

**Digests Of Unpublished Decisions Of
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UNITED STATES GENERAL ACCOUNTING OFFICE

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NOTE: The format of the Procurement Law and the Civilian and Military Personnel Law sections of this publication varies from the other sections because the Index-Digest Section is converting to MICOM and must make the appropriate changes.

April 1985

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GENERAL GOVERNMENT MATTERS
APPROPRIATIONS AND MISCELLANEOUS

B-213771.2 Apr. 1, 1985

APPROPRIATIONS--REIMBURSEMENT--(INTRAAGENCY FINANCING OF
PROGRAMS

Decision holding that the General Services Administration is bound to same 45-day reimbursement requirement for procurement made on its behalf through General Supply Fund (GSF) as are other agencies for procurements made on their behalf is affirmed. Review of prior decision discloses no material error of fact or law. Any agency (including GSA) that has items procured through the GSF in its behalf is a "requisitioning agency" within the meaning of 40 U.S.C. 756(b) and is bound by the 45-day reimbursement requirement.

Provision of 40 U.S.C. 756(b) authorizing amortization of cost of "equipment utilized for lease or rent to executive agencies" permits GSA to recover costs of common use type items which are used intermittently by more than one agency over the useful life of the items by assessing users a rental fee, but does not permit GSA to procure an item through the GSF for the sole use of GSA and then lease it to itself merely to avoid the 45-day reimbursement requirement. If this were permissible, then every procurement, regardless of whether it is made on GSA's or some other agency's behalf, could be so classified rendering meaningless the application of the 45-day reimbursement requirement.

B-217532 Apr. 5, 1985

SOCIAL SECURITY--STATE COMPLIANCE WITH SOCIAL SECURITY ACT
AS AMENDED--COST OF LIVING ADJUSTMENTS

The Supplemental Security Income program (title 16 of the Social Security Act) requires states to pass through to recipients the full amount of Federal cost of

living adjustments after 1976. 42 U.S.C. 1382g (1982). The 1983 amendments to section 1382g require states using individual benefits tests (state payments must equal or exceed the payments to an individual in December 1976) to update the minimum state payment requirement to the payment level in March 1983. Neither the statute nor its legislative history support an argument that states may choose either December 1976 or March 1983 levels to comply with the law.

B-212745 Apr. 15, 1985

POSTAL SERVICE, UNITED STATES--MAILS--POSTAGE--DEFICIENCY
INDEBTEDNESS

The Air Force should pay the Postal Service amounts due for postage calculated on the basis of a statistical sampling method. The Postal Service's sampling method has a rational basis and the Air Force has not established a more realistic computation. Furthermore, the Department of Defense, acting on behalf of military departments including the Air Force, agreed to the Postal Service's statistical sampling method in 1972.

Although an Air Force contractor used an improper form for bulk mailing, the Air Force should nonetheless be charged at bulk rate in view of the longstanding Postal Service practice of accepting bulk mailings without proper form.

B-215226 Apr. 16, 1985

ACCOUNTABLE OFFICERS--RELIEF--REQUIREMENTS FOR GRANTING--
RELIEF OF SUPERVISOR

Army Finance and Accounting Officer is relieved of liability for improper payment of funds by cashier under his supervision where the record presents evidence that an adequate system of supervision was maintained and policed. The loss was the result of the cashier's failure to check for disbursing official's initials on a check over \$1,000.

B-217440, B-217440.2 Apr. 16, 1985
ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS PAYMENTS--
WITHOUT FAULT OR NEGLIGENCE

Relief is granted to disbursing officers and cashiers under 31 U.S.C. 3527(c) for improper payment of travel voucher where the disbursing officers maintained an adequate system of procedures to safeguard the funds for which they were accountable and the cashiers were in compliance with the procedures when making the payment resulting from criminal activity over which the accountable officers had no control.

B-217947 Apr. 16, 1985
ACCOUNTABLE OFFICERS--RELIEF--DUPLICATE CHECKS ISSUED--
IMPROPER PAYMENT

Relief is granted Army disbursing official and his supervisor under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his superior, and subsequent collection attempts have been pursued.

B-218515 Apr. 30, 1985
DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT
OF BAD FAITH OR NEGLIGENCE

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued.

PERSONNEL LAW: CIVILIAN PERSONNEL

OFFICERS AND EMPLOYEES B-216970 Apr. 1, 1985
Promotions
Cancellation

An employee who was serving under a temporary appointment at the grade GS-2 level, was converted to a permanent appointment and promoted to the grade GS-3 level. One month later the employee was promoted to a grade GS-4 position, but his subsequent promotion to the grade GS-5 level 6 months later was denied under time-in-grade restrictions applying to promotions under nontemporary appointments. Although the union argues that the employee was prematurely converted to a permanent appointment which later affected his entitlement to promotion, we hold that the conversion to a permanent appointment was proper and may not be changed retroactively.

MEALS B-217261 Apr. 1, 1985
Headquarters

A Customs Patrol Officer on an extended surveillance assignment at his headquarters, who was required to remain in a motel room for several days, may not be reimbursed for meal expenses. Absent specific statutory authority or exigent circumstances involving danger to human life or the destruction of federal property, the government may not pay the subsistence expenses or furnish free food to employees performing duty at their headquarters.

TRAVEL EXPENSES B-216921 Apr. 2, 1985
Official business
Personal expenses
Reimbursement basis

An employee who pays for authorized travel costing in excess of \$100 with personal funds contrary to the Federal Travel Regulations may be reimbursed the transportation costs which would have been properly chargeable to the Government if the transportation service had been procured with a Government Transportation Request. The fact that the airline tickets involved were purchased from a travel agent does not affect his reimbursement in this case since the travel agent was authorized for use by Government travelers under a contract with the General Services Administration.

OFFICERS AND B-217186 Apr. 3, 1985
EMPLOYEES
Transfers
Real estate expenses
Time limitation
Mandatory

An employee's claim for reimbursement of real estate expenses, based on the sale of his house which occurred more than 7 years after he reported for duty at his new assignment, may not be allowed. Depressed market conditions, a recalcitrant tenant, and erroneous advice concerning requirements for reimbursement, do not provide a legal basis to waive a 2-year time limit provided by a regulation having the force and effect of law as the eligibility period for relocation allowances.

OFFICERS AND EMPLOYEES B-187650 Apr. 4, 1985
Transfers
Break in service
Expense entitlement

An employee who separates from the Government within 12 months of a transfer becomes obligated to repay relocation costs where the separation is not for reasons beyond the employee's control and acceptable to the agency. Reemployment with the Government approximately 3 years later does not fulfill the statutory requirement of 12 months' service with the Government following a transfer so as to relieve the employee from debt.

TRANSPORTATION B-213340 Apr. 4, 1985
Travel agencies
Restrictions on use
Violations by Government travelers
Reimbursement claims
Criteria for allowance

An Army employee who was unaware of the general prohibition against use of travel agents purchased coach-class air transportation for official travel from a travel agent. He may be reimbursed for transportation costs which would have been incurred if he had obtained his transportation directly from the carrier. In view of the requirement to purchase such transportation using a Government Transportation Request, his reimbursement is limited to the lower fare available for transportation procured with a Government Transportation Request since evidence does not establish that his failure to obtain a Transportation Request was for reasons beyond his control.

