

November 1988

Digests of Unpublished Decisions of the Comptroller General of the United States

United States General Accounting Office

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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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OVERRULED, MODIFIED AND DISTINGUISHED

B-230619, Nov. 16, 1988 amplifies 54 Comp. Gen. 679 (1975).

B-230873, Nov. 21, 1988 distinguishes B-225014,
Sept. 30, 1987.

B-229873, Nov. 29, 1988 distinguishes 64 Comp. Gen.
359 (1985).

APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223657 Nov. 14, 1988

Purpose availability

Strategic/critical materials

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Time availability

Fiscal-year appropriation

Strategic/critical materials

Implementation of the Federal Emergency Management Agency's proposal to use National Defense Stockpile Transaction Fund (Fund) money to pay for the relocation of stockpile materials, as reflected in the agency's revision to the annual materials plan for the stockpile for fiscal year 1987, was proper under the regular General Services Administration appropriation for that fiscal year.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process

B-226389 Nov. 14, 1988

Conflicting statutes

Statutory interpretation

Even though section 1201 of the National Defense Authorization Act for 1987 was enacted into law after section 9085 of the Department of Defense (DOD) Appropriations Act, 1987, section 1201 did not impliedly repeal section 9085. Facts and circumstances surrounding enactment of the two statutes, as well as section 1201(b)'s express repeal of provision of 1986 DOD Appropriation Act, identical to section 9085 do not indicate that Congress intended to repeal by implication section 9085. See cases cited.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-229873 Nov. 29, 1988

Time availability

Bona fide needs doctrine

Applicability

Cooperative agreements

Although the "bona fide needs" rule, 31 U.S.C. § 1502(a), applies to grants and cooperative agreements as well as procurement contracts, the Small Business Administration (SBA) did not violate the bona fide needs rule by making 1-year cooperative agreement awards to Small Business Development Centers (Centers) on September 30 of 1 fiscal year even though the cooperative agreement work was to be done in the next fiscal year. The SBA's bona fide need is to provide assistance to the Centers by entering into grants or cooperative agreements within the fiscal year sought to be charged. 64 Comp. Gen. 359 (1985) distinguished.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-226868 Nov. 4, 1988

Relocation

Household goods

Actual expenses

Reimbursement

Amount determination

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

CIVILIAN PERSONNEL

B-229395 Nov. 4, 1988

Relocation

New appointment

Travel expenses

First duty stations

A new appointee to a manpower shortage position, who was issued travel orders erroneously authorizing reimbursement for temporary quarters subsistence expenses, a house-hunting trip, and miscellaneous expenses, may only be reimbursed for her travel and shipment of the household goods under 5 U.S.C. § 5723 (1982). In addition, we decline to submit this claim to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

CIVILIAN PERSONNEL

B-220119.1 Nov. 14, 1988

Travel

Travel expenses

Documentation procedures

Burden of proof

Evidence that claimant submitted false receipts in support of vouchers for travel and transportation services that were not rendered and expenses that were not incurred is sufficient to overcome the presumption in favor of honesty and fair dealing.

CIVILIAN PERSONNEL

Travel

Travel expenses

Illegal/improper payments

Correction procedures

Agency that sustains its burden of proof on fraudulent claims is entitled to recoupment. Recoupment by deductions from employee's current pay account is consistent with the purpose of 31 U.S.C. § 3711(c)(1).

CIVILIAN PERSONNEL

Travel

Travel expenses

Reimbursement

False claims

Claimant who submitted fraudulent claims is not entitled to reimbursement even after expenses for travel and transportation are actually incurred approximately one year later.

CIVILIAN PERSONNEL**B-229426 Nov. 14, 1988****Relocation****Privately-owned vehicles****Shipment****Actual expenses****Reimbursement**

Following a divorce, an employee's former spouse and children returned to Oregon from Alaska. The employee, who remained in Alaska and retained his privately owned vehicle, seeks to be reimbursed the cost of shipping the other family automobile back to the conterminous United States. In order for the government to pay for the cost of shipping an automobile, there must be specific statutory authority for this and no such authority exists in the circumstances described. See 5 U.S.C. §§ 5727 and 5729.

CIVILIAN PERSONNEL**B-231537 Nov. 14, 1988****Relocation****Residence transaction expenses****Reimbursement****Eligibility****New residence construction****CIVILIAN PERSONNEL****Relocation****Taxes****Allowances****Eligibility**

A transferred employee constructed a residence at his new duty station and claims reimbursement for a state excise tax imposed on the sale of construction services. Under paragraph 2-6.2d of the Federal Travel Regulations, only those expenses resulting from construction which are comparable to expenses allowable in connection with the purchase of an existing residence may be reimbursed. Since the tax is not imposed on the purchase price of an existing residential property, it is unique to the construction process and may not be reimbursed.

CIVILIAN PERSONNEL**B-232679 Nov. 14, 1988****Relocation****Residence transaction expenses****Loan origination fees****Reimbursement****Amount determination**

A transferred employee who purchased a residence at his new duty station may not be reimbursed for the full amount of a loan origination fee of 2.5 percent. Although he has demonstrated by a Federal Home Loan Bank's survey that a fee of 2.5 percent was customary in the locality for the conventional financing involved, the "fees" reflected in the survey include not only loan origination fees but also discounts and points which are not reimbursable expenses.

CIVILIAN PERSONNEL**B-206396 Nov. 15, 1988****Compensation****Waiver****Members of Congress**

The Honorable Tom Tauke, Member, United States House of Representatives, is advised that the payment of the salaries of Members of Congress is fixed by law and that absent specific statutory authority, members may not waive any portion of their statutory salaries. However, there is no prohibition against a member accepting his or her salary and then donating such amount to the United States Treasury. United States v. Burnison, 339 U.S. 87 (1950); 31 U.S.C. § 3113 (1982).

CIVILIAN PERSONNEL**B-230619 Nov. 16, 1988****Travel****Permanent duty stations****Actual subsistence expenses****Prohibition**

Two employees were notified that they were being reassigned from New Orleans, Louisiana, to a new duty station and, prior to reporting, they were to undergo 6 months of training at two locations. After their training assignments but before their transfer to the new official station, the employees were assigned to perform temporary duty in New Orleans. While per diem allowances may not ordinarily be paid at an employee's official station, such allowances may be paid under these circumstances where the employees, in reliance on agency notification, vacated their residences, packed their personal belongings, and arranged for their families to travel with them. See 54 Comp. Gen. 679 (1975).

CIVILIAN PERSONNEL**B-230720 Nov. 16, 1988****Compensation****Rates****Determination****Highest previous rate rule**

An employee of the Air Force Accounting and Finance Center who transferred from a higher paying position with the Naval Supply Center claims that under the highest previous rate rule she is entitled to higher grade and pay after a subsequent promotion. Since the employee's salary after promotion exceeded her existing rate of pay by two step increases, as required under 5 U.S.C. § 5334(b) (1982), the highest previous rate rule does not apply.

CIVILIAN PERSONNEL

B-230868 Nov. 16, 1988

Relocation

Travel expenses

Illegal/improper payments

Debt waiver

An appointee to a manpower shortage position was issued travel orders erroneously authorizing reimbursement of certain relocation expenses not available to an appointee. After he incurred expenses in reliance on the erroneous orders, the error was discovered. The employee's legitimate expenses were applied against the travel advance, and he was indebted to the government for \$1,250.03. The indebtedness is waived under 5 U.S.C. § 5584 (Supp. IV 1986) since the travel advance was made to cover the expenses erroneously authorized and the employee actually spent the travel advance in good faith reliance on the erroneous travel orders.

CIVILIAN PERSONNEL

B-231008 Nov. 16, 1988

Relocation

Temporary quarters

Determination

Criteria

Under the applicable relocation regulations, an employee is ineligible for reimbursement of his expenses incurred while renting his permanent residence following its sale at his old duty station incident to his transfer to a new duty station.

CIVILIAN PERSONNEL

B-229435.2 Nov. 17, 1988

Compensation**Conflicts of interest****Employment applications**

Department of Energy (DOE) official did not violate conflict-of-interest statutes when he provided his resume to a Texaco official with whom he had dealings at the time as a representative of DOE since it appears that he was not negotiating for employment with Texaco. Instead, the evidence suggests that the DOE official sought the Texaco official's help in finding future employment with a firm other than Texaco. Nevertheless, the DOE official's actions violated government-wide and DOE standards of conduct.

CIVILIAN PERSONNEL**Compensation****Conflicts of interest****Gifts/donations**

Administrator of the Economic Regulatory Administration (ERA), in the Department of Energy, violated prohibition in government-wide and DOE standards of conduct against accepting gifts or entertainment from persons having business before his agency when he attended a dinner as the guest of a lobbyist who represented clients having cases pending before ERA.

CIVILIAN PERSONNEL

B-228998 Nov. 21, 1988

Compensation**Reduction-in-force****Compensation retention**

Agency abolished employee's position of Quality Assurance Specialist, GS-12, effective November 17, 1981, and offered employee a wage grade position in lieu of separation by reduction in force (RIF). Employee was erroneously notified that acceptance of Laborer position would include indefinite retention of GS-12 pay. Employee elected the lower grade position, rather than discontinued service retirement pursuant to RIF. In January 1984, employee was notified that GS-12 pay was not indefinite, but would be reduced retroactively to November 19, 1983. Employee is not entitled to pay of GS-12 position beyond statutory period of 2 years. Notice by agency official to contrary does not provide a basis to allow him additional compensation. Government cannot be bound beyond the actual authority conferred upon its agents by statute or regulations.

CIVILIAN PERSONNEL**Compensation****Reduction-in-force****Procedural defects**

Employee who accepted lower grade position after receiving a reduction-in-force (RIF) notice contends that the agency did not follow the proper procedures in conducting the RIF. This Office cannot consider the employee's contention because challenges to agency RIF actions must either be processed through a negotiated grievance procedure, if applicable, or presented to the Merit Systems Protection Board.

CIVILIAN PERSONNEL**B-228998 Con't****Compensation****Nov. 21, 1988****Retirement compensation****Separation dates****Retroactive adjustments**

A retired civil service employee requests that his separation date be changed retroactively so that he may accept a discontinued service retirement pursuant to reduction-in-force notice. Employee alleges that his electing to forgo discontinued service retirement in November 1981 resulted from erroneous advice that saved pay would be indefinite. Agency may retroactively change employee's date of separation and submit request for retroactive discontinued service retirement to the Office of Personnel Management where agency incorrectly advised employee whose position was abolished that he would receive GS-12 pay indefinitely. The failure of agency to give employee correct information as to consequences of refusing separation and discontinued service retirement constituted administrative error which deprived him of right granted by statute and regulation to elect discontinued service retirement.

Relocation

Overseas personnel

Educational allowances

Overpayments

Waiver

The education allowance authorized by 5 U.S.C. § 5924(4) is an overseas cost-of-living allowance payable to federal employees stationed in foreign areas to assist them in providing their children with educational services ordinarily provided without charge by public schools in the United States. There are two separate statutory provisions--5 U.S.C. §§ 5584 and 5922(b)--authorizing waiver of overpayments of this allowance when collection would be "against equity and good conscience." An employee may properly apply separately for waiver of an overpayment both to the head of the employing agency under 5 U.S.C. § 5922(b), and to the Comptroller General under 5 U.S.C. § 5584, in situations involving an overlapping of these separate waiver authorities.

An employee stationed in the Bahamas received education allowance monies in the amount of \$4,500 for his daughter's room and board at a high school near Miami, Florida, for the 1981-82 academic year. Under the applicable regulations this payment should have been limited to \$2,850 because the school did not provide the room and board. Waiver is granted under 5 U.S.C. § 5584 of the erroneous overpayment of \$1,650, since the record establishes that the employee acted in good faith and without knowledge of the error and that he spent the entire \$4,500 for his daughter's food and lodging in reliance on the erroneous authorization.

CIVILIAN PERSONNEL**Relocation****Overseas personnel****Educational allowances****Overpayments****Waiver****B-226143 Con't****Nov. 22, 1988**

An employee stationed in the Bahamas received an education allowance in the summer of 1982 to provide for his daughter's education at a high school near Miami, Florida, for the 1982-83 school year. He became liable to refund most of the allowance when he was transferred to Miami at the beginning of that academic year in September 1982. Waiver of collection is denied under 5 U.S.C. § 5584 since the transaction did not involve expenses incurred by the employee in detrimental reliance on an erroneous authorization. Further, the Comptroller General has no basis to question the previous denial of waiver by the employing agency under 5 U.S.C. § 5922(b) with respect to those amounts.

CIVILIAN PERSONNEL**Compensation****Overtime****Eligibility****International dateline****B-229355 Nov. 22, 1988**

An employee who is nonexempt from the provisions of the Fair Labor Standards Act (FLSA) crossed the international dateline in both directions while performing official travel between Hawaii and Guam. Under title 5, United States Code, the employee may be paid 8 hours basic pay for a workday "lost" traveling westbound, but receives no pay for the workday "gained" traveling eastbound. However, where the "lost" day and the "gained" day occur in different workweeks, a nonexempt employee traveling eastbound may receive overtime pay under the FLSA for each hour in excess of 40 hours actually worked during that workweek since under the FLSA each scheduled administrative workweek is deemed separate and distinct.

CIVILIAN PERSONNEL**B-229355 Con't****Travel****Nov. 22, 1988****Overseas travel****International dateline****Travel time****Charging**

An employee performing temporary duty in Guam celebrated the Fourth of July holiday there. He commenced return travel on the following day and, after crossing the international dateline, he arrived at his official duty station in Hawaii on the Fourth of July. Since the office was closed, he was unable to work. In accordance with 5 U.S.C. § 6103 (1982) and Exec. Order No. 11,582, the employee's holiday observance was in Guam. However, he should not be required to use annual leave in Hawaii on the Fourth of July since it is appropriate for his agency to exercise its discretion and grant him an excused absence without loss of pay for the day.

CIVILIAN PERSONNEL**B-231658 Nov. 22, 1988****Travel****Lodging****Reimbursement****Government quarters****Availability**

An employee, who attended a training course at a military installation, was scheduled to use base accommodations, but he lodged off-base for personal reasons. Paragraph C1055-1 of Volume 2, Joint Travel Regulations, provides that the lodging portion of per diem may not be paid where adequate government quarters are available, but not used. A statement of nonavailability of government quarters is required to support reimbursement, and absent such a statement, it is assumed that adequate government quarters were available.

CIVILIAN PERSONNEL**B-231587 Nov. 23, 1988****Relocation****Miscellaneous expenses****Reimbursement****Eligibility****CIVILIAN PERSONNEL****Relocation****Temporary quarters****Actual subsistence expenses****Eligibility**

A transferred employee claims entitlement to temporary quarters subsistence expenses for the last 3 days she occupied her residence at the old duty station because the kitchen appliances had been disconnected in preparation for shipment. The claim is denied since the residence was not vacated within the meaning of paragraph 2-5.2c of the Federal Travel Regulation (FTR). The claim may not be paid under the FTR provisions governing miscellaneous expense reimbursement since those provisions specifically exclude expenses which are considered and denied elsewhere in the FTR. Gerald G. Shockley, B-230848, Sept. 6, 1988.

CIVILIAN PERSONNEL**B-230698 Nov. 25, 1988****Relocation****Residence transaction expenses****Leases****Termination costs****Reimbursement**

An employee and another adult shared an apartment for which both signed the lease. The employee is entitled to reimbursement of only 50 percent of the lease termination expenses incurred incident to his transfer, even though he may have paid all the expenses. See Federal Travel Regulations, para. 2-6.1.c and f.

CIVILIAN PERSONNEL**B-231549 Nov. 28, 1988****Compensation****Retroactive compensation****Labor disputes****GAO review**

The GAO will not take jurisdiction under 4 C.F.R. part 22 of a union request for our review of an employee's claim where the agency objects to our consideration, nor will we take jurisdiction under 4 C.F.R. part 31 since the claim was the subject of a grievance and the matter was withdrawn by the union prior to binding arbitration.

CIVILIAN PERSONNEL**B-229067 Nov. 29, 1988****Compensation****Overtime****Eligibility****Non-workday travel****Justification**

An employee who traveled outside of her regularly scheduled administrative workweek in order to be at certain ports 2 or 3 days prior to a ship's arrival is not entitled to overtime compensation. Although the government could not control the arrival of the ships, adequate notice of their arrival was available in ample time to schedule the employee's travel within her regularly scheduled workweek. Her claims for overtime compensation are denied since record fails to indicate any immediate official necessity for travel within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) and decisions of this Office construing that overtime entitlement authority.

Compensation

Fringe benefits

Retroactive adjustments

Intermittent employment

An intermittent employee appeals a claim settlement disallowing his claim for retroactive benefits as a full-time employee. The settlement is affirmed since no material mistake of law or fact in the original settlement is established. The records presented do not clearly establish that the employee served a regular tour of duty scheduled in advance under which he was routinely scheduled for work at specific times and dates for each of the two workweeks of a given pay period.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-226048 Nov. 8, 1988

Relocation

Household goods

Actual expenses

Reimbursement

Amount determination

If the service determines that a member's goods he transported in a second privately owned vehicle incident to his change of station were of unusual value, such that they would have been shipped separately by the service, he may be reimbursed the actual expenses he incurred in their transportation. 1 JTR para. M8500. Such reimbursement is limited to actual expenses incurred, such as gasoline, oil and tolls, and may not exceed what it would have cost the government to ship the goods.

MILITARY PERSONNEL

Relocation

Household goods

Shipment

Restrictions

Privately-owned vehicles

MILITARY PERSONNEL

Relocation

Travel expenses

Privately-owned vehicles

Multiple vehicles

Mileage

A uniformed service member's use of more than one privately owned conveyance in connection with a permanent change of station was not authorized for the purpose of transporting household goods so as to qualify for an additional mileage allowance. Paragraph M7003-2, 1 Joint Travel Regulations (1 JTR).

MILITARY PERSONNEL**B-230824 Nov. 14, 1988****Pay****Survivor benefits****Annuity payments****Distribution****Wills**

The Survivor Benefit Plan (SBP) is an income maintenance program established under federal law for the dependents of deceased service members. The law governing the program identifies the eligible beneficiaries and specifies an order of precedence among them. The SBP law does not authorize service members to treat annuities as assets of their estates, or to designate annuitants in wills or other testamentary instruments, or to appoint guardians or trustees to oversee the disbursement of annuity payments. Hence, a retired Navy petty officer could not effectively in his will either designate an SBP annuitant or designate guardians to disburse the annuity, and the SBP annuity payable upon his death must instead be disbursed in conformity with the applicable provisions of federal law.

MILITARY PERSONNEL**B-231565 Nov. 14, 1988****Pay****Dual compensation restrictions****Reemployed annuitants****Applicability**

When the military and naval departments enter into statutorily authorized personal services contracts for the services of retired service members who are specialists in medicine and related fields, the retirees do not thereby become civilian federal employees in established government positions. Hence, they are not covered by the dual compensation restrictions of 5 U.S.C. §§ 5531 and 5532 (1982), which apply to a retired service member who holds a civilian "position" in the government.

MILITARY PERSONNEL**B-231022 Nov. 16, 1988****Travel****Travel expenses****Reimbursement****Travel orders****Amendments**

Travel expenses of an Army officer whose orders directed him to MacDill Air Force Base, Florida, but whose actual temporary duty location was Honduras, may be reimbursed on the basis of amended orders issued retroactively since there was an error which was apparent on the face of the orders.

MILITARY PERSONNEL**B-228733 Nov. 22, 1988****Travel****Overseas travel****Overseas allowances****Housing allowances****Amount determination**

A member who rents a residence shall not be considered a sharer for purposes of reducing his housing allowance entitlement even though the owner of the residence is his fiancée and both live in the residence. The member is not a sharer under the applicable regulations because his fiancée is not entitled to housing allowances and she does not contribute money for his rent or payments.

MILITARY PERSONNEL

B-188452.2 Nov. 25, 1988

Pay

Survivor benefits

Annuities

Amount determination

Based upon a court opinion and our subsequent decisions, we hold that a widow is entitled to a full unreduced Survivor Benefit Plan (SBP) annuity based upon a second marriage, even though she is entitled to receive Dependency and Indemnity Compensation from the Veterans Administration based on her prior marriage to another service member. Her claim is considered filed on the date she requested waiver of SBP overpayments.

MILITARY PERSONNEL

B-231021 Nov. 25, 1988

Pay

Survivor benefits

Eligibility

Where deceased Navy member (retired) failed to change beneficiary designation before death, the person actually listed as beneficiary on the beneficiary designation form at the time of member's death was entitled to receive any arrears of member's retired pay due and unpaid.

PROCUREMENT

PROCUREMENT	B-230190.3	Nov. 1, 1988
Competitive Negotiation	88-2	CPD 420
Use		
Criteria		

PROCUREMENT
Sealed Bidding
Use
Criteria

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire mess attendant services is justified where the contracting officer determines that discussions are necessary to ensure that offerors fully understand the services and the staffing required to adequately perform the contract and basis for award includes technical considerations in addition to price and price-related factors.

PROCUREMENT	B-232066	Nov. 1, 1988
Sealed Bidding	88-2	CPD 421
Bid guarantees		
Sureties		
Acceptability		
Information submission		

A contracting agency may determine that an individual surety on a bid bond is unacceptable and, consequently, find the bidder nonresponsive where the individual surety failed to disclose outstanding bid bond obligations regardless of the actual risk of liability on them.

PROCUREMENT**B-232147.2 Nov. 1, 1988****Bid Protests****88-2 CPD 422****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Where protester initially protests generally that performance-type specification should have been included in solicitation instead of design-type specification, but presents for the first time in its comments on the agency report its detailed argument as to why its item is acceptable without meeting the design requirements. the detailed argument is untimely and will not be considered; detailed argument, which must independently satisfy timeliness requirements, concerns alleged solicitation deficiency and was not raised prior to closing date for submission of proposals as required under Bid Protest Regulations.

PROCUREMENT**B-232303.3 Nov. 1, 1988****Socio-Economic Policies****88-2 CPD 423****Small business set-asides****Use****Administrative discretion**

Agency is not required by Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 19.501(g) to issue solicitation as a repetitive small business set-aside where a previous small business set-aside procurement included the services in issue as one element of a broader requirement but immediately preceding contract for the services was awarded through the section 8(a) program; the statutory and regulatory scheme suggest that a small business set-aside is not required in such circumstances.

PROCUREMENT
Bid Protests
Private disputes
GAO review

B-233301 Nov. 1, 1988
88-2 CPD 425

The General Accounting Office will not consider an allegation that awardee will infringe on another's copyright as that is essentially a dispute between private parties.

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Extension
Administrative discretion

B-233359 Nov. 1, 1988
88-2 CPD 426

The granting of an extension to apply for a certificate of competency is a matter within the discretion of the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, controlling.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-230309.4 Nov. 2, 1988
88-2 CPD 429

Request for reconsideration is denied where protester did not show that prior decision contained errors of fact or law or present information not previously considered that would warrant its reversal or modification.

PROCUREMENT B-231343.3 Nov. 2, 1988
Competitive Negotiation 88-2 CPD 430
Offers
Evaluation
Technical acceptability
Tests

Contracting officer reasonably determined, based on the information available to him prior to award, that low bidder's fire extinguisher systems had been laboratory tested and met solicitation requirements.

PROCUREMENT B-231795 Nov. 2, 1988
Noncompetitive Negotiation 88-2 CPD 431
Contract extension
Sole sources
Propriety

Protest that an agency's modification of a contract for sonobuoys to require delivery of additional units constituted an improper sole-source award is sustained where it appears from the record that competition for the additional units was possible and likely would have resulted in the government paying a lower unit price for those units.

PROCUREMENT B-231903 Nov. 2, 1988
Competitive Negotiation 88-2 CPD 432
Offers
Submission time periods
Extension
Propriety

Where the contracting agency allowed over 30 days for the preparation and submission of proposals, we find that offerors were given sufficient time for this purpose; the protester's delay in submitting questions to the agency until approximately 1 week prior to the closing date for proposal submission cannot be used as a basis for extending the closing date.

PROCUREMENT B-231903 Con't
Specifications Nov. 2, 1988
 Minimum needs standards
 Competitive restrictions
 Allegation substantiation
 Evidence sufficiency

Agency's requirements regarding format and contents of proposal and minimum experience of proposed contract manager are not unduly restrictive where protester has not established that the requirements are clearly unreasonable.

PROCUREMENT
 Specifications
 Minimum needs standards
 Determination
 Administrative discretion

Protester's contentions that the request for proposals (RFP) did not address 1 year of the agency's requirements and the estimated occurrences of two work priorities is denied where the agency's yearly requirements were addressed in the RFP and the agency did not have any reliable work priority estimates.

PROCUREMENT B-231907 Nov. 3, 1988
 Bid Protests 88-2 CPD 433
 Moot allegation
 GAO review

Protest that solicitation issued by contracting agency conflicts with protester's mandatory requirements contract is rendered academic by expiration of protester's contract.

PROCUREMENT

Bid Protests

Bias allegation

Allegation substantiation

Burden of proof

B-231923; B-231923.2

Nov. 3, 1988

88-2 CPD 438

Allegations that the Navy should have known prospective mobilization base offerors could not have met known funding limitations do not show bad faith. To show bad faith protesters must make a showing that the agency had a specific intent to harm them.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of solicitation provision stating that industrial mobilization factors may be considered, which was not filed until after closing, is not timely since it was filed after the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Incumbent contractors

The government is under no obligation to eliminate an advantage which a firm may enjoy because of its incumbency on other contracts unless the advantage has resulted from unfair government action.

PROCUREMENT

Competitive Negotiation

Contract awards

Price disclosure

Propriety

Revealing the award price of a current contract does not rise to the level of an improper auction.

B-231923; B-231923.2 Con't

Nov. 3, 1988

Requests for proposals

Amendments

Justification

Funding restrictions

Where Navy amended solicitation allowing previously excluded current producer of oiler ships into the competition, Navy did not violate its earlier policy of preserving the industrial mobilization base because change was necessary due to funding limitation.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Cancellation

Justification

Funding restrictions

A contracting agency has a right to cancel a solicitation when sufficient funds are not available, irrespective of disputes concerning the validity of government estimates.

PROCUREMENT

B-232049 Nov. 3, 1988

Bid Protests

88-2 CPD 434

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that request for best and final offers (BAFOs) after disclosure of offerors' initial prices constituted an auction is untimely where filed after the closing date for the receipt of BAFOs.

PROCUREMENT

Competitive Negotiation

Offers

Competitive ranges

Inclusion

Administrative discretion

B-232049 Con't

Nov. 3, 1988

Although award on the basis of an initial proposal that does not meet specific solicitation requirements is improper, a contracting agency can include in the competitive range proposals which are unacceptable as submitted but susceptible of being made acceptable through discussions.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation errors

Evaluation criteria

Application

Protest that evaluation was not conducted under the terms set out in the RFP is denied where, in accordance with solicitation, proposals were evaluated on a pass/fail basis under criteria listed in the solicitation and award was made to the lowest-priced technically acceptable proposal.

PROCUREMENT B-232264 Nov. 3, 1988
Competitive Negotiation 88-2 CPD 435
Offers
Competitive ranges
Exclusion
Administrative discretion

Agency determination that protester's proposal was technically unacceptable and not in the competitive range is reasonable where request for proposals called for the overhaul of existing equipment while the protester offered to redesign the system and make fundamental changes in the existing equipment.

A technically unacceptable proposal need not be included in the competitive range, irrespective of its low price, where the proposal could not be made acceptable without major revisions.

PROCUREMENT B-232322 Nov. 3, 1988
Bid Protests 88-2 CPD 436
GAO procedures
Protest timeliness
10-day rule

Protester's new and independent grounds of protest are dismissed where the later raised issues do not independently satisfy the timeliness rules of General Accounting Office's Bid Protest Regulations.

PROCUREMENT **B-232322 Con't**
 Competitive Negotiation **Nov. 3, 1988**
 Requests for proposals
 Defects
 Evaluation criteria

Protester has not met burden of affirmatively proving its case where it does not rebut the agency's specific responses to the protester's allegation that the solicitation was defective because it failed to apprise all offerors regarding the operability, suitability for intended use, and condition of government-furnished property.

Where all offerors submit proposals on the basis that certain equipment will be operational, the fact that, after award, delay in obtaining certificate might (and in fact does) prevent use of equipment does not render solicitation defective for failure to disclose this possibility.

PROCUREMENT **B-233248 Nov. 3, 1988**
 Sealed Bidding **88-2 CPD 437**
 Invitations for bids
 Amendments
 Acknowledgment
 Responsiveness

An amendment to a solicitation which makes clear solicitation requirement is for installation of fire detection system in three rooms, not one, is material and a bidder's failure to acknowledge the solicitation amendment renders the bid nonresponsive; absent such acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amended solicitation.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Notification

B-233248 Con't
Nov. 3, 1988

A bidder bears the risk of not receiving invitation for bid amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing, or the agency failed to furnish the amendment where the bidder availed itself of every reasonable opportunity to obtain the amendment.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-224305.2 Nov. 4, 1988
88-2 CPD 439

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Award of costs of filing and pursuing protest, including attorneys' fees, is granted where initial decision sustained protester's challenge to restrictive design specifications which unreasonably excluded protester from competition.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Sureties
Adequacy

B-231855 Nov. 4, 1988
88-2 CPD 440

Agency rejection of bid because tax appraised value of real estate listed by sureties was not adequate to support required bid guarantee is improper where agency's subsequent appraisal of one property shows that fair market value of property is substantially higher than the tax appraised value and record indicates that fair market value of sureties' property is more than adequate to cover price difference between protester's bid and next low bid, which is considered adequate security under applicable Federal Acquisition Regulation provision.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231934.2 Nov. 4, 1988
88-2 CPD 441

Request for reconsideration that essentially reiterates arguments which were considered and rejected does not warrant reversal or modification of our prior decision.

PROCUREMENT **B-231993 Nov. 4, 1988**
Socio-Economic Policies 88-2 CPD 442
Small businesses
Disadvantaged business set-asides
Preferences
Applicability

Contracting agency improperly failed to include small disadvantaged business preference in solicitation providing for award to the low, technically acceptable offeror since such an award decision, without a comparative technical evaluation, is essentially based on price; Department of Defense Federal Acquisition Regulation Supplement § 19.7000(a) requires inclusion of preference in solicitations where award will be based on price or price related factors.

PROCUREMENT **B-232094 Nov. 4, 1988**
Competitive Negotiation 88-2 CPD 443
Requests for proposals
Amendments
Bad faith
Allegation substantiation

Allegation that agency improperly relaxed the delivery schedule for the awardee without advising protester of the change is sustained where record indicates that major performance milestone requirements of the delivery schedule were relaxed, and the agency was aware that protester withdrew from the competition because of an earlier amendment to the solicitation compressing the original delivery schedule.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Amendments
Notification
Contractors

B-232094 Con't
Nov. 4, 1988

Generally, an amendment relaxing solicitation's delivery schedule must be issued to an offeror no longer in the competitive range where the subject matter of the amendment is directly related to the technical reasons which prevented the offeror from competing.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232553.2 Nov. 4, 1988
88-2 CPD 444

Request for reconsideration that basically only reiterates previously-rejected arguments does not warrant reversal of the prior decision.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232731.2 Nov. 4, 1988
88-2 CPD 445

Request for reconsideration is denied where protester, who essentially reiterates arguments initially raised and basically disagrees with original decision, fails to show any error of fact or law that would warrant reversal or modification.

PROCUREMENT**B-229991.3 Nov. 7, 1988****Sealed Bidding****Bids****Evaluation****Price reasonableness****Administrative discretion**

Four million dollars difference between protester's alleged price as corrected and second low bid does not necessarily mean that the second low bid was reasonable under procurement estimated at over \$22 million.

PROCUREMENT**B-231840, et al.****Bid Protests****Nov. 7, 1988****GAO procedures****88-2 CPD 446****Interested parties**

Where a protester is ranked last technically of the five offerors in the competitive range, it is nevertheless an interested party under the Bid Protest Regulations to protest the evaluation of its proposal, since, if its protest were sustained, it could be in line for award.

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

An incumbent contractor's protest that its alleged confidential and proprietary data concerning the demographics of its incumbent employees was disclosed during discussions to other offerors on a negotiated procurement is untimely under the Bid Protest Regulations, where this same data was included in an amendment to the solicitation, which also solicited best and final offers (BAFO), and the contractor failed to protest by the BAFO closing date.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Privileged information

Prior contracts

B-231840, et al. Con't

Nov. 7, 1988

Where an incumbent contractor has not shown that the awardee was advised of the incumbent's employee salary and benefit levels during discussions, but only that other offerors have been given some relative information on this subject, the contractor has not met its burden of showing it was prejudiced by the disclosure of the alleged proprietary information or by the alleged improper discussion techniques.

PROCUREMENT

Competitive Negotiation

Contract awards

Source selection boards

Administrative discretion

Source selection official may reasonably rely upon the expert advice and evaluation recommendations of the source evaluation board and need not actually read the proposals to make an integrated assessment of the proposals and make a reasonable and prompt award selection in accordance with Federal Acquisition Regulation § 15.612.

PROCUREMENT**Competitive Negotiation****Discussion****Adequacy****Criteria****B-231840, et al. Con't****Nov. 7, 1988**

Agencies are not obligated to conduct all-encompassing discussions or discuss every element of a technically acceptable proposal that received less than the maximum score, even where the discussions are otherwise exhaustive.

A protester is not competitively prejudiced, even where it is not told of certain technical deficiencies during otherwise exhaustive discussions and even though it was allegedly pressured to raise its proposed costs, since the correction of the technical deficiencies would not significantly improve the protester's fourth ranked proposal and because its evaluated cost would only approximate the awardee's evaluated cost if its proposed cost had not been raised.

PROCUREMENT**Competitive Negotiation****Discussion****Adequacy****Criteria****PROCUREMENT****Competitive Negotiation****Discussion****Misleading information****Allegation substantiation**

An agency has not conducted misleading or improperly unequal discussions in providing specific guidance to the awardee during discussions on the desired staffing for the awardee's proposed approach, which guidance caused the awardee to lower its staffing by 500 persons, where the agency provided the same level of specific advice to other offerors in the competitive range and did not mislead the other offerors into lowering the quality of their proposals.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Cost estimates

B-231840, et al. Con't.

Nov. 7, 1988

An agency probable cost analysis on proposals on a base maintenance services contract is reasonable, where the agency relied upon Defense Contract Audit Agency input, made various adjustments to the offerors' elements of cost, determined the offerors' salary levels were realistic and normalized the staffing levels.

An agency is not required to verify each and every item of all proposals to ascertain whether the offerors complied with a solicitation requirement that certain salary and benefit levels be retained. A "regression analysis," which showed the awardee's overall salary levels were compliant, and a spot check of the awardee's cost proposal, which found no indication of noncompliance, is a reasonable review in the circumstances.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Downgrading

Propriety

An offeror which proposed significantly lower staffing levels on a base management services contract and which did not respond to suggestions made during discussions that it raise its manning levels, was reasonably downgraded under the solicitation's technical and management evaluation criteria.

B-231840, et al. Con't
Nov. 7, 1988

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Organizational experience

PROCUREMENT	B-231912; B-231912.2
Competitive Negotiation	Nov. 7, 1988
Requests for proposals	88-2 CPD 447
Evaluation criteria	
Cost/technical tradeoffs	
Technical superiority	

D-19

PROCUREMENT

Bid Protests

Non-prejudicial allegation

GAO review

B-232263 Nov. 7, 1988

88-2 CPD 449

Protest that request for proposals did not contain labor escalation provision clause to provide for increased Service Contract Act wage determinations in option years is without merit where the Federal Acquisition Regulation does not require the clause.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Incumbent contractors

Agency is not required to release incumbent contractor's personnel information to aid protester in preparing proposal, since such information is an advantage of incumbency that the government has no obligation to eliminate.

PROCUREMENT

Special Procurement Methods/Categories

Service contracts

Fixed-price contracts

Options

Wage rates

It was reasonable to omit from request for proposals the general economic price adjustment clause that would make government responsible for added cost of wage increases in contract option years, where, considering current and future market conditions, agency determined that offerors should be able to calculate with reasonable certainty any future wage and other cost increases, and include those projected costs in their proposed fixed prices.

PROCUREMENT**Sealed Bidding****Bids****Responsiveness****Determination criteria****B-232289 Nov. 7, 1988****88-2 CPD 450**

Protest that awardee's bid is nonresponsive is denied where the awardee has unequivocally offered to provide the required video system in conformity with all material terms and conditions of the invitation for bids. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive.

PROCUREMENT**Sealed Bidding****Bids****Minor deviations****Acceptability****B-232453 Nov. 7, 1988****88-2 CPD 451****PROCUREMENT****Sealed Bidding****Bids****Responsiveness****Determination criteria**

A bidder's inadvertent completion of a certification in the small business concern representation clause that is not required for the type of contract to be awarded does not affect the responsiveness of the bid.

PROCUREMENT
 Bid Protests
 GAO procedures
 GAO decisions
 Reconsideration

B-232585.2 Nov. 7, 1988
88-2 CPD 452

PROCUREMENT
 Bid Protests
 GAO procedures
 Protest timeliness
 Deadlines
 Constructive notification

Prior dismissal of protest as untimely is affirmed where the protest against conversion of invitation for bids to a negotiated procurement was not filed in the General Accounting Office (GAO) until 3 weeks after proposals were due. The alleged advice of contracting officer "to wait" to file does not result in waiver of the timeliness requirements of GAO's Bid Protest Regulations.

PROCUREMENT
 Bid Protests
 GAO procedures
 Interested parties
 Direct interest standards

B-233053 Nov. 7, 1988
88-2 CPD 453

PROCUREMENT
 Bid Protests
 GAO procedures
 Interested parties
 Manufacturers/dealers

A manufacturer's protest is dismissed where the offer submitted was from one of its dealers since only an actual or prospective offeror in line for award is an interested party eligible to protest under the General Accounting Office's Bid Protest Regulations.

PROCUREMENT**B-233053 Con't****Bid Protests****Nov. 7, 1988****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

To be timely, a protest against the propriety of the use of mandatory specifications in a request for quotations must be filed prior to the closing date for the receipt of quotations.

PROCUREMENT**B-232090 Nov. 8, 1988****Competitive Negotiation****88-2 CPD 457****Offers****Evaluation errors****Evaluation criteria****Application****PROCUREMENT****Competitive Negotiation****Offers****Evaluation errors****Non-prejudicial allegation**

Protest that agency's evaluation deviated materially from the evaluation criteria set forth in the request for proposals is denied where the protester fails to demonstrate that it was prejudiced by the alleged deviation.

PROCUREMENT**B-232286.2 Nov. 8, 1988****Bid Protests****88-2 CPD 458****GAO procedures****Protest timeliness****10-day rule**

A protest file which was closed because the protester failed to file timely comments with the General Accounting Office (GAO) within 10 working days after the protester received a copy of the contracting agency's report will not be reopened where the comments were sent only to the contracting agency, not GAO.

PROCUREMENT B-233068.2 Nov. 8, 1988
Socio-Economic Policies 88-2 CPD 460
Small business 8(a) subcontracting
Use
Administrative discretion

Prior dismissal of protest against an agency's decision not to award a contract under Small Business Administration's 8(a) program is affirmed since our Office will not review a decision not to award a contract under 8(a) program absent a showing of possible bad faith or fraud or that regulations have been violated and protester has failed to support its allegation of bad faith.

PROCUREMENT B-233188 Nov. 8, 1988
Contractor Qualification 88-2 CPD 461
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protester's allegation that awardee does not have the financial resources, the necessary equipment and facilities, satisfactory performance record, and integrity to perform a contract is a challenge to contracting officer's affirmative determination of responsibility and will not be considered where there is no showing of possible fraud or bad faith by procurement officials or a failure to apply definitive responsibility criteria.

PROCUREMENT

B-233250 Nov. 8, 1988

Contractor Qualification

88-2 CPD 462

Responsibility criteria**Distinctions****Performance specifications**

Solicitation requirements that contractor service equipment with trained and experienced personnel are performance requirements, not definitive responsibility criteria, and the ability to comply with these requirements is encompassed within the contracting officer's subjective responsibility determination.

PROCUREMENT

B-232237 Nov. 9, 1988

Sealed Bidding

88-2 CPD 463

Contract awards**Propriety****Invitations for bids****Defects**

Award under invitation for bids with ambiguous pricing provision to bidder which based its bid on one reasonable interpretation of provision is proper where bid would be low under either interpretation.

PROCUREMENT**Specifications****Ambiguity allegation****Specification interpretation**

Solicitation provision calling for unit prices for estimated quantities to correspond to unit prices for stepladder quantities is ambiguous where it can reasonably be interpreted as referring either to the aggregate estimated quantities or the individual quantities designated by destination within each line item.

PROCUREMENT**B-232488 Nov. 9, 1988****Sealed Bidding****88-2 CPD 464****Bids****Error correction****Low bid displacement****Propriety**

Agency properly allowed correction of apparent clerical error in bid which resulted in displacement of low bidder where the mistake in the bid and the intended bid were ascertainable substantially from the face of the bid.

PROCUREMENT**B-233393 Nov. 9, 1988****Bid Protests****88-2 CPD 465****Bills of lading****GAO review****PROCUREMENT****Bid Protests****GAO authority**

Protest concerning request for carriers' rate tenders is dismissed since the request was issued under authority of the Transportation Act of 1940, and the transportation services will be obtained through the use of a government bill of lading and not under the government's procurement system.

PROCUREMENT**B-224215.3 Nov. 10, 1988****Bid Protests****88-2 CPD 466****Allegation substantiation****Lacking****GAO review**

Protest of the contracting agency's exercise of an option in an incumbent contractor's contract is dismissed where the protester fails to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office Bid Protest Regulations.

PROCUREMENT
Contract Management
Contract performance
GAO review

B-224215.3 Con't
Nov. 10, 1988

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

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231914.2 Nov. 10, 1988
88-2 CPD 468

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

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-232131 Nov. 10, 1988
88-2 CPD 469

Allegation that awardee's equipment does not satisfy requirements of purchase description is without merit where record shows that awardee's equipment in fact satisfies the requirements.

PROCUREMENT
Bid Protests
Allegation investigation
GAO review

B-232221 Nov. 10, 1988
88-2 CPD 470

General Accounting Office does not conduct investigations pursuant to its bid protest function for the purpose of establishing the validity of a protester's speculative statements.

PROCUREMENT**B-232221 Con't****Bid Protests****Nov. 10, 1988****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest that procurement should have been set aside for small business concerns is untimely when not filed prior to closing date for receipt of proposals.

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

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

PROCUREMENT**B-233109 Nov. 10, 1988****Bid Protests****88-2 CPD 473****GAO procedures****Interested parties****Direct interest standards**

Protester, second low bidder, is not an interested party to challenge award to low bidder where protester's bid is nonresponsive and protester thus would not be in line for award even if its protest were sustained.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-233109 Con't
Nov. 10, 1988

Contracting agency properly rejected protester's bid as nonresponsive where the corporate surety for the protester's bid bond is not listed in Treasury Department Circular 570 as of bid opening.

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

B-233064 Nov. 14, 1988
88-2 CPD 475

The General Accounting Office will not review a protest concerning a determination of the Small Business Administration (SBA) to not issue a certificate of competency (COC) except upon a showing of possible fraud or bad faith or disregard of vital information bearing on the firm's responsibility. An agency's failure to forward the result of a second preaward survey to the SBA which reached essentially the same conclusions as the one initially forwarded to SBA does not provide a basis for a review of SBA's refusal to issue a COC.

PROCUREMENT**B-233071.2 Nov. 14, 1988****Bid Protests****GAO procedures****Protest timeliness****Significant issue exemptions****Applicability**

An untimely protest does not present a significant issue of widespread interest where its resolution would primarily benefit only the protester and the protester never filed a protest over the allegedly objectionable specifications, although involved with the procurement for almost 2 years, and where it waited several weeks after notice to file a protest of the award.

PROCUREMENT**B-232054 Nov. 15, 1988****Bid Protests****88-2 CPD 477****GAO procedures****Protest timeliness****10-day rule****Effective dates**

Where a protester alleges that the contracting agency improperly established a competitive range of one firm, the incumbent, by eliminating the protester from the competition, the time for filing a protest runs from when the protester first learns that only one firm remained in the competitive range after its elimination, and not from when the protester learns the technical basis for its elimination.

PROCUREMENT B-232054 Con't
Competitive Negotiation Nov. 15, 1988
Offers
Competitive ranges
Exclusion
Administrative discretion

Although the General Accounting Office closely scrutinizes agency decisions that limit the competitive range to one proposal, an initial proposal was properly excluded from the competitive range where it was reasonably found to be so technically deficient that major revisions would have been required to make it acceptable.

PROCUREMENT B-232059.3 Nov. 15, 1988
Bid Protests
GAO procedures
GAO decisions
Reconsideration

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

PROCUREMENT B-232100 Nov. 15, 1988
Competitive Negotiation 88-2 CPD 478
Offers
Competitive ranges
Exclusion
Administrative discretion

Agency acted reasonably in finding the protester's proposal to be unacceptable and in excluding it from the competitive range where the proposal was found to lack supporting information required to be submitted by the solicitation for several areas listed for evaluation.

PROCUREMENT

B-232592.2 Nov. 15, 1988

Sealed Bidding

88-2 CPD 479

Bids

Modification

Post-bid opening periods

Propriety

An otherwise successful bid may be modified at any time to make its terms more favorable to the government.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Price omission

Taxes

Where a solicitation contains the standard tax clause providing that the bid price includes all applicable federal, state and local taxes, a bid that is qualified with the language "no tax included" with no indication elsewhere in the bid as to what tax in what amount is excluded, is properly rejected as nonresponsive even where no state sales tax is applicable because the submission of a bid on a tax-excluded basis is viewed as evidence of the bidder's belief, absent definite information to the contrary, that taxes may be assessed, and of the bidder's unwillingness to assume payment of such taxes at the bid price.

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety
Evaluation errors
Materiality

B-231967 Nov. 16, 1988
88-2 CPD 480

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Options
Prices

General Accounting Office has no legal objection to the award of a construction contract under a solicitation consisting of four base items and an option item where consistent with solicitation's Contract Award clause, the two base items awarded represented the lowest offer within the funds available and where, even though evaluation did not include the option item, contrary to the solicitation, the result would not change whether or not the price of the option item was added to those of the two base items which were properly awarded.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration
Comments timeliness

B-232401.2 Nov. 16, 1988
88-2 CPD 482

General Accounting Office (GAO) affirms its dismissal of a protest where the protester failed to submit written comments on the conference and report within 7 working days of the date on which the conference on the merits of the protest was held as required by GAO's Bid Protest Regulations.

PROCUREMENT**B-232407.2 Nov. 16, 1988****Bid Protests****88-2 CPD 483****Non-prejudicial allegation****GAO review**

Protester challenging contracting officer's failure to file size status protest with Small Business Administration was not prejudiced since protester's size status protest was not timely filed with the contracting officer and therefore would not have an affect on the instant procurement.

PROCUREMENT**Contractor Qualification****Responsibility criteria****Performance capabilities**

Whether firm selected for award can perform a contract within subcontracting limitations is a matter of responsibility, evidence of which can be provided anytime before award.

PROCUREMENT**B-232843 Nov. 16, 1988****Bid Protests****88-2 CPD 484****GAO procedures****Interested parties****Direct interest standards**

Where firm would not be in line for award were its protest sustained, protest is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under General Accounting Office Bid Protest Regulations.

PROCUREMENT

B-233082.2 Nov. 16, 1988

**Bid Protests
Subcontracts
GAO review**

Under its Bid Protest Regulations, the General Accounting Office (GAO) does not consider protests concerning subcontractor selection except when the selection is made "by or for" the government.

PROCUREMENT

**Contract Management
Contract administration
Contract terms
Compliance
GAO review**

Under an existing contract, whether materials supplied will meet contract specifications is a matter of contract administration which the GAO does not review.

PROCUREMENT

B-231822.2 Nov. 17, 1988

**Bid Protests
GAO procedures
Protest timeliness
10-day rule**

88-2 CPD 485

Protest of agency's interpretation of requirement that solicited telephone system be for government's exclusive official use is dismissed as untimely where protester was informed during discussions of agency's interpretation of the requirement and revised its proposal in response to the agency's interpretation, and protest on this basis was not filed within 10 working days of such agency advice.

PROCUREMENT
Competitive Negotiation
Alternate offers
Rejection
Propriety

B-231822.2 Con't
Nov. 17, 1988

Protest that agency improperly rejected alternate proposal for failure to comply with solicitation requirement that telecommunication system be for exclusive official government use is denied where solicitation requires the system to be for the exclusive use of the government and the protester does not dispute that its offer did not comply with the solicitation requirement as properly interpreted by agency.

PROCUREMENT
Bid Protests
Allegation
Abandonment

B-232146 Nov. 17, 1988
88-2 CPD 487

Where agency's report specifically addresses arguments raised in initial protest, and protester fails to rebut the agency position in its comments on the agency report, the issues are deemed abandoned.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

To be timely, protest allegation that solicitation amendment allowed insufficient time to prepare a best and final offer (BAFO) must be filed no later than due date for BAFOs.

PROCUREMENT	B-232146 Con't
Bid Protests	Nov. 17, 1988
GAO procedures	
Purposes	
Competition enhancement	

General Accounting Office (GAO) will not consider argument that agency's definition of its minimum needs was not sufficiently restrictive since GAO role in resolving bid protests is to promote full and open competition.

PROCUREMENT	B-232383; B-232383.2
Bid Protests	Nov. 17, 1988
GAO procedures	88-2 CPD 488
Protest timeliness	
10-day rule	
Adverse agency actions	

Protest to the General Accounting Office following an initial protest to the contracting agency is untimely when it is not filed within 10 working days of the protester's receipt of notification of the agency's denial of the initial protest, notwithstanding the fact that the protester continued to pursue the matter with the agency following the initial denial.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
Criteria

Where the protester was rejected as nonresponsible because the contracting officer was not provided with sufficient information to permit finding the sureties on the protester's individual surety bid bond acceptable and the record shows the nonresponsibility determination was reasonably based, rejection of the protester's bid was proper.

Prices

The General Accounting Office has no comment on proposed changes to the Federal Acquisition Regulation (FAR) §§ 12.401, 12.403 and the clause at FAR § 52.212-10, which would increase from \$100 to \$250 the value of any excess quantity of items delivered by a contractor which may be retained by the government.

Pre-award periods

Non-prejudicial allegation

Protest of failure to timely notify unsuccessful offeror of Small Business Administration size determination on its size protest of awardee is dismissed since the contracting officer did not make award until the ruling by the SBA and, therefore, the protester was not prejudiced by the procedural deficiency.

PROCUREMENT **B-232156 Nov. 18, 1988**
Competitive Negotiation 88-2 CPD 490
Offers
Competitive ranges
Exclusion
Administrative discretion

Technically unacceptable proposal may be excluded from competitive range notwithstanding its low proposed price.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Allegation substantiation

Protest is denied where protester claims that evaluation of its proposal for questionnaire data analysis was inaccurate, but record indicates that evaluation had a reasonable basis and was made according to the stated evaluation criteria.

PROCUREMENT **B-233322 Nov. 18, 1988**
Bid Protests 88-2 CPD 491
GAO procedures
Interested parties

General Accounting Office does not consider protest issues which are essentially made on behalf of other potential competitors who themselves may properly protest as interested parties.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

Direct interest standards

B-233322 Con't

Nov. 18, 1988

Where firm would not be in line for award were its protest sustained, protest is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Contention that the low quoter will be unable to perform at its quoted price constitutes an allegation that the firm is not responsible; General Accounting Office generally does not review affirmative determinations of responsibility.

PROCUREMENT

Bid Protests

GAO procedures

Preparation costs

B-226984.2 Nov. 21, 1988

88-2 CPD 492

Amounts claimed for costs of filing and pursuing a protest may be recovered to the extent that the claim is adequately documented and shown to be reasonable. To the extent that the claim is inadequately documented and includes items not granted in the bid protest decision, or for which there is no legal authority for payment, claimant is not entitled to recovery.

PROCUREMENT B-226984.2 Con't
Competitive Negotiation Nov. 21, 1988
Offers
Preparation costs

Claimant is not entitled to recover proposal preparation costs where such costs were not awarded in prior decision and protester did not request reconsideration, as erroneous or inadequate, of the recommended remedy within the 10-working-day period provided by the General Accounting Office's Bid Protest Regulations.

PROCUREMENT B-230873 Nov. 21, 1988
Contract Disputes
Shipment costs
Freight charges

Where a carrier's tender supplement that was in effect when a particular shipment moved provided that "shipments accorded exclusive-use-of-vehicle service" will be "rated" under an identified rate table, the intent of the supplement was to combine rate factors for both line-haul and exclusive-use services into one charge. This intent is made clear by the fact that a subsequent supplement of the same tender provided specifically that such shipments "will be rated at an additional charge." Yowell Transportation Services, Inc., B-225014, Sept. 30, 1987, distinguished.

PROCUREMENT**B-230874 Nov. 21, 1988****Contract Disputes****Shipment costs****Freight charges**

Comptroller General's decision in Yowell Transportation Services, Inc., B-225014, Sept. 30, 1987, reversed the General Services Administration's (GSA) disallowance of the carrier's supplemental bill for exclusive-use-of-vehicle charges. Upon remand, GSA allowed the exclusive-use charges, but reduced the amount of the carrier's recovery on the basis of a reaudit of the carrier's original line-haul charges. The carrier contends that GSA disregarded the Comptroller General's decision, and should not be allowed to reaudit the original charges since GSA initially considered them to be correct. GSA's actions are sustained since its recomputation of the carrier's original charges was based on the Comptroller General's interpretation of the carrier's tenders, which differed from GSA's original interpretation, and the carrier failed to challenge the technical basis for GSA's reaudit of the line-haul charges.

PROCUREMENT**B-231177.3 Nov. 21, 1988****Bid Protests****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration is denied where the protester merely reiterates arguments initially raised and previously considered by the General Accounting Office.

PROCUREMENT

Contract Management
Contract administration
Contract terms
Modification
Propriety

B-231177.3 Con't
Nov. 21, 1988

PROCUREMENT

Contract Management
Contract administration
GAO review

Where protester neither alleges nor makes a prima facie showing that contracting agency awarded a contract intending to modify it, alleged modification of the contract after award is a matter of contract administration, and the General Accounting Office will not review the matter pursuant to its bid protest function.

PROCUREMENT

Bid Protests
Allegation substantiation
Lacking
GAO review

B-232000 Nov. 21, 1988
88-2 CPD 500

Where solicitation calls for analog recorders that provide two computer interfaces, protest that recorders offered by awardee do not conform to the solicitation because they do not provide for the concurrent accommodation of the two interfaces as do the recorders offered by the protester is denied, since the protester has not shown that the solicitation requires simultaneous accommodation of both forms of data communications to the recorder or that both interfaces can or will be used simultaneously.

PROCUREMENT **B-232000 Con't**
Competitive Negotiation **Nov. 21, 1988**
 Contract awards
 Initial-offer awards
 Discussion
 Propriety

Protest is sustained, where following its conduct of discussions—during which it requested and obtained information from offerors to determine the technical acceptability of their offers--the agency failed to afford those offerors an opportunity to submit best and final offers (BAFOs), but instead made award on the basis of initial offers as "clarified," in the course of which it: (1) allowed only the awardee to submit a revised delivery schedule; and (2) improperly excluded the protester from the opportunity to submit a BAFO based on an internal agency "projection" that its price would be too high to be competitive.

PROCUREMENT **B-232096 Nov. 21, 1988**
 Bid Protests **88-2 CPD 495**
 GAO procedures
 Protest timeliness
 Apparent solicitation improprieties

Request for quotations was clear that agency required offerors to directly lease a job fair site and protester should have protested this prior to the due date for best and final quotations.

Protester's objection that it was given inadequate time to offer another job fair site should have been protested prior to due date for best and final quotations.

PROCUREMENT B-232096 Con't
 Competitive Negotiation Nov. 21, 1988
 Discussion
 Adequacy
 Criteria

Discussions were meaningful where agency pointed out deficiencies and permitted offeror to revise its offer to attempt to correct those deficiencies.

PROCUREMENT B-232139 Nov. 21, 1988
 Competitive Negotiation 88-2 CPD 496
 Requests for proposals
 Evaluation criteria
 Competitive restrictions
 Allegation substantiation

PROCUREMENT
 Competitive Negotiation
 Requests for proposals
 Terms
 Shipment schedules

Protest that most important evaluation factor for award--early delivery--is unduly restrictive of competition is denied where agency offers reasonable explanation for factor, and protester does not show that the requirement is clearly unreasonable.

PROCUREMENT
 Competitive Negotiation
 Requests for proposals
 Terms
 Ambiguity allegation
 Interpretation

Protest that solicitation language--that price is less important than other factors--is ambiguous is denied where solicitation adequately conveys that other factors combined are worth more than price.

PROCUREMENT	B-232139 Con't
Specifications	Nov. 21, 1988
Minimum needs standards	
Competitive restrictions	
Justification	
Sufficiency	

Where agency shows that various technical requirements in solicitation are reasonably related to its minimum needs and protester alleges no more than that the requirements are burdensome, protester has failed to show that the requirements are unduly restrictive.

PROCUREMENT	B-232143; B-232143.2
Bid Protests	Nov. 21, 1988
GAO procedures	88-2 CPD 497
Protest timeliness	
Apparent solicitation improprieties	

Protest contentions relating to proposal deficiencies raised in negotiation letter and relating to request for proposals amendment are untimely because issues were required to be raised before the due date for receipt of revised proposals but were raised later.

PROCUREMENT
Competitive Negotiation
Contract awards
Administrative discretion
Cost/technical tradeoffs
Cost savings

Contracting officer may properly decide in favor of a technically lower rated proposal in order to take advantage of its lower cost, where he reasonably determines that the cost premium involved in making award to the higher rated, higher cost offeror is not justified in light of the acceptable level of technical competence available at the lower cost.

Agency realism analysis of successful offeror's cost proposal was reasonable. Agency is entitled to rely upon advice of Defense Contract Audit Agency in analyzing proposed costs.

Protest that solicitation for radiometer system unduly restricts competition by including specifications allegedly "written around" design features of a competitor's product is denied where agency establishes that the solicitation requirements are reasonably related to its minimum needs.

Protester is not an interested party entitled to protest where the protester, as fourth low offeror, would not be in line for award even if the protest were sustained; the fact that the next low offeror was offering protester's product does not render protester interested since interest is based on protester's own direct economic interest as the firm next in line for award.

PROCUREMENT

B-230216.2 Nov. 22, 1988

Special Procurement

88-2 CPD 501

Methods/Categories

In-house performance

Cost evaluation

Government estimates

Computation errors

Where protester fails to present evidence adequate to establish either the alleged error or the amount of the alleged error in in-house estimate, protest against agency determination made under Office of Management and Budget Circular A-76 cost comparison is denied.

PROCUREMENT

Special Procurement Methods/Categories

In-house performance

Cost evaluation

Personnel

Agency determination of the staffing level required to accomplish the performance work statement under cost comparison will not be questioned where the record does not show the determination was made in a manner tantamount to fraud or bad faith.

Agency properly excluded from in-house cost estimate the cost of support personnel whose positions would not be eliminated if a contract were awarded; cost comparison procedures require inclusion in estimate only of costs for positions that would be eliminated.

PROCUREMENT**B-230381 Nov. 22, 1988****Payment/Discharge****Shipment****Carrier liability****Burden of proof**

Where the evidence indicates that part of the damage to a refrigerator was caused by the nature of the refrigerator to deteriorate according to the natural law of heat, the carrier is not liable for that part of the damage because it is an exception to common carrier liability. However, where the evidence does not show that a dented door and broken liner were solely caused by heat, the carrier is liable for that part of the damage. The matter is remanded to the Navy to allocate an amount to each part of the damage out of the total repair bill and then refund to the carrier the amount found to be due, if any, out of the amount the Navy has already collected.

PROCUREMENT**B-230724.5 Nov. 22, 1988****Bid Protests****88-2 CPD 502****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration is denied where protester fails to show error of fact or law or information not previously considered which warrants reversal or modification.

PROCUREMENT**Contract Management****Contract modification****GAO review**

As a general rule, the General Accounting Office will not review protests based upon contract modifications since modifications are primarily a matter of contract administration and, thus, the responsibility of the contracting agency.

PROCUREMENT **B-232164 Nov. 22, 1988**
Competitive Negotiation 88-2 CPD 503
Offers
Competitive ranges
Exclusion
Administrative discretion

Protest that agency improperly excluded proposal from the competitive range is denied where the agency reasonably determined that the proposal did not meet certain requirements of the solicitation and would require major revisions to become acceptable.

PROCUREMENT **B-232662 Nov. 22, 1988**
Contract Management
Tooling costs
Federal procurement regulations/laws
Amendments

General Accounting Office recommends that proposed amendment to Federal Acquisition Regulation (FAR) § 45.306 and the clause of FAR § 52.245-17 concerning special tooling be examined to ensure that it is consistent with all current legislation.

PROCUREMENT **B-233479 Nov. 22, 1988**
Sealed Bidding 88-2 CPD 504
Bids
Responsiveness
Price omission
Taxes

Where an invitation for bids requires that bid prices include all applicable taxes, a bid which includes the phrase "plus applicable taxes" is nonresponsive even though the federal government may be exempt from certain state taxes.

PROCUREMENT	B-233501	Nov. 22, 1988
Contract Management	88-2	CPD 505
Contract administration		
Defaulted contractors		
Repurchase contracts		
Price determination		

A repurchase contract may not be awarded to the defaulted contractor at a price greater than the terminated contract price because this would be tantamount to modification of the existing contract without consideration.

PROCUREMENT	B-230972.3; B-230972.4
Competitive Negotiation	Nov. 23, 1988
Contract awards	88-2 CPD 506
Administrative discretion	
Cost/technical tradeoffs	
Technical superiority	

Award to the offeror with the highest technically rated proposal that does not have the lowest evaluated cost is unobjectionable where the solicitation provides that technical capability is more important than cost and the agency determines that an award based on a proposal with other than the lowest cost is justified based on that proposal's technical superiority.

B-230972.3; B-230872.4 Con't
Nov. 23, 1988

Protest that agency failed to hold discussions prior to selecting other than the low cost proposal for award is denied where the record shows that the agency conducted two rounds of technical discussions, alerting the protester of areas in its proposal the agency considered weak, and the protester submitted a best and final offer reflecting changes in its proposal made as a result of those discussions.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Downgrading
Propriety

Agency reasonably downgraded offeror's proposal without reopening discussions when it discovered in the final stages of the evaluation that the offeror was able to propose a low support-to-professional staff ratio only by classifying as professionals a number of personnel that the agency determined should have classified as support.

PROCUREMENT **B-232037 Nov. 23, 1988**
Competitive Negotiation **88-2 CPD 507**
Offers
Evaluation
Technical acceptability

The contracting agency's determination that the protester's proposal was technically unacceptable was not unreasonable where the proposal failed to provide adequate information which was required by the solicitation and necessary for the proper technical evaluation of the proposal, and where rectification of those deficiencies would require major revisions to the proposal.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Withdrawal
Propriety

Where contracting agency found none of the proposals received in response to a small business set-aside to be technically acceptable, it was not improper for the contracting officer to withdraw the set-aside, cancel the request for proposals and resolicit the requirement on an unrestricted basis.

PROCUREMENT **B-232082.2 Nov. 23, 1988**
Bid Protests **88-2 CPD 508**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and fails to show any error of fact or law that would warrant reversal or modification.

B-232158 Nov. 23, 1988
88-2 CPD 509

PROCUREMENT	B-232201	Nov. 23, 1988
Specifications	88-2	CPD 510
Minimum needs standards		
Total package procurement		
Propriety		

PROCUREMENT B-232340 Nov. 23, 1988
Sealed Bidding 88-2 CPD 511
Unbalanced bids
Materiality
Responsiveness

D-54

PROCUREMENT

B-232578 Nov. 23, 1988

**Competitive Negotiation
Offers**

88-2 CPD 513

Competitive ranges

Exclusion

Administrative discretion

Determination whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude the protester's proposal was improper is denied where agency's technical evaluation was consistent with the solicitation's provisions and had a reasonable basis.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Personnel
Standards**

Allegation that agency was required to disclose in the solicitation a manning standard developed by the agency evaluators to assess whether proposed personnel were adequate is denied, since the standard was developed based on the work load revealed in the solicitation and merely reflected the evaluators' judgment concerning the minimum manning required to perform the work.

PROCUREMENT**B-232688 Nov. 23, 1988****Sealed Bidding****88-2 CPD 515****Bids****Responsiveness****Contractors****Identification**

Where corporation submits bid in abbreviated corporate name and also supplies its Federal Employee Identification Number with bid documents, there is sufficient evidence that identifies corporation as the party to be bound by any contract award, and bid therefore is responsive.

PROCUREMENT**Sealed Bidding****Low bids****Error correction****Price adjustments****Propriety**

Upward correction of low bid is proper where the bidder presents clear and convincing evidence, in the form of bid worksheets, that the mistake in bid occurred due to a failure to include item price in subtotal, and then calculation of total price based on the understated subtotal.

PROCUREMENT**B-233485 Nov. 23, 1988****Sealed Bidding****88-2 CPD 516****Bids****Responsiveness****Shipment schedules****Deviation**

A bid was properly rejected as nonresponsive where it offered delivery after the government's required delivery date even though the bidder's cover letter stated that the firm would meet all the requirements of the solicitation.

PROCUREMENT

Sealed Bidding

Invitations for bids

Terms

Shipment schedules

B-233485 Con't

Nov. 23, 1988

A solicitation clause allowing bidders to propose an alternative to the government's desired delivery date is not ambiguous where clause clearly stated that proposed time for delivery must be within the required period set forth in the solicitation.

PROCUREMENT

Sealed Bidding

Non-responsive bids

Error correction

Propriety

A nonresponsive bid may not be corrected by the rules governing mistakes in bids.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Cancellation

Resolicitation

Information disclosure

B-232003 Nov. 25, 1988

88-2 CPD 517

Protest that procurement must be disturbed because sensitive information was leaked outside the government is denied where the evidence currently available points only to an unsuccessful offeror as a possible recipient of the leaked information and the record contains statements by the two awardees that they did not receive the information.

B-232168.2 Nov. 25, 1988

Competitive Negotiation

88-2 CPD 519

Offers

Competitive ranges

Exclusion

Administrative discretion

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

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Allegation substantiation

Evidence sufficiency

A protest based upon the unsupported allegation that the request for proposals (RFP) in a photocopier services procurement discriminates against offerors that use small, independent dealers rather than a direct sales force to sell and service photocopy equipment is denied where there is no evidence in the record or in the RFP itself of any such bias.

PROCUREMENT

B-232421 Nov. 28, 1988

Competitive Negotiation

88-2 CPD 520

Requests for proposals

Competitive restrictions

Justification

Urgent needs

General Accounting Office will not object to agency's decision to limit procurement for flight-critical turbine blade sets to approved sources where the agency reasonably determines that unapproved sources cannot timely meet its urgent requirements.

PROCUREMENT**B-233148 Nov. 28, 1988****Bid Protests****88-2 CPD 521****Agency-level protests****Protest timeliness****GAO review**

Protest against cancellation of request for proposals will not be considered where the initial agency-level protest was not timely filed.

PROCUREMENT**Special Procurement Methods/Categories****In-house performance****Administrative discretion****GAO review**

General Accounting Office will not review an agency's determination to perform services in-house rather than by contracting out unless agency has issued a solicitation for purposes of cost comparison under Office of Management and Budget Circular A-76.

PROCUREMENT**B-233358.2 Nov. 28, 1988****Bid Protests****88-2 CPD 522****GAO procedures****Protest timeliness****Time/date notations****Establishment**

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

B-233477 Nov. 28, 1988
88-2 CPD 523

PROCUREMENT B-231457.2 Nov. 29, 1988
Socio-Economic Policies 88-2 CPD 524
Small business set-asides
Cancellation
Unrestricted resolicitation
Propriety

PROCUREMENT	B-231579.2	Nov. 29, 1988
Bid Protests	88-2	CPD 525
GAO procedures		
GAO decisions		
Reconsideration		

D-60

PROCUREMENT	B-231815.5 Nov. 29, 1988
Bid Protests	88-2 CPD 526
GAO procedures	
GAO decisions	
Reconsideration	

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and fails to show any error of fact or law that would warrant reversal or modification.

PROCUREMENT	B-232098 Nov. 29, 1988
Bid Protests	88-2 CPD 527
Dismissal	
Definition	

Protest is dismissed where it merely asks that the General Accounting Office require the agency to supply information in support of arguments which are not supported by the record.

PROCUREMENT	B-232133; B-232133.2
Competitive Negotiation	Nov. 29, 1988
Contract awards	88-2 CPD 528
Cost savings	
Technical superiority	

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

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

B-232133; B-232133.2 Con't
Nov. 29, 1988

PROCUREMENT
Contractor Qualification
Licenses
State/local laws
GAO review

Contention that agency improperly found proposed awardee responsible to perform contract despite firm's lack of state licenses required to perform guard services is without merit; where solicitation does not require specific licenses, compliance with state and local licensing requirements is responsibility of contractor and is not a matter for the agency to resolve prior to award.

PROCUREMENT B-232259 Nov. 29, 1988
Competitive Negotiation 88-2 CPD 529
Offers
Competitive ranges
Exclusion
Administrative discretion

Protester has not shown that the agency acted unreasonably in excluding its proposal from the competitive range based on a technical evaluation which found significant deficiencies in three of the five areas listed for evaluation.

PROCUREMENT B-232271 Nov. 29, 1988
Sealed Bidding 88-2 CPD 530
Bid guarantees
Sureties
Responsibility

Procuring agency reasonably determined that individual surety on a bid bond was nonresponsible where agency owned by surety engaged in business practices which called into question the surety's integrity and credibility.

PROCUREMENT B-232305 Nov. 29, 1988
Competitive Negotiation 88-2 CPD 531
Offers
Competitive ranges
Exclusion
Administrative discretion

After conducting one round of discussions with offeror, agency's determination that offeror's proposal was not in the competitive range was proper where the firm's proposal's technical rating was low, the record shows the rating was reasonable and supported by the evaluation, and offeror's proposed cost was substantially higher than all other offerors.

PROCUREMENT

B-232414 Nov. 29, 1988

Specifications

88-2 CPD 532

Minimum needs standards

Competitive restrictions

GAO review

General Accounting Office will not disturb a procuring agency's determination of its needs and the specifications necessary to meet them, or the agency's technical evaluation of proposed equipment, absent a clear showing by the protester that the agency has acted unreasonably.

PROCUREMENT

B-232624.2 Nov. 29, 1988

Socio-Economic Policies 88-2 CPD 533

Small business 8(a) subcontracting

Use

Administrative discretion

Protest challenging decision to continue a procurement under section 8(a) of the Small Business Act is without merit absent a showing of fraud or bad faith on the part of government officials, or that specific regulations have been violated.

There is no legal requirement that a procurement be removed from the section 8(a) program in order to allow the incumbent contractor, a former 8(a) concern, to compete to continue performing the requirement.

PROCUREMENT**B-233013 Nov. 29, 1988****Bid Protests****88-2 CPD 535****GAO procedures****Interested parties****Direct interest standards**

Protest that solicitation specifications for construction project are unduly restrictive of competition, filed by firm whose interest is that of a prospective supplier, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and General Accounting Office's implementing Bid Protest Regulations.

PROCUREMENT**B-233570 Nov. 29, 1988****Bid Protests****88-2 CPD 536****Dismissal****Definition**

Protest of procurement is dismissed where a protest filed by another party involving the same procurement is pending before the General Services Administration Board of Contract Appeals.

PROCUREMENT**B-232140.2 Nov. 30, 1988****Bid Protests****88-2 CPD 537****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration is denied where the protester has not shown any error of fact or law which would warrant reversal of prior decision.

PROCUREMENT

B-232262 Nov. 30, 1988

Specifications

88-2 CPD 538

Minimum needs standards

Competitive restrictions

GAO review

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Justification

Sufficiency

Protest that specifications unduly restrict competition is denied where the agency presents reasonable explanations in support of the specifications as necessary to meet its minimum needs and protester fails to show that the restrictions are clearly unreasonable.

PROCUREMENT

Specifications

Minimum needs standards

Total package procurement

Propriety

An agency decision to procure photocopier machines and related services on a total package basis was legally unobjectionable where the agency reasonably believed that this contracting method would reduce administrative costs attributable to duplicate efforts; allow greater flexibility in redistributing copiers to meet changing needs; and increase competition for certain categories of copiers.

PROCUREMENT**B-232434.2 Nov. 30, 1988****Competitive Negotiation****88-2 CPD 539****Contract awards****Propriety****Post-award discussion**

Protest that information submitted by awardee to contracting agency incident to a protest filed in our Office constituted improper post-award discussions is dismissed where the agency award determination was properly made without reference to this information.

PROCUREMENT**B-232586 Nov. 30, 1988****Bid Protests****88-2 CPD 540****Private disputes****GAO review**

Allegation that other offerors may have acquired proprietary information from a former employee of protester involves a dispute between private parties which does not provide a basis for protest to the General Accounting Office.

PROCUREMENT**Competitive Negotiation****Offers****Acceptance time periods****Extension****Propriety**

Where an offer which had been extended for the period requested by the contracting agency nevertheless expires (as do all other offers), the contracting officer may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations to make an award on the basis of the offer as submitted since waiver under these circumstances is not prejudicial to the competitive system.

PROCUREMENT**B-232929 Nov. 30, 1988****Bid Protests****88-2 CPD 541****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

If a firm initially protests to the contracting agency, alleging an apparent impropriety in the solicitation, the agency's opening of bids, without taking the requested corrective action is initial adverse agency action, and a subsequent protest to the General Accounting Office more than 10 working days later is untimely.

PROCUREMENT**B-232931 Nov. 30, 1988****Bid Protests****88-2 CPD 542****GAO procedures****Protest timeliness****10-day rule****Adverse agency actions**

Protest against a solicitation specification filed with the contracting officer prior to the closing date for the receipt of initial proposals is untimely where the agency received proposals on the scheduled closing date without taking corrective action and the subsequent protest to the General Accounting Office was filed more than 10 working days later.

PROCUREMENT**B-233681 Nov. 30, 1988****Bid Protests****Subcontracts****GAO review**

General Accounting Office will not consider a protest of an award of a subcontract by a fixed-price contractor for an item arising out of an engineering change proposal requested by the contractor.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-232435, et al.
Federal Administrative/ Nov. 17, 1988
Legislative Matters
Administrative agencies
Audits
Financial information

The General Accounting Office favors the proposed changes to Federal Acquisition Regulation § 52.215-2, which would illustrate the type and form of contractor cost and financial information which is to be made available to auditors for conducting audits of contract costs.

MISCELLANEOUS TOPICS
Federal Administrative/Legislative Matters
Federal procurement regulations/laws
Revision
Congressional committees
Printing

The General Accounting Office has no comment on proposed changes to the Federal Acquisition Regulation (FAR) which would withdraw from coverage in FAR § 8.802(a) and (c) the requirements concerning the Congressional Joint Committee on Printing approval of the acquisition of printing.

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