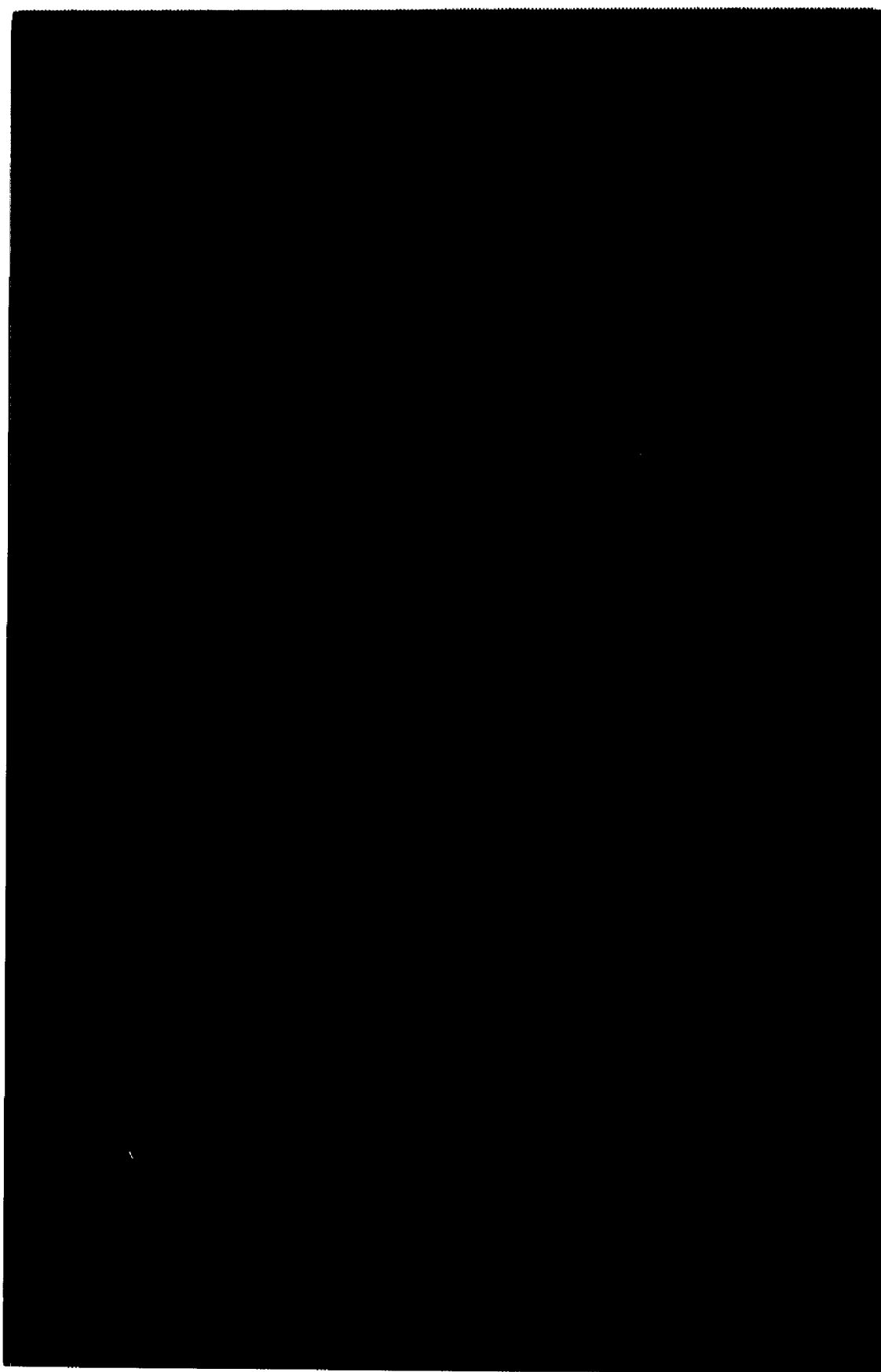


July 1988

Digests of Unpublished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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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-230755 July 6, 1988

Amount availability

Fiscal-year appropriation

Appropriation restrictions

Additional compensation

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Purpose availability

Specific purpose restrictions

Watershed projects

Reclamation

The Environmental Protection Agency (EPA) may not make payments mandated by section 512 of the Water Quality Act of 1987 from its fiscal year 1988 appropriations. Section 512 directs the EPA Administrator to make the payments "to the extent provided in Appropriations Acts." This language requires specific reference to the payments in an appropriation act. Since EPA's fiscal year appropriations contain no such reference, they may not be used to make the payments.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance

B-230735 July 20, 1988

Grants

Matching funds

Administrative regulations

Authority

Drake University may use income from an endowment fund trust provided by a special appropriation through the Legal Services Corporation to support a University Legal Clinic for local matching funds in grant applications with other federal agencies, provided the use of such funds is consistent with the grant agreement under which the endowment fund trust was provided.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-229187 July 12, 1988

Compensation

Overpayments

Error detection

Debt collection

Waiver

An employee was overpaid when the correct amount was not deducted from his salary for health insurance premiums. Upon the employee's transfer to a new agency, the premiums for a less expensive health plan were deducted from his salary. The employee seeks waiver of his debt to the government under 5 U.S.C. § 5584 (1982). Waiver may be granted where the amount of the overpayment was small each pay period, the employee's salary fluctuated at the time of the error, and employee continued to be covered by and file claims under the same health insurance plan.

CIVILIAN PERSONNEL

B-217402.2 July 15, 1988

Compensation

Debt collection

Set-off

Legislative/judicial personnel

The opinion in B-217402, June 10, 1985, is clarified with the explanation that GAO believes the provisions of 5 U.S.C. § 5514 (1982) do not apply to the House of Representatives or other institutions within the executive, legislative, or judicial branches, unless they are properly classifiable as "departments," "agencies," or "independent establishments." Nevertheless, salary offset can still be taken against employees of the House of Representatives under 31 U.S.C. § 3716 (1982), or other applicable statutes.

CIVILIAN PERSONNEL

B-230365 July 25, 1988

Relocation

Actual expenses

Eligibility

Distance determination

The National Park Service denied an employee's claim for reimbursement of relocation expenses in connection with a short-distance transfer within the Shenandoah National Park. The employee was required to vacate a government-owned house at his old duty station, which he had been required to reside in as a condition of employment. The expenses may be allowed since the employee's relocation of residence was clearly required by his official change of station, notwithstanding that the transfer occurred within the park boundaries and that the net increase in commuting distance was less than 10 miles.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-231476 July 12, 1988

Pay
Overpayments
Error detection
Debt collection
Waiver

MILITARY PERSONNEL

Pay
Overpayments
Interest
Waiver

A former Navy member's failure to notice and seek corrective action regarding the Navy's erroneous calculations of his leave balances, resulting in overpayments to him, precludes the Comptroller General from waiving his indebtedness to the government under 10 U.S.C. § 2774 where the member reasonably should have recognized the errors. By regulation, however, interest on such indebtedness does not accrue while the waiver request is pending.

MILITARY PERSONNEL
Relocation
Household goods
Shipment costs
Rates
Propriety

B-229259 July 25, 1988

MILITARY PERSONNEL
Relocation
Household goods
Temporary storage
Rates
Propriety

The Army may not reimburse an employee under the commuted rate system for the costs of storage and transportation of household goods by privately owned vehicle from the continental United States to Alaska incident to a permanent change of station. The employee's travel order erroneously authorized storage and transportation under the commuted rate system; the commuted rate system is applicable only to transfers where both old and new stations are within the conterminous 48 states and the District of Columbia. However, the employee may be reimbursed his actual moving expenses (such as gasoline, oil, truck rental and tolls) and temporary storage costs not to exceed what the constructive cost would have been to the government under the Government Bill of Lading method.

