the fact that price is an evaluation factor equal to technical factors.

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

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

**PROCUREMENT**                    B-235502 Con't  
Competitive Negotiation       Sept. 18, 1989  
Requests for proposals  
Evaluation criteria  
Cost/technical tradeoffs  
Weighting

In negotiated procurements, award need not be made to the firm offering the lowest price where the solicitation does not state that award will be made on that basis but instead provides that award will be made to the offeror whose proposal is most advantageous to the government, price and other factors considered.

**PROCUREMENT**                    B-235603 Sept. 18, 1989  
Noncompetitive Negotiation 89-2 CPD 238  
Contract awards  
Sole sources  
Propriety

Sole-source award is unobjectionable where the agency complied with statutory requirements for written justification and publication of notice in the Commerce Business Daily (CBD) and the agency reasonably determined that the protester's proposed equipment does not meet its technical requirements and that only one source could supply the desired item.

**PROCUREMENT**                    B-235701 Sept. 18, 1989  
Competitive Negotiation        89-2 CPD 239  
Best/final offers  
Pricing errors  
Correction  
**Propriety**

Agency acted properly in calling a suspected mistake in protester's proposal to its attention, and allowing protester to address it on submission of its best and final offer.

Agency acted properly in interpreting a figure in a best and final offer literally, rather than in a different way allegedly intended by the offeror, when agency's interpretation under the circumstances is reasonable.

**PROCUREMENT**                    B-235950 Sept. 18, 1989  
Bid Protests                    89-2 CPD 240  
GAO procedures  
Protest timeliness  
Apparent solicitation improprieties

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

Protest that during discussions agency discouraged protester from changing its technical proposal to make it less costly is dismissed as untimely where it was not filed prior to the next closing date for the receipt of proposals.

**PROCUREMENT**

B-236370 Sept. 18, 1989

**Bid Protests****GAO procedures****Interested parties****Direct interest standards**

Third-low offeror is not an interested party to protest award to the low offeror where the second low offeror would be in line for award even if the protest were sustained.

**PROCUREMENT**

B-236709 Sept. 18, 1989

**Bid Protests**

89-2 CPD 241

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

The General Accounting Office (GAO) will not consider the merits of an untimely protest under the significant issue exception to GAO's timeliness requirements where the issue raised--whether a bidder properly was permitted to correct its bid after bid opening--is not a matter of first impression or of widespread interest to the procurement community.

**PROCUREMENT**

B-236904 Sept. 18, 1989

**Bid Protests**

89-2 CPD 242

**Sales****Government property****GAO review**

Protest concerning the sale of services is not subject to review by the General Accounting Office in the absence of the contracting agency's agreement to have protest considered.

**PROCUREMENT****B-235349.2 Sept. 19, 1989****Bid Protests****89-2 CPD 243****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration of prior decision, on ground that the decision failed to address alleged improper communications between agency and awardee, is denied; prior decision specifically addressed the allegations and found them to have no bearing on the case.

**PROCUREMENT****B-235716 Sept. 19, 1989****Bid Protests****89-2 CPD 245****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest alleging an apparent solicitation impropriety filed after the closing date for the receipt of initial proposals is untimely where the contracting agency reports that it never received the protester's agency-level protest and the protester does not furnish any documentary proof that protest was initially filed at the contracting agency.

**PROCUREMENT****B-235821 Sept. 19, 1989****Specifications****89-2 CPD 246****Minimum needs standards****Competitive restrictions****Justification****Sufficiency**

Protest that specifications are unduly restrictive is denied where agency makes showing that specifications for insect screening are required to meet its minimum needs, and protester has not shown that the requirements are unreasonable.

**PROCUREMENT** B-236363.2 Sept. 19, 1989  
Bid Protests 89-2 CPD 247  
GAO procedures  
GAO decisions  
Reconsideration

Request for reconsideration is denied where protest against cancellation of solicitation was properly dismissed as being academic and where protest of alleged improprieties in a solicitation not yet announced is premature.

