

GAO

Office of General Counsel



139119

1980

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Unpublished  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

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United States General Accounting Office

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**Charles A. Bowsler**

Comptroller General of the United States

**Milton J. Socolar**

Special Assistant to the Comptroller General

**James F. Hinchman**

General Counsel

**Vacant**

Deputy General Counsel

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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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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**

**Appropriation Availability B-231711 Mar. 28, 1989**

**Purpose availability**

**Fire fighting services**

The fiscal year 1987 appropriation for the National Forest System provides \$263,323,000 of 2-year funds for, among other things, forest firefighting, out of a lump-sum appropriation of \$1,158,294,000. The appropriation language "shall remain available until September 30, 1988" establishes a limit only on the amount of funds available for 2 years, not a limitation on the maximum amount of funds available for firefighting. Thus, obligations incurred for forest firefighting during fiscal year 1987 may be paid from both the 1-year and 2-year funds.

Although Congressional committee reports specified that \$125,000,000 in fiscal year 1988 appropriations was provided to liquidate firefighting obligations incurred in the previous year, the Forest Service, Department of Agriculture, may use more than \$125,000,000 of fiscal year 1988 appropriations for that purpose. Where lump-sum appropriations are involved, indications in committee reports and other legislative history as to how funds should or are expected to be spent do not represent legally binding requirements. 55 Comp. Gen. 307(1975).

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability B-231711 Con't**

**Purpose availability Mar. 28, 1989**

**Lump-sum appropriation**

**Administrative discretion**

Although Congressional committee reports specified that \$125,000,000 in fiscal year 1988 appropriations was provided to liquidate firefighting obligations incurred in the previous year, the Forest Service, Department of Agriculture, may use more than \$125,000,000 of fiscal year 1988 appropriations for that purpose. Where lump-sum appropriations are involved, indications in committee reports and other legislative history as to how funds should or are expected to be spent do not represent legally binding requirements. 55 Comp. Gen. 307(1975).

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability**

**Time availability**

**Time restrictions**

**Fiscal-year appropriation**

The fiscal year 1987 appropriation for the National Forest System provides \$263,323,000 of 2-year funds for, among other things, forest firefighting, out of a lump-sum appropriation of \$1,158,294,000. The appropriation language "shall remain available until September 30, 1988" establishes a limit only on the amount of funds available for 2 years, not a limitation on the maximum amount of funds available for firefighting. Thus, obligations incurred for forest firefighting during fiscal year 1987 may be paid from both the 1-year and 2-year funds.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Budget Process                      B-231711 Con't**  
**Advances                              Mar. 28, 1989**  
**Repayment**  
**Fire fighting services**

The Forest Service may repay the funds that were advanced to it from the Knutson-Vandenberg special trust fund for fighting forest fires. Title 16, United States Code, Section 556d authorizes advances of funds under any of the Forest Service's appropriation accounts for fighting forest fires in emergency cases but does not mandate repayment.

**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**                      **B-232729 Mar. 1, 1989**  
**Relocation**  
**Residence transaction expenses**  
**Hazard insurance**  
**Reimbursement**

A transferred employee, whose residence at his old station remained vacant for a protracted period, was required to pay a higher premium for hazard insurance coverage. The employee claims reimbursement for this increased insurance cost as a real estate expense. Since paragraph 2-6.2d(2)(a) of the Federal Travel Regulations specifically precludes reimbursement of costs of loss and damage insurance, the claim may not be allowed. Mark Kroczyński, 64 Comp. Gen. 306 (1985).

**CIVILIAN PERSONNEL**                      **B-218798.2 Mar. 7, 1989**  
**Travel**  
**Temporary duty**  
**Travel expenses**  
**Privately-owned vehicles**  
**Mileage**

An employee, who was assigned to a nearby temporary audit site for a period of 11 days, used his family automobile for two roundtrips each day because his spouse drove him to work and picked him up after work each day. Under the Federal Travel Regulations and the agency's implementing regulations, the employee is limited to mileage reimbursement for one roundtrip by his privately owned vehicle each day.

**CIVILIAN PERSONNEL****B-231146 Mar. 10, 1989****Travel****Advances****Overpayments****Debt collection****Waiver**

An appointee to a manpower shortage position was issued orders erroneously authorizing reimbursement of temporary quarters subsistence expenses and was given a travel advance. After he incurred expenses in reliance on the erroneous orders the error was discovered. Repayment of the travel advance is waived under 5 U.S.C. § 5584, as amended, since the advance was made to cover the expenses erroneously authorized and the employee actually spent the advance in good faith reliance on the erroneous travel orders.

**CIVILIAN PERSONNEL****B-230472 Mar. 16, 1989****Travel****Lodging****Expenses****Reimbursement**

A transferred employee who performed temporary duty travel en route to his new duty station rented an apartment from a fellow employee who owned and rented apartments as a business sideline. The agency limited the employee's per diem to the subsistence portion (50 percent), since under agency regulations such lodgings must be considered noncommercial. On appeal, we hold that the lodging cost may be allowed since the fact that the owner of commercial lodgings is a friend, acquaintance, or a fellow employee does not automatically make those accommodations noncommercial. See also Peter Lalic, B-227430, dated today.

**CIVILIAN PERSONNEL**

**B-230472 Mar. 16, 1989**

**Travel**

**Temporary duty**

**Travel expenses**

**Reimbursement**

**Amount determination**

The immediate family of a transferring employee accompanied him while he performed temporary duty en route to his new duty station. The agency computed their cost of travel and per diem on a constructive basis using the most direct route airline schedule. On appeal, the agency action is sustained. The Federal Travel Regulations permit indirect travel, but specifically provide that reimbursement for travel is limited to the cost of the most direct usually traveled route between old and new stations with per diem based on that routing.

**CIVILIAN PERSONNEL**

**B-217158.2 Mar. 22, 1989**

**Compensation**

**Severance pay**

**Eligibility**

**CIVILIAN PERSONNEL**

**Compensation**

**Severance pay**

**Eligibility**

**Involuntary separation**

**Determination**

An employee who was involuntarily discharged from his federal position and denied severance pay by his agency under 5 U.S.C. § 5595(b) (1982) based on inefficiency, seeks review of our Claims Group settlement which sustained that agency action. Based on rulings by the Merit Systems Protection Board and Court of Appeals for the Federal Circuit rendered in the claimant's case, the finding of inefficiency is reasonably based and we conclude that our Claims Group action is correct.

**CIVILIAN PERSONNEL**

**B-231764 Mar. 22, 1989**

**Leaves of Absence**

**Leave repurchase**

**Procedures**

**Occupational illnesses/injuries**

Where an employee suffers an on-the-job injury and later receives workers' compensation, the employee must buy back any paid leave taken and be placed in a leave-without-pay status. If the employee is indebted to the agency for the buy back of leave, the agency may not collect such indebtedness by reducing amounts of withholding from an employee's lump-sum annual leave payment. The agency should collect any indebtedness from current pay, lump-sum leave payment, or retirement annuity, as available. The employees may subsequently claim the money spent to buy back the leave as a deduction on his tax return. See Internal Revenue Service Rev. Rul. 79-322.

**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-221944.2 Mar. 24, 1989**

**Pay**

**Additional pay**

**Service credits**

**Constructive service**

**Education**

The Defense Officer Personnel Management Act, Pub. L. No. 96-513, December 12, 1980, 94 Stat. 2904, repealed 37 U.S.C. § 205(a)(7) and (8), which had authorized constructive longevity of service credit for medical and dental officers of the uniformed services based on their years of professional education. The statute contained a savings clause that preserved the credit for service members who had been credited with constructive service upon an original appointment. The savings clause may be extended to those officers who had been discharged from service after receiving the constructive credit and later reappointed in the service after the effective date of the Act.