PROCUREMENT

PROCUREMENT
Bid Protests
Dismissal
Definition

B-231743 July 1, 1988
88-2 CPD 2

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

Protest by sixth lowest bidder against the award of contracts to the two lowest bidders is dismissed where the protester fails to state a basis for protest against the intervening lower bidders and therefore is not an interested party under Bid Protest Regulations, 4 C.F.R. § 21.1(a). Stated belief that intervening lower bidders offered noncompliant supplies, without further explanation, does not constitute the required legally sufficient detailed statement of grounds of protest.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-231745 July 1, 1988
88-2 CPD 3

Protest that solicitation specifications were too restrictive is untimely because it was filed after the date set for receipt of initial proposals.

PROCUREMENT	B-231745	Con't
Competitive Negotiation	July 1, 1988	
Offers		
Technical acceptability		
Negative determination		
Propriety		

Offer that does not conform to the material terms and conditions of the solicitation properly was rejected as unacceptable.

PROCUREMENT	B-230313; B-230313.2
Bid Protests	July 5, 1988
GAO procedures	88-2 CPD 5
Protest timeliness	
10-day rule	

New protest contentions based on information in report on initial protest are considered timely under Bid Protest Regulations, if filed at the General Accounting Office within 10 working days of receipt of the report.

PROCUREMENT
Competitive Negotiation
Competitive advantage
Organizational conflicts of interest
Allegation substantiation
Lacking

An offeror's use of an equipment manufacturer as a subcontractor on a maintenance contract that includes the manufacturer's equipment does not constitute an organizational conflict of interest, where the contract does not provide for technical advice on replacing or upgrading the system.

PROCUREMENT

B-230313; B-230313.2 Con't

Competitive Negotiation

July 5, 1988

Discussion reopening

Propriety

Best/final offers

Non-prejudicial allegation

Without reopening discussions and after receipt of best and final offers, an agency can delete from the award 18 subline items that constitute 1.21 percent of the protester's high total cost and 5.4 percent of the awardee's low total cost, where there is a substantial cost difference between these offerors and a stated urgency, since the protester is not prejudiced by this change in requirements.

PROCUREMENT

Competitive Negotiation

Offers

Acceptance

Propriety

Where an offeror states in detail in its proposal that it meets solicitation requirements and the agency confirms the offeror's compliance during discussions, the agency had a reasonable basis for determining the proposal was acceptable.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Prices

Unbalanced offers

Where a price proposal under a RFP is not mathematically unbalanced there is no basis to reject it as materially unbalanced.

PROCUREMENT

B-230313; B-230313.2 Con't

Contract Management

July 5, 1988

Contract modification

Cardinal change doctrine

Criteria

Determination

A cardinal change to a contract requiring resolicitation of the requirement occurs where the essential purpose of the contract has been changed. A potential ambiguity concerning whether the contract covers one item that may lead to a contract modification, but which does not change the contract's essential purpose, is not a cardinal change.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

The General Accounting Office will not review an affirmative determination of responsibility by the contracting officer, absent a showing of fraud or bad faith on the part of the contracting agency or an alleged failure of the agency to apply definitive responsibility criteria.

PROCUREMENT B-230313; B-230313.2 Con't
Socio-Economic Policies July 5, 1988
Small business set-asides
Use
Contracting officer duties

Where circumstances indicate that small business offeror may not comply with statutorily-mandated requirement to incur on a small business set-aside solicitation for services at least 50 percent of the cost of personnel for employees of the small business concern, contracting officer has a duty to inquire into the likelihood of compliance. Contracting officer satisfies this duty when he receives explanation and assurances from offeror reasonably indicating that the offeror will comply.

PROCUREMENT	B-230669	July 5, 1988
Competitive Negotiation	88-2	CPD 6
Best/final offers		
Rejection		
Propriety		

Proposal need not be rejected based on deficiencies in initial proposal where such deficiencies were pointed out in negotiations and corrected in best and final offer.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Information submission
Contractor duties

Offerors are responsible for the preparation of their proposals and agencies are not obligated to go in search of omitted information.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Personnel
Bias

B-230669 Con't
July 5, 1988

Agency could reasonably conclude that one offeror's proposed clearinghouse, which relied heavily on parent organization's existing relationships as conduit for required communications with outside entities, offered less assurance of impartiality and objectivity than that of another offeror, which proposed that its clearinghouse establish its own linkages independent of the parent organization.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Non-prejudicial allegation

Protester was not prejudiced by exclusion from final evaluation summary of one evaluator's scores reported by telephone without accompanying narrative, because even with scores, protester would still be lower rated technically and higher in cost.

PROCUREMENT B-230669 Con't
Competitive Negotiation July 5, 1988
Technical evaluation boards
Qualification
GAO review

The composition of a technical evaluation panel is within the contracting agency's sound discretion and, as such, will not be reviewed by the General Accounting Office about a showing of possible abuse of that discretion.

Contracting agency was justified in excusing from evaluation panel evaluator who provided written endorsement to one of the competitors. Retention on panel of evaluator who was associated with other competitor more than 20 years ago and another who remarked that she had preferred other competitor's proposal in a prior acquisition was neither unreasonable nor inconsistent, given staleness of association and irrelevance of remark to current procurement.

PROCUREMENT B-230945 July 5, 1988
Sealed Bidding 88-2 CPD 7
Bids
Responsiveness
Shipment schedules
Deviation

Where bidder offers an alternate delivery schedule as permitted by IFB but fails unambiguously to commit the bidder to all required incremental delivery dates, bid is nonresponsive.

PROCUREMENT**B-231086 July 5, 1988****Sealed Bidding****88-2 CPD 8****Bonds****Federal procurement regulations/laws****Deviation**

Federal Acquisition Regulation (FAR), deviation which precludes the use of individual sureties as security for bid, payment and performance bonds unless such individual sureties deposit adequate tangible assets with the government is not objectionable where the deviation was properly authorized under the FAR and is a temporary element of a pilot contracting program aimed at improving the efficiency of the agency's procurement efforts.

PROCUREMENT**B-231095 July 5, 1988****Competitive Negotiation****88-2 CPD 9****Best/final offers****Price data****Omission****Effects**

Agency properly allowed offeror to correct price omission in its best and final offer (BAFO), without reopening discussions with other offerors in the competitive range, where offeror's pricing pattern throughout negotiation process indicated intent to offer the same price for the omitted item as it offered for same item in its initial proposal and for similar item in its BAFO.

PROCUREMENT**B-231575 July 5, 1988****Bid Protests****88-2 CPD 10****Dismissal****Propriety****Pending protests**

Protest of allegedly improper procurement is dismissed while protest filed by an interested third party involving the same procurement is pending before the General Services Administration Board of Contract Appeals.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Competition rights
Contractors
Exclusion

B-230316 July 6, 1988
88-2 CPD 11

Failure of agency to provide previous subcontractor with copy of solicitation for items it supplied to prime contractor does not provide a basis for requiring agency to resolicit where agency did not deliberately exclude the firm from competition, it otherwise made reasonable efforts to publicize and distribute the solicitation, 11 proposals were received, and the subcontractor did not avail itself of every reasonable opportunity to obtain the solicitation after reading the synopsis of the procurement in the Commerce Business Daily.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-230608; B-230609
July 6, 1988
88-2 CPD 12

Where protester orally complained during discussions in November 1987 that its competitors replaceable pad tracks for the M1 Abrams Tank were being evaluated only on the average mileage obtained from one of two proving ground test sites and the Army explained its evaluation basis, protest that the evaluation was insufficient, filed after award in March 1988, is untimely.

