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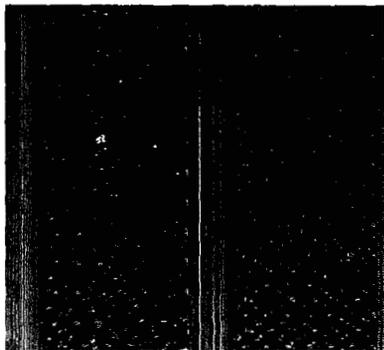
Quarterly Digests
Of Unpublished Decisions
Of The Comptroller General
Of The United States-
OGC/Index Digest Section

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United States General Accounting Office

July-September 1983

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UNITED STATES GENERAL ACCOUNTING OFFICE

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Acting General Counsel

July through September 1983

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B-205527 July 1, 1983 83-2 CPD 49

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY V. COST*

Even if scoring of price in evaluating proposals could be shown protester would not have been prejudiced because price difference was outweighed by significant difference in technical merit of protester's and awardee's proposals.

B-210023 July 1, 1983 83-2 CPD 50

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSIONS
WITH ALL OFFERORS REQUIREMENTS--EXCEPTIONS--OFFERS NOT WITHIN
COMPETITIVE RANGE*

Agency is not required to conduct negotiations with offeror who submits technically unacceptable proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE FORMULA--ADMINISTRATIVE DETERMINATION*

This Office will not disturb procuring agency's determination to exclude offeror from competitive range if that determination is reasonable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

In brand name or equal procurement, where offeror supplied only names of equal items which it intended to supply, without any model numbers, AF reasonably excluded offeror from competitive range.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--RESPONSIVENESS--
CONCEPT NOT APPLICABLE TO NEGOTIATED PROCUREMENTS--EXCEPTION*

Although concept of responsiveness does not directly apply to negotiated procurement, agency may use this

term to indicate that proposal which fails to comply with certain solicitation requirements is technically unacceptable.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--
BRAND NAME OR EQUAL PROVISIONS*

Solicitation provision stating that proposal would be construed as offering brand name product unless it clearly showed offeror's intent to supply equal item is not applicable where protester clearly intended to supply equal item, but failed to adequately describe that item.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that specifications were ambiguous and required information that was not necessary to evaluate proposals is dismissed as untimely when not received before closing date for receipt of proposals.

*B-212018, B-212018.2 July 1, 1983 83-2 CPD 51
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMBIGUOUS*

Solicitation required that equipment be in current production, state-of-the-art and commercially available. Common, ordinary meaning of these three terms is sufficiently broad that offerors might reasonably have interpreted these requirements differently. Recommendation is made that agency should clarify meaning of these terms in this RFP and request new round of best and final offers.

*B-209705 July 5, 1983 83-2 CPD 52
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
LOW BID IN EXCESS OF GOVERNMENT ESTIMATE*

Determination of contracting agency to cancel advertised solicitation is not unreasonable where only responsive bid received was substantially higher

than Govt. estimate and potential supplier at significantly lower cost was unjustifiably excluded from bidding.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester alleging bad faith in agency decision to cancel solicitation has not met its burden of meeting judicially established standard of "well-nigh irrefragable proof" by making unsubstantiated allegations of contradictory Govt. action and Govt. collusion with protester's competitors.

B-210737 July 5, 1983 83-2 CPD 54

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Appeal of protest initially filed with procuring agency must be filed with GAO within 10 working days after procuring agency's initial adverse action. Procuring agency responded to protest by reaffirming its position at debriefing and awarding contract. Appeal filed with GAO more than month and half after this adverse action is, therefore, untimely.

B-212037 July 5, 1983 83-2 CPD 53

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

SBA, not GAO, has statutory authority to conclusively determine matters of small business size status.

B-209374 July 6, 1983 83-2 CPD 56

BIDS--PREPARATION--COSTS--NONCOMPENSABLE

Claim for bid preparation costs where claimant alleges that agency was aware prior to bid opening that contract for dredging services could only be performed by firm which had exclusive access to disposal areas and therefore agency acted arbitrarily in failing to cancel the solicitation prior to bid opening is denied where agency states

that it continued to receive assurances from municipal authority responsible for providing disposal areas that sites would be made available and agency determined to cancel only after these promises were not fulfilled.

B-210052 July 6, 1983 83-2 CPD 58

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--LOST--
POSTAL SYSTEM ERROR--CONTRACTOR ASSUMPTION OF RISK*

Protester bears the responsibility for the delivery of quotation. Protester has not affirmatively proven that it submitted quotation procuring agency claims it did not receive. Protester must bear responsibility for choosing to deliver its quotation by mail.

B-210093 July 6, 1983 83-2 CPD 59

*BIDDERS--QUALIFICATIONS--PREQUALIFICATION OF BIDDERS--"APPROVED
SOURCE" REQUIREMENT--CASE-BY-CASE EVALUATION OF SUBSTITUTE
ITEMS*

Protest is denied because procurement met all requirements for acceptable, approved-source, restricted procurement--restriction met bona fide needs of agency; nonapproved sources were permitted to submit proposals and could become qualified through reasonable procedure. Protester could not qualify prior to award of contract; therefore, its proposal was properly rejected.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed within 10 days of agency rejection of protester's proposal because it could not show that it was approved source and could not gain approved-source status is timely. Protester was not required to file protest prior to due date for submission of proposals because solicitation did not clearly state that part must be manufactured by only previously approved source and in such restricted procurements, agencies are required to accept proposals from nonapproved sources and give them the opportunity to qualify.

*B-210168.2 July 6, 1983 83-2 CPD 60
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision dismissing portion of protest as untimely is affirmed on reconsideration because protester has not shown that decision was based on errors of fact or law.

*B-210843 July 6, 1983 83-2 CPD 62
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
PREFERENCE FOR DOMESTIC SPECIALTY METALS CLAUSE*

Bid to supply product (component of weapon or weapons system) made of foreign specialty metal was properly rejected for not complying with preference for domestic specialty metals clause in solicitation where clause is based on law which agency reasonably interprets as permitting exception to clause for weapon or weapons system, not components thereof.

*CONTRACTS--PROTEST--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against specialty metals clause in invitation for bids is dismissed as untimely since it was filed after bid opening.

*B-211201 July 6, 1983 83-2 CPD 63
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
BRAND NAME OR EQUAL--IMPROPER CONSIDERATION OF UNLISTED
SALIENT CHARACTERISTICS*

Contracting agency improperly rejected product offered under brand name or equal purchase description where product was rejected for failing to meet unlisted salient characteristics.

*REPORTS--ADMINISTRATIVE--CONTRACT PROTEST--TIMELINESS OF
REPORT*

Contracting agency delay beyond 25-day period provided in Bid Protest Procedures for submitting report on protest is

purely procedural matter and does not provide basis to disregard report.

B-212082 July 6, 1983 83-2 CPD 64

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
PROCUREMENT UNDER 8(a) PROGRAM--STANDARD OPERATING PROCEDURES
COMPLIANCE*

GAO will not review SBA's compliance with its own internal guidelines for Small Business Act's sec. 8(a) program absent showing of possible fraud or bad faith on part of Govt. officials.

B-212101 July 6, 1983 83-2 CPD 65

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--
ORAL*

Oral extension of closing date for receipt of proposal is not binding on Govt.

B-209299 July 7, 1983 83-2 CPD 66

*CONTRACTS--FEDERAL SUPPLY SCHEDULE--MANDATORY USE REQUIREMENT--
VETERANS ADMINISTRATION*

Agency procurement of central dictation system from supplier who held optional use schedule contract was improper where agency's needs could be satisfied from supplier on mandatory schedule.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADDITIONAL INFORMATION SUPPORTING
TIMELY SUBMISSION*

Protest is timely, notwithstanding that GAO requested additional, more detailed statement in support of original protest, since original protest submission setting forth basic grounds for protest satisfied filing requirement of Bid Protest Procedures.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest is timely where protester could not have known from face of solicitation that agency would make award

in violation of applicable procurement regulation; therefore, protester was not required to file protest prior to closing date for receipt of quotations.

*B-211450, B-211569 July 7, 1983 83-2 CPD 67
BIDS--ESTIMATES OF GOVERNMENT--PROPRIETY*

Where solicitation provides estimate of quantity of fuel used annually and cost of fuel per gallon, bidder has sufficient basis to prepare overall fuel costs for bid.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Requirement that fuel for operation and maintenance of vehicles is to be purchased from Govt. is reasonable where requirement provides incentive for contractor to use fuel efficiently.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of alleged solicitation defects filed before bid opening is timely under Bid Protest Procedures.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL
CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.*

Protester is interested party under GAO protest procedures when it asserts that it would have submitted bid but for alleged defects in solicitation's requirements.

*PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PURCHASE
PROPRIETY*

Requirement that parts and materials be supplied by Govt. and purchased through Fed. Supply Service, rather than allowing contractor to purchase parts commercially from its own sources, is reasonable where agency has

existing Fed. Supply Schedule contracts for supplies and contractor is not required to pay for them.

*B-211313 July 8, 1983 83-2 CPD 68
BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--INFORMATION*

Where (1) specification states that certified standard product may be modified to meet technical requirements of specification; (2) IFB does not limit number or type of changes allowed; and (3) it appears that agency did not intend to consider proposed modifications in determining responsiveness of bids, performance capability of product furnished by bidder is for consideration by agency as part of its determination of bidder responsibility, not bid responsiveness.

BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER TO MEET ALL SOLICITATION TERMS

Bid was responsive to standard commercial product certification requirement where bidder specified crane model which it stated would meet specification requirements.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest challenging responsibility of awardee is dismissed because GAO does not review affirmative determinations of responsibility, except in circumstances not applicable here.

*B-208557.5 July 11, 1983 83-2 CPD 69
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO*

Protest that contractor has been allowed to substitute subcontractor during performance of contract is matter of contract administration and is responsibility of procuring agency rather than GAO under Bid Protest Procedures.

*B-209940.2 July 11, 1983 83-2 CPD 70
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
BURDEN OF PROVING UNDUE RESTRICTION*

Solicitation requirement that underground heat distribution system be constructed with pressure testable manholes is not unduly restrictive of competition merely because it prevents a system supplier from offering its system which is approved under applicable prequalification procedures; such restrictive requirement is permissible where it is reasonably related to agency's minimum needs.

*B-210094.2 July 11, 1983 83-2 CPD 71
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Original decision denying protest is affirmed where protester fails to establish that decision was based on errors of law or did not take into consideration all relevant evidence timely presented.

*B-210101.2 July 11, 1983 83-2 CPD 72
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION*

Fact that agency found no major weaknesses or deficiencies in protester's proposal does not render award to another offeror unreasonable where that offeror's proposal was reasonably judged superior to protester's proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--EXPERIENCE*

Fact that protester has more experience in one area than awardee does not render agency's superior evaluation of awardee's overall management capability unreasonable since evaluation of management capability clearly included consideration of many factors other than experience.

B-210101.2 July 11, 1983 83-2 CPD 72 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EXPERIENCE RATING

Protester's superior experience in aircraft carrier repair did not entitle it to higher score than awardee under "Experience and Past Performance" evaluation criterion in RFP. Aircraft carrier experience was only one of five subcriteria under "Experience" aspect of that criterion, and awardee's experience in other areas, as well as its superior "Past Performance" score, outweighed protester's superior aircraft carrier experience.

B-210199 July 11, 1983 83-2 CPD 73
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where agency and protester disagree as to transportation costs which should have been added to protester's bid for evaluation purposes, but protester has furnished no evidence that agency's calculations are incorrect, protester has failed to meet its burden of affirmatively proving its case.

B-211445 July 11, 1983 83-2 CPD 74
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Protest by firm that would not be in line for award if protest were upheld is dismissed because firm is not interested party under GAO Bid Protest Procedures.

B-211832 July 11, 1983 83-2 CPD 75
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR EQUAL--
"EQUAL" PRODUCT EVALUATION--SALIENT CHARACTERISTICS NOT MET

Where protester's descriptive literature submitted with its bid in response to solicitation for brand name or equal product shows that protester's "equal product fails to conform to salient characteristics listed in solicitation, bid was properly rejected as nonresponsive.

*B-211832 July 11, 1983 83-2 CPD 75 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Contention that specification for brand name or equal product unduly restricted competition will not be considered since it involves alleged defect apparent from face of solicitation and protest was not filed prior to bid opening as required by Bid Protest Procedures.

*B-211876 July 11, 1983 83-2 CPD 76
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--OFFEROR--
SUBSTITUTION AFTER CLOSING OF SISTER FIRM FOR DEBARRED
OFFEROR--PROPRIETY*

Substitution of offerors after closing where new offeror proposes to assume obligations of debarred sister firm is not permitted because substitution is for convenience of vendor and not by operation of law.

*B-211903 July 11, 1983 83-2 CPD 77
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY
MATTERS--NOT FOR GENERAL ACCOUNTING OFFICE REVIEW*

Determination under OMB Circular No. A-76 to contract for services in lieu of performance by Govt. employees is matter of executive policy not reviewable in bid protest filed by union representing Fed. employees.

*B-208281.2 July 12, 1983 83-2 CPD 78
CONTRACTS--OPTIONS--PRICE COMPARISON PRIOR TO EXERCISING
OPTION*

Option is unaccepted offer to sell upon terms spelled out in solicitation which may be unilaterally accepted by Govt. Govt. may not renegotiate any terms of option without issuing new solicitation where facts indicate that price competition may be available.

*GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--PRIOR
RECOMMENDATION--MODIFIED--LAPSE OF TIME*

Recommendation of termination for convenience will be modified when both protester and agency

agree that termination will not serve Govt.'s best interests.

*B-208670.2, B-208809.2 July 12, 1983 83-2 CPD 79
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Although awardee allegedly relied on understanding that "good performance" would result in exercise of contract options, awardee's request for reconsideration of recommended corrective action (nonexercise of option) is denied where there is no showing of error of fact or law and where award, albeit legal, was made in face of unresolved questions concerning adequacy of competition and reasonableness of price.

*B-209103 July 12, 1983 83-2 CPD 80
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS*

Where protester did not receive amendment to solicitation until day quotes were due, but time available to prepare quote appears reasonable under circumstances and there has been no showing of prejudice, protest received after time set for RFQ alleging that protester was unable to submit quote is untimely because alleged deficiency was apparent on face of solicitation.

*CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--MINIMUM
NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

RFQ requirement for first-year start-up services cannot reasonably be interpreted as imposing unlimited obligation upon contractor to provide such services throughout first year. Consequently, agency may make award on basis of offered 3 days of services which agency determined satisfied its needs.

*B-209380.2 July 12, 1983 83-2 CPD 81
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--ADMINISTRATIVE APPEAL UPHOLDING DETERMINATION TO
PERFORM IN-HOUSE--REASONABLENESS OR APPEAL DETERMINATION*

Protest of determination to perform audiovisual and photographic services in-house rather than by contract

is denied where protester has not shown that administrative appeal upholding determination violated mandated procedures for determining cost of in-house operation versus contracting.

*B-210966 July 12, 1983 83-2 CPD 82
ADVERTISING--COMMERCE BUSINESS DAILY--INFORMATION--DATE OF
BID OPENING, ETC.--CONSTRUCTIVE NOTICE FROM PUBLICATION*

Publication of synopsis in CBD constitutes constructive notice of solicitation and its contents to prospective bidders.

*BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--BIDDER
NOT TIMELY SOLICITED, ETC.*

When there is no deliberate attempt by procuring agency to preclude a protester from competition, and adequate competition results in reasonable prices, GAO will not disturb otherwise valid award even though protester did not receive copy of solicitation.

B-211046 July 12, 1983 83-2 CPD 83
BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--SUBMISSION OF
TEST DATA--PURPOSE--COMPETENCY OF BIDDER TO PERFORM

When invitation requires submission of test data after bid opening, data is to be used to enable procuring agency to determine bidder's competency to perform, rather than to establish characteristics of product, so that requirement relates to bidder responsibility, not bid responsiveness, and data may be submitted at any time up to award. Rule is not affected by solicitation statement that failure to submit data by specific date will render bid nonresponsive.

B-211741 July 12, 1983 83-2 CPD 84
BONDS--BIDS--DEFICIENCIES--CRITERIA FOR ACCEPTANCE

Low bid was properly determined to be responsive where bidder stated in Bid Bond form that bid bond would be in amount of ".20" percent of bid price, instead of 20 percent as required by IFB, because only reasonable construction of bid indicates that bidder intended to submit bid bond in amount of 20 percent of bid price.

B-206442.2 July 13, 1983 83-2 CPD 85
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

As matter of policy, GAO generally will not review affirmative determination of responsibility in connection with procurement by local housing authority. In addition, whether successful contractor complies with minority hiring goals is matter of contract administration, and is primarily responsibility of local housing authority, with oversight by HUD.

B-206442.2 July 13, 1983 83-2 CPD 85 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING

When local housing authority has provided bidder numerous opportunities to demonstrate ability of proposed subcontractors to meet minority hiring goals, but information is not forthcoming within reasonable time, authority may reject bidder as nonresponsible. Bidder's presentation of additional information during development of complaint to GAO does not affect reasonableness of nonresponsibility determination.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS

Request for reconsideration of decision on procurement by local housing authority generally must meet standard set forth in GAO Bid Protest Procedures: complainant must either show factual or legal grounds warranting reversal or modification of decision, or must present information not previously available and therefore not considered by GAO.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

When alleged factual error in number of proposed subcontractors, pointed out in request for reconsideration, does not change fact that bidders proposed to subcontract extensively, GAO will affirm decision holding that local housing authority reasonably considered subcontractor hiring records in determining whether bidders could meet minority hiring goals.

B-210872 July 13, 1983 83-2 CPD 87
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF
COMPETENCY REQUIREMENT

Where procuring agency finds small business nonresponsible, and SBA subsequently refuses to issue COC, GAO generally will not review agency's determination of nonresponsibility.

B-210872 July 13, 1983 83-2 CPD 87 - Con.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
SCOPE--CERTIFICATE OF COMPETENCY REQUIREMENT*

Where protester shows that possible fraud or bad faith on part of Govt. officials may have caused SBA to decline to issue COC, GAO will review matter. But when protester fails to present irrefutable proof that officials acted with specific and malicious intent to injure protester and fails to demonstrate that alleged fraud or bad faith caused SBA to deny COC, then GAO will deny protest.

B-211677.2 July 13, 1983 83-2 CPD 88

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Where protester reiterates argument which was rejected in original protest, request for reconsideration of prior decision dismissing protest as untimely is denied.

B-207681.3 July 14, 1983 83-2 CPD 89

CONTRACTS--PROTESTS--PREPARATION--COSTS--NONCOMPENSABLE

Where agency involvement in subcontract award made by its prime contractor is limited to mere approval, there is no legal basis upon which agency can be required to pay proposal preparation costs to firm prime contractor who did not select for subcontract award. Basis for payment of such costs is breach of implied duty to review proposals fairly and honestly; where agency only approves subcontract awards, it makes no express or implied assurances to prospective subcontractors with respect to evaluation of proposals and, therefore, did not breach any duty to this subcontractor. Prior decision reversed.

*CONTRACTS--SUBCONTRACTS--ADMINISTRATIVE APPROVAL--
REASONABLENESS*

Where prime contractor is acting for Govt. subject to agency approval, agency must act reasonably in approving procurement actions taken by prime contractor.

*B-208744.2 July 14, 1983 83-2 CPD 90
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where request for reconsideration does not raise any new facts or legal arguments which show that prior decision was erroneous.

*B-210593 July 14, 1983 83-2 CPD 91
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION*

Determination of relative merits of proposals is responsibility of agency that solicited them, and GAO will not disturb determination unless it is shown to be arbitrary or to violate procurement statutes or regulations.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
INFORMATION SUFFICIENCY*

Proposal evaluations must be made on basis of information submitted with proposals. No matter how capable offeror may be, if it does not submit adequately written proposal it cannot expect to be considered for award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNACCEPTABLE PROPOSALS--COST, ETC. NOT A FACTOR*

Technically unacceptable offer is of no value to Govt. notwithstanding its price.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAO will not review protest concerning another offeror's small business size status, since by law matter is for decision by SBA.

*B-210969 July 14, 1983 83-2 CPD 92
EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEM--ACQUISITION, ETC--
SOLE-SOURCE BASIS--PROPRIETY*

Decision to purchase automatic data processing equipment on sole-source basis is not justified where agency

failed to consider affirmative response to CBD notice, and meaningful competition was feasible.

B-211460 July 14, 1983 83-2 CPD 93
BIDS--UNSIGNED--BID BOND OVERCOMING DEFICIENCY

Failure of bidder to sign bid is waivable as minor informality when accompanying bid bond is properly executed and evidences bidder's intent to be bound by bid submitted.

B-211575 July 14, 1983 83-2 CPD 94
CONTRACTS--NEGOTIATION--COMPETITION--EXCLUSION OF OTHER FIRMS--EXCLUSION ON BASIS OF CONFLICT OF INTEREST--REASONABLENESS OF DETERMINATION

Elimination from competition of firm which would be in position of evaluating and refining adequacy and applicability of specifications firm developed under prior contracts is reasonable where agency demonstrates that objectivity in assessment of prior work is of paramount importance.

CONTRACTS--NEGOTIATION--CONFLICT OF INTEREST PROHIBITIONS--ORGANIZATIONAL--AGENCY RESPONSIBILITIES

Responsibility for determining whether firm has conflict of interest if firm is awarded particular contract and to what extent firm should be excluded from competition rests with procuring agency and we will overturn such determination only when it is shown to be unreasonable.

B-206684 July 15, 1983 83-2 CPD 95
PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PURCHASE PROPRIETY

Award to optional Supply Schedule contractor under small purchase was not objectionable where GAO cannot conclude that procuring agency acted other than in good faith.

*B-206684 July 15, 1983 83-2 CPD 95 - Con.
PURCHASES--SMALL--AWARDS--PROCEDURAL DEFICIENCIES--NOT
PREJUDICIAL TO PROTESTER*

Even if purchasing agent did not comply with regulatory requirements before making award during pendency of protest, failure is procedural defect and does not affect validity of otherwise proper award.

REPORTS--ADMINISTRATIVE--CONTRACT PROTEST--TIMELINESS OF REPORT

Fact that contracting agency took extra-ordinary amount of time to submit report on protest does not invalidate otherwise valid award; however, agency head is being notified of delay in report submission and recommendation is being made that reporting procedures be reviewed.

