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UNITED STATES GENERAL ACCOUNTING OFFICE

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VOLUME XXV

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B-200299, June 12, 1981, modified in part by B-200299.2, Oct. 9, 1981

B-202647, June 17, 1981 overruled by B-202647.2(1), Oct. 2, 1981

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B-203473(1) Oct. 1, 1981 81-2 CPD 269
 BIDS--EVALUATION--CRITERIA--NOTICE TO BIDDERS--SUFFICIENCY

Although solicitation does not contain notice to bidders that option prices would be evaluated as required by regulations, bidders were not prejudiced as this information was provided during prebid conference.

BIDS--EVALUATION--OPTIONS--EVALUATION CRITERIA

Since there is no evidence in record that agency made determination required by regulations prior to evaluation of option prices, GAO recommends that solicitation be canceled and requirement readvertised unless agency can either show that proper determination was in fact made or makes such determination prior to making award.

BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--WHAT CONSTITUTES

Even if bid on service contract for four month base period and two 1-year options is mathematically unbalanced, bid may be accepted unless it is also materially unbalanced, that is, reasonable doubt exists that award would not result in lowest ultimate cost. Such question need not be resolved, however, since it concerns third low bid and there is no indication in record that agency will reject two lower bids.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest concerning bidder's ability to meet contractual requirements is not for consideration as GAO will not review affirmative determination of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.

B-199937(1) Oct. 2, 1981 81-2 CPD 270
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--RESTRICTIVE--PARTS, ETC., PROCUREMENT

Agency cannot restrict consideration of alternative sources by simply assigning spare part to material control classification which requires that part be purchased from original equipment manufacturer. Manufacturer of alternative part must be given opportunity to demonstrate suitability of alternative product, and any restriction of competition must be separately justified under procurement statutes.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--
INADEQUATE

Fact that alternative part is not guaranteed when used with components of original manufacturer is not adequate to justify sole source award since original manufacturer does not guarantee replacement parts when used with its own components.

Sole source justification is not adequate where record shows that other manufacturers have produced same parts satisfactorily in prior procurements utilizing more rigid manufacturing and inspection controls by Govt.

B-202647.2(1) Oct. 2, 1981 81-2 CPD 271
BIDS--PRICES--ITEM PRICING--SUBMISSION AFTER BID OPENING--
PROPRIETY

It is improper to require only total bid price at bid opening and post-bid opening submission of and possible negotiation of unit prices under IFB for indefinite quantity contract, since unit prices are necessary at bid opening to set material terms of contractor's obligation. That procedure, however, may be used if fixed price contract is contemplated, since Govt.'s acceptance of low bid would obligate firm to provide services listed for stated period for which Govt. would pay total bid price. In that case, unit prices would not affect contractor's obligation. B-202647, June 17, 1981, overruled.

B-202647.2(1) Oct. 2, 1981 81-2 CPD 271 - Con.
CONTRACTS--OPTIONS--SOLICITATION PROVISIONS--PROMPT PAYMENT
DISCOUNTS--DECREASES NOT PRECLUDED--BID RESPONSIVE

Bidder may alter prompt payment discounts for option years different from that offered for base year where not precluded from doing so by IFB. B-202647, June 17, 1981, overruled.

B-198952.2 Oct. 5, 1981 81-2 CPD 273
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Request by agency for reconsideration received more than 10 working days after agency knew of basis for request is untimely. 4 C.F.R. 21.9 (1981).

B-200177.2 Oct. 5, 1981 81-2 CPD 274
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than one year after protester received notification of SBA denial of protest over award of 8(a) contract is untimely and will not be considered on its merits.

B-200871 Oct. 5, 1981 81-2 CPD 275
BIDS--AGGREGATE v. SEPARABLE ITEMS, PRICES, ETC.--
ADDITIVES--APPROPRIATION AVAILABILITY--RECORDING
REQUIREMENT--NOT APPLICABLE TO FPR

FPR do not require pre-bid-opening determinations of available funding in procurements having additive items; therefore, Veterans Administration has discretion in determining amount of available funding for award of contract where additional funds are obtained after bid opening.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ADEQUACY--SCOPE
OF WORK--SUFFICIENCY OF DETAIL

IFB which described electrical wiring work to be done by reference to "approximate locations" was sufficiently detailed to permit competitive bidding since work details could be estimated through visiting worksite.

*B-200871 Oct. 5, 1981 81-2 CPD 275 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--INCORPORATION OF
TERMS BY REFERENCE*

Work described in notes on IFB drawing was not inconsistent with IFB's specifications since notes' work was incorporated by reference into specifications both by provision of specifications as well as general provision No. 2 of IFB. Moreover, even if notes' work is not to be considered to be part of specifications, bidders were still required to price notes' work in their bids because IFB repeatedly stated that work to be bid was set forth in both "specifications and drawings." Repeated statements admitted possibility that some required work might be found only in IFB's specifications or in drawings.

BIDS--MISTAKES--APPARENT TO AGENCY

Agency must reject bid, responsive on its face, where, despite bidder's denial, it is apparent to agency that mistake has been made.

*BIDS--PRICES--REASONABLE PRICE RANGE ESTABLISHED--ESTIMATE
NOT CEILING FOR BIDDING*

Bidder assumed risk of allegedly bidding on cost estimate which obviously did not include all work required under reasonable interpretation of specifications and drawings since bidder did not question cost estimate prior to bidding; moreover, under applicable precedent bidder is expected to prepare its independent bid regardless of cost estimate which is not ceiling for bidding.

*B-203937 Oct. 5, 1981 81-2 CPD 276
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest that quotations were not evaluated on common basis under terms of RFQ and that awardee's quotation

did not meet RFQ specifications, filed within 10 working days after debriefing conference, at which agency explained evaluation and protester first reviewed awardee's quotation, is timely under 4 C.F.R. 21.2(b)(2) (1981) and will be considered on merits. Contracting agency is requested to provide documented report on merits of these bases of protest.

*B-204786 Oct. 5, 1981 81-2 CPD 277
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after protest was denied by contracting agency is untimely and not for our consideration.

*B-204823 Oct. 5, 1981 81-2 CPD 278
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that offeror should not have been awarded contract because of alleged violation of Fed. regulatory agency order and past unsatisfactory performance involves responsibility and GAO will not review affirmative responsibility determination absent showing of fraud or presence of unapplied definitive responsibility criteria.

*B-198911.3 Oct. 6, 1981 81-2 CPD 279
CONTRACTS--OPTIONS--SOLICITATION PROVISIONS--PROPRIETY*

Purported options for contract renewals which contemplate negotiation of price, subject to yet-to-be-determined price ceiling, for acquisition of undefined equipment and/or services, to fulfill imprecisely defined needs, are little more than advance agreements to conduct negotiations on what is tantamount to sole-source basis. Prior decision is affirmed. Provisions should be deleted from contract.

B-202536.2 Oct. 6, 1981 81-2 CPD 281
CONTRACTS--NEGOTIATION--COMPETITION--
COMPETITIVE RANGE FORMULA--ADMINISTRATIVE DETERMINATION

Contracting agency did not abuse its administrative discretion when it excluded protester from competitive range since agency had rational basis for concluding that protester did not have reasonable chance of being selected for final award.

B-203202.2 Oct. 6, 1982 81-2 CPD 282
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING
REQUIRED

Requirement that bidder list source-controlled component which it proposes to utilize creates obligation that bidder furnish specified component, which is not otherwise required under IFB specifications.

Where IFB identifies previously approved source-controlled components and requires bidder to list those that it will furnish to that procuring agency can insure that acceptance of bid will obligate bidder to meet agency's needs, bidder's failure to identify one such component requires rejection of bid as nonresponsive.

B-198679.2 Oct. 7, 1981 81-2 CPD 283
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

GAO affirms prior decision denying protest that use of peak workload data in specifications and failure to include nonpeak workload data and projections, purportedly available from prior contracts, rendered specifications unduly restrictive of competition, unfairly advantageous to incumbent contractor, and inappropriate for award of fixed-price incentive contract. Protester has presented no new factual grounds showing that specifications

were unreasonable, that agency could reasonably provide more precise information, or that agency's decision to award fixed-price incentive contract lacked reasonable basis.

*B-204842 Oct. 7, 1981 81-2 CPD 284
CONTRACTS--STENOGRAPHIC REPORTING--CHARGES TO PUBLIC--AS
EVALUATION FACTOR--REASONABLENESS REQUIREMENT*

GAO recommends that agency reject proposal, which includes unreasonably high rate of up to \$7.50 per page for copy of transcript requested by public, since under Fed. Advisory Committee Act agency is obligated to make copies of transcripts available to public at reasonable prices.

*FEES--SERVICES TO PUBLIC--CHARGES--REPORTING SERVICES--
REASONABLENESS REQUIREMENT*

Agency must evaluate offeror's proposed rate of "\$7.50 maximum" per page for copy of transcript requested by agency or by public at rate of \$7.50 per page.

*B-199690.2 Oct. 8, 1981 81-2 CPD 285
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
WEIGHT LIMITATION*

Decision that Air Force specification's 0.75-pound cylinder weight limitation does not unduly restrict competition, although Navy buys protester's heavier cylinder, is affirmed. Protester has not shown that weight restriction was not reasonably related to Air Force's particular needs under operating procedures and conditions different from those of Navy.

*TRANSPORTATION DEPARTMENT--REGULATIONS--HAZARDOUS
MATERIALS--COMPLIANCE DETERMINATION--MILITARY PROCUREMENTS*

Decision denying protest against solicitation which deleted product qualification requirement allegedly violating Dept. of Transportation regulations on hazardous materials is affirmed. Where agency which

prepared the specification determined less rigorous tests would assure an acceptable product and the solicitation stated product qualification was not required, GAO will not object to an agency's determination that less restrictive specifications and tests meet its minimum needs.

*B-201333(1) Oct. 8, 1981 81-2 CPD 286
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

Because unreasonable failure of civilian agency to refer determination of nonresponsibility of small business-protester to SBA in reliance on agency procurement regulation violated Small Business Act and implementing Federal Procurement Regulations, protest against award of completed contract is sustained. Since SBA declined to decide hypothetically protester's compliance with definitive responsibility criterion, in this limited circumstance, GAO decides matter and finds reasonable basis for nonresponsibility determination. Therefore, bid preparation costs are not allowable.

*B-202782(1) Oct. 8, 1981 81-2 CPD 287
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Where agency fails to show that specification restriction requiring that electronic mail systems be manufactured by only one company is prima facie reasonable, solicitation should be canceled and requirement resolicited without restrictive specification.

*B-203818.2 Oct. 8, 1981 81-2 CPD 288
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--
POLICY MATTERS--NOT FOR GAO REVIEW*

Determination under Office of Management and Budget Circular No. A-76 to contract for services rather than have them performed in-house is matter of Executive Branch policy not reviewable as bid protest filed by union representing Fed. employees.

B-197872.2 Oct. 9, 1981 81-2 CPD 289
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
CANCELLATION--DELAY

Agency, after major considerations have been enumerated as to why cancellation of solicitation may be appropriate, should inform offeror of that possibility to enable offeror to make necessary informed business decisions, rather than delay 2 months.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
CANCELLATION--REASONABLE BASIS--CHANGED CONDITIONS,
NEEDS, ETC.

Contracting officer's decision to cancel solicitation after it was determined that communication system was no longer needed, based on, among other things, departmental-wide requirements and plan to establish nationwide system, was reasonable.

In view of conclusion that contracting officer's determination to cancel solicitation was reasonable, there is no basis to find arbitrary and capricious action by agency to support recovery of proposal preparation costs.

*B-197872.2 Oct. 9, 1, 1981 81-2 CPD 289 - Con.
ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--CLAIM FOR
BID/PROPOSAL PREPARATION COSTS*

Govt. is not estopped to deny existence of contract with protester where record lacks clear evidence of any overt act by Govt. which might reasonably be construed as inducement to protester to incur costs by commencing its implementation plan prior to award.

*B-200299.2 Oct. 9, 1981 81-2 CPD 290
CONTRACTS--LABOR STIPULATIONS--DAVIS-BACON ACT--
CLASSIFICATION OF WORKMEN--DISPUTES*

Ruling that record was sufficient to substantiate worker's claim that he was not paid prevailing Davis-Bacon wage rate for work performed as carpenter and painter is affirmed on reconsideration. B-200299, June 12, 1981, modified in part.

*CONTRACTS--LABOR STIPULATIONS--DAVIS-BACON ACT--WAGE
UNDERPAYMENTS--EVIDENCE*

Ruling that agreement between contractor and Dept. of Labor did not cover work performed by employee in March 1979, but rather work performed in May 1979, is modified on reconsideration to extent that new evidence has established that agreement covered work performed in March 1979. B-200299, June 12, 1981, modified in part.

*B-202031 Oct. 9, 1981 81-2 CPD 291
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS*

Prior decision is affirmed where request for reconsideration questions decision holding that agency should evaluate previously accrued installation charges when telephone system is reprocured. Rule that Govt. is not required to compensate for natural advantage of incumbency does not apply where incumbency resulted from improper award which reprocurement is intended to correct.

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3

B-202921 Oct. 9, 1981 81-2 CPD 292
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
METHOD--NOT PREJUDICIAL

Protest that cube dimensions should not have been used in evaluation under terms of solicitation under terms of solicitation need not be considered because even using protester's method of computation, protester's does not become low and, therefore, there was no prejudice.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

Contention that cheaper surface transportation rates should have been used in evaluation rather than LOGAIR rates, is found to be without merit since agency has justified use of LOGAIR rates because of priority of program, RFTP alerted offerors to possibility of air shipping and all bids were evaluated using same formula.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--TWO-STEP PROCUREMENT--SOLICITATION
IMPROPRIETIES-STEP TWO

Protest of life cycle cost evaluation method, set forth in step two IFB is untimely where not filed prior to bid opening. While protester argues it was misled by step one request for technical proposals (RFTP) in designing container, assuming RFTP did mislead protester, IFB made clear the manner in which bids would be evaluated and, therefore, alleged impropriety was apparent from review of IFB.

B-203206 Oct. 9, 1981 81-2 CPD 293
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

GAO will not conduct independent investigation to establish validity of protester's statements since burden is on protester to provide evidence necessary to support its case. This burden has not been met

where Administrative Review Board's decision reasonably sustains determination to continue performance in-house.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

When doubt exists as to when protester knew or should have known basis for protest, doubt is resolved in favor of protester.

B-203428, et al. Oct. 9, 1981 81-2 CPD 294
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility except for reasons not present here.

CONTRACTS--NEGOTIATION--OFFERS AND PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

Determination that awardee's proposals were technically acceptable is matter which falls within contracting agency's administrative discretion, and not subject to question by our Office unless clearly arbitrary or unreasonable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--
RESPONSIVENESS--CONCEPT NOT APPLICABLE TO NEGOTIATED
PROCUREMENTS

Concept of responsiveness is not applicable to negotiated procurements. Therefore, protester's argument that awardee's proposals were nonresponsive is without merit.

CONTRACTS--PERFORMANCE--ADEQUACY--CONTRACT ADMINISTRATION
MATTER

Whether awardee will fulfill its contractual obligations is matter for contracting agency in administration of contract and does not affect validity of awards.

B-203428, et al. Oct. 9, 1981 81-2 CPD 294 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Question of legal rights to certain drawings is
dispute between private parties which must be
settled by courts rather than by GAO.

B-203581 Oct. 9, 1981 81-2 CPD 295
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--QUALIFIED
PRODUCTS

Clause in IFB which requires that forklift trucks
offered be bidder's latest standard commercial product
which has been in production, marketed and in use for
one year prior to issuance of solicitation appears to
involve bid responsiveness. Even if clause is con-
strued as constituting definitive responsibility
standard, agency cannot award contract to bidder offer-
ing trucks which have not been in use for one year.
"But see" on B-203581.2.