PROCUREMENT

Competitive Negotiation
Requests for proposals
Evaluation criteria
Weighting
Bias allegation

B-230608; B-230609 Con't
July 6, 1988

Protest that Army failed to provide computer program to protester showing weights and values of inputs evaluated for life cycle cost is denied since the solicitation advised offerors of the broad scheme of scoring to be employed and gave reasonably definite information concerning the relative importance of evaluation factors. The precise numerical weight to be used in evaluation need not be disclosed.

PROCUREMENT

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

B-230692 July 6, 1988
88-2 CPD 13

Proposed awards to higher priced, higher technically ranked offerors are not objectionable where the solicitation award criteria made technical considerations more important than cost and the contracting officer reasonably concluded that the protester's lower proposed price did not outweigh the technical advantages demonstrated in its competitors' higher priced proposals.

PROCUREMENT

Competitive Negotiation
Discussion
Adequacy
Criteria

A protester is not prejudiced by alleged agency failure to apprise it during discussions of all weaknesses in its proposal, where it does not claim that it could or would have improved its proposal as a result of the discussions.

B-230692 Con't
July 6, 1988

PROCUREMENT B-231770 July 6, 1988
Competitive Negotiation 88-2 CPD 14
Offers
Evaluation
Technical acceptability

PROCUREMENT	B-228461.3	July 7, 1988
Bid Protests	88-2	CPD 16
GAO procedures		
GAO decisions		
Reconsideration		

D-11

PROCUREMENT
Sealed Bidding
Bids

B-229786.2 July 7, 1988
88-2 CPD 17

Cost estimates
Risk assumption

The procuring activity is under no legal obligation to eliminate risk entirely from a procurement and prospective bidders are expected to take added risks into account when preparing their bids.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Protest against maintenance dredging solicitation requirement that bids shall be based on an estimate for achieving a fixed depth set by the procuring activity, rather than on an estimate for a maximum allowable over-depth, is denied. The requirement reasonably was imposed in part to preclude unbalanced bidding by removing a bid element calculated at a fixed maximum for bid comparisons, but subject to significant variance by the contractor during performance, which affects the price actually paid by the government.

PROCUREMENT
Special Procurement
Methods/Categories

B-230794 July 7, 1988
88-2 CPD 18

In-house performance
Cost estimates
Contract administration
Personnel

Agency determination of the staffing level required to accomplish the performance work statement under Office of Management and Budget Circular A-76, cost comparison will not be questioned where the record does not show the determination was made in a manner tantamount to fraud or bad faith.

B-230986 July 7, 1988

88-2 CPD 19

Requests for proposals

Cancellation

Justification

Government advantage

Contracting officer had a reasonable basis to cancel a negotiated procurement for consolidated copier services where the government could thereby obtain significant savings by procuring the services under individual Federal Supply Schedule purchase orders.

B-231048 July 7, 1988

88-2 CPD 20

GAO Procedures

Protest timeliness

10-day rule

Where doubt exists concerning the date a protester became aware of the basis of its protest, doubt is resolved in favor of the protester.

PROCUREMENT

Contractor Qualification

Licenses

Determination time periods

Contract clause, incorporated in request for proposals, requiring the contractor to warrant that it is authorized to do business and has obtained necessary licenses, does not constitute definitive responsibility criteria since the requirement does not indicate that any necessary licenses must be obtained prior to award and does not otherwise state specific, objective standards for measuring an offeror's capability to perform.

PROCUREMENT**B-231072.2 July 7, 1988****Bid Protests****88-2 CPD 21****GAO procedures****Protest timeless****Apparent solicitation improprieties**

General Accounting Office will not consider a protest of an agency's request for second best and final offers where the protest was not filed prior to the date on which the second best and final offers were due.

PROCUREMENT**Competitive Negotiation****Discussion reopening****Propriety**

As a general matter, an agency may reopen negotiations and request a second round of best and final offers when it is in the government's best interest to do so.

PROCUREMENT**B-231144 July 7, 1988****Bid Protests****88-2 CPD 22****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest that estimated quantities stated in solicitation are wrong is untimely, since it was not filed before bid opening.

PROCUREMENT**Sealed Bidding****Contract awards****Propriety**

A contract in a sealed bid procurement must be awarded on the basis of the factors stated in the invitation for bids.

PROCUREMENT**B-231481 July 7, 1988****Socio-Economic Policies****88-2 CPD 23****Small businesses****Responsibility****Competency certification****GAO review**

General Accounting Office dismisses protest by low bidder that it should have been awarded a contract where the protester, a small business concern, is determined to be nonresponsible by the contracting agency and the matter of the protester's responsibility has been referred to the Small Business Administration (SBA), for possible issuance of a certificate of competency, because SBA's authority in this regard is conclusive.

PROCUREMENT**B-231509.2 July 7, 1988****Socio-Economic Policies****88-2 CPD 24****Labor standards****Supply contracts****Manufacturers/dealers****Determination**

The General Accounting Office does not consider whether a bidder qualifies as a manufacturer under the Walsh-Healey Act. By law, such a matter is for review by the contracting agency in the first instance, subject to review by the Small Business Administration, if a small business is involved, and by the Secretary of Labor.

PROCUREMENT **B-231509.2 Con't**
Socio-Economic Policies **July 7, 1988**
Small businesses
Competency certification
Eligibility
Criteria

The certificate of competency use procedure is not limited to consideration of the issues raised by the contracting officer. The Small Business Administration's conduct of an independent evaluation, including an assessment of the firm's eligibility for COC consideration, reasonably may result in the refusal to issue a COC for a different reason.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Size status
Administrative discretion
GAO review

Since Small Business Administration has conclusive statutory authority to determine small business status for federal procurement purposes, General Accounting Office does not consider size status protests.

PROCUREMENT **B-231775 July 7, 1988**
Contractor Qualification **88-2 CPD 25**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The General Accounting Office does not review a protest of an agency's affirmative determination of responsibility absent a showing of possible fraud, bad faith or failure to apply definitive criteria contained in the solicitation.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-230831 July 8, 1988
88-2 CPD 28

Protests by small business offeror that agency should not have rejected its bid samples as unacceptable without first allowing it an opportunity to correct any deficiencies are dismissed as academic where contracting officer dissolved small business set-asides after determining that protester's prices were unreasonable and protester will be given an opportunity to compete for unrestricted requirements.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Use
Administrative discretion

Protests of withdrawal of small business set-asides are denied where contracting officer reasonably determined, based on a comparison of offeror's prices for large business-manufactured kits with its prices for 50-percent small business-manufactured kits that the latter prices were unreasonable.

PROCUREMENT
Bid Protests
Bias allegation
Allegation substantiation
Evidence sufficiency

B-230876 July 8, 1988
88-2 CPD 29

Where the protester has not submitted virtually irrefutable proof of bias, there is no basis for finding that contracting officials showed favoritism toward the protester's competitor in defining the requirement.

PROCUREMENT

B-230876 Con't

Competitive Negotiation

July 8, 1988

Requests for quotations

Cancellation

Resolicitation

Cancellation of a request for quotations does not result in an improper auction upon resolicitation where the cancellation was in accord with the governing legal requirements.

