



133239

UNITED STATES GENERAL ACCOUNTING OFFICE

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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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

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

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

November 1986

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-223840 Nov. 5, 1986

Disbursing Officers

Illegal/Improper Payments

Liability Restrictions

Statutes of Limitation

Under 31 U.S.C. 3526(c), once the 3-year statutory period has expired an accountable officer can no longer be financially liable for an improper payment and as such there is no need for our Office to consider whether or not to grant relief.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing Officers

Relief

Account Deficiency

GAO Authority

Although the running of the statute of limitations does not extend to the amount restored to an account, we are without the authority to reimburse the accountable officer for a deficiency in her account that she has paid for where the deficiency was the result of an illegal, improper or incorrect payment.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-222392 Nov. 12, 1986

Disbursing Officers

Relief

Illegal/Improper Payments

Forgeries

Army Finance and Accounting Officer is not relieved of liability for improper payment made by unidentified subordinate who cashed a check with forged endorsements because the record does not contain the evidence needed to show that the officer maintained and monitored a system with adequate controls to prevent losses of this type from occurring.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Liability

Statutes of Limitation

Effective Dates

Illegal/Improper Payments

When an improper payment is made by an accountable officer who cashes a check with forged endorsements, the 3-year statute of limitations set forth in 31 U.S.C. § 3526(c) does not begin to run until the command has received a debit voucher from the Treasury Department or other information explaining why the payment was improper.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-223372 Nov. 12, 1986**
Certifying Officers
Criteria
Determination

Army official who signs her name to an SF 1180 as deputy to Finance Officer is certifying official on that document which is used to initiate substitute check from Treasury. Finance officer who did not sign name is not certifying official.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

Army certifying official who mistakenly assumed that Treasury would use other information to issue substitute check was responsible for loss resulting from issuance of substitute check based on her SF 1180 certification that checks nos. \$53,000 rather than \$550, the amount of the original check. This Office is not authorized to grant relief where as here certifying official knew certificate was erroneous.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225109 Nov. 12, 1986
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

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

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225128 Nov. 13, 1986
Certifying Officers
Relief
Illegal/Improper Payments
Substitute Checks

Relief is granted Army Finance and Accounting official under 31 U.S.C. § 3528 from liability for certification of improper payment resulting from payee's negotiation of both original issued Army instrument and substitute Treasury check. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute check.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-221447 Nov. 21, 1986

Relief

Physical Losses

GAO Decisions

Reconsideration

Request for reconsideration by Veterans Administration of decision denying relief of accountable officer for unexplained loss of patient funds from two part drop safe is denied where new information does not provide the type of affirmative evidence, lacking in the initial request, sufficient to rebut presumption of negligence raised by shortage.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-223253 Nov. 21, 1986

Torts

Government Liability

In this letter, we respond to a claim filed against the General Accounting Office (GAO) under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671-2680 (1982) allegedly resulting from work performed at the Rockwell International Rocky Flats Plant in Colorado. The claim was based upon GAO's failure to provide adequate supervision. We respond that GAO has no such duty; the extent of GAO's authority as relevant here is to conduct audits and evaluations, and issue reports. See 31 U.S.C. §§ 712, 717, and 3523 (1982).

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-223004 Nov. 3, 1986

Relocation

Residence Transaction Expenses

Reimbursement

Eligibility

Property Titles

The employee is not entitled to real estate selling expenses since he had not acquired an interest in the property prior to the time he was first definitely notified of his transfer, as required by the travel regulations. Before notice of the transfer, neither he nor an immediate family member held title to the residence, and he had only an informal arrangement with his in-laws to purchase under indefinite terms as to price and time of purchase.

CIVILIAN PERSONNEL

B-223053 Nov. 10, 1986

Travel

Temporary Duty

Per Diem Rates

Amount Determination

Two employees on official business in Reading, England, resided in London because they claimed only minimal lodging was available in Reading. Their per diem reimbursement is limited to the per diem rate for Reading since there is no evidence that suitable lodgings were unavailable in that locality.

CIVILIAN PERSONNEL

B-224590 Nov. 10, 1986

Travel

Travel Expenses

Air Carriers

Liquidated Damages

Government Rights

An employee is not entitled to retain liquidated damages (denied boarding compensation) paid to him by a commercial airline for the inconvenience and delay resulting from denial of a reserved seat for official travel. Such compensation belongs to the Government.

CIVILIAN PERSONNEL

B-222704 Nov. 12, 1986

Compensation

Compensation Retention

Administrative Regulations

CIVILIAN PERSONNEL

Compensation

Grade Retention

Administrative Regulations

GAO Personnel requests review of draft Order concerning grade and pay retention procedures. We have no legal objections to the draft Order with the following changes. We recommend that a paragraph be inserted to explain appeal procedures which are available for (1) reclassification actions, (2) RIF actions, and (3) actions where grade retention is not available. We also recommend that these regulations reflect the recent change in OPM regulations to preclude grade or pay retention incident to a statutory reduction in pay.

Relocation**Residence Transaction Expenses****Reimbursement****Eligibility****Voluntary Separation**

An employee, transferred in the interest of the government, executed a 12-month service agreement. Pursuant to regulation, she had 2 years from the date she reported for duty at her new station (August 8, 1983) to sell her residence at her old duty station and purchase a residence at her new duty station. She voluntarily separated from government service 13 months after reporting to her new duty station. Subsequent to her separation but within 2 years of her reporting date, she sold her old residence and purchased a new one and claims expense reimbursement. On question of whether her voluntary separation alters her reimbursement rights, the answer is no. So long as an employee performs a minimum of 12 months continuous service following transfer, such conditional rights as she has to real estate expense reimbursement pursuant to a service agreement became vested 12 months later, subject only to the maximum time limitation within which such expenses must be incurred.

CIVILIAN PERSONNEL**B-224088 Nov. 17, 1986****Travel****Foreign Service Personnel****Federal Travel Regulations****Travel Modes****Vessels**

For Foreign Service Employees engaged in surface transportation between points of departure and destination separated by oceans the use of foreign-flag vessels is restricted by section 901 of the Merchant Marine Act of 1936, 46 U.S.C. § 1241(a) (1982) which requires use of ships registered under the laws of the United States, where such ships are available, unless the necessity of the mission requires use of a ship under a foreign flag. However, since no U.S.-registered ships have been available for some time, foreign-flag vessels may be considered for use subject to further restrictions in 6 FAM § 133.2 which allows use of a foreign-flag ship only when the use of air transportation would be a health hazard or when payment can be made through use of excess foreign currency.

CIVILIAN PERSONNEL**B-224906 Nov. 17, 1986****Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****Time Restrictions**

Under paragraph 2-6.1e of the Federal Travel Regulations, a transferred employee has 3 years (including a 1-year extension) from the date of reporting at his new duty station in which to incur real estate transaction expenses in order to qualify for reimbursement of real estate purchase or sale expenses. Where closing on purchase of new residence was delayed pending outcome of lawsuit seeking rescission of purchase contract, employee exceeded 3-year period and may not be reimbursed since neither his agency nor the Comptroller General may waive the 3-year period provided for by this regulation.

CIVILIAN PERSONNEL**B-222338 Nov. 25, 1986****Relocation****Miscellaneous Expenses****Reimbursement****Rates****CIVILIAN PERSONNEL****Relocation****Temporary Quarters****Actual Subsistence Expenses****Reimbursement****Deadlines**

Under the Federal Travel Regulations, claims by transferred Government employees for temporary quarters subsistence expenses must be for a period beginning no later than (1) 30 days after they report for duty at their new duty station or (2) 30 days after they vacate their permanent residence at their old duty station, whichever is later. In this case, a transferred employee vacated his residence at his old duty station in Biloxi, Mississippi, and subsequently reported for duty at his new station in Richmond, Virginia, on April 9, 1980. He may not be allowed temporary quarters subsistence expenses commencing on July 13, 1980, based on a visit made by his estranged wife to Richmond beginning on that date, since by then the eligibility period prescribed by regulation for such expenses had elapsed. In addition, he is not entitled to miscellaneous relocation expenses at the "immediate-family" rate of \$200 because his wife was not in his household.

CIVILIAN PERSONNEL**Relocation****Temporary Quarters****Determination****Criteria****B-222338 Con't****Nov. 25, 1986**

An employee rented a room in the Veterans Administration hospital where he worked following his transfer from Biloxi, Mississippi, to Richmond, Virginia, in 1980. He continued the rental during his entire stay at the new duty station, and his claim for temporary quarters subsistence expenses based on his occupancy of the room was initially denied because it appeared that the room had been his permanent residence rather than temporary quarters. He has produced new evidence that after occupying the room from April 9 to August 11, 1980, he moved into a permanent residence to which he transported his household goods from temporary storage, and that he kept the room at the hospital thereafter simply for occasional use. Consequently, in these particular circumstances the rented room may be considered to be temporary quarters rather than a permanent residence, and he is eligible for 30 days' temporary quarters subsistence expenses beginning within 30 days of April 9, 1980, when he reported for duty at the new duty station and began occupancy of the room.

CIVILIAN PERSONNEL**B-223112 Nov. 25, 1986****Relocation****Residence Transaction Expenses****Additional Expenses****Reimbursement****Eligibility**

A transferred employee sold his residence at his old duty station and was reimbursed for his authorized expenses. Due to market conditions, the employee had to take back a mortgage to facilitate the sale. Nearly a year later when the new owner defaulted on payments, the employee foreclosed, regained legal title and then resold the property. He now claims additional expenses for the resale. The claim is denied. We have held that para. 2-6.1 of the Federal Travel Regulations permits reimbursement for only one set of authorized expenses relating to one sale of a residence and one purchase of a residence. Since the expenses of a sale were paid, the resale expenses of a resale may not be paid. Douglas D. Walldorff, 57 Comp. Gen. 669 (1978).