COMPENSATION

B-214845 Apr. 12, 1985

Overtime**Inspectional service employees**

Customs Service employees are entitled to overtime compensation at a higher rate under 19 U.S.C. 267 and 1451 (1982) (1911/1944 Act) rather than the rate paid them under the Federal Employees Pay Act of 1945 (FEPA), if they actually performed "inspectional services" specified in the 1911/1944 Act. It is not necessary that the employees' job descriptions call for the performance of such inspectional services; nor must the employees work in a primary search area. Michael J. Murphy, Frank R. Doud, B-194568, February 15, 1980, is hereby clarified.

COMPENSATION**Overtime****Inspectional service employees****Evidence****Sufficiency**

Employees of Customs Service presented sufficiently convincing evidence that they did perform "inspectional services" as specified in the 1911/1944 Act and thus are entitled to overtime compensation at the higher rate specified under its provisions rather than the lower FEPA rate at which the agency compensated them.

**OFFICERS AND
EMPLOYEES**

B-215228 Apr. 12, 1985

**Transfers
Temporary quarters
Entitlement**

An employee requested reconsideration of our decision, Johnny M. Jones, 63 Comp. Gen. 531 (1984), denying his claim for temporary quarters subsistence expenses while occupying an apartment under a 1-year lease. The employee has presented evidence indicating that the lease he signed could have been cancelled without penalty if, as was his intent, he purchased a condominium unit in the same complex. While the execution of a 1-year lease under these circumstances may not necessarily evidence an intent to remain in the apartment for the full term of the lease, the employee's intent to purchase a residence at some future time, contingent upon the sale of his former residence, is too indefinite to change the character of the rented quarters from permanent to temporary. Prior decision is affirmed.

TRANSPORTATION

B-215614 Apr. 18, 1985

**Household effects
Actual expenses
Determination**

An employee who chooses to ship his own household goods may be reimbursed for actual expenses as defined in applicable regulations. The cost of servicing and re-filling fire extinguishers is not an actual expense incident to the shipment of goods, because the fire extinguishers become the property of the employee for his further use or other disposition.

TRANSPORTATION
Household effects
Insurance

B-215614 Apr. 18, 1985
Cont.

Since it is the policy of the Government to assume its own risks of loss, there is no basis for reimbursement of collision damage waiver insurance on vehicles leased by an employee to transport his household goods, unless such insurance is required by regulation or law applicable to the shipment.

TRANSPORTATION
Household effects
Privately owned vehicle, etc.

An employee transported his own household goods to his new duty station. Weight tickets obtained show that he moved goods in excess of the then applicable 11,000-pound maximum weight limit referred to in the statutory authorization. In cases such as this, where the employee moves his own goods and claims less for transportation expenses than it would have cost to ship the maximum allowable weight of household goods by Government Bill of Lading, reimbursement need not be prorated based on the excess weight since the expenses incurred and claimed do not exceed the cost for shipment by the least costly commercial means.

**OFFICERS AND
EMPLOYEES**

B-216777 Apr. 18, 1985

Transfers

Real estate expenses

Reimbursement

The employee may not be reimbursed \$3,000 real estate expenses incurred in the sale of his home incident to his transfer. The expenses were part of the settlement costs charged to the buyer, and the employing office, with the assistance of the local office of the Department of Housing and Urban Development, determined that the seller's assumption of the buyer's obligation for such costs was not customary in the locality of the sale. Under travel regulations an employee may be reimbursed only those selling expenses customarily paid by sellers.

**OFFICERS AND
EMPLOYEES**

B-216401 Apr. 22, 1985

Transfers

Real estate expenses

Reimbursement

An employee who sold his residence at his former duty station after he had been notified that he was to be transferred back to that same duty station, claims temporary quarters subsistence expenses and expenses relating to the purchase of a new residence. Since the time allowed for reimbursement of real estate expenses incident to the initial transfer had expired some months before he was notified of the retransfer, the costs of purchasing the new residence and temporary quarters subsistence expenses may be allowed.

**OFFICERS AND
EMPLOYEES**

B-216973 Apr. 22, 1985

Transfers

Real estate expenses

Loan transfer fee

A transferred employee purchased a residence at his new duty station and was charged a loan transfer fee and an association transfer fee. Paragraph 2-6.2d(1) of the Federal Travel Regulations, as amended, effective October 1, 1982, permits reimbursement of loan origination fees and similar fees and charges, but not items considered to be finance charges. The employee's loan transfer fee may be reimbursed where it is similar to and assessed in lieu of a loan origination fee. The association transfer fee may not be allowed since it is a non-reimbursable maintenance cost for landscaping. Further, membership fees are considered a part of the purchase price and not a part of the cost or expenses of purchase.

PERSONNEL LAW: MILITARY PERSONNEL

DEBT COLLECTIONS B-217241 Apr. 9, 1985
Waiver
Military personnel
Dual compensation

A retired Coast Guard officer, employed by the National Transportation Safety Board, received full civilian pay and full retired pay contrary to the dual compensation prohibitions in 5 U.S.C. 5532. Although he had made his employing agency and the Coast Guard aware of his civilian employment, he knew of the dual compensation restrictions and had been told approximately how much to expect for full retired pay. When no deductions were made and he received approximately \$900 per month in excess of his entitlement, he should have known he was receiving erroneous payments. Since he is not without "fault" in the matter, the debt may not be waived.

DEBT COLLECTIONS
Waiver
Military personnel
Pay, etc.
Flight pay overpayments

A Coast Guard officer participated in a flight program as a non-crew member during which he was eligible for flight pay for months he flew at least 4 hours. During the first year in the program he flew sufficient hours to qualify for monthly flight pay. However, during the subsequent 18 months he continued to receive flight pay although he only flew enough hours to qualify 1 month, and flew only 1 hour during the entire remainder of the period. Clearly he did not qualify for flight pay during these months, and he should have known he was receiving erroneous payments. Therefore, waiver of the debt is denied.

DEBT COLLECTIONS

B-216951 Apr. 12, 1985

Waiver

Military personnel

Pay, etc.

Retired

A retired service member who received overpayments of retired pay should have known that the payments were erroneous, considering his rank, years of service, the amount of the erroneous overpayments, and the fact that he was aware that he was being paid based upon retirement as a colonel rather than his retired rank of lieutenant colonel. Therefore, waiver of this indebtedness is not granted.

PROCUREMENT LAW

BIDS **B-217115 Apr. 1, 1985**
Responsiveness **85-1 CPD 365**
Descriptive Literature
Adequacy

Allegation that awardee's bid was nonresponsive is without merit where protester's has not clearly shown that the agency's technical determination that the required descriptive literature submitted by the awardee indicated conformity to the material requirements of the solicitation was unreasonable.

CONTRACTS

Grant-Funded Procurements
General Accounting Office Review
Postaward

In reviewing the propriety of contract awards made by grantees, GAO will examine whether the procurement was conducted in a manner consistent with the fundamental principles of federal procurement inherent in the concept of competition. These principles include the requirement that where required descriptive literature does not show conformity to the solicitation requirements in all material respects, the bid must be rejected as nonresponsive.

BIDS **B-215632, B-216895**
Invitation For Bids **Apr. 2, 1985**
Specifications **85-1 CPD 380**
Restrictive

Protest that agency is arbitrarily insisting on unduly restrictive specification, because it has procured the excluded material for use in meeting a similar requirement, is denied where record shows procurement of excluded material was for experiment to determine the material's acceptability and record otherwise establishes reasonable basis for agency caution.

