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(TRANSPORTATION INCLUDED)

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October through December 1983

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 B-208064, Jan. 25, 1983, modified by B-208064, Nov. 15, 1983

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B-208626.2 Oct. 3, 1983 83-2 CPD 404

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--SAMPLES--
NONCOMPLIANCE WITH SPECIFICATIONS*

Where, as here, bid samples which bidder submits for examination comply with stated purpose for which they were required by solicitation, there is no requirement that samples otherwise comply with specifications, nor is bidder, by submission of noncompliant samples, relieved from furnishing items fully in accord with those specifications.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--SAMPLES--
NONCOMPLIANCE WITH SPECIFICATIONS--ALLEGATION*

Protester's contention that awardee does not meet solicitation requirement that bid samples be from production of manufacturer whose product is to be supplied is without merit. GAO finds that protester's arguments overlook fact awardee is manufacturer in that awardee performs finishing operations on items which are forged by another manufacturer and supplied to awardee.

BIDS--PRICES--REASONABLENESS--ADMINISTRATIVE DETERMINATION

Determination concerning reasonableness of prices submitted in response to solicitation is matter of administrative discretion which GAO will not question unless determination is unreasonable or there is showing of bad faith or fraud. Although GAO questions agency's price comparison scheme (awardee's price was compared with hypothetical domestic bidder who might have bid on previous agency contract that was awarded to foreign bidder), GAO cannot conclude that agency's determination would have been different if questionable price comparison scheme had not been used.

*B-208626.2 Oct. 3, 1983 83-2 CPD 404 - Con.
BUY AMERICAN ACT--CONTRACTOR COMPLIANCE WITH CERTIFICATION--
CONTRACTOR'S OBLIGATION TO SUPPLY QUALIFYING ITEMS*

Where awardee has offered pursuant to terms of solicitation, items that qualify as domestic end products under Buy American Act, 41 U.S.C. 10a-d (1976), awardee is obligated to supply such items. Fact that awardee changes source of one of its components in order to meet its obligation is immaterial.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review contracting agency's affirmative determination of responsibility absent showing that agency acted fraudulently or in bad faith, or that definitive responsibility criteria in solicitation have not been met.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--WALSH-
HEALEY ACT*

Under terms of Walsh-Healey Act, 41 U.S.C. 35-45 (1976), GAO does not consider legal status of firm as regular dealer or manufacturer. This matter is to be determined by contracting agency in first instance, subject to review by Small Business Administration (where small business is involved) and Sec. of Labor.

*B-212553 Oct. 3, 1983 83-2 CPD 405
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE
PROCUREMENTS*

GAO will not consider protest against possible future procurement.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest against request for proposals is rendered academic by agency's cancellation of solicitation.

B-212667 Oct. 3, 1983 83-2 CPD 406

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Allegation that contract clause will have adverse impact on competition for precommercial thinning contract is untimely since allegation relates to alleged defect which was apparent on face of solicitation and, therefore, should have been protested prior to bid opening.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION

Allegation that National Forest Service policy of spraying roadsides with herbicides creates health hazard for workers in area is dismissed since protester was not awarded contract and, therefore, is not interested party to question whether contract performance has been made impossible by Forest Service.

B-212877 Oct. 3, 1983 83-2 CPD 407

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that contracting officer did not extend bid opening date to clarify alleged ambiguity in solicitation is dismissed where protests to contracting agency and to GAO were received after bid opening.

B-212969 Oct. 3, 1983 83-2 CPD 408

BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--STATE, ETC.
CERTIFICATIONS

When solicitation does not require bidder to have specific license, allegation that successful bidder does not possess necessary state operating authority to permit it to provide moving services required by solicitation does not affect eligibility of bidder for award; rather, it raises matter to be settled between contractor and state authorities, not federal officials.

B-212975 Oct. 3, 1983 83-2 CPD 409
CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE

Protest allegation--that solicitation must be canceled if SBA rules that wrong size standard was used--is dismissed as premature where SBA has not yet determined that wrong size standard was used.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protest allegation--that bidders on total small business set-aside are not small businesses and that solicitation thus must be canceled--in essence is size status protest and is dismissed; Small Business Administration, not GAO, has conclusive authority to decide such matters.

B-212987.2 Oct. 3, 1983 83-2 CPD 410
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--SOLICITATION IMPROPRIETIES

Protest against solicitation defects filed with GAO more than 10 working days after protester learns of agency's denial of protester's preclosing-date protest to agency is untimely under GAO Bid Protest Procedures, 4 C.F.R. 21.2(b)(1).

B-213104 Oct. 3, 1983 83-2 CPD 412
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--TENNESSEE VALLEY AUTHORITY

GAO will not review Tennessee Valley Authority (TVA) procurement because GAO is precluded by TVA Act from disallowing credit for expenditures which TVA board determines necessary in carrying out TVA Act.

B-209491.2, B-209492.2 Oct. 4, 1983 83-2 CPD 413
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed where request for reconsideration fails to raise new issues of fact or to demonstrate that errors of law exist in that prior decision.

*B-202753.3 Oct. 4, 1983 83-2 CPD 414
CONTRACTS--FEDERAL SUPPLY SCHEDULE--PURCHASES FOR SYSTEM--
MULTIPLE-AWARD SCHEDULE CONTRACTS--EVALUATION--PROPRIETY*

Where product offered by large business conforms to all expressed requirements of unrestricted line item in solicitation for multiple award contracts under FSS, it may not be rejected solely because of agency's previously unexpressed concern that acceptance might adversely impact another line item which has been set aside for small business firms.

*B-210904 Oct. 4, 1983 83-2 CPD 415
TIMBER SALES--BIDS--PROCEDURE--FOREST SERVICE MANUAL*

Where auction officer on Forest Service timber sale was in process of announcing closing of sale and protester expressed a desire to submit a further bid, it was incumbent on auction officer under provisions of Forest Service Manual covering auction procedures to hold auction open to allow protester opportunity to submit its bid.

TIMBER SALES--PROCEDURE--FOREST SERVICE MANUAL

Although under Uniform Commercial Code (UCC) auction officer may have had discretion to close timber sale while bidder was attempting to bid, UCC is merely guidance in this situation and policy in Forest Service Manual requiring that every effort be made to secure best possible price for Govt. is controlling.

*B-211968 Oct. 4, 1983 83-2 CPD 416
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--QUALIFYING
TERMS INAPPLICABLE--BID RESPONSIVE*

Unsolicited submission of product information bulletin which contains statement that equipment is "subject to change" without notice may be ignored in evaluating bid, where bid, read as whole, indicates bidder's intention to furnish product conforming to all specifications and literature was not required for evaluation purposes.

B-211968 Oct. 4, 1983 83-2 CPD 416 - Con.
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protest that proposed awardee will not deliver equipment meeting specification is matter of contract administration which is function and responsibility of contracting agency and not for consideration under GAO Bid Protest Procedures.

B-212053 Oct. 4, 1983 83-2 CPD 417
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED

Protester's allegation that specifications for aerial survey aircraft were unduly restrictive since they were written in such manner as to exclude use of any aircraft except specifically configured AT-11 aircraft is denied where agency establishes that specification requirements were necessary to meet its minimum needs and awardee of contract offered aircraft other than AT-11.

B-212093 Oct. 4, 1983 83-2 CPD 418
BIDS--OMISSIONS--ACCEPTABILITY OF BID

Failure to complete SF 19-B, "Representations and Certifications," and supplement to SF 19-B does not render bid nonresponsive, and required information may be submitted after bid opening.

BIDS--OMISSIONS--PRICES IN BID--ESSENTIALITY OF OMISSION

Where bidder submitted total price for each of four bid items, but omitted individual prices on line items under each bid item, omission may be viewed as minor informality or irregularity and waived because solicitation did not explain how individual prices would be evaluated and, in fact, total prices, not individual prices, were used in determining low bidder.

B-212093 Oct. 4, 1983 83-2 CPD 418 - Con.
REPORTS--ADMINISTRATIVE--CONTRACT PROTEST--TIMELINESS OF
REPORT

GAO will not disregard substantive information in agency's administrative report merely because report was not submitted within timeframe under Bid Protest Procedures.

B-212175 Oct. 4, 1983 83-2 CPD 419
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SELF-CERTIFICATION
NOT A MATTER OF RESPONSIVENESS

Failure to acknowledge amendment changing small business eligibility criteria does not render bid nonresponsive since amendment does not concern bidder's obligation to perform in accordance with requirements of solicitation.

B-212378.6 Oct. 4, 1983 83-2 CPD 420
CONTRACTS--PROTESTS--SUBCONTRACTOR PROTEST--TIMELINESS

Prime contractor's protest, indicating its interest in protest filed by its subcontractor, is untimely since prime contractor's protest was not filed within 10 working days after prime contractor knew basis for its protest.

B-212830 Oct. 4, 1983 83-2 CPD 421
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE-
BID NONRESPONSIVE

Bid was properly rejected as nonresponsive for failure to acknowledge material solicitation amendments despite bidder's failure to receive amendments, since bidder does not suggest that agency deliberately attempted to exclude bidder from competition.

B-212880 Oct. 4, 1983 83-2 CPD 422
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

To extent that protest is against solicitation provision which imposed quantity limit on award

unless bidder otherwise specified, protest is untimely. To extent protest is against Forest Service's rejection of protester's bid on one item, rejection was proper since award of that item would have exceeded quantity limit in its bid.

*B-212956 Oct. 4, 1983 83-2 CPD 423
BIDS--PREPARATION--COSTS--SUBCONTRACTORS*

There is no authority for payment of potential subcontractor's bid preparation costs where Govt. played no role in selection of another subcontractor.

*B-213048 Oct. 4, 1983 83-2 CPD 424
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PROPRIETY*

Procurement for alcohol and drug abuse counseling services may be set aside for small businesses since legislation authorizing agencies to establish such programs do not exclude procurements for such services from the Small Business Act's requirements.

*B-213107 Oct. 4, 1983 83-2 CPD 425
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED*

Failure of potential bidder to receive copy of solicitation is not reason to disturb award where there is no showing that adequate competition and reasonable prices were not obtained, or that failure was result of deliberate attempt to exclude firm from bidding.

*B-212884 Oct. 7, 1983 83-2 CPD 427
BUY AMERICAN ACT--WAIVER--AGENCY DETERMINATION--NOT
REVIEWABLE BY GAO*

GAO will not review Secretary of Transportation's decision not to waive a buy American requirement where that decision is by statute vested in the Secretary's discretion.

B-213041.2 Oct. 7, 1983 83-2 CPD 428

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest concerning allegedly arbitrary and
punitive solicitation terms which were apparent
prior to bid opening is dismissed as untimely where
the protest was filed after bid opening.

B-210415 Oct. 11, 1983 83-2 CPD 429

PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
PROCUREMENT AT OTHER THAN LOWEST FSS PRICE--JUSTIFICATION
REQUIREMENT

Proposal submitted by ADP schedule contractor in response
to Commerce Business Daily announcement of intent to place
order under another ADP schedule contract need not be accep-
ted despite its lower price and apparent responsiveness where
procuring agency had reasonable basis for believing that pro-
posed equipment would not perform essential operation based
upon agency's contemporaneous experience with same make and
model of equipment as proposed. Moreover, in view of this
contemporaneous experience with protester's equipment, agency
was not required to give the protester separate opportunity
to demonstrate operability of its equipment.

B-211028 Oct. 11, 1983 83-2 CPD 430

CONTRACTS--FEDERAL SUPPLY SCHEDULE--MULTIPLE SUPPLIERS--
AGENCY ISSUANCE OF A REQUEST FOR QUOTATIONS

Agency may properly issue RFQ to obtain quotes on
whatever equipment on FSS vendor would propose to
meet specifications and general line-item descriptions
of RFQ.

CONTRACTS--FEDERAL SUPPLY SCHEDULE--MULTIPLE SUPPLIERS--
PRICE REDUCTION

Protest alleging that purchasing agency could not
accept price reduction offered on items on multiple-
award FSS since price reduction had not been accepted
by GSA as of closing date for receipt of quotations is
denied since purpose of price reduction clause is to

assure Govt. benefit of any price reduction that occurs during contract period and GSA accepted price reduction prior to award by purchasing agency.

*B-211179 Oct. 11, 1983 83-2 CPD 431
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Protest against acceptance of allegedly nonconforming equipment under contract involves matter of contract administration not reviewable by GAO.

*CONTRACTS--PROTESTS--TO AGENCIES, ETC. OTHER THAN GAO--
TIMELINESS OF PROTEST*

Protest filed with GAO more than 10 working days after oral denial by contracting agency of oral protest is dismissed as untimely.

*B-211246.2 Oct. 11, 1983 83-2 CPD 431
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PRE-QUALIFICATION
OF OFFERORS*

Agency's statement in its report of selection decision that it believes only four firms could have responded to its requirements does not demonstrate that it made improper "prequalification" of offerors (excluding protester) where there is no evidence that agency attempted to determine eligibility of firms to compete prior to issuing its solicitation, or that it would only consider offer if submitted by one of four firms mentioned.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--
PROPRIETY*

Agency's failure to issue formal solicitation amendment to impose demonstration requirement was not prejudicial where protester received actual written notice of requirement.

B-211246.2 Oct. 11, 1983 83-2 CPD 432 - Con.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--SUBCRITERIA--ENCOMPASSED WITHIN MAJOR CRITERIA*

Evaluation factors contained in solicitation are not defective where they are described as including but not limited to certain specified consideration. Agency is not required to identify explicitly every aspect of evaluation factor which it might take into account, provided that such aspects are reasonably related to stated factor.

CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

GAO will not consider bases of protest pending before court of competent jurisdiction where court has not expressed interest in receiving GAO opinion. Fact that protester is not party to litigation is irrelevant.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against allegedly defective solicitation is timely where filed 37 minutes before closing time set for receipt of proposals. There is no requirement that such protests be filed sufficiently prior to closing time to allow for meaningful response before that time passes.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISTRICT
OF COLUMBIA PROCUREMENTS*

GAO will consider protest against D.C. Lottery and Charitable Games Control Board procurement, even though appropriated funds may not be involved since, as general matter, D.C. Govt. acquiesces in GAO's review of its procurement actions, and has done so here, in order to provide independent non-judicial review forum.

B-211474.2, B-212473 Oct. 11, 1983 83-2 CPD 433
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST

Terminated contractor protests that five similar contracts were not terminated. Protest against award of those contracts is untimely. Moreover, even if award of those contracts was improper, erroneous actions do not have binding effect on procuring agency in subsequent solicitation.

CONTRACTS--TERMINATION--CONVENIENCE OF GOVERNMENT--
ADMINISTRATIVE DETERMINATION

When GAO finds contract award is improper, GAO will consider feasibility of recommending contract termination as means of promoting integrity of contract award process. However, when GAO agrees with procuring agency that award was improper and agency has terminated contract, GAO will not consider whether termination was feasible since agency had already decided that it was feasible to terminate contract.

CONTRACTS--TERMINATION--CONVENIENCE OF GOVERNMENT--ERRONEOUS
EVALUATION, ETC.

RFP stated that award would be based on "price and other factors." Under GAO decisions, RFP statement reasonably meant that price and technical factors will be considered equal. Nevertheless, agency intended that price would be controlling and awarded on that basis. Procuring agency properly terminated contract and resolicited with RFP which reflected actual selection basis.

CONTRACTS--TERMINATION--CONVENIENCE OF GOVERNMENT--PROPRIETY

Procuring agency terminated and resolicited small business set-aside contract because RFP did not reflect actual selection basis. Award had been protested by another offeror, which SBA--subsequent to termination--determined was not small business. Size status of that offeror did not affect propriety of termination.

B-211732 Oct. 11, 1983 83-2 CPD 434

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Where protester by letters within 10 working days of rejection of its proposal adequately conveys its dissatisfaction with agency technical evaluation and asks for corrective action (reconsideration by agency), protest submitted to GAO within 10 working days of agency affirmation of evaluation results is timely.

*CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--
EVALUATION--TECHNICAL ACCEPTABILITY*

Contracting officer's rejection of technical proposal submitted under first step of two-step formally advertised procurement was proper since proposal was reasonably determined to be unacceptable for valid technical reasons under stated evaluation criteria.

Protest filed after agency's rejection of technical proposal of small business alleging that determination to reject proposal was tantamount to nonresponsibility determination which should have been referred to SBA under COC program, is without merit because responsibility type criteria in solicitation may be legitimately used to evaluate offer to perform agency's requirements with stated resources set forth in offeror's technical proposal.

B-211733 Oct. 11, 1983 83-2 CPD 435

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--"EQUAL" PRODUCT EVALUATION--SALIENT CHARACTERISTICS
NOT MET*

Bid was properly rejected as nonresponsive to brand name or equal solicitation where protester failed to show that contracting agency erroneously or arbitrarily determined that descriptive material submitted with bid, previously submitted information, or information otherwise reasonably available to contracting agency did not substantiate compliance with

salient characteristics. Contracting officer had no obligation to seek clarification from bidder after bid opening nor to research general trade publications not cited in bid nor otherwise apparently relevant in hopes of finding information on product offered as equivalent.

*B-212263, B-212263.2 Oct. 11, 1983 83-2 CPD 436
BIDS--MISTAKES--VERFICATION--ACCEPTANCE OF CONTRACT AT INITIAL
BID PRICE*

Procuring agency that suspects that bid is mistaken should accept that bid after it has been verified, both orally and in writing, where documentation submitted by bidder who did not allege mistake supports (verifies) bidder's final bid price. Fact that documentation also indicates price discrepancies between bid and Govt. estimate does not change conclusion.

BIDS--MISTAKES--VERFICATION--ADEQUACY

Contracting officer can, pursuant to DAR 2-406.3(e)(1) (1976 ed.), request documentation to substantiate that bid is without error.

*B-212439, et al. Oct. 11, 1983 83-2 CPD 437
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF COMMENTS ON AGENCY'S REPORT*

Protest is dismissed where protester failed within required 10-day period to submit comments on agency report or to request consideration of protest without comment submission.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against bonding requirements in invitation are untimely and not for consideration since matter was not raised prior to bid opening.

B-212794 Oct. 11, 1983 83-2 CPD 438

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that solicitation failed to require first article approval under resulting contract is untimely since it was not filed prior to bid opening.

B-212850 Oct. 11, 1983 83-2 CPD 439

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest which is not filed within 10 working days after protester knew of contract award is untimely under 4 C.F.R. 21.2(b) (2) and will not be considered.

B-212995 Oct. 11, 1983 83-2 CPD 440

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protest concerning small business size status of bidder is by law matter for decision by Small Business Administration and not for consideration by GAO.

B-213065 Oct. 11, 1983 83-2 CPD 441

BIDDERS--QUALIFICATIONS--LEGAL CAPACITY

Protester's allegation that awardee does not have required use permit for its facility raises issue to be resolved by contractor with appropriate local authorities since solicitation requires such permit in general terms only and there is no indication that contracting officer has reasonably determined that enforcement is likely and could delay performance of contract.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protester's allegation that awardee's performance plans are not adequate for compliance with contract requirements raises issue with respect to contracting officer's affirma-

tive determination of awardee's responsibility which GAO will not review in absence of circumstances not present here.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegation that agency should have procured required services by use of negotiation method rather than by formal advertising is untimely since it concerns alleged defect which was apparent on face of solicitation and was not protested before bid opening date as required by GAO Bid Protest Procedures.

B-213108 Oct. 11, 1983 83-2 CPD 442

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review DOE operating contractor's affirmative responsibility determination absent showing of fraud or bad faith or that definitive responsibility criteria in solicitation were not applied.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that there were deficiencies in DOE operating contractor's solicitation is untimely where filed after closing date for receipt of proposals.

B-213132 Oct. 11, 1983 83-2 CPD 443

BIDDERS--QUALIFICATIONS--LEGAL CAPACITY

In absence of solicitation provision requiring that bidder possess specific license or permit, contracting officer need not consider whether bidder intends to comply with licensing or permit requirements imposed by state or local authorities in determining bidder's eligibility for award.

B-213152 Oct. 11, 1983 83-2 CPD 444

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF
COMPETENCY REQUIREMENT

Protest is dismissed where question of small business
protester's responsibility is properly before SBA for
possible issuance of COC.

B-213159 Oct. 11, 1983 83-2 CPD 445

CONTRACTS--NEGOTIATION--SOLE SOURCE BASIS--DETERMINATION NOT
TO USE--SCOPE OF GAO REVIEW

GAO will not consider protest that competitive procurement
should be conducted on sole-source basis with particular firm.

