

July 1989

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Unpublished  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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## **PREFACE**

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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





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**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**            **B-235072**    **July 5, 1989**

**Cashiers**

**Relief**

**Physical losses**

**Theft**

Relief is granted to former sub-cashier at the United States Embassy in Lagos, Nigeria, from liability for a loss of \$852.00. Contrary to established Foreign Service procedures, at least two people had knowledge of the combination to the sub-cashier's safe where the funds were kept, thus precluding the definite placement of responsibility for the loss of funds.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability** **B-234091**    **July 7, 1989**

**Purpose availability**

**Necessary expenses rule**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Appropriation Availability**

**Purpose availability**

**Specific purpose restrictions**

**Personal expenses/furnishings**

Purchase of running shoes by the Department of Energy (DOE) for Nuclear Materials Couriers who are required to pass fitness tests and to meet certain physical requirements is not authorized by Section 19 of the Occupational Safety and Health Act of 1970, nor would such a purchase be considered a necessary expense of DOE's activities. Furthermore, the proposed purchase cannot be considered the purchase of special clothing and equipment which could be authorized under 5 U.S.C. § 7903.



**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**                      **B-233129**    **July 5, 1989**  
Relocation  
    Temporary quarters  
        Actual subsistence expenses  
            Reimbursement  
                Amount determination

A transferred employee who was traveling with his wife and 11-year-old son reclaims temporary quarters lodging expenses which were disallowed by the agency as unreasonable under the Federal Travel Regulations. We hold that the agency's determination to limit the employee's reimbursement to one motel room, which is not required by the applicable regulations, was arbitrary and capricious.

**CIVILIAN PERSONNEL**                      **B-234861**    **July 11, 1989**  
Relocation  
    Relocation travel  
        Eligibility  
            Administrative determination  
                Errors

**CIVILIAN PERSONNEL**  
Relocation  
    Travel expenses  
        Rental vehicles  
            Reimbursement

A transferred employee was erroneously authorized a rental car for his personal use while he was in temporary quarters at his new duty station in Hawaii pending arrival of his privately owned automobile which was being shipped from California. Reimbursement for the rental car is not authorized because reimbursement of the cost of local transportation in such circumstances is specifically prohibited by paragraph 2-5.4a of the Federal Travel Regulations.

**CIVILIAN PERSONNEL**

**B-205359.2 July 14, 1989**

**Leaves of Absence**

**Sick leave**

**Charging**

**Retroactive adjustments**

Upon reconsideration we sustain our prior decision that an employee, who received advance sick leave, was properly paid for that leave. The advance sick leave was substituted for leave without pay only during pay periods following the employee's illness.

**CIVILIAN PERSONNEL**

**B-231943 July 14, 1989**

**Leaves of Absence**

**Annual leave**

**Lump-sum payments**

**Waiver**

**Reinstatement**

**CIVILIAN PERSONNEL**

**Leaves of Absence**

**Lump-sum payments**

**Reinstatement**

**Retroactive compensation**

**Set-off**

An employee who is retroactively restored to duty and awarded backpay may not retain a lump-sum payment for annual leave even though the settlement agreement of her discrimination complaints failed to consider deduction of this amount from her backpay award. This lump-sum payment is not subject to waiver since deduction of the lump-sum payment from the backpay award does not result in a net indebtedness to the government.



**CIVILIAN PERSONNEL**

**B-233527 July 26, 1989**

**Travel**

**Temporary duty**

**Interruption**

**Travel expenses**

**Reimbursement**

An employee, whose duty station and commuting residence were in Lubbock, Texas, was on a temporary duty assignment in Dallas, Texas. She interrupted her assignment to travel to her parents' home in Houston, Texas, for the Thanksgiving Day holiday and for the following weekend. Her claim for the transportation expense to Houston is denied since she did not return to her duty station or place of abode, as required under the Federal Travel Regulations. She may be reimbursed allowable per diem expenses for the holiday and nonworkdays.



**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-233390 July 6, 1989**

**Pay**

**Retirement pay**

**Overpayments**

**Personnel death**

The widow of a deceased retired Air Force officer is entitled to waiver of indebtedness for erroneous payments of retired pay she received from the Air Force after his death when the payments should have been terminated. Waiver is granted under 10 U.S.C. § 2774, since she was without fault in failing to notify the Air Force paying organization of the death.

**MILITARY PERSONNEL**

**B-229099 July 7, 1989**

**Relocation**

**Household goods**

**Weight restrictions**

**Liability**

**Waiver**

**MILITARY PERSONNEL**

**Relocation**

**Mobile homes**

**Reimbursement**

**Overpayments**

**Liability**

Where the government pays the costs associated with transporting a member's mobile home and the costs associated with a voluntary Do-It-Yourself move and these payments exceed the member's entitlement resulting in a member's indebtedness, the debt is not an erroneous payment which may be considered for waiver under 10 U.S.C. § 2774.

**MILITARY PERSONNEL****B-232042 July 11, 1989****Pay****Pay retention****Eligibility**

Coast Guard member was appointed as a temporary Lieutenant 03E after serving as a temporary Chief Warrant Officer (W4) with the permanent grade of Chief Warrant Officer (W3). Because the pay and allowances of a Lieutenant were originally more advantageous the member did not receive saved pay under 14 U.S.C. § 214 and 37 U.S.C. § 907. The member now has completed 26 years of service and at that length of service the entitlements of a W4 are more advantageous than that of a Lieutenant 03E. The member is entitled to revert back to saved pay at his former temporary grade of Chief Warrant Officer (W4) under 14 U.S.C. § 214(d) (1982).

**MILITARY PERSONNEL****B-233351 July 27, 1989****Pay****Retirement pay****Distribution****Personnel death**

Widow of a retired Army member claims entitlement to an annuity under the Survivor Benefit Plan and unpaid retired pay due at the time of his death. In connection with his death, she entered a plea of guilty to involuntary manslaughter but was not adjudged guilty, instead entering the state's first offender program. The claim, based on the argument that the widow was temporarily insane at the time of the incident, is disallowed because the record does not reasonably demonstrate the absence of felonious intent in light of the guilty plea and the absence of any fact-finding proceedings establishing that the killing was accidental, in self-defense or otherwise justifiable.

