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Comptroller General
of the United States

No. 8

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NOTICE

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

PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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

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

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

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-225123 May 1, 1987

Purpose availability

Specific purpose restrictions

Utility services

Use taxes

Comprehensive analysis of general rules applied to federal, state and local taxes, late payment charges and other service charges appearing on telephone bills shows that some charges are payable by the United States Senate, while others are not. Tentative opinions are offered as to the validity of 14 taxes itemized on sample telephone bills sent for analysis, but when doubt exists as to whether a particular tax is payable, the Senate Financial Clerk is advised to initiate a practice of requiring telephone companies to demonstrate that taxes or other charges are payable by the Federal Government.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226752 May 1, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

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

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226614 May 6, 1987

Cashiers

Relief

Illegal/improper payments

Computation errors

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing officers

Relief

Illegal/improper payments

Computation errors

Relief is granted to an Army Finance Officer where record shows that this accountable officer maintained adequate procedures and controls to avoid errors and that he took steps to implement those procedures. Relief is granted to cashier who made the improper payment where record shows that she followed prescribed procedures in paying an erroneously calculated voucher and nothing unusual occurred during the transaction which would have led her to believe that an improper payment was being made.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-215118 May 7, 1987

Burden of proof

On reconsideration of B-215118, Dec. 18, 1984, we affirm the denial of that part of Mr. Hai-Tha Truong's claim pertaining to damages for lost yarn on the ground that it was barred by the applicable statute of limitations, 31 U.S.C. 3702(b)(1). Regardless of the statute of limitations issue, however, the claimant has not sustained the burden of proof necessary to show that the transaction giving rise to the claim was not under the Commodity Import Program, a program that gave the Agency for International Development (AID) the right to take title to goods when shipment of the goods would have conflicted with the purposes underlying the program. Furthermore, the record does not indicate the amount claimed to have been expended on the lost yarn nor whether any payments made were in dollars or piasters, the currency of the former Government of Vietnam.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government

Statutes of limitation

On reconsideration of B-215118, Dec. 18, 1984, we affirm the denial of that part of Mr. Hai-Tha Truong's claim which pertained to damages for a tricot knitting machine, on the ground that it was barred by the various statutes of limitation in the laws that could have formed a basis for the claim.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226854 May 13, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

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

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226872 May 13, 1987

Cashiers

Relief

Illegal/improper payments

Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing officers

Relief

Illegal/improper payments

Forgeries

Army finance officer and subordinate cashiers are granted relief under 31 U.S.C. 3527(c) for improper payments totaling \$1,000. Improper payments resulted from criminal activity over which the finance officer and cashiers had no control. The offender was able to cash forged checks with two different cashiers, each of whom checked her ID and neither of whom were led to believe that a fraud was being perpetrated.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226882 May 13, 1987

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 both an original issued Army instrument and the 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 and adequate collection efforts are now being made. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-223375 May 14, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing officials under 31 U.S.C. 3527(c) from liability for improper payment resulting from the negotiation of two checks drawn on closed bank accounts as part of a fraudulent check cashing scheme. Proper procedures were followed in the payment of the checks and there was no indication of bad faith on the part of the disbursing official and his subordinates.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims By Government B-226729 May 18, 1987

Illegal/improper payments

Debt collection

Receipts

Deposit

An agency made erroneous payments under invalid contracts to several associations. The agency has an obligation to collect the erroneous payments. The amounts collected should be deposited to the appropriations from which the contracts were funded or their successor accounts. If the funds cannot be identified as a refund of monies paid from particular appropriations, then the agency would be under a requirement to deposit the amounts collected in the general fund of the Treasury as miscellaneous receipts.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-225832.5 May 26, 1987

Time availability

Permanent/indefinite appropriation

Determination criteria

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Time availability

Time restrictions

Fiscal-year appropriation

Section 215 of the Military Construction Appropriations Act, 1987, Pub. L. No. 99-591, 100 Stat. 3341; 3341-307 (1986), must be interpreted to constitute permanent legislation. There is a presumption that any provision in an annual appropriation act is effective only for the covered fiscal year. That presumption, however, can be overcome if the provision in question includes "words of futurity." Section 215 refers to requests submitted by the President "on or after the date of enactment of this title." Similar language in the past has been found to constitute words of futurity.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226176 May 26, 1987

Disbursing officers

Illegal/improper payments

Liability restrictions

Statutes of limitation

It is not necessary for our Office to grant relief in a case where the 3-year statute of limitation period has expired. Under these circumstances, the account in question must be considered settled and the accountable officer involved cannot be held liable for any erroneous payment. 31 U.S.C. 3526(c).

Request for relief of accountable officers liable for improper payment should be made to GAO within 2 years after the date the account in which the loss occurred is available to GAO for audit (that is, the date the agency has substantially complete accounts).

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226695 May 26, 1987

Cashiers

Relief

Physical losses

Theft

Record is unclear whether cashier of imprest fund remained liable after giving government checks to messenger who cashed checks and was subsequently robbed. If, in fact, cashier is liable, we grant relief on grounds that she did not act negligently in handling government funds; if she is not liable, then there is no need for us to grant relief. As to messenger, he remains liable for the loss as an accountable officer. However, we neither grant nor deny relief since there is no request therefor.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226838 May 26, 1987
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 and original issued Army instrument and the 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 and adequate collection efforts are now being made. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227184 May 26, 1987
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army Finance Officer under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, 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-227185 May 29, 1987

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 an original Army-issued instrument and the 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 and adequate collection efforts are now being made. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227191 May 29, 1987

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 debit vouchers received after June 1, 1986, we will deny relief if Army delays more than 3 months in forwarding the debt to its collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227191 Con't

Relief May 29, 1987

Illegal/improper payments

Agency request

Submission time periods

Request for relief of accountable officers liable for improper payment should be made to GAO within 2 years after the date the account in which the loss occurred is available to GAO for audit (that is, the date the agency has substantially complete accounts).



CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-225839 May 6, 1987

Relocation

Household goods

Shipment

Restrictions

Privately-owned vehicles

An employee who ships an antique, inoperable pickup truck as part of her household goods incident to a transfer must bear the expense of shipping the pickup truck since that kind of a vehicle is expressly excluded from the definition of "household goods" that may be shipped at government expense. The facts that the truck is old and inoperable do not change its essential character to something other than a truck.

CIVILIAN PERSONNEL

B-226669 May 6, 1987

Leaves of Absence

Annual leave

Computation errors

Error correction

Unused leave balances

Employee had a 360-hour leave ceiling at the time it was determined that his service computation date had been improperly established to give him credit for time in a reserve status. The correction of his annual leave account to recover the excess annual leave credit the employee received as a result of that error reduced his leave account balance to 164 hours. Since the correction of his annual leave account resulted in a positive leave balance, the employee is not indebted to the government as a result of the excess leave credits and the recoupment of those credits, therefore, is not subject to waiver under 5 U.S.C. 5585. Consistent with 37 Comp. Gen. 213 (1957), the reconstruction of his leave account reduces his special leave ceiling of 360 hours to the 240-hour ceiling authority by 5 U.S.C. 6304(a) for most employees.

CIVILIAN PERSONNEL**B-224052 May 11, 1987****Leaves of Absence****Annual leave****Lump-sum payments****Overpayments****Debt collection**

An employee, a Personnel Management Specialist, resigned his competitive status position with his agency and accepted an excepted position in another agency without a break in service. He prepared his own SF-52, Request for Personnel Action, noting that lump-sum payment for annual leave was not to be made. Due to an error by the agency's personnel office, he received the lump-sum payment for his annual leave, and he seeks waiver of this erroneous overpayment. The employee's resignation and subsequent reemployment without a separation for one or more workdays does not authorize lump-sum payment of annual leave under 5 U.S.C. 5551(a) (1982). The overpayment may not be waived under 5 U.S.C. 5584, since the employee was not without fault in the matter.

CIVILIAN PERSONNEL**B-223542 May 12, 1987****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Property titles**

An employee, who was single when he transferred to a new duty station, later married and purchased a residence with his new wife. Although the employee was not married at the time he transferred, he was married before settlement on his residence. The employee's claim for real estate expenses may be allowed without limitation since, at the time of settlement, he acquired title in the name of himself and a member of his immediate family.