Pay

Survivor benefits

Annuities

Set-off

Social security

The Survivor Benefit Plan (SBP) is an income maintenance program for the dependents of deceased military retirees, and it was designed to complement social security survivor benefits. The SBP law contains a provision requiring an annuity offset in the amount of the social security survivor benefit to which a widow or widower "would be entitled" predicated on the retiree's military service, regardless of the actual social security entitlement. Hence, the SBP annuity of an Army reservist's widow was subject to a social security offset based on 5 two-week periods of annual active training duty he performed between 1957 and 1961, notwithstanding that her social security benefits were actually based on the retiree's nonmilitary employment.

**PROCUREMENT**

**PROCUREMENT** **B-232402.2 Mar. 1, 1989**  
**Bid Protests** **89-1 CPD 213**  
**Private disputes**  
**GAO review**

The General Accounting Office will not consider a matter that is essentially a dispute between private parties.

**PROCUREMENT** **B-233345.2 Mar. 1, 1989**  
**Bid Protests** **89-1 CPD 214**  
**GAO procedures**  
**Preparation costs**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Preparation costs**

There is no basis for an award of protest costs where the protester withdraws its request for the General Accounting Office to consider the merits of the protest, since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

**PROCUREMENT** **B-234420 Mar. 1, 1989**  
**Bid Protests** **89-1 CPD 215**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest concerning an alleged solicitation deficiency is dismissed as untimely where not raised prior to the closing date for receipt of proposals.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**B-229831.7 Mar. 2, 1989**

**89-1 CPD 218**

Protest involving specific arguments about alleged unreasonable Navy evaluation of each of the personnel resumes proposed by the protester is untimely filed under General Accounting Office (GAO) Bid Protest Regulations when first filed more than 2 months after offeror received all Navy evaluations of its personnel resumes. The fact that the specific arguments were first advanced at an informal GAO conference on protest and the comments thereon does not make the protester's piecemeal presentation timely under the Bid Protest Regulations.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Competitive ranges**

**Exclusion**

**Administrative discretion**

General Accounting Office will not disturb procurement or contract unless there is some evidence that the protester, whether it be small business or not, would have been competitive, but for the contracting agency's actions, particularly where price is an important evaluation factor.

**PROCUREMENT** **B-231775.3 Mar. 2, 1989**  
**Contractor Qualification 89-1 CPD 220**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

General Accounting Office will not review protest challenging contracting agency's affirmative responsibility determination where protester fails to show that determination was based on possible fraud or bad faith or failure to apply definitive responsibility criteria. Fact that awardee has been unable to deliver conforming products to date under contract does not demonstrate that contracting officials acted fraudulently or in bad faith in making the responsibility determination.

**PROCUREMENT** **B-232959.2 Mar. 2, 1989**  
**Competitive Negotiation 89-1 CPD 221**  
**Offers**  
**Evaluation**  
**Technical acceptability**  
**Tests**

Protest that computer terminal offered by the awardee does not comply with mandatory requirements set out in the solicitation is denied where the record does not demonstrate that the procuring agency improperly determined that the awardee's equipment complies with the requirements.



**PROCUREMENT**  
Special Procurement  
Methods/Categories  
Service contracts  
Personal services  
Criteria

B-233303, et al. Con't  
Mar. 2, 1989

Agency awards of contracts to individuals do not create prohibited personal services contracts where, under the terms of the contracts, the contractors' employees will not be subject to direct government supervision.

**PROCUREMENT**  
Competitive Negotiation  
Competitive advantage  
Conflicts of interest  
Allegation substantiation  
Lacking

B-233309 Mar. 2, 1989  
89-1 CPD 223

Agency is not required to exclude a firm from a procurement because of an organizational conflict of interest where the firm did not provide systems engineering or technical direction services for the systems to be supplied and did not prepare the work statement or material leading directly, predictably and without delay to the work statement.

**PROCUREMENT**  
Competitive Negotiation  
Competitive advantage  
Non-prejudicial allegation

The government has no obligation to equalize a competitive advantage that a firm may enjoy because of its own particular business circumstances or because it gained experience under a prior government contract unless the advantage results from a preference or unfair action by the contracting agency.

**PROCUREMENT**

**B-233816.2 Mar. 2, 1989**

**Bid Protests**

**89-1 CPD 225**

**GAO procedures**

**Protest timeliness**

**Significant issue exemptions**

**Applicability**

Untimely protest does not present an issue of widespread significance to the procurement community justifying consideration on the merits where it raises the issue of whether a bid deposit in the form of a certified check should be accepted by the contracting officer even though the IFB does not list that type of instrument among the acceptable forms of payment.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Dismissal of protest for untimeliness is affirmed where protest that bid was improperly rejected was filed more than 10 working days after protester was notified of the rejection and provided with sufficient information to know its basis for protest.

**PROCUREMENT**

**B-233978.2 Mar. 2, 1989**

**Bid Protests**

**89-1 CPD 226**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Prior decision dismissing a protest as untimely is affirmed where the protest was filed in our Office more than 10 working days after the basis of the protest was known.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-234292.2 Mar. 2, 1989**  
**89-1 CPD 227**

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Size determination**  
**Pending protests**  
**Contract awards**

Prior decision dismissing protest of an award to another bidder is affirmed where record shows the Small Business Administration had informed the protester that its challenge to the size status of the awardee was resolved by a decision that the awardee was a small business issued pursuant to a size challenge made by another bidder.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Agency notification**

**B-234301.2 Mar. 2, 1989**  
**89-1 CPD 228**

Protest is dismissed for failure to file a copy with the contracting activity within 1 working day after filing with the General Accounting Office (GAO) since, as of 13 working days after the protest was filed at GAO, contracting activity had not received a copy of the protest and otherwise did not have timely knowledge of protest basis so that it could respond within the statutory 25-day period.

**PROCUREMENT**

**B-234549 Mar. 2, 1989**

**Bid Protests**

**89-1 CPD 229**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest grounds based upon alleged solicitation improprieties--use of request for quotations for procurement of services valued at greater than \$25,000 instead of placing delivery order under existing contract--are untimely when not raised prior to closing date for receipt of quotations.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Protest of contracting agency's alleged failure to synopsize requirement in Commerce Business Daily and limitation of competition to 3 offerors is untimely when raised more than 10 days after protester was aware or should have been aware of these grounds.

**PROCUREMENT**

**Competitive Negotiation**

**Below-cost offers**

**Acceptability**

Submission and acceptance of below cost offers are not legally objectionable. Whether an offeror can meet contract requirements in light of its low offer concerns the agency's affirmative responsibility determination which the General Accounting Office generally does not review.

**PROCUREMENT** B-234549 Con't  
**Contractor Qualification** Mar. 2, 1989  
**Responsibility**  
**Contracting officer findings**  
**Pre-award surveys**  
**Administrative discretion**

Whether to conduct a preaward survey is a matter within the contracting officer's broad discretion and the allegations that no survey or proper determination of responsibility were made of awardee, are not sufficient as bases for protest.

**PROCUREMENT** B-234616 Mar. 2, 1989  
**Sealed Bidding** 89-1 CPD 230  
**Bids**  
**Responsiveness**  
**Acceptance time periods**  
**Deviation**

Where a bid offers a minimum bid acceptance period of 60 days in response to a sealed bid solicitation requiring 90 days, the bid is nonresponsive and may not be corrected after bid opening.

**PROCUREMENT** B-232500.4 Mar. 3, 1989  
**Bid Protests** 89-1 CPD 231  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration of decision holding that agency failed to conduct meaningful discussions is denied where the requestor fails to show any error of fact or law that would warrant reversal of or modification of prior decision, and merely reiterates arguments considered in the initial decision.



