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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-217114.2 Feb. 3, 1988**
Disbursing Officers
Relief
Illegal/Improper Payments
Travel Allowances

Supervisory U.S. Army Finance and Accounting officer is relieved of liability for improper payments because he maintained and supervised an adequate system of procedures to prevent improper payments. The improper payments were the result of criminal activity outside the control of the finance officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-226581 Feb. 18, 1988
Purpose Availability
Necessary Expenses Rule
Voluntary Expenditures
Reimbursement

Geological Survey employee may be reimbursed \$15,136 for personal expenditures made for services and equipment in support of an Economy Act agreement project in South Africa, provided that the agency involved finds that the expenditures were made in furtherance of a public necessity.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-217114 Feb. 29, 1988

Liability

Debt Collection

Collection of amounts owed by an accountable officer whose retirement account has been flagged for repayment may be held in abeyance pending resolution of government claims against individuals liable for the same debt. Collection of corresponding interest and penalty charges also may be held in abeyance.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government

Interest

The United States generally may not pay accountable officers interest on amounts refunded to them.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims by Government

Past Due Accounts

Debt Collection

Penalties

Interest

Interest and penalties assessed against an accountable officer pertaining to monies for which he is liable to the government may be returned to the extent the accountable officer's liability is subsequently decreased by (1) a determination that the accountable officer was not responsible for the entire amount initially assessed, or (2) through collections from the individuals who fraudulently procured the monies from the accountable officer and the collections include amounts for interest and penalties at least equal to the amounts assessed against the accountable officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-225980 Feb. 29, 1988

Amount Availability

Fiscal-Year Appropriation

Additional Compensation

Consumer Product Safety Commission (Commission) questioned whether a \$250,000 limitation on the Commission's 1987 fiscal year appropriation on the total amount of salaries and benefits payable to the Commissioners during the 1987 fiscal year would prohibit them from receiving pay raises that went into effect during the year if, as a result of such raises, their total salaries and benefits would exceed \$250,000. The question was resolved, however, for the 1987 fiscal year by the enactment of the Supplemental Appropriations Act, 1987, which made an additional \$20,000 available to pay salaries and benefits to the Commissioners. Moreover, since this issue is not likely to arise in the 1988 fiscal year, there is not current need for a substantive response to the Commission's inquiry.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-229394 Feb. 2, 1988

**Compensation
Overpayments
Error Detection
Debt Collection
Waiver**

After leaving government service in August 1982, an employee received payment for 2 hours of overtime and 90 hours of lump-sum leave. Due to an administrative error, the employee received another check in October 1982, representing an overpayment of 80 hours of regular pay. When the employee brought this overpayment to the attention of proper authorities, she was told the payment was correct and represented additional payment for leave not taken. Waiver is granted since employee, who had no special knowledge of personnel law or payroll processes, reasonably relied on information provided her and was not advised that the payment was erroneous until nearly 2 years later.

CIVILIAN PERSONNEL

B-227581 Feb. 16, 1988

**Relocation
Household Goods
Weight Restrictions
Liability
Waiver**

An employee may not be relieved of his debt for excess weight of his household goods shipped incident to an official change of station. The weight allowance was established by law and there is no authority to exceed it notwithstanding that the carrier may have underestimated the weight, or that the agency may not have fully counseled the employee as to his entitlements.

CIVILIAN PERSONNEL**B-227581 Con't****Relocation****Feb. 16, 1988****Household Goods****Weight Restrictions****Liability****Waiver**

The carrier's method of assessing transportation charges (billing 11,720 pounds as 12,000 pounds at a lower rate) does not provide a basis for permitting payment by the government for a shipment of household goods in excess of an employee's authorized 11,000-pound weight allowance where the statutory regulations prescribe the specific method of assessing charges for excess weight. This method is based on a ratio of the excess weight to the total weight of the shipment applied to the total charges for the shipment.

CIVILIAN PERSONNEL**B-229215 Feb. 22, 1988****Compensation****Conflicts of Interest****Pending Resignations**

The Deputy Assistant Secretary of Commerce for Automotive Affairs and Consumer Goods who was planning to leave government and sent letters to 32 foreign-owned vehicle manufacturers seeking to form and head a trade association to represent their interests should have recused himself from participation in International Trade Administration matters affecting their interests as soon as he dispatched those letters. Although he would not be deemed to be negotiating for employment under 18 U.S.C. § 208(a) until he received a response to one of those letters, he violated the Standards of Conduct and the Office of Government Ethics guidelines by participating in a meeting concerning the development of a system to analyze data to be provided by the Japanese under the MOSS Agreement, data potentially revealing of the auto parts purchasing habits of Japanese-owned vehicle manufacturers to whom he sent his letters.

CIVILIAN PERSONNEL

B-229264 Feb. 23, 1988

Compensation

Retroactive Compensation

Amount Determination

Reinstatement

The Merit Systems Protection Board (MSPB) found that an agency had improperly removed an employee and granted him reinstatement with backpay. During the period of removal, the employee was subsequently arrested several times and, as a result of one arrest, was incarcerated. The MSPB seeks our Office's advisory opinion on the proper period of backpay. We conclude that the employee should be considered "unavailable" for work only during those periods when he was actually incarcerated. We believe it is too speculative to determine that the agency would have suspended and removed the employee upon one of his arrests during this period.

CIVILIAN PERSONNEL

B-227331 Feb. 29, 1988

Compensation

Retroactive Compensation

Eligibility

Discretionary Authority

Two employees claim retroactive promotions and accompanying backpay for the 5-month period that their career-ladder promotions were delayed due to a reclassification review. Generally, a career-ladder promotion is discretionary with the agency unless there is a mandatory agency regulation or policy which states otherwise. In this case, the claims are denied since the job announcement indicating a promotion potential to a particular grade for the employees' positions did not constitute a nondiscretionary administrative regulation or policy which if not carried out would constitute an "unjustified or unwarranted personnel action" by the agency under the Back Pay Act, 5 U.S.C. § 5596 (1982).

PROCUREMENT

PROCUREMENT

B-228287 Feb. 1, 1988

Bid Protests

88-1 CPD 93

Contract Performance

Work Suspension

The contracting agency is not required to order suspension of contract performance where the protest is filed on the 10th calendar day after award but the agency receives General Accounting Office notification of the protest on the 11th calendar day after award.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest alleging that the solicitation improperly directed that lack of past performance would not be considered negatively in the evaluation of proposals is untimely, where the protest was filed after the closing date for receipt of initial proposals.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

10-Day Rule

Protest that the agency improperly included certain of the protester's (the incumbent contractor) proprietary plans used in an earlier contract in an offerors' library available to all offerors in the present procurement is untimely, where the protester waited 5 months after it knew this basis of protest to raise the issue.

