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Office of General Counsel



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of the United States

GAO 139532

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Contents

	<u>Page</u>
Table of Decisions	I
Digests:	
Appropriations/Financial Management	A-1
Civilian Personnel	B-1
Military Personnel	C-1
Procurement	D-1
Index	i

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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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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TABLE OF DECISIONS

MAY 1989

	<u>May</u>	<u>Page</u>		<u>May</u>	<u>Page</u>
B-197911.6	25...	D-55	B-234141.8	16...	D-32
B-203022	4...	B- 1	B-234141,		
B-226868.2	19...	B- 3	et al.)	17...	D-34
B-230403	19...	B- 3	B-234142	10...	D-19
B-231857.4)			B-234143	3...	D- 6
B-231857.5)	22...	D-43	B-234147)		
B-231981	19...	B- 4	B-234147.2)	23...	D-48
B-232139.4	23...	D-48	B-234191	17...	D-37
B-232157	4...	B- 1	B-234219	9...	D-14
B-232375	31...	B- 5	B-234224)		
B-232678.2	19...	D-42	B-234224.2)	12...	D-26
B-232736.2	22...	D-45	B-234225)		
B-233066.2	16...	D-30	B-234227)	5...	D- 9
B-233130	19...	B- 4	B-234237	3...	D- 7
B-233496.3	12...	D-26	B-234241	3...	A- 1
B-233537.2	10...	D-18	B-234250	30...	D-61
B-233574.2,			B-234251	2...	D- 4
et al.)	25...	D-55	B-234272	17...	D-38
B-233579.2	16...	D-30	B-234281	23...	D-49
B-233724.2	16...	D-31	B-234282	8...	D-12
B-233734	30...	A- 2	B-234283	8...	D-13
		B- 5	B-234294	9...	D-16
B-233742.2	24...	D-50	B-234303	16...	D-32
B-233789.2	24...	D-52	B-234314.2	22...	D-46
B-233870	30...	A- 3	B-234365	11...	D-23
B-233935.3	25...	D-56	B-234412	24...	D-52
B-233937	8...	A- 1	B-234424	1...	D- 1
B-233992	16...	B- 2	B-234425	30...	C- 1
B-234028	9...	D-14	B-234468	25...	D-57
B-234029	11...	D-22	B-234475	23...	D-49
B-234034	3...	D- 5	B-234494	5...	D-10
B-234068	8...	D-12	B-234543	3...	D- 7
B-234071	4...	D- 8	B-234560	12...	D-27
B-234107	19...	D-42	B-234563	5...	D-10
B-234124	10...	D-18	B-234569	15...	D-29

TABLE OF DECISIONS - CON.

	<u>May</u>	<u>Page</u>		<u>Mar</u>	<u>Page</u>
B-234579	16...	D-33	B-234987,		
B-234583	22...	D-47	et al.)	3...	D- 8
B-234587.2	16...	D-33	B-234998.3	1...	D- 3
B-234594	30...	D-62	B-235066.2	18...	D-41
B-234614.2	5...	D-11	B-235102	11...	D-25
B-234615	9...	D-16	B-235117.2	11...	D-25
B-234620	1...	D- 1	B-235151	24...	D-54
B-234621	24...	D-53	B-235165	9...	D-17
B-234652	17...	D-39	B-235231.2	26...	D-60
B-234694	25...	D-57	B-235280	11...	D-25
B-234728	18...	D-41	B-235308	23...	D-50
B-234734.2	19...	D-43	B-235330.2	25...	D-59
B-234740.2	16...	D-33	B-235331	16...	D-34
B-234753	23...	D-49	B-235369	11...	D-26
B-234768	16...	B- 2	B-235400	26...	D-60
B-234774	24...	D-53	B-235406	12...	D-28
B-234778	25...	D-58	B-235413	12...	D-28
B-234780	31...	D-63	B-235448.2	23...	D-50
B-234798	12...	D-27	B-235477	17...	D-40
B-234853	26...	D-60	B-235491	22...	D-47
B-234882	25...	D-59	B-235512.2	31...	D-63
B-234936.2	1...	D- 2	B-235553	26...	D-61
B-234940.2	11...	D-24	B-235559	24...	D-54
B-234959,			B-235567	24...	D-54
et al.)	8...	A- 2	B-235589,	30...	D-62
B-234986.2	22...	D-47	et al.)	30...	D-62

APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-234241 May 3, 1989

Purpose availability

Necessary expenses rule

Awards/honoraria

Recruitment

The Army may use funds appropriated for recruiting and advertising to pay for framed recruiting posters for use as prizes for potential Army doctors in order to facilitate recruiting. Before the Army implements the plan, it should determine whether the award of a prize worth up to \$25 is consistent with its own regulations with regard to gifts to potential recruits.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-233937 May 8, 1989

Relief

Physical losses

Theft

Drug Enforcement Agent denied relief under 31 U.S.C. § 3527(a) for liability resulting from a theft of government funds where the exercise of due care on his part would have prevented the loss. See, B-214718, December 14, 1984. The loss occurred after the agent placed a bag containing government funds on a ledge in a crowded restaurant.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-234959, et al.**
Disbursing officers **May 8, 1989**
Liability restrictions
Statutes of limitation

Since four requests for relief of the Treasury disbursing officer were received more than three years after the losses resulting from the negotiation of both the original and a replacement check, this office is unable to grant relief. The accountable officer has no personal liability since the applicable accounts had been settled by operation of law. We consider the date of receipt by the agency of substantially complete accounts, or where records are retained at the site, the end of the period of the account, as the point from which the 3-year limitation period begins to run.
B-198451.2, September 15, 1982.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims by Government **B-233734** **May 30, 1989**
Training expenses
Debt collection
Waiver
GAO authority

We concur with the determination of the Internal Revenue Service (IRS) to seek repayment of training expenses where the employee resigned after 11 months of a 33-month service agreement. There is no indication in the record that the IRS acted in an arbitrary or capricious manner when it denied the employee's request for waiver of training expenses under the provisions of 5 U.S.C. § 4108(c) (1982). Furthermore, we cannot accept the argument that the IRS breached an "agreement" to utilize the employee's skills and that such actions prevent collection of training expenses.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-233870 May 30, 1989

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief will be granted to an accountable officer who properly supervised subordinates who made an improper payment. Proper supervision is indicated since the supervisor issued a Standing Operating Procedure several weeks before the loss occurred which, if followed, should have prevented the loss.

Standard requiring U.S. Army Finance and Accounting Officers to forward loss matters to the Collections Division of the U.S. Army Finance and Accounting Center within three months of discovering the loss apply to losses, other than just those caused by the negotiation of original and duplicate checks.

Agency's collection efforts are insufficient to grant relief under 31 U.S.C. § 3527(c) when the Finance and Accounting Office does not refer a loss to the agency's collection office for at least eleven months after the loss is discovered, and the finance and accounting office's own actions did not meet the Federal Claims Collection Standards.

Despite an agency's insufficient collection efforts, relief is granted to an accountable officer since U.S. Internal Revenue Service Notices of Federal Income Tax Lien were filed against the creditor before it received the payment, the debtor's assets were insufficient to retire the tax liens, and the prior tax liens and low value of the debtor's assets would have made collection efforts futile.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-203022 May 4, 1989

Compensation

Awards/honoraria

Eligibility

Administrative regulations

The Office of Personnel Management (OPM) states that its statutory authority to promulgate regulations allows it to adopt one set of regulations to carry out the awards programs in chapter 54 (Performance Management Recognition System - PMRS) and chapter 45 (Performance Management Recognition System - PMRS) and chapter 45 (Incentive Award Program), of title 5, United States Code. We believe such regulations may allow PMRS employees to receive awards under two separate statutory authorities, which is contrary to the provisions of 5 U.S.C. § 4501(2)(a) (Supp. IV 1986) which excludes PMRS employees from the definition of "employee" under the incentive award program. We would recommend that OPM amend its regulations to clarify this matter.

CIVILIAN PERSONNEL

B-232157 May 4, 1989

Travel

Per diem

Eligibility

10-hour rule

Exemptions

An airplane pilot who works a first 40-hour workweek is not entitled to per diem because of an exception to the "10-hour rule" in the Federal Travel Regulations, para. 1-7.5b(1), which prohibits the payment of per diem to employees who qualify solely on the basis of the fact that they work a non-standard workday.

CIVILIAN PERSONNEL **B-233992** **May 16, 1989**
Relocation
Residence transaction expenses
Reimbursement
Eligibility
Property titles

The nondependent parents of a transferred employee purchased a residence for the employee's use near her new permanent duty station but held legal title in their names only. The employee may not be reimbursed for her parent's closing costs since legal title to the property was not in the employee's name and since nondependent parents do not qualify under the Federal Travel Regulations (FTR) as members of the employee's "immediate family" for purposes of real estate expense reimbursement.

CIVILIAN PERSONNEL **B-234768** **May 16, 1989**
Relocation
Temporary quarters
Actual subsistence expenses
Reimbursement
Amount determination

A transferred employee reclaims amount of disallowed meal costs incurred while occupying temporary quarters. In limiting the employee's claim, the agency relied on its internal guideline stating that an allowance of 45 percent of the maximum allowable amount of temporary quarters subsistence expenses for meal costs is considered reasonable, unless an acceptable explanation is provided by the employee which supports a higher amount. Here, the agency's determination is sustained in the absence of adequate justification by the employee for additional meal costs.

CIVILIAN PERSONNEL

B-226868.2 May 19, 1989

Relocation

Household goods

Commuted rates

Reimbursement

Amount determination

The Internal Revenue Service initially authorized reimbursement for an employee's shipment of household goods under the GBL method, and then, in the light of further evidence which was subsequently found to be erroneous, authorized reimbursement under the higher commuted rate method. Upon reconsideration, we affirm our prior decision that the employee's reimbursement is limited to his actual costs.