**PROCUREMENT** **B-233571 Con't**  
**Competitive Negotiation** **Mar. 3, 1989**  
**Discussion**  
**Misleading information**  
**Allegation substantiation**

Protest that discussions with the contracting agency misled the protester into believing that adding other topics would not substantially improve its original proposal focusing on only one critical physical process affecting wetlands loss is without basis where the record shows that the agency clearly expressed to the protester its concern with regard to the narrow focus of its proposed research and suggested adding other topics, and the protester's response indicates that it understood the agency's concern.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation errors**  
**Evaluation criteria**  
**Application**

Protest that proposals were not evaluated on the basis of the RFP's stated evaluation criteria is denied where the record indicates that the evaluation of proposals was properly conducted in accordance with the RFP's evaluation criteria.



**PROCUREMENT**

**B-233384 Mar. 6, 1989**

**Competitive Negotiation**

**89-1 CPD 240**

**Contract awards**

**Personnel**

**Substitution**

**Propriety**

Awardee's replacement of two key personnel in best and final offer (BAFO) was not a major change so as to indicate the unacceptability of the initial proposal, and thus is unobjectionable, where the initial proposal was the highest-rated and the substitution of the two employees raised the proposal score minimally; substitution obviously did not constitute major proposal revision.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Personnel**

**Adequacy**

Protest that awardee improperly was permitted to propose part-time key personnel is denied where request for proposals specified that part-time employees were acceptable under "unusual circumstances," and agency reasonably determined that unusual circumstances were present for awardee's two proposed part-time key personnel.

PROCUREMENT                      B-233384 Con't  
Competitive Negotiation      Mar. 6, 1989  
Offers  
    Evaluation errors  
    Evaluation criteria  
    Application

Where there is no evidence that evaluation was inconsistent with the stated evaluation criteria, or otherwise improper, allegation that protester was prejudiced by the short duration of the evaluation is without merit; the contracting agency, not the General Accounting Office, is in the best position to determine the amount of time necessary to conduct a satisfactory evaluation.

PROCUREMENT  
Competitive Negotiation  
    Requests for proposals  
    Evaluation criteria  
    Competitive restrictions  
    Allegation substantiation

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

Allegation of competitive prejudice as a result of solicitation's failure to indicate that price would be equally weighted with technical factors in evaluation of proposals is denied; where a solicitation does not expressly state the relative importance of price versus technical factors, price and technical factors are considered to be approximately equal in importance.

**PROCUREMENT** **B-233384 Con't**  
**Competitive Negotiation Mar. 6, 1989**  
**Technical evaluation boards**  
**Qualification**  
**GAO review**

Composition of technical evaluation board is within the discretion of the agency, and where protester has not shown fraud, bad faith, conflict of interest, or actual bias, there is no basis to question composition of the panel.

**PROCUREMENT**  
**Contractor Qualification**  
**Approved sources**  
**Alternate sources**  
**Approval**  
**Government delays**

Award to qualified source for critical aviation part was not unreasonable where the protester, which offered an alternate product, failed to furnish an adequate technical data package in support of its product approval request, and where the agency reasonably determined that time would not permit the agency to evaluate the protester's alternate product and still make an award in time to fulfill its requirements.

**PROCUREMENT**

**B-233740.2 Mar. 6, 1989**

**Bid Protests**

**89-1 CPD 242**

**GAO procedures**

**GAO decisions**

**Reconsideration**

**Comments timeliness**

Protester's late receipt of an agency report is not a basis to reopen a protest that was dismissed because of the protester's failure to file comments or express continued interest in the protest within 10 working days after receipt of the agency report. The protester was specifically notified of the need to advise the General Accounting Office of its failure to receive the report when due in a written acknowledgement of its protest.

**PROCUREMENT**

**B-233871 Mar. 6, 1989**

**Sealed Bidding**

**89-1 CPD 244**

**Bid guarantees**

**Responsiveness**

**Contractors**

**Identification**

There is no discrepancy between the legal entity named on a bid and a bid bond where the principal on the bid bond is an operating unit of the nominal bidder.

**PROCUREMENT**

**Sealed Bidding**

**Bid guarantees**

**Responsiveness**

**Signatures**

**Authority**

Protest that awardee's project manager did not have authority to sign the firm's bid is denied where the bid bond was signed by the company's vice president.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-232139.2 Mar. 7, 1989**  
**89-1 CPD 245**

Where subsequent facts concerning protested evaluation criterion show dispositively that protester will not be prejudiced by the protested evaluation criterion, request for reconsideration concerning that provision is dismissed.

Request for reconsideration of protest previously dismissed as academic challenging solicitation requirement relaxed by amendment is denied, where agency has reasonably justified solicitation requirement, as amended, and protester fails to rebut agency's showing.

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

**B-232139.3 Mar. 7, 1989**  
**89-1 CPD 246**

Protest alleging solicitation deficiencies which is not filed before the closing date for receipt of proposals is untimely and not for consideration on the merits.

**PROCUREMENT**  
**Competitive Negotiation**  
**Contract awards**  
**Administrative discretion**

**B-232307.2 Mar. 7, 1989**  
**89-1 CPD 247**

Protester's argument that its offer was substantially equal to the awardee's and thus its lower costs entitled it to award is rejected where record shows that awardee's proposal was reasonably regarded as technically superior to the protester's and protester's lower labor rates were considered unrealistic.



**PROCUREMENT** **B-233561 Mar. 7, 1989**  
**Competitive Negotiation 89-1 CPD 250**  
**Offers**  
**Cost realism**  
**Evaluation**  
**Administrative discretion**

Agency cost realism analysis had a reasonable basis where the agency reviewed awardee's responses to agency cost discussions in light of the government estimate, verified awardee's overhead and general and administrative rates with the Defense Contract Audit Agency and verified awardee's past performance under similar cost reimbursement contracts; awardee was able to demonstrate to agency's satisfaction how it could perform contract at the costs proposed.

**PROCUREMENT** **B-233926.3 Mar. 7, 1989**  
**Bid Protests 89-1 CPD 251**  
**GAO procedures**  
**Interested parties**

The General Accounting Office will not consider a protest from a firm subject to debarment proceedings since the firm is ineligible for a contract award and, therefore, is not an interested party to protest.

**PROCUREMENT** **B-234016; B-234017**  
**Bid Protests Mar. 7, 1989**  
**Moot allegation 89-1 CPD 252**  
**GAO review**

Protest that incumbent contractor for waste disposal services is at competitive disadvantage because only it allegedly knows that landfill disposal fees which firms are liable for under contract could increase significantly during contract period is academic, where agency by amendment advises all potential bidders of this and bidders thus will be competing on equal basis.



**PROCUREMENT** **B-233701 Con't**  
**Contractor Qualification** **Mar. 8, 1989**  
**Licenses**  
**Applicability**

Where solicitation licensing requirement pertains only to private detective agencies and awardee is a qualified individual eligible for award, who is not a detective agency, contracting officer properly made award without consideration of compliance with licensing requirements.

**PROCUREMENT** **B-232577.2 Mar. 9, 1989**  
**Bid Protests** **89-1 CPD 257**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**  
**Comments timeliness**

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reversal**  
**Additional information**

Dismissal of protest for failure to file a copy with the contracting officer within 1 day after filing with the General Accounting Office (GAO) is reversed where record indicates that because of overseas location of contracting activity it was physically impossible to promptly effect delivery even by air courier service and the protester made a good faith effort to comply with prompt filing requirement by sending a telex and a copy of the protest by registered mail, return receipt requested, to the contracting officer on the same day that it filed its protest with GAO.



**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for bids**  
**Competition rights**  
**Contractors**  
**Exclusion**

**B-233986 Con't**  
**March 9, 1989**

The fact that a bidder may not have received a solicitation amendment until after bid opening is irrelevant absent evidence that the failure to receive the amendment in a timely fashion resulted from a deliberate attempt by the contracting agency to exclude the bidder from competition or that the agency failed to furnish the amendment inadvertently after the bidder availed itself of every reasonable opportunity to obtain the amendment.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

**B-234302 Mar. 9, 1989**  
**89-1 CPD 260**

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**Architect/engineering services**  
**Contract awards**  
**Administrative discretion**

Protester is not an interested party to object to selection of another firm for negotiation of an architect-engineering contract where it would not be in line for award even if the other firm were eliminated from the competition.