B-213198 Oct. 11, 1983 83-2 CPD 446

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Questions concerning small business size status will not
be considered by GAO since conclusive authority over such
matters is vested by statute in Small Business Administration.

B-213213 Oct. 11, 1983 83-2 CPD 447

CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--TENNESSEE VALLEY
AUTHORITY

Protest concerning procurement by Tennessee Valley Authority
(TVA) will not be considered because General Accounting Office
is precluded by TVA Act from disallowing credit for expen-
ditures which TVA Board determines is necessary to carry
out purposes of TVA Act.

B-210100 Oct. 12, 1983 83-2 CPD 448

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--
INADEQUATE--FOR MULTI-YEAR PROCUREMENT

Award of sole-source contract for computer systems, provi-
ding for delivery over 5-year period and systems support
for 8 years beyond last delivery, based on need to acquire
initial systems within short time, is improper where systems
are not complex technologically and agency acknowledges
that other vendors could duplicate system "if given enough

time." Agency should consider limiting quantity procured sole source to those required to fulfill immediate needs, which we will not question here, during time needed to develop competitive procurement for balance of systems.

*B-210536 Oct. 12, 1983 83-2 CPD 449
CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--
RESTRICTIVE--"APPROVED SOURCE" REQUIREMENT--QUALIFICATION
OF OFFERORS*

Protest is denied because procurement for spare parts met all requirements for acceptable, approved-source, restricted procurement--restriction met valid Govt. need and nonapproved sources could submit proposals and could become qualified after evaluation of complete technical data package.

Even though protester had been erroneously awarded contracts for spare parts in past without undergoing any qualification procedure and was ultimately determined to be qualified, contracting officer acted reasonably in rejecting protester, since protester offered alternative spare parts and protester's data package (required by solicitation) was insufficient for evaluation and qualification before award to original equipment manufacturer.

*B-210732 Oct. 12, 1983 83-2 CPD 450
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION THAT
ITEM OFFERED FAILED TO MEET SPECIFICATIONS*

Where shipping information (vehicle dimensions) included in bid indicates that vehicle offered did not meet specification requirements, bid was properly rejected as nonresponsive.

Information in shipping data clause of bid which indicates that vehicle offered does not conform with dimensions in specification constitutes material deviation and renders bid nonresponsive, because even though it may not affect bid price or shipping cost, it does affect quality of product offered.

B-210732 Oct. 12, 1983 83-2 CPD 450 - Con.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS

Where protester initially files timely protest and later supplements it with new and independent grounds of protest, later grounds of protest must independently satisfy timeliness requirements. Such grounds are untimely when they are based on information available from face of awardee's bid and are filed considerably later than 10 days after bid opening.

B-210849 Oct. 12, 1983 83-2 CPD 451

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
FAILURE TO REQUEST--UNACCEPTABLE REVISED PROPOSAL

There is nothing improper per se in agency establishing revised competitive range after negotiations; fact that offeror included in initial competitive range but subsequently excluded will thus be deprived of opportunity to submit best and final offer is not cause for objection where revised competitive range determination was reasonable.

CONTRACTS--NEGOTIATIONS--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS

Agency's decision to exclude protester's second highest rated proposal from revised competitive range after negotiations was reasonable, even though only highest rated offeror was left in competitive range, where: (1) technical merit, not proposal cost was primary consideration in awarding cost-reimbursement type contract; (2) protester's lower experience rating likely could not be improved in best and final offer; and (3) it does not appear protester could have reduced its proposed costs sufficiently to offset other offeror's technical superiority.

B-211012 Oct. 12, 1983 83-2 CPD 452

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

RFP that did not explicitly state relative importance of cost and technical factors was defective. However, protest of that defect not raised until after closing date for

receipt of initial proposals is untimely. Nevertheless, defect did not prejudice protester, since award was made on basis of technical scores and cost comparison that would be acceptable even under protester's reading of evaluation criteria.

B-211426 Oct. 12, 1983 83-2 CPD 453

CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--RULE--EXCEPTIONS--APPLICABILITY

Contracting agency's decision to reject protester's 1 day late quotations was improper because RFQ did not contain late quotations provision, award had not been made, and neither substantial activity had transpired in evaluating quotations nor would other offerors have been prejudiced.

B-211702 Oct. 12, 1983 83-2 CPD 454

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--SITUATIONS NOT REQUIRING DISCUSSION

While in negotiated procurement discussions generally are held with all offerors in competitive range, award without discussion is proper where it can be clearly shown from existence of adequate competition that acceptance of most favorable initial proposal will result in contract at fair and reasonable price, provided solicitation so advises.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

GAO will not disturb agency's technical evaluation unless shown to be unreasonable or in violation of procurement laws and regulations. Further, because the protester bears burden of proving its case, mere disagreement with evaluation does not render evaluation unreasonable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--TECHNICAL SUPERIORITY V. COST

Award to firm with best technical proposal and overall highest rated proposal when price was factored in was not improper simply because another firm offered lower price, since agency reasonably determined that technical superiority of winning proposal was worth higher price.

B-211702 Oct. 12, 1983 83-2 CPD 454 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider small business size status protests since SBA has statutory authority to make conclusive size status determination in Federal procurements.

B-212040.3 Oct. 12, 1983 83-2 CPD 455
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where there is irreconcilable conflict between protester and agency in factual matter, protester has failed to meet its burden of proof and agency's position will be accepted.

BIDS--LATE--AGENCY RESPONSIBILITY--PROPRIETY OF CONSIDERATION--
BIDDER'S OPPORTUNITY TO CHANGE BID AFTER EXPOSURE OF OTHER
BIDS

GAO will not disturb contract award even though contracting officer failed to comply with procurement regulation requiring agency to retain late bid until after award, since it appears contracting officer returned bid to protester prior to award at its request.

BIDS--PREPARATION--COSTS--NONCOMPENSABLE

Claim for bid preparation costs is denied where it cannot be determined that protester had a substantial chance of receiving award.

B-212203 Oct. 12, 1983 83-2 CPD 456
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has not met burden of showing agency's specifications were in excess of minimum needs or unduly restricted competition.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--
SOLICITATION IMPROPRIETIES

Protest alleging defects in the solicitation filed initially with agency prior to bid opening and with GAO after

bid opening, but within 10 working days after knowledge of initial adverse agency action, is timely.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.

Protester, which is potential competitor if protest is successful, is "interested party" although no bid was submitted on protester solicitation.

B-212343 Oct. 12, 1983 83-2 CPD 457

BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--CONFORMABILITY OF EQUIPMENT, ETC. OFFERED

Bid that contains unsolicited part numbers must be rejected as nonresponsive unless either it contains express statement that designated parts conform to specifications, or data available to contracting officer before bid opening demonstrates that parts conform.

ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.

Improper award in one or more procurements does not justify repetition of same error.

B-212945 Oct. 12, 1983 83-2 CPD 458

CONTRACTS--SUBCONTRACTS--FEMALE-OWNED SUBCONTRACTING--OBLIGATION OF PRIME CONTRACTOR

Federal policy prohibiting discriminatory employment practices based on sex or race does not obligate prime contractor to subcontract with any particular minority women-owned concern.

B-213063 Oct. 12, 1983 83-2 CPD 459

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination of prospective contractor's responsibility absent showing of fraud on part of procurement officials or that solicitation contains definitive responsibility criteria that allegedly have been misapplied.

B-213063 Oct. 12, 1983 83-2 CPD 459 - Con.
CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--
BID EVALUATION PROPRIETY

Where bidders commit themselves by their bids to paying specified Service Contract Act wage rates, bids are responsive and bidding was conducted on equal basis.

LABOR DEPARTMENT--JURISDICTION--SERVICE CONTRACT ACT VIOLATIONS

Whether contractor is in compliance with Service Contract Act is matter for DOL.

B-212494.2 Oct. 14, 1983 83-2 CPD 460
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
CONSTRUCTIVE NOTICE

GAO's Bid Protest Procedures have been published in the Federal Register, so that all protesters are charged with constructive notice of contents.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest is untimely where protester knew or should know basis of its protest will before 10 working days prior to date protest was filed.

B-210215.2 Oct. 17, 1983
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
INDEPENDENT INVESTIGATION AND CONCLUSIONS--LIMITATION

GAO consideration of bid protests is based on written record established primarily through submissions by parties to protest and GAO does not conduct investigations in context of bid protest function.

B-212019 Oct. 17, 1983 83-2 CPD 462
BIDS--RESPONSIVENESS--MAKE, MODEL NUMBER, ETC. LISTED OF
UNACCEPTABLE EQUIPMENT, ETC.

Where model number offered is identified in bid as required by IFB, and bid does not qualify offeror's obligation to furnish item meeting specified requirements, bid is responsive.

B-212019 Oct. 17, 1983 83-2 CPD 462 - Con.
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD

Protest against second low bid is academic where agency properly has found low bid responsive and bidder responsible, and therefore intends to award contract to firm.

B-213244 Oct. 17, 1983 83-2 CPD 463
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

Allegation that a bid price is too low to permit satisfactory performance is not valid basis to challenge contract award.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Whether awardee actually performs contract according to specifications is matter of contract administration, which is responsibility of procuring agency and not GAO.

CONTRACTS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination of responsibility except under limited circumstances.

B-213250 Oct. 17, 1983 83-2 CPD 464
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest alleging that prior unsatisfactory performance renders bidder ineligible for contract award involves a challenge to an affirmative responsibility determination which GAO will not review unless possible fraud on part of procuring agency is shown or the solicitation contains definitive responsibility criteria which allegedly were misapplied.

B-212465 Oct. 19, 1983 83-2 CPD 465
BIDS--EVALUATION--CRITERIA--APPLICATION OF CRITERIA

In determining the low bidder under an IFB, an agency may not consider expense of changing contractors unless IFB indicates that such costs will be considered.

B-212465 Oct. 19, 1983 83-2 CPD 465 - Con.
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
ACTUAL NOTICE EFFECT'

Amendment to an IFB has been acknowledged constructively where the submission of bid on extended date for bid opening as set by amendment clearly demonstrates that bidder had received amendment and was aware of its contents.

B-206196.2 Oct. 20, 1983 83-2 CPD 466
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ADDITIONAL EVIDENCE SUBMITTED--
AVAILABLE BUT NOT PREVIOUSLY PROVIDED TO GAO

Original decision is affirmed where request for reconsideration presents some arguments and facts which were previously considered and rejected or information which was known to protester and could have been presented in connection with its initial protest and other arguments which do not show that our original decision was incorrect.

B-210750.2 Oct. 20, 1983 83-2 CPD 467
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
SMALL BUSINESS REPRESENTATION

Bid, submitted in response to total small business set-aside solicitation, which failed to indicate whether bidder would furnish materials manufactured or produced by small business concerns was properly rejected as non-responsive; failure may not be waived or cured.

B-211513 Oct. 20, 1983 83-2 CPD 468
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION

Contention that contracting officer's determination not to set aside procurement for small business can be reversed on appeal to agency head by SBA only where that determination is found to be arbitrary and capricious is without merit where governing regulations impose no such standard.

B-211513 Oct. 20, 1983 83-2 CPD 468 - Con.
CONTRACTS--SMALL BUSINESS--AWARDS--SET-ASIDES--ADMINISTRATIVE
DETERMINATION--AUTHORITY TO DETERMINE

Agency decision to set aside procurement for small business, challenged on basis that set-aside improperly resulted from decision by allegedly unauthorized agency official to sustain Small Business Administration appeal of contracting officer's initial determination not to set aside procurement, is not legally objectionable where agency head subsequently approved determination to uphold appeal.

B-211868 Oct. 20, 1983 83-2 CPD 469
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility except for reasons not present here.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION-- NOT FOR
RESOLUTION BY GAO

Whether awardee will fulfill its contractual obligations is matter for contracting agency in administration of contract and does not affect validity of award.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENTS--
PROPRIETARY DATA ISSUES

Where owner of technical data actively participated in procurement, non-exclusive licensee is not interested party to protest alleged misuse of proprietary data.

B-212701 Oct. 20, 1983 83-2 CPD 476
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest against awardee's ability to comply with specifications concerns matter of responsibility which GAO does not review except in limited circumstances not applicable here.

B-212701 Oct. 20, 1983 83-2 CPD 470 - Con.
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Whether specification requirements are met during performance of contract is matter of contract administration which GAO will not consider.

B-212790 Oct. 20, 1983 83-2 CPD 471
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PRICES

Bid that omits unit price is not rendered nonresponsive where bid includes total price for item(s) in question (even if estimated quantity is utilized in IFB) since unit price that bidder is committed to is obtainable by dividing estimated quantity into total price for item(s).

B-213305 Oct. 20, 1983 83-2 CPD 472
CONTRACTS--PROTESTS--NONAPPROPRIATED FUND ACTIVITIES

Protest involving procurement utilizing nonappropriated funds is dismissed as GAO has no authority to consider bid protest that does not involve expenditure of appropriated funds.

B-201642.3, B-201642.4 Oct. 21, 1983 83-2 CPD 473
GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--
PRIOR RECOMMENDATION--WITHDRAWN--NOT IN BEST INTEREST OF
GOVERNMENT'

Prior decision finding that agency's determination of minimum needs for computer systems was unreasonable based on GAO audit reports finding that workload projections and studies on which determination was based were erroneous is affirmed; however, recommendation of decision that systems not be purchased is withdrawn because it is not in Govt.'s best interest.

B-211117 Oct. 24, 1983 83-2 CPD 476
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--EXPERIENCE

Prior experience of offeror, and that of its proposed staff, in providing specific type of services being

procured are reasonably related aspects of, and are encompassed by, respectively, stated criteria "Offeror's experience and qualifications" and "Individual staff experience." Thus, lack of such experience--at both entity and staff levels--was properly taken into account in evaluating protester's proposal even though solicitation did not explicitly identify these aspects of stated evaluation criteria.

*B-211117.2 Oct. 24, 1983 83-2 CPD 477
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE*

Govt. is not obliged to compensate for the competitive advantage firm may enjoy because of its own particular business circumstances, including incumbency under other Govt. contracts, unless such advantage results from preference or unfair action by contracting agency.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION

There is no requirement that negotiations with offerors be in writing, and while record suggests that all offerors may not have been given same information regarding evaluation of travel costs, record also makes clear no prejudice accrued to any offeror as result.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Whether contractor improperly manipulates staff or Govt.-furnished space, equipment or services between different Govt. contracts, and whether such manipulation might be grounds for default under either contract, are matters for contracting agency to determine. GAO does not consider such matters of contract administration under its Bid Protest Procedures.

*B-211117.3 Oct. 24, 1983 83-2 CPD 478
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE*

Contention that awardee may have enjoyed competitive advantage in procurement because of its incumbency under prior interim contract is not supported in absence of proof that awardee's alleged advantage was result of preference or unfair action by contracting agency.

B-211117.3 Oct. 24, 1983 83-2 CPD 478 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
AGENCY ADJUSTMENT OF PROPOSAL--PROPRIETY

Agency's adjustment to offeror's cost proposal changing offeror's 12-month estimated costs to match 9-month initial performance period specified in solicitation is objectionable, since adjustment resulted in evaluation of proposals on equal basis and no offeror was prejudiced.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ERRORS--NOT PREJUDICIAL

While record suggests that all offerors may not have been given same information regarding evaluation of travel costs, record also makes clear that no prejudice accrued to any offeror as result.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

Unfair or prejudicial motives will not be attributed to procurement officials on basis of inference or supposition; therefore, where protester merely alleges undue influence and conflict of interest, but offers no evidence of actual bias, special treatment, or other improper conduct on part of agency officials, protester has not satisfied its burden of proof.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

A protester's disagreement with agency's evaluation of its proposal does not of itself render evaluation objectionable in absence of showing that evaluation was unreasonable, arbitrary or unlawful. Where review of evaluators' worksheets indicates that evaluators regarded limited relevant experience of some of protester's staff as weakness, protester has not shown that agency's evaluation of its proposal was without rational basis.

Contention that offerors were not competing on equal basis because awardee was allegedly allowed to exclude two regions from coverage under property management services contract is not supported by record.

B-211117.3 Oct. 24, 1983 83-2 CPD 478; - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Allegation of possible improper use by awardee of other competitors' proprietary data presents dispute among private parties and is not basis for GAO to object to otherwise valid award.

B-211749 Oct. 24, 1983 83-2 CPD 479
CONTRACTS--DEFAULT--REPROCUREMENT--DEFAULTED CONTRACTOR LOW
BIDDER--BID REJECTION--PROPRIETY

Reprocurement contract may not be awarded to defaulted contractor at price greater than terminated contract price.

CONTRACTS--DEFAULT--TERMINATION OF CONTRACT--ADMINISTRATIVE
DETERMINATION

Dispute concerning termination for default and repro-
curement is matter of contract administration which is
for resolution by contracting agency, not GAO.

B-211942, B-211942.2 Oct. 24, 1983 83-2 CPD 480
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Where protesters fail to submit bids before scheduled bid opening date because of incorrect oral assurances given by contract specialist that solicitation would be amended and bid opening date extended, fact that bid opening is not extended does not require resolicitation where there is no evidence of conscious or deliberate effort to exclude protesters from participating in competition and where adequate competition was received which resulted in reasonable prices.

B-212147 Oct. 24, 1983 83-2 CPD 481
CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR

Award of negotiated contract to higher technically rated, higher priced offeror is unobjectionable where result is consistent with evaluation criteria stated in RFP under which procuring agency determined that awardee offered lowest dollars to quality point ratio and technical evaluation of proposals had reasonable basis.

B-212147 Oct. 24, 1983 83-2 CPD 481 - Con.
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester's unsubstantiated allegations that conduct of procurement was unusual or objectionable do not meet protester's burden of affirmatively proving its case.

B-212442, B-212442.2 Oct. 24, 1983 83-2 CPD 483
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--JUSTIFICATION--INACCURATE SPECIFICATIONS

Cancellation after bid opening of portion of solicitation on which protester submitted bid was proper where specifications did not reflect agency needs.

B-212544 Oct. 24, 1983 83-2 CPD 484
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protest contending that agency improperly conducted auction between dealer (protester) and manufacturer (awardee) by first soliciting oral quote from awardee, then soliciting quote from protester, and finally returning to awardee for second quotation is denied where agency denies allegation and protester has not furnished evidence in support of its position.

B-213144 Oct. 24, 1983 83-2 CPD 487
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest against award to competitor is not timely where protest was filed with GAO more than 10 working days after protester knew of basis of protest. Moreover, to extent protest is directed to solicitation defect, it should have been filed before bid opening.

B-212848 Oct. 24, 1983 83-2 CPD 485
STATUTES OF LIMITATION--CLAIMS--GENERAL ACCOUNTING OFFICE--EFFECT OF TIME LIMITATION--CLAIM BARRED

As general rule, GAO must receive claims against Govt. within 6 years after they accrue. State university's claim for tuition for two Army members enrolled during 1974-75 academic year, first received in 1983, therefore

may not be paid. Moreover, university's attempt to recover amounts due from Army in 1980 does not toll running of 6-year period.

*STATUTES OF LIMITATION--CLAIMS--GENERAL ACCOUNTING OFFICE--
STATE CLAIMS EXCEPTION--STATE UNIVERSITY APPLICABILITY*

Exception to 6-year statute of limitations for claims of state, set forth at 31 U.S.C.A. 3702(b)(1)(B) (formerly 31 U.S.C. 71a (1976)), does not apply to state university.

*B-212963.2 Oct. 24, 1983 83-2 CPD 486
CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW*

Request for reconsideration of GAO dismissal of initial protest is denied. Initial protest was dismissed because it concerned the propriety of standard industrial classification contained in solicitation, a matter for resolution by SBA. Since SBA's determination is conclusive and because protester has raised no matters other than issue of propriety of industrial classification, GAO will not consider matter further. Protester's request that GAO hold its decision on reconsideration request in abeyance pending protester's appeal to SBA is also denied.

*B-213144 Oct. 24, 1983 83-2 CPD 487
CONTRACTS--AWARDS--NOTICE--ADVANCE OF AWARD*

There is no legal right to advance notice of impending award to facilitate protest.

*B-213211 Oct. 24, 1983 83-2 CPD 488
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

Submission of allegedly below-cost bid does not constitute basis for objecting to award of contract.