CIVILIAN PERSONNEL

B-230403 May 19, 1989

Relocation

Temporary quarters

Actual subsistence expenses

Reimbursement

Eligibility

Pursuant to a permanent change of duty station, an employee and spouse moved into temporary quarters at the employee's new duty station. Seven weeks later they returned to their former residence for 9 days primarily to pack up furniture, following which they returned to the new duty station. The agency denied temporary quarters subsistence expenses (TQSE) of the spouse for the 7-week period following the transfer on the basis that the house at the old duty station had not been vacated. We find that the employee and his spouse did intend to vacate the old residence, and their return for a short and definite period to pack up furniture did not adversely affect the employee's entitlement to TQSE for the spouse.

CIVILIAN PERSONNEL**B-231981 May 19, 1989****Travel****Temporary duty****Travel expenses****Reimbursement****Fines**

Department of the Army employee who paid fines to Panamanian police for allegedly fictitious traffic violations while on temporary duty in Panama may not be reimbursed by the government for the fines as expenses of official travel. Ordinarily fines are considered personal to the employee and payment of them is his personal responsibility. However, in view of the unusual circumstances the employee describes concerning these fines, the claim may be appropriate for consideration by the Army under the Military Personnel and Civilian Employees Claims Act of 1964.

CIVILIAN PERSONNEL**B-233130 May 19, 1989****Travel****Permanent duty stations****Actual subsistence expenses****Prohibition**

Employees claim expenses at their official duty station incident to their duties as escort officers for the United States Information Agency's International Visitors Program, which required their continuous presence at local hotels and restaurants. Absent specific statutory authority, employees are not entitled to subsistence or per diem at their official duty station regardless of unusual working conditions. However, to the extent such expenses were erroneously authorized by the agency, repayment of amounts advanced to cover such expenses may be considered for waiver under 5 U.S.C. § 5584, as amended.

CIVILIAN PERSONNEL

B-233734 May 30, 1989

Compensation

Training expenses

Reimbursement

Breach of service agreements

We concur with the determination of the Internal Revenue Service (IRS) to seek repayment of training expenses where the employee resigned after 11 months of a 33-month service agreement. There is no indication in the record that the IRS acted in an arbitrary or capricious manner when it denied the employee's request for waiver of training expenses under the provisions of 5 U.S.C. § 4108(c) (1982). Furthermore, we cannot accept the argument that the IRS breached an "agreement" to utilize the employee's skills and that such actions prevent collection of training expenses.

CIVILIAN PERSONNEL

B-232375 May 31, 1989

Relocation

Household goods

Temporary storage

Expenses

Weight certification

A transferred employee's household goods were shipped and were placed in commercial storage at destination. Most of those household goods were then moved to his temporary quarters. Those household goods and the rest of the household goods in storage were later moved to his permanent quarters. Under chapter 2, part 8, of the Federal Travel Regulations, the government's cost of transportation and temporary storage shall not exceed the cost on a constructive basis of transporting the goods in one lot from old to new station, temporary storage, and movement of the goods in one lot from storage. Since the expenses previously paid by the government were less than constructive costs, the employee may be reimbursed the additional cost of moving his household goods from temporary to permanent quarters, not to exceed the constructive cost limitation.

CIVILIAN PERSONNEL

B-232375 Con't

Relocation

May 31, 1989

Temporary quarters

Actual subsistence expenses

Determination

A transferred employee whose household goods were shipped under the actual expense method exceeded the constructive cost of transporting the goods in one lot, temporary storage at the destination and movement of the goods to permanent quarters, because a portion of his goods were moved from storage into temporary quarters and later to permanent quarters. The expenses incurred by the employee in excess of constructive costs may be reimbursed as a temporary quarters subsistence expense since the goods were used to furnish temporary quarters. Aaron L. Howe, B-217435, Aug. 29, 1985.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-234425 May 30, 1989

Pay
Retirement pay
Distribution
Personnel death

MILITARY PERSONNEL

Pay
Survivor benefits
Annuity payments
Distribution
Statutes

The estate of a widow to whom the Army owed \$6,572.92 in unpaid retirement pay and Survivor Benefit Plan payments was closed before her executrix claimed that amount. In accordance with Kansas law, the estate should be reopened under an administrator de bonis non, who may then claim the money and distribute it according to the terms of the widow's will.

PROCUREMENT

PROCUREMENT **B-234424** **May 1, 1989**
Socio-Economic Policies **89-1 CPD 414**
Small businesses
Disadvantaged business set-asides
Eligibility
Determination

Since the Small Business Administration determines whether a firm is small and disadvantaged for purposes of eligibility for Department of Defense small disadvantaged business (SDB) set-asides, the General Accounting Office will not consider a protest challenging awardee's SDB eligibility status for award of a contract.

PROCUREMENT **B-234620** **May 1, 1989**
Specifications **89-1 CPD 415**
Minimum needs standards
Competitive restrictions
Geographic restrictions
Justification

Solicitation for cardiology scanning services requiring that a "full disclosure" report be furnished to the hospital within 24 hours after a heart monitor is removed from a patient is not objectionable merely because it provides a competitive advantage to scanning companies located in the vicinity of the hospital.

PROCUREMENT

B-234620 Con't

Specifications

May 1, 1989

Minimum needs standards

Competitive restrictions

Justification

Sufficiency

Protest is denied where agency presents support for its position that "full disclosure" report is required to meet its minimum needs, and protester does not show that requirement is unreasonable. Fact that other similarly situated hospitals do not require submission of full disclosure reports does not, in and of itself, demonstrate that requirement is unreasonable since procuring officials can reasonably differ with regard to their assessment of what is required to meet similar needs.

PROCUREMENT

B-234936.2 May 1, 1989

Bid Protests

89-1 CPD 416

GAO procedures

GAO decisions

Reconsideration

Additional information

Request for reconsideration of protest dismissed as untimely is denied where, on reconsideration, for the first time, protester alleges that it timely filed an agency-level protest, which would have rendered its protest to our Office timely, since it is clear that this information previously was available to the protester, but was not presented at the time the protest first was filed with General Accounting Office.

PROCUREMENT

Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-234998.3 May 1, 1989
89-1 CPD 417

PROCUREMENT

Bid Protests
GAO procedures
Protest timeliness
Deadlines
Constructive notification

Prior dismissal of protest filed 3 months late as untimely is affirmed, notwithstanding protester's assertion that it was unaware of bid protest timeliness requirements, because the protester is charged with constructive notice of Bid Protest Regulations through their publication in the Federal Register and the Code of Federal Regulations.

PROCUREMENT

Socio-Economic Policies
Small businesses
Responsibility
Competency certification
GAO review

The Small Business Administration may refuse to issue a certificate of competency for a reason different from the one the contracting officer relied on for nonresponsibility determination.

PROCUREMENT B-234998.3 Con't
Socio-Economic Policies May 1, 1989
Small businesses
Responsibility
Competency certification
Negative determination

Where a contracting officer makes a nonresponsibility determination, referral to the Small Business Administration under the certificate of competency procedures is required by the Small Business Act.

PROCUREMENT B-234251 May 2, 1989
Competitive Negotiation 89-1 CPD 419
Competitive advantage
Conflicts of interest
Allegation substantiation
Lacking

Protest that a conflict of interest exists where agency awarded a contract for the evaluation of programs to the same contractor that assists agency in developing programs under a separate support services contract is denied where agency reasonably determines that there are adequate safeguards in place to prevent the contractor from conducting biased evaluations of the programs.

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

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

PROCUREMENT

B-234034 May 3, 1989

Bid Protests

89-1 CPD 420

Bias allegation

Allegation substantiation

Burden of proof

Protest alleging bias must present virtually irrefutable proof, since procurement contracting officials are presumed to act in good faith.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest alleging that a solicitation amendment disclosed proprietary information beneficial to other offerors is untimely when not filed prior to the next closing date for the receipt of proposals.

PROCUREMENT

Competitive Negotiation

Best/final offers

Price data

Omission

Effects

Where a protester's best and final offer does not provide unit prices for the quantities required by the solicitation but instead proposes prices based upon different quantities, it is reasonable for the procuring agency to calculate the cost of the proposal on the basis of the price of the lowest quantity ordered based on past experience.

PROCUREMENT **B-234143 May 3, 1989**
Competitive Negotiation **89-1 CPD 422**
Below-cost offers
Acceptability

The submission of a below-cost or low-profit offer is not illegal and provides no basis for challenging the award of a firm-fixed-price contract to a responsible contractor.

PROCUREMENT
Competitive Negotiation
Offers
Price competition
Adequacy
Fixed-price contracts

Contracting officer's determination that adequate price competition has been obtained, and thus that certified cost and pricing data is not required, is reasonable where the record does not support the conclusion that any offeror is immune from competition, and in any case, the outcome of the competition would not have been changed.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

Protest that awardee will not provide certain commercial software to the agency with complete licenses as required by the RFP is denied where awardee's offer conformed to the terms of the solicitation; whether or not the awardee in fact meets that obligation is a matter of contract administration.

PROCUREMENT **B-234143** **Con't**
Contractor Qualification **May 3, 1989**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Contracting officer's affirmative determination of responsibility was reasonable where it was based on acceptable contractor performance history on a similar item.