**PROCUREMENT**

**B-233438 Mar. 10, 1989**

**Competitive Negotiation**

**89-1 CPD 263**

**Contract awards**

**Administrative discretion**

**Cost/technical tradeoffs**

**Cost savings**

A contracting officer properly may select a proposal with a lower technical rating to take advantage of its lower cost, even though cost was the least important evaluation criterion, where he reasonably determines that the cost premium involved in making an award to the higher rated, higher cost offeror is not justified in light of the acceptable level of technical competence available at the lower cost.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Cost realism**

**Evaluation**

**Administrative discretion**

Agency realism analysis of successful offeror's cost proposal was reasonable. Although awardee estimated the cost of the contract as much less than the protester, the awardee's proposed technical and management approach was acceptable and the agency determined that the firm's proposed cost was reasonable for the proposed approach.



**PROCUREMENT**  
**Competitive Negotiation**  
**Conflicts of interest**  
**Competition rights**  
**Contractors**  
**Exclusion**

**B-233369; B-233369.2**  
**Mar. 13, 1989**  
**89-1 CPD 267**

Although an agency may exclude an offeror from the competition because of an apparent conflict of interest in order to protect the integrity of the competitive procurement system, even if no actual impropriety can be shown, a discussion of a procurement at an out of office meeting between the chairman of the technical evaluation team and a principal representative of an offeror shortly prior to the issuance of the solicitation is not sufficient reason to exclude that offeror from the competition in the absence of evidence that information was improperly disclosed at this meeting or evidence of possible bias or preferential treatment on the part of the evaluators.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Personnel**  
**Adequacy**

As a general rule, offerors cannot receive an award under a request for proposals if they do not propose key personnel who meet minimum requirements. Nevertheless, where an agency ascertains during the course of a protest that the selected firm failed to address two of 23 required key personnel positions, but determines after reevaluating the offeror's proposal that the award selection is unaffected, the award will not be disturbed, notwithstanding this deficiency, where the agency reasonably determines that the omission of the particular two personnel is a relatively minor item in the overall evaluation, which otherwise clearly establishes the offeror's entitlement to award.

**PROCUREMENT**

**Competitive Negotiation**

**Requests for proposals**

**Evaluation criteria**

**Personnel experience**

**B-233369; B-233369.2 Con't**

**Mar. 13, 1989**

Letters of commitment from an offeror's proposed key personnel, in which they grant permission for their names to be used on a proposal and agree to negotiate in good faith should the offeror receive the award, can be accepted in satisfaction of a request for proposal's requirement for a firm commitment from key personnel, where "firm commitment" is undefined and the agency is reasonably assured the employees are committed to the offeror. Binding bilateral agreements between the offeror and the key personnel are not required.

A request for proposals, which includes a key personnel clause, does not require designated key personnel to be permanent, or even that the contractor commence performance with the personnel listed in the proposal, so long as the contractor provides personnel as qualified as those listed in the proposal and obtains agency approval for all substituted personnel.

**PROCUREMENT**

**Competitive Negotiation**

**Requests for proposals**

**Evaluation criteria**

**Prior contracts**

**Contract performance**

There is no legal basis for favoring a firm with a presumption on the basis of past performance; an offeror is required to demonstrate its capabilities in its proposal.

**PROCUREMENT** B-233702 Mar. 13, 1989  
Competitive Negotiation 89-1 CPD 268  
Contract awards  
Administrative discretion  
Cost/technical tradeoffs  
Cost savings

Contracting agency may accept a technically lower-rated proposal to take advantage of its lower labor rates, even though cost is the least important evaluation criterion, so long as agency reasonably decides that the cost premium involved in an award to a higher-rated, higher-cost offeror is not warranted in light of the acceptable level of technical competence available at the lower cost.

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

Award on an initial proposal basis, without discussions, is proper where the solicitation advises offerors of this possibility, and the competition clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government.

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

Since an agency's cost realism analysis of a time and materials contract necessarily involves the exercise of informed judgment, the General Accounting Office will not disturb the results of that analysis unless it clearly lacks a reasonable basis.

**PROCUREMENT**  
**Bid Protests**  
**GAO authority**

**B-233789 Mar. 14, 1989**  
**89-1 CPD 269**

Protest against the Department of Housing and Urban Development's procedure for prequalifying property appraisers and inspectors under the single family home direct endorsement mortgage insurance program is not for consideration under General Accounting Office's bid protest function because it does not involve a solicitation or the award or proposed award of a contract.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**

Where protester objects to the contracting agency's use of small purchase procedures to acquire credit analysis services but does not protest a particular procurement, and has not attempted to become certified to participate in the program, protester is not an interested party.

**PROCUREMENT**  
**Bid Protests**  
**Bias allegation**  
**Allegation substantiation**  
**Burden of proof**

**B-233974 Mar. 14, 1989**  
**89-1 CPD 270**

Protest that contracting agency was biased in favor of the awardee is denied where the agency has reasonably explained the actions allegedly indicating bias in connection with the current procurement and the record contains no evidence that any bias adversely affected the protester's competitive position.

**PROCUREMENT** **B-234004 Mar. 14, 1989**  
**Bid Protests** **89-1 CPD 271**  
**Allegation substantiation**  
**Lacking**  
**GAO review**

Protest that agency should not be allowed to reject protester's nonresponsive bid because it led the firm to believe it would receive award is without merit where agency did not actually enter into a contract with the protester.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Modification**  
**Propriety**

A bid accompanied by an altered bid bond--where the penal sum of the bond has been typed over a whited-out figure without evidence in the bid documents or the bond itself that the surety had consented to the alteration--properly was rejected as nonresponsive.

**PROCUREMENT** **B-232029.2 Mar. 15, 1989**  
**Competitive Negotiation** **89-1 CPD 272**  
**Offers**  
**Evaluation**  
**Technical acceptability**

Protester's contention that agency improperly found its technical proposal to be marginal in areas of management and operations is denied where record shows that agency reasonably was concerned that the protester's proposal concentrated too many tasks under the project manager, and that the proposal lacked detail in its operation plan, leading to determination that proposal was deficient in these areas.



**PROCUREMENT** **B-232103.2 Con't**  
**Competitive Negotiation** **Mar. 15, 1989**  
**Offers**  
**Competitive ranges**  
**Exclusion**  
**Administrative discretion**

Protest that factors outside the technical merit of protester's proposal improperly contributed to its exclusion from the competitive range is denied where protester fails in its burden of proof to establish bias or bad faith.

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

Protest of inclusion of only one offeror in the competitive range is denied where record supports agency's determination that there was no reasonable chance protester could correct the deficiencies in its proposal through discussions.

**PROCUREMENT**                      B-233411 Mar. 15, 1989  
Competitive Negotiation      89-1 CPD 274  
Contract awards  
    Administrative discretion  
    Cost/technical tradeoffs  
    Technical superiority

**PROCUREMENT**  
Competitive Negotiation  
Contract awards  
    Fixed-price contracts  
    Cost/technical tradeoffs  
    Justification

Award for security guard services at a price 14 percent higher than the protester's does not appear unreasonable where awardee's proposal was considered technically superior to protester's proposal in areas related to understanding of the solicitation requirements, experience of shift supervisors, and proposed training courses and where the guard services are critical to the agency mission.

**PROCUREMENT**  
Competitive Negotiation  
Discussion  
    Adequacy  
    Criteria

An agency, during discussions, does not have to discuss elements of a proposal that are acceptable, albeit lower-ranked, in comparison to higher-ranked elements in another proposal.