PROCUREMENT

Bid Protests

Information Disclosure

Administrative Determination

GAO Review

B-228287 Con't

Feb. 1, 1988

Dispute between the protester and the contracting agency over what information the agency was required to give the protester during a debriefing conference is a procedural matter that does not affect the competitive standing of offerors or the validity of the award.

PROCUREMENT

Competitive Negotiation

Contract Awards

Administrative Discretion

Cost/Technical Tradeoffs

Technical Superiority

In a negotiated procurement, award to a higher priced, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

PROCUREMENT **B-228287** **Con't**
Competitive Negotiation **Feb. 1, 1988**
Offers
Evaluation
Personnel
Adequacy

Protest that the procuring agency misled the protester by including in the solicitation an estimate of the staffing levels needed to perform the statement of work when, in fact, the agency intended to accept only a proposal offering the exact staffing levels stated in the solicitation is denied, where: (1) the agency accepted a proposal which offered staffing levels below the solicitation's estimated levels; (2) the agency told the protester during discussions that its proposed staffing was inadequate in several areas and gave the protester a chance to revise its proposal or explain lower staffing levels; and (3) the evaluation examined the protester's staffing resources in light of the protester's proposed methodologies and still found the personnel levels to be inadequate.

PROCUREMENT **B-228494** **Feb. 1, 1988**
Bid Protests **88-1 CPD 94**
Non-Prejudicial Allegation
GAO Review

Protest is denied where protester was not prejudiced even if there was a lack of meaningful discussions since meaningful discussions would not have cured technical deficiencies which resulted in protester's proposal being excluded from the competitive range.

PROCUREMENT **B-228494 Con't**
Competitive Negotiation **Feb. 1, 1988**
Offers
Competitive Ranges
Exclusion
Administrative Discretion

A technically unacceptable proposal may be excluded from the competitive range irrespective of its low offered price.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation Errors
Allegation Substantiation

Protest that agency improperly evaluated proposal is denied where the protester indicates its disagreement with the agency's evaluation but does not demonstrate that the evaluation was unreasonable.

PROCUREMENT **B-229571 Feb. 1, 1988**
Bid Protests **88-1 CPD 95**
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest alleging apparent defects in a request for proposals is untimely where it was not filed prior to the closing date for receipt of initial proposals.

PROCUREMENT

**Contract Management
Contract Performance
GAO Review**

B-229619 Con't

Feb. 01, 1988

Once an offeror promises to perform in accordance with a solicitation's requirements, whether the contractor performs as contractually required is a matter of contract administration which is the responsibility of the procuring agency and is not subject to review by the General Accounting Office under its bid protest function.

PROCUREMENT

**Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review**

Where an offeror promises to comply with the requirements of a solicitation, a contention that the offeror will be unable to do so at the offered price constitutes an allegation that the offeror is not responsible; General Accounting Office generally does not review affirmative determinations of responsibility.

PROCUREMENT **B-229729; B-229730**
Competitive Negotiation **Feb. 1, 1988**
Federal Procurement Regulations/Laws
Amendments
Offers

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 87-37, a proposal to amend FAR Subparts 14.2, 15.4, 52, and 53 to provide for a new Standard Form in connection with a simplified contract format and annual representations and certification or to FAR Case No. 87-42, a proposal to permit the synopsis of advance notice of agency interest in potential research and development programs.

PROCUREMENT
Sealed Bidding
Federal Procurement Regulations/Laws
Amendments
Bids

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 87-37, a proposal to amend FAR Subparts 14.2, 15.4, 52, and 53 to provide for a new Standard Form in connection with a simplified contract format and annual representations and certification or to FAR Case No. 87-42, a proposal to permit the synopsis of advance notice of agency interest in potential research and development programs.

PROCUREMENT **B-228919.2 Feb. 2, 1988**
Bid Protests **88-1 CPD 101**
GAO Procedures
GAO Decisions
Reconsideration

To be considered, a request for reconsideration of a prior decision of the General Accounting Office, must indicate that the decision contained errors of fact or of law or information not previously considered that would warrant its reversal or modification. The repetition of arguments made during resolution of the original protest, or mere disagreement with the decision, does not meet this standard.

PROCUREMENT **B-228002.2 Feb. 3, 1988**
Competitive Negotiation **88-1 CPD 102**
Offers
Payment Terms
Progress Payments

Agency determination to employ progress payments, in response to request by selected offeror, did not amount to change in agency requirements necessitating discussions or material deviation from basis of competition where accepted offer was not conditioned upon receipt of progress payments and otherwise complied with terms of solicitation, and awardee was not afforded opportunity to alter terms of its offer.

PROCUREMENT **B-228232.2 Feb. 3, 1988**
Sealed Bidding **88-1 CPD 103**
Bids
Errors
Error Substantiation

The General Accounting Office will not question procuring agency's denial of bidder's request to correct a mistake in its bid where correction would require recalculation of the bid (based on a different subcontractor's price) and the corrected bid would be less than one percent below the next low bid.

PROCUREMENT B-228574 Feb. 3, 1988
Competitive Negotiation 88-1 CPD 106
Offers
Competitive Ranges
Exclusion
Administrative Discretion

Absent a showing that an agency's evaluation is unreasonable, and not consistent with the solicitation's evaluation factors, exclusion of the protester's proposal from the competitive range is warranted where agency finds proposal unacceptable in two areas identified for evaluation in RFP as "critical", and finds that deficiencies are not susceptible to correction through discussions.

PROCUREMENT B-229679 Feb. 3, 1988
Competitive Negotiation 88-1 CPD 107
Use
Criteria

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire vehicles is justified where offerors are expected to take a variety of exceptions to the specifications and discussions are necessary to resolve those matters and to define the terms of each offer.

PROCUREMENT B-229680 Feb. 3, 1988
Socio-Economic Policies 88-1 CPD 108
Small Businesses
Research/Development Contracts
Offers
Evaluation

In light of agency discretion under Small Business Innovation Research Program to fund or reject proposals, General Accounting Office review of decision to reject protester's proposal is limited to determining whether agency complied with any applicable regulations and solicitation provisions and whether agency acted fraudulently or in bad faith.