PROCUREMENT **B-234237** **May 3, 1989**
Contractor Qualification **89-1 CPD 423**
Approved sources
Equivalent products
Acceptance
Administrative discretion

Protest challenging agency determination that gyroscopes offered as an alternate to approved source were technically acceptable is denied since agency has primary responsibility for establishing procedures to determine product acceptability and for determining whether item will satisfy government's minimum needs, and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

PROCUREMENT **B-234543** **May 3, 1989**
Contractor Qualification **89-1 CPD 424**
Responsibility criteria
Performance capabilities

An awardee's compliance with a solicitation provision calling for the Food and Drug Administration's (FDA) review of medication's stability test data is a matter of responsibility and need only be met by the start of contract performance. Contentions that data submitted by the awardee to the FDA are invalid and that the testing of the product was not proper are not subject to review by the General Accounting Office.

PROCUREMENT B-234987, et al.
Socio-Economic Policies May 3, 1989
Small businesses 89-1 CPD 425
Disadvantaged business set-asides
Eligibility
Determination

Agency properly did not apply small disadvantaged business evaluation preference where procurements were conducted either as total small business set-asides or on an unrestricted basis pursuant to the Small Business Competitiveness Demonstration Program Act of 1988, since applicable regulations preclude applying the preference in such circumstances.

PROCUREMENT B-234071 May 4, 1989
Competitive Negotiation 89-1 CPD 426
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

Contracting officer's determination to award cost-plus-fixed-fee contract to offeror of lower-rated, lower-cost proposal was proper where the contracting officer reasonably determined that the slight technical advantage of the higher-rated proposal was not worth its substantially higher cost.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Terms
Interpretation

Where solicitation for rocket vehicle system required that the contractor provide a flight proven boost control subsystem, the only reasonable interpretation of the requirement is that boost control subsystem must be flight proven before required delivery of the rocket vehicle system 18 months after award of contract, rather than on date initial proposals were due.

PROCUREMENT B-234225; B-234227
Contractor Qualification May 5, 1989
Responsibility 89-1 CPD 427
Contracting officer findings
Affirmative determination
GAO review

Post-award protest against affirmative determination of responsibility regarding agency's acceptance of awardee's individual sureties is denied where protester fails to show bad faith on the part of the procuring officials.

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions
Sureties
Financial capacity

A bid cannot be rejected as nonresponsive on the basis that the surety affidavits which accompanied the bid bond allegedly contained false information regarding each surety's net worth. If the bond as submitted is proper on its face, the bid is responsive, and the matter instead is one of responsibility, which may be established any time before award.

PROCUREMENT

Sealed Bidding

Invitations for bids

Amendments

Acknowledgment

B-234494 May 5, 1989

89-1 CPD 428

PROCUREMENT

Sealed Bidding

Invitations for bids

Amendments

Acknowledgment

Late submission

Bidder's acknowledgments of solicitation amendments received by contracting officer prior to bid opening may be accepted as timely by agency despite contracting officer's inadvertent failure to bring the acknowledgments to the bid opening room or to announce the acknowledgments at bid opening.

PROCUREMENT

Sealed Bidding

Invitations for bids

Terms

Liability insurance

B-234563 May 5, 1989

89-1 CPD 429

In invitation for bids for government-owned, contractor-operated laundry services, contracting agency may properly include property damage liability insurance requirements covering government-owned building and equipment to be entrusted to contractor, since government property is involved and the work is to be performed on a government installation.

PROCUREMENT **B-234563 Con't**
Special Procurement **May 5, 1989**
Methods/Categories
In-house performance
Competitive advantage
Allegation substantiation

In cost comparison to determine whether to retain in-house or to contract for operation of laundry services, the fact that, due to the government's self insurance capability, insurance costs included in government cost estimate are considerably lower than premiums for commercial insurance which bidders are required to provide, does not make invitation for bids defective nor invalidate the insurance requirement.

PROCUREMENT **B-234614.2 May 5, 1989**
Bid Protests **89-1 CPD 430**
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 requirements where the issue raised is not of widespread interest to the procurement community or a matter of first impression.

PROCUREMENT B-234068 May 8, 1989
Contractor Qualification 89-1 CPD 431
Responsibility
Contracting officer findings
Negative determination
GAO review

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability
Information submission

Protester was properly found nonresponsible where it failed to provide sufficient information to permit finding that the individual sureties on its bid bond were acceptable and the record shows the contracting officer's nonresponsibility determination was reasonably based.

PROCUREMENT B-234282 May 8, 1989
Contractor Qualification 89-1 CPD 432
Responsibility
Contracting officer findings
Negative determination
GAO review

Protest is denied where protester fails to show that the contracting agency's determination of financial nonresponsibility, based on information presented by the protester in its financial report, was unreasonable.

PROCUREMENT **B-234283 May 8, 1989**
Competitive Negotiation 89-1 CPD 433
Requests for proposals
Amendments
Compliance time periods
Adequacy

Protest alleging that agency allowed insufficient time to consider an amendment to a request for proposals is denied where record shows that the amendment made no significant changes to the solicitation requirements.

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

Protest that solicitation should be set aside for small businesses is denied where the record does not show that the contracting agency abused its discretion in determining that it did not have a reasonable expectation of receiving acceptable proposals from at least two responsible small business concerns.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Brand name specifications

Protest alleging that specifications (salient characteristics) of brand name or equal solicitation are unduly restrictive of competition is denied where the protester does not contend that it cannot meet any particular specification, and fails to show that the requirements in the RFP exceed the agency's minimum needs.

PROCUREMENT **B-234028 May 9, 1989**
Competitive Negotiation **89-1 CPD 434**
Offers
 Technical acceptability
 Deficiency
 Blanket offers of compliance

PROCUREMENT
Competitive Negotiation
Offers
 Technical acceptability
 Descriptive literature

Contracting agency's rejection of protester's lower priced proposal as technically unacceptable was not unreasonable, where the protester's proposal failed to provide sufficient--and, in some instances, any--information required by the request for proposals for technical evaluation purposes and price was not a controlling evaluation factor.

PROCUREMENT **B-234219 May 9, 1989**
Bid Protests **89-1 CPD 435**
Allegation substantiation
 Lacking
 GAO review

Protester's speculation that awardee intends to sell its business, which is denied by awardee and of which the agency indicates it has no knowledge, does not provide a basis for protest.

PROCUREMENT

B-234219 Con't

Bid Protests

May 9, 1989

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Allegation that incumbent had not performed satisfactorily under existing contract is untimely filed after award where the solicitation provided notice of the incumbent's satisfactory performance rating and resulting statutory preference entitlement.

Protest against issuance of solicitation prior to the expiration of an incumbent's concession contract is untimely filed after award of contract and, in any event, early resolicitation is in accordance with statute authorizing the procurement.

PROCUREMENT

Competitive Negotiation

Contract awards

Initial-offer awards

Propriety

Concession contract renewal award properly was made on the basis of initial proposals to satisfactorily performing incumbent which submitted the best proposal, where the solicitation advised that award could, and probably would, be based on initial proposals, and the procurement was conducted under specific statutory authority which provides preference for satisfactorily performing concessionaires.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Administrative discretion

Agency properly did not credit protester for offering additional features which were discouraged under the solicitation, and which the solicitation provided would not be considered as enhancing a proposal.

PROCUREMENT B-234294 May 9, 1989
Bid Protests 89-1 CPD 436
Allegation substantiation
Lacking
GAO review

Contention that protester should have received award because its bid was low for base period is without merit where solicitation stated that award would be based on evaluation of base and option prices.

PROCUREMENT
Sealed Bidding
Unbalanced bids
Allegation substantiation
Evidence sufficiency

PROCUREMENT
Sealed Bidding
Unbalanced bids
Contract awards
Propriety

Bid for maintenance services was not mathematically or materially unbalanced where difference between per month prices for base period and option month prices was not extreme (less than 20 percent), price for base period reasonably included costs for start-up and equipment and bid will become low during performance of first option period which government reasonably expected to, and, in fact, did exercise.

PROCUREMENT B-234615 May 9, 1989
Specifications 89-1 CPD 437
Minimum needs standards
Determination
Administrative discretion

Agency properly rejected bid where radio equipment offered for qualification does not meet solicitation requirement for UHF channel and tone display and selection.

PROCUREMENT
Bid Protests
GAO authority

B-235165 May 9, 1989
89-1 CPD 438

PROCUREMENT
Bid Protests
Private disputes
GAO review

The General Accounting Office (GAO) will not review matters concerning the inability of an apparent low offeror to meet leasing prerequisites of a proposed contract, where the lease award is strictly between the offeror and the cognizant county officials and such matters fall beyond the scope of GAO's bid protest functions.

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Competency certification
GAO review

Where an apparent low offeror is determined to be nonresponsible due to its failure to obtain a required lease under the proposed contract as a fixed base operator at a county airport, protester's allegations of unauthorized or unethical conduct by county officials concerning the lease award do not form a basis for a protest to the General Accounting Office under the Bid Protest Regulations.

PROCUREMENT **B-235165 Con't**
Socio-Economic Policies **May 9, 1989**
Small businesses
Responsibility
Negative determination
GAO review

Where a small business protests a nonresponsibility finding by a contracting officer and the Small Business Administration (SBA) subsequently declines to issue a certificate of competency to the small business, the General Accounting Office will not review the nonresponsibility determination by either the agency or the SBA absent a showing of possible fraud or bad faith on the part of the contracting officials or of the SBA's failure to consider vital information bearing on the firm's responsibility.

PROCUREMENT **B-233537.2 May 10, 1989**
Bid Protests **89-1 CPD 439**
GAO procedures
GAO decisions
Reconsideration

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

PROCUREMENT **B-234124 May 10, 1989**
Bid Protests **89-1 CPD 440**
Allegation
Abandonment

Where agency's report specifically addresses initial protest argument that awardee's offered product does not meet specification requirement, and the protester neither rebuts nor expresses any disagreement with the agency's position in its comments on the agency's report, the issue is considered abandoned.