CIVILIAN PERSONNEL

B-226463 May 14, 1987

Travel

* Temporary duty

Travel expenses

Privately-owned vehicles

Mileage

Employee appeals claim settlement disallowing claim for mileage in the vicinity of his temporary duty station where the agency did not authorize vicinity mileage in travel orders. Our prior settlement is affirmed since no material mistake of law or fact in original settlement is established. The determination of whether to authorize an employee mileage for the use of his automobile as advantageous to the government is discretionary with the employing agency.

CIVILIAN PERSONNEL

B-210555.23 May 18, 1987

Travel

Commuting expenses

Prohibition

Applicability

Assistant Commissioner for Internal Affairs, U.S. Customs Service, is advised that the General Services Administration Travel Regulations on which he relied do not authorize home-to-airport travel in a Government car. FTR section 1-2.3d, FPMR 101-7 authorizes reimbursement only for taxicabs, public transportation or mileage and parking fees if a private vehicle is used.

Assistant Commissioner for Internal Affairs, U.S. Customs Service, is advised that the statutory prohibition in 31 U.S.C. 1344 against use of a Government car for home-to-work travel is not limited to travel from the employee's home to his headquarters, but extends to anywhere he may be required to report, including a conference site outside his usual office. However, if his driver is found to be entitled to a Government car under the "field work" exception in the law, and does not incur any additional expense to the Government by picking up the Assistant Commissioner on the way to the meeting, there would be no need to repay his agency for the cost of the trip. Decision B-210555.18, B-210555.20, March 10, 1987, provided to Assistant Commissioner for further clarification.

CIVILIAN PERSONNEL

B-226403 May 19, 1987

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

An employee who rented a room in the vicinity of her headquarters rather than returning to her home 30 miles away seeks reimbursement for the cost of her lodging and the dinner meal. Her supervisor directed her to rent the room because she was needed the next day on a time critical project and a bad weather forecast threatened to worsen an already difficult transportation situation. The claim may not be allowed since employees may not be reimbursed for per diem or subsistence at their headquarters regardless of unusual conditions.

CIVILIAN PERSONNEL

B-210555.22 May 20, 1987

Travel**Commuting expenses****Liability**

Commissioner of Customs is not required to reimburse his agency for any improper trips in a government car between his home and an official duty assignment made prior to June 4, 1983. On June 3, 1983, GAO issued decision at 62 Comp. Gen. 438, designed to clarify scope of 31 U.S.C. 1344 and dispel widespread impression that heads of government agencies had discretion to authorize use of a government car between home and work. The decision, however, was stated to be prospective in its application only.

CIVILIAN PERSONNEL

Travel

Commuting expenses

Prohibition

Applicability

B-210555.22 Con't

May 20, 1987

Although Commissioner of Customs works long hours, seven days a week and attends important gatherings and meetings, all official in nature, after normal work hours, the mandatory nature of the prohibition in 31 U.S.C. 1344 does not permit him to be driven home in a government car.

Commissioner of Customs, whose office is directly engaged in apprehending drug traffickers, feels he is entitled to transportation between home and work because of the dangerous nature of this work. The Commissioner is invited to submit any evidence he may have of direct threats against his personal safety during the period covered by GAO's report to Congressman Brooks about his vehicle usage and we will be glad to reconsider our findings.

CIVILIAN PERSONNEL

Travel

Travel regulations

Interpretation

Permanent residences

GAO has no authority to waive or permit a deviation from a Government Travel Regulation in order to define the residence of the Commissioner of Customs for travel reimbursement purposes as Charlottesville, Virginia, instead of Alexandria, Virginia, the latter being the residence from which he regularly commutes to work. The Commissioner is advised to consult with the Acting Commissioner of the Federal Supply Service, General Services Administration, which is solely responsible for promulgating and interpreting federal travel regulations.

Compensation

Retroactive compensation

Eligibility

Non-appropriated funds

GAO review

Employee of the Army and Air Force Exchange Service (AAFES), a nonappropriated fund instrumentality, seeks retroactive promotion with backpay for the period he claims to have been wrongfully detailed to a higher grade UA-14 position. The Supreme Court has recognized that 5 U.S.C. 2105(c) denied AAFES employees the protections of the Back Pay Act, 5 U.S.C. 5596. AAFES v. Sheehan, 456 U.S. 728 (1982). Although GAO does not have jurisdiction over the individual's claim, it does not appear that his detail to a higher grade position violated AAFES personnel procedures under which he signed an agreement to accept assignment to a higher grade position without adjustment of his personal grade or pay.

Travel**Temporary duty****Travel expenses****Privately-owned vehicles****Mileage**

An employee who performed temporary duty travel used his privately owned vehicle (POV) for that purpose as a matter of personal preference and claims reimbursement at 20.5 cents a mile on the basis that his travel authorization specified POV reimbursement to be in lieu of common carrier travel. Travel order specified 9.5 cents a mile, but agency admits that a clerical error was made in that the 9.5 cent rate was typed in the wrong space. Employee was committed to the use of a government-furnished vehicle for temporary duty travel, if available, and he was informed before travel was performed that such a vehicle was available. Under the Federal Travel Regulations reimbursement for POV use in lieu thereof was properly limited to 9.5 cents a mile. Although errors on travel orders may be corrected after travel is performed under certain circumstances, the travel order here specified the correct mileage rate and the use of the wrong space was harmless error.

CIVILIAN PERSONNEL**B-224055 May 21, 1987****Relocation****Details****Permanent duty stations****Determination**

An employee was detailed from his agency position in Washington, D.C., to a position with a commission in Flagstaff, Arizona. Relocation expenses were authorized for his travel to Arizona in 1982 and for his return travel in early 1984 after the detail was terminated. Although the agency's auditors question the payment of relocation expenses in this situation, we conclude that such payment was proper. Based on the issuance of the orders directing the assignment, the duration of the assignment, and the nature of the duties to be performed, it appears clear that this assignment was a permanent rather than temporary duty assignment.

CIVILIAN PERSONNEL**B-226735 May 22, 1987****Compensation****Overtime****Eligibility****Military leave**

Practice by which Malmstrom Air Force Base rescheduled employees from assignments involving regularly scheduled overtime to regular 40-hour work schedules for periods of military leave appears to be improper. Under 5 U.S.C. 6323, members of the Armed Forces Reserves are entitled to the compensation, including overtime, they would have received had they not been ordered to active duty or active duty for training.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-223536 May 1, 1987

Pay

Death gratuities

Eligibility

Member of the Marine Corps died while on excess leave while awaiting appellate review of his court-martial. The spouse's claim for 6-month death gratuity may be paid since the courts have held that where an accused dies before mandatory appeal from his conviction has been completed, the proceedings must be abated from their inception and if proceedings were abated member's spouse would be eligible for death benefits.

MILITARY PERSONNEL

B-225262 May 4, 1987

Relocation

Temporary quarters

Determination

Criteria

An Air Force officer who was transferred from Arkansas to Texas claims a temporary lodging expense allowance based on his continued occupancy of his permanent residence in Arkansas on a rental basis after the date he sold it. The officer continued to occupy the residence as his usual place of abode until the date he actually moved out, however, so that the residence cannot be considered to have been his "temporary" quarters within the meaning of that term under the applicable statutes and regulations. Hence, his claim cannot be allowed.

MILITARY PERSONNEL**B-107211 May 8, 1987****Pay****Retroactive pay****Eligibility****Burden of proof**

Former Army member requests payment of active duty pay from October 1, 1944, to October 25, 1945, based on our legal determination in 1952 that he was entitled to such pay. We advise the interested Congressman that, in the absence of pertinent government records, the former member's claim may be paid only if he furnished clear and satisfactory evidence that the claim has never been satisfied.

MILITARY PERSONNEL**B-224779 May 21, 1987****Pay****Payroll deductions****Survivor benefits****Refunds**

A retired Air Force Sergeant provided Survivor Benefit Plan (SBP) coverage for his wife while he was in receipt of military retired pay. He later waived his military retired pay and relinquished the SBP coverage when he elected to apply his military service toward a civil service retirement. He is not entitled to a refund of amounts deducted from his retired pay to cover SBP costs during the period he has SBP coverage. During that period he had the protection of SBP coverage for his wife and he paid the appropriate costs. His later election to combine his military and civilian service for civil service retirement purposes, and his resulting conversion of SBP coverage to civil service survivor annuity coverage for his wife, may not serve as a basis for a refund of the SBP costs.