**PROCUREMENT** **B-233844; B-233845**  
**Socio-Economic Policies** **Mar. 15, 1989**  
**Small business** **89-1 CPD 275**  
**set-asides**  
**Use**  
**Administrative discretion**

Protest of the reversal of agency decision to offer a requirement for counseling services to the Small Business Administration for award to the protester under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. IV 1986), is dismissed since decision was based on a determination that services were no longer needed because work could be performed by in-house personnel, which is a matter of executive policy.

**PROCUREMENT** **B-234433 Mar. 15, 1989**  
**Bid Protests** **89-1 CPD 276**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

A protester challenging a contract award is not an interested party under General Accounting Office's Bid Protest Regulations, and its protest is therefore dismissed, where it would not be in line for award if its protest were upheld.



**PROCUREMENT** B-233489; B-233489.2 Con't  
**Competitive Negotiation** Mar. 16, 1989  
**Offers**  
**Competitive ranges**  
**Exclusion**  
**Administrative discretion**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical acceptability**

Agency determination that protester's proposal was technically unacceptable and not in the competitive range is reasonable where prior to submission of proposals, in response to protester's question, the agency advised the protester in writing that under the agency's interpretation of the solicitation the protester's intended technical approach was not acceptable, and protester nevertheless submitted a proposal that both used the rejected approach and failed to comply with other mandatory technical requirements.

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

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



**PROCUREMENT** B-233939 Mar. 16, 1989  
**Specifications** 89-1 CPD 282  
**Ambiguity allegation**  
**Specification interpretation**

Protest that packaging specification in solicitation is unspecific and overly complex is denied where the solicitation, read as a whole, reasonably describes the packaging requirements necessary to meet the agency's minimum needs.

**PROCUREMENT** B-234110 Mar. 16, 1989  
**Bid Protests** 89-1 CPD 283  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest filed after bid opening contending that bid preparation period allotted by invitation for bids was too short to allow preparation of a competitive bid is untimely where protester had sufficient time to raise the issue before bid opening.

**PROCUREMENT**  
**Bid Protests**  
**Private disputes**  
**GAO review**

General Accounting Office will not consider a protest that the protester lost the competition because, in preparing its bid, the protester used several high quotations from potential subcontractors the protester now alleges colluded with the awardee to prevent the protester from underbidding the awardee. Since the government had no part in selecting the subcontractors or in the subcontractors' actions, the matter essentially involves a dispute between private parties, and is not a matter to be resolved through the protest process.



**PROCUREMENT**

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

**B-233835 Con't  
Mar. 17, 1989**

Allegations that awardee does not intend to perform the contract in compliance with the specifications and domestic manufacture requirements are dismissed as they involve contract administration and therefore are not for consideration under General Accounting Office's Bid Protest Regulations.

**PROCUREMENT**

**Contractor Qualification  
Responsibility  
Contracting officer findings  
Affirmative determination  
GAO review**

Protest challenging awardee's ability to properly perform under the contract is dismissed as it concerns the awardee's responsibility. General Accounting Office will not consider a protest of an agency's affirmative determination of responsibility absent a showing of fraud or bad faith on the part of the procurement officials, or an allegation that definitive responsibility criteria were not applied.

**PROCUREMENT**

**B-234062 Mar. 17, 1989**

**Sealed Bidding**

**89-1 CPD 285**

**Bids**

**Late submission**

**Acceptance criteria**

**Government mishandling**

Government mishandling was not the sole or paramount reason for the late receipt of a bid which was hand delivered to an installation postal facility 14 minutes prior to bid opening where the bid envelope was not marked with any information identifying it as a bid and, as a result, the bid was transported to the bid opening site 4 hours later by the agency's regular mail delivery, rather than by expedited mail delivery; the bid therefore was properly rejected as late.

**PROCUREMENT**

**B-219495.2; B-233323.2**

**Payment/Discharge**

**Mar. 20, 1989**

**Federal procurement regulations/laws**

**Amendments**

**Audits**

**Commercial carriers**

General Accounting Office has no comments on Federal Acquisition Regulation (FAR) case No. 88-56, a proposed rule to add paragraph (c) to FAR section 47.104-4 and a contract clause at FAR section 52.247-65 concerning the submission of commercial freight bills to the General Services Administration for audit.

**PROCUREMENT** **B-219495.2; B-233323.2 Con't**  
**Payment/Discharge** **Mar. 20, 1989**  
**Federal procurement regulations/laws**  
**Revision**  
**Prices**  
**Certification**

General Accounting Office has no comments on Federal Acquisition Regulation (FAR) case No. 85-32, a proposed rule to revise FAR Parts 14, 15, and 52 to implement Public Law Nos. 98-577 and 98-591, which require offerors in certain noncompetitive acquisitions to certify that the prices offered to the government for parts or components sold to the public are not higher than the offerors' lowest commercial prices, or justify higher prices in writing.

**PROCUREMENT** **B-230529.4; B-233708**  
**Competitive Negotiation** **Mar. 20, 1989**  
**Sureties**  
**Acceptability**

**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Sureties**  
**Acceptability**

General Accounting Office comments on a change proposed in Federal Acquisition Regulation (FAR) case No. 88-57 to the requirements of FAR Part 28 concerning the use of individual sureties, and the proposed addition of a clause at FAR section 52, 228-11, by noting that it is required to study and report to Congress on the problems incident to the use of individual sureties; GAO therefore suggests that action on a final rule changing existing requirements be deferred pending completion of its study.



**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**

**B-234572 Mar. 20, 1989**  
**89-1 CPD 287**

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

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

Protester is not an interested party to protest awards made to the low bidders where procuring agency advises that protester was rejected as nonresponsive, and has not protested this determination, and the protester was not the next low bidder, because it would not be in line for an award even if we sustained the protest.

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

**B-234633 Mar. 20, 1989**  
**89-1 CPD 288**

Protest that the contracting agency improperly amended the closing data for receipt of proposals, as well as certain solicitation requirements and evaluation criteria, subsequent to the initially established closing date is dismissed as untimely since the objections, which are alleged solicitation improprieties, were not protested by the next closing date following the issuance of the amendments as required by the General Accounting Office's Bid Protest Regulations.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Ambiguous prices**  
**Rejection**  
**Propriety**

**B-233679 Mar. 21, 1989**  
**89-1 CPD 291**

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Ambiguous prices**

Where a bid is subject to two interpretations, under only one of which it would be low, it is ambiguous and must be rejected.

**PROCUREMENT**  
**Sealed Bidding**  
**Bonds**  
**Justification**  
**GAO review**

**B-233983 Mar. 21, 1989**  
**89-1 CPD 289**

**PROCUREMENT**  
**Sealed Bidding**  
**Performance bonds**  
**Justification**

Protest that bonding requirement in an invitation for bids for custodial services is unduly restrictive of competition is without merit since it is within agency's discretion to require bonding even in a small business set-aside and the General Accounting Office will not upset such a determination made reasonably and in good faith. Agency's requirement for uninterrupted performance of custodial services is itself a reasonable basis for imposing bonding requirements in a solicitation where the agency has had prior experience indicating this may be a problem.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-234395.2 Mar. 21, 1989**  
**89-1 CPD 290**

Prior decision dismissing protest is affirmed where request for reconsideration does not establish any factual or legal errors in the prior decision.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**

**B-231857.2 Mar. 22, 1989**  
**89-1 CPD 292**

Technically unacceptable offeror is not an "interested party" under General Accounting Office's Bid Protest Regulations to challenge legal status of proposed awardee, where other acceptable offers are in the competitive range and the protester would be ineligible for award in the event the protest were sustained.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Adequacy**  
**Criteria**

Discussions were meaningful where agency directed protester to the deficient area of its proposal and, after first round of discussions amended the solicitation in a manner that further communicated the agency's concern with protester's technical approach.

**PROCUREMENT**

**Competitive Negotiation  
Discussion reopening  
Propriety**

**B-231857.2 Con't**

**Mar. 22, 1989**

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 brought up to an acceptable level.