*B-213325 Oct. 24, 1983 83-2 CPD 489
BIDS--LATE--MAIL EVIDENCE DELAY--EXPRESS MAIL*

Bid sent by Postal Service express mail that arrives after bid opening is late and may not be accepted. Fact that Postal Service promised to deliver bid earlier than it actually did does not constitute Govt. mishandling at

Govt. installation so as to permit consideration of bid.

B-209843.2 Oct. 25, 1983 83-2 CPD 490

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--PROTESTER NOT IN LINE FOR AWARD

Allegation that contractor experience requirement is unduly restrictive is dismissed as academic where bids were opened after protest was filed, and the protester's bid was only the 12th lowest received; since protester is not low bidder, it would not be in line for award even had solicitation not contained allegedly restrictive requirement.

B-210747 Oct. 25, 1983 83-2 CPD 491

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--TESTS--FIRST ARTICLE--WAIVER

First article testing is designed to insure that contractor can furnish product that is satisfactory for its intended use. Agency denial of waiver of first article testing to firm which never has produced solicited item directly to Govt. without being under the administration of intervening contractor is reasonable because agency did not have assurance that firm previously had furnished acceptable product to Govt.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--PROPRIETY

Protest against sole-source award is denied. The record indicates that items ordered were urgently needed and agency reasonably determined that awardee was only firm qualified for waiver of first article testing requirements at time requirement was issued.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES-- CONTRACT DISPUTES ACT OF 1978

Protester's remedies with respect to its contention that Govt. is estopped to deny existence of contract and its claim for expenses incurred in anticipation of contract performance should be pursued under Contract Disputes Act of 1978, 41 U.S.C. 601, et seq. (Supp. III, 1979).

B-210836 Oct. 25, 1983 83-2 CPD 492

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--
INADEQUATE--FOR MULTI-YEAR PROCUREMENT*

Agency justification for sole-source award for additional telephone capability on basis that additional telephone capability was urgently needed and that compatibility problems between new and old equipment could arise if new vendor were awarded contract is inadequate in absence of required timeframe for need and evidence that there was only one source.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION*

Protest against noncompetitive award presents significant issue and warrants consideration under GAO Bid Protest Procedures, 4 C.F.R. 21.2(c) (1983), where record indicates apparent impropriety in agency's sole-source award.

B-211641 Oct. 25, 1983 83-2 CPD 493

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

A protester's allegations without evidence are rejected as speculative.

*PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
REDUCTION*

A contractor may institute a general price reduction in its FSS contract and offer that reduction to agency without first receiving approval from GSA.

B-211665 Oct. 25, 1983 83-2 CPD 494

*PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
PROCUREMENT AT OTHER THAN LOWEST FSS PRICE--JUSTIFICATION
REQUIREMENT*

Protest against delivery order for higher priced tunnel washer under FSS is denied where agency justification is not shown to be unreasonable.

B-212505.2 Oct. 25, 1983 83-2 CPD 495

BIDS--EVALUATION--ALTERNATE BASES BIDDING--PROPRIETY OF EVALUATION

When IFB does not require bidders to specify which of three alternative configurations they are offering, procuring agency properly may consider bidder offering any of them to be responsive.

Procuring agency may not give greater credit to one of three alternatives specified in solicitation than to others in absence of specific evaluation provisions to that effect. Basis for evaluation must be stated clearly and exactly, so that bidders know, before opening, how their bids will be evaluated.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

When protester believes bidders should be required to specify which of three possible alternatives included in amended solicitation they intend to provide, and that certain costs to user agency should be evaluated, protest must be filed before amended bid opening date to be considered timely, since alleged defects are apparent on face of amended solicitation.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

When Buy American restriction in proposed legislation is not enacted, protest based on effect of restriction on bid prices becomes academic, and GAO will not consider it further.

B-212597 Oct. 25, 1983 83-2 CPD 496

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--ADMINISTRATIVE DISCRETION

Protest that agency improperly canceled RFP issued on sole-source basis and improperly revised RFP to permit open competition of requirement is dismissed because the objective of bid protest function is to insure full and free competition for Govt. contracts.

B-212798 Oct. 25, 1983 83-2 CPD 497

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Allegation that solicitation did not accurately reflect Navy's needs is untimely where filed after initial closing date for receipt of proposals.

Allegation that agency should have accepted proposal offering to repair existing Govt. equipment at lower cost rather than providing new equipment is untimely since amendment to solicitation indicated that no provision exists for Govt-furnished material and, therefore, protest should have been filed not later than next closing date.

B-212800 Oct. 25, 1983 83-2 CPD 498

BIDS--LATE--RETURN TO SENDER--BID CONSIDERATION

Late bid improperly returned to the bidder by the contracting officer is not prima facie unacceptable, and may now be opened and considered for award on basis of proof that lateness was due solely to mishandling by agency during process of receipt and that sealed bid envelope had not been opened and resealed.

B-212961 Oct. 25, 1983 83-2 CPD 499

CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED

Protest is dismissed where material issues are before court of competent jurisdiction and court has not indicated interest in GAO decision.

B-213050.2 Oct. 25, 1983 83-2 CPD 500

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Request for reconsideration is denied where protester makes no attempt to show that original decision contained error of fact or law, but presents new basis for protest--whether contractor will comply with Buy American Act--which concerns matter of contract administration that GAO does not review under its Bid Protest Procedures.

B-213096 Oct. 25, 1983 83-2 CPD 501
CONTRACTS--PROTESTS--ADMINISTRATIVE ACTIONS--OUTSIDE SCOPE
OF PROTEST PROCEDURE

Protest against procurement policy and unconnected with any award or proposed award is not for consideration by GAO under Bid Protest Procedures.

B-213224 Oct. 25, 1983 83-2 CPD 502
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review contracting agency's affirmative determination of responsibility absent showing that determination was made fraudulently or in bad faith or that definitive responsibility criteria were not met.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/
CLOSING DATE FOR PROPOSALS

Protest that specifications in IFB are deficient is untimely since it was not made prior to bid opening.

B-213245 Oct. 25, 1983 83-2 CPD 503
BIDS--GUARANTEES--BID GUARANTEES--DEFICIENCIES--BID REJECTION

Bid not accompanied by required bid guarantee must be rejected as nonresponsive, absent circumstances not relevant here, even where omission of guarantee resulted from bidder's confusion over bid guarantee requirement.

B-213270 Oct. 25, 1983 83-2 CPD 504
BIDS--LATE--INVITATION MAILING REQUIREMENTS--NONCOMPLIANCE

Late mailed bid must be rejected unless one of limited conditions set forth in solicitation for consideration of late mailed bids is met.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest is untimely where filed with GAO more than 10 working days after protester learns of initial adverse agency action on its earlier protest filed with contracting agency.

B-212460 Oct. 26, 1983 83-2 CPD 505

BONDS--BID--SURETY--REQUIREMENTS--AT LEAST TWO INDIVIDUAL SURETIES

Where IFB requires bid bond and bidder submits only one individual surety in support of bid bond, agency rejection of bid as nonresponsive is proper since valid bid bond is material part of bid and DAR 10.201.2(b) requires that at least two individual sureties shall be provided.

B-213360 Oct. 26, 1983

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO has discontinued its practice of reviewing contracting officers' affirmative determinations of bidders' responsibility, except where it is alleged that definitive criteria of responsibility have not been met or where there is showing that contracting officials' conduct is tantamount to fraud.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES

It would be inappropriate for GAO to investigate administration of particular contract where matters at issue between contractor and Govt. should be resolved through "Disputes" procedure.

B-211568.2 Oct. 27, 1983 83-2 CPD 506

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against repeated amendments of RFP after closing dates expired is dismissed as untimely where protest is filed after last established closing date.

B-212812 Oct. 27, 1983 83-2 CPD 510

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST

A protest is untimely under GAO Bid Protest Procedures where protester fails to diligently pursue information upon which protest is based.

B-213138 Oct. 27, 1983 83-2 CPD 511

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest that contracting agency improperly opened bids
after postponing original bid opening is untimely when filed
more than 10 working days after bids were opened prematurely.

B-213398 Oct. 27, 1983 83-2 CPD 512

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed almost 3 months after protester received
notice from agency that its offer was rejected because
product it offered was technically unacceptable is untimely
and will not be considered on merits.

B-212340.3 Oct. 28, 1983 83-2 CPD 513

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
STANDARD REPRESENTATIONS AND CERTIFICATIONS--WAIVER--AS MINOR
INFORMALITY

Allegation that awardee's bid should be found nonresponsive
for failure of bidder to complete certain standard representa-
tions and certifications is denied since any omission con-
cerning provisions may be waived as minor informality.

BUY AMERICAN ACT--CONTRACTOR COMPLIANCE WITH CERTIFICATION--
CONTRACT ADMINISTRATION MATTER

Review of awardee's bid indicates that awardee took no
exception to Buy American certificate and GAO will
not review protest challenging bidder's intended compli-
ance with representation in its Buy American certification.

B-208768.3 Oct. 31, 1983 83-2 CPD 514

CONTRACTS--AWARDS--DELAYED AWARDS--AWARDEE NO LONGER LOW
BIDDER

Where award date was unavoidably delayed so as to
shorten performance period from 3 years to 2-1/2 years,
award to bidder evaluated as low under performance period spe-
cified in IFB, but not low under evaluation based on shorter

performance period, is reasonable. Since bids must be evaluated on basis set forth in IFB, i.e., 3 years, only alternative to award is resolicitation, which would cost more than difference between low 3-year price and bid that is low for shorter period.

*B-211359.2 Oct. 31, 1983 83-2 CPD 515
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
SCOPE OF WORK CHANGED*

Contracting officers have broad discretion in deciding whether to cancel solicitation, and GAO will not overturn such decision unless there is abuse of that discretion. Where there has been significant change in agency's needs since bid opening, cancellation of solicitation is proper.

CONTRACTS--MODIFICATION--SCOPE OF CONTRACT REQUIREMENTS

Award to low bidder with intention to negotiate necessary changes caused by increase in scope of contract work is improper.

*DEFENSE ACQUISITION REGULATION--CANCELLATION OF INVITATION
AFTER BID OPENING--JUSTIFICATION--ADDITIONAL QUANTITY NEEDS
V. ADDITIONAL REPAIR, ETC.*

Provision in sec. 2-404.1(a) of DAR (1976 ed.) that prohibits cancellation of solicitation solely because of increased requirements for items that agency is procuring is inapplicable since protested procurement is for repair and maintenance and not for supply of items.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--IN-HOUSE
PERFORMANCE V. CONTRACTING OUT--COST COMPARISON--INTERNAL
STUDY V. COMPETITIVE SOLICITATION*

As general rule, whether contracting agency should contract out for any particular work or perform it in-house is policy matter which GAO will not review. The only exception to this rule is where agency issues competitive solicitation for purposes of ascertaining cost of contracting. This exception is inapplicable here. Therefore, GAO will not review agency's decision to perform in-house increased contract work rather than resolicit after cancellation of protested solicitation.

B-211582 Oct. 31, 1983 83-2 CPD 516

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION*

A cogent and compelling reason to cancel solicitation exists when specifications overstate agency's minimum needs.

*BIDS--PREPARATION--COSTS--SOLICITATION CANCELLED AFTER BID
OPENING*

Where contracting agency properly cancels solicitation, disappointed bidder alleging that cancellation was improper is not entitled to bid preparation costs.

B-212492 Oct. 31, 1983 83-2 CPD 517

BIDDERS--IDENTITY--SUBSTITUTION OF BIDDERS--PROPRIETY

Contract may not be awarded to entity other than that which submitted bid. To permit substitution of bidders would serve to undermine sound competitive procedures in that it would facilitate submission of bids through irresponsible parties, whose bids then could be avoided or supported by real principals as their interests might dictate.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

GAO will not consider protest by potential supplier to low bidder against contracting agency's finding that low bidder is nonresponsible, since protester, being ineligible for award, is not interested party under GAO's Bid Protest Procedures.

B-212497 Oct. 31, 1983 83-2 CPD 518

BIDS--MISTAKES--CORRECTION--PROPRIETY

Where mistakes in bid is alleged prior to award and bidder presents clear and convincing evidence of mistake and of intended bid price by submission of worksheets and an affidavit showing that mistake resulted from dropping of zero in calculation of labor costs, there is reasonable basis for agency determination to allow bid correction to reflect intended bid.

B-212535 Oct. 31, 1983 83-2 CPD 519

BIDS--AMBIGUOUS--NONRESPONSIVE BID

Where bid offers two conflicting delivery schedules, one of which is nonresponsive to required delivery schedule, bid is ambiguous and properly is rejected as nonresponsive.

BIDS--MISTAKES--NONRESPONSIVE BIDS--CORRECTION IMPROPER

Where bid offers delivery schedule deviating from required delivery schedule and therefore renders bid nonresponsive, deviation cannot be corrected under rules governing mistakes in bids since errors in bids which may be corrected after bid opening are those which do not affect responsiveness of bid.

BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--DELIVERY PROVISIONS

Bid offering delivery schedule of "Dely. 240 days ARO," i.e., offering delivery within 240 days after receipt of notice of award, is nonresponsive to required delivery schedule of within 240 days after date of contract.

BIDS--RESPONSIVENESS--WAIVER OF REQUIREMENT

Where bid offers delivery schedule deviating from required delivery schedule, deviation cannot be treated as minor informality since delivery items represent material requirements.

Nonresponsive bid may not be accepted even though it would result in monetary savings to Govt. since acceptance would be contrary to maintenance of competitive bidding system.

B-212776 Oct. 31, 1983 83-2 CPD 520

SALES--CONDEMNED GOVERNMENT PROPERTY--PURCHASE BY GOVERNMENT EMPLOYEE--EMPLOYEE CONNECTED WITH CONDEMNATION

Where agency regulations prohibit sale of surplus property to Govt. employee who either directly or indirectly used or was in any way connected with its condemnation, and define Govt. employee to include member of employee's household, bid of woman living with Govt. employee, in relationship of husband and wife, was properly disqualified where employee was responsible for determining whether property should be repaired or condemned.

B-212788 Oct. 31, 1983 83-2 CPD 521

BIDS--OPENING--TIME FOR OPENING DETERMINATION

Declaration of time for bid opening by bid opening officer is determinative of lateness absent clear record to show that bid opening room clock showed time later than that designated in solicitation.

Where there is conflicting evidence of (1) time shown on bid opening room clock when bid in question arrived, (2) whether bid opening officer's alternate assigned to observe bid opening room clock actually stood in front of clock prior to bid opening time, and (3) basis on which bid opening officer determined that bid opening time had arrived and that bid in question was timely submitted, protester fails to meet its burden of affirmatively proving its case.

B-213265 Oct. 31, 1983 83-2 CPD 522

BIDS--LATE--REJECTION--PROPRIETY

Bid sent by express mail delivered late by postal service must be rejected.

B-213302 Oct. 31, 1983 83-2 CPD 523

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative determination of responsibility absent showing of exceptions not applicable to immediate case.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

SBA has conclusive authority to determine matters of small business size status for procurement purposes.

B-210308.9 Nov. 1, 1983 83-2 CPD 507

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest of an agency's rejection of bid for failure to acknowledge an amendment is untimely where filed on 11th working day after protester learned the basis for protest.

B-211351.2 Nov. 1, 1983 83-2 CPD 508

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed upon request for reconsideration where protester merely restates allegations which were considered in the original protest.

B-212167 Nov. 1, 1983 83-2 CPD 509

BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Failure of solicitation to specify or adequately describe all required features of a brand name product in a brand name or equal solicitation, resulting in bids which unknown to the bidders, were not acceptable to agency, provides a cogent and compelling reason to cancel solicitation after opening.

BIDS--PREPARATION--COSTS--SOLICITATION CANCELLED AFTER BID
OPENING

Claim for the costs associated with preparation of bids or proposals will be denied where underlying bid protest lacks merit.

B-212286 Nov. 2, 1983 83-2 CPD 524

CONTRACTORS--RESPONSIBILITY--DETERMINATION--TIME FOR MAKING
DETERMINATION

Procuring agency is not required to delay award indefinitely while offeror attempts to cure causes for firm being found non-responsible. Thus, where low offeror fails to supply required information prior to agency-established deadline, after having been provided ample opportunity to do so, agency reasonably may find low offeror nonresponsible.

B-212409 Nov. 3, 1983 83-2 CPD 525

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10 working days after protester had knowledge of initial adverse agency action on its protest to agency is untimely filed and is not for consideration.

B-211119.4 Nov. 4, 1983 83-2 CPD 526

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ORIGINAL DECISION RENDERED IN
RESPONSE TO COURT REQUEST--COURT NOT INTERESTED IN GAO
RECONSIDERATION

GAO will not reconsider prior decision rendered in response to an expression of interest from a court unless court expresses an interest in reconsideration of decision.

B-212285.2 Nov. 4, 1983 83-2 CPD 527

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
MODIFICATION

Post-award decision to extend date for closing of sale on real property is matter of contract administration, which is function and responsibility of contracting agency. Decision will not be reviewed by GAO unless it is shown that contract was awarded with intention to alter its terms to the prejudice of prospective awardee's competitors, or that changed contract is materially different from contract on which competition was based.

B-212330 Nov. 4, 1983 83-2 CPD 528

BIDS--AMBIGUOUS--TWO POSSIBLE INTERPRETATIONS--CLARIFICATION
PREJUDICIAL TO OTHER BIDDERS

Where two possible meanings can be reached from language of a bid, contracting officer's reasonable interpretation will prevail and

bidder may not explain its meaning after bid opening when it is in position to prejudice other bidders.

B-212659 Nov. 4, 1983 83-2 CPD 529

BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--SUBMISSION OF TEST DATA--PURPOSE--COMPETENCY OF BIDDER TO PERFORM

Rejection of bid as nonresponsive to a solicitation for testing services because bidder failed to provide literature describing its testing procedures is improper since bidder's testing procedures relate to how bidder will perform, a matter of responsibility, not responsiveness.

BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--ADEQUACY

Where, taken as a whole, bidder's drawings and descriptive literature indicate that bidder's equipment contains all of controls required by solicitation, bid is responsive.

BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION THAT ITEM OFFERED FAILED TO MEET SPECIFICATIONS

Where bidder's descriptive literature consists of typewritten sheet containing battery final voltage and specific gravity specifications and printed manufacturer's data sheet indicating different specifications for these characteristics which do not meet solicitation requirements, and bidder has not clearly indicated set of specifications that pertains to the battery it offers to supply, bid is ambiguous and must be rejected.

Where it cannot be determined from protester's drawing submitted with its bid exactly to what designation "AL" (aluminum) refers, but one reasonable interpre-

tation is that it refers to busing (conductors), bid is not responsive to a solicitation that requires all busing to be copper.

BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER TO MEET ALL SOLICITATION TERMS

To be responsive, bid must be an offer to provide exact thing required by solicitation. Bid that offers an alarm that indicates when system consisting of several components is on battery power is not responsive to solicitation requiring an alarm that indicates when any one component of system is on battery power.

When bidder takes no exception to requirements of solicitation, acceptance of bid obligates bidder to supply all items in accordance with terms of solicitation.

*B-213436 Nov. 4, 1983 83-2 CPD 530
GENERAL ACCOUNTING OFFICE--JURISDICTION--ANTITRUST MATTERS*

Allegation of anti-trust violations is for consideration by Attorney General, not GAO.

*B-213536 Nov. 4, 1983 83-2 CPD 531
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review an affirmative determination of responsibility in absence of showing of possible fraud or misapplication of definitive responsibility criteria.

*B-211553 Nov. 7, 1983
CONTRACTS--ARCHITECT, ENGINEERING, ETC. SERVICES--PROCUREMENT
PRACTICES--BROOKS BILL APPLICABILITY--PROCUREMENT NOT
RESTRICTED TO A-E FIRMS--ADMINISTRATIVE DETERMINATION*

GAO will not question contracting agency's determination to secure services through competitive bidding procedures rather than through procedures described in Brooks Act

for selection of architectural or engineering firms unless protester demonstrates that agency intended to circumvent the Act.

*B-211957 Nov. 7, 1983 83-2 CPD 532
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SUSPENDED,
DEBARRED, ETC. CONTRACTORS*

GAO will not consider protest by firm proposed for debarment from government contracting since under applicable regulations firm is ineligible for government contracts pending outcome of debarment proceedings.

*B-211973 Nov. 7, 1983 83-2 CPD 533
CONTRACTS--PROTESTS--ISSUES IN LITIGATION*

GAO will not review award of contract by public housing agency, to be funded by HUD under Comprehensive Improvement Assistance Program, since matter is before court of competent jurisdiction and court has not indicated an interest in GAO decision.