CONTRACTS

Protests

Interested Party Requirement

Protester is an interested party to protest allegedly unduly restrictive specifications, notwithstanding its submission of a responsive bid for the allegedly unduly restrictive requirement, where protest was filed prior to bid opening and protester has indicated to agency that it does not intend to furnish the material called for by the specifications despite its bid to the contrary.

CONTRACTS

Protests

Interested Party Requirement

**Potential Contractors, Etc. Not
Submitting Bids, Etc.**

Protester is an interested party to protest the chemical composition of construction material required by the specifications where protester is prepared to offer domestic construction material if foreign material is unacceptable.

CONTRACTS **B-216948; B-217353**
Protests **Apr. 2, 1985**
General **85-1 CPD 381**
Accounting Office Procedures
Timeliness Of Protest
Adverse Agency Action Effect

Once a timely protest to the contracting agency has been filed, any subsequent protest to GAO must be filed within 10 working days after the protester has notice of initial adverse agency action on the protest. The time for filing at GAO is not tolled while a protester continues to pursue its protest with the agency.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
**Apparent Prior To Bid Opening/
Closing Date For Proposals**

Protest objecting to specification requirement is untimely when filed after closing date for receipt of offers.

CONTRACTS
Requests For Quotation
Specifications
Brand Name Or Equal
"Equal" Product Evaluation

Agency properly refused to consider product alleged to be equal to the specified brand name product where product did not comply with a particular feature of the brand name item that was identified in the solicitation.

CONTRACTS
Small Business
Concerns
Awards

B-217508 Apr. 2, 1985
85-1 CPD 382

Responsibility Determination
Nonresponsibility Finding
Certificate Of Competency
Requirement

Protester, rejected as nonresponsible, contending that it has a right as a small business concern to have the determination of its responsibility referred to the Small Business Administration (SBA) under the certificate of competency (COC) procedures is protesting the agency's action and not a solicitation defect (the omission of a size status certification clause).

CONTRACTS
Small Business Concerns
Awards

Responsibility Determination
Nonresponsibility Finding
Referral To SBA For COC Mandatory
Without Exception

Contracting officer's determination that small business concern is nonresponsible on basis of unsatisfactory record of performance and unreasonably low cost must be referred to SBA for consideration under the COC procedures, since applicable law and regulations do not allow any exceptions to this requirement. GAO and the courts have found very limited exceptions to the referral requirement and such circumstances are not present here.

BIDDERS **B-216585 Apr. 3, 1985**
Qualifications **85-1 CPD 385**
Manufacturer Or Dealer
Self-Certification

Protest alleging that low bid is nonresponsive, because low bidder submitted the name of its roofing subcontractor instead of its own name on an IFB required manufacturer's certification (designed to evidence manufacturer's approval for warranty purposes of roofing installer), is denied where IFB permitted subcontracting and under the contract contractor can be required to obtain and pass through required warranties from both subcontractors and manufacturers.

CONTRACTS
Small Business Concerns
Awards
Set-Asides
Subcontractor, Supplier, Etc.
Size Status

Subcontracting with a large business in connection with a construction contract set aside for small business is not legally objectionable.

CONTRACTS
Small Business Concerns
Awards
Small Business Administration's
Authority
Size Determination

Small Business Administration has exclusive authority to determine matters of small business size status for federal procurement and sales purposes.

CONTRACTS **B-214081.3 Con't**
Negotiation **Apr. 4, 1985**
Request For Proposals
Ambiguous

When a solicitation provision is held to be at best, susceptible of more than one reasonable interpretation, and thus ambiguous, the protester need not establish that it definitely would have been the successful offeror absent the solicitation defect, but rather that there was a reasonable possibility that the protester was displaced due to the unfair competitive advantage afforded another offeror as a result of the defect. Where the difference between two offers is little more than 3 percent of the estimated value of the contract, the difference is slight enough to uphold a finding that the protester reasonably might have been the low offeror but for the unequal competition created by the ambiguity.

CONTRACTS **B-216606 Apr. 4, 1985**
Protests
Interested Party Requirement
Direct Interest Criterion

Protest challenging propriety of contract award for a research study is closed without action since it appears that, as a result of a statutory provision directing agency to award two contracts for the research study, the protester is to receive award for an identical research study and therefore lacks direct interest in propriety of the award of the first contract which is the subject of the protest.

BIDDERS **B-216848 Apr. 4, 1985**
Debarment
Labor Stipulation Violations
Davis-Bacon Act
Wage Underpayments
Debarment Required

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act; there was a substantial violation of the Act in that the underpayment of employees was intentional as demonstrated by the contractor's bad faith in the falsification of certified payroll records. Therefore, the contractor will be debarred under the Act.

CONTRACTS **B-217571 Apr. 4, 1985**
Protests **85-1 CPD 389**
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known
To Protester

A protest not received in the General Accounting Office within 10 working days after the protester was orally advised of the basis for the protest is untimely and will not be considered.

BIDS **B-218056 Apr. 4, 1985**
Alternative **85-1 CPD 390**
Bids And Proposals Invited

Where alternative bids are requested, one with first article approval test and one without first article, a bid based on either alternative is responsive.

CONTRACTS

Protests

**Abeyance Pending Contract Appeals
Board Action**

Protest involving procurement of automatic data processing equipment is dismissed since a protest filed by another concern involving the same procurement is pending before the General Services Board of Contract Appeals. See sections 21.1(a) and 21.3(f)(6) of GAO's Bid Protest Regulations, 49 Fed. Reg. 49,417, 49,419, 49,421 (1984) (to be codified at 4 C.F.R. § 21).

CONTRACTS

Protests

**B-218056 Con't
Apr. 4, 1985
Moot, Academic, Etc. Questions
Corrective Action Proposed Taken,
Etc. By Agency**

Protest is dismissed as academic where the agency has resolved the issue in the protester's favor.

CONTRACTS

Protests

**Moot, Academic, Etc. Questions
Protester Not In Line For Award**

Protest is dismissed as academic where the challenged bidder submitted the highest bid and is therefore not in line for award.

BIDS

B-217061 Apr. 5, 1985

Prices

85-1 CPD 395

Reasonableness

Administrative Determination

Determination of price reasonableness is a matter of administrative discretion which will not be questioned unless the determination by the procuring agency is unreasonable.

BIDS

Responsiveness

Descriptive Literature

Unsolicited

Describing Nonconforming Equipment

Bid Nonresponsive

Where unsolicited descriptive literature included with bid indicates that the product to be furnished does not comply with the IFB specifications, the bid must be rejected as nonresponsive.

BIDS

Responsiveness

Low Price Of Bid Not A Factor

A nonresponsive bid may not be accepted even though it would result in cost savings to the government, since acceptance would be contrary to the maintenance of the competitive bidding system.

CONTRACTS B-216673.10; and .11
Protests Apr. 8, 1985
Abeyance Pending 85-1 CPD 399
Court Action
Not All Issues Pending

GAO dismisses protests alleging that certain line items of a solicitation were not properly evaluated where the same broad issues have been raised in a court action involving the same procurement, since the selection process was completely integrated and the actions or possible remedies of the court, which is not interested in GAO's opinion, could affect the protested line items. The fact that the protested items are not specifically before the court and protester is not a party to the litigation does not change this result.

CONTRACTS B-218001.2 Apr. 8, 1985
Negotiation 85-1 CPD 400
Offers Or Proposals
Evaluation
Competitive Range Exclusion
Reasonableness

Agency decision to exclude offeror from competitive range is proper where offeror's technical proposal was unacceptable and so deficient as to require major revisions before it could be made acceptable.