**PROCUREMENT**

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

A technically unacceptable proposal need not be considered, irrespective of its low price.

**PROCUREMENT**

**Competitive Negotiation  
Offers  
Technical acceptability  
Negative determination  
Propriety**

Agency determination to reject protester's proposal as technically unacceptable after evaluation of second best and final offer is reasonable, where agency conducted two rounds of discussions and amended the solicitation to advise offerors what was required to meet mandatory technical requirements for proposed layberthing facility, and incumbent protester nevertheless submitted a second best and final offer with design load engineering calculations based upon an approach that was different from the required approach.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid guarantees**  
**Sureties**  
**Acceptability**  
**Information submission**

**B-233534 Mar. 22, 1989**  
**89-1 CPD 293**

An agency may not automatically reject the proposal of an offeror on a negotiated procurement solely for the reason that the individual sureties, who executed the bid guarantee included in the proposal, fail to identify one outstanding performance bond obligation, where this failure to disclose apparently resulted from a good faith error and not as part of any continuing pattern of nondisclosures by the individual sureties and where the nondisclosure should not cause the contracting officer to be concerned about the sufficiency of the sureties' net worth to cover the guarantee bond obligations.

**PROCUREMENT**  
**Contract Management**  
**Contract administration**  
**Options**  
**Use**  
**GAO review**

**B-233539 Mar. 22, 1989**  
**89-1 CPD 294**

Protest that agency improperly exercised an option to extend the term of a contract is denied where the protester has not shown that the agency failed to follow applicable regulations or that the agency's determination to exercise the option was unreasonable.

**PROCUREMENT**  
Contract Management  
Contract modification  
GAO review

B-233539 Con't  
Mar. 22, 1989

General Accounting Office will not consider protests against contract modifications as they involve matters of contract administration unless the contract was awarded with the intent to modify it or the modifications are beyond the scope of the original contract.

**PROCUREMENT**  
Bid Protests  
GAO procedures  
Purposes  
Competition enhancement

B-234106 Mar. 22, 1989  
89-1 CPD 295

Protest that agency should have made a sole-source award to protester instead of soliciting competitive offers for work will not be reviewed by General Accounting Office, since purpose of bid protest function is to enhance, not restrict competition.

**PROCUREMENT**  
Competitive Negotiation  
Contract awards  
Propriety

Protest that work under solicitation should have been ordered under protester's existing contract is denied where record shows that work was not intended to be included in protester's contract as awarded.

**PROCUREMENT** **B-231122.2 Mar. 23, 1989**  
**Bid Protests** **89-1 CPD 296**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protest of allegedly restrictive solicitation provision filed after bid opening is untimely.

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

Protest of agency's nonresponsibility determination filed more than 10 days after protester knew of the determination is untimely.

**PROCUREMENT** **B-231998.2 Mar. 23, 1989**  
**Bid Protests** **89-1 CPD 297**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

Request for reconsideration is denied where supporting arguments are untimely presented, in error, or based upon information which was previously available to the protester but not presented during consideration of the initial protest.

**PROCUREMENT**  
**Bid Protests**  
**Dismissal**  
**Definition**

**B-234644.2 Mar. 23, 1989**  
**89-1 CPD 298**

Protest that procurement has been improperly set aside for small business concerns is dismissed for failure to state a basis of protest where protester does not allege that the agency had no reasonable expectation that bids from two responsible small business concerns would be received and that award would be made at a reasonable price.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

**B-225843.6 Mar. 24, 1989**  
**89-1 CPD 299**

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Responsibility**  
**Affirmative determination**  
**GAO review**

General Accounting Office (GAO) does not review contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procuring officials or that definitive responsibility criteria have not been applied. Allegation that such a determination simply was arbitrary is not sufficient to invoke GAO review.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Contract awards**  
**Pending protests**  
**Justification**

**B-225843.6 Con't**  
**Mar. 24, 1989**

Contracting officer's award of a contract following an initial determination by the Small Business Administration (SBA) regional office that the proposed awardee was a small business concern, without waiting for the result of an appeal to the SBA's Office of Hearings and Appeals, is proper since there is no requirement that the contracting officer withhold award during the appeal period.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small businesses**  
**Size determination**  
**GAO review**

The Small Business Administration has conclusive authority to decide small business size status for federal procurement purposes.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Adequacy**  
**Criteria**

**B-233569 Mar. 24, 1989**  
**89-1 CPD 300**

Discussions were not meaningful with respect to protester's proposed data entry staffing level where the only question bearing on the agency's specific concern in this regard referred to "resources," a term with a broad meaning in the context of the procurement; this question was, therefore, too general and was not sufficient to satisfy regulatory requirements that agency point out deficiencies in proposals in the competitive range.



**PROCUREMENT** **B-234700 Mar. 24, 1989**  
**Socio-Economic Policies 89-1 CPD 302**  
**Small businesses**  
**Preferred products/services**  
**Certification**

A bid on a total small business set-aside solicitation that contains no binding commitment on the part of the bidder that it will furnish end products manufactured by a small business is nonresponsive, notwithstanding that the bidder is a small business manufacturer of the products called for by the solicitation.

**PROCUREMENT** **B-234772 Mar. 24, 1989**  
**Bid Protests 89-1 CPD 303**  
**GAO procedures**  
**Protest timeliness**  
**10-day rule**

Protest filed with General Accounting Office (GAO) more than 10 working days after protester received contracting officer's denial of its agency-level protest, is dismissed as untimely. Fact that in the interim protester filed a protest with the Department of Agriculture Board of Contract Appeals which dismissed it as not involving a matter within the Board's jurisdiction, does not toll the time for filing with GAO.

**PROCUREMENT** **B-234805 Mar. 24, 1989**  
**Competitive Negotiation 89-1 CPD 304**  
**Hand-carried offers**  
**Late submission**  
**Acceptance criteria**  
**Acceptance**

Offer delivered by United States Postal Service express mail the day after it was due properly was rejected, since a late hand-carried offer can be considered only if mishandling by the procuring agency was the paramount cause of the late receipt.

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

**B-234820 Mar. 24, 1989**  
**89-1 CPD 305**

Evidence of the authority of a surety's agent to sign a bid bond on behalf of the surety generally must be furnished with a bid prior to bid opening; failure to timely furnish such evidence renders bid nonresponsive.

**PROCUREMENT**  
Bid Protests  
GAO procedures  
Preparation costs

**B-219998.9; B-233697**  
**Mar. 27, 1989**  
**89-1 CPD 306**

Claim for proposal preparation costs is denied where cancellation of solicitation was proper.

**PROCUREMENT**  
Competitive Negotiation  
Requests for proposals  
Cancellation  
Justification  
GAO review

Protest against Army's cancellation of a request for proposals for dining services is denied where the contracting officer reasonably determined that the solicitation should be canceled because a lack of funds required that the agency reduce its requirements by 28 percent.

**PROCUREMENT** B-219998.9; B-233697 Con't  
Competitive Negotiation Mar. 27, 1989  
Requests for proposals  
Cancellation  
Resolicitation  
Notification

Regulation which requires that a resolicitation of a canceled solicitation be issued to all firms originally solicited cannot be construed as requiring the size eligibility of a particular bidder to dictate whether a resolicitation is restricted to small business or not.

**PROCUREMENT** B-231545.3 Mar. 27, 1989  
Bid Protests 89-1 CPD 307  
Bias allegation  
Allegation substantiation  
Burden of proof

Protest that agency was biased against protester in its evaluation of proposals is denied where protester does not show that evaluation of its proposal was unreasonable but merely speculates that members of proposal evaluation review committee were biased because of an earlier contract dispute.

**PROCUREMENT**  
Contract Management  
Contract modification  
GAO review

Protest that procuring agency intends to modify contract to include requirement for operation of newly constructed dining facility that should have been included in the competition for that contract is denied where at the time of award agency did not know when construction of facility would be completed and agency is now operating facility with government employees.