*B-212928 Nov. 7, 1983 83-2 CPD 534
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--ISSUES
IN LITIGATION*

GAO will not consider protest where material issues are before court of competent jurisdiction and court has not expressed an interest in receiving GAO decision.

*B-213321 Nov. 7, 1983 83-2 CPD 535
BIDS--COLLUSIVE BIDDING--REFERRAL TO JUSTICE DEPARTMENT*

Allegation of collusive bidding is matter for Justice Dept. and not for consideration under GAO's bid protest function. Further, there is no evidence, based on facts alleged, that there was any intent or action taken to collude with others to set prices or restrain competition by inducing others not to bid.

B-213321 Nov. 7, 1983 83-2 CPD 535 - Con.
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

Absent finding of nonresponsibility, a below-cost bid does not provide basis to challenge an award.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review contracting officer's affirmative determination of responsibility where protester's grounds for disputing determination do not show that there was fraud or bad faith on part of contracting officials or that there were definitive responsibility criteria which had been misapplied.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that solicitation does not contain a performance bond requirement, filed after award, is untimely since it involves alleged impropriety apparent prior to bid opening which must be filed prior to bid opening.

B-213383 Nov. 7, 1983 83-2 CPD 536
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
CONTRACT DISPUTES ACT OF 1978

Claim for interest on late payment is dismissed because it is a claim relating to a contract and must be processed under procedures of Contract Disputes Act of 1978, 41 U.S.C. 601 et seq. (Supp. IV 1980).

B-213502 Nov. 7, 1983 83-2 CPD 537
BIDDERS--QUALIFICATIONS--LEGAL CAPACITY

Whether there is violation of local law is matter for local authorities and not GAO.

B-213502 Nov. 7, 1983 83-2 CPD 537 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination
of responsibility except in limited circum-
stances.

B-213531 Nov. 7, 1983 83-2 CPD 538
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--AWARD MADE
TO PROTESTER

Protest concerning integrity of certain
competing bidders in two timber sales
procurements is dismissed as academic
since protester was awarded both contracts.

B-210898 Nov. 8, 1983 83-2 CPD 539
BIDS--INVITATION FOR BIDS--PRICING STRUCTURE--RISK

It is bidder's responsibility in bidding
on fixed-price contract to project costs
and to include in basic contract price
factor covering any otherwise uncompensated
cost increases.

BIDS--PRICES--ESCALATION--PROPRIETY

Protester's allegations of ambiguities
in solicitation's economic price adjust-
ment clause are without merit, since price
adjustment clause contains sufficient
detail so that prospective bidders have
clear and precise understanding of
operation of clause.

BIDS--PRICES--ESCALATION--PROVISION--PROPRIETY

Economic price adjustment clauses must
reflect some objective standard other than
bidder's prices as basis upon which price
adjustment will be made. Price adjustment
clause in protested solicitation reflects
objective standard because it is tied to
Dept. of Labor's producer price index.

B-210898 Nov. 8, 1983 83-2 CPD 539 - Con.
BIDS--PRICES--ESCALATION--PROVISION--PROPRIETY

Protester's allegation that solicitation's economic price adjustment clause is unconscionably one-sided in favor of Govt. is without merit, since it is within ambit of administrative discretion for contracting agency to offer to competition proposed contract imposing maximum risks upon contractor.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has burden of affirmatively proving its case. Protester failed to provide sufficient evidence to establish that producer price index does not represent actual market price for material used in manufacturing contract items.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF COMMENTS ON AGENCY'S REPORT

Contracting agency's allegation that protester failed to file comments on protest report within 10 working days is without merit, since protester was granted extension.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--ALLEGATIONS UNSUBSTANTIATED

Contracting agency's allegation that protester untimely raised new issues in comments on protest report is without merit, since protester's comments were further detailed support for timely filed protest.

B-211632 Nov. 8, 1983 83-2 CPD 540
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Meaningful discussions were held where contracting agency identified those areas

in protester's proposal which it considered deficient and gave protester an opportunity to correct those deficiencies in revised proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
POINT RATING--DEDUCTION IN TWO OR MORE AREAS DUE TO ONE
DEFICIENCY*

Where proposal deficiency is related to two different evaluation criteria, agency may properly penalize proposal in both evaluation categories.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

GAO has no basis to object to procuring agency's evaluation of protester's technical proposal where protester fails to show that evaluation was unreasonable or in violation of evaluation criteria listed in solicitation.

B-211886 Nov. 8, 1983 83-2 CPD 541

*CONTRACTS--NEGOTIATION--REQUEST FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Protester's allegations that solicitation is defective because successful contractor would be forced to provide service and maintain inventory of parts and supplies for which solicitation does not include any specific provision for compensation are without merit where protester fails to show that agency's position--that the potential costs of which protester complains are either subject to contractor control or should be factored into contractor's bid--is unreasonable.

*B-211886 Nov. 8, 1983 83-2 CPD 541 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT*

Protester is interested party under GAO protest procedures when it asserts that it would have submitted bid but for alleged defects in solicitation specifications.

*B-212242 Nov. 8, 1983 83-2 CPD 542
BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--ADEQUACY
DETERMINATIONS*

Nature and extent of preaward survey needed to assure contracting officer that company will meet its contractual obligation are for contracting officer's judgment.

*CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--SUPPORTED BY RECORD*

Issue of whether evidence of bidder's lack of ability to perform is sufficient to warrant a finding in a particular case that bidder is not responsible is matter primarily for determination by administrative officers concerned, and such determination will not be disturbed by GAO absent clear showing of lack of reasonable basis for finding. Contracting officer's finding that one of protester's two production facilities lacked adequate quality control was reasonable basis for determining that protester was nonresponsible for those contract items to be produced at that facility.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

While, generally, GAO will not consider a protest of nonresponsibility determination where SBA has denied COC, issue will be considered at request of a court.

*B-213269 Nov. 8, 1983 83-2 CPD 543
CONTRACTS--AWARDS--NOTICE--TO SUCCESSFUL BIDDERS*

Protest that procuring activity failed to give unsuccessful bidder advance notice of intended award and formal notice of actual award of contract in small business procurement is dismissed since under DAR, para. 1-703(b)(1), contracting agency is not required to give advance notice of award in formally advertised small business set-aside and failure to provide formal notice of actual award of contract is merely procedural deficiency which does not affect validity of award.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965*

Protest that awardee does not comply with hourly wage rate and benefit provisions of Service Contract Act is dismissed because enforcement of the Act rests with Dept. of Labor, and whether contract requirements actually are met is matter of contract administration, which is a function of contracting agency.

*B-213439 Nov. 8, 1983 83-2 CPD 544
BIDS--INVITATION FOR BIDS--INTERPRETATION--ORAL EXPLANATION*

Oral advice by agency personnel that conflicts with specific language of specification is not binding on agency.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest based upon alleged improprieties on face of IFB is untimely since it was not filed prior to bid opening date.

B-213517 Nov. 8, 1983 83-2 CPD 545

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative determination of responsibility absent showing of possible fraud or bad faith or allegation that definitive responsibility criteria were misapplied.

B-211375 Nov. 9, 1983 83-2 CPD 546

CONTRACTS--FEDERAL SUPPLY SCHEDULE--SPECIFICATIONS--MINIMUM
NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION

Protester has not demonstrated inaccuracy of agency's assertion that it would have been impossible to establish average usage rate for dual-purpose microfiche reader/printers which are used by many agencies nationwide so as to allow reasonable basis for consideration of cost of supplies in current procurement.

GSA election to award two contracts, one for each of two types of microfiche reader/printers which differ technologically and are better suited to different types of applications, was reasonable response to responsibility to satisfy needs of wide range of Federal agencies.

CONTRACTS--NEGOTIATION--ADMINISTRATIVE DETERMINATION--
ADVERTISING V. NEGOTIATION

Determination to conduct negotiated procurement, because three prior versions of product description had proved unsatisfactory for advertised procurement and current version had not been market tested, is reasonable.

B-210732.2 Nov. 10, 1983 83-2 CPD 547
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Contention that prime contractor is supplying vehicles with nonconforming lighting systems is matter of contract administration not for review under GAO's Bid Protest Procedures.

CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS

GAO, except in limited circumstances, will not review potential subcontractor's protest of award of a subcontract since matter involves contract administration.

B-213318 Nov. 10, 1983 83-2 CPD 548
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review contracting agency's affirmative determination of responsibility absent a showing that determination was made fraudulently or in bad faith or that definitive responsibility or in bad faith or that solicitation were not met.

CONTRACTS--AWARDS--PROCEDURAL DEFECTS

Procedural deficiency that has no bearing on validity of bids received would not affect legality of award.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest based upon alleged improprieties which are apparent prior to bid opening must be filed prior to bid opening.

B-213485 Nov. 10, 1983 83-2 CPD 549

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against small business set-aside
which is received by GAO after time set
for bid opening is untimely.

CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW

GAO will not consider protest against small
business size standard in solicitation,
since SBA is sole adjudicator of size
standard issues.

B-213523 Nov. 10, 1983 83-2 CPD 550

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Bidder's ability and intention to perform
contract according to specifications is
matter of responsibility, and GAO will
not review a determination that bidder is
responsible except in limited circumstances
not present here.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10
working days after protester receives
contracting agency's denial of its
protest to agency is untimely.

B-213534 Nov. 10, 1983 83-2 CPD 551

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not consider protest concerning
bidder's ability to meet contract require-
ments since award must be preceded by
contracting officer's finding that bidder

is responsible, and GAO does not review affirmative determination of responsibility in absence of a showing of possible fraud or misapplication of definitive responsibility criteria.

*B-211009.2 Nov. 14, 1983 83-2 CPD 552
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--OVERSTATEMENT OF MINIMUM NEEDS*

Requirement which limits potential offeror's freedom to propose product it believes will be suitable to meet agency's needs is undue restriction on competition where record shows that restriction is based on unsupported conclusions, and information provided by protester, unrefuted by agency, indicates firm's product can meet agency's stated needs and same product has been acceptable to agency under prior procurement.

*B-211454 Nov. 14, 1983 83-2 CPD 553
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
MATERIALITY DETERMINATION*

Failure of low bidder to acknowledge an amendment in solicitation for painting may be waived because bid without amendment leaves Govt. free to award contract consistent with requirements specified in unacknowledged amendment.

*B-211937 Nov. 14, 1983 83-2 CPD 554
CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--NEW
EQUIPMENT*

Where solicitation required that equipment be new, unused, and not reconditioned, offer of used, overhauled items was properly rejected as unacceptable under terms of solicitation.

B-212172.2 Nov. 14, 1983 83-2 CPD 555

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not consider protest of another bidder's small business size status because SBA, not GAO, has statutory authority to conclusively determine small business size status for federal procurements.

B-212253 Nov. 14, 1983 83-2 CPD 556

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Agency determination to use f.o.b. destination delivery requirement and servicing and warranty requirements on International Federal Supply Schedule will not be disturbed where, as here, there has been no clear showing that determination is unreasonable.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION

Protest that procurement should have been set aside for small businesses is denied since, with certain exceptions not relevant here, nothing in Small Business Act or regulations mandates that any particular procurement be set aside exclusively for small business participation.

B-212410 Nov. 14, 1983 83-2 CPD 557

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest untimely filed with procuring agency (more than 10 days after basis of protest was known) and then filed with GAO after denial by contracting officer is not for consideration on merits under 4 C.F.R. 21.2(a), which requires that initial protest to agency be filed on timely basis.

B-212608.2 Nov. 14, 1983 83-2 CPD 558

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where protester's initial submission indicates protest involves matters which GAO does not consider, GAO, pursuant to 4 C.F.R. 21.3(g), will dismiss protest without requesting agency report.

B-208684.2 Nov. 15, 1983 83-2 CPD 559

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
RESOLICITATION

Where protest has been sustained based in part on finding that solicitation was defective, protester's subsequent request that GAO amend its recommended relief (that agency resolicit after correcting defective solicitation) and instead recommend award to protester, is denied where reconsideration request appears to be based on new information which would merely reinforce GAO's conclusion that solicitation was defective.

B-211479.3 Nov. 15, 1983 83-2 CPD 560

BIDDERS--INVITATION RIGHT--INVITATION RECEIVED LATE

Sec. 223(a), Pub. L. 95-507, 92 Stat. 1757, and implementing DAR 1-1002.1 (Defense Acquisition Circular No. 76-24, Aug. 28, 1980), require that small business, upon its request, shall be provided with copy of bid sets and specifications concerning particular contract and law provides no exception to this responsibility. However, law only becomes operative where agency refuses small business request and an untimely agency response apparently because of agency mishandling of request is not refusal.

B-211917 Nov. 15, 1983 83-2 CPD 561

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

Where services sought to be procured under some, but not all, of invitation's bid items are no longer required and solicitation taken as whole contemplates and authorizes only single aggregate award for all bid items, then agency has necessary cogent and compelling reason to cancel invitation for bids after all bid prices have been exposed.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--CHANGES, REVISIONS,
ETC.--AFTER AWARD--EVIDENCE OF INTENT*

Contracting officer may not award contract under specification knowing that Govt.'s needs are different than that identified in specification and that specification accordingly must be changed after award.

B-212078 Nov. 15, 1983 83-2 CPD 562

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COST--DENIED*

Claim for quotation preparation costs is denied since it cannot be determined that protester had substantial chance of receiving award had there been resolicitation.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Where solicitation called for brand name "or equal" light fixtures, but agency then decided that only brand name fixtures would meet its needs, award should not have been made without giving all offerors opportunity to submit quotations on brand name fixtures only. Therefore, protester, which submitted late quotation, is interested party since, if agency had amended solicitation to

give all offerors opportunity to submit quotations on brand name fixtures only, protester would have been able to compete.

CONTRACTS--PROTESTS--SUSTAINED--SPECIFICATION CHANGES DURING NEGOTIATION--FAILURE TO COMMUNICATE TO ALL OFFERORS IN COMPETITIVE RANGE

Protest is sustained where solicitation called for brand name "or equal" light fixtures and then agency decided that only brand name fixtures would be procured without giving all offerors opportunity to submit quotations on brand name fixtures only

*B-212159 Nov. 15, 1983 83-2 CPD 563
BIDS--MISTAKES--WAIVER, ETC. OF ERROR--PREJUDICIAL TO OTHER BIDDERS*

Sales award should not be made to high lump-sum, all-or-none bidder on 12 sale items where bidder requests waiver of its error in unintentionally including one rather than another particular item in all-or-none bid. Although all-or-none bid is high, corrected and uncorrected, GAO finds that acceptance of admittedly erroneous, uncorrected bid would improperly displace high individual bidder for item on which all-or-none bidder never intended to bid.

*B-212285 Nov. 15, 1983 83-2 CPD 564
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Protester has burden of affirmatively proving its case. Where there is nothing in record to indicate that agency did not fully comply with all environmental standards in conveying real property, protester has failed to carry its burden of proof that property was not adequately decontaminated prior to sale.

B-212285 Nov. 15, 1983 83-2 CPD 564 - Con.
FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT--DISPOSAL
PROVISIONS--SURPLUS PROPERTY--REJECTION OF ALL BIDS

Under Federal Property and Administrative Services Act, the Administrator of General Services is authorized to reject all bids for surplus property when it is in the public interest to do so. 40 U.S.C. 484(e)(2)(c).

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT--DISPOSAL
PROVISIONS--SURPLUS PROPERTY--TITLE WARRANTY

Under Federal Property and Administrative Services Act, Administrator of General Services is authorized to convey real property with or without warranty so that conveyance of surplus property by quitclaim deed is proper. 40 U.S.C. 484(c).

B-212356 Nov. 15, 1983 83-2 CPD 565
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--COMPLIANCE

Protest that awardee did not meet solicitation provision that required submission of references of clients who currently operated offeror's equipment in dual or triple processor environment is sustained since awardee provided only two references and neither reference met solicitation requirement.

B-212448 Nov. 15, 1983 83-2 CPD 566
BIDS--MISTAKES--APPARENT TO AGENCY

Agency rejection of low bid on basis of suspected mistake was reasonable despite bidder's assertion that no error was made, where bid in question is substantially below Govt. estimate, bidder did not explain factors raised by agency during verification and it is clear that bidder erred in interpreting specifications.

B-212490.2 Nov. 15, 1983 83-2 CPD 567

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Prior decision dismissing protest because protester was not interested party is affirmed where protester has failed to demonstrate that decision was based on erroneous interpretation of fact or law or information not previously considered.

B-212565 Nov. 15, 1983 83-2 CPD 568

BIDS--INVITATION FOR BIDS--AMENDMENTS--ACKNOWLEDGMENT--
BIDDER BOUND BY AMENDED IFB

Where bidder acknowledges all of amendments to IFB, but still uses original bidding schedule, which was modified by one of those amendments, agency may nonetheless accept bid since bidder is bound to all terms and conditions of new bidding schedule.

BIDS--PRICES--REDUCTION BY LOW BIDDER--AFTER BID OPENING

Agency may accept reduction in total price of bid which corresponds to reduction in total price of one of listed items even though unit price was not correspondingly changed since it is clear from bid what new unit price would be.

B-213037.2 Nov. 15, 1983 83-2 CPD 569

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--EQUITABLE
JURISDICTION--SPECIFIC STATUTE REQUIREMENT

GAO cannot require suspension or delay of contract performance pending SBA's review of that agency's refusal to issue low bidder COC, since to do so would constitute exercise of equitable jurisdiction which can only be granted by statute, and GAO does not have that statutory authority.

B-213307 Nov. 15, 1983 83-2 CPD 570

BIDS--MISTAKES--UNIT PRICE V. EXTENSION DIFFERENCES--RULE

Where protester's bid indicates discrepancy in unit and extended prices and either price reasonably could have been intended, agency may not rely on bidder's confirmation of bid since permitting bidder to elect between two prices, only one of which will result in award to bidder, after competitor's bid prices were revealed, allows bidder unfair advantage contrary to principles of competitive bidding.

B-213414 Nov. 15, 1983 83-2 CPD 571

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
BONDS--BID

Rejection of bid as nonresponsive for failing to furnish bid bond is proper since statement in bid bond requirement that failure to comply "may be cause for rejection" is just as compelling and material as if more positive language were employed.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not consider protests regarding affirmative determinations of responsibility unless there is showing of fraud or it is alleged that definitive responsibility criteria set forth in solicitation were not properly applied by agency.

B-213480 Nov. 15, 1983 83-2 CPD 572

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--NOT APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS

Protest alleging sufficient time was not afforded to prepare quotations is untimely where basis of protest was not raised before closing date for receipt of quotations.

B-213526 Nov. 15, 1983 83-2 CPD 573
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative responsibility
determination except in limited circumstances.

B-211788.2 Nov. 16, 1983 83-2 CPD 574
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Request for reconsideration is denied where
protester merely reargues same points
that were presented and considered in
connection with initial protest.

B-212514.3 Nov. 16, 1983 83-2 CPD 575
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Second request for reconsideration is denied
where protester again fails to show error
of law or fact in GAO's decision not to
object to agency's continued small business
set-aside of procurement of dredging services.

B-213284 Nov. 16, 1983 83-2 CPD 576
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID

Bid offering a bid acceptance period less
than that required in the solicitation is
nonresponsive and cannot be changed after
bid opening since a nonresponsive bid cannot
be corrected.

B-211991 Nov. 17, 1983 83-2 CPD 577
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Where firm submitted unsolicited proposal
for technical study, its protest based on
its exclusion from competitive procurement
for study and alleged agency mishandling of

its proposal is untimely since firm failed to diligently pursue information on which its protest was based after being notified that a contract for study had been awarded to another firm; failure to diligently pursue information on which protest may be based renders subsequent protest based on that information untimely.

B-212004 Nov. 17, 1983 83-2 CPD 578

BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION THAT ITEM OFFERED FAILED TO MEET SPECIFICATIONS

Protest that protester's bid was improperly determined to be nonresponsive to all IFB specifications is denied. Even though protester's bid offered to meet all IFB requirements, bid was accompanied by brochure which qualified bid and showed that product offered by protester in bid did not meet speed requirement set forth in IFB.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Protest alleging that awardee's bid was nonresponsive to IFB specifications is denied since awardee's bid took no exception to IFB specifications. Furthermore, whether awardee will perform contract in accord with IFB specifications is matter of contract administration which GAO does not review under Bid Protest Procedures.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging ambiguity in IFB specifications is untimely where record shows that alleged defect was known to protester before bid opening, but was not filed in our Office until after bid opening date. 4 C.F.R. 21.2(b)(1) (1983).

