

GAO

Office of General Counsel



Digests of Unpublished
Decisions of the
Comptroller General
of the United States



United States General Accounting Office

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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-204078.2 May 6, 1988

Purpose availability

Specific purpose restrictions

Revolving accounts

General/administrative costs

Paragraph 1302(c)(2) of the Panama Canal Act, as amended by section 5422 of the Omnibus Budget Reconciliation Act of 1987, acts as a bar to the obligation or expenditure of funds from the Panama Canal Revolving Fund for administrative expenses unless authorized specifically in an appropriations act. The statute clearly provides that no funds may be obligated expended by the Commission in any fiscal year except to the extent or in such amounts as are provided in appropriations acts.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Time availability

Permanent/indefinite appropriation

Determination criteria

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process

Permanent/indefinite appropriation

Section 5422 of the Omnibus Budget Reconciliation Act of 1987, which establishes the Panama Canal Revolving Fund, eliminates the need for annual appropriations to the Panama Canal Commission to carry out its activities, with the exception of administrative expenses. A statute that authorizes the deposit of receipts in a special fund and makes the fund available for carrying out specific purposes creates a permanent appropriation.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Budget Process **B-204078.2 Con't**
Continuing resolutions **May 6, 1988**
Statutory interpretation
Congressional intent

Paragraph 1302(c)(1) of the Panama Canal Act, as amended by the Omnibus Budget Reconciliation Act of 1987, and section 305 of the Department of Transportation and Related Agencies Appropriations Act, 1988, can be read consistently. The Reconciliation Act and the Appropriations Act were enacted on the same day, and presumably the Congress intended them to be interpreted as consistently as possible. Both the requirements of paragraph 1302(c)(1), which requires annual authorizations before the Panama Canal Commission may use the Panama Canal Revolving Fund, and section 305, which requires the fiscal year 1988 appropriations to the Commission to be used in conformance with the Panama Canal Treaties of 1977, and subsequent implementing legislation are applicable to Canal Commission activities. We see no necessary conflict between their provisions.

APPROPRIATIONS/FINANCIAL MANAGEMENT
Budget Process
Funds transfer
Unobligated balances
Authority

Budget authority enacted by the Department of Transportation and Related Agencies Appropriations Act, 1988, for the operation of the Panama Canal Commission were transferred to the Panama Canal Revolving Fund by the Omnibus Budget Reconciliation Act of 1987. Paragraph 1302(a)(2) of the Panama Canal Act of 1979, as amended by the Reconciliation Act, transferred to the Revolving Fund all unexpended appropriations available to the Commission at the close of business on December 31, 1987.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-230691 May 12, 1988

Purpose availability

Specific purpose restrictions

Utility services

Use taxes

9-1-1 emergency service charges imposed by districts established in Tennessee under that state's Emergency Communications District Law are actually taxes and may not be paid by the federal government. These charges have the same characteristics as similar charges imposed under Florida, Maryland and Texas law and previously disallowed in B-215735.2, April 20, 1987, 66 Comp. Gen. 385; 65 Comp. Gen. 879 (1986); and 64 Comp. Gen. 655 (1985).

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-231154 May 4, 1988

**Compensation
Conflicts of interest
Board members
Disqualification**

Individual who is currently Deputy General Counsel of the National Labor Relations Board has been nominated to be a member of the Board. If he is confirmed and appointed a Board member, he will be required to disqualify himself from deciding any case in which he participated personally as Deputy General Counsel. He will not be required to disqualify himself from cases that were pending within the National Labor Relations Board during his service as Deputy General Counsel but in which he had no personal involvement. These standards for disqualification are consistent with 5 U.S.C. § 554(d)(2) and 28 U.S.C. § 455.

CIVILIAN PERSONNEL

B-226306 May 12, 1988

**Leaves Of Absence
Home leave
Eligibility**

The Army has requested our decision concerning its interpretation of the home leave regulation, 5 C.F.R. § 630.606(c)(2) (1987). The Army may grant home leave during an employee's period of service abroad, or within a reasonable period after the employee's return from service abroad when it is contemplated, i.e., expected, that the employee will return to service abroad immediately or on completion of a permanent assignment in the United States.

CIVILIAN PERSONNEL**B-229375 May 12, 1988****Relocation****Household goods****Actual expenses****Reimbursement****Amount determination**

The Internal Revenue Service (IRS) authorized an employee to move his household goods on a permanent change of station by the Government Bill of Lading method and the employee decided to move himself. Under General Services Administration regulations, the IRS properly limited reimbursement to the actual expenses incurred; therefore, the employee's reclaim for the difference between the amount of actual expenses and the amount payable on the commuted rate basis may not be allowed.

CIVILIAN PERSONNEL**B-227411 May 19, 1988****Compensation****Overtime****Retroactive compensation****Night differentials**

The Director, Voice of America (VOA), is advised that there is no authority to retroactively grant payment of a night differential to VOA Foreign Service Nationals employed on the Island of Antigua prior to the effective date such premium compensation was specifically authorized by headquarters or was included in a local compensation plan. Such payment of night differential is discretionary, and an increase in compensation resulting from an exercise of discretionary administrative authority is payable only on or after the effective date of the increase or specific authorization, in this case March 16, 1986.

CIVILIAN PERSONNEL

B-231084 May 19, 1988

**Compensation
Overpayments
Error detection
Debt collection
Waiver**

Waiver under 5 U.S.C. § 5584 is not appropriate to the extent that an employee continues to accept erroneous payments after receiving actual notice of the error.

CIVILIAN PERSONNEL

B-219526 May 25, 1988

**Relocation
Expenses
Interest
Eligibility
Delayed payments**

A transferred employee received payment of a Relocation Income Tax Allowance (RITA). Because 154 days elapsed between the time he submitted his voucher and the time payment was made, he claimed interest on the amount due for all the period beyond the first 30 days. His claim is denied since he is not entitled to interest under the Prompt Payment Act and there are no statutes authorizing the payment of interest on delayed relocation expense payments.

CIVILIAN PERSONNEL**B-229086 May 25, 1988****Compensation****Retroactive compensation****Promotion****Eligibility****Burden of proof**

A grade GS-3 employee, who claims that she was detailed to perform the duties of a grade GS-4 position for nearly 1 year, is not entitled to a retroactive temporary promotion and backpay. The Court of Claims ruled in Wilson v. United States, 229 Ct. Cl. 510 (1981), that employees have no entitlement under the applicable statute or regulations to temporary promotions for overlong details.

CIVILIAN PERSONNEL**B-229439 May 25, 1988****Travel****Advances****Overpayments****Debt collection****Waiver**

An employee seeks reimbursement of money collected from him for a travel overpayment. The overpayment was caused by the agency's failure to deduct a travel advance from the amount claimed by the employee at the time of voucher settlement. The employee claims, among other things, that he never received the money. We find no basis to allow the employee's claim based upon the written record, and this Office does not conduct adversary hearings. Further, since the overpayment was made prior to December 28, 1985, the effective date of waiver coverage of travel and transportation expenses, waiver is not available in this case.