BIDS **B-218281.2 Apr. 8, 1985**
Evaluation **85-1 CPD 404**
Criteria
Undisclosed
Not Prejudicial To Protester

GAO affirms decision that an IFB for indefinite quantity requirements, which listed estimated quantities for each item but failed to advise bidders expressly that for evaluation purposes unit prices would be multiplied by the estimated quantity for each item, should not have been canceled after bid opening where there is no persuasive showing that any bidder was misled into pricing the items differently than it would have otherwise.

CONTRACTS **B-218409 Apr. 8, 1985**
Grant-Funded **85-1 CPD 405**
Procurements
General Accounting Office Review

Complaint regarding rejection of bid by grantee is dismissed since GAO no longer reviews complaints concerning contracts under federal grants.

CONTRACTS
Negotiation
Awards

B-217257 Apr. 9, 1985
85-1 CPD 407

Initial Proposal Basis
Propriety

Award on the basis of initial proposals to offeror who submits proposal which contracting officer concludes is technically superior but which is not lowest cost offer is proper where evaluation of proposals and award is consistent with award selection criteria contained in RFP, it can be demonstrated clearly from the existence of adequate competition that acceptance of the most favorable proposal would result in a fair and reasonable price, and the solicitation advises offerors that award may be made without discussions.

CONTRACTS
Protests

B-217258 Apr. 9, 1985
85-1 CPD 408

Conflict In Statements Of Protester And
Contracting Agency

Protester's burden of proving that it was granted an extension to file a COC application is not met by its mere unsupported assertion to that effect where both the contracting agency and SBA deny granting an extension.

BIDS **B-218273 and .2**
Competitive **Apr. 10, 1985**
System **85-1 CPD 410**
Specifications
Restrictive

Protest that a specification provision concerning compensation to contractors for the extra cost of planting seedlings with roots longer than specified in the planting data sheets is unduly restrictive of competition because it allegedly eliminates the bidders' ability to accurately assess risk and cost is denied, where all bidders competed on an equal basis, adequate competition was received, and the low bid was lower than the government estimate. It is within the ambit of administrative discretion to offer to competition a proposed contract imposing maximum risks upon the contractor and minimum administrative burdens on the agency.

CONTRACTS **B-218316.2 Apr. 10, 1985**
Protests **85-1 CPD 411**
Basis For Protest Requirement

Protest alleging that evaluation under agency interpretation of solicitation specifications violates provisions of Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369, 98 Stat. 1175, July 18, 1984, is dismissed for failure to state a valid basis of protest because CICA provisions cited by protester are not applicable to solicitation issued prior to CICA's effective date.

CONTRACTS **B-218316.2 Con't**
Protests **Apr. 10, 1985**
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
Apparent Prior To Bid Opening/
Closing Date For Proposals

Protest against alleged defective specifications contained in step one request for proposals of two-step formally advertised procurement filed after closing date for receipt of initial step one technical proposals is untimely.

CONTRACTS **B-218367.2 Apr. 10, 1985**
Protests **85-1 CPD 412**
Interested Party Requirement
Mistake-In-Bid Questions

GAO will not consider one firm's complaint that another's bid may be mistaken, as only the contracting parties are in a position to assert rights and bring forth all necessary evidence to resolve mistake-in-bid questions. Moreover, the allegation that a bid is below cost is not a legal basis for precluding award.

BIDS **B-218436 Apr. 10, 1985**
Acceptance Time **85-1 CPD 413**
Limitation
Bids Offering Different Acceptance
Periods
Shorter Periods
Responsiveness Of Bid
Solicitation Provisions

Bid which allegedly mistakenly quoted zero day bid acceptance period where solicitation required 60-day minimum bid acceptance period is nonresponsive.

GENERAL ACCOUNTING **B-215042** **Con't**
OFFICE **Apr. 12, 1985**

Jurisdiction

Contracts

Agency Actions

Use Of Appropriated Funds

GAO will consider a protest involving a procurement funded with donations to the National Park Service for renovating certain national monuments because donations placed in special accounts pursuant to statutory authority constitute appropriated funds subject to GAO's authority.

CONTRACTS **B-215472.2** **Apr. 12, 1985**
Prices **85-1** **CPD 417**

Adjustments

Increases

Although an agency's decision to refuse to adjust an estimated fair market price for fuel oil in an 8(a) firm's favor is not shown to be an action taken in bad faith, it is nonetheless held to be unreasonable where the weight of the evidence shows that the 8(a) firm could not have performed at the agency's offered price without suffering a loss on the subcontract.

SMALL BUSINESS B-215472.2 Con't
ADMINISTRATION Apr. 12, 1985
Contracts
Contracting With Other Government
Agencies
Procurement Under 8(a) Program
Review By GAO

GAO does not review decisions to effect procurements under the 8(a) program and does not consider protests of 8(a) awards, absent a showing of possible fraud or bad faith on the part of the government officials, or an allegation that the Small Business Administration violated its regulations. In order to show bad faith, a protester must offer irrefutable proof that an agency's action was taken with the specific and malicious intent to injure the firm.

CONTRACTORS B-216286 Apr. 12, 1985
Responsibility 85-1 CPD 418
Determination
Review By GAO
Affirmative Finding Accepted

GAO does not review an affirmative determination of responsibility unless the protester shows fraud or bad faith on the part of procurement officials or the solicitation contains definitive responsibility criteria that allegedly have not been applied. To show fraud or bad faith, the protester must submit virtually irrefutable proof that procurement officials had a malicious and specific intent to harm the protester.

CONTRACTS
Amounts
Estimates
Validity

B-216286 Con't
Apr. 12, 1985

Allegation that agency's estimated quantities are erroneous is denied since protester has not shown that agency's estimates were not based on the best information available, otherwise misrepresent the agency's needs, or result from fraud or bad faith.

CONTRACTS
Negotiation
Offers Or Proposals
Prices
Unprofitable

There is nothing illegal in the government's acceptance of a below-cost offer where the offeror is found responsible.

CONTRACTS
Negotiation
Offers Or Proposals
Unbalanced

Protest alleging that awardee's offer is unbalanced and will not result in lowest cost to the government if services, specifically eliminated from RFP, are reinstated, is denied. Record shows that eliminated services have not been required by the agency and, under these circumstances, there is no basis to conclude that awardee's offer will not result in lowest cost to the government.

CONTRACTS **B-216878 Apr. 12, 1985**
Awards **85-1 CPD 419**
Approval
Higher Authority Approval

Agency requirement that contracting officer's selection of an awardee be reviewed at a higher level is proper.

CONTRACTS
Negotiation
Offers Or Proposals
Evaluation
Cost Realism Analysis
Adequacy

Awardee's failure to perform up to the required level under the contract does not necessarily indicate that agency improperly evaluated the realism of awardee's price.

CONTRACTS
Pre-Award Audits
Waiver

Contracting officer did not treat offerors unequally by requesting a copy of a preaward audit performed in connection with a proposal submitted by the protester in another procurement while declining to require a preaward audit of the awardee. In any event, the regulations permit a contracting officer to require a preaward audit of one proposal while waiving the requirement with regard to another.

CONTRACTS
Awards
Notice

B-218015 Con't
Apr. 12, 1985

What Constitutes Notice

The government cannot be said to have awarded a contract to a bidder merely because the bidder was informed that a contract number had been assigned to the solicitation, since such information falls short of indicating a clear, unconditional acceptance of the offer.

