



131077

UNITED STATES GENERAL ACCOUNTING OFFICE

CHARLES A. BOWSER

Comptroller General of the United States

MILTON J. SOCOLAR

Special Assistant
to the Comptroller General

HARRY R. VAN CLEVE

General Counsel

JAMES F. HINCHMAN

Deputy General Counsel

JUNE 1986

Contents

	<u>Page</u>
Table of Decisions	I
Digests:	
General Government Matters:	
Appropriations and Miscellaneous	A-1
Personnel Law: Civilian Personnel	B-1
Personnel Law: Military Personnel	C-1
Procurement Law	D-1
Special Studies & Analysis	E-1
Transportation Law	F-1
Index	i

Compiled in the
Index-Digest Section
Office of the General Counsel

Telephone research service regarding Comptroller
General decisions: (202) 275-5028

For copies of cases: (202) 275-6241

TABLE OF DECISIONS

June 1986

	<u>June</u>	<u>Page</u>		<u>June</u>	<u>Page</u>
B-194528)			B-221875	4...D-	8
B-223217)	26...	F- 1	B-221879	9...D-	15
B-212316	20...	B- 6	B-221886	2...D-	1
B-217563	24...	C- 1	B-221894,		
B-217914	25...	C- 2	et al.)	4...D-	9
B-218953	26...	B- 7	B-221903	2...D-	2
B-219005	17...	B- 6	B-221924	24...D-	41
B-219212	26...	A- 6	B-222018.2	25...D-	46
B-219590.4	27...	D-51	B-222021	10...E-	1
B-219835	2...	B- 1	B-222066	26...C-	3
B-219878.2	6...	D-12	B-222139	20...D-	37
B-219925	10...	B- 4	B-222151	12...D-	19
B-219981.4	12...	D-19	B-222152	19...D-	31
B-220087.3	19...	D-30	B-222162	25...D-	46
B-220148	6...	A- 2	B-222197	19...D-	31
B-220381.2	3...	D- 5	B-222230)		
B-220399.2	16...	D-23	B-222231)	3...D-	5
B-220459.2	10...	D-16	B-222241.2	20...D-	39
B-220721	12...	C- 1	B-222307	30...D-	52
B-220877	25...	C- 2	B-222314	10...D-	17
B-220889	2...	B- 2	B-222334	2...B-	2
B-221089.2	16...	D-25	B-222364	13...D-	21
B-221162	10...	B- 5	B-222384.2	17...D-	26
B-221305.2	24...	D-40	B-222420	2...D-	3
B-221374.4,			B-222421	17...D-	26
et al.)	20...	D-34	B-222428.2	3...D-	6
B-221453	18...	A- 3	B-222430	12...D-	20
B-221510.2	25...	D-45	B-222448.4	6...D-	13
B-221536	12...	A- 3	B-222466	19...D-	32
B-221569	2...	A- 1	B-222468	10...D-	17
B-221584.4	19...	D-30	B-222469.2	6...D-	13
B-221615	24...	F- 1	B-222476	24...D-	42
B-221709.5	24...	D-41	B-222486	25...D-	48
B-221806.2	11...	D-18	B-222511	17...D-	27
B-221814.2	10...	D-16	B-222523	16...D-	25
B-221827.2	4...	D- 8	B-222537.2	18...D-	29
B-221831.2	25...	D-45	B-222541	24...D-	42
B-221863)			B-222549.2	5...D-	10
B-221863.2)	20...	D-37	B-222553	6...D-	14

TABLE OF DECISIONS - Con.

	<u>June</u>	<u>Page</u>		<u>June</u>	<u>Page</u>
B-222561	5...	D-11	B-223103	23...	D-39
B-222572.2	19...	D-33	B-223107	23...	D-40
B-222583	3...	D- 6	B-223134)		
B-222584	30...	D-53	B-223139)	2...	A- 2
B-222585.2	6...	D-14	B-223158.2	30...	D-53
B-222595	9...	D-16	B-223164	24...	D-44
B-222600	2...	D- 3	B-223167.2	4...	D-10
B-222601.2	30...	D-53	B-223173	3...	D- 7
B-222602.2	16...	D-26	B-223180.2	12...	D-21
B-222617	5...	D-11	B-223194.2,		
B-222623	4...	D-10	et al.)	25...	D-50
B-222628	17...	D-28	B-223211	18...	D-29
B-222648	24...	D-43	B-223223	24...	D-44
B-222685	20...	A- 5	B-223235	13...	D-23
B-222686	11...	A- 3	B-223244.2	30...	D-54
B-222691	2...	D- 4	B-223248	17...	D-29
B-222703	25...	D-48	B-223267	26...	D-50
B-222726	3...	D- 7	B-223270	26...	D-50
B-222760	25...	D-49	B-223289.2	19...	D-34
B-222776	16...	B- 5	B-223299	13...	D-23
B-222792	11...	D-18	B-223300	24...	D-45
B-222916	2...	B- 4	B-223323	18...	D-30
B-222919	24...	D-43	B-223353	27...	D-52
B-222961.2	2...	D- 4	B-223357	23...	A- 6
B-222988.2	19...	D-34	B-224345	26...	D-51
B-223027	19...	A- 5	B-224356	30...	D-54
B-223080	2...	A- 1			

**GENERAL GOVERNMENT MATTERS
APPROPRIATIONS AND MISCELLANEOUS**

APPROPRIATIONS

B-221569 June 2, 1986

Availability

Membership Fees

Private Organizations

The Coast Guard may use appropriated funds to purchase memberships, in its own name, in private organizations, notwithstanding the prohibition of 5 U.S.C. § 5946, if such memberships are of primary benefit to the Coast Guard and the Coast Guard determines that such memberships are necessary to carry out its statutory function.

PAYMENTS

Advance

Fees

The Coast Guard may pay a fee for membership in a private organization at the beginning of the membership period without violating the advance payment prohibition of 31 U.S.C. § 3324 (1982). The advance payment prohibition is not applicable because the Coast Guard receives the membership and is enrolled in the organization upon payment.

DISBURSING OFFICERS

B-223080 June 2, 1986

Relief

Erroneous Payments

Not Result of Bad Faith or Negligence

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

DISBURSING OFFICERS B-223134; B-223139 June 2, 1986

Relief

Erroneous Payments

Not Result of Bad Faith or Negligence

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

APPROPRIATIONS

B-220148 June 6, 1986

Availability

Telephones

Use of appropriated funds by the Internal Revenue Service (IRS) to install certain telephone equipment in the residences of IRS customer "assistors" does not violate the prohibition of 31 U.S.C. § 1348(a)(1) (1982). GAO has recognized the inapplicability of the prohibition when the telephone service is one of limited use or it is a service involving numerous safeguards and the separate service is essential. Equipment to be installed in the residences of IRS customer "assistors" has no outcall capability and can receive calls only from IRS switching equipment, making abuse of the system virtually impossible. Also, an employee's personal telephone cannot be used with the IRS system, making installation of a separate line essential.

APPROPRIATIONS**B-222686 June 11, 1986****Transfers****Between Appropriations**

The Secretary of Agriculture was authorized by 7 U.S.C. § 150dd(b)(2) and 7 U.S.C. § 147a(f) to make indemnity payments to producers and others under certain circumstances. Under 7 U.S.C. § 147b, the transfer of \$11.1 million from the appropriations of the Agricultural Research Service to those of the Animal and Plant Health Inspection Service, to pay outstanding citrus canker claims arising from emergency efforts to eradicate this plant pest, was not legally objectionable. Such payments are properly classified as "expenses in accordance with section 147a" for which payment may be made from transferred funds.

APPROPRIATIONS**B-221536 June 12, 1986****Availability****Expenses Incident to Specific Purposes
Necessary Expenses**

The Office of Personnel Management may properly use appropriated funds to purchase refills for pens initially purchased at personal expense but since used strictly in the conduct of Government business. As office supplies, pens and pen refills are considered necessary expenses arising out of and directly related to the work of an agency. Where the needs of the Government require the use of particular items (such as pens), thereby making appropriated funds available for their purchase, it is proper to use appropriated funds to maintain in working order similar employee-owned items, which are used in the conduct of Government business.

DISBURSING OFFICERS**B-223027 June 19, 1986****Relief****Erroneous Payments****Not Result of Bad Faith or Negligence**

Relief is granted Army disbursing official and his deputy under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, after June 1, 1986, where the payee has left the Army or its employ, we will not longer grant relief if Army delays more than 3 months in forwarding the debt to your collection division.

DISBURSING OFFICERS**B-222685 June 20, 1986****Relief****Erroneous Payments****Not Result of Bad Faith or Negligence**

A supervisory disbursing official is relieved from liability under 31 U.S.C. § 3527(c) for an improper payment made by a subordinate. The improper payment occurred when the subordinate paid a voucher which showed x's in the amount due column to indicate that the voucher was not for payment. The voucher was used to calculate the amount carried over to a voucher that was for payment. The supervisory disbursing official is relieved because he maintained and enforced adequate procedures and controls over funds. Although the loss was not turned over to the agency's collection activity within the 3 months, relief is granted because the loss occurred before the 3-month requirement was in effect.

CERTIFYING OFFICERS

B-223357 June 23, 1986

Relief**Erroneous Payments****Duplicate Payments**

Relief is granted Army Finance and Accounting official under 31 U.S.C. § 3528 from liability for certification of improper payment resulting from payee's negotiation of both original issued Army instrument and substitute Treasury checks. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute check.

DEBT COLLECTIONS

B-219212 June 26, 1986

Waiver**Civilian Employees****Compensation Overpayments****Failure to Deduct Insurance Premiums**

Claims Group settlement, denying waiver caused by improper deductions of insurance premiums, is reversed based on the totality of the circumstances. Although employee was aware of the overpayments, he submitted corrected forms to his payroll office on four occasions. Also, waiver request has been pending since 1982, was held by Claims for 29 months, and settlement indicated incorrectly that claimant failed to take corrective action.