MILITARY PERSONNEL

B-224779 Con't

Pay

May 21, 1987

Survivor benefits

Eligibility

A retired Air Force Sergeant who was employed in a civilian capacity for 15 years by the Postal Service following his military retirement, and who then waived his military retired pay in order to have his military service time added to his civilian service for civil service retirement purposes, is no longer eligible for military Survivor Benefit Plan (SBP) coverage for his wife, since under the applicable statutes his election to have civil service annuity coverage for her based on his combined Federal military and civilian service operated to preclude continued SBP coverage.

MILITARY PERSONNEL

B-221521 May 22, 1987

Pay

Family separation allowances

Eligibility

A member of the Air Force (husband) assigned to an overseas unaccompanied tour is married to another member (wife) who is also assigned to an unaccompanied tour at a separate duty station. The wife has a child from a previous marriage and they have a child from their marriage to each other. The two children had been living with the members as part of one household and continue to share the same household with the husband's mother in the United States while their parents are assigned overseas. The husband may not receive family separation allowances on account of the child of their marriage if his wife is currently receiving family separation allowances on account of her child of a previous marriage, since the children are members of the same class of dependents. The additional expenses intended to be covered by the family separation allowances have been reimbursed to the wife under her family separation allowances. If the husband were to also receive the allowance, the family unit would, in effect, be paid twice for the same expenses.

PROCUREMENT

PROCUREMENT B-225575 May 1, 1987
Special Procurement 87-1 CPD 456
Methods/Categories
Federal supply schedule
Off-schedule purchases
Justification
Low prices

Quotation solicited from Federal Supply Schedule (FSS) vendors are not offers that can be accepted by the government and there is therefore no requirement that the quotation comply precisely with the terms of Request for Quotations. Moreover, award to a lower priced firm is proper, even where that firm does not have all the required items on its schedule contract, since the controlling consideration is whether award was made to an FSS contractor.

Agency may award combined contract for Federal Supply Schedule and non-Federal Supply Schedule items to an offeror who submitted low aggregate quote in response to request for quotations.

PROCUREMENT B-225581 May 1, 1987
Bid Protests 87-1 CPD 457
Bias allegation
Allegation substantiation
Evidence sufficiency

General Accounting Office denies a protest alleging that an agency's decision to cancel all bids for price unreasonableness stemmed from the agency's desire to favor one particular firm where the protester fails to present any evidence demonstrating bias other than the fact that the decision to cancel was made after the apparent low bidder withdrew due to a mistake in bid.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification
Price reasonableness

B-225581 Con't
May 1, 1987

Agency properly cancels solicitation after bid opening on the basis of price unreasonableness where the low responsive bid exceeds the government estimate by more than 50 percent and the protester fails to substantiate its allegation that the government estimate is unreasonably low.

PROCUREMENT
Sealed Bidding
Invitations for bids
Terms
Progress payments

B-225712 May 1, 1987
87-1 CPD 459

Contracting officer generally has the discretion to determine whether and under what terms a provision for progress payments should be included in the solicitation.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Performance specifications
Justification

Protest that specification is in excess of contracting agency's minimum needs and is unduly restrictive of competition is denied where there is no showing that agency lacked a reasonable basis for requiring the contractor's crew to arrive at the site within 2 hours of notification to begin repairs and to stop leaks of hazardous substance leaking from transformers where the transformers are located in a high-rise, densely populated building and where failure to begin work immediately could seriously affect the health and safety of the building's occupants.

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

B-225770.2 May 1, 1987
87-1 CPD 460

Dismissal of protest filed 11 working days after hand delivery to protester's employee of copy of contracting officer's denial of protest to agency is affirmed. Delivery of denial, clearly addressed to counsel at protester's headquarters, to senior employee experienced in procurement is adequate notice of initial adverse agency action.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Snow days

"Snow day," on which federal offices in District of Columbia were closed but federal offices elsewhere were open, is analogous to Inauguration Day and is a working day for purposes of computing timeliness, since it did not fall on the last day of the 10-day filing period.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-225773 May 1, 1987
87-1 CPD 461

Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals are untimely unless filed prior to the closing date.

PROCUREMENT **B-225773 Con't**
Contractor Qualification **May 1, 1987**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The capability of meeting the RFP's requirements is a matter of responsibility and we do not review affirmative determinations of responsibility absent fraud or bad faith on the part of contracting officials or the misapplication of definitive responsibility criteria.

PROCUREMENT **B-226309.2 May 1, 1987**
Bid Protests **87-1 CPD 462**
GAO procedures
GAO decisions
Reconsideration

Protester whose initial protest that agency improperly determined its proposal to be technically unacceptable was dismissed as untimely may not obtain General Accounting Office's consideration of same issue in a subsequent protest of the agency's resolicitation for the same requirement.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Resolicitation
Propriety

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Cancellation
Unrestricted 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 Protests
GAO procedures
GAO decisions
Reconsideration

B-223613.2 May 4, 1987
87-1 CPD 464

General Accounting Office affirms a decision holding that contracting activity acted unreasonably in not considering alternate methods for evaluating alternate product where the agency, in a request for reconsideration, does not show that its failure to consider such alternate methods during the 16-month period between submission of the protester's offer and award was reasonable.

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

B-224887.3 May 4, 1987
87-1 CPD 465

Protest of negative responsibility determination based on preaward survey is timely where protester promptly filed Freedom of Information Act request for preaward survey report after it was found nonresponsible and filed protest within 10 working days of receipt of the report.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
Pre-award surveys

Protest of contracting officer's negative responsibility determination is denied where the determination was based on a negative preaward survey report which found that the prospective contractor had an unsatisfactory record of prior performance and the record contains documentation that provides a reasonable basis for the preaward survey findings and the contracting officer's determination.

PROCUREMENT

B-225526.2 May 4, 1987

Bid Protests

87-1 CPD 466

GAO procedures

GAO decisions

Reconsideration

PROCUREMENT

Competitive Negotiation

Competitive advantage

Non-prejudicial allegation

Prior decision, holding that agency did not waive a material solicitation requirement solely for the benefit of one offeror but waived it also for the benefit of the protester, is affirmed where the protester fails to present facts or legal arguments to establish that the prior decision was erroneous.

PROCUREMENT

B-225693.2 May 4, 1987

Competitive Negotiation

87-1 CPD 467

Contract awards

Initial-offer awards

Propriety

Protest that agency's award of contracts one day prior to the deadline for the protester to submit requested financial information indicates that the agency did not give the protester's proposal full and fair consideration is without merit where the record shows that the agency requested financial information solely in connection with a preaward survey of the protester's responsibility and not in connection with its evaluation of the protester's proposal.

**PROCUREMENT
Sealed Bidding
Bids**

**B-225799 May 4, 1987
87-1 CPD 468**

**Responsiveness
Preferred products/services
Foreign country classification**

Bid was properly rejected as nonresponsive for offering nondesignated country products which could not be accepted pursuant to the Trade Agreements Act where bid offered products manufactured in both designated and nondesignated countries.

**PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic products
Applicability**

Trade Agreements Act does not prohibit acquisition of domestic products in procurements to which it applies; rather, the purpose of the Act is to forgo preference for domestic products over foreign ones where a specified group of foreign countries is involved.

**PROCUREMENT
Socio-Economic Policies
Preferred products/services
Foreign/domestic product distinctions**

Surgeon's gloves produced outside the United States are foreign end products under the Trade Agreements Act despite sterilization of the gloves in the United States since (1) sterilization involves treatment of the finished product only without materially altering the form of the gloves and therefore does not constitute manufacture in the United States; and (2) there is no showing that the gloves are made using domestic components whose cost exceeds 50 percent of the total cost of the components.

PROCUREMENT

B-225810.2 May 4, 1987

Bid Protests

87-1 CPD 469

GAO procedures

GAO decisions

Reconsideration

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

Suspended/debarred contractors

Request for reconsideration of a protest against agency's allegedly improper refusal to provide protester with a copy of a solicitation is denied. Protester does not show any errors in prior decision dismissing protest because agency had initiated debarment proceedings against the firm, and pending a decision, the firm is not eligible for award of a government contract.

PROCUREMENT

B-226979.2 May 4, 1987

Bid Protests

87-1 CPD 470

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Dismissal of an untimely protest is affirmed where the protester presents no credible evidence that it had any reason to ignore an alleged apparent solicitation impropriety, namely, the conduct on a negotiated basis of a procurement which the protester contends was required to be conducted on a sealed bid basis.