PROCUREMENT **B-228576 Feb. 4, 1988**
Competitive Negotiation 88-1 CPD 110
Offers
Evaluation
Technical Acceptability

Protest that offer was unacceptable because the item offered is not a standard commercial product as required by the solicitation specifications is denied where offer is acceptable on its face.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Office Findings
Affirmative Determination
GAO Review

General Accounting Office does not review contracting officers' affirmative determinations of responsibility absent a showing of fraud or bad faith or that definitive responsibility criteria have not been applied.

PROCUREMENT **B-226665.3 Feb. 5, 1988**
Bid Protests 88-1 CPD 111
GAO Procedures
GAO Decisions
Reconsideration

General Accounting Office affirms previous decision recommending that item to be acquired in an option be the subject of competition, where the agency requesting reconsideration of the decision has not demonstrated any error of fact or law.

PROCUREMENT

**Sealed Bidding
Invitations for Bids
Amendments
Acknowledgment
Waiver**

**B-228409 Con't
Feb. 5, 1988**

Bidder's failure formally to acknowledge an amendment that clarifies agency's intention to assess liquidated damages for late performance of delivery orders rather than merely for late performance of whole contract, may not be waived as a minor informality since the amendment eliminates a reasonable, more lenient interpretation, and therefore is material.

PROCUREMENT

**Competitive Negotiation
Offers**

**B-228475 Feb. 5, 1988
88-1 CPD 115**

**Sample Evaluation
Testing
Administrative Discretion**

Protest that agency failed to require flight test of aircraft is denied where agency had reasonable basis for its decision not to conduct flight test and protester fails to show that agency position was based on bad faith as alleged.

PROCUREMENT

**Competitive Negotiation
Requests for Proposals
Evaluation Criteria
Cost/Technical Tradeoffs
Weighting**

Although agency reduced the maximum number of technical points available from the number stated in the request for proposal evaluation scheme, protest of this issue is denied where the reduction does not appear to have affected the selection because the two competing technical offers were essentially equal and the awardee offered a substantially lower cost.

PROCUREMENT

Sealed Bidding

Bid Guarantees

Responsiveness

Sureties

Liability Restrictions

B-226774.3 Feb. 8, 1988

88-1 CPD 119

A low bid, which includes the required bid guarantee executed by surety in excess of its underwriting limitation without evidence of reinsurance in the bid is nonresponsive, where the amount of the surety's underwriting limitation is less than the difference between the low bid price and the next higher acceptable bid.

PROCUREMENT

Competitive Negotiation

Offers

Competitive Ranges

Exclusion

Administrative Discretion

B-227880.4 Feb. 8, 1988

88-1 CPD 120

Agency may exclude a technically acceptable proposal from the competitive range and from further negotiations when the offeror's price is substantially higher than the prices of other acceptable offerors and the agency reasonably determines that the higher-priced proposal has no reasonable chance of being selected for award.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Options

Prices

Protest that agency improperly found offerors who did not use solicitation worksheet to calculate necessary staffing levels to be technically acceptable is denied where the agency advised offerors at preproposal conference that worksheet was provided for information purposes only and where that interpretation is consistent with other solicitation provisions.

PROCUREMENT

Bid Protests

GAO Procedures

Interested Parties

Direct Interest Standards

B-228445; B-228582

Feb. 8, 1988

88-1 CPD 121

A firm is not an interested party to protest award of a contract for engineering services where, if protest were sustained, another offeror and not the protester would be in line for that award.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

A protest concerning allegations of solicitation improprieties is untimely where it is not filed prior to the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation Errors

Allegation Substantiation

A protest of an agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a superior technical and management proposal which offered the lowest probable cost.

PROCUREMENT

B-228445; B-228582 Con't

Contractor Qualification Feb. 8, 1988

Organizational Conflicts of Interest

Allegation Substantiation

Evidence Sufficiency

The award of a contract to generate technical data packages for the Army Nuclear Munitions Program to a firm having both engineering and production capabilities does not violate the Federal Acquisition Regulation subpart 9.5 governing organizational conflicts of interest, where the record fails to show that the awardee's development type work under this contract will create a potential conflict of interest. The record indicates the work will not lead to future competitive production of items, but that production will be handled in-house.

PROCUREMENT

Contractor Qualification

Responsibility Criteria

Performance Capabilities

The ability to perform a contract at a particular offered price concerns the offeror's responsibility, the affirmative determination of which will not be reviewed unless there is a showing of possible fraud or bad faith or failure by the contracting officer to apply definitive responsibility criteria.

PROCUREMENT B-229710, et al.
Socio-Economic Policies Feb. 8, 1988
Small Business 88-1 CPD 124
Set-Asides
Use
Justification

Protests challenging contracting officer's decision to set aside procurements for competition exclusively among small business concerns are denied where the record indicates the contracting officer had a reasonable expectation that offers would be obtained from at least two small business concerns and where protester fails to show that awards to small business bidders under prior set-aside procurements were not made at reasonable prices.

PROCUREMENT B-229828.2 Feb. 8, 1988
Bid Protests 88-1 CPD 125
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Post-award protest challenging experience requirement in a solicitation is untimely where the basis for protest was evident from the face of the solicitation and the protest was not filed before the closing date for receipt of proposals.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
Good Cause Exemptions
Applicability

General Accounting Office (GAO) will not consider the merits of an untimely protest under the good cause exception to GAO timeliness requirements where there is no showing of a compelling reason beyond the protester's control that prevented the timely filing of the protest.

PROCUREMENT **B-229700 Feb. 9, 1988**
Specifications **88-1 CPD 129**
Minimum Needs Standards
Competitive Restrictions
Allegation Substantiation
Evidence Sufficiency

Protest alleging that solicitation's specification which requests individual resumes in seven separate labor categories is excessive and unduly restrictive of competition is denied where the protester merely disagrees with the agency's determination of its minimum needs and fails to show that the resume requirement is clearly unreasonable or that it exceeds the agency's minimum needs.

PROCUREMENT **B-230124 Feb. 9, 1988**
Sealed Bidding **88-1 CPD 130**
Bids
Bid Guarantees
Justification

Federal Acquisition Regulation §§ 28.101-1 and 28.102-1 do not preclude the government from requiring a bid guarantee for a construction contract under \$25,000 where performance and payment bonds are also required.

PROCUREMENT **B-228339.2 Feb. 10, 1988**
Sealed Bidding **88-1 CPD 131**
Invitations for Bids
Cancellation
Justification
Price Reasonableness

Contracting officer's decision to cancel solicitation based on price unreasonableness was proper where only bid received exceeded government estimate by more than 33 percent and protester has not established that government estimate was incomplete or inaccurate.