CIVILIAN PERSONNEL**B-223872 Nov. 25, 1986****Travel****Medical Emergencies****Travel Expenses****Reimbursement**

Employee on temporary duty travel may be reimbursed costs of medically necessitated air ambulance transportation services for herself and infant son prematurely born during employee's temporary duty assignment. The Government may absorb these costs under 5 U.S.C. § 5702(b) and para. 1-2.4 of the Federal Travel Regulations, which provide that an employee, incapacitated by illness or injury not due to his own misconduct while on official travel away from his duty station, is entitled to per diem and "appropriate transportation expenses" to his designated post of duty. We construe the term "appropriate transportation expenses" to be broad enough to authorize payment of the air ambulance transportation expenses essential for the safe return of the newborn child to the duty station.

CIVILIAN PERSONNEL**B-217044 Nov. 28, 1986****Compensation****Retroactive Compensation****GAO Decisions****Reconsideration**

The denial of a former Federal employee's claim for additional backpay because of a procedurally defective removal from a position is affirmed since the employee has not met his burden of demonstrating that the original decision should be reversed due to an error of law or fact. The employee was removed from a position reserved for local nationals in the Philippines after he became a U.S. citizen. He moved to the U.S.A. less than 3 months later. The Merit Systems Protection Board determined that he should have been provided with a 60-day notice period under reduction-in-force procedures prior to his removal, and he was awarded backpay on that basis. The case record demonstrates that additional backpay is not warranted because of several factors, including the fact that the employee was not available for work and, moreover, there was no position for which he qualified as a U.S. citizen even if he had been available.

CIVILIAN PERSONNEL**B-223644 Nov. 28, 1986****Relocation****Foreign Service Personnel****Home Service Transfer Allowances****Amount Determination**

Foreign Service Officer with Agency for International Development authorized to travel from Naples, Italy, to Washington, D.C., in June 1982, was authorized a home service transfer allowance (HSTA) covering the period of his stay in Washington, D.C., in contemplation of further reassignment to an overseas post. Employee may be paid HSTA for the period his dependents stayed in Ocean City, Maryland, limited to the maximum allowable period of 30 days and computed on the basis of the statutory per diem rate of \$50.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-223425 Nov. 3, 1986

Pay

Variable Housing Allowances Eligibility

A Marine Corps member was stationed at Camp Lejeune, North Carolina. Cost-free government quarters were available to him there, and he was not eligible for a variable housing allowance (VHA). He traveled to Chicago, Illinois, where he spent 7 days in a leave status awaiting his final discharge. The applicable statute authorizes payment of VHA to service members "assigned to duty" in a high housing cost area in the United States; the allowance may not be paid on the basis of a service member's election to go to a high housing cost area for the purpose of taking leave rather than fulfilling a duty assignment.

MILITARY PERSONNEL

B-223704 Nov. 25, 1986

Pay

Payroll Deductions Underdeductions Waiver Deadlines

A Coast Guard member incurred a debt to the United States when payroll deductions were not made between 1975 and 1977 for bonds he received through a savings bond program. This discrepancy was discovered in 1977 and partially corrected with his consent in an installment repayment plan, but the debt was not completely paid under this plan at the time of his discharge from the Coast Guard in 1978. After his discharge he made no further payments toward the satisfaction of his debt. His application for waiver of the remaining indebtedness, first submitted to the Coast Guard in 1984, is precluded from consideration under the provisions of the waiver statute, 10 U.S.C. § 2774, since the date of discovery of the overpayment occurred more than 3 years before the receipt of the application for waiver.

MILITARY PERSONNEL**B-222678 Nov. 28, 1986****Pay****Personnel Death****Balances****Payees****Spouses**

Where Navy member marries a second wife without dissolving his first marriage, his first wife is his legal widow on the date of his death and is entitled to the balance of his unpaid military retired pay.

MILITARY PERSONNEL**B-224142 Nov. 28, 1986****Pay****Retirement Pay****Increase****Eligibility****Criteria**

Two retired officers of the Air Force were advanced from the grade of lieutenant general to general on the retirement lists. When retired service members are advanced in grade on the retirement lists, their retired pay may not be recalculated to reflect their advancement in the absence of statutory authority directing a recalculation. In this case, there does not appear to be an Act of Congress authorizing a recalculation of the officers' retired pay, nor does it appear that an increase in their pay was ever intended to result from their advancement on the retirement lists. In these circumstances the Comptroller General is unable to conclude that they are eligible for an increase in the rate of their retired pay.

PROCUREMENT

PROCUREMENT

B-223594.2 Nov. 3, 1986

Sealed Bidding

86-2 CPD 510

Bid Guarantees

Responsiveness

Invitations for Bids

Identification

Prior decision, holding that a bid bond which refers to another solicitation number is materially defective and requires rejection of the bid as nonresponsive, in the absence of other objective evidence on the face of the bond clearly establishing that the bond was intended to cover the bid with which it was actually submitted, is affirmed. In general, the correct bid date on the bond, by itself, is not sufficient to overcome the presence on the bond of the solicitation number for a different on-going procurement.

PROCUREMENT

B-224026 Nov. 3, 1986

Sealed Bidding

86-2 CPD 511

Bids

Responsiveness

Additional Work/Quantities

Price Omission

PROCUREMENT

Sealed Bidding

Invitations for Bids

Amendments

Additional Work/Quantities

Acknowledgment

Low bid that failed to state a separate price for items added by an amendment properly was rejected as nonresponsive where the government's estimated cost of the added items is more than the difference between the two lowest bids. Even though award was on a lump-sum basis, the mere acknowledgment of the amendment without stating a price for the additional items created doubt as to the intended price of the items and whether the bidder obligated itself to provide those items.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration

B-224064.2 Nov. 3, 1986
86-2 CPD 512

Request for reconsideration is dismissed where protester largely reiterates arguments earlier made in opposition to the proposed dismissal of its protest for failure to provide a copy of the protest to the contracting officer, and where protester does not convincingly show an error of law or fact warranting reversal of original decision.

PROCUREMENT
Bid Protest
GAO Procedures
Interested Parties
Direct Interest Standards

B-224208 Nov. 3, 1986
86-2 CPD 513

Protest is dismissed because protester is not an interested party under GAO's Bid Protest Regulations where protester, third low bidder, would not be in line for award should its protest against low bid be sustained, given that protester has not protested against any possible award to second low bidder.

PROCUREMENT **B-224504; B-223938**
Competitive Negotiation **Nov. 3, 1986**
Offers **86-2 CPD 514**
Competitive Ranges
Exclusion
Administrative Discretion

PROCUREMENT
Competitive Negotiation
Offers
Organizational Experience
Evaluation
Evidence Sufficiency

When proposal fails adequately to describe experience of key personnel and corporation under prior contracts or to relate that experience to the work to be performed under the protested contract, agency's elimination of offeror from the competitive range, without discussions, is not unreasonable.

PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Discussion

Agency has no obligation to conduct discussions with an offeror whose initial proposal is either technically unacceptable or so deficient in information that it is not reasonably susceptible of being made acceptable without major revisions.

PROCUREMENT

B-224504; B-223938 Con't

**Competitive Negotiation
Offers**

Nov. 3, 1986

Evaluation

Technical Acceptability

When an in camera review of an agency's technical evaluation, which concluded that the protester's proposal was technically unacceptable, shows that evaluation was reasonable and consistent with solicitation's evaluation scheme, the General Accounting Office will deny the protest. Agency's use of evaluation subfactors such as recentness of experience is proper when the subfactors are reasonably related to or encompassed by stated evaluation criteria, read together with the statement of work and specific experience requirements in the solicitation.

PROCUREMENT

Competitive Negotiation

Requests for Proposals

Cancellation

Resolicitation

Propriety

Cancellation of request for proposals set aside for small business and resolicitation on unrestricted basis is proper where all small business proposals are found technically unacceptable.

PROCUREMENT
Bid Protest
Conferences
Justification

B-222476.3 Nov. 4, 1986
86-2 CPD 515

Request for an administrative conference will not be granted in connection with a decision on reconsideration where the request should have been made during the original protest proceedings in accordance with the General Accounting Office's Bid Protest Regulations and where a conference clearly would serve no useful purpose.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration

Prior decision is reaffirmed where protester's second request for reconsideration advances no new arguments why the prior decision should be reversed or modified.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration
Additional Information

B-223033.2 Nov. 4, 1986
86-2 CPD 516

Arguments raised by the protester in its request for reconsideration do not show that prior decision, upholding agency's determination that protester was nonresponsible due to inadequate finances, was erroneous.

PROCUREMENT
Bid Protest
GAO Procedures
Preparation Costs

B-223033.2 Con't
Nov. 4, 1986

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Claim for costs is denied where General Accounting Office affirms decision denying protest.

PROCUREMENT
Bid Protest
Moot Allegation
GAO Review

Since a proper finding by the agency that the protester lacked adequate finances to perform the contract work by itself justifies a determination of nonresponsibility, it would be academic to consider the propriety of other independent findings which themselves would support a determination of nonresponsibility.

PROCUREMENT
Bid Protest
GAO Procedures
Preparation Costs

B-223999 Nov. 4, 1986
86-2 CPD 517

PROCUREMENT
Competitive Negotiation
Offers
Preparation Costs

Protester is not entitled to recover proposal preparation costs or costs of filing and pursuing protest where protest is found to be without merit.