**MILITARY PERSONNEL****B-233351 Con't****Pay****July 27, 1989****Survivor benefits****Annuity payments****Eligibility**

Widow of a retired Army member claims entitlement to an annuity under the Survivor Benefit Plan and unpaid retired pay due at the time of his death. In connection with his death, she entered a plea of guilty to involuntary manslaughter but was not adjudged guilty, instead entering the state's first offender program. The claim, based on the argument that the widow was temporarily insane at the time of the incident, is disallowed because the record does not reasonably demonstrate the absence of felonious intent in light of the guilty plea and the absence of any fact-finding proceedings establishing that the killing was accidental, in self-defense or otherwise justifiable.

**MILITARY PERSONNEL****B-236084 July 31, 1989****Pay****Retirement pay****Forfeiture**

A retired regular officer of the Marine Corps who is convicted of a criminal offense which requires forfeiture of office loses his office since the courts have held that a retired regular officer continues to hold office after retirement. Since, it appears that he has forfeited his office continued payment of retired pay for that office raises serious doubt as to his entitlement and should be discontinued.



## **PROCUREMENT**

**PROCUREMENT**                      **B-234680; B-234681**  
**Contractor Qualification**      **July 3, 1989**  
**De facto debarment**            **89-2 CPD 1**  
**Non-responsible contractors**

Protest that nonresponsibility determination was tantamount to a de facto debarment is denied where protester will not be precluded from competing and receiving award of future contracts, assuming protester is otherwise qualified and convinces agency that its past performance problems have been corrected.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting officer findings**  
**Negative determination**  
**Prior contract performance**

Protest that contracting officer's nonresponsibility determination lacked a reasonable basis is denied where determination is based upon contracting officer's reasonable conclusion that the protester's prior performance was inadequate.

Procuring agency acted reasonably in concluding that protester's corrective action plan did not demonstrate firm's affirmative responsibility where plan was skeletal and prospective in nature and did not demonstrate how firm would correct prior performance problems.

**PROCUREMENT**

**B-235198.2 July 5, 1989**

**Bid Protests**

**89-2 CPD 4**

**GAO procedures**

**Interested parties**

**Direct interest standards**

Manufacturer's protest against cancellation of purchase order awarded to manufacturer's dealer is dismissed, since only an actual or prospective bidder or offeror is an interested party eligible to maintain a protest under General Accounting Office's Bid Protest Regulations and the manufacturer seeks only reinstatement of purchase order to its dealer.

**PROCUREMENT**

**B-235304 July 5, 1989**

**Competitive Negotiation**

**89-2 CPD 6**

**Contract awards**

**Multiple/aggregate awards**

**Propriety**

Although multiple awards were permitted by the solicitation, award of a single contract, rather than multiple awards, is proper where single award was less costly to the government than two awards.



PROCUREMENT                      B-234678    July 6, 1989  
    Competitive Negotiation    89-2    CPD   19  
        Offers  
            Evaluation  
                Downgrading  
                    Propriety

PROCUREMENT  
    Competitive Negotiation  
        Offers  
            Evaluation  
                Technical acceptability

Proposal to do study (estimated by contracting agency to take 2,000 work hours) significantly more extensive than that reasonably contemplated by request for proposals was reasonably downgraded in the areas of understanding and technical approach and properly rejected as unacceptable and not susceptible of being made acceptable.

PROCUREMENT                      B-235031; B-235032  
    Bid Protests                  July 6, 1989  
        Agency-level protests    89-2    CPD   20  
            Protest timeliness  
                GAO review

PROCUREMENT  
    Bid Protests  
        GAO procedures  
            Protest timeliness  
                10-day rule

Protests that agency improperly evaluated items offered in response to request for quotations are dismissed as untimely where protester, in one case, did not file a timely agency-level protest and, in the other case, did not file a protest with the General Accounting Office within 10 working days after learning of denial of its agency-level protest.

**PROCUREMENT**

**B-235866 July 6, 1989**

**Bid Protests**

**89-2 CPD 21**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed before that time to be considered timely.

**PROCUREMENT**

**Contract Management**

**Contract administration**

**Contract terms**

**Compliance**

**GAO review**

Whether contractor will comply with applicable state or local law during contract performance is a matter of contract administration which General Accounting Office will not consider.

**PROCUREMENT**

**B-235277 July 7, 1989**

**Bid Protests**

**89-2 CPD 22**

**GAO procedures**

**Protest timeliness**

**Apparent solicitation improprieties**

Protest that request for proposals for engine seals restricted to preapproved sources is improper because it provided for approval based on an offeror's manufacture of similar items is untimely where protester waited until after award selection before raising this issue.

PROCUREMENT	B-235277	Con't
Competitive Negotiation	July 7, 1989	
Offers		
Cost realism		
Evaluation		
Administrative discretion		

Protest that awardee's offer is unrealistically low does not provide a basis for the agency to reject a technically acceptable fixed-price proposal absent a finding of nonresponsibility.

PROCUREMENT	B-235642	July 7, 1989
Bid protests	89-2	CPD 23
Non-prejudicial allegation		
GAO review		

Protest challenging contracting agency's initial refusal to allow public examination of bid documents immediately upon the conclusion of bid opening is dismissed where protester does not present any evidence of prejudice resulting from agency's action and the protester in fact was later allowed access to the documents.

**PROCUREMENT**

**B-235794.2 July 7, 1989**

**Bid Protests**

**89-2 CPD 24**

**GAO procedures**

**GAO decisions**

**Reconsideration**

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**Delays**

**Agency-level protests**

Fact that agency delayed release of abstract of offers to protester does not provide a basis for reopening protest dismissed as untimely where protester did not raise any arguments based on the abstract within 10 days of its receipt. In any event, information in abstract does not appear to have any relation to original basis of protest, which was that award to foreign firm was improper.

**PROCUREMENT**

**B-234704 July 10, 1989**

**Special Procurement**

**89-2 CPD 25**

**Methods/Categories**

**Federal supply schedule**

**Offers**

**Rejection**

**Propriety**

Rejection of protester's low quote under Federal Supply Schedule procedures is upheld where the agency found that the quote would not meet its minimum needs due to two specification deviations it determined were material, the finding appears to have a reasonable basis, and the protester fails to rebut the finding.

<b>PROCUREMENT</b>	<b>B-234704 Con't</b>
<b>Special Procurement</b>	<b>July 10, 1989</b>
<b>Methods/Categories</b>	
<b>Federal supply schedule</b>	
<b>Purchases</b>	
<b>Justification</b>	
<b>Low prices</b>	

Protest against delivery order to Federal Supply Schedule contractor on ground that contractor's quote failed to meet several of the specifications is denied where agency shows that all but one of alleged deviations in fact meet the specifications, and the one deviation is reasonably waived as minor; in any case, where contractor responds to request for quotations (RFQ), quote need not literally meet all the RFQ's requirements where it is at the lowest price and is found to meet the government's actual minimum needs.