*B-209102 July 15, 1983 83-2 CPD 96
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
NOT DENIED TO PROTESTER*

Protest charging that Army/Marine Corps should have eliminated effects of any Canadian subsidy to awardee is denied, because solicitation did not contain any indication that subsidies would be eliminated, and GAO is unaware of any statute or reg. which requires such treatment of foreign govt. subsidies. Moreover, contracts between ULSL defense agencies and Canadian firms are specifically encouraged under Memorandum of Understanding between the U.S. Dept. of Defense and Canadian Dept. of Defense Production which has been implemented in DAR 6, part 5 (1976 ed.) which contains no provision for offsetting Canadian Govt. subsidies in evaluation of proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--AMENDMENT OF SOLICITATION*

Protest alleging that repeated requests for best and final offers amounted to improper auction technique is denied because each request was based upon substantial changes to quantity and program requirements required in basic and option periods of contract. There is no

evidence to support protester's speculation that agencies' personnel told awardee price it should offer to be considered for award, and record shows that awardee actually increased its price between first and third best and final offers.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--EXPERIENCE RATING

Protest contending that evaluation was contrary to RFP scheme because past performance was not considered is denied because record reveals that protester's relevant prior experience was considered in evaluation.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protest alleging that contracting agencies' personnel which tester products and completed evaluation questionnaires and agencies' personnel which evaluated those questionnaires were not qualified is denied. Agency technical personnel are entitled to presumption that they are qualified, and record shows that they were selected for their special expertise in this case. Protester has provided no evidence other than its unsubstantiated allegation to overcome presumption and has not carried its burden of proof.

Protest alleging that prototype testing is not valid because no final operational test report was issued before awardee was selected is denied. Nothing in RFP required final operational test report and results of testing were made available to source selection officials before selection was made.

Protest alleging that protester's vehicles were tested at higher speeds than awardee's vehicles and without regular scheduled maintenance is denied. Army denies both allegations, and GAO cannot reconstruct what actually occurred during testing from record. Therefore, protester, which bears burden of proof, has not proved its case.

Protest alleging that prototype testing was fatally flawed because no reliability data was collected on turret subsystem is denied since record clearly shows that turret reliability data was collected. Furthermore, protester's charge that its turret subsystem was superior to awardee's turret subsystem is not supported by record.

Protest charging that Army/Marine Corps improperly failed to give protester credit for modifications proposed to correct perceived turret subsystem deficiencies is denied. Record supports Army/Marine Corps' test and evaluation results and shows that there was reasonable basis for conclusion that modifications to design of turret probably could not be completed within contract schedule and, therefore, this was weakness in protester's proposal.

Protest alleging that evaluation of reliability growth potential of vehicles was improper because it did not include calculation of separate growth rates based upon each vehicle failure and contractor's proposed corrective action is denied. Army correctly points out that methodology proposed by protester would result in overly optimistic forecast. Growth rate used was primarily based upon maturity of contractors' programs, and relatively low figure was used because vehicles offered were essentially off-the-shelf, nondevelopmental items, and protester has not proved that agencies' method was illogical.

Protest alleging that evaluation of reliability test data was arbitrary and that awardee's test vehicle was scored using different, more lenient standard is denied. Record reveals protester's vehicle's malfunctions were considered to be more serious than awardee's because they generally had greater impact upon vehicle mission; protester's proposed modifications were not credited because they were not installed early enough in testing to be properly evaluated as to whether they significantly improved performance, and therefore, GAO concludes that evaluation was fair and reasonably based.

B-209102 July 15, 1983 83-2 CPD 96 - Con.
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Unsuccessful offeror's protest that it should have been selected for award because it proposed lowest cost is denied since agency has reasonably justified award to technically superior, higher cost offeror as providing Govt. "greatest value."

Protester's numerous disagreements with agencies' technical evaluation of proposals and conclusion that awardee's offer was "substantially and significantly technically superior" to other candidates' offers do not provide basis to find evaluation is without reasonable basis.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest alleging that there were number of irregularities in prototype testing phase of two-phase procurement is dismissed as untimely under 21.2(b)(2) of GAO Bid Protest Procedures which states that protest must be filed no later than 10 days after basis for protest is known or should have been known. Protester's representatives were present during all phases of testing, and deficiency reports were given to protester's representatives during testing. Protester should have known bases for protest at time of testing but waited almost 4 months after testing was completed to protest. In such circumstances, protester has waived its right to protest.

B-210898.2 July 15, 1983 83-2 CPD 97
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--REVIEW

GAO does not consider legal status of firm as regular dealer or manufacturer within meaning of Walsh-Healey Act. By law this matter is to be determined by contracting agency in first instance subject to review by SBA (if small business is involved) and Sec. of Labor.

B-210898.2 July 15, 1983 83-2 CPD 97 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Capacity of company to manufacture item in accordance with solicitation requirements concerns matter of responsibility. GAO does not review affirmative determinations of responsibility unless there has been either showing of fraud on part of procurement officials or allegation that solicitation contains definitive responsibility criteria that have not been applied. Negative determination of small business responsibility must be referred to SBA under that agency's COC procedures.

B-211898 July 18, 1983 83-2 CPD 98
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

Protest that agency will not include protester's equipment on approved source list is dismissed as academic because agency reports that it is currently considering protester's test data for possible inclusion of its equipment on approved source list.

B-212238 July 18, 1983 83-2 CPD 99
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

SBA, not GAO, has conclusive statutory authority to determine responsibility of small business that is found non-responsible by contracting agency.

B-210082 July 19, 1983 83-2 CPD 100
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
LACKING

Where offerors did not submit proposals on common basis, award to low offeror was properly terminated. Moreover, claim for preparation costs by losing offeror is denied since it is not clear which offeror would have been successful in competition on equal basis.

*B-210082 July 19, 1983 83-2 CPD 100 - Con.
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CORRECTIVE ACTION PROPOSED, TAKEN, ETC. BY AGENCY*

It is not necessary to consider whether protest is timely where contracting agency acknowledges all the facts necessary to establish validity of protester's objection and proposes corrective action.

*B-211429 July 19, 1983 83-2 CPD 101
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
EVALUATION OF PROPOSALS--DELIVERY PROVISIONS*

When solicitation states that evaluation will be on basis of delivery, proposal in which offeror agrees to meet minimum schedule is not equal to one offering accelerated delivery, and price does not automatically become determinative factor in award. To ensure that offerors are competing on equal basis, solicitation should indicate values of minimum or accelerated delivery in relation to price.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--AMENDMENT OF SOLICITATION*

Relaxation of required delivery schedule after receipt of best and final offers constitutes material change in requirements and, in order for offerors to compete on equal basis, requires procuring agency to request another round of best and finals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
FACTORS NOT IN SOLICITATION--STATUTORY REQUIREMENTS*

In GAO's opinion, no reasonable offeror, aware of statute requiring price to be considered in any negotiated procurement, would read literally evaluation provision stating "offers shall be evaluated on basis of delivery rather than price." In such circumstances, offeror has duty to inquire before proposing accelerated delivery at premium price.

B-211429 July 19, 1983 83-2 CPD 101 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--DEFECTIVE--
EVALUATION FACTORS

Under 10 U.S.C. 2304(b), price must be considered in any negotiated procurement. GAO therefore views statement that "offers shall be evaluated on basis of delivery rather than price" as solicitation deficiency.

B-209194 July 21, 1983 83-2 CPD 102
BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY
UNBALANCED BIDS"--MATERIALITY OF UNBALANCE

Protest against award on basis that low bid is unbalanced is denied. Even assuming low bid is mathematically unbalanced, low bid is not materially unbalanced since estimates stated in IFB are based upon actual historical experience and protester **has presented** no evidence to cast doubt upon accuracy of IFB estimates. Agency statement in protest report that estimates might possibly decrease does not affect this conclusion.

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

In view of conclusion that award is otherwise proper, we will not consider procedural matter of propriety of award while protest was pending since, even if award was contrary to applicable regulations, its legality would not be affected.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester's wholly speculative allegation does not satisfy protester's burden to affirmatively prove its case.

B-209827 July 21, 1983 83-2 CPD 103
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--FAILURE TO PERFORM

Where RFP solicits firm, fixed-price contract, asks for cost or pricing data, and advises that price evaluation would be performed, award of contract is not improper even though evaluation was not performed since, eventual contract negotiated was based on adequate price competition.

B-209827 July 21, 1983 83-2 CPD 103 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

GAO's function in considering objection to technical evaluation of proposals is not to evaluate them, but to examine record and consider whether procuring agency's determination have been clearly shown to be unreasonable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY EQUAL PROPOSALS

Whether proposals are technically equal is not determined solely by difference in point scores. Rather, it is procuring agency's judgment as to significance of difference.

B-211064.2 July 21, 1983 83-2 CPD 104
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging that solicitations' specifications were inadequate which was filed after closing dates for receipt of initial proposals is untimely and will not be considered.

B-211092 July 21, 1983 83-2 CPD 105
ADVERTISING--COMMERCE BUSINESS DAILY--INFORMATION--DATE OF
BID OPENING, ETC.--CONSTRUCTIVE NOTICE FROM PUBLICATION

Protest that sole-source award of contract was improper is untimely where filed approximately 1 month after date of publication in CBD of notice that sole-source negotiations were being conducted, since protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known.
4 C.F.R. 21.2(b)(2) (1983).

*B-211302.2 July 21, 1983 83-2 CPD 106
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF COMMENTS ON AGENCY'S REPORT'*

Protest is dismissed for failure to file either (1) comments on procuring agency's report on protest or (2) statement that protester desires a decision on basis of existing record since neither request for conference filed with initial protest nor oral request for conference made prior to receipt of agency report excuses requirement that protester actively indicate within 10-day period following receipt of agency report continued interest in protest. 4 C.F.R. 21.3(d).

*B-211337 July 21, 1983 83-2 CPD 107
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

Protest from firm not in line for award if protest is upheld is dismissed because protester does not have requisite direct and substantial interest with regard to award to be considered an "interested party" under GAO Bid Protest Procedures.

*B-211816.2 July 21, 1983 83-2 CPD 108
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
CONSTRUCTIVE NOTICE*

Prior decision dismissing protest as untimely is affirmed on reconsideration since protester is charged with constructive knowledge of Bid Protest Procedures published in Fed. Reg., notwithstanding misleading advice received from contracting officer concerning filing of protest.

*B-212066 July 21, 1983 83-2 CPD 109
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest filed more than 10 working days after protester obtained knowledge of basis of its protest during oral debriefing is dismissed as untimely.

10-day filing requirement is not extended to allow protester to wait for written confirmation of debriefing information.

*B-212138 July 21, 1983 83-2 CPD 110
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against solicitation specifications received by GAO after the time set for bid opening is not timely.

*B-212146 July 21, 1983 83-2 CPD 111
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

Allegation that one firm's bid is unbalanced and should be rejected is dismissed as academic where that firm was not low responsive, responsible bidder and is not in line for award.

*B-212248 July 21, 1983 83-2 CPD 112
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--
EXHAUSTION OF ADMINISTRATIVE REMEDIES*

GAO will not consider protest of cost comparison calculation made by agency to determine, in accord with OMB Circular No. A-76, whether to perform services in-house or to contract them out until protester has exhausted contracting agency's administrative review procedures.

*B-212280 July 21, 1983 83-2 CPD 113
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest concerning small business size status of apparent low bidder is not subject to review by GAO; by law it is matter for determination by SBA.

*B-212298 July 21, 1983 83-2 CPD 114
GENERAL ACCOUNTING OFFICE--JURISDICTION--SUBCONTRACTS*

Protest by subcontractor of agency decision that equipment to be furnished by subcontractor under prime contract is unacceptable will not be considered under GAO Bid Protest Procedures.

*B-212340 July 21, 1983 83-2 CPD 115
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against validity of sample requirement is untimely under our Bid Protest Procedures since it was not filed before bid opening.

*B-208338 July 25, 1983 83-2 CPD 119
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Agency decision to exclude protester from competitive range was not unreasonable where protester's proposal did not demonstrate compliance with mandatory requirement of solicitation.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--
READING ALL PROVISIONS TOGETHER RULE--PRESUMPTION AGAINST
CONFLICT*

Since solicitations must be read as whole, agency did not change evaluation criteria where performance requirement was explicitly stated in solicitation's statement of work.

*B-208982.2 July 25, 1983 83-2 CPD 120
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

GAO will dismiss request for reopening of protest file received more than 10 working days after protester should have had notice of such action, since request is tantamount to request for reconsideration of decision not to consider protest.

B-208982.2 July 25, 1983 83-2 CPD 120 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--PROTEST NOT RECEIVED

As general rule, regardless of how original was lost, duplicate protest must independently satisfy timeliness requirements of GAO Bid Protest Procedures. Same rule applies to copies of information in support of protest.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD

When agency finds protester nonresponsive, and protester does not challenge this finding, GAO will dismiss protest, since even if it were sustained, protester would not be in line for award.

B-211236 July 25, 1983 83-2 CPD 122
CONTRACTS--TWO-STEP PROCUREMENT--STEP TWO--BIDS--EVALUATION--
ALL OR NONE OPTION YEAR PRICES

Where protester inserts two sets of prices for option quantities (lower price if all options are exercised), agency evaluation of higher individual option prices was proper because if agency does not exercise all options, higher prices would be paid. To evaluate on lower all or none prices would introduce uncertainty as to whether bid was actually lowest.

B-207898.5 July 26, 1983 83-2 CPD 123
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Request for second reconsideration of protest decision, filed more than 10 working days after protester receives decision denying first request for reconsideration, is untimely.

B-208902.3 July 26, 1983 83-2 CPD 124
CONTRACTS--PROTESTS--ISSUES IN LITIGATION

Protester requests that we reopen protest which was dismissed because issues were before court and court did not express interest in our deci-

sion, since court has now dismissed case for lack of jurisdiction. We will not reopen case because case is still before court for decision on bid preparation costs. While relief is different, material issues before court are same as those that protester urges us to review, and court has not expressed interest in our decision.

*B-209454 July 26, 1983 83-2 CPD 125
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
OFFERORS'S SUPERIOR ADVANTAGES--GOVERNMENT EQUALIZING
DIFFERENCES*

Govt. has no obligation to eliminate competitive advantage that firm may enjoy unless such advantage results from preference or other unfair action by Govt. Where Bureau of Indian Affairs employee assisted Indian tribal group in preparation of its offer in course of his official duties and in furtherance of BIA's statutory responsibility towards Indian tribes, GAO will deny protester's contention that assistance given tribal group constituted preference or other unfair action which procuring agency had obligation to eliminate.

CONTRACTS--PROTESTS--ALLEGATIONS--VAGUE

In absence of any specific objection to "merits of award in general," GAO has no basis to review reasonableness of agency's evaluation of proposals.

*FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE
AUTHORITY*

GAO has no authority under the Freedom of Information Act to determine what information must be disclosed by agency.

*B-209712 July 26, 1983 83-2 CPD 126
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--DOUBTFUL*

Where doubt exists as to when protester received letter from Govt. indicating that award of contract

for roofing construction had been made to non-Indian firm, which was basis for protest, timeliness of subsequent protest to GAO is resolved in favor of Indian association.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--TRADE ASSOCIATIONS, ETC.

Indian association whose members include potential bidders is interested party under GAO's Bid Protest Procedures to protest against award to non-Indian firm.

INDIAN AFFAIRS--CONTRACTS--BUREAU OF INDIAN AFFAIRS--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT--AWARD PREFERENCE PROVISIONS--APPLICABILITY OF SBA 8(a) AWARDS AND SUBCONTRACTS THEREUNDER

Requirement in section 7(b) of Indian Self-Determination and Education Assistance Act that prime contract for benefit of Indians require prime contractor to afford preference to Indian-owned firms in award of subcontracts to greatest extent feasible, does not apply to SBA as "prime contractor" awarding subcontracts under Small Business Act's section 8(a) program. SBA is only conduit in section 8(a) award process between Federal agency whose needs are in issue and firm that will meet those needs, and section 7(b) clearly contemplates that entity actually performing contract give preference to Indian firms in awarding subcontracts.

B-209720 July 26, 1983 83-2 CPD 127

BIDS--EVALUATION--DISCOUNT PROVISIONS--MANUALLY CROSSED OUT BY CONTRACTING OFFICER--PROVISIONS NOT FOR CONSIDERATION

Prompt-payment discounts should not have been considered in bid evaluation where provision in IFB permitting evaluation of discounts was manually crossed out by contracting officer. Crossing out reasonably indicated that agency did not intend to evaluate discounts.

*B-209720 July 26, 1983 83-2 CPD 127 - Con.
OFFICERS AND EMPLOYEES--CONTRACTING WITH GOVERNMENT--
PROPRIETY*

Where only evidence of record indicates bidder was owned or controlled by Govt. employee, award to that firm would be prohibited by DAR 1-302.6.

*B-210078 July 26, 1983 83-2 CPD 128
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--ONE KNOWN SOURCE*

Sole-source award is justified where record shows that time is of essence and only one known source could meet needs of agency within time required.

*B-210520, et al. July 26, 1983 83-2 CPD 129
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against use of broad categories in multiple-award Federal Supply Schedule solicitation is untimely when filed after closing date for receipt of proposals. 62 Comp. Gen. 271, distinguished.

Protest against reorganization of Special Item Numbers for Federal Supply Schedule solicitation filed after closing date for proposals is untimely.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF
COMPETITION*

Protest against use of broad categories in Fed. Supply Schedule solicitation is denied when protester does not show that Govt. had no reasonable expectation of receiving competition for all needed varieties of broadly described item.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
FEDERAL SUPPLY SCHEDULE*

Protest against small business set-aside for certain Fed. Supply Schedule items on ground that it creates

sole-source procurement is denied when contracting agency's decision to set aside is based on substantial number and dollar volume of previous small business contracts awarded on unrestricted basis and small business interest in instant procurement. 62 Comp. Gen. 271, distinguished

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--PROPRIETY

Claim that small business set-aside will injure large business' small business suppliers is without legal merit where propriety of set-aside has been established. 62 Comp. Gen. 271, distinguished.

Protest against small business set-aside is denied when review of proposals received under set-aside reveals that substantial number of qualified firms have offered variety of technically acceptable equipment at reasonable prices.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Small business size and size standards are determined by SBA, not GAO. 62 Comp. Gen. 271, distinguished.

B-212212 July 26, 1983 83-2 CPD 130

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

GAO does not review agency's affirmative determination of responsibility except where fraud, bad faith, or misapplication of definitive responsibility criteria is shown.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Protester's allegations, without evidence sufficient to affirmatively support its position (that low bidder bid on basis that it would not be subject to State and Federal environmental

standards and that low bidder would ignore standards during performance), are speculative and, therefore, protester has not met burden of proof.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Alleged future violations of State and Federal environmental standards are matters of contract administration which GAO will not review.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging defects and/or inconsistencies in solicitation specifications is untimely when first filed after bid opening.

*B-212271 July 26, 1983 83-2 CPD 131
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD*

GAO will not consider protest by potential supplier to unsuccessful offerors where protest generally challenges propriety of procuring activity's rejection of certain offerors as nonresponsible under one solicitation and rejection of offers as technically unacceptable under another solicitation, since protester, who is ineligible for award, is not interested party under GAO Bid Protest Procedures.

*B-212289 July 26, 1983 83-2 CPD 132
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO*

Contractor's complaint concerning allegedly improper administration of its contract is not matter for review under GAO's Bid Protest Procedures, but instead should be pursued under contract's disputes procedure.

*B-210949, B-210949.2 July 27, 1983 83-2 CPD 133
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING--BAD FAITH ALLEGED*

Finding of nonresponsibility will not be questioned where protester has not demonstrated bad faith by contracting officer in making determination or unreasonableness of finding.

*PURCHASES--SMALL--QUOTATIONS--REJECTION--FAILURE TO PROVIDE
TECHNICAL DATA*

Where protester does not contend that rejection of quotation on small purchase procurement was made in other than good faith, determination to reject quotation pursuant to RFQ provision for failure to provide technical data showing equality of item to be provided is upheld. Distinguished by B-211829, Sept. 20, 1983.

*B-211439 July 27, 1983 83-2 CPD 134
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--AWARD
MADE TO PROTESTER*

When protester, challenging cancellation of single solicitation and resolicitation and award of five separate contracts, has itself accepted four of awards, GAO will dismiss protest with regard to these as academic. Even if protest were sustained, since level of effort required has been reduced, it is unlikely that GAO would recommend reinstatement of original solicitation. Ultimate remedy therefore would be recommendation for award to protester, and where this already has occurred, no useful purpose would be served by GAO considering matter further.

*SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
FRAUD OR BAD FAITH ALLEGED--EVIDENCE SUFFICIENCY*

When agency has canceled solicitation for single contract and, under resolicitation, proposes to award five contracts, including one under Section 8(a) of Small Business Act, protester has not presented proof of bad faith merely by showing that agency originally considered awarding it

single contract or by stressing fact that there was internal disagreement among agency officials as to whether procurement should be broken out for multiple awards.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--REVIEW BY GAO

Because of broad discretion given procuring agencies to award contracts to SBA, under Section 8(a) of Small Business Act, GAO will not review decision to award such contract unless protester shows possible fraud or bad faith on part of Govt. officials.

*B-209940.6 July 28, 1983 83-2 CPD 135
CONTRACTS--PROTESTS--COURT ACTION--DISMISSAL--WITH PREJUDICE*

Voluntary dismissal with prejudice of complaint filed in U.S. District Court constitutes final adjudication on merits, barring further action by GAO on protest involving same issues.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest allegation that IFB specification is unduly restrictive is untimely and not for consideration on merits where alleged restrictiveness was apparent on face of IFB, but protest was not filed in GAO until after bid opening.

*B-211282 July 28, 1983 83-2 CPD 136
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTESTS--FAILURE TO DILIGENTLY PURSUE PROTEST*

Where firm delayed 3 months in furnishing support for its initial protest to contracting agency, protest filed with GAO more than 4 months after initial protest was filed, during which time agency supported continued performance of 12-month contract by another firm, is dismissed as untimely, since protester did not diligently pursue matter.

*B-211489 July 28, 1983 83-2 CPD 137
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

GAO will not consider protest complaining of specific benchmark coding defect where protest was filed more than 10 working days after protester was advised of initial adverse action on protest it filed with contracting agency.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Contention that contracting agency should have furnished benchmark materials written in particular character set is untimely. Protester knew from solicitation, including benchmark materials released before closing date for receipt of initial proposals, that another character set had been used, but did not file protest until after closing date.