B-212004 Nov. 17, 1983 83-2 CPD 578 - Con.
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--PROTESTER
NOT IN LINE FOR AWARD

Protest alleging that agency improperly evaluated protester's bid prices will not be considered because protester's bid was otherwise nonresponsive and ineligible for award. Accordingly, protest is academic.

B-212191 Nov. 17, 1983 83-2 CPD 585
CONTRACTS--PROTESTS--SUSTAINED--AGENCY FAILURE TO FOLLOW
GUIDELINES--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON

GAO sustains protest challenging agency decision to perform services in-house based on comparison of Govt. estimate with protester's offer, since agency failed to comply with procedures for conducting cost comparison identified in RFP, and that failure casts doubt on validity of outcome of comparison.

B-209960 Nov. 18, 1983 83-2 CPD 579
CLAIMS--AGAINST UNITED STATES--BURDEN OF PROOF

Where conflict statements of claimant and procuring activity are only evidence as to whether or not activity made telephone request for repairs in issue, claimant clearly has failed to meet its burden of affirmatively proving that telephone request was ever made.

B-210709.2 Nov. 18, 1983 83-2 CPD 580
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--EXCEPTIONS--OFFERS NOT WITHIN
COMPETITIVE RANGE

Prior decision holding that agency could properly exclude protester's excessively priced proposal from competitive range without further discussions is affirmed where record shows that all offerors were

afforded opportunity to revise their cost proposals and protester's costs remained excessive.

B-210877.3 Nov. 18, 1983 83-2 CPD 581

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--PRIOR GAO
CONSIDERATION OF SAME ISSUE EFFECT*

Prior decision which held untimely protest based on agency's failure to give protester opportunity to submit revised offer on newly qualified item is affirmed. Further, issue does not fall within significant issue exception to our timeliness rules because it has been previously considered by our Office.

B-211280 Nov. 18, 1983 83-2 CPD 582

*BIDDERS--QUALIFICATIONS--FAILURE TO SUBMIT INFORMATION BEFORE
BID OPENING--RESPONSIBILITY OF BIDDER V. RESPONSIVENESS OF BID*

IFB requirement for submission of test results concerning performance of windows relates to bidder's responsibility, which may be determined on basis of information submitted after bid opening, rather than bid responsiveness where information apparently is not needed to determine conformance with specifications and IFB does not clearly advise bidders that submission requirement involves responsiveness and of consequences of not furnishing data with their bids.

B-211368 Nov. 18, 1983 83-2 CPD 583

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

Cancellation of portion of solicitation after bid opening is proper where agency reasonably determines that all prices received were excessive and that it will

be more cost effective to satisfy Govt.'s needs using less expensive model differing from that on which bids were solicited.

*B-211368 Nov. 18, 1983 83-2 CPD 583
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Evidence of agency's past allegedly improper procurement actions is not sufficient to satisfy protester's heavy burden of proof in establishing bad faith on part of agency procurement officials.

REGULATIONS--FORCE AND EFFECT OF LAW--AGENCY POLICY

Violation of internal agency guidelines provides no basis for questioning legality of award since such internal guidelines do not have force and effect of law.

*B-211891, et al. Nov. 18, 1983 83-2 CPD 584
ANTITRUST MATTERS--CONTRACTING OFFICER'S RESPONSIBILITY*

Allegation that firm should be suspended from contracting because it pleaded nolo contendere in suit brought against it for violation of anti-trust laws is dismissed. This is matter for consideration by contracting agency, not GAO.

*CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
INCUMBENT CONTRACTOR'S ADVANTAGE*

GAO will not object to agency's decision to accept bids from current mobilization base producers on competitive solicitation for expansion of base. Although current producers may enjoy competitive advantage because of their prior contracts, this would be improper only if it resulted from unfair government action, which is not case here.

E-211891, et al. Nov. 18, 1983 83-2 CPD 584 - Con.
CONTRACTS--NEGOTIATION--NATIONAL EMERGENCY AUTHORITY--
CONCLUSIVENESS

Quantity of a given mobilization item to be awarded to particular mobilization base producer is matter within discretion of procuring agency, which GAO will not disturb absent convincing evidence of abuse of discretion. Fact that agency made error in calculating quantity to award to protester is not considered sufficient evidence to find abuse of discretion here.

CONTRACTS--NEGOTIATION--NATIONAL EMERGENCY AUTHORITY--
EXPANSION OF MOBILIZATION BASE

There is no prohibition against expansion of existing mobilization base where current producer or producers are not being utilized to their full capacity.

CONTRACTS--NEGOTIATION--NATIONAL EMERGENCY AUTHORITY--
RESTRICTIONS ON NEGOTIATIONS

Agency could reasonably decide to negotiate mobilization base agreements with only current producers of mobilization base item and later expand base competitively as need arose, especially where its then current needs were not sufficient to support additional producers. Determinations of this type are primarily responsibility of procuring agency and will not be disturbed absent convincing evidence of abuse of administrative discretion.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Firm that is not mobilization producer is not interested party to protest that procurement restricted to such producers resulted in disproportionate award to large business, since firm would be ineligible for award even if protest on this issue were sustained.

B-212227 Nov. 18, 1983 83-2 CPD 586
CONTRACTS--NEGOTIATION--AWARDS--INITIAL PROPOSAL BASIS--
PROPRIETY

Award on basis of initial proposals is proper where selected proposal does not vary substantially from solicitation's requirements, and acceptance of it without discussion will result in fair and reasonable price.

B-212281 Nov. 18, 1983 83-2 CPD 587
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE

Agency correctly rejected bid as nonresponsive where bidder failed to acknowledge receipt of material solicitation amendment which changed rooms in which retiling work was to be performed to one in which considerably extra care and labor would have to be expended during performance.

B-212351.2 Nov. 18, 1983 83-2 CPD 588
BIDS--LATE--ACCEPTANCE--DELAY DUE TO IMPROPER GOVT. ACTION

Where IFB did not specify specific bid opening room and agency did not post signs at location stated in IFB directing bidders to bid opening room, agency acceptance of late bid was proper since Govt. action was paramount cause of late receipt and integrity of bid system would not be compromised since no bids were opened prior to receipt of late bid.

B-212551 Nov. 18, 1983 83-2 CPD 589
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAGE DETERMINATION CHANGES--DECREASED WAGE RATES

Failure to timely acknowledge amendment to solicitation which contains decreased wage rates does not render low bidder's bid nonresponsive. Low bidder would be obligated

to pay wage rates prescribed in original wage determination and attached to its bid.

B-212626 Nov. 18, 1983 83-2 CPD 590

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SELF CERTIFICATION--INDICATION OF ERROR--CONTRACTING OFFICER'S DUTY TO INVESTIGATE, ETC.

Where protester failed to deliver to contracting officer within 5 working days after bid opening protest both alleging that another bidder was not small business and containing detailed basis for such allegation, and where also information which would have reasonably impeached self-certification of other bidder is neither brought to attention of contracting officer nor readily available such that its existence and significance should have been discovered by contracting officer, then latter did not abuse his discretion by accepting bidder's self-certification at face value.

B-213094 Nov. 18, 1983 83-2 CPD 591

BONDS--BID--DEFICIENCIES--BID REJECTION

Protest that bid bond not signed by corporate surety's representative should not have been rejected by contracting officer is summarily denied where there is conflict among legal authorities regarding effect of lack of such signature on validity of bond so that agency could reasonably conclude that bond may not be enforceable.

B-213136 Nov. 18, 1983 83-2 CPD 592

BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--LACKING

Absent solicitation provision requiring bidders to possess specific license, bidder's lack of state license does not bar contract award to bidder.

B-213136 Nov. 18, 1983 83-2 CPD 592 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative determination of responsibility except in limited circumstances.

B-213342 Nov. 18, 1983 83-2 CPD 593
TRANSPORTATION--CARRIERS--LIABILITY--EVIDENCE

Interstate common carrier by rail is liable for damage in transit to generators when damage has not been shown to have resulted from defective bracing by shipper, or that fault of carrier did not contribute or that any defect in blocking was not apparent on ordinary observation.

Claimant bears burden to furnish evidence clearly and satisfactorily establishing its claim and all incidental matters to establish clear legal liability of U.S. and claimant's right to payment.

B-213512 Nov. 18, 1983 83-2 CPD 594
BIDS--LATE--LOST

Copy of lost bid may not be submitted after bid opening where bid was lost by Postal Service after being sent by registered mail, since that would be inconsistent with protecting integrity of competitive bidding system.

B-213521 Nov. 18, 1983 83-2 CPD 452
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
COMMERCIAL CARRIER DELAY

Proposal sent by United Parcel Service "Next Day Air" service which was received in office designated in solicitation after time specified in solicitation must be rejected.

B-209704.4 Nov. 21, 1983 83-2 CPD 596

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not review contracting officer's determination that small business concern is not responsible since SBA is authorized by statute to certify conclusively the competency of a small business concern.

B-209992.2, B-209992.3 Nov. 21, 1983 83-2 CPD 597

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
CONTRACTOR ELIGIBILITY--OPTIONS

Recommendation that options in 8(a) contract awarded to firm whose participation in 8(a) program would expire during first year of performance not be exercised unless firm continued in 8(a) program is clarified. Options may be exercised subject to requirements of regulations for justification of exercise of options.

B-211761 Nov. 21, 1983 83-2 CPD 598

BUY AMERICAN ACT--WAIVER--AGENCY DETERMINATION--NOT
REVIEWABLE BY GAO

GAO will not review agency determination not to waive Buy American Act requirements since Buy American Act vests discretion as to waiver in heads of concerned agencies.

B-211918 Nov. 21, 1983 83-2 CPD 599

BIDS--LATE--AGENCY RESPONSIBILITY

Since bid was late when tendered to contracting officer, contracting officer's refusal to accept bid did not cause bid to be late.

B-211918 Nov. 21, 1983 83-2 CPD 592 - Con.
BIDS--LATE--EVIDENCE OF LATE RECEIPT--TIME/DATE STAMP--
CONFLICT WITH OTHER EVIDENCE

Protest that bid was timely because time/
date stamp showed that it was received by bid
opening deadline is denied where evidence
submitted by procuring agency shows that time/
date machine was 3-4 minutes slow.

BIDS--LATE--OPENING OF BID EFFECT

Bid opening officer's improper opening
of late bid does not provide basis on
which bid may be accepted.

BIDS--LATE--TIME FOR OPENING DETERMINATION

Bid opening officer's declaration that
bid opening time has arrived is criterion
for determining lateness absent clear evi-
dence in record to show that time was
incorrect.

BIDS--LATE--TIME OF RECEIPT DETERMINATION--EVIDENCE TO
ESTABLISH

In determining whether hand-carried bid
was timely submitted, all relevant
evidence in record may be considered.

B-211940 Nov. 21, 1983 83-2 CPD 600
SMALL BUSINESS ADMINISTRATION--AUTHORITY--SMALL BUSINESS
CONCERNS--ABILITY TO PERFORM--NOT QUESTIONED BY GAO ABSENT
SHOWING OF FRAUD OR BAD FAITH

Issues raised concerning sec. 8(a) contractor's
ability to perform are matters for determi-
nation by SBA, not GAO.

SMALL BUSINESS ADMINISTRATION--AUTHORITY--SMALL BUSINESS
CONCERNS--SET-ASIDE DETERMINATIONS

The determination to set aside a procure-
ment under sec. 8(a) of Small Business Act
is a matter for the contracting agency and

SBA, and therefore will not be reviewed by GAO absent showing of possible fraud or bad faith on part of Govt. officials.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--CONTRACTOR ELIGIBILITY

Question of whether firm is eligible for assistance under sec. 8(a) of Small Business Act is a matter for determination by SBA, and thus is not subject to legal review by GAO.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--REVIEW BY GAO

GAO generally will not review agency decision to contract or not contract under sec. 8(a) program, including when that decision is based on cost comparison between cost of in-house performance and contracting with an 8(a) firm, absent showing of possible fraud or bad faith on part of procurement officials.

*B-212552 Nov. 21, 1983 83-2 CPD 601
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--HOUSING AND URBAN DEVELOPMENT DEPARTMENT PROCUREMENTS*

GAO will not consider protest concerning procurement actions of HUD under authority granted to HUD under National Housing Act. 12 U.S.C. 1701, et seq. (1982).

*B-213155 Nov. 21, 1983 83-2 CPD 602
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against alleged specification defects is untimely under our Bid Protest Procedures since it was not filed prior to bid opening.

B-213158 Nov. 21, 1983 83-2 CPD 603
BIDS--CORRECTION--INITIALING REQUIREMENT

Fact that initials accompanying changes to prices on bidding schedule appear to be different than initials appearing elsewhere in bid does not require rejection of bid as nonresponsive. Even if changes were not initialed by person signing bid, as required by solicitation, this requirement is matter of form and may be waived where bid, as changed, leaves no doubt as to prices intended.

Bidder is responsible for changes to its bid made before bid opening and may be required to perform at prices as submitted. There is no requirement for Govt. to prove either identity or authority of person who actually made or initialed changes.

B-213225.2 Nov. 21, 1983 83-2 CPD 604
CONTRACTS--PROTESTS--INJUNCTIVE RELIEF--NOT AVAILABLE THROUGH GAO

GAO has no authority to order suspension of procurement proceedings or to stay award of contract pending SBA's review of the small business size standard used in solicitation.

B-213362 Nov. 21, 1983 83-2 CPD 605
BIDS--AMBIGUOUS--ACCEPTANCE

Award to bidder who priced additive items separately instead of cumulatively as called for in solicitation was not improper where bid price was easily ascertainable from submitted bid.

B-213457 Nov. 21, 1983 83-2 CPD 606
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--ADMINISTRATIVE DETERMINATION

Decision whether particular procurement should be set aside for small business essen-

tially is one within discretion of contracting activity.

B-213457 Nov. 21, 1983 83-2 CPD 606
GENERAL ACCOUNTING OFFICE--JURISDICTION--ANTITRUST MATTERS

Allegation regarding possible violation of antitrust laws is for consideration by Dept. of Justice, not GAO.

B-213659 Nov. 21, 1983 83-2 CPD 607
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protest concerning offeror's small business size status is not for review by GAO since by law it is matter for decision by SBA.

B-212196 Nov. 22, 1983 83-2 CPD 608
BIDS--INVITATION FOR BIDS--AMENDMENTS--ACKNOWLEDGMENT--LATE RECEIPT BY AGENCY

Procuring agency properly considered telegraphic acknowledgment of amendment to bid received after bid opening since amendment was received late due solely to Govt. mishandling.

B-212428.2 Nov. 22, 1983 83-2 CPD 609
PURCHASES--SMALL--REQUESTS FOR QUOTATIONS--MISPLACED LOWER OFFER--EFFECT ON AWARD

GAO will not disturb small purchase contract where after award contracting agency discovered protester's misplaced timely quotation, absent evidence of conscious or deliberate effort by contracting personnel to exclude protester from consideration.

B-213492 Nov. 22, 1983 83-2 CPD 610
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTESTS--ADVERSE AGENCY ACTION EFFECT--INTERIM APPEALS TO AGENCY--EFFECT ON 10 WORKING DAY GAO FILING PERIOD

The 10-day period for filing protests in GAO after contracting agency denial of

protest filed initially with contracting agency is not tolled by repeated attempts to convince contracting agency officials that protest is meritorious. Accordingly, where protester waited more than 10 days to file protest in GAO after protest filed with contracting agency was denied by contracting agency, protest to GAO is untimely and not for consideration on its merits.

*B-213586 Nov. 22, 1983 83-2 CPD 611
CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW*

Protest against small business size standard classification in solicitation is not for consideration by GAO since SBA Size Appeals Board has conclusive jurisdiction to entertain appeal from contracting officer's determination of such classification.

*B-212774 Nov. 23, 1983 83-2 CPD 612
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Where initial protest to contracting agency is untimely filed, subsequent protest to GAO is dismissed as untimely.

*B-213585 Nov. 23, 1983 83-2 CPD 613
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review subjective business judgments comprising affirmative responsibility determination absent circumstances not applicable here.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING*

Although past performance is factor to be taken into account by contracting officer

in determining bidder's responsibility, bidder which has defaulted on previous contracts generally may not automatically be excluded from competition.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Allegations questioning agency's failure to enforce existing contracts concern matters of contract administration which are for consideration by contracting agency, not GAO.

B-213582 Nov. 25, 1983 83-2 CPD 614

BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--PAYMENT TERMS

A bid in which bidder inserted word "net" next to 20-day option in prompt payment discount section of solicitation was properly rejected as nonresponsive, since it could be reasonably read as taking exception to solicitation's 30-day payment terms.

B-213680 Nov. 25, 1983 83-2 CPD 615

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--BOARD OF CONTRACT APPEALS DECISIONS

GAO will not consider matters relating to payment of claim concerning contract dispute matter which has been decided by Armed Services Board of Contract Appeals.

B-213718 Nov. 25, 1983 83-2 CPD 616

CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--FEDERAL RESERVE SYSTEM--MEMBER BANK CONTRACTS

GAO's protest jurisdiction does not extend to Federal Reserve System banks since GAO has no authority to settle accounts of such banks.

B-212371 Nov. 28, 1983 83-2 CPD 617

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Agency's evaluation of Industrial Preparedness Plan is tantamount to an affirmative determination of responsibility which will not be reviewed by GAO absent exceptions not applicable here.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--COURT INTEREST EXCEPTION*

GAO will consider untimely protest on merits where material issues of protest are before court and court has asked for GAO decision.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that solicitation conducted under authority to negotiate purchase in interest of industrial mobilization was improper because it permitted award to minimum of two offerors is untimely because alleged impropriety was apparent on face of solicitation. It is also without merit because Determination & Findings signed by Under Secy. of Defense for Research and Engineering, which authorized award to two or three offerors, in order to maintain or expand industrial mobilization base, is in accord with 10 U.S.C. 2304(a)(16) and is final under 10 U.S.C. 2310.

B-212434 Nov. 28, 1983 83-2 CPD 618

*BIDS--EVALUATION--DELIVERY PROVISIONS--F.O.B. ORIGIN--OMITTED
FROM BID*

Protest concerning responsiveness of low bid which failed to supply shipping weights and dimensions for f.o.b. origin items is denied since agency reasonably determined that low bid remained most advantageous to Govt. after evaluating probable and even improbable transportation costs.

B-212731 Nov. 28, 1983 83-2 CPD 619

BID--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT

Bid offering paint which, according to test data furnished with bid, did not meet one of salient characteristics of brand name paint is nonresponsive and is not eligible for acceptance.

BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS SUBMITTED AT BID OPENING

Nonresponsive bid may not be corrected after bid opening, since permitting bidder to do so would be tantamount to allowing submission of new bid.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protests alleging improprieties in IFB apparent prior to bid opening must be filed prior to bid opening in order to be considered.

PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PURCHASE PROPRIETY

Agency's decision not to resolicit but rather to purchase its requirements from FSS is a matter within agency's judgment which GAO will not question absent clear showing of abuse of discretion.

B-212991 Nov. 28, 1983

SET-OFF--MUTUALITY OF PARTIES, ETC.--EVIDENCE

Burden of showing that new company is not mere continuation of old company is on company seeking to avoid liability for debts of old company.

B-212991 Nov. 28, 1983 - Con.

TRANSPORTATION--OVERCHARGES--SET-OFF--MUTUALITY OF PARTIES,
ETC.

Direct recovery from new company is proper where record establishes that new company is either identical to predecessor company or, at most, a continuation of activities and interests of old company.

TRANSPORTATION--RATES--TARIFFS--ABSENCE OF TARIFF--PAYMENT
BASIS--QUANTUM MERUIT

Where carrier transports goods without proper operating authority, carrier can be paid quantum meruit based on usual or going rates of other authorized carriers for same services.

B-213001 Nov. 28, 1983 83-2 CPD 620

BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
DELIVERY PROVISIONS

Bid stating that "based upon delivery schedule quoted by manufacturers of specified equipment, work cannot be completed within this time frame" creates uncertainty as to whether bidder intends to comply with IFB completion schedule and renders bid non-responsive.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

To be timely under GAO's Bid Protest Procedures, a protest asserting that it is impossible to meet IFB delivery schedule must be filed before bid opening.