PROCUREMENT
Bid Protests
Definition

B-225570 May 5, 1987
87-1 CPD 471

Since General Accounting Office's bid protest jurisdiction is based on a finding that the protest concerns a procurement of property or services by a federal agency, the award by a federal agency of a franchise contract for cable television services is subject to GAO's bid protest jurisdiction.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

Protest is sustained where General Accounting Office review of protester's proposal indicates agency erroneously concluded protester's proposal did not meet request for proposal's requirements.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-225721 May 5, 1987
87-1 CPD 473

Protest based on alleged deficiencies in a solicitation is untimely and will not be considered on the merits when not filed with General Accounting Office or the contracting agency prior to the closing date for receipt of initial proposals.

PROCUREMENT **B-225721 Con't**
Competitive Negotiation **May 5, 1987**
Offers
 Competitive ranges
 Exclusion
 Administrative discretion

Agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal ranked fifth of seven proposals received and where the agency reasonably considered the offeror's technical proposal to be so deficient as to require major revisions before it could be made acceptable.

PROCUREMENT **B-225996 May 5, 1987**
Competitive Negotiation **87-1 CPD 474**
Contract awards
 Quantity reduction
 Propriety

Award of a contract to refurbish pumps and motors will not be questioned, even though the agency--before award--was aware of the need to delete one motor because the solicitation inadvertently failed to include a schedule of prices for the parts needed to refurbish that motor, where the competition for the contract as subsequently modified would not be materially different from the competition originally obtained. Only one of 100 pumps and motors was deleted; the item for refurbishment of the motors was reduced by the unit price for the motor; and the awardee's overall evaluated price was \$400,000 less than that of the protester.

PROCUREMENT

B-225996 Con't

**Competitive Negotiation
Requests for proposals
Amendments
Criteria**

May 5, 1987

Where the record of the questions and answers at preproposal conference is furnished to all offerors in a writing signed by the contracting officer, this letter meets the essential requirements for an amendment, and the information therein is therefore binding on all offerors. Protester is not entitled to ignore this information and instead to rely on its pricing practice under other contracts.

PROCUREMENT

**Contract Management
Contract modification
Cardinal change doctrine
Criteria
Determination**

Contracting agency may extend the due date for delivery of two test units by 30 days where the contract as modified is not materially different from the contract for which a competition was held. This is because the requirement that the contractor make timely delivery of the test units or risk termination of its contract remains; the delay resulted in part from the agency's inability to meet its contractual duty to provide adequate drawings; and the schedule for future deliveries is unchanged.

PROCUREMENT

227084; B-227084.2

Bid Protests

May 5, 1987

Administrative policies 87-1 CPD 475**Violation****GAO review**

Provisions of Office of Management and Budget circulars generally establish executive branch policies, agency compliance with which is not considered under the General Accounting Office's bid protest function.

PROCUREMENT B-227084; B-227084.2 Con't
Bid Protests May 5, 1987
Cooperative agreements
GAO review

PROCUREMENT
Special Procurement Methods/Categories
Cooperative agreements
GAO review

Under the Competition in Contracting Act of 1984, General Accounting Office, as before, will not review a challenge to the award of a cooperative agreement unless there is some showing that a procurement contract should have been used.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that agency improperly sought offers leading to the award of a cooperative agreement instead of a procurement contract is untimely when solicitation clearly reflects agency intent to award cooperative agreement and protest is not filed until after closing date for receipt of offers.

PROCUREMENT B-223203.3 May 6, 1987
Competitive Negotiation 87-1 CPD 476
Discussion reopening
Competitive system integrity
GAO decisions
Recommendations

Prior decision recommending that discussions be reopened only with the protester is clarified to specify that discussions should not include an opportunity for protester to increase its price.

PROCUREMENT

B-225046.2 May 6, 1987

Bid Protests

87-1 CPD 477

GAO procedures

GAO decisions

Reconsideration

Arguments that amount to a reiteration of those previously considered do not provide a basis for reconsideration.

PROCUREMENT

Socio-Economic Policies

Preferred products/services

Domestic products

Waiver

Administrative discretion

Protester was not prejudiced by contracting officer's premature award of a contract for a drug to the low bidder evaluated without the Buy American Act preferences where the contracting officer relied on advice from the Directorate of Medical Materiel that the drug was only available from foreign sources and where the Directorate of Medical Materiel subsequently determined in writing that the drug was not available in the United States in sufficient and reasonably available commercial quantities and that therefore the Buy American Act should be waived.

PROCUREMENT

B-225638 May 6, 1987

Competitive Negotiation

87-1 CPD 478

Offers

Evaluation

Administrative discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record indicates that the conclusions reached are supported by the information in the proposals and consistent with the criteria set forth in the solicitation.

PROCUREMENT

B-225649 May 6, 1987

Noncompetitive Negotiation 87-1 CPD 479

Contractors

Notification

Procedural defects

Contracting agency's failure to solicit proposal from protester in procurement using other than competitive procedures did not comply with statutory requirement that offers be solicited from as many sources as practicable where protester shows that contracting agency's technical personnel, should have known of protester's interest, and there is no indication that the agency could not have considered an additional proposal within its established schedule for the procurement.

PROCUREMENT

Noncompetitive Negotiation

Use

Justification

Urgent needs

Use of other than competitive procedures to procure equipment needed for Congressionally mandated testing of Bradley Fighting Vehicle based on "unusual and compelling urgency" under 10 U.S.C. 2304(c)(2) was justified where there was insufficient time to conduct the procurement using fully competitive procedures due to reasonable determination by contracting agency that testing, for which the equipment being procured was needed, had to be completed within a short time after the testing requirement was imposed.

PROCUREMENT B-225713 May 6, 1987
Competitive Negotiation 87-1 CPD 481
Offers
Evaluation
Information submission
Contractor duties

PROCUREMENT
Specifications
Brand name specifications
Equivalent products
Acceptance criteria

Agency's refusal to approve protester's alternate product for critical submarine part is not unreasonable where protester failed to provide required original equipment manufacturer's drawings in a sufficiently timely manner to permit the agency to evaluate protester's product and still make an award in time to maintain an adequate spare parts inventory of the product.

PROCUREMENT B-225735, et al.,
Sealed Bidding May 6, 1987
Bids 87-1 CPD 482
Modification
Late submission
Rejection

Protested bids are not materially unbalanced where the estimated quantities in the solicitations are reasonably accurate representations of the government's anticipated actual needs, based on the best information available, and, solicitations will represent the lowest ultimate cost to the government.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-226118 May 6, 1987
87-1 CPD 483

Protest against allegedly improper rejection of a bid in a 1985 procurement, and protester's claim for damages resulting from that rejection, filed more than a year after the action, are untimely under our Bid Protest Regulations.

PROCUREMENT
Sealed Bidding
Contract awards
Prior contracts
Errors
Effects

When agency's inspection of a crewboat offered by the apparent low, responsive bidder reveals that it meets all minimum specifications, protester's allegation that the bid should be rejected because in 1985 the agency rejected its bid for a similar crewboat under similar specifications is without merit. Even if the protester's bid was improperly rejected, the government is not now estopped from accepting a responsible bidder's low, responsive bid.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-226797 May 6, 1987
87-1 CPD 484

Protest filed more than 1 month after the contracting agency denied the protester's agency-level protest is untimely and is not for consideration under either the "good cause" or "significant issue" exceptions to our timeliness regulation.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-227083 May 6, 1987
87-1 CPD 485

Protest timely filed with General Accounting Office (GAO) regional office but not received at GAO Headquarters address specified in bid protest regulations until more than 10 working days after protester knew of basis of protest is untimely and will not be considered.

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

B-225589, et al.,
May 7, 1987
87-1 CPD 486

Award of cost-reimbursement contract to firm whose proposed costs were higher than protester's is not legally objectionable where agency reasonably concluded that personnel proposed in the protester's best and final offer did not meet the government's minimum qualification requirements set forth in the solicitation.

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

B-225600 May 7, 1987
87-1 CPD 487

In a negotiated procurement there is no requirement that award be made on the basis of the lowest cost. The contracting agency has the discretion to select a superior technical proposal rather than a lower rated, lower cost proposal where under evaluation criteria set forth in solicitation cost considerations are secondary to technical merit in proposal evaluation.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-225600 Con't
May 7, 1987

Protest that agency failed to hold meaningful discussions concerning three areas of weakness is without merit, where contracting 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

Where record indicates that agency evaluated protester's proposal in a manner consistent with established criteria set forth in solicitation and the evaluation was reasonable, protest based on offeror's disagreement with evaluation is denied.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Technical evaluation of proposal must be based on information provided in the proposal, and neither an offeror's past performance nor information the agency might acquire during a preaward survey can be considered as a basis for technical evaluation of proposal.