**PERSONNEL LAW:
CIVILIAN PERSONNEL**

**FOREIGN SERVICE
Travel Expenses
Dependents
Temporary Duty of Employee**

B-219835 June 2, 1986

A commissioned officer in the Public Health Service, while on temporary duty in Washington, D.C., enroute to his permanent duty station overseas, was converted to a Foreign Compensation rating under an agreement between the Department of Health and Human Services and the Agency for International Development. Officer seeks reimbursement for the shipment of his foreign-made automobile and for his wife's per diem in Washington, D.C. Authorization for payment of travel expenses under the Joint Travel Regulations was administrative error and order may be modified to provide for travel expenses under the Foreign Service Travel Regulations. Since Foreign Service Travel Regulations permit payment of expenses incurred for the shipment of a foreign-made automobile and for dependent's per diem incurred at temporary duty station enroute to new permanent duty station, officer may be reimbursed for the total amount of his claim.

OFFICERS AND EMPLOYEES

B-220889 June 2, 1986

Transfers**Real Estate Expenses****Reimbursement**

Transferred employee sold his residence at his old duty station to a buyer who obtained VA financing. Certain fees in excess of the amounts permitted as charges to the VA borrower/buyer were charged to and paid by the seller. When asked for a report on the custom in the area the local HUD office stated than more than 50 percent of the lenders were charging these fees to the sellers, and that this percentage was growing. While the phrase "customary in the area" is not susceptible of precise definition we conclude that, if the number of lenders charging a particular fee is "50 percent and growing," the requirement of the Federal Travel Regulations that the fees be customary in the area is met. Therefore, the employee may be reimbursed for the fees paid, provided that the amounts do not exceed the amounts customary for the area.

COMPENSATION

B-222334 June 2, 1986

Double**Concurrent Military Retired and Civilian Service Pay**

House Subcommittee Chairwoman questions application of Dual Compensation Act, 5 U.S.C. § 5532 (1982), to contract between Tennessee Valley Authority (TVA) and a retired admiral for his services as TVA's Manager of Nuclear Power. We conclude that since the arrangement with TVA is an improper contract for personal services, the contract also circumvents the Dual Compensation Act.

House Subcommittee Chairwoman questions whether Inspector General of Tennessee Valley Authority is improperly receiving both retired pay and salary. Since the Inspector General is not currently receiving an annuity from the Civil Service Retirement Fund, his TVA salary need not be reduced under 5 U.S.C. § 8344.

PERSONAL SERVICES
Private Contract v.
Government Personnel
Criteria

B-222334 Con't
June 2, 1986

House Subcommittee Chairwoman questions contractual arrangements between Tennessee Valley Authority (TVA) and retired admiral who was hired to be TVA's Manager of Nuclear Power. Where the contract with TVA establishes an employer-employee relationship, it constitutes an improper personal services contract. In addition, the contract also circumvents TVA's statutory salary limitation. See 16 U.S.C. § 831h (1982).

TENNESSEE VALLEY AUTHORITY
Contracts
Statutory Authority

House Subcommittee Chairwoman questions contractual arrangements between Tennessee Valley Authority (TVA) and a retired admiral, citing the Federal Acquisition Regulations (FAR) which (1) prohibit contractors from supervising Federal employees, and (2) prohibit agencies from contracting out management of a Federal program. We conclude that the TVA is not bound by the provisions of the FAR but that TVA may not contract to fill management positions.

TENNESSEE VALLEY AUTHORITY
Employees
Compensation
Increase for Top Executives
Contrary to Salary Limitation Statute

House Subcommittee Chairwoman questions management incentive and merit retirement payments made to the new Inspector General of the Tennessee Valley Authority (TVA). We conclude that such payments are "salary" as defined in the TVA Act and are therefore subject to the TVA statutory salary limitation of Level IV of the Executive Schedule. See 16 U.S.C. § 831b (1982).

GENERAL ACCOUNTING OFFICE B-222916 June 2, 1986

Decisions

Requests

Litigation Pending

An employee, as a union representative, seeks advice from the Comptroller General of the United States about the entitlement of Federal employees to hearings under the Debt Collection Act of 1982 in various circumstances. The General Accounting Office will not consider matters which are in the courts during pendency of litigation, because the eventual outcome of the litigation may resolve the matter. This request was prompted by an accident involving the employee personally. Since the primary issue raised is the subject of active litigation before the United States District Court for the Western District of Texas, we will not provide a substantive response to this request.

OFFICERS AND EMPLOYEES B-219925 June 10, 1986

Transfers

Real Estate Expenses

Broker's Fees

Employee who sold his residence in Sierra Vista, Arizona, incident to a permanent change of station may be reimbursed for all of 7 percent broker's commission. According to the evidence, including HUD's determination, there is no single prevailing rate for the locale and the 7 percent falls within the range generally charged.

OFFICERS AND EMPLOYEES**B-221162 June 10, 1986****Transfers****Real Estate Expenses****Finance Charges****What Constitutes**

An employee who transferred in May 1982 may not be reimbursed for a loan reservation fee or a processing-closing fee charged by the lender in connection with his purchase of a residence at his new duty station. The reservation fee is similar to a commitment fee and the processing-closing fee is similar to a loan origination fee. Both are finance charges within the definition set forth in Regulation Z and neither may be reimbursed in view of the specific prohibition contained in Federal Travel Regulations, para. 2-6.2d (September 1981) (FTR), in effect at the time of transfer. A loan application fee charged by the same lender is excluded from the definition of a finance charge and may be reimbursed under FTR, para 2-6.2d, as a fee similar to a VA or FHA fee for loan application.

DEBT COLLECTIONS**B-222776 June 16, 1986****Waiver****Civilian Employees****Compensation Overpayments****Collection Against Equity and Good Conscience**

Federal employee pay computation statute was amended to change the divisor from 2,080 hours to 2,087 hours which resulted in a small reduction in pay. Although the amendment was enacted April 7, 1986, it was retroactively effective March 1, 1986, resulting in overpayments of pay to most Federal employees. Collection of these overpayments is hereby waived under our waiver authority contained in 5 U.S.C. §5584 and 4 C.F.R. Part 91-93.

DEBT COLLECTIONS

B-219005 June 17, 1986

Waiver**Civilian Employees****Compensation Overpayments****Collection not Against Equity and Good
Conscience, etc.**

Incident to a promotion, a Bureau of Land Management employee was converted from a General Schedule to a wage grade status. Although the Notice of Personnel Action for this promotion did not indicate that he was entitled to Cost-of-Living Allowance (COLA) payments, such payments were continued due to an administrative error. Since the employee received Leave and Earnings Statements throughout the time in question which clearly showed COLA payments, his failure to examine the statements and to note the error makes him at least partially at fault, thereby precluding waiver under 5 U.S.C. § 5584.

TRAVEL EXPENSES

B-212316 June 20, 1986

Overseas Employees**Place of "Actual Residence"**

Employee who claims travel and transportation expenses for himself and his dependents from Iran to Washington, D.C., in connection with his appointment by the U.S. Information Agency bears burden of establishing that Iran was his place of actual residence at the time he was offered the position. Where agency records establish that the employee had been residing in Washington, D.C. for more than 7 months prior to his selection, the employee's unsubstantiated claim that he was offered the position while in Iran does not establish Iran as his place of actual residence or otherwise provide a basis for reimbursing the travel expenses claimed.

Transfers**Attorney Fees****House Purchase and/or Sale****Construction Costs**

A transferred employee may not be reimbursed a second attorney's fee for advisory and representational legal services in negotiating an escrow account to correct construction defects in the newly constructed residence he purchased at his new duty station. Payment of a second attorney's fee by the purchaser was not customary in the locality and the particular legal services rendered were related to construction of the residence rather than to the conveyance of title to the property. Reimbursement of expenses related to construction is expressly prohibited under the regulations.

**PERSONNEL LAW
MILITARY PERSONNEL**

SUBSISTENCE

B-220721 June 12, 1986

Per Diem

Military Personnel

Temporary Duty

Time Limitation

Twenty Weeks

An Air Force Reserve member ordered to active duty with her consent for a period of more than 20 weeks at the same location is at her permanent duty station and is not entitled to travel per diem while there. She, however, may receive travel per diem payments for several periods of temporary duty at locations other than the permanent duty station.

DECEDENTS' ESTATES

B-217563 June 24, 1986

Pay, etc. due Military Personnel

Absence of Beneficiary, Spouse, Children, etc.

Claim of Next of Kin

Sister-in-law of deceased member claims accumulated retired pay of member as legal representative of his estate. Her claim is doubtful since the will was probated in Pennsylvania although evidence in the record indicates that member and his wife were domiciled in New York. In addition, the will was executed in June 1967, a year after the member was permanently hospitalized in the Veterans Administration medical facility in New York, and after he had been determined to be mentally incompetent by the Veterans Administration and a custodian had been appointed for him. He was never found to have regained competency before his death in 1982. Therefore, the claim is of doubtful validity and may not be allowed.

DEBT COLLECTIONS**B-217914 June 25, 1986****Waiver****Military Personnel****Collection Against Equity and Good Conscience,
etc.**

New evidence from a retired service member established that at the time he erroneously executed a form indicating he was not receiving Veterans Administration compensation and during the period he received resulting overpayments of retired pay, his poor health and mental condition made it unlikely that he was aware of having erroneously executed the form and receiving overpayments. Accordingly, the previous denial of waiver of his debt (B-217914, June 11, 1985) is reversed and waiver is granted.

TRANSPORTATION**B-220877 June 25, 1986****Household Effects****Military Personnel****Weight Limitation****Administrative Determination**

The question of whether and to what extent authorized weights have been exceeded in the shipment of household effects by members of the uniformed services is a matter primarily for administrative determination and ordinarily will not be questioned in the absence of evidence showing it to be clearly in error.

**TRANSPORTATION
Household Effects
Military Personnel
Weight Limitation
Evidence**

**B-220877 Con't
June 25, 1986**

Evidence of the weight of household effects when placed in nontemporary storage is not determinative of the weight of the goods when taken out of storage. A higher weight upon being taken out of storage and transported to the new duty station may be due to several factors including use of different scales, use of storage materials which are not removed before shipping, moisture absorption while in storage, and heavier containers and packing cases for a transcontinental shipment. The certified weight obtained in connection with the transportation of the goods, not the weight previously obtained for storage purposes, is the controlling weight.