B-210764 Nov. 29, 1983 83-2 CPD 621

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEFECTIVE--MINIMUM
NEEDS INCORRECTLY STATED

Solicitation is defective where Navy's post-award notice to field activities suggests that Navy did not intend bidders for magazine subscriptions contract to base their bids on furnishing of scientific, technical, and medical publications. However, under circumstances, GAO must conclude that bidders computed their bids based on supplying at least some of these publications. Therefore, solicitation was defective and requirement should have been resolicited.

B-212276 Nov. 29, 1983 83-2 CPD 622

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest is dismissed where rendered academic by agency's cancellation of solicitation due to inadequate specifications.

B-212534 Nov. 29, 1983 83-2 CPD 623

BIDS--OPENING--PREMATURE OPENING

Where several bidders relied on extended bid opening date in not submitting bids and two bids were erroneously opened on original opening date and prices disclosed, decision of contracting officer to continue procurements and not award on basis of prematurely opened bids was proper.

B-213257 Nov. 29, 1983 83-2 CPD 624

BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Cancellation of IFB and resolicitation is not recommended since there is no evidence of a conscious or deliberate attempt to exclude protester from bidding.

*B-213447 Nov. 29, 1983 83-2 CPD 625
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO 5 months after initial protest was filed with contracting agency is untimely under GAO Bid Protest Procedures where protester has reason to know that agency has permitted contract to be substantially performed or completed.

*B-213703 Nov. 29, 1983 83-2 CPD 626
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--MATTER OF CONTRACT ADMINISTRATION*

Protest challenging propriety of default termination of contract raises issue concerning contract administration which is to be resolved under Contract Disputes Act of 1978, not under GAO Bid Protest Procedures.

*B-212162 Nov. 30, 1983 83-2 CPD 627
BIDS--MISTAKES--CORRECTION--NONRESPONSIVE BIDS*

Bid that is properly declared nonresponsive due to failure to certify that it will provide only parts from vendors listed on source control drawings may not be corrected through mistake-in-bid procedures.

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED

Where IFB identifies previously approved source controlled components and requires bidder to certify that it will furnish only those components, bidder's failure to certify is material deviation and requires rejection of bid as nonresponsive.

*B-212653 Nov. 30, 1983 83-2 CPD 628
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--ADMINISTRATIVE
DETERMINATION--LABOR DEPARTMENT REVIEW*

Whether bidder is regular dealer or manufacturer under Walsh-Healey Act is for

determination by contracting agency subject to final review by SBA and Dept. of Labor and, thus, will not be considered by GAO.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--CONCLUSIVENESS

GAO will not review protest concerning determination by SBA to issue COC except upon prima facie showing of fraud on part of Govt. officials or where protest concerns a small business' compliance with definitive responsibility criterion contained in solicitation.

FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS OF AGENCIES, ETC., OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE DISCLOSURE

GAO will not review allegation that agency is improperly withholding information from protester. The protester's sole recourse is to pursue disclosure remedies provided by FOIA.

B-212769 Nov. 30, 1983 83-2 CPD 629

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--REFERRAL TO SBA FOR COC MANDATORY WITHOUT EXCEPTION

Contracting officer's rejection of small business bidder as nonresponsive without referring matter to SBA under COC procedures was improper.

B-212871 Nov. 30, 1983 83-2 CPD 640

BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--BIDDER NOT TIMELY SOLICITED, ETC.

Propriety of particular procurement generally depends on whether Govt. obtained adequate competition and reasonable prices. GAO has no reason to question agency's determination that it did obtain reasonable price through adequate competition where four responsive bids were received, lower of which was in line with agency's cost estimate.

B-212871 Nov. 30, 1983 83-2 CPD 640 - Con.

BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE

Where bid failed to acknowledge a material amendment, agency was under no obligation to extend bid opening date and was required to reject bid as nonresponsive even though agency knew that bidder had not received amendment in time to consider it in preparation of bid. Once agency has dispatched amendment in sufficient time to permit all prospective bidders to consider information, prospective bidders bear risk of untimely receipt unless they can show that untimely receipt resulted from conscious and deliberate effort to exclude them.

B-213592 Nov. 30, 1983 83-2 CPD 630

BIDS--EVALUATION--AGGREGATE V. SEPARABLE ITEMS, PRICES, ETC.--
FAILURE TO BID ON ALL ITEMS

Protest alleging that agency improperly rejected protester's bid on two of five line items is without merit where solicitation clearly provided that award would be made to bidder submitting low total bid on five line items and agency's actions here were consistent with solicitation's terms.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Contention that solicitation provision is unduly restrictive is untimely where alleged defect was apparent from face of solicitation but protest was not filed until after bid opening, contrary to GAO Bid Protest Procedures.

B-213667 Nov. 30, 1983 83-2 CPD 631

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility except in limited circumstances which are not present in this case.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider small business size status protests since by law, conclusive authority over such matters is vested in SBA.

B-213693 Nov. 30, 1983 83-2 CPD 641

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
CONTRACT DISPUTES ACT OF 1978

GAO generally does not review disputes about contract cancellations since they involve matters that must be processed under Contract Disputes Act of 1978, which requires initial filing with contracting officer for decision.

B-213444 Dec. 1, 1983 83-2 CPD 632

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest after bid opening against possibility that contractor might not, because of ambiguity in specifications, furnish item required by procuring activity will not be considered since (1) to extent protest is against ambiguity it is untimely as protests against impropriety in specifications must be filed prior to bid opening and (2) question of whether contractor supplies item in conformance with specifications is matter of contract administration which is responsibility of procuring agency, not our Office.

B-213733 Dec. 1, 1983 83-2 CPD 633
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Manufacturer of product offered by third low bidder is not "interested" party under GAO Bid Protest Procedures because firm is not bidder and therefore not eligible for award, even if issues raised were resolved in its favor.

B-212868 Dec. 2, 1983 83-2 CPD 634
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against propriety of contracting agency's decision to make sole-source award is untimely where filed approximately 5 months after protester was informed that sole-source award would be made.

B-213289 Dec. 2, 1983 83-2 CPD 635
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against propriety of solicitations that is untimely filed with procuring agency (after closing dates for receipt of initial proposals) and then filed with GAO after agency's denial of protest is not for consideration on merits under 4 C.F.R. 21.2(a) which requires that initial protest to agency be filed on timely basis.

B-213334 Dec. 2, 1983 83-2 CPD 636
CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Allegations attributing unfair motive to procurement officials are regarded as mere speculation where record fails to demonstrate bias against protester.

B-213334 Dec. 2, 1983 83-2 CPD 636 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--ADMINISTRATIVE DETERMINATION

GAO generally will not review determination of nonresponsibility with respect to small business bidder since by law SBA is empowered to conclusively determine responsibility of small business.

B-213467 Dec. 2, 1983 83-2 CPD 637
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest allegation that IFB specification is unduly restrictive of competition is untimely and not for consideration on merits where alleged restrictiveness was apparent on face of IFB, but protest was not filed until after bid opening.

B-213587 Dec. 2, 1983 83-2 CPD 638
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Whether bidder on small business set-aside actually supplies small business items, as it represented it would in bid, is matter of contract administration, which is responsibility of contracting agency, not GAO.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider size status protests, since SBA has conclusive authority to determine matters of small business size status for Federal procurement purposes.

B-213679 Dec. 2, 1983 83-2 CPD 639
BIDS--RESPONSIVENESS--EXCEPTION TAKEN TO INVITATION TERMS--
SMALL BUSINESS REQUIREMENTS

Where small business firm bidding on items in total small business set-asides represents in bid that supplies to be furnished will not be manufactured or produced by small business concern, bid is nonresponsive.

B-211273 Dec. 5, 1983 83-2 CPD 642
CONTRACTS--MODIFICATION--BEYOND SCOPE OF CONTRACT--SUBJECT TO
GAO REVIEW

While contract modifications generally are responsibility of procuring agency in administering contract, GAO will consider protest that modification went beyond the contract's scope and should have been subject of new procurement, since such modification has effect of circumventing competitive procurement statutes. Modification does not exceed contract's scope, however, as long as modified contract is substantially same as contract that was competed.

CONTRACTS--MODIFICATION--PROPRIETY

GAO finds that agency's modification of contract for computer-assisted legal research system to include party names, year of decision, and court jurisdiction of cited cases is not outside contract's purpose of obtaining legal research through use of computers.

B-212624 Dec. 5, 1983 83-2 CPD 644
BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--DISCUSSION WITH
BIDDER

There is no requirement that contracting officials discuss preaward data with offeror prior to making determination of nonresponsibility. Since responsibility determinations are administrative in nature, they do not require procedural due process otherwise necessary in judicial proceedings.

B-212624 Dec. 5, 1983 83-2 CPD 644 - Con.

CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--BASED ON NEGATIVE PRE-AWARD SURVEY
REPORT

Negative responsibility determination based on negative preaward survey report and purchasing activity's subsequent review of supplemental information protester submitted responding to questions raised by survey team, was proper where there was reasonable doubt about protester's ability to meet delivery schedule.

B-212673 Dec. 5, 1983 83-2 CPD 645

BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS
SUBMITTED AT BID OPENING

Bid sample requested and furnished after bid opening may not be used to determine bid responsiveness.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY

Question of small business' responsibility must be referred to SBA for consideration of issuing certificate of competency.

B-211063, et al. Dec. 6, 1983 83-2 CPD 646

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION

Function of GAO is not to reevaluate proposal; GAO will not disturb procuring agency's evaluation of proposals submitted in response to solicitation unless evaluation was arbitrary or in violation of procurement laws and regulations. Record shows that agency's evaluation of protester's proposals was reasonable.

B-211063, et al. Dec. 6, 1983 83-2 CPD 646 - Con.
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where protester merely alleges that proper evaluation of its proposal would show invalidity of reasons set forth by contracting agency for finding it unacceptable, protester has not met its burden to affirmatively prove its case.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Where protest against alleged deficiencies in solicitation specifications was not filed until after deadline for initial proposal submission, protest is untimely and not for consideration since alleged deficiencies should have been apparent prior to deadline.

B-211968.2 Dec. 6, 1983 83-2 CPD 647
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Request for reconsideration will not be considered where protester timely files short notice requesting reconsideration of prior decision, but fails to provide detailed statement within 10 working days after basis for reconsideration was known or should have been known.

B-212054 Dec. 6, 1983 83-2 CPD 648
BIDDERS--IDENTITY--SUFFICIENCY

Contract may properly be awarded to bidder whose legal name is Palmetto Services Corporation, but is named on bid as Palmetto Corporation, since bidder is sufficiently identified by address, name of owner, and employer identification number to be bound by contract.

B-212054 Dec. 6, 1983 83-2 CPD 648 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Allegations that low bidder lacks integrity and is affiliated with suspended corporation and suspended individuals constitute protest to affirmative determination of responsibility which our Office will not review in absence of showing of fraud or bad faith on part of contracting officer or failure to apply definitive criteria of responsibility.

B-212347 Dec. 6, 1983 83-2 CPD 649
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF
COMPETITION

Protest against small business set-aside is denied since contracting officer reasonably anticipated receipt of offers from sufficient number of small businesses even though only one small business submitted bid.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--PRICE
REASONABLENESS--ADMINISTRATIVE DETERMINATION

Determination that small business bid is reasonable is not legally objectionable since bid is lower than bid submitted previous year by protester.

B-212538 Dec. 6, 1983 83-2 CPD 650
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SUBMISSION
DATE--ADMINISTRATIVE DETERMINATION

Determination of date for receipt of initial proposals is for contracting agency and GAO will not question such determination where, as here, record establishes that date was not arbitrarily or capriciously selected and that procuring agency achieved adequate competition.

B-212538 Dec. 6, 1983 83-2 CPD 650 - Con.
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protester fails to show that agency determination to procure single credit card system, as more efficient than multiple credit card system, is unreasonable where protester alleges that single credit card system may have adverse economic impact on its industry.

GENERAL ACCOUNTING OFFICE--JURISDICTION--ANTITRUST MATTERS

GAO does not consider under its bid protest function allegations regarding potential anti-trust violations.

B-212830.2 Dec. 6, 1983 83-2 CPD 651
BIDS--INVITATION FOR BIDS--AMENDMENTS--NONRECEIPT--BIDDER'S
RISK--BIDDER EXCLUSION NOT INTENDED

Prior decision is sustained where protester has not shown that contracting agency's failure to provide amendments to solicitation resulted from specific purpose of excluding protester from competition.

B-209547.2 Dec. 7, 1983 83-2 CPD 652
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

GAO's refusal, in prior decision, to question contracting agency's determination to secure services through competitive bidding procedures rather than procedures prescribed in Brooks Act for selection of architectural or engineering firms, is affirmed on reconsideration since it has not been established that decision was based on errors of fact or law.

B-211105 Dec. 7, 1983 83-2 CPD 653
BIDS--PREPARATION--COSTS--RECOVERY

When specific Government recommendation has caused prime operating contractor to breach duty to evaluate subcontractor's proposal

fairly, GAO will recommend that agency instruct prime to award offeror proposal preparation costs; agency ultimately will bear this expense under prime's cost-reimbursement type contract.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--NOT JUSTIFIED

When record does not support agency's statement that evaluation criteria and procedures were deficient, GAO will sustain protest against prime operating contractor's cancellation of solicitation for subcontract upon agency's recommendation.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

When protester is aware that solicitation for subcontract has been canceled, but does not know why until it receives copies of correspondence between agency and prime operating contractor under Freedom of Information Act request, protest alleging that cancellation was unreasonable, filed within 10 working days of receipt of correspondence, is timely.

CONTRACTS--SUBCONTRACTS--REQUESTS FOR PROPOSALS--CANCELLATION

In direct Federal procurement, only reasonable basis (as opposed to compelling reason) is required for cancellation of negotiated solicitation. In GAO's opinion, however, the same reasonable basis should exist before agency recommends that prime operating contractor cancel negotiated solicitation for subcontract.

*B-211525 Dec. 7, 1983 83-2 CPD 654
BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--ADEQUACY
DETERMINATIONS*

Agency cannot reasonably conclude that protester's bid price was insufficient to absorb additional labor costs that agency believes will be incurred when agency failed to revise cost analysis component of pre-award survey to reflect reduction in its own estimate of minimum number of personnel needed.

CONTRACTS--PROTESTS--SUSTAINED--EVALUATION OF BIDS--ERRONEOUS

Protest against negative determination of responsibility is sustained where determination is based on cumulative effect of unsatisfactory ratings in number of areas investigated by pre-award survey team, and team's conclusions in many of these areas are unreasonable or unsupported.

*B-212257.2 Dec. 7, 1983 83-2 CPD 655
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--INTERIM
APPEALS TO AGENCY--EFFECT ON 10 WORKING DAY GAO FILING PERIOD*

Where agency denies appeal challenging cost comparison which indicated that certain services should be performed in-house instead of by contract, protest based on same grounds as appeal is untimely where filed in GAO more than 10 working days after protester received decision denying its appeal.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--PRIOR
GAO CONSIDERATION OF SAME ISSUE EFFECT*

GAO will not consider untimely protest under exception to GAO's timeliness rules for significant issues where protest does not raise issues of widespread interest or

importance to procurement community which have not been considered on merits in previous decisions.

*BIDS--INVITATION FOR BIDS--CANCELLATION--NOT REQUIRED--
SOLICITATION DEFICIENCIES--NOT PREJUDICIAL*

Agency did not have compelling reason to cancel IFB and resolicit even if IFB was inadequate where award to low responsive bidders would have met agency's needs and would not have prejudiced any other firm.

B-213036.2 Dec. 7, 1983 83-2 CPD 657

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging defects which are apparent on face of solicitation, filed with bid or included in proposal, will not be considered timely protest to contracting agency, and any subsequent protest to GAO will be dismissed.

B-213487 Dec. 7, 1983 83-2 CPD 658

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

Where SBA refuses to issue COC, GAO will not review this refusal unless protester makes prima facie showing of bad faith or demonstrates that information vital to nonresponsibility determination was not considered.

B-213599 Dec. 7, 1983 83-2 CPD 659

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED*

Where protester has not filed timely protest with GAO, GAO will not consider claim for proposal preparation costs.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--QUALIFICATIONS*

It generally is not GAO's function to appraise qualifications of agency contracting personnel, and with nothing more than protester's opinion that technical proposal evaluator lacks sufficient experience, we will not examine or question that evaluator's qualifications.

CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR

Award to other than offeror proposing lowest price in negotiated procurement is not objectionable where solicitation provided that award would be based 90 percent on technical considerations and 10 percent on price, agency adhered to that scheme in selecting awardee, and there is no showing that agency unreasonably determined that awardee's higher evaluation score was sufficient to offset lower price offered by protester.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EXPERIENCE RATING*

Fact that awardee's technical proposal was not downgraded based on lack of specific experience does not render evaluation defective where solicitation did not state that offerors were to possess such specific experience or that lack of this experience would adversely affect evaluation of offer.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

GAO will not conduct investigations pursuant to its bid protest function; burden rests on protester to present all evidence in support of its allegations.

B-212536 Dec. 8, 1983 83-2 CPD 660 - Con.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Allegation that procurement should have been set aside for competition exclusively by Indian firms is untimely and not for consideration on merits where not raised prior to closing date for receipt of proposals.

B-213177 Dec. 9, 1983 83-2 CPD 662

BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--SUFFICIENCY--
PROXIMITY OF ASSERTED INTENDED BID TO NEXT LOW BID

Where protester seeking correction of its bid to within .26 percent of next low bid submits only computer printout and unsworn written statement as evidence of its intended bid, contracting officer's determination that such evidence does not constitute clear and convincing evidence of asserted intended bid price required to allow correction is not unreasonable. The closer asserted intended bid is to next low bid, the more difficult it is to clearly establish that it is bid actually intended.

B-209884.2 Dec. 12, 1983 83-2 CPD 663

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Request for reconsideration of decision that offer to furnish surplus parts was properly rejected is denied where protester does not show any error of law or fact in decision that warrant reversal.

B-212241 Dec. 12, 1983 83-2 CPD 664

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protester's contention that solicitation in two-step, formally-advertised procurement

should have required equipment manufacturer and not contractor to certify compliance with emissions standards is untimely. Protest concerns alleged defect apparent in first-step request for technical proposals and therefore should have been filed before first-step closing date.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Agency's initiation of second step of two-step, formally-advertised procurement without amending first-step solicitation in response to oral protest filed with agency constitutes agency's initial adverse action on protest; protest to GAO filed more than 6 weeks later is untimely since it was not filed within 10 days of date protester is presumed to have received second-step solicitation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Where protest filed with agency concerning alleged solicitation defect is untimely, subsequent protest to GAO on same issue is also untimely.

B-212258 Dec. 12, 1983 83-2 CPD 665

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

Protester is not interested party under Bid Protest Procedures since, if protest were upheld, protester would not be in line for award.

B-212717 Dec. 12, 1983 83-2 CPD 666

*CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--PENNSYLVANIA
AVENUE DEVELOPMENT CORPROATION*

Protest of award of contract by Pennsylvania Avenue Development Corp. (PADC) will not

be considered since PADC is wholly owned Govt. corp. and has broad discretionary authority with regard to its expenditures.

B-213064 Dec. 12, 1983 83-2 CPD 667

CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--HOUSING AND URBAN DEVELOPMENT DEPARTMENT PROCUREMENTS

GAO will not consider protest concerning procurement actions of Dept. of Housing and Urban Development (HUD) in connection with property responsibilities under National Housing Act, 12 U.S.C. 1701, et seq., in view of broad statutory authority of HUD to make expenditures in connection with those responsibilities.

B-213075 Dec. 12, 1983 83-2 CPD 668

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--SOLICITATION CANCELED

Protest against sole-source procurement is academic because agency indicates that solicitation will be canceled and requirement will be competitively acquired.

B-213493 Dec. 12, 1983 83-2 CPD 669

BIDS--ALL OR NONE--LOW ON ALL ITEMS REQUIREMENT

Bid which was qualified "all or none" as to three geographic zones on which prices for drawer units were sought, and which was low on only two of zones, was properly rejected under solicitation clause which permits consideration of "all or none" bid only if it is low with respect to each item upon which individual award may be made.

B-213554.2 Dec. 12, 1983 83-2 CPD 670

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest, alleging defect in solicitation, which was filed 38 minutes after closing time for receipt of initial proposals is untimely

under sec. 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1983)). Letter allegedly previously submitted to GAO but never received in our Office cannot be considered "filed" for timeliness purposes.