PROCUREMENT **B-234124 Con't**
Specifications **May 10, 1989**
Minimum needs standards
Determination
Administrative discretion

General Accounting Office will not disturb the contracting agency's determination that the awardee's offered machine fully complies with specification requirements, where the awardee's offer specifically stated that the offered equipment would comply with the specification in question, and commercial brochure included with awardee's offer showed that its required feature was an optional item available on the offered model.

PROCUREMENT **B-234142 May 10, 1989**
Bid Protests **89-1 CPD 441**
Bias allegation
Allegation substantiation
Evidence sufficiency

Prejudicial motives will not be attributed to agency officials on the basis of unsupported allegations, inference or supposition.

PROCUREMENT **B-234142 Con't**
Competitive Negotiation **May 10, 1989**
Contract awards
Fixed-price contracts
Cost/technical tradeoffs
Justification

PROCUREMENT
Competitive Negotiation
Contract awards
Source selection boards
Administrative discretion

Source selection decision document contained a sufficient justification for the award decision because its rationale was consistent with the evaluation record, it referenced specific criteria under which awardee was rated as technically superior and stated that, while the awardee's price was not the lowest received, its technical superiority justified the higher price.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Downgrading
Propriety

Protester's disagreement with the agency's evaluation of data as to computer reliability submitted with its proposal in lieu of the type of reliability data which was required by the solicitation does not show that the agency acted unreasonably in downgrading the proposal for failing to provide the required data.

PROCUREMENT B-234142 Con't
Competitive Negotiation May 10, 1989
Offers
Evaluation
Personnel
Adequacy

PROCUREMENT
Contractor Qualification
Contractor personnel
GAO review

Where solicitation provided that personnel qualifications would be evaluated, the agency acted reasonably in assigning risk to the protester's proposal which pledged the use of an "associate staff" without specifically defining the concept and without providing all of the required resumes.

PROCUREMENT
Competitive Negotiation
Offers
Risks
Pricing

Agency properly considered unexplained reductions in protester's final price as an indication that its proposal presented performance risks where the solicitation provided that an analysis of underlying costs would be performed.

PROCUREMENT **B-234142 Con't**
Socio-Economic Policies **May 10, 1989**
Small businesses
Contract awards
Non-responsible contractors
Competency certification

Where protester, a small business offeror, was downgraded in the evaluation of its proposal the matter did not have to be referred to the Small Business Administration for certificate of competency proceedings even though the factors under which its proposal was evaluated contained elements traditionally related to responsibility.

PROCUREMENT **B-234029 May 11, 1989**
Noncompetitive Negotiation 89-1 CPD 442
Contract awards
Sole sources
Propriety

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements, the sole-source award of a contract under the authority of 10 U.S.C. § 2304(c)(1) is not objectionable where the agency reasonably determined that only one source could provide the required inspection and maintenance of liquid oxygen tanks since the contracting agency does not possess or have rights in the technical data necessary for a competitive procurement and the protester has not shown that performance could be accomplished without such data.

PROCUREMENT

B-234365 May 11, 1989

Bid Protests

89-1 CPD 443

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that specifications unduly restrict competition involves an alleged impropriety apparent from the face of the solicitation and thus is untimely where not filed until after the due date for initial proposals.

PROCUREMENT

Competitive Negotiation

Offers

Competitive ranges

Exclusion

Administrative discretion

Protest that agency improperly eliminated protester from the competitive range is denied where equipment offered by the protester failed to meet a number of specifications in the solicitation and the contracting agency therefore reasonably concluded that the protester did not have a reasonable chance of receiving the award.

**PROCUREMENT
Competitive Negotiation
Offers**

**B-234365 Con't
May 11, 1989**

**Evaluation
Technical acceptability**

Protester's argument that, although its equipment does not offer various features required by the specifications, it meets the agency's functional requirements, does not establish that the equipment is technically acceptable since the particular features set out in a solicitation are presumed to be material requirements which an offeror must provide in order to be technically acceptable.

Protester's representations in protest that it intended to provide various other required features likewise is not sufficient to demonstrate that its proposed equipment was technically acceptable where the protester's proposal itself did not indicate that those features would be provided.

PROCUREMENT

Bid Protests

Prime contractors

Contract awards

Subcontracts

GAO review

**B-234940.2 May 11, 1989
89-1 CPD 444**

Dismissal of protest of alleged ambiguous technical requirements in a solicitation issued by a government prime construction contractor for the installation of demountable wall partitions is affirmed, since the General Accounting Office has no jurisdiction to review a subcontract awarded by a prime contractor when the subcontract award is not made by or for the government.

PROCUREMENT B-235102 May 11, 1989
Contractor Qualification 89-1 CPD 445
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Where offeror certifies in its offer that it will supply a chain of United States origin as required by solicitation and offeror does in fact have a manufacturing facility in the United States, contracting officer did not act in bad faith in making an affirmative determination that the offeror was responsible.

PROCUREMENT B-235117.2 May 11, 1989
Bid Protests 89-1 CPD 446
Prime contractors
Contract awards
Subcontracts
GAO review

The General Accounting Office will not review the protest of a subcontract awarded by a government prime architect-engineer contractor in the course of performing its contract since the selection of the subcontractor was not by or for the government.

PROCUREMENT B-235280 May 11, 1989
Bid Protests 89-1 CPD 447
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that procurement should have been set aside for competition exclusively by Indian firms is untimely and not for consideration on the merits when filed after the bid opening date.

PROCUREMENT B-235369 May 11, 1989
Bid Protests 89-1 CPD 448
Private disputes
GAO review

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

PROCUREMENT B-233496.3 May 12, 1989
Bid Protests 89-1 CPD 449
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where protester only reiterates previously rejected arguments.

PROCUREMENT B-234224; B-234224.2
Bid Protests May 12, 1989
Moot allegation 89-1 CPD 453
GAO review

Protest against agency's alleged plans to make an improper sole-source award is academic where record reflects that no such award was ever made and agency has decided to utilize in-house performance of the services it requires.

PROCUREMENT
Bid Protests
Premature allegation
Future procurement
GAO review

General Accounting Office will not review allegations concerning agency plans to perform services in-house where no competitive solicitation has been issued for cost comparison purposes.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Signatures
Sureties

B-234560 May 12, 1989
89-1 CPD 454

Where bidder submits bid bond containing signatures of individual sureties photocopied on bid form prior to completion of the form, contracting officer properly rejected bid as nonresponsive because the bid bond is of questionable enforceability.

PROCUREMENT
Bid Protests
Forum election
Finality

B-234798 May 12, 1989
89-1 CPD 455

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Where a protest is initially filed with the contracting agency, a protester may only wait a reasonable amount of time for a contracting agency's response to its protest before filing a protest with the General Accounting Office.

PROCUREMENT

B-234798 Con't

Bid Protests

May 12, 1989

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Where a small business, protesting the award of a sole-source contract to a large business, is orally advised by the agency that the contract award was proper and that the contract would not be awarded to its firm under the previous procurement for the same requirement that was set aside for small businesses, the firm was required to file its protest with the General Accounting Office within 10 days of learning of the agency's adverse action.

PROCUREMENT

B-235406 May 12, 1989

Bid Protests

89-1 CPD 456

GAO procedures

Protest timeliness

10-day rule

Protest concerning a bidder's revision of its bid price when extending its bid acceptance period is untimely when filed more than 10 working days after the basis for protest was known.

PROCUREMENT

B-235413 May 12, 1989

Bid Protests

89-1 CPD 457

Protest timeliness

10-day rule

Adverse agency actions

When a firm initially protested small business set-aside to contracting agency prior to closing date for receipt of initial 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) 5 weeks later, based on agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

PROCUREMENT

B-234569 May 15, 1989

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Weighting
Bias allegation**

89-1 CPD 459

Protest that agency should have disclosed the numerical weights to be used in comparing technical factors relative to cost is denied since there is no requirement to disclose the precise numerical weights and the solicitation provided the offerors sufficient information concerning the relative order of importance of these factors.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Terms
Ambiguity allegation
Interpretation**

Protester could not reasonably assume that contracting agency would evaluate base year costs only where on balance the more reasonable interpretation of the evaluation clause in the solicitation is that both base and option year costs would be evaluated. To the extent that the clause was unclear on its face, protester should have sought clarification from the contracting offeror or filed a protest contesting the clause before the due date for initial proposals.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-233066.2 May 16, 1989

89-1 CPD 461

Request for reconsideration of decision holding that contracting agency properly accepted low bid that failed to acknowledge a solicitation amendment that had only a minimal impact on cost or merely clarified requirements already contained in the solicitation is denied where protester reiterates prior arguments, but does not establish error of fact or law.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-233579.2 May 16, 1989

89-1 CPD 462

Where protester essentially reiterates original protest arguments which have already been considered and rejected request for reconsideration is denied.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-233724.2 May 16, 1989
89-1 CPD 463

PROCUREMENT
Competitive Negotiation
Discussion reopening
Propriety
Best/final offers
Corrective actions

Request for reconsideration of recommended corrective action--reopening competition to permit all offerors in competitive range to submit revised proposals--is denied where, contrary to protester's assertion, reopening competition under original solicitation is permitted as one of several possible remedies under Competition in Contracting Act of 1984 and General Accounting Office's Bid Protest Regulations, and protester has not shown that it is inappropriate under the circumstances.

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Request for reimbursement of proposal preparation costs is denied where recommended corrective action provides protester opportunity to compete and agency has in fact afforded protester the opportunity to submit a revised proposal.