B-203938 Oct. 9, 1981 81-2 CPD 296
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--EXCEPTIONS--OFFERS NOT WITHIN
COMPETITIVE RANGE

Proposing new bilingual/bicultural models was
properly within scope of solicitation and pro-
curing agency was not obligated to discuss
other offeror's suggestions with protester.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFEROR'S REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Where during discussions, procuring agency directed
offeror's attention to one evaluator's concern about
protester's ability to provide consultation services
and where revised proposal addressed that area,
agency satisfied its obligation to conduct meaningful
discussions.

B-203938 Oct. 9, 1981 81-2 CPD 296 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--ADHERANCE TO EVALUATION SCHEME

Protester was treated fairly and consistently with evaluation scheme where one of three evaluators give each offeror relatively low scores for evidence of satisfactory similar experience and other two evaluators gave each offeror relatively high scores. Further, scoring of this evaluation factor was not outcome determinative.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
INFORMATION PROVIDED--INACCURATE

Procuring agency made reasonable and good faith effort to obtain accurate information concerning protester's proposed consultant. Protester's incorrect proposal contributed to agency's inability to obtain correct information. Further, since agency reasonably believed that information obtained was accurate, agency was not obligated to seek clarification from protester.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
RE-EVALUATION--METHOD CHANGES

Procuring agency reasonably explains that protester's score was lower in final evaluation than in earlier evaluation because agency used lower-range scale to score proposals the final time.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
RE-EVALUATION--SCORING CHANGES

Procuring agency's explanation of one evaluator's determination to decrease score of protester's proposal regarding understanding of intent and requirement is reasonable. Initially, one evaluator gave protester's proposal benefit of doubt but perspective of additional discussions and proposal revisions provided reasonable basis for evaluator's determination to decrease protester's score on this factor.

*B-203938 Oct. 9, 1981 81-2 CPD 296 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY EQUAL PROPOSALS--PRICE DETERMINATIVE FACTOR*

Where final overall technical scores range from 81 to 85 points, and where protester's contentions of error in evaluation are found to be without merit, agency's determination that proposals were of similar technical quality cannot be questioned by GAO. Thus, selection of second highest scored offeror (83 points), which submitted significantly lower evaluated cost, is reasonable.

*B-204654 Oct. 9, 1981 81-2 CPD 297
BIDS--EVALUATION--AGGREGATE v. SEPARABLE ITEMS, PRICES,
ETC.--LOW BIDDER ENTITLEMENT TO AWARD*

Additive/Deductive Clause, stating that low bidder for purposes of award shall be determined on basis of aggregate amount for first or base bid item, plus or minus items providing most features of work within funds determined by Govt. to be available before bid opening, does not require Govt. to make award at unreasonable price simply because funds are available.

BIDS--PRICES--REASONABLENESS--ADMINISTRATION DETERMINATION

Defense Acquisition Regulation permits contracting officer to reject individual bids and/or to cancel solicitation if bids are unreasonable, such determination properly may be made by comparing bid prices with Govt. estimate. GAO cannot conclude that contracting officer was unreasonable in rejecting base bid which was 140 percent of Govt. estimate.

*B-204684 Oct. 9, 1981 81-2 CPD 298
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--AMBIGUOUS--ALLEGATION NOT SUSTAINED*

Requirement that offered workboat have proven record of service without restriction as to type of service is not ambiguous.

*B-204787 Oct. 9, 1981 81-2 CPD 299
BIDS--EVALUATION--DISCOUNT PROVISIONS--PROPRIETY OF
EVALUATION*

Agency properly evaluated awardee's offered discount for payment within 20 days in determining awardee's bid to be low notwithstanding fact that cost of money to Govt. resulting from early payment would, according to protester, result in awardee's bid being higher than protester's because IFB provided that prompt payment discounts for payment within 20 or more days would be evaluated and IFB did not provide for considering cost of money to Govt. in evaluating bids.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that awardee does not have ability to perform contract will not be considered because allegation relates to awardee's responsibility and GAO does not generally review affirmative determinations of responsibility except in circumstances not applicable here.

*B-197082.2 Oct. 13, 1981 81-2 CPD 301
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Request for reconsideration of protest decision filed more than 10 working days after protester learned of grounds for requesting reconsideration is untimely.

*B-203946 Oct. 13, 1981 81-2 CPD 302
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against award which was based on calculation of bids, including alleged improper proprietary alternate, which was permitted under solicitation, is untimely and will not be considered on merits, since basis of protest was apparent from solicitation, but protest was not filed until after bid opening.

B-204415 Oct. 13, 1981 81-2 CPD 303
GENERAL ACCOUNTING OFFICE--JURISDICTION--CLAIMS--
SETTLEMENTS--AUTHORITY

Procurement conducted by Treasury Dept. pursuant to cooperative agreement between U.S. and Kingdom of Saudi Arabia does not involve use of funds subject to GAO account settlement authority and protest of such procurement is therefore dismissed.

B-204920 Oct. 13, 1981 81-2 CPD 304
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest alleging bidder is not responsible because it allegedly is being considered for debarment by another agency will not be considered on merits because GAO does not review protests involving affirmative determinations of responsibility, except where fraud is alleged or where definitive responsibility criteria allegedly have not been applied.

B-204935 Oct. 13, 1981 81-2 CPD 305
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

SBA, not GAO, conclusively determines matters of small business size status for Fed. procurement purposes. 15 U.S.C. 637(b)(6) (1976).

B-204992 Oct. 13, 1981 81-2 CPD 306
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest alleging undue delay by procuring agency in making award is untimely where filed with GAO nearly 2 months after expiration of protester's offer and more than 10 working days after protester's receipt of notification of elimination from competitive range.

B-205014 Oct. 13, 1981 81-2 CPD 307
BIDS--PRICES--BELOW COST

Protester's contention that awardee's bid price will not cover awardee's labor costs in performing contract will not be considered because it constitutes challenge of affirmative determination of bidder's responsibility. GAO will not review such determinations absent showing that procuring officials committed fraud or failed to apply definitive responsibility criteria, neither of which is alleged here.

B-202783 Oct. 14, 1981 81-2 CPD 308
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Whether bidder in fact supplies items manufactured by small business is matter of contract administration, which is responsibility of contracting agency and not for consideration by GAO.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--ADMINISTRATIVE DETERMINATION

Bidder's past conduct performing contracts set aside for small business, where bidder supplied some items not manufactured by small business, is matter to be considered by contracting agency in determining whether bidder is responsible. Such determination will not be reviewed by GAO except in circumstances not present here.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SELF-CERTIFICATION--ACCEPTANCE

Bidder's certification that it is small business, that it will provide products manufactured by small business, and its listing of that small business in bid is sufficient information for contracting officer to find bid responsive to invitation for bids setting aside requirement for small business.

*B-202831 Oct. 14, 1981 81-2 CPD 309
BIDS--MISTAKES--CORRECTION--DENIAL--ACCEPTANCE OF CONTRACT
AT INITIAL BID PRICE--NOTICE TO AGENCY REQUIREMENT*

Contracting officer has no obligation to query bidder as to willingness to accept award at original bid price where bidder only requested correction of bid prior to award.

BIDS--MISTAKES--CORRECTION--RULE

Even if contracting officer on first IFB was aware of verified prices on second IFB, it would not have been proper to accept verified prices as establishing intended bid for erroneous prices on first IFB, since verified prices were for IFB issued 10 days after bids were opened for first IFB and thus do not establish what intention was when bid on first IFB was submitted.

*BIDS--MISTAKES--RECALCULATION OF BID--ADDITIONAL COST
FACTOR CONSIDERATION--CORRECTION NOT ALLOWED*

Bidder seeking correction of bid is not permitted to recalculate and change bid to include factors which were not in mind when bid was prepared and submitted.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--TWO
SOLICITATIONS FOR SAME ITEM*

Protest that contracting agency erred in soliciting bids for same equipment under two different IFB's is untimely since it was made after bids were open for both IFB's.

*B-205009 Oct. 16, 1981 81-2 CPD 311
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest concerning small business size status will not be considered by GAO since authority to conclusively determine size status is vested in SBA.

B-200647 Oct. 19, 1981 81-2 CPD 313
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS

Bid offering mobile radio which contained some modules which could not be removed without clipping or unsoldering was nonresponsive to solicitation provision requiring all modules to be removable without clipping or unsoldering.

BIDS--RESPONSIVENESS--WAIVER OF REQUIREMENT

Although nonresponsive bid must usually be rejected, nonresponsive bid may be accepted here where radio offered would meet purchaser's actual needs and where record shows that other bids submitted were unacceptable for different reasons and it appears likely that bidders would offer same radios on resolicitation.

OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-102--
ATTACHMENT O

GAO will not consider allegation that grantor agency's handling of protest violated Attachment O of OMB Circular A-102 because provisions of Attachment O regarding grantor's consideration of protests have no direct relationship to validity of grantee's award decision. In this instance GAO has before it positions of grantor, grantee and all interested parties and therefore can properly consider whether grantor has ensured that grantee's proposed award complies with requirements made applicable by law, regulation or grant terms.

B-203324 Oct. 19, 1981 81-2 CPD 314
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO
ACKNOWLEDGE--BID NONRESPONSIVE

If bidder does not receive and acknowledge material amendment to IFB and such failure is not result of conscious and deliberate effort to exclude bidder from participating in competition, bid must be rejected as nonresponsive.

TERMS

*B-203324 Oct. 19, 1981 81-2 CPD 314 - Con.
BIDS--INVITATION FOR BIDS--AMENDMENTS--MATERIAL TO CONTRACT*

Amendment to IFB for building maintenance services adding snow removal tasks is material because it imposes additional work requirements and thereby changes legal relationship between parties.

BIDS--INVITATION FOR BIDS--AMENDMENTS--NONRECEIPT--BIDDER'S RISK

Bidder bears risk of nonreceipt of amendments which are timely mailed. Procuring activity is not insurer of bidding documents to prospective bidders.

*B-203579.2 Oct. 19, 1981 81-2 CPD 315
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision dismissing protest as untimely is affirmed since it is not shown to have been based on error of law or fact.

*B-203870 Oct. 19, 1981 81-2 CPD 316
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Protester's mere difference of opinion as to agency's minimum needs is not sufficient to upset agency's determination of those needs. Rather, protester has burden of affirmatively proving that decision concerning agency's minimum needs are clearly unreasonable.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--RESTRICTIVE--UNDUE RESTRICTION NOT
ESTABLISHED*

Use of product design specification is not unduly restrictive or violative of these regulations where:
(1) specification for number of "character" lines to be displayed on word processing equipment is dictated by agency's reasonable determination of its minimum

needs; (2) solicitation clearly stated that deviations from specification might be considered provided Govt.'s needs would not be prejudiced; and (3) 20 firms responded to solicitation.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest based upon alleged solicitation improprieties is timely when filed with GAO prior to closing date for receipt of initial proposals. Fact that protester failed to submit its request for specification revision prior to RFP's deadline for comments and questions does not make protest untimely, if protest is timely under 4 C.F.R. 21.2(b)(1) (1981).

*B-204819 Oct. 19, 1981 81-2 CPD 317
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--CONSIDERATION PROVIDED FOR IN SOLICITATION--MAILING PROVISIONS*

Late proposal sent by regular mail 7 days before date specified in RFP for receipt of proposals was properly rejected since it was not sent by certified or registered mail as provided in RFP.

CONTRACTS--PROTESTS--DENIAL--SUMMARY DENIAL

Protest is summarily denied where protester's initial submission demonstrates affirmatively that protester is not entitled to relief.

*B-204930 Oct. 19, 1981 81-2 CPD 318
CONTRACTS--DISPUTES--SETTLEMENT--"CONTRACT DISPUTES ACT OF 1978"*

Claim concerning agency's alleged failure to purchase services from contractor under post-March 1, 1979, requirements contract is for resolution under Contract Disputes Act of 1978 and, therefore, may not be considered by GAO.

B-205006 Oct. 19, 1981 81-2 CPD 319
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest which questions alleged improprieties which
are apparent on face of solicitation is not timely
when received by GAO after date for bid opening.

B-202879(1) Oct. 20, 1981 81-2 CPD 321
CONTRACTS--NEGOTIATION--BASIC ORDERING AGREEMENTS--PROPRIETY

Fact that agency enters into basic ordering
agreement with firm does not in itself unduly
restrict competition, although agency must
justify any sole-source orders placed against
basic ordering agreement.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION

Protester's disagreement with agency's judgment
that it lacks adequate technical data for competi-
tive procurement does not meet protester's burden
of proving that agency's justification of sole-
source award on that basis is unreasonable.

B-204605 Oct. 20, 1981 81-2 CPD 322
BIDS--LATE--INVITATION MAILING REQUIREMENTS--NONCOMPLIANCE

Bid, sent by certified mail on second calendar
day prior to date specified in invitation for
receipt of bids and received by contracting
agency after bid opening, was properly rejected
as late bid.

B-204887 Oct. 20, 1981 81-2 CPD 323
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that procurement should not have been set
aside for small business firms is untimely since
protest concerns solicitation impropriety apparent
prior to bid opening but was not filed until after
bid opening.

B-204887 Oct. 20, 1981 81-2 CPD 323 - Con.
CONTRACTS--PROTESTS--MERITS

Contention--that competitive bids from sufficient number of small businesses were not received--is without merit where six bids from small businesses were received and award was made at price near lower range of Govt. estimate. Further, GAO will not investigate each bidder, at protester's request, to ascertain its size status.

B-205101 Oct. 20, 1981 81-2 CPD 324
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging that provision of solicitation restricted ability of protester to compete for contract is untimely where alleged impropriety was evident on face of solicitation and protest was not filed until after contract was awarded.

B-201970(1) Oct. 21, 1981 81-2 CPD 325
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEFECTIVE--
MINIMUM NEEDS OVERSTATED

Rejection of low bid offering equipment which would meet agency's actual needs and award of contract to higher bidder under specifications which agency knew or should have known overstated its minimum needs is improper.

B-203545 Oct. 21, 1981 81-2 CPD 326
BIDS--MODIFICATION--TELEGRAPHIC--TIMELY

Telegraphic bid modification which was time stamped by GSA Communications Center prior to bid opening is not late where invitation stated that receipt by GSA Communications Center is deemed to be receipt by office designated in solicitation.

B-203545 Oct. 21, 1981 81-2 CPD 326 - Con.
BIDS--PRICES--BELOW COST--EFFECT ON BIDDER RESPONSIBILITY

No legal basis exists to preclude contract award merely because low bidder may have submitted below-cost bid.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review affirmative determination of responsibility except in limited circumstances.

B-203800 Oct. 21, 1981 81-2 CPD 327
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest--that (1) agency improperly restricted competition by listing in RFP only three firms (including protester) that were eligible to compete, and (2) RFP omitted necessary technical evaluation criteria to ensure acceptable performance--is untimely under 4 C.F.R. 21.2(b)(1) (1981), since protest is against alleged improprieties apparent in RFP and it was not filed prior to closing date for receipt of initial proposals.

EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--GENERAL
SERVICES ADMINISTRATION--RESPONSIBILITIES UNDER BROOKS ACT--
DELEGATION OF PROCUREMENT AUTHORITY TO OTHER AGENCIES--
EXCEPTIONS

Protester contends that agency procured automatic data processing equipment without procurement authority. GAO has no basis to question agency's procurement action where (1) contracting officer, with higher level concurrence, determined that system was classified as "Communication, Detection and Coherent Radiation Equipment" available under Federal Supply Schedule Group 58 requiring no delegation of authority from GSA and (2) protester offers no rebuttal to agency's position.

B-204427 Oct. 21, 1981 81-2 CPD 328
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest--concerning eligibility of offeror to compete
under procurement--filed with GAO more than 10 working
days after basis for protest was known is untimely and
not for consideration. See 4 C.F.R. 21.2(b)(2) (1981).

B-204886 Oct. 21, 1981 81-2 CPD 329
CORPORATIONS--LEGAL SERVICES CORPORATION--CONTRACTS--AWARD--
REVIEW BY GAO

GAO lacks jurisdiction to review award of contract
under grant by Legal Services Corporation, since
Corporation is not agency or establishment of Govt.
subject to GAO's accounts settlement authority.