*B-212100 July 28, 1983 83-2 CPD 138
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against IFB specification and contract requirements is dismissed since it was filed after bid opening.

*B-212297 July 28, 1983 83-2 CPD 139
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAO will not consider questions concerning small business size standards and status since SBA has exclusive authority over these matters.

*B-212328 July 28, 1983 83-2 CPD 140
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest based on failure to include wage rate determination in RFP is untimely under GAO's

Bid Protest Procedures where is was not filed
before closing date for receipt of initial proposals.

B-212411 July 28, 1983 83-2 CPD 141
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Questions concerning small business size status will
not be considered by GAO since conclusive authority
over such matters is vested by statute in SBA.

B-209097 July 29, 1983 83-2 CPD 150
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Determination of needs of Govt. and methods of
accommodating such needs are primarily responsibility
of contracting agencies, and GAO will not question
agency's assessment of its needs where protester fails
to show that its determination is clearly unreasonable.
When either of two National Fire Protection Assn. stand-
ards arguably applies to procurement, disagreement
between protester and agency, or among experts, is not
sufficient to show that agency's decision as to appro-
priate standard is clearly unreasonable.

Absent evidence of possible fraud or willful mis-
conduct on part of contracting officials, GAO will
not consider merits of protest that Govt.'s interest
as user was not protected because specifications
were insufficiently restrictive.

GAO will not consider merits of protest that deletion of
requirement for listing by approved testing laboratory
from specifications allows bidders to offer, and agency
to accept, fire alarm system that does not satisfy
Occupational Health and Safety Administration regs.
There is no legal requirement that agency use specifi-
cations adhering to Underwriters Laboratory (UL) or
similar standards.

*B-209097 July 29, 1983 83-2 CPD 150 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

When protest is filed initially with procuring agency, GAO will not consider subsequent protest unless it is received within 10 working days after protester has actual or constructive knowledge of initial adverse agency action. Bid opening without action requested by protester is adverse agency action, and protest to GAO filed more than 10 working days later is untimely.

*B-209859.2, B-209860.2 July 29, 1983 83-2 CPD 142
BIDDERS--QUALIFICATIONS--FINANCIAL RESPONSIBILITY--EVALUATION--
DISCUSSIONS WITH BIDDERS--JUSTICE DEPARTMENT PARTICIPATION*

Contracting officer may permit representative of Dept. of Justice to participate in discussions with bidder concerning its financial resources and capabilities, even though Justice's interest is adverse to bidder.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--ADMINISTRATIVE DETERMINATION*

Contracting officer's determination that bidder is not financially responsible may include consideration of bidder's voluntary filing for bankruptcy; outstanding claims of other agencies against bidder; and bidder's inability or unwillingness to fully disclose information relating to performance, particularly its corporate organization and contractual relationships. Further, in determining financial responsibility of affiliate of bankrupt bidder, contracting officer may consider possible liability for bankrupt bidder's debts.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
INAPPLICABILITY OF COC PROCEDURES*

Where SBA informally advises protesters, small business firms, that agency's adverse responsibility determinations were not for review under

SBA's COC procedures because protesters' product was of foreign origin, rule that small business firms must pursue questions of responsibility under COC procedures is not for application and protesters' challenge to nonresponsibility determination will be considered by GAO.

*B-212296 July 29, 1983 83-2 CPD 143
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Authority to determine small business size status rests solely with SBA; therefore, GAO does not review such matters.

*B-212393 July 29, 1983 83-2 CPD 144
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--INTERIM
APPEALS TO AGENCY-EFFECT ON 10 WORKING DAY GAO FILING PERIOD*

Protest filed with GAO more than 10 working days after firm learned that its protest to contracting agency was denied is untimely and not for consideration on merits.

*B-211171 Aug. 1, 1983 83-2 CPD 145
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON*

When protester does not show violation of established procedures, protest against agency's cost comparison in solicitation conducted under OMB A-76 is denied.

*B-211226 Aug. 1, 1983 83-2 CPD 146
CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--
MINIMUM WAGE, ETC. DETERMINATIONS--RATES UNDER PRIOR CONTRACTS*

Under Service Contract Act, 41 U.S.C. 351, et seq. (1976), successor employer is only required to pay same levels of compensations as predecessor contractor where predecessor contractor had collective bargaining agreement with its employees. Protester, which must bear burden of proof, has not indicated that it, as predecessor contractor, had collective bargaining agreement with employees involved and successor contractor states that its

proposal did not include protester's employees. Therefore, protester has not carried its burden of proof.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that request for proposals contained Service Contract Wage rates for wrong categories of services employees is dismissed. Alleged impropriety in solicitation was apparent before date set for receipt of initial proposals, but was not filed until after contract was awarded. Therefore, protest was untimely filed under section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1983)), which requires that such protests be filed before date set for submission of initial proposals.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965*

GAO will not review bid protest alleging that awardee is in violation of Service Contract Act since responsibility for enforcement of act belongs to contracting agency head and Sec. of Labor. Moreover, allegation that awardee may have proposed wage rate below minimum Service Contract Act wage rate for certain class of employees does not necessarily mean that awardee intends to violate Service Contract Act since awardee may have proposed below-cost offer for this particular class of employee, and below-cost offer is not impediment to award of contractt. Protest therefore is dismissed.

B-212024 Aug. 1, 1983 83-2 CPD 147

CONTRACTS--PROTESTS--ISSUES IN LITIGATION

GAO will not consider protest where material issues are before court of competent jurisdiction which has not expressed interest in receiving GAO's views.

*B-212211 Aug. 1, 1983 83-2 CPD 148
CONTRACTS--PROTESTS--INJUNCTIVE RELIEF--NOT AVAILABLE
THROUGH GAO*

GAO has no authority to order suspension of procurement proceedings or award pending SBA's Size Appeals Board's ruling on challenge to size standard used in solicitation. Where Size Appeals Board rules after bid opening, its determination does not affect current procurement but applies only prospectively.

*B-212392 Aug. 1, 1983 83-2 CPD 149
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION
BY GAO*

Whether awardee's product conforms to contract requirements is matter of contract administration, which is responsibility of procuring agency and not GAO.

*B-208836 Aug. 2, 1983 83-2 CPD 151
CONTRACTS--FEDERAL SUPPLY SCHEDULE--FAILURE TO USE--ITEMS, ETC.
AWARDED NOT WITHIN SCOPE OF SUPPLY SCHEDULE*

Award may not be made under non-mandatory Automatic Data and Telecommunications Service (ADTS) schedule contract when comparable equipment satisfying procuring agency's minimum requirements is listed under mandatory Fed. Supply Service (FSS) schedule contract. Consequently, contracting agency acted properly in canceling purchase order placed under optional use schedule contract in order to procure comparable equipment listed on mandatory FSS schedule contract.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--REVIEW OF PROCEDURES LEADING TO AWARD*

Although GAO normally will not consider protest of agency decision to cancel contract, GAO will consider protest of cancellation based on alleged impropriety in award process.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--BIDS--UNBALANCED--ACCEPTANCE--PROPRIETY

Where grantee state's Regs. for construction project provide that grantee may reject unbalanced bid if it is found to be detrimental to grantee, that Reg. is not violated when grantee, after examining situation, finds that acceptance of bid would not be detrimental.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--BIDS--UNBALANCED--RESPONSIVENESS

Where solicitation does not preclude submission of front-loaded bid, mathematically unbalanced bid is not nonresponsive to solicitation and bidder's post-bid opening submission of construction schedule indicating that bid was not front-loaded did not result in nonresponsive bid being made responsive.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--COMPETITIVE SYSTEM--COMPLIANCE

Where acceptance, after bid opening, of low bidder's agreement to perform according to construction schedule and to charge for possible additional work based on its actual costs did not represent material changes to solicitation and did not result in reduction of contract obligations for which all bidders competed, competition was conducted on equal basis.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--FINALITY OF ADMINISTRATIVE MATTERS--GRANT ADMINISTRATIVE MATTERS--MINORITY SUBCONTRACTING GOALS

Where low bidder certifies in its bid that it will comply with minority subcontracting requirements, its bid is responsive on point, and whether it actually carries out this legal obligation during performance is matter of contract and grant administration within purview of grantee and grantor.

*B-209491, B-209492 Aug. 2, 1983 83-2 CPD 153
CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--BASED ON NEGATIVE PRE-AWARD SURVEY
REPORT*

Although pre-award survey used by contracting officer pertained to different procurement for different equipment, nature and extent to which such survey is to be used is matter for contracting officer's judgment, and GAO finds nothing objectionable in its use here as one of grounds for nonresponsibility determination.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--FACTORS FOR
CONSIDERATION--DEFAULT TERMINATIONS--DESPITE PENDING APPEALS*

Fact that terminations for default had been appealed to ASBCA does not eliminate such determinations as evidence of proposed contractor's nonresponsibility.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--QUALIFICATION OF
OFFERORS--ADEQUACY OF FINANCES, PERSONNEL, FACILITIES, ETC.*

Firm's failure to demonstrate that it possessed adequate financial resources and adequate personnel and facilities is proper ground for nonresponsibility determination.

*B-209823 Aug. 2, 1983 83-2 CPD 154
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ERRORS--NOT PREJUDICIAL*

Minor errors in evaluation of protester's technical proposal in this case have no effect on relative ranking of proposals.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
PERSONNEL COMMITMENT--EVIDENCE SUFFICIENCY*

Where solicitation requires letter of commitment for proposed key personnel, but does not define that requirement, it is reasonable for contracting agency to accept proposed key person where person applied to offeror for employment, submitted resume, was interviewed and signed statement of availability for employment which offeror included in proposal as letter of commitment.

B-209823 Aug. 2, 1983 83-2 CPD 154 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--PROXIMITY OF FACILITIES--SATISFACTION OF
REQUIREMENT

Where solicitation states that proximity of offeror's facilities to using agency is important, but does not define proximity, agency may reasonably find that 28-mile distance satisfies requirement even though incumbent's facility was within 5 miles, so long as performance requirements of contract are not adversely affected.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
STORAGE SPACE--SATISFACTION OF REQUIREMENT

Solicitation requirement for 25,000 square feet of storage space for cartons may be satisfied by either single or multiple tier approaches so long as total storage space requirement is met without adversely affecting contract performance requirements.

B-209900 Aug. 2, 1983 83-2 CPD 155
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON

To prevail in protest that cost comparison used by agency in reaching its dec. to perform photocopying services in-house was faulty and misleading, protester must demonstrate not only failure to follow established procedures, but also that this failure materially affected outcome.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging that solicitation's requirement for exactly 28 photocopiers is unduly restrictive is untimely because protest alleging improprieties in RFP must be filed prior to closing date for receipt of initial proposals.

*B-209900 Aug. 2, 1983 83-2 CPD 155 - Con.
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

Protest that agency improperly determined alternative proposal to be technically unacceptable is academic where cost comparison data establishes that alternate proposal is of substantially greater cost than in-house performance estimate.

*B-209986 Aug. 2, 1983 83-2 CPD 156
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--ACCESS TO
RECORDS PROVISION--PROPRIETY*

GAO has no basis for objecting to solicitation provision that gives Govt. right to examine contractor's records, in absence of statute or Reg. prohibiting such provision, or of proof that it adversely affected competition.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--LOGISTICAL
INFORMATION--NOT REQUIRED*

Agency was not obligated to include in its solicitation for operation of COPARS in Panama certain logistical information regarding Govt. services available to its employees and information regarding impact of Canal Treaty and Panamanian labor and tax laws because logistical information was not essential to preparation of intelligent offer, and agency is not obliged to act as legal advisor to prospective offerors.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--MISLEADING
ALLEGED--NOT SUSTAINED*

GAO has no reason for objecting to solicitation provision that limits amount of parts that contractor may ship via Military Airlift Command to 1,000 lbs. per week. Provision would not likely mislead offerors concerning anticipated turnover of stock since solicitation also contained Govt.'s estimate of parts needed based on expenditures for previous year.

*B-209986 Aug. 2, 1983 83-2 CPD 156 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
AMBIGUOUS--ALLEGATION NOT SUSTAINED*

Solicitation provision indicating those holidays on which operation of Contractor Operated Parts Store (COPARS) would not be required was not ambiguous, and is therefore unobjectionable.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.

Protester that did not submit proposal under solicitation would not be eligible for award even if its protest against contract award procedures were sustained. Thus, protester is not interested party under GAO Bid Protest Procedures.

*B-210844 Aug. 2, 1983 83-2 CPD 157
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY V. COST--SOLICITATION PROVISIONS*

Whether technical point spread between two competing proposals indicates superiority of one proposal over another to justify award at higher cost depends on facts and circumstances of each case and is primarily a matter within the discretion of the procuring agency. Allegation that proposals should have been considered essentially equal technically thus making cost determinative award factor is without merit where agency reasonably found that proposal rated 6.25 points (out of 100) higher technically was superior to protester's lower-cost proposal, and RFP stated that technical quality was more important than cost.

*B-211000 Aug. 2, 1983 83-2 CPD 158
BIDS--INVITATION FOR BIDS--INTERPRETATION--ORAL EXPLANATION*

Bidder relies on oral advice regarding terms of solicitation at its own risk.

*B-211000 Aug. 2, 1983 83-2 CPD 158 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--SAMPLES--
NONCOMPLIANCE WITH SPECIFICATIONS*

Contracting agency's decision to cancel solicitation when all bidders' bid samples fail to meet requirements of purchase description is upheld because protester's low bid was properly rejected as nonresponsive.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Under Bid Protest Procedures, allegations concerning apparent solicitation improprieties--stringency of contracting agency bid sample test and time allowed for preparation of bids--are untimely and will not be considered because filed after bid opening.

*B-211324 Aug. 2, 1983 83-2 CPD 159
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
LOW BID IN EXCESS OF GOVERNMENT ESTIMATE*

GAO has no basis for objecting to cancellation of invitation for bids where only bid received was some 67 percent higher than Govt.'s estimate.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of alleged solicitation improprieties apparent prior to bid opening must be filed prior to that time.

*B-211479 Aug. 2, 1983 83-2 CPD 160
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED*

Resolicitation is not required by sec. 223(a) of Pub. L. 95-507 due to failure of small business to receive copy of bid set prior to bid opening where supply of bid sets was exhausted, agency's mailing of bid set just prior to opening was not due to any deliberate attempt to exclude protester, and there was adequate competition.

B-211479 Aug. 2, 1983 83-2 CPD 160 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where protester files protest against failure to receive bid package with contracting agency prior to bid opening, subsequent GAO protest within 10 days of bid opening is timely filed.

B-212287 Aug. 2, 1983 83-2 CPD 161
CONTRACTS--AWARDS--LOW BIDDER--RESPONSIVE AND RESPONSIBLE

Contract in advertised procurement must be awarded to low responsive, responsible bidder. Therefore, fact that COC was issued to second low bidder does not affect award of contract where low bidder also is responsible.

B-212342 Aug. 2, 1983 83-2 CPD 162
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review agency's affirmative determination of responsibility absent either showing of possible fraud on part of contracting officials, or misapplication of definitive responsibility criteria.

B-212357 Aug. 2, 1983 83-2 CPD 163
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest against award of contract because certain officers of firm were also officers of corporation which was previously convicted of fraud is dismissed since it relates to procuring official's affirmative determination of responsibility which GAO does not review, where, as here, protester fails to show fraud or that solicitation contains definitive responsibility criteria which were not applied.

B-212380 Aug. 2, 1983 83-2 CPD 164
CONTRACTS--LABOR STIPULATIONS--MINIMUM WAGE DETERMINATIONS--
EXCEEDED

Wage determination in an RFP specifies only minimum wages and benefits to be paid. GAO will deny protest against bids providing wages which are higher than determined rates.

*B-212467 Aug. 2, 1983 83-2 CPD 165
CONTRACTS--GRANT-FUNDED PROCUREMENTS--GENERAL ACCOUNTING
OFFICE REVIEW*

Complaint concerning Fed. agency's rejection of grant application is dismissed since, with certain limited exceptions not present here, GAO does not review complaints concerning awards of grants.

*B-211996 Aug. 3, 1983 83-2 CPD 166.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

GAO does not review determinations by SBA to issue COC, absent showing of fraud or bad faith.

*B-212304.2 Aug. 3, 1983 83-2 CPD 167
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS*

Bid properly is rejected as nonresponsive where offered product does not conform to solicitation's specifications.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest based on apparent improprieties in solicitation is dismissed as untimely where filed after bid opening.

*B-209563.2 Aug. 4, 1983 83-2 CPD 168
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest of cancellation of solicitation, filed with GAO more than 10 working days after basis for protest was known, is untimely under Bid Protest Procedures. Even though protest was sent by certified mail it will not be considered as it was not sent later than fifth working day prior to final date for filing protest.

B-210656 Aug. 4, 1983 83-2 CPD 169

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest issue not timely raised in protest to agency will not be considered in subsequent protest to GAO.

CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS--AWARDS "FOR" GOVERNMENT

GAO will review awards of subcontracts made by prime contractors operating Govt.-owned facilities because such subcontract awards are "for" Govt.

CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--NO PREFERENCE GIVEN TO WOMEN OWNED BUSINESSES

Prime contractor acted properly in not granting preference to women-owned business in award of subcontract since solicitation did not provide for such preference.

B-210833 Aug. 4, 1983 83-2 CPD 170

CONTRACTS--CONSTRUCTION--BEYOND THE FOUR CORNERS--MEMORANDUM OF CONVERSATION

Written memorandum of conversation between R.I. State Operation and Maintenance Supervisor and contractor concerning amount of equipment to be used in connection with snow removal contract is not part of contract but memorandum does serve purpose of guide as to what State expected in way of snow removal equipment.

CONTRACTS--PERFORMANCE--ADEQUACY

Where Base Civil Engineer, who was supervising snow removal contract between State of Rhode Island and contractor, was of view that contractor did not furnish sufficient amount of snow removal equipment to perform contract, GAO concludes that this was reasonable view. However, since contract was terminated for convenience, GAO would not object to State paying contractor reasonable value for work performed.

B-212379 Aug. 4, 1983 83-2 CPD 171
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION

Determination whether to set aside procurement under section 8(a) of Small Business Act, and propriety of 8(a) award itself, are matters for contracting agency and SBA, which GAO will not review absent showing of fraud or bad faith on part of Govt. officials.

B-212494 Aug. 4, 1983 83-2 CPD 172
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--ADVERSE AGENCY ACTION EFFECT

Where protest initially is filed with contracting agency, subsequent protest to GAO must be filed within 10 working days from notification of contracting agency's initial adverse action on protest at that level.

B-212381 Aug. 5, 1983 83-2 CPD 173
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider small business size status protests since by law conclusive authority over matter is vested in SBA.

B-199392.3, B-199392.4 Aug. 8, 1983 83-2 CPD 174
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Where proposal is considered to be acceptable and within competitive range, purchasing agency is under no obligation to discuss every aspect of proposal receiving less than maximum score.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE INCLUSION--REASONABLENESS

Contracting officer's determination to place offeror's proposal within competitive range is not shown to be unreasonable simply because offeror's 42 percent price reduction in its best and final offer did not result in contract award.

*B-199392.3, B-199392.4 Aug. 8, 1983 83-2 CPD 174 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

Numerical scoring of technical proposal that excludes consideration of offered increased levels of reliability for optional equipment quantities under warranty option is not shown to be unreasonable since nature of warranty option generally limited its precise measurement in technical evaluation.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY SUPERIOR PROPOSALS--PRICE COMPARABILITY*

In determining reasonableness of award under negotiated procurement where technical factors are more important than price, question is not whether selected proposal represents technological breakthrough justifying payment of higher price but whether source selected proposal outweighs its higher costs.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PRICES--
CUMULATIVE PRICING OF OPTION YEAR QUANTITIES--ACCEPTABILITY
OF PRICING SCHEME*

Offeror's cumulative pricing of option-year quantities is not shown either to violate solicitation or to be prejudicial where total cost to Govt. is easily ascertainable under that method.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--"OFF-THE-SHELF" END PRODUCT REQUIREMENT

Agency's technical evaluation attributing weaknesses to proposal is not shown to be unreasonable where solicitation seeks "off-the-shelf" or slightly modifiable equipment and proposal offers equipment in development.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protester fails to prove that proposal evaluation process was biased toward one offeror where protester's allegations are unfounded and record reasonably supports agency's technical judgment.

*B-199392.3, B-199392.4 Aug. 8, 1983 83-2 CPD 174 - Con.
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Protester that submits evidence with its protest to show that its proposal exceeded agency's minimum requirements does not thereby prove that agency's technical evaluation was unreasonable where protester merely offered to comply with minimum requirements.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Where protester and agency disagree concerning whether issue was raised during debriefing, and agency submits evidence to support its position, AO will accept agency's position that issue was discussed. Thus, protest that is filed more than 10 days after debriefing is untimely.

*B-207096.2 Aug. 8, 1983 83-2 CPD 175
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS*

In negotiated procurement, nonconforming initial proposal need not be rejected if it is reasonably susceptible to being made acceptable through negotiations. Such normal revisions as ensue thus are not considered late proposals or late modifications to proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--FAILURE TO PERFORM*

Agency need not analyze realism of offeror's expected costs in connection with firm fixed-price contract where prime concern is cost quantum.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Protest that agency failed to consider factors other than price in evaluating proposals for fixed-price contract is denied, where record shows that agency did evaluate offerors for acceptability under each RFP evaluation factor and, in conformance with RFP

selection criterion, awarded contract to technically acceptable offeror proposing lowest firm fixed-price contract.

*B-210443 Aug. 8, 1983 83-2 CPD 176
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Proposal is properly excluded from competitive range for technical deficiencies where those deficiencies are so material as to preclude upgrading proposal to acceptable level except through major revision.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester's mere disagreement with agency's technical evaluation of its proposal does not meet protester's burden of showing that evaluation is unreasonable.

*B-210927 Aug. 8, 1983 83-2 CPD 177
CONTRACTS--PROTESTS--INJUNCTIVE RELIEF--NOT AVAILABLE
THROUGH GAO*

Fed. court, not GAO, is proper forum for seeking injunctive relief to prevent award until protest is resolved.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Protester who did not enter competition is not interested party under GAO's Bid Protest Procedures to challenge determinations of technical acceptability, as protester was not improperly denied opportunity to compete and therefore does not have necessary direct economic stake in selection decision.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--MISTAKE-
IN-BID QUESTIONS*

GAO will not consider one firm's complaint that another's bid may be mistaken as only contracting parties are in position to assert rights and bring forth all necessary

evidence to resolve mistake-in-bid questions. Moreover, submission of bid considered by another firm as too low does not constitute legal basis for precluding awards.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF COMPETITION

Small business set-aside is appropriate when contracting officer reasonably expects that sufficient number of small businesses will respond to solicitation.

CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION

While agencies should formulate their needs so as to maximize competition, burdensome requirements which may limit competition are not unreasonable so long as they reflect Govt.'s legitimate minimum needs.

B-211119.2 Aug. 8, 1983 83-2 CPD 178

CONTRACTS--PROTESTS--ISSUES IN LITIGATION

Protest filed in GAO is dismissed where material issues protested are before court of competent jurisdiction and court has not indicated interest in GAO decision.

B-211395 Aug. 8, 1983 83-2 CPD 179

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Determination of agency's minimum needs is primarily responsibility of agency since procuring officials are most familiar with conditions under which supplies and services being procured will be used. Where procuring agency has established prima facie support for necessity for specifications which are alleged to be unduly restrictive, protester's disagreement with agency's technical conclusions does not establish that specifications are unreasonable.

*B-211405 Aug. 8, 1983 83-2 CPD 180
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--ADEQUACY*

Determination to reject second low bidder's bid as nonresponsive due to descriptive literature which did not demonstrate bidder's compliance with specification was proper as descriptive literature was necessary for bid evaluation and to assure conformance with specification.

Where agency determines that bidder's descriptive literature demonstrates conformance to technical requirements of IFB, GAO will not disturb such determination in absence of showing that agency's action was either erroneous or arbitrary.

*B-211872 Aug. 8, 1983 83-2 CPD 181
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXCEPTION OF
COMPETITION*

Protest against total small business set-aside is denied when contracting officer has reasonable expectation that proposals will be received from sufficient number of responsible concerns so that award will be made at reasonable price.

*B-211879.2 Aug. 8, 1983 83-2 CPD 182
BIDS--EVALUATION--AGGREGATE V. SEPARABLE ITEMS, PRICES, ETC.--
ITEM PRICE MISTAKE*

Apparent mistake in bid on alternate deductive items does not provide sufficient basis to reject bid for basic item, which offers to perform entire project called for under solicitation providing for award of basic item if funds are available and it is determined that funds are available.

CONTRACTS--PROTESTS--SUMMARY DISMISSAL

Where it is clear from protester's initial submission that protest involves matters which GAO does not consider, GAO will dismiss protest without requesting agency report or holding conference which would serve no useful purpose.

B-212277 Aug. 8, 1983 83-2 CPD 183
TIMBER SALES--BIDS--LATE

Although Forest Service policy permitting consideration of late bids for timber sales recently has changed, when Instructions to Bidders state that Federal Procurement Regulations clause will apply, late bid sent by certified mail 3 days before opening was properly rejected, since delay was due to Postal Service, rather than to mishandling at Govt. installation.

B-212395 Aug. 8, 1983 83-2 CPD 184
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against rejection of offer under solicitation filed with GAO more than 10 working days after protester learns of rejection of offer and basis for rejection is dismissed as untimely.

B-212470 Aug. 8, 1983 83-2 CPD 185
CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW

GAO will not consider a protest concerning solicitation's small business size standard since SBA has exclusive authority over matter.

B-212474 Aug. 8, 1983 83-2 CPD 186
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Question of whether contracting officer's selection of contract start-up date failed to give awardee sufficient preparation time concerns matter of contract administration, which is contracting agency's responsibility, not GAO's.

B-212474 Aug. 8, 1983 83-2 CPD 186 - Con.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against solicitation's failure to specify date performance is to begin is untimely where filed after bid opening.

B-212513 Aug. 8, 1983 83-2 CPD 187

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest concerning small business size status of bidder is not for consideration by GAO since exclusive jurisdiction with respect to such matters is statutorily vested in SBA.

B-212514 Aug. 8, 1983 83-2 CPD 188

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REPETITIVE MILITARY
PROCUREMENTS*

Pursuant to DAR, once service has been successfully acquired through small business set-aside, all future requirements for that service must be set aside unless contracting officer, in his business judgment, determines that there is not reasonable expectation that offers from two responsible small businesses will be received and that award will be made at reasonable price.

B-210775 Aug. 9, 1983 83-2 CPD 189

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

Contracting agency properly canceled advertised solicitation after opening based on cogent and compelling reason where contracting agency did not mail material amendment to all prospective bidders until day before extended bid opening, resulting in inadequate competition.

*B-211528.2 Aug. 9, 1983 83-2 CPD 191
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative determinations of responsibility except in limited circumstances which have not been alleged by protester.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether contractor is performing in accordance with contract terms is matter of contract administration for resolution by contracting agency, not GAO.

*B-211557 Aug. 9, 1983 83-2 CPD 192
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PRICES*

Govt. properly rejected bid as nonresponsive where bidder left blank spaces designated for pricing material technical data requirements, bid did not indicate existence, nature, and amount of alleged transposing error and other bidders' data prices show that price impact of data would affect relative standing of bidders.

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

Fact that agency permitted protester to clarify nonresponsive bid submitted on prior solicitation (because protester was sole bidder) does not preclude agency from rejecting similarly nonresponsive bid on subsequent solicitation.

*B-212340.2 Aug. 9, 1983 83-2 CPD 193
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO OPENING/CLOSING DATE FOR PROPOSALS*

Protester whose initial protest was dismissed as untimely because it alleged impropriety in invitation for bids (IFB) but was not filed until after bid opening may not obtain consideration of same issue by alleging that time-

liness should be calculated from date protester learned its bid was nonresponsive for failure to comply with disputed IFB provision because that would circumvent purpose of GAO's timeliness requirements, which is to give protester and interested parties fair opportunity to present their cases with minimal disruption to orderly and expeditious process of Govt. procurements.

*B-205093.3 Aug. 10, 1983 83-2 CPD 194
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT INTEREST CRITERION*

Protester will not be considered interested party to protest agency's failure to promptly forward to SBA protester's size protest since protester did not submit bid and, therefore, was not eligible for award. Allegation that awardee is not complying with small business certifications made in its bid by subcontracting to large business is matter of contract administration which will not be reviewed by our Office.

*B-209370 Aug. 10, 1983 83-2 CPD 195
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--REASONABLE*

GAO will not question agency's technical evaluation because protester has not shown that agency's judgment lacked reasonable basis.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Bias of technical evaluation committee member in favor of awardee is not shown where identical allegation was denied in prior decision where no bias was found even though alleged favored firm received much higher scores vis-a-vis protester, as opposed to narrow range of scores here.

*B-211413 Aug. 10, 1983 83-2 CPD 196
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED*

Protest challenging prospective contractor's ability to supply items in accordance with contract is matter of responsibility, and GAO will not review agency's affir-

mative determination of responsibility unless there is evidence of fraud or misapplication of definitive responsibility criteria.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Whether firm actually fulfills its contract obligation is matter of contract administration, which is responsibility of procuring agency, not GAO.

B-212015 Aug. 10, 1983 83-2 CPD 197

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest received in GAO more than 10 days after protester is notified by agency of unacceptability of its proposal and specific reasons therefor is untimely.

B-212206 Aug. 10, 1983 83-2 CPD 198

BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER TO MEET ALL SOLICITATION TERMS

Bid is unambiguous and responsive where there is only one reasonable interpretation of sentence in letter attached to bid if sentence is considered in context of bid and specifications, and bid unequivocally offers to provide supplies and services at stated price.

B-212378.4 Aug. 10, 1983 83-2 CPD 199

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest not received in our Office within 10 working days after protester knew or should have known of basis of its protest is untimely and will not be considered.

B-212436 Aug. 10, 1983 83-2 CPD 200

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest untimely filed with procuring agency (more than 10 days after basis of protest was known) and then filed with GAO after denial by contracting offi-

cer is not for consideration on merits under 4 C.F.R. 21.2(a), which requires that initial protest to agency be filed on timely basis.

B-211966 Aug. 11, 1983 83-2 CPD 201

*BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
SUBCONTRACTOR LISTING*

Where IFB contained requirement that bids contain list of potential subcontractors or be rejected as nonresponsive, failure to list potential subcontractors is material defect which is not for waiver. Therefore, rejection of bid which did not list potential subcontractors or indicate that bidder intended to perform all work itself was proper.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that IFB is defective because it should not have contained subcontractor listing requirement is dismissed as untimely where filed after bid opening. Sec. 21.2(b)(1) of GAO Bid Protest Procedures requires protest based upon alleged solicitation defects which were apparent before bid opening to be filed before bid opening.

B-208722, B-208722.2 Aug. 12, 1983 83-2 CPD 202

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS*

Meaningful discussions were held where contracting agency identified those areas in protester's proposal which it considered deficient and afforded protester opportunity to correct those deficiencies in revised proposal.

*B-208722, B-208722.2 Aug. 12, 1983 83-2 CPD 202 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

Protests against technical evaluation of proposals and contract award to offeror proposing higher cost than protester's is denied where contracting agency's determinations have not been shown to be unreasonable or inconsistent with evaluation criteria contained in solicitation.

Protester's disagreement with contracting agency over relative merits of its technical proposal does not render agency's evaluation unreasonable or otherwise provide GAO with basis to question evaluation.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNACCEPTABLE PROPOSALS--SMALL BUSINESS
ADMINISTRATION COC PROCEDURES INAPPLICABILITY*

Where proposal submitted by small business concern was reasonably determined to be technically unacceptable, contracting agency was not required to refer question of offeror's responsibility to SBA.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest that discussions were not meaningful is timely since it was raised within 10 days after protester learned reasons--relating to issues which allegedly were not mentioned at discussions--as to why its proposal was rejected.

*B-210681 Aug. 12, 1983 83-2 CPD 203
BIDS--LATE--MISHANDLING--MISDIRECTION OF BIDDER BY
REPRESENTATIVE OF CONTRACTING OFFICER, ETC.*

Where improper Govt. action (misdirection of bidder by authorized representative of contracting officer) is paramount cause for bid being time-stamped 1 minute after bid opening, and no other bids had been opened, late low bid was properly accepted.

B-212384 Aug. 12, 1983 83-2 CPD 204
ADVERTISING--COMMERCE BUSINESS DAILY--INFORMATION--DATE OF
BID OPENING, ETC.--CONSTRUCTIVE NOTICE FROM PUBLICATION

Publication of synopsis in CBD constitutes constructive notice to prospective offerors of solicitation and its contents.

BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

When procuring agency has not intentionally precluded protester from competing, and there is adequate competition among offerors, GAO will not disturb otherwise valid procurement even though protester did not receive copy of solicitation.

B-204787.2 Aug. 15, 1983 83-2 CPD 205
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest questioning affirmative determination of responsibility is denied as protester has failed to make showing of fraud on part of procuring officials.

B-208662 Aug. 15, 1983 83-2 CPD 206
CONTRACTS--NEGOTIATION--AWARDS--PROPRIETY

Award to firm which failed to certify in its proposal that three prior installations of similar equipment met specified criteria was improper because solicitation made such certification mandatory.

B-209091.2 Aug. 15, 1983 83-2 CPD 207
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
MATERIALITY DETERMINATION

Amendment specifying information omitted from solicitation is not shown to be material where agency submits evidence, which protester does not challenge, that information was easily determinable without amendment.

Amendment to solicitation that explicitly states technical feature of equipment sought is not material where specifications without amendment already required bidders to supply equipment with that feature.

B-210285.2 Aug. 15, 1983 83-2 CPD 208
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

GAO decision is affirmed where reconsideration request merely reflects protester's disagreement with decision and does not provide evidence that decision was based on any errors of law or fact.

B-210317.2 Aug. 15, 1983 83-2 CPD 209
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Prior decision holding that cancellation of IFB after bid opening was proper is affirmed since it has not been established that decision was based on errors of fact or law.

B-211706 Aug. 15, 1983 83-2 CPD 210
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--MATTER OF CONTRACT ADMINISTRATION

GAO will not review protest that agency improperly terminated contract for convenience of Govt. and improperly paid contractor under termination agreement for supplies it purchased as these are matters which concern contract administration.

B-212039 Aug. 15, 1983 83-2 CPD 211
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE

Where agency does not receive acknowledgment of material amendment to solicitation, fact that bidder sent acknowledgment is not relevant as bidder has responsibility to assure that acknowledgment arrives on time at agency. Failure of agency to receive acknowledgment requires rejection of bid as nonresponsive.

B-212065 Aug. 15, 1983 83-2 CPD 212
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against cancellation of solicitation which is not received by GAO within 10 working days of when protester received notification that solicitation had been canceled is untimely and will not be considered on merits.

B-212491 Aug. 15, 1983 83-2 CPD 213
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not review contracting officer's decision that small business firm is not responsible bidder since under law SBA has conclusive authority to certify whether small business is responsible.

B-212504 Aug. 15, 1983 83-2 CPD 214
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

Since SBA has conclusive authority to determine responsibility of small business, GAO will not review contracting agency's decision that small business is nonresponsible.

B-212567 Aug. 15, 1983 83-2 CPD 215
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Questions concerning small business size status will not be considered by GAO since conclusive authority over such matters is vested by statute in SBA.

B-212596 Aug. 15, 1983 83-2 CPD 216
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Determination whether to set aside procurement under section 8(a) of Small Business Act, and SBA's compliance with its own internal guidelines, are matters for SBA, which GAO will not review absent showing of possible fraud or bad faith on part of Govt. officials of violation of applicable regulations.'

*B-210754.2 Aug. 16, 1983 83-2 CPD 217
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--NEW INFORMATION--
EFFECT*

Procuring agency is under no legal obligation to request SBA to reconsider its declination to issue COC to small business firm after receipt of new information where contracting officer has reconsidered nonresponsibility determination in light of new information presented and determines that small business firm remains nonresponsible.

*B-210781, B-210781.2 Aug. 16, 1983 83-2 CPD 218
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
REGARDLESS OF WHEN INFORMATION JUSTIFYING CANCELLATION FIRST
SURFACES*

Failure of contracting officer to prepare formal written determination justifying cancellation is not basis for sustaining protest where circumstances necessary to support cancellation are present.

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
SCOPE OF WORK CHANGED*

Agency properly canceled solicitation after bid opening when it determined that scope of work required under solicitation for dredging services had substantially changed as result of removal of some of material under sole-source contract, and determined that previously unavailable agency-owned dredge had become available to perform remaining work.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Protest that agency acted unreasonably in determining that emergency dredging services were needed and that only hopper dredge could perform work within required timeframe is denied where protester has not shown that agency's conclusions are unreasonable but merely disagree with agency's belief that such dredging was needed and that firm using pipeline dredge could not perform within required timeframe.

B-210781, B-210781.2 Aug. 16, 1983 83-2 CPD 218 - Con.
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION AND
FINDINGS--FAILURE TO PREPARE

Agency's failure to prepare proper determination and findings justifying sole-source negotiations is not error affecting validity of sole-source award where surrounding circumstances indicate that award was justified.

B-211161 Aug. 16, 1983 83-2 CPD 219
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Since agency should have rejected protester's proposal because it was submitted after date specified in RFP, under GAO Bid Protest Procedures, protester is not "interested" party to protest award to another firm.

B-211547.3 Aug. 16, 1983 83-2 CPD 220
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Requests for reconsideration is denied where protester requesting reconsideration has not shown any error of law or presented any facts which GAO did not previously consider.

B-211547.3 Aug. 16, 1983 83-2 CPD 220
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION

Untimely protest does not raise significant issue to warrant its consideration on merits where issue is not of widespread interest to procurement community.

B-208871 Aug. 22, 1983 83-2 CPD 221
CONTRACTS--AWARDS--PROCEDURAL DEFECTS

Protest that contracting agency awarded contract after receiving notice of protest is denied because deficiency is procedural one that does not affect validity of award.

*CONTRACTS--NEGOTIATION--AWARDS--BASIS--PRICE AND OTHER FACTORS
CONSIDERED*

Where contracting officer reasonably determined that competing proposals were substantially equal in quality, award based primarily upon cost savings to Govt. was proper.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--ADEQUACY*

cost reasonableness of awardee's proposal and that awardee's proposed costs were unreasonably low in specific area is denied. Protester must bear burden of affirmatively proving its case, but protester has not carried burden here. Record reflects that contracting agency evaluated proposed costs and found them in line with national average for type of work to be performed. Furthermore, record reflects that awardee's and protester's proposed costs are similar in specific area in which protester alleges that awardee's costs were too low. Review reveals no basis to question cost reasonableness evaluation in other areas of proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ERRORS--NOT PREJUDICIAL*

Protest that contracting agency improperly evaluated proposals by substituting "cost reasonableness" for "price advantage" criterion specified in RFP, though factually accurate, provides no basis for upsetting award. Protester was not prejudiced because its proposed costs were significantly higher than awardee's proposed costs and, if "price advantage" had been evaluated, awardee would have received more evaluation points rather than protester.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
RE-EVALUATION--SCORING CHANGES*

Contracting officer's determination, that competing proposals were substantially equal in quality despite point spread of 10.5 out of 100 given by evaluation panel and evaluation panel's recommendation that award be made to

offeror of higher rated proposal, is not unreasonable. Point scores are only guides for decisionmaking and contracting officer was not bound by them. Contracting officer reasonably rescored proposals after reviewing evaluation panel members' narrative summaries and offerors' written responses to questions raised during negotiations and determined that point spread should have been significantly less.

B-210275 Aug. 22, 1983 83-2 CPD 222

BIDS--ESTIMATES OF GOVERNMENT--REASONABLENESS

Protest that solicitation misstates quantities of filters needed to maintain heating, air conditioning, and ventilation systems is denied. Agency properly may state its needs in terms of reasonably accurate estimate of quantity of work required, and protester has not shown that agency's estimate is unreasonable.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEFECTIVE--NOT PREJUDICIAL

Protest that solicitation contains incorrect filter size specifications and fails to identify types of filters required is denied. Even if protester is correct, it has not shown that it was prejudiced by such defects.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against alleged solicitation improprieties that were apparent prior to bid opening is dismissed as untimely because it was not filed before bid opening, as required by GAO Bid Protest Procedures.

B-212435 Aug. 22, 1983 83-2 CPD 223

CONTRACTS--PROTESTS--INJUNCTIVE RELIEF--NOT AVAILABLE THROUGH GAO

GAO has no authority to order suspension of procurement proceedings or to stay award of contract pending SBA's review of small business size standard used in solicitation.

*B-212520 Aug. 22, 1983 83-2 CPD 224
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest questioning apparent low bidder's ability to comply with solicitation's limitation on subcontracting is dismissed. Protest concerns bidder's responsibility, issue that GAO reviews only in limited circumstances not present here.

*B-212623 Aug. 22, 1983 83-2 CPD 225
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest filed after bid opening which alleges ambiguities which were apparent in solicitation is untimely.

*B-212705 Aug. 22, 1983 83-2 CPD 226
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest questioning contracting officer's affirmative determination of responsibility is dismissed because GAO does not review such determinations in absence of showing of possible fraud or that definitive responsibility criteria in solicitation were misapplied, circumstances not present here.

*B-208072.2 Aug. 23, 1983 83-2 CPD 227
BIDS--MISTAKES--EVIDENCE OF ERROR--"CLEAR AND CONVINCING
EVIDENCE" OF ERROR AND INTENDED BID PRICE*

Low bid may not be corrected upward where bidder has not presented clear and convincing evidence that its bid price omitted cost of item.

*B-208202 Aug. 23, 1983 83-2 CPD 228
BUY AMERICAN ACT--BUY AMERICAN CERTIFICATE--LEFT BLANK*

Acceptance of bid containing blank Buy American certificate and no indication that product offered is foreign obligates bidder to supply domestic source end product; bidder's ability to do so is question of responsibility

which GAO will not review absent either showing of fraud or bad faith on part of contracting agency or allegation that definitive responsibility criteria have not been met.

*BUY AMERICAN ACT--CONTRACTOR COMPLIANCE WITH CERTIFICATION--
CONTRACT ADMINISTRATION MATTER--RECOMMENDATION BY GAO--REPEAT
BUY AMERICAN ACT ANALYSIS*

Although compliance with Buy American certificate is matter of contract administration, GAO recommends that agency perform more precise Buy American Act analysis, and take appropriate action regarding contractor if it determines that foreign end item was delivered.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Showing of fraud or bad faith requires virtually irrefutable proof of specific and malicious intent to harm protester, standard not met in this case.

B-209516 Aug. 23, 1983 83-2 CPD 229

*CONTRACTS--NEGOTIATION--OFFERS OF PROPOSALS--EVALUATION--
COST REALISM--REASONABLENESS*

GAO will not disturb agency's evaluation of cost realism unless it is unreasonable, and where agency both obtained Defense Contract Audit Agency report on reasonableness of proposed costs, based in part on audits of offerors' accounts, and conducted its own review based on its prior cost experience, evaluation is not unreasonable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY V. COST*

Where agency finds 5.5 percent technical scoring differential to be insignificant, it is not compelled to find 3.75 percent, \$1.3 million cost differential insignificant under evaluation scheme that listed technical merit and cost as having approximately equal value. There is no relationship between technical point score differentials and proposed price/cost differentials.

*B-209516 Aug. 23, 1983 83-2 CPD 229 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY V. COST*

Where RFP does not list precise evaluation formula for technical merit and cost, agency properly could determine that 5.5 percent higher technical score based primarily on advantages of incumbency did not indicate significant difference that warranted paying evaluated \$1.3 million more than for less costly offer.

*B-209800 Aug. 23, 1983 83-2 CPD 230
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PRICES*

Complainant's bid is nonresponsive where it does not include price on item which agency considered for award in accordance with solicitation.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Complainant does not have direct and substantial interest that is necessary to make it interested party to object to award to another bidder where its bid is properly rejected as nonresponsive, no basis for resolicitation is found, and there is third apparently acceptable bidder entitled to award.

*B-209910.2 Aug. 23, 1983 83-2 CPD 231
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

GAO affirms prior decision where reconsideration request does not show that decision was erroneous.

*B-210032 Aug. 23, 1983 83-2 CPD 232
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--COMPLIANCE*

Protest is sustained where successful contractor did not submit evidence from which contracting agency could reasonably conclude that definitive responsibility criterion had been met.

B-210032 Aug. 23, 1983 83-2 CPD 232 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
DEFINITIVE RESPONSIBILITY CRITERIA

GAO will review affirmative determination of responsibility where protester alleges that definitive responsibility criterion requiring contractor to submit evidence of having specific experience in particular area was not applied.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has burden of affirmatively proving its case. Where conflicting statements by protester and contracting agency constitute only available evidence, that burden has not been met.