PROCUREMENT

B-234141.8 May 16, 1989

Bid Protests

89-1 CPD 464

GAO procedures

Protest timeliness

Deadlines

Constructive notification

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Protest based on agency's alleged failure to solicit protester's offer on a procurement publicized in the Commerce Business Daily (CBD) is untimely where filed more than 10 working days after the closing date for receipt of proposals; synopsis of procurement in the CBD constitutes constructive notice to potential offerors of the solicitation and its contents.

PROCUREMENT

B-234303 May 16, 1989

Sealed Bidding

89-1 CPD 465

Contract awards

Propriety

Invitations for bids

Defects

Acceptance of the low bid which took no exception to the specifications, even though a portion of the specifications was defective, is not legally objectionable when no bidder was misled by the specifications, all submitted bids on the same basis, and the protester, who contends that it was unable to bid due to the defective specifications, has not shown that it was particularly affected by the defect.

PROCUREMENT

Bid Protests

GAO procedures

Pending litigation

GAO review

B-234579 May 16, 1989

89-1 CPD 466

The General Accounting Office will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction unless the court requests a decision.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

B-234587.2 May 16, 1989

89-1 CPD 467

Request for reconsideration of a protest that a procurement was improperly set aside under Section 8(a) of the Small Business Act and that the Small Business Administration (SBA) failed to conduct a determination of adverse impact is denied where the initial protest was filed several months after the initial adverse agency action on the protest by the agency offering the requirement and by the SBA.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-234740.2 May 16, 1989

89-1 CPD 468

Prior decision is affirmed on reconsideration where dismissal was due to protester's failure to file timely comments on agency report; protester's alleged unawareness of comment filing requirements is not a basis for an exception to timeliness requirements, since protester is charged with constructive notice of Bid Protest Regulations through their publication in Federal Register and Code of Federal Regulations and, in any event, had actual notice of the requirements from standard protest acknowledgment letter.

PROCUREMENT **B-235331 May 16, 1989**
 Special Procurement **89-1 CPD 471**
 Methods/Categories
 Cooperative agreements
 GAO review

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

PROCUREMENT **B-234141, et al.**
 Bid Protests **May 17, 1989**
 GAO procedures **89-1 CPD 472**
 Protest timeliness
 Apparent solicitation improprieties

PROCUREMENT
 Competitive Negotiation
 Requests for proposals
 Amendments
 Compliance time periods
 Adequacy

Protest that offeror was not allowed sufficient time to prepare a revised proposal after delayed receipt of amendment to request for proposals is untimely where protest was not filed by the extended closing date for submission of proposals.

PROCUREMENT

B-234141, et al. Con't

**Competitive Negotiation
Offers**

May 17, 1989

Competitive ranges

Exclusion

Administrative discretion

Agency determination that proposal is technically unacceptable and consequent exclusion from the competitive range will not be disturbed where proposal indicated limited organizational experience and contained deficiencies in required strategy for the implementation of total quality management such that the proposal had no reasonable chance for award and would require major revisions to be acceptable.

PROCUREMENT

**Competitive Negotiation
Offers**

Evaluation errors

Administrative policies

Compliance

Alleged failure by contracting agency to comply with internal instructions for conducting proposal evaluation, which required a specific and detailed explanation for a proposal's unacceptability, is a matter for consideration within the agency itself rather than through the bid protest process; instead, the General Accounting Office will consider the reasonableness of the evaluation and compliance with any applicable statutes or regulations.

PROCUREMENT B-234141, et al. Con't
Competitive Negotiation May 17, 1989
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

Disparity in technical scoring among individual evaluators does not by itself cast doubt on the validity of evaluation panel's unanimous, final conclusion that protester's initial proposal was unacceptable, since it is not unusual for individual evaluators to reach disparate conclusions when judging proposals, as both objective and subjective judgments are involved.

PROCUREMENT
Competitive Negotiation
Technical evaluation boards
Qualification
GAO review

The composition of technical evaluation panels is within the discretion of the contracting agency and, as such, will not be reviewed by the General Accounting Office absent a showing of possible bad faith, fraud, conflict of interest or actual bias on the part of evaluators.

PROCUREMENT
Specifications
Performance specifications
Adequacy

Protest that agency should have provided offerors with greater detail concerning the expected manner of compliance with requirements in request for proposals (RFP) is denied; the RFP clearly set forth the minimum elements of the required total quality management implementation plan, and there is no requirement that an agency specify precisely the manner in which offerors are to fulfill performance requirements.

PROCUREMENT B-234191 May 17, 1989
Competitive Negotiation 89-1 CPD 473
Contracting officer duties
Contract award notification

Protest that agency did not notify protester of its elimination from competition until after award is denied since agency notification is a procedural matter not affecting the validity of award.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

Discussions are meaningful where the agency imparted sufficient information to protester, through an amendment to the solicitation, to afford it a fair and reasonable opportunity, in the context of the procurement, to identify and correct the deficiencies in its proposal.

PROCUREMENT
Competitive Negotiation
Offers
Modification
Late submission

Clarification of offeror's prices and acceptance of late modification offering more advantageous terms to government do not constitute discussions with the offeror.

PROCUREMENT **B-234191 Con't**
Specifications **May 17, 1989**
Brand name/equal specifications
Equivalent products
Salient characteristics
Descriptive literature

In brand name or equal procurement, agency decision to reject protester's offer of an equal product is proper where the best and final offer listed the salient characteristics as features, but failed to clearly describe the proposed modifications of the standard model. Protester's failure to set forth the modifications would not allow the contracting agency to determine whether the product in fact complied with the stated salient characteristics.

PROCUREMENT **B-234272 May 17, 1989**
Competitive Negotiation **89-1 CPD 474**
Alternate offers
Acceptance
Propriety

Protest challenging agency determination that alternate proposal in an approved source procurement for repair of aircraft engine parts was technically acceptable is denied since agency has primary responsibility for determining technical acceptability of alternate proposals and protester has not shown that agency determination was fraudulent or constituted willful misconduct.

PROCUREMENT B-234272 Con't
Competitive Negotiation May 17, 1989
Competitive advantage
Non-prejudicial allegation

Protester's argument that it was not treated equally because it was not given the same opportunity to propose less rigorous repair procedure for aircraft engine parts as contained in alternate proposal is denied where protester identifies nothing in the solicitation that prohibited protester from also proposing the same repair procedure.

PROCUREMENT B-234652 May 17, 1989
Competitive Negotiation 89-1 CPD 475
Best/final offers
Late submission
Rejection
Propriety

The best and final offer (BAFO) of an offeror who does not allow a reasonable time for its telefaxed BAFO to be delivered to the designated location for receipt of proposals was properly rejected as late.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The General Accounting Office will not review an affirmative responsibility determination absent a showing of possible fraud or bad faith or that definitive responsibility criteria were not applied.

PROCUREMENT **B-234652 Con't**
Specifications **May 17, 1989**
Brand name specifications
Equivalent products
Acceptance criteria

Where a brand name or equal solicitation sets forth specific design features and capabilities of a brand name dual-output, cat's-eye design spectrometer, an offered equal product which takes exception to these specific requirements was properly rejected as unacceptable.

PROCUREMENT **B-235477 May 17, 1989**
Bid Protests **89-1 CPD 476**
GAO procedures
Protest timeliness
10-day rule

Protest of the cancellation of a solicitation is untimely, as evidenced by General Accounting Office's (GAO) time/date stamp showing actual receipt, when filed with GAO more than 10 working days after denial of the firm's protest to the contracting agency.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Time/date notations
Establishment

Protest of the cancellation of a solicitation is untimely, as evidenced by General Accounting Office's (GAO) time/date stamp showing actual receipt, when filed with GAO more than 10 working days after denial of the firm's protest to the contracting agency.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-234728 May 18, 1989

89-1 CPD 479

Protest of inclusion in solicitation of a bid guarantee requirement, not filed prior to bid opening, is untimely under General Accounting Office Bid Protest Regulations, and therefore will not be considered on the merits.

PROCUREMENT

Sealed Bidding

Bids

Bid guarantees

Omission

Responsiveness

Failure to furnish a bid guarantee with the bid requires the rejection of the bid as nonresponsive and cannot be cured after bid opening.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-235066.2 May 18, 1989

89-1 CPD 480

Request for reconsideration of protest that was dismissed as untimely is denied where protester fails to show good cause for untimeliness and protest does not present a significant issue of widespread interest or importance to the procurement community.

PROCUREMENT

B-232678.2 May 19, 1989

Bid Protests

89-1 CPD 481

GAO procedures

GAO decisions

Reversal

Factual errors

Request for reconsideration is granted where the prior decision was based on an error of fact crucial to the holding.

PROCUREMENT

B-234107 May 19, 1989

Sealed Bidding

89-1 CPD 482

Bids

Acceptance time periods

Expiration

Reinstatement

Protest contending that the contracting agency improperly failed to request the protester, whose bid was the lower of the two received, to extend its bid acceptance period prior to the expiration of its bid is sustained where record indicates that the agency in effect allowed awardee to revive its expired bid without affording the protester a similar opportunity.

PROCUREMENT B-231857.4; B-231857.5 Con't
Competitive Negotiation May 22, 1989
Offers
Evaluation
Cost estimates

Protest that contracting agency should have evaluated cost proposals on the basis of present value is denied where the solicitation indicated that cost proposals would be evaluated on the basis of average costs and the agency properly evaluated cost proposals in conformance with the solicitation's stated evaluation scheme.