PROCUREMENT

B-225630.2 May 7, 1987

Bid Protests

87-1 CPD 489

GAO procedures

Interested parties

Direct interest standards

A nonresponsive bidder is not an interested party under GAO Bid Protest Regulations to protest the responsiveness of the awardees' bids where there are other bids which could be accepted, so that the protester does not have the requisite direct economic interest in the outcome of the matter.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Descriptive literature

Absence

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

PROCUREMENT

Sealed Bidding

Contract awards

Propriety

PROCUREMENT

Sealed Bidding

Invitations for bids

Contractors

Notification

Award of a contract is not improper solely because a bidder did not receive a complete copy of the solicitation as long as there is adequate competition resulting in reasonable prices and there is no evidence of a conscious or deliberate intent on the part of the procuring agency to exclude a particular bidder from competition.

PROCUREMENT

B-225733 May 7, 1987

Sealed Bidding

Invitations for bids

Post-bid opening cancellation

Justification

Sufficiency

Agency had compelling reason to cancel invitation which failed to include minimum product performance requirements and quality standards since award on the basis of a solicitation which did not include these requirements and standards could result in the agency's accepting a product with significant performance deficiencies.

PROCUREMENT

Sealed Bidding

Invitations for bids

Post-bid opening cancellation

Resolicitation

There is no authority to permit the low bidder under a properly canceled invitation for bids an exclusive opportunity to meet the revised requirements of the agency without resolicitation.

PROCUREMENT

Socio-Economic Policies

Small businesses

Competency certification

Effects

The Small Business Administration's issuance of a Certificate of Competency requires that the contracting agency not require the bidder to meet any other standards of responsibility, but does not compel the government to make an award if specifications are found defective.

PROCUREMENT

B-225679.3 Con't

Contractor Qualification May 8, 1987

Responsibility

Contracting officer findings

Affirmative determination

GAO review

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

PROCUREMENT

Socio-Economic Policies

Labor standards

Service contracts

GAO authority

Administration and enforcement of Service Contract Act is the responsibility of the Secretary of Labor and head of the contracting agency, not General Accounting Office.

PROCUREMENT

B-225700 May 8, 1987

Bid Protests

87-1 CPD 494

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that solicitation requirement for descriptive literature does not comply with the Federal Acquisition Regulation, raised after bid opening, is untimely under Bid Protest Regulations, which require that a protest of alleged improprieties in a solicitation be raised before bid opening.

PROCUREMENT
Sealed Bidding
Bids
Evaluation
Discussion
Propriety

B-225700 Con't
May 8, 1987

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Determination time periods

The procuring agency properly did not discuss deficiencies in protester's bid prior to contract award because the Federal Acquisition Regulation requires the evaluation of bids without discussions, and it is a fundamental principle of sealed bidding that responsiveness must be determined on the basis of the bid as submitted.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Descriptive literature
Adequacy

Where an invitation for bids required descriptive literature sufficient to determine whether the offered item conforms to the technical specifications and bidders were cautioned that the literature would be used in the technical evaluation of bids, the procuring agency properly rejected as nonresponsive a bid that included inadequate descriptive literature.

Where the solicitation requires descriptive literature clearly marked to show that the offered item complies with all aspects of the specifications, a bidder's statement that it will comply with the specifications is insufficient to determine the technical acceptability of the bid.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225781 May 8, 1987
87-1 CPD 495

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Where protest is dismissed as untimely, related claims for proposal preparation expenses and costs of pursuing bid protest will not be considered.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

Protest that "total package" procurement for the SPY-1 Radar system, including all subsystems and integration and testing, unnecessarily restricts competition does not raise "significant issues" so as to warrant exception to timeliness rules set forth in General Accounting Office (GAO) Bid Protest Regulations, since GAO previously has considered similar issues a number of times.

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

Protest that the Navy's procurement of the SPY-1 Radar system, including all subsystems and integration and testing, as a total package unnecessarily restricts competition is untimely where the protester waited more than 4 months after the initial adverse agency action on the protester's agency-level protest--receipt of proposals without taking requested corrective action--before filing the protest in the General Accounting Office.

PROCUREMENT
Bid Protests
Private disputes
GAO review

B-227037 May 8, 1987
87-1 CPD 496

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest that prospective awardee improperly used protester's proprietary data and attempted to recruit protester's employees concerns a dispute between private parties, not for resolution under General Accounting Office's (GAO) bid protest jurisdiction. To the extent this allegation concerns the prospective contractor's responsibility, that is a matter for consideration by the contracting agency, and GAO will review an affirmative decision in that regard only in limited circumstances.

PROCUREMENT
Contract Management
Contract performance
GAO review

Allegation that agency will interpret contract resulting from solicitation under which protester's offer was found unacceptable inconsistent with solicitation's terms is dismissed where agency denies allegation and General Accounting Office has no reason to question agency's position.

PROCUREMENT

B-223827.4 May 12, 1987

Payment/Discharge

Federal procurement regulations/laws

Revision

Payment procedures

General Accounting Office has no objection to a proposal to add to the Federal Acquisition Regulation (FAR) a new Subpart 32.9 and a clause at FAR 52.232-25 to implement Office of Management and Budget Circular A-125 entitled "Prompt Payment."

PROCUREMENT

B-225457.2 May 12, 1987

Bid Protests

87-1 CPD 498

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest against inclusion of new evaluation criteria incorporated into solicitation by amendment is untimely where not filed prior to next closing date for receipt of proposals as required by Bid Protest Regulations.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Protest of consideration of alternate offer is timely where filed within 10 working days of notice to protester that contract would be awarded on basis of alternate.

PROCUREMENT
Competitive Negotiation
Alternate offers
Acceptance
Propriety

B-225457.2 Con't
May 12, 1987

Protest of agency intent to accept alternate offer under solicitation for language laboratory equipment is without merit where alternate offer amounts to a choice of less expensive desks, and both desk styles comply with the specifications; government may accept alternate products that meet specifications even where solicitation does not provide for offers of alternate equipment.

PROCUREMENT
Sealed Bidding
Bids
Acceptance time periods
Extension

B-225597.2 May 12, 1987
87-1 CPD 499

There is no right to a government contract, and Federal Acquisition Regulation provision stating that before expiration of bids, agencies should, if necessary, request written extensions of the lowest bidders' bid acceptance periods is for the benefit of the government. The provision is of the type that creates no rights in bidders.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-225955.2 May 12, 1987
87-1 CPD 500

PROCUREMENT
Bid Protests
GAO procedures
Purposes
Time restrictions

Assuming as the protester contends that the contracting agency received a copy of a protest to the General Accounting Office (GAO) within 10 working days of when the protester learned of its basis for protest, this would not suffice to satisfy the purpose of GAO's timeliness requirement, which is to ensure that a protest is resolved expeditiously. The expeditious resolution of a protest requires that the protester initiate the protest process by filing with GAO in a timely manner.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Certified mail

A protester assumes the risk that its use of certified mail to transmit a protest to the General Accounting Office (GAO) will not result in timely receipt of the protest by GAO.

PROCUREMENT

B-225955.2 Con't

Bid Protests

May 12, 1987

GAO procedures

Purposes

Due process doctrine

The Bid Protest Regulations are designed to provide due process by affording all parties a reasonable opportunity to present their case, and the dismissal of a protest not filed in a timely manner as required by these regulations does not constitute denial of due process.

PROCUREMENT

Bid Protests

Private disputes

GAO review

The General Accounting Office (GAO) will not consider the effect on an awardee's responsibility of its alleged use of the protester's confidential information in preparing its successful bid because the matter concerns a dispute between private parties which GAO does not adjudicate in a bid protest.

PROCUREMENT

B-224235.2 May 13, 1987

Bid Protests

87-1 CPD 501

GAO procedures

Interested parties

Large business protester contending that it would have competed for award of a concession agreement had the agency not limited the field of potential awardees to small businesses is an interested party for purposes of objecting to the agency's definition of the field of potential awardees.

PROCUREMENT
Special Procurement
Methods/Categories
Options
Contract extension
Use
Propriety

B-224235.2 Con't
May 13, 1987

Where an award of a concession agreement is justified in part on the basis of urgency, the inclusion in the agreement of options to extend the term of the agreement is not justified.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-224284.2 May 13, 1987
87-1 CPD 502

Where, in request for reconsideration, an agency that improperly rejected a bid as nonresponsive for failure to acknowledge an amendment that merely confirmed the only reasonable interpretation of a solicitation makes either hypothetical arguments or ones already considered, there is no basis to overturn a prior decision.