B-210368.2 Aug. 23, 1983 83-2 CPD 233
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
NOT DENIED TO PROTESTER

Protest that firm obtained competitive price advantage by offering unacceptable camera case as equivalent to brand name is denied because solicitation allowed brand name or equivalent and firm offered brand name and competitive price therefor in alternative.

CONTRACTS--NEGOTIATION--PREAWARD SURVEYS--FAILURE TO CONDUCT--
SCOPE OF GAO REVIEW

Contracting officer has discretion not to conduct preaward survey, and in absence of showing of fraud or failure to apply definitive responsibility requirement, GAO will not review decision not to conduct preaward survey, nor review contracting officer's affirmative determination of responsibility. Below cost proposal provides no basis for protest because procuring agency determined that firm is responsible.

*B-210368.2 Aug. 23, 1983 83-2 CPD 233 - Con.
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Unsupported allegation that firm's camera does not meet flashbulb synchronization requirement is denied.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that procuring agency improperly released price and technical data of protester's terminated contract to competitors is untimely when not filed prior to closing date for RFP on resolicitation following termination.

*B-211129 Aug. 23, 1983 83-2 CPD 234
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE*

There is no legal requirement that Govt. consider advantages obtained by incumbent contractor due to its status unless Govt. somehow has contributed to this advantage.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--EVALUATORS--ADHERENCE TO EVALUATION SCHEME

GAO generally will defer to selecting official's judgment, even when he disagrees with assessment of technical superiority made by working level evaluation committee or by individuals who may be expected to have technical expertise. Manner in which official uses results of technical and cost evaluations is limited only by tests of rationality and consistency with established evaluation factors.

When evaluation factors and subfactors listed in solicitation clearly cover relative strengths and weaknesses used to distinguish two closely-ranked proposals, GAO will deny protest alleging that Source Selection Official abused his discretion and did not apply evaluation factors rationally.

B-211129 Aug. 23, 1983 83-2 CPD 234 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--POINT RATING--
REQUIREMENT NOT MANDATORY

Unless solicitation sets forth precise, numerical evaluation formula and provides that award will be made to offeror whose proposal receives highest number of points, award need not be made on that basis. In any other case, scores are merely guides for intelligent decision making by selecting officials.

CONTRACTS--NEGOTIATION--SOURCE SELECTION--BOARD, COMMISSION,
ETC.--OVERRULED BY SOURCE SELECTION OFFICIAL

Source Selection Official's overruling of lower level evaluators does not, of itself, demonstrate that choice is arbitrary or result of bad faith or bias.

B-211170 Aug. 23, 1983 83-2 CPD 235
BIDDERS--DEBARMENT--DE FACTO

One-time disqualification of firm from award based on nonresponsibility, which under circumstances has reasonable basis, does not constitute de facto debarment and denial of due process.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING

Contracting agency has reasonable basis for rejecting offeror as nonresponsible where property offered by firm under solicitation for 10-year lease was subject to foreclosure for failure to pay county taxes for prior 3 years. Foreclosure action raised doubt as to firm's ability to retain property, and risk of loss of title was not sufficiently lessened by firm's agreement to pay taxes since one missed payment could result in foreclosure.

B-211170 Aug. 23, 1983 83-2 CPD 235 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--REOPENED DISCUSSIONS AFTER BEST AND
FINAL

Discussion with only one offeror intended to cure material deficiency in offer held after receipt of best and final offers is improper because discussions reopened with one offeror after receipt of best and final offers must be reopened with all offerors in competitive range and opportunity must be given to submit revised proposals.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Where best available evidence submitted by agency, time-date stamp on offers, shows initial and best and final offers were timely submitted, allegation that offers were submitted late is denied.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
NONRESPONSIBLE OFFEROR

Offeror found to be nonresponsible is not "interested" party under our Bid Protest Procedures to protest award to next low bidder where it does not appear that circumstances would lead to cancellation and resolicitation of procurement. However, GAO will review second low offeror's status due to court interest in our views.

B-211189.3 Aug. 23, 1983 83-2 CPD 236
BIDS--INVITATION FOR BIDS--CANCELLATION--REQUIREMENTS
INCORPORATED INTO ONGOING NEGOTIATED PROCUREMENT

GAO will not object to cancellation of advertised solicitation for construction of two buildings and incorporation of requirement for buildings into ongoing construction contract through negotiated modification of current contract where notwithstanding fact that contract as modified exceeds scope of original competition, and is tantamount to sole-source award, record shows that adequate justification existed to authorize sole-source award.

*B-211369 Aug. 23, 1983 83-2 CPD 237
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
GOVERNMENT MISHANDLING DETERMINATION--RULE*

Even where protester shows by acceptable evidence that proposal was received at Govt. installation (mailroom) prior to deadline for receipt, late delivery to specific room designated in solicitation has not been shown to be due solely to Govt. mishandling where, contrary to RFP instructions, envelope bore no indication of date and time scheduled for proposal receipt and where no showing of delay in normal mail distribution process has been made.

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--RULE--
EXCEPTIONS--APPLICABILITY*

Protester's late proposal is properly rejected notwithstanding mailing of proposal by certified mail since proposal was mailed less than 5 calendar days prior to date specified for receipt.

*B-211371 Aug. 23, 1983 83-2 CPD 238
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY V. RESPONSIBILITY DETERMINATION--
INAPPLICABILITY OF CERTIFICATE OF COMPETENCY PROCEDURES*

Protest alleging that agency failed to refer nonresponsibility determination to SBA is denied since agency did not determine protester nonresponsible but rather evaluated protester's technical proposal and found it less desirable than competitor's under solicitation's award criteria. Matters that normally are considered in responsibility determinations properly may be considered in evaluation of proposals when negotiation procedures are used and agency requires relative assessment of competing offerors' abilities in those respects.

*B-211516 Aug. 23, 1983 83-2 CPD 239
BIDS--MISTAKES--CORRECTION--TOTAL OF LINE ITEMS V. TOTAL
ENTERED ON BID*

Line item prices in low total bid in which actual total of all line items is less than entered total

may be corrected, based on bidder's worksheets that show line item prices that correspond with entered total, since bidder is low based on both actual total and clearly intended, entered total.

*B-211707 Aug. 23, 1983 83-2 CPD 240
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Where conflicting statements of protester and contracting agency are only evidence regarding alleged directions from agency personnel to protester to quote particular model, protester has not met its burden of affirmatively proving that such directions were given.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

GAO's Bid Protest Procedures provide that in case of negotiated procurements, alleged improprieties which do not exist in initial solicitation but which are subsequently incorporated therein must be protested not later than next closing date following incorporation.

*B-211746 Aug. 23, 1983 83-2 CPD 241
CONTRACTS--PROFITS--ANTICIPATED*

No legal basis exists for GAO to award protester damages for lost earnings.

*OFFICERS AND EMPLOYEES--CONTRACTING WITH GOVERNMENT--PUBLIC
POLICY OBJECTIONABILITY--FAMILY ACTIVITIES*

Agency properly rejected protester's bid based on apparent conflict of interest where protester's husband would be supervising performance under awarded contract.

*B-211789 Aug. 23, 1983 83-2 CPD 242
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Protest alleging that Govt. improperly used proprietary data is denied where protester has not shown that data was marked proprietary or disclosed in confidence.

B-211789 Aug. 23, 1983 83-2 CPD 242 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Subcontractor's allegation that prime contractor acted improperly concerns dispute between private parties and will not be considered by GAO.

B-211870 Aug. 23, 1983 83-2 CPD 243
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--EXTENSION PROPRIETY--
PROTEST DETERMINATION EFFECT

Offering of bid acceptance period shorter than 60-day period requested, but not required, in S.F. 33 does not render bid nonresponsive. Although bidder cannot be allowed to extend bid acceptance period, where other bidders offered longer requested acceptance period, bidder's active participation in protest filed within offered acceptance period tolls running of period until resolution of protest.

BIDS--CORRECTION--INITIALING REQUIREMENT

Where uninitialed erasure and correction leave no doubt as to intended, corrected bid price, then legally binding offer, acceptance of which would consummate valid contract, is created at offered price, and requirement for initialing changes will be considered matter of form which may be waived in interest of Govt.

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PAGE OF IFB NOT RETURNED

Bidder's failure to return page of invitation for bids does not render bid nonresponsive where omitted page is incorporated into bid by reference, thus resulting in submittal in such form that acceptance would create valid and binding contract requiring bidder to perform in accordance with all material terms and conditions of IFB.

*B-211870 Aug. 23, 1983 83-2 CPD 243 - Con.
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PRICES*

Bidder's failure to follow pricing format of IFB schedule does not render bid nonresponsive where, as result of explanatory note added by bidder to schedule, all elements of bidder's price easily can be ascertained from face of bid.

*B-212101.2 Aug. 23, 1983 83-2 CPD 244
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--TIME LIMITATION
FOR SUBMISSION--ORAL EXTENSION BY NEGOTIATOR WITHOUT AUTHORITY--
EFFECT*

Oral extension of closing date for receipt of proposals is not binding on Govt. since contract negotiator did not have authority to grant such extension and Govt. is not bound beyond actual authority conferred upon its agents.

*B-212619 Aug. 23, 1983 83-2 CPD 245
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--MAIL
DELAY EVIDENCE--EXPRESS MAIL*

Attempt to deliver proposal prior to opening via express mail does not provide basis for consideration of late proposal where there is no evidence that unsuccessful attempt resulted from Govt. action.

*B-209884 Aug. 24, 1983 83-2 CPD 246
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
SURPLUS PARTS*

Agency's concern about where, when, why and how items became Govt. surplus is not in itself sufficient to preclude procurement of parts from surplus dealers. Decision not to accept offers of surplus parts is not objectionable, however, where agency considers items critical, and there is no historical data on items from time they left manufacturer so that simple visual inspection of item would insure acceptable quality.

B-209425 Aug. 25, 1983 83-2 CPD 247

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--EVALUATION--REASONABLENESS*

Agency reasonably evaluated equipment available from protester where record shows that agency not only evaluated what protester offered, but also other equipment which could be obtained from protester.

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--REQUIREMENTS--EVALUATION PROPRIETY*

Protester has not met its burden of proving that its low-cost system is capable of meeting contracting agency's requirement where agency identified number of specific requirements which it concluded protester's system could not meet, and protester has made no showing that its system can satisfy them.

B-209684, B-210466 Aug. 25, 1983 83-2 CPD 248

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
NONRESPONSIVE BIDS*

Contracting agency had compelling reason for cancelling IFB after bid opening when all bids received were nonresponsive.

*BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION
THAT ITEM OFFERED FAILED TO MEET SPECIFICATIONS*

Bid is nonresponsive where Govt. is unable to determine from descriptive literature submitted with it for evaluation purposes that product offered meets all of invitation's specifications.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest contending that specification is unduly restrictive of competition is academic where solicitation was canceled because all bids were nonresponsive and protester's bid was determined to be nonresponsive on several bases in addition to its failure to meet one specification protested.

*CONTRACTS--NEGOTIATION--AWARDS--INITIAL PROPOSAL BASIS--
PROPRIETY*

Award may be made without discussions where there is adequate competition so as to ensure that acceptance of most advantageous proposal without discussions will result in fair and reasonable price, provided solicitation advises offerors of possibility that award may be made without discussions. Where solicitation contains required notice and provides for award primarily on basis of price and two acceptable offers are received, agency's decision to award contract on basis of initial proposals is not legally objectionable in absence of proof that decision reflects bias in favor of particular firm.

CONTRACTS--NEGOTIATION--COMPETITION--TEST DEMONSTRATION

Agency does not give firm unfair competitive advantage when, at firm's request, it conducts preprocurement tests on firm's equipment to determine whether that equipment meets its minimum needs and no other firm makes similar request.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where protester alleges that agency provided information and equipment to competitor to help competitor to help competitor develop product used by agency, thereby giving competitor unfair advantage, but agency states that it provided only what was appropriate under prior contracts and agency's version of what occurred is as plausible as protester's, protester has not sustained its burden of establishing that agency acted improperly.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of allegedly restrictive specifications and delivery schedule is untimely and not for consideration where filed after closing date for receipt of initial proposals.

*B-210592 Aug. 25, 1983 83-2 CPD 250
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
CONTRACT DISPUTES ACT OF 1978*

Protest of agency cancellation of contract on basis that award was improper, will not be considered where protester is not seeking GAO recommendation that contract be reinstated but is requesting recommendation that cancellation be converted to termination for convenience, since that is matter for resolution under Contract Disputes Act.

*B-212131 Aug. 25, 1983 83-2 CPD 251
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
NONAPPROPRIATED FUND ACTIVITIES*

The protest of a contract award which involves direct expenditure of nonappropriated funds is dismissed as GAO has no authority to take exception to contract award which does not involve expenditure of appropriated funds.

*B-212426 Aug. 25, 1983 83-2 CPD 252
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest challenging technical and financial capacity of low bidder and firm's ability to perform contract at bid price, involves matters of responsibility which are for judgment of contracting officials. GAO does not review affirmative determination of bidder's responsibility.

*B-212517 Aug. 25, 1983 83-2 CPD 253
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO*

Selection of contractor for award under sec. 8(a) of Small Business Act is within discretion of contracting agency and Small Business Admin. (SBA) and will not be questioned absent showing of fraud or bad faith on part of Govt. officials or allegations that SBA regs. have been violated.

B-212571 Aug. 25, 1983 83-2 CPD 254 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging defective specifications is dismissed as untimely when not received by contracting agency or GAO prior to time set for bid opening.

B-212608 Aug. 25, 1983 83-2 CPD 255
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

Submission of below-cost bid in not valid basis to challenge contract award. Further, allegations of possible infringement of antitrust laws are properly for referral to Dept. of Justice.

B-212622, et al. Aug. 25, 1983 83-2 CPD 256
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--
SOLICITATION IMPROPRIETIES

Protests filed with GAO more than 10 working days after firm learned that its protests to contracting agency were denied are untimely and not for consideration on merits.

B-210666 Aug. 26, 1983 83-2 CPD 257
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Inadvertent action on part of agency which precludes potential supplier (even incumbent contractor) from submitting bid is not compelling reason for resolicitation so long as adequate competition and reasonable prices were obtained and there was no deliberate or conscious attempt to preclude potential bidders from bidding.

B-211351 Aug. 26, 1983 83-2 CPD 258
CONTRACTORS--DEFAULTED--REPROCUREMENT--STANDING

Repurchase contract may not be awarded to defaulted contractor at price greater than terminated contract price.

B-211351 Aug. 26, 1983 83-2 CPD 258 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--MATTER OF CONTRACT ADMINISTRATION

Dispute concerning termination for default and
reprocurement is matter of contract administration
which is for resolution by contracting agency, not
GAO.

B-211934.3 Aug. 26, 1983 83-2 CPD 259
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where protester fails to demonstrate factual or
legal grounds to warrant reversal of previous decision,
GAO again dismisses protest as not for consideration.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO affirms on reconsideration its prior decision
dismissing protest despite protester's allegation
that its protest was wrongly decided as issue of re-
sponsibility rather than issue of responsiveness.

B-212378.5 Aug. 26, 1983 83-2 CPD 260
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not received in our Office within 10
working days after protester knew or should have known
of basis of its protest is untimely and will not be
considered.

B-212587 Aug. 26, 1983 83-2 CPD 261
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION

Protest that small business/labor surplus area set-
aside is unduly restrictive is dismissed where pro-
tester neither alleges nor attempts to show that agency
did not have reasonable expectation of adequate com-
petition to insure award at reasonable price.

*B-212677 Aug. 26, 1983 83-2 CPD 262
GENERAL ACCOUNTING OFFICE--JURISDICTION--CLAIMS--SETTLEMENT--
AUTHORITY*

Procurement conducted by Treasury Dept. pursuant to cooperative agreement between U.S. and Kingdom of Saudi Arabia does not involve funds subject to GAO account settlement authority and protest of such procurement therefore is dismissed.

*B-212706 Aug. 26, 1983 83-2 CPD 263
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Below-cost bid does not provide legal basis for challenging award where there is affirmative finding of responsibility.

*B-212779 Aug. 26, 1983 83-2 CPD 264
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest questioning responsibility determination is dismissed because GAO does not review affirmative determinations of responsibility in absence of showing of fraud or showing that definitive responsibility criteria in solicitation were misapplied, circumstances not present here.

*B-205278.2 Aug. 29, 1983 83-2 CPD 265
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED*

Prerequisite to entitlement for reimbursement of preparation costs is arbitrary or capricious Govt. action with respect to claimant's bid or proposal. Therefore, when solicitation cancellation is legally unobjectionable, protester is not entitled to proposal preparation costs.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
UNAVAILABILITY OF FUNDS*

Contracting agencies have broad discretion in determining when it is appropriate to cancel negotiated solicitation, and may do so by establish-

ing reasonable basis for cancellation. Cancellation for lack of funds clearly is proper.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protester has burden of proving its allegation. Allegations of bias based upon inference, speculation, and supposition with nothing more fail to meet burden of proof.

B-210710 Aug. 29, 1983 83-2 CPD 267

BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--UTILIZATION--ADMINISTRATIVE DETERMINATION

Procuring agency is not required to conduct pre-award survey when agency is in possession of information sufficient to make responsibility determination.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--NOTICE

Protest against agency failure to provide pre-award notice of nonresponsibility (which was based on protester's lack of facilities and fact that protester had only been in business for one month) is without merit since there is no requirement for such notice prior to making responsibility determination. Decisions regarding procedural due process and de facto debarment are distinguishable and inapplicable.

PURCHASES--SMALL--SMALL BUSINESS CONCERNS--CERTIFICATE OF COMPETENCY PROCEDURES UNDER SBA--APPLICABILITY

Contracting Officer has discretionary authority regarding referral of negative determination of responsibility to SBA of contract valued at less than \$10,000. Contracting officer did not abuse his discretion when he did not refer negative determination because procurement was urgent and valued at only \$130.80-\$144. Negative determination was not unreasonable. Record does not support protester's contention that determination was based on Walsh-Healey Act, which is inapplicable to this (less than \$10,000) procurement.

*B-210796 Aug. 29, 1983 83-2 CPD 268
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON*

Protest against agency's determination to retain function in-house based on A-76 cost comparison with bids received in response to IFB is denied where errors made by agency in computing its in-house cost estimate, if viewed in their worst light, do not impact evaluation result.

*B-210940 Aug. 29, 1983 83-2 CPD 269
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--
STANDARDIZATION, INTERCHANGEABILITY, ETC.*

Sole-source negotiated procurement was justified since agency determination to standardize equipment has not been shown to be without reasonable basis.

*B-211259 Aug. 29, 1983 83-2 CPD 270
BIDS--GUARANTEES--BID GUARANTEES--NONCOMPLIANCE--BID
NONRESPONSIVE--ACCEPTANCE*

Where both bids timely received were nonresponsive for failure to provide bid guarantee, procuring agency properly accepted low bid notwithstanding that it was technically nonresponsive where acceptance resulted in contract which would satisfy Govt.'s actual needs and would not result in prejudice to only other bidder.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--LATE BIDDER
PROTESTING RESPONSIVENESS OF TIMELY BIDDERS*

Protester which submitted late bid is interested party where it protests that both timely bids should have been determined nonresponsive for failure to submit bid guarantee as required by invitation for bids since determination of nonresponsiveness would have necessitated cancellation of solicitation and resolicitation, in which case protester would be able to compete.

*B-211788 Aug. 29, 1983 83-2 CPD 271
BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE*

Correction of bid mistake, which would result in displacement of another bidder, may be effected only where mistake and bid actually intended are ascertainable substantially from invitation and bid, without resort to bidder's worksheets.

BIDS--MISTAKES--CORRECTION--UNIT PRICE ERROR

Where bid contains discrepancy between unit and extended prices for item, bid may be corrected downward to reflect unit price that is consistent with extended price if unit price clearly is out of line with both Govt. estimate and prices offered by other bidders, and only extended price reasonably can be regarded as having been intended bid.

*B-211817 Aug. 29, 1983 83-2 CPD 272
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether awardee's product conforms to contract requirements is matter of contract administration, which is responsibility of procuring agency and not for GAO.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against failure to set aside procurement for small business concerns is untimely under GAO Bid Protest Procedures since protest was filed after closing date.

Protest against alleged improprieties in solicitation, not existing in initial solicitation, but subsequently incorporated therein, is untimely where not protester before next closing date for receipt of proposals. See 4 C.F.R. 21.2(b)(1) (1983).

*B-211817 Aug. 29, 1983 83-2 CPD 272 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--PROCUREMENT NOT RESTRICTED
TO SMALL BUSINESSES*

Protest that small business offeror allegedly will supply items manufactured by large business does not make offeror ineligible for award since procurement was not restricted to small businesses.

*B-212044 Aug. 29, 1983 83-2 CPD 273
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest initially filed with contracting agency must be filed with GAO within 10 working days from notification of contracting agency's initial adverse action on protest.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

GAO will not consider merits of case where protester is not in line for award even if its protest is sustained because protester is not interested party under GAO Bid Protest Procedures.

*B-212112.3 Aug. 29, 1983 83-2 CPD 274
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELLED*

GAO will dismiss protest against allegedly defective specification when solicitation in which they are contained has been canceled. If agency issues new solicitation that protester believes is unduly restrictive, firm may file new protest listing its specific objections to new solicitation.

*B-212317 Aug. 29, 1983 83-2 CPD 275
CONTRACTS--GRANT-FUNDED PROCUREMENTS--GENERAL ACCOUNTING
OFFICE REVIEW--EXHAUSTION OF ADMINISTRATIVE REMEDIES
REQUIREMENT*

Where grantor agency maintains established procedures for resolving complaints concerning grantee procurements, GAO will not consider complaint until matter first has been reviewed by grantor agency.

B-212331 Aug. 29, 1983 83-2 CPD 276

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest of allegedly unduly restrictive specifications
in solicitation is dismissed as untimely since it was
not filed before bid opening.

B-212739 Aug. 29, 1983 83-2 CPD 277

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging solicitation improprieties that
are apparent prior to bid opening must be filed
before bid opening.