PROCUREMENT

B-223999 Con't

Competitive Negotiation

Nov. 4, 1986

Best/Final Offers

Evaluation Errors

Allegation Substantiation

Evidence Sufficiency

There is no basis to question contracting agency's technical evaluation where protester fails to provide any specific support for general contention that its technical proposal should have received a higher score.

PROCUREMENT

Competitive Negotiation

Contract Awards

Administrative Discretion

Cost/Technical Tradeoffs

Technical Superiority

Contracting agency's selection of higher priced, higher rated offeror is proper where request for proposals provided that technical factors were more important than cost and protester provides no evidence to show price/technical tradeoff was unreasonable.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting Officer Findings

Affirmative Determination

GAO Review

General Accounting Office will not consider protester's challenge to contracting agency's affirmative responsibility determination where protester makes only general, unsupported allegation that awardee may not be a responsible contractor.

PROCUREMENT	B-223157.2 Nov. 5, 1986
Bid Protest	86-2 CPD 518
GAO Procedures	
Protest Timeliness	
10-Day Rule	
Reconsideration Motions	

Request for reconsideration filed more than 10 days after the basis for reconsideration was known or should have been known is untimely.

PROCUREMENT	B-224254.2 Nov. 5, 1986
Contract Disputes	86-2 CPD 519
GAO Review	

PROCUREMENT
Contract Management
Contract Administration
Options
Use
GAO Review

Protest that the contracting agency should have exercised an option in the protester's contract rather than employing civil servants to perform the services and that the contracting agency's failure to do so constituted interference with the protester's performance of its existing contract does not involve the question of an illegal or improper award or proposed award and is therefore inappropriate for resolution under the General Accounting Office bid protest function.

PROCUREMENT
Bid Protest
GAO Procedures
Interested Parties
Direct Interest Standards

B-224330 Nov. 5, 1986
86-2 CPD 520

Protest by the third-low offeror against award to the low offeror is dismissed, since second-low offer was found technically acceptable and protester, who has not contested that finding, thus would not be next in line for award if its protest were sustained.

PROCUREMENT
Sealed Bidding
Bids
Error Correction
Pricing Errors
Line Items

B-224412 Nov. 5, 1986
86-2 CPD 521

Bid may be corrected to reallocate line item prices where there is clear and convincing evidence that bidder correctly computed total price (which is unchanged by correction) but erred in allocating price to individual line items.

PROCUREMENT
Contract Management
Contract Administration
Convenience Termination
Propriety
GAO Review

B-224816.2 Nov. 5, 1986
86-2 CPD 522

Protest alleging that termination of a contract because the award was based upon an improper evaluation factor will result in hardship to it is dismissed where the contractor does not allege that the initial award in fact was proper or that the corrective action is insufficient to protect the integrity of the competitive procurement system.

B-224937 Nov. 5, 1986
86-2 CPD 523

Protest against award to another firm is dismissed as academic where the contract has been terminated for the convenience of the government because the agency determined the solicitation improperly restricted competition.

B-225063 Nov. 5, 1986
86-2 CPD 524

Where bidder certifies in accordance with the Buy American Act that it intends to supply a domestic product, whether firm complies with its obligation to do so in performing the contract is a matter of contract administration, which the General Accounting Office does not review.

B-225431 Nov. 5, 1986
86-2 CPD 525

Protest is dismissed where the protester fails to file a copy of its protest with the contracting officer within 1 day after filing with the General Accounting Office as required by the Bid Protest Regulations.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule

B-223982.3 Nov. 6, 1986
86-2 CPD 526

Dismissal of protest as untimely is affirmed where record establishes that protest was filed more than 10 working days after basis for it was known.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule
Effective Dates

Protest based entirely on information received pursuant to Freedom of Information Act request or learned during a debriefing will be considered timely if filed within 10 working days after the protester's receipt of the information.

PROCUREMENT	B-224326.2	Nov. 6, 1986
Bid Protest	86-2	CPD 527
GAO Procedures		
GAO Decisions		
Reconsideration		

PROCUREMENT
Socio-Economic Policies
Small Businesses
Responsibility
Negative Determination
GAO Review

Prior dismissal of a small business protest is affirmed where request for reconsideration seeks GAO review of contracting officer's nonresponsibility determination which has been referred to the Small Business Administration (SBA) for consideration under certificate of competency procedures under which SBA has exclusive authority to determine a small business's responsibility.

PROCUREMENT	B-224457; B-224020
Bid Protest	Nov. 6, 1986
GAO Procedures	86-2 CPD 528
Protest Timeliness	
10-Day Rule	

Where agency fails to advise protester that its bid price is unreasonable or that its bid has been rejected, and merely indicates that invitation for bids has been converted to a negotiated procurement, protester's allegation that it is entitled to an award at its originally offered price is timely.

PROCUREMENT

**'Sealed Bidding
Bids**

Evaluation

Price Reasonableness

Administrative Discretion

**B-224457; B-224020 Con't
Nov. 6, 1986**

Agency determination concerning price reasonableness is a matter of administrative discretion which will not be questioned unless there is a showing of fraud or bad faith.

PROCUREMENT

Sealed Bidding

Invitations for Bids

Cancellation

Bids

Price Disclosure

Where procurement is properly canceled the fact that the protester's bid prices have been disclosed does not constitute a basis for denying the government the right to cancel the solicitation.

PROCUREMENT

Sealed Bidding

Invitations for Bids

Cancellation

Justification

Competition Enhancement

Cancellation of negotiations with only one source and resolicitation is proper where agency has reasonable basis to believe that resolicitation will result in additional competition.

General Accounting Office will not review contracting agency's affirmative determination of contractor's responsibility absent showing of possible fraud or bad faith on the part of procuring officials or allegation that the solicitation contained definitive responsibility criteria that allegedly were not applied.

General Accounting Office will not review agency determination not to waive Buy American Act requirements since Buy American Act vests discretion as to waiver in the head of the concerned agency.

Failure to acknowledge a material amendment which adds a Davis-Bacon wage rate determination to a solicitation that was issued without the wage rate determination renders a bid nonresponsive since only a specific Davis-Bacon wage rate determination can legally bind a contractor under the Davis-Bacon Act to pay the rates specified in the solicitation.

PROCUREMENT **B-223953 Con't**
Competitive Negotiation **Nov. 7, 1986**
Contract Awards
Administrative Discretion

PROCUREMENT
Competitive Negotiation
Contract Awards
Propriety
Evaluation Errors
Materiality

Agency decision to award contract to the only offeror whose proposal indicated that it would provide satellite communications system by delivery date required in request for proposals (RFP) was proper, where RFP indicated that delivery date was critical and RFP evaluation scheme specifically stated that offers which failed to meet "required service interval may be declared technically non-acceptable." Evaluator's error in calculating protester's evaluated life-cycle price is not sufficient to invalidate award determination.

PROCUREMENT **B-224425.2 Nov. 7, 1986**
Sealed Bidding **86-2 CPD 534**
Alternate Bids
Terms
Substitution
Post-Bid Opening Periods

Where firm submitted two bids to perform the required waste disposal services, each based on a different disposal site, and where the bids were priced differently precisely because of the different costs of using the respective sites, agency properly did not allow the substitution after bid opening of the higher-priced disposal site for the lower-priced one once it was determined that the lower-priced one was not actually approved.

PROCUREMENT

B-222601.6 Nov. 7, 1986

Bid Protest

86-2 CPD 531

GAO Procedures

GAO Decisions

Reconsideration

PROCUREMENT

Bid Protest

GAO Procedures

Protest Timeliness

10-Day Rule

Adverse Agency Actions

Prior dismissal is affirmed where protest against the rejection of proposal as technically unacceptable was filed with General Accounting Office more than 10 days after adverse action on initial protest to the contracting agency, and protester is not an interested party to raise alleged Buy American Act violation.

PROCUREMENT

B-223953 Nov. 7, 1986

Bid Protest

86-2 CPD 532

GAO Procedures

Preparation Costs

PROCUREMENT

Competitive Negotiation

Offers

Preparation Costs

Where protest is denied, General Accounting Office will deny claim for proposal preparation expenses and costs of pursuing protest.

PROCUREMENT**B-224426.2 Nov. 7, 1986****Socio-Economic Policies****86-2 CPD 535****Labor Surplus Set-Asides****Geographic Restrictions****Contractors****Eligibility**

Where, under invitation for bids set aside for labor surplus area (LSA) concerns, bidder named an LSA and gave the name of an industrial park in completing the solicitation's LSA clause but did not give a specific street address, contracting agency was reasonable in determining from a review of area maps and consultation with city officials in the LSA that the industrial park was located outside the LSA the firm specified. Consequently, the bid was ambiguous as to its commitment to perform in an LSA so that the bidder is ineligible for award.

PROCUREMENT**B-224634 Nov. 7, 1986****Bid Protest****86-2 CPD 537****GAO Procedures****Preparation Costs**

There is no basis for payment to protester of costs of filing and pursuing protests, including attorney's fees, where the General Accounting Office has not found any procurement impropriety committed by the contracting agency.

PROCUREMENT**Special Procurement Methods/Categories****Service Contracts****Personal Services****Criteria**

Agency contract for counseling services does not create illegal employer-employee relationship where the services will not be subject to direct government supervision and adequate direction is provided to the contractor through detailed written specifications contained in the solicitation's statement of work.

PROCUREMENT

Sealed Bidding

Bid Opening

Extension

Justification

GAO Review

B-225017 Nov. 7, 1986

86-2 CPD 538

The General Accounting Office generally will deny protests against extensions of bid opening date that are intended to give offerors sufficient time to prepare their bids and to review their prices. This is because the effect of the extension is to enhance, rather than restrict, competition.