CONTRACTS
Protests

B-218051.2 Apr. 12, 1985
85-1 CPD 422

General Accounting Office Procedures
Timeliness Of Protest

GAO rejects suggestion that precise time limits for filing protests be replaced by a "reasonable time" requirement, since protests are serious matters that require effective and equitable procedural standards so that protesters have a fair opportunity to present their cases and protests can be resolved reasonably quickly.

CONTRACTS
Protests

General Accounting Office Procedures
Timeliness Of Protest

Date Basis Of Protest Made Known
To Protester

Dismissal as untimely of protest filed on the eleventh working day after the protester knew the basis for it, where the ninth day of the period was Inauguration Day, is affirmed, since the protester had time after Inauguration Day to file.

CONTRACTS **B-218164** **Apr. 12, 1985**
Protests **85-1** **CPD** **423**
General Accounting Office Procedures
Timeliness Of Comments On Agency Report

Protest is dismissed for failure of protester to submit comments on agency report or to submit a statement requesting that case be decided on existing record.

CONTRACTS **B-218294.2** **Apr. 12, 1985**
Negotiation **85-1** **CPD** **424**
Offers Or Proposals
Preparation
Costs
Recovery Criteria

Award of proposal preparation costs is only justified if protester shows both that the government's conduct towards the protester was arbitrary and capricious and that, if the government had acted properly, the protester would have had a substantial chance of receiving the award. Where the protester fails to show it had a substantial chance for award, GAO will deny a claim for proposal preparation costs.

CONTRACTS
Protests
Preparation
Costs
Noncompensable

An unsuccessful offeror is not entitled to the costs of filing and pursuing its protest, including attorneys fees, where the protest was filed prior to the effective date of the Competition in Contracting Act of 1984, Pub. L. No. 98-369, 98 Stat. 1175, even though GAO decided the protest in its favor.

CONTRACTS **B-218125.2 Con't**
Protests **Apr. 15, 1985**
Allegations
Bias
Unsubstantiated

Protester alleging bias has the burden of proof, and where the record fails to demonstrate the existence of bias, GAO regards the protester's allegations as mere speculation.

CONTRACTS **B-218227 Apr. 15, 1985**
Protests **85-1 CPD 430**
Abeyance Pending Court Action

GAO will not consider a protest where the issues presented are before a court of competent jurisdiction, the protester has not asked that the court seek GAO's opinion, and the court has not otherwise expressed interest in GAO's decision.

CONTRACTS **B-218331 Apr. 15, 1985**
Negotiation **85-1 CPD 431**
Awards
Initial Proposal Basis
Propriety

GAO dismisses protest against rejection of a bid as nonresponsive due to lack of technical data, even though the agency may have inadvertently misled the protester into believing that it was participating in a negotiated procurement by checking the solicitation block indicating this. Since in appropriate circumstances an agency may make award on the basis of initial proposals, an offeror that does not make its initial proposal as complete as possible runs the risk of rejection.

CONTRACTS **B-217284 and .2 Con't**
Negotiation **Apr. 16, 1985**
Offers Or Proposals
Rejection
Notification Of Unsuccessful Offerors

Protest that agency failed to inform offerors of all deficiencies in their proposals after initial technical evaluation is denied where information solicited from protester and other offerors was not intended to be all inclusive, but rather part of ongoing process to determine technical acceptability.

CONTRACTS
Protests
Allegations
Bias
Unsubstantiated

The protester has the burden of proving bias or favoritism on the part of the procuring agency. Where written record fails to demonstrate bias, the protester's allegations are to be regarded as mere speculation.

CONTRACTS **B-217286.2** **Apr. 16, 1985**
Protests **85-1** **CPD** **434**
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
**Apparent Prior To Bid Opening/
Closing Date For Proposals**

Alleged improprieties in an invitation for bids apparent prior to bid opening must be protested to either the contracting agency or GAO before the time set for opening bids.

CONTRACTS
Protests
Moot, Academic, Etc. Questions
Nonresponsible Bidder/Offeror

A protest alleging that the low bidder, a small business concern, is nonresponsible is academic, where the contracting officer finds the bidder to be nonresponsible and the Small Business Administration does not issue a certificate of competency, thus precluding award to that bidder.

CONTRACTS **B-218102.2** **Apr. 16, 1985**
Protests **85-1** **CPD** **435**
General Accounting Office Procedures
Timeliness Of Protest
"Good Cause" Exception Applicability

Where protester has not shown reason for untimely filing of protest, good cause exception to timeliness requirements is not applicable and prior decision dismissing protest is affirmed.

CONTRACTS **B-218102.2 Con't**
Protests **Apr. 16, 1985**
General Accounting Office Procedures
Timeliness Of Protest
Significant Issue Exception
Not For Application

Where issue raised in protest affects protested procurement only, significant issue is not present to justify exception to GAO's filing requirements and prior decision dismissing protest as untimely is affirmed.

CONTRACTS **B-216512 Apr. 17, 1985**
Negotiation **85-1 CPD 436**
Conflict Of Interest Prohibitions
Inapplicable

Allegation that a contract award was improper because a former agency employee subsequently was employed by the awardee, indicating a conflict of interest, is dismissed where the agency denies, and the protester submits no evidence demonstrating, that the former employee exerted improper influence on behalf of the awardee, or even participated in the procurement.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of protest
Solicitation improprieties
**Apparent prior to bid opening/
closing date for proposals**

Protest that agency improperly failed to send protester a solicitation is dismissed as untimely when not filed within 10 days after the closing date for the receipt of proposals published in the Commerce Business Daily.

CONTRACTS B-218352.2 Apr. 17, 1985
Protests 85-1 CPD 439
General Accounting Office Procedures
Timeliness Of Protest
Significant Issue Exception
Not For Application

Request for reconsideration of dismissal of a protest as untimely on grounds that the protest presents significant issues meriting review is denied since the issue raised has been the subject of numerous GAO decisions in the past.

CONTRACTS B-218423 Apr. 17, 1985
Protests 85-1 CPD 440
General Accounting Office Procedure
Timeliness Of Protest
Solicitation Improprieties
**Apparent Prior To Bid Opening/
Closing Date For Proposals**

Protest that the "Small Business Concern Representation" clause in the solicitation is ambiguous and should be rewritten is dismissed as untimely since it pertains to an alleged deficiency apparent on the face of the solicitation and was not protested prior to bid opening.

CONTRACTS
Small Business Concerns
Awards
Set-Aside
Status Of Bidders

Protest of the rejection of a bid submitted in response to a total small business set-aside because of its failure to indicate that all supplies would be produced by a small business is dismissed since such a bid does not obligate the contractor to provide supplies produced by a small business concern and therefore, the purpose of the total set-aside could be defeated.

BIDS **B-216236.2** **Apr. 18, 1985**
Invitation For **85-1 CPD 441**
Bids

Specifications
Brand Name Or Equal
"Equal" Product Evaluation
Salient Characteristics Not Met

"Equal" bid submitted in response to brand name or equal solicitation was properly rejected as nonresponsive where descriptive literature accompanying bid failed to establish that the offered item met all the IFB's salient characteristics. A blanket statement that "equal" product will be modified so that all salient characteristics are met is insufficient to permit a determination of responsiveness.