PROCUREMENT

Special Procurement Methods/Categories

Federal supply schedule

Mandatory use

PROCUREMENT

Special Procurement Methods/Categories

Federal supply schedule

Offers

Rejection

Propriety

Where the estimated dollar amount of a procurement exceeds the maximum order limitation stipulated in a mandatory Federal Supply Schedule, the procuring agency's issuance of solicitations for the purpose of price comparisons is proper.

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Design specifications

Burden of proof

Specification requiring that cabinet flipper doors retract toward the inside is not unduly restrictive where the agency explains that the specification is necessary to meet the minimum needs of the agency, and the protester does not show it to be unreasonable.

PROCUREMENT**B-231020 July 8, 1988****Competitive Negotiation****88-2 CPD 30****Requests for proposals****Amendments****Compliance time periods****Adequacy**

Protest that 29 days was not sufficient time for the completion and submission of proposals following the issuance of a solicitation amendment that was accompanied by voluminous software documentation is denied where there is no contention that the amendment substantially changed solicitation requirements; complete analysis of the software data did not appear to have been necessary in order to prepare an adequate proposal; and the agency received timely proposals from four offerors, none of which had either requested the software documentation or suggested that more time was needed in order to analyze it.

PROCUREMENT**B-231588.2 July 8, 1988****Bid Protests****88-2 CPD 31****GAO procedures****Protest timeliness****Significant issue exemptions****Applicability**

General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception of the Bid Protest Regulations where the protest does not raise an issue of significance to the procurement community.

PROCUREMENT**Bid Protests****GAO procedures****Protest timeliness****10-day rule****B-231810; B-231811****July 8, 1988****88-2 CPD 32**

Protest that agency should have awarded contract to protester on a sole-source basis is dismissed as untimely where it is filed with the General Accounting Office more than 10 working days after the protester learns its agency-level protest on the same issue has been denied.

PROCUREMENT**Bid Protests****GAO procedures****Purposes****Competition enhancement**

The General Accounting Office will not review a protest that the protester should have received a sole-source award.

PROCUREMENT**Contract Management****Contract administration****GAO review****B-231812 July 11, 1988****88-2 CPD 33**

General Accounting Office does not consider matters of contract administration as part of its bid protest function.

B-228347.2 July 12, 1988

88-2 CPD 34

Administrative discretion

Technical superiority

PROCUREMENT

Requests for proposals

Administrative discretion

PROCUREMENT

B-230647 July 12, 1988

Federal procurement regulations/laws

GAO review

D-22

PROCUREMENT B-230647 Con't
Noncompetitive Negotiation July 12, 1988
Use
Justification
Industrial mobilization bases

PROCUREMENT
Noncompetitive Negotiation
Use
Justification
National defense interests

The Maritime Administration is authorized under the Competition in Contracting Act of 1984, 41 U.S.C. § 253(c)(3), to use other than competitive procedures in instances where it is necessary for national emergency or industrial mobilization purposes to award a contract to a particular source or sources.

PROCUREMENT B-230943 July 12, 1988
Competitive Negotiation 88-2 CPD 38
Best/final offers
Clerical errors

Protest that agency accepted a nonconforming best and final proposal is denied when the only reasonable reading of the proposal is that, while it referred to the wrong packaging specification, it nevertheless represented an offer to meet all the solicitation's material requirements.

PROCUREMENT **B-231115 July 12, 1988**
Socio-Economic Policies 88-2 CPD 39
Small business 8(a) subcontracting
Administrative regulations
Compliance
GAO review

PROCUREMENT
Socio-Economic Policies
Small business 8(a) subcontracting
Use
Administrative discretion

Protest of Small Business Administration's alleged failure to prepare an impact analysis for the Small Business Act's section 8(a) program is denied where the 8(a) contract is for services not previously procured from small business.

PROCUREMENT
Socio-Economic Policies
Small business 8(a) subcontracting
Definition

Section 8(a) subcontracting program is a noncompetitive procedure established by statute which grants contracting agencies broad discretion to determine the appropriateness of an 8(a) award, and which does not require publication of the proposed procurement action.

PROCUREMENT **B-231173 July 12, 1988**
Specifications 88-2 CPD 40
Brand name specifications
Equivalent products
Acceptance criteria

Protester's allegation that the brand name product offered by the awardee does not conform to the brand name requested in the solicitation is without merit where the product offered is identical to the brand name solicited and has been successfully tested by the agency.

PROCUREMENT	B-227122.3; B-227122.4
Competitive Negotiation	July 13, 1988
Best/final offers	88-2 CPD 41
Rejection	
Price reasonableness	
Risks	

Weaknesses in offeror's proposal with respect to mission suitability and financial condition (where solicitation provided for consideration of financial condition and capability in the evaluation of technical proposals) provide a reasonable basis for selection of another more highly evaluated offeror.

PROCUREMENT	B-228599.2 July 13, 1988
Competitive Negotiation	88-2 CPD 42
Contract awards	
Errors	
Corrective actions	
Non-prejudicial allegation	

Even where agency should have pointed out an evaluated proposal deviation to the protester, and even though the agency made an upward adjustment in the offeror's probable costs in the cost analysis when the offeror did not correct its offer in its revised proposal, the protester is not prejudiced where the award selection of a higher technically rated offeror would not have been changed, even if the upward probable cost adjustment had not been made.

PROCUREMENT **B-228599.2 Con't**
Competitive Negotiation **July 13, 1988**
Contracting officer duties
Effects
Advisory opinions

Agency failure to consider late submitted Defense Contract Audit Agency (DCAA) audits of offerors' cost proposals in its probable cost analysis is reasonable, where DCAA verbally advised that there were no significant differences between the cost proposals and the DCAA report recommendations. DCAA audits are only advisory; the degree to which they are used is a matter for the contracting officer to decide.

PROCUREMENT **B-231001 July 13, 1988**
Sealed Bidding **88-2 CPD 44**
Contract awards
Default termination
Performance sureties

Pursuant to reprocurement for default, contracting agency acted properly in accepting surety's proposal to have the contract work completed at the defaulted contract price by a contractor that did not bid on the original procurement; agency was not required to reprocure from next low bidder on original procurement.

PROCUREMENT **B-231168.2 July 13, 1988**
Bid Protests **88-2 CPD 46**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-231629 July 13, 1988
88-2 CPD 45

Protest against amendment repealing solicitation's small business recertification requirement is dismissed as academic where the Small Business Administration has found that proposed awardee is a small business and no immediate purpose would be served by our review of the matter.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size standards
Administrative discretion

Since the Small Business Administration has conclusive authority to determine small business status for federal procurement purposes, the General Accounting Office does not consider size status protests.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Collusion

B-231846 July 13, 1988
88-2 CPD 47

Protest that low bidder engaged in collusive bidding is dismissed because the issue is for resolution first by the contracting officer in the context of a responsibility determination and then, if collusion is suspected, by the Attorney General in a criminal investigation.

PROCUREMENT	B-231889 July 13, 1988
Special Procurement	88-2 CPD 48
Methods/Categories	
In-house performance	
Administrative discretion	
GAO review	

Decision to cancel solicitation and to perform work in-house is a matter of executive policy that the General Accounting Office does not review where, as here, the solicitation was not for the purposes of comparing the costs of in-house performance with the costs of contracting.

PROCUREMENT	B-229508.3 July 14, 1988
Bid Protests	88-2 CPD 49
GAO procedures	
GAO decisions	
Reconsideration	

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

PROCUREMENT	B-230855.2 July 14, 1988
Specifications	88-2 CPD 50
Minimum needs standards	
Competitive restrictions	
Justification	
Sufficiency	

Solicitation for construction of radio towers that precluded use of welded steel pipe is not unduly restrictive of competition where agency shows that requirement is necessary to insure structural integrity of tower and is directly related to the safety of personnel who will climb the towers, and where the protester fails to show that requirements are clearly unreasonable or that they do not represent the agency's minimum needs.