**DECEDENTS' ESTATES
Pay, etc. due Military Personnel
Beneficiary Designations
Validity**

B-222066 June 26, 1986

A soldier designated, as the person to receive his unpaid military pay and allowances in the event of his death, "Jean S. McBride (wife)." That designated, identifiable person is entitled to the soldier's accumulated pay following his death notwithstanding that they had divorced and she was the soldier's former wife at the time he designated her as his beneficiary. Determinations concerning entitlement to the accumulated pay of deceased service members must be made in conformity with their written designations, and a service member's designation may not be set aside on the basis of conjecture that the member might or should have intended to make a contrary designation.

PROCUREMENT LAW

BIDDERS

B-221886 June 2, 1986

Qualifications

86-1 CPD 505

Preaward Surveys

Timeliness of use

Scheduling of preaward survey prior to determination of low bidder is justifiable as a means of expediting award.

BIDS

Evaluation

Delivery Provisions

F.O.B. Origin

Transportation Costs

Protest against evaluation of cost to the government for transportation under f.o.b. origin bid is denied. Contracting officer acting in good faith has a right to rely on transportation evaluation made by transportation experts. Moreover, the protester has failed to identify any specific errors in evaluation. Instead, it has merely provided a general estimate of transportation costs; an estimate which, even if accepted, would still not render the protester the low bidder.

BIDS

Rejection

Propriety

Allegation that foreign bidder is subsidized by its government provides no basis for rejecting the foreign bid.

BIDS

B-221903 June 2, 1986

Responsiveness

86-1 CPD 506

Bid Guarantee Requirement

By regulation, a bidder's noncompliance with a bid guarantee requirement is properly waivable where the amount of the guarantee, although less than that called for in the solicitation, equals or exceeds the difference in stated prices between the bid and the next higher acceptable bid.

BIDS**Unbalanced****Propriety of Unbalance****"Mathematically Unbalanced Bids"****Materiality of Unbalance**

In order to prevail in its assertion that a bid is materially unbalanced and, therefore, nonresponsive, the protester must show that there is a reasonable doubt that acceptance of the bid will result in the lowest ultimate cost to the government. Where the agency is purchasing a complete system on a lump-sum, firm-fixed-price basis, and the solicitation does not involve pricing variables such as estimated quantities or option periods, the protester has failed to meet that burden.

BIDS**Unbalanced****Propriety of Unbalance****"Mathematically Unbalanced Bids"****What Constitutes**

A bid is not mathematically unbalanced unless the bid is based on nominal prices for some work and enhanced prices for other work. Therefore, even though a bidder's item prices for the installation of equipment arguably may be understated, the bid is not mathematically unbalanced in the absence of any showing that the item prices for the equipment itself are overstated.

BIDS

B-222420 June 2, 1986

Mistakes

86-1 CPD 508

Correction**Intended Bid Price****Establishment Required**

Protest of the contracting agency's decision allowing upward price correction of mistaken low bid is sustained. While there is evidence of a mistake due to disparity in bid prices, the bidder submitted evidence only of the cost of the work allegedly omitted, but did not provide worksheets showing that the cost of this work was omitted from its initial bid price. Thus, the record does not contain clear and convincing evidence of the intended bid price which would establish basis for correction, unless the bidder can provide worksheets to support the upward correction of its bid. Withdrawal of the bid is permissible, however, based on the existing record.

CONTRACTS

B-222600 June 2, 1986

Protests

86-1 CPD 509

Authority to Consider**Contract Administration Matters**

General Accounting Office will not consider protester's contention that the contracting agency will not insure that the awardee meets its obligations under the contract.

CONTRACTS**Protests****Basis for Protest Requirement**

A protester has no standing to claim an error in a competitor's quotation, since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.

CONTRACTS

B-220381.2 June 3, 1986

Protests**General Accounting Office Function
Scope of Review of Agency Actions**

The General Accounting Office (GAO) advises a member of Congress that issues about bid protest procedures raised by an unsuccessful protester do not warrant legislative consideration. GAO states that (1) its review function is properly limited to determining whether agency officials have violated applicable statutes and regulations; (2) its timeliness rules for initiating a protest appear to be reasonable and equitable; (3) and basing protest decisions on confidential information would not adequately protect the rights and interests of all the parties.

BIDS

B-222230; B-222231 June 3, 1986

Late

86-1 CPD 514

Propriety of Consideration

A late bid cannot be considered on the basis that the bid may offer the government advantages over those bids which have been timely received.

BIDS**Late****Time for Opening Determination**

Where the bid opening officer receives a hand-carried bid after declaring the arrival of the bid opening time as shown on the front office clock, the agency properly rejected the bid as late. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

CONTRACTS **B-222583 Con't**
Negotiation **June 3, 1986**
Offers or Proposals
Time Limitations for Submission
Oral Extension by Negotiator Without Authority
Effect

Oral extension of the closing date for receipt of proposals is not binding on the government and protester therefore cannot rely on an oral extension.

CONTRACTS **B-222726 June 3, 1986**
Buy American Act **86-1 CPD 519**

When proposed awardee intends to supply foreign components originating in a country designated under the Trade Agreements Act, so that the evaluation preference for domestic products in the Buy American Act does not apply, the General Accounting Office will dismiss a protest alleging that the awardee intends to supply a foreign end product or components.

CONTRACTS
Small Business Concerns
Awards
Small Business Administration's Authority
Size Determination

The Small Business Administration is empowered by statute to determine conclusively matters of size status and eligibility for federal procurements, and the General Accounting Office will neither make nor review such determinations.

BIDDERS **B-223173 June 3, 1986**
Suspension **86-1 CPD 520**
Eligibility for Contract Award

GAO will not consider a protest where the protester has been suspended and is ineligible to receive a government contract and, therefore, is not an interested party to protest under Bid Protest Regulations.

BIDS
Invitation for Bids
Cancellation
After Bid Opening
Nonresponsive Bids

B-221827.2 June 4, 1986
86-1 CPD 521

Agency's failure to receive any responsive bids constitutes a compelling reason to cancel a solicitation. Moreover, when the cancellation is proper, the agency does not create an impermissible auction when it resolicits.

CONTRACTS
Termination
Erroneous Award Remedy

Agency properly may terminate a contract where it learns after award that the only two bidders submitted nonresponsive bids, and that procuring officials conducted discussions with the awardee in order to establish that the offered product would meet the requirements of the solicitation.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Reasonable

B-221875 June 4, 1986
86-1 CPD 522

Protest against agency's technical evaluation of proposal is denied where the protester has not shown it to be unreasonable, inconsistent with the stated evaluation criteria, or in violation of procurement statutes and regulations.

CONTRACTS

B-221875 Con't

Protests

June 4, 1986

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest against solicitation requirements, apparent prior to the submission of initial proposals, is untimely when it is not filed until after award has been made.

BIDS

B-221894, et al. June 4, 1986

Invitation for Bids

86-1 CPD 523

Cancellation

Erroneous

Reinstatement Recommended

Protest against cancellation of invitation for bids, on the basis that all bids were unreasonably priced, is sustained where the protester's bid price was compared to a post-bid-opening, unsubstantiated quote from a previous supplier that was lower than the supplier's own earlier price, lower than the government estimate and lower than the price most recently paid for the item, and where the agency did not consider all relevant factors when comparing the protester's bid price to the last price paid for the item.

BIDS

Preparation

Costs

Noncompensable

Request for recovery of bid preparation costs and costs of filing and pursuing the protest is denied where GAO recommends that the agency reconsider the reasonableness of the protester's bid and award the contract to the firm if the reevaluation results in a determination that the price is reasonable.

CONTRACTS

B-222561 June 5, 1986

Protests

86-1 CPD 527

General Accounting Office Procedures**Timeliness of Protest****Date Basis of Protest Made Known to Protester**

A protest filed with the contracting agency more than 10 working days after the protester knew the basis for protest is untimely. Subsequent protest to the General Accounting Office is untimely where it was not initially timely protested with the procuring agency.

BUY AMERICAN ACT

B-222617 June 5, 1986

Foreign Bidder

86-1 CPD 528

Competitive Advantage**Equalization****Not Required**

There is no requirement that an agency offset foreign government subsidies in evaluating proposals other than through application of the Buy American Act evaluation differential to the price of the foreign items.

CONTRACTORS**Responsibility****Determination****Review by GAO****Affirmative Finding Accepted**

GAO will not review an agency's affirmative determination of responsibility except in limited circumstances.

CONTRACTS**Protests****Interested Party Requirement****Mistake-in-Bid Questions**

Protest that low offer may be mistaken is dismissed, since only the contracting parties--the government and the prospective awardee--are in a position to assert rights and bring forth the necessary evidence to resolve mistake questions.

BIDS
"Buying In"
Not Basis for Precluding Award

B-222448.4 June 6, 1986
86-1 CPD 531

Protest that bids were unreasonably low or "buy-ins" does not provide a valid basis to challenge a possible contract award. Such a protest questions the bidder's responsibility which the General Accounting Office does not review except in limited circumstances not present here.

BIDS
Competitive System
Foreign Contractors

Allegation that foreign firms are subsidized by their governments provides no basis for rejecting those firms' bids.

CONTRACTS
Protests
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

B-222469.2 June 6, 1986
86-1 CPD 532

GAO affirms the prior dismissal of a protest based upon the protester's counsel's statement in its comments on the agency report on the protest indicating that the comments were untimely filed, where the request for reconsideration is premised upon the allegation that the information initially presented to GAO by protester's counsel is in error.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Significant Issue Exception
Not for Application

The "significant issue" exception in section 21.2(c) of GAO's Bid Protest Regulations cannot be applied where a protest is dismissed because comments were untimely filed since the exception applies only to protests which are untimely filed with GAO and not to protests timely filed, but otherwise deficient.