PROCUREMENT

Sealed Bidding

Invitations for Bids

Amendments

Specification Changes

Procedures

When specifications must be changed, agencies must accomplish this by amendment, considering whether there is a need to extend bid opening date. Even if opening is extended, any bids received before the time set must be kept secure and unopened.

PROCUREMENT
Bid Protest
Agency-Level Protests
Oral Protests

B-225034 Nov. 7, 1986
86-2 CPD 539

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule

Protester's statement during telephone conversation with contracting officer that it would protest award to any other bidder did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Therefore, protest to General Accounting Office, filed more than 10 days after oral notification of the basis of protest, is dismissed as untimely.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest against apparent IFB improprieties is untimely where filed after bid opening.

PROCUREMENT
Bid Protest
Agency-Level Protests
Oral Protests

B-225459 Nov. 7, 1986
86-2 CPD 540

Award to low bidder does not appear legally objectionable where protester did not timely perfect its oral size status protest.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule
Adverse Agency Actions

B-225459 Con't
Nov. 7, 1986

Protest is dismissed as untimely when not filed with General Accounting Office within 10 days of notification of initial adverse action on prior agency-level protest.

PROCUREMENT
Socio-Economic Policies
Labor Standards
Construction Contracts
Minimum Wage Guarantees
Government Estimates

B-220518.2 Nov. 10, 1986
86-2 CPD 541

Protest that the agency's estimate of the amount of work covered by Davis Bacon Act minimum wage requirements is based on inaccurate information is denied where the record does not establish the claimed inaccuracies.

Protest that agency's estimate of the amount of work included under Davis Bacon Act minimum wage requirements is based on prior work that was not performed by government employees and will not be included in the contract is denied where the allegation is unsupported by the record.

Protest that procuring agency used terms for estimating work covered by the minimum wage requirements of the Davis Bacon Act that are inconsistent with the definition of those terms in agency regulations governing organizational responsibilities and accounting requirements is denied where those regulations were not drafted to implement the Act.

PROCUREMENT **B-220518.2 Con't**
Socio-Economic Policies **Nov. 10, 1986**
Labor Standards
Construction Contracts
Worker Classification
Propriety

When criteria used by the procuring agency to classify previous repair and minor construction work as subject to the Davis Bacon Act reasonably reflect the requirements of the statute, they may be used to estimate the amount of Davis Bacon Act work offerors should expect to perform under a subsequent contract.

PROCUREMENT **B-222181.2 Nov. 10, 1986**
Bid Protest **86-2 CPD 542**
GAO Procedures
GAO Decisions
Reconsideration

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

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration
Additional Information

PROCUREMENT
Bid Protest
GAO Procedures
Preparation Costs

Where agency argued in initial protest that specifications were not relaxed, it cannot properly argue on reconsideration that protester is not entitled to costs of preparing proposal because specifications were in fact improperly relaxed and protester did not have substantial chance of receiving award.

PROCUREMENT
Bid Protest
GAO Procedures
Preparation Costs

B-222181.2 Con't
Nov. 10, 1986

Protester had a substantial chance of receiving award where technical data submitted with its offer showed compliance with solicitation's minimum technical specifications and its offer was next low after a noncompliant offer. Therefore, prior decision that protester is entitled to costs of preparing proposal is affirmed.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical Acceptability

Agency's argument that its own product test results justify acceptance of a product notwithstanding technical literature showing product's noncompliance with minimum technical requirement is rejected where tests were essentially field tests which did not address compliance with this minimum requirement.

PROCUREMENT
Competitive Negotiation
Offers
Technical Acceptability
Deficiency
Blanket Offers of Compliance

Where technical literature included in offer shows noncompliance with solicitation's minimum technical requirements, the subsequent submission by the offeror of a blanket statement of compliance is not sufficient to make the offer compliant.

B-223943 Nov. 10, 1986
86-2 CPD 545

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PROCUREMENT
  Competitive Negotiation
    Offers
      Cost Realism
        Evaluation
          Administrative Discretion

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PROCUREMENT
Competitive Negotiation
Technical Transfusion/Leveling
Allegation Substantiation
Evidence Sufficiency

D-23

PROCUREMENT

Bid Protest

GAO Procedures

Preparation Costs

B-224229 Nov. 10, 1986

86-2 CPD 546

PROCUREMENT

Competitive Negotiation

Offers

Preparation Costs

Where a protest is dismissed, there is no decision on the merits, and therefore, no basis on which protest or proposal preparation costs may be recovered.

PROCUREMENT

Bid Protest

Moot Allegation

GAO Review

Protest that offeror's proposal was improperly eliminated from the competitive range is rendered academic as the result of the solicitation's cancellation. The General Accounting Office will not retain jurisdiction of such a protest, despite the protester's request to do so, when the solicitation has been canceled.

PROCUREMENT

Bid Protest

Premature Allegation

GAO Review

A protester's speculation as to an agency's future course of action in satisfying a requirement is not a valid basis for the General Accounting Office to consider the merits of the protest.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule
Effective Dates

B-224913.2 Nov. 10, 1986
86-2 CPD 547

Where protest is initially submitted without a detailed statement of the legal and factual grounds of protest, but is subsequently followed by a letter that includes the requisite detailed explanation, timeliness of the protest must be measured from the date of receipt of the detailed statement. Protest is dismissed as untimely when the detailed statement of protest basis is filed more than 10 working days after the protester learned of the basis of its protest.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule
Adverse Agency Actions

B-225092 Nov. 10, 1986
86-2 CPD 548

A protest not filed within 10 working days after the protester was orally advised its agency protest was denied is untimely and will not be considered on the merits.

PROCUREMENT
Bid Protest
Premature Allegation
GAO Review

B-225449 Nov. 10, 1986
86-2 CPD 549

Protest against the contents of a request for proposals (RFP) is dismissed as premature where RFP has not yet been issued.

PROCUREMENT	B-223639	Nov. 12, 1986
Bid Protest	86-2	CPD 550
GAO Procedures		
Interested Parties		
Direct Interest Standards		

Protest from company not in line for award if protest is upheld is dismissed because protester does not have the required direct economic interest to be considered an "interested party" under GAO Bid Protest Regulations.

PROCUREMENT	B-223675	Nov. 12, 1986
Special Procurement	86-2	CPD 551
Methods/Categories		
Federal Supply Schedule		
Purchases		
Cost/Technical Tradeoffs		
Justification		

An agency ordering from the Federal Supply Schedule must place an order with the lowest priced supplier consistent with its minimum needs unless it justifies purchasing a higher priced product. Such a justification may be based on features not identified in a request for quotations.

PROCUREMENT
Special Procurement Methods/Categories
Federal Supply Schedule
Purchases
Cost/Technical Tradeoffs
Technical Superiority

Purchase of other than the lowest priced dictation equipment from the Federal Supply Schedule is justified where the equipment selected includes features which allow it to be used more efficiently.

PROCUREMENT **B-224302 Nov. 12, 1986**
Competitive Negotiation **86-2 CPD 552**
Offers
Sample Evaluation
Testing
Administrative Discretion

Contracting agency has considerable discretion in determining the degree of testing required to obtain product conforming to specifications in request for proposals (RFP) and agency's determination will be disturbed only if it is shown to be unreasonable. Under RFP for boresight devices for tank guns which required that the devices adapt to irregularities of shape in worn gun tubes, protester fails to show that contracting agency's testing procedures were unreasonable where agency tested the devices on two tanks with worn gun tubes and protester does not show that more extensive tests were required to determine whether the devices complied with the RFP requirement.

PROCUREMENT **B-224307 Nov. 12, 1986**
Sealed Bidding **86-2 CPD 553**
Bonds
Justification
GAO Review

Protest alleging that requirements for performance and bid bonds in a solicitation for fire protection services unduly restrict competition is without merit. Procurement regulations authorize requiring performance bond in a nonconstruction situation where, as here, the services are essential and the contractor will have the use of government-owned property, and a bid bond requirement is valid where a performance bond also is required.

PROCUREMENT
Sealed Bidding
Performance Bonds
Justification

B-224307 Con't
Nov. 12, 1986

PROCUREMENT
Sealed Bidding
Pre-Award Surveys
Purposes

Fact that a preaward survey will be conducted does not in itself establish that solicitation requirement for performance bond is unreasonable. Survey is an evaluation of the prospective contractor's capability to perform, and does not offer an agency any legal protection after award, whereas performance bond secures the contractor's obligation to perform.

PROCUREMENT
Bid Protest
Moot Allegation
GAO Review

B-224545 Nov. 12, 1986
86-2 CPD 554

PROCUREMENT
Contract Management
Contract Administration
Convenience Termination
Administrative Determination
GAO Review

The General Accounting Office will not review an agency's termination of a contract for convenience in order to perform the work with its own personnel. Therefore, since contract awarded pursuant to protested procurement has been terminated for convenience, protest that agency improperly determined protester to be nonresponsible and that agency improperly did not suspend performance under contract after protest was filed is academic.

PROCUREMENT
Sealed Bidding
Bids
Evaluation
Prices
Options

B-224573 Nov. 12, 1986
86-2 CPD 555

PROCUREMENT
Sealed Bidding
Invitations for Bids
Evaluation Criteria
Prices
Options

Where solicitation specifies that bids will be evaluated by totaling the prices for the basic quantities and option quantities exercised at time of award, a protester who submits the low price for the basic quantities but not for the option quantities exercised is not in line for award since it did not offer the lowest total price.