PROCUREMENT **B-228548 Con't**
Competitive Negotiation **Feb. 10, 1988**
Offers
Evaluation
Prices
Additional Work/Quantities

The inclusion in an offer on a requirements contract of prices for quantities in excess of the solicitation's best estimated quantities is legally unobjectionable so long as the terms of the "additional offer" are not inconsistent with the terms of the solicitation.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Unit Prices

Protest that offer violates solicitation's integrity of unit prices clause is denied where 1) there is no evidence to suggest that per-unit costs are other than properly allocated; 2) costs are not improperly distributed between more and less expensive line items; and 3) evaluation of line items within proposals is on the basis of unit cost multiplied by estimated quantities thereby obviating possible competitive advantage to be gained from pricing individual units within a line item differently.

PROCUREMENT

B-229682.2 Feb. 10, 1988

Bid Protests

88-1 CPD 134

GAO Procedures

Administrative Reports

Comments Timeliness

Dismissal of original protest for failure to file comments on agency report is affirmed, even though protester alleged nonreceipt of report and misrepresentations by the agency, because despite notice of its responsibility, protester failed to timely notify the General Accounting Office of the nonreceipt of the report.

PROCUREMENT

B-229804 Feb. 10, 1988

Bid Protests

88-1 CPD 136

Premature Allegation

GAO Review

Protest challenging preaward survey recommendation of nonresponsibility is dismissed as premature where there is no determination of responsibility by the contracting officer.

PROCUREMENT

Small Purchase Method

Requests for Quotations

Use

Information

Protest that low quoter, under request for quotations (RFQ) issued under small purchase procedures, is entitled to the award of a contract is denied where the RFQ was issued for informational purposes.

PROCUREMENT

B-229975.2 Feb. 10, 1988

Bid Protests

88-1 CPD 137

Agency-Level Protests

Protest Timeliness

Waiver

Merits Adjudication

An agency's consideration of an untimely agency-level protest does not preclude the General Accounting Office (GAO) from dismissing an untimely protest even if the protest to GAO was filed within 10 days of the protester's notice of the denial of the agency-level protest.

PROCUREMENT

Bid Protests

Definition

While a protester's communication to a contracting agency does not have to explicitly state that it is intended as a protest for it to be considered so, a mere request for clarification does not constitute a formal protest.

PROCUREMENT

B-228028.2 Feb. 11, 1988

Bid Protests

88-1 CPD 138

GAO Procedures

GAO Decisions

Reconsideration

Prior decision dismissing protest of subcontract awarded by a government prime contractor is affirmed where the award was not by or for the government.

PROCUREMENT **B-229902 Feb. 11, 1988**
Socio-Economic Policies
Preferred Products/Services
Domestic Products
Federal Procurement Regulations/Laws
Revision

General Accounting Office has no objection to a proposal to revise the Federal Acquisition Regulation (FAR) by adding FAR § 31.205-1(g) to provide that reasonable costs incurred to promote American aerospace exports at domestic and international exhibits are allowable.

PROCUREMENT **B-227817.2 Feb. 12, 1988**
Bid Protests **88-1 CPD 141**
GAO Procedures
GAO Decisions
Reconsideration

Request for reconsideration is denied where there is no showing that prior decision may have been based on factual or legal errors.

PROCUREMENT **B-227984.3 Feb. 12, 1988**
Bid Protests **88-1 CPD 142**
GAO Procedures
Preparation Costs

There is no basis for the award of protest costs and bid preparation costs where the protest is dismissed as academic, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

PROCUREMENT

Sealed Bidding

Bids

Preparation Costs

B-227984.3 Con't

Feb. 12, 1988

There is no basis for the award of protest costs and bid preparation costs where the protest is dismissed as academic, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

PROCUREMENT

Competitive Negotiation

Contract Awards

Administrative Discretion

Cost/Technical Tradeoffs

Cost Savings

B-228395 Feb. 12, 1988

88-1 CPD 143

Where two proposals are rated acceptable in all technical and management areas, which are both weighted higher than cost under the solicitation's evaluation criteria, and the awardee's technical capabilities are rated riskier than the protester's capabilities, the source selection official, which has been apprised of the weaknesses/risks, can reasonably select the awardee based on its significant lower cost (\$6.4 million vis a vis \$9.4 million).

Where the Defense Contract Audit Agency performed audits on both offerors' cost/price proposals, including subcontractor costs and indirect costs, and offerors were provided with an opportunity to revise and/or explain their proposals based upon these comments, the agency has performed sufficient cost analysis to justify an award selection based on lower cost.

PROCUREMENT

B-229538, et al. Con't

Sealed Bidding

Feb. 12, 1988

Invitations for Bids

Post-Bid Opening Cancellation

Resolicitation

Non-Prejudicial Allegation

Protest alleging that if under IFB providing for split award item representing 60 percent of agency's requirement is awarded while item representing 40 percent is canceled and resolicited, awardee of 60 percent quantity will have an unfair advantage upon resolicitation due to its ability to combine material requirement purchases, and entire IFB therefore should be canceled, is denied where possible advantage to awardee of 60 percent item is outweighed by prejudice to the competitive bidding system of cancellation of the item after prices have been exposed.

PROCUREMENT

Sealed Bidding

Partial Contract Awards

Non-Prejudicial Allegation

Under invitation for bids (IFB) providing for split award, bidder which did not offer its lowest price on item representing 60 percent of agency's requirement because it interpreted IFB as providing for award of item representing 40 percent of agency's requirement to second low bidder was not prejudiced by agency's decision not to cancel 60 percent quantity. IFB instructed bidders to treat each item as a separate quantity and to price each accordingly, and the protester elected not to compete for 60 percent item.

PROCUREMENT

B-227094.5 Feb. 16, 1988

Bid Protests

88-1 CPD 149

GAO Procedures

Administrative Reports

Comments Timeliness

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

PROCUREMENT

B-228429.2 Feb. 16, 1988

Competitive Negotiation

88-1 CPD 150

Requests for Proposals

Competition Rights

Contractors

Exclusion

A prospective offeror bears the risk of nonreceipt of a complete solicitation package when it has notice of the defect in the package several weeks prior to the due date for the receipt of proposals, but makes no attempt to contact the agency to obtain the package until it has been eliminated from the competitive range.

PROCUREMENT

Socio-Economic Policies

Disadvantaged Business Set-Asides

Use

Administrative Discretion

The decision to set-aside a procurement for small disadvantaged business is a business judgment within the broad discretion of the contracting officer which will not be questioned unless a clear showing is made that the contracting officer abused his discretion.