BIDS
Invitation for Bids
Specifications
Adequacy

B-222553 June 6, 1986
86-1 CPD 533

Where solicitation states that prices for estimated quantities in option years will be evaluated, but that award will be for the base year only, and evaluation and award are in accord with these terms, protest that award was improper has no merit. Agency properly may use estimates when its exact requirements are unknown, and regulations specifically permit the use of option clauses except in certain circumstances not alleged to be present here.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest of agency's failure to include a price escalation clause in a solicitation concerns an alleged impropriety that is apparent on the face of the solicitation, and such protest, to be timely, must be filed before bid opening.

CONTRACTS

Negotiation

Offers or Proposals

Discussion With all Offerors Requirement

What Constitutes Discussion

B-222585.2 June 6, 1986
86-1 CPD 534

A mere request for best and final offers is sufficient to satisfy the requirement for discussions.

CONTRACTS

B-222585.2 Con't

Protests

June 6, 1986

General Accounting Office Procedures

Timeliness of Protest

Adverse Agency Action Effect

Protest not filed within 10 days of notification of adverse agency action is untimely.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

Apparent in Request for Best and Final Offers

Protest that award criteria should be changed because an amendment to the solicitation changed the contract type from cost plus fixed fee to fixed price is untimely because it was not filed prior to closing date for best and final offers.

CONTRACTS

B-221879 June 9, 1986

Negotiation

86-1 CPD 536

Sole-Source Basis

Authority

Where budget reductions were ordered by the agency head for Fiscal Year 1987 for numerous military activities, an agency properly determined that urgent circumstances existed and that it must use noncompetitive procedures provided for under the Competition in Contracting Act to limit the procurement to the only firm it reasonably believes can perform the work of implementing operational improvements within the time constraints available to achieve the anticipated savings.

BIDS B-222595 June 9, 1986
Mistakes 86-1 CPD 537
Nonresponsive Bids
Correction Improper

Bid that deviates from the required delivery schedule is nonresponsive and may not be corrected even though the deviation reflected only clerical error.

CONTRACTS B-220459.2 June 10, 1986
Negotiation 86-1 CPD 539
Offers or Proposals
Evaluation
Technical Transfusion Prohibition

Prior decision is affirmed where additional facts regarding agency's discussions with the offeror selected for award do not establish that the agency engaged in technical leveling or technical transfusion during those discussions.

CONTRACTS B-221814.2 June 10, 1986
Protests 86-1 CPD 540
Preparation
Costs
Noncompensable

Where a recommendation that competitive range negotiations be reopened is sufficient to insure that the protester now receives a full and fair opportunity to compete for the award, the recovery of its costs of filing and pursuing the protest, including attorney's fees, is not appropriate.

GENERAL ACCOUNTING OFFICE B-221814.2 Con't
Recommendations June 10, 1986
Contracts
Procurement Deficiencies
Correction

The details of implementing a recommendation for corrective action set forth in a bid protest decision are within the sound discretion and judgment of the contracting agency and, therefore, the agency's ultimate manner of compliance will not be questioned as long as it remedies the procurement impropriety that was the basis for the original decision.

BIDS B-222314 June 10, 1986
Mistakes 86-1 CPD 541
Correction
Propriety

Upward correction of a bid before award is permissible where evidence consisting of the bidder's worksheets, the subcontractor's quotation, and an adding machine tape clearly demonstrates both the existence of a mistake and the intended bid.

CONTRACTS B-222468 June 10, 1986
Protests 86-1 CPD 542
Allegations
Not Prejudicial

Protest is denied where there is no indication that an error in calculating protester's total offered price adversely affected the protester's competitive standing.

CONTRACTS
Protests
Burden of Proof
On Protester

B-222468 Con't
June 10, 1986

Protester has the burden of proving its case and GAO does not conduct investigations for the purpose of establishing whether a protester may have a valid basis for protest.

CONTRACTS
Protests
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

B-221806.2 June 11, 1986
86-1 CPD 543

The General Accounting Office denies a request for reconsideration that fails to show legal or factual errors in a decision concluding that a bidder rendered itself ineligible for award after its bid expired by conditioning an extension of its bid acceptance period upon an increase in price. Arguments concerning the protester's responsibility are irrelevant when its extended bid was nonresponsive.

CONTRACTS
Small Business Concerns
Awards
Set-Asides

B-222792 June 11, 1986
86-1 CPD 544

Administrative Determination
Reasonable Expectation of Competition

Contracting officer's decision not to procure required services through a small business set-aside was not an abuse of the discretion granted under the procurement regulations where he determined, based on negative technical evaluations of small businesses' qualification statements, that there was no reasonable expectation that offers from two responsible small business concerns would be received.

BIDS
Invitation for Bids
Cancellation
After Bid Opening
Insufficient Funding

B-219981.4 June 12, 1986
86-1 CPD 545

Cancellation of an invitation for bids (IFB) after bid opening is proper where funds for the procurement are no longer available. Contracting agency is not precluded from resoliciting if funds become available in the future, since there is no evidence that the current unavailability of funds is merely a pretext to permit cancellation of the IFB and resolicitation in the future.

CONTRACTS
Negotiation
Offers or Proposals
Best and Final
Additional Rounds
Auction Technique not Indicated

B-222151 June 12, 1986
86-1 CPD 546

Review of the protest record discloses nothing to indicate that the agency created an auction either by disclosing the relative price standing of offerors or by requesting a second round of best and final offers merely to afford one offeror a competitive advantage.

CONTRACTS
Negotiation
Offers or Proposals
Discussion With all Offerors Requirement
Reopened Discussions After Best and Final

Contracting agency properly may reopen discussions and request a second round of best and final offers where the agency realizes it failed to request needed information during discussions and further discussions are needed to evaluate a proposal.

CONTRACTS

B-223180.2 June 12, 1986

Protests

86-1 CPD 548

General Accounting Office Procedures**Timeliness of Protest****Time/Date Stamp Effect**

A protest is filed for purposes of General Accounting Office (GAO) timeliness rules when it is received in GAO notwithstanding when it allegedly was mailed. GAO time/date stamp establishes the time of receipt absent other evidence to show actual earlier receipt.

CONTRACTS

B-222364 June 13, 1986

Negotiation

86-1 CPD 549

Awards**Price Determinative Factor**

Although the protester had the highest point-rated technical proposal, it was not unreasonable for the agency to make an award to another firm to take advantage of the awardee's lower cost proposal since the agency found the awardee's offer as acceptable as the protesters. Notwithstanding the fact that in an overall evaluation scheme price is of less importance than other evaluation criteria, price may become the determinative consideration in making the award where the proposals are essentially equal technically.

CONTRACTS**Negotiation****Offers or Proposals****Best and Final**

An offeror that is requested by the contracting agency to submit a "best and final" offer is responsible for assuring that it submits just such an offer and, thus, has no reason to expect there will be further negotiations after it submits its response.

CONTRACTS

B-222364 Con't

Negotiation

June 13, 1986

Offers or Proposals

Discussion With all Offerors Requirement

"Meaningful" Discussions

No technical discussions need be held in a negotiated procurement where all the proposals submitted are found to be technically acceptable and contain no technical deficiencies or uncertainties.

CONTRACTS

Protests

Allegations

Speculative

Protester's objection to the agency's request for best and final price offers because of the possibility that someone in the agency could "leak" the initial price proposals to one of the offerors is based on mere speculation and provides no basis with which to challenge the propriety of the agency's conduct of the procurement.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest that procurement should have been conducted using sealed bidding instead of negotiation is untimely where it was not raised before the closing date for receipt of initial proposals.

CONTRACTS **B-223235 June 13, 1986**
Protests **86-1 CPD 550**
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent Prior to Bid Opening/Closing Date
for Proposals

Protest challenging agency's decision to use simplified small purchase procedures is dismissed as untimely where protest was not filed in General Accounting Office until more than 2 months after date set for submission of initial proposals.

CONTRACTORS **B-223299 June 13, 1986**
Responsibility **86-1 CPD 551**
Determination
Review by GAO
Affirmative Finding Accepted

General Accounting Office will not review a challenge to a contracting agency's affirmative responsibility determination where there is no allegation or showing that the contracting officials acted fraudulently or in bad faith or that the solicitation contained definitive responsibility criteria that have not been met.

CONTRACTS **B-220399.2 June 16, 1986**
Negotiation **86-1 CPD 552**
Awards
To Other Than low Offeror

In negotiated procurements there is no requirement that award be made on the basis of the lowest cost. The procuring agency has the discretion to select a higher technically rated offeror if doing so is consistent with the evaluation scheme in the solicitation.

CONTRACTS

B-220399.2 Con't

Negotiation

June 16, 1986

Offers or Proposals

Evaluation

Reasonable

General Accounting Office in camera review of proposals and evaluation score sheets and summaries shows that the agency's technical evaluation of proposals was fair and reasonable.

CONTRACTS

Negotiation

Offers or Proposals

Prices

Unprofitable

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

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

New Issues

Unrelated to Original Protest Basis

New grounds of protest initially presented subsequent to General Accounting Office's receipt of agency report on the protest are dismissed as untimely where it appears that new protest is based on information known to the protester at agency debriefing on its proposal which was held prior to the filing of the original protest.

CONTRACTS B-221089.2 June 16, 1986
Protests 86-1 CPD 553
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

Decision is affirmed on reconsideration where agency fails to establish the existence of an error of law or fact in the decision.

CONTRACTS B-222523 June 16, 1986
Protests 86-1 CPD 554
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

A protest not filed within 10 working days after the protester was orally advised its agency protest was denied is untimely and will not be considered on the merits.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Significant Issue Exception
Not for Application

General Accounting Office will not consider the merits of an untimely protest by invoking "significant issue" exception to timeliness requirements where untimely protest does not raise issue of first impression which would have widespread significance to the procurement community.

CONTRACTS
Protests
Allegations
Unsubstantiated

B-222421 Con't
June 17, 1986

Allegation that agency determination to restrict to domestic sources 50 percent of agency's spare roadwheel acquisitions was based on political pressure is denied since contracting officials are presumed to act in good faith and protester has failed to provide any substantiating evidence to support its allegation.