*B-213722 Dec. 12, 1983 83-2 CPD 671
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that IFB is defective filed after bid opening is untimely.

*B-213809 Dec. 12, 1983 83-2 CPD 672
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest questioning whether bidders will meet Buy American requirements involves challenge to determination that bidder is responsible, which GAO does not review in absence of showing of possible fraud or that definitive responsibility criteria in solicitation were misapplied, circumstances not present here.

*B-211484 Dec. 13, 1983 83-2 CPD 673
BIDS--PREPARATION--COSTS--NONCOMPENSABLE--INVITATION PROPERLY
CANCELED*

Claim for bid preparation costs is denied where claimant has not shown that agency abused its discretion in canceling solicitation.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--IN-HOUSE
PERFORMANCE V. CONTRACTING OUT--COST COMPARISON--ADEQUACY*

GAO will not review agency decision to perform work with its own employees rather than to contract out except in limited circumstances not present here.

B-211587, B-211587.2 Dec. 13, 1983 83-2 CPD 674
BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--SUSTAINED
BY RECORD

Allegation that solicitation was sole-source procurement under pretense of being competitive because only one bidder offers motor grader with "successive gear type transmission" as required by specifications is unfounded where two bidders who made no bid on particular bid item involved have offered motor grader with successive gear-type transmission under previous solicitation.

BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--TWO BIDS
ADEQUACY

Allegation that solicitation was sole-source procurement under pretense of being competitive because only one bidder offers a "lock-unlock differential" for motor grader as required by specifications is unfounded where, in fact, two bidders offered required lock-unlock differential.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Where purchasing agency shows that specification restriction requiring that motor grader have lock-unlock differential is prima facie reasonable and protester fails to show that this requirement is clearly unreasonable, specification is not unduly restrictive of competition.

B-212033 Dec. 13, 1983 83-2 CPD 675
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protester has not shown that Corps of Engineers improperly specified "excavated trench" construction method using 30-inch "soil-bentonite" wall to contain wastes at

landfill in New Jersey or improperly prohibited use of alternative construction method involving "vibrated beam."

B-212254 Dec. 13, 1983 83-2 CPD 676

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

Fourth low bidder is not interested party under GAO's Bid Protest Procedures to protest that low bid is nonresponsive.

CONTRACTS--TERMINATION-- CONVENIENCE OF GOVERNMENT--ERRONEOUS EVALUATION, ETC.

Agency's decision to terminate contract is proper where erroneous award to other than low bidder was discovered shortly after award and there is no evidence that termination, and proposed award to actual low bidder, is not in Govt.'s interest.

B-212449 Dec. 13, 1983 83-2 CPD 677

BIDS--INVITATION FOR BIDS--INTERPRETATION--INCORRECT

Protester's interpretation of confusing solicitation descriptive phrase of item requested is not reasonable where protester fails to consider specifications which describe this item.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest is timely when it is submitted within 10 working days after protester learns that agency is interpreting solicitation in way which is different than protester's interpretation.

B-212530.2 Dec. 13, 1983 83-2 CPD 678

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PRICES

Even where solicitation appears to require bidder to bid on base and all additive items, bid which fails to include prices for some items should not be rejected if evaluation and award are not based upon items that were not bid.

B-212564 Dec. 13, 1983 83-2 CPD 679

CONTRACTS--NEGOTIATION--ADMINISTRATIVE DETERMINATION--
ADVERTISING V. NEGOTIATION

Agency decision to use negotiation procedures in lieu of formal advertising when awarding contract for stenographic reporting services is not legally objectionable where record shows that agency's minimum needs required level of managerial and technical competence which could not be assured through formal advertising.

B-213299 Dec. 13, 1983 83-2 CPD 680

CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--MAIL
DELAY EVIDENCE--REGULAR MAIL

Under small purchase procedures, offerors are responsible for timely receipt of their quotations and untimely quotation need not be considered for award.

B-213551 Dec. 13, 1983 83-2 CPD 681

BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE

Bidder's failure to acknowledge receipt of material amendment which increased number of days of weather delays which construction contractor must suffer before it would be entitled to time extension renders bid nonresponsive since acceptance of bid would not legally obligate bidder to meet Govt.'s needs as identified in amended solicitation.

*BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAIVER--EFFECT ON COMPETITION*

Public interest in strictly maintaining competitive bidding procedures required by law outweighs any pecuniary advantage which Govt. might gain in particular case by making award to bidder who failed to acknowledge receipt of material amendment, i.e., by making award in violation of rules.

*BIDS--INVITATION FOR BIDS--AMENDMENTS--NONRECEIPT--BIDDER'S
RISK--BIDDER EXCLUSION NOT INTENDED*

Bidder's failure to receive material solicitation amendment and its resulting failure to acknowledge amendment does not render award under IFB to another bidder improper where agency dispatched amendment in sufficient time to permit prospective bidders to consider information in preparing their bids, agency received six bids acknowledging amendment, and there is no indication that failure to receive amendment resulted from conscious and deliberate agency effort to exclude bidder.

*BIDS--INVITATION FOR BIDS--CANCELLATION--NOT REQUIRED--
SOLICITATION DEFICIENCIES--NOT PREJUDICIAL*

Given absence of showing of resulting prejudice, mere existence of allegedly ambiguous solicitation term does not provide compelling reason to cancel solicitation and readvertise after bid opening.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest filed after bid opening alleging that two provisions of IFB arguably conflicted, thereby creating ambiguity, is untimely and GAO

will not consider merits of issue. Protests based on solicitation improprieties apparent prior to bid opening must be filed before bid opening.

B-208469.3 Dec. 14, 1983 83-2 CPD 682
BIDDERS--UNSUCCESSFUL--ANTICIPATED PROFITS

There is no legal basis for allowing unsuccessful bidder to recover anticipated profits, even if claimant has been wrongfully denied contract.

BIDS--PREPARATION--COSTS--RECOVERY

Claim for bid preparation costs is allowed where agency improperly evaluated bids and awarded contract to other than lowest priced bidder.

CONTRACTS--PROTESTS--PREPARATION--COSTS--NONCOMPENSABLE

Attorneys' fees incurred in pursuing bid protest are not compensable.

B-210389.4, et al. Dec. 14, 1983 83-2 CPD 683
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF BIDDER--DEBARMENT PROCEEDINGS PENDING

Firms against which debarment proceedings were pending were eligible for participation in drawing held to determine order of priority for negotiation on labor surplus area set-aside portion of solicitation. Terms of solicitation required inclusion in drawing of all small business concerns which submitted responsive bids on non-set-aside portion of solicitation, and fact that debarment proceedings are pending does not affect bid responsiveness. Proper time for determining effect of such proceedings on firm's eligibility for set-aside award is time of that award.

*B-210389.4, et al. Dec. 14, 1983 83-2 CPD 683 - Con.
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF BIDDER--DETERMINATION INCORRECT--PROPRIETY
OF CORRECTION PROCEDURES*

Contracting agency was not required to conduct second drawing, held to correct improprieties in first drawing, in a manner which protester argues would have been less disruptive to results of first drawing than the manner chosen.

*CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF BIDDER--PLACE OF SUBSTANTIAL PERFORMANCE--
UNAMBIGUOUS*

GAO rejects argument that bid does not evidence clear and unambiguous commitment to meet solicitation's labor surplus area (LSA) requirement because bid price allegedly is inconsistent with bidder's indication that it will perform as LSA concern. Under facts and circumstances of this case, bid price was not obviously inconsistent with bidder's express commitment to perform as LSA concern. B-205712, Apr. 15, 1982, and B-163181, Feb. 7, 1968, distinguished.

CONTRACTS--OFFER AND ACCEPTANCE--OFFER--WHAT CONSTITUTES

No merit is found to protester's assertion that it reached binding agreement with agency after agency phoned and offered it opportunity to supply quantity of items listed in written solicitation, and protester accepted this offer. Agency disputes allegation that it made offer to protester, and protester's interpretation of phone conversation is inconsistent with both terms of solicitation and ordinary rules concerning Govt. contract formation.

B-210792 Dec. 14, 1983 83-2 CPD 684

CONTRACTS--REQUESTS FOR QUOTATIONS--COPY REQUESTED--FAILURE TO FURNISH

Procuring agency need not furnish protester with copy of request for quotations needed to respond to agency's Commerce Business Daily synopsis of its intent to place order against automatic data processing schedule contract, where protester concedes that it can supply only used equipment and has not shown to be unreasonable agency's determination that its minimum need is for new equipment.

B-212899 Dec. 14, 1983 83-2 CPD 685

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against IFB's method of evaluation and award scheme is untimely under GAO Bid Protest Procedures because alleged impropriety concerns defect on fact of solicitation and protest was not filed with GAO prior to bid opening.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF COMPETENCY REQUIREMENT

GAO will not question contracting officer's determination that small business is nonresponsible where SBA affirms that determination by refusing to issue Certificate of Competency (COC). In addition, GAO will not question SBA's refusal to issue COC absent showing of fraud or bad faith.

B-213169 Dec. 14, 1983 83-2 CPD 686

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERS REQUIREMENT--FAILURE TO DISCUSS--SITUATIONS NOT REQUIRING DISCUSSION

When incumbent contractor's initial proposal is technically acceptable, but other offeror's proposals have deficiencies, agency is not

required to hold discussions with incumbent, and its discussions with other offerors do not constitute unequal or unfair treatment.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--FACTORS NOT IN SOLICITATION--ORAL DISCLOSURE DURING NEGOTIATIONS

When, during negotiations, offerors are advised of changes in Govt.'s requirements, offerors have actual notice of them regardless of inconsistency with or absence from solicitation.

When protester is aware of changes in agency requirements well before they are formalized in solicitation amendment, contracting officer's decision not to extend due date for best and finals is not arbitrary or capricious and does not unduly restrict competition, and GAO will deny protest that there was insufficient time to prepare alternate proposal.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--RESTRICTIVE--AGENCY DETERMINATION TO USE LESS RESTRICTIVE SPECIFICATIONS

Unlike unduly restrictive specifications, which violate statutes and regulations requiring free and open competition in Federal procurement, specifications that allegedly are not restrictive, enough violate no law or regulation, and there is no legal basis for questioning their use.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--WALSH-HEALEY ACT

Under applicable regulations, question of whether prospective contractor qualifies as manufacturer or regular dealer for Walsh-Healey Act purposes is for contracting officer, with appeal to Dept. of Labor or, in appropriate circumstances, the SBA, rather than to GAO.

B-213590 Dec. 14, 1983 83-2 CPD 688

BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL V.
SPECIFIC--EFFECT ON RESPONSIBILITY

Solicitation provision requiring bidders to obtain necessary licenses and/or permits to perform contract concerns bidder's responsibility.

Solicitation provision which requires bidders to obtain necessary licenses and/or permits but which does not state that specific license is required does not constitute definitive responsibility criteria.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED--STATE, ETC. LAW COMPLIANCE

Contract award to bidder necessarily includes contracting officer's finding that bidder is responsible. GAO will not disturb this finding absent allegations that contracting officer is guilty of fraud or bad faith or that definitive responsibility criteria were not applied.

B-213640, B-213641 Dec. 14, 1983 83-2 CPD 689

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO generally will not review affirmative determination of responsibility.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

GAO will not consider protest against contract administration.

B-213646 Dec. 14, 1983 83-2 CPD 690

BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--INFORMATION--
STANDARD FORM 19-B REPRESENTATIONS AND CERTIFICATIONS

Information regarding affiliation of bidder with other firms goes to question of bidder responsibility, not to question of responsiveness

of bidder's bid; information may be supplied after bid opening, if not contained in bid, as part of responsibility consideration.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative determination of responsibility absent allegation that definitive responsibility criteria were misapplied or of fraud or bad faith on part of contracting officials; contract award necessarily indicates contracting officer finding of awardee responsibility.

*B-213716 Dec. 14, 1983 83-2 CPD 691
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative responsibility determination absent showing of possible fraud or bad faith by Govt. contracting officials, or that definitive responsibility criteria were not met.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--ADMINISTRATIVE DETERMINATION*

Protest concerning bidder's qualifications as a small business concern is not for review by GAO since it is matter for decision by SBA.

*B-213867 Dec. 14, 1983 83-2 CPD 692
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest concerning various alleged defects in specification filed after bid opening is untimely because protest concerns alleged improprieties in solicitation that were apparent prior to bid opening.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Absent showing of possible fraud or bad faith, GAO will not consider protest that procuring agency should have awarded renewal contract to protester under sec. 8(a) of Small Business Act, because decision to award contract under sec. 8(a) is within discretion of contracting officials.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
FRAUD OR BAD FAITH ALLEGED--EVIDENCE SUFFICIENCY

In protest involving 8(a) procurement, possible fraud or bad faith is not shown by fact that procuring agency conducted protracted negotiations with protester, with repeated emphasis on obtaining cost concessions, and then abandoned those negotiations in order to procure through other means.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

GAO will not review Small Business Admin.'s (SBA) determination to issue a COC to small business found to be nonresponsible by procuring agency absent prima facie showing of fraud or that information vital to responsibility determination was willfully disregarded by SBA, thus implying bad faith, since SBA by law is final authority in such matters.

B-211454.3 Dec. 16, 1983 83-2 CPD 695

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Request for reconsideration is denied where protester fails to demonstrate factual grounds or errors of law which would merit reversal or modification of original decision.

B-212237.2 Dec. 16, 1983 83-2 CPD 696

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Request for reconsideration of protest decision filed more than 10 working days after protester receives decision with which it disagrees is untimely.

B-212591 Dec. 16, 1983 83-2 CPD 697

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

While agencies should formulate their needs so as to maximize competition, allegedly burdensome requirements which may limit competition are not unreasonable so long as they reflect Govt.'s legitimate minimum needs.

B-212829.2 Dec. 16, 1983 83-2 CPD 698

CONTRACTS--PROTESTS--BASIS FOR PROTEST REQUIREMENT

Protest based upon fact that protester has protest pending with GAO concerning prior alleged improper award by contracting agency for same product is not reviewable basis of protest.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Where initial protest fails to state basis of protest, subsequent allegation that contracting agency should have procured product by formal advertising rather than by negotiation raised

for first time after closing date for receipt of proposals is untimely under GAO Bid Protest Procedures.

B-213036 Dec. 16, 1983 83-2 CPD 699

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--NOT OVERSTATED

Protester's objection that modem-key pad requirement overstates agency's minimum need is denied where agency needs key pad to permit employees without computer knowledge to utilize modem.

B-213129 Dec. 16, 1983 83-2 CPD 700

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review agency's affirmative determination of responsibility absent either showing of possible fraud on part of contracting officials, or misapplication of definitive responsibility criteria.

B-213327 Dec. 16, 1983 83-2 CPD 701

BIDS--INVITATION FOR BIDS--AMBIGUOUS--ALLEGED INCONSISTENT
PROVISIONS

Solicitation is not ambiguous where one of alleged inconsistent provisions merely modifies application of general provision. Therefore, IFB for Qualified Product List (QPL) item containing statement that it was labor surplus set-aside, but clause indicates differential will not be applied to QPL items, is not objectionable.

B-211627.2, et al. Dec. 19, 1983 83-2 CPD 702

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL
BUSINESS SET-ASIDES

Protest of large business firm is dismissed because: (1) protester is not "interested party" since issues raised (awardee's alleged lack of responsibility and improper evaluation of proposals) are extraneous to small business

set-aside provision which excludes large business firm from competition; and (2) protester's argument regarding an improper/ambiguous provision relating to subcontracting is untimely raised.

B-212018.3, et al. Dec. 19, 1983 83-2 CPD 703
GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--PRIOR
RECOMMENDATION--WITHDRAWN--NOT IN BEST INTEREST OF GOVERNMENT

Prior decision, finding ambiguity in solicitation, is affirmed where parties on reconsideration argue for different interpretations of solicitation requirements and language is sufficiently broad to encompass all interpretations. Solicitation is ambiguous when it is capable of more than one reasonable interpretation. Recommendation for corrective action is withdrawn where record now shows that costs of termination and resulting disruption would be out of proportion to benefits received or identifiable competitive harm.

B-212780, et al. Dec. 19, 1983 83-2 CPD 704
CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED

Protests filed in GAO are dismissed where material issues protested are before court of competent jurisdiction and court has not indicated interest in GAO decision.

B-213070.2 Dec. 19, 1983 83-2 CPD 705
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Original decision dismissing protest because it was dispute between private parties is affirmed where allegation that was not considered initially does not alter substance of original protest.

B-213116 Dec. 19, 1983 83-2 CPD 706
CONTRACTS--PROTESTS--NONAPPROPRIATED FUND ACTIVITIES

Procurement conducted by GSA pursuant to cooperative agreement between the U.S. and Saudi Arabia does not involve use of funds subject to GAO account settlement authority and protest of such procurement therefore is dismissed.

B-213802 Dec. 19, 1983 84-1 CPD 1
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider small business size status since by law conclusive authority over matter is vested in SBA.

B-208876.2 Dec. 20, 1983 84-1 CPD 2
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

IFB for replacement of glass in two greenhouses which omitted material requirement for snow and wind load-bearing capacity was defective and was properly canceled, since omission precluded consideration of material requirement and, therefore, minimum needs of govt. were not met.

B-211679.2 Dec. 20, 1983 84-1 CPD 3
CONTRACTS--PROTESTS--CLARITY OF PROTEST--CONSIDERATION
PROCEDURE

Protester who fails to clearly set forth its grounds for protest assumes risk that its protest will not be construed as intended.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Protest by firm that would not be in line for award if protest were upheld will not be considered because firm is not an interested party under GAO Bid Protest Procedures.

B-211914 Dec. 20, 1983 84-1 CPD 4
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
BRAND NAME OR EQUAL--SALIENT CHARACTERISTICS--SATISFACTION OF
REQUIREMENT

Under brand name or equal purchase description, offeror need not furnish exact duplicate of brand name product but need only comply with salient

characteristics of brand name product listed in solicitation.

Waiver of minor deviation from size listed as salient characteristic in brand name or equal purchase description was not improper where there was no evidence to suggest that "equal" product thereby was functionally inferior to brand name product, and brand name manufacturer failed to show that it was prejudiced.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester which fails to substantiate allegation does not meet its burden of affirmatively proving basis for that portion of its protest.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--VARYING DEGREES OF DISCUSSIONS--PROPRIETY

Discussions under negotiated brand name or equal procurement for sole purpose of determining from nonbrand offeror whether "equal" product conforms to salient characteristics are not improper.

B-212770 Dec. 20, 1983 84-1 CPD 5

AGENTS--OF PRIVATE PARTIES--AUTHORITY--CONTRACTS--SIGNATURES--CONFIRMATION AFTER BID OPENING

Evidence of agent's authority to sign bid may be established after bid opening.

BIDS--INVITATION FOR BIDS--CLAUSE--ECONOMIC PRICE ADJUSTMENT--SCOPE OF USE--ADMINISTRATIVE DETERMINATION

Contention that procuring activity should have used economic price adjustment clause in its IFB is rejected because use of such clause is discretionary with agency and no abuse of discretion has been shown.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--CURRENT NEEDS*

GAO will not consider contention that specifications should be more restrictive to meet needs of user agency since matter is one to be resolved by agencies and activities involved.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

GAO will not question agency's quantity requirements for item absent clear showing that determination to procure quantity is unreasonable.

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

Award pending protest is permissible under provisions of DAR 2-407.8(b)(3).

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION--SCOPE
OF GAO REVIEW*

GAO will not question agency's decision to procure item competitively rather than on sole-source basis, since objective of bid protest function is to insure full and free competition for Govt. contracts.

*CONTRACTS--OPTIONS--EXERCISABLE AT SOLE DISCRETION OF
GOVERNMENT--BID PROTEST NOT FOR CONSIDERATION*

GAO will not consider incumbent contractor's contention that agency should have exercised contract option provision instead of issuing new solicitation where option is renewable at sole discretion of Govt.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

GAO will not consider protest by incumbent contractor of allegedly restrictive delivery terms of solicitation where protester has not demonstrated any economic interest or harm at stake in raising issue and protest is essentially on behalf of other participating bidders.

B-212770 Dec. 20, 1983 84-1 CPD 5 - Con.
FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS OF
AGENCIES, ETC., OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE
DISCLOSURE

GAO has no authority under Freedom of Information Act to determine what information must be disclosed by Govt. agencies.

B-212922 Dec. 20, 1983 84-1 CPD 6
BIDS--AGGREGATE V. SEPARABLE ITEMS, PRICES, ETC.--AWARD BASIS--
PROPRIETY

Determining lowest evaluated price on aggregate rather than multiple-award basis was proper where tenor of solicitation was that aggregate award was contemplated.