PROCUREMENT **B-228545 Con't**
Competitive Negotiation **Feb. 16, 1988**
Offers
Risks
Evaluation
Technical Acceptability

Where the solicitation requested proposals for an experimental investigation of promising technology and innovative approaches to improving the performance or reducing the cost of traveling wave tubes, agency did not act unreasonably in selecting a possibly riskier, more experimental approach, that offered the potential for a greater advancement in the state of the art, over an approach based upon a level of effort significantly less than both the solicitation estimate of the required effort and that proposed by the awardee.

PROCUREMENT **B-229723 Feb. 16, 1988**
Sealed Bidding **88-1 CPD 154**
Invitations for Bids
Terms
Liquidated Damages
Propriety

A damages provision in a solicitation for telephone switchboard operations which permits the government to deduct from the contractor's payment an amount representing the value of the required service item does not impose an unreasonable measure of damages where the task, answering a call in a timely manner and helping to complete the call, is not divisible by separate elements or tasks for purposes of determining an acceptable quality level because such criteria in this instance are interrelated and reasonably meet the particular needs of the agency.

PROCUREMENT B-225710.2; B-226897.2
Specifications Feb. 17, 1988
Minimum Needs Standards 88-1 CPD 155
Competitive Restrictions
Performance Specifications
Justification

Protest that low temperature test requirement for aircraft hydraulic test stand is unduly restrictive of competition is denied where the agency revised this test consistent with the terms of a recommendation made by the General Accounting Office in connection with a prior protest challenging the same requirement.

Protest that noise level test requirement for aircraft hydraulic test stand is unduly restrictive of competition is denied where the agency establishes that the requirement is based on Occupational Safety and Health Act standards as amended based on actual testing, and the protester does not establish that reliance on this amended standard is unreasonable.

PROCUREMENT B-228052.2 Feb. 17, 1988
Bid Protests 88-1 CPD 175
GAO Procedures
Preparation Costs

PROCUREMENT
Competitive Negotiation
Offers
Preparation Costs

Where no other corrective action is practicable because agency proceeded with performance in face of protest based on urgency determination, successful protester is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including reasonable attorneys' fees.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-228052.2 Con't
Feb. 17, 1988

General Accounting Office determines conduct of procurement was deficient when (1) selection determination for walk-through metal detectors was based on comparative numerical scoring analysis, which was inconsistent with the pass/fail operational equipment testing actually conducted; (2) discussions were not meaningful because the protester was not sufficiently alerted to the deficiencies in its proposal as evaluated; and (3) evaluation of awardee's proposal was inconsistent with the solicitation and lacked a reasonable basis in the area of units in operation.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical Acceptability
Equivalent Products

General Accounting Office finds unobjectionable comparative technical scoring in competitively negotiated brand name or equal solicitation in which nonbrand name equipment receives higher technical score than brand name, where its performance was technically superior to brand name; it is unreasonable to assume that a proposal offering the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified when the solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis and provided technical evaluation factors.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

10-Day Rule

B-228461; B-228461.2 Con't

Feb. 17, 1988

Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy the General Accounting Office timeliness requirements.

PROCUREMENT

Competitive Negotiation

Partial Contract Awards

Propriety

Agency is not required to make parallel awards of single line item--that is, awards to two different offerors for parts of the line item--where the low offeror has offered to furnish the entire line-item quantity.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Descriptive Literature

Adequacy

B-228493 Feb. 17, 1988

88-1 CPD 157

Agency determination that specific model of scoop loader offered by bidder met the standard commercial product requirements in the invitation for bids was not unreasonable where the bidder certified in its bid the compliance of the loader with the specifications and the information available to the agency did not show that any needed modifications to the loader were so substantial that the product would no longer be a standard commercial product.

PROCUREMENT
Competitive Negotiation
Contract Awards
Initial-Offer Awards
Propriety

B-228546; B-228546.2
Feb. 17, 1988
88-1 GPD 159

Award properly was made to the lowest-priced, technically acceptable offeror on the basis of initial offers where the solicitation advised all offerors that award might be based on initial proposals, and the competition demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation Errors
Non-Prejudicial Allegation

Allegation that the contracting agency improperly accepted an offer that did not meet all of the requirements set forth in the request for proposals is without merit, where a review of the record shows that the awardee's offer met all the material requirements and the only deviation in the awardee's proposal could properly be waived as a minor deviation.

PROCUREMENT
Bid Protests
Moot Allegation
GAO Review

B-229610; B-229816 Con't
Feb. 17, 1988

Where agency agrees to amend solicitation to remove a provision which was the sole basis of protest, and reinstates protester's previously rejected offer for evaluation purposes (because offer was originally rejected for failing to comply with solicitation provision which was removed by amendment), protest is academic.

PROCUREMENT
Competitive Negotiation
Offers
Preparation Costs

Dismissal of protest as academic does not provide a basis upon which proposal preparation and bid protest costs may be awarded.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Shipment Schedules
Deviation

B-230120 Feb. 17, 1988
88-1 GPD 163

A bid offering a delivery period of 150 days after receipt of an order, where a maximum 150-day delivery period from the date of contract was required was properly rejected as nonresponsive because it effectively added 5 days for delivery through the ordinary mails of notice of the contract award to the 150-day delivery period.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-227802.2 Feb. 18, 1988
88-1 CPD 164

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

PROCUREMENT
Special Procurement
Methods/Categories
In-House Performance
Cost Evaluation
Personnel

B-228590 Feb. 18, 1988
88-1 CPD 166

Cost comparison showing that cost of the low commercial offeror exceeded the government's estimated cost of in-house performance is invalid, and protest on that basis is sustained, where the solicitation's performance work statement included the requirement for a staff position--program manager--that the government excluded from its estimate, and the probable cost for the omitted position (as shown by an agency-sponsored management study) exceeded the in-house cost advantage.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Point Ratings

B-228718.3 Feb. 18, 1988
88-1 CPD 167

General Accounting Office finds unobjectionable comparative technical scoring in a competitively negotiated brand name or equal solicitation in which non-brand name equipment receives higher technical score than brand name, where its performance was technically superior to brand name; it is unreasonable to assume that a proposal offering the brand name would be scored equal to an offer possessing merit beyond the minimum requirements specified when the solicitation clearly put offerors on notice that offers would be comparatively evaluated on a point-scored basis and provided technical evaluation factors.