CONTRACTS
Protests
Basis for Protest Requirement

Allegation that protester, a foreign firm, could offer a lower price if allowed to compete provides no basis to object to agency's partial restriction of acquisition to domestic sources where such restriction is not found improper.

CONTRACTS
Requests for Quotations
Preparation of Quotation
Cost
Recovery

B-222511 June 17, 1986
86-1 CPD 558

Where the agency admits that certain improprieties in the conduct of a procurement under a request for quotations may have denied the protester an opportunity to compete fairly for the contract, but that corrective action is not feasible because the contract has already been performed, the protester is entitled to recover the costs of preparing its quotation and the costs of filing and pursuing the protest since the firm was unreasonably excluded from the procurement.

BIDS

B-222628 June 17, 1986

Prices

86-1 CPD 559

Below Cost

Not Basis for Precluding Award

There is nothing illegal in the acceptance of a below-cost bid submitted by a responsible firm.

CONTRACTS

Protests

Allegations

Not Prejudicial

Whether a firm should have been included on a superseded qualified products list (QPL) is not relevant to the propriety of award to that firm under an invitation restricted to bidders on the current QPL, since the protester admits that the bidder properly is on the current QPL and does not suggest that the bid otherwise is unacceptable.

CONTRACTS

Protests

Basis for Protest Requirement

Complaint that low bid in current competitive procurement--\$63.75/item--shows that the government paid that same firm an unreasonably high price--\$100/item--in the past, when the bidder was in a sole-source position, does not state a basis for protest since it provides no challenge to the propriety of the current award. To the extent the protest challenges that bidder's integrity and business ethics for purposes of the competitive award, those are elements of responsibility, and GAO does not review an affirmative determination in that respect except in limited circumstances.

CONTRACTS**B-223248 June 17, 1986****Protests****86-1 CPD 561****What Constitutes Protest**

Protester's oral complaint to contracting officer before the closing date for the receipt of initial proposals that the solicitation included restrictive specifications and an unreasonable delivery schedule did not constitute timely protest since oral complaint to agency does not constitute a protest. Therefore, protest of alleged solicitation improprieties to GAO filed following the closing date for the submission of initial proposals is dismissed as untimely.

CONTRACTS**B-222537.2 June 18, 1986****Protests****86-1 CPD 570****Interested Party Requirement****Potential Contractors, etc. not Submitting Bids, etc.**

Firm that did not submit its own offer in response to a solicitation does not qualify as an interested party under the Competition in Contracting Act of 1984 to protest award of the contract.

ESTOPPEL**B-223211 June 18, 1986****Against Government****86-1 CPD 571****Not Established****Prior Erroneous Advice, Contract Actions, etc.**

Where a solicitation expressly cautions bidders against relying upon oral advice from agency personnel, a bidder who relies on oral assurances that the bid opening date will be extended does so at its own risk since such advice is not binding upon the agency.

CONTRACTS**B-223323 June 18, 1986****Protests****86-1 CPD 572****Interested Party Requirement****Direct Interest Criterion**

A union local which represents federal employees is not an interested party to protest the contracting agency's decision to contract for services rather than perform them in-house, since it is not an actual or prospective bidder or offeror under the challenged solicitation.

BIDS**B-220087.3 June 19, 1986****Invitation for Bids****86-1 CPD 562****Cancellation****After Bid Opening****Scope of Work Changed**

Contracting agency properly canceled invitation for bids (IFB) for design and installation of a local area network where agency's needs have changed to require more extensive system than described in IFB. Since the procurement is principally for design of an integrated system, the changes necessary to meet agency's expanded needs are not the equivalent of an additional quantity under a solicitation for a supply of items. The agency's new requirements thus cannot properly be the subject of a separate solicitation. Award cannot be made under the original IFB with the intention of modifying the contract to accommodate the new requirements.

CONTRACTORS**B-221584.4 June 19, 1986****Responsibility****86-1 CPD 563****Determination****Review by GAO****Nonresponsibility Finding**

General Accounting Office will not recommend further consideration of a nonresponsibility determination where protester fails to demonstrate that an alleged change in circumstances, occurring after the Small Business Administration's denial of a certificate of competency, represents a material change in the principal factors on which the nonresponsibility determination was based.

CONTRACTS
Negotiation
Requests for Proposals
Amendment
Propriety

B-222152 June 19, 1986
86-1 CPD 564

Where RFP solicits two alternative technical approaches, an amendment to the RFP, issued after proposal submission and evaluation that eliminates one of the alternatives from selection consideration, is proper since offerors had the opportunity and did in fact submit offers on both approaches.

CONTRACTS
Protests
Interested Party Requirement
Protester not in Line for Award
Interested Party Nonetheless

Offeror is an interested party to protest an amendment to an RFP which eliminated one of two alternative approaches, even though protester would not be successful offeror for remaining alternative, since if the protest is sustained the protester would either have the opportunity to compete under a resolicitation or be considered for award under the unamended RFP.

CONTRACTS
Negotiation
Offers or Proposals
Preparation
Costs
Recovery

B-222197 June 19, 1986
86-1 CPD 565

Where agency accepted company's offer which contained payment and delivery terms contrary to those contained in the solicitation and which afforded the company an unfair competitive advantage over the protester, recovery of protester's proposal preparation costs is appropriate. Protester had a substantial chance of receiving the award and was unreasonably excluded from the procurement without being afforded an opportunity to propose on the basis of the contracting agency's actual needs, and other remedies are not appropriate.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Propriety

B-222466 Con't
June 19, 1986

Protester's allegation that procuring agency failed to evaluate proposals in accordance with the solicitation's evaluation criteria is without merit. While the procuring agency did not specifically advise offerors that proposing physicians with over 10 years of experience would result in receiving maximum points in the category, the evaluation was not improper because this factor was reasonably related to the stated criteria.

CONTRACTS

B-222572.2 June 19, 1986

Protests
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

The period within which a protest of the cancellation of a solicitation must be filed is not extended by the agency's issuance of a new solicitation for the same requirement.

CONTRACTS

Protests
General Accounting Office Procedures
Timeliness of Protest
Significant Issue Exception
Not For Application

Concerns of the low bidder under a canceled solicitation over the inefficiency and basic unfairness of the agency's failure to award it a contract have been considered in previous decisions and therefore do not constitute significant issues warranting consideration of an untimely protest.

CONTRACTS
Negotiation
Awards
Propriety
Upheld

B-221374.4, et al. Con't
June 20, 1986

The General Accounting Office denies a protest alleging an awardee's noncompliance with housing development design and construction criteria in a solicitation, including codes and standards incorporated by reference, where the awardee's proposal substantially complied with the solicitation requirements and the agency properly evaluated the proposal.

The General Accounting Office denies a protest that an awardee's proposal failed to comply with technical requirements specifically set forth in the solicitation where the protester's allegations are either in error as to what the solicitation required or what the awardee's proposal offered or concern insignificant matters that would not have changed the relative ranking of the awardee or rendered its proposal unacceptable.

CONTRACTS
Protests
Basis for Protest Requirement

Requirement that a protest contain a detailed statement of its legal and factual basis is intended to assist the General Accounting Office in determining whether the protest states a valid basis or warrants dismissal and to enable the agency to respond in a timely report. The requirement is met by a protest that the awardee's proposal is inconsistent with specific requirements of the solicitation, although the awardee's proposal is not provided to the General Accounting Office by the protester.

CONTRACTS B-221863; B-221863.2
Negotiation June 20, 1986
Competition 86-1 CPD 574
Full and Free
Competition Requirement

The Department of Energy (DOE) alternative source selection procedures permitting definitized contract negotiations with only one offeror were improperly utilized to the detriment of the statutory requirement for full and open competition where the protester's technical proposal was ranked so closely with that of the offeror selected for final negotiations that the slight difference in scoring did not necessarily represent a meaningful difference in actual technical merit. Accordingly, the General Accounting Office recommends that DOE reopen discussions with both firms to obtain best and final offers on the basis of definitized contract documents. Second protester, whose proposal, although lowest in cost, was markedly inferior relative to the proposals of its competitors and otherwise only marginally acceptable, is not entitled to the same remedy.

CONTRACTS B-222139 June 20, 1986
Negotiation 86-1 CPD 575
Offers or Proposals
Evaluation
General Accounting Office Review

General Accounting Office (GAO) review of evaluation of proposals is limited to examining whether the agency evaluation was fair and reasonable and consistent with the stated evaluation criteria. GAO review shows that agency's evaluation was reasonable.

CONTRACTS
Protests
Allegations
Bias
Unsubstantiated

B-222139 Con't
June 20, 1986

Although letter from agency official transmitting agency level protest to agency's headquarters may be construed as indicating bias against the protester because the protester was the incumbent contractor under prior two contracts and the agency had received complaints from other potential offerors, the letter read as a whole may be reasonably construed as stating that award was made on the basis of the proposal which rated highest in the agency's evaluation. Even if bias in the evaluation of proposals were assumed, it does not appear to have been translated into action which affected the protester's competitive position where there was a reasonable basis for the evaluators' determinations.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

Specific grounds of protest are dismissed as untimely where the allegations were first presented to General Accounting Office more than 10 working days from the date on which protester received evaluators' scoring sheets, under Freedom of Information Act request, which contained the information which forms the basis for the new grounds of protest.

SMALL BUSINESS ADMINISTRATION B-222241.2 June 20, 1986
Contracts 86-1 CPD 576
Contracting With Other Government Agencies
Procurement Under 8(a) Program
Fraud or Bad Faith Alleged
Evidence Sufficiency

Protest of agency's withdrawal of procurement from the 8(a) program is denied where protester does not present evidence of specific and malicious intent by government officials to injure the protester.

CONTRACTS B-223103 June 23, 1986
Two-Step Procurement 86-1 CPD 577
Step One
Offers or Proposals
Discussion With all Offerors Requirement
Discussions not Required

There is no requirement that an agency conduct discussions with an offeror whose technical proposal under step one of a two-step sealed bid acquisition is informationally deficient to the extent that it cannot be made acceptable without a major rewriting of the proposal.