<b>PROCUREMENT</b>	<b>B-234740.4 July 10, 1989</b>
<b>Bid Protests</b>	
<b>GAO procedures</b>	
<b>Administrative reports</b>	
<b>Comments timeliness</b>	

<b>PROCUREMENT</b>
<b>Bid Protests</b>
<b>GAO procedures</b>
<b>GAO decisions</b>
<b>Reconsideration</b>
<b>Comments timeliness</b>

A protest that was dismissed because protester failed to contact the General Accounting Office within 10 working days after receipt of agency report, as required by Bid Protest Regulations, may not be reopened and considered on the merits; requirement in the Regulations that protester express continued interest in pursuing the protest after having opportunity to read agency report ensures that resources of our Office will not be occupied with a protest about whose merits the protester has changed his mind after reading the agency report.

**PROCUREMENT**  
**Specifications**  
**Minimum needs standards**  
**Leases**

**B-234790 July 10, 1989**  
**89-2 CPD 26**

Protest that contracting agency improperly tailored a solicitation to conform to office space offered by ultimate awardee is denied where the record shows that the specifications in fact accurately reflected the government's minimum needs and enhanced competition.

Use of 10-year amortization period for moving costs in the evaluation of proposals is unobjectionable where 10-year amortization period was consistent with 10-year price evaluation under the solicitation and with the protester's own offer of a lease for a 10-year term, and where, although the government has termination rights after 5 years, the agency expects to remain in the leased premises for the full 10-year lease period.

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

**B-234957 July 10, 1989**  
**89-2 CPD 27**

Bid is nonresponsive where bidder's total price cannot be determined from the bid documents submitted at bid opening.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Terms**  
**Deviation**

Bid which attempts to limit government's rights and supplement bidder's rights under the termination for convenience clause in an invitation for bids (IFB) is nonresponsive since it contains a material deviation from the terms of the IFB.

**PROCUREMENT**

**Sealed Bidding**

**Non-responsive bids**

**Post-bid opening periods**

**Clarification**

**Propriety**

**B-234957 Con't**

**July 10, 1989**

A bidder may not be afforded an opportunity after bid opening to explain or clarify its bid so as to make it responsive, since the bidder's intention must be determined from the bid and material available at bid opening.

**PROCUREMENT**

**Sealed Bidding**

**Bids**

**Responsiveness**

**Determination criteria**

**B-234685 July 11, 1989**

**89-2 CPD 28**

Bid, including descriptive literature, that took no exception to solicitation requirements represented an unqualified offer to supply the exact thing requested and, therefore, was responsive. Bidder's submission of upgraded version of item bid for performance testing after bid opening is unobjectionable where the manufacturer had upgraded the item between bid opening and the date for performance testing and the item submitted for testing thus was the current production model.

**PROCUREMENT**

**Socio-Economic Policies**

**Small businesses**

**Responsibility**

**Competency certification**

**GAO review**

Question of small business' responsibility must be referred to the Small Business Administration for consideration under certificate of competency procedures.

**PROCUREMENT**  
**Bid Protests**  
**Subcontracts**  
**GAO review**

**B-234781 July 11, 1989**  
**89-2 CPD 30**

Subcontract awarded by contractor operating a government-owned, contractor-operated plant (GOCO) for the purchase of an item to be incorporated in final delivered product, not equipment for the GOCO plant, is not the type of subcontract subject to review by the General Accounting Office.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Descriptive literature**  
**Adequacy**

**B-234979 July 11, 1989**  
**89-2 CPD 31**

While unsolicited commercial literature submitted with bid described petri dishes as packaged in trays of 100 per package which was contrary to solicitation packaging requirements, cover letter submitted with the bid reasonably explained that literature concerned only dishes furnished in prior procurements. Therefore, descriptive literature did not express an intent to qualify bid.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Determination criteria**

Insertion of product model number does not render bid nonresponsive where bid contains express statement that the specified equipment conforms to the specifications.



**PROCUREMENT**  
**Bid Protests**  
**Subcontracts**  
**GAO review**

**B-235575 July 11, 1989**  
**89-2 CPD 33**

Protest of a subcontract awarded by a government prime contractor is dismissed for lack of jurisdiction where the subcontract award was not "by or for" the government; government's exercise of its right under prime contract to approve or disapprove prime contractor's selection of subcontractor is not enough to invoke jurisdiction.

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

**B-233925.2 July 12, 1989**  
**89-2 CPD 34**

Agency reasonably selected higher-priced, technically superior proposal under request for proposals for runway repair giving predominant weight to technical factors based upon reasonable determination that awardee had "company" runway repair experience and protester did not.

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

**B-234159.3 July 12, 1989**

A protest that was dismissed because protester failed to contact the General Accounting Office within 10 days after receipt of agency report, as required by Bid Protest Regulations, may not be reopened and considered on the merits; requirement is in the Regulations that protester express continued interests in pursuing the protest after having opportunity to read agency report ensures that resources of our Office will not be occupied with a protest about whose merits the protester has changed his mind after reading the agency report.

B-234309.2 July 12, 1989

Contractor Qualification 89-2 CPD 35

## Responsibility/responsiveness distinctions

Bidder's failure to include certification that it was a licensed applicator of a roofing system manufacturer does not render the bid nonresponsive where the bidder did not otherwise take exception to any of the solicitation's requirements. The certification concerns the bidder's ability to provide a roofing system meeting the specifications and, as a matter of responsibility, may be provided any time before award.

**B-234315.4 July 12, 1989**

## Bid Protests

89-2 CPD 36

## GAO procedures

### Interested parties

### Direct interest standards

Protest from a bidder which would not be in line for award if the protest were upheld is dismissed because the protester does not have the requisite direct economic interest required to be considered an interested party entitled to maintain the protest.

## PROCUREMENT

## Bid Protests

## GAO procedures

### Protest timeliness

### Apparent solicitation improprieties

Protest that solicitation is defective which was not filed until after bid opening date is dismissed as untimely.

## PROCUREMENT

## Bid Protests

**Moot allegation**

GAO review

Protest that low bid should be rejected as nonresponsive is dismissed as academic where the procuring agency in fact rejected the bid as nonresponsive.