Pay

Dual compensation restrictions

Retirement pay

Reduction

Amount determination

The dual pay restrictions of 5 U.S.C. § 5532 are specifically made applicable to the Postal Service by 39 U.S.C. § 410(b)(1). For this reason the retired pay of a military retiree reemployed with the Postal Service is to be reduced in accordance with 5 U.S.C. § 5532. Because the Postal Service is not a nonappropriated fund instrumentality, the dual pay restrictions are not rendered inapplicable by the rationale in Denkler v. United States, 782 F.2d 1003, holding 5 U.S.C. inapplicable to reemployment with the Federal Reserve Board.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-227584 May 19, 1988

Travel

Travel allowances

Eligibility

Entries concerning travel allowances in military orders are ineffective to the extent that they do not conform to the applicable statutes and regulations. Hence, an Army reservist called away from his home to perform active duty is entitled to payment of travel allowances as prescribed by regulation, notwithstanding an entry included by the Army Reserve Personnel Center in his active duty orders that travel at government expense was not authorized.

MILITARY PERSONNEL

Travel

Travel orders

Conflicting terms

Inconsistent travel orders or authorizations for the same travel issued by different Army commands should be reconciled in the settlement of an Army reservist's claims. The orders issued by the proper order issuing authority should be amended to conform to the law and regulations, and subsequent settlement of the member's claims should be based on the amended orders. The other orders should be disregarded.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Subcontractors

B-230234 May 2, 1988
88-1 CPD 421

Protest against road construction solicitation specifying use of particular road surfacing material is dismissed where the protester is, at most, a subcontractor to a potential bidder, and therefore is not an interested party under the General Accounting Office Bid Protest Regulations.

PROCUREMENT
Sealed Bidding
Bids
Late submission
Rejection
Propriety

B-230291 May 2, 1988

Protester's bid properly was rejected as late where bid was delivered by commercial carrier to installation's central receiving facility rather than office designated in IFB for receipt and where carrier's envelope was not marked with information clearly identifying it as a bid.

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Descriptive literature

B-230567 May 2, 1988
88-1 CPD 422

Where request for proposals requires offerors to furnish sufficient technical literature to establish that equipment is a current production model, agency properly rejected proposal which failed to contain adequate descriptive literature and stated only that offered equipment was accepted in prior procurement.

PROCUREMENT

Bid Protests

GAO procedures

Administrative reports

Comments timeliness

B-230574.2 May 2, 1988

88-1 CPD 423

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

Comments timeliness

Protest properly was dismissed for failure to timely comment on contracting agency's report, or otherwise express interest in the General Accounting Office's (GAO's) continued consideration of the case, where "reply" protester now says was mailed to "[our] organization" in fact was addressed to a Member of Congress, not GAO. A protester's obligation to advise the GAO of the protester's continuing interest in its case is not satisfied by the sending of correspondence to a Member of Congress, of which correspondence the GAO is not made aware.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

B-230628.2 May 2, 1988

88-1 CPD 424

Protest based on solicitation defect allegedly learned after bid opening is untimely where protester did not file the protest within 10 days of learning of the defect.

PROCUREMENT
Contract Management
Contract administration
Convenience termination
Resolicitation
GAO review

B-228480.4 May 3, 1988
88-1 CPD 429

Where solicitation is found to be defective after award because its evaluation scheme did not include an estimate of waiting time for each line item of transportation services so that the agency could not ensure that award resulted in the lowest cost to the government, General Accounting Office will not object to agency's decision to terminate the contract and resolicit the requirement with appropriate corrections.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-229943.2 May 3, 1988
88-1 CPD 430

Protest against the use of mini source selection procedures to evaluate proposals is untimely where this alleged impropriety was apparent but not filed before the closing date for receipt of proposals.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

Protest that protester did not receive meaningful discussions is denied where the procuring agency advised protester of deficiencies in its proposal and provided protester with the opportunity to revise its proposal.

PROCUREMENT B-229943.2 Con't
Competitive Negotiation May 3, 1988
Offers
Evaluation
Technical acceptability

In reviewing protests concerning the evaluation of technical proposals, the General Accounting Office will not substitute its judgment for that of agency's evaluators but will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes and regulations.

PROCUREMENT B-230226 May 3, 1988
Sealed Bidding 88-1 CPD 431
Bids
Evaluation
Price reasonableness
Administrative discretion

Protest that awardee's bid should have been rejected as nonresponsive because it was unreasonably high for one item is denied where protester fails to show that agency's determination of price reasonableness was clearly unreasonable or resulted from fraud or bad faith.

PROCUREMENT
Bid Protests
Agency-level protests
Protest timeliness
Waiver
Merits adjudication

B-231070 May 3, 1988
88-1 CPD 432

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest to the General Accounting Office (GAO) against the rejection of a proposal as technically unacceptable will not be considered because the initial agency-level protest was not timely filed. The fact that the contracting agency considered the protest on the merits does not waive GAO's timeliness requirements.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that statement of work contained in solicitation was too generic and therefore inadequate is untimely when not filed prior to the initial closing date for submission of proposals.

PROCUREMENT
Bid Protests
Private disputes
GAO review

B-231072 May 3, 1988
88-1 CPD 433

The General Accounting Office will not consider a matter that is essentially a dispute between private parties.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-227880.5 May 4, 1988
88-1 CPD 434

The General Accounting Office finds without merit a request for reconsideration of a decision that an agency properly excluded the protester's proposal from the competitive range where the protester proposed excessive staffing based on an unreasonable reliance on a solicitation worksheet for calculating staffing after the agency advised offerors that the worksheet was provided for information purposes only and was not mandatory for use.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

Protest that agency should have advised offeror that its initial proposal was overstaffed before eliminating it from the competitive range is denied where deficiency resulted from the offeror's lack of diligence, competence or inventiveness in preparing its proposal.

PROCUREMENT

B-229655.2 May 4, 1988

Bid Protests

88-1 CPD 435

Allegation substantiation

Lacking

GAO review

PROCUREMENT

Specifications

Ambiguity allegation

Specification interpretation

Where protester alleges that solicitation provisions are ambiguous but provides no alternative interpretations or further explanations, these allegations are dismissed for failure to state a basis for protest.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest concerning a solicitation impropriety is untimely where not raised until the protester's comments on the agency report.

PROCUREMENT

Sealed Bidding

Bid opening

Extension

Refusal

Justification

Contracting officer's decision not to delay bid opening, despite bidder's lengthy request for clarification, is not legally objectionable where bidder waits until last working day before bid opening to request such clarification even though it was apparently aware of grounds for request upon issuance of the solicitation due to relationships it had with the incumbent.

PROCUREMENT
Sealed Bidding
Invitations for bids
Information adequacy

B-229655.2 Con't
May 4, 1988

There is no requirement that a solicitation be so detailed as to completely eliminate all performance uncertainties and risks. Protester has not shown that information provided in solicitation lacks sufficient detail as to be defective, where information provided is adequate to prepare a bid.

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

Even if a provision in a solicitation's specifications and a term used in the schedule of work are ambiguous, argument that the ambiguities require the requirement to be resolicited is without merit where the protester does not show that it was prejudiced by the defects.