CONTRACTS

B-221709.5 June 24, 1986

Negotiation

86-1 CPD 580

Offers or Proposals**Evaluation****Administrative Discretion**

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

CONTRACTS**Protests****General Accounting Office Function****Free and Full Competition Objective**

General Accounting Office (GAO) will not review the merits of an allegation that more restrictive specifications are required to serve the government's interest, or that a procurement should be conducted on a sole-source basis, since the purpose of GAO's role in resolving bid protests is to ensure that the statutory requirements for free and open competition are met.

CONTRACTS

B-221924 June 24, 1986

Negotiation

86-1 CPD 581

Requests for Proposals**Specifications****Minimum Needs****Administrative Determination**

Agency's determination of its minimum needs for a "critical" repair part is upheld where the protester has not shown that the agency's determination was unreasonable.

BIDS

B-222476 June 24, 1986

Unbalanced

86-1 CPD 582

Propriety of Unbalance

"Mathematically Unbalanced Bids"

Materiality of Unbalance

A low bid in which the first article unit price charged by the bidder was more than 1,000 times greater than the unit price for the production items was properly rejected as materially unbalanced because an award to the firm would result in the payment of funds early in the contract period--in essence, an interest-free loan--to which the firm is not entitled with respect to the actual value of the first articles.

CONTRACTS

Cost Accounting

Capitalization of Tangible Assets

Where any capital expenditures in acquiring special equipment necessary to furnish acceptable first articles are an investment in the production quantity as well, such costs should be amortized over the entire contract rather than allocated solely to the first articles.

CONTRACTS

B-222541 June 24, 1986

Protests

86-1 CPD 584

General Accounting Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

Where an offeror writes to the agency after learning of its basis for its protest, but fails to express dissatisfaction with the agency's action and to request corrective action, the offeror's letter does not constitute a protest to the agency, and a protest filed with the General Accounting Office more than 2 months later is untimely.

CONTRACTS B-222648 June 24, 1986
Protests 86-1 CPD 585
General Accounting Office Procedures
Timeliness of Protest
Failure to Diligently Pursue Protest

Protester fails to diligently pursue information which forms the basis of its protest that the awardee's facilities are in a flood area where that information was available at the time of award and the protest is filed more than four months later.

CONTRACTORS B-222919 June 24, 1986
Responsibility 86-1 CPD 586
Determination
Review by GAO
Affirmative Finding Accepted

GAO will not review an affirmative determination of responsibility absent a showing of fraud or bad faith, or that a definitive responsibility criterion was not met.

CONTRACTS
Protests
Authority to Consider
Contract Administration Matters

Whether contractor will comply with contract terms during performance is a matter of contract administration which GAO will not consider.

GENERAL ACCOUNTING OFFICE
Jurisdiction
Contracts
Walsh-Healey Act

GAO does not consider whether a bidder qualifies as a manufacturer under the Walsh-Healey Act.

BIDS

B-223300 June 24, 1986

Prices

86-1 CPD 588

Below Cost

Effect on Bidder Responsibility

A below-cost bid is not nonresponsive. A protest contending that no bidder can properly perform the contract at a price lower than that bid by the protester raises an issue of bidder responsibility, the affirmative determination of which will not be reviewed absent a showing of possible fraud or bad faith on the part of the procuring officials or that the agency failed to apply or misapplied definitive responsibility criteria stated in the solicitation.

CONTRACTS

B-221510.2 June 25, 1986

Protests

86-1 CPD 589

General Accounting Office Procedures

Reconsideration Requests

Error of Fact or Law

Not Established

Prior decision is affirmed where request for reconsideration presents no new evidence in support of protester's contentions and fails to show factual or legal error in GAO's conclusion that discrepancies in place of performance and small business status certifications of low bid on unrestricted portion of partial labor surplus area set-aside solicitation do not render bid nonresponsive.

CONTRACTS

B-221831.2 June 25, 1986

Protests

86-1 CPD 590

General Accounting Office Procedures

Reconsideration Requests

Error of Fact or Law

Not Established

Request for reconsideration is denied where protester does not demonstrate that the decision was legally or factually incorrect.

BIDS

B-222018.2 June 25, 1986

Qualified

86-1 CPD 591

All or None

Combination of Procurements

Where a solicitation for moving and storage services in five different areas permits bids on an all or none basis, protest that an agency improperly considered a bid from a firm that qualified its bid by agreeing to accept an award for one area only if awarded a second area is without legal merit. Where an award for both areas results in the lowest overall cost to the government and is in accord with the solicitation, it may properly be made.

BIDS

Unbalanced

Not Automatically Precluded

Protest that a low aggregate bid should be rejected because one line item out of more than 30 is unreasonable as to price, resulting in an unbalanced bid, is denied. Even if the bid is mathematically unbalanced, it may properly be accepted so long as the estimated quantity of work under the item reasonably represents the agency's actual anticipated needs.

CONTRACTS

B-222162 June 25, 1986

Protests

86-1 CPD 592

Authority to Consider

Contract Administration Matters

Claim for contract termination costs is a matter for resolution under the Contract Disputes Act of 1978, which establishes procedures for resolving such claims.

CONTRACTS

B-222162 Con't

Protests

June 25, 1986

General Accounting Office Procedures**Timeliness of Protest****Solicitation Improprieties****Not Apparent Prior to Closing Date for****Receipt of Quotations**

Protest that requirement for a diesel-powered street sweeper in a request for quotations issued under the small purchase procedures unduly restricts competition is timely where, before the date for receipt of quotations, the protester was orally advised by agency personnel that its quotation for a gasoline-powered sweeper would be evaluated and that the agency was primarily interested in performance of the sweeper, and the protest was filed within 10 days after the protester's quotation for a gasoline-powered sweeper was rejected.

CONTRACTS**Requests for Quotations****Specifications****Minimum Needs Requirement****Administrative Determination****Reasonableness**

Specification for a street sweeper powered by a diesel engine, rather than a gasoline engine, does not unduly restrict competition where the agency presents a reasonable explanation of why the specification is necessary to meet its minimum needs and the protester fails to show that the restriction is clearly unreasonable.

BIDDERS**B-222486 June 25, 1986****Responsibility v. Bid Responsiveness
Information**

Bidders' failure to provide the name, address, and part number of the manufacturer of grease gun adapters with their bids does not render the bids nonresponsive when the bidders otherwise took no exception to the solicitation. The information concerns their ability to provide adapters meeting a military specification and, as a matter of responsibility, may be provided any time before award.

BIDDERS**Responsibility v. Bid Responsiveness
Manufacturer or Dealer Determination**

Bidder's status as a manufacturer or dealer may be resolved after bid opening and, if necessary, information submitted may be corrected or waived as a minor informality.

CONTRACTS**B-222703 June 25, 1986****Protests****Authority to Consider
Activities not Involving Federal Procurement**

Since a lease is a type of sale, not a procurement of property, and Competition in Contracting Act of 1984 only authorizes GAO to review protests pertaining to procurements of property or services by a federal agency, protest concerning the proposed lease of government-owned equipment will not be considered.

**Invitation for Bids
Interpretation
Incorrect**

Where protester alleges that it should have been considered the low bidder because the procuring agency should have waived the IFB's "Configuration Item Verification Review" requirement under the IFB's "Waiver of First Article" clause, protest is denied because the protester's interpretation of the clause is unreasonable.

CONTRACTS**Protests
Allegations
Premature**

Protest challenging the responsibility of the apparent low bidder is dismissed where the procuring agency advises that the bidder's responsibility is still being considered because the allegation is premature.

CONTRACTS**Protests
Moot, Academic, etc. Questions
Protester in not in Line for Award**

Protest against initial low bidder has become academic where the procuring agency subsequently rejected the bidder as nonresponsive.

CONTRACTS

B-224345 June 26, 1986

Small Business Concerns

Awards

Responsibility Determination

Nonresponsibility Finding

Review by GAO

Where Small Business Administration declines to issue a certificate of competency on basis that applicant is not a small business, General Accounting Office will review protest of contracting officer's nonresponsibility determination.

CONTRACTS

Small Business Concerns

Awards

Small Business Administration's Authority

Size Determination

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

CONTRACTS

B-219590.4 June 27, 1986

Protests

Interested Party Requirement

Trade Associations, etc.

A union local which represents federal employees is not an interested party to protest the contracting agency's decision to contract for services rather than perform them in-house, since it is not an actual or prospective bidder or offeror under the challenged solicitation.

BIDS

B-222584 June 30, 1986

Responsiveness**Waiver of Requirement**

Bid that includes bid guarantee stamped "confidential" was properly accepted where two unstamped copies of the guarantee were included in the bid and where, because there are no apparent reason for restricting the guarantee, the restriction can be waived as a minor irregularity.

CONTRACTS

B-222601.2 June 30, 1986

Protests**General Accounting Office Procedures****Timeliness of Protest****Significant Issue Exception****Not for Application**

Neither allegedly arbitrary rejection of initial proposal based on submission of inadequate information nor agency's alleged failure to follow stated evaluation criteria presents a significant issue which, although untimely protested, the General Accounting Office will consider on the merits.

CONTRACTS

B-223158.2 June 30, 1986

Protests**General Accounting Office Procedures****Constructive Notice**

Protesters are charged with constructive knowledge of GAO's Bid Protest Regulations.

CONTRACTS**Protests****General Accounting Office Procedures****Timeliness of Protest****Date Basis of Protest Made Known to Protester**

Dismissal of original protest is affirmed, and protest will not be reopened, where protester failed to file protest within 10 working days of the date the basis for protest was known.

BIDS**B-223244.2 June 30, 1986****Rejection
Propriety**

Procuring agency properly rejected bid, which included restriction on the disclosure of the bid to the public, as nonresponsive, notwithstanding that the procuring agency disclosed the price at bid opening.

BIDS**B-224356 June 30, 1986****Collusive Bidding**

Protest that low bidders engaged in collusive bidding is dismissed because the question is one circumstance to be considered by the contracting officer in determining their responsibility.