**PROCUREMENT**

**B-234395.3 July 12, 1989**

**Sealed Bidding**

**89-2 CPD 37**

**Bids**

**Responsiveness**

**Acceptance time periods**

**Deviation**

Bidder's request to increase its bid price after bid opening constitutes a refusal to extend its bid acceptance period, rendering it ineligible for award.

**PROCUREMENT**

**B-234727 July 12, 1989**

**Contractor Qualification**

**89-2 CPD 38**

**De facto debarment**

**Non-responsible contractors**

Where procuring agency makes an award to the next low bidder after determining that the protester was nonresponsible because of an unsatisfactory record of integrity, protester's due process rights were not violated because the agency determination applied to one procurement only, which did not constitute a de facto debarment or suspension where due process considerations are applicable.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Contracting officer findings**

**Negative determination**

**Prior contract performance**

Contracting agency reasonably determined that bidder was nonresponsible based on information in a criminal investigation report which called into question the bidder's integrity based on performance under a recent government contract.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

**B-234773 July 12, 1989**

**89-2 CPD 39**

Issues which are first raised more than 10 days after the protester was made aware of the bases for protest are untimely and not for consideration on the merits.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Contracting officer findings**

**Affirmative determination**

**GAO review**

Where contracting officer determined awardee to be responsible, and alleged evidence of bad faith does not establish that agency acted with specific or malicious intent to harm the protester, General Accounting Office will not question the affirmative responsibility determination.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility criteria**

**Distinctions**

**Evaluation criteria**

When responsibility-type factors such as experience are included as technical evaluation factors in a request for proposals, they do not constitute definitive responsibility criteria. Agency properly evaluated awardee's proposal with respect to these factors where the evaluation was reasonable and consistent with the evaluation criteria.

PROCUREMENT	B-234773	Con't
Contractor Qualification	July 12, 1989	
Responsibility criteria		
Organizational experience		

Protest that awardee did not meet definitive responsibility criteria concerning employee training certificates and experience is denied where the awardee submitted sufficient evidence from which the contracting officer reasonably could conclude that the awardee either specifically complied with the requirements, or evidenced a level of achievement equivalent to the criterion.

PROCUREMENT B-234789 July 12, 1989  
Socio-Economic Policies 89-2 CPD 40  
Small business set-asides  
Use  
Administrative discretion

Contracting agency's decision to set aside natural gas procurement for small businesses rather than for small disadvantaged business (SDB) concerns was proper where based upon prior procurement history for natural gas contracts, contracting officer determined that there was not a reasonable expectation that offers would be obtained from two responsible SDB firms at prices not exceeding the fair market price by more than 10 percent.

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

**B-234803 July 12, 1989**  
**89-2 CPD 41**

**PROCUREMENT**  
    **Sealed Bidding**  
        **Bids**  
            **Responsiveness**  
            **Contractors**  
            **Identification**

Allegations that agency improperly rejected bid as nonresponsive because of uncertainty as to the identity of the actual bidder and that agency did not comply with laws providing preferences for small disadvantaged businesses are denied where identical allegations raised by the same protester against the same procuring activity were recently considered and rejected and the protester has not offered any additional information to warrant a different conclusion.

**PROCUREMENT**  
    **Contractor Qualification**  
        **Responsibility/responsiveness distinctions**

**B-234917 July 12, 1989**  
**89-2 CPD 42**

**PROCUREMENT**  
    **Sealed Bidding**  
        **Bids**  
            **Responsiveness**  
            **Additional information**  
            **Post-bid opening periods**

Protest allegation that agency allowed awardee in an unrelated procurement to clarify its bid after bid opening but would not permit protester to correct its nonresponsive bid in this procurement is denied where record shows that information supplied by the awardee related to its responsibility and not to responsiveness.

**PROCUREMENT**

**Sealed Bidding**

**Bids**

**Responsiveness**

**Contractors**

**Identification**

**B-234917 Con't**

**July 12, 1989**

Agency's rejection of bid as nonresponsive because of uncertainty as to identity of actual bidder is proper where bid was submitted by an entity that certified itself as both a corporation and a joint venture.

**PROCUREMENT**

**Socio-Economic Policies**

**Small businesses**

**Contract awards**

**Preferences**

**Applicability**

Protest that agency is not complying with laws regarding small disadvantaged businesses (SDBs) is denied where solicitation contained evaluation preference for SDBs and protester became low bidder only by virtue of its application.

**PROCUREMENT**

**Sealed Bidding**

**Contract awards**

**Multiple/aggregate awards**

**B-235080 July 12, 1989**

**89-2 CPD 43**

Protest that agency should make multiple awards representing the lowest overall cost to the government is denied where the invitation for bids contemplated and authorized only an aggregate award.

**PROCUREMENT**

**B-235236; B-235250**

**Bid Protests**

**July 13, 1989**

**GAO procedures**

**89-2 CPD 44**

**Interested parties**

**Direct interest standards**

Firm which submitted low bid on solicitation that was canceled because of price unreasonableness, and which did not submit bid on resolicitation, is an interested party under Bid Protest Regulations to protest potential award under resolicitation because, if the protest were sustained, the remedy would be award to firm under the original solicitation, if otherwise appropriate.

**PROCUREMENT**

**Bid Protests**

**GAO procedures**

**Protest timeliness**

**10-day rule**

Protest against cancellation of solicitation on basis of price unreasonableness filed approximately 2 months after cancellation and within 10 days of bid opening on resolicitation is timely where protest is predicated on comparison of low bids received on original solicitation and on resolicitation.

**PROCUREMENT**

**Sealed Bidding**

**Bids**

**Public opening**

Contracting officer acted properly in publicly opening all bids received under invitation for bids.



**PROCUREMENT****Sealed Bidding****Invitations for bids****Cancellation****Justification****Price reasonableness****B-235236; B-235250 Con't****July 13, 1989**

Contracting officer's decision to cancel invitation for bids (IFB) based on unreasonableness of bid prices was proper where low bid exceeded government estimate by 22 percent and there is no showing that the decision to cancel was based on bad faith or fraud on the part of contracting officials. Furthermore, cancellation of IFB after bid opening does not result in impermissible auction under resolicitation where IFB was canceled due to unreasonable prices.

**PROCUREMENT****Bid Protests****GAO procedures****GAO decisions****Reconsideration****B-232999.2; B-232999.3****July 14, 1989****89-2 CPD 45**

Decision is affirmed where new arguments advanced in support of agency's rationale for a selection decision involving reported preaward technical consultations with the requiring activity are not documented, persuasive, or timely raised.