PROCUREMENT
Competitive Negotiation
Unbalanced offers
Materiality
Determination
Criteria

Protest that the awardee's offer was materially unbalanced or so grossly front-loaded that contract awarded will provide awardee with unauthorized contract financing tantamount to improper advance payments, is denied where protester has not demonstrated that awardee's prices are unbalanced (i.e., do not reflect cost plus profit) and record shows that higher prices reflect awardee's higher facility rental costs during the early years of the contract.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

Protest relating to performance of a contract involves matters of contract administration which the General Accounting Office will not review pursuant to its bid protest function.

PROCUREMENT
Competitive Negotiation
Offers

B-232736.2 May 22, 1989
89-1 CPD 485

Competitive ranges
Exclusion
Administration discretion

Where solicitation provided that technical merit would be paramount to price, agency reasonably excluded protester's low-priced proposal from the competitive range after two evaluations resulted in significantly lower technical scores than its five competitors.

PROCUREMENT
Competitive Negotiation
Offers

Competitive ranges
Exclusion
Discussion

Allegation that meaningful discussions were not conducted is based on protester's misinterpretation of a request for clarification of initial proposals incident to a competitive range determination; since the protester was properly not included within the competitive range, the agency was under no obligation to enter into discussions.

PROCUREMENT
Competitive Negotiation
Offers

Evaluation
Personnel
Adequacy

Agency determination that protester's proposed vehicle maintenance staff was insufficient was reasonable where the agency concluded, and the terms of the protester's proposal indicate, that more than four mechanics are required but the protester only proposed four.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232139.4 May 23, 1989
89-1 CPD 490

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Prior dismissal of protest alleging solicitation deficiencies is affirmed where protest is not filed with the General Accounting Office until after "the close of business," the closing time for receipt of best and final offers, at the agency. While the protester alleges that agency employees voluntarily work beyond the hours fixed by the agency as the official work day, "close of business" is considered to be the time the agency established that working hours end and the agency no longer conducts government business with the public on that day.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Samples

B-234147; B-234147.2
May 23, 1989
89-1 CPD 491

PROCUREMENT
Sealed Bidding
Contract awards
Competition sufficiency

Protest is sustained where contracting officer, after determining all bidders nonresponsive for submitting nonconforming bid samples, requested resubmittal of bid samples only and awarded contract to initial low bidder, based on satisfactory test results on new sample, without affording other bidder a reasonable opportunity to negotiate.

PROCUREMENT **B-234281 May 23, 1989**
Bid Protests **89-1 CPD 492**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Where protester was advised 1 month before the closing date for receipt of best and final quotations that agency would consider the quotations as firm offers, protest, filed after award, that the agency should have employed request for proposals instead of request for quotations to solicit firm offers is untimely.

PROCUREMENT **B-234475 May 23, 1989**
Specifications **89-1 CPD 493**
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Protest that specifications for a crawler tractor to be used in fire suppression unduly restrict competition by precluding hydrostatic transmissions is denied where the record supports the agency's determination that standardization of agency tractors is necessary due to cooperation between several agencies in fire fighting efforts and that operators' training and experience generally are with powershift, rather than hydrostatic, transmissions.

PROCUREMENT **B-234753 May 23, 1989**
Contractor Qualification **89-1 CPD 494**
Contractor personnel
Misrepresentation

Protest that awardee's proposal materially misrepresented its personnel qualifications and its intent to subcontract maintenance for certain equipment after contract award is denied where the record does not support a finding of material misrepresentation.

PROCUREMENT

B-233742.2 Con't

Special Procurement

May 24, 1989

Methods/Categories

Computer equipment services

Demonstration projects

Compliance time periods

Sufficiency

Contracting agency was not required to further delay procurement of microcomputer workstations to be used in Department of Defense command and control network so as to provide offerors with more time for the development of hardware and software to be demonstrated at required live test demonstration (LTD) where potential offerors were notified of the agency's essential requirements at least 1 year prior to the scheduled LTD, the agency denies that substantial development will be necessary, and a number of offerors successfully completed the LTD with no more than minor discrepancies.

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Allegation substantiation

Evidence sufficiency

General Accounting Office will not object to solicitation requirement for 24-hour repair or replacement of microcomputer workstations deployed world-wide for use in Department of Defense command and communications network where protester fails to demonstrate that the requirement is unreasonable.

PROCUREMENT **B-233742.2 Con't**
Specifications **May 24, 1989**
 Minimum needs standards
 Competitive restrictions
 Justification
 Sufficiency

Protest that specifications unduly restrict competition is denied where the agency presents reasonable explanations in support of specifications as necessary to meet its minimum needs and the protester fails to show that the specifications are clearly unreasonable; fact that specifications place protester at competitive disadvantage does not render them unreasonable since an agency is not required to cast its procurements in a manner that neutralizes the competitive advantages some firms may have over others by virtue of their own particular circumstances.

PROCUREMENT **B-233789.2 May 24, 1989**
Bid Protests **89-1 CPD 498**
 GAO procedures
 GAO decisions
 Reconsideration

Request for reconsideration is denied where the protester fails to specify any errors of fact or law or information not previously considered that warrant reversal or modification of the prior decision.

PROCUREMENT **B-234412 May 24, 1989**
Bid Protests **89-1 CPD 499**
 GAO procedures
 Protest timeliness
 Apparent solicitation improprieties

Protest of bid guarantee requirement is dismissed as untimely where requirement was apparent in the solicitation but protester did not object to it until after bid opening.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-234412 Con't
May 24, 1989

Substitution of sureties after bid opening is not permissible where more than one acceptable bid was received in response to the invitation for bids.

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

B-234621 May 24, 1989
89-1 CPD 500

Protest filed by non-disadvantaged small business concern which alleges that it is improper to conduct an Office of Management and Budget Circular No. A-76 cost-comparison by means of a total small disadvantaged business (SDB) set-aside, is denied in the absence of any authority prohibiting such a procurement and where the decision to set aside the procurement, based on the competitive results of a recent, similar, nearby procurement, is not alleged to represent an abuse of discretion on the part of contracting officials.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price omission
Line items

B-234774 May 24, 1989
89-1 CPD 501

Procuring agency properly waived bidder's failure to include price of one item in its bid where the work covered is divisible from the solicitation and the cost is de minimis relative to the total bid and would not affect the competitive standing of the bidders.

PROCUREMENT B-235151 May 24, 1989
Bid Protests 89-1 CPD 502
Non-prejudicial allegation
GAO review

Protest that bid from a large business should be rejected is without merit where the solicitation was issued under the Small Business Competitiveness Demonstration Program and properly not restricted to small businesses.

PROCUREMENT B-235559 May 24, 1989
Bid Protests 89-1 CPD 503
GAO procedures
Interested parties
Direct interest standards

Since as the fifth low offeror in a procurement in which price is the only evaluation factor the protester's direct economic interest is not affected by the award of the contract, the protester is not an interested party eligible to pursue a protest against award to the low offeror.

PROCUREMENT B-235567 May 24, 1989
Bid Protests 89-1 CPD 504
GAO procedures
Protest timeliness
10-day rule

Protest which was initially untimely filed with the contracting agency will not be considered by the General Accounting Office.

PROCUREMENT

B-197911.6 May 25, 1989

Payment/Discharge

Shipment

Carrier liability

Amount determination

Furniture repair estimates obtained by the carrier in connection with a damage claim by the shipper of household goods, although lower than the estimates obtained by the shipper, do not warrant reducing the measure of damages and the Navy's recovery against the carrier for injury to the furniture shipped. The carrier did not show that the military member's estimates were unreasonable in comparison with local market repair prices or the value of the articles. GAO is uncertain whether the estimates obtained by the carrier were for restoration of the furniture to the same extent as the estimates obtained by the military member.

PROCUREMENT

B-233574.2, et al.

Bid Protests

May 25, 1989

GAO procedures

89-1 CPD 505

GAO decisions

Reconsideration

Prior decision, holding that a bidder's failure to certify that only end items that are manufactured or produced by small business concerns will be furnished does not affect the responsiveness of the bid where such small business certification is not required for the type of contract to be awarded, is affirmed where the agency fails to present facts or legal arguments to establish that the prior decision was erroneous.

PROCUREMENT **B-233574.2, et al. Con't**
Socio-Economic Policies **May 25, 1989**
Small businesses
Preferred products/services
Certification

Protests are sustained where bidder was found nonresponsive for failing to certify that only end items that are manufactured or produced by small business concerns will be furnished, where such certification is not required for the type of contracts to be awarded.

PROCUREMENT **B-233935.3 May 25, 1989**
Competitive Negotiation **89-1 CPD 506**
Contract awards
Multiple/aggregate awards
Propriety

Agency determination to procure scaffolding components on a lot basis which includes both couplers and associated pipes rather than break out components under separate lots is unobjectionable where the decision was based on a reasonable need to ensure compatibility among the component parts and to obtain reliable test results.

PROCUREMENT
Specifications
Minimum needs standards
Determination
Administrative discretion

A contracting agency's responsibility for determining its actual needs includes determining the type and amount of testing necessary to ensure product compliance with specifications, and the General Accounting Office will not question such a determination absent a clear showing that it was arbitrary or capricious.

PROCUREMENT **B-234468 May 25, 1989**
Competitive Negotiation 89-1 CPD 507
Offers
Acceptance time periods
Expiration

Where offeror failed to revive expired offer by acknowledging amendment or otherwise indicating continuing interest in procurement, contracting officer properly rejected the offer.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Amendments
Notification
Contractors

Non-receipt of amendment by an offeror does not affect validity of award to another offeror where full and open competition and reasonable prices are obtained and record does not indicate that agency attempted to exclude offeror from the competition.