B-204907 Oct. 21, 1981 81-2 CPD 330
CONTRACTS--PROTESTS--TO AGENCIES, ETC., OTHER THAN GAO--
TIMELINESS OF PROTEST

Protest to GAO will not be considered where firms
initial protest to contracting agency was not filed
in timely manner.

B-204994 Oct. 21, 1981 81-2 CPD 331
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest that bidder is incapable of meeting
solicitation delivery schedule is dismissed,
since it concerns challenge to agency's
affirmative determination of responsibility
which is not matter for review by GAO except
in circumstances not present here.

B-205100 Oct. 21, 1981 81-2 CPD 332
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Protests concerning small business size status are
not considered by GAO, but rather by SBA which, pur-
suant to U.S.C. 637(b), exercises conclusive authority
in this area.

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B-205131 Oct. 21, 1981 81-2 CPD 333
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest of affirmative determination of responsibility, which does not allege fraud on part of contracting officer or failure to apply definitive responsibility criteria, is not for review by GAO.

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B-199741.3 Oct. 26, 1981 81-2 CPD 338
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION

GAO finds no merit in protester's contention that narrative analysis portion of agency's technical evaluation report to Source Selection Official contradicts conclusion in prior protest decision that it was not unreasonable for Source Selection Official to make award to second-ranked offeror in order to take advantage of that offeror's lower cost. Narrative analysis in report clearly showed that second-ranked offeror, like protester, would have little difficulty in performing contract.

B-203261 Oct. 26, 1981 81-2 CPD 339
BONDS--BID--DEFICIENCIES--BID BOND PRINCIPAL AND BIDDER
VARIANCE--CORPORATE BIDDER

Although bidder is identified in bond and bid documents by three different corporate names, discrepancies are matters of form which do not affect identity of firm where evidence submitted after bid opening and prior to award establishes sameness of entities named in bid and bid bond.

BONDS--BID--IDENTITY OF BIDDER UNCLEAR--ESTABLISHMENT
AFTER BID OPENING

Where bidder is identified in bid bond and bid documents by three different corporate names, agency may consider documents submitted after bid opening which existed and were available

prior to bid opening to determine responsiveness of bid by establishing that different entities named in bid and bid bond are actually same firm.

*B-203385 Oct. 26, 1981 81-2 CPD 340
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PROPRIETY*

Decision to conduct procurement as total small business set-aside is reasonable where it is based on advice to contracting officer of six qualified small businesses, notwithstanding erroneous inclusion of large business among the six. Identification of four potential offerors with directly applicable experience in related fields is sufficient by itself to support set-aside and erroneous inclusion of large business is irrelevant.

*B-203659 Oct. 26, 1981 81-2 CPD 341
CONTRACTS--NEGOTIATION--COMPETITION--EFFECT OF NEGOTIATION
PROCEDURES--NOT PREJUDICIAL*

Procuring agency's request for verification of pricing in one offeror's first best and final offer may have provided basis for offeror to speculate that its proposed price was low but agency's action did not provide that offeror with unfair competitive advantage in submitting its second best and final offer. All offerors were given equal opportunity to revise proposals based on revised and clarified requirements.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND
FINAL--ADDITIONAL ROUNDS--AMENDMENT OF SOLICITATION*

Where response to procuring agency's request for verification of pricing in offeror's best and final offer results in determination that RFP is ambiguous, amendment clarifying requirement and permitting revised proposals constitutes meaningful written discussions with all offerors in competitive range.

B-203659 Oct. 26, 1981 81-2 CPD 341 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Initial adverse agency action occurs when procuring agency proceeds with closing date for proposal receipt as scheduled without taking corrective action suggested by timely protest to agency. Subsequent protest to GAO is untimely under 4 C.F.R. 21.2(a) (1981), since it was not filed here within 10 working days of notice of the initial adverse agency action.

B-203778 Oct. 26, 1981 81-2 CPD 342
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Correspondence with contracting officer requesting information does not constitute protest to agency. Protest subsequently filed with GAO more than 10 working days after basis for protest is known is untimely.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest of alleged improprieties in solicitation which is not filed prior to bid opening is untimely when impropriety is apparent from face of solicitation.

B-203952.2 Oct. 26, 1981 81-2 CPD 343
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
STATUS OF BIDDERS

There is no authority under small business set-aside procedures for any special consideration of minority or disadvantaged status of bidders in making award decision. Award must be made to lowest responsive, responsible bidder regardless of minority or disadvantaged status.

B-204839 Oct. 26, 1981 81-2 CPD 344
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not consider protest against affirmative determinations of responsibility except in exceptional circumstances which are not alleged.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protester's belief that apparent awardee will seek post-award contract modification substituting cast iron for specified aluminum parts, is matter of contract administration which will not be considered by GAO.

B-204988 Oct. 26, 1981 81-2 CPD 345
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Determination whether to set aside procurement under section 8(a) of Small Business Act and whether concern is eligible for assistance under section 8(a) of act is not received by GAO unless determination resulted from fraud or bad faith on part of Govt. officials.

B-205077 Oct. 26, 1981 81-2 CPD 346
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Determination whether to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA and will not be reviewed by GAO absent showing of fraud or bad faith on part of Govt. officials.

Issues concerning contractor eligibility for subcontract award under section 8(a) of Small Business Act are matters for determination by

BY GAO--

SBA and not GAO; because of broad discretion afforded SBA by statute, such judgmental decision will not be questioned absent showing of fraud or bad faith on part of Govt. officials.

B-202407 Oct. 27, 1981 81-2 CPD 347
BUY AMERICAN ACT--CONTRACTS--FOREIGN PRODUCTS--PRICE DIFFERENTIALS APPLICABLE

Buy American Act does not absolutely prohibit procurement of foreign materials, but establishes preference for domestic material by requiring that differential be added to price bid on material of foreign origin.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

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Protest that procuring agency should have applied Buy American Act differential relating to supply rather than construction contract, where IFB made clear that procuring agency considered solicitation to be for construction, is untimely under 4 C.F.R. 20.2(b)(1) (1981) since not filed prior to bid opening.

B-204524, et al. Oct. 27, 1981 81-2 CPD 348
CONTRACTS--PROTESTS--AFFIDAVIT PENDING COURT ACTION

Protests will not be considered because material issues involved are pending before court of competent jurisdiction, and court has not expressed interest in GAO decision.

B-204863 Oct. 27, 1981 81-2 CPD 349
CONTRACTS--DISCOUNTS--REFUND CLAIM--DENIED

Claim for refund of prompt-payment discount is denied where contract provides for discount if payment is made within 30 days of receipt of invoice by Government and supplier cannot show facts to refute Government's assertion that it never received original invoice and payment was made within 30 days of receipt of copy of invoice.

*B-205103 Oct. 27, 1981 81-2 CPD 350.
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether equipment furnished complies with contract requirements is matter of contract administration for contracting agency, not GAO.

*B-198295.3 Oct. 28, 1981 81-2 CPD 351
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision holding that VA had reasonable basis to consider bid ineligible for award is affirmed where request for reconsideration makes no showing of erroneous legal conclusions or information not previously considered.

*B-200430.2 Oct. 28, 1981 81-2 CPD 352
CONTRACTS--NEGOTIATION--PRICES--INCREASES*

Awardee, a regulated telephone company whose rates must be approved by State commission, based offer on current rate structure, even though it had requested rate increase which was pending with State commission. Protest that acceptance of such offer was not in best interest of Govt. is denied, where permitting rate increases to be passed through on telephone contracts is standard Govt. policy necessitated by nature of telephone industry. In any event, agency reevaluated offer based on projected new rates, and offer was still low, so protester was not prejudiced.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Issues raised by interested party must independently meet timeliness rules of GAO Bid Protest Procedures to be considered. Since issues were raised more than 10 working days after party had knowledge of grounds underlying issues, they are untimely and are dismissed.

B-200430.2 Oct. 28, 1981 81-2 CPD 352 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

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Protest after award that awardee's offer was nonresponsive because it contained termination liability clause which conflicts with standard Termination for Convenience of Govt. clause is untimely where solicitation was amended to allow termination liability clauses, because protester knew from amendment that such clauses would be acceptable. Complaint is really against amendment permitting such clauses to be offered and, to be timely, protest against alleged defect incorporated in solicitation must be filed before next closing date after incorporation.

REGULATIONS--FORCE AND EFFECT OF LAW--AGENCY POLICY

Protest that agency improperly waived preaward contract clearance is denied, since regulation providing for clearance is merely internal agency guideline, without force and effect of law.

B-201328 Oct. 28, 1981 81-2 CPD 353
CONTRACTS--DISCOUNTS--REFUND CLAIM

Govt. is entitled to prompt-payment discount where failure to pay contractor within discount period is due to contractor's failure to pay workers proper wage rate in violation of Service Contract Act (SCA). However, Govt. is not entitled to discount on amount withheld which is in excess of amount owed workers or where court holds that SCA is not applicable to contract.

INTEREST--CONTRACTS--DELAYED PAYMENT BY GOVERNMENT

Payment of interest is not required to be made on amounts withheld by contracting agencies, at direction of Dept. of Labor, in excess of amount needed to reimburse workers underpaid by contractor in violation of Service Contract Act, since neither laws of U.S. nor contract provides for payment of interest.

B-202707 Oct. 28, 1981 81-2 CPD 354
*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--
SITUATIONS NOT REQUIRING DISCUSSION*

Contracting agency need not discuss with protester fact that protester's proposed costs were significantly higher than lower rated albeit technically acceptable awardee's proposed costs where: (1) solicitation provided that award could be made without discussions; (2) offerors had competed on same basis; and (3) protester's proposed costs were below agency estimate.

*CONTRACTS--NEGOTIATION--OFFERS AND PROPOSALS--EVALUATION--
TECHNICALLY SUPERIOR PROPOSALS--PRICE COMPARABILITY*

Although protester had highest rated technical proposal, it was not unreasonable for Source Selection Authority to make award to awardee to take advantage of lower cost. Technical evaluators believed awardee would be able to perform as acceptably as protester and Source Selection Authority determined (after cost analysis required by RFP evaluation scheme) that extra technical merit offered by protester was not worth probable extra expenditure of over \$1.5 million over life of basic contract plus 2 option years. In addition, though RFP indicated that technical factors were more important than cost, cost was listed as one of significant factors to be considered in selection of contractor.

*CONTRACTS--PROTESTS--ALLEGATION OF IMPROPRIETY OF TECHNICAL
PROPOSAL--NOT SUPPORTED BY RECORD*

Protest that AF evaluators should have downgraded awardee's technical proposal because awardee attempted to recruit protester's employees is denied because awardee did not list protester's employees in its proposal.

CON

B-202707 Oct. 28, 1981 81-2 CPD 354 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest alleging that AF should have discussed with protester AF perception that proposal was "excessive" and priced too high is timely because protester was not aware of these alleged perceptions until after it received AF report on protest.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

CON--

Protest alleging that awardee attempted to recruit protester's employees and that should have discussed alleged recruitment with awardee prior to making award is dismissed as untimely because this basis for protest was known to protester more than 10 days before protest was filed in our Office. 4 C.F.R. 21.2(b)(2) (1981).

B-202963 Oct. 28, 1981 81-2 CPD 355
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION

GAO has no basis to object to contract award that resulted from proper evaluation of proposals according to RFP's evaluation scheme.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

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Protest that RFP's delivery schedule was too restrictive is dismissed as untimely, since it was not filed before proposals were due.

B-203184 Oct. 28, 1981 81-2 CPD 356
CONTRACTS--LABOR STIPULATIONS--SOLICITATION PROVISIONS--
INCORPORATING STATUTES BY REFERENCE

Adequate notice of responsibilities and liabilities of potential contractor under Service Contract Act

and Contract Work Hours Safety Standards Act is provided by solicitation which incorporates by reference forms explaining both acts and directly contains specific notice of Service Contract Act.

*B-204243 Oct. 28, 1981 81-2 CPD 358
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest based on alleged negotiation deficiencies filed more than 10 working days after protester received written notice of award to another firm and copies of documentation concerning award process is untimely and not for consideration on merits.

*B-204940 Oct. 28, 1981 81-2 CPD 359
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--HAND
CARRIED*

Protester's hand-carried proposal delivered after time specified in solicitation for receipt of proposals was properly rejected.

*B-205022 Oct. 28, 1981 81-2 CPD 360
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS*

Agency properly rejected bid as nonresponsive where bidder's standard proposal form, incorporated into bid, took exception to terms of solicitation.

*B-205034 Oct. 28, 1981 81-2 CPD 361
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING*

Contracting officer's determination of nonresponsibility was reasonable and will not be disturbed by GAO where preaward inspection revealed inability by bidder to perform in accordance with requirements of solicitation.

B-205034 Oct. 28, 1981 81-2 CPD 361 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Since protests based on alleged improprieties in specifications are required, by 4 C.F.R. 21.2(b), to be filed prior to bid opening, protest against requirement for shower with bath and sink in room separate from bedroom is not timely when not raised until after bid opening.

REPORTS--ADMINISTRATIVE--CONTRACT PROTEST--REPORT NOT REQUESTED BY GAO--PROTEST PATENTLY WITHOUT LEGAL MERIT

Where protester's initial submission indicates protest is without legal merit, GAO will render decision without obtaining report from agency.

B-205088 Oct. 28, 1981 81-2 CPD 362
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS

Bid is properly rejected as nonresponsive where protester adds condition to solicitation requiring payment of 50 percent of contract price upon commencement of performance, and IFB provided for payment upon completion of work.

B-205235 Oct. 28, 1981 81-2 CPD 363
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest that bidder is incapable of meeting solicitation delivery schedule is dismissed, since it concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.

B-205257 Oct. 28, 1981 81-2 CPD 364
CONTRACTS--LABOR STIPULATIONS--SOLICITATION PROVISIONS--
AMENDMENTS--FAILURE TO ACKNOWLEDGE--BID NONRESPONSIVE

Bidder's failure to acknowledge invitation amendment containing Dept. of Labor wage rate determination

renders bid nonresponsive. It is not relevant that bidder never received amendment, since contracting agency advises that it sent amendment to bidder two weeks before bid opening and there is no suggestion of deliberate attempt to exclude bidder from competition.

*B-199013.2 Oct. 29, 1981 81-2 CPD 365
CONTRACTS--DEFAULT--TERMINATION OF CONTRACT--CLAIM
SETTLEMENT--DISPUTES CLAUSE*

Question of whether contract should be terminated for default and whether defaulted contractor should be held liable for excess procurement cost is matter within jurisdiction of Armed Services Board of Contract Appeals under disputes clause of contract and is not for consideration by GAO.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Dismissal of protest against award as untimely is affirmed since protester knew of award on May 1, 1980, and believed that it was improper but did not protest until May 19, 1980, which was more than 10 working days later.

*B-202572 Oct. 29, 1981 81-2 CPD 366
BIDS--INVITATION FOR BIDS--AMBIGUITY ALLEGATION--NOT
SUSTAINED--ONLY ONE REASONABLE INTERPRETATION*

Protester's allegation that solicitation is ambiguous is denied where agency amended solicitation to clarify allegedly ambiguous provisions and solicitation in other instances is reasonably clear.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT

Protester who files timely protest alleging that solicitation specifications are defective and preclude firm from properly preparing its bid is interested party under GAO Bid Protest Procedures.

Failure of protester to attend prebid conference does not alter protester's interested party status under Bid Protest Procedures.

CONTRACTS--PROTESTS--SAME ISSUE(s) RAISED IN PRIOR CASE BY SAME PROTESTER

Where identical issue was raised by protester in prior case, was decided adversely to protester by GAO, and no new relevant information has been submitted, issue is without merit.

B-204599.2 Oct. 30, 1981 81-2 CPD 368

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--FURNISHING OF INFORMATION ON PROTEST--SPECIFICITY REQUIREMENT

Protester filed protest but failed to state any specific grounds for protest. GAO requested detailed statement of specific grounds of protest within 5 working days of receipt of GAO request but statement furnished 19 working days after protest was filed. Since protester's detailed statement indicated that protester knew specific grounds of protest prior to filing protest, protest is dismissed.