General Accounting Office recommendation to recompet requirements beyond the base year in lieu of permitting the agency to supplement the record to support its rationale for a cost/technical tradeoff decision based on the awardee's lack of incumbency is affirmed where substantial contract performance has occurred and where both competing parties now have the benefit of incumbency.

**B-233268.3; B-233268.4**

**July 14, 1989**

89-2 CPD 46

## Propriety

### Best/final offers

### Corrective actions

General Accounting Office will not object to agency's decision to reopen negotiations and request a second round of best and final offers where after award agency discovered that awardee's offer lacked the required written permission for use of government-furnished equipment (GFE), upon which the offer was conditioned; since use of GFE was material to the evaluation, agency properly permitted protester to furnish the permission through discussions rather than clarifications.

## PROCUREMENT

## Competitive Negotiation

## Offers

## Evaluation

## Cost estimates

Protest that agency failed to apply commercial rental rate in calculating evaluation factor to be added to proposals requesting rent-free use of government-furnished equipment (GFE) is denied where the protester acknowledges that the GFE is special purpose equipment which a contractor can only obtain by purchase and the agency reasonably determines that there is no applicable commercial rental rate.

## PROCUREMENT

**B-234741.2 July 14, 1989**

89-2 CPD 48

## Invitations for bids

## Cancellation

### Justification

### Price reasonableness

Invitation for bids may be canceled after bid opening where agency reasonably determines that the only bid was unreasonably high based upon historical costs.

PROCUREMENT	B-234837	July 14, 1989
Competitive Negotiation	89-2 CPD	49
Offers		
Designs		
Evaluation		
Technical acceptability		

Contracting agency has responsibility for determining whether technical data item is required by the solicitation and may waive requirement where identical data has been previously furnished by offeror and accepted by the agency. Contracting agency determination to grant a waiver of technical data requirement for awardee under the terms of the solicitation did not prejudice the protester where awardee's offer was low with or without the waiver of the requirement.

PROCUREMENT	B-234848	July 14, 1989
Bid Protests	89-2	CPD 50
Agency-level protests		
Protest timeliness		
GAO review		

Protest that agency should not have settled litigation by reinstating firm in competitive range is untimely since it was filed months after protester received letter from agency that informed it of settlement agreement and protester does not argue that it did not know of litigation at the time of settlement agreement. Protester should have filed protest prior to due date for best and final offers or at least made some timely effort to find information needed to file such a protest.

**PROCUREMENT****B-234848 Con't****Competitive Negotiation  
Offers****July 14, 1989****Evaluation****Personnel****Adequacy**

Protest that proposed awardee does not have sufficient qualified personnel and does not have required equipment and facilities to perform support services contract is denied where agency reasonably determined that proposal demonstrated that required personnel are on staff, under commitment to the awardee or are employed by subcontractors, and awardee and subcontractors have required equipment and facilities.

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

General Accounting Office 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. Allegations that awardee is too small, or that it lacks integrity, or that it does not have the facilities, personnel or financial resources required for contract are responsibility issues that are best left to the business judgment of the contracting agency.

**PROCUREMENT**

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

**B-235207 July 14, 1989**  
**89-2 CPD 51**

A bidder's failure to sign its bid and three of four amendments may be waived as minor informalities where one amendment incorporating a Department of Labor wage determination was signed and the other amendments were either not material or the bidder's intent to be bound was evident.

**PROCUREMENT**

**Sealed Bidding**  
**Invitations for bids**  
**Cancellation**  
**Justification**  
**Minimum needs standards**

Protest challenging cancellation of an invitation for bids (IFB) after bid opening is sustained where no compelling reason justified cancellation because award under the IFB would meet the needs of the government without prejudice to other bidders.

**PROCUREMENT**

**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Certification**  
**Errors**

Where standard language in solicitation's hazardous material provisions clearly obligates contractor to prepare material data safety sheets as part of contract performance if the materials to be delivered are listed in specified regulations as hazardous, and materials under solicitation are in fact listed, bidder's incorrect certification that the materials are not hazardous does not require rejection of bid.

**B-235039 July 17, 1989**

Competitive Negotiation  
Requests for proposals  
Cancellation  
Resolicitation  
Propriety

89-2 CPD 53

Agency decision to resolicit after termination of contract for convenience of government is not objectionable where protester's proposal was technically unacceptable without further discussions, where agency determined that prior solicitation's limited competition was not justified and where resolicitation would broaden competition.

## PROCUREMENT

**B-235243 July 17, 1989**

Competitive Negotiation  
Contract awards  
Initial-offer awards  
Propriety

89-2 CPD 54

In limited circumstances, award may be made on the basis of initial proposals, without discussions and final offers. However, even where the circumstances are present, award on the basis of initial proposals is permissive, not mandatory.

## PROCUREMENT

Specifications

- Minimum needs standards
- Competitive restrictions
- Allegation substantiation
- Evidence sufficiency

Protest that revision to specifications unduly restricts competition is denied where agency explains that the specifications were revised to provide offerors a clear description of the minimum requirements, and protester presents no evidence to dispute the agency position.

**PROCUREMENT****B-235419 July 17, 1989****Bid Protests****89-2 CPD 55****Non-prejudicial allegation****GAO review**

Protest that the contracting agency failed to advise the protester of deficiencies in its technical proposal is denied where the protester is not prejudiced by the agency's failure since the additional points available for the technical factor would not change the protester's competitive standing or make its proposal technically acceptable, and the protester's final price is higher than the awardee's.

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

Where solicitation specifically requested that offerors submit information related to technical evaluation factors in their initial proposals, protest that meaningful discussions were not conducted because the contracting agency failed to request the submission of such information in the protester's best and final offer is denied because the agency is not required to remind offerors to submit information that is already specifically requested in the solicitation.

**PROCUREMENT****B-235806 July 17, 1989****Sealed Bidding****89-2 CPD 56****Bid guarantees****Responsiveness****Letters of credit****Adequacy**

A bid guarantee, in the form of an irrevocable letter of credit, must remain available to the government for at least the entire bid acceptance period.

**PROCUREMENT**

**B-235134 July 18, 1989**

**Competitive Negotiation**

**89-2 CPD 57**

**Discussion**

**Determination criteria**

Agency decision not to engage in technical discussions is unobjectionable where proposal is found technically acceptable on each element of evaluation scheme.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Personnel**

**Adequacy**

Protest that awardee improperly submitted resumes of key personnel with its proposal without consent of individuals in question is denied where record shows that resumes were supplied to awardee by individuals' employer for awardee's use in its proposal and awardee therefore reasonably believed individuals had agreed to use of resumes.