PROCUREMENT
Contracting Power/Authority
Unauthorized contracts
Ratification

B-226248 May 13, 1987

Recruitment advertisement was published in New York Daily News based on a procurement request signed by an Environmental Protection Agency (EPA) Assistant Regional Administrator. Authority to approve publication under 44 U.S.C. 3702 had been delegated to regional contracting officers. Since delegation under the statute is legally permissible, and since there was prior written authorization, albeit by the wrong person, EPA may ratify the action.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-226526 May 13, 1987
87-1 CPD 504

Protest is dismissed as academic where the contract award being protested has been terminated for the convenience of the government and the requirement will be resolicited under more competitive specifications.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-222459.4 May 14, 1987
87-1 CPD 505

Where protest to General Accounting Office (GAO) was filed more than 10 working days after basis for it was known to the protester, so that the protest was untimely, fact that a copy of the protest was filed with contracting agency within the 10-day period is irrelevant, since filing of a protest with GAO means receipt in our office.

While there is nothing objectionable in a protester pursuing additional, more detailed, information to support its arguments, doing so does not justify delaying filing a protest based on the grounds already known.

PROCUREMENT
Sealed Bidding
Bids

B-223945.2 May 14, 1987
87-1 CPD 506

Error correction
Low bid displacement
Propriety

PROCUREMENT
Sealed Bidding
Bids

Error correction
Pricing errors
Line items

Discrepancy in bid between stated total price for base and option period services and the correct mathematical total of price for services may be corrected so as to displace another otherwise, low bidder, where the asserted correct bid is the only reasonable interpretation ascertainable from the bid itself. Contracting officer did not lack a reasonable basis for interpretation since stated total--based on 12 months of base period services initially established in IFB--was submitted more than 3 months before contracting agency decreased base period services to 9 months by IFB amendment which successful bidder acknowledged and separately priced showing correct reduced base year prices.

PROCUREMENT
Specifications

B-223987.2 May 14, 1987
87-1 CPD 507

Minimum needs standards
Competitive restrictions
Design specifications
Justification

Solicitation requirement for an integrated check printing and document processing system incorporating an automated optical cost-print verification process is not unduly restrictive of competition because the requirement is reasonably related to the agency's need to produce error-free checks.

PROCUREMENT

B-225502.2 May 14, 1987

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

87-1 CPD 508

PROCUREMENT

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

General Accounting Office affirms prior dismissal as untimely of protest against failure to include proposal in competitive range where protester has not shown that its forbearance from protesting after receipt of an agency letter detailing specific reasons for the rejection of its proposal was justified.

PROCUREMENT

B-225654 May 14, 1987

**Bid Protests
GAO procedures
Purposes
Competition enhancement**

87-1 CPD 509

A protester's interest as a beneficiary of more restrictive specifications is not protectible under the General Accounting Office's bid protest function, which is to ensure that the statutory requirement for full and open competition has been met.

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

B-225654 Con't
May 14, 1987

Where a solicitation's evaluation and source selection criteria give greater weight to technical considerations than to cost or price, the selection of a lower cost/price offeror whose technical proposal has also been found to be technically superior is not only reasonable but required.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Inclusion
Administrative discretion

An initial proposal was properly included within the competitive range where the agency reasonably determined that the proposal was susceptible of being made acceptable through discussions.

PROCUREMENT

B-225654 Con't

Specifications

May 14, 1987

Minimum needs standards

Competitive restrictions

Design specifications

Justification

Although precise design specifications are not improper per se, their use is generally inappropriate if an agency can state its minimum needs in terms of performance specifications which alternate designs could meet. Protest by development contractor that a procurement for antisubmarine warfare power control systems essentially should have been restricted to its own design is denied where the intent of the contracting agency, as reasonably expressed in the solicitation, properly was to broaden the competition to allow for the submission of alternative approaches to meet its minimum equipment needs through the satisfaction of less restrictive performance requirements.

PROCUREMENT

B-225686 May 14, 1987

Sealed Bidding

87-1 CPD 510

Bids

Error correction

Pricing errors

Line items

Protest that agency improperly permitted awardee to correct its bid is sustained where the worksheets submitted by the awardee to establish the mistake do not provide for profit or overhead or otherwise clearly indicate the intended bid.

PROCUREMENT
Sealed Bidding
Invitations for bids
Interpretation
Terms

B-225689 May 14, 1987
87-1 CPD 511

Where invitation required new shipping containers, bid to furnish containers transported from overseas manufacturer filled with cargo properly was rejected, since such equipment is "used," not "new," as those terms are commonly understood. Invitation for bids required notice of intent to furnish used equipment and opportunity for government approval or rejection; by failing to provide notice of intent or seeking clarification of requirements, bidder assumed risk that bid might be rejected.

PROCUREMENT
Bid Protests
Forum election
Finality

B-226633.2 May 14, 1987
87-1 CPD 514

Protester that has filed with the General Services Administration Board of Contract Appeals may not elect to file the same protest with the General Accounting Office.

PROCUREMENT
Bid Protests
GAO procedures
Agency notification

Requirement that protester furnish/agency with a copy of its protest within 1 day after filing with General Accounting Office (GAO) is reasonable given the statutorily imposed time limitation for the agency's filing of a report and for GAO's resolution of the protest.

PROCUREMENT B-226633.2 Con't
Bid Protests May 14, 1987
GAO procedures
Agency notification
Deadlines
Constructive notification

Dismissal of protest for failure to file a copy with the contracting agency within 1 day after filing with the General Accounting Office (GAO) is affirmed since protester failed to comply with Bid Protest Regulations. Protester is charged with constructive knowledge of the requirement that it furnish the contracting agency with a copy of its protest no later than 1 day after it is filed with GAO.

PROCUREMENT B-226861.2 May 14, 1987
Bid Protests 87-1 CPD 515
GAO procedures
Protest timeliness
10-day rule

Dismissal of original protest is affirmed where protester failed to file protest within 10 working days of the date the basis for protest was known.

PROCUREMENT B-226892 May 14, 1987
Contract Management 87-1 CPD 516
Contract administration
Contract terms
Compliance
GAO review

Whether awardee will meet its contractual obligations to the government is a matter of contract administration, which is the responsibility of procuring agency and is not encompassed by the General Accounting Office's bid protest function.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price omission
Line items

B-226898 May 14, 1987
87-1 CPD 517

Where an IFB contemplated the award of a firm, fixed-price contract, a bid accompanied by a cover letter which stated that certain costs were not included because the protester took exception to the specifications, was properly rejected as nonresponsive.

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

A nonresponsive bid may not be made responsive by post-bid-opening explanations.

PROCUREMENT
Contract Management
Contract performance
Work suspension
Administrative discretion

B-227101 May 14, 1987

Whether contract performance should be continued pending the outcome of alleged criminal investigation is a matter of contract administration for consideration by the contracting agency, not the General Accounting Office.

PROCUREMENT

B-225662.2 May 15, 1987

Bid Protests

87-1 CPD 519

Allegation substantiation

Burden of proof

PROCUREMENT

Sealed Bidding

Bids

Evaluation

Approved sources

Based on evidence in the record, GAO cannot conclude that procuring agency deliberately attempted to delay processing of protester's qualified products list (QPL) application in order to preclude protester from competing under QPL procurement.

PROCUREMENT

Sealed Bidding

Contract awards

Propriety

Award to low qualified source was proper where record shows that award was delayed approximately 5 months during which time the agency determined it would need more time to qualify protester, that award could not be delayed further due to the need for item, adequate competition was obtained because all five qualified sources competed and protester has not shown that award was made to next low bidder at an unreasonable price.

PROCUREMENT B-226014 May 15, 1987
Competitive Negotiation 87-1 CPD 520
Offers
Evaluation errors
Salient characteristics
Allegation substantiation

PROCUREMENT
Specifications
Brand name/equal specifications
Equivalent products
Salient characteristics
Descriptive literature

Protest by brand-name offeror under negotiated brand-name-or-equal procurement that agency improperly made award to firm whose proposal was "nonresponsive" because its "equal" product did not conform to one of the salient characteristics listed in the solicitation is denied where agency obtained a clarification from the "equal" offeror through telephonic discussions and record does not support protester's contention that agency arbitrarily concluded that the requirement would be met.