PROCUREMENT
Sealed Bidding
Bids
Options
Price Adjustments
Post-Bid Opening Periods

Clause in solicitation allowing contractor to voluntarily reduce option price or delivery time does not apply to allow a bidder, whose bid is not yet accepted, to reduce option price after bid opening.

PROCUREMENT
Sealed Bidding
Bids

B-224573 Con't
Nov. 12, 1986

Price Negotiation
Allegation Substantiation
Evidence Sufficiency

Allegation that awardee may have negotiated its option price, contrary to sealed bidding principles, is unsubstantiated where record indicates that option price, upon which option was exercised at time of contract award, was same as that contained in awardee's low bid upon bid opening.

PROCUREMENT
Sealed Bidding
Contract Award Notification
Procedural Defects

Failure to adequately notify protester of award, and exercise of option at time of award, is merely a procedural deficiency and does not affect the validity of an otherwise properly awarded contract.

PROCUREMENT
Sealed Bidding
Post-Bid Opening Modification
Low Bid Displacement
Propriety

Exception allowing consideration of late modification of an otherwise successful bid does not apply to a protester whose bid was not low. A bidder may not revise its bid price downward, after bid opening, where the revision has the effect of displacing the low bid of another bidder.

PROCUREMENT**B-224824.2 Nov. 12, 1986****Bid Protest****86-2 CPD 556****GAO Procedures****GAO Decisions****Reconsideration****PROCUREMENT****Contract Management****Contract Administration****GAO Review**

Prior decision is affirmed which held that compliance with a solicitation's U.S.-flag vessel preference clause is a matter of contract administration not for review under the General Accounting Office's bid protest function where the agency's interpretation and application of the clause had no direct bearing upon the propriety of the source selection decision, which was solely on the basis of the lowest-priced technically acceptable offer as set forth in the solicitation.

PROCUREMENT**B-224058 Nov. 13, 1986****Socio-Economic Policies****86-2 CPD 557****Small Businesses****Discrimination Allegation****Allegation Substantiation****Evidence Sufficiency****PROCUREMENT****Specifications****Minimum Needs Standards****Competitive Restrictions****Performance Specifications****Geographic Restrictions**

Protest that procurement of oxygen supply services on a state-wide basis discriminates against small businesses is without merit where the record establishes reasonable competition from small business concerns, which submitted the three lowest bids.

B-224160; B-224161

Nov. 13, 1986

Invitations for Bids

Post-Bid Opening Cancellation

Resolicitation

Non-Prejudicial Allegation

Protest by the low bidder against the post-bid opening cancellation of an invitation for bids is denied where the protester, also the apparent low bidder under the successor solicitation, has made no credible showing that it was materially harmed by the agency's procurement actions. A showing of prejudice is the gravamen of any viable protest challenging the agency's conduct of a procurement.

B-224325 Nov. 13, 1986

86-2 CPD 558

Moot Allegation

GAO Review

PROCUREMENT

Sealed Bidding

Invitations for Bids

Wage Rates

Errors

Correction

Protest that invitation includes erroneous wage determination is dismissed where contracting agency agrees and advises of intent to issue a corrected wage determination.

PROCUREMENT
Contract Management
Contract Administration
GAO Review

B-224325 Con't
Nov. 13, 1986

PROCUREMENT
Sealed Bidding
Invitations for Bids
Terms
Liquidated Damages
Propriety

Protest concerning allegedly improper service contract liquidated damages clause is denied where protester does not show that the clause by its terms imposes an impermissible penalty in that there is no possible relationship between its provisions and any contemplated losses. Moreover, propriety of actual implementation of the clause involves a matter of contract administration, which General Accounting Office does not review.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
Deadlines
Constructive Notification

B-224980.2 Nov. 13, 1986
86-2 CPD 559

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule

Protest is untimely where not filed within 10 days after protester knew the basis of its protest. Protester's apparent lack of knowledge of the 10-day filing requirement is not a defense to dismissal of its protest as untimely since protesters are held to have constructive notice of GAO Bid Protest Regulations through their publication in the Federal Register.

PROCUREMENT
Bid Protest
Moot Allegation
GAO Review

B-225358 Nov. 13, 1986
86-2 CPD 560

Protest against rejection of an offer is academic where the agency terminates the protested contract for the convenience of the government because it agrees that evaluation under the Buy American Act was improper.

PROCUREMENT
Competitive Negotiation
Offers
Foreign Products
Evaluation
Equality

Under Department of Defense Supplement to the Federal Acquisition Regulation, when all offers are for foreign end products, they should be evaluated on an equal basis, without application of a Buy American Act factor.

PROCUREMENT
Contract Management
Contract Administration
Convenience Termination
Resolicitation
GAO Review

Agency's decision to resolicit after termination of an improperly awarded contract is not objectionable when the agency's needs have changed and the change may have an effect on price. Under these circumstances, a protester is not entitled to an award under the original solicitation.

PROCUREMENT **B-224485 Nov. 14, 1986**
Competitive Negotiation **86-2 CPD 561**
Offers
Price Adjustments
Late Submission
Acceptability

Agency is not obligated to consider late offer to reduce price where record shows that agency had reasonable basis for not holding discussions and requesting best and final offers which would have permitted timely consideration of revised price.

PROCUREMENT **B-225100 Nov. 14, 1986**
Socio-Economic Policies **86-2 CPD 562**
Small Businesses
Responsibility
Competency Certification
GAO Review

General Accounting Office will not review an agency's rejection of a small business bidder as nonresponsible where, following the agency's referral of the contracting officer's negative responsibility determination to the Small Business Administration (SBA), the bidder failed to provide information required by the SBA for a certificate of competency.

PROCUREMENT **B-225424 Nov. 14, 1986**
Bid Protest
Non-Prejudicial Allegation
GAO Review

Protest of contracting agency's unspecified past, present and proposed actions involving the planning, construction and acquisition of a telecommunications system will not be considered because under Bid Protest Regulations only timely protests filed by interested parties involving specific procurement actions are considered.

B-225424 Con't
Nov. 14, 1986

PROCUREMENT	B-223635.3	Nov. 17, 1986
Competitive Negotiation	86-2	CPD 563
Discussion		
Adequacy		
Criteria		

Agency is not obligated to notify protester of proposal deficiencies remaining after protester's initial response to agency's questions; agency need not conduct further discussions with offeror once it determines offeror's proposal has no reasonable chance of being selected for award and thus is outside of revised competitive range.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-223635.3 Con't
Nov. 17, 1986

PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Discussion

Protest that agency failed to hold meaningful discussions before eliminating proposal from competitive range is without merit where agency sent protester questions that should have led the protester into the areas of its proposal with which the agency was concerned, and protester was given opportunity to revise proposal with responses to these questions.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation Errors
Allegation Substantiation

Protest that in evaluating protester's proposal, the agency failed to follow the stated evaluation criteria and evaluated related subfactors inconsistently, is without merit where the criteria applied by the agency were reasonably related to the stated factors and the record shows that scoring under different subfactors in fact is consistent.

PROCUREMENT
Sealed Bidding
First-Article Testing
Prior Contractors
Waiver
Propriety

B-223742 Nov. 17, 1986
86-2 CPD 564

General Accounting Office recommends that contracting agency waive requirement for first article tests for prior producer of aluminum frame folding cots where agency determination not to waive was based on extended break in production combined with changes to specifications since then, and record does not establish that agency considered lack of complexity of cots, apparent insignificance of changes or fact that since its last full cot contract firm has furnished satisfactory cot components that include those changes.

PROCUREMENT
Special Procurement
Methods/Categories
Federal Supply Schedule
Purchases
Justification
Low Prices

B-223977 Nov. 17, 1986
86-2 CPD 565

Protest against issuance of delivery order to lower priced Federal Supply Schedule contractor on the ground that selected system did not offer all of the features required by contracting agency is denied where system ordered meets all written specifications and record indicates that protester's belief that more features were required resulted from its communications with unauthorized agency personnel.

PROCUREMENT**B-224013 Nov. 17, 1986****Bid Protest****86-2 CPD 566****GAO Procedures****Protest Timeliness****Apparent Solicitation Improprieties**

Protest against solicitation impropriety--allegedly ambiguous and overly restrictive specification--is untimely when filed with agency after the closing date for receipt of proposals. Subsequent protest to GAO is untimely where initial protest is untimely filed with contracting agency.

PROCUREMENT**B-224104.2 Nov. 17, 1986****Bid Protest****86-2 CPD 567****GAO Procedures****Preparation Costs****PROCUREMENT****Sealed Bidding****Bids****Preparation Costs**

When the General Accounting Office finds that an agency had a compelling reason for canceling a solicitation, and the protester will be able to compete under a resolicitation, the protester is not entitled to bid preparation costs or the costs of pursuing the protest. These are only available when the agency has unreasonably excluded the protester from the procurement and other remedies are not available.

B-224104.2 Con't

Sealed Bidding

Nov. 17, 1986

Invitations for Bids

Post-Bid Opening Cancellation

Justification

Sufficiency

An agency reasonably may determine that a compelling reason exists for canceling a brand name or equal invitation for bids after opening where the invitation fails to include five salient characteristics that the agency subsequently determines are required to meet its needs.

PROCUREMENT

B-224448 Nov. 17, 1986

Bid Protest

86-2 CPD 568

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Where the solicitation for custodial services includes evaluation criteria specifically stating that technical factors are more important than price, protest that the award should have been based on price rather than technical factors was required to be filed prior to the closing date for proposals, and is untimely.