**PROCUREMENT**

**Competitive Negotiation**

**Technical evaluation boards**

**Bias allegation**

**Allegation substantiation**

**Evidence sufficiency**

Allegation that evaluation and scoring of revised proposal by chairman of technical evaluation panel (TEP) alone was improper is denied where only support for allegation of bias is fact that TEP chairman had access to pricing information which is not objectionable in itself and other TEP members orally were asked for their views and agreed with chairman's evaluation that proposals were technically equal.



**PROCUREMENT****B-235171 July 18, 1989****Sealed Bidding****89-2 CPD 58****Bid guarantees****Responsiveness****Sureties****Liability restrictions**

A commercial bid bond form that limits the surety's obligation to the difference between the amount of the awardee's bid and the amount of a reprocurement contract materially differs from the standard form government bid bond and thus renders a bid nonresponsive.

**PROCUREMENT****B-233943.2 July 19, 1989****Bid Protests****89-2 CPD 59****GAO procedures****GAO decisions****Reconsideration**

Request for reconsideration is denied where protester fails to show any error of fact or law which warrants reversal or modification of prior decision, but essentially reiterates arguments considered in the initial decision.

Request for reconsideration of dismissal of protest challenging denial of certificate of competency (COC) by the Small Business Administration is denied where the protester merely reiterates assertion made in its initial protest and does not show that government officials acted fraudulently or in bad faith in connection with the denial of the COC.

**PROCUREMENT****B-234896 July 19, 1989****Socio-Economic Policies****Labor standards****Construction contracts****Wage rates****Amount determination**

The Judiciary Office Building Development Act provides for construction by a private developer of a building on government-owned property, under contract with the Architect of the Capitol. The United States will lease the building, pay rent sufficient to amortize the developer's construction cost, and receive title to the building when the lease expires. This arrangement constitutes a contract with the United States for the construction of a public building, within the meaning of the Davis-Bacon Act requirement that workers under such contracts be paid the prevailing local wage. 40 U.S.C. § 276a.

**PROCUREMENT****B-234935 July 19, 1989****Bid Protests****89-2 CPD 61****Agency-level protests****Oral protests****PROCUREMENT****Bid Protests****Agency-level protests****Protest timeliness****GAO review**

Allegation that contracting agency improperly made multiple awards under solicitation which did not include Federal Acquisition Regulation (FAR) § 52.214-22 (FAC 84-5) governing multiple awards is dismissed as untimely where the protester only orally complained of award to agency and did not file a written agency-level protest until 5 months later.

### Interpretation

**GAO review**

### Apparent solicitation improprieties

D-29

PROCUREMENT	B-235889	Con't
Contractor Qualification	July 19, 1989	
Responsibility		
Information		
Submission time periods		

The requirement that a bidder submit a subcontracting plan relates to the bidder's responsibility, and therefore, the plan may be submitted at any time prior to the award of the contract.

PROCUREMENT	B-233105.4	July 20, 1989
Bid Protests	89-2	CPD 64
GAO procedures		
Protest timeliness		
10-day rule		

Request for reconsideration of decision dismissing protest as untimely is denied where the initial protest was filed more than 10 days after the protester learned of its basis for protest.

PROCUREMENT	B-233850.2	July 20, 1989
Bid Protests	89-2	CPD 65
GAO procedures		
GAO decisions		
Reconsideration		

Request for reconsideration of prior decision that acceptance of awardee's bid was unobjectionable is denied where protester does not establish any factual or legal errors in our conclusion that specification requirement for a protective cage capable of protecting a strobe light from mechanical damage established only a performance requirement to protect the strobe light, which the awardee met, and not a design requirement for a separate steel cage.

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

**Responsiveness**  
**Determination criteria**

**B-234857 July 20, 1989**  
**89-2 CPD 66**

Where invitation for bids (IFB) clearly informed bidders for construction contract that certain bid items (for furnishing and installing transformers) required line item prices and specific information regarding transformer losses for use in calculating evaluated prices, and IFB warned bidders that failure to provide either price or transformer loss information for these bid items would result in bid being rejected as incomplete, contracting officer properly rejected protester's bid which did not contain transformer loss information for required transformers, as protester's bid could not be evaluated under IFB's evaluation formula.

**PROCUREMENT**  
**Bid Protests**  
**Allegation**  
**substantiation**  
**Lacking**  
**GAO review**

**B-235019; B-235019.2**  
**July 20, 1989**  
**89-2 CPD 67**

Protest that agency's determination not to require first article testing for off-the-shelf air cylinders in an emergency situation is inconsistent with previous General Accounting Office bid protest decision requiring first article testing is denied where that decision applied to a non-emergency situation for cylinders not yet built.

**PROCUREMENT**

**B-235019; B-235019.2 Con't**

**Bid Protests**

**July 20, 1989**

**Bias allegation**

**Allegation substantiation**

**Evidence sufficiency**

Where the record does not show that contracting officials had a specific and malicious intent to harm the protester, protest alleging bad faith because of the agency's alleged interference with the protester's ability to compete for subcontracts for air cylinders is denied.

**PROCUREMENT**

**Contract Management**

**Contract modification**

**Cardinal change doctrine**

**Effects**

**Resolicitation**

Where a sole-source award is appropriate, it is not necessary for a modification to a contract that is beyond the scope of the original contract to be competitively procured.

**PROCUREMENT**

**Noncompetitive Negotiation**

**Contract awards**

**Sole sources**

**Propriety**

**PROCUREMENT**

**Noncompetitive Negotiation**

**Use**

**Justification**

**Urgent needs**

Protest that agency fabricated an urgent situation to justify a sole-source procurement is denied where the record demonstrates that an emergency did exist so as to justify the agency's decision to limit competition and not to require first article testing.

**PROCUREMENT**  
**Bid Protests**  
**GAO procedures**  
**Preparation costs**

**B-235136 July 20, 1989**  
**89-2 CPD 68**

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Preparation costs**

Where agency negligently prepares government estimate for a procurement which results in agency cancellation of invitation for bids after bid opening due to lack of sufficient funds to make purchase, claim for bid preparation and protest costs is denied since mere negligence or lack of due diligence by the agency, standing alone, does not provide a basis for the recovery of bid preparation and protest costs.

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

**B-235170 July 20, 1989**  
**89-2 CPD 69**

Contracting officer reasonably determined that both individual sureties, principals in the bond brokerage firm furnishing the bid bond guarantees, were unacceptable because of their association with another principal in the brokerage firm who allegedly had previously repudiated two of his own bonds, and because both individual sureties are under criminal investigation by the federal government, thus reasonably calling into question their integrity, credibility, and financial acceptability.