B-195559.2 Nov. 2, 1981 81-2 CPD 369

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--LACKING

GAO will not object to sole-source award of contracts for "mutual use" of medical services by VA under 38 U.S.C. 5053 once appropriate changes are made to agency regulations removing such contract awards from competition requirements of FPR.

B-200756.2 Nov. 2, 1981 81-2 CPD 370

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--COMPETITIVE RANGE DETERMINATION--IMPROPER

Where competitive range was based on final results of combined technical and cost evaluation which placed great emphasis on cost, agency's failure to conduct

adequate cost analysis left it in no position to determine that any proposal was out of line as to price and technical ability so that further discussions would be meaningless.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--ADEQUACY*

Agency has not performed adequate cost realism analysis when it fails to examine basis of provisional overhead rates and all other costs proposed by all offerors for cost reimbursement type contract.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Where agency reiterates reason for limiting competitive range which already was considered as part of original protest record, matter will not be considered further.

*B-203589.2 Nov. 2, 1981 81-2 CPD 371
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision, denying protest, is affirmed where protester does not show that decision contains any error of fact or law.

*B-203786 Nov. 2, 1981 81-2 CPD 372
CONTRACTS--EXTENSION--AFTER EXPIRATION--SOLICITATION PENDING*

There is nothing improper in agency extending incumbent's contract to cover period after contract is to expire until new contract can be awarded.

*CONTRACTS--NEGOTIATION--COST-REIMBURSEMENT BASIS--
EVALUATION FACTORS--COST v. TECHNICAL RATING*

In negotiating cost reimbursement type contract, lowest estimated cost is not necessarily determining factor in making award. Agency therefore may select

highly rated technical proposal instead of lower rated, lower estimated cost one if agency reasonably determines that superior performance expected from higher rated offeror justifies potential additional costs involved. Extent to which such cost/technical trade-off may be made is governed by RFP's evaluation scheme.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ALLEGATION OF BIAS NOT SUSTAINED*

Critical test to show bias in agency's evaluation of proposals is whether all offerors in fact were treated fairly and equally. That tests is not met simply by alleging that same agency improperly awarded sole-source contract in different procurement to subcontractor proposed by successful offeror in this one.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

GAO will not question agency's evaluation of technical proposals unless protester shows that agency's judgment lacked reasonable basis, was abuse of discretion, or violated procurement statutes or regulations.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that evaluation criteria were unduly restrictive is dismissed as untimely, since it was filed after closing date for receipt of proposals.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
SUBCONTRACTOR, SUPPLIER, ETC., SIZE STATUS*

Subcontracting with large business under service contract set aside for small business is not legally objectionable.

B-203871 Nov. 2, 1981 81-2 CPD 373
BIDS--AMBIGUOUS--ACCEPTANCE

Ambiguous low bid may be accepted because (1) ambiguity in bid does not affect evaluation, (2) bid is low under either interpretation of ambiguity, and (3) low bidder agrees to accept interpretation which is most favorable to Govt.

BIDS--AMBIGUOUS--CONSTRUCTION--NOT PREJUDICIAL TO OTHER BIDDERS

Bid containing prompt-payment discount statement "NET% 30 calendar days plus 2%" does not impose an open-ended interest charge. GAO concludes that, at worst, after 30 calendar days, bidder reserved right to increase bid price by 2 percent. Thus, bid price is certain and bid can be evaluated without prejudice to other bidders.

B-204038 Nov. 2, 1981 81-2 CPD 374
BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS--CERTIFICATION REQUIREMENTS--UNDERWRITERS LABORATORIES, ETC.--PRODUCT LISTING

While agency has presented reasons for requiring Underwriters Laboratories or equivalent certification of bidder's product, agency has not justified need for bidder to have certification at bid opening.

B-195183.3 Nov. 3, 1981 81-2 CPD 375
CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST COMPARISON

Where decision to retain function in-house is based on comparison of estimated in-house costs with offers received in competitive procurement, integrity of process dictates that comparison be supported by complete and comprehensive data, and that elements of comparison are clearly identifiable and verifiable.

B-195945.6, et al. Nov. 3, 1981 81-2 CPD 376
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

GAO will not waive requirement of 4 C.F.R. 21.9 (1981) that requests for reconsideration be filed within 10 working days after basis for reconsideration was known or should have been known.

B-204562 Nov. 3, 1981 81-2 CPD 377
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

Question of small business firm's responsibility (compliance with Indian Preference requirements) is for conclusive determination by SBA through certificate of competency procedure, and will not be reviewed by GAO absent circumstances not relevant here.

B-204677 Nov. 3, 1981 81-2 CPD 378
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Allegation that successful offeror would be unable to satisfactorily perform contract, including first article test requirements, is matter of responsibility and GAO does not review affirmative determinations of responsibility except under circumstances not applicable here.

B-204911.2 Nov. 3, 1981 81-2 CPD 379
BIDS--PRICES--BELOW COST

There is no legal basis for precluding award merely because low bidder submitted below-cost bid.

BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--MATHEMATICALLY
UNBALANCED BIDS"--WHAT CONSTITUTES

While low bidder's bid may be mathematically unbalanced, protester has not shown that bid was materially unbalanced and, therefore, there is no showing that award would not result in lowest cost to Govt.

B-204911.2 Nov. 3, 1981 81-2 CPD 379 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility absent allegations of fraud or misapplication of definitive responsibility criteria.

CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST
NOT FOR CONSIDERATION ON THE MERITS

Where protester's initial submission clearly shows protest is without legal merit, neither case development nor requested conference is necessary, and summary denial is in order.

B-205115 Nov. 3, 1981 81-2 CPD 380
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Allegation that awardee does not have ability to perform contract will not be considered because protest relates to awardee's responsibility and GAO does not review affirmative determination of responsibility except in circumstances not applicable here.

B-205230 Nov. 3, 1981 81-2 CPD 381
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF
COMPETENCY REQUIREMENT

GAO does not review SBA refusal to issue certificate of competency unless protester makes prima facie showing of fraud or demonstrates that information vital to responsibility determination was not considered.

B-202208.2 Nov. 4, 1981 81-2 CPD 382
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Prior decision, denying protest, is affirmed where protester does not demonstrate that decision contains any errors of fact or law.

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B-202837 Nov. 4, 1981 81-2 CPD 383
BIDS--INVITATION FOR BIDS--AMBIGUITY ALLEGATION--NOT
SUSTAINED--ONLY ONE REASONABLE INTERPRETATION

Based on review of record, GAO concludes that protested solicitation specifications--concerning lease of "multi-passenger" automotive vehicles--were not ambiguous and did not provide, contrary to protester's assertions, sufficient detail so that prospective bidders had clear and precise understanding of Govt.'s needs. Moreover, GAO finds that solicitation's pricing directions were not ambiguous.

TEST

B-204251 Nov. 4, 1981 81-2 CPD 384
BIDS--RESPONSIVENESS--RESPONSIVENESS v. BIDDER
RESPONSIBILITY--INFORMATION REQUIREMENTS

Failure of bidder to furnish training plan with bid does not make bid nonresponsive. Since specifications stated in detail number of hours and subject areas of training, requirement for training plan was informational in nature, bearing on responsibility of bidder, and could properly be submitted after bid opening.

GAO--

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Allegations--that bidder failed to furnish training plan with bid, that bidder is not licensed by State agency (and IFB contained general statement that contractor should obtain all necessary State and local permits and licenses), and that bid price is so low that adequate performance under contract is not possible--all relate to bidder's responsibility. Protest concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.

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CONTRACTS--PROTESTS--ALLEGATIONS--NOT SUPPORTED BY RECORD

Protest on basis that bidder does not possess "secret" clearance as required by IFB is denied, since bidder has clearance and there is no requirement for clearance in solicitation.

*B-204251 Nov. 4, 1981 81-2 CPD 384 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Where initial protest is made in expectation that contracting agency might take action adverse to protester's interest, but protester waits until agency report is furnished to seek out information which was available before original protest was filed, subsequent protest on new basis is untimely notwithstanding it was made within 10 working days after receipt of contracting agency's report.

*B-204257, B-204257.2 Nov. 4, 1981 81-2 CPD 369
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CERTIFICATION
REQUIREMENTS--INDIAN AFFAIRS*

Where there is no dispute that awardees certified in their proposals that their organizations would satisfy RFP's requirement for Indian control during contract performance, GAO has no basis to conclude that agency failed to enforce mandatory solicitation requirement for such certification.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether awardees fulfill their contractual commitments during contract performance is matter of contract administration, which is primarily responsibility of procuring agency and is not for consideration under GAO's bid protest function.

*B-204530.2 Nov. 4, 1981 81-2 CPD 386
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--"GOOD CAUSE" EXCEPTION APPLICABILITY*

Protester's unfamiliarity with timeliness requirement in Bid Protest Procedures does not constitute "good cause" required before GAO will consider untimely protest.

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B-204530.2 Nov. 4, 1981 81-2 CPD 386 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--PRIOR
GAO CONSIDERATION OF SAME ISSUE EFFECT

Where merits of protest involve issues which have been considered in prior decisions, issues are not "significant issues" required before GAO will consider untimely protest.

B-204810 Nov. 4, 1981 81-2 CPD 387
BIDS--LATE--HAND CARRIED DELAY

Hand carried bid which is still in possession of bidder at time of bid opening is late notwithstanding bidder's possible timely arrival in building specified in solicitation.

BIDS--OPENING--TIME FOR OPENING DETERMINATION

Declaration of time for bid opening by bid opening officer is determinative of lateness absent independent evidence that bid opening occurred earlier or later than time designated in solicitation.

CONTRACTS--PROTESTS--CONFLICT IN STATEMENTS OF PROTESTER AND CONTRACTING AGENCY

Where only evidence of time of bid submission is conflicting statements of protester and contracting agency, protester fails to meet its burden of affirmatively proving its case.

B-205069 Nov. 4, 1981 81-2 CPD 388
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--INITIAL PROPOSAL BASIS--SOLICITATION PROVISION--DISCUSSIONS NOT PRECLUDED

Solicitation clause that advises offerors that award may be made on basis of initial offers received without further discussion does not prohibit discussions and subsequent request for best and final offers.

B-205069 Nov. 4, 1981 81-2 CPD 388 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REVISIONS--
EQUAL OPPORTUNITY TO ALL OFFERORS

Once one offeror is given opportunity to revise its offered performance schedule and its price it is necessary that all other offerors in competitive range be given opportunity to restructure their offers.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that procurement for replacement of airfield lighting should have been formally advertised rather than negotiated is untimely under Bid Protest Procedures, where filed with procuring activity and GAO after closing date for receipt of initial proposals.

B-205210 Nov. 4, 1981 81-2 CPD 389
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest concerning alleged solicitation defects is untimely because although it was filed with agency prior to bid opening, it was filed with GAO more than 10 working days after agency denied protest.

B-205250 Nov. 4, 1981 81-2 CPD 390
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest received by GAO more than 10 working days after initial adverse agency action is untimely filed.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--PROTEST ADDRESSED INCORRECTLY

Untimely protest sent to address other than that set forth in section 21.1(b) of Bid Protest Procedures is not for consideration.

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B-205313 Nov. 4, 1981 81-2 CPD 391
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not filed within 10 days after basis of it is
known is untimely and will not be considered.

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PARENT

B-204980.2 Nov. 5, 1981 81-2 CPD 392
FEDERAL HOME LOAN BANK BOARD--CONTRACTS--GENERAL ACCOUNTING
OFFICE AUTHORITY

GAO will not consider bid protest concerning procure-
ment by Federal Home Loan Bank Board, since GAO has
audit but not settlement authority over Board's
activities.

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B-203352 Nov. 9, 1981 81-2 CPD 394
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against sole-source award filed on May 18,
1981--based on information received by protester on
April 27, 1981--is untimely under 4 C.F.R. 21.2(b)(2)
(1981), since matter was not filed within 10 working
days after protester first learned of agency's justi-
fication for sole-source award.

ES--

B-203807 Nov. 9, 1981 81-2 CPD 395
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--APPARENT PRIOR TO BID OPENING/CLOSING
DATE FOR PROPOSALS

Protest after award that terms of solicitation im-
properly restricted competition is untimely filed.
GAO Bid Protest Procedures require that protests
based on apparent solicitation improprieties be
filed before bid opening or closing date for re-
ceipt of initial proposals.

B-204937 Nov. 9, 1981 81-2 CPD 396

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Basis of protest--that competitor had advance knowledge of RFP's requirements--first presented to GAO more than 10 working days after it was known or should have been known by protester is untimely under 4 C.F.R. 21.2(b) (2) (1981) and will not be considered on merits.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Contention--that RFP provided insufficient time for protester to prepare proposal--involves alleged impropriety apparent from solicitation. Since it was not protested prior to closing date for receipt of initial proposals, this aspect of protest is untimely under 4 C.F.R. 21.2 (b)(1) (1981) and will not be considered on merits.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
DISPUTES--BETWEEN PRIVATE PARTIES*

Protest--against procuring agency determination to permit new firm (composed of former key employees of protester) to compete against protester (incumbent contractor)--is dismissed because competition is in accord with Govt. procurement policy, and GAO is not proper forum to resolve protester's dispute with new firm.

B-205027 Nov. 10, 1981 81-2 CPD 397

*GENERAL ACCOUNTING OFFICE--JURISDICTION--GRANTS-IN-AID--
FAILURE TO RECEIVE--COMPLAINT NOT FOR CONSIDERATION*

GAO will not consider objections regarding National Oceanic and Atmospheric Administration's failure to award grant to applicant because GAO generally does not review complaints regarding award of grants or other Fed. assistance.

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B-205253 Nov. 10, 1981 81-2 CPD 398
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not review protests concerning bidder's small business size status and small business size standard applied by contracting agency where SBA has made determinations relating to those matters since those determinations are conclusive under 15 U.S.C. 637(b) (1976).

B-205375 Nov. 10, 1981 81-2 CPD 399
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest filed more than ten working days after basis of protest was known is untimely and not for consideration on merits.

B-202961.2, B-202961.3 Nov. 12, 1981
81-2 CPD 400
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Original decision is affirmed where requests for reconsideration do not demonstrate any error of fact or law.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Where requests for reconsideration of decision are filed within 10 days after receipt by parties of decision through normal distribution channels, requests are timely filed.

B-204025 Nov. 12, 1981 81-2 CPD 401
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--"EQUAL" PRODUCT EVALUATION

Where, in "brand name or equal" solicitation calling for delivery of items A and B or equal, bidder includes drawing of its item offered as equivalent to

B in descriptive materials for its item offered as equivalent to item A, drawing will not render bid nonresponsive where it is clear under circumstances that it was included inadvertently, and there is no other indication that it was intended to qualify bid.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR EQUAL--"EQUAL" PRODUCT EVALUATION--CONCLUSIVENESS

Agency's determination that bidder's descriptive material is sufficient to establish equivalence of its product under "brand name or equal" clause will not be disturbed where protester has submitted no evidence showing that product in fact is not equivalent to brand name product or that agency's determination was otherwise erroneous, and where descriptive material is not insufficient on its face.

B-204968 Nov. 12, 1981 81-2 CPD 402

BIDS--EVALUATION--DISCOUNT PROVISIONS--DISCOUNT NOT EVALUATED

Although SF 33-A generally provides for evaluation of 20-day prompt payment discounts, agency properly did not evaluate protester's offer of such discount where solicitation contained specific clause stating minimum period for evaluated discounts would be 30 days. Solicitation was not ambiguous because Order of Precedence Clause stated specific clause should prevail over other provisions.

B-204339 Nov. 16, 1981 81-2 CPD 405

AGENTS--OF PRIVATE PARTIES--AUTHORITY--CONTRACTS--SIGNATURES--CONFIRMATION AFTER BID OPENING

Where authority of person signing receipt for amendment is questioned after bid opening, president of company can confirm authority after bid opening.