B-208148.5 Aug. 30, 1983 83-2 CPD 278

BIDDERS--DEBARMENT--PROCEDURE--ADMINISTRATIVE DETERMINATION--
REASONABLENESS

Even though Dept. of Labor reversed contracting
officer's initial determination that protester was
affiliated with debarred bidder and, therefore,
ineligible for award, contracting officer's initial
determination was reasonable based upon evidence
before contracting officer at time initial determin-
ation was made. Contracting officer's consideration
of evidence of affiliation contained in Small Business
Admin.'s size status determination was proper.

CONTRACTS--AWARDS--ABEYANCE--PENDING ADMINISTRATIVE APPEAL
OF DEBARMENT

Award to next low bidder, pending consideration of
contracting officer's determination that low bidder was
affiliated with debarred bidder by Dept. of Labor (DOL)
and Small Business Admin. (SBA), was proper. Contract-
ing officer waited reasonable period of time--almost
4 months after initial appeal was filed with SBA--before
making award. Moreover, there is no requirement
that award be held in abeyance pending resolution of
administrative proceeding before DOL. Since DOL did

not rule that low, eligible bidder was not affiliated with debarred bidder until almost 3 months after award to next low bidder, and since contracting officer's initial determination was reasonable at time it was made, award to next low bidder was valid.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest that contracting officer improperly ruled protester to be ineligible for award because of its alleged affiliation with debarred bidder is timely where filed within 10 days after receipt of notification of award. Even though protester knew earlier that contracting officer considered it ineligible for award, issue had been referred to Dept. of Labor by contracting agency. Until receipt of notice of award, contracting agency's actions could reasonably have been interpreted by protester to mean that contracting agency would consider protester eligible if contracting officer's determination of affiliation was reversed by Dept. of Labor.

B-208777 Aug. 30, 1983 83-2 CPD 279

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--SUBCRITERIA-REASONABLY RELATED TO CRITERIA*

Agency use of evaluation subcriterion, "other (specify)," was not objectionable where what evaluators considered and specified on evaluation sheets was reasonably related to announced major criterion.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ERRORS--NOT PREJUDICIAL*

Protest is denied, despite deficiencies in procurement, where deficiencies did not operate to deny protester award to which it was otherwise entitled.

B-208777 Aug. 30, 1983 83-2 CPD 279 - Con.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--SITUATIONS
NOT REQUIRING DISCUSSION

Agency can award negotiated contract on basis of initial proposals without discussions where there is adequate competition to insure that award is at fair and reasonable price provided that solicitation advises offerors of possibility that award might be made without discussions.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
IMPROPER--NONDISCLOSURE OF CRITERIA WEIGHTS

Where evaluators assign weights to evaluation criteria differing from weights which offerors presumably assumed (i.e., equal weight), error of not informing offerors of relative importance attached to each evaluation factor is not cured by merely assigning equal weights to criteria and normalizing evaluators scoring against new weights.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION--IMPROPER EVALUATION METHOD

Where offerors are entitled to assume that price has weight equal to other evaluation factors, evaluation of price, using form of mathematical analysis in which prices closest to Govt. estimate receive maximum points and deviations from Govt. estimate are penalized by award of lesser point values, is improper.

B-211152 Aug. 30, 1983 83-2 CPD 280

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--PROPRIETY

Proposed sole-source award for spare parts for equipment previously procured on sole-source basis in unobjectionable because protester has not shown it could satisfy agency's needs.

*B-211554 Aug. 30, 1983 83-2 CPD 281
CONTRACTS--NEGOTIATION--COMPETITION--RESTRICTIONS--ORIGINAL
EQUIPMENT MANUFACTURER--SPARE PARTS MILITARY PROCUREMENT*

Agency decision after receipt of offers that procurement should be restricted to original equipment manufacturer's (OEM's) part is upheld since agency lacked OEM's drawing, only OEM's parts had been adequately tested, and qualification of alternate parts offered by protester cannot be determined until adequate testing criteria are developed.

*B-211799 Aug. 30, 1983 83-2 CPD 287 - 403
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION*

Cancellation of IFB after bid opening is not unreasonable where IFB failed to include mandatory Defense Acquisition Regulation clauses.

*B-212183 Aug. 30, 1983 83-2 CPD 282
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
PAYMENT TERMS*

Bid in which bidder inserted word "net" next to 20-day option in prompt payment discount section of solicitation was properly rejected as nonresponsive, since it could be reasonably read as taking exceptions to solicitation's 30-day payment terms.

*B-209979 Aug. 31, 1983 83-2 CPD 283
BIDDERS--DEBARMENT--REMOVAL FROM LIST--DENIED*

Subcontractor requesting to be removed from debarred bidders list, who submitted statement from one employee explaining reason for underpayment of wages, has not submitted evidence sufficient to overcome corroborated statements by other employees that they had been underpaid.

*B-212689.2 Aug. 31, 1983 83-2 CPD 284
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against procuring activity's failure to in-

clude wage determination in solicitation is dismissed as untimely since it was not filed before bid opening.

*B-209524 Sept. 1, 1983 83-2 CPD 285
CONTRACTS--NEGOTIATION--SOLE-SOURCE--JUSTIFICATION--
INADEQUATE--FOR MULTI-YEAR PROCUREMENT*

Award of multi-year sole-source contract for F-16 centerline fuel tanks was not justified where, because data package could be obtained, agency had no basis for concluding that competition for future requirements was foreclosed.

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--PROCEDURES--
COMMERCE BUSINESS DAILY NOTICE PROCEDURES--FAILURE TO FOLLOW--
NOT PREJUDICIAL*

Protest that defective Commerce Business Daily synopsis of proposed sole-source award for F-16 centerline fuel tanks and agency's failure to synopsize additional quantities included later misled protester into believing quantities were not sufficient to warrant its participation in procurement is denied. Protester suffered no prejudice because lack of design data would have prevented it from competing.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Where only basis of protest against F-16 wing tank procurement is that agency in separate procurement action improperly obtained F-16 centerline tanks noncompetitively, protest against wing tank procurement is without merit as there is no legal connection between procurements.

*B-212758 Sept. 1, 1983 83-2 CPD 286
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
NONAPPROPRIATED FUND ACTIVITIES*

Protest involving nonappropriated fund activity is dismissed as GAO has no authority to consider bid protest against such activity.

GAO will not object to award where solicitation requires offerors to demonstrate availability of facility adequate for contract performance and procuring agency evaluates offeror's proposed facility as adequate but, due to delay in procurement, offeror's option to lease facility expires before award and, after award, another suitable facility is substituted for one originally evaluated.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Where RFP, without specifying precise weights, advises that difference in weight between evaluation factors is not significant and four factors are assigned weights of 30, 25, 25 and 20 offerors are sufficiently informed of relative importance of evaluation criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--SUBCRITERIA-REASONABLY RELATED TO CRITERIA*

While agencies are required to identify major evaluation factors applicable to procurement, they need not explicitly identify various aspects of each which will be considered. All that is required is that those aspects not identified by logically and reasonably related to stated evaluation criteria.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that request for proposals contained evaluation criteria prejudicial to protester that is not filed until after receipt of proposals is untimely.

B-208582 Sept. 2, 1983 83-2 CPD 288 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Protest that competitor obtained business confidential and proprietary information from protester's employees; that competitor induced protester's employees to breach their employment contracts; and that competitor otherwise fostered conflicts of interest among protester's employees are allegations concerning improper business practices which are not for consideration under GAO Bid Protest Procedures.

B-209097.2 Sept. 2, 1983 83-2 CPD 289
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

When request for reconsideration contains no factual or legal grounds upon which prior decision should be reversed or modified, GAO will affirm decision in which it refused to consider protest that specifications were insufficiently restrictive to protect Govt.'s interest as user and allowed bidders to offer, and agency to accept, fire alarm system not conforming with Occupational Safety and Health Administration regulations.

B-209458, et al. Sept. 2, 1983 83-2 CPD 290
BIDS--AMBIGUOUS--AMBIGUITY NOT ESTABLISHED

Despite low foreign bidder's references to domestic ports of loading, for evaluation purposes specific reference to foreign port as shipping point is accepted as only reasonable interpretation of bid. Therefore, bid is unambiguous and responsive.

BIDS--EVALUATION--CRITERIA--BALANCE OF PAYMENT PROGRAM
EVALUATION FACTOR--WAIVER

GAO finds that there is no legal impediment to Department of Defense (DOD) now reconsidering its determination not to waive Balance of Payments Program evaluation factor for low bidder--Israeli firm--since waiver was denied due to advice of U.S. Trade Representa-

tive (USTR) perceived by DOD to preclude waiver, USTR advises that DOD perception of that advice did not preclude waiver, and procurement is preaward and corrective action is possible.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Designation of foreign manufacturing facilities concerns bidder responsibility. Since GAO does not review contracting officer's affirmative determination of responsibility, except in circumstances not present here, it will not consider this contention.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

Protest of award to firm "A" is dismissed where court is considering propriety of award to firm "B," and if court rules against firm "B" making firm "A" eligible for award, protester is not interested party because there are other possible awardees priced lower than protester.

B-209707.2 Sept. 2, 1983 83-2 CPD 291

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ELIGIBLE PARTY REQUIREMENT

Bidder who was adversely affected by prior decision, but who did not submit comments during initial protest, is proper party to submit request for reconsideration when that party was not notified that protest was filed with GAO.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Request for reconsideration which does not contain information not previously considered is denied.

*B-210029, B-210447 Sept. 2, 1983 83-2 CPD 293
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DEVIATIONS--
ACCEPTABILITY OF OFFER*

Rejection of mass immunization injector that is powered by compressed gas offered as alternative to specified foot-powered injector is proper since procurement is for units to be used in field and compressed gas, although generally available, may not be readily available in combat.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
RESTRICTIVE--GENERAL ACCOUNTING OFFICE RECOMMENDATION OF LESS
RESTRICTION*

Specification limiting purchase of hypodermic injectors to those electrically powered is unduly restrictive of competition since injectors are intended primarily for use in fixed facilities where other power sources, such as compressed gas, also can be utilized. Need for spare parts stocking and additional training do not themselves justify restriction.

*B-210082.2 Sept. 2, 1983 83-2 CPD 294
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
LACKING*

Prior decision, which concurred with contracting officer's decision to conduct resolicitation because of solicitation ambiguities, met required showing of prejudice. Ambiguities caused offerors to compete on unequal basis and it was unclear which offeror, absent ambiguities, would have been low.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ADDITIONAL EVIDENCE SUBMITTED*

Procuring agency's supplemental report, which was received three days after GAO decision was issued has been considered at this time. Supplemental report supports decision.

*B-210092 Sept. 2, 1983 83-2 CPD 295
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative determination of responsibility except under circumstances not present here.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--
ONE REASONABLE INTERPRETATION*

Solicitation requirement is not ambiguous where only one reasonable interpretation is possible.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--LIFE-CYCLE COSTING*

Where agency intends to conduct cost evaluation on basis of life-cycle costs, this intention must be specified in language of solicitation.

Solicitation language which indicates that agency will procure existing design rather than new design since this will result in lowest life-cycle costs does not provide basis for concluding that life-cycle costs of offered existing designs will be evaluated.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Where protest was filed after award, allegation that performance testing should have been required and conducted is untimely and will not be considered since it relates to apparent solicitation impropriety (failure to provide for or require such testing).

Allegation that life-cycle costs should have been evaluated where solicitation did not provide for such evaluation relates to alleged apparent solicitation impropriety which must be filed prior to closing date for receipt of initial proposals.

B-210259 Sept. 2, 1983 83-2 CPD 296

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--REASONABLE INTERPRETATION

Protester's allegation that RFP is ambiguous is without merit because RFP is not subject to two reasonable interpretations.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Where protester disagrees with procuring agency's technical evaluation of successful proposal vis-a-vis its proposal without producing sufficient evidence to establish evaluation was unreasonable, protester has failed to affirmatively prove its case.

Allegation of prejudicial motives or discrimination against protester is not supported where based on inference or supposition.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER--DOUBTFUL

Where doubt exists concerning date protester became aware of basis of protest, GAO resolves doubt in favor of protester.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--NOT APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against ambiguity in RFP, alleged as result of award, is timely filed when filed 10 working days after award under seemingly unambiguous RFP.

B-210276 Sept. 2, 1983 83-2 CPD 297

BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE

Reg. allowing correction of mistake in contractor's bid which is not discovered until after bid opening applies only where contractor inadvertently includes in its bid something other than what it intended.

*B-210276 Sept. 2, 1983 83-2 CPD 297 - Con.
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
PRICES*

Pricing information which was requested in solicitation for accounting purposes only and not as basis for award is not material and therefore failure to include such information does not render bid nonresponsive.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where only evidence as to whether contracting official advised protester to include certain elements in its bid is conflicting statements by protester and contracting officials, and even at best protester relies upon "implication" in conversation, protester has not met burden to prove its case.

*CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--SPECIFICATIONS--
DEVIATIONS--EFFECT*

Outcome of bidding was not affected by specification deviations taken by awardee since they did not give awardee price advantage exceeding difference between its bid and next low bid of protester.

*B-210877, B-210877.2 Sept. 2, 1983 83-2 CPD 280
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--QUALIFICATIONS OF
OFFERORS--"APPROVED SOURCE" REQUIREMENT*

Protest alleging that awardee was not properly qualified as approved source, where procurement is restricted to approved sources only, is denied since record shows that awardee submitted data in compliance with RFP which was fully evaluated by appropriate technical personnel. Under these circumstances, there is no basis to object to qualification of awardee as approved source.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest alleging unfair treatment because protester was given no opportunity to submit offer on newly qualified item which was not identical to item specified in RFP is

untimely since it was not raised until more than 10 working days after protester learned of basis of protest.

B-211403 Sept. 2, 1983 83-2 CPD 299

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

With regard to acquisition of critical human survival items, Govt. agencies may legitimately specify items with superior performance characteristics allowing for as much reliability, effectiveness and safety in performing function for which they are designed as possible.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION

Decision to sole-source procurements of high performance night vision goggles because of urgent need based on prior testing which determined that only one manufacturer had commercially available off-the-shelf product which could meet Govt.'s requirements is not objectionable.

B-211479.2 Sept. 2, 1983 83-2 CPD 300

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where request for reconsideration fails to demonstrate any erroneous fact or law, prior decision is affirmed.

B-211679 Sept. 2, 1983 83-2 CPD 301

BONDS--PERFORMANCE--SURETY--CORPORATE V. INDIVIDUAL UNDERWRITER

Protest that payment and performance bonds which designate individuals as sureties are not equivalent to bonds underwritten by corporate sureties is without merit as regs. expressly authorize use of bonds underwritten by individual sureties.

*B-211679 Sept. 2, 1983 83-2 CPD 301 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO*

Question of whether two individual sureties required on each bond have sufficient net worths to cover bidder's possible default is matter of responsibility to be decided by agency based on its business judgment.

*B-211874 Sept. 2, 1983 83-2 CPD 302
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION--REASONABLE EXPECTATION OF
COMPETITION*

Where responses to notice of intended small business set-aside and agency investigation indicate that adequate competition on set-aside will be obtained at reasonable prices, protest that agency improperly decided to set procurement aside is denied.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PROPRIETY*

Procurement for alcohol and drug abuse prevention services may be set aside for small business as statutes encouraging agencies to establish such programs do not exclude procurements for such services from Small Business Act requirements.

*B-212785 Sept. 2, 1983 83-2 CPD 303
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
BID SIGNATURE*

Rejection of bid from incumbent contractor as non-responsive is proper when bid is unsigned and not accompanied by other material indicating bidder's intention to be bound.

*B-202813.4 Sept. 6, 1983 83-2 CPD 304
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED*

Award of proposal preparation costs is only justified if claimant shows both that Govt.'s conduct towards claimant was arbitrary and capricious and that, if

Govt. had acted properly, protester would have had substantial chance of receiving award. Therefore, claim for proposal preparation costs based on allegations of wrongdoing by offeror rather than by Govt. is dismissed.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

Protest objecting to contract awarded more than 2 years ago is academic, because hardware deliveries are substantially complete and it is unlikely that invalidation of award would result in new award to protester under original solicitation.

B-212328.2 Sept. 6, 1983 83-2 CPD 305

CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

GAO will not consider protest where material issue presented is before court of competent jurisdiction and court has not indicated interest in GAO decision.

B-212635 Sept. 6, 1983 83-2 CPD 306

CONTRACTS--PROFITS--ANTICIPATED

Claim for damages based on matter protested untimely will not be considered.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--CONSTRUCTIVE NOTICE OF PROCEDURES

Lack of actual knowledge of Bid Protest Procedures does not excuse late filing of protest.

B-212708 Sept. 6, 1983 83-2 CPD 307

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

Protest against bidder's ability to comply with specifications concerns matter of responsibility which GAO generally does not review.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Contractor's compliance with specifications concerns administration of contract which is not for resolution under Bid Protest Procedures.

B-212777 Sept. 6, 1983 83-2 CPD 308
CONTRACTS--LABOR SURPLUS AREAS--TOTAL SET-ASIDES--PROPRIETY

Total labor surplus area set-aside is proper when contracting agency has reasonable expectation of competition from responsible firms.

B-211357 Sept. 7, 1983 83-2 CPD 309
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest of alleged readily discernible solicitation defect is untimely because it was not filed until 6 months after closing date for receipt of initial proposals.

B-211923 Sept. 7, 1983 83-2 CPD 339
CONTRACTS--PROTESTS--NONAPPROPRIATED FUND ACTIVITIES

GAO will not review award of permit to provide food and beverage service in park where permit does not involve direct expenditure of appropriated funds and only funds flowing to Govt. from permit is minimal, annual charge more in nature of reimbursement for administrative expenses than rent for use of Govt. property or payment of approximate commercial value of permit.

B-212874 Sept. 7, 1983 83-2 CPD 310
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

Protest challenging below-cost bidders does not provide basis for GAO taking legal objection to acceptance of bid and further, to extent protest questions responsibility determination, it is dismissed because GAO does not review affirmative determinations of responsibility in absence of showing of fraud or showing that definitive responsibility criteria in solicitation were misapplied, circumstances not present here.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10 working days after protester learns of agency's denial of protest first filed with agency is untimely.

*B-211120 Sept. 12, 1983 83-2 CPD 311
BIDS--PREPARATION--COSTS--NONCOMPENSABLE*

Since Govt. action did not preclude small business participation in sale, claim for bid preparation cost is denied.

SALES--SMALL BUSINESS CONCERNS--AWARDS--SEPARABLE V. AGGREGATE

Protest that sale invitation should not have permitted bids on aggregate item basis (all or none) in derogation of participation by small businesses is denied since record reflects active participation by small businesses and logical basis for grouping of items and permitting all or none bids.

*B-212098 Sept. 12, 1983 83-2 CPD 312
BIDS--EVALUATION--PROPRIETY--CRITERIA OF EVALUATION*

Since award must be based on criteria stated in solicitation, it would have been improper to award protester preference as minority-owned firm located in labor surplus area where these factors were not stated in solicitation.

BIDS--EVALUATION--PROPRIETY--UPHELD

There is no merit to contention that second low bidder also should have received award where agency determined that low bidder was capable of fulfilling all of its requirements.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review protests against affirmative determinations of responsibility except in circumstances not applicable here.

*B-212341 Sept. 12, 1983 83-2 CPD 313
BIDS--PRICES--LEVEL PRICING CLAUSE--BID RESPONSIVENESS*

Low bid which contains \$9 variation in unit price between first year price of \$42,009 for solicitation item and other year prices in multiyear pro-

curement may be accepted, despite violation of the solicitation's level pricing provision, where record shows that there would be no prejudice to other bidders, given \$2,258,395 difference between low bid and second low bid.

*B-212403.2 Sept. 12, 1983 83-2 CPD 314
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
REJECTION PROPRIETY*

Late proposal was properly rejected where none of exceptions in solicitation permitting consideration of late proposals are applicable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against rejection of late proposal on grounds that extension of time in amendment to RFP was unreasonably short and that provision in RFP limiting proof of mailing to certified or registered mail was unreasonable when size of proposal package made such mail service unavailable constitutes protest against alleged improprieties in solicitation which untimely since protest was not received in our Office or in contracting agency before closing date for receipt of proposals.

*B-212713 Sept. 12, 1983 83-2 CPD 315
BIDS--RESPONSIVENESS--PRICING RESPONSE NONRESPONSIVE TO IFB
REQUIREMENTS--FAILURE TO INSERT MAXIMUM PRICE FOR LINE ITEM*

Bidder's failure to insert maximum price for line item required by solicitation is material deviation that renders bid nonresponsive.

*B-212733 Sept. 12, 1983 83-2 CPD 316
BIDDERS--INVITATION RIGHT--FAILURE TO SOLICIT BIDS--INCUMBENT
CONTRACTOR*

Fact that incumbent contractor did not receive solicitation for current procurement does not constitute compelling reason to resolicit agency needs where no showing

has been made that adequate competition was not obtained, that prices obtained were unreasonable, or that failure was result of deliberate or conscious attempt to preclude incumbent contractor from competing.

*B-208065 Sept. 13, 1983 83-2 CPD 317
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

GAO will not investigate complainant's bare allegations to assist complainant in establishing truth of allegations.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--GRANTS-IN-AID--
PROTESTS AGAINST GRANT AWARDS--NO AUTHORITY TO CONSIDER*

Complaint regarding award of cooperative agreements will not be considered where complainant has not made some showing that contracts rather than cooperative agreements should have been used or that conflict of interest was involved.

*B-212037.3 Sept. 13, 1983 83-2 CPD 318
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest to GAO filed more than 10 days after protester's receipt of notification that its bid was rejected as non-responsive and notification of award is untimely and not for consideration. Even though protest was submitted to GAO by certified mail, we will not consider it as exception to our general rule since certified letter was not mailed not later than fifth day prior to final date for timely filing of protest with GAO.

*B-212080 Sept. 13, 1983 83-2 CPD 319
BIDS--PRICES--REASONABLENESS--ADMINISTRATIVE DETERMINATION*

Determination concerning price reasonableness is matter of administrative discretion which GAO will not question unless determination is unreasonable or there is showing of bad faith or fraud.

*B-212080 Sept. 13, 1983 83-2 CPD 319 - Con.
CONTRACTS--AWARDS--PROCEDURAL DEFECTS*

Procedural deficiency does not affect validity of properly awarded contract.

CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL

Protester was not prejudiced by fact that low offeror provided longer warranty period than protester.

CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--NEW EQUIPMENT

New equipment is not required where specifications do not call for it.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not review question of small business size status, because Small Business Administration has statutory authority to conclusively determine small business size status for Federal procurements.