PROCUREMENT
Bid Protests
Definition

B-230921 July 14, 1988
88-2 CPD 51

PROCUREMENT
Bid Protests
GAO authority

Protest against determination by agency to exclude protester as a planned producer for a future procurement is not for consideration under General Accounting Office's bid protest function since protester's objection does not pertain to a particular solicitation or to the proposed award or award of a particular contract and thus is not within the scope of the bid protest provisions of the Competition in Contracting Act of 1984.

PROCUREMENT
Bid Protests
GAO procedures

B-231692 July 14, 1988
88-2 CPD 52

Protest timeliness
Apparent solicitation improprieties

Protest against award to a firm listed in solicitation as an approved source is, in effect, a protest of alleged solicitation improprieties which must be filed prior to the closing date for receipt of proposals and will not be considered by General Accounting Office when it was initially filed with the contracting agency after the closing date.

PROCUREMENT **B-231915 July 14, 1988**
Contractor Qualification 88-2 CPD 53
Responsibility
Contracting officer findings
Affirmative determination
GAO review

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions
Equal employment/affirmative action

Protest alleging that low bidder is nonresponsive for failure to comply with affirmative action requirements of the solicitation and federal procurement law is dismissed, since compliance with these requirements concerns the bidder's responsibility and the General Accounting Office generally will not review a contracting officer's affirmative responsibility determination.

PROCUREMENT **B-208159.13 July 15, 1988**
Bid Protests
Allegation investigation
GAO review

Letter responding to inquiry from Senator David Pryor discusses how GAO handles allegations raised in bid protests relating to fraud or other violations of federal criminal law.

PROCUREMENT B-230699 July 15, 1988
Competitive Negotiation 88-2 CPD 55
Offers
Competitive ranges
Exclusion
Administrative discretion

Agency's decision to exclude protester's proposal from the competitive range was not unreasonable where proposal contained significant technical and informational deficiencies such that it would require major revisions before it could be made acceptable and protester's technical score was 34 percent lower than that of only other offeror.

PROCUREMENT B-230827 July 15, 1988
Sealed Bidding 88-2 CPD 56
Invitations for bids
Cancellation
Justification
Errors

Agency had a compelling reason to cancel a solicitation where the solicitation incorrectly overstated the agency's needs by 566 percent due to an error in requirements.

PROCUREMENT B-231112.2 July 15, 1988
Bid Protests 88-2 CPD 57
GAO procedures
GAO decisions
Reconsideration

The protester's late receipt of an agency report is not a basis to reopen a protest that was dismissed because of the protester's failure to file comments or express continued interest in the protest within 10 working days after receipt of the agency report. The protester was specifically notified of the necessity of advising the General Accounting Office of its failure to receive the report when due in a written acknowledgment of its protest.

PROCUREMENT

Bid Protests

Agency-level protests

Protest timeliness

GAO review

B-231669.2 July 15, 1988

88-2 CPD 58

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Where a firm initially protested to the contracting activity alleging a solicitation is overly restrictive prior to the closing date for receipt of proposals, the agency's opening of initial proposals without taking the requested corrective action constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) 4 weeks later, based on agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

PROCUREMENT

B-230724 July 18, 1988

Contractor Qualification 88-2 CPD 59

Responsibility criteria

Distinctions

Performance specifications

PROCUREMENT

Sealed Bidding

Contract awards

Government delays

Propriety

The contracting officer properly delayed award of contracts for helicopter services in order to allow the Federal Aviation Administration (FAA) to certify the helicopters offered to operate in the manner and in conditions specified in the invitation. As the helicopters were capable of meeting the performance specifications at all times pertinent to the protest, the issue of the FAA's certifying the helicopters to operate was a matter of responsibility that properly could be resolved after bid opening.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Determination criteria

A bid to provide a helicopter for fighting fires and other services is responsive where the bid does not qualify or limit the offeror's obligation to supply a helicopter that can operate in accord with the material performance requirements set forth in the invitation for bids.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-230798 July 18, 1988
88-2 CPD 60

Protester, who objects to the application of a revised statutory cost limitation which was not incorporated into the solicitation, has made no showing that it would have bid differently had the revised limitation been incorporated.

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

Notwithstanding the agency's failure to update a solicitation notice to reflect the most current statutory cost limitation, General Accounting Office has no objection to a proposed award to the low bidder whose bid, while not conforming to the limitation notice in the solicitation, did not exceed the actual cost statutory limitation.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Justification
GAO review

B-231067.2 July 18, 1988
88-2 CPD 63

Cancellation of solicitation is proper where procuring agency determines it no longer requires the solicited item.

PROCUREMENT B-228593.2 July 19, 1988
Specifications 88-2 CPD 64
Minimum needs standards
Administrative regulations
Statutes
Implementation

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Justification
Sufficiency

Decision is affirmed that a solicitation for educational services issued on a Pacific theater-wide basis does not contravene a statutory provision which calls for multiple offerors, but also provides that the Department of Defense (DOD) may conduct procurements for such services in a manner to avoid unnecessary duplication of offerings consistent with ensuring alternate offerors to the maximum extent feasible. Thus DOD properly could limit the number of service providers on a theater-wide basis on feasibility or unnecessary duplication grounds.

PROCUREMENT B-231747.2 July 19, 1988
Bid Protests 88-2 CPD 65
GAO procedures
Preparation costs

PROCUREMENT
Bid Protests
Moot allegation
GAO review

Where a protest is dismissed as academic, there is no decision on the merits and, therefore, no basis on which the costs of filing and pursuing the protest may be recovered.

PROCUREMENT**Bid Protests****Patent infringement****GAO review****B-231774; B-231778****July 20, 1988****88-2 CPD 66**

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

PROCUREMENT**Socio-Economic Policies****Small business set-asides****Cancellation****Justification**

Where price submitted by sole small business offeror is unreasonable inasmuch as it is twice that of the government estimate, contracting agency had a reasonable basis for cancellation of total small business set-aside solicitation.

PROCUREMENT**Bid Protests****Moot allegation****GAO review****B-230839 July 21, 1988****88-2 CPD 67**

Protest that the agency deprived protester of opportunity to compete because the agency did not provide it with a copy of the solicitation is denied where the record shows that although the agency did not prepare a solicitation mailing list, otherwise reasonable efforts were made to publicize and distribute the solicitation; the protester in fact secured a copy before proposals were due; and three proposals were received.

Protest that notice in the Commerce Business Daily was misclassified is denied where the record shows that the procurement, a consolidated management contract, was correctly classified under the section for services to operate and maintain a government facility.

PROCUREMENT
Bid Protests
Wage rates
GAO review

B-230839 Con't
July 21, 1988

PROCUREMENT
Competitive Negotiation
Requests for proposals
Defects
Evaluation criteria

The General Accounting Office does not consider the accuracy of the Department of Labor wage determinations issued in connection with solicitations subject to the Service Contract Act.

PROCUREMENT
Competitive Negotiation
Contract awards
Government delays
Justification

Whether an agency may fail to meet a target award date due to the unavailability of funds is a matter of procedure and does not invalidate a procurement or provide a basis for protest.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Use
Administrative discretion

General Accounting Office did not violate Small Business Administration regulations by deciding not to set aside a procurement for small business where there was reason to expect offers from at least two responsible business concerns.