**PROCUREMENT****Bid Protests****GAO procedures****GAO decisions****Reconsideration****B-235448.3; B-235448.4****July 20, 1989**

A protest that was dismissed as untimely because it was filed later than 10 working days after the basis of protest was known, as required by Bid Protest Regulations, may not be reopened and considered on the merits; timeliness requirements of Bid Protest Regulations further statutory purpose of Competition in Contracting Act that protests be resolved expeditiously and that the government procurement process not be burdened by untimely protests.

**PROCUREMENT****Bid Protests****GAO procedures****Protest timeliness****10-day rule****B-235792 July 20, 1989****89-2 CPD 70**

Protest is untimely where filed 1 month after protester received notice of award and agency's statement that, in accordance with the solicitation, alternate items could not be considered. Fact that protester received later information relating to the agency's justification for limiting competition does not toll the time for filing the protest.

**PROCUREMENT****Socio-Economic Policies****Small businesses****Size determination****GAO review****B-235958 July 20, 1989****89-2 CPD 71**

General Accounting Office will not consider a challenge to the Small Business Administration's (SBA) determination that a bidder is a small business concern since by statute SBA has conclusive jurisdiction in such matters.



PROCUREMENT	B-236082	July 20, 1989
Competitive Negotiation	89-2	CPD 72
Hand-carried offers		
Late submission		
Acceptance criteria		
Acceptance		

Procuring agency's rejection of protester's late proposal delivered by Federal Express was proper where improper governmental action was not the paramount cause of the late delivery.

<b>PROCUREMENT</b>	<b>B-235085 July 24, 1989</b>
Sealed Bidding	89-2 CPD 75
Hand-carried bids	
Late submission	
Acceptance criteria	

Protester's bid was properly rejected as late where bid was delivered by commercial carrier to the agency installation's central receiving facility rather than to the office designated in the solicitation for receipt, and the envelope was not properly addressed.

PROCUREMENT	B-235306.2	July 24, 1989
Bid Protests	89-2	CPD 76
GAO procedures		
GAO decisions		
Reconsideration		

- Bid Protests
  - GAO procedures
  - Protest timeliness
  - Apparent solicitation improprieties

Dismissal of protest as untimely is affirmed on reconsideration where protester should have been aware of the legal basis for its contention that solicitation provision was improper, but did not protest until after initial closing date; protester may not await additional supporting information before filing protest.

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

B-236069 July 24, 1989  
89-2 CPD 77

Protest which was filed more than 10 working days after the basis of protest was known is untimely filed and will not be considered. See 4 C.F.R. § 21.2(a)(2) (1988).

**PROCUREMENT**  
Sealed Bidding  
Bid guarantees  
Responsiveness  
Invitations for bids  
Identification

B-235124 July 25, 1989  
89-2 CPD 78

Agency properly rejected protester's bid as nonresponsive where bid guarantee, in the form of an irrevocable letter of credit, is inadequate because it does not identify the solicitation or the work to be performed.

**PROCUREMENT**  
Sealed Bidding  
Contract awards  
Propriety  
Allegation substantiation  
Evidence sufficiency

B-235376.2 July 25, 1989  
89-2 CPD 79

Protest that awardee's bid should have been rejected as nonresponsive is denied where the awardee unequivocally offered to provide the required machine in accordance with the material terms and conditions of the invitation for bids (IFB) and the awardee's descriptive literature showed that its machine complied with the salient characteristics of the IFB.

**PROCUREMENT** **B-235812 July 25, 1989**  
**Bid Protests** **89-2 CPD 80**  
**GAO procedures**  
**Interested parties**  
**Direct interest standards**

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

**PROCUREMENT** **B-236176 July 25, 1989**  
**Contractor Qualification** **89-2 CPD 81**  
**Responsibility**  
**Contracting officer findings**  
**Affirmative determination**  
**GAO review**

General Accounting Office (GAO) will not consider a protest questioning a prospective awardee's low price or its ability to comply with specifications in an invitation for bids since such a protest is a challenge to the contracting officer's affirmative determination that the firm is a responsible contractor, and GAO will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or that definitive responsibility criteria have been misapplied.

**PROCUREMENT** **B-232025.2 July 26, 1989**  
**Sealed Bidding** **89-2 CPD 82**  
**Contract awards**  
**Eligibility**  
**Suspended/debarred contractors**

Where protester, who had submitted low bid, was on list of suspended contractors at time of the award, and where second low bidder refused to extend acceptance period, agency reasonably concluded that award to second low bidder was in the government's interest.

**PROCUREMENT****Bid Protests****GAO procedures****GAO decisions****Reconsideration****Additional information****B-232693.2; B-232693.3****July 26, 1989****89-2 CPD 83**

General Accounting Office affirms prior decision sustaining protest on ground that agency unreasonably evaluated proposals, and recommending that agency reevaluate proposals and reimburse protester for cost of pursuing protest; request for reconsideration does not warrant reversal where it is based on information that could have been but was not presented during consideration of original protest.

**PROCUREMENT****Bid Protests****GAO procedures****Protest timeliness****Apparent solicitation improprieties****B-235249 July 27, 1989****89-2 CPD 85**

Protest ground concerning solicitation impropriety apparent prior to the closing date for receipt of proposals is untimely where it is not filed before closing.

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

Where a firm initially filed an agency-level protest of contracting activity's refusal to extend closing date for receipt of proposals on the basis of insufficient time to submit offers, the agency's receipt of proposals on the scheduled closing date without taking any corrective action in response to the protest constitutes initial adverse agency action, such that a subsequent protest to the General Accounting Office (GAO), 3 weeks later, is untimely under GAO's Bid Protest Regulations.

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

**B-235534.2 July 27, 1989**  
**89-2 CPD 86**

Protest filed more than 10 days after 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, in writing, the agency decision.

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

**B-234927.2 July 28, 1989**  
**89-2 CPD 87**

A contractor adversely affected by a prior General Accounting Office decision is not eligible to request reconsideration of that decision where the firm was notified of the original protest but did not participate in the protest.

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

**B-234936.3 July 28, 1989**  
**89-2 CPD 88**

Where the protester is in possession of facts that would establish the timeliness of its protest, but does not include those facts in its initial protest submission, the protester bears the risk of dismissal, and upon reconsideration of the dismissal, the General Accounting Office will not consider the information which should have been presented initially.