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*B-204339 Nov. 16, 1981 81-2 CPD 405 - Con.
BIDS--INVITATION FOR BIDS--AMENDMENTS--ACKNOWLEDGMENT--
DEVIATION FROM REQUIRED PROCEDURE--FORM v. SUBSTANCE*

Where IFB provided that bidders are deemed to acknowledge receipt of any amendment indicated by certified mail records or telephone company records, but bidder acknowledged amendment by signing formal receipt when amendment was received in person, absence of acknowledgment of amendment in manner prescribed by IFB was failure in form and not substance. B-151188, May 8, 1963, distinguished.

*B-205256 Nov. 16, 1981 81-2 CPD 406
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility absent allegations of fraud or misapplication of definitive responsibility criteria.

*CONTRACTS--COMPETITIVE SYSTEM--RESTRICTIONS ON COMPETITION--
SPARE PARTS MILITARY PROCUREMENT*

Although, with proper justification, DAR 1-313(c) may be cited as authority for sole-source procurement of "source controlled" replacement parts, overall policy of DAR 1-313 requires procurement of spare parts on competitive basis where feasible. Consequently, GAO will not object to agency procurement from other than original source of equipment.

CONTRACTS--PROTESTS--DENIAL--SUMMARY DENIAL

Where protester's initial submission clearly shows protest is without legal merit, case development is unnecessary and summary denial is in order.

*B-205449 Nov. 18, 1981
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that amended solicitation established bid opening date which did not allow enough time for po-

tential bidders to develop bids, filed after bid opening date, is dismissed as untimely.

*B-203089(1) Nov. 19, 1981 81-2 CPD 408
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--INITIAL PROPOSAL BASIS FOR AWARD--
TECHNICAL UNCERTAINTY IN OFFERS REQUIRING DISCUSSIONS*

Authority to make award on basis of initial proposals where adequate competition indicates that proposed prices are reasonable does not apply where there is technical uncertainty in low-priced proposal within competitive range. Where such uncertainty exists, agency must clarify proposals through discussions.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--PRICE CONSIDERATION--RELATIVE IMPORTANCE*

Since evaluation criteria set forth in RFP clearly stated that award would be based on combined evaluation score composed of 80 points for technical merit and 20 points for price, protest that award did not go to proposal having lowest price but not best technical score is without merit. If protester is challenging evaluation criteria, protest filed after closing date for receipt of initial proposals is untimely.

*B-203260.2 Nov. 19, 1981 81-2 CPD 409
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Firm which did not submit offer is not "interested party" qualified to protest award. Firm has no direct and substantial interest at stake since there are other offerors eligible for award if protest is sustained.

*B-205310 Nov. 19, 1981 81-2 CPD 410
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest concerning small business size status of offeror is by law matter for decision by SBA and not for consideration by GAO.

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B-205331 Nov. 19, 1981 81-2 CPD 411
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest concerning solicitation's failure to provide for first article testing, provisioning technical documentation and technical manuals is untimely when filed subsequent to closing date for receipt of initial proposals.

B-205385 Nov. 19, 1981 81-2 CPD 412
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest by bidder against alleged solicitation impropriety filed (received) at GAO after bid opening is untimely under 4 C.F.R. 21.2(b)(1) and letter of protest submitted with bid is also untimely protest since protest contained in bid submission is not protest before bid opening under our Bid Protest Procedures.

B-205386 Nov. 19, 1981 81-2 CPD 413
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10 working days after protest was denied by contracting agency is untimely and will not be considered on merits.

B-205421 Nov. 19, 1981
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Questions concerning small business size status are not for consideration by GAO since conclusive authority over such matters is vested by statute in SBA.

B-205234 Nov. 20, 1981 81-2 CPD 415
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest to GAO, addressed to contracting agency's regional office and forwarded by that agency, is untimely

and will not be considered on merits because GAO did not receive protest within 10 working days after protester knew basis for protest. Delay caused by protester's failure to properly address protest does not merit consideration of untimely protest under 4 C.F.R. 21.2(c) (1981).

*B-197847 Nov. 23, 1981 81-2 CPD 416
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Previous decision denying claim for relief from termination for default order is affirmed where no persuasive evidence of factual or legal errors has been submitted.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
EQUITABLE RELIEF--CONTRACT MODIFICATION, ETC.*

GAO is without authority to consider request for modification, reformation, rescission or cancellation of contract on equitable grounds.

*B-203711 Nov. 23, 1981 81-2 CPD 417
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--ADHERENCE TO EVALUATION SCHEME*

Protest alleging deficiencies in evaluation on which award was based is denied where record indicates evaluation was conducted in accordance with evaluation system set forth in RFP which gave due weight to technical and cost merits of proposals.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--DOUBTFUL*

Where doubt exists as to when protester knew or should have known of basis for protest, doubt is resolved in favor of protester.

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*B-204382.4 Nov. 23, 1981 81-2 CPD 418
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest against solicitation specifications, filed with GAO more than 10 working days after both bid opening and protester's receipt of contracting agency's denial of its protest at that level, is untimely and will not be considered on merits. Moreover, mere transmittal of copy of protest letter filed with contracting officer is not considered direct protest to GAO.

*B-204506 Nov. 23, 1981 81-2 CPD 419
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Acceptance of proposals on scheduled date, without amendment of protested specifications, constitutes initial adverse agency action, and any protest to GAO must be filed within 10 days thereafter. Protester does not have option of waiting until it receives written denial of protest to contracting agency before protesting to GAO.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Timeliness provisions of GAO Bid Protest Procedures are strictly construed, and while contracting agency may impose stricter timeliness requirements than GAO, it may not waive GAO requirements. Thus, protest regarding alleged solicitation deficiencies, filed with agency after closing date for receipt of initial proposals, is untimely, and subsequent protest to GAO will be dismissed.

*CONTRACTS--PROTESTS--MERITS--CONSIDERATION BY AGENCY--
DISMISSAL BY GAO--NOT PRECLUDED*

Agency's consideration on merits of untimely protest does not prevent GAO dismissal of same protest.

B-204596 Nov. 23, 1981 81-2 CPD 420
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC., QUESTIONS

Protest concerning responsiveness of one firm's bid is academic and will not be considered where contract was awarded to another firm.

B-204887.2 Nov. 23, 1981 81-2 CPD 421
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Prior decision will not be reconsidered because request does not appear to comply with requirement of 4 C.F.R. 21.9(b) (1981) that requests for reconsideration be filed within 10 working days after basis for reconsideration be filed within 10 working days after basis for reconsideration was known or should have been known.

B-204982 Nov. 23, 1981 81-2 CPD 422
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC., QUESTIONS--
SOLICITATION CANCELLED

Protest over rejection of bid as nonresponsive becomes moot as result of cancellation of solicitation.

B-205434 Nov. 23, 1981 81-2 CPD 423
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
SMALL BUSINESS ADMINISTRATION'S AUTHORITY--RESPONSIBILITY
DETERMINATION--CONCLUSIVENESS OF SBA'S CERTIFICATION

Issues concerning contractor capability to perform contract awarded under section 8(a) of Small Business Act are matters for determination by SBA and not GAO; because of broad discretion afforded SBA by statute, such judgmental decisions will not be questioned absent showing of fraud or bad faith on part of Govt. officials.

B-204244 Nov. 24, 1981 81-2 CPD 425
BIDS--EVALUATION--PRICE REASONABLENESS

Where each unit bid price carries its share of costs, bid cannot be said to be unbalanced.

B-204244 Nov. 24, 1981 81-2 CPD 425
BIDS--PREPARATION--COSTS--NONCOMPENSABLE--NONRESPONSIVE BID

In view of conclusion that agency properly rejected low bid as nonresponsive, GAO does not find that agency acted arbitrarily or capriciously toward low bidder - claimant so as to support claim for bid preparation costs.

BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS

Where IFB specifies that each unit price must not exceed statutory cost limitation and protester's bid exceeds limitation for five of seven unit prices, bid was properly rejected as nonresponsive.

B-205094(1) Nov. 24, 1981 81-2 CPD 426
ADVERTISING--NEWSPAPERS, MAGAZINES, ETC.--AUTHORIZATION REQUIREMENT

Cost of newspaper advertisements without prior written authority by head of dept. or his representative may not be paid because such payment is expressly prohibited by 44 U.S.C. 3702 (1976); however, claim will be submitted to Congress pursuant to Meritorious Claims Act of April 10, 1928, because of equitable considerations in this case.

B-205212 Nov. 24, 1981 81-2 CPD 427
ADVERTISING--NEWSPAPERS, MAGAZINES, ETC.--PROCUREMENT PROCEDURE

There is no requirement that advertised procurements be publicized through advertisements in local newspapers.

BIDDERS--INVITATION RIGHT--INVITATION NOT RECEIVED

Mere fact that certain potential bidders did not receive copies of solicitation does not constitute violation of rules governing advertised procurements where there is no evidence that competition obtained was not adequate.

B-205212 Nov. 24, 1981 81-2 CPD 427 - Con.
CONTRACTS--AWARDS--DELAYED AWARDS--PROPRIETY

Agency's delay of award and commencement of performance of contract to allow bidder time to obtain county license was not improper since delays (one and three days, respectively) were reasonable and did not require agency to compromise its needs.

CONTRACTS--AWARDS--PROPRIETY--LICENSING-TYPE REQUIREMENTS--
GENERAL v. SPECIFIC SOLICITATION REQUIREMENT

Where solicitation does not contain express requirement that offerors hold particular license or permit, contracting officer need not consider whether such licensing has been obtained in determining offeror's eligibility for award; award made to offeror not possessing local license is not improper under these circumstances.

B-202094.3 Nov. 30, 1981 81-2 CPD 429
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Contention that awardees may not have capability and capacity to meet pro rata share of mobilization base commitments is challenge to affirmative determination of awardees' responsibility, which is not for review by our Office except in circumstances not present here.

CONTRACTS--NEGOTIATION--AWARDS--NOTICE--TO UNSUCCESSFUL
OFFERORS

Protest that contracting agency never formally notified protester that awards had been made is denied since there is ample evidence that protester was notified both formally and informally of awards and notification of awards was published in Commerce Business Daily.

B-202094.3 Nov. 30, 1981 81-2 CPD 429 - Con.
*CONTRACTS--PROTESTS--ALLEGATIONS--PREAWARD SURVEY
IMPROPRIETIES--NOT PREJUDICIAL*

Allegation of improper conduct by preaward survey team will not be reviewed since protester lost competition on basis of price alone and negative preaward survey did not competitively prejudice protester.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protest alleging that awardees submitted alternate proposals changing methods of manufacture in contravention of solicitation is denied since agency reports that alternate proposals were rejected by contracting officer and awards were based on proposals which did not vary manufacturing methods required by solicitation.

Protest alleging that contracting officer deceived protester regarding exact quantities to be ordered is denied since solicitation clearly required quotations for various ranges of quantities for each item being procured, all offerors competed on equal basis, and there is no evidence of deception.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED--SPLIT AWARDS

Contention that split awards to two offerors based upon proposals which did not indicate intention to utilize Government-furnished property (GFP) are improper under solicitation is denied because protester's interpretation of solicitation is unreasonable where solicitation stated that "more than one award may be made to offerors not utilizing the GFP."

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT IN REQUEST FOR BEST AND FINAL OFFERS

Protest, contending that request for best and final offers contradicted original solicitation's stated intention to reestablish mobilization base commitments and amounted to sole-source award for two items

being procured, is dismissed as untimely. Alleged contradiction was apparent from reading of Nov. 20, 1981, request for best and final offers and, therefore, had to be filed before due date for receipt of best and final offers in accord with section 21.2(b)(1) of GAO Bid Protest Procedures.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegation that offers based upon use of Government-furnished equipment and previous supplier's facility should be credited with saving Govt. costs of removing, refurbishing, maintaining, and storing Govt. equipment is dismissed as untimely since solicitation enunciated evaluation factors and did not include costs proposed by protester. Accordingly, this issue concerns alleged solicitation defect which should have been protested before closing date for receipt of initial proposals under section 21.2(b)(1) of GAO Bid Protest Procedures.

To extent that protester contends that solicitation should not have allowed consideration of offers based on use of facilities other than previous supplier's, protest is untimely because it alleges solicitation defect, which should have been filed prior to due date for submission of initial proposals under section 21.2(b)(1) of GAO Bid Protest Procedures.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--AFFIRMATIVE FINDING EFFECT*

Where small business is determined to be nonresponsible, matter must be referred to SBA under 15 U.S.C. 637 (b)(7)(A) and, therefore, allegation that contracting officer should not have recommended that offeror apply to SBA for certificate of competency is denied.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--STATUS OF SMALL
BUSINESS--OTHER THAN IN SET-ASIDES*

Contention that protester should have received special consideration because it is small business is denied.

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Solicitation was unrestricted and, therefore, special consideration to any small business would have been improper.

CRIMINAL LAW VIOLATIONS--NOT FOR GAO CONSIDERATION

Allegation of possible criminal activity is dismissed since enforcement of criminal statutes is charged to Dept. of Justice and matter has been referred to FBI by contracting agency.

*B-204013 Nov. 30, 1981 81-2 CPD 431
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO
ACKNOWLEDGE--BID NONRESPONSIVE*

Bidder's failure to acknowledge amendment increasing Service Contract Act wage determination requires rejection of bid as nonresponsive to material amendment and may not be waived as minor informality.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO
BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest filed after bid opening against allegedly inadequate time to acknowledge amendment of invitation for bids is untimely under Bid Protest Procedures and not for consideration on merits.

*B-205379 Nov. 30, 1981 81-2 CPD 432
BIDS--"BUYING IN"--NOT BASIS FOR PRECLUDING AWARD*

Allegations of "buy-in," which would result in a loss contract, and awardee's inability to perform contract provide no legal bases upon which award may be challenged. Rejection of bid as extremely low requires agency to find bidder nonresponsible.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility absent circumstances not present here.

*B-199547.3 Dec. 1, 1981 81-2 CPD 435
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADDITIONAL INFORMATION SUPPORTING
TIMELY SUBMISSION*

Where initial protest submission raises issue of improper cost realism analysis, additional materials submitted in support of timely protest issue will be considered. Additional materials only provide rationale for protest basis clearly stated in initial protest and do not constitute a piecemeal development of protest issues.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--ISSUES
NOT RAISED IN PROTEST*

In deciding protest, GAO is not confined to issues raised by parties to protest. Where procurement deficiency is obvious from review of agency's report on protest, GAO will state views and make recommendations if appropriate.

*B-204303 Dec. 1, 1981 81-2 CPD 18
BONDS--PERFORMANCE--SMALL BUSINESS CONCERNS--PROPRIETY*

Protest that IFB requirement for bid and performance bonds discriminates against new and small business concerns is without merit since contracting officer has discretion to determine whether need exists for bonding requirement and record shows that bonds were considered necessary to protect Govt. from financial loss and to prevent harm to welfare of military personnel.

*B-204921 Dec. 1, 1981 81-2 CPD 437
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--NOTICE TO
BIDDER/OFFEROR*

While contracting agency may discuss preaward data with bidder prior to making responsibility determination, there is no requirement that bidder be advised of non-responsibility determination prior to referral to SBA.

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B-204921 Dec. 1, 1981 81-2 CPD 437 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Question concerning size standard used in procurement is not for consideration by GAO since SBA has conclusive jurisdiction to hear appeal from contracting officer's determination.

B-205081 Dec. 1, 1981 81-2 CPD 438
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest which is filed eleventh working day after protester knew of contract award will not be considered because it is untimely under 4 C.F.R. 21.2(b)(2).

B-205522 Dec. 1, 1981 81-2 CPD 439
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--
ADMINISTRATIVE DETERMINATION--LABOR DEPARTMENT REVIEW

Whether bidder is regular dealer or manufacturer under Walsh-Healey Act is for determination by contracting agency subject to final review by SBA and Dept. of Labor and, thus, will not be considered by GAO.