## **PROCUREMENT**

### **Bid Protests**

### **GAO procedures**

### **Preparation costs**

# **PROCUREMENT**

## **Competitive Negotiation Offers**

### **Preparation costs**

There is no basis for recovery of bid preparation or protest costs where protest is dismissed as academic.

**PROCUREMENT** B-230298.7 Sept. 20, 1989  
**Sealed Bidding** 89-2 CPD 248  
**Bids**  
**Responsiveness**  
**Determination criteria**

Certification that 52 percent of manufacturing or production costs will be incurred by a subcontractor, made for purposes of establishing eligibility as a labor surplus area concern, does not render bid nonresponsive to Limitations on Subcontracting clause, which provided that submission of the bid constitutes agreement that bidder shall perform at least 50 percent of the cost of manufacturing "not including the cost of materials;" the calculations were based on different measurements—total costs versus total costs other than the cost of materials.

**PROCUREMENT**                   **B-233365.3 Sept. 20, 1989**

Competitive Negotiation       **89-2 CPD 249**

Offers

Organizational experience

Evaluation

Evidence sufficiency

Where contracting agency establishes prima facie support for solicitation's performance standards and protester fails to show that solicitation's standards are clearly unreasonable, protest that requirements are unnecessarily restrictive is denied.

**PROCUREMENT**

Sealed Bidding

Invitations for bids

Terms

Liquidated damages

Propriety

General Accounting Office will not object to deductions from monthly payments due contractor for deficient performance, where protester fails to show that there is no possible relation between stipulated deductions and losses that are contemplated by the parties.

**PROCUREMENT**                   **B-234597.4 Sept. 20, 1989**

Bid Protests

**89-2 CPD 250**

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration of prior decision is denied where protester does not establish any factual or legal errors in the prior decision.

**PROCUREMENT**                   **B-235370.2 Sept. 20, 1989**  
**Sealed Bidding**               **89-2 CPD 251**  
**Invitations for bids**  
**Post-bid opening cancellation**  
**Justification**  
**Sufficiency**

Compelling reason to cancel invitation for bids after bid opening existed where invitation required bonding if "contract price/minimum" was \$25,000 or greater, thus rendering solicitation ambiguous; bidders reasonably could interpret solicitation as requiring bonding since bid prices were well above \$25,000, or as not requiring bonding since stated minimum order was only \$8,000, and bids received indicate different bidders adopted different interpretations.

**PROCUREMENT**                   **B-235599 Sept. 20, 1989**  
**Competitive Negotiation**      **89-2 CPD 252**  
**Best/final offers**  
**Technical acceptability**  
**Negative determination**  
**Propriety**

Best and final offer which, by its own terms, does not meet specification requirements is not technically acceptable, and the deficiencies contained therein cannot be corrected through a request for clarification.

**PROCUREMENT**                   **B-235627 Sept. 20, 1989**  
**Contractor Qualification**      **89-2 CPD 253**  
**Insurance**  
**State/local laws**  
**Compliance**

Contracting agency need not require that bidders furnish verification that they carry insurance coverage mandated by state or local law, such as workers' compensation, since compliance with state and local requirements is a matter to be resolved between the contractor and the state or local authorities.

**PROCUREMENT**                           **B-235627 Con't**  
**Sealed Bidding**                       **Sept. 20, 1989**  
**Invitations for bids**  
**Terms**  
**Liability insurance**

Protest alleging that solicitation for a fixed-price nonpersonal services contract is defective because it did not require the contractor to obtain commercial insurance coverage is denied, where Federal Acquisition Regulation does not require such coverage and contracting agency reasonably determined that insurance coverage was not necessary to protect the government's interest.