PROCUREMENT **B-234694 May 25, 1989**
Bid Protests 89-1 CPD 508
Moot allegation
GAO review

A challenge to the contracting agency's determination that the protester's second-low bid was nonresponsive is academic, and therefore is dismissed, where the protester has presented no basis on which to disturb the award made to the low bidder.

PROCUREMENT **B-234694 Con't**
Contractor Qualification **May 25, 1989**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The General Accounting Office will not review an affirmative responsibility determination absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price data
Minor deviations

An "NSP" (not separately priced) notation for a line item clearly equates with zero dollar costs and indicates the bidder's affirmative intention to obligate itself to provide the item at no charge to the government. A bid should not be rejected when NSP is inserted.

PROCUREMENT **B-234778 May 25, 1989**
Contractor Qualification **89-1 CPD 509**
Responsibility criteria
Organizational experience

Bid is responsive despite bidder's failure to submit with bid evidence of subcontractor's previous asbestos abatement experience since information concerning firm's experience bears on responsibility and, as such, may be furnished any time prior to award.

PROCUREMENT **B-234778 Con't**
Sealed Bidding **May 25, 1989**
Invitations for bids
Terms
Liability insurance

Bid complies with solicitation requirement for liability insurance in connection with asbestos removal work and thus is responsive where bidder indicates that it will furnish liability insurance through its asbestos subcontractor.

PROCUREMENT **B-234882 May 25, 1989**
Contractor Qualification **89-1 CPD 510**
Responsibility
Contracting officer findings
Negative determination
GAO review

Protest against contracting officer's nonresponsibility determination is dismissed where protester has not disputed additional, independent basis for the nonresponsibility determination.

PROCUREMENT **B-235330.2 May 25, 1989**
Socio-Economic Policies **89-1 CPD 511**
Small businesses
Responsibility
Competency certification
GAO review

Small Business Administration (SBA) is authorized by statute to certify conclusively as to all elements of a small business concern's responsibility; therefore, procurement activity acts properly in referring a nonresponsibility determination regarding a small business to the SBA and the SBA acts properly in determining whether that business is a responsible prospective contractor.

PROCUREMENT **B-234853 May 26, 1989**
Competitive Negotiation **89-1 CPD 513**
Hand-carried offers
Late submission
Acceptance criteria
Acceptance

Protest against the rejection of a hand-carried proposal received after the time that offers were due is denied where the actions of the protester and its agent were the paramount cause of the late submission of the proposal, rather than any improper government action.

PROCUREMENT **B-235231.2 May 26, 1989**
Bid Protests **89-1 CPD 514**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of prior decision dismissing as untimely a protest initially filed with procuring agency but filed with our Office more than 10 days after initial adverse agency action is denied, since the protester has not presented any factual or legal basis for us to overrule our decision.

PROCUREMENT **B-235400 May 26, 1989**
Sealed Bidding **89-1 CPD 515**
Bids
Bid deposit
Late submission

Where sales contract specifies that bid deposit must be received at a particular location, receipt at a different location at the government installation--a branch of a private bank--does not make the bid deposit timely when the bank is not acting as the agent of the government.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-235553 May 26, 1989
89-1 CPD 516

Protester is not an interested party to object to dissolution of small business set-aside where it would not have been in line for award if set-aside had not been withdrawn.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-234250 May 30, 1989
89-1 CPD 517

Agency was not required to discuss matters with an offeror that are not related to the solicitation's minimum requirements, i.e., matters that do not render a proposal deficient.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Sufficiency

Technical evaluation that found awardee's proposal superior based on factor (expert review) not explicitly identified in solicitation was proper because this factor was reasonably related to stated technical factor measuring the quality and pertinence of technical approach.

PROCUREMENT
Sealed Bidding
Unbalanced bids
Materiality
Responsiveness

B-234594 May 30, 1989
89-1 CPD 518

The apparent low bid under a solicitation for grounds maintenance services is not materially unbalanced where there is no reasonable doubt that acceptance of bid will result in the lowest ultimate cost to the government.

PROCUREMENT
Special Procurement Methods/Categories
Service contracts
Terms

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

Protest that solicitation for grounds maintenance services was misleading is denied where solicitation, as amended, clearly describes the required frequency of services.

PROCUREMENT
Bid Protests
GAO procedures
Purposes
Competition enhancement

B-235589, et al.
May 30, 1989
89-1 CPD 519

The General Accounting Office generally will not consider a protest that alleges the protester is entitled to a sole-source award because the objective of GAO's bid protest function is to insure full and open competition.

PROCUREMENT

B-234780 May 31, 1989

**Sealed Bidding
Unbalanced bids
Contract awards
Propriety**

Allegation that awardee's bid violates solicitation's integrity of unit prices clause and is unbalanced is denied where protester has not shown that it was prejudiced by awardee's pricing, or that there is a reasonable doubt that award will result in the lowest overall cost to the government.

PROCUREMENT

B-235512.2 May 31, 1989

**Bid Protests
GAO procedures
Preparation costs**

Protester may not be awarded its proposal preparation and protest costs where protest is withdrawn based on agency's corrective action shortly after protest was filed, rendering protest academic.

INDEX
May 1989

	<u>May</u>	<u>Page</u>
APPROPRIATIONS/FINANCIAL MANAGEMENT		
Accountable Officers		
Disbursing officers		
Liability restrictions		
Statutes of limitation	B-234959, et al.)	8...A- 2
Relief		
Illegal/improper payments		
Substitute checks	B-233870	30...A- 3
Relief		
Physical losses		
Theft	B-233937	8...A- 1
Appropriation Availability		
Purpose availability		
Necessary expenses rule		
Awards/honoraria		
Recruitment	B-234241	3...A- 1
Claims by Government		
Training expenses		
Debt collection		
Waiver		
GAO authority	B-233734	30...A- 2
CIVILIAN PERSONNEL		
Compensation		
Awards/honoraria		
Eligibility		
Administrative regulations	B-203022	4...B- 1

INDEX - Con.

May Page

CIVILIAN PERSONNEL - Con.

Compensation - Con.

Training expenses

Reimbursement

Breach of service
agreements

B-233734

30...B- 5

Relocation

Household goods

Commuted rates

Reimbursement

Amount determination

B-226868.2

19...B- 3

Temporary storage

Expenses

Weight certification

B-232375

31...B- 5

Residence transaction expenses

Reimbursement

Eligibility

Property titles

B-233992

16...B- 2

Temporary quarters

Actual subsistence expenses

Determination

B-232375

31...B- 6

Reimbursement

Amount determination

B-234768

16...B- 2

Eligibility

B-230403

19...B- 3

Travel

Per diem

Eligibility

10-hour rule

Exemptions

B-232157

4...B- 1

INDEX - Con.

	<u>May</u>	<u>Page</u>
CIVILIAN PERSONNEL - Con.		
Travel - Con.		
Permanent duty stations		
Actual subsistence expenses		
Prohibition	B-233130	19...B- 4
Temporary duty		
Travel expenses		
Reimbursement		
Fines	B-231981	19...B- 4
MILITARY PERSONNEL		
Pay		
Retirement pay		
Distribution		
Personnel death	B-234425	30...C- 1
Survivor benefits		
Annuity payments		
Distribution		
Statutes	B-234425	30...C- 1
PROCUREMENT		
Bid Protests		
Allegation		
Abandonment	B-234124	10...D-18
Allegation substantiation		
Lacking		
GAO review	B-234219	9...D-14
	B-234294	9...D-16
Bias allegation		
Allegation substantiation		
Burden of proof	B-234034	3...D- 5
Evidence sufficiency	B-234142	10...D-19

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Bid Protests - Con.			
Forum election			
Finality	B-234798	12...	D-27
GAO authority	B-235165	9...	D-17
GAO procedures			
Administrative reports			
Comments timeliness	B-234734.2	19...	D-43
GAO decisions			
Reconsideration	B-232139.4	23...	D-48
	B-233066.2	16...	D-30
	B-233496.3	12...	D-26
	B-233537.2	10...	D-18
	B-233574.2		
	et al.)	25...	D-55
	B-233579.2	16...	D-30
	B-233724.2	16...	D-31
	B-233789.3	24...	D-52
	B-234734.2	19...	D-43
	B-234740.2	16...	D-33
	B-234998.3	1...	D- 3
	B-235066.2	18...	D-41
	B-235231.2	26...	D-60
	B-235448.2	23...	D-50
Additional information	B-234936.2	1...	D- 2
Reversal			
Factual errors	B-232678.2	19...	D-42
Interested parties	B-235553	26...	D-61
Direct interest standards	B-235559	24...	D-54

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Bid Protests - Con.			
GAO procedures - Con.			
Pending litigation			
	GAO review	B-234579	16...D-33
Preparation costs			
		B-235308	23...D-50
		B-235512.2	31...D-63
Protest timeliness			
Apparent solicitation			
improprieties			
		B-232139.4	23...D-48
		B-234034	3...D- 5
		B-234141, et al.)	17...D-34
		B-234219	9...D-15
		B-234281	23...D-49
		B-234365	11...D-23
		B-234412	24...D-52
		B-234728	18...D-41
		B-235280	11...D-25
Deadlines			
Constructive			
notification			
		B-234141.8	16...D-32
		B-234998.3	1...D- 3
Significant issue exemptions			
	Applicability	B-234614.2	5...D-11
10-day rule			
		B-234141.8	16...D-32
		B-234798	12...D-27
		B-235406	12...D-28
		B-235477	17...D-40
		B-235567	24...D-54
Adverse agency actions			
		B-234587.2	16...D-33
		B-234798	12...D-28
		B-235413	12...D-28