BIDS
Invitation For Bids
Specifications
Brand Name Or Equal
Salient Characteristics
Differing From Those Of
Brand Name Product

Protest that proposed awardee offers a product which is nonresponsive to brand name of equal procurement is denied where the protester has not shown how the product is not equal to the brand name product required by the IFB.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
Apparent Prior To Bid Opening/
Closing Date For Proposals

Protest alleging improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.

CONTRACTS **B-216761 Apr. 18, 1985**
Negotiation **85-1 CPD 442**
Requests For Proposals
Amendment
Required For Changes In RFP

Where a procurement is transformed from a noncompetitive to a competitive acquisition by an agency decision to consider an "equal" product contained in an unsolicited proposal, amendment of the solicitation with notice to the original offeror is required.

BIDS **B-216891 Apr. 18, 1985**
Competitive System **85-1 CPD 443**
Preservation Of System's Integrity
Pecuniary Disadvantage To Government

Importance of maintaining the integrity of the competitive bidding system outweighs any monetary savings that would be obtained by considering a late bid.

BIDS
Late
Hand Carried Delay
Rejection Of Bid

GAO denies a complaint against a local housing authority's rejection of a late bid that was hand carried to the designated office after the scheduled opening time when there is no evidence that the lateness was due to improper government action.

BIDS

B-217251 Apr. 19, 1985

Correction

85-1 CPD 449

Initialing Requirement

A bidder's failure to initial changes in a bid is a matter of form that may be considered an informality and waived if the bid leaves no doubt as to the intended price. This rule also applies where changes in the bid are initialed but by someone other than the person who signed the bid.

BIDS**Prices****Discrepancies**

Where bid contains a price discrepancy, bid may be accepted even though other bidders are displaced, since only one price reasonably could be regarded as having been intended bid.

CONTRACTS**Protests****General Accounting Office Procedures****Timeliness Of Protest****Date Basis Of Protest Made Known
To Protester****What Constitutes Notice**

Protest alleging that competitor's low bid is ambiguous and should be rejected need not be filed before agency notification of intent to award to competitor since grounds for protest do not arise until the protester has learned of agency action or intended action adverse or inimical to the protester's interest.

GENERAL ACCOUNTING B-218193.2 Apr. 19, 1985
OFFICE 85-1 CPD 450

Jurisdiction
Labor Stipulations
Service Contract Act Of 1965

Prior decision dismissing protest concerning wage rates included in solicitation is affirmed because even though the Department of Labor Board of Service Contract Appeals, which by law has jurisdiction over the matter, is not duly constituted at this time, the question is for resolution under the authority of the Secretary of Labor.

CONTRACTS B-218347.2 Apr. 19, 1985
Protests 85-1 CPD 451
General Accounting Office Procedures
Timeliness Of Protest
Adverse Agency Action Effect

Prior dismissal of protest as untimely is affirmed where protest was not filed at GAO within 10 days of the protester's receipt of adverse agency action on protest initially filed with agency.

CONTRACTS B-218472 Apr. 19, 1985
Negotiation 85-1 CPD 452
Competition
Exclusion Of Other Firms

GAO dismisses protest contending that circumstances justify the head of a procuring agency's excluding a particular source from a procurement as authorized by 10 U.S.C. § 2304 (b)(1), as amended by the Competition in Contracting Act of 1984, since the protested solicitation was issued on March 15, 1985, but section 2304(b)(1) applies only to solicitation issued after March 31, 1985.

BIDS **B-218536 Apr. 19, 1985**
Late **85-1 CPD 453**
Mishandling Determination
Improper Government Action
Not Primary Cause For Late Receipt
Hand Carried Delay

Bid delivered by commercial carrier to agency installation at 4:45 p.m. on February 18, 1985, but not delivered in the usual course of internal agency mail to the depository specified in the solicitation for receipt of hand-carried bids until after opening at 10 a.m. on February 20, 1985, is late. Since the record suggests that the protester may have significantly contributed to the late receipt inasmuch as the protester misaddressed the bid package and has not claimed that the package was identified or clearly marked so as to inform any agency personnel that immediate delivery to the depository was required, and there has been no showing that wrongful government action was the paramount cause of late receipt, the bid may not be considered for award.

BIDS
Rejection
Notice

Alleged delay in notifying bidder of rejection of its bid as late constitutes at most a procedural deficiency that has no bearing upon the validity of the award.

CONTRACTS **B-218536 Con't**
Protests **Apr. 19, 1985**
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
Apparent Prior To Bid Opening/
Closing Date For Proposals

Initial protest to the agency alleging that amended bid opening date allowed bidders insufficient time in which to prepare and submit their bids was untimely, and thus cannot form the basis of a subsequent protest to GAO, where not filed until after bid opening. Bidder was not entitled to wait until after learning whether its bid was timely received, since this deprived agency of the opportunity to take corrective action, such as extending the bid opening date, prior to when bids were opened and competitors' prices exposed.

CONTRACTS **B-158766 Apr. 22, 1985**
Protests **85-1 CPD _____**
Sustained

Letter to Chairman House, Committee on Coast Guard and Navigation stating that GAO has received 79 protests under Coast Guard procurement since January 1, 1981 and sustained 3 of them. Letter also contain statistics regarding protests filed in connection with procurement of the 4 armed services, FAA, NOAA and NASA.

BIDS **B-217213 Apr. 22, 1985**
Bid Forms **85-1 CPD 456**
Copies
Noncompliance Effect

Bid may be accepted notwithstanding IFB language stating that failure to furnish two copies of spare parts price list would render bid nonresponsive. Deficiency is not material since bidders were not required to commit themselves to specific spare parts prices.

BIDS
Rejection
Erroneous Basis

Bidder's failure to submit its Employer's Identification Number and its DUNS number may be waived and is not a basis for rejection of the bid.

CONTRACTS **B-217319.2 Apr. 22, 1985**
Negotiation **85-1 CPD 457**
Offers Or Proposals
Preparation
Costs
Denied

Where agency had reasonable basis to cancel and resolicit requirement for architectural and engineering services, there is no legal basis for allowing an unsuccessful offeror to recover its proposal preparation costs.

CONTRACTORS **B-217431; B-217432**
Responsibility **Apr. 22, 1985**
Determination **85-1 CPD 458**
Review By GAO
Nonresponsibility Finding

Unless the protester demonstrates bad faith by the agency or the absence of any reasonable basis for the determination, GAO will not question a contracting agency's determination of nonresponsibility where a pre-award survey shows poor performance of the bidder on prior contracts and where the bidder has not positively shown that it has taken corrective action.

BIDS **B-218133 Apr. 22, 1985**
Invitation For Bids **85-1 CPD 460**
Cancellation
After Bid Opening
Compelling Reasons Only

An invitation for bids may be canceled after bid opening and the exposure of bid prices when a compelling reason exists for doing so. A significant reduction in the agency's requirements under a procurement after bid opening constitutes such a reason.

BIDS
Invitation For Bids
Cancellation
Justification

Even assuming original basis for cancellation was erroneous or inadequate, a subsequently enunciated basis, which would have supported cancellation had it been advanced originally, is acceptable.

BIDS **B-218133 Con't**
Invitation For Bid Apr. 22, 1985
Cancellation
Resolicitation
Requirements Decreased

There is no authority to permit the low bidder under an invitation for bids properly canceled due to a significant reduction in requirements an exclusive opportunity to revise its bid to meet the changed needs of the agency without resolicitation.