**PROCUREMENT**                           **B-236804 Sept. 20, 1989**  
**Sealed Bidding**                       **89-2 CPD 254**  
**Bids**  
**Responsiveness**  
**Acceptance time periods**  
**Deviation**

Where a bid offers a minimum bid acceptance period of 60 days in response to a sealed bid solicitation requiring no less than 120 days, the bid is nonresponsive and must be rejected despite the bidder's contention that it intended to offer 160 days.

**PROCUREMENT**                           **B-233143.3 Sept. 21, 1989**  
**Bid Protests**                       **89-2 CPD 255**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest against agency's allegedly calling for multiple best and final offers under a revised solicitation and disclosure of protester's costs under original solicitation resulting in an auction is untimely where protester did not file a protest until 5 months after it knew about the revised solicitation and the cost disclosure.

**PROCUREMENT**                   **B-233143.3 Con't**  
**Competitive Negotiation**      **Sept. 21, 1989**  
**Offers**  
**Evaluation**  
**Administrative discretion**

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

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

Fact that protester received higher score in the evaluation of its proposal under original request for proposals (RFP) and a lower score when its second proposal, submitted in response to a revised RFP was evaluated by different evaluators, does not mean that the second evaluation was incorrect or not in accordance with evaluation criteria since the revised RFP was issued to correct evaluation flaws in the initial RFP.

Protest alleging that contracting agency evaluated offerors on requirements that were not stated as evaluation criteria in the request for proposals is denied where the record shows that the requirements were set forth elsewhere in the solicitation.

A contracting agency may properly evaluate a proposal's weaknesses in more than one evaluation area as long as the deficiency reasonably relates to more than one evaluation criteria.

**PROCUREMENT**                           **B-233695.3 Sept. 21, 1989**  
**Bid Protests**                         **89-2 CPD 256**  
    **GAO procedures**  
    **GAO decisions**  
    **Reconsideration**

Request for reconsideration of prior decision holding that procuring agency properly rejected bid as nonresponsive because bidder failed to describe proposed modifications and clearly mark its descriptive literature to show the modifications is denied where the protester essentially restates its initial arguments and does not show that the prior decision was based on an error of fact or law.

**PROCUREMENT**                           **B-235682 Sept. 21, 1989**  
**Bid Protests**                         **89-2 CPD 261**  
    **Patent infringement**  
    **GAO review**

Claim of possible patent infringement does not provide a basis for the General Accounting Office to object to an award.

**PROCUREMENT**  
    **Contractor Qualification**  
    **Licenses**  
    **Applicability**

Protest that awardee failed to comply with Food and Drug Administration regulation requiring registration for "medical device products intended to be delivered to the government" is denied where the record indicates that the medical product is exempt from such registration.

**PROCUREMENT** B-235782 Sept. 21, 1989  
**Noncompetitive Negotiation** 89-2 CPD 262  
**Contract awards**  
**Sole sources**  
**Propriety**

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

Protest that agency made an improper sole-source award is denied where the record clearly indicates that only one manufacturer, the awardee, was capable of producing the item, a flight-critical part that was urgently required, without the risks of delay attendant on production lot sampling, which would have been required for other approved sources of the item.

**PROCUREMENT** B-235872 Sept. 21, 1989  
**Sealed Bidding** 89-2 CPD 263  
**Invitations for bids**  
**Post-bid opening cancellation**  
**Justification**  
**Evaluation criteria**

Cancellation of invitation for bids after bid opening is justified where solicitation evaluation scheme would not ensure that award would be based on most advantageous price to government.

**PROCUREMENT**

B-236672.2 Sept. 21, 1989

**Bid Protests**

89-2 CPD 264

**GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration of dismissal of protest challenging responsiveness of low bid is denied where alleged defect in the certificate of sufficiency submitted with bid bond does not affect responsiveness of bid since certificate serves only to assist the contracting officer in determining the surety's responsibility.

**PROCUREMENT**

B-233105.6 Sept. 22, 1989

**Bid Protests**

89-2 CPD 265

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

Protest that award should have been made under first round of best and final offers is untimely where filed more than 10 days after protester learned that discussions would be reopened and another round of best and final offers would be held, which provided the basis for protest.

**PROCUREMENT**

B-237030 Sept. 22, 1989

**Socio-Economic Policies**

89-2 CPD 267

**Small businesses****Preferred products/services****Certification**

Bid submitted in response to a small business set-aside solicitation which contains certification that not all end items to be furnished under the contract will be products of a small business manufacturer cannot be used to establish bidder's legal commitment to do so.

**PROCUREMENT** B-235826 Sept. 25, 1989  
**Competitive Negotiation** 89-2 CPD 268  
**Offers**  
**Competitive ranges**  
**Exclusion**  
**Administrative discretion**

Protester was properly excluded from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because its proposal contained significant technical weaknesses in the areas of professional and technical staffs, and its understanding of the scope of work, and was scored substantially below the technical proposals of two higher rated offerors.

**PROCUREMENT** B-235888; B-236190  
**Sealed Bidding** Sept. 25, 1989  
**Invitations for bids** 89-2 CPD 269  
**Post-bid opening cancellation**  
**Justification**  
**Evaluation criteria**

Cancellation after bid opening of solicitation issued on a brand name basis is unobjectionable where agency concludes that tape recorders other than the brand name model will satisfy its minimum needs and it appears that resolicitation on a brand name or equal basis will enhance competition and result in cost savings to the government.

**PROCUREMENT** B-236479.2 Sept. 25, 1989  
**Bid Protests** 89-2 CPD 270  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration is denied where protester does not establish any factual or legal errors in the prior decision which warrant reversal or modification.

**PROCUREMENT**                   **B-232200.3; B-232200.4**  
**Bid Protests**                 **Sept. 26, 1989**  
**GAO procedures**               **89-2 CPD 271**  
**GAO decisions**  
**Reconsideration**

Decision sustaining protest and recommending resolicitation on grounds that solicitation's evaluation of bids clause was ambiguous is affirmed where decision was not based on error of fact or law.

**PROCUREMENT**                   **B-234367.2 Sept. 26, 1989**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration of decision sustaining protest is denied where contractor reiterates arguments raised initially and fails to show any error of fact or law that would warrant reversal or modification of prior decision.

**PROCUREMENT**                   **B-235740 Sept. 26, 1989**  
**Bid Protests**                 **89-2 CPD 273**  
**GAO procedures**  
**Preparation costs**

Protester is not entitled to bid protest costs where there is no decision on the merits.

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

Protest is academic where agency acted reasonably in issuing a corrective amendment satisfying the protester's objections to an ambiguous solicitation.

**PROCUREMENT**                           **B-236355 Sept. 26, 1989**  
**Sealed Bidding**                       **89-2 CPD 274**  
**Bids**  
**Responsiveness**  
**Determination criteria**

A bidder need not submit additional information in support of its certification that it would comply with the Drug-Free Workplace Act of 1988, Pub. L. No. 100-690, § 5152(a)(1), since, by its express terms, the solicitation's drug-free workplace clause is self-executing.

**PROCUREMENT**                           **B-232190.3; B-232190.4**  
**Bid Protests**                       **Sept. 27, 1989**  
**GAO procedures**                      **89-2 CPD 275**  
**GAO decisions**  
**Reconsideration**

Eligibility under the Walsh-Healey Public Contracts Act is not for resolution by the General Accounting Office.

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

The award of a contract constitutes an affirmative determination of responsibility.

**PROCUREMENT**                           **B-235620.3 Sept. 27, 1989**  
**Bid Protests**                       **89-2 CPD 276**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration of prior decision denying protest against agency's nonresponsibility determination based upon unacceptability of individual sureties is denied where protester does not establish any factual or legal errors in the prior decision.

**PROCUREMENT**                           **B-235857 Sept. 27, 1989**  
**Sealed Bidding**                       **89-2 CPD 277**  
**Invitations for bids**  
**Procedural defects**  
**Materiality**

Protest against use of clauses similar to those in the General Services Administration Acquisition Regulation in a Department of Defense (DOD) procurement is denied where protester does not show that clauses deviate from Federal Acquisition Regulation (FAR) or DOD FAR Supplement.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for bids**  
**Terms**  
**Performance bonds**

Protest of bonding requirement in a solicitation for security guard services is denied since it is within agency's discretion to require bonding even in a small business set-aside and the agency's requirement for uninterrupted performance of security guard services is itself a reasonable basis for imposing bonding requirements in a solicitation where prior experience indicated problems in performance.

**PROCUREMENT**                           **B-233493.4 Sept. 28, 1989**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration of prior decision holding that a bid was improperly rejected as late when it was submitted at 2 p.m., the time called for in the invitation for bids for the submission of bids, is denied where protester restates arguments previously considered and request does not show that initial decision contained errors of fact or of law.

**PROCUREMENT** B-235255.2 Sept. 28, 1989  
**Socio-Economic Policies** 89-2 CPD 278  
**Small businesses**  
**Disadvantaged business set-asides**  
**Preferences**  
**Applicability**

Protest that agency improperly found firm's surety unacceptable will not be considered where agency, pursuant to statute, properly does not apply small disadvantaged business (SDB) evaluation preference in evaluating bids, and firm is not the low bidder without the SDB preference.

**PROCUREMENT** B-235568.3 Sept. 28, 1989  
**Bid Protests** 89-2 CPD 279  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Technical acceptability**  
**Negative determination**  
**Propriety**

The General Accounting Office will not question the exclusion of the protester's step-one proposal as unacceptable in two-step negotiated procurement where the proposal was reasonably found deficient, requiring major revisions to make the proposal acceptable.

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

**B-235688 Sept. 28, 1989**  
**89-2 CPD 280**

Protester's claim that its proprietary data rights under a contract awarded pursuant to the Department of Defense's Small Business Innovation Research program have been violated is dismissed where the appropriate remedy is administrative settlement of its claim or a judicial action against the government for damages rather than consideration under the bid protest function of the General Accounting Office.

**PROCUREMENT** **B-235706 Sept. 28, 1989**  
**Specifications** **89-2 CPD 281**  
**Minimum needs standards**  
**Competitive restrictions**  
**Allegation substantiation**  
**Evidence sufficiency**

Where contracting agency determines that an accelerated performance schedule reflects the government's need to achieve cost savings, record does not show otherwise, and protester fails to specify why the schedule is restrictive of competition except to indicate that it alone requires an indefinitely longer period of time to ready itself for performance, there is no basis for the General Accounting Office to object to the schedule established by the agency.

**PROCUREMENT** **B-235880 Sept. 28, 1989**  
**Bid Protests** **89-2 CPD 282**  
**Moot allegation**  
**GAO review**

Allegation that solicitation unfairly permits the contracting agency to withhold final payment under the contract until all disputes and claims under the contract have been settled is rendered academic where the procuring agency deletes the requirement by amending the solicitation.

**PROCUREMENT**                    B-235880 Con't  
**Sealed Bidding**                Sept. 28, 1989  
**Bonds**  
**Justification**  
GAO review

Protest that bonding requirements under a solicitation for a ship conversion contract are not in the government's best interest and constitutes an impediment to small businesses is denied because the Miller Act requires the contracting agency to obtain performance and payment bonds for the contract in question.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for bids**  
**Terms**  
**Progress payments**

The contracting officer has the discretion to determine whether and under what terms a provision for progress payments should be included in a solicitation and properly may require bonding and the retainage of a percentage of the contract price from progress payments in the same procurement.