**PROCUREMENT** B-233947.2 Con't  
Contract Management Mar. 27, 1989  
Contract administration  
Convenience termination  
Resolicitation  
GAO review

Termination of contract and resolicitation with amended specification was proper where contracting agency determined that, while the awardee's proposed logic analyzer did not comply with the mandatory specification requirements, it did satisfy the agency's minimum needs, and that, therefore, the specification had overstated the agency's needs.

**PROCUREMENT** B-234244 Mar. 27, 1989  
Competitive Negotiation 89-1 CPD 312  
Contract awards  
Multiple/aggregate awards  
Propriety

Since solicitation for different types of furniture provided that award would be made in the aggregate by group for all the geographical delivery zones within the group, the agency properly made award to the firm whose offer was low when the prices for all the zones within the group were totaled as opposed to the protester whose offer was low for only one of the three zones within the group.

**PROCUREMENT** B-231822.3 Mar. 28, 1989  
Competitive Negotiation 89-1 CPD 313  
Offers  
Evaluation  
Technical acceptability

Protest that awardee's equipment fails to technically conform to solicitation's specifications is denied where agency demonstrates that it reasonably determined that awardee's proposed equipment and approach conformed to the terms of the solicitation.

**PROCUREMENT**

**B-233492.2 Mar. 28, 1989**

**Bid Protests**

**89-1 CPD 314**

**GAO procedures**

**GAO decisions**

**Reconsideration**

Protest dismissed as untimely will not be reconsidered when request for reconsideration does not establish any factual or legal errors in the prior decision.

**PROCUREMENT**

**B-233579 Mar. 28, 1989**

**Noncompetitive Negotiation 89-1 CPD 315**

**Contract awards**

**Sole sources**

**Propriety**

A contracting agency has a reasonable basis for determining that the manufacturer of the only acceptable and tested antenna in its inventory is the only source that can meet its technical and schedule requirements for an interim purchase of antennas to meet operational requirements pending delivery of replacement antennas under an ongoing fully competitive procurement, where the agency reasonably finds that it must test the antenna proposed by the protester before it can approve this source and the testing of the protester's antenna cannot be completed to allow for timely delivery.

**PROCUREMENT** B-233589; B-233589.2  
**Socio-Economic Policies** Mar. 28, 1989  
**Small business** 89-1 CPD 316  
**set-asides**  
**Use**  
**Administrative discretion**

Contracting officer's decision to procure certain services on an unrestricted basis, and not through a small business set-aside, is not an abuse of discretion where the procurement history and contracting officer's knowledge of the market did not support an expectation that offers from two or more responsible small business concerns would be received; where agency distinguished this procurement from another concurrent one for services which is set aside; and where the agency small and disadvantaged business utilization specialist and the Small Business Administration procurement center representative have expressed their concurrence with the decision not to set aside the procurement.

**PROCUREMENT** B-233693 Mar. 28, 1989  
**Competitive Negotiation** 89-1 CPD 317  
**Discussion**  
**Adequacy**  
**Criteria**

Where agency advised protester to submit model test plan or more data to demonstrate that proposal for ship construction qualified for waiver of test plan requirement, and protester unilaterally chose to submit best and final offer premised on waiver of test plan requirement, agency conducted meaningful discussions since it properly alerted protester to perceived deficiency in its proposal.

Where initial proposal omitted data on ship stability, agency was not obligated to discuss technical deficiency that first became apparent after protester submitted such data with its best and final offer.







**PROCUREMENT** **B-234352 Con't**  
**Bid Protests** **Mar. 28, 1989**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

Where protester is the fifth lowest bidder and has not contested the acceptability of the fourth lowest bid, the protester is not an interested party to pursue a protest against award to the low responsive bidder.

**PROCUREMENT** **B-234598.2 Mar. 28, 1989**  
**Bid Protests** **89-1 CPD 321**  
**GAO procedures**  
**Protest timeliness**  
**Apparent solicitation improprieties**

Protester's contention that recording device specifications which require sprocket-type paper drive unduly restrict competition will not be considered since an alleged impropriety in a solicitation which is apparent prior to due date for receipt of proposals must be filed before that date. Fact that protester did not learn of alleged rationale for specifications until after the contract was awarded to its competitor does not excuse protester from its obligation to file a protest of the specification prior to the due date for receipt of proposals; a time when corrective action, if warranted, could be taken with the least disruption to the procurement.

**PROCUREMENT** **B-234823 Mar. 28, 1989**  
**Sealed Bidding** **89-1 CPD 322**  
**Hand-carried bids**  
**Late submission**  
**Acceptance criteria**

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



**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Interested parties**

**Direct interest standards**

**B-233710.2 Mar. 29, 1989**

**89-1 CPD 326**

Protester, second low bidder, is not an interested party to challenge agency's cancellation of solicitation where protester does not raise a timely objection to the acceptability of the low bidder and protester thus would not be in line for award even if its protest were sustained.

**PROCUREMENT**

**Sealed Bidding**

**Invitations for bids**

**Cancellation**

**Justification**

**Price reasonableness**

Cancellation of invitation for bids and reissuance of solicitation as request for proposals is proper where the contracting officer reasonably determines that all the bid prices were unreasonably high and that revising the solicitation to reduce the term of the contract over which the items are to be supplied would result in more advantageous prices.

**PROCUREMENT**

**B-234168 Mar. 29, 1989**

**Bid Protests**

**89-1 CPD 328**

**Premature allegation**

**Future procurement**

**GAO review**

Protest against the procuring agency issuing a "Potential Sources Sought" announcement in the Commerce Business Daily to obtain information about commercially available militarized shotguns and ammunition to plan future procurements will not be considered because the General Accounting Office only considers protests against solicitations already issued by federal agencies and awards made or proposed to be made under those solicitations.

**PROCUREMENT**

**B-234636.2 Mar. 29, 1989**

**Bid Protests**

**89-1 CPD 329**

**GAO procedures**

**Protest timeliness**

**Good cause exemptions**

**Applicability**

Protest filed with the General Accounting Office (GAO) more than 10 working days after notice of initial adverse agency action on protester's initial protest to the procuring agency is untimely and will not be considered under "good cause" exception to timeliness rules where no compelling reason beyond the protester's control prevented the protester from filing the protest with GAO.

**PROCUREMENT**

**B-234639 Mar. 29, 1989**

**Bid Protests**

**89-1 CPD 330**

**Moot allegation**

**GAO review**

Where a procuring agency renders a protest academic by taking the corrective action requested by the protester, the General Accounting Office has no legal basis on which to find the protester entitled to its protest costs.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**GAO decisions**  
**Reconsideration**

**B-232346.5 Mar. 30, 1989**  
**89-1 CPD 331**

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**

Where protester requests that reconsideration--dismissed because lawsuit brought issues before court of competent jurisdiction--be reopened because the lawsuit was dismissed without prejudice the day before the General Accounting Office dismissal, but record shows that suit was dismissed due to uncontested award to another offeror that had proposed a lower cost, but initially had been rejected as nonresponsible, dismissal of reconsideration remains proper; protester is no longer an interested party with standing to protest its rejection as nonresponsible since protester no longer would be in line for award if its protest were sustained.

**PROCUREMENT**  
**Competitive Negotiation**  
**Competitive advantage**  
**Conflicts of interest**  
**Allegation substantiation**  
**Lacking**

**B-233115.2 Mar. 30, 1989**  
**89-1 CPD 332**

Agency is not required to exclude a firm from a procurement in order to eliminate a competitive advantage because of an organizational conflict of interest where the firm did not prepare the work statement, more than one contractor provided material leading to the work statement, and there is no evidence of preferential treatment by the government.

**PROCUREMENT**

B-233796 Mar. 30, 1989

**Bid Protests**

89-1 CPD 333

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Argument that solicitation should have been set aside for 100 percent Indian-owned firms where solicitation explicitly stated that procurement was set aside for 51 percent Indian-owned firms is untimely where protester did not object to the provision until after bid opening.