PROCUREMENT

Competitive Negotiation

Best/Final Offers

Evaluation Errors

Allegation Substantiation

Evidence Sufficiency

Where the solicitation states that technical factors are more important than price and the record indicates that the technical evaluation panel based its evaluation of best and final offers strictly on price, the protester's contention that the contracting officer arbitrarily and capriciously disregarded the panel's evaluation of its low proposal is without merit.

PROCUREMENT **B-224448 Con't**
Competitive Negotiation **Nov. 17, 1986**
Requests for Proposals
Evaluation Criteria
Cost/Technical Tradeoffs
Technical Superiority

Although Federal Acquisition Regulation, 41 C.F.R. § 15.605(c) (1985), states that the lowest price is properly the deciding factor in many source selections, that provision does not require award on the basis of price where the solicitation specifically provides that technical factors are given greater weight.

PROCUREMENT **B-224595 Nov. 17, 1986**
Contractor Qualification **86-2 CPD 569**
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

PROCUREMENT
Contractor Qualification
Responsibility/Responsiveness Distinctions

When the protester does not allege that a low bidder has taken exception to military specifications and drawings, but rather questions the firm's intent and ability to provide an interchangeable part, the allegations concern responsibility. If the procuring agency determines that the firm is responsible--a determination that the General Accounting Office generally will not review--it will be legally obligated under any contract awarded to it to provide supplies in accord with the specifications and drawings.

PROCUREMENT

B-224622 Nov. 17, 1986

Bid Protest

86-2 CPD 570

Bias Allegation**Allegation Substantiation****Burden of Proof**

A protester has the burden of proving bias, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

PROCUREMENT**Competitive Negotiation****Competitive Advantage****Incumbent Contractors**

An agency is not required to discount a competitive advantage that might accrue to an offeror by virtue of incumbency so long as the advantage did not result from preferential treatment or other unfair government action.

PROCUREMENT**Competitive Negotiation****Contract Awards****Administrative Discretion****Cost/Technical Tradeoffs****Technical Superiority**

Contracting agency properly may award a contract to a higher-priced, higher-rated offeror where the solicitation specifically states that the government's primary concern is the offeror's technical and management capabilities and the agency reasonably concludes that the technical and management advantages of the awardee's offer are significant enough to offset the lower evaluated cost of the protester's proposal.

PROCUREMENT
Bid Protest
Agency-Level Protests
Oral Protests

B-224672 Nov. 17, 1986
86-2 CPD 571

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Agency-level protest that agency's competitive solicitation misappropriated protester's idea is untimely when filed after proposal due date, since protest basis was apparent from the face of the solicitation. Protester's oral complaint to agency before proposal due date did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Therefore, protest to GAO, after proposal due date, is dismissed as untimely.

PROCUREMENT
Bid Protest
GAO Procedures
Purposes
Competition Enhancement

GAO will not review protest that the government should procure feasibility study from a particular firm on a sole-source basis.

PROCUREMENT
Bid Protest
Agency-Level Protests
Oral Protests

B-224672 Con't
Nov. 17, 1986

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule

Protest contending proposal was improperly determined to be outside of the competitive range is dismissed as untimely when first filed with contracting agency more than 10 working days after protester was notified of the reasons for its exclusion. Protester's oral complaint to contracting agency about its exclusion did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Since the protest was not initially timely protested to procuring agency, later protest to the General Accounting Office is untimely.

PROCUREMENT
Bid Protest
GAO Procedures
Interested Parties
Direct Interest Standards

B-224820.2 Nov. 17, 1986
86-2 CPD 572

Direct economic interest of third-low offeror is not affected by award where second-low offeror would be awarded contract if protest of acceptance of low offer were successful. Protester therefore is not an interested party under Bid Protest Regulations to pursue the matter.

PROCUREMENT

Bid Protest

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

B-225377 Nov. 17, 1986

86-2 CPD 573

Protest of solicitation's evaluation factors is dismissed as untimely when filed with the agency after closing date.

PROCUREMENT

Bid Protest

Premature Allegation

GAO Review

Protest of evaluation of protester's proposal is premature and is dismissed when filed while agency is still considering protester's proposal for award.

PROCUREMENT

Bid Protest

GAO Procedures

Preparation Costs

B-222534.2 Nov. 18, 1986

86-2 CPD 574

PROCUREMENT

Competitive Negotiation

Offers

Preparation Costs

Claim for costs is denied where record shows that protester was not denied a fair opportunity to compete for this requirement since there has been no showing that protester was unreasonably excluded from the competition.

Claim for costs based on alleged errors in agency's technical evaluation is denied where record fails to show that protester was unreasonably excluded from the competition and where there is no showing that if the alleged evaluation errors were corrected, that there is a substantial likelihood that protester would receive the award.

Criteria

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Terms
Interpretation

B-222534.2 Con't
Nov. 18, 1986

Allegation that solicitation for the Trident Sonar Maintenance Trainer--Front End Simulator (TSMT FES) which will be used to train sonar technicians for Trident submarines was issued solely as a full scale design and development effort is without merit where solicitation not only required offerors to design and develop the TSMT FES but also to fabricate and install a production unit approximately 24 months after contract award.

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Terms
Liquidated Damages
Propriety

B-223263.2 Nov. 18, 1986
86-2 CPD 575

Solicitation provision for contract payment deductions for failure to meet required delivery schedule does not impose an impermissible penalty where the protester has not shown that there is no possible relationship between the provision and reasonable contemplated losses.

PROCUREMENT
Specifications
Minimum Needs Standards
Competitive Restrictions
Performance Specifications
Management Services

Performance standards for operation of an automotive parts store are not considered overly restrictive where the procuring agency has presented prima facie support that the restrictions are necessary to meet the agency's legitimate minimum needs and the protester has failed to show that the requirements are clearly unreasonable.

PROCUREMENT**Sealed Bidding****Contract Awards****Propriety****Funding Restrictions****B-223440.2 Nov. 18, 1986****86-2 CPD 576**

Where funds determined available prior to bid opening are insufficient to cover the lowest base bid, award may be made, if additional funds can be obtained, only to the bidder submitting the lowest bid for the base work. After funds are obtained, award may also include additive items--within the order stipulated in the bidding documents--but only if some other responsible bidder has not submitted a lower bid on that combination.

PROCUREMENT**Bid Protest****GAO Procedures****Protest Timeliness****10-Day Rule****B-223931 Nov. 18, 1986****86-2 CPD 577**

Issues first raised in response to agency report on initial protest, more than 10 working days after protester knew of additional protest grounds, are untimely.

PROCUREMENT**Competitive Negotiation****Contract Awards****Administrative Discretion****Cost/Technical Tradeoffs****Technical Superiority**

Agency's decision to award contract to higher-priced offeror is proper where awardee's proposal received higher technical score and technical evaluation was consistent with solicitation's established evaluation criteria which advised that technical capability would be given more weight than price.

PROCUREMENT**B-223994 Nov. 18, 1986****Competitive Negotiation****86-2 CPD 578****Offers****Organizational Experience****Evaluation****Propriety**

Proposal responding to solicitation leading to multiple award, task order, indefinite delivery, indefinite quantity contracts for automatic data processing planning services was properly rejected for failing to meet solicitation qualification criteria requiring the implementation of two or more major information systems, where the procuring agency reasonably found that the projects identified in the proposal were not the implementation of "major" information systems.

PROCUREMENT**B-224009 Nov. 18, 1986****Socio-Economic Policies****Small Businesses****Responsibility****Competency Certification****GAO Review**

Allegation that agency's preaward survey and determination of nonresponsibility is in error will not be reviewed by the General Accounting Office since Small Business Administration (SBA) is empowered by statute to conclusively determine whether a small business is responsible, and after consideration of the matter under the SBA's certificate of competency (COC) procedures, the SBA declined to issue a COC.

Protest that contracting officer did not give adequate consideration to changed circumstances affecting the protester's responsibility after the Small Business Administration had declined to issue a certificate of competency (COC), is denied where record shows that contracting officer was aware of the new information and determined the offeror still was nonresponsible, and the protester has not shown that the determination was made in bad faith.

GAO Review

GAO Review

PROCUREMENT**B-224293 Nov. 18, 1986****Sealed Bidding****86-2 CPD 581****Bid Guarantees****Responsiveness****Invitations for Bids****Identification**

Contracting officer acted reasonably in rejecting corporate guarantee which contained no information other than an erroneous solicitation number to identify the procurement to which it pertained.

PROCUREMENT**B-224421.2 et al.****Competitive Negotiation****Nov. 18, 1986****Requests for Proposals****86-2 CPD 582****Cancellation****Justification****GAO Review**

General Accounting Office will closely scrutinize whether agency has reasonable basis to cancel request for proposals where the prices have been disclosed and price is the sole award selection criteria.

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

Where the agency terminates negotiated contracts awarded to two mobilization base producers because the awards were not in accordance with request for proposals' evaluation criteria, and resolicits the requirements, instead of making the proper awards, the resolicitation can be justified by the agency decision to make three awards for substantially increased quantities of the mobilization base items in order to keep all three mobilization base producers "warm," even where this decision is first made in response to the protests against the resolicitation.

Request for proposals, which provides for multiple awards to lowest combination of awards, price and other factors considered, does not allow for award to the low offeror on the largest quantity, if the resulting combination of awards does not represent the lowest overall cost to the government. Agency's past practices and unstated evaluation intent cannot be used to supplement this unambiguous criteria to allow an award at other than the lowest overall cost.

Bid guarantee requirement is material part of IFB which cannot be waived and submission of company check rather than certified check, bank draft, cashier's check or money order, as specified by the invitation, renders bid nonresponsive.