PROCUREMENT B-227039 May 15, 1987
Socio-Economic Policies
Labor standards
Construction contracts
Violation
Administrative remedies

Contractor's attorney purports to appeal to the Comptroller General for review of and relief from the demand of the Army Corps of Engineers for payment of \$61,854.73 for alleged violations of the Davis-Bacon Act relating to the proper classification of employees. The contractor's attorney is advised that since the contractor has not exhausted its administrative remedies at the Department of Labor, our Office will not decide the merits of the issues raised at this time.

PROCUREMENT
Sealed Bidding
Alternate bids
Responsiveness
Criteria

B-225725 May 18, 1987
87-1 CPD 522

Where solicitation permits bids for custodial services on both a nighttime and daytime basis, a bid for daytime services that complies with all the terms and conditions of the solicitation is responsive, and the fact that the same bidder's bid for nighttime services is nonresponsive does not affect the responsiveness of the daytime bid.

PROCUREMENT
Sealed Bidding
Bids
Clerical errors
Error correction
Propriety

Where it is not clear whether a mistake in bid is in a unit price or an extended price, so that the intended bid cannot be determined, it is generally improper to treat the mistake as an apparent clerical error.

PROCUREMENT
Sealed Bidding
Low bids
Error correction
Price adjustments
Propriety

Where it is clear that an allegedly mistaken bid would be low with or without correction, a bidder may waive its mistake claim or correct its bid, even when the intended bid cannot be determined exactly. When the error amounts to \$108.02 on a total price of more than \$2 million, the effect is de minimus, and higher-priced bidders are not prejudiced.

PROCUREMENT
Competitive Negotiation
Best/final offers
Technical acceptability
Negative determination
Propriety

B-226167 May 18, 1987
87-1 CPD 523

Contracting agency reasonably rejected best and final offer for the lease of office and related space because of informational deficiencies when it omitted items that were specifically required by the request for proposals and that had been raised during discussions. Protester's oral statement during discussions of its intent to meet solicitation requirements, without verification, is not a binding offer.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Amendments
Criteria

When contracting officer advises all offerors, in writing, of the government's changed requirements, the essential elements of an amendment are present, whether or not the writing is numbered and designated as a formal amendment. Agency's letter to offerors, listing additional solicitation requirements as well as topics for discussion, meets this test.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-226387 May 18, 1987
87-1 CPD 524

Protest that agency should have issued an invitation for bids and not have conducted a procurement under negotiation procedures is untimely where not raised until long after the due date for initial proposals, since the use of negotiation was an alleged deficiency that was apparent on the face of the solicitation.

PROCUREMENT

B-227023 May 18, 1987

Bid Protests

87-1 CPD 525

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest against alleged apparent solicitation impropriety--amendment imposing allegedly excessive minimum level of effort requirement--is dismissed as untimely when not filed until after the next closing date for receipt of proposals.

PROCUREMENT

B-227117 May 18, 1987

Bid Protests

87-1 CPD 526

GAO procedures

Interested parties

Direct interest standards

Protest from the second low bidder, which is not in line for the award if the protest, essentially on behalf of the low bidder, is upheld, is dismissed because the protester does not have the requisite direct economic interest required to be considered an interested party under the Bid Protest Regulations.

PROCUREMENT

B-222448.6 May 19, 1987

Sealed Bidding

Invitations for bids

Post-bid opening cancellation

Justification

Sufficiency

An invitation for bids may be canceled after bid opening and the exposure of bid prices when a compelling reason exists for doing so. Agency has a compelling reason to cancel the invitation where agency determines that solicitation requirements fail to reflect the agency's need because one product is no longer available and award based on revised requirement is expected to result in lower overall price to the government.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-224908.3; B-224908.4

May 19, 1987

Prior decision is affirmed where requests for reconsideration filed by the contracting agency and the awardee fail to establish that the prior decision rests upon the protester's material misrepresentation of fact.

PROCUREMENT

Bid Protests

GAO procedures

Preparation costs

PROCUREMENT

Competitive Negotiation

Discussion reopening

Competitive system integrity

GAO decisions

Recommendations

PROCUREMENT

Competitive Negotiation

Offers

Preparation costs

Recommendation that competitive range discussions be reopened is withdrawn where it is determined upon reconsideration that the remedy is no longer feasible given the extent of contract performance and the critical nature of the requirement to the agency's mission. Protester, however, is nevertheless entitled to its protest costs, including attorney's fees, and its proposal preparation costs.

PROCUREMENT B-225621.2; B-225621.3
Sealed Bidding May 20, 1987
Invitations for bids 87-1 CPD 528
Post-bid opening cancellation
Justification
Competition enhancement

Where solicitation requirement for a preaward test related to a small and segregable portion of the required work and restriction on subcontracting that portion of the work prevented potential bidders from competing, the contracting officer had a compelling reason to cancel the solicitation after bid opening since it is in the best interest of the government to enhance competition.

PROCUREMENT B-226971 May 20, 1987
Bid Protests 87-1 CPD 530
Moot allegation
GAO review

Protest based on objection to contracting agency's technical evaluation of protester's proposal which led to protester's exclusion from competitive range is dismissed as academic where contracting agency decides to reopen competition and reevaluate proposal.

PROCUREMENT B-223527.4 May 21, 1987
Competitive Negotiation
Price reasonableness

The determination of price reasonableness involves the exercise of business judgment by the contracting officer; the exercise of such judgment is not subject to legal objection unless it is clearly unreasonable or there is a showing of bad faith or fraud.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225462.2 May 21, 1987
87-1 CPD 531

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Claim for bid protest costs is denied where protester withdrew initial protest and subsequent protest is denied.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification

Cancellation of invitation for bids after contract with third low bidder has been terminated and second low bidder has been advised that solicitation will be reinstated and it will receive award is proper where agency no longer requires the supplies.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic sources
Construction contracts
Vessels

B-225722 May 21, 1987
87-1 CPD 532

Military contracting agency properly included, in solicitation for a barge, domestic shipyard restriction of 10 U.S.C. 7309, since restriction applies to the procurement of any vessel by a military department.

PROCUREMENT
Sealed Bidding
Unbalanced bids
Materiality
Responsiveness

B-225808.3 May 21, 1987
87-1 CPD 533

A low bid for a requirements type contract that is mathematically unbalanced is not materially unbalanced unless it can be shown that the government estimates are so unreliable that award to the low bidder will not result in the lowest cost to the government.

PROCUREMENT
Bid Protests
Allegation
substantiation
Lacking
GAO review

B-225819; B-225819.2
May 21, 1987
87-1 CPD 534

Protester's self-serving speculation that awardee may have submitted its initial proposal after closing time set for receipt of initial proposals does not show submission was late where no evidence has been submitted in support of allegation and agency denies that it is true.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

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

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

B-225819; B-225819.2 Con't

May 21, 1987

New grounds of protest raised for the first time in a letter filed in the General Accounting Office subsequent to initial protest letter must independently satisfy the timeliness rules of Bid Protest Regulations. Where protester should have known areas in which its proposal was downgraded from agency correspondence and debriefing, at which the scoring of protester's proposal in those areas was discussed, but waited 20 days after debriefing to protest the low scoring of its proposal in those areas, protest is dismissed as untimely.

PROCUREMENT

Bid Protests

Information disclosure

Competitive advantage

Under the Competition in Contracting Act of 1984, agencies are not required to provide to protesters and other interested parties documents related to a protest that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Nevertheless, decisions on bid protests are based on the entire record and not merely on those portions that have been released to the protester and other interested parties.

PROCUREMENT B-225819; B-225819.2 Con't
Competitive Negotiation May 21, 1987
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

Contracting agency's selection of higher priced, higher technically rated offeror was proper, since request for proposals provided that technical factors would be weighted at 90 percent of total evaluation while evaluated price would represent only 10 percent and there is no evidence that price/technical tradeoff was unreasonable.

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

Allegation that several evaluators may have potential conflicts of interest because of personal or professional relationships with awardee's employees is not sufficient to justify overturning the award, since the record contains no evidence of bias or preferential treatment toward awardee in the evaluation process.

PROCUREMENT B-224561.2 May 22, 1987
Bid Protests 87-1 CPD 535
GAO procedures
Information submission
Timeliness

Parties to a bid protest, including contracting agencies, that withhold or fail to submit relevant evidence to the General Accounting Office (GAO) during consideration of the protest do so at their peril, since GAO will not reconsider decisions based upon previously available and relevant evidence that is first presented in a request for reconsideration.