SPECIAL STUDIES & ANALYSIS

TRANSPORTATION DEPARTMENT B-222021 June 10, 1986
National Highway Traffic Safety Administration
Administration Efficiency

National Highway Traffic Safety Administration (NHTSA), after closing an investigation of a possible safety-related defect pursuant to a settlement agreement, cannot reopen investigation at the point at which it was closed. NHTSA can, however, based on its statutory authority and the terms of the settlement, open an investigation, based on new information, if it affords the manufacturer all the procedural rights guaranteed by the National Traffic and Motor Vehicle Safety Act, title I, part B, 15 U.S.C. §§ 1411-1423. One form of new information which NHTSA could consider is post-settlement fatalities involving vehicles covered by the agreement.

National Highway Traffic Safety Administration (NHTSA) settled a defect investigation without finding a defect, based on manufacturer's agreement to send letters and reminder labels. This opinion describes terms of settlement and monitoring responsibilities of NHTSA.

National Highway Traffic Safety Administration (NHTSA) settled a defect investigation without finding a defect, based on manufacturer's agreement to send letters and reminder labels. NHTSA has no authority to require that individual owners display the label on their cars. When a vehicle covered by the settlement but which does not have the label affixed is sold, we know of no authority or responsibility to require dealers not controlled by the manufacturer, to affix it. (The manufacturer may have authority, but has no responsibility, to require dealers which it owns to affix the label.)

TRANSPORTATION DEPARTMENT B-222021 Con't
National Highway Traffic June 10, 1986
Safety Administration
Administration Efficiency

National Highway Traffic Safety Administration (NHTSA) settled a defect investigation without finding a defect, based on manufacturer's agreement to send letters and reminder labels. Opinion discusses Center for Auto Safety vs. Lewis, 685 F. 2d 656 (D.C. Cir. 1982), in which Court of Appeals upheld NHTSA's action in agreeing to the settlement.

National Highway Traffic Safety Administration (NHTSA) settled a defect investigation without finding a defect, based on manufacturer's agreement to send letters and reminder labels. NHTSA made "commitments" at congressional hearings and during litigation to monitor the settlement agreement. These commitments are not legally binding but were honored by NHTSA.

A "recall" of cars with a defect--whereby the National Highway Traffic Safety Administration orders that the defect be remedied at the manufacturer's expense--can only reach vehicles purchased within 8 years of notification to owners of the defect. 15 U.S.C. § 1414(a).

TRANSPORTATION LAW

TRANSPORTATION

B-221615 June 24, 1986

Overcharges

Deduction Reclaims

Review

A motor carrier that performed all the transportation service for a government shipment billed and collected charges derived from its rate tariff. The General Services Administration (GSA) recovered overcharges from the carrier on the basis that the Government Bill of Lading (GBL) was issued to another carrier which had lower tender rates in effect at the time of shipment. The carrier to which the GBL was issued merged into the billing carrier during transit. We sustain GSA's action since it appears that the government looked to the carrier to which the GBL was issued for performance and the operational arrangements it chose to make with the other carrier had no effect on its obligation to the government.

GENERAL ACCOUNTING OFFICE

B-194528; B-223217

Jurisdiction

June 26, 1986

Maritime Matters

The Agency for International Development (AID) disputes the Maritime Administration's (MARAD) grounds for refusing to approve the charter of a foreign-built U.S. flag vessel to Israel for use in transporting grain under AID's Cash Transfer Program with Israel. Although the Comptroller General has held that the Cargo Preference Act does not apply to the Program, MARAD contends that since Israel agreed to abide with the law's objective, and the vessel would be U.S.-documented for less than 3 years, the vessel would not be eligible to share in the traffic. See 59 Comp. Gen. 279 (1980). The General Accounting Office cannot resolve the interagency dispute because MARAD's reasons for refusing to charter a vessel under the Shipping Act of 1916 is a matter outside the jurisdiction of this Office.

INDEX

JUNE 1986

	<u>June</u>	<u>Page</u>
APPROPRIATIONS		
Availability		
Expenses Incident to Specific Purposes		
Necessary Expenses	B-221536	12... A- 3
Membership Fees		
Private Organizations	B-221569	2... A- 1
Telephones	B-220148	6... A- 2
Transfers		
Between Appropriations	B-222686	11... A- 3
BIDDERS		
Qualifications		
Preaward Surveys		
Timeliness of Use	B-221886	2... D- 1
Responsibility <u>y.</u> Bid		
Responsiveness		
Information	B-222486	25... D-48
Manufacturer or Dealer Determination	B-222486	25... D-48
Suspension		
Eligibility for Contract Award	B-223173	3... D- 7
BIDS		
"Buying In"		
Not Basis for Precluding Award	B-222448.4	6... D-13
Collusive Bidding	B-224356	30... D-54
Competitive System		
Foreign Contractors	B-222448.4	6... D-13

INDEX - Con.

		<u>June</u>	<u>Page</u>
BIDS - Con.			
Evaluation			
Delivery Provisions			
F.O.B. Origin			
Transportation Costs	B-221886	2...	D- 1
Invitation for Bids			
Cancellation			
After Bid Opening			
Compelling Reasons Only	B-222691	2...	D- 4
Insufficient Funding	B-219981.4	12...	D-19
Nonresponsive Bids	B-221827.2	4...	D- 8
Scope of Work Changed	B-220087.3	19...	D-30
Erroneous			
Reinstatement Recommended	B-221894, et al.)	4...	D- 9
Domestic Source Requirements	B-222421	17...	D-26
Interpretation			
Incorrect	B-222760	25...	D-49
Specifications			
Adequacy	B-222553	6...	D-14
Late			
Propriety of Consideration	B-222230) B-222231)	3...	D- 5
Time for Opening			
Determination	B-222230) B-222231)	3...	D- 5
Mistakes			
Correction			
Intended Bid Price			
Establishment Required	B-222420	2...	D- 3

INDEX - Con.

		<u>June</u>	<u>Page</u>
BIDS - Con.			
Mistakes - Con.			
Correction - Con.			
Propriety	B-222314	10...	D-17
Nonresponsive Bids			
Correction Improper	B-222595	9...	D-16
Preparation			
Costs			
Noncompensable	B-221894, et al.)	4...	D- 9
	B-222691	2...	D- 4
Prices			
Below Cost			
Effect on Bidder			
Responsibility	B-223300	24...	D-45
Not Basis for Precluding			
Award	B-222628	17...	D-28
Qualified			
All or None			
Combination of Procurements	B-222018.2	25...	D-46
Rejection			
Propriety	B-221886	2...	D- 1
	B-223244.2	30...	D-54
Responsiveness			
Bid Guarantee Requirement	B-221903	2...	D- 2
Waiver of Requirement	B-222584	30...	D-53
Unbalanced			
Not Automatically Precluded	B-222018.2	25...	D-46

INDEX - Con.

	<u>June</u>	<u>Page</u>
BIDS - Con.		
Unbalanced - Con.		
Propriety of Unbalance		
"Mathematically Unbalanced Bids"		
Materiality of Unbalance	B-221903	2... D- 2
	B-222476	24... D-42
What Constitutes	B-221903	2... D- 2
BONDS		
Payment		
Miller Act Coverage		
Subcontractors, etc.	B-223223	24... D-44
BUY AMERICAN ACT		
Foreign Bidder		
Competitive Advantage		
Equalization		
Not Required	B-222617	5... D-11
CERTIFYING OFFICERS		
Relief		
Erroneous Payments		
Duplicate Payments	B-223357	23... A- 6
COMPENSATION		
Double		
Concurrent Military Retired		
and Civilian Service Pay	B-222334	2... B- 2
CONTRACTORS		
Responsibility		
Determination		
Definitive Responsibility		
Criteria		
What Constitutes	B-221374.4, et al.)	20... D-34

INDEX - Con.

		<u>June</u>	<u>Page</u>
CONTRACTORS - Con.			
Responsibility - Con.			
Determination - Con.			
Review by GAO			
Affirmative Finding			
Accepted	B-222617	5...	D-11
	B-222623	4...	D-10
	B-222919	24...	D-43
	B-223299	13...	D-23
Nonresponsibility			
Finding	B-221584.4	19...	D-30
CONTRACTS			
Buy American Act	B-222726	3...	D- 7
Cost Accounting			
Capitalization of Tangible			
Assets	B-222476	24...	D-42
Federal Supply Schedule			
Mandatory Use Requirement	B-221536	12...	A- 3
Negotiation			
Awards			
Price Determinative Factor	B-222364	13...	D-21
Propriety			
Upheld	B-221374.4,		
	et al.)	20...	D-35
	B-222307	30...	D-52
To Other Than low Offeror			
	B-220399.2	16...	D-23
	B-222466	19...	D-32
Competition			
Full and Free Competition			
Requirement	B-221863)		
	B-221863.2)	20...	D-37

INDEX - Con.

	<u>June</u>	<u>Page</u>
CONTRACTS - Con.		
Negotiation - Con.		
Late Proposals and Quotations		
Rejection Propriety	B-222583	3... D- 6
	B-223107	23... D-40
	B-223270	26... D-50
Offers or Proposals		
Best and Final	B-222364	13... D-21
Additional Rounds		
Auction Technique not Indicated	B-222151	12... D-19
Discussion With all Offerors Requirement		
"Meaningful" Discussions	B-222364	13... D-22
Reopened Discussions After Best and Final		
	B-222151	12... D-19
What Constitutes Discussion		
	B-222151	12... D-20
	B-222585.2	6... D-14
Evaluation		
Administrative Discretion	B-221709.5	24... D-41
General Accounting Office Review		
	B-222139	20... D-37
Propriety	B-222466	19... D-33
Reasonable		
	B-220399.2	16... D-24
	B-221875	4... D- 8
Technical Transfusion Prohibition		
	B-220459.2	10... D-16

INDEX - Con.