Protest filed more than 10 working days after protester learned of initial adverse agency action--contracting officer's determination that auction officer in timber sale properly reopened bidding--in response to protest filed with agency is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration

B-223175.2 Nov. 19, 1986
86-2 CPD 585

Allegation by interested party that prior decision ignored uncontroverted evidence in the record is without merit where review shows that alleged factual misstatements are not in error.

PROCUREMENT
Specifications
Minimum Needs Standards
Competitive Restrictions
Geographic Restrictions
Justification

B-223905 Nov. 19, 1986
86-2 CPD 586

Protest that geographic restriction in a solicitation for international ocean freight transportation services to be provided at no cost to the government unduly restricts competition is denied where the procuring agency has shown that the restriction is needed to satisfy its minimum needs, the protester has submitted a proposal which satisfies the requirement and has not shown itself to have been competitively prejudiced, and where substantial competition under the solicitation has been received.

PROCUREMENT
Competitive Negotiation
Unbalanced Offers
Cost Allocation
Labor Costs
Justification

B-223935; B-223935.2
Nov. 19, 1986
86-2 CPD 587

Where an offeror explains that the reason its base year price is 2.6 percent higher than its first option year price is because it will incur lower labor costs in the option year due to a shift in location of production facilities to a lower labor cost area, its offer is not mathematically unbalanced.

An offer is neither mathematically nor materially unbalanced where gross mathematical unbalancing is not present and the offeror adequately explains its cost structure.

Question regarding fulfillment of payment and performance bond requirements, which are implemented after contract award is a matter of contract administration not cognizable under General Accounting Office Bid Protest Regulations.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration

B-224176.2 Nov. 19, 1986
86-2 CPD 589

PROCUREMENT
Bid Protest
GAO Procedures
Preparation Costs

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Prior decision dismissing a protest and denying an attendant claim for the recovery of protest and bid preparation costs is affirmed. It is an essential rule of the General Accounting Office (GAO) bid protest process that a protester's entitlement to costs only arises upon a determination by GAO that an agency's procurement actions were in violation of applicable statute or regulation, and there simply can be no recovery of costs without a decision on the merits sustaining a protest filed with GAO.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Cancellation
Justification

B-224327 Nov. 19, 1986
86-2 CPD 590

Cancellation of invitation for bids is justified when agency, after consulting with the Department of Labor, concluded that original wage determination was erroneous.

PROCUREMENT **B-224770 Nov. 19, 1986**
 Competitive Negotiation **86-2 CPD 591**
 Requests for Proposals
 Cancellation
 Administrative Determination
 Timeliness

Agency properly may cancel a solicitation no matter when the information precipitating the cancellation arises, even if that is after proposals are submitted and the protester has incurred costs in pursuing the award.

PROCUREMENT
 Competitive Negotiation
 Requests for Proposals
 Cancellation
 Justification
 Government Advantage

Cancellation of request for proposals for new equipment is proper where the procuring agency determines that its needs can best be met by renovating existing equipment, and that the new equipment therefore no longer is required.

PROCUREMENT **B-225394.2 Nov. 19, 1986**
 Bid Protest **86-2 CPD 592**
 GAO Procedures
 GAO Decisions
 Reconsideration

PROCUREMENT
 Bid Protest
 GAO Procedures
 Information Submission
 Timeliness

Dismissal of a protest for failure to include a detailed statement of the protest grounds is affirmed where the protester furnished its details for the first time in its reconsideration request filed nearly 1 month after original deficient protest was filed.

PROCUREMENT B-225441.2 Nov. 19, 1986
Contract Management 86-2 CPD 593
Contract Administration
Subcontracts
GAO Review

General Accounting Office (GAO) will not review a proposed award by a second-tier subcontractor because the award is not by or for the government as is necessary for GAO to review subcontractor protests.

PROCUREMENT B-223937; B-223937.2
Bid Protest Nov. 20, 1986
Non-Prejudicial 86-2 CPD 594
Allegation
GAO Review

Protest that agency relaxed specifications without notifying protester is dismissed where there is no showing that protester was prejudiced by the agency's actions.

PROCUREMENT B-224262.2 Nov. 20, 1986
Bid Protest 86-2 CPD 595
GAO Procedures
GAO Decisions
Reconsideration

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule

Decision dismissing protest as untimely on the grounds that bid documents and our decision refer to Bid Protest Regulations of different dates (1985 and 1986) is affirmed because the regulations did not change between the two dates.

PROCUREMENT**B-224481; B-224489****Bid Protest****Nov. 20, 1986****GAO Procedures****86-2 CPD 596****Interested Parties****Direct Interest Standards**

Protester is not an interested party to protest that agency's issuance of solicitations restricted to one name brand only and determination of one contractor as the only responsible source resulted in the improper exclusion of a product the protester does not distribute and should, therefore, be canceled, since even if the protests were sustained on this basis, the protester would not be eligible for award because it does not market the product which it claims is excluded.

PROCUREMENT**Competitive Negotiation****Potential Contractors****Exclusion****Justification**

Should a firm, which has not protested its exclusion from the procurements at issue, decide to attempt to meet the government's needs in the future, it should not be excluded solely upon the assumption that its equipment would be far too expensive because that is a question to be decided by the marketplace.

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Evaluation Criteria
Sufficiency

B-224481; B-224489 Con't
Nov. 20, 1986

PROCUREMENT
Specifications
Brand Name Specifications
Salient Characteristics
Sufficiency

Protests alleging that requests for proposals were defective because they did not list salient characteristics or evaluation criteria are denied where the solicitations were restricted to one brand name only and contained provisions that sufficiently advised potential offerors that cost would be the determining award factor.

PROCUREMENT
Specifications
Minimum Needs Standards
Competitive Restrictions
Brand Name Specifications

Agency's procurement of certain cameras and camera accessories does not unduly restrict competition where agency establishes convincingly that its needs can only be met by one contractor, and while disagreeing with the agency's determination of its minimum needs, protester fails to show that agency's determination has no reasonable basis or, as protester argues, that it has cameras which will meet the government's minimum needs.

PROCUREMENT**B-225213-O.M. Nov. 20, 1986****Socio-Economic Policies****Labor Standards****GAO Procedures****Procedural Changes**

By this memorandum, new procedures are established for Davis-Bacon Act and Related Acts case-handling. It provides that all submissions involving the Davis-Bacon Act be sent to the Office of General Counsel first; immediately thereafter, copies of the documents necessary to make payment and to debar for Related Acts are to be sent to the Claims Group. The Claims Group is to send the Office of General Counsel information indicating the status of funds in the case. When one of these cases is closed, the Department of Labor submission will be forwarded to the Claims Group for storage in the associated Z-file. All submissions not involving the Davis-Bacon Act are to be sent directly to the Claims Group for processing in accordance with established procedures. In cases involving both Davis-Bacon Act and Related Acts debarments, any subsequent debarment under the Davis-Bacon Act relates back to the date of the Related Acts debarments where the debarments arose out of the same event. Standard forms--including one to be sent to the Department of Labor when all the payments that can be made have been made--are also provided for use in transmitting required materials and information under these procedures.

PROCUREMENT**B-224250 Nov. 21, 1986****Bid Protest****86-2 CPD 597****Moot Allegation****GAO Review**

Protest that contracting agency extended and expanded the coverage of a contract, by contract modification, without obtaining competitive bids is academic where agency rescinds protested contract modification.

PROCUREMENT

B-224312 Nov. 21, 1986

Bid Protest

86-2 CPD 598

Bias Allegation

Allegation Substantiation

Evidence Sufficiency

PROCUREMENT

Competitive Negotiation

Technical Evaluation Boards

Bias Allegation

Allegation Substantiation

Evidence Sufficiency

Even though a solicitation originally describes one manufacturer's equipment, when the contracting agency amends it to permit consideration of proposals for equipment that either eliminates the need for special features or meets requirements in a different way than that specified, the protester has not shown bias in favor of the equipment originally described. Moreover, the General Accounting Office will not sustain a protest based on inference or supposition.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical Acceptability

The General Accounting Office does not sustain protests regarding technical acceptability determinations in the absence of a showing that contracting officials acted unreasonably or violated procurement statutes and regulations. When a protester does not address specific deficiencies cited by evaluators or explain unsatisfactory performance during a demonstration of its equipment, the protester has not established unreasonableness or statutory and regulatory violations.

PROCUREMENT B-225473 Nov. 21, 1986
Contractor Qualification 86-2 CPD 600
Responsibility/Responsiveness Distinctions

Failure to disclose individual surety's outstanding bond obligations does not render a bid nonresponsive where the bid is proper on its face. Rather, it raises a question of responsibility, which may be established any time prior to contract award.

PROCUREMENT	B-222533.2	Nov. 24, 1986
Bid Protest	86-2	CPD 601
GAO Procedures		
GAO Decisions		
Reconsideration		

Prior decision holding that bid was responsive even though bid contained unsolicited model number is affirmed where bidder has not shown that decision was based on error of law or information not previously considered.

PROCUREMENT	B-224273	Nov. 24, 1986
Sealed Bidding	86-2	CPD 602
Bids		
Responsiveness		
Price Omission		
Line Items		

Bid which contains "n/c" (no charge) instead of dollar price for a line item in the solicitation's schedule is responsive, because such notation clearly equates with zero dollars, and thereby shows the bidder's affirmative intent to provide the requirement covered by the line item at no charge to the government.

PROCUREMENT
Sealed Bidding
Unbalanced Bids
Materiality
Responsiveness

B-224273 Con't
Nov. 24, 1986

A bid is not materially unbalanced where there is no reasonable doubt that the estimated quantities in the solicitation are inaccurate so as to call into question whether the bid represents the lowest ultimate cost to the government.