BIDS
Preparation
Costs
Noncompensable
Invitation Properly Canceled

Claim for bid preparation costs is denied where claimant has not shown that the agency abused its discretion in canceling solicitation.

CONTRACTS
Protests
Preparation
Costs
Noncompensable

Claim for costs of filing and pursuing protest, including attorney's fees, is denied where cancellation of solicitation was proper.

BONDS

B-218199 Apr. 22, 1985

Bid

85-1 CPD 461

Surety

Affidavit (Standard Form 28)

Deficiencies

**Responsiveness v. Responsibility
Matter**

A bid cannot be rejected as nonresponsive on the basis that individual sureties' affidavits and other supporting financial statements which accompanied the bid bond were defective in form and content. Responsiveness is determined from the bidding documents at bid opening, and if the bid bond itself as submitted is proper on its face, the bid is responsive, and the acceptability of the sureties may be established any time before award since it concerns a matter of responsibility.

CONTRACTORS

Responsibility

Determination

Burden Of Proof

Allegations that a contracting officer previously rejected the low bidder's sureties on another procurement, that the contracting officer relied on outdated information in determining a surety's net worth, that the agency unreasonably delayed the award of a contract under another protest, and the like, do not show bad faith on the part of the contracting officer in determining the sureties to be responsible since a showing of bad faith requires virtually irrefutable proof that the contracting officer had a specific and malicious intent to injure the protester.

BIDS B-218201.3 Apr. 22, 1985
Responsiveness 85-1 CPD 462
Responsiveness v. Bidder Responsibility

A contracting agency cannot change a matter of responsibility into one of responsiveness merely by the terms of the solicitation.

BIDS B-216800 Apr. 23, 1985
Invitation For Bids 85-1 CPD 463
Specifications
Brand Name Or Equal
"Equal" Product Evaluation
Salient Characteristics Not Met

Where an "equal" item has not been shown to meet the salient characteristics of a brand name product in a brand name or equal procurement, the bid must be rejected as nonresponsive.

BIDS
Responsiveness
Brand Name Procurement
Compliance Requirements

Bid that fails to designate the manufacturer and model number on line items for certain accessories to brand name system is responsive where it is clear from the IFB and the bid that the bidder is offering the brand name accessories.

CONTRACTS
Protests
Preparation
Costs
Request Premature

B-218074 Con't
Apr. 23, 1985

Under GAO's Bid Protest Regulations, the recovery of costs for filing and pursuing the protest, including attorney's fees, and bid and proposal preparation costs, may be allowed where the agency has unreasonably excluded a protester from the procurement. Since GAO has not ultimately decided whether the protester here is being unreasonably excluded, but rather has recommended that the agency reexamine its position in view of GAO's expressed concerns in the matter, the protester's request for the allowance of any costs is premature.

BIDS
Invitation For
Bids

B-218014.3 Apr. 24, 1985
85-1 CPD 466

Cancellation
Not Required
Solicitation Deficiencies
Not Prejudicial

Cancellation of solicitation is not justified by need to make changes to a specification if offerors were not prejudiced by the defect and the government's needs would be met by making award to the low bidder.

CONTRACTS **B-218438 Con't**
Small Business **Apr. 24, 1985**
Concerns
Awards
Small Business Administration's
Authority
Size Determination

The Small Business Administration has exclusive authority to decide matters of size status and, therefore, GAO will not consider protests alleging that a firm does not qualify as small.

CONTRACTS **B-215565 Apr. 26, 1985**
Minority Businesses 85-1 CPD 470
Set-Asides
Authority

Restriction of contract awards to minority firms is questionable when not done under procedures implementing section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. I, 1983) or any other statute authorizing such a contracting approach.

CONTRACTS
Negotiation
Offers Or Proposals
Evaluation
Criteria
Cost

Where solicitation required offerors to propose cost evaluation "multipliers" which reflected the offerors' indirect personnel costs but did not state how multipliers would be evaluated, procuring agency's use only of protester's highest cost multiplier in cost evaluation is inappropriate since: (1) offerors were entitled to assume that all offered multipliers proposed would be evaluated in some reasonable way and (2) it appears unlikely that protester would only use the staff represented by protester's highest cost multiplier.

CONTRACTS **B-217069; B-218006 Con't**
Protests **Apr. 26, 1985**
Allegations
Not Prejudicial

A minor defect occasioned by possibly confusing terminology in a solicitation provision does not constitute a ground for sustaining the protest where the protester does not allege that it was prejudiced in any manner by the defect, and there is no indication that the competition was not conducted on an equal basis.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
Apparent Prior To Bid Opening/
Closing Date For Proposals

Alleged defects in an invitation for bids, apparent prior to bid opening, must be protested to either the contracting agency or GAO prior to the time set for opening bids in order to be considered.

BIDDERS **B-217286 Apr. 26, 1985**
Responsibility v. **85-1 CPD 474**
Responsiveness
Information
Standard Form 19-B Representatives
And Certifications

A bidder's failure to furnish with its bid a list of affiliates is a minor informality which may be waived or cured after bid opening.

BIDS**B-217286 Con't****Mistakes****Apr. 26, 1985****Correction****Obvious Error**

The allegation that the contracting agency improperly allowed correction of a firm's bid after bid opening in order to make it responsive and low is without foundation where the bid documents reveal that the mistakes as corrected by the agency were obvious in nature, involving the misplacement of decimal points in extended prices, and there is no evidence that the bid as originally submitted was other than low.

CONTRACTS**Protests****General Accounting Office Procedures****Timeliness Of Protest****Solicitation Improprieties****Apparent Prior To Bid Opening/****Closing Date For Proposals**

An alleged solicitation impropriety apparent prior to bid opening must be protested to either the contracting agency or GAO prior to the time set for opening bids in order to be considered.

CONTRACTS **B-217286** **Con't**
 Small Business **Apr. 26, 1985**
 Concerns
 Awards
 Small Business Administration's
 Authority
 Size Determination

Under the Small Business Act of 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration has conclusive authority to determine matters of small business size status for federal procurements, and therefore GAO will not consider an allegation that the low bidder under a 100 percent set-aside is not a small business concern.

CONTRACTORS **B-217542** **Apr. 26, 1985**
 Responsibility **85-1** **CPD** **475**
 Determination
 Definitive Responsibility Criteria

Definitive responsibility criterion contained in solicitation, which required that each offeror of software obtain a letter from the manufacturer of the product offered guaranteeing the supply of the product for the term of the contract, is not unduly restrictive of competition since GSA's needs required guaranteed supply, as well as benefits derived from dealing with authorized offeror/vendor, such as warranties, manufacturer upgrades, replacement of damaged parts and trade-in allowances.

GENERAL ACCOUNTING OFFICE **B-217542 Con't**
Apr. 26, 1985

Jurisdiction
Contracts
Disputes
Between Private Parties

The propriety of a manufacturer's decision to limit the availability of its product is essentially a matter which cannot be adjudicated by this Office.

CONTRACTS **B-217580 Apr. 26, 1985**
Protests **85-1 CPD 476**
Allegations
Speculative

Protester has failed to sustain its burden of proving the contracting agency disclosed the protester's price quote to other firms where the allegation is based only on speculation and is disputed by the agency.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness Of Protest
Date Basis Of Protest Made Known
To Protester

Protest against use of small purchase procedures for construction work is dismissed as untimely since it was not filed within 10 working days after protester knew the protest basis.