	<u>June</u>	<u>Page</u>
CONTRACTS - Con.		
Negotiation - Con.		
Offers or Proposals - Con.		
Preparation		
Costs		
Recovery	B-222197	19... D-31
Prices		
Unprofitable	B-220399.2	16... D-24
Rejection		
Failure to Meet Solicitation		
Requirements	B-222197	19... D-32
Submission of Technical		
Data	B-222307	30... D-52
Time Limitation for		
Submission		
Oral Extension by Negotiator		
Without Authority		
Effect	B-222583	3... D- 7
Requests for Proposals		
Amendment		
Propriety	B-222152	19... D-31
Evaluation Criteria		
Administrative		
Determination	B-222430	12... D-20
Specifications		
Minimum Needs		
Administrative		
Determination	B-221924	24... D-41
Sole-Source Basis		
Authority	B-221879	9... D-15

INDEX - Con.

		<u>June</u>	<u>Page</u>
CONTRACTS - Con.			
Protests			
Allegations			
Bias			
Unsubstantiated	B-222139	20...	D-38
Not Prejudicial	B-222468	10...	D-17
	B-222628	17...	D-28
Premature	B-222760	25...	D-49
Speculative	B-222364	13...	D-22
Unsubstantiated	B-222421	17...	D-27
Authority to Consider			
Activities not Involving			
Federal Procurement	B-222703	25...	D-48
Contract Administration			
Matters	B-222162	25...	D-46
	B-222600	2...	D- 3
	B-222919	24...	D-43
Basis for Protest			
Requirement	B-221374.4,		
	et al.)	20...	D-35
	B-222421	17...	D-27
	B-222600	2...	D- 3
	B-222628	17...	D-28
Burden of Proof			
On Protester	B-222468	10...	D-18
General Accounting Office			
Function			
Free and Full Competition			
Objective	B-221709.5	24...	D-41

INDEX - Con.

		<u>June</u>	<u>Page</u>
CONTRACTS - Con.			
Protests - Con.			
General Accounting Office Function - Con.			
Scope of Review of Agency			
Actions	B-220381.2	3...	D- 5
General Accounting Office			
Procedures			
Constructive Notice	B-223158.2	30...	D-53
	B-223194.2,		
	et al.)	25...	D-50
Filing Protest With			
Agency	B-222428.2	3...	D- 6
Reconsideration Requests			
Error of Fact or Law			
Not Established	B-221089.2	16...	D-25
	B-221510.2	25...	D-45
	B-221806.2	11...	D-18
	B-221831.2	25...	D-45
	B-222469.2	6...	D-13
	B-222549.2	5...	D-10
	B-222988.2	19...	D-34
Timeliness			
	B-222961.2	2...	D- 4
Timeliness of Protest			
Adverse Agency Action			
Effect	B-222585.2	6...	D-15
Date Basis of Protest Made			
Known to Protester	B-219878.2	6...	D-12
	B-221374.4,		
	et al.)	20...	D-36
	B-222139	20...	D-38
	B-222523	16...	D-25
	B-222541	24...	D-42
	B-222561	5...	D-11
	B-222572.2	19...	D-33
	B-223158.2	30...	D-53
	B-223167.2	4...	D-10

INDEX - Con.

	<u>June</u>	<u>Page</u>
CONTRACTS - Con.		
Protests - Con.		
General Accounting Office Procedures - Con.		
Timeliness of Protest - Con.		
Failure to Diligently Pursue Protest	B-222648	24... D-43
New Issues		
Unrelated to Original Protest Basis	B-220399.2	16... D-24
	B-221374.4, et al.)	20... D-36
Regular Mail Delay	B-219878.2	6... D-12
Significant Issue Exception		
Not for Application	B-222469.2	6... D-13
	B-222523	16... D-25
	B-222572.2	19... D-33
	B-222601.2	30... D-53
	B-222602.2	16... D-26
Solicitation Improprieties		
Apparent in Request for Best and Final Offers	B-222585.2	6... D-15
Apparent Prior to Bid Opening/Closing Date for Proposals	B-221875	4... D- 9
	B-222364	13... D-22
	B-222430	12... D-20
	B-222553	6... D-14
	B-223235	13... D-23
	B-223289.2	19... D-34
Not Apparent Prior to Closing Date for Receipt of Quotations	B-222162	25... D-47

INDEX - Con.

	<u>June</u>	<u>Page</u>
CONTRACTS - Con.		
Protests - Con.		
General Accounting Office Procedures - Con.		
Timeliness of Protest - Con.		
Time/Date Stamp Effect	B-223180.2	12... D-21
Interested Party Requirement		
Direct Interest Criterion	B-223323	18... D-30
Mistake-in-Bid Questions	B-222617	5... D-11
Potential Contractors, etc. not Submitting Bids, etc.	B-222537.2	18... D-29
Protester not in Line for Award		
Interested Party		
Nonetheless	B-222152	19... D-31
Trade Associations, etc.	B-219590.4	27... D-51
Moot, Academic, etc. Questions		
Corrective Action Proposed, Taken, etc. by Agency	B-223267	26... D-50
Protester not in Line for Award	B-222760	25... D-49
Solicitation Canceled	B-222384.2	17... D-26
Preparation		
Costs		
Compensable	B-222197	19... D-32
Noncompensable	B-221814.2	10... D-16
What Constitutes Protest	B-223248	17... D-29
Requests for Quotations		
Preparation of Quotation		
Cost		
Recovery	B-222511	17... D-27

INDEX - Con.

		<u>June</u>	<u>Page</u>
CONTRACTS - Con.			
Requests for Quotations - Con.			
Specifications			
Minimum Needs Requirement			
Administrative Determination			
Reasonableness	B-222162	25...	D-47
Small Business Concerns			
Awards			
Responsibility Determination			
Nonresponsibility Finding			
Review by GAO	B-223164	24...	D-44
	B-224345	26...	D-51
Set-Asides			
Administrative Determination			
Reasonable Expectation			
of Competition	B-222792	11...	D-18
Small Business Administration's			
Authority			
Size Determination	B-222726	3...	D- 7
	B-224345	26...	D-51
Termination			
Erroneous Award Remedy	B-221827.2	4...	D- 8
Two-Step Procurement			
Step One			
Offers or Proposals			
Discussion With all			
Offerors Requirement			
Discussions not			
Required	B-223103	23...	D-39
Rejection			
	B-221305.2	24...	D-40
	B-223103	23...	D-40

INDEX - Con.

		<u>June</u>	<u>Page</u>
DEBT COLLECTIONS			
Waiver			
Civilian Employees			
Compensation Overpayments			
Collection Against Equity and Good Conscience	B-222776	16...	B- 5
Collection not Against Equity and Good Conscience, etc.	B-219005	17...	B- 6
Failure to Deduct Insurance Premiums	B-219212	26...	A- 6
Military Personnel			
Collection Against Equity and Good Conscience, etc.	B-217914	25...	C- 2
DECEDENTS' ESTATES			
Pay, etc. due Military Personnel			
Absence of Beneficiary, Spouse, Children, etc.			
Claim of Next of Kin	B-217563	24...	C- 1
Beneficiary Designations			
Validity	B-222066	26...	C- 3
DISBURSING OFFICERS			
Relief			
Erroneous Payments			
Not Result of Bad Faith or Negligence	B-221453	18...	A- 3
	B-222685	20...	A- 5
	B-223027	19...	A- 5
	B-223080	2...	A- 1
	B-223134)		
	B-223139)	2...	A- 2

INDEX - Con.

	<u>June</u>	<u>Page</u>
ESTOPPEL		
Against Government		
Not Established		
Prior Erroneous Advice,		
Contract Actions, etc.	B-219878.2	6... D-12
	B-223211	18... D-29
 FOREIGN SERVICE		
Travel Expenses		
Dependents		
Temporary Duty of		
Employee	B-219835	2... B- 1
 GENERAL ACCOUNTING OFFICE		
Decisions		
Requests		
Litigation Pending	B-222916	2... B- 4
 Jurisdiction		
Contracts		
Disputes		
Contract Disputes Act		
of 1978	B-223353	27... D-52
Subcontractors' Claims	B-223223	24... D-44
Walsh-Healey Act	B-222919	24... D-43
Maritime Matters	B-194528)	
	B-223217)	26... F- 1
 Recommendations		
Contracts		
Procurement Deficiencies		
Correction	B-221814.2	10... D-17

INDEX - Con.

		<u>June</u>	<u>Page</u>
OFFICERS AND EMPLOYEES			
Transfers			
Attorney Fees			
House Purchase and/or Sale			
Construction Costs	B-218953	26...	B- 7
Real Estate Expenses			
Broker's Fees	B-219925	10...	B- 4
Finance Charges			
What Constitutes	B-221162	10...	B- 5
Reimbursement	B-220889	2...	B- 2
PAYMENTS			
Advance			
Fees	B-221569	2...	A- 1
PERSONAL SERVICES			
Private Contract <u>v.</u> Government			
Personnel			
Criteria	B-222334	2...	B- 3
SMALL BUSINESS ADMINISTRATION			
Contracts			
Contracting With Other			
Government Agencies			
Procurement Under 8(a) Program			
Fraud or Bad Faith Alleged			
Evidence Sufficiency	B-222241.2	20...	D-39
SUBSISTENCE			
Per Diem			
Military Personnel			
Temporary Duty			
Time Limitation			
Twenty Weeks	B-220721	12...	C- 1

INDEX - Con.

		<u>June</u>	<u>Page</u>
TENNESSEE VALLEY AUTHORITY			
Contracts			
Statutory Authority	B-222334	2...	B- 3
Employees			
Compensation			
Increase for Top Executives			
Contrary to Salary			
Limitation Statute	B-222334	2...	B- 3
TRANSPORTATION			
Household Effects			
Military Personnel			
Weight Limitation			
Administrative			
Determination	B-220877	25...	C- 2
Evidence	B-220877	25...	C- 3
Overcharges			
Deduction Reclaims			
Review	B-221615	24...	F- 1
TRANSPORTATION DEPARTMENT			
National Highway Traffic			
Safety Administration			
Administration			
Efficiency	B-222021	10...	E- 1
TRAVEL EXPENSES			
Overseas Employees			
Place of "Actual Residence"	B-212316	20...	B- 6

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20540

Special Fourth Class Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use \$300