**PROCUREMENT**

**B-234985 July 28, 1989**

**Contract Management**

**89-2 CPD 89**

**Contract modification**

**Cardinal change doctrine**

**Criteria**

**Determination**

The failure of solicitation specifications to adequately reflect the agency's minimum needs may not be remedied by a post-award changes to the specifications which affect the nature of the contract.

**PROCUREMENT**

**Sealed Bidding**

**Invitations for bids**

**Post-bid opening cancellation**

**Justification**

**Sufficiency**

A compelling reason exists for the cancellation of an invitation for bids after bid opening where the contracting agency determines that the solicitation specifications, in essence, for legal services did not properly or adequately describe its actual minimum needs for the legal services required.

**PROCUREMENT**

**B-235187 July 28, 1989**

**Sealed Bidding**

**Invitations for bids**

**Competition rights**

**Contractors**

**Exclusion**

Protest that agency's failure to provide prior contractor with copy of solicitation resulted in a lack of full and open competition and rendered procurement fatally flawed is denied where, although agency inadvertently failed to solicit the protester it made reasonable efforts to publicize and distribute the solicitation and obtained adequate competition, as evidenced by receipt of 25 bids.

**PROCUREMENT****B-235053 July 31, 1989****Sealed Bidding****89-2 CPD 90****Bids****Errors****Error substantiation**

Bidder seeking post-bid-opening correction of a claimed mistake in bid must submit clear and convincing evidence of the error and how it occurred. Protester that did not substantively respond to agency's reasonable assertion that its mistake claim lacked credibility did not meet its obligation to submit clear and convincing evidence.

**PROCUREMENT****B-235197 July 31, 1989****Competitive Negotiation****89-2 CPD 91****Contract awards****Administrative discretion****Cost/technical tradeoffs****Technical superiority**

Where request for proposals provided that, in evaluating proposals, technical quality and price would be considered to be of equal importance, agency properly awarded on the basis of higher-rated, higher-priced proposal since it reasonably determined that technical advantage associated with higher-rated proposal was worth the difference in price.

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

Awardee's proposal satisfied solicitation's requirement for in-house electricians where electricians proposed, although employees of a subcontractor, were assigned to work effort on a permanent, full-time basis.

PROCUREMENT

B-236052 July 31, 1989

Sealed Bidding

89-2 CPD 92

Bids

Post-bid opening periods

Error correction

Propriety

Protest generally alleging only that allowing post-bid opening bid corrections compromises the integrity of the procurement system does not state a valid basis for protest since bid correction is a procedure permitted by applicable regulations.



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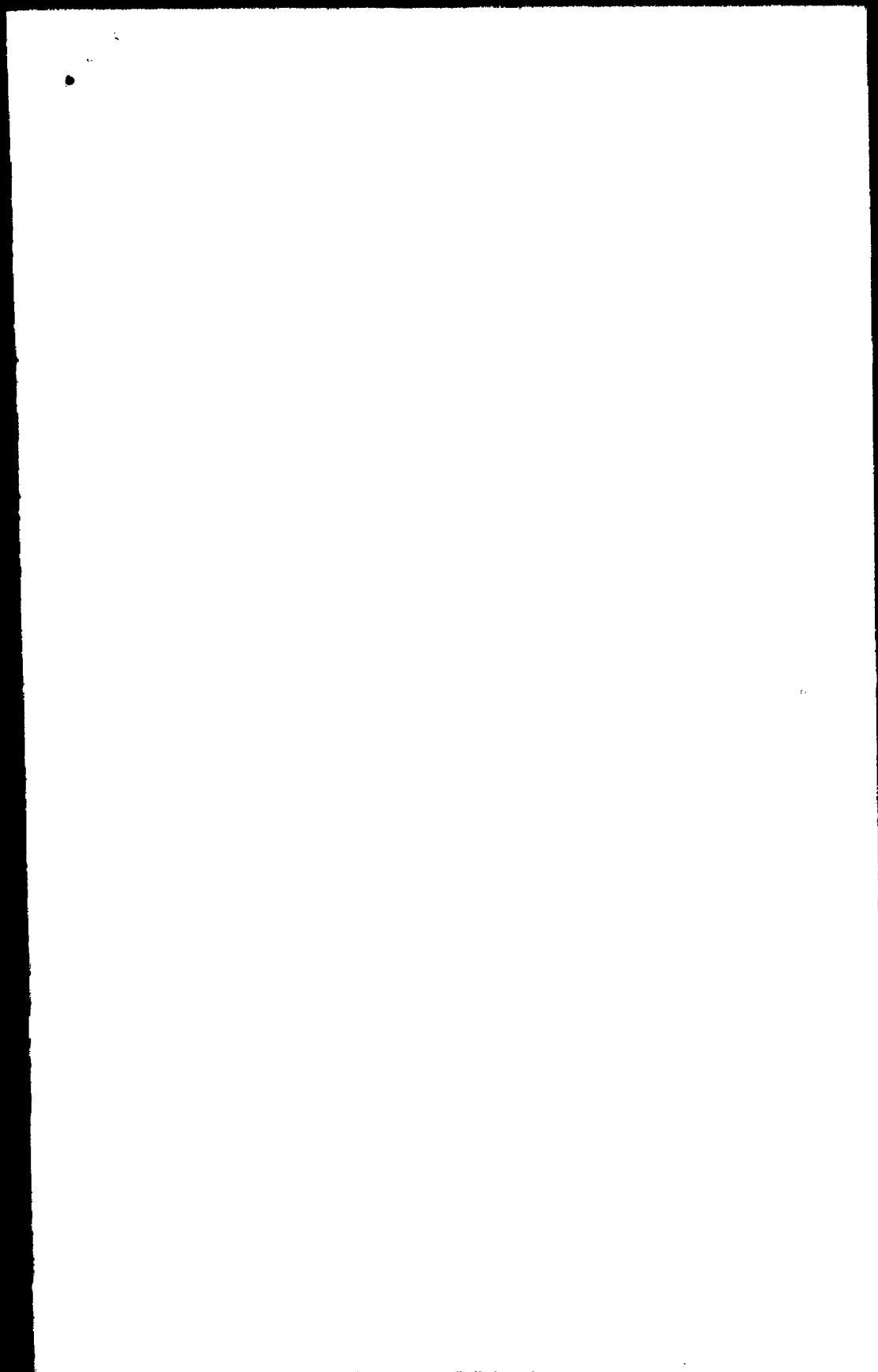
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