B-230839 Con't
July 21, 1988

PROCUREMENT	B-225843.4	July 22, 1988
Bid Protests	88-2	CPD 69
GAO procedures		
Interested parties		
Direct interest standards		

PROCUREMENT	B-230816	July 22, 1988
Bid Protests	88-2	CPD 70
GAO procedures		
Protest timeliness		
10-day rule		

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PROCUREMENT
Contract Management
Contract administration
Contract terms
Modification

B-230816 Con't
July 22, 1988

Post-award decision to extend date for closing of sale of real property is a matter of contract administration, which is the function and responsibility of contracting agency, and will not be reviewed by General Accounting Office where record does not establish that contract was awarded with the intention that its terms would be modified to the prejudice of unsuccessful bidders, or that the changed contract is materially different from the contract on which the competition was based.

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Eligibility
Criteria

B-230862 July 22, 1988
88-2 CPD 71

Small Business Administration (SBA) determination of ineligibility for a certificate of competency on the basis that the bidder has not met the requirement under the SBA regulations that it perform a significant portion of the contract work with its own facilities and personnel is tantamount to an affirmation of the agency's original determination of nonresponsibility and therefore is not subject to further review by the General Accounting Office except in limited circumstances not present in this case.

PROCUREMENT

Bid Protests

GAO Procedures

Protest timeliness

10-day rule

B-230965; B-230966

July 22, 1988

88-2 CPD 72

Protest that solicitation's "scope of work" provision was vague and poorly written is dismissed as untimely where not asserted until after award of the contract, well beyond the closing date for receipt of proposals.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Protests challenging the management competence of proposed awardee concerns agency's affirmative determination of responsibility which, in this case, is not a matter for consideration under the Bid Protest function of the General Accounting Office.

PROCUREMENT

Socio-Economic Policies

Small businesses

Contract awards

Eligibility

Protests that proposed awardee is not eligible for award under Buy Indian Act small business set-asides is denied where there is no indication of record that determination of awardee's eligibility was other than proper.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-230994 July 22, 1988
88-2 CPD 73

Protest that solicitation contains inadequate data is denied where the solicitation in fact includes the data the protester requests. In any event, solicitations need not be drafted to eliminate all uncertainties and risks of performance.

PROCUREMENT
Contract Disputes
Liquidated damages
Amount determination

Liquidated damages rates are not improper just because they are based on the costs of reperforming the unsatisfactory services with government employees where such costs reasonably reflect the measure of damages.

PROCUREMENT
Specifications
Minimum needs standards
Risk allocation
Performance specifications

Protest that compensation rate set out in cleaning services solicitation for up to 200 additional hours of unspecified service is too low to cover the contractor's costs is denied, since the services are very limited in the context of the contract, and since the contractor clearly can cover any risk of undercompensation in its overall bid price.

PROCUREMENT**B-231438 July 22, 1988****Bid Protests****88-2 CPD 74****GAO procedures****Interested parties**

Where a small business set-aside is found to be proper, a large business protester is not an interested party for the purpose of protesting the agency's decision to conduct negotiations rather than solicit bids.

PROCUREMENT**Socio-Economic Policies****Small business set-asides****Use****Justification**

General Accounting Office will not object to agency's decision to set aside procurement for small business concerns where the record indicates the contracting officer had a reasonable expectation that offers would be obtained from at least two small business concerns and that an award would be made at a reasonable price.

PROCUREMENT**B-230809 July 25, 1988****Bid Protests****88-2 CPD 76****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Allegation that source approval testing is unavailable and thus should be waived for protester is untimely, and will not be considered, where solicitation clearly called for source approval, but protest was not filed until after deadline for receipt of proposals; Bid Protest Regulations require that alleged solicitation deficiencies be protested prior to proposal submission deadline.

PROCUREMENT

Contract Management
Contract administration
Default termination
GAO review

B-230878 July 25, 1988
88-2 CPD 77

PROCUREMENT

Contract Management
Contract administration
GAO review

Propriety of prime contractor's alleged termination of the protester's contract for default and the Department of Energy's decision to withhold funds under the protester's contract in response to its lawsuit are questions of contract administration and therefore are not reviewable under our bid protest function.

PROCUREMENT

Contractor Qualification
Organizational conflicts of interest
Allegation substantiation
Evidence sufficiency

Prime contractor's decision to exclude the protester from competing for a small purchase order which would have required the protester to test and evaluate its own product was proper because the protester had an organizational conflict of interest.

PROCUREMENT B-231092 July 25, 1988
Competitive Negotiation 88-2 CPD 78
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

Speculation that evaluation committee was biased in favor of the awardee provides no basis upon which to question the award where there is no evidence that alleged friendship of agency official with awardee affected the evaluation of proposals, and the record provides a reasonable basis for agency conclusion that proposals were essentially equal with respect to technical merit and for subsequent agency determination to make award to the low-priced offeror.

PROCUREMENT B-231353 July 25, 1988
Bid Protests 88-2 CPD 79
Allegation substantiation
Lacking
GAO review

PROCUREMENT
Bid Protests
Bad faith
Allegation substantiation
Lacking

Protester contending that the contracting officer acted in bad faith must submit proof that the contracting officer had a specific and malicious intent to injure the protester.

PROCUREMENT B-231353 Con't
Competitive Negotiation July 25, 1988
Requests for proposals
Cancellation
Justification
GAO review

PROCUREMENT
Socio-Economic Policies
Small business 8(a) subcontracting
Use
Administrative discretion

The determination to cancel a competitive procurement and to initiate a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and the Small Business Administration to decide; that decision will not be reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of government officials.

PROCUREMENT B-231801 July 25, 1988
Bid Protests 88-2 CPD 80
GAO procedures
Protest timeliness
Apparent solicitation improprieties

PROCUREMENT
Sealed Bidding
Invitations for bids
Evaluation criteria
Prices
Options

Protest that contracting agency improperly evaluated protester's bid by adding the option quantity price to the initial quantity price is dismissed because the solicitation provided for evaluation of bids on that basis, and bids must be evaluated on the same basis on which they were invited. Protest that this evaluation method was wrong is untimely, since it concerns an alleged impropriety in the solicitation but was not filed before bid opening.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-231857 July 25, 1988
88-2 CPD 81

Where a procuring agency renders a protest academic by taking the corrective action requested by the protester, the General Accounting Office has no legal basis on which to find the protester entitled to recover its protest costs.

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions
Competency certification

B-231858 July 25, 1988
88-2 CPD 82

The certificate of competency program addresses a small business concern's responsibility for purposes of receiving a government contract, and does not apply where the bid is nonresponsive.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Small business set-asides
Compliance

Bid on a total small business set-aside indicating that not all end items to be furnished would be produced by small businesses is nonresponsive.

PROCUREMENT
Contract Management
Contract administration
GAO review

B-231878 July 25, 1988
88-2 CPD 83

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

PROCUREMENT**B-232001 July 25, 1988****Bid Protests****88-2 CPD 84****GAO procedures****Protest timeliness****Apparent solicitation improprieties****PROCUREMENT****Competitive Negotiation****Requests for proposals****Cost evaluation****Evaluation criteria****Applicability**

Protest that agency did not consider alleged cost savings accruing from protester's offer to waive termination costs otherwise due under predecessor contract is dismissed where solicitation did not provide for consideration of such cost savings and protester did not file initial protest until after the contract was awarded.