B-203790 Dec. 3, 1981 81-2 CPD 441
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED--STATE, ETC., LAW COMPLIANCE

Where solicitation contains only general requirement that contractor comply with applicable laws and does not indicate that specific state or local business license is required, contracting officer may place responsibility for determining compliance upon prospective contractor. In such circumstances, contracting officer's affirmative determination of responsibility, either explicit or implicit, will not be questioned by GAO even though contractor may not have held all locally-required business licenses at time of award, absent showing of fraud on part of procuring officials.

B-203790 Dec. 3, 1981 81-2 CPD 441 - Con.
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Whether contract is being performed in compliance with contract requirements is matter of contract administration and not for resolution under GAO Bid Protest Procedures.

PURCHASES--SMALL--REQUESTS FOR QUOTATIONS--AMENDMENT--ORAL

Award is not objectionable merely because quoters were advised orally, instead of through written amendment, of revision to specifications, since all parties including protester were aware of change and therefore were not prejudiced by failure of agency to issue written amendment.

B-204471 Dec. 3, 1981 81-2 CPD 442
BIDS--COMPETITIVE SYSTEM--FOREIGN CONTRACTORS

Foreign bidder from North Atlantic Treaty Organization nation which has entered into Memorandum of Understanding with U.S. may not be disqualified from award because it may have competitive advantage. Further, agency was under no obligation to place notice in solicitation for aircraft parts to inform domestic bidders that foreign firms might participate in procurement.

B-205050 Dec. 4, 1981 81-2 CPD 443
BIDS--ACCEPTANCE TIME LIMITATION--EXTENSION--PROTEST
DETERMINATION

When firm withdraws its protest against proposed contract award and in withdrawal letter expresses continued interest in matter--still under protest by another firm--and in eventual award, firm has shown sufficient interest in award to extend acceptance period of its bid until resolution of protest even though it did not expressly extend bid.

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B-205050 Dec. 4, 1981 81-2 CPD 443 - Con.
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF BIDDER--PLACE OF SUBSTANTIAL PERFORMANCE--
IDENTIFICATION

Bidder is eligible for Labor Surplus Area (LSA) evaluation preference notwithstanding that firm restricts from public disclosure information about LSA where it will incur requisite proportion of contract cost, where firm obviously has committed itself publicly in bid to performance terms which otherwise establish its eligibility for evaluation preference.

B-205485 Dec. 7, 1981 81-2 CPD 444
CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS

Complaint alleging that 100 percent performance bond requirement in grantee's solicitation unduly restricts competition, received at GAO after bid opening, is untimely and will not be considered on merits, since alleged deficiency was apparent on face of solicitation.

B-205593 Dec. 7, 1981 81-2 CPD 445
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility in absence of showing of fraud or allegations that definitive responsibility criteria in solicitation were misapplied.

B-200872, et al. Dec. 8, 1981 81-2 CPD 446
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--ADMINISTRATIVE DETERMINATION

Although protesters disagree with agency's goals and approach to accomplishing cultural resource surveys, determination of Govt.'s needs and method of accommodating them are primarily responsibilities of contracting agencies.

B-200872, et al. Dec. 8, 1981 81-2 CPD 446 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA

GAO will not question a contracting agency's low technical evaluations proposals, resulting in their exclusion from competitive range, where record shows that agency reasonably considered that proposals reflected a lack of understanding of agency's needs.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--NONDISCLOSURE ALLEGATION

Allegations that agency used undisclosed evaluation criteria to rate proposals are not supported by record which contains evaluation scoring sheets and evaluators' narrative comments that correspond to criteria announced in solicitations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--CONFLICT OF INTEREST ALLEGED

Where no actual conflict of interest is shown, fact that one of three agency technical evaluators was an employee of awardee two years before procurement does not in itself satisfy protesters' burden of proving bias in favor of awardee.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--RECOVERY

Where protests are denied, claims for proposal preparation costs are denied. Also, costs of pursuing protest are not compensable.

B-205034.2 Dec. 8, 1981 81-2 CPD 448
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Opening of bids without acting favorably on protester's objections to form of IFB constitutes adverse action and protest received in our Office more than 10 days later is untimely and will not be considered.

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B-205039 Dec. 8, 1981 81-2 CPD 449
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING
REQUIRED--INFORMATION--SMALL BUSINESS CONCERNS--END PRODUCT
CONTRIBUTOR

Bid, submitted in response to total small business set-aside, which failed to indicate whether bidder would furnish supplies manufactured by small business concern was properly rejected as nonresponsive and may not be corrected.

B-205229 Dec. 8, 1981 81-2 CPD 450
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM
PROCEDURES--COMPETITION NOT REQUIRED

Contracts awarded under sec. 8(a) of Small Business Act need not be preceded by competition since in general 8(a) awards are not subject to competition and procedural requirements of procurement regulations.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Determination to procure under sec. 8(a) of Small Business Act is matter within discretion of contracting agency and SBA, and will not be reviewed by GAO, absent showing of fraud or bad faith on part of Govt. officials.

B-205512 Dec. 8, 1981 81-2 CPD 451
BIDS--PRICES--BELOW COST--EFFECT ON BIDDER RESPONSIBILITY

Allegation by unsuccessful bidder that other bids were too low because bidders will not be able to comply with solicitation's alleged minimum manning requirements is not basis upon which award of contract may be challenged. Rejection of bid as too low requires agency to find bidder nonresponsive.

B-205512 Dec. 8, 1981 81-2 CPD 451 - Con.
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility unless fraud on part of procuring officials is shown or solicitation contains definitive responsibility criteria which have allegedly not been met.

B-202724 Dec. 9, 1981 81-2 CPD 452
BIDS--INVITATION FOR BIDS--CANCELLATION--JUSTIFICATION--
LOWEST BID NOT LOWEST COST TO GOVERNMENT

Where only one responsive bid was received and price analysis and comparison with hourly charges on prior contracts indicates that sole bid may be at an unreasonable price, cancellation of IFB after bid opening is justified.

B-204948 Dec. 9, 1981 81-2 CPD 455
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
COMMERCIAL CARRIER DELAY

Solicitation late proposal provision concerning mishandling of offers by Govt. after receipt at Govt. installation is not for application to proposal delivered by common carrier, since provision applies only to offers submitted by mail.

B-203167 Dec. 10, 1981 81-2 CPD 456
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITER. 4--EXPERIENCE

Where GAO review of evaluation team summaries and protester's proposal discloses that protester's experience is not primarily in areas required by solicitation, protest based on improper evaluation of organizational experience will be denied. In addition, when more than 140 individuals and firms named in proposal as being available to provide external support are merely listed with area of expertise, protester has not provided sufficient information for agency to evaluate proposed support group, and protest based on weakness in this area will be denied.

BY GAO--

B-203167 Dec. 10, 1981 81-2 CPD 456 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--ORDER OF IMPORTANCE

When solicitation clearly indicates that cost will be less important than technical and management excellence, and procuring agency determines that one proposal is technically superior to another, award to lowest-priced offeror is not required. Only if technical proposals are essentially equal does cost become determining factor.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW

GAO will not reevaluate technical proposals or substitute its judgment for that of evaluation team members, who have considerable discretion. Rather, GAO will examine record to determine whether judgment of evaluation team was reasonable and in accord with listed criteria, and will consider whether there was any violation of procurement statutes and regulations.

B-204632.2 Dec. 10, 1981 81-2 CPD 457
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not undertake independent review of contracting officer's nonresponsibility determination of small business firm because the SBA not GAO, has the statutory authority to conclusively determine small business bidder's responsibility.

B-205277 Dec. 10, 1981 81-2 CPD 458
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC., QUESTIONS--
SOLICITATION CANCELLED

Rejection of all bids and readvertisement of project render protest against rejection of late bid moot and, thus, GAO will not consider issues raised by protest.

B-205554 Dec. 10, 1981 81-2 CPD 462
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed with GAO more than 10 working days after
protester knew basis for protest is untimely and will
not be considered on the merits.

B-201319.2 Dec. 11, 1981 81-2 CPD 459
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Cancellation of entire IFB after bid opening because
IFB contained incorrect small business set-aside clause
is proper where competition for unrestricted portion
of IFB may have been distorted because of inappropriate
set-aside provision.

B-202017.2 Dec. 11, 1981 81-2 CPD 460
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Agency cancellation of IFB after bid opening is reason-
able where award is to be made on basis of extended unit
prices for estimated quantities and an estimated quantity
is found to be grossly erroneous.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
EX PARTE MEETINGS--AGENCY AND PROTESTER--PROPRIETY

There is no requirement that contracting agency refrain
from ex parte meeting with protestor during pendency of
GAO protest, so long as all interested parties are given
notice of protest and opportunity to submit views.

B-205422 Dec. 11, 1981 81-2 CPD 461
CONTRACTS--DISPUTES--SETTLEMENT--"CONTRACT DISPUTES ACT OF
1978"

Protester's remedies with respect to its contention
that Govt. is estopped to deny existence of "8(a)"
subcontract with firm should be pursued under Contract
Disputes Act of 1978, 41 U.S.C. 601, et seq. (Supp.
III, 1979).

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B-205422 Dec. 11, 1981 81-2 CPD 461 - Con.
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO

Protest by 8(a) firm against contracting agency's re-
jection of its proposal and subsequent decision to
withdraw procurement from SBA program is dismissed
because protester has not alleged or shown fraud or
bad faith by procurement officials in agency's nego-
tiations, proposal evaluation or decision to withdraw
procurement from program.

B-202875 Dec. 14, 1981 81-2 CPD 463
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--
INADEQUATE--TIME FRAME OVERESTIMATED

Agency is not precluded from making sole-source award
once urgent requirement arises which can only be satis-
fied by one source within required time frame. Where,
however, agency overestimated time in which other sour-
ces could begin to supply urgently needed part, sole-
source award improperly exceeded scope of justification.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against sole-source procurement, filed prior
to closing date for receipt of initial proposals and
within reasonable time after publication of intent to
negotiate requirement in Commerce Business Daily (when
mailing time is taken into account) is timely.

B-203156 Dec. 14, 1981 81-2 CPD 464
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST
ARTICLE--EVIDENCE TO SUPPORT WAIVER--TIMELINESS

Even though an IFB requires a bidder seeking waiver of
first article testing to submit evidence of prior Govt.
approval with bid, failure to do so does not preclude
waiver since decision whether to waive such testing
relates to bidder's responsibility, which may be
demonstrated after bid opening.

*B-203156 Dec. 14, 1981 81-2 CPD 464 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST
ARTICLE--WAIVER*

Decision whether to waive first article requirement is within contracting agency's discretion, and thus presence in IFB of clause making waiver available does not confer right to waiver on any particular bidder. Therefore, firm's argument that it would have structured its bid differently had it known it would not receive waiver does not provide basis for viewing agency's decision not to waive requirement as improper.

BIDS--PREPARATION--PRICE ACCURACY--BIDDER RESPONSIBILITY

Manner in which firm chooses to prepare its bid is a matter of its own business judgment, for which Govt. is not responsible.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--FACTORS FOR
CONSIDERATION--NOTICE TO BIDDERS--GENERAL v. DEFINITIVE
CRITERIA*

Army regulation that states first article testing generally should not be waived for follow-on production by a former producer whenever there has been a "lengthy delay * * * of production (normally 1 year or more)" does not impose a definitive responsibility criterion, because it does not set out a standard that must be met as a prerequisite to award.

*B-204037 Dec. 14, 1981 81-2 CPD 465
CONTRACTS--SUBCONTRACTORS--RESPONSIBILITY--NONRESPONSIBILITY
FINDING--LABOR STRIFE AVOIDANCE*

Prime contractor may reasonably determine a bidder on a subcontract to be nonresponsible on basis of bidder's representations that it does not intend to conform to prime contractor's labor policies as required by solicitation.

B-204037 Dec. 14, 1981 81-2 CPD 465 - Con.

GENERAL ACCOUNTING OFFICE--JURISDICTION--SUBCONTRACTS

A protest against procurement conducted by prime contractor, acting as Dept. of Energy cost-type construction manager, is appropriate for our review under rule announced in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

B-202132 Dec. 15, 1981 81-2 CPD 467

CONTRACTS--NEGOTIATION--COMPETITION--COMPETITIVE RANGE FORMULA--ADMINISTRATIVE DETERMINATION

It is improper in a negotiated procurement to exclude some offerors from competitive range, without considering price, because their proposals are technically inferior, though admittedly acceptable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--TECHNICAL ACCEPTABILITY

It is neither the function for practice of GAO to independently evaluate technical proposals. GAO review of agencies' technical evaluations is generally limited to examining whether the evaluation was fair and reasonable.

FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS OF AGENCIES, ETC., OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE DISCLOSURE

GAO has no authority to direct an agency to release information withheld under the Freedom of Information Act. Controversies of that nature may only be resolved by resort to Federal courts. However, GAO may conduct in camera examinations of documents sought and consider them in reaching its decisions.

B-202202 Dec. 15, 1981 81-2 CPD 468

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--ADMINISTRATIVE DETERMINATION--REASONABLE BASIS

Agency decision to issue sole-source order for spare electronic modules for electronic navigation beacon is not unreasonable when: the awardee is also, under

a related contract, charged with development and production of new version of beacon; order requires modules to be fully compatible and interchangeable with older version of the beacon; baseline specifications of new version are still being changed because of ongoing development process; agency lacks complete technical data package suitable for competitive procurement; time constraints require that the interchangeable modules be available as soon as possible after development of new version of beacon.

B-202283 Dec. 15, 1981 81-2 CPD 469

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

Agency's determination that its minimum needs for safety equipment for F-4 aircraft can be satisfied only by pneumatic-type (and not a resistive-type) system is reasonable because, in agency's technical judgment (which has not been shown to be arbitrary), (1) currently available data based on actual use of protester's old resistive-type system and pneumatic-type system indicate that pneumatic-type system is more reliable for this particular application and (2) protester's old and modern systems are not significantly different.

B-202399, et al. Dec. 15, 1981 81-2 CPD 471

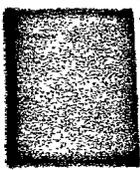
*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--RECOVERY*

Claim for proposal preparation costs is denied where GAO has not found agency actions were improper.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING CLOSING DATE FOR PROPOSALS*

Protest allegation concerning propriety of using negotiation raised after closing date for receipt of initial proposals is untimely as allegation concerns alleged impropriety evident on face of solicitation. Likewise, contention regarding existence of written determination and findings needed to support negotiation is untimely as it was raised almost 2 months after closing date for receipt of initial proposals.

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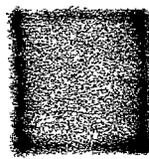


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B-202399, et al. Dec. 15, 1981 81-2 CPD 471 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PROPRIETY--SUBSEQUENT TO UNRESTRICTED SOLICITATION

Determination to set aside procurement for ship repair services for small business after solicitation is originally issued on unrestricted basis is not legally objectionable if reasonable basis for determination exists at time it is made.

GAO has no reason to object to determination to set aside procurement for ship repair services after solicitation was issued on unrestricted basis because delay in reaching final determination was caused by good faith dispute between contracting officer and SBA official. Dispute was resolved through appeals process set forth in regulation and final determination that offers would be received from at least two responsible small businesses does not appear unreasonable.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

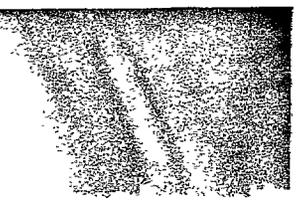
Protests questioning size standard for ship repair firms is not subject to review by GAO since by law it is matter for decision by the SBA.

B-203417 Dec. 15, 1981 81-2 CPD 473
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--"EQUAL" PRODUCT EVALUATION--SALIENT CHARACTERISTICS
NOT MET

Bid proposing "equal" product in response to brand name or equal invitation was properly rejected as nonresponsive since proposed product did not meet all of listed salient characteristics of brand name model.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging defects apparent from face of solicitation must be filed prior to bid opening. 4
C.F.R. 21.2(b)(1).