**PROCUREMENT**

**Sealed Bidding**

**Bid guarantees**

**Sureties**

**Acceptability**

General Accounting Office will not disturb agency's determination that an individual surety is acceptable where the record does not show that procuring officials acted in bad faith in making the determination or that there was no reasonable basis for the determination.

**PROCUREMENT**

**Sealed Bidding**

**Low bids**

**Error correction**

**Price adjustments**

**Propriety**

Protest that low bid should have been rejected as nonresponsive because it contained unit prices that were not consistent with the bid total is denied where two of the errors were de minimus and the other was properly correctable by the agency under mistake in bid procedures, which permit correction of a discrepancy in a bid where the discrepancy admits to only one reasonable interpretation that is ascertainable from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic or experience.

**PROCUREMENT** **B-234093 Mar. 30, 1989**  
**Socio-Economic Policies 89-1 CPD 334**  
**Small business set-asides**  
**Use**  
**Administrative discretion**

Agency's determination to solicit for construction services contract on an unrestricted basis, rather than through a small business set-aside, is not an abuse of discretion where the requirement had no prior procurement history; the only construction requirement of similar scale within the previous 2 years had been bid upon by only one small business and was awarded at a price substantially lower than the contemplated contract; the decision was concurred in by small business specialists; and the agency was unaware of any actual small business interest.

Evidence of small business interest received after the solicitation was issued does not demonstrate the unreasonableness of the original determination or require that the solicitation be amended to restrict it to small business participation.

**PROCUREMENT** **B-233943 Mar. 31, 1989**  
**Competitive Negotiation 89-1 CPD 337**  
**Contract awards**  
**Administrative discretion**  
**Cost/technical tradeoffs**  
**Technical superiority**

Allegation that the value of certain government furnished property made available to the awardee was underestimated is not for consideration where, even if the protester's calculations are correct, the alleged cost change would not offset the awardee's technical superiority, and would not affect the award determination.

**PROCUREMENT**  
**Competitive Negotiation**  
**Contract awards**  
**Propriety**

**B-233943 Con't**  
**Mar. 31, 1989**

A statement allegedly made at a debriefing conference which is contradicted by other evidence in the record does not establish that an award decision was based solely on an extremely small price differential.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Determination criteria**

In a negotiated procurement, the decision to request best and final offers from all offerors is discretionary and there is nothing improper in conducting discussions where the agency reasonably considered them to be warranted.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Price disclosure**  
**Allegation substantiation**  
**Evidence sufficiency**

Unfair motives will not be attributed to government procurement officials on the basis of inference or supposition; the mere fact that an offeror slightly reduced its best and final offer to a price just below its competitor's initial price does not establish that there was any improper price disclosure by the procuring agency.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-234120 Mar. 31, 1989**  
**89-1 CPD 338**

**Expiration**  
**Reinstatement**  
**Propriety**

Bidder which limited bid acceptance period to 3 days may not be permitted to revive bid by extending acceptance period after expiration of 3-day period because acceptance of bid would give protester an unfair advantage and, therefore, would be prejudicial to other bidders that offered the standard 60-day acceptance period.

**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**Service contracts**  
**Personal services**  
**Criteria**

**B-234146 Mar. 31, 1989**  
**89-1 CPD 339**

Agency contract for aircraft maintenance services does not create illegal employer-employee relationship where the services will not be subject to relatively continuous government supervision and control, and adequate direction is provided to the contractor through detailed written specifications contained in the solicitation.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**  
**Suppliers**

**B-234371; B-234578**  
**Mar. 31, 1989**

Protest filed by firm whose interest is that of a prospective supplier to the prime contractor is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and the General Accounting Office's implementing Bid Protest Regulations.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Interested parties**  
**Suspended/debarred contractors**

**B-234642 Mar. 31, 1989**

Protester is not an interested party to maintain protest where it would not be eligible to receive award even if protest were sustained due to initiation of debarment proceedings against it.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Agency-level protests**  
**Protest timeliness**  
**Oral protests**

**B-234844 Mar. 31, 1989**  
**89-1 CPD 340**

Alleged oral complaints made to contracting activity before date for receipt of proposals are insufficient to constitute agency-level protest and are therefore irrelevant to the General Accounting Office's determination of timeliness.

**PROCUREMENT**

**B-234844 Con't**

**Bid Protests**

**Mar. 31, 1989**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest of alleged solicitation impropriety is dismissed as untimely where filed after award.

**MISCELLANEOUS TOPICS**

**MISCELLANEOUS TOPICS**

**B-230951 March 10, 1989**

**Agriculture**

**Housing**

**Loans**

Although section 304 of the Housing and Community Development Act provides that the Secretary of Agriculture shall carry out a rural housing guaranteed loan demonstration program, that section also limits the Secretary's authority to guarantee loans under the program "to the extent of amounts provided in appropriation Acts." Therefore, if the annual appropriation for the Farmers Home Administration (FmHA) does not specifically approve or authorize FmHA to make any guaranteed loans in a particular fiscal year, FmHA would be unable to carry out the demonstration program in that year. Since FmHA's appropriations for fiscal years 1988 and 1989 do not authorize FmHA to make any guaranteed rural housing loans, FmHA was not authorized to implement the demonstration program in fiscal year 1988 and may not do so in fiscal year 1989.

**MISCELLANEOUS TOPICS**                    **B-229232.9 Mar. 13, 1989**  
**Environment/Energy/Natural Resources**  
**Natural resources**  
**Condemnation**  
**Determination**

The Weldon Amendment would not cause a compensable taking of ASRC's property by the federal government under the Fifth Amendment of the U.S. Constitution. It would not contravene the provisions of the Chandler Lake exchange agreement. Further, even if the Weldon Amendment would have an adverse impact on ASRC's economic interests, the substantial public purposes of the Weldon Amendment, when weighed against the uncertain nature of ASRC's economic interests, lead to the conclusion that there would be no "taking." There also is an "essential nexus" between the substantial public purposes of the restrictions imposed by the § 214 and the purposes of the ANWR. See cases cited.

**MISCELLANEOUS TOPICS**  
**Environment/Energy/Natural Resources**  
**Natural resources**  
**Public lands**  
**Development**  
**Congressional approval**

Under the Chandler Lake exchange of August 9, 1983, with Department of Interior, Arctic Slope Regional Corporation (ASRC) received subsurface rights to lands in Alaska National Wildlife Refuge (ANWR). H.R. 3601, the proposed "National Fish and Wildlife Enhancement Act of 1988," 100th Cong., 2d Sess., as favorably recommended by the House Merchant Marine and Fisheries Committee, included the Weldon Amendment. Under it, § 214 of the bill, ASRC could not commence exploratory drilling within the coastal plain of ANWR until the day before the first federal lease sale in ANWR. Also, ASRC could not resume such drilling outside the coastal plain until publication of final environmental regulations for the lease sale.

**MISCELLANEOUS TOPICS**

**B-232993 Mar. 13, 1989**

**Human Resources  
Health care  
Nursing homes**

Federal law and regulation does not prohibit nursing homes from admitting private pay patients while denying admission to Medicaid beneficiaries.

Alzheimer's disease is not a mental disease for purposes of classifying nursing home as institution for mental diseases.

**MISCELLANEOUS TOPICS**

**B-208593.8 Mar. 22, 1989**

**Environment/Energy/Natural Resources  
Environmental protection  
Air quality  
Standards  
Deadlines**

EPA lacks authority under the Clean Air Act to set a near term (3 or 5 year) deadline for attainment of the ozone and carbon monoxide air quality standards for Los Angeles. When Congress set the 1987 deadline it balanced economic and air quality concerns. The control measures required to achieve near term attainment would destroy the economy of Southern California and would almost certainly be found unreasonable if challenged in court.

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