PROCUREMENT

B-225138 May 22, 1987

**Contract Management
Shipment costs
Rates
Overcharge
Set-off**

PROCUREMENT

**Payment/Discharge
Shipment costs
Overcharge
Payment deductions
Statutes of limitation**

The General Services Administration effected deduction of alleged overcharges from amounts subsequently due a carrier more than 3 years after the bills were paid. Section 3726(b) of title 31, United States Code, limits the Government's time in which to deduct overcharges to 3 years after payment. Thus, the deductions were erroneous and the amounts deducted should be refunded to the carrier.

PROCUREMENT

**B-225675 May 22, 1987
87-1 CPD 536**

**Bid Protests
Allegation substantiation
Lacking
GAO review**

There is no merit to protester's contention that the contracting agency did not comply with the regulatory requirements for awarding a contract after a challenge to the awardee's status as a regular dealer under the Walsh-Healey Act had been referred to the Small Business Administration where the record shows that the contracting agency substantially complied with the regulatory requirements.

PROCUREMENT **B-227088.2 May 22, 1987**
Bid Protests **87-1 CPD 537**
Agency-level protests
Protest timeliness
Waiver
Merits adjudication

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest to contracting agency of alleged improprieties in request for proposals is untimely if filed with proposal, and General Accounting Office therefore will not consider subsequent protest following initial adverse agency action, even if contracting agency considered protest's merits.

PROCUREMENT **B-227103 May 22, 1987**
Sealed Bidding **87-1 CPD 538**
Bids
Modification
Late submission
Rejection

Procuring agency may not consider late bid modification where the modification was received and time/date stamped after the bid opening date. Fact that late modification would make bid low does not permit acceptance of the modification where the bid is not otherwise low.

PROCUREMENT B-227254 May 22, 1987
Bid Protests 87-1 CPD 539
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Protest to General Accounting Office is untimely where filed more than 10 working days after initial adverse action by contracting agency on protest filed at that level.

PROCUREMENT B-225574.2 May 26, 1987
Competitive Negotiation 87-1 CPD 540
Offers
Evaluation
Time/materials contracts
Wage rates

Where request for proposals for time-and-materials contract requires that offerors' wage rates be based on a 40-hour week, an offer to provide compensated overtime is acceptable if the labor rates actually proposed are based on the actual hourly wage rates the offeror pays for a 40-hour week.

PROCUREMENT B-226591 May 26, 1987
Sealed Bidding 87-1 CPD 542
Bids
Responsiveness
Contractor liability
Liability restrictions

Bid which fails to acknowledge material amendment concerning equipment specifications, and which imposes protester's standard terms and conditions which take exception to numerous invitation for bids requirements--including delivery terms and bidder's obligation to pay applicable taxes--is properly rejected as nonresponsive.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-225125.2 May 27, 1987
87-1 CPD 543

Protest of the rejection of the protester's bid for its failure to acknowledge several solicitation amendments is dismissed because, where the protester is not the low bidder, has not contested the acceptability of the lower-priced bids received, and would not therefore be in line for award even if its protest were upheld, it is not an interested party under General Accounting Office Bid Protest Regulations.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

B-225732.2 May 27, 1987
87-1 CPD 544

Protest of award by a firm that is not in line for award if the protest were sustained is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest contending that request for proposals' technical evaluation provisions are unduly complex is untimely when not filed before the time set for receipt of initial proposals.

PROCUREMENT

B-225823.3 May 29, 1987

Competitive Negotiation

Offers

Late submission

Acceptance criteria

Neither the desire to compete on the part of a firm that submitted a late proposal, nor the fact that another company has protested its failure to receive a copy of the solicitation, warrants consideration of the late proposal since it properly was rejected under the applicable rules.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS **B-226831** **May 4, 1987**
Federal Administrative/Legislative Matters
Administrative regulations
Records management

This Office has no legal objection to a proposal submitted by the National Archives and Records Administration to amend General Records Schedule (GRS) 4, Item 6, relating to surplus property case files to conform with the dollar amounts specified in GRS 3, Item 4, relating to routine procurement case records.

MISCELLANEOUS TOPICS **B-226811** **May 6, 1987**
Federal Administrative/Legislative Matters
Administrative agencies
Financial information
Interagency transfer
Signatures

Within the context of transactions between Federal agencies, it is our opinion that electronic signatures are acceptable provided that appropriate safeguards are taken to prevent unauthorized use promote reliability and permit accountability.

MISCELLANEOUS TOPICS **B-226429** **May 7, 1987**
Federal Administrative/Legislative Matters
Interagency agreements

Agreement between Veterans' Administration (VA) and Department of Defense (DOD) providing for use of military aeromedical evacuation system to transport VA beneficiaries to military and VA hospitals, on a referral and space available basis, would be authorized by VA-DOD Health Resources Sharing and Emergency Operation Act (38 U.S.C. 5011(a)) and Economy Act (31 U.S.C. 1535).

MISCELLANEOUS TOPICS **B-226732 May 8, 1987**
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

This Office does not concur in the approval of the Requests for Records Disposition Authority (SF-115) submitted by the Air Force proposing to change rules 15 and 16 of table 112-1, AFR 12-50, Volume II, relating to claims by the Air Force for recovery of the costs incurred by the Government in providing hospital care to persons injured by the tortious acts of third parties since we have no evidence that the Government's right to collect debts by way of setoff was considered or the potential for fraud in obtaining compromise settlements was considered when establishing the proposed 1 year retention period for unpaid claims.

MISCELLANEOUS TOPICS **B-218922 May 18, 1987**
Human Resources
Social security
Payroll deductions
Refunds
Distribution

Internal Revenue Service refunded Social Security contributions previously paid over by Department of Labor (DOL) contractor. Refund included portion which had been withheld from employee wages and an equal amount contributed by contractor as employer. Portion of refund representing employer's contribution should have been returned to DOL as an unallowable contractor cost. However, contractor erroneously distributed more than half of the total refund to some former employees. Balance of refund, now in hands of DOL, should be viewed as partial return of unallowable contract costs and retained by DOL for credit to disbursing appropriation, and DOL should pursue claim for balance due.

MISCELLANEOUS TOPICS B-226922 May 21, 1987
Environment/Energy/Natural Resources
Hazardous substances
Environmental protection
Standards
Enforcement

EPA is authorized under section 2002 of RCRA, as amended, to establish "minimally acceptable procedures" for states conducting inventory programs pursuant to section 3012.

EPA must assume responsibility for state inventory programs found not to be in compliance with section 3012 or regulations implementing the provision. EPA is authorized to issue a compliance order or sue for appropriate relief if state programs do not comply with section 3012 and applicable regulations. Civil penalties may also be sought against states which do not take action consistent with the compliance order. 42 U.S.C. 6928(a). Unless the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 et seq. (1982), appropriations specifically conditioned allocation of funds upon compliance with section 3012, EPA would not be authorized to deny states their distributions under CERCLA due to noncompliance with section 3012.

Section 3012(b) does not specify the method by which EPA might discover whether individual state programs are adequate.

MISCELLANEOUS TOPICS B-226922 Con't
Environment/Energy/Natural May 21, 1987
Resources
 Hazardous substances
 Waste sites
 Inventories
 State/local governments

Section 3012 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901 et seq. (1982), leaves unanswered the question of when the appropriate time arises for state submission of waste site inventories. Any reasonable interpretation by the state of the section's exhortation to act "as expeditiously as practicable" would be acceptable.

Section 3012 of RCRA, as amended, is silent regarding the frequency of inventory updates required to be submitted by states. The states administering inventory programs have discretion regarding the timing of compiling and submitting initial waste site inventories and updates under section 3012.

Active waste site search techniques mentioned in section 3012 are elective—not required—on the part of the administrator of the state inventory program. Program administrators would have broad discretion in their choice of methods not specifically mentioned in section 3012.

National Security/International Affairs**Foreign aid programs****Funding restrictions****Military assistance**

Senate expedited procedures put forth in the International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, 722, 99 Stat. 190, 258 (1985) (ISDCA), are available in the Senate for the consideration of the President's fiscal year 1988 budget request for assistance to the Nicaraguan Democratic Resistance. The applicability of the Senate expedited procedures to the President's request is not dependent on the extension of the provisions of section 722 of ISDCA by section 215 of Title II of the Military Construction Appropriations Act, 1987, Pub. L. No. 99-591, 100 Stat. 3341, 3341-307 (1986).

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