PROCUREMENT**B-229735.2 July 26, 1988****Special Procurement****88-2 CPD 85****Methods/Categories****In-house performance****Cost estimates****GAO review**

There is no basis to question an agency's decision to retain services in-house rather than contract for them as a result of an Office of Management and Budget Circular A-76 cost comparison where the protester has not shown that the agency in its in-house estimate did not include costs for sandblasting or that the agency's estimate was unreasonable.

PROCUREMENT**Bid Protests****GAO procedures****Protest timeliness****B-231177; B-231177.2****July 26, 1988****88-2 CPD 86**

Allegations that contracting agency improperly accepted an offer that did not meet specific mandatory requirements set forth in the solicitation are dismissed as untimely, when raised over a month after award, although allegedly shortly after information concerning the basis of protest was received, since the protester failed to diligently seek information to determine whether a basis of protest existed.

PROCUREMENT**Competitive Negotiation****Offers****Evaluation****Administrative discretion**

Procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and their evaluations will not be disturbed unless shown to be arbitrary or in violation of procurement laws or regulations. A mere disagreement between the protester and the agency over the technical evaluation is not sufficient to show that the evaluation was unreasonable.

PROCUREMENT B-231177; B-231177.2 Con't
Competitive Negotiation July 26, 1988
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Technical superiority

A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a technically superior proposal and, based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical and price most advantageous to the government.

PROCUREMENT B-231490 July 26, 1988
Sealed Bidding
Hand-carried bids
Late submission
Acceptance criteria

A proposal hand-delivered after the time specified for receipt must be rejected as late where evidence of record does not support a finding that improper government action was the paramount cause of late receipt.

PROCUREMENT B-231871 July 26, 1988
Socio-Economic Policies 88-2 CPD 87
Small business set-asides
Amendments
Disadvantaged business set-asides
Preferences

Determination by agency to amend a small business set-aside solicitation to allow a preference for small disadvantaged business 20 days prior to bid opening is proper when amendment is necessary to implement recent statute providing for an evaluation preference to small disadvantaged businesses.

PROCUREMENT**B-232020 July 26, 1988****Bid Protests****88-2 CPD 88****Allegation substantiation****Lacking****GAO review**

Protest by other than low offeror, filed after closing date for receipt of proposals, that award to low offeror is contrary to statutes and regulations granting an evaluation preference to small disadvantaged business concerns is dismissed where solicitation did not provide for such preference and neither the statutes nor regulations, in effect at the time the solicitation was issued, required such a preference.

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

Protest that solicitation should have included an evaluation preference for small disadvantaged business concerns is untimely, since it alleges a solicitation impropriety apparent prior to closing date for receipt of proposals but was not filed before that time.

PROCUREMENT**B-228396.4 July 27, 1988****Contractor Qualification 88-2 CPD 89****Responsibility****Contracting officer findings****Affirmative determination****GAO review**

In face of contention that responsibility determination amounted to bad faith General Accounting Office concludes that the determination was reasonable where, although awardee was undergoing bankruptcy proceedings, it provided a letter of commitment from financial institution for working capital to fund performance of the contract.

Fact that awardee is undergoing bankruptcy proceedings does not indicate that contracting officials acted in bad faith in finding awardee to be a responsible firm.

General Accounting Office does not consider challenges to small business size status because the Small Business Administration has conclusive authority to decide such matters.

Though request for proposals (RFP) did not reference test requirements, agency could reasonably require testing before approval of the protester as a source for containers to transport nuclear critical electronic drawers, since RFP required protester to furnish evidence that its containers would meet requirements. Since the protester had never manufactured containers, and submitted drawings which did not reflect vibration and shock test requirements, the agency could require evidence, in the form of test results, to alleviate its concerns about latent weaknesses resulting from protester's manufacturing process.

PROCUREMENT	B-230717.2	July 27, 1988
Contractor Qualification	88-2	CPD 91
Responsibility		
Contracting officer findings		
Negative determination		
GAO review		

Where a small business concern protests a nonresponsibility finding by a contracting officer and the subsequent refusal of the Small Business Administration (SBA) to issue a certificate of competency to the concern General Accounting Office will dismiss the protest where the protester has not shown possible fraud or bad faith on the part of the contracting officials or the SBA and where the protester has not shown that the SBA failed to consider vital information bearing on the firm's responsibility.

PROCUREMENT	B-231392.2	July 27, 1988
Bid Protests	88-2	CPD 92
GAO procedures		
Interested parties		

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

PROCUREMENT**B-231403 July 27, 1988****Specifications****88-2 CPD 93****Minimum needs standards****Competitive restrictions****Justification****Sufficiency**

Protest that requirement for on-base switching equipment under solicitation for base telecommunications system unduly restricts competition is without merit where agency establishes that requirement is needed to minimize potential for disruption of on-base communications in all circumstances including emergency or wartime situations by maintaining system within the security of the base.

PROCUREMENT**B-231478 July 27, 1988****Bid Protests****88-2 CPD 95****Allegation substantiation****Burden of proof****PROCUREMENT****Specifications****Minimum needs standards****Competitive restrictions****Justification****Sufficiency**

Protest that specification for "wet chemical" fire extinguisher system is unduly restrictive of competition is denied where the agency presents a reasonable explanation in support of the specification as necessary to meet its minimum needs and protester, while disagreeing with agency's analysis, fails to show that the exclusion of "dry chemical" system is clearly unreasonable.

PROCUREMENT

B-230886.2 July 28, 1988

Special Procurement

88-2 CPD 97

Methods/Categories

Federal supply schedule

Purchases

Cost/technical tradeoffs

Justification

PROCUREMENT

Special Procurement Methods/Categories

Federal supply schedule

Purchases

Cost/technical tradeoffs

Technical superiority

Protest against award to an allegedly higher priced vendor under a mandatory, multiple-award Federal Supply Schedule (FSS) contract is denied where apparently higher priced vendor's equipment includes required installation, and inclusion of the protester's FSS installation charges makes its price higher than awardee's.

PROCUREMENT

Special Procurement Methods/Categories

Federal supply schedule

Purchases

Cost/technical tradeoffs

Technical superiority

Justification for placing order under Federal Supply Schedule (FSS) may be based on considerations not identified in the request for quotations (RFQ), since RFQ is intended merely to identify suitable equipment listed in FSS.

PROCUREMENT
Sealed Bidding
Bids

B-230987 July 28, 1988
88-2 CPD 98

Error correction
Pricing errors
Line items

Where workpapers contain clear and convincing evidence that the low bidder mistakenly failed to multiply the overhead rate for one line item by the number of months the bidder computed were needed to complete that line item, the General Accounting Office will not object to the procuring agency's decision to permit upward correction of the bid.

PROCUREMENT
Contractor Qualification
Responsibility

B-231628 July 28, 1988
88-2 CPD 99

Contracting officer findings
Affirmative determination
GAO review

Protest that awardee will not perform the amount of work in labor surplus area as promised in its bid is a challenge of the contracting agency's affirmative determination of responsibility and is therefore not for General Accounting Office review except in limited circumstances not present here.

PROCUREMENT
Bid Protests
GAO procedures

B-228470.2 July 29, 1988
88-2 CPD 125

Preparation costs

Protester may recover the costs of filing and pursuing its protest, including reasonable attorney fees, where the protest has been sustained, resulting in likely cost savings to the government, and no other remedy is available.

PROCUREMENT	B-230013.2; B-230013.3
Bid Protests	July 29, 1988
GAO procedures	88-2 CPD 100
Protest timeliness	
Significant issue exemptions	
Applicability	

Protest presented a significant issue justifying consideration on the merits even though it was untimely filed where, based on the fully developed record, it was clear that the contracting agency had unreasonably excluded the protester from the competitive range contrary to the procurement statutes and regulations.