PROCUREMENT
Sealed Bidding
Bids
Computation
Collective bargaining agreements

B-229990 May 4, 1988
88-1 CPD 436

Prospective bidders are responsible for ascertaining the details of any collective bargaining agreements and considering them in the calculation of their bids.

PROCUREMENT

B-229990 Con't

Special Procurement

May 4, 1988

Methods/Categories

Service contracts

Wage rates

Computation

Collective bargaining agreements

Agency is not required to warn bidders of the incumbent contractor's view that the Service Contract Act makes payable to employees in job classifications that were not used under the predecessor contract the fringe benefits set out in the incumbent's collective bargaining agreement. The Service Contract Act's requirement that a successor service contractor pay employees no less than the rates in the predecessor's agreement does not apply where the agreement is inapplicable to the work performed under the earlier contract.

PROCUREMENT

Special Procurement Methods/Categories

Service contracts

Wage rates

GAO review

General Accounting Office does not review the wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act.

PROCUREMENT **B-230076 May 4, 1988**
Competitive Negotiation 88-1 CPD 437
Offers
Cost realism
Evaluation errors
Allegation substantiation

Protester has not shown that the agency's cost realism approach of not escalating personnel costs subject to Department of Labor determinations under the Service Contract Act was arbitrary or unreasonable even though it had the effect of differentially adjusting the proposed costs of both offerors.

PROCUREMENT **B-230306 May 4, 1988**
Socio-Economic Policies 88-1 CPD 438
Small business set-asides
Contract awards
Price reasonableness

Protest that agency improperly awarded a contract for tool sets under a small business set-aside to a firm that proposed a price in excess of the item's fair market price is denied, since the agency's determination, in accordance with governing procurement regulations, that the awardee's offered price did not exceed the fair market price, was reasonable.

PROCUREMENT **B-230956.2 May 4, 1988**
Bid Protests 88-1 CPD 439
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Dismissal of protest as untimely is affirmed where protester failed to file its protest with the General Accounting Office (GAO) within 10 working days of notice of initial-adverse agency action on protester's prior protest filed with the procuring agency. A protest is filed for purpose of GAO timeliness rules when it is received in GAO notwithstanding when it was mailed.

PROCUREMENT **B-231080 May 4, 1988**
Competitive Negotiation **88-1 CPD 440**
Offers
Submission time periods
Additional information

An agency properly rejected a protester's offer when the protester failed to submit information requested within 15 days, as required by the agency. Protester's belief that 15 days meant 15 working days rather than 15 calendar days is unreasonable.

PROCUREMENT **B-226774.4 May 6, 1988**
Bid Protests **88-1 CPD 441**
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Sureties
Liability restrictions

Prior decision holding that bid was properly rejected as nonresponsive where the required bid bond amount exceeded the corporate surety's underwriting limit and no evidence of reinsurance was provided with the bid is affirmed on reconsideration where protester merely reiterates arguments raised in initial protest and fails to show error of fact or law in prior decision.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-230211.2 May 6, 1988
88-1 CPD 442

Protest filed more than 10 working days after protester knew the basis for its protest is untimely.

Though firm may choose to pursue a matter with the contracting agency instead of filing a protest, even after the agency has advised that it reject's the firm's position, doing so does not toll the 10 working day period for filing a protest with our Office.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

B-230597 May 6, 1988
88-1 CPD 443

PROCUREMENT
Contractor Qualification
Responsibility criteria
Performance capabilities

Whether a bidder can perform at its proposed facility concerns the firm's responsibility, and the General Accounting Office will not review an affirmative determination in that regard in the absence of a showing of possible fraud or bad faith or the failure to apply definitive responsibility criteria.

PROCUREMENT **B-230597 Con't**
Contractor Qualification **May 6, 1988**
Responsibility
Information
Submission time periods

Protest that bid should have been rejected because bidder did not complete the place of performance clause is denied, because the clause generally concerns bidder responsibility, so that the missing information may be supplied up to the time of contract award.

PROCUREMENT **B-231075 May 6, 1988**
Bid Protests **88-1 CPD 444**
GAO procedures
Protest timeliness
10-day rule

Protest of the cancellation of a solicitation filed more than 8 months after protester knew of the cancellation is untimely.

PROCUREMENT **B-229491.2 May 9, 1988**
Bid Protests **88-1 CPD 445**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where agency does not present evidence that original decision was based on errors of law or fact.

PROCUREMENT B-229861.2; B-229862.2
Specifications May 9, 1988
Minimum needs standards 88-1 CPD 446
Competitive restrictions
Allegation substantiation
Evidence sufficiency

Protest alleging that solicitation for extracting precious metals from electronics scrap unduly restricts competition by restricting type of processing method contractor may use is denied where protester fails to show that contracting agency's technical judgment that restriction is necessary to ensure recovery of optimum amount of precious metal is unreasonable.

PROCUREMENT B-230230 May 9, 1988
Socio-Economic Policies 88-1 CPD 447
Small businesses
Contract awards
Propriety

A Small Business Administration determination that the awardee does not meet the solicitation size standard, which is rendered for prospective application only, does not affect the validity of the protested contract award.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size determination
GAO review

Where a contracting officer failed to provide an incumbent contractor with a small business set-aside solicitation for a follow-on contract based on a belief that the contractor did not meet the applicable size standard and therefore would not be eligible for contract award, the exclusion of the contractor was proper since the Small Business Administration, before bid opening and in response to the contracting officer's request, confirmed that the incumbent does not meet the size standard.

PROCUREMENT **B-230230 Con't**
Socio-Economic Policies **May 9, 1988**
Small businesses
Size standards
GAO review

General Accounting Office will not consider protest that a solicitation has the wrong Standard Industrial Classification (SIC) code, used to determine the small business size standard for the procurement, since conclusive authority to determine the proper SIC code is vested in the Small Business Administration.

PROCUREMENT **B-229921, et al.**
Competitive Negotiation **May 10, 1988**
Contract awards **88-1 CPD 448**
Multiple/aggregate awards
Propriety

PROCUREMENT
Competitive Negotiation
National defense interests
Industrial mobilization bases

Where solicitation specifically provided for multiple awards only if best value offeror could not meet the required delivery schedule, contracting agency was not required to make less than a complete award to offeror whose proposal was most advantageous under the stated evaluation criteria in order to enhance future competition or strengthen the industrial mobilization base.

PROCUREMENT B-229921, et al. Con't
Competitive Negotiation May 10, 1988
Contract awards
Oral notification
Allegation substantiation

Allegation that prior award was made orally to the protester is not supported by the record and, in any event, is irrelevant to the protest issue of whether there was a reasonable basis for a written award to competing offeror.

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

Contracting agency did not act unreasonably in selecting for award the proposal of the contractor most experienced in supplying night vision devices where: (1) the awardee had undertaken corrective measures to overcome prior production shortfalls; (2) one competitor, although offering slightly lower prices, proposed significantly reduced quality assurance inspection sampling; and (3) other competitor's proposal offered an evaluated cost more than 10 percent higher than that of the awardee, without also offering any significant offsetting technical advantages.

PROCUREMENT
Competitive Negotiation
Contracting officer duties
Information disclosure

Contracting agency has no duty to provide offerors technical data available to the incumbent that was not reasonably available to the agency during the competition.

PROCUREMENT B-229921, et al. 'Con't'
Competitive Negotiation May 10, 1988
Discussion reopening
Propriety
Best/final offers
Pre-award surveys

Discussion of protester's technical proposal during preaward survey did not require the reopening of negotiations and a request for an additional round of best and final offers where protester's technical proposal already had been found to be acceptable and the evaluation of proposals had been completed, and information obtained during the survey was used for responsibility determination.

PROCUREMENT B-229942 May 10, 1988
Sealed Bidding 88-1 CPD 449
Bids
Responsiveness
Descriptive literature
Adequacy

PROCUREMENT
Sealed Bidding
Invitations for bids
Defects
Descriptive literature

Descriptive literature clause in an invitation for bids which merely states in general terms what categories of descriptive literature might be required is defective due to lack of specificity. It is, thus, improper for the procuring agency to reject a bid as nonresponsive for failure to include adequate descriptive literature.

PROCUREMENT

B-230724.3 May 11, 1988

Bid Protests

88-1 CPD 450

GAO procedures

Protest timeliness

Apparent solicitation improprieties

A protest to the contracting agency alleging improprieties in the invitation for bids is untimely when filed in an envelope clearly labeled as containing a bid, since the contracting officer is not authorized to open a bid until the time set for bid opening.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Where the issue raised in a protest affects the protested procurement only, the protest does not present a significant issue that justifies invoking an exception to the General Accounting Office's timeliness rules.

PROCUREMENT

B-197911 May 12, 1988

Payment/Discharge

Shipment

Carrier liability

Burden of proof

In a case concerning a claim against a household goods carrier for damage to a cabinet, the agency presents copies of an inventory sheet indicating that no exceptions were taken by the carrier at origin to the condition of the cabinet included in a shipment of household goods. The carrier's contention that a copy of the inventory it presented, tending to show that exceptions were taken at destination, is not sufficient to overcome the agency's inventory sheet and thus does not establish preexisting damage. As a result, the denial of the carrier's claim for refund of \$150 collected by the agency to recover for the damage is sustained.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Terms
Ambiguity allegation
Interpretation

B-230270 May 12, 1988
88-1 CPD 451

A protest that solicitation provisions are ambiguous because they are insufficiently specific is denied where all provisions to which the protester objects reasonably describe the work to be performed. The mere presence of risk in a solicitation does not render it inappropriate, and offerors are expected to consider the degree of risk in calculating their prices.

PROCUREMENT
Competitive Negotiation
Use
Criteria

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire janitorial services is justified where the agency reasonably concludes that discussions with the responding offerors are necessary to ensure offeror understanding of requirements.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-231058 May 12, 1988
88-1 CPD 452

Protest filed more than 10 working days after protester knew or should have known of the basis for the protest is untimely and not for consideration.

PROCUREMENT

Bid Protests

Moot allegation

GAO review

B-229831.2; B-229831.3

May 13, 1988

88-1 CPD 453

Protester who admits that contracting agency has properly corrected mistakes in contracting process by directing that negotiations be reopened for the benefit of the protester and all other competitors is not entitled to any other remedy.

PROCUREMENT

Competitive Negotiation

Discussion reopening

Propriety

Contracting officer may reopen negotiations by requesting new best and final offers when it is clearly in the government's best interest to do so. Reopening of discussions was not unreasonable when, based on evaluation of protester's best and final offer, Navy's contracting officer had insufficient information to determine whether protester should be awarded the contract given perceived deficiencies in its proposal relating to proposed personnel and length of proposed workweek.

PROCUREMENT

Competitive Negotiation

Offers

Price disclosure

Allegation substantiation

Evidence sufficiency

Allegation that competitor obtained improper knowledge of protester's proposal prices because competitor stated it had "strong reasons" to suspect it had a competitive pricing advantage over all other offerors is speculative since competitor's statement is also likely to have been prompted only by surmise rather than by improperly obtained price information.

PROCUREMENT

B-230050; B-230050.2

Competitive Negotiation

May 13, 1988

Competitive advantage

Conflicts of interest

Allegation substantiation

Lacking

Protest that the awardee had a conflict of interest which should have precluded award to it is denied, where the record contains no evidence to support the protester's allegation. The protester's mere conjecture of an actual or potential conflict of interest, without factual support, provides no basis to invalidate the award.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Privileged information

Prior contracts

Protest that the awardee obtained confidential information from the contracting agency's computerized information system while working as a contractor with the agency on an earlier contract and unfairly used that confidential information to improve its proposal in the present, protested procurement is denied, where the protest is based solely on the protester's conjecture that the awardee could have cheated to win the contract award and there is no evidence in the record to support the protester's allegation.

PROCUREMENT **B-230050; B-230050.2 Con't**
Competitive Negotiation **May 13, 1988**
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Technical superiority

Where the solicitation stated that the technical quality of a proposal was more important than the cost, and the agency reasonably determined that the awardee's proposal was significantly technically superior to the protester's proposal (rated approximately 19 percent higher by the evaluators), the agency properly awarded the contract to the awardee, even though its proposed price was approximately 2 percent higher than the protester's proposed price.

PROCUREMENT **B-230130; B-230130.2**
Bid Protests **May 13, 1988**
GAO procedures **88-1 CPD 454**
Protest timeliness
10-day rule

Where protest of the cancellation of a solicitation is not filed within 10 working days of the time the protester is informed by the contracting agency that the solicitation is being canceled the protest is untimely. Fact that protester had filed a protest prior to the cancellation has no bearing since the protest grounds did not concern the cancellation and, in any event, were rendered academic by the cancellation.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

Protest of a requirement regarding the commencement of contract performance is academic where a solicitation amendment corrected problem.

PROCUREMENT **B-230130; B-230130.2 Con't**
Contractor Qualification **May 13, 1988**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

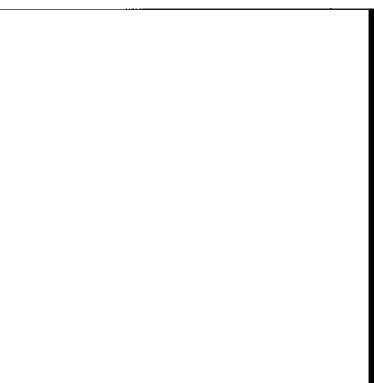
General Accounting Office will not review a contracting officer's affirmative responsibility determination absent a showing that it was made fraudulently or in bad faith or that affirmative responsibility criteria in the solicitation were not met.

PROCUREMENT
Sealed Bidding
Contracting officers
Bad faith
Allegation substantiation

Mere allegation that the contracting agency has acted fraudulently and in bad faith in conducting a procurement is insufficient to meet the protester's duty of affirmatively proving its case.

PROCUREMENT
Sealed Bidding
Invitations for bids
Post-bid opening cancellation
Resolicitation

Fact that bid prices were disclosed under a solicitation that was canceled after bid opening has no bearing on whether awards may be made on the resolicitation of the procurement if the cancellation is proper.



PROCUREMENT **B-230130; B-230130.2 Con't**
Sealed Bidding **May 13, 1988**
Invitations for bids
Pre-qualification
Contractor personnel

Protest of a requirement that bidders guarantee permanent and stable employees is denied where solicitation reasonably required only that employees be bona fide and not employed solely for the purpose of obtaining specific government contract.

PROCUREMENT **B-226422.5 May 16, 1988**
Bid Protests **88-1 CPD 456**
Allegation substantiation
Lacking
GAO review

Protester's complaint concerning the agency's selection of technical evaluators is dismissed where protester makes no showing of possible fraud, conflict of interest or actual bias on the part of the evaluators. General Accounting Office will not conduct an investigation to substantiate the protester's allegations.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protester's objection to the reopening of discussions after receipt of best and final offers is untimely where protest was not filed prior to the closing date for receipt of the additional round of best and final offers.

PROCUREMENT

B-226422.5 Con't

Bid Protests

May 16, 1988

Non-prejudicial allegation

GAO review

Protester was not prejudiced by agency's failure to notify it of the contract award where the protest is denied on the merits.

Protester's complaint that the agency failed to notify it of a deadline for extending its offer is dismissed where protester learned of the deadline from another offeror and complied with it.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical acceptability

Fact that protester's price was lower than proposed awardee's price is irrelevant where protester's final offer was determined to be technically unacceptable.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation errors

Allegation substantiation

Protester has not demonstrated that agency's determination that its proposal reflected a lack of understanding of the scope of practice for a primary care clinic was unreasonable where proposal focused on medical services such as emergency care, obstetrics, and psychological services, considered inappropriate by the agency.

PROCUREMENT **B-229965 May 16, 1988**
Competitive Negotiation 88-1 CPD 457
Offers
Evaluation
Cost estimates

Normalization of cost scores but not technical scores is not objectionable where point scores are used merely as guidelines in the selection process and the selection official retains discretion to determine whether differences in scores are indicative of superiority.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Rescoring of technical proposals after submission of best and final offers is not required where agency determines that revisions made in final offer only affect price and not technical approach.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Non-prejudicial allegation

Protest that agency abandoned evaluation cost criteria set forth in solicitation is denied where the protester does not establish that it was misled to its prejudice by the agency's actual evaluation approach.

PROCUREMENT B-230009 May 16, 1988
Sealed Bidding 88-1 CPD 459
Two-step sealed bidding
Offers
Rejection
Propriety

Rejection of technical proposal under step one of a two-step procurement was reasonable where solicitation prohibited use of proposed component of required essential system, and changes to satisfy the requirement would require a major revision to the proposal.

PROCUREMENT B-230284 May 16, 1988
Bid Protests 88-1 CPD 460
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that bid schedule is flawed, first raised in protester's comments on agency report, is untimely as protest concerns alleged impropriety in the solicitation which must be filed prior to bid opening.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Determination time periods

A bidder's intention to be bound to solicitation requirements, including the requirement that a firm price be offered, must be determined from the bid itself at the time of bid opening. Explanations offered after bid opening are not acceptable.

PROCUREMENT
Sealed Bidding
Bids

B-230284 Con't
May 16, 1988

Responsiveness
Price omission
Line items

A bid is nonresponsive if it does not offer to perform a required service at a firm, fixed price where a fixed-price contract is contemplated. Therefore, agency properly rejected protester's bid as nonresponsive where bid schedule required bidders to provide lump sum amounts for certain line items and protester inserted percentage figures but did not indicate the base figure from which to calculate the lump sum.

PROCUREMENT
Bid Protests

B-230629 May 16, 1988
88-1 CPD 461

GAO procedures
Protest timeliness
Apparent solicitation improprieties

A protest to a contracting agency alleging that solicitation specifications were unduly restrictive of competition is untimely when filed in a sealed envelope separate from, but delivered concurrently with and marked identically to, the protester's proposal. Contracting officer reasonably understood the entire submission to be the protester's proposal which he had no obligation to read or evaluate until after the closing time for receipt of proposals had passed.

PROCUREMENT

B-230655 May 16, 1988

Bid Protests

88-1 CPD 462

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that solicitation should have allowed alternate qualification method through the submission of a first article for testing is untimely when not raised until after the closing date for the submission of initial proposals.

PROCUREMENT

Contractor Qualification

Approved sources

Government delays

Protest that agency delay during its source approval process deprived protester of a reasonable competitive opportunity is denied where the record does not indicate that the agency qualification procedures were unreasonably lengthy.

PROCUREMENT

B-228168.3 May 17, 1988

Competitive Negotiation

88-1 CPD 463

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Award to higher priced, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and agency reasonably concluded that protester's lower proposed price did not outweigh the technical advantages demonstrated in competitor's higher priced proposal.

PROCUREMENT B-228168.3 Con't
Competitive Negotiation May 17, 1988
Discussion
Adequacy
Criteria

When record clearly indicates that deficiencies in protester's proposal were brought to its attention, agency conducted meaningful discussions with protester.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

A technical evaluation of a proposal must be consistent with the evaluation criteria set forth in the solicitation and be based on the information submitted with the proposal. Protester's argument that prior performance of a 90-day interim contract should have been reflected in the technical evaluation of its proposal is without merit where solicitation's evaluation criteria did not include such factor and protester's proposal did not include information concerning the prior performance.

PROCUREMENT
Contract Management
Contract modification
GAO review

When a protester neither alleges nor establishes that a contract was awarded with the intent to modify it or that the proposed modification is beyond the scope of the contract, the proposed contract modification is a matter of contract administration and beyond the bid protest jurisdiction of the General Accounting Office.

PROCUREMENT **B-230599 May 17, 1988**
Noncompetitive Negotiation 88-1 CPD 464
Use
Justification
Urgent needs

Agency decision to limit competition to the only known qualified source is proper where agency does not have sufficient time to qualify a new source.

PROCUREMENT **B-231163 May 17, 1988**
Bid Protests **88-1 CPD 465**
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

An untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules where the issues raised are not of widespread interest to the procurement community.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest initially filed with contracting agency is dismissed as untimely when filed at the General Accounting Office more than 10 working days after protester received notice that contracting agency denied firm's agency-level protest.

PROCUREMENT

B-228958.3 May 18, 1988

Bid Protests

88-1 CPD 466

GAO procedures

GAO decisions

Reconsideration

Additional information

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Request for reconsideration based on evidence the protester obtained pursuant to a Freedom of Information Act request is dismissed as untimely because the protester failed to diligently pursue the information, which, in any event, does not warrant reversal of our previous decisions.

PROCUREMENT

B-230013 May 18, 1988

Competitive Negotiation

88-1 CPD 467

Discussion

Offers

Error correction

PROCUREMENT

Competitive Negotiation

Offers

Competitive ranges

Exclusion

Evaluation errors

Agency exclusion of proposal from competitive range based on deficiency concerning one of nine required simulator sights is improper where the record shows the deficiency may be susceptible of correction through discussions.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Evaluation errors

B-230013 Con't
May 18, 1988

Where protester proposed a training simulation system which may be configured in two ways, the agency's exclusion of the proposal from the competitive range because it determined only one deficient configuration was offered and therefore substantial revisions to the proposal would be necessary in order to meet the solicitation's requirements regarding hit point accuracy is improper because the record shows the proposal already contained information needed to determine accuracy for the alternate configuration and a major change in hardware was not required.

Exclusion of protester's proposal from competitive range because it required additional special test equipment instead of offering built-in testing is not supported by the record where the proposal indicated the special test equipment was simply recommended extra equipment that was in addition to the built-in test equipment offered.

PROCUREMENT **B-230220 May 18, 1988**
Noncompetitive Negotiation 88-1 CPD 468
Contract awards
Sole sources
Propriety

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract is not objectionable where the contracting agency reasonably determined that only one source could supply the desired product, the protester has not shown that the solicitation's technical requirements are unreasonable, and the protester is given a subsequent sole-source award for a portion of the requirements to test its offered products for possible future competitive procurements.

PROCUREMENT **B-230308 May 18, 1988**
Socio-Economic Policies 88-1 CPD 470
Small business set-asides
Non-prejudicial allegation

Protest that contracting officer awarded a contract under a small business set-aside without first giving notice to the unsuccessful offerors for purposes of protesting the proposed awardee's size status before the award is denied, since the Small Business Administration has determined, in response to the protester's post-award size-status protest, that the awardee is a small business concern for this procurement and therefore the protester was not prejudiced by the notice delay.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-229683.2 Con't
May 19, 1988

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and fails to show any error of fact or law that would warrant reversal or modification.

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

B-229926.3 May 19, 1988
88-1 CPD 475

General Accounting Office (GAO) will not review an agency's determination to perform services in-house, pending resolution of a protest, rather than extend the incumbent's contract since the decision is a matter of executive policy, which is not within GAO's bid protest function when an agency has not issued a competitive solicitation for cost comparison purposes under Office of Management and Budget Circular No. A-76.

PROCUREMENT **B-230033 May 19, 1988**
Contractor Qualification **88-1 CPD 476**
Debarment
Recommendation withdrawal
Contract awards
Eligibility

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Resolicitation
Requests for proposals

Where an invitation for bids (IFB) has been converted to a request for proposals, contracting agency need not negotiate with contractor that was ineligible for award under IFB because its proposal debarment was pending at bid opening.

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Effects

Small Business Administration issuance of certificate of competency on prior procurement is not conclusive as to responsibility where protester since has been proposed for debarment.

PROCUREMENT
Bid Protests
Prime contractors
Contract awards
Subcontracts
GAO review

B-230121.2; B-230121.3
May 19, 1988
88-1 CPD 477

Protests of rejection of offers from competitive range for a subcontract to be awarded by a government prime contractor are dismissed as outside General Accounting Office jurisdiction where subcontractor selection is not made by or for the government; prime contractor, while having some management responsibilities under cost-reimbursement contract, is not serving as a middleman or mere conduit between the government and the subcontractor where there is no indication that the subcontract will in effect be awarded on behalf of the government, and the government is not actively and directly involved in selection of the subcontractor.

PROCUREMENT
Bid Protests
GAO authority

B-230256.2 May 19, 1988
88-1 CPD 478

General Accounting Office's authority to decide bid protests encompasses only protests relating to particular procurements; protest of agency's general practices will therefore not be considered.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-230904 May 19, 1988
88-1 CPD 479

Where a protester fails to timely challenge an agency determination that its proposal was unacceptable for failure to comply with one of the request for proposal's mandatory requirements, its protest raising other issues is not for consideration, since, even if the General Accounting Office agreed with the protester's arguments, the protester would not be eligible for award.

PROCUREMENT **B-230219** **May 20, 1988**
Special Procurement **88-1 CPD 483**
Methods/Categories
Architect/engineering services
Contractors
Evaluation
Additional information

Allegation that agency improperly revised its initial ranking of protester as the highest qualified architect-engineer firm is denied where protester does not demonstrate that agency's evaluation was unreasonable based on capacity of protester to perform contract following award of another contract.

PROCUREMENT **B-230248** **May 20, 1988**
Bid Protests **88-1 CPD 484**
Allegation investigation
GAO review

General Accounting Office will not conduct investigations to establish the validity of a disappointed offeror's speculative allegations.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Post-award protest concerning allegedly defective specifications is untimely where protester was aware of basis for protest prior to closing date.

PROCUREMENT

B-230248 Con't

Bid Protests

May 20, 1988

GAO procedures

Protest timeliness

10-day rule

Where incident giving rise to protest occurred more than 4 months before protest was filed, protest is untimely.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Conflicts of interest

Post-employment restrictions

Allegation substantiation

Former agency employee's employment by company awarded contract did not constitute conflict of interest where there is no evidence that former employee improperly influenced award.

PROCUREMENT

B-230309.3 May 20, 1988

Socio-Economic Policies

88-1 CPD 485

Small businesses

Responsibility

Competency certification

GAO review

PROCUREMENT

Socio-Economic Policies

Small business set-asides

Size status

Administrative discretion

GAO review

Protester's objections to the qualifications of a proposed awardee under a small business set-aside and to its intention to subcontract all of the work are not for General Accounting Office (GAO) review because they constitute a challenge to (1) the proposed awardee's responsibility which GAO generally does not review (2) the firm's small business size status, which is a matter for the Small Business Administration.

PROCUREMENT

**Sealed Bidding
Bids**

**Responsiveness
Signatures
Omission**

B-230630 May 20, 1988

88-1 CPD 486

A bidder's failure to sign its bid may not be waived as a minor informality when the only evidence of the bidder's intent to be bound is a corporate seal and no other documentation signed by the bidder accompanied the bid.

It is a bidder's responsibility to prepare its bid properly; neither alleged nonreceipt of a transmitted Standard Form 33 bid form, nor lack of knowledge of the significance of the form, relieves a bidder of the responsibility to submit a signed bid.

PROCUREMENT

Bid Protests

**GAO procedures
Agency notification**

B-231201.2 May 20, 1988

88-1 CPD 487

Protest properly was dismissed where the protester failed to provide a copy to the contracting agency within 1 day of filing at the General Accounting Office, as required by Bid Protest Regulations. Mailing a copy to the agency is not sufficient, since the Regulations clearly require actual receipt within 1 day.

PROCUREMENT

B-231201.2 Con't

Bid Protests

May 20, 1988

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Significant-issue exception in Bid Protest Regulations applies only to protests that are untimely filed, and there is no equivalent provision for waiving the requirement to provide a copy of the protest to the contracting agency within 1 day of filing.

PROCUREMENT

B-230659 May 23, 1988

Competitive Negotiation

88-1 CPD 488

Offers

Price reasonableness

Determination

Administrative discretion

General Accounting Office will not question contracting officer's determination that the protester's prices were unreasonable where the determination, a matter of administrative discretion involving the exercise of business judgment, has not been shown to be unreasonable and where bad faith or fraud has not been alleged.

PROCUREMENT

Sealed Bidding

Pre-award surveys

Purposes

No legal basis exists for objection to the preaward survey made on the protester prior to the final determination regarding the acceptability of the protester's bid, where the possibility of award existed.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Subcontractors

B-231366 May 23, 1988
88-1 CPD 489

Prospective subcontractor to an unsuccessful offeror in a procurement generally is not an interested party to protest that the selected offer does not meet all the solicitation's requirements. Moreover, the fact that the subcontractor might have bid on its own had it known a nonconforming offer would be acceptable is not relevant, since the only way to reach that issue is by considering the propriety of the award, and where there is an intermediate party (the unsuccessful offeror) that has a greater interest than the protester, we generally consider the protester to be too remote to qualify as an interested party for protest purposes.

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

B-231371 May 23, 1988
88-1 CPD 490

Protest is untimely when it is filed with the General Accounting Office more than 10 days after the initial adverse action on the protest to the agency.

PROCUREMENT
Competitive Negotiation
Contract awards
Initial-offer awards
Propriety

B-228303.2 May 24, 1988
88-1 CPD 491

Contracting agency may not award a contract on the basis of initial proposals where the pattern of prices received reasonably indicate that the government could obtain significant savings by conducting discussions.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Amendments
Evaluation criteria
Weighting**

B-230078; B-230079

May 24, 1988

Where, after receipt of initial proposals and samples, an agency amends a request for proposals to change the basis upon which award will be made from a technical (80 percent)/price (20 percent)/tradeoff to award on the basis of the low technically acceptable proposal, the agency is required to provide an opportunity to submit revised or new proposals in response to the modified evaluation criteria.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Subcriteria
Disclosure**

Request for proposals must inform offerors of minimum requirements that apply to particular factors and significant subfactors.

PROCUREMENT

**Bid Protests
GAO procedures
Administrative reports
Comments timeliness**

B-230298.4 May 24, 1988

88-1 CPD 493

Dismissal of protest for failure to file timely comments to agency report is affirmed where protester did not fulfill its obligation to notify the General Accounting Office, within required timeframe, that it had not received the report.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-231168 May 24, 1988
88-1 CPD 494

Protest of agency's use of Defense Contract Audit Agency recommended labor and overhead rates to evaluate cost proposal is untimely when filed with General Accounting Office more than 10 working days after DCAA rates were given to protester and protester was able to determine that the rates were allegedly erroneous.

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

B-231182.2 May 24, 1988
88-1 CPD 495

Protest filed with the General Accounting Office (GAO) more than 10 days after the contracting agency denied the protester's agency-level protest is untimely. Protester's continued pursuit of the matter with the contracting agency before filing with GAO does not toll the time for filing.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification
Competition enhancement

B-231354 May 24, 1988
88-1 CPD 496

Agency decision to cancel solicitation is not unreasonable where agency failed to solicit several previous contractors and only one bid per line item was received.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-229491.3 May 25, 1988
88-1 CPD 497

Under General Accounting Office Bid Protest Regulations in effect for protests filed prior to January 15, 1988, protester is not entitled to recover its costs of filing and pursuing successful protest, including attorneys' fees, where initial decision included recommendation that award be made to protester, and agency agrees to do so.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-230007.2 May 25, 1988
88-1 CPD 498

Protest that during discussions agency is required to provide full information on status of work to be performed under solicitation calling for a labor-hour, level-of-effort type contract is denied. Offerors are not entitled to discussions concerning the RFP's statement of work; rather, agencies are only required to point out weaknesses or deficiencies in proposals and afford the firm an opportunity to revise its offer.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Amendments
Compliance time periods
Adequacy

Protest that offeror was not allowed sufficient time after RFP amendment to prepare revised proposal is denied where firm was previously aware of one requirement of the amendment in time to amend its proposal and the amendment otherwise did not require significant changes in proposal.

PROCUREMENT

Specifications

Ambiguity allegation

Specification interpretation

B-230007.2 Con't

May 25, 1988

Protest that RFP does not provide sufficient information for offerors to prepare competitive proposals is denied where contract to be awarded is a labor-hour, level-of-effort one and protester does not show that solicitation is restrictive of competition by demonstrating that it is disadvantaged by the solicitation in any way not shared by other offerors.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Conflicts of interest

Post-employment restrictions

Allegation substantiation

B-230097 May 25, 1988

88-1 CPD 499

Generally, it is not improper for an agency to award a contract to a firm that employs former agency personnel.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Technical equality

Cost savings

Where an agency reasonably considers proposals to be technically equal, price may become determinative in making award even though the solicitation assigned price less importance than technical considerations.

PROCUREMENT
Competitive Negotiation
Contract awards
Personnel
Substitution
Propriety

B-230097 Con't
May 25, 1988

Protest that awardee improperly substituted personnel after award is without merit where, contrary to the protester's allegations, the solicitation did not prohibit or limit substitutions of personnel, but merely required agency approval, which the awardee obtained.

PROCUREMENT
Contractor Qualification
Contractor personnel
GAO review

It is not inherently improper for an awardee to recruit and hire personnel employed by the prior incumbent contractor; whether such action may be grounds for a civil action against the awardee is not a matter to be resolved in a protest to the General Accounting Office.

PROCUREMENT
Contract Management
Contract reformation
Clerical errors
Error correction

B-230603 May 25, 1988
88-1 CPD 500

Where contract was awarded to low bidder which alleged mistake in its bid before award and parties agreed that contractor could pursue mistake claim, contract should be reformed to include cost of diesel generator and certain related costs where contractor's original workpapers contain clear and convincing evidence that those costs were mistakenly omitted from its bid.

PROCUREMENT
Sealed Bidding
Bids

B-230603 Con't
May 25, 1988

Clerical errors
Error correction
Propriety

Contractor alleging mistake may recover cost of generator, but not claimed labor costs and markup associated with the generator, however, since there is insufficient pre-bid opening evidence in the record demonstrating that contractor intended to include those amounts in its bid. Other mistakes in contractor's prices for items unrelated to the generator, discovered by contracting agency after award, are not relevant to whether there is clear and convincing evidence of the generator mistake, and contractor may waive these unrelated mistakes since the effect on the bid if the mistakes were corrected would be negligible.

PROCUREMENT
Competitive Negotiation
Alternate offers

B-230675 May 25, 1988
88-1 CPD 501

Acceptance
Propriety

Protest that agency was required to notify offerors that an alternate part had been approved for acceptance under the solicitation is denied where offerors should have known that this was a possibility in view of the solicitation's invitation of alternates through the Products Offered clause.

PROCUREMENT
Competitive Negotiation
Discussion
Offers
Clarification
Propriety

B-230675 Con't
May 25, 1988

Protest that agency held discussions with the awardee and thus improperly failed to do so with the protester is denied, because the agency's communication with the awardee did not give the firm the opportunity to revise its proposal or to furnish information necessary to evaluate the proposal.

PROCUREMENT
Competitive Negotiation
Offers
Risks
Pricing

An offeror proposing an inflated price in what on its face is a competitive procurement, based on the assumption that there would be no competition, does so at its own risk when the assumption proves to be wrong.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231042.2 May 25, 1988
88-1 CPD 502

PROCUREMENT
Bid Protests
GAO procedures
Purposes
Competition enhancement

Dismissal of protest is affirmed as General Accounting Office will not consider a protest that the agency should have modified its contract with the protester rather than issue a solicitation for additional work; the purpose of the bid protest process, to assure that free and open competition is obtained to the maximum extent possible, is not furthered by requiring an agency to reduce competition.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-230058.2 May 26, 1988
88-1 CPD 503

Request for reconsideration that basically only reiterates previously rejected arguments does not warrant reversal or modification of the prior decision.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-230660 May 26, 1988

The protester is an interested party under the General Accounting Office Bid Protest Regulations where the firm alleges that it would have submitted an offer but for the insufficient time allowed to prepare offers and the unduly restrictive requirements of the solicitation.

PROCUREMENT

B-230660 Con't

**Competitive Negotiation
Requests for proposals
Office space
Justification**

May 26, 1988

Protest that the General Services Administration (GSA) had no legitimate need to lease a new building from another firm, because there are no legally cognizable deficiencies in the protester's building which GSA presently leases, is denied, where: (1) the protester's building has been cited by the city government for 72 deficiencies, many of which are safety violations, and (2) an independent engineering firm reported that the protester's building contained many life-threatening hazards and should be vacated as soon as possible.

PROCUREMENT

**Sealed Bidding
Potential contractors
Exclusion
Propriety**

Protest that the General Services Administration (GSA) did not follow regulations regarding pre-solicitation notice and proposal preparation time is denied, because the record shows that: (1) GSA publicly announced in two local newspapers that it was soliciting for a relocation site; (2) the protester had been notified that GSA was planning to relocate the Corps of Engineers from the protester's building to an alternate site at least several months before the solicitation actually was issued; (3) the urgent and compelling situation--the protester's building in which the Corps of Engineers was previously located contained numerous life-threatening fire hazards--did not allow for the usual 30-day response time between issuance and closing under the solicitation; and (4) the protester and the awardee were treated equally.

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Performance specifications

Geographic restrictions

B-230660 Con't

May 26, 1988

A geographical restriction limiting offers of office space to the city limits is reasonable, where the government employees housed in that office space must work closely with other government employees located within the city, and the General Services Administration's market survey revealed no potential office sites outside the city limits that would be convenient to those other offices and still meet the agency's other requirements.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

B-230070 May 27, 1988

88-1 CPD 504

Objections to matters which are alleged to have improperly affected the competition and evaluation of follow-on contract are timely raised, and will not be considered on the merits, when protested more than 10 working days after the protester was aware of their occurrence.

PROCUREMENT

Competitive Negotiation

Below-cost offers

Acceptability

In a cost reimbursement situation, an alleged "buy-in" (offering cost estimate less than anticipated costs with expectation of increasing costs during performance) by low-priced offeror furnishes no basis to challenge an award where agency knew the realistic estimated cost of contractor's performance before award and made award based on that knowledge.

PROCUREMENT **B-230070 Con't**
Competitive Negotiation **May 27, 1988**
Offers
Evaluation
Cost controls

Allegation that the agency improperly conducted proposal evaluation using a ceiling overhead rate which exceeded the overhead rate proposed in protester's best and final offer (BAFO) lacks merit where agency discussed matter of a ceiling with the protester and the protester did not address it in its BAFO, since agency, in its evaluation of competing proposals, is free to use any reasonable ceiling for purposes of cost realism analysis and the ceiling appears reasonable under the circumstances.

PROCUREMENT
Contract Management
Contract expiration
Urgent needs
Contract extension
Propriety

Modification of existing level-of-effort contracts, to extend the performance period until a competitive follow-on contract could be awarded, is proper where incumbent contractor was the only source of the services before protesting firm (organized, in part, by former employees of the incumbent) began operation, and the protester is competing for the follow-on contract.

PROCUREMENT **B-230204 May 27, 1988**
Bid Protests **88-1 CPD 505**
GAO procedures
Interested parties
Direct interest standards

Where protester's best and final offer was technically unacceptable and three other proposals were acceptable, protester is not an interested party to protest award of a contract for engineering services; if protest were sustained, another offeror, not the protester, would be in line for award.

PROCUREMENT B-230216 May 27, 1988
Special Procurement 88-1 CPD 506
Methods/Categories
In-house performance
Administrative appeals

PROCUREMENT
Special Procurement Methods/Categories
In-house performance
Cost estimates
GAO review

Under Office of Management and Budget Circular A-76 appeals procedure where protester has not been allowed to challenge new information submitted by the agency to establish that its in-house estimate is low because costs were mistakenly included in the government estimate, issue should be referred back to the agency for A-76 appeals board review.

PROCUREMENT B-230912.2 May 27, 1988
Competitive Negotiation 88-1 CPD 507
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

Protest that award of a negotiated contract was improper because it was not made to protester, an allegedly responsible offeror, on the basis of its lower priced offer is dismissed for failure to state a basis of protest where, under evaluation criteria of solicitation, cost is subordinate to technical factors, and protester does not allege that its proposal was technically equal to that of the awardee.

PROCUREMENT

B-228395.2 May 31, 1988

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

A request for reconsideration which does not indicate that a prior decision denying a protest was based on errors of fact or law is denied.

PROCUREMENT

B-228540.2 May 31, 1988

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

88-1 CPD 508

Request for reconsideration is denied where protester disagrees with prior decision but does not demonstrate legal error made in decision or information not considered previously.

PROCUREMENT

B-229508.2 May 31, 1988

**Bid Protests
Moot allegation
GAO review**

88-1 CPD 509

Protest is dismissed in part where action taken by the agency subsequent to the filing of the protest has rendered the issues raised therein academic. The General Accounting Office (GAO) will not consider an issue of protest where the agency has altered its actions so that no useful purpose would be served by GAO's decision.

PROCUREMENT B-229508.2 Con't
Competitive Negotiation May 31, 1988
Discussion
Offers
Clarification
Propriety

Protest that agency should have conducted discussions to clarify whether protester's offered price included duty that should not have been included is denied since agency properly inferred that no duty was included based upon solicitation clause not to include duty.

PROCUREMENT B-230208 May 31, 1988
Competitive Negotiation
Requests for proposals
Evaluation criteria
Competitive restrictions
Allegation substantiation

Protest challenging as unduly restrictive an evaluation plan in which personnel experience is more important than firm experience and where offerors must submit, for evaluation, plans for training their personnel is denied where the protester has not shown the evaluation scheme to be unreasonable.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Weighting
Bias allegation

Protest that procuring agency chose relative weights of evaluation criteria to favor competitor is denied where there is a reasonable basis for agency's discretionary actions and the record reflects no specific and malicious intent to injure protester.

PROCUREMENT

B-230955 May 31, 1988

Bid Protests

88-1 CPD 510

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest against a solicitation specification filed with the contracting officer prior to the closing date for the receipt of initial proposals was untimely where the agency received proposals on the scheduled closing date without taking corrective action and the subsequent protest to the General Accounting Office was filed more than 10 working days later.

PROCUREMENT

B-231511 May 31, 1988

Bid Protests

Administrative policies

GAO review

PROCUREMENT

Bid Protests

Premature allegation

GAO review

General Accounting Office does not consider, as part of its bid protest function, a protest of an agency's procurement policy, as opposed to a particular procurement decision regarding a solicitation, proposed award, or award of a contract.

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