General Accounting Office finds no merit to protester's contention that improper use of undisclosed evaluation criteria resulted in awardee's evaluation scoring advantage in comparatively scored brand name or equal procurement, where record indicates that awardee's higher rating was merely based on awardee's system's capabilities beyond the minimum solicitation requirements, which properly were scored above the protester's offered system meeting the minimum requirements.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical Acceptability
Tests

Protest disputing evaluation of the relative performance merits of X-ray screening systems on the basis of descriptive literature specifications is without merit, where operational testing also was conducted, and disclosed deficiencies in protester's system not challenged by protester.

PROCUREMENT**B-226006 Feb. 19, 1988**

**Payment/Discharge
Shipment Costs
Additional Costs
Bills of Lading
Ambiguity**

Where a carrier originally bills the government on the basis of rates published in tenders applicable to shipments tendered at a 10 cents per pound per article valuation, and the tenders are noted on the Government Bills of Lading (GBLs), the General Services Administration properly denied supplemental bills for substantially higher tariff charges. Even though the GBLs also contained a declared valuation of \$2.50 per pound per article, the \$2.50 notation was a mistake and the carrier published no tender applicable to the \$2.50 notation. In any event, the carrier had a duty to inquire as to the government's intent if it found the GBLs to be ambiguous.

PROCUREMENT**B-227555.4 Feb. 19, 1988**

**Competitive Negotiation 88-1 CPD 168
Offers
Competitive Ranges
Exclusion
Administrative Discretion**

Agency's exclusion of protester's proposal from the competitive range for full food service contract is reasonable where the record indicates that the proposal was deficient in all but one evaluation area and would require major revisions to become technically acceptable.

PROCUREMENT **B-230111 Feb. 19, 1988**
Bid Protests **88-1 CPD 172**
Non-Prejudicial Allegation
GAO Review

Protest that awardee's bid of the brand name item is nonresponsive because the item does not meet four Federal Information Processing Standards (FIPS) referenced in the solicitation has no merit where the protester concedes that three of the FIPS are obsolete and the fourth does not apply to the type of equipment being purchased.

Contention that contracting agency improperly awarded contract to bidder that did not furnish certain information with its bid has no merit where the information clearly was not required for bid evaluation and had no effect on the bidder's promise to perform as specified.

PROCUREMENT **B-230148 Feb. 19, 1988**
Bid Protests **88-1 CPD 173**
GAO Procedures
Protest Timeliness
10-Day Rule

Protest filed more than 10 working days after the contracting agency denied the protester's A-76 appeal is untimely. Protester's continued pursuit of the appeal with the contracting agency does not alter this result.

PROCUREMENT **B-228026.2 Feb. 22, 1988**
Competitive Negotiation **88-1 CPD 174**
Discussion
Determination Criteria

Where breakdown of prices for base and option year quantities was required to determine whether an offer was so extremely front-loaded as to be materially unbalanced, request for breakdown constituted discussions.

PROCUREMENT **B-228026.2 Con't**
Competitive Negotiation **Feb. 22, 1988**
Discussion Reopening
Propriety
Best/Final Offers
Corrective Actions

Despite revelation that awardee's price was disclosed to its competitors, General Accounting Office declines to modify its recommendation that another round of best and final offers be solicited since the risk of an auction is secondary to the need to preserve the integrity of the competitive procurement system through appropriate corrective action.

PROCUREMENT **B-228457.2 Feb. 22, 1988**
Bid Protests **88-1 CPD 176**
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest concerning alleged improprieties apparent on the face of the solicitation is untimely when the protest is not filed until after contract award.

PROCUREMENT

B-228457.2 Con't

Competitive Negotiation

88-1 CPD 176

Best/Final Offers

Evaluation Errors

Allegation Substantiation

Evidence Sufficiency

General Accounting Office denies protest that second best and final offer was mis-evaluated as to price in that contracting agency added to the price of hardware items that for data items when it allegedly knew, or should have known, that the price of data already was included within the hardware price. There was no indication in protester's revised final cost offer that the line item prices included the price for certain subline items. Contracting officer properly evaluated final offer, as revised following discussions, without regard to any pricing pattern that may have been established in the interim offers.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

Protest that agency failed to conduct meaningful discussions with offeror is denied where, during two rounds of written and oral discussions, agency informed protester of certain inconsistencies in its pricing proposals and protester was given an opportunity to revise its proposals in response to these concerns.

PROCUREMENT **B-228598 Feb. 22, 1988**
Socio-Economic Policies **88-1 CPD 181**
Small Businesses
Competency Certification
Bad Faith
Allegation Substantiation

Protester fails to show that denial by Small Business Administration (SBA) of a certificate of competency (COC) was the result of fraud, bad faith, or failure to consider information vital to the protester's responsibility where, in connection with solicitation for maintenance of X-ray equipment, the record shows that SBA reasonably relied on contracting agency's conclusion that the protester failed to document performance of equipment calibration services as required under the prior contract, and protester was aware that prior performance was an issue in COC proceeding and was given adequate opportunity to respond.

PROCUREMENT **B-229801 Feb. 22, 1988**
Sealed Bidding **88-1 CPD 182**
Bid Guarantees
Sureties
Acceptability

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

PROCUREMENT **B-230051 Feb. 22, 1988**
Socio-Economic Policies
Federal Procurement Regulations/Laws
Revision
Foreign Businesses
Antitrust Matters

While General Accounting Office has no objection to proposed change to FAR § 3.103-2 instructing contracting officers to report offers from foreign suppliers for overseas requirements suspected of being collusive or containing false certificates of independent pricing, it suggests that FAR § 3.103-1(b) pertaining to the certificate be modified to conform to the new requirement.

PROCUREMENT **B-230052 Feb. 22, 1988**
Socio-Economic Policies
Computer Equipment/Services
Specifications
Federal Procurement Regulations/Laws
Amendments

General Accounting Office has no objection to a proposed amendment to the Federal Acquisition Regulation (FAR), which would institute a policy encouraging industry participation in the tailoring of specifications and standards in systems acquisitions (i.e., "acquisition streamlining").

PROCUREMENT **B-225449.5; B-225449.6**
Bid Protests **Feb. 23, 1988**
GAO Procedures **88-1 CPD 183**
GAO Decisions
Reconsideration

Prior decision is affirmed where requests for reconsideration fail to show legal error or information not previously considered.

PROCUREMENT
Bid Protests
GAO Procedures
Agency Notification

B-227022.3; B-227022.4
Feb. 23, 1988
88-1 CPD 184

Dismissal of protest for failure to file a copy with the contracting agency within 1 working day after filing of protest with the General Accounting Office is affirmed since an attempt to transmit a copy via telefacsimile machine, as protester contends it did, does not satisfy requirement for actual receipt of protest by contracting agency within 1 day.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

To be timely, protest must be filed with General Accounting Office within 10 working days of time protester knew or should have known of basis for protest.