CONTRACTS **B-218430 Apr. 26, 1985**
Negotiation **85-1 CPD 479**
Alternate Proposal
Rejection Propriety

GAO dismisses protest where the protester offered an alternative product in lieu of the approved source item specified in the solicitation and, as a result, was not considered for the award because the alternate could not be analyzed and approved in time. The solicitation notified all offerors that the length of time needed to approve an alternate product could prevent consideration for the current contract award. In view of this notification, the protester has no grounds to complain that its proposal was not considered, since it voluntarily chose to offer an alternate product.

CONTRACTS
Negotiation
Offers Or Proposals
Evaluation
Approved Sources
Alternatives

Fact that an agency's procedure for approving alternate products takes more time than protester believes is necessary does not indicate that the procedure lacks a reasonable basis.

BIDS **B-218509** **Apr. 26, 1985**
Acceptance Time **85-1 CPD 480**
Limitation
Bids Offering Different Acceptance
Periods
Shorter Periods
Responsiveness Of Bid
Solicitation Provisions

Bid which offered a bid acceptance period shorter than that required in a solicitation is nonresponsive and bidder may not modify bid after opening nor may the deficiency be waived.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness Of Protest

Solicitation Improprieties

**Apparent Prior To Bid Opening/
Closing Date For Proposals**

Protest that bid acceptance period contained in solicitation is excessive must be filed prior to bid opening.

BIDS **B-218652** **Apr. 26, 1985**
Late **85-1 CPD 481**
Acceptance
Delay Due To Improper Government Action

Late bid sent by commercial carrier cannot be considered unless the paramount cause of the late receipt was improper government action and consideration of the late bid would not compromise the integrity of the competitive procurement system.

CONTRACTORS **B-217556 Apr. 29, 1985**
Conflict Of **85-1 CPD 482**
Interest
Organizational
Agency Determination
Reasonable Basis

Protest that contracting agency improperly determined protester to be ineligible for award because the protester had a conflict of interest is denied. Contracting agency reasonably determined that, since protester essentially prepared statement of work for the protested procurement, protester had a conflict of interest and should be precluded from performing the work required under the statement.

CONTRACTS **B-218026.2 Apr. 29, 1985**
Negotiation **85-1 CPD 483**
Requests For Proposals
Specifications
Restrictive
Undue Restriction Not Established

A protest that boiler specification is unduly restrictive is denied where the contracting agency states that a prohibition on devices in the firetubes and a limitation on the heat transfer rate are necessary to avoid excessive maintenance and to prolong the life of the boiler, and the protester fails to establish that the restrictions are not reasonably related to the agency's minimum needs.

BIDS **B-218123 Apr. 29, 1985**
Invitation For **85-1 CPD 484**
Bids
Cancellation
Not Required
Solicitation Improprieties
Not Prejudicial

Even if a solicitation contained a defective specification as alleged by the protester, the deficiency is not a compelling reason to cancel the invitation and readvertise where no prejudice to the bidders has been shown.

BIDS
Responsiveness
Exceptions Taken To Invitation Terms

Bid which took exception to material requirements of an invitation for bids properly was rejected as nonresponsive.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
Apparent Prior To Bid Opening/
Closing Date For Proposals

Protest of specifications is untimely where protester's objections to specifications were first presented in a cover letter submitted with its bid.

APPROPRIATIONS **B-217480** **Apr. 30, 1985**
Defense Department **85-1** **CPD** **487**
Contracts
Statutory Restrictions

Restrictions contained in annual Department of Defense Appropriations Act prohibits agencies from purchasing certain enumerated items which are not of domestic origin and manufacture. Buy American Act provisions setting forth a preference for domestic products over foreign goods do not apply to procurements subject to this restriction. Definition of what is a "domestic end product" for purposes of the Buy American Act is not used to determine what constitutes a product reprocessed, reused, or produced in the United States for purposes of the Appropriations Act restriction.

APPROPRIATIONS
Defense Department
Contracts
Statutory Restrictions

GAO denies a protest alleging that an agency improperly rejected a bid specifying that clothing offered would be partially manufactured in Haiti when the procurement is subject to the Department of Defense Appropriations Act and the implementing regulations. Under GAO decisions, the act requires that each successive state in the manufacturing process be domestic.

APPROPRIATIONS **B-217480** **Con't**
Defense Department **Apr. 30, 1985**
Restrictions
Labor Surplus Areas
Total Set-Asides

Provision annually included in Department of Defense Appropriations Act that restricts the purchase of certain items to those which are of domestic origin and manufacture permits Defense agencies to target, to a limited extent, procurements of these items to labor surplus areas.

CONTRACTS

Protests

General Accounting Office Procedures
Timeliness Of Protest
Solicitation Improprieties
**Apparent Prior To Bid Opening/
Closing Date For Proposals**

GAO dismisses as untimely a protest alleging that a solicitation improperly failed to incorporate a mandatory subcontracting clause where the protest was not filed until after bid opening, because the alleged deficiency was apparent on the face of the solicitation. Protests of such deficiencies must be filed before bid opening.

CONTRACTS **B-218030** **Apr. 30, 1985**
Protests **85-1** **CPD**
General Accounting Office Procedures
Timeliness Of Protest
Adverse Agency Action Effect

Protest against cancellation of invitation for bids filed more than 10 working days after protester's receipt of notification of cancellation is untimely.

SPECIAL STUDIES & ANALYSIS

B-216599 Apr. 8, 1985

COOPERATIVE AGREEMENTS--PROPRIETY OF USE--IN LIEU OF
PROCUREMENT--AGENCY PURPOSE--THIRD-PARTY SERVICES--
STATUTORY GRANT--PROGRAM AUTHORITY

Provision of cooperative agreement pertaining to reception and placement (R&P) of refugees that allow recipient of Government funds to accrue and expend interest on such funds within a stated period of time is legally unobjectionable as usual rule governing return of accrued interest on advanced Government funds is not applicable to R&P Program funds because funds are not advances but are per capita payments then due recipients.

OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS-- NO. A-110--
POLICY MATTERS--NO FORCE AND EFFECT OF LAW

To extent that OMB Circular No. A-110 is not premised on statute, the Circular is simply a policy statement without force and effect of law. Consequently, agencies may modify policy demands of Circular to meet needs of their particular programs.

OFFICE AND MANAGEMENT AND BUDGET--CIRCULARS-- NO. A-122--
APPLICABILITY

Since voluntary organizations implementing program for initial reception and placement of refugees under cooperative agreements with Department of State receive funds based on a set per capita amount for each refugee, OMB Circular No. A-122 does not by its terms apply to cooperative agreements because cost is not used to price, administer or settle cooperative agreements nor are voluntary organizations required to account to Government for their actual costs.

B-217736 Apr. 12, 1985

APPROPRIATIONS--IMPOUNDING--IMPOUNDMENT CONTROL ACT--
DEFERRAL--WHAT CONSTITUTES

Where deferral of budget authority was disapproved by Congress once, subsequent deferral of same budget authority may be permitted under the Impoundment Control Act only where such deferral either is based on new circumstances, unknown at the time of first disapproval or is found to be in furtherance of good administrative practice.

APPROPRIATIONS--LIQUIDATING

Where contract authority was due to expire, at the end of fiscal year, Congress effectively extended its period of availability by subsequent language in a liquidating appropriation making such contract authority "available until expended."

BUDGETS--AUTHORITY

For purposes of Impoundment Control Act, contract authority is a form of budget authority, whereas the liquidating appropriation should not be regarded as budget authