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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process

B-232827 Oct. 19, 1988

Miscellaneous revenues

Treasury deposit

Concerning the possible application of 40 U.S.C. § 485a to the sale of wastepaper, at one time this statute did apply to such a sale, permitting agencies to deduct and retain the direct costs thereof from the gross proceeds. See, e.g., 5 Comp. Gen. 680 (1926). However, section 204(a) of the Federal Property and Administrative Services of 1949, 40 U.S.C. § 485(a), and the General Services Administration regulations issued pursuant thereto, 41 C.F.R. § 101-45.307, take precedence over 40 U.S.C. § 485a. They require that all sale proceeds are to be deposited into the Treasury as miscellaneous receipts. Thus, no reimbursement for any wastepaper recovery and sale costs is currently available.

CIVILIAN PERSONNEL

**CIVILIAN PERSONNEL
Compensation
Board members**

B-230685 Oct. 6, 1988

Federal Retirement Thrift Investment Board members may be paid for a full day while on Board business regardless of the hours worked since the enabling statute does not provide for any other terms of reimbursement except for the daily rate of basic pay for grade GS-18 of the General Schedule.

**CIVILIAN PERSONNEL
Relocation
Household goods
Shipment
Insurance
Reimbursement**

B-231120 Oct. 6, 1988

An employee, who was appointed to a manpower shortage position, claims reimbursement for the cost of excess insurance obtained by him incident to the movement of household goods. He argues that the law and regulations limiting reimbursement entitlement do not apply since he was a non-citizen, non-federal employee when the situation arose. The claim is denied since the regulations authorizing the shipment of household goods specifically provide that the cost of excess insurance obtained by an employee will be borne by the employee.

CIVILIAN PERSONNEL
Compensation
Personnel death
Balances
Payees

B-228750 Oct. 7, 1988

In cases of conflicting claims for the unpaid compensation of a deceased employee, we generally require either evidence sufficient to allow one claim and deny all others or a judicial determination by a court of competent jurisdiction establishing entitlement. Since this case presents several legal and factual conflicts on the written record, we believe that it would be better for a court of competent jurisdiction to resolve it.

CIVILIAN PERSONNEL
Compensation
Overpayments
Error detection
Debt collection
Waiver

B-229294 Oct. 7, 1988

An employee's indebtedness for nonpayment of Federal Employees Group Life Insurance premiums is waived under the provisions of 5 U.S.C. § 5584 (Supp. IV 1986), where the individual is without fault and recovery would be against equity and good conscience. The indebtedness and subsequent overpayment occurred when the employee was retroactively granted life insurance coverage by the Office of Personnel Management.

CIVILIAN PERSONNEL**B-229473 Oct. 7, 1988****Travel****Per diem****Eligibility****10-hour rule****Exemptions**

The Department of Labor is correct in applying Federal Travel Regulations para. 1-7.5b(1)(b), which prohibits per diem payments to employees who work a non-standard workday unless the travel period is at least 2 hours longer than the employees' workday, to mine inspectors who work a "first 40-hour workweek." The regulation is intended to be applied to variable or flexible workdays regardless of the number of hours worked, or whether scheduled or nonscheduled, as well as to compressed workday schedules. Since in this case the employees' travel from the time they leave home or office until they return is hours of employment for which they receive regular, overtime, or premium pay depending on the specific situation, any expenses they incur during travel on short or long days are expenses employees would normally incur, would seem to average out over a number of days, and are not necessarily incident to the travel status.

CIVILIAN PERSONNEL**B-230903 Oct. 7, 1988****Compensation****Overpayments****Error detection****Debt collection****Waiver**

The Department of the Navy is advised that it is not precluded from considering Federal Insurance Contributions Act (FICA) salary underdeductions which aggregate less than \$500 in amount for waiver under the provisions of 5 U.S.C. § 5584 (1982). The corresponding overpayment of wages is subject to waiver.

CIVILIAN PERSONNEL
Leaves of Absence

B-231477 Oct. 7, 1988

Sick leave
Charging
Administrative discretion

Employee who was away from work in order to provide blood support, as needed, during his son's illness, claims sick leave should be granted instead of the annual leave actually granted by the agency. Employee's claim to restore his annual leave balance with unused sick leave is disallowed since agency did not abuse its discretion in granting sick leave only for those days when employee was actually donating blood or undergoing tests.

CIVILIAN PERSONNEL
Relocation

B-227469 Oct. 17, 1988

Travel expenses
Manpower shortages

Household goods transportation expenses for a new appointee to the federal service are authorized by law and the Federal Travel Regulations to persons appointed to positions which have been designated as manpower-shortage positions. The fact that agency officials erroneously authorized reimbursement of expenses for an appointee to a position which was not designated a manpower-shortage position provides no basis for payment since a payment not authorized by statute or regulation will not form the basis for estoppel against the government. Claim is not appropriate for reporting to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d), since it does not contain equities of unusual nature.

CIVILIAN PERSONNEL**B-228878 Oct. 21, 1988****Relocation****Expenses****Reimbursement****Eligibility****Personal convenience**

Employee transferred laterally to the same position and grade he held previously is properly denied reimbursement for relocation expenses where the position to which he transferred had no further promotion potential as such a move is primarily for the benefit and convenience of the employee.

CIVILIAN PERSONNEL**B-229180 Oct. 25, 1988****Travel****Permanent duty stations****Actual subsistence expenses****Prohibition**

An employee on extended temporary duty who returns to his permanent station is not entitled to per diem at his permanent station. Reimbursement for return travel expenses may be made only if he submits proper proof that he was requested to return for official business.

CIVILIAN PERSONNEL

B-226755 Oct. 26, 1988

Relocation

Household goods

Weight restrictions

Exemptions

General/administrative costs

If the agency can make certifications required by the Federal Travel Regulations, the agency may make an allowance for shipment of employee's professional books as an administrative expense, and their weight need not be applied against his household goods weight allowance.

CIVILIAN PERSONNEL

Relocation

Household goods

Weight restrictions

Liability

Waiver

A Veterans Administration employee's household goods shipment made in connection with a permanent change of duty station exceeded his weight allowances by 4,820 pounds. As is standard government practice under the Government Bill of Lading system, the agency paid the carrier's bill and requests reimbursement from the employee for the excess weight costs--\$2,362.60 in this case. Because this is standard, long-standing practice no "error" has been made; therefore, no waiver may be granted under statute allowing waiver of debts arising out of "erroneous payments."

CIVILIAN PERSONNEL**B-228650 Oct. 26, 1988****Compensation****Retroactive compensation****Service credits**

If adequate documentation is provided, the Secretary of State may retroactively designate Juba, Sudan, as an unhealthful post in order to allow an employee to receive extra service credit for retirement purposes since the post was not considered previously for such designation due to administrative error.

CIVILIAN PERSONNEL**B-210244 Oct. 27, 1988****Relocation****Temporary quarters****Actual subsistence expenses****Dependents****Eligibility**

Subsistence expenses of wife of U.S. Customs Service employee being transferred to Rome, Italy, are not payable where wife attended language classes along with the employee at a temporary duty station in Rosslyn, Virginia, and the expense of her tuition was borne by the government. Employee claims that even with paying her subsistence expenses the government would still be saving money since, had she not attended the classes she would have had to establish temporary quarters in Rome and the government would have been liable for the maintenance of two temporary households. The fact that a course of action saves the government money does not serve to create an entitlement not authorized by law. Without authority, of which none has been found, the payment may not be made.

CIVILIAN PERSONNEL

B-229164 Oct. 27, 1988

Travel

Temporary duty

Per diem rates

Amount determination

Notwithstanding erroneous information regarding applicable per diem rates for extended temporary duty for training given to employees of the Department of the Army, they are limited to the per diem rate provided by the Joint Travel Regulations.

CIVILIAN PERSONNEL

B-230905 Oct. 27, 1988

Compensation

Overpayments

Error detection

Debt collection

Waiver

Waiver under 5 U.S.C. § 5584 (1982) is not appropriate to the extent that an employee continues to accept erroneous payments after receiving actual notice of the error.

Relocation**Household goods****Weight restrictions****Liability****Waiver**

A federal employee who was transferred from Washington, D.C., to San Diego, California, had her household goods transported in two separate shipments. Under the Federal Travel Regulations the total amount allowable by the government cannot exceed the cost of a one-lot shipment, and employees are personally responsible for the excess transportation costs. The fact that the employee in this case may not have been aware that she would be liable for the excess costs does not serve to increase her entitlement.

A long-standing practice of the government in arranging transportation of transferred federal employees' household goods is for the employing agency to contract with commercial carriers using government bills of lading. Upon completion of the shipment the agency pays the carrier and collects any excess charges from the employee for exceeding the authorized weight allowance or for extra services. Employees' resulting debts generally do not arise out of "erroneous" payments, and therefore are not subject to consideration under the waiver statute, 5 U.S.C. § 5584. While there are some limited exceptions where the excess charges resulted from government error, such as erroneous orders, where no such error is shown an employee's debt resulting from extra charges incurred for the transportation of her household goods in two separate shipments cannot be considered for waiver.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-229372-O.M. Oct. 5, 1988

Travel

Advances

Overpayments

Debt collection

Waiver

A military member was authorized a travel advance of \$1,117.02 of which \$135.33 covered mileage for his second privately owned vehicle driven by his wife to his new duty station. The overpayment of the travel advance may be waived because mileage expenses were incurred in detrimental reliance on erroneous travel orders and there was no fraud, misrepresentation, fault or lack of good faith by the military member. Further, his other legitimate expenses did not equal the amount of the advance and he was not otherwise indebted to the government for any portion of the advance.

MILITARY PERSONNEL

B-227783 Oct. 7, 1988

Travel

Per diem

Eligibility

Member of the Army Reserve is not entitled to per diem for active duty for training when he changes his residence to the same location as his duty station prior to receiving active duty orders.

MILITARY PERSONNEL

B-227280 Oct. 14, 1988

Travel**Overseas travel****Dependents****Travel expenses****Reimbursement****MILITARY PERSONNEL****Travel****Overseas travel****Travel expenses****Reimbursement****Eligibility**

A Marine Corps Warrant Officer was issued permanent change-of-station orders from Hawaii to Okinawa via two temporary duty stations in the United States. The member's command-sponsored dependents were residing in the Republic of the Philippines on the date his orders were issued, and, after 19 days leave, they accompanied him at his personal expense to the United States. The member is not entitled to reimbursement for the travel of his dependents nor for his leave travel to the Philippines since neither was authorized by the regulations in effect at that time.

MILITARY PERSONNEL**Travel****Overseas travel****Dependents****Travel expenses****Reimbursement**

A Marine Corps Warrant Officer, whose dependents accompanied him at his personal expense to his two temporary duty stations in the United States to attend training courses prior to a second consecutive overseas tour, is not entitled to transportation of the dependents at government expense. The course of instruction at each of the schools was less than 20 weeks duration, and the applicable regulations exclude such entitlement under these circumstances.

MILITARY PERSONNEL**B-227280 Con't****Travel****Oct. 14, 1988****Overseas travel****Travel expenses****Reimbursement****Eligibility**

A Marine Corps Warrant Officer, whose command-sponsored dependents had established a residence in the Philippines prior to receipt of his permanent change-of-station orders, is limited to travel and transportation allowances from this location (Philippines) to the new permanent station (Okinawa) not to exceed the entitlement from the old permanent station (Hawaii) to the new station (Okinawa). Since he was issued a Government Transportation Request in error, he is indebted to the government for the difference between the cost expended for the travel of his dependents, less the estimated cost from Hawaii to Okinawa.

MILITARY PERSONNEL**Travel****Travel expenses****Air carriers****Liquidated damages****Government rights**

A Marine Corps Warrant Officer and his dependents were involuntarily forced to relinquish their seats on an airline flight. The officer must reimburse the government for the portion of the denied boarding compensation paid to him by the airline since such payments to a member or an employee traveling on official business belong to the government. 41 Comp. Gen. 806 (1962). However, he may retain the portion of the denied boarding compensation pertaining to his dependents since their travel was of a personal nature and not official business.

MILITARY PERSONNEL**B-190617.2 Oct. 17, 1988****Pay****Survivor benefits****Annuities****Amount determination**

Based on our holding in Sarah E. Tweedy, B-226888, May 18, 1988, 67 Comp. Gen. _____, which overruled our prior decision herein, we now hold that Sergeant Barker's widow is entitled to a full unreduced Survivor Benefit Plan annuity based on her marriage to Sergeant Baker, even though she was also entitled to receive Dependency and Indemnity Compensation from the Veterans Administration based on her first marriage to another service member. Her claim was timely filed and is payable from the day following Sergeant Baker's death in 1977 for the remainder of her unremarried lifetime.

MILITARY PERSONNEL**B-229335 Oct. 21, 1988****Relocation****Household goods****Shipment costs****Waiver**

The wife of a transferred Marine Corps Sergeant acting on his behalf received erroneous advice from the transportation management office that his maximum weight of household goods allowed to be shipped pursuant to permanent change of station had been increased, and she received written documentation confirming the erroneous advice. Relying on this erroneous authorization, she shipped household effects that were 6,211 pounds in excess of the authorized weight allowance and incurred a debt of \$5,002.53. Since the member's debt resulted from the erroneous authorization, the debt is considered to have arisen out of an erroneous payment and is subject to consideration under the waiver statute. The debt otherwise qualifies for waiver and, therefore, is waived.

Travel**Actual subsistence expenses****Eligibility**

A military member ordered to active duty for training who receives travel orders specifying individual travel for himself but group travel for all other members of the Reserve unit is authorized to travel separately and be reimbursed his airplane fare from home of record to the active duty for training site and return to home of record.

MILITARY PERSONNEL**Travel****Per diem****Eligibility**

When military member receives permissive temporary duty orders, he may engage in travel primarily for his own benefit and may not receive travel expenses or per diem. Therefore member who traveled to Washington, D.C., to inquire about joining new Reserve unit has no entitlement to travel expenses or per diem since travel orders stated travel was for permissive temporary duty and purpose of travel was for member's benefit.

Military member engaged in inactive duty for training at the headquarters of his Reserve unit does not receive a per diem.

Pay

Overpayments

Error detection

Debt collection

Waiver

A reemployed retired federal annuitant was erroneously informed that he could be returned to federal employment at full federal salary, have his civil service annuity halted, and have his former military retired pay reinstated. Properly, however, he was entitled to his full civil service annuity but his federal salary should have been reduced by the amount of the annuity. His military retired pay could not be reinstated because he had waived it to qualify for the civil service annuity. Erroneously the agency failed to reduce his federal salary while the employee continued to receive his full annuity, but his military retired pay correctly was not reinstated. The employee recognized a problem, knew that he was being overpaid and tried to have it corrected, but spent the overpayment of \$25,900.40. Because the employee was erroneously advised he would be entitled to military retired pay, waiver of the amount of the debt equal to the expected retired pay, \$9,758.55, is appropriate. However, since he clearly knew he was being overpaid, waiver may not be granted for the remainder of the debt, \$16,141.85.

PROCUREMENT

PROCUREMENT	B-229926.5; B-229926.6
Competitive Negotiation	Oct. 3, 1988
Discussion	88-2 CPD 306
Adequacy	
Criteria	

Protest that agency failed to hold meaningful discussions is without merit where agency sent protester questions sufficient to lead protester into areas of deficiency, protester was given an opportunity to revise its proposal, and subsequent changes in government cost estimate did not change the substance of the deficiencies.

PROCUREMENT
Competitive Negotiation
Offers
Cost realism
Evaluation
Administrative discretion

Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's costs were analyzed based on work to be performed, independent government estimate, and other proposals submitted.

PROCUREMENT **B-229926.5; B-229926.6 Con't**
Competitive Negotiation **Oct. 3, 1988**
Technical evaluation boards
Bias allegation
Allegation substantiation
Evidence sufficiency

General Accounting Office (GAO) will not object to the composition of an agency's technical evaluation panel absent a showing of possible fraud, bad faith, or conflict of interest. Mere speculation as to possible bias does not carry the protester's burden of proof and GAO will not conduct an investigation to substantiate the protester's allegations.

PROCUREMENT **B-231772.2 Oct. 3, 1988**
Bid Protests **88-2 CPD 307**
GAO procedures
GAO decisions
Reconsideration

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

PROCUREMENT **B-232148 Oct. 3, 1988**
Payment/Discharge
Unauthorized contracts
Quantum meruit/valebant doctrine

Company that towed and stored immobile government trailer that blocked the highway and constituted a safety hazard may be paid on quantum meruit basis because services performed in good faith conferred a benefit that was received and accepted by government. The government must limit payments to the extent of the benefit received from the services.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-229735.3 Oct. 4, 1988
88-2 CPD 311

Request for reconsideration is denied where requesting party disagrees with prior decision of General Accounting Office but does not show errors of fact or law or information not previously considered that warrants reversal or modification.

PROCUREMENT
Special Procurement
Methods/Categories
Federal supply schedule
Offers
Rejection
Propriety

B-230171.34 Oct. 4, 1988
88-2 CPD 312

Agency properly rejected offer for Federal Supply Schedule contract where record does not demonstrate that offeror would meet minimum sales requirement set forth in solicitation and agency's determination to reject offer was reasonably based upon past sales records of offeror.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231478.2 Oct. 4, 1988
88-2 CPD 313

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

PROCUREMENT**B-231597 Oct. 4, 1988****Bid Protests****88-2 CPD 315****GAO procedures****Protest timeliness****10-day rule**

A protest based upon information provided to the protester at a debriefing conference is untimely where the protest was filed in the General Accounting Office more than 10 working days after the conference.

PROCUREMENT**Competitive Negotiation****Contract awards****Administrative discretion****Cost/technical tradeoffs****Technical superiority**

Contracting agency properly decided to award a cost-plus-fixed-fee contract to the offeror of the higher-rated, higher-cost proposal, where the solicitation emphasized that technical factors were more important than cost considerations, and the agency reasonably determined that the awardee's higher technical merit was worth the additional cost.

PROCUREMENT**B-231680 Oct. 4, 1988****Bid Protests****88-2 CPD 316****GAO procedures****Interested parties**

Protester that cannot comply with requirement to supply brand name radio component is not an interested party to challenge other solicitation provisions.

PROCUREMENT**B-231680 Con't****Specifications****Oct. 4, 1988****Minimum needs standards****Competitive restrictions****Allegation substantiation****Evidence sufficiency**

Agency's specification of particular radio component by part number and manufacturer (i.e., brand name) in request for proposals is not unduly restrictive of competition where: (1) the agency does not possess a technical data package for the component, (2) the cost of alternatives such as reverse engineering are inconsistent with the value of the requirement, and (3) only a limited number of the components are being procured since the component is due to be phased-out with the radios it supports.

PROCUREMENT**B-231842 Oct. 4, 1988****Bid Protests****88-2 CPD 317****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest of solicitation provision allowing for oral proposals concerns an alleged solicitation impropriety apparent on the face of the solicitation, and thus is untimely where filed after the closing date for proposals.

PROCUREMENT**Competitive Negotiation****Contract awards****Initial-offer awards****Propriety**

Where no apparent mistake exists in an oral proposal, award to another offeror on the basis of its low initial proposal is unobjectionable. Post-award allegation of mistake by second low offeror does not warrant disturbing otherwise proper award.

PROCUREMENT B-231842 Con't
Competitive Negotiation Oct. 4, 1988
Oral solicitation
Propriety

PROCUREMENT
Contract Management
Contract administration
Default termination
Resolicitation
Procedures

In repurchase for replacement of unsafe and inadequate buildings after default by the original contractor, it was proper for agency to solicit oral proposals from the next three lowest offerors in the original procurement, where there is no evidence that permitting oral proposals did not result in maximum practicable competition or generate lowest available price.

PROCUREMENT B-231870 Oct. 4, 1988
Bid Protests 88-2 CPD 318
GAO procedures
Protest timeliness
10-day rule

Protest filed more than 10 days after the protester was orally informed that its agency-level protest had been denied and the basis therefor is untimely; protester may not delay filing its protest until it has received, in writing, the agency decision with an enclosure of the General Accounting Office's Bid Protest Regulations, since a prospective contractor is charged with constructive knowledge of those regulations.

PROCUREMENT B-231883.2; B-231884.2
Bid Protests Oct. 4, 1988
GAO procedures 88-2 CPD 319
Interested parties
Direct interest standards

A protester is not an interested party where it is not in line for award after the addition of the Buy American Act evaluation factors even if its protest were sustained since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under the General Accounting Office's Bid Protest Regulations.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic products
Interpretation

Agency properly concluded that low offeror was not subject to evaluation under the Buy American Act where the evidence available shows that the item offered is manufactured in the United States.

PROCUREMENT B-232028 Oct. 4, 1988
Bid Protests 88-2 CPD 320
GAO procedures
Protest timeliness
Apparent solicitation improprieties

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

PROCUREMENT B-232028 Oct. 4, 1988
Competitive Negotiation 88-2 CPD 320
Offers
Evaluation
Technical acceptability

Agency determination to reject a proposal as technically unacceptable is proper where the proposal did not meet the solicitation requirement that offerors demonstrate that the equipment proposed had previously been used in a successful operation.

PROCUREMENT B-232510 Oct. 4, 1988
Bid Protests 88-2 CPD 321
Premature allegation
Future procurement
GAO review

Where no solicitation has yet been issued, protest against anticipated procurement is premature and, therefore, not for consideration under Bid Protest Regulations.

PROCUREMENT B-232749 Oct. 4, 1988
Bid Protests 88-2 CPD 322
GAO procedures
Purposes
Competition enhancement

A protest that an awardee's product, while meeting the solicitation's specifications, is nonetheless of inferior quality, is essentially a protest that the specifications are not sufficiently restrictive to provide the level of quality required. Since the objective of the bid protest function is to insure full and open competition for government contracts, the General Accounting Office generally will not review a protest that has the explicit or implicit purpose of reducing competition.

PROCUREMENT **B-232364 Oct. 5, 1988**
Noncompetitive Negotiation 88-2 CPD 325
Contract awards
Sole sources
Justification
Preferred products/services

PROCUREMENT
Socio-Economic Policies
Preferred products/services
American Indians

Proposed sole source award to qualified Indian contractor is permitted under the Buy Indian Act. Because the Buy Indian Act is a statutorily authorized procurement procedure, it is excepted from the "full and open competition" requirement of the Competition in Contracting Act. The Secretary of the Interior is granted broad discretion in purchasing the products of Indian industry in implementing the Buy Indian Act, and this discretion is not affected by provisions of the Federal Acquisition Regulation which pertain to small business set-asides.

PROCUREMENT **B-227006.2 Oct. 6, 1988**
Contract Management 88-2 CPD 326
Contract administration
Subcontracts
GAO review

The award of a lower tier subcontract that is consistent with requirements of the prime contract is a matter to be considered by the contracting agency in the administration of its contract and not by the General Accounting Office as part of its bid protest function.

PROCUREMENT B-230914.2 Oct. 6, 1988
Contractor Qualification 88-2 CPD 327
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Allegation that offeror lacks integrity pertains to offeror's responsibility, and General Accounting Office will not review a contracting officer's affirmative determination of responsibility absent a showing of possible agency fraud or bad faith or the misapplication of definitive responsibility criteria contained in the solicitation.

PROCUREMENT
Socio-Economic Policies
Labor standards
Supply contracts
Manufacturers/dealers
Determination

Challenge of the legal status of an offeror as a regular dealer or manufacturer under the Walsh-Healey Act is for determination in the first instance by the procuring agency, and is reviewable by the Small Business Administration (if a small business is involved) and the Secretary of Labor, not the General Accounting Office.

PROCUREMENT **B-231617 Oct. 6, 1988**
Special Procurement **88-2 CPD 328**
Methods/Categories
Federal supply schedule
Multiple aggregate awards
Propriety

Protest against the issuance of a delivery order to a higher-priced multiple-award Federal Supply Schedule (FSS) contractor by protester with similar FSS contract is denied where contracting officer reasonably relied on information contained in the FSS listings which failed to include the protester as a potential source of supply for the equipment.

PROCUREMENT **B-231630 Oct. 6, 1988**
Socio-Economic Policies **88-2 CPD 329**
Preferred products/services
Domestic products
Applicability

Protest that agency improperly applied a domestic item restriction contained in an appropriation act is denied where the agency reasonably determined that the items being procured are within the coverage of the act because they are "clothing" and that an exception contained in the act does not apply because the items are not "chemical warfare protective clothing."

PROCUREMENT **B-231643; B-231643.2**
Bid Protests **Oct. 6, 1988**
Moot allegation **88-2 CPD 330**
GAO review

Protest alleging awardee's noncompliance with minimum mandatory solicitation requirements is denied where the awardee's proposal substantially complied with the requirements in question and the agency properly evaluated the proposal.

PROCUREMENT B-231643; B-231643.2 Con't
Competitive Negotiation Oct. 6, 1988
Offers
Evaluation
Administrative discretion

Since procuring officials enjoy a reasonable degree of discretion in evaluating proposals, the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria found in the solicitation.

PROCUREMENT B-231644 Oct. 6, 1988
Competitive Negotiation 88-2 CPD 331
Requests for proposals
Evaluation criteria
Personnel experience

Where solicitation provides for the contractor to monitor employees and ensure that its employees meet the requirements of the solicitation, any contract awarded under the solicitation will not result in an illegal personal services contract.

PROCUREMENT
Contract Management
Contract administration
GAO review

Allegation that contracting officer's technical representative, not contracting officer, is improperly approving and disapproving personnel changes under protesters current contract involves contract administration, and is not relevant to that person's role, if any, under contract not yet awarded pursuant to protested procurement.

PROCUREMENT

Socio-Economic Policies
Labor standards
Service contracts
Wage rates
GAO review

B-231644 Con't

Oct. 6, 1988

Where the procuring agency establishes that Standard Form 98 was sent to the Department of Labor (DOL) in the proper form and DOL determined that there was no wage determination applicable to the procurement, without any evidence the protester's contrary allegation is without merit. The accuracy of the wage determination is a matter for DOL, not the General Accounting Office.

PROCUREMENT

Socio-Economic Policies
Small business set-asides
Use
Justification

Allegation that procuring agency improperly issued solicitation as a small business set-aside instead of a small disadvantaged business (SDB) set-aside is denied where under previous solicitation for requirement issued as a SDB set-aside the low offeror's price exceeded the fair market price by more than 10 percent.

PROCUREMENT

Specifications
Minimum needs standards
Competitive restrictions
Allegation substantiation
Evidence sufficiency

Requirement that offerors provide signed letters of commitment from proposed employees is not unreasonable where the solicitation lists personnel qualifications as an evaluation criteria and an offeror's proposed employees are integral to the contractor's performance under the contract.

PROCUREMENT B-231678 Oct. 6, 1988
 Bid Protests 88-2 CPD 332
 GAO procedures
 Interested parties
 Direct interest standards

Fourth low offeror and original manufacturer of item solicited by the procuring agency is not an interested party eligible to maintain the protest under General Accounting Office Bid Protest Regulations where offeror is not in line for the award.

PROCUREMENT B-231736.2 Oct. 6, 1988
 Bid Protests 88-2 CPD 333
 GAO procedures
 Protest timeliness
 Apparent solicitation improprieties

Protest against requirement to submit best and final offers with and without pricing for first article testing on FOB origin and FOB destination, filed after the next closing date for receipt of proposals is untimely and there is no basis for waiving our timeliness requirements.

PROCUREMENT B-232756 Oct. 6, 1988
 Bid Protests 88-2 CPD 334
 GAO procedures
 Interested parties

Protester is not an interested party eligible to protest agency's failure to reject other bids as nonresponsive for failure to include phase-in and transition plans, where second low bid did include these plans and thus would be selected for award even if the protest were sustained.

PROCUREMENT B-232554 Oct. 7, 1988
Socio-Economic Policies 88-2 CPD 335
Small businesses
Competency certification
Extension
Administrative discretion

The granting of an additional 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 B-232756.2 Oct. 7, 1988
Socio-Economic Policies 88-2 CPD 336
Small businesses
Size determination
Pending protests
Contract awards

Contracting agency properly may make award after the Small Business Administration determines, in response to a size status protest, that the awardee is a small business, even though an appeal of that determination is pending.

PROCUREMENT B-232841 Oct. 7, 1988
Contractor Qualification
Licenses
State/local laws
GAO review

A contractor's compliance with a general state and local licensing requirement is a matter that must be resolved between the contractor and the state or local authorities, not by federal officials.

PROCUREMENT	B-231473.3	Oct. 11, 1988
Bid Protests		
GAO procedures		
GAO decisions		
Reconsideration		

PROCUREMENT B-232200 Oct. 11, 1988
Socio-Economic Policies 88-2 CPD 338
Small business set-asides
Use
Justification

PROCUREMENT	B-232256; B-232257
Bid Protests	Oct. 11, 1988
Moot allegation	88-2 CPD 339
GAO review	

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PROCUREMENT **B-232338 Oct. 11, 1988**
Competitive Negotiation 88-2 CPD 340
Offers
Late submission
Acceptance criteria
Government mishandling

Proposal delivered by Express Mail to agency mailroom 8 or 9 hours before time established for receipt of proposals, but subsequently misrouted by agency mailroom, properly is rejected as late where Express Mail package did not indicate solicitation number and time specified for receipt of proposals as required by solicitation. Thus, even if package was properly handled, it would have arrived late at location designated for receipt of proposals. Thus, agency's lack of expedited procedures for handling bids or proposals was not cause of parcel's late delivery.

PROCUREMENT **B-232505.2 Oct. 11, 1988**
Bid Protests 88-2 CPD 341
GAO procedures
Protest timeliness
10-day rule

Protest filed more than 10 working days after protester knew or should have known the basis for its protest, cancellation of a solicitation, is untimely.

PROCUREMENT **B-232751 Oct. 11, 1988**
Bid Protests 88-2 CPD 342
GAO procedures
Protest timeliness
10-day rule

Protest concerning proposed award of a contract on a sole-source basis is dismissed as untimely when filed more than 10 working days after protester knew or should have known basis of protest.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-231766 Oct. 12, 1988
88-2 CPD 343

Protest that an award was made under a request for proposals on the basis of an improper price evaluation is dismissed as academic when the agency determines that the solicitation was defective and takes the appropriate corrective action.

PROCUREMENT
Sealed Bidding
Post-bid opening cancellation
Justification
Minimum needs standards

B-231934 Oct. 12, 1988
88-2 CPD 345

Compelling reason exists for cancellation of invitation for bids after opening where agency determines that solicitation requirement for specially designed system should be changed to an "off-the-shelf" system to meet its minimum needs.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Brand name/equal specifications
Equivalent products

B-232222 Oct. 12, 1988
88-2 CPD 346

PROCUREMENT
Specifications
Brand name/equal specifications
Equivalent products
Acceptance criteria

Protester's bid was properly found to be nonresponsive to a brand name or equal invitation for bids where the protester's bid for an "equal" product failed to show through its descriptive literature that the offered product complied with numerous salient characteristics specified in the solicitation.

PROCUREMENT

B-232714 Oct. 12, 1988

Sealed Bidding

Bid guarantees

Responsiveness

Sureties

Liability restrictions

A bid bond is defective when no penal sum has been inserted on the bond, either as a percentage of the bid amount or as a fixed sum.

PROCUREMENT

B-232731 Oct. 12, 1988

Bid Protests

GAO procedures

Interested parties

A protester, who willingly permits its bid to expire, renders itself ineligible for award and, therefore, cannot be considered an interested party under the General Accounting Office's Bid Protest Regulations to maintain a protest that it was improperly found nonresponsible.

PROCUREMENT

B-233072 Oct. 12, 1988

Sealed Bidding

88-2 CPD 347

Bids

Responsiveness

Determination time periods

The responsiveness of a bid may only be determined from the material which was available to the agency at bid opening.

PROCUREMENT
Sealed Bidding
Bids

B-233072 Con't
Oct. 12, 1988

Responsiveness
Small business set-asides
Compliance

A bid on a total small business set-aside, indicating that not all end items to be furnished would be produced by small businesses, is nonresponsive because otherwise the bidder would be free to furnish supplies from a large business and therefore defeat the purpose of the set-aside.

PROCUREMENT
Bid Protests

B-231504.2 Oct. 13, 1988
88-2 CPD 348

GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is dismissed where argument raised by protester is one which could and should have been advanced in its original protest, as General Accounting Office's Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues.

PROCUREMENT

B-231996 Oct. 13, 1988

Bid Protests

88-2 CPD 349

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest challenging basis for contracting agency's decision to restrict competition to two sources is timely where filed prior to closing date for initial proposals since it concerns alleged solicitation impropriety. Although protester had expressed its concern earlier in letter to agency based on synopsis in Commerce Business Daily announcing decision to restrict competition, protest to General Accounting Office did not have to be filed within 10 days after agency's response to letter, since specific grounds for objecting to restriction were not apparent until the solicitation was issued.

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Justification

Sufficiency

Where item being procured is technically complex, critical component is being produced for the first time, and contracting agency requires delivery at earliest practicable date, agency reasonably may restrict competition to firms experienced with prior versions of the item based on determination that only such firms can be expected to produce the item without undue risk of unacceptable performance.

PROCUREMENT B-232078 Oct. 13, 1988
 Bid Protests 88-2 CPD 350
 GAO procedures
 Protest timeliness
 Apparent solicitation improprieties

Protest against alleged apparent solicitation impropriety (failure to issue as a small business set-aside) must be filed prior to bid opening date.

PROCUREMENT
 Sealed Bidding
 Invitations for bids
 Amendments
 Acknowledgment
 Responsiveness

A bidder's failure to acknowledge a material amendment normally requires the rejection of the bid as nonresponsive. However, an amendment may be considered constructively acknowledged where the bid itself includes one of the essential items appearing only in the amendment, such that the bid clearly indicates that the bidder received and agreed to the terms of the amendment.

PROCUREMENT B-232242.2 Oct. 13, 1988
 Bid Protests 88-2 CPD 351
 GAO procedures
 Protest timeliness
 Apparent solicitation improprieties

Basis of protest concerning a solicitation impropriety raised for first time after bid opening is untimely and dismissed.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-232242.2 Con't
Oct. 13, 1988

Protest against Small Business Administration's (SBA) refusal to issue a certificate of competency (COC) is untimely when not filed in General Accounting Office within 10 days of protester's receipt of notice from SBA declining to issue a COC.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-231547.2 Oct. 14, 1988
88-2 CPD 352

Protester is not interested party eligible to protest cancellation of solicitation where protester's bid under the solicitation properly was rejected as nonresponsive, and protester thus would not have been in line for award had the solicitation not been canceled.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Descriptive literature
Absence

Where "brand name or equal" solicitation requires submission of descriptive literature to demonstrate equality of other than brand name, and bid of equal item includes only make and model numbers for the components and no descriptive literature; the solicitation specifically required descriptive literature; and agency was unable to ascertain that the salient characteristics were met without it, bid properly was rejected as nonresponsive.

PROCUREMENT	B-231573.2; B-231574.2
Socio-Economic Policies	Oct. 14, 1988
Small businesses	88-2 CPD 353
Responsibility	
Competency certification	
GAO review	

General Accounting Office will not review the Small Business Administration's (SBA) refusal to issue a certificate of competency when the record does not support the protester's allegation that SBA refused to consider vital information bearing on the firm's responsibility.

PROCUREMENT	B-231815, et al.
Bid Protests	Oct. 14, 1988
GAO procedures	88-2 CPD 354
Protest timeliness	
10-day rule	

Protest that another offer was submitted late and therefore should have been rejected is untimely where protester was aware of the basis for protest at least 3 months before raising the issue.

Issue concerning former agency employee's employment by company awarded contract is untimely when filed more than 10 working days after the protester should have been aware of the basis for protest.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Personnel
Adequacy

Protest that the agency should have rejected the awardee's proposal because if found the proposed project manager unacceptable is denied where the record indicates that the awardee's proposed project manager in fact was acceptable to the agency.

PROCUREMENT
Contract Management
Contract administration
GAO review

B-231815, et al. Con't
Oct. 14, 1988

Whether in performing a contract the contractor violates a requirement that 50 percent of the personnel costs of the contract be attributed to the prime contractor is a matter of contract administration, which the General Accounting Office does not consider as part of its bid protest function.

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

B-232141 Oct. 14, 1988
88-2 CPD 355

For a party to prevail based on its interpretation of a solicitation provision, the party must at least show that its interpretation of the provision is reasonable and susceptible of the understanding reached. Where an invitation for bids (IFB) was issued as a total small business set-aside, and the agency by amendment inadvertently referenced a clause indicating that the IFB was a small disadvantaged business (SDB) set-aside, without deleting prior inconsistent provisions indicating that the IFB remained a small business set-aside, bidder could not reasonably conclude that an SDB set-aside was intended, especially where regulations prohibited an SDB set-aside for the type of construction project solicited.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-232717 Oct. 14, 1988
88-2 CPD 356

Protest is dismissed because protester is not an interested party under General Accounting Office Bid Protest Regulations where protester, third low bidder, would not be in line for award should its protest against low bid be sustained, since protester has not protested against any possible award to second low bidder.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-231710 Oct. 17, 1988
88-2 CPD 357

Post-award protest concerning alleged improprieties apparent from the solicitation is untimely because under General Accounting Office Bid Protest Regulations such protests must be filed prior to the closing date for receipt of proposals.

PROCUREMENT
Competitive Negotiation
Competitive advantage
Conflicts of interest
Post-employment restrictions
Allegation substantiation

Offeror's employment of the spouse of a former government employee is not improper where there is no evidence in the record that actions of the employee, either before or after she left the agency, resulted in prejudice for, or on behalf of, the offeror.

PROCUREMENT **B-231710 Con't**
 Competitive Negotiation **Oct. 17, 1988**
 Contract awards
 Initial-offer awards
 Propriety

The Competition in Contracting Act of 1984 prohibits contracting agencies conducting negotiated procurements from awarding a contract on the basis of initial proposals to other than the lowest overall cost offeror.

PROCUREMENT
 Competitive Negotiation
 Technical evaluation boards
 Bias allegation
 Allegation substantiation
 Evidence sufficiency

Allegation that agency evaluators may have potential conflicts of interest because of personal or professional relationships with awardee or protester is not sufficient to justify overturning the award, since the record contains no evidence of bias or preferential treatment toward awardee in the evaluation process.

PROCUREMENT **B-231725 Oct. 17, 1988**
 Competitive Negotiation
 Competitive advantage
 Conflicts of interest
 Post-employment restrictions
 Allegation substantiation

Protest is dismissed where agency, the Department of Justice, is investigating whether the role of one of its former employees in the formative stages of the procurement was such that his later relationship with the awardee constituted a violation of law and departmental standards of conduct and improperly prejudiced the protester, subject to reinstatement when the investigation is complete.

PROCUREMENT**B-231941 Oct. 17, 1988****Sealed Bidding****88-2 CPD 358****Invitations for bids****Amendments****Acknowledgment****Responsiveness**

A low bidder's failure to acknowledge an amendment to an invitation for bids soliciting bids for tree thinning under which the government has marked the trees to be left, which adds a requirement that pruned trees also not be cut, cannot be waived as a minor informality, where the amendment affects the bidder's legal obligation to perform and could have an impact on the cost of performance in a situation where the second low bid of \$123,240 is only \$104 or .0845 percent higher than the low bid.

PROCUREMENT**B-233012 Oct. 17, 1988****Sealed Bidding****88-2 CPD 359****Bid guarantees****Sureties****Acceptability**

Bidder's offer, after bid opening, to cure unacceptability of individual sureties by submission of an additional surety was properly rejected by contracting officer as tantamount to substitution of sureties.

PROCUREMENT

B-231704 Oct. 18, 1988

Competitive Negotiation

88-2 CPD 360

Discussion

Misleading information

Allegation substantiation

An agency has not misled an offeror during discussions, where the offeror necessarily responded to the opportunity to revise its proposal after receiving almost completely negative pre-performance test results, even though the offeror was ultimately found unacceptable, in part, because these untested design revisions caused the agency to determine that they represented an unacceptably high risk that the offeror could not timely meet the contract technical requirements.

PROCUREMENT

Competitive Negotiation

Offers

Competitive ranges

Exclusion

Administrative discretion

The proposal of an offeror, whose proposed products could not pass pre-award performance tests, and who consequently made apparently untested, design modifications, was reasonably found unacceptable and outside the competitive range, where the agency has documented its determination that the offeror's technical proposal represented an unacceptably high risk that technical requirements could not be met in a timely manner and the offeror has not clearly established the feasibility of its approach.

PROCUREMENT **B-231704 Con't**
Competitive Negotiation **Oct. 18, 1988**
Offers
Competitive ranges
Exclusion
Justification

A technically unacceptable proposal can be excluded from the competitive range irrespective of its low evaluated cost.

An agency can exclude from the competitive range an offeror initially included in the competitive range if it is determined the offeror no longer has a reasonable chance for award.

PROCUREMENT **B-231736 Oct. 18, 1988**
Socio-Economic Policies **88-2 CPD 361**
Small business set-asides
Use
Justification

Protest against procuring agency's decision to issue solicitation as a small business set-aside without a small disadvantaged business (SDB) 10 percent evaluation preference, is denied where the solicitation was based on a deviation from the requirement in Department of Defense Federal Acquisition Regulation Supplement § 19.502-72(a) to issue the procurement as a SDB set-aside.

PROCUREMENT **B-231768 Oct. 18, 1988**
Noncompetitive Negotiation 88-2 CPD 362
Sole sources
Justification
Intellectual property

Noncompetitive brand name only procurement is not objectionable where agency reasonably determined that only one source could furnish the required radio frequency interference filters because that source holds the proprietary information necessary to develop a technical data package for use in a competitive procurement.

PROCUREMENT **B-231788 Oct. 18, 1988**
Competitive Negotiation 88-2 CPD 363
Requests for proposals
Terms
Ambiguity allegation
Interpretation

Provision in solicitation for lease of warehouse space limiting the acceptable geographic area is not ambiguous where there is only one reasonable interpretation of that provision. Rejection of protester's offer on basis that its proposed site was outside that area therefore was reasonable.

PROCUREMENT **B-231794 Oct. 18, 1988**
Sealed Bidding 88-2 CPD 364
Bids
Evaluation
Tests
Accuracy

Conflicting test results from a government approved independent laboratory do not establish that agency's test results were incorrect absent a showing that agency's test was defective or improperly conducted, or that the results were erroneously reported.

PROCUREMENT
Sealed Bidding
Bids

B-231794 Con't
Oct. 18, 1988

Responsiveness
Samples

Where low bidder's bid sample was determined noncompliant with listed sample evaluation characteristics and solicitation required rejection of bid for such nonconformity, the low bid was properly rejected as nonresponsive.

PROCUREMENT
Competitive Negotiation
Offers

B-231940 Oct. 18, 1988
88-2 CPD 365

Evaluation
Technical acceptability

Allegation that proposed awardee's offered equipment does not satisfy certain specification requirements is without merit where firm's proposal included information showing compliance, and proposal does not take exception to any requirements.

PROCUREMENT
Sealed Bidding
Bid guarantees

B-232337 Oct. 18, 1988
88-2 CPD 366

Responsiveness
Letters of credit
Adequacy

Agency properly rejected as nonresponsive bid accompanied by bid guarantee in the form of an irrevocable letter of credit which expired prior to such time as was reasonably necessary to enable government to exercise its rights in the event bidder failed to comply with invitation for bids requirement to furnish performance and payment bonds.

PROCUREMENT **B-233103 Oct. 18, 1988**
Contract Management **88-2 CPD 367**
Contract administration
Convenience termination
Resolicitation
GAO review

Agency decision to terminate a contract line item for the convenience of the government and to resolicit the requirement is a matter of contract administration which is not for consideration under General Accounting Office Bid Protest Regulations.

PROCUREMENT **B-233123 Oct. 18, 1988**
Sealed Bidding **88-2 CPD 368**
Bids
Responsiveness
Terms
Deviation

Bid for clinical laboratory services was properly rejected as nonresponsive where bidder's cover letter imposed conditions that modify the requirements of the solicitation and limit its liability to the government under the contract.

PROCUREMENT **B-230190.2 Oct. 19, 1988**
Competitive Negotiation **88-2 CPD 369**
Requests for proposals
Amendments
Bad faith
Allegation substantiation

Protest that agency acted in bad faith in issuing a solicitation by a certain date in order to set it aside for small disadvantaged businesses and to avoid a new regulatory prohibition against such set-asides in certain circumstances, which apparently were present, is without merit where record supports the reasonableness of the agency's actions and reveals no evidence of bad faith.

PROCUREMENT**B-230721.2 Oct. 19, 1988****Bid Protests****88-2 CPD 370****GAO procedures****Interested parties**

A firm whose proposal was found technically unacceptable and therefore was passed over for award in favor of a higher-priced offer is an interested party to protest the agency's decision with respect to its own proposal, regardless of whether there was a lower-priced offer of the same brand where the lower-priced offer's acceptability is challenged, and that offeror no longer evidences any interest in the award.

PROCUREMENT**Competitive Negotiation****Offers****Competitive ranges****Exclusion****Administrative discretion**

Exclusion of initial proposal from the competitive range is proper where the offeror does not furnish descriptive literature expressly required for proposal evaluation but instead only writes "we comply" next to various specifications, and the agency's evaluator reasonably concludes, based on his knowledge of the particular model offered, that it does not meet certain necessary specifications.

PROCUREMENT**B-232007 Oct. 19, 1988****Special Procurement****88-2 CPD 371****Methods/Categories****Federal supply schedule****Multiple/aggregate awards****Mandatory use**

Although request for quotations from Federal Supply Schedule (FSS) vendors indicated that a trade-in allowance for dictation equipment would be considered, agency, based on a change in its needs, properly disregarded trade-in allowances offered by vendors and issued delivery order to mandatory multiple award vendor which offered the lowest priced equipment meeting the government's minimum needs. Since quotations under FSS are not offers which can be accepted by the government, there is no requirement that delivery order conform exactly to the vendors' informational quotations.

PROCUREMENT**B-232203, et al.****Special Procurement****Oct. 19, 1988****Methods/Categories****Architect/engineering services****Contractors****Agency notification****Hazardous substances**

The General Accounting Office has no objection to a proposed rule which would amend the Federal Acquisition Regulation (FAR) to require contractors taking inventory of government property which is in their possession and which is no longer needed for contract performance to specifically identify hazardous and contaminated materials, and to make corrections to the policy regarding the transfer and reporting of contractor-held government property.

PROCUREMENT

B-232203, et al. Con't

Special Procurement

Oct. 19, 1988

Methods/Categories

Architect/engineering services

Contractors

Inventories

Government property

The General Accounting Office has no objection to a proposed rule which would amend the Federal Acquisition Regulation to require advance notice by contractors of certain size shipments and shipments containing classified, sensitive, controlled, explosive or other specified hazardous materials.

PROCUREMENT

Special Procurement Methods/Categories

Architect/engineering services

Federal procurement regulations/laws

Amendments

The General Accounting Office has no objection to a proposed rule which would amend the Federal Acquisition Regulation (FAR) to provide interested Architect-Engineering firms an early opportunity to indicate the number and type of consultant personnel they propose to use on a specific project.

PROCUREMENT

B-232460 Oct. 19, 1988

Bid Protests

88-2 CPD 372

Constitutional rights

GAO review

The General Accounting Office (GAO) will not consider protester's contention that provision of Federal Acquisition Regulation on which agency relies for rejecting protester's bid constitutes a denial of due process, since it is a function of the courts, not GAO, to determine matters of constitutionality.

PROCUREMENT**B-232629.2 Oct. 19, 1988****Bid Protests****88-2 CPD 373****GAO procedures****Protest timeliness****Significant issue exemptions****Applicability**

An untimely protest alleging an unduly restrictive requirement will not be considered under the significant issue exception to the bid protest timeliness rules where the issue of restrictiveness raised by the protester does not appear to be of widespread interest to the procurement community.

PROCUREMENT**B-232691.2 Oct. 19, 1988****Bid Protests****88-2 CPD 374****GAO procedures****Protest timeliness****Deadlines****Constructive notification**

Prior dismissal of untimely protest is affirmed, notwithstanding protester's assertion that it was unaware of the General Accounting Office's Bid Protest Regulations' timeliness requirements, because the protester is charged with constructive knowledge of those regulations through their publication in the Federal Register.

PROCUREMENT**B-225843.3 Oct. 20, 1988****Competitive Negotiation****88-2 CPD 375****Competitive advantage****Conflicts of interest****Post-employment restrictions****Allegation substantiation**

Awardee's employment of former agency employee, as a temporary consultant and ultimately as a permanent employee, does not disqualify firm from award by individual's former agency where there is no evidence that the person will be employed to work on the contract or that he improperly influenced the award.

PROCUREMENT **B-225843.3 Con't**
Competitive Negotiation **Oct. 20, 1988**
Contract awards
Propriety

Allegation that proposed award of contract for civilian mess attendant service resulted from improper political influence is without merit where there is no evidence in record to support allegation.

PROCUREMENT
Competitive Negotiation
Discussion reopening
Propriety

There is nothing wrong with requesting more than one round of best and final offers where a valid reason exists to do so. Changes in the number of dining facilities and clarification of requirements provide adequate justifications for further rounds of best and final offers.

PROCUREMENT **B-228396.6 Oct. 20, 1988**
Bid Protests **88-2 CPD 376**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of decision denying protester's claim that agency acted in bad faith in determining awardee to be responsible is denied where protester does not show that original decision was based on error of fact or law.

PROCUREMENT**B-231916 Oct. 20, 1988****Special Procurement****88-2 CPD 377****Methods/Categories****In-house performance****Cost estimates****Contract administration****Personnel**

In conducting cost comparison under Office of Management and Budget Circular No. A-76, agency had reasonable basis to exclude potential cost of retained pay for employees downgraded as a result of implementing most efficient organization for training support services.

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.

PROCUREMENT**B-232124 Oct. 20, 1988****Competitive Negotiation****88-2 CPD 378****Contract awards****Administrative discretion**

Procuring agency is not required to award a contract to the offeror who receives the highest total score for cost and technical factors although the RFP contains a numerical technical/price evaluation formula, it provides that the award will be made to the offeror whose proposal is most advantageous to the government.

PROCUREMENT **B-232124 Con't**
Competitive Negotiation **Oct. 20, 1988**
Offers
 Cost realism
 Evaluation
 Administrative discretion

Contracting officer reasonably determined that awardee's price proposal was realistic even though some proposed labor rates were lower than required under applicable wage determinations since payments under the contract were limited to the proposed fixed labor rates and the government therefore will not bear any increased costs resulting from any higher wage rate payments.

PROCUREMENT
Competitive Negotiation
Offers
 Evaluation
 Technical equality

Contracting officer reasonably determined that technical proposals were equal in merit based on the conclusion that the protester's slightly higher technical score was due to the experience it gained as the incumbent contractor.

PROCUREMENT
Competitive Negotiation
Offers
 Price omission
 Line items
 Allegation substantiation

Protester's contention that awardee failed to include certain costs in its price proposal as required by the solicitation is without merit where there is no evidence that awardee omitted any applicable costs.

PROCUREMENT **B-232124 Con't**
Competitive Negotiation **Oct. 20, 1988**
**Technical transfusion/
leveling**
Allegation substantiation
Evidence sufficiency

Contracting agency did not engage in technical leveling where, although offerors were given two opportunities to revise their initial proposals, there is no indication in the record that during successive rounds of discussions the agency informed the awardee of inherent deficiencies remaining in its proposal so that the awardee was helped to raise its proposal to the level of the protester's proposal.

PROCUREMENT **B-232140 Oct. 20, 1988**
Sealed Bidding **88-2 CPD 379**
Bids
Responsiveness
Price omission
Line items

A bid in which a line item price is omitted under a solicitation which states that award will be made on an aggregate basis is nonresponsive and cannot be corrected and accepted except in limited circumstances where other prices in the bid establish a consistent pattern which evidences both the existence of an error and the intended bid, which is not the case here.

Omission of a price entry for a material requirement which is not divisible from the remainder of the solicitation requirements may not be waived as a minor informality.

PROCUREMENT B-232140 Con't
 Sealed Bidding Oct. 20, 1988
 Non-responsive bids
 Post-bid opening periods
 Clarification
 Propriety

A nonresponsive bid may not be corrected and accepted even though it would result in monetary savings to the government since acceptance would compromise the integrity of the competitive bidding system.

PROCUREMENT B-232145 Oct. 20, 1988
 Bid Protests 88-2 CPD 380
 Bias allegation
 Allegation substantiation
 Burden of proof

Improper action will not be attributed to an agency's procurement officials simply on the basis of inference or supposition.

PROCUREMENT B-232145 Con't
Competitive Negotiation Oct. 20, 1988
Best/final offers
Technical acceptability
Negative determination
Propriety

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Deficiency
Blanket offers of compliance

Since burden is on offeror to submit an adequately written proposal from the outset, where protester's best and final offer fails to include technical information that is called for by the solicitation and is necessary to establish compliance with the specifications, there is a reasonable basis to find the protester's proposal technically unacceptable; a blanket offer of compliance is not an adequate substitute for required detailed information.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

After discussions and a request for best and final offers an agency is not required to notify an offeror of deficiencies remaining in its proposal or first appearing in its best and final offer, or to conduct successive rounds of discussions until omissions are corrected and the proposal is brought up to an acceptable level.

PROCUREMENT**Bid Protests****GAO procedures****Interested parties****Subcontractors****B-232611.2 Oct. 21, 1988****88-2 CPD 382**

A second-tier subcontractor to a prime contractor to the government, which is not itself an actual bidder or offeror, is not considered an interested party to protest under the Competition in Contracting Act of 1984 and the General Accounting Office's Bid Protest Regulations.

PROCUREMENT**Contract Management****Contract performance****GAO review**

The propriety of the rejection by the government, during the course of contract performance, of materials supplied by the protester to the general contractor, involves a matter of contract administration and as such is not for consideration under the General Accounting Office's Bid Protest Regulations.

PROCUREMENT**Bid Protests****GAO authority****B-230103.2 Oct. 24, 1988****88-2 CPD 385**

General Accounting Office (GAO) affirms its prior decision upholding the contracting agency's termination of a contract previously awarded to protester and resolicitation of the requirement, and rejects argument that it did not have jurisdiction to decide the matter where: (1) protester first requested the GAO decision; (2) subsequently appealed substantially the same issues to the agency Board of Contract Appeals but failed to so inform GAO until after the issuance of the decision denying its protest; and (3) the propriety of the resolicitation necessarily involves consideration of the contract actions which preceded it.

PROCUREMENT

**Competitive Negotiation
Unbalanced offers
Materiality
Determination
Criteria**

B-230103.2 Con't

Oct. 24, 1988

Regardless of whether the protester was aware that a solicitation understated the estimated amount of certain waste material to be disposed of, prior decision holding that protester's offer was materially unbalanced is not legally incorrect since such unbalancing is determined irrespective of the protester's knowledge or intent at the time it submitted its proposal.

PROCUREMENT

**Contract Management
Contract administration
Convenience termination
Resolicitation
GAO review**

General Accounting Office (GAO) affirms its prior decision upholding the contracting agency's termination of a contract previously awarded to protester and resolicitation of the requirement, and rejects argument that it did not have jurisdiction to decide the matter where: (1) protester first requested the GAO decision; (2) subsequently appealed substantially the same issues to the agency Board of Contract Appeals but failed to so inform GAO until after the issuance of the decision denying its protest; and (3) the propriety of the resolicitation necessarily involves consideration of the contract actions which preceded it.

PROCUREMENT

B-232030 Oct. 24, 1988

Competitive Negotiation

88-2 CPD 386

Contract awards

Initial-offer awards

Propriety

Although the awardee did not include the entire solicitation in its initial proposal, the awardee's initial proposal constituted a valid offer since it included all of the material terms of the solicitation, technical information and signed certifications and representations.

PROCUREMENT

Contractor Qualification

Approved sources

Equivalent products

Acceptance

Administrative discretion

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

PROCUREMENT B-233067 Oct. 24, 1988
Competitive Negotiation 88-2 CPD 387
Contract awards
Propriety
Requests for proposals
Deviation

Agency's acceptance of proposal for modular vault system which did not meet the solicitation requirement for Underwriters Laboratory certification is not objectionable where offer satisfied agency's needs and the other offeror was not prejudiced by the agency's actions because it competed on the same basis as did the awardee.

PROCUREMENT B-231998 Oct. 25, 1988
Competitive Negotiation 88-2 CPD 388
Offers
Evaluation
Technical acceptability

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability
Performance history

Protester failed to show that the agency acted unreasonably in finding its proposal to be unacceptable and the awardee's proposal to be acceptable under a solicitation provision requiring offerors to substantiate that the equipment offered was "field proven" where protester's proposal stated that it could not supply performance history on its machines as required by the solicitation and where protester's assertions with respect to the awardee's proposal are either unsubstantiated or contradicted by the record.

PROCUREMENT
Bid Protests
Conferences
Justification

B-232151.3 Oct. 25, 1988
88-2 CPD 389

Fact finding conferences are granted in the sole discretion of the General Accounting Office and will not be granted where protester was aware of issue at the time its protest was dismissed, but did not request the conference until its second request for reconsideration.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

Second request for reconsideration of dismissal of protest for failure to timely file a copy of its protest with the contracting officer is denied where protester's evidence of proper filing, not submitted until second request, does not establish that protester met timely filing requirement.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Design specifications
Burden of proof

B-232218 Oct. 25, 1988
88-2 CPD 390

Protester who fails to show that specifications are unduly restrictive has not met its burden where the contracting agency has made a prima facie showing that the specifications are necessary in order to meet its minimum needs.

PROCUREMENT**Specifications****Minimum needs standards****Competitive restrictions****GAO review****B-232218 Con't****Oct. 25, 1988**

Protest that solicitation's commercial item description test requirement is unduly restrictive of competition is denied where the requirement reasonably reflects the contracting agency's minimum needs. The contracting agency's responsibility for determining its needs includes determining the type of testing necessary to ensure product compliance with specifications, and the General Accounting Office will not question such a determination absent a clear showing that it is arbitrary or capricious.

PROCUREMENT**Bid Protests****Bias allegation****Allegation substantiation****Burden of proof****B-232390 Oct. 25, 1988****88-2 CPD 391**

Protester alleging bias on the part of procurement officials must submit virtually irrefutable proof that contracting officials had a specific and malicious intent to harm the protester, since contracting officials are presumed to act in good faith.

PROCUREMENT**Sealed Bidding****Bid guarantees****Responsiveness****Signatures****Sureties**

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

PROCUREMENT B-232791 Oct. 25, 1988
Contract Management 88-2 CPD 392
Contract administration
GAO review

Whether an offeror in fact supplies end items manufactured by a small business is a matter of contract administration which is the responsibility of the contracting agency and not for consideration by General Accounting Office.

PROCUREMENT B-233009 Oct. 25, 1988
Sealed Bidding 88-2 CPD 393
Bid guarantees
Sureties
Substitution

A bidder may not, after bid opening, substitute acceptable individual sureties for ones deemed unacceptable because such a substitution would alter the sureties' joint and several liability under the bid bond, the principal factor in determining the bid's responsiveness to the bid guarantee requirement.

PROCUREMENT B-233220 Oct. 25, 1988
Bid Protests 88-2 CPD 394
GAO procedures
Interested parties
Direct interest standards

Protester is not interested party eligible to challenge propriety of evaluation of awardee's proposal where protester's proposal was eliminated from competitive range, protester did not timely protest elimination of its proposal, and there is another offeror's proposal, besides awardee's, remaining in the competitive range that would be next in line for award; a firm is not considered interested where it would not be in line for award if its protest were sustained.

PROCUREMENT

B-233220 Con't

Bid Protests

Oct. 25, 1988

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Allegations that solicitation amendment was ambiguous and did not allow offerors sufficient additional time before the deadline for submission of proposals are untimely, and will not be considered, where not raised until after the deadline for proposal submission.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Allegation that agency improperly eliminated proposal from competitive range based on improper evaluation is untimely, and will not be considered, where protester was advised of proposal rejection and specific reasons for rejection more than 10 working days prior to filing of protest.

PROCUREMENT**B-232681 Oct. 26, 1988**

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Sample evaluation
Testing**

88-2 CPD 395

Protest challenging alleged failure of contracting agency in connection with follow-on procurement of handguns to advise protester that agency would not exercise option under protester's existing contract unless protester's handgun passed all mandatory tests under request for test samples (RFTS) in follow-on competition is without merit where RFTS clearly indicated that all sample weapons, including protester's, were required to pass all mandatory tests to be considered for award, whether through exercise of an option or through a new contract award.

PROCUREMENT**B-230223.2 Oct. 27, 1988**

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

88-2 CPD 396

Protester has not been prejudiced by agency delay in product qualification process after submission on a quote for a request for quotations, where agency takes 3 weeks to advise protester of what information was needed for the product qualification process, in circumstances where there is (1) a 230-day qualification process that the protester has not successfully challenged and (2) a 270-day delivery requirement.

PROCUREMENT B-230223.2 Con't
Contractor Qualification Oct. 27, 1988
Approved sources
Government delays

Protester has not been prejudiced by agency delay in product qualification process after submission on a quote for a request for quotations, where agency takes 3 weeks to advise protester of what information was needed for the product qualification process, in circumstances where there is (1) a 230-day qualification process that the protester has not successfully challenged and (2) a 270-day delivery requirement.

PROCUREMENT B-231841.2 Oct. 27, 1988
Competitive Negotiation 88-2 CPD 397
Requests for proposals
Amendments
Submission time periods
Effects

Protest that offeror was not allowed sufficient time after alleged delayed receipt of request for proposals amendments to prepare revised proposal is denied where there is no showing agency deliberately attempted to exclude protester, agency received 10 timely proposals and protester had amendment 1 week prior to closing date.

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

Allegation that solicitation was ambiguous as to what was required of contractor is denied where reading of solicitation, as a whole, resolves any ambiguity.

PROCUREMENT B-232307 Oct. 27, 1988
Competitive Negotiation 88-2 CPD 398
Competitive advantage
Incumbent contractors

An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Administrative discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Technical superiority

Protester's argument that as low, technically acceptable offeror it is entitled to award is rejected where the solicitation provided that cost was secondary in importance to technical considerations and agency reasonably concluded that another offeror's technical superiority warranted its higher cost.

PROCUREMENT**B-232667 Oct. 27, 1988****Bid Protests****Federal procurement
regulations/laws****Amendments****Language priority****Translations**

General Accounting Office has no objection to proposed change to Federal Acquisition Regulation Subpart 25.9 prescribing the use of the Inconsistency Between English Version and Translation of Contracts clause.

PROCUREMENT**B-233069; B-233070****Competitive Negotiation****Oct. 27, 1988****Requests for proposals****88-2 CPD 399****Competition rights****Contractors****Exclusion**

Where the agency did not contribute to an incumbent firm's failure to timely receive a solicitation, and the agency took all reasonable steps to furnish the firm the solicitation, the incumbent firm bears the risk of late receipt of the solicitation where adequate competition was otherwise obtained.

PROCUREMENT**B-233108 Oct. 27, 1988****Bid Protests****88-2 CPD 400****Patent infringement****GAO review**

Claims of possible patent infringement do not provide a basis for the General Accounting Office (GAO) to object to an award. Questions of patent infringement generally are not encompassed by GAO's bid protest function, since patent holders have recourse for claims of patent infringement under 28 U.S.C. § 1498 (1982).

PROCUREMENT

B-233108 Con't

**Competitive Negotiation
Offers**

Oct. 27, 1988

Evaluation

Options

Prices

Protest that firm should have been awarded contract because its price for basic requirement was low is dismissed where, in accordance with solicitation terms, the Navy made award on basis of total price including options.

PROCUREMENT

Socio-Economic Policies

**Preferred products/
services**

Domestic products

Applicability

Allegation that contract should not be awarded to a foreign firm due to national security factors is not a valid basis for protest where such an award does not violate any law or regulation.

PROCUREMENT**B-233170 Oct. 27, 1988****Sealed Bidding****88-2 CPD 401****Bids****Late submission****Rejection****Propriety**

Protester's late bid, sent by U.S. Postal Service express mail 2 days prior to bid opening, was properly rejected notwithstanding assurance by Postal Service employees of timely delivery. Late bids that are not sent by registered mail or certified mail 5 days prior to bid opening can only be considered if there was government mishandling after receipt at the government installation. Express mail is not the equivalent of registered or certified mail, and the term "government" in government mishandling means the contracting activity, not the Postal Service.

PROCUREMENT**B-231791 Oct. 28, 1988****Bid Protests****88-2 CPD 402****GAO procedures****Protest timeliness****Deadlines****Constructive notification**

Allegation that awardee's approach to pricing site survey reports and drawings renders its proposal unbalanced is untimely where that argument was not presented in the initial protest and otherwise not raised within the required timeframe.

PROCUREMENT **B-231791 Con't**
Competitive Negotiation **Oct. 28, 1988**
Offers
Evaluation errors
Allegation substantiation

Allegation that contracting agency may have improperly conducted life cycle cost evaluation of maintenance items by not applying a discount factor is denied where calculations provided by agency to General Accounting Office show factor was applied.

PROCUREMENT
Competitive Negotiation
Unbalanced offers
Materiality
Determination
Criteria

Awardee's price proposal is not objectionable as materially unbalanced where both for base year and all option years awardee's proposal represents lowest price to government.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest that awardee of a fixed-price contract submitted an offer that was unreasonably low provides no basis to challenge the contract award. Such a protest essentially questions the awardee's responsibility and does not fall within the exception under which affirmative determinations of responsibility are reviewed.

PROCUREMENT**B-231880.2 Oct. 28, 1988****Bid Protests****88-2 CPD 403****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-231895.2 Oct. 28, 1988****Bid Protests****88-2 CPD 404****GAO procedures****Preparation costs**

There is no basis for recovery of bid preparation or protest costs where protest is either denied on the merits or dismissed as academic.

PROCUREMENT**Sealed Bidding****Invitations for bids****Cancellation****Justification****Price reasonableness**

Contracting officer's decision to cancel invitation for bids based on unreasonableness of bid prices was proper where the low acceptable bid substantially exceeded the government estimate and there is no showing that the decision to cancel was based on bad faith or fraud on the part of contracting officials.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

B-231983 Oct. 28, 1988

88-2 CPD 405

A protester whose best and final offer was rejected as technically unacceptable following discussions is an interested party to protest the adequacy of the discussions.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Even though a protester complained of a lack of specificity during discussions, a protest that discussions were not meaningful because agency failed to disclose all the deficiencies which were listed as reasons for rejection of proposal as technically unacceptable is timely when filed within 10 days of the date the protester learns of the rejection of its proposal.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

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

PROCUREMENT B-231983 Con't
Competitive Negotiation Oct. 28, 1988
Discussion
Misleading information
Allegation substantiation

A protester's allegation that it was misled during oral discussions into believing that its proposal's technical approach was not deficient is without merit, where the record indicates otherwise and the protester's best and final offer includes extensive revisions concerning its technical approach in response to the discussion topics.

PROCUREMENT B-232058 Oct. 28, 1988
Small Purchase Method 88-2 CPD 406
Quotations
Evaluation
Cost/technical tradeoffs
Technical superiority

Agency reasonably determined in small purchase procurement for training services that award to firm quoting the lowest price would not be in the government's best interest because that firm's instructors were not able to present students completing the course with certificates as specified in the request for quotations.

PROCUREMENT B-232082 Oct. 28, 1988
Competitive Negotiation 88-2 CPD 407
Requests for proposals
Defects
Allegation substantiation

Protest that solicitation calling for award of level of effort contract is defective because it does not specify level of effort required and includes an inspection clause inconsistent with level of effort type contract is without merit where, despite reference to award of level of effort contract, solicitation in essence contemplates award of a basic fixed-price services contract.

PROCUREMENT

B-232668.2 Oct. 28, 1988

Bid Protests

88-2 CPD 408

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Where a request for best and final offers for supplies is accompanied by a solicitation amendment calling for prices for new material only and stating that proposals for rebuilt supplies would not be considered, protest of such amendment filed after the closing date for receipt of best and final offers is untimely.

PROCUREMENT

Competitive Negotiation

Contractors

Exclusion

Justification

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical acceptability

Agency acts properly in refusing to accept offer of rebuilt supplies where solicitation stated that "[p]roposals for rebuilt assemblies will not be considered."

PROCUREMENT**B-232756.3 Oct. 28, 1988****Socio-Economic Policies****88-2 CPD 409****Small businesses****Contract awards****Pending protests****Justification**

Agency is not required to withhold award pending appeal of Small Business Administration (SBA) affirmative size determination; appeal ruling reversing size determination applies only if agency receives it before award or if agency in its discretion decides to terminate contract if it receives notice of the ruling after award.

PROCUREMENT**B-232844.2 Oct. 28, 1988****Bid Protests****88-2 CPD 410****GAO procedures****Interested parties****Direct interest standards**

Protester's interest as manufacturer/supplier to a bidder who would be in line for award if the protest were sustained is not sufficient for it to be considered an interested party to challenge the proposed awardee's bid under Bid Protest Regulations which require that a protester be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award.

PROCUREMENT**B-233262 Oct. 28, 1988****Bid Protests****88-2 CPD 411****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

Protest that solicitation did not accurately reflect actual scope of work required based on protester's inspection of site where work is to be performed is untimely where filed after closing date for receipt of initial proposals. Protester's decision to forego filing protest before initial closing date based on alleged oral representation by contracting official that any discrepancies between solicitation and actual work to be performed would be addressed in the evaluation process was unreasonable where the statement was clearly inconsistent with the fundamental principle that a contracting agency may not solicit proposals on one basis and make award on another basis.

PROCUREMENT**B-227607.4 Oct. 31, 1988****Competitive Negotiation****88-2 CPD 412****Offers****Late submission****Acceptance criteria**

Proposal delivered by Federal Express after the closing date for receipt of proposals properly was rejected where late delivery was caused by Federal Express and not the government.

PROCUREMENT**B-229312 Oct. 31, 1988****Payment/Discharge****Shipment****Carrier liability****Burden of proof**

Under a Military-Industry Memorandum of Understanding, notice of loss or damage to a shipment of household goods discovered after delivery of the shipment must be "dispatched" to the common carrier not more than 45 days after delivery of the shipment or the carrier is presumed not to be responsible for the loss or damage. However, the presumption can be overcome by the presentation of evidence substantiating that the loss or damage occurred in transit, and the circumstances of this case indicate that the carrier is responsible for in-transit loss and damage.

PROCUREMENT**B-231815.4 Oct. 31, 1988****Bid Protests****88-2 CPD 413****Fraud****Investigation****Administrative proceedings**

Protest is dismissed where contracting agency has referred the protester's allegations of fraud in the procurement process and bias on the part of the selecting official to the agency's Inspector General for investigation. The protester may reinstate its protest with the General Accounting Office if its allegations are substantiated by the Inspector General's report.

PROCUREMENT B-231960.2 Oct. 31, 1988
 Bid Protests 88-2 CPD 414
 GAO procedures
 Administrative reports
 Comments timeliness

Dismissals of original protest for failure to file comments on agency report in timely manner is affirmed, even though protester received report after date it was due, where, despite notice of its responsibility, protester allowed lapse of more than 10 working days after report was due before either notifying the General Accounting Office of late receipt or filing comments.

PROCUREMENT B-231990 Oct. 31, 1988
 Competitive Negotiation 88-2 CPD 415
 Requests for proposals
 Evaluation criteria
 Cost/technical tradeoffs
 Weighting

Statutory provision which requires that solicitation specify importance of technical quality relative to other evaluation factors is satisfied by solicitation which specifies that award will be made to lowest priced technically acceptable offeror.

PROCUREMENT**B-231990 Con't****Specifications****Oct. 31, 988****Minimum needs standards****Competitive restrictions****GAO review**

Protest that requirement that security systems interface with agency's computer is restrictive of competition is denied even though, as a result of requirement, contractors will be required to purchase interface equipment from a single company, since computer system is already in place, agency has decided to monitor all individual building security systems on the computer and, in the agency's judgment, remote monitoring proposed by protester would result in additional expense and duplication of effort.

PROCUREMENT**Specifications****Minimum needs standards****Determination****Administrative discretion**

Protest that solicitation for design and installation of security systems should be amended is denied where contested provisions of solicitation affect all offerors equally and protester merely disagrees with the agency's determination of its minimum needs and has not shown that that determination is unreasonable.

PROCUREMENT**B-232126 Oct. 31, 1988****Bid Protests****88-2 CPD 416****GAO procedures****Protest timeliness****10-day rule**

Protest of agency's interpretation requirement for one high speed microfiche copier is dismissed as untimely where protester was informed of agency's interpretation of solicitation as requiring one copier, and protest on this basis was not filed within 10 working days of such agency advice.

PROCUREMENT **B-232126 Con't**
 Competitive Negotiation **Oct. 31, 1988**
 Offers
 Evaluation
 Technical acceptability

Where request for proposals (RFP) specifies one high speed microfiche copier, and protester submits proposal for a system with two copiers, the General Accounting Office has no basis to question rejection which was based on RFP requirement.

PROCUREMENT
 Competitive Negotiation
 Requests for proposals
 Terms
 Ambiguity allegation
 Interpretation

Protest that request for proposals was misleading because it did not detail relationship between equipment and staffing requirements is without merit where labor and equipment requirements were clearly specified.

PROCUREMENT **B-232144 Oct. 31, 1988**
 Socio-Economic Policies **88-2 CPD 417**
 Small business
 set-asides
 Use
 Administrative discretion

Contracting officer's decision not to procure required product through a small business set-aside, even though the requirement previously was acquired by set-aside, was not an abuse of discretion where the contracting officer determined, based upon the history of prior procurements, the advice from the agency's small business specialist and agency technical personnel, and an informal market survey, that there was no reasonable expectation that bids from two responsible small business concerns would be received.

PROCUREMENT B-232367 Oct. 31, 1988
Competitive Negotiation 88-2 CPD 418
Use
Criteria

Agency decision to use negotiation procedures, in lieu of sealed bidding procedures, to acquire grounds maintenance services is justified where the contracting officer determines that discussions are necessary to ensure that offerors fully understand the performance methods, manning and equipment requirements necessary to adequately perform the contract.

PROCUREMENT B-232420; B-232420.2
Socio-Economic Policies Oct. 31, 1988
Small businesses
Competency certification
Extension
Administrative discretion

A protester may not reasonably delay submitting a certificate of competency application while waiting for an agency to respond to a Freedom of Information Act request.

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

The General Accounting Office does not review a Small Business Administration's denial of a certificate of competency except in limited circumstances.

PROCUREMENT B-232420; B-232420.2 Con't
Socio-Economic Policies Oct. 31, 1988
Small businesses
Responsibility
Competency certification
GAO review

Where a firm fails to apply for a certificate of competency after the contracting officer refers a nonresponsibility determination to the Small Business Administration (SBA), General Accounting Office (GAO) will not review the contracting officer's determination since such a review would in effect substitute GAO for SBA.

PROCUREMENT B-232517 Oct. 31, 1988
Competitive Negotiation 88-2 CPD 419
Quotations
Evaluation
Prompt payment discounts

Protest that agency failed to consider prompt payment discount is denied because the Federal Acquisition Regulation provides that prompt payment discounts should not be considered in the evaluation of quotations.

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