**PROCUREMENT**                    B-235976 Sept. 28, 1989  
**Competitive Negotiation**      89-2 CPD 283  
**Contract awards**  
**Administrative discretion**  
**Cost/technical tradeoffs**  
**Technical superiority**

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

**PROCUREMENT**                    B-235976 Con't  
Competitive Negotiation      Sept. 28, 1989  
Offers  
Evaluation  
Administrative discretion

In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting agency enjoys a reasonable range of direction, and we will not question a determination of the technical merit of proposals unless it is shown to be arbitrary.

**PROCUREMENT**  
Competitive Negotiation  
Offers  
Evaluation errors  
Non-prejudicial allegation

Protest is denied where there is no indication alleged error in evaluating proposals adversely affected the protester's competitive standing.

**PROCUREMENT**  
Contractor Qualification  
Contractor personnel  
GAO review

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

Whether awardee will be able to perform contract using employees whose resumes were included in awardee's proposal is a matter of responsibility and General Accounting Office will not review agency's affirmative determination of awardee's responsibility absent showing of possible agency fraud or bad faith or alleged failure to apply definitive responsibility criteria.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

**B-235982 Sept. 28, 1989**  
**89-2 CPD 284**

Low bidder whose bid properly was rejected as nonresponsive is not an interested party to argue that second low bidder's bid should be rejected where there is another bidder which could be considered for award if the second low bid were rejected, since protester would not be in line for award even if the protest were sustained.

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

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

Protest challenging adequacy of experience questionnaire submitted by awardee with its bid will not be considered since it was first raised in protester's comments on the agency report and therefore is untimely, and in any event constitutes a challenge to the contracting officer's affirmative responsibility determination, a matter which the General Accounting Office generally does not review.

**PROCUREMENT**  
Sealed Bidding  
Bids  
Responsiveness  
Terms  
Deviation

**B-235982 Con't**  
**Sept. 28, 1989**

Where bidder's notation in an attachment to its bid clearly takes exception to a material requirement of the solicitation, the performance period, contracting officer properly rejected bid as nonresponsive.

**PROCUREMENT** **B-235994 Sept. 28, 1989**  
Small Purchase Method  
Requests for quotations  
Contractors  
Exclusion  
Propriety

Where contracting officer refused to provide protester with solicitation for small purchase, small business set-aside, despite protester's repeated requests, protester was improperly excluded from the competition in violation of the Small Business Act and procurement statutes, which require that competition be obtained to the maximum extent practicable and that procuring agencies provide a copy of a solicitation to any small business concern upon request.

**PROCUREMENT**

B-235999.1 Sept. 28, 1989

**Special Procurement Methods/Categories**  
**Computer equipment/services**  
**Contract awards**  
**Authority delegation**

**PROCUREMENT**

**Special Procurement Methods/Categories**  
**Computer equipment/services**  
**Federal procurement regulations/laws**  
**Applicability**

Contract for accounting, financial and trust services should have been competed under the Brooks Act, 40 U.S.C. § 759 (Supp. IV 1986). The act applies if the contract requires "the performance of a service or the furnishing of a product which is performed or produced making significant use" of automatic data processing equipment. 40 U.S.C. § 759(a)(2)(A). Requirement for offerors to provide detailed analyses of computer and its use was an important and significant element of the services to be provided. Moreover, request for proposals included other services, forming bulk of contract, that could only by performed by computer.

**PROCUREMENT**

**Specifications**  
**Minimum needs standards**  
**Total package procurement**  
**Propriety**

Whether individual services should have been broken out from acquisition of integrated financial, accounting and trust services was matter for agency discretion. Total package approach might have justifiable on basis of assuring sufficient compatibility among computer dependent functions to support an integrated system. Investment advisory services, however, appear not to be computer dependent and there is no obvious rationale for not breaking them out, thereby enhancing competition for these services.