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Bid Protests - Con.		
GAO procedures - Con.		
Protest timeliness - Con.		
Time/date notations		
Establishment	B-235477	17...D-40
Purposes		
Competition enhancement	B-235589, et al.)	30...D-62
Moot allegation		
GAO review	B-234224) B-234224.2) B-234694	12...D-26 25...D-57
Non-prejudicial allegation		
GAO review	B-235151	24...D-54
Premature allegation		
Future procurement		
GAO review	B-234224) B-234224.2)	12...D-26
Prime contractors		
Contract awards		
Subcontracts		
GAO review	B-234940.2 B-235117.2	11...D-24 11...D-25
Private disputes		
GAO review	B-235165 B-235369	9...D-17 11...D-26
Competitive Negotiation		
Alternate offers		
Acceptance		
Propriety	B-234272	17...D-38

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Competitive Negotiation - Con.			
Below-cost offers			
Acceptability	B-234143	3...	D- 6
Best/final offers			
Late submission			
Rejection			
Propriety	B-234652	17...	D-39
Price data			
Omission			
Effects	B-234034	3...	D- 5
Competitive advantage			
Conflicts of interest			
Allegation substantiation			
Lacking	B-234251	2...	D- 4
Non-prejudicial allegation	B-234272	17...	D-39
Contract awards			
Administrative discretion			
Cost/technical tradeoffs			
Cost savings	B-234071	4...	D- 8
Fixed-price contracts			
Cost/technical tradeoffs			
Justification	B-234142	10...	D-20
Initial-offer awards			
Propriety	B-234219	9...	D-15
Multiple/aggregate awards			
Propriety	B-233935.3	25...	D-56

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Competitive Negotiation - Con.		
Contract awards - Con.		
Source selection boards		
Administrative discretion B-234142	10...	D-20
Contracting officer duties		
Contract award notification B-234191	17...	D-37
Discussion		
Adequacy		
Criteria	B-234191	17...D-37
	B-234250	30...D-61
Discussion reopening		
Propriety		
Best/final offers		
Corrective actions	B-233724.2	16...D-31
Hand-carried offers		
Late submission		
Acceptance criteria		
Acceptance	B-234853	26...D-60
Offers		
Acceptance time periods		
Expiration	B-234468	25...D-57
Competitive ranges		
Exclusion		
Administrative discretion		
	B-232736.2	22...D-45
	B-234141,	
	et al.)	17...D-35
	B-234365	11...D-23
Discussion	B-232736.2	22...D-45

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Competitive Negotiation - Con.			
Offers - Con.			
Evaluation			
Administrative discretion	B-231857.4)		
	B-231857.5)	22...	D-43
	B-234219	9...	D-15
Cost estimates	B-231857.4)		
	B-231857.5)	22...	D-44
Downgrading			
Propriety	B-234142	10...	D-20
Personnel			
Adequacy	B-232736.2	22...	D-45
	B-234142	10...	D-21
Personnel experience	B-232736.2	22...	D-46
Technical acceptability	B-234365	11...	D-24
Evaluation errors			
Administrative policies			
Compliance	B-234141, et al.)	17...	D-35
Modification			
Late submission	B-234191	17...	D-37
Preparation costs	B-233724.2	16...	D-31
Price competition			
Adequacy			
Fixed-price contracts	B-234143	3...	D- 6
Risks			
Pricing	B-234142	10...	D-21

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Competitive Negotiation - Con.			
Offers - Con.			
Technical acceptability			
Deficiency			
Blanket offers of compliance	B-234028	9...	D-14
Descriptive literature	B-234028	9...	D-14
Requests for proposals			
Amendments			
Compliance time periods			
Adequacy	B-234141, et al.)	17...	D-34
	B-234283	8...	D-13
Notification			
Contractors	B-234468	25...	D-57
Evaluation criteria			
Sufficiency	B-234250	30...	D-61
Weighting			
Bias allegation	B-234569	15...	D-29
Terms			
Ambiguity allegation			
Interpretation	B-234569	15...	D-29
Interpretation	B-234071	4...	D- 8
Risks	B-233742.2	24...	D-50
Technical evaluation boards			
Bias allegation			
Allegation substantiation			
Evidence sufficiency	B-234141, et al.)	17...	D-36

J

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Competitive Negotiation - Con.		
Technical evaluation boards - Con.		
Qualification		
GAO review	B-234141, et al.)	17...D-36
Unbalanced offers		
Materiality		
Determination		
Criteria	B-231857.4) B-231857.5)	22...D-44
Contract Management		
Contract administration		
Contract terms		
Compliance		
GAO review	B-231857.4) B-231857.5) B-234143	22...D-44 3...D- 6
Contractor Qualification		
Approved sources		
Equivalent products		
Acceptance		
Administrative discretion	B-234237	3...D- 7
Contractor personnel		
GAO review	B-234142	10...D-21
Misrepresentation	B-234753	23...D-49

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Contractor Qualification - Con.			
Responsibility			
Contracting officer findings			
Affirmative determination			
GAO review	B-234143	3...D-	7
	B-234225)		
	B-234227)	5...D-	9
	B-234652	17...D-	39
	B-234694	25...D-	58
	B-235102	11...D-	25
Negative determination			
GAO review	B-234068	8...D-	12
	B-234282	8...D-	12
	B-234882	25...D-	59
Responsibility criteria			
Organizational experience	B-234778	25...D-	58
Performance capabilities	B-234543	3...D-	7
Responsibility/responsiveness distinctions			
	B-234314.2	22...D-	46
Sureties			
Financial capacity	B-234225)		
	B-234227)	5...D-	9
Noncompetitive Negotiation			
Contract awards			
Sole sources			
Propriety	B-234029	11...D-	22
	B-234583	22...D-	47
Payment/Discharge			
Shipment			
Carrier liability			
Amount determination	B-197911.6	25...D-	55

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Sealed Bidding		
Bid guarantees		
Responsiveness		
Signatures		
Sureties	B-234560	12...D-27
Sureties		
Adequacy	B-235491	22...D-47
Sureties		
Acceptability	B-234412	24...D-53
Information submission	B-234068	8...D-12
Bids		
Acceptance time periods		
Expiration		
Reinstatement	B-234107	19...D-42
Bid deposit		
Late submission	B-235400	26...D-60
Bid guarantees		
Omission		
Responsiveness	B-234728	18...D-41
Responsiveness		
Additional information		
Post-bid opening periods	B-234314.2	22...D-46
Price data		
Minor deviations	B-234694	25...D-58
Price omission		
Line items	B-234774	24...D-53

INDEX - Con.

		<u>May</u>	<u>Page</u>
PROCUREMENT - Con.			
Sealed Bidding - Con.			
Bids - Con.			
Responsiveness - Con.			
Samples	B-234147) B-234147.2)	23...	D-48
Contract awards			
Competition sufficiency	B-234147) B-234147.2)	23...	D-48
Propriety			
Invitations for bids			
Defects	B-234303	16...	D-32
Invitations for bids			
Amendments			
Acknowledgment	B-234494	5...	D-10
Late submission	B-234494	5...	D-10
Terms			
Liability insurance	B-234563 B-234778	5... 25...	D-10 D-59
Unbalanced bids			
Allegation substantiation			
Evidence sufficiency	B-234294	9...	D-16
Contract awards			
Propriety	B-234294 B-234780	9... 31...	D-16 D-63
Materiality			
Responsiveness	B-234594	30...	D-62

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Socio-Economic Policies		
Disadvantaged business set-asides		
Use		
Administrative discretion B-234621	24...	D-53
Small businesses		
Competency certification		
Bad faith		
Allegation		
substantiation B-234986.2	22...	D-47
Contract awards		
Non-responsible contractors		
Competency		
certification B-234142	10...	D-22
Disadvantaged business set-asides		
Eligibility		
Determination B-234424	1...	D- 1
B-234987,		
et al.)	3...	D- 8
Preferred products/services		
Certification B-233574.2,		
et al.)	25...	D-56
Responsibility		
Competency certification		
GAO review B-234998.3	1...	D- 3
B-235165	9...	D-17
B-235330.2	25...	D-59
Negative determination B-234998.3	1...	D- 4
Negative determination		
GAO review B-235165	9...	D-18

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Socio-Economic Policies - Con.		
Small business set-asides		
Size status		
Administrative discretion		
GAO review	B-234251	2...D- 4
Use		
Administrative discretion	B-234283	8...D-13
Special Procurement Methods/Categories		
Computer equipment services		
Demonstration projects		
Compliance time periods		
Sufficiency	B-233742.2	24...D-51
Cooperative agreements		
GAO review	B-235331	16...D-34
In-house performance		
Competitive advantage		
Allegation substantiation	B-234563	5...D-11
Service contracts		
Terms	B-234594	30...D-62
Specifications		
Ambiguity allegation		
Specification		
interpretation	B-234594	30...D-62
Brand name/equal specifications		
Equivalent products		
Salient characteristics		
Descriptive literature	B-234191	17...D-38
Brand name specifications		
Equivalent products		
Acceptance criteria	B-234652	17...D-40

INDEX - Con.

	<u>May</u>	<u>Page</u>
PROCUREMENT - Con.		
Specifications - Con.		
Minimum needs standards		
Competitive restrictions		
Allegation substantiation		
Evidence sufficiency	B-233742.2	24...D-51
Brand name specifications	B-234283	8...D-13
Design specifications		
Justification	B-234475	23...D-49
Geographic restrictions		
Justification	B-234620	1...D- 1
Justification		
Sufficiency	B-233742.2	24...D-52
	B-234620	1...D- 2
Determination		
Administrative discretion	B-233935.3	25...D-56
	B-234124	10...D-19
	B-234615	9...D-16
Performance specifications		
Adequacy	B-234141, et al.)	17...D-36

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