B-203885 Dec. 15, 1981
INDIAN AFFAIRS--CONTRACTS--BUREAU OF INDIAN AFFAIRS--INDIAN
SELF-DETERMINATION ACT--COMPLIANCE DETERMINATION

Indian Self-Determination and Education Assistance Act does not mandate that Sec. of Interior enter into road construction contract with Indian tribal organization upon tribe's request.

B-204018.2 Dec. 15, 1981 81-2 CPD 474
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
CANCELLATION--REASONABLE BASIS--SUBSTANTIAL CHANGE IN
SPECIFICATIONS

Deciding whether to cancel RFP is basically matter for sound judgment and discretion of responsible agency officials. Navy's decision to use specific Military Specification rather than Federal Specification, initially used, was reasonable.

B-204445 Dec. 15, 1981 81-2 CPD 475
BIDS--LATE--TELEGRAPHIC MODIFICATIONS--MISHANDLING BY
GOVERNMENT

Strict and literal application of late bid regulation should not be utilized to reject late telegraphic bid modification where it is shown that Govt. mishandling is paramount cause of failure of bid modification to be timely received at Govt. installation.

BIDS--LATE--TELEGRAPHIC MODIFICATIONS--PROPRIETY OF
CONSIDERATION

Telegraphic bid modification, received after bid opening, may properly be considered where contracting office received notice of arrival of telegraphic modification from Western Union office located on Govt. premises well in advance of bid opening and failure of contracting office to pick up modification, as per policy, was paramount cause for its late receipt.

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B-204552 Dec. 15, 1981 81-2 CPD 476

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

Protester contends that awardee's proposal was incom-
plete in four areas. GAO concludes that contention
is without merit because awardee's proposal appears
to be complete in these areas and protester has not
shown that any of four areas were improperly evalu-
ated by agency.

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CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

for

Contentions--that awardee's proposal should have been
rejected because portions of its technical approach were
copied from RFP's statement of work and its proposal
did not contain required detailed outline--are with-
out merit since (1) awardee's complete technical ap-
proach section demonstrates satisfactory understanding
of requirements and (2) awardee submitted detailed out-
line of proposed program required by RFP.

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CONTRACTS--NEGOTIATION--REQUEST FOR PROPOSALS--
SPECIFICATIONS--PERSONNEL COMMITMENT--EVIDENCE SUFFICIENCY

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RFP requirement--that offeror must submit letter of com-
mitment for proposed personnel not presently employed--
was satisfied because person proposed is currently
employed by subcontractor, and subcontractor submitted
letter of commitment for that person and another person.

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B-205210.2 Dec. 15, 1981 81-2 CPD 477

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

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Prior decision dismissing protest as untimely is affirmed
where protester has failed to establish decision was based
on erroneous interpretation of fact or law.

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B-205259 Dec. 15, 1981 81-2 CPD 478
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Cancellation of IFB after bid opening but prior to award was proper where solicitation specifications were inadequate and protester has not established that contracting officer abused his broad powers of discretion in canceling IFB.

B-205540 Dec. 15, 1981 81-2 CPD 479
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

GAO will not review SBA refusal to issue certificate of competency in absence of showing of fraud or bad faith.

B-205220, B-205220.2 Dec. 16, 1981
81-2 CPD 481
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Post-award protests by potential subcontractor against allegedly restrictive electrostatic painting requirements are dismissed as untimely. Requirements were clearly stated in Govt's solicitations so that protests should have been filed before bid opening dates.

B-201484.3 Dec. 21, 1981 81-2 CPD 482
BIDS--"BUYING-IN"--NOT BASIS FOR PRECLUDING AWARD

Protest asserting that awardee cannot perform required work at alleged "buy-in" price bid is without merit because Govt. may accept a below-cost bid. Allegation further involves questions of bidder responsibility which GAO does not review except in circumstances not presented here and also matters of contract admin. which are the responsibility of contracting agency, not GAO.

AWARDING--

B-201484.3 Dec. 21, 1981 81-2 CPD 482 - Con.
BIDS--MISTAKES--CORRECTION--CLERICAL ERROR

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Although awardee's bid which stated monthly prices for estimated square footage to be serviced instead of unit prices based on square footage is correctable as an apparent clerical mistake under DAR 2-406.2, contracting agency's correction under DAR 2-406.3 is not legally objectionable and erroneous unit pricing method did not render bid nonresponsive.

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BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--WHAT CONSTITUTES

RE

Where low bid prices for basic year and 2 option years are same for each year, protester has failed to show that bid is mathematically unbalanced and there is no basis to determine that bid is materially unbalanced and unacceptable.

CONTRACTS--
PROTESTS--

CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--RECONSIDERATION STAGE OF PROTEST

CONTRACTS--
PROTESTS--
CONFERENCES--
REQUEST DENIED--
RECONSIDERATION STAGE OF PROTEST

Protester's request for a conference is denied because GAO Bid Protest Procedures do not explicitly provide for a conference on request for reconsideration, and matter can be resolved without a conference.

CONTRACTS--
PROTESTS--
MOOT, ACADEMIC, ETC.,
QUESTIONS--
BID WITHDRAWAL

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC., QUESTIONS--BID WITHDRAWAL

Contention contracting agency should not consider allegedly nonresponsive low bid is dismissed as academic because, based on a purported mistake in bid, bid has been withdrawn.

CONTRACTS--
PROTESTS--
TO AGENCIES, ETC.,
OTHER THAN GAO--
TIMELINESS OF PROTEST

CONTRACTS--PROTESTS--TO AGENCIES, ETC., OTHER THAN GAO--TIMELINESS OF PROTEST

Protest by third low bidder alleging that two lowest bids are nonresponsive, filed with contracting agency more than 10 working days after bid opening but before protester knew that agency considered either bid responsive,

is timely. Subsequent protest to GAO within 10 working days of protester's notification of agency's denial of its protest will be considered timely.

*B-203352.2 Dec. 21, 1981 81-2 CPD 483
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision is affirmed because protester has not shown any errors of law or fact in decision's conclusion that its protest against sole-source award was untimely since protest was not filed within 10 working days after protester learned of agency's justification for sole-source award. Further, the matter does not fall within GAO's exceptions to timeliness requirements.

*B-204245 Dec. 21, 1981 81-2 CPD 484
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF
COMPETITION--OFFEROR'S SUPERIOR ADVANTAGES--GOVERNMENT
EQUALIZING DIFFERENCES*

There is no requirement that a contracting agency equalize a competitive advantage unless it is result of preference or unfair action by Fed. Govt.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ALLEGATION OF BIAS NOT SUSTAINED*

Protester has not met burden of proof concerning allegations that evaluation of proposals was biased in favor of awardee, that awardee received information prior to closing date not available to other offerors, and that former students of awardee-university served on evaluation team. Here, allegations of bias are denied by contracting officer and record contains no evidence to support protester's allegations nor has protester submitted evidence to support allegations.

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*B-204245 Dec. 21, 1981 82-2 CPD 484 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Allegation that proposals were not evaluated on same basis is without merit, since record indicates that both protester's and awardee's proposals were reviewed with respect to all evaluation criteria.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

GAO will not disturb judgment of contracting officer that a proposal is technically unacceptable unless determination is clearly shown to be without a reasonable basis. Where agency determined protester's proposal unacceptable because it lacked specific methods of research and survey and failed to demonstrate experience in area to be surveyed under contract, technical evaluation was not unreasonable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegation that solicitation should have been set aside for small business is untimely, since protest of this alleged impropriety in solicitation was not filed until after closing date set for receipt of proposals.

*B-204518 Dec. 21, 1981 81-2 CPD 485
BIDS--EVALUATION--PRICE ANALYSIS*

Protest that contracting agency should have rounded off weighted line item prices (for example, \$5.04375 to \$5.04) before summing them to determine lowest weighted cumulative price is denied. Contracting agency evaluated bids in strict accord with evaluation scheme in invitation for bids which did not call for rounding, and evaluation scheme reflects low cost to Govt. Allegation that agency rounded in prior procurements using similar scheme is irrelevant.

B-204742 Dec. 21, 1981 81-2 CPD 486

*BIDS--AMBIGUOUS--TWO POSSIBLE INTERPRETATIONS--CLARIFICATION
PREJUDICIAL TO OTHER BIDDERS--REJECTION OF BID*

Where bid is reasonable susceptible of two interpretations, one of which makes bid nonresponsive, bidder is foreclosed from providing any clarification of ambiguity to establish that bidder intended to be responsive.

*BIDS--COMPETITIVE SYSTEM--PRESERVATION OF SYSTEM'S
INTEGRITY--PECUNIARILY DISADVANTAGEOUS TO GOVERNMENT*

Possibility that Govt. might realize monetary savings in particular procurement if material bid deficiency is waived is outweighed by importance of maintaining integrity of competitive bidding system.

BIDS--MISTAKES--CORRECTION--NONRESPONSIVE BIDS

Nonresponsiveness of bid may not be cured through bid correction.

*BIDS--QUALIFIED--BID NONRESPONSIVE--PUBLIC DISCLOSURE
RESTRICTED*

Bid was properly rejected as nonresponsive even though contracting officer disclosed price at bid opening contrary to restriction against disclosure in bid.

CONTRACTS--AWARDS--ERRONEOUS--NONRESPONSIVE BIDDER

Even if an award was made, later determination that award was made to nonresponsive bidder would not preclude termination of award to correct that situation.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
AWARD PROCEDURES*

Award of small business set-aside must be made to lowest responsive, responsible bidder, and there is no authority to apply different rules simply because small business concerns are involved.

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B-203934 Dec. 22, 1981 81-2 CPD 487
AGENTS--GOVERNMENT--GOVERNMENT LIABILITY FOR NEGLIGENT OR
ERRONEOUS ACTS--DOCTRINE OF ESTOPPEL

Contractor, temporarily barred from entering foreign country where he had been performing personal services contract for U.S. Govt., is entitled to be reimbursed for time he was unable to perform since, in view of assurances he received which he relied on to his detriment, U.S. Govt. is estopped from denying contractor's entitlement to reimbursement for time period in question.

B-195560.2, *et al.* Dec. 23, 1981 81-2 CPD 488
CONTRACTS--PROTESTS--DENIAL--SUMMARY DENIAL

GAO summarily denies protests and affirms prior decisions on request for reconsideration where agency report shows that protester's allegation of impropriety is founded on nothing more than agency renumbering of solicitation clauses without any change in content of clauses renumbered.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

GAO summarily denies protests where protester's initial submissions fail to present any arguments or information distinguishing present contentions from those previously considered and denied.

B-203792 Dec. 23, 1981 81-2 CPD 489
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ADEQUACY--SCOPE
OF WORK--SUFFICIENCY OF DETAIL

Agency is not required to provide bidders with precise details for mess attendant services requirements for facility under renovation where information specified in solicitation and opportunity for site visit provide reasonable basis for computing bids.

*B-203792 Dec. 23, 1981 81-2 CPD 489 - Con.
CONTRACTS--OPTIONS--EXERCISABLE AT SOLE DISCRETION OF
GOVERNMENT--REVIEW BY GAO*

GAO will not review agency's determination not to exercise option where option provision is exercisable at agency's sole discretion.

*LABOR DEPARTMENT--WAGE DETERMINATIONS--NOT INCLUDED IN
SOLICITATION--EFFECT*

Where appropriate wage rate determination from Dept. of Labor is not received by contracting agency in time for inclusion in solicitation, economic terms of incumbent contractor's collective bargaining agreement apply to contract and should be used by bidders in developing bids.

*B-203996, B-203996.2 Dec. 23, 1981 81-2 CPD 490
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE*

Competitive advantage gained by offeror as result of prior performance of Govt. contract is not improper.

*CONTRACTS--NEGOTIATION--REQUEST FOR PROPOSALS--
SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Determination of needs of Govt. and methods of accommodating needs is primarily responsibility of procuring agency. Protester who objects to specifications in RFP bears heavy burden. Protesters' objections to RFP specifications concerning hardware, software, location of office, etc., will not be questioned since it cannot be concluded that procuring activity has no reasonable basis for those requirements.

*B-204549 Dec. 23, 1981 81-2 CPD 491
BIDS--PRICES BELOW COST--EFFECT ON BIDDER RESPONSIBILITY*

Protest against proposed award on basis that low bid is unbalanced between basic (\$87,590.64) and first option (\$80,499.36) year is denied. Low bid does not appear to be mathematically unbalanced because startup costs plus profit in base

year could reasonably account for price difference between years. Further, low bid is not materially unbalanced because agency anticipates continued need and available funding for option periods; thus, low bid offers Govt. lowest ultimate cost.

*BIDS--UNBALANCED--PROPRIETY OF UNBALANCED BIDS--
"MATHEMATICALLY UNBALANCED BIDS"--WHAT CONSTITUTES*

Where agency intends to make award to low responsive and responsible bidder, protester's contention that low bidder submitted a below-cost bid does not provide valid basis to challenge proposed award.

*B-205590 Dec. 23, 1981 81-2 CPD 492
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL v.
SPECIFIC--EFFECT ON RESPONSIBILITY*

In absence of solicitation provision requiring bidder to possess specific license, contracting officer is not required to determine whether bidder intends to comply with Federal, State or local licensing requirements in determining bidder's eligibility for contract award.

*B-203597 Dec. 24, 1981 81-2 CPD 493
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND
FINAL--ADDITIONAL ROUNDS--DENIAL PROPRIETY*

Agency refusal to reopen discussions in order to permit protester to take advantage of developments in Navy contract it was performing was not unreasonable where benefit to Govt. was not clear.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--ADEQUACY*

Agency performed cost realism analysis in accordance with solicitation requirements. Additionally, agency's analysis of estimated 10-year operations and support costs for system was performed as set forth in solicitation. Several factors that protester argues

should have been considered were not required to be considered in RFP. In any event, protester argues that if analysis is done correctly, its costs should be less and that was, in fact, the result.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--TECHNICALLY EQUAL PROPOSALS

Protester has not shown that technical evaluation, ranking proposals as essentially equal, was without reasonable basis. Protester's arguments mostly concern past performance and current state of its and proposed awardee's technology, which protester claims agency ignored or was unaware of. Source selection documents show that past performance was but one of four evaluation criteria, and that agency consideration of it was adequate.

CONTRACTS--NEGOTIATION--SOURCE SELECTION--BOARD, COMMISSION, ETC.--DETERMINATION PROPRIETY

Protester's request that GAO interview all evaluators involved in source selection in order to independently verify integrity of official written documentation of source selection is denied where GAO has all relevant documentation and evidence submitted by protester in support of request for investigation does not show that documentation is not accurate reflection of events of source selection process.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Protester has provided no evidence to support speculation that proposed awardee and agency engaged in discussions after best and final offers were submitted.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Argument that contract will be funded from improper appropriation if proposed awardee receives contract has no relevance to propriety of source selection and will not be considered.

B-203597 Dec. 24, 1981 81-2 CPD 493 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Argument that system does not reflect agency's minimum needs was not raised before closing date for receipt of proposals and, therefore, is untimely. Issue does not fall within "significant issue" exception of timeliness rules. Additionally, arguments that protester was not permitted to offer cost-effective alternative to use of Govt.-furnished equipment and that reduction in RFP hardware requirement favored proposed awardee were not raised within 10 working days of protester's knowledge of them and are also untimely.

B-204385 Dec. 24, 1981 81-2 CPD 494
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEVIATIONS--
WAIVER--PRICE, QUALITY, QUANTITY EFFECT

Contracting agency may not waive advertised specification if deviation from it goes to substance of bid or works injustice on other bidders. Substantial deviation is one which affects price, quality, or quantity of goods or services offered.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEVIATIONS--
WAIVER--UNJUSTIFIED WHERE PREJUDICIAL

When other bidders appear to have been prejudiced, waiver of specifications is improper even though low bidder's equipment satisfies Govt.'s needs and meets intent of specifications, and GAO will sustain protest on this basis.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ERRONEOUS--
BURDEN OF DISCOVERY--AGENCY RESPONSIBILITY

Contracting agency cannot shift burden of discovering errors in solicitation to bidders or offerors, who have right to assume that clearly stated and unambiguous requirements will be enforced.