PROCUREMENT	B-230946 July 29, 1988
Bid Protests	88-2 CPD 101
GAO procedures	
Protest timeliness	
Apparent solicitation improprieties	

Protest that agency should have given office space proposal greater credit for space use efficiency is denied since, although proposal included statement that a typical upper floor of proposed building achieves an 86 percent space utilization efficiency, there was no documentation in the proposal to support this assertion. Although protester argues that evaluation should have considered the space efficiency advantages of a single building and that agency should have requested and considered layout drawings, those factors were not listed in solicitation's evaluation criteria and if the protester objected to listed evaluation criteria, it was required to protest before initial closing date.

PROCUREMENT

Competitive Negotiation

Best/final offers

Cost estimates

Omission

Effects

B-230946 Con't

July 29, 1988

Protest that agency should have applied lower energy costs in evaluating proposal for lease of office space is denied where proposal included no information on energy costs which agency could use to quantify those costs for the proposed office space. An evaluation must be based upon the information included in a proposal, so that no matter how advantageous an offer may be, an offeror runs the risk of losing the competition if it does not submit an adequate proposal.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Office space

Under solicitation for lease of office space which provided that cost to government for security services would be factored into evaluation of each offer, agency's method of evaluating security costs, which involved an assessment of security costs for each offer based on the specific characteristics of the space proposed in each offer, was reasonable.

Agency's evaluation of offer for lease of office space which did not add costs for rearrangement of work stations within currently leased space was proper since solicitation only called for evaluation to include cost of agency relocation from currently leased premises.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS

B-159292 July 7, 1988

Finance Industry

Financial institutions

Stocks

Refunds

Under section 406(d) of Rural Electrification Act of 1936, as amended (REA Act), 7 U.S.C. § 946(d), patronage refunds on Class B stock of Rural Telephone Bank (Bank) may only be made in B stock of Bank. Only way in which B stockholders can obtain cash from their stock is through stock redemption. While matter is not free from doubt, such redemptions may be viewed as constructive dividends. Cash dividends on Class B stock are prohibited by section 406(d) of Act.

MISCELLANEOUS TOPICS

Finance Industry

Financial institutions

Stocks

Retirement

Current Bylaws of Bank established vested right of prior redemption for Bank's Class A stock which would be impaired by proposal to amend Bylaws to permit retirement of Class B stock before retirement of Class A stock.

Neither Secretary of Agriculture nor Administrator of Rural Electrification Administration has authority under section 403(a) of REA Act, 7 U.S.C. § 943(a), to consent to Bank's amendment of its Bylaws to change government's right of prior redemption for its Class A stock. Any such consent should be specifically authorized by the Congress.

MISCELLANEOUS TOPICS
Law Enforcement
Criminal law matters
Collusion
Bids

B-231846 July 13, 1988

Protest that low bidder engaged in collusive bidding is dismissed because the issue is for resolution first by the contracting officer in the context of a responsibility determination and then, if collusion is suspected, by the Attorney General in a criminal investigation.

MISCELLANEOUS TOPICS
National Security/International Affairs
Foreign aid programs
Funds
Use
Accountability

B-231247 July 18, 1988

The Anglo-Irish Agreement Support Act, Public Law 99-415, which authorizes the contribution of U.S. funds to support economic and social development in Ireland and Northern Ireland, does not specifically place any responsibilities on the Agency for International Development (A.I.D.) for insuring that any such contributions are ultimately used for the purposes designated by that act. The Act places accountability on the President by requiring prior annual certifications, and an annual report on whether the Act's objectives are being achieved.

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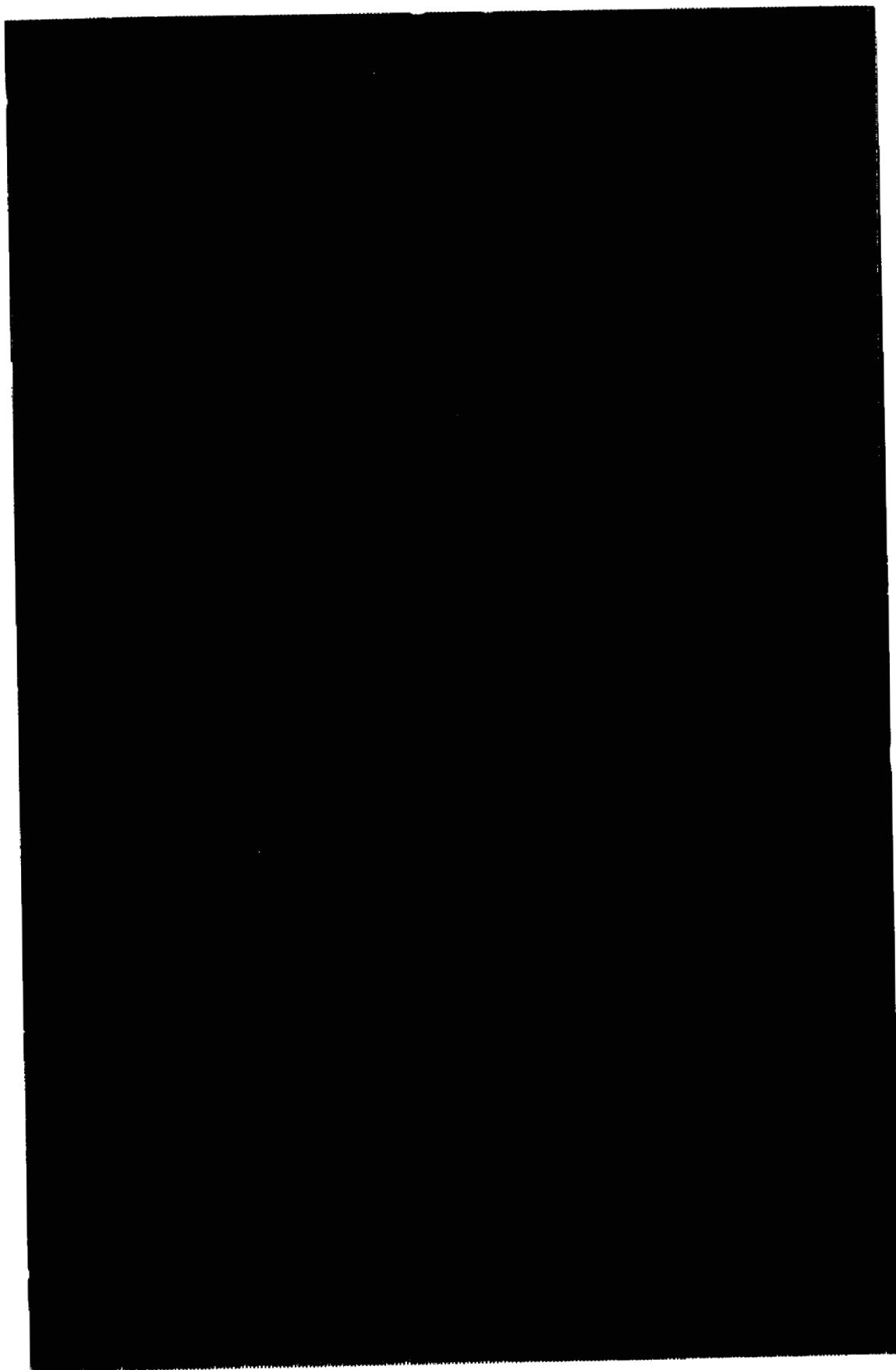
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