B-212960 Dec. 20, 1983 84-1 CPD 7
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Unsupported allegations of bias by contracting personnel and of their failure to evaluate samples fairly do not meet protester's burden of presenting sufficient evidence to prove its case.

FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS OF
AGENCIES, ETC. OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE
DISCLOSURE

GAO has no authority to determine what information must be disclosed by agency under FOIA.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protest that awardee might provide nonconforming items raises matter of contract administration which is responsibility of procuring agency, not GAO.

B-213233 Dec. 20, 1983 84-1 CPD 8
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--TESTS--
FIRST ARTICLE--WAIVER

Decision whether to waive first article testing requirement is matter within contracting agency's discretion. Contracting officer's decision to waive first article testing will not be disturbed in absence of showing that it was arbitrary, capricious, or unreasonable.

Waiver of first article testing requirement is not shown to be arbitrary, capricious, or unreasonable where waiver was based upon fact that firm had produced first articles under earlier contract, first articles had passed substantially all first article tests required under earlier contract and were expected to pass remaining tests within matter of weeks after waiver determination was made, and contracting agency had been supplied similar items by firm under previous contracts.

B-213492.2 Dec. 20, 1983 84-1 CPD 9
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--ESTABLISHED

Request for reconsideration of GAO dismissal of protest as untimely is granted in part. Basis for dismissal was that protester had waited more than 10 days from contracting agency denial of initial protest to file protest with GAO. However, one issue of protest filed with contracting agency had not been denied by contracting agency at time all other issues were denied. Prior GAO decision, B-213492, Nov. 22, 1983, is modified to reflect that dismissal of this protest issue as untimely was erroneous. However, the issue in question--whether awardee incorrectly certified in its bid that parts supplied would be manufactured in U.S.--is dismissed because such issue concerns whether awardee will meet contract obligation and is matter of contract administration which we do not review.

*B-210684, B-210684.2 Dec. 21, 1983 84-1 CPD 10
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

Although contracting officer has broad discretion to cancel solicitation, because of potential impact on competitive system of canceling invitation for bids after bid opening, regulations require compelling reasons for such action. Fact that some terms of invitation for bids are in some way deficient does not, of itself, constitute compelling reason to cancel.

Where invitation for bids contains a number of separate requirements, one of which is servicing Govt-owned equipment and, after bid opening, agency discovers that it failed to include two items in inventory of approximately 844 items, and record shows that adding two missing items to resulting contract would vary contractor's obligation in an insignificant manner from stated solicitation requirements and would have little effect on price, need to add that requirement to contract does not provide compelling reason to cancel solicitation.

Although historical data contained in solicitation could be misleading to bidders in light of increased requirements under new contract, when those increased requirements are identified at bidders' conference and spelled out in solicitation amendment, no bidder should be misled and presence of the historical data does not provide basis for cancelling solicitation after bid opening.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ADEQUACY--SCOPE
OF WORK--SUFFICIENCY OF DETAIL*

Where solicitation does not identify precise number of each item to be serviced under contract, but instead groups two similar items together in a single quantity, bidders can take whatever minor uncertainty is involved into account in

computing their bids; solicitation was not defective merely because the number of each item was not precisely indicated.

B-212771 Dec. 21, 1983 84-1 CPD 11
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--PROTESTER
NOT IN LINE FOR AWARD

Contention that solicitation provision prohibiting use of hydraulic dredges is unduly restrictive is dismissed as academic where bids were opened after protest was filed, and the protester's bid was only sixth lowest received; since the protester is not low bidder, it would not be in line for award even had solicitation not contained allegedly restrictive prohibition.

B-213800, B-213800.2 Dec. 21, 1983 84-1 CPD 12
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY

Under 15 U.S.C. 637(b)(7), SBA has authority to issue or deny certificate of competency and GAO will not review SBA determination absent prima facie showing of fraud or willful disregard of facts.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not consider allegation that firm is not small business eligible for set-aside award since conclusive authority to decide matters concerning small business' size status is vested with SBA.

B-210406.2 Dec. 22, 1983 84-1 CPD 13
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISTRICT
OF COLUMBIA PROCUREMENTS

Protest of District of Columbia procurement for lease of public space under Dupont Circle is dismissed because D.C. Law 1-4 (May 22, 1975) grants Mayor of District broad discretion in setting procurement procedures.

B-213877 Dec. 22, 1983 84-1 CPD 14
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative responsibility determination except in limited circumstances not present here.

B-210654 Dec. 23, 1983 84-1 CPD 15
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Solicitation for custodial services was properly canceled where provision of Joint Continuing Resolution of Dec. 21, 1982, prohibited the GSA from contracting out for services contemplated by portion of solicitation and term of existing contract for remainder of work encompassed 6 months of performance period covered by solicitation.

BIDS--PREPARATION--COSTS--NONCOMPENSABLE--INVITATION PROPERLY
CANCELED

Protester is not entitled to bid preparation costs where agency makes reasonable determination to cancel solicitation after bid opening, even if part of information forming basis of decision to cancel was available to contracting officer prior to bid opening, where there is no indication that agency acted in bad faith.

B-210667 Dec. 23, 1983 84-1 CPD 16
BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
COMFORMABILITY OF EQUIPMENT, ETC. OFFERED

Although shipping information (forklift truck weight and dimensions) exceeded specification limitations, bid could properly be accepted as responsive since shipping data may reflect use of blocking and bracing materials as well as truck itself and other circumstances indicated bidder did not intend to qualify its bid.

B-212318 Dec. 23, 1983 84-1 CPD 17

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
POINT RATING--PROPRIETY OF EVALUATION*

Solicitation indicated that technical rating was more important than price. Agency determined that highest technically rated and second technically rated offerors were essentially equal and awarded to second technically rated offeror on basis of price. Third technically rated offeror (who submitted lowest price) protests that technical difference between all three proposals was insignificant and award should have been made to it on basis of price. Protest is denied because there was rational basis for agency's determination that protester's proposal was not technically equal to other two proposals.

CONTRACTS--SUBCONTRACTS--CONFLICTS OF INTEREST

Former agency employee assisted awardee in preparation of proposal and will perform as subcontractor for awardee. Project officer indicates that former employee (former chief of procuring section) had been asked, prior to departure from agency, to review solicitation package. Solicitation was issued after former employee departed agency. Protester has not shown that award was inconsistent with conflict of interest regulations.

B-212858 Dec. 23, 1983 84-1 CPD 18

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against omission of required clauses under RFP is untimely because it was not filed before closing date for receipt of initial proposals.

B-212858 Dec. 23, 1983 84-1 CPD 18 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Protest from firm not in line for award if protest is upheld is dismissed because protester does not have requisite direct and substantial interest with regard to award to be considered as "interested party" under GAO Bid Protest Procedures.

B-213488 Dec. 23, 1983 84-1 CPD 19
CONTRACTS--PAYMENTS--SURETY OF DEFAULTED CONTRACTOR--
ENTITLEMENT

Miller Act performance and payments bonds surety may be reimbursed from retainages under defaulted contract once surety submits reasonable evidence that all outstanding claims of laborers and materialmen have been paid.

B-213552 Dec. 23, 1983 84-1 CPD 20
BIDDERS--QUALIFICATIONS--CERTIFICATIONS--FAILURE OF BIDDER
TO COMPLETE--MINOR INFORMALITIES--WAIVER

Bidder's certification that product offered is from nondesignated country may be waived as minor informality where bidder under delivery terms of IFB provided binding commitment that it would deliver material mined in Rwanda, a designated country. Mistaken certification does not reserve bidder right to elect to provide material from nondesignated country.

B-209166.2 Dec. 27, 1983 84-1 CPD 21
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Contracting agency met requirement that meaningful discussions be held with all offerors in competitive range where it asked questions concerning deficiency in protester's proposal and it permitted protester to revise its proposal to correct deficiency.

B-209166.2 Dec. 27, 1983 84-1 CPD 21 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED--PERFORMANCE
SPECIFICATIONS

Resource Consumption Routine (RCR) that does not measure and print out all resource elements which company's billing algorithm uses to compute charges to Govt. does not meet solicitation requirement for RCR that requires output of each unique resource element for which charge is made.

B-210647.2 Dec. 27, 1983 84-1 CPD 22
BIDS--LATE--REJECTION--PROPRIETY

Where protester has failed to show that executed copy of solicitation was received by procuring agency by bid opening date or that exception for receipt of late bids applies, procuring agency properly rejected executed copy as late.

BIDS--PREPARATION--COSTS--NONCOMPENSABLE

Claim for bid preparation costs is denied where there is no showing that Govt. acted arbitrarily or capriciously in rejecting bid.

BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER TO
MEET ALL SOLICITATION TERMS

Telegraphic bid which, contrary to solicitation requirement, makes no mention of bidder's agreement to be bound by all terms and conditions of solicitation is nonresponsive.

CONTRACTS--PROFITS--ANTICIPATED

Claim for loss of profits, legal expenses, and costs incurred in obtaining and retaining additional equipment in preparation for award is denied since no legal basis exists which authorizes such recovery.

B-211240 Dec. 27, 1983 84-1 CPD 23
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION

Protester, supplier of mass storage devices, lacks requisite interest to protest agency requirement for MVS/XA operating system where protester is affected only indirectly by requirement and parties directly affected fail to file timely protests.

EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--TOTAL PACKAGE BASIS V. COMPONENT BREAKOUT--
ADMINISTRATIVE DETERMINATION

Decision to procure mass storage devices as part of total system procurement, based on requirement for contractor to be responsible for total system integration and installation, is reasonable, notwithstanding Navy's recitation of additional questionable bases for decision.

B-211511 Dec. 27, 1983 84-1 CPD 24
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED

Claim for proposal preparation costs is denied where there is no showing that Govt. acted arbitrarily or capriciously in rejecting proposal.

CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR
PROPOSALS--DISCUSSIONS WITH ALL OFFERORS REQUIREMENT--
DISCUSSIONS NOT REQUIRED

Procuring activity's rejection of technical proposal under first step of two-step procurement was proper where procuring activity did not hold discussions with offeror prior to rejection of proposal because procuring activity determined proposal not to be reasonably susceptible of being made acceptable in view of fact that offeror proposed software programming language other than those required by specifications and clarification thereto.

B-211511 Dec. 27, 1983 84-1 CPD 24 - Con.
CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--
EVALUATION--TECHNICAL ACCEPTABILITY

Procuring activity properly determined awardee's technical proposal to be acceptable where mandatory requirements in solicitation were clarified in amendment to solicitation to permit offerors to propose "seek times" in excess of those allowed by requirements as long as offeror's system resulted in acceptable equivalent performance taking into consideration other compensating factors.

B-212410.2 Dec. 27, 1983 84-1 CPD 25
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
IN-HOUSE GOVERNMENT PERFORMANCE

Cancellation of RFP issued in accordance with OMB Circular A-76 was justified where agency adjusted its in-house estimate to reflect scope of work specified in RFP and adjusted estimate was lower than any proposal.

B-212518 Dec. 27, 1983 84-1 CPD 26
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR EQUAL--
"EQUAL" PRODUCT EVALUATION--SALIENT CHARACTERISTICS NOT MET

Where "equal" item does not conform to salient characteristics of brand name product, bid must be rejected as nonresponsive. Although protester believes agency should have sought verification, bidder cannot cure defect because bidder's intent to comply with specifications must be determined at bid opening from face of bid.

B-212590 Dec. 27, 1983 84-1 CPD 27
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--RULE--
EXCEPTIONS--APPLICABILITY

Proposal that is misaddressed, and thus arrives at proper location late because it was routed through routine mail processing system at wrong location, does not fall within any exception to requirement that late proposals be rejected.

B-212590 Dec. 27, 1983 84-1 CPD 27 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--DEFICIENT--
MAILING ADDRESS

Where some of solicitation's instructions as to proper mailing address for proposals are illegible, offeror has duty to clarify matter and purchasing agency will not be held responsible for fact that offeror misaddressed its proposal.

B-213046 Dec. 27, 1983 84-1 CPD 28
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Contracting agency has primary responsibility for determining its minimum needs and GAO will not question agency's decisions concerning best methods of accommodating its needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. GAO finds that protester has failed to establish unreasonableness of protested solicitation provision requiring successful offeror to furnish qualification hardware for approval testing within 90 days from date of award.

CONTRACTS--REQUIREMENTS--REQUIREMENTS V. INDEFINITE QUANTITY--
ADMINISTRATIVE DETERMINATION

GAO finds no merit in protester's challenge to agency's not guaranteeing minimum order in requirements solicitation on grounds that contractor has to assume maximum amount of risk unless there is some assurance of receiving minimum order. It is within ambit of administrative discretion to offer to competition a proposed contract imposing maximum risks upon contractor and minimum administrative burdens on agency.

B-213320 Dec. 27, 1983 84-1 CPD 29
BIDS--AGGREGATE V. SEPARABLE ITEMS, PRICES, ETC.--FUNDS
AVAILABILITY

Although agency erroneously recorded \$400,000 as amount available to fund construction contract, agency in fact had determined prior to bid opening

that only \$357,149 was actually available. Award to bidder who, although not low for base bid and all additives, was low for base and two additives which was most agency could purchase with funds actually available, was proper.

*B-213752 Dec. 27, 1983 84-1 CPD 30
BIDS--COMPETITIVE SYSTEM--EQUAL BIDDING BASIS FOR ALL BIDDERS--
INCUMBENT'S ASSISTANCE*

Protest that competitor had unfair competitive advantage because incumbent contractor assisted it by helping to prepare its proposal, by providing information not available to others, and by denying others access to key personnel is dismissed because private business firms are not required to assist other firms not of their own choosing to prepare proposals simply because they are incumbent Govt. contractors.

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
REJECTION PROPRIETY*

Proposal revision received after date set in solicitation for receipt of proposals offering a substitute for one of offeror's key personnel who died while agency was evaluating proposals need not be considered despite contracting officer's alleged oral agreement to contrary because such oral extensions of submission date for proposals are not binding upon Govt., because no changes were made in offeror's score after agency was advised that proposed individual was no longer available, and because offeror otherwise suffered no discernible prejudice.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that agency did not provide offerors with sufficient guidelines as to extent they could subcontract to large businesses without disqualifying themselves for award of small business set-aside concerns alleged impropriety in solici-

tation which must be filed prior to due date for receipt of initial proposals. Protest filed several months later is untimely.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protest concerning small business size status of concern will not be considered by GAO since conclusive authority for size status determinations is vested in SBA.

B-210275.2 Dec. 28, 1983 84-1 CPD 31

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

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

FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE AUTHORITY

Firm's recourse to contracting agency documents that allegedly support its position, but which it has not been able to secure from that agency, is to pursue disclosure remedies provided in Freedom of Information Act. Moreover, GAO has no authority under that act to determine what information other agencies must disclose.

B-211868.2 Dec. 28, 1983 84-1 CPD 32

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROPRIETARY DATA ISSUES

Prior decision holding that non-exclusive licensee is not interested party to protest alleged Govt. misuse of proprietary data is affirmed where protester has not demonstrated error of fact or law.

B-213273 Dec. 28, 1983 84-1 CPD 33
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--TWO-STEP PROCUREMENT--SOLICITATION
IMPROPRIETIES-STEP TWO

Protest filed after bid opening with respect to evaluation criteria set forth in second step of two-step formally advertised procurement is untimely under GAO's Bid Protest Procedures, which require such protests to be filed prior to bid opening.

B-213576 Dec. 28, 1983 84-1 CPD 34
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination of responsibility except in limited circumstances.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in solicitation is dismissed as untimely when filed after bid opening because GAO Bid Protest Procedures require filing prior to bid opening.

B-213910 Dec. 28, 1983 84-1 CPD 35
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED

Agency properly rejected bid as nonresponsive where bidder failed to complete required certification that components of offered items would be obtained from only approved sources as set forth in IFB.

B-213920 Dec. 28, 1983 84-1 CPD 36
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Since SBA is vested with conclusive authority to determine whether concern qualifies as small business, GAO will not review protests of concern's small business size status.

B-212735.2 Dec. 29, 1983 84-1 CPD 37
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY
MATTERS--NOT FOR GAO REVIEW

Determination under OMB Circ. No. A-76 to contract for services rather than have them performed in-house is matter of executive branch policy not reviewable pursuant to bid protest filed by union local representing Federal employees.

B-213394 Dec. 29, 1983 84-1 CPD 38
CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST
NOT FOR CONSIDERATION ON MERITS

GAO need not grant request for conference where protest is clearly not reviewable by GAO and may be dismissed under 4 C.F.R. 21.3(g) (1983). 55 Comp. Gen. 280, distinguished.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Protest by third low bidder that second low bid should be rejected as materially unbalanced is dismissed since protester would not be in line for award if its protest is upheld and is thus not interested party under GAO Bid Protest Procedures. 55 Comp. Gen. 280, distinguished.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Protest that awardee obtained confidential information pertaining to protester's performance costs and projected profits from protester's certified public accountants and insurance company is allegation concerning private improper business practices which is not for consideration under GAO Bid Protest Procedures. 55 Comp. Gen. 280 distinguished.

B-213715 Dec. 29, 1983 84-1 CPD 39

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed with GAO more than 10 working days
after receipt by protester of contracting
officer's denial of its protest to contracting
agency is untimely and not for consideration.

B-213875 Dec. 29, 1983 84-1 CPD 40

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Question of whether contracting officer is
following proper reimbursement rate during
option period of contract concerns matter of
contract administration, which is contracting
agency's responsibility, not GAO's.

B-213905 Dec. 29, 1983 84-1 CPD 41

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Protest of agency decision to award contract under section
8(a) of Small Business Act is not for consideration by GAO
in absence of showing of possible fraud or bad faith on
part of Govt. officials or failure by agency officials to
follow applicable regulations.

B-206641.2, et al. Dec. 30, 1983 84-1 CPD 42

BIDS--INVITATION FOR BIDS--CANCELLATION--REINSTATEMENT--
RECOMMENDED BY GAO--FACTORS CONSIDERED

Recommended cancellation of solicitation and resolicitation
of requirement is rescinded where GAO is advised in agency
request for reconsideration that at time of issuance of
its decision sustaining protest, construction on project
already was substantially completed; corrective action
under these circumstances is impracticable.

*B-206641.2, et al. Dec. 30, 1983 84-1 CPD 42 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--JUSTIFICATION--FORMAL DOCUMENTATION*

GAO will not assume that plastic conduit is unsuitable for particular site conditions where nothing in record supports such conclusion, and argument on reconsideration that GAO should have made this assumption.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--UNDUE
RESTRICTION*

Decision holding that insulation specification was unduly restrictive is affirmed where agency requests reconsideration based on fact that specification was not restricted to single type of insulation, since decision was based on unjustified exclusion of insulation used by protester, not fact that only one kind of insulation was acceptable.

*B-211160 Dec. 30, 1983 84-1 CPD 43
PAYMENTS--QUANTUM MERUIT/VALEBANT BASIS--ABSENCE, ETC. OF
CONTRACT--GOVERNMENT ACCEPTANCE OF GOODS/SERVICES--BENEFIT
TO GOVERNMENT REQUIREMENT*

Supplier to sec. 8(a) business concern claims that the SBA failed to properly perform duty, created by enforceable promises, to monitor and manage special bank account which contained advance payments extended by SBA to 8(a) concern. As result, claimant has been unable to collect the \$488,000 it is owed by 8(a) firm for supplies used to perform 8(a) subcontract. Claim is denied because statements by SBA which allegedly constitute enforceable promises were made in connection with advance payments made on three previous occasions, not to particular advance payment to which supplier now claims right.

*B-211900 Dec. 30, 1983 84-1 CPD 44
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

GAO's examination of Govt.'s determination of its minimum needs is only to ascertain whether procuring agency's evaluations and conclusions are reasonable. Record

shows that procuring agency's need for brand name computer equipment to run agency's automated procurement system was reasonable.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

Protest contending that brand name manufacturer of computer equipment specified in solicitation created sole-source procurement by refusing to furnish such equipment to protester relates to matter which GAO will not consider under its protest function.

B-213724 Dec. 30, 1983 84-1 CPD 45

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest against awardee's ability to comply with solicitation requirements concerns matter of responsibility which GAO does not generally review.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether solicitation requirements are met during performance of contract is matter of contract administration which GAO will not consider.

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