*B-204385 Dec. 24, 1981 81-2 CPD 494 - Con.
CONTRACTS--PROTESTS--WORDING*

When dissatisfied bidder alleges that lower bidders are offering equipment which does not meet specifications, identifying sections of solicitation involved by number, allegation should be regarded as protest even though word "protest" is not used.

*B-204594 Dec. 24, 1981 81-2 CPD 495
CONTRACTS--PROTESTS--BASIS FOR PROTEST REQUIREMENT--
PROTESTER'S DISPUTE WITH THIRD PARTY*

Protester's allegation that recommended supplier of parts may not have offered to provide parts to all prospective bidders at same price is a private matter between parties not for consideration by GAO.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Record provides no support for protester's contention that successful bidder may have obtained a price advantage by having components manufactured to its own drawings rather than drawings specified in solicitation. To extent protester is suggesting that successful bidder may not comply with contract specifications, it raises question of contract administration not for consideration by GAO.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS--SOLICITATION IMPROPRIETIES--NOT APPARENT PRIOR
TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest based upon pre-bid opening conversations with a component supplier, as result of which protester suspected that a potential competitor may not use components which meet Govt. specifications, need not be filed before bids are opened and competitor is low bidder in line for award. Protest alleging under these circumstances that low bidder may use non-specification components, filed two days after bid opening, is timely.

B-205697 Dec. 24, 1981 81-2 CPD 496
CONTRACTS--NEGOTIATION--OFFERS AND PROPOSALS--BEST AND
FINAL--LATE MODIFICATION--PRICE REDUCTION

Contention that agency violated Defense Acquisition Regulation by refusing to permit protester to modify cost proposal is without merit since protester sought to do so well after date for receipt of best and final offers.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Contention that agency impermissibly disclosed to competitor confidential information contained in a previous unsolicited proposal, where filed more than 10 working days after protester became aware of basis for protest, is untimely and will not be considered on merits.

B-202198 Dec. 28, 1981 81-2 CPD 497
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ADEQUACY--SCOPE
OF WORK--SUFFICIENCY OF DETAIL

Protest is denied where protester fails to show that specifications and drawings for a fire prevention sprinkler system or notations on drawings for renovation of a building are erroneous, conflicting or ambiguous as alleged.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEFECTIVE--
ALLEGATION NOT SUSTAINED

Specifications are not rendered materially defective because of immaterial or minor errors which have not been shown to have misled protester or any other bidder.

B-202522 Dec. 28, 1981 81-2 CPD 498
CONTRACTS--DISPUTES--SETTLEMENT--"CONTRACT DISPUTES ACT OF
1978"

Money claim for breach of contract involving award of requirements covered by contract allegedly awarded to claimant is for consideration under Contract Disputes Act of 1978 and not by our Office.

B-202522 Dec. 28, 1981 81-2 CPD 498 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
CANCELLATION--REASONABLE BASIS--CHANGED CONDITIONS,
NEEDS, ETC.

GAO will not question contracting agency's decision to cancel solicitation where agency had reasonable basis for its decision based, in part, on its apparent agreement with our Office's audit findings which criticized solicitation format involving pricing of thousands of items.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protester was not required to file its protest with GAO within 10 working days after it received oral notification of cancellation of solicitation since record does not indicate that this oral notification provided protester with sufficient information as to reasons for cancellation so as to give rise to any possible basis for protest.

B-204554 Dec. 28, 1981 81-2 CPD 499
BIDS--AMBIGUOUS--TWO POSSIBLE INTERPRETATIONS--
CLARIFICATION PREJUDICIAL TO OTHER BIDDERS--REJECTION OF
BID

Bid which contains an inconsistency between item prices and total bid price which gives rise to two bid price interpretations must be rejected as ambiguous since under one interpretation it would not be low.

B-205011 Dec. 28, 1981 81-2 CPD 500
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where prior to bid opening potential bidder raises, and contracting officer supplies answers to, approximately 100 questions concerning IFB specifications, firm does not meet its burden of proof in subsequent protest to GAO by simply alleging that "a few" of its questions had been answered satisfactorily and "other" answers were "evasive" without specifying in what respect IFB remained defective.

B-205011 Dec. 28, 1981 81-2 CPD 500 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

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Where evidence shows protest against improprieties in
IFB was received at GAO before bids were opened,
protest is timely notwithstanding protest was not
time/date stamped at GAO until after bids were opened.

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B-205087.2 Dec. 28, 1981 81-2 CPD 501
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Request for reconsideration is denied because protester
submits no facts or arguments which were not considered
during review of initial protest and no points of law
on which a reversal could be based.

B-205586 Dec. 28, 1981 81-2 CPD 502
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

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Where it is clear that protester filed protest with GAO
more than 10 working days after notice of initial adverse
agency action, protest is dismissed as untimely.

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B-205591 Dec. 28, 1981 81-2 CPD 503
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that receipt of an amendment to a solicitation
only four days prior to bid opening left insufficient
time to revise bid filed after bid opening is untimely
and will not be considered on merits.

B-205625 Dec. 28, 1981 81-2 CPD 504
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Dispute concerning modification of contract and reim-
bursement for related changes and delays therein is
a matter of contract administration and not for reso-
lution under GAO Bid Protest Procedures.

B-205731 Dec. 28, 1981 81-2 CPD 505
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against agency's determination to exclude
protester's proposal from competitive range is un-
timely under 4 C.F.R. 21.2(b) (2) (1981) since pro-
test was filed more than 10 working days after
basis of protest was or should have been known.

B-205852 Dec. 28, 1981 81-2 CPD 506
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Before firm can be awarded contract, contracting officer
must find that it is a responsible business concern,
and GAO will not review affirmative determination of
responsibility except in limited circumstances.

B-201295.2 Dec. 29, 1981 82-1 CPD 130
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Request for reconsideration of decision rendered
Sept. 23, 1981, is untimely and will not be considered
when filed with GAO on Oct. 26, 1981.

B-203473.2 Dec. 29, 1981 81-2 CPD 507
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest of agency's cancellation of IFB, filed with
GAO more than one month after agency issued amendment
canceling solicitation, is dismissed as untimely
because protest was not filed within 10 working days
of when protester knew or should have known of basis
for protest.

B-204051 Dec. 29, 1981 81-2 CPD 508
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

Protest filed in GAO is dismissed where material issues protested are before a court of competent jurisdiction, plaintiff has not requested judicial relief pending GAO decision, and court has not indicated interest in GAO decision.

B-204574 Dec. 29, 1981 81-2 CPD 509
CONTRACTS--AWARDS--SEPARATE OR AGGREGATE--SINGLE AWARD--
PROPRIETY

Agency decision to procure by means of overall package approach rather than breaking out components for separate competitive procurements is matter for agency determination and is not subject to objection absent clear evidence that decision lacked reasonable basis.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Where protest letter alleging improprieties apparent on face of solicitation was received after closing date for receipt of proposals but was preceded by telex message setting forth basis of protest, which was received prior to closing date, protest is timely.

B-204685 Dec. 29, 1981 81-2 CPD 510
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Since agency is in best position to know its needs and is responsible for keeping kitchen facility a suitable workplace, GAO has no basis to object to specification requirement for vents and hoods over ovens as part of agency's overall plan for cooling facility even though protester maintains that its ovens are self-venting and therefore requirement is necessary.

B-204685 Dec. 29, 1981 81-2 CPD 510 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that specification requirement for vent hoods over ovens in solicitation for relocation of pastry kitchen filed in GAO after bid opening is timely as protest was initially filed with agency prior to bid opening and GAO protest was filed within ten days of a conversation which contracting agency argues was formal notification that protest filed with agency was denied.

B-200695.2, B-200696.2 Dec. 30, 1981
81-2 CPD 511

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Where evidence offered by a party urging reconsideration of a prior decision fails to present any new facts or identify errors of law sufficient to justify a reversal or modification of initial decision, that decision is affirmed.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION

Where subject of a protest involved a potentially recurring problem of proper procedures to be followed when employing life cycle cost analysis in evaluating responses to solicitation, it presented an issue of sufficient importance to warrant consideration on its merits even where protest was untimely filed.

B-204526 Dec. 30, 1981 81-2 CPD 512
CONTRACTS--STENOGRAPHIC REPORTING--PRICES--BID

Protest that low bid for stenographic reporting services is nonresponsive because price bid for duplicate copies furnished to public is allegedly unreasonably high is denied. GAO has no basis to question contracting agency's

determination that bid price is reasonable based on information furnished to agency by low bidder, rates bid by other bidders, and protester's bid on prior year's contract.

*B-205038.2 Dec. 30, 1981 81-2 CPD 513
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review an affirmative determination of responsibility absent a showing of fraud on part of procuring officials or an allegation that definitive responsibility criteria in solicitation were misapplied.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
SUBCONTRACTOR, SUPPLIER, ETC., SIZE STATUS*

Subcontracting with a large business under a service contract set aside for small businesses is not legally objectionable.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest that awardee under small business set aside should not be considered a small business firm because a large business allegedly will perform most of contract work is dismissed since SBA is empowered to make conclusive determinations on matters of small business size status.

*B-205679 Dec. 30, 1981 81-2 CPD 514
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of alleged impropriety apparent on face of solicitation is untimely when filed after bid opening date.

B-205732 Dec. 30, 1981 81-2 CPD 515
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO two months after date of contracting agency's initial adverse action and three months after date of initial protest filed with agency is untimely. GAO will allow only a reasonable period to receive notice of adverse agency action through mail.

B-201839 Dec. 31, 1981 81-2 CPD 516
BIDDERS--INVITATION RIGHT--FAILURE TO SOLICIT BIDS--
INCUMBENT CONTRACTOR

Although it was inappropriate for contracting office to decline to issue solicitations to protester because protester refused to submit a formal application to be placed on bidders mailing list, awards were not improper since Govt. received benefit of competition and there is nothing in record which suggests that reasonable prices were not obtained or that failure to solicit protester was result of any deliberate effort to exclude protester from competition.

Where protester was current contractor, contracting officer was aware of protester's existence, and protester made repeated requests to receive solicitations, contracting office should not have ignored protester merely because protester had not submitted a formal application to be placed on bidders mailing list.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION--
INADEQUATE

Although sole-source award was of questionable validity because justification was based on an outdated restriction and there is no indication that a search was made among installers of equipment to ascertain that there was no one other than selected offeror that was capable of performing, corrective action on contract is not recommended since contract was completed and contractor paid several months before the protester learned of procurement and protested.

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*B-201839 Dec. 31, 1981 81-2 CPD 516 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS--SIGNIFICANT ISSUE EXCEPTION*

Where solicitations are not published in the Commerce Business Daily because they are for foreign procurements, but solicitations are displayed in contracting office, there is public notice of their existence and protest filed after award is untimely; however, protest will be considered, since deficiencies in procurements warrant consideration of protest on merits.

*B-203419 Dec. 31, 1981 81-2 CPD 518
BIDDERS--QUALIFICATIONS--DEFINITIVE RESPONSIBILITY
CRITERIA--WHAT CONSTITUTES*

Contention that agency waived solicitation's definitive responsibility criteria is without merit because information requested (concerning prior experience and quality control programs) was general in nature and not sufficiently specific and objective to be described as definitive responsibility criteria.

*CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--SPECIFICATIONS--
REVISION--PROPRIETY*

During evaluation of proposals in step one of two-step procurement, agency may delete a requirement, for information which was to be used in evaluating proposals where (1) revised requirement appears to reflect the agency's actual needs and (2) there is no showing that interests of offerors or potential offerors are unfairly prejudiced by amendment.

*B-203757 Dec. 31, 1981 81-2 CPD 519
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

When SBA issues certificate of competency to low bidder, on basis that it is able to perform work in question even though it does not meet special standards of responsibility included in solicitation, protest by fifth-low bidder regarding restrictiveness of standards becomes academic.

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B-203757 Dec. 31, 1981 81-2 CPD 519 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--RESPONSIBILITY DETERMINATION--
LIMITATIONS BY AGENCY PRECLUDED

SBA's authority is not limited by special standards of responsibility which procuring agency has included in solicitation, since SBA has statutory authority to make final determination with regard to all aspects of responsibility of small business concerns.

B-204022 Dec. 31, 1981 81-2 CPD 520
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST
ARTICLE--WAIVER

Low bid need not be rejected because price based on waiver of first article testing was so out of line as to suggest obvious mistake, since agency has determined that first article testing will not be waived for low bidder, and firm's bid on that basis is responsive and is not alleged to be in error.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT

Protester who is second low bidder and therefore would be in line for award if low bid is rejected, as it maintains, is an "interested party" under our Bid Protest Procedures.

B-204047 Dec. 31, 1981 81-2 CPD 521
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
INFORMATION SUFFICIENCY

Offeror who based proposal on mistaken belief that simultaneous execution of supervisory functions was not required cannot complain of rejection of its proposal where it was afforded opportunity to make its proposal acceptable by explaining how comparability would be provided but failed to do so.

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OR--

B-204047 Dec. 31, 1981 81-2 CPD 521 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Requirement that offerors' systems permit simultaneous performance of multiple supervisory functions is not unreasonable since agency anticipates that heavy work load otherwise will result in backlog.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed within 10 working days after protester learned that its proposal was rejected is timely notwithstanding that protester questions RFP requirements. Requirement was ambiguous and protester filed its protest once agency's interpretation was known.

B-204604 Dec. 31, 1981 81-2 CPD 522
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not consider protests against affirmative responsibility determinations except in limited circumstances.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--ALL OR NONE

Award can be made to a firm whose offer was on an all-or-none basis where solicitation did not preclude all-or-none proposals and firm's price, determinative award factor, was lowest one received.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND
FINAL--REVISED PROPOSAL SUBMITTED--REOPENING OF
NEGOTIATIONS NOT REQUIRED

Decision not to reopen negotiations after receipt of price reduction after best and final offers were received was not an abuse of contracting officer's discretion where bases for decision were that both firms had been given a fair chance to submit their best offers, preaward survey already had been concluded, and award price was considered reasonable.

B-204604 Dec. 31, 1981 81-2 CPD 522 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND
FINAL--REVISED PROPOSAL SUBMITTED--REOPENING OF
NEGOTIATIONS NOT REQUIRED

Price reduction submitted in response to contracting agency's written advice that solicitation "exists in a competitive environment" properly was rejected as late, since such advice was given orally prior to request for best and final offers, best and final offers already had been submitted, and agency's advice cannot reasonably be viewed as a reopening of negotiations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ALLEGATION OF BIAS NOT SUSTAINED

Protest that rejection of protester's proposal modification as late is merely an element in a pattern of bias against the firm characterized by earlier agency procurement actions adverse to protester, is denied, where agency has advanced reasonable justification for each of those actions and modification in any case properly was rejected.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--SAME FOR SMALL AND LARGE BUSINESS

There is no legal basis for an agency to give special consideration to a small business in an unrestricted procurement.

CONTRACTS--NEGOTIATION--PROPRIETY--PROCEDURES DEFICIENT

Where a firm is not prejudiced by an agency's failure to notify it promptly that its proposal modification will not be considered because it was received late, failure is a procedural deficiency that does not affect validity of contract award.

B-204673 Dec. 31, 1981 81-2 CPD 523
AGENTS--GOVERNMENT--GOVERNMENT LIABILITY FOR NEGLIGENT OR
ERRONEOUS ACTS--DOCTRINE OF ESTOPPEL

Where protester relied on a Govt. quality assurance representative's (QAR) favorable QPL recommendation to

higher authority as well as alleged QAR oral advise regarding QPL qualification tests, it did so at its own risk, and Govt. is not estopped from declaring bid non-responsive for bidder's failure to offer a qualified product.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--QUALIFIED PRODUCTS--LISTING--NON-LISTING EFFECT

A QPL requirement in an IFB is a material requirement that must be met at time of bid opening. Protester's failure to satisfy a QPL life preserver salt spray test requirement prior to bid opening renders its bid non-responsive.

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