PROCUREMENT
Bid Protest
Allegation Substantiation
Burden of Proof

B-224505 Nov. 24, 1986
86-2 CPD 603

PROCUREMENT
Special Procurement Methods/Categories
In-House Performance
Cost Evaluation
Government Estimates
Deadlines

Where the protester contends that the agency submitted its management study under an Office of Management and Budget Circular A-76 cost comparison more than 2 months late, and the protester's only evidence is its own unsupported statement, but the record indicates that the management study was in fact completed and submitted on time, protester has not carried its burden of proof.

PROCUREMENT	B-224505	Con't
Special Procurement	Nov. 24, 1986	
Methods/Categories		
In-House Performance		
Cost Evaluation		
Government Advantage		
Allegation Substantiation		

Where the protester alleges that the government and contractors were not competing on the basis of the same scope of work which resulted in an erroneous Office of Management and Budget Circular A-76 cost comparison, because the agency's management study was revised without corresponding amendment of the solicitation, but the protester fails to show any specific difference between the work required in the solicitation and that specified in the management study, and the agency issued hundreds of pages of amendments to the solicitation, protester's allegation does not present sufficiently detailed basis for protest.

PROCUREMENT	B-224635	Nov. 24, 1986
Sealed Bidding	86-2	CPD 604
Invitations for Bids		
Amendments		
Acknowledgment		
Responsiveness		

Bid not acknowledging material amendment must be rejected as nonresponsive. Verification/correction procedures for alleged mistakes in bid apply only to bids that are responsive on their face.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration

B-225000.2 Nov. 24, 1986
86-2 CPD 605

Request for reconsideration of a decision dismissing a protest as untimely filed is dismissed where the request for reconsideration does not contain a statement of factual or legal grounds upon which reversal could be deemed warranted, but instead merely contains a single allegation, which, even if accepted as fact, would not warrant reversal of the dismissal of the protest.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

B-225217 Nov. 24, 1986
86-2 CPD 606

General Accounting Office will not review a contracting agency's affirmative determination of responsibility unless there is a showing that the determination may have been made fraudulently or in bad faith by the contracting officials or that definitive responsibility criteria in the solicitation have not been applied properly. Protester fails to make any reasonable showing of bad faith where protester merely makes unsupported statement that awardee was found responsible despite negative preaward survey recommendation based on contracting agency's desire to make award before funds for the contract expired.

While the Competition in Contracting Act gives the General Accounting Office (GAO) authority to prescribe deadlines for the disclosure of information that an interested party is authorized by law to receive, GAO has no authority to determine what information must be disclosed by agencies in connection with bid protests.

Where to compete for contract to manufacture exact replacement for existing diesel generator crankshaft installed in Philippines offerors must obtain access to existing proprietary drawing which contracting agency did not possess, protester's proposal, although containing low price, was properly rejected since protester was ultimately unable to obtain drawing and therefore did not accurately propose to satisfy certain technical requirements. Alternatively, protester's proposal to travel to Philippines before crankshaft manufacture to verify existing crankshaft's dimensions would not have assured contracting agency, prior to contractor selection, that protester could precisely manufacture crankshaft; moreover, protester might have erroneously measured crankshaft thereby rendering its replacement crankshaft unusable.

PROCUREMENT
Sealed Bidding
Bids

B-223924 Nov. 25, 1986
86-2 CPD 608

Errors
Post-Bid Opening Withdrawal
Propriety

PROCUREMENT
Sealed Bidding
Low Bids
Error Correction
Price Adjustments
Propriety

Protest of the contracting agency's decision to allow upward price correction of an allegedly mistaken low bid is sustained where the worksheets, adding machine tape, and subcontractor quotation telephone memorandum submitted to support the mistake claim do not establish the intended bid by clear and convincing evidence; claimant may, however, withdraw its bid since the evidence presented does reasonably support the existence of a mistake.

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Advance Approval
Administrative Policies
GAO Review

B-224251 Nov. 25, 1986
86-2 CPD 609

Alleged failure by contracting agency to comply with internal instructions regarding preissuance approval of solicitation is a matter for consideration within the agency itself rather than through the bid protest process.

General Accounting Office will not review contracting agency's affirmative determination of responsibility absent showing of possible fraud or bad faith by contracting officials or that solicitation included definitive responsibility criteria that were not applied.

PROCUREMENT
Bid Protest
GAO Procedures
GAO Decisions
Reconsideration

D-68

PROCUREMENT **B-224434 Nov. 25, 1986**
Competitive Negotiation **86-2 CPD 611**
Offers
Competitive Ranges
Exclusion
Administrative Discretion

Determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. However, GAO will determine whether the evaluation was arbitrary, that is, unreasonable or in violation of procurement regulations.

PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Evaluation Errors

Where offeror excluded from the competitive range was found marginally satisfactory on the technical evaluation, but was never scored on its price proposal and the solicitation called for evaluation of technical and price proposals, agency violated FAR § 15.609(a) by not scoring offeror's price proposal prior to determining competitive range.

PROCUREMENT **B-225069.2 Nov. 25, 1986**
Bid Protest **86-2 CPD 612**
Patent Infringement
GAO Review

Claim of possible patent infringement does not provide a basis for the General Accounting Office to object to an award since questions of patent infringement are not encompassed by GAO's bid protest function.

B-225069.2 Con't

Nov. 25, 1986

B-223942 Nov. 26, 1986

Competitive Negotiation Offers

B-223951.2 Nov. 26, 1986

Bid Protest

PROCUREMENT

B-223995 Nov. 26, 1986

Sealed Bidding

Bids

Responsiveness

Signatures

Omission

Bid which included typewritten name and title of person authorized to sign, but no signature, was properly rejected as nonresponsive and omission was not subject to waiver as minor informality.

Failure of invitation for bid to require a bid bond or contain an explicit warning that failure to sign one's bid would result in rejection of bid as nonresponsive does not provide grounds to waive, as a minor informality, missing signature in protester's bid.

PROCUREMENT

Sealed Bidding

Invitations for Bids

Procedural Defects

Materiality

Use of an outdated Standard Form 33 bid form was a procedural deficiency which did not eliminate the requirement for a signature on the bid.

PROCUREMENT

B-224128 Nov. 26, 1986

Bid Protest

Allegation

Abandonment

Where the agency report rebuts protester's allegations with regard to invitation for bids deficiencies, and protester fails to respond to agency's rebuttal in its comments on the agency's report, the issues are considered abandoned and will not be considered.

B-224128 Con't
Nov. 26, 1986

PROCUREMENT B-225078.2 Nov. 26, 1986

Bid Protest

GAO Procedures

Protest Timeliness

Deadlines

Constructive Notification

Protest filed more than 10 working days after protester learned of initial adverse agency action--contracting officer's cancellation of solicitation and award of the requirement to another firm through small purchase procedures--in response to protest filed with agency is untimely. Protester's assertion that it was unaware of timeliness rules does not provide a basis for considering an untimely protest since the protester is charged with constructive notice of Bid Protest Regulations through their publication in the Federal Register.

PROCUREMENT

B-224185 Nov. 28, 1986

Bid Protest

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

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

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical Acceptability

PROCUREMENT

Specifications

Performance Specifications

Product Reliability

Performance Capabilities

Solicitation requirement that microwave radio equipment to be furnished have been operated successfully as a full integrated system carrying real traffic in either military or commercial applications is not satisfied by an offeror proposing to furnish equipment that will not become operational until the scheduled delivery of the system in the future.

PROCUREMENT**B-224198 Nov. 28, 1986****Competitive Negotiation****Discussion****Adequacy****Criteria**

Although procuring agencies generally must conduct meaningful discussions with all offerors whose proposals are in the competitive range in order to point out weaknesses or deficiencies in the proposals and to allow an opportunity for proposal revision, this requirement does not extend to an explicit exception taken by an offeror to a material solicitation requirement. Therefore, where a proposal was ultimately rejected as technically unacceptable because of the protester's expressed intent not to comply with a clear requirement to provide full software maintenance, the fact that the agency may not have conducted comprehensive discussions with regard to the exception taken did not unreasonably exclude the protester from the procurement.

PROCUREMENT**B-224682 Nov. 28, 1986****Contract Management****Contract Administration****Contract Terms****Compliance****GAO Review**

Contractor's inability to begin performance on scheduled date, where contractor's quotation took no exception to this requirement, is a matter of contract administration and not for consideration by General Accounting Office.

PROCUREMENT

B-224682 Con't

Small Purchase Method

Nov. 28, 1986

Competition

Use

Criteria

Small purchase procedures, as implemented by the Federal Acquisition Regulation, require agencies to obtain competition to the maximum extent practicable. The use of competitive procedures by prime contractor for federal agency is therefore proper, notwithstanding that previous awards for similar acquisitions were allegedly made on a sole-source basis.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-216021 Nov. 18, 1986

Federal Administrative/Legislative Matters

Administrative Reports

Congressional Submission

Executive Branch Personnel

Part-Time Employment

General report on OPM's actions in administration of competitive service required by 5 U.S.C. § 1308(a) was medium for OPM's reporting to Congress on part-time employment as required by section 3(a) of the Federal Employees Part-Time Career Employment Act of 1978, as amended, 5 U.S.C. § 3407. Since subsequent enactment of Congressional Reports Elimination Act of 1980 amended 5 U.S.C. § 1308 so as to eliminate the general annual report of 5 U.S.C. § 1308(a), OPM is no longer required to submit to Congress annual report on agency part-time programs.

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United States

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