**PROCUREMENT****B-236240 Sept. 28, 1989****Bid Protests****Labor standards****GAO review**

Protest of inconsistent application of labor laws by Department of Labor offices in different states is a matter for consideration by that agency and not the General Accounting Office.

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

General Accounting Office will not review an affirmative responsibility determination absent a showing of possible fraud or bad faith or that definitive responsibility criteria were not applied.

**PROCUREMENT****B-236662.2 Sept. 28, 1989****Bid Protests****89-2 CPD 285****GAO procedures****GAO decisions****Reconsideration**

Prior dismissal of protest by small business concern against the Small Business Administration's (SBA) refusal to issue a certificate of competency (COC) is affirmed since protester on reconsideration again fails to show possible bad faith or fraud on the part of SBA. Argument on reconsideration that SBA would reconsider matter if contracting officer would agree to request that the case to be reopened does not establish that original dismissal was based on any error of fact or law. In any event, generally, there is no requirement that the agency request that the SBA reconsider its refusal to issue a COC.

**PROCUREMENT**                           **B-236972 Sept. 28, 1989**  
**Bid Protests**                           **89-2 CPD 286**  
    **GAO procedures**  
    **Protest timeliness**  
    **10-day rule**

Protest is untimely when filed more than 10 working days after protester received oral notification of award to low technically acceptable offeror.

**PROCUREMENT**                           **B-232108.2 Sept. 29, 1989**  
    **Sealed Bidding**  
    **Invitations for bids**  
    **Cancellation**  
    **Resolicitation**  
    **Propriety**

**PROCUREMENT**  
    **Specifications**  
        **Brand name specifications**  
        **Ambiguous specifications**  
        **Salient characteristics**  
        **Equivalent products**

On a solicitation calling for the submission of bids on a brand name or equal basis, where the protester, the exclusive licensee of the brand name part, offered that part, yet the agency made award to the low bidder offering the brand name manufacturer's less expensive part based upon a different, but reasonable, interpretation of the purchase description, the solicitation was prejudicially ambiguous such that the requirement should be resolicited.

**PROCUREMENT****B-235663 Sept. 29, 1989****Bid Protests****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest that issue raised in negotiations was beyond the requirements of the solicitation is untimely since protest was filed after the next closing date for receipt of proposals following negotiations which included allegedly improper issue.

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

Agency did not violate requirement for conducting meaningful discussions where in context of solicitation calling for innovative and creative means of assisting agency, questions addressed to offeror in negotiations were reasonably calculated to lead offeror into areas of its proposal requiring improvement or explanation without amounting to technical leveling.

**PROCUREMENT****B-235686 Sept. 29, 1989****Sealed Bidding****Bid guarantees****Sureties****Acceptability**

Low bid was properly rejected on the basis that individual bid bond surety was nonresponsible where the contracting officer had a reasonable basis to question the accuracy and sufficiency of the surety's evidence of financial acceptability and net worth.

**PROCUREMENT****B-235746 Sept. 29, 1989**

**Contractor Qualification  
Responsibility  
Contracting officer findings  
Negative determination  
GAO review**

Protest against a nonresponsibility determination is denied where the contracting officer reasonably determined that the individuals proposed by the protester for key personnel positions did not satisfy the solicitation's minimum qualification requirements.

**PROCUREMENT****B-236845 Sept. 29, 1989**

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

Protest that specifications in an invitation for bids are restrictive is untimely where filed after bid opening.

**PROCUREMENT****B-236983 Sept. 29, 1989**

**Sealed Bidding  
Bids  
Responsiveness  
Warranties**

Bid which offers warranty terms which shortens the warranty period required by solicitation is nonresponsive.

**PROCUREMENT**

**B-237061 Sept. 29, 1989**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**Adverse agency actions**

Where a firm initially protested solicitation's requirements to contracting agency prior to closing date for receipt of initial proposals, the agency's receipt of initial proposals without taking the requested corrective action constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) more than 6 weeks later, based on the agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

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