PROCUREMENT
Bid Protests
Bias Allegation
Allegation Substantiation
Evidence Sufficiency

B-228404 Feb. 23, 1988
88-1 CPD 185

Protester alleging bias on the part of procurement officials must submit virtually irrefutable proof since contracting officials are presumed to act in good faith.

PROCUREMENT

B-228404 Con't

Bid Protests

Feb. 23, 1988

GAO Procedures

Protest Timeliness

10-Day Rule

Protest that solicitation evaluation criteria are unfair is untimely when it is not filed with either the procuring agency or the General Accounting Office before bid opening. Alleged improprieties that are apparent on the face of a solicitation must be filed by that date.

PROCUREMENT

Competitive Negotiation

Contract Awards

Initial-Offer Awards

Propriety

Award on the basis of initial proposals to the firm judged to be most advantageous under the evaluation factors listed in the solicitation but proposing second lowest cost offeror was proper where the only lower-priced proposal would not have been in the competitive range.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical Acceptability

The determination of the merits of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the agency violated procurement statutes or regulations.

**PROCUREMENT
Sealed Bidding
Bids**

**B-229714 Feb. 23, 1988
88-1 CPD 186**

**Responsiveness
Price Data
Minor Deviations**

Where the bidder had entered the base year total price in the schedule of rates attached to the bid, thereby offering to perform as required and at a price apparent on the face of the bid, the failure of a bidder to enter a base year total price in another specified section of the bid does not render the bid nonresponsive.

**PROCUREMENT
Sealed Bidding
Unbalanced Bids
Materiality
Responsiveness**

The apparent low bid on a contract for refuse and debris removal is not mathematically and materially unbalanced where there is no reasonable doubt that acceptance will result in the lowest ultimate cost to the government.

**PROCUREMENT
Bid Protests
GAO Procedures
Interested Parties**

**B-229818 Feb. 23, 1988
88-1 CPD 187**

Protest is dismissed where the protestor is, at most, a potential subcontractor to a contract awardee, and therefore is not an "interested party" under the Competition in Contracting Act.

**PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties**

**B-230098 Feb. 23, 1988
88-1 CPD 188**

Protest alleging solicitation impropriety which was apparent prior to bid opening is untimely when filed after bid opening.

PROCUREMENT **B-230098 Con't**
Bid Protests **Feb. 23, 1988**
Non-Prejudicial Allegation
GAO Review

Protester's allegation that first and second low bidders are foreign firms from a country which may in the future pursuant to Pub. L. No. 100-202, 101 Stat. 1329 (1987), be placed on the United States Trade Representative's list of countries that discriminate against United States firms and therefore, should be ineligible for award is without merit because the law only prohibits award to foreign firms whose country is on the list.

PROCUREMENT
Sealed Bidding
Below-Cost Bids
Contract Awards
Propriety

Submission and possible acceptance of an alleged below-cost bid is not legally objectionable.

PROCUREMENT **B-229489 Feb. 24, 1988**
Competitive Negotiation **88-1 CPD 189**
Discussion
Determination Criteria

Procuring agency need not hold discussions with offerors whose proposals are technically unacceptable and not susceptible to being made acceptable.

PROCUREMENT

B-230040 Feb. 24, 1988

Bid Protests

88-1 CPD 190

GAO Procedures

Protest Timeliness

Good Cause Exemptions

Applicability

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

Significant Issue Exemptions

Applicability

Protest which was initially untimely filed with contracting agency is untimely when subsequently filed at General Accounting Office (GAO) and will not be considered under either the good cause or significant issue exceptions to GAO timeliness requirements where there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of protest and where protest does not present a unique issue or one of widespread interest to the procurement community.

PROCUREMENT

B-228306.2 Feb. 25, 1988

Bid Protests

88-1 CPD 191

GAO Procedures

GAO Decisions

Reconsideration

Request for reconsideration asserting that contracting agency improperly omitted one component from list published in Commerce Business Daily (CBD) of microfiche equipment to be acquired from schedule contract presents no basis to disturb prior decision denying protest where protester offers no evidence refuting agency's technical determination that component was necessary to meet its minimum needs.

PROCUREMENT

B-228591 Feb. 25, 1988

Noncompetitive Negotiation 88-1 CPD 193

Contract Awards

Sole Sources

Propriety

Sole-source award to only firm qualified to produce a particular aircraft part is justified where contracting agency reasonably determines that only that part will meet its minimum needs.

PROCUREMENT

Noncompetitive Negotiation

Use

Justification

Urgent Needs

Although under Competition in Contracting Act a justification for the award of a contract based on unusual and compelling urgency may be made after the contract is awarded, the justification should be issued within a reasonable time after the contract is awarded.

PROCUREMENT

B-229505 Feb. 25, 1988

Bid Protests

88-1 CPD 194

GAO Procedures

Interested Parties

Protester who does not submit an offer under a solicitation nevertheless is an interested party to challenge the specifications in the solicitation as defective based on its interest as a potential offeror under a revised solicitation if the protest is sustained.

PROCUREMENT

B-229505 Con't

Bid Protests

Feb. 25, 1988

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest alleging that specifications in solicitation are defective is timely where filed before due date for initial proposals; it need not be filed within 10 days after issuance of solicitation.

PROCUREMENT

Competitive Negotiation

Federal Procurement Regulations/Laws

Additional Work/Quantities

Competition

Statutory provision calling for a "new competition" in connection with a follow-on procurement of pistols cannot reasonably be interpreted to require the contracting agency to limit the procurement to any particular sources.

PROCUREMENT

Competitive Negotiation

First-Article Testing

Prior Contractors

Waiver

Propriety

In follow-on procurement of pistols, contracting agency should not require protester's pistol to be retested on specifications which it met in connection with initial procurement, in view of agency's decision to exempt awardee under initial contract from retesting and agency's failure to justify its decision to retest the protester.

PROCUREMENT **B-229505** **Con't**
Specifications **Feb. 25, 1988**
Minimum Needs Standards
Determination
Administrative Discretion

In procurement for pistols, the fact that the targeting and accuracy specifications applied in the initial testing stage of the procurement were changed in the contract ultimately awarded does not demonstrate that the testing specifications exceed the government's minimum needs where the contracting agency did not intend to relax the initial specifications. Even assuming that the contract specifications are less stringent, the defect is that the agency improperly modified the contract specifications, not that the initial testing specifications exceed the government's minimum needs.

PROCUREMENT **B-229744** **Feb. 25, 1988**
Sealed Bidding **88-1 CPD 195**
Bids
Judgmental Errors
Error Correction
Propriety

Bid may not be corrected after bid opening where the bid submitted was the bid intended, even though it was later discovered that the bid was based upon an erroneous interpretation of the specifications.

PROCUREMENT **B-230169** **Feb. 25, 1988**
Sealed Bidding **88-1 CPD 196**
Bid Guarantees
Responsiveness
Signatures
Sureties

The enforceability of a bid bond that does not include the signature of the surety's attorney-in-fact is sufficiently questionable to warrant rejection of the bid as nonresponsive.

PROCUREMENT

B-224837 Feb. 26, 1988

**Payment/Discharge
Payment Deductions
Wage Underpayment
Reserve Funds
Sureties**

A surety on a Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-5 (1982)) contract assumed and completed the contract. The surety seeks payment of the excess of funds withheld to cover underpayments to employees. A surety who completes performance of a contract or pays funds needed for completion of a contract, becomes entitled to remaining contract proceeds in the hands of the government as the government's subrogee. See Priority of Payment From Remaining Contract Proceeds, 64 Comp. Gen. 763, 765 (1985). By this memorandum, we determine that the surety is entitled to the excess of withheld funds.

PROCUREMENT

B-227953.2 Feb. 26, 1988

**Bid Protests
GAO Procedures
GAO Decisions
Reconsideration**

88-1 CPD 198

Request for reconsideration of decision dismissing as untimely a protest challenging request for second best and final offers (BAFOs) because it was not filed by the closing date for receipt of second BAFOs, is denied where protester fails to present evidence that original decision was based on error of fact or law.

PROCUREMENT

Competitive Negotiation

Contract Awards

Initial-Offer Awards

Propriety

B-229917; B-229917.2

Feb. 26, 1988

88-1 CPD 202

Contracting agency's decision in response to protest challenging award on initial proposal basis to open discussions and request best and final offers from all offerors in competitive range and, if warranted, terminate awardee's contract, is appropriate even though one offeror received detailed debriefing after initial award was made, since agency properly concluded that award based on initial proposals was improper because it was not clear that awardee's proposal would result in lowest overall cost to government.

PROCUREMENT

Competitive Negotiation

Discussion Reopening

Propriety

Best/Final Offers

Competitive Ranges

Contracting agency's decision in response to protest challenging award on initial proposal basis to open discussions and request best and final offers from all offerors in competitive range and, if warranted, terminate awardee's contract, is appropriate even though one offeror received detailed debriefing after initial award was made, since agency properly concluded that award based on initial proposals was improper because it was not clear that awardee's proposal would result in lowest overall cost to government.

PROCUREMENT

B-230086 Feb. 26, 1988

Bid Protests

*** 88-1 CPD 204**

GAO Procedures

Interested Parties

Protest against award by firm that did not submit a bid is dismissed as protester is not an interested party entitled to protest under the General Accounting Office's Bid Protest Regulations.

PROCUREMENT

B-224782.7 Feb. 29, 1988

Competitive Negotiation

Federal Procurement Regulations/Laws

Revision

Corporate Entities

Merger

PROCUREMENT

Sealed Bidding

Federal Procurement Regulations/Laws

Revision

Corporate Entities

Merger

In response to request for suggested changes to Federal Acquisition Regulation Parts 30 and 31 concerning the allowability of costs incident to mergers and other business combinations, General Accounting Office states its belief that as a general rule the book value of an asset subsequent to a business combination should be limited to the book value of the asset when first devoted to government contracting, less accumulated depreciation; revaluations of assets should be permitted on a case-by-case basis only where it can be shown that a combination will result in corresponding benefits to the government.

PROCUREMENT
Bid Protests
Bids
Preparation Costs

B-228449.2 Feb. 29, 1988
88-1 CPD 205

PROCUREMENT
Bid Protests
GAO Decisions
Recommendations
Contract Awards
Withdrawal

Recommendation in prior decision sustaining protest that award be made to the protester is changed to grant the protester costs of filing and pursuing the protest and bid preparation costs where the record shows that contract has been substantially performed.

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Recommendation in prior decision sustaining protest that award be made to the protester is changed to grant the protester costs of filing and pursuing the protest and bid preparation costs where the record shows that contract has been substantially performed.

PROCUREMENT

B-228593 Feb. 29, 1988

Specifications

88-1 CPD 208

Minimum Needs Standards

Administrative Regulations

Statutes

Implementation

Interim rules which implement statutory provision that allows for the elimination of unnecessary duplication of off-duty post-secondary education program course offerings are consistent with statute, even though regulations provide for a theater-wide rather than an installation-by-installation determination of what constitutes "unnecessary duplication" and establish economic and logistical criteria for making determination. The statute does not prescribe the methodology for making "unnecessary duplication" determinations and provides that duplicative course offerings need only be permitted "to the maximum extent feasible." As such, the statute does not prohibit determinations based upon economic and logistical considerations.

PROCUREMENT

Specifications

Minimum Needs Standards

Competitive Restrictions

Justification

Sufficiency

Solicitation which restricts the award of contracts for discrete course categories to single educational provider for each category is legally unobjectionable where issued pursuant to a regulation consistent with statutory allowance for the elimination of "unnecessary duplication."

PROCUREMENT

B-229491 Feb. 29, 1988

**Competitive Negotiation
Contract Awards
Propriety**

PROCUREMENT

**Competitive Negotiation
Offers
Designs
Evaluation
Technical Acceptability**

Award of a contract was improper where descriptive literature submitted with awardee's proposal indicates that the specific model of motor-generator offered by awardee failed to conform to material solicitation requirement.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS

B-226466 Feb. 25, 1988

Human Resources

Health Care

Personnel

Student Loans

Debt Waiver

The Health Professions Loan Repayment Program authorized financial assistance for physicians in repaying debts incurred in medical school as an inducement for them to enter into agreements committing themselves to serve in physician shortage areas for extended periods after the agreements were executed. The program was not designed to provide payments as a gratuity for past services. Hence, no payment may be allowed to a physician on an application submitted after the program was phased out for benefits predicated on his past service in a shortage area.

MISCELLANEOUS TOPICS

B-217114 Feb. 29, 1988

Federal Administrative/Legislative Matters

Information Disclosure

Statutory Regulations

Applicability

Although GAO is not subject to the Freedom of Information Act, 5 U.S.C. § 552, GAO's disclosure policy follows the spirit of the Act, and thus we will provide claimant copies of the materials in his case file that our regulations allow to be disclosed. 4 C.F.R. pt. 81.

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