*B-212696 Sept. 13, 1983 83-2 CPD 320
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility except in limited circumstances not applicable here.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Protest that potential awardee might not comply with contract requirements based on prior agency acceptance of nonconforming item involves contract administration and compliance and is not for resolution under GAO's Bid Protest Procedures.

*B-212796 Sept. 13, 1983 83-2 CPD 321
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO
ACKNOWLEDGE--BID NONRESPONSIVE*

Bidder's failure to acknowledge material amendment renders its bid nonresponsive. Deficiency may not be waived on basis that bidder did not receive amendment where there is no evidence of deliberate effort by agency to prevent bidder from competing on procurement.

*B-208449.2 Sept. 14, 1983 83-2 CPD 322
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

Fifth-low responsive bidder under canceled solicitation is not "interested party" under GAO Bid Protest Procedures to protest cancellation where, even if protest were sustained, firm would not be in line for award.

*B-210754.3 Sept. 14, 1983 83-2 CPD 323
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Where GAO is notified that protester seeks reconsideration but protester fails to furnish factual or legal basis for requesting reconsideration within 10 working days after receipt of GAO decision, request for reconsideration is dismissed as untimely.

*B-211555 Sept. 14, 1983 83-2 CPD 324
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--CONSTRUCTIVE NOTICE OF PROCEDURES*

Although protester alleges that it did not know of requirement concerning time for filing of protest, untimely protest may not be considered because bidders are on constructive notice of requirement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that specifications contained in solicitation are unduly restrictive is dismissed as untimely since it was not filed before bid opening date.

B-212853 Sept. 14, 1983 83-2 CPD 325
CONTRACTS--PROTESTS--ISSUES IN LITIGATION

GAO will not consider bid protest when issues presented are before U.S. District Court and court has not expressed interest in such decision.

B-209458.5 Sept. 15, 1983 83-2 CPD 326
BIDS--EVALUATION--FOREIGN COUNTRY END PRODUCTS

Awards to contractor offering product of foreign subcontractor are not affected by Dept. of Commerce temporary order allegedly denying export privileges to subcontractor because order applied only to U.S. origin commodities or technology.

B-210049 Sept. 15, 1983 83-2 CPD 327
BIDS--INVITATION FOR BIDS--DEFECTIVE--EVALUATION CRITERIA

IFB containing bid evaluation clause which did not provide for award on basis of total cost of work was defective. Award to low bidder on total work is upheld, however, since protester has not shown prejudice.

B-210172 Sept. 15, 1983 83-2 CPD 328
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

The Small Business Administration, not GAO, has statutory authority to conclusively determine whether concern is small business for purposes of particular procurement.

OFFICERS AND EMPLOYEES--CONFLICT OF INTEREST STATUTES--AWARD OF GOVERNMENT CONTRACTS--PROPRIETY

Agency did not abuse its discretion in determining that it may accept low bid for sports officiating services from organization it regards as substantially owned or controlled by Govt. employees where price of only other bidder is approximately 25 percent higher and record indicates that same individuals actually would perform this essentially part-time work regardless of which bidder was awarded contract.

B-210172 Sept. 15, 1983 83-2 CPD 328 - Con.
OFFICERS AND EMPLOYEES--CONFLICT OF INTEREST STATUTES--AWARD
OF GOVERNMENT CONTRACTS--PROPRIETY

Protest that performance of sports officiating services by active duty military and by civilian Govt. personnel would violate dual compensation laws is denied where protester has not borne its burden of proof.

B-212172 Sept. 15, 1983 83-2 CPD 329
BONDS--BID--REQUIREMENT--ADMINISTRATIVE DETERMINATION

Protest against requirement for bid bond in commissary shelf-stocking and custodial service solicitation is without merit since contracting agency has discretion to determine whether need exists for such requirement. Record shows that bid bond was considered necessary because contractor would be handling considerable amount of Govt. property and because agency considered shelf-stocking service essential to operation of military base.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD--INTERESTED PARTY NONETHELESS

GAO will consider protest by sixth low bidder against solicitation's bid bond requirement because requirement is material one and appropriate remedy might be cancellation and resolicitation were GAO to rule that it was unreasonably restrictive of competition.

B-212862 Sept. 15, 1983 83-2 CPD 330
BIDS--RESPONSIVENESS--BID GUARANTEE REQUIREMENT

Bid is nonresponsive where solicitation requires bid guarantee, protester delivers its bid guarantee day after bid opening, and exceptions to bid guarantee requirement under Defense Acquisition Regulation 10-102.5 (Defense Acquisition Circular No. 76-20, Sept. 17, 1979) do not apply.

B-208180.2 Sept. 16, 1983 83-2 CPD 331
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON

Protest that certain material line items in cost comparison were improperly excluded or miscalcu-

lated is denied, as GAO finds no evidence that such computations were not in accord with applicable cost comparison guidelines.

*B-208180.2 Sept. 16, 1983 83-2 CPD 331
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--IN-HOUSE
PERFORMANCE V. CONTRACT OUT--COST COMPARISON--REVISION AFTER
ADMINISTRATIVE APPEAL*

Decision by agency to recompute certain line items of cost comparison in response to initial appeal by interested union is subject to GAO review authority to extent that such recomputation may have materially affected comparison's ultimate outcome.

*CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--REVISION AFTER ADMINISTRATIVE APPEAL--PROPRIETY*

Protest that revision of cost comparison by agency after bid opening, in response to appeal by affected party, was improper is denied. It would be incongruous to establish appeal procedure but preclude cost comparison revisions based on appeal or based on matters that become evident through appeal process.

*B-208184 Sept. 16, 1983 83-2 CPD 332
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM--FUNCTION*

"Will cost" analysis or cost realism analysis is separate and apart from technical analysis. Results of both analysis are used to make award determination. "Will cost" analysis does not neutralize technical proposals or render them equal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--ORDER OF IMPORTANCE*

Solicitation must clearly advise offerors of broad scheme of scoring to be employed and give reasonably definite information concerning relative importance of evaluation factors in relation to each other. Based on comparison of solicitation's description of relative importance of evaluation factors to scoring scheme employed by procuring agency, GAO cannot find any inconsistency between solicitation and scheme.

B-208184 Sept. 16, 1983 83-2 CPD 332 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW

GAO's function in considering objections to technical evaluations of proposals is not to evaluate proposals, but to examine record and consider whether procuring agency's determinations have been clearly shown to be unreasonable. Based on review of record, GAO cannot question agency's technical conclusions or award to higher cost offeror whose proposal was considered to be "significantly superior."

B-208684 Sept. 1983 83-2 CPD 333
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--
SOLICITATION PROVISIONS

GAO sustains protest challenging agency decision to perform services in-house, based on comparison of Govt. estimate with protester's offer, since agency failed to comply with procedures for conducting cost comparison identified in request for proposals, and that failure casts doubt on validity of outcome of comparison.

CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--
SOLICITATION PROVISIONS--CONTRARY TO AGENCY REGULATIONS

Agency's compliance with internal directive providing that labor costs should be included in Govt. estimate only for portion of first year of performance is improper where cost comparison procedures identified in solicitation expressly state that full labor costs will be included for first year.

CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--
SOLICITATION PROVISIONS--STATEMENT OF WORK

Statement of work in solicitation is inadequate where it states that offerors are only to include cost of work being performed by the in-house work force, but does not indicate that the in-house work force is not performing certain work which seems to be encompassed by the statement of work.

B-209544 Sept. 16, 1983 83-2 CPD 334
CONTRACTS--PROTESTS--ABEYANCE PENDING INSPECTOR GENERAL
INVESTIGATION

When procuring agency's Inspector General is investigating procurement, is considering veracity of report on which protest is based, and has held discussions with Dept. of Justice, GAO will close file without action until investigation and any subsequent criminal proceedings are complete.

B-209671 Sept. 16, 1983 83-2 CPD 335
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
BENCHMARK TESTS--USE AS EVALUATION TOOL

Protest against exclusion from competitive range is denied where protester failed in operational capability demonstration (OCD) to demonstrate ability to satisfy mandatory requirements and protester rejected opportunity to rerun OCD. Although requirements may not have been clearly stated in solicitation, instructions and materials for OCD, provided to offerors 8 weeks in advance, clarified and refined statement of requirements sufficiently to put offerors on notice of actual needs.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Contention that agency-supplied programs, to be used for conduct of operational capability demonstration, did not comply with requirements of RFP is untimely filed where protester has test materials, including programs, in possession for 8 weeks prior to OCD, but did not protest before demonstration date.

B-212579 Sept. 16, 1983 83-2 CPD 336
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--COMPETITION
AVAILABILITY

Protest is sustained where agency justified sole-source award on bases that only design of awardee's product had been adapted to Govt.'s needs and that alternate products could not be considered given required delivery dates and time needed for other firms to design, test and initiate production of satisfactory alternate product, where

record shows that producers of comparable products could have satisfied Govt.'s minimum needs equally well if given opportunity and that they would have had time to meet Govt.'s required delivery dates if agency had initiated competition when its needs were first known.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--INADEQUATE

Agency belief that article to be procured was subject to patent claim does not justify decision to award sole-source contract, since such claim, standing alone, does not justify sole-source negotiated award to purported patent holder where competition is otherwise possible.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--PATENTED ARTICLES

Protest is sustained where agency justified non-competitive award on basis of public exigency, but record show that competition was possible through use of expedited procedures.

B-212714 Sept. 16, 1983 83-2 CPD 337

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--AWARD VALIDITY--REVIEW BY GAO

Selection of contractor under sec. 8(a) of Small Business Act is essentially within discretion of contracting agency and Small Business Administration, and thus will not be questioned absent wither showing of fraud or bad faith on Govt.'s part or that applicable regs. were not followed.

B-212716 Sept. 16, 1983 83-2 CPD 338

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest contending bidder is incapable of meeting solicitation requirement that hand tools be manufactured wholly in U.S. is dismissed since it challenges agency's affirmative determination that bidder can meet requirement and concerns matter of responsibility. Affirmative determinations of responsibility are not subject to GAO review in absence of showing of possible fraud or bad faith by procuring officials or that solicitation contains definitive responsibility criteria which have allegedly been misapplied.

*B-209393 Sept. 19, 1983 83-2 CPD 340
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE*

Protest that procuring agency is required to equalize incumbent contractor's competitive advantage is denied where advantage is not result of preferred treatment or other unfair action by Govt.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED--PERFORMANCE
SPECIFICATIONS*

Where RFP containing performance-oriented specifications permits offerors to propose old equipment; or mixture thereof for specified portion of work, RFP need not establish different evaluation bases for old and new equipment, since consistent with RFP as issued agency will evaluate all proposals as to whether, and what extent, equipment offered meets performance criteria, which is not dependent upon equipment's age.

*B-209858.2, B-209858.3 Sept. 19, 1983 83-2 CPD 341
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Protest alleging that tractor-scraper offered by awardee does not comply with Product Experience Qualification clause of solicitation is denied where record indicates that awardee's equipment, whether viewed as latest standard model or latest standard model with commercially accepted change, complies with clause.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL
SUBCONTRACTORS--NOT ELIGIBLE FOR AWARD*

GAO will not consider protest by potential subcontractor to unsuccessful offeror since protest challenges propriety of procuring agency's refusal to consider offeror's late modification and, therefore, protester, who is ineligible for award, is not interested party under GAO Bid Protest Procedures.

B-210757 Sept. 19, 1983 83-2 CPD 342
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Where solicitation does not contain adequate specifications for contract performance, cancellation and readvertisement of solicitation with revised specifications is appropriate. Negotiation of material changes to specifications with low bidder, as advocated by protester, would be prejudicial to other bidders and improper.

B-211196 Sept 19, 1983 83-2 CPD 343
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA

Solicitation contained clause requiring that rental value of Govt.-owned production property authorized for rent-free use be added as evaluation factor to price of offeror possessing such equipment in order to equalize competition and clause requiring that total value of equipment be added as evaluation factor to offer of any offeror if subcontractor possessing equipment quoted to that offeror and not to others. Protest of contracting officer's determination that second clause did not apply to prime contractor possessing equipment and product for its own use is denied because neither statute, reg. nor GAO cases preclude such interpretation and because protester was aware of interpretation prior to preparation of its offer.

B-211598 Sept. 19, 1983 83-2 CPD 344
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE

Amendment that imposes legal obligation on contractor that was not contained in original solicitation is material and thus rejection of bid as nonresponsive for failure to include acknowledgement of amendment is proper.

*B-212514.2 Sept. 19, 1983 83-2 CPD 345
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Request for reconsideration is denied where protester fails to raise new issues of fact or to demonstrate errors of law which would cause GAO to reconsider its prior decision.

*B-210283 Sept. 20, 1983 83-2 CPD 346
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
BEST INTERESTS OF THE GOVERNMENT--IN-HOUSE PERFORMANCE FOUND
TO BE CHEAPER, FASTER, ETC.*

Agency properly canceled IFB after bid opening where as result of post-opening events need for items became urgent, and agency's own in-house facility could produce and deliver items faster than could be required under IFB.

*B-211650 Sept. 20, 1983 83-2 CPD 347
BIDS--EVALUATION--PROPRIETY--STANDARDS OF EVALUATION NOT IN
INVITATION*

While Govt. may consider other factors (relating to costs) in addition to bid price in determining low evaluated bid and, therefore, bid most advantageous to Govt., solicitation must provide for evaluation of those factors before they may be considered. Factors which are not included in solicitation evaluation criteria may not be considered during bid evaluation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest against failure of agency to incorporate into specifications certain alleged changes in agency needs is untimely where not raised within 10 working days after protester knew or should have known of basis for protest.

B-211650 Sept. 20, 1983 83-2 CPD 347

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against failure of agency to include certain cost factors in bid evaluation criteria is untimely and not for consideration since issue was not raised prior to bid opening.

B-211829 Sept. 20, 1983 83-2 CPD 348

*CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--SUPPORTED BY RECORD*

Contracting officer's nonresponsibility determination did not lack any reasonable basis when it was based on negative report of contractor's quality assurance history.

*PURCHASES--SMALL--SMALL BUSINESS CONCERNS--CERTIFICATE OF
COMPETENCY PROCEDURES UNDER SBA--APPLICABILITY*

Army contracting officer's failure to refer determination of nonresponsibility of small business to SBA, because bidder's quotation was less than \$10,000, although consistent with Defense Acquisition Regulation 1-705.4(c), was contrary to SBA reg. 125.5(d) when total cost of Govt. procurement, determined by awardee's quotation or bid price, exceeded \$10,000. 62 Comp. Gen. 213 and B-210949.2, July 27, 1983, distinguished.

B-212744 Sept. 20, 1983 83-2 CPD 349

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

GAO will not question contracting officer's determination that small business is nonresponsible where that determination is affirmed by Small Business Administration's refusal to issue certificate of competency.

*B-212789 Sept. 20, 1983 83-2 CPD 350
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
DESCRIPTIVE LITERATURE*

Failure to furnish descriptive literature required by solicitation by bid opening for evaluation of bid renders bid nonresponsive and acceptance of literature by agency after bid opening would be improper.

*B-212810 Sept. 20, 1983 83-2 CPD 351
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

No basis exists to preclude contract award merely because low bidder may have submitted below-cost bid.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative determination of responsibility except in limited circumstances not applicable here.

*CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW*

GAO does not consider small business size status since by law conclusive authority over matter is vested in Small Business Administration.

*B-212963 Sept. 20, 1983 83-2 CPD 352
CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW*

Question concerning propriety of standard industrial classification utilized for small business set-aside procurement is not for consideration by GAO, since conclusive authority over question of this nature is vested in SBA.

*B-209577.2 Sept. 21, 1983 83-2 CPD 353
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON*

Based on review of record, GAO cannot question Navy's decision to perform required services in-house.

*B-209577.2 Sept. 21, 1983 83-2 CPD 353 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against agency's use of cost comparison transmittal memorandum specified in solicitation is dismissed since protest was not made to agency prior to bid opening as required by our Bid Protest Procedures.

*B-212592 Sept. 21, 1983 83-2 CPD 354
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE
PROCUREMENTS*

Protests against future sole-source resolicitation is dismissed as premature.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest against solicitation specifications is rendered academic by agency's cancellation of solicitation.

*B-212937 Sept. 21, 1983 83-2 CPD 355
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest of sole-source award is untimely when filed more than 2 months after sole-source negotiations were announced in Commerce Business Daily (CBD), since protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known as required by GAO Bid Protest Procedures.

*B-212989 Sept. 21, 1983 83-2 CPD 356
CONTRACTS--PROTESTS--CONTRACTS ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Where option is exercisable at discretion of Govt., decision whether to exercise option is matter of contract administration which GAO will not review under its bid protest functions.

B-213030 Sept. 21, 1983 83-2 CPD 357
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility except in limited circumstances not present here. Fact that firm is in bankruptcy proceedings does not necessitate finding of nonresponsibility.

B-206119 Sept. 22, 1983 83-2 CPD 358
CONTRACTS--SUBCONTRACTS--EVALUATION--EXPERIENCE

Contracting officer acted reasonably in rejecting proposal for failure to meet experience requirement. Solicitation required offerors to have installed for 12 months similar integrated systems to that proposed. Protester's proposal listed various projects each including some subsystems, but no one project integrating all proposed subsystems in similar setting.

B-209505 Sept. 22, 1983 83-2 CPD 359
CONTRACTS--NEGOTIATION--COMPETITION--RESTRICTIONS--UNDUE
RESTRICTION--NOT ESTABLISHED

Where procurement meets requirements for acceptably restricted procurement and protester's unapproved product was unable to be qualified prior to award due to fact that agency lacked fully adequate data or sufficient test results, and testing of product was not feasible, proposal was properly rejected.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Results of agency's technical evaluation of proposal will not be questioned where protester does not meet its burden of affirmatively proving results to be unreasonable.

B-211119.3 Sept. 22, 1983 83-2 CPD 360
CONTRACTS--NEGOTIATION--AWARDS--BASIS--LEASE WITH OPTION TO
PURCHASE

GAO will not object to award on lease with purchase option basis, as permitted under RFP, where agency exercises business judgment that funding will become

available during contract for purchase of leased equipment, contract period is lengthy (4 years) and savings to Govt. will be substantial.

CONTRACTS--NEGOTIATION--AWARDS--NOT CONTRARY TO NEGOTIATED PROCUREMENT PROCEDURES--IMPROPER POST-AWARD DISCUSSIONS--NOT FOUND

Adjustments made to awardee's proposal after best and final offers are not objectionable where adjustments did not affect technical acceptability of proposal.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--ACCEPTABILITY

Agency properly found that awardee's best and final offer met mandatory specification requirements and that awardee was entitled to onsite demonstration verifying that compliance.

B-212942 Sept. 22, 1983 83-2 CPD 361

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--CERTIFIED MAIL RULE

Protest filed with GAO more than 10 working days after basis for protest was known is untimely. Although protest was submitted by certified mail, it was not mailed not later than fifth day prior to final date for timely filing of protest.

B-207670 Sept. 22, 1983 83-2 CPD 362

CONTRACTS--GRANT-FUNDED PROCUREMENTS--EVALUATION OF OFFERS, ETC.--CRITERIA--SUBCRITERIA

Complaint that grantee should not have considered "turmoil" that would be caused by replacing incumbent contractor--because such "turmoil" was not identified as evaluation factor--is denied. Grantee has shown that consideration of matter was prompted not by unfair desire simply to retain incumbent contractor, but by concern with anticipated disruption of work based upon complainant's experience on similar job and its proposed method for performing work, which concerns clearly were related to solicitation's stated evaluation factors.

*B-207670 Sept. 23, 1983 83-2 CPD 362 - Con.
CONTRACTS--GRANT-FUNDED PROCUREMENTS--EVALUATION OF OFFERS,
ETC.--ERRORS--NOT PREJUDICE*

Although grantee should have amended solicitation if it wished to take into account effect that substantially reduced caseload would have upon proposed price, it has not been shown that this prejudiced complainant because complainant's proposal was so seriously deficient otherwise that it stood little chance of selection.

CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS

Complaint filed with proposal alleging that information in solicitation and documents available under solicitation were not adequate for preparing proposal involves defect on face of solicitation and therefore is not timely since it was not filed before time set for receipt of proposals.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--REASONABLE

Determination of relative merits of proposals in response to grantee's solicitation is primarily grantee's responsibility, and therefore will not be questioned by GAO unless shown to be arbitrary or to violate procurement statutes or regs.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--PIECEMEAL DEVELOPMENT OF ISSUES BY PROTESTER

GAO will not consider objections to way grantee conducted procurement that were first raised in complainant's comments on grantor agency's report on other matters raised by firm, since objections could have been raised initially, and it would be inappropriate to allow grant complaint process to proceed in piecemeal manner.

*CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
NOT DENIED TO PROTESTER*

Awardee's proposed use of Govt. computer system did not constitute unfair competitive advantage where agency did not consider awardee's use of this system in either technical or cost evaluation.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--SUBCRITERIA-REASONABLY RELATED TO CRITERIA*

While agency is required to identify in solicitation, and adhere to, major evaluation criteria applicable to procurement, it also may apply factors not specifically identified as evaluation criteria so long as they are reasonably related to stated criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ERRORS--NOT PREJUDICIAL*

Agency's apparent failure to evaluate cost of awardee's proposed use of on-line computer communications network did not prejudice protester where solicitation provided that technical capability, not cost, would be primary consideration in award decision, and cost of using communications network does not appear to be so great as to offset significant technical advantage enjoyed by awardee.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS-- EVALUATION--
EVALUATORS--COMMENTS NOT PREJUDICIAL*

Comments by technical evaluators expressing doubt that offeror will relinquish its copyrights to data, even though offeror's proposal appears to agree to satisfy requirement, is of no consequence in evaluation where record indicates that proposal was not downgraded based on comment, and that other unrelated considerations were primary cause for downgrading of proposal.

*B-208214 Sept. 23, 1983 83-2 CPD 363 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PERSONNEL--INDIVIDUAL RESPONSIBLE FOR OVERALL IMPLEMENTATION
OF CONTRACT*

Where solicitation requires offerors to identify in their proposals single principal investigator to head up project and proposal names two co-principal investigators, proposal is not deficient where it also designates one individual project manager and that individual is found to possess stated qualifications for principal investigator. Under these circumstances, it is not improper for agency to further upgrade proposal based on qualification of second co-principal investigator.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
SUBCONTRACTOR AVAILABILITY*

Mere fact that offeror has not entered into firm agreement with proposed subcontractor at time of evaluation does not render evaluation inadequate where offeror's proposal included proposal by subcontractor and record shows subcontractor's capabilities were evaluated in terms of stated evaluation criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

Protest of technical evaluation of proposals in denied where protester has not shown that evaluation was arbitrary or unreasonable.

*B-210154 Sept. 23, 1983 83-2 CPD 364
EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--COMPETITIVE PROCEDURES V. FEDERAL SUPPLY SCHEDULE
UTILIZATION*

Agency must seek maximum practicable competition before placing delivery order against nonmandatory Automatic data processing (ADP) schedule contract because such contracts are not awarded on competitive basis.

*B-210154 Sept. 23, 1983 83-2 CPD 364 - Con.
EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--COMPETITIVE PROCEDURES V. FEDERAL SUPPLY SCHEDULE
UTILIZATION*

In evaluating whether conducting competitive procurement or placing delivery order against nonmandatory automatic data processing (ADP) schedule contract would be more advantageous to Govt., it may, in some cases, be appropriate to consider that anticipated savings will not be realized for duration of competition; however, because such consideration has anti-competitive effect, agency must calculate this delay factor over shortest period of time practicable.

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--EVALUATION--COST COMPARISON*

Computation of cost of owning computer system which does not take into account significant items of cost cannot be relied on in cost comparison between system ownership and contracting for computer services.

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--EVALUATION--CRITERIA--DISCLOSURE REQUIREMENTS*

Regulations governing evaluation of responses to Commerce Business Daily (CBD) announcement of agency's intention to place delivery order against nonmandatory automatic data processing (ADP) schedule contract do not require that factors used in evaluation be disclosed.

*B-210156.2 Sept. 23, 1983 83-2 CPD 365
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

To be eligible for COC under Small Business Administration procedures, small business bidder must perform significant portion of contract with its own facilities and personnel. Ineligibility finding on that basis is tantamount to affirmation of contracting officer's original determination of nonresponsibility and therefore not subject to GAO review.

*B-211452 Sept. 23, 1983 83-2 CPD 366
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
MODIFICATION OF PROPOSAL--CONSIDERATION PROPRIETY*

Rejection of late modification of proposal is proper since GSA's current procurement policy requires that standard late proposal rules be applied to multiple-award schedule procurements.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Initial proposal is properly excluded from competitive range where information necessary to evaluate proposal was omitted.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

To be considered timely, protest based on alleged improprieties in RFP which are apparent prior to closing date must be filed before that date.

*B-211475.4 Sept. 23, 1983 83-2 CPD 367
CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED*

Dismissal with prejudice of complaint filed in court constitutes final adjudication on merits, barring further action by GAO on protest involving same issue.

*B-212024.3 Sept. 23, 1983 83-2 CPD 368
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

Protester whose offer was not low and thus not in line for award is not interested party under GAO Bid Protest Procedures.

CONTRACTS--PROTESTS--ISSUES IN LITIGATION

GAO will not consider protest where protester has filed suit in court on same ground, even where Govt.'s position in suit is that court lacks jurisdiction.

B-212139 Sept. 23, 1983 83-2 CPD 369

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ACCEPTABILITY

Protester lacks reasonable basis for urging that it should receive award on two solicitation items, when its best and final offers for those items were not low and award was based on price. Further, acceptance of below-cost offer is not inherently illegal.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Allegation that contracting officer showed bad faith throughout procurement process is denied, where protester has not proven that contracting officer directed his actions with specific and malicious intent to injure protester.

B-212691 Sept. 23, 1983 83-2 CPD 370

CONTRACTS--ARCHITECT, ENGINEERING, ETC. SERVICES--
PROCUREMENT PRACTICES--QUALIFICATION FORMS--LATE SUBMISSION

Contracting officer's decision to refuse to consider protester's late qualification forms that were submitted pursuant to procurement under Brooks Act, 40 U.S.C. 541, et seq. (1976), is upheld because agency published appropriate notice in Commerce Business Daily and has evaluated and ranked timely respondents.

B-212772 Sept. 23, 1983 83-2 CPD 371

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--REPROCUREMENT, ETC.

GAO will not consider disagreement with amount of excess reprocurement cost assessment in contracting officer's decision, since Contract Disputes Act of 1978 requires that appeal from adverse contracting officer decision be to either contracting agency board of contract appeals or U.S. Claims Court.

B-212832 Sept. 23, 1983 83-2 CPD 372

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION
NOT TO USE--SCOPE OF GAO REVIEW

GAO will not consider protest that defense mobilization base policies require that procurement should be conducted on sole-source basis with particular mobilization base

producer of item since objective of GAO's bid protest function is to insure full and free competition for Govt. contracts.

B-211539 Sept. 26, 1983

CONTRACTS--LABOR STIPULATIONS--WAGE UNDERPAYMENTS--CLAIM PRIORITY--UNDERPAID WORKERS V. COMPETING CLAIMS

Payment of contract balance that is claimed by payment bond surety, Department of Labor (DOL) for unpaid wages, and trustee in bankruptcy may be made in full amount of DOL claim with remaining balance payable to surety.

CONTRACTS--PAYMENTS--SURETY OF DEFAULTED CONTRACTOR--TAX AND OTHER DEBTS DUE GOVERNMENT

Payment of contract balance that is claimed by payment bond surety, Forest Service for excess procurement costs, IRS pursuant to tax levy, and trustee in bankruptcy may be made in full amount of excess procurement costs with remaining balance payable to IRS.

B-211595 Sept. 26, 1983 83-2 CPD 373

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED

RFP to upgrade disk drives for computers which requires offerors to provide with offer certification from manufacturer and maintainer of equipment permitting offeror to install proposed equipment into currently installed equipment is not unduly restrictive of competition where agency is unable to prepare detailed specifications and requirement is dictated by agency's minimum needs.

B-211862 Sept. 26, 1983 83-2 CPD 374

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL BUSINESS SET-ASIDE

Where large business protester is ineligible for award under total small business set-aside, GAO will not consider its objections to alleged deficiencies in solicitation since protester is not interested party that would be affected by resolution of issues.

*B-211884 Sept. 26, 1983 83-2 CPD 375
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--RESTRICTIVE--UNTIME RESTRICTION NOT ESTABLISHED*

Solicitation requirement that energy monitoring and control system and temperature control system be furnished by company regularly engaged in manufacture of both systems is not unduly restrictive of competition where agency, because of performance failures in past, seeks to assure compatibility of both systems. Fact that few offerors can meet Govt'.s needs does not warrant conclusion that provision is unduly restrictive.

*B-212889 Sept. 26, 1983 83-2 CPD 376
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest that procurement was improperly considered as one for Architect-Engineering services rather than for laboratory testing services filed more than 10 days after basis for protest is known or should have been known is untimely and will not be considered on merits.

*B-212985 Sept. 26, 1983 83-2 CPD 377
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after protester learns of initial adverse agency action (affirmation of negative determination of protester's responsibility) on protest to agency is dismissed as untimely.

*B-213070 Sept. 26, 1983 83-2 CPD 378
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

Protest that concerns dispute between private parties is not matter that GAO will consider.

*B-213088 Sept. 26, 1983 83-2 CPD 379
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed more than 10 days after initial agency action denying protest filed with contracting agency is untimely and will not be considered.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--INTERIM
APPEALS TO AGENCY-EFFECT ON 10 WORKING DAY GAO FILING PERIOD*

Appeal to agency head of contracting officer's denial of protest initially filed with contracting agency does not toll 10-day requirement for filing subsequent protest to GAO.

*B-208117.2 Sept. 27, 1983 83-2 CPD 380
BIDS--PRICES--BELOW COSTS--NOT BASIS FOR PRECLUDING AWARD*

No basis exists to preclude contract award merely because bidder may have submitted below-cost bid.

*BIDS--UNBALANCED--PROPRIETY OF UNBALANCED--"MATHEMATICALLY
UNBALANCE BIDS"--MATERIALITY OF UNBALANCE*

Even assuming low bid is mathematically unbalanced, we cannot conclude low bid is materially unbalanced since quantity estimates stated in solicitation were reasonably determined, protester has presented no evidence to cast doubt upon solicitation estimates, and low bid was significantly lower than all other bids and will apparently result in lowest ultimate cost to the Govt.

*BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY
UNBALANCED BIDS"--WHAT CONSTITUTES*

Where bidder offers apparently nominal prices for some items but does not offer enhanced prices for other items, its bid is not mathematically unbalanced.

B-208117.2 Sept. 27, 1983 83-2 CPD 380
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest concerning bidder's ability to meet contractual requirements is not for consideration as GAO will not review affirmative determination of responsibility absent allegation of fraud by procuring officials, or missapplication of definitive responsibility criteria contained in solicitation.

B-210376 Sept. 27, 1983 83-2 CPD 381
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON

Protest that contracting agency underestimated cost of in-house performance and overestimated cost of contracting is denied where protester has not shown that cost comparison was inaccurate or violated OMB Circular No. A-76 and other applicable guidance.

B-210730 Sept. 27, 1983 83-2 CPD 382
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED

Where IFB identifies previously approved source controlled components and requires bidder to certify that it will furnish only those components, bidder's failure to certify requires rejection of bid as nonresponsive. Absent such certification, bidder could, in accordance with notes on source control drawings, offer alternative components for procuring agency's approval rather than those previously approved and identified in IFB, thereby varying its obligation from that intended by agency.

B-212636.2 Sept. 27, 1983 83-2 CPD 383
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Allegations concerning bidder's ability to deliver supplies and provide parts and labor for inspection and repair, concern bidder's responsibility. GAO does not review contracting officer's affirmative determination of responsibility absent showing of fraud or bad faith on part of Govt. procurement offi-

cials or that solicitation contained definitive responsibility criteria that have allegedly not been applied.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

Allegation concerning breach of exclusive distributorship contract for manual typewriters will not be considered because it is dispute between private parties which cannot be adjudicated by this Office.

*B-212797 Sept. 27, 1983 83-2 CPD 384
CONTRACTS--PROTESTS--BASIS FOR PROTEST REQUIREMENT*

Protest is summarily denied where protester has failed to state legal basis for precluding another firm from bidding or receiving award under protested solicitation.

*B-207246.2, B-211811 Sept. 28, 1983 83-2 CPD 385
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL
SUBCONTRACTORS--RESTRICTIVE SPECIFICATIONS ALLEGATION*

Potential subcontractor is interested party to protest restrictiveness of compressor specifications where protest is filed prior to proposal due date of prime contract procurement. Protester has not shown that agency lacked rational basis for specifications, so protest is denied.

CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS

Neither Govt. drafting of compressor specification included in prime construction contract nor employee's aid in evaluating subcontractor offers is sufficient Govt. involvement to invoke GAO review of award of subcontract for compressors. Consequently, protest of biased subcontract evaluation is dismissed.

*B-208694, B-208694.2 Sept. 29, 1983 83-2 CPD 386
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest challenging capability of awardee to perform contract relates to matter of responsibility which

will not be reviewed absent showing that contracting agency acted fraudulently or in bad faith.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--DENIAL PROPRIETY*

Request for second round of best and final offers and agency decision not to call for third round of best and final offers are not objectionable where valid reasons exist for action.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION*

Protest of technical evaluation of proposals is denied where protesters have not shown evaluation to be unreasonable or arbitrary.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--SELECTION*

Selection of evaluators is within contracting agency's discretion and, therefore, GAO will not generally object to composition of evaluation panel.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protesters have not met their burden of proof where allegations that awardee had access to inside information and was treated preferentially are based solely on speculative statements.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protests concerning alleged solicitation improprieties which are apparent prior to closing date for receipt of proposals are untimely under GAO Bid Protest Procedures which require protests based upon alleged solicitation improprieties that are apparent prior to closing date to be filed before that date and alleged improprieties which do not exist in initial solicitation that are subsequently incorporated therein must be protested not later than next closing date for receipt of proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM--REJECTION OF PROPOSAL*

Agency determinations of price realism are judgmental in nature and determination that proposed price is unrealistically low is not subject to objection unless it is clearly shown to be unreasonable. Determination that price, which is less than half of agency estimate and which is substantially lower than all other proposed prices is unrealistic, appears to be reasonable despite offeror's assertion that it could perform work at its offered price.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--SUBCRITERIA-REASONABLY RELATED TO CRITERIA*

Procuring agency's assessment of relative risk associated with various elements of proposals is unobjectionable where these elements reasonably relate to evaluation criteria set forth in RFP.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION--POINT RATING*

Agency's decision to base point scoring of cost proposals on lowest realistic price, rather than lowest price, is not objectionable where such approach avoids what might otherwise have been misleading result and otherwise was consistent with evaluation criteria set forth in solicitation.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

GAO will not reevaluate proposals or substitute its judgment for that of agency evaluators, who have considerable discretion. Rather, GAO will examine record to determine whether judgment of evaluators was reasonable and in accord with evaluation criteria listed in solicitation.

B-209776 Sept. 29, 1983 83-2 CPD 387

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest filed after date for receipt of initial proposals that agency should have assured that all offerors had access to component specified in solicitation is untimely. Protester was not lulled by agency into abandoning its protest by agency assurances that component manufactured by protester would be considered equal to specified component as record shows that agency only agreed to evaluate protester's component and did so, finding it acceptable but not assigning it as high score as specified component.

B-210166 Sept. 29, 1983 83-2 CPD 388

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION--
CONTROLLING DATE FOR DETERMINATION

Conflict between Small Business Administration (SBA) Rules and Regulations and Federal Procurement Regulations as to controlling date for determining size status of business is resolved in favor of SBA provision, since SBA is agency designated by law to define what constitutes small business and to determine which firms are small and SBA provision expresses current SBA policy.

B-210182 Sept. 29, 1983 83-2 CPD 389

CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--FAILURE TO FOLLOW AGENCY POLICY AND REGULATIONS

To prevail in protest against results of cost comparison upon which agency based its decision to retain function in-house, protester must demonstrate not only failure to follow established cost comparison procedures, but also that such failure materially affected outcome.

CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--
SOLICITATION PROVISIONS--STATEMENT OF WORK

Statement of work in solicitation is inadequate where it states that offerors are only to include cost of work being performed by in-house work force,

but does not indicate that in-house work force is not performing certain work which seems to be encompassed by statement of work.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--WHAT CONSTITUTES NOTICE*

Protest of A-76 cost comparison filed with GAO within 10 days after protester received agency's decision on its appeal under agency's administrative review procedure, but more than 10 days after protester had been telephonically informed of decision's outcome, is timely where details of decision were not known to protester until decision was received.

*B-211578 Sept. 29, 1983 83-2 CPD 390
BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--CERTIFICATION
REQUIREMENTS*

IFB requirement for bidders to submit with their bids fabric sample and written certification of sample from manufacturer or fabric mill involves issue of responsibility, not responsiveness, since it concerns how bidders will perform rather than whether bidders would perform in conformity with solicitation.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where protester alleges that bid was nonresponsive since certain information provided on bid form was inaccurate but agency determines that response submitted was accurate, protester has failed to meet its burden of affirmatively proving its allegation.

*B-212734, B-212734.2 Sept. 29, 1983 83-2 CPD 391
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
PROCUREMENT UNDER 8(a) PROGRAM--CONTRACTOR ELIGIBILITY*

Procuring agency's decision to procure services, upon Small Business Administration's (SBA) approval, under 8(a) contract from firm which has applied to

B-212795 Sept. 29, 1983 83-2 CPD 392
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
PROCUREMENT UNDER 8(a) PROGRAM--CONTRACTOR ELIGIBILITY

Selection of contractor for award under sec. 8(a) of Small Business Act and contracting agency's decision to combine several contracts into one for 8(a) set-aside are basically within discretion of contracting agency and will not be questioned absent showing of fraud or bad faith on part of govt. officials or allegation that SBA regulations were violated.

FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE
AUTHORITY

GAO has no authority under Freedom of Information Act to determine what information must be disclosed by govt. agencies.

B-209458.6 Sept. 30, 1983 83-2 CPD 393
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ISSUES IN LITIGATION

Request for reconsideration is dismissed where issues raised are before court of competent jurisdiction and court, which expressed interest in decision by GAO, has not indicated any interest in having GAO reconsider decision.

B-210218, B-210218.2 Sept. 30, 1983 83-2 CPD 394
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
TECHNICALLY UNACCEPTABLE

Protester's best and final offer was properly found technically deficient where it failed to rectify technical deficiency which was repeatedly brought to protester's attention during negotiations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSIONS WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Agency conducted meaningful negotiations with offeror where it repeatedly brought material deficiencies to offeror's attention during course of negotiations, and offeror was specifically requested in its invita-

*B-210218, B-210218.2 Sept. 30, 1983 83-2 CPD 394
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
OFFERS OR PROPOSALS--EVALUATION--COST REALISM--OFFER OR
PROPOSAL DOWNGRADED FOR PRICE RISK*

Agency improperly downgraded protester for price risk based on govt.'s independent cost estimate where technical evaluation and specific proposal cost evaluation showed that protester could provide performance at level equal to awardee's and at significantly lower cost.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--EXPERIENCE*

Small business protester's proposal could be downgraded for poor past performance record, within context of explicitly stated criteria, without necessity for referral to Small Business Administration for consideration under certificate of competency procedures. However, agency cannot reasonably downgrade offer in this regard as separate evaluation factor, where solicitation provides that past performance will be considered within context of other stated evaluation criteria, and not as independently rated factor, and technical evaluation already reflects consideration of past performance in finding that protester's offer is technically equal to that of awardee.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
METHOD--NOT PREJUDICIAL*

Where protester's proposal was properly eliminated from consideration because of technical deficiency, GAO need not address protester's objection that it was unfairly evaluated with respect to its past performance record since this could not have materially affected protester's chances for award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--RECOVERY*

Since protester had substantial chance for award but for agency's improper action, proposal preparation costs are recommended.

B-210941 Sept. 30, 1983 83-2 CPD 395

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--
PROPRIETY*

No rational basis has been established for rejection of proposal to design and fabricate three reverse osmosis water purification units. Although agency believed units would not work without major redesign, it has not demonstrated that reliance on data agency used in its analysis was reasonable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF COMMENTS ON AGENCY'S REPORT*

Contention that protest should be dismissed under sec. 21.3(d) of Bid Protest Procedures because comments on agency's report were not filed within 10 working days of its receipt is rejected where protester timely requested and was given additional time to respond.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FURNISHING OF INFORMATION ON PROTEST--
SPECIFICITY REQUIREMENT*

Protest is timely notwithstanding agency's contention that protest as originally filed was too indefinite and that protest as later defined is untimely. Protester was clearly objecting to grounds stated in agency's letter rejecting its proposal.

B-212490 Sept. 30, 1983 83-2 CPD 396

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
PROTESTER NOT IN LINE FOR AWARD*

Where suppliers of underground heat distribution systems must have their systems approved under multi-agency prequalification procedures through issuance of letter of acceptability to be entitled to supply their systems, protester who does not possess letter of acceptability is not interested party under GAO Bid Protest Procedures since protester would not be eligible for award.

*B-212530 Sept. 30, 1983 83-2 CPD 397
CONTRACTS--PROTESTS--COURT ACTION--PROTEST DISMISSED*

GAO will not consider protest where same issues are pending before court of competent jurisdiction and court has not requested or otherwise expressed interest in GAO decision.

*B-212502 Sept. 30, 1983 83-2 CPD 398
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

Where small business concern is determined to be nonresponsible by contracting officer, GAO will not review subsequent denial by SBA of COC absent showing of possible fraud or bad faith.

*B-213050 Sept. 30, 1983 83-2 CPD 400
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
SUBCONTRACTORS' CLAIMS*

Protest by subcontractor of agency decision that materials to be supplied by subcontractor under prime contract are unacceptable will not be considered under GAO Bid Protest Procedures.

*B-213077 Sept. 30, 1983 83-2 CPD 399
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAO does not consider small business size status protests since by law conclusive authority over matter is vested in SBA.

TRANSPORTATION

No July cases

B-211473, et al. Aug. 15, 1983

TRANSPORTATION--ADDITIONAL COSTS--PRIORITY SERVICE

Carrier's claim that higher transportation charges for priority service, which involves carrier meeting priority pickup and delivery times, were justified is denied where carrier cannot establish that service was requested or performed.

B-206567 Sept. 23, 1983

CONTRACTS--PAYMENTS--ASSIGNMENT--VALIDITY OF ASSIGNMENT--ASSIGNEES' FIGHT TO PAYMENT

Nonbilling carrier properly may claim refund of deductions taken by Govt. from payments due billing carrier where billing carrier in turn set off deductions against amounts it owed nonbilling carrier, since non-billing carrier obtained subrogation rights by operation of law.

TRANSPORTATION--AIR CARRIERS--RATES--PREFERENTIAL RATES FOR GOVERNMENT--FILING WITH CAB REQUIREMENT

Commuter all-cargo air carrier should be refunded deductions for alleged overcharges based on difference between tariff rates, required to be filed with Civil Aeronautics Bd. and rates contained in tender executed by carrier, since under Federal Aviation Act of 1958 there is no authority for air carriers to give preferential rates to Govt. unless they are properly filed with Bd. or the Bd. has exempted carrier from its filing requirements.

TRANSPORTATION--AIR CARRIER--TARIFF FILING REQUIREMENTS--CARRIER EXEMPT FROM REQUIREMENTS--REVIVAL OF EARLIER FILED TARIFF

Where air carrier executed tender when it was exempted from tariff-filing requirements of Civil Aeronautics

Bd. but Bd. subsequently required carrier to file tariffs, filed tariffs replaced tender by operation of law. When carrier later was exempted from tariff-filing requirements, tender was not revived unless parties so agreed, and deductions based on tender thus were not proper.

*TRANSPORTATION--OVERCHARGES--TENDER ACCEPTANCE DISPUTED--
EVIDENCE--SUFFICIENCY*

Commuter all-cargo air carrier not subject to tariff-filing requirements should not be refunded deductions for alleged overcharges based on difference between carrier's published rates and rates contained in tender executed by carrier, where there is conflicting evidence in record whether tender was ever accepted by Govt.

B-210740 Sept. 27, 1983

*TRANSPORTATION--RATES--TARIFFS--CONSTRUCTION--AGAINST
CARRIER*

Not only do claimants generally bear burden of proving their claims and establishing liability of U.S. but where claimant is carrier making claim based upon tender of tariff, then ambiguities in terms of tender or tariff are to be resolved against claimant.

*TRANSPORTATION--RATES--TARIFFS--CONSTRUCTION--AGAINST
CARRIER*

Agency is entitled to shipper's applicable tender which affords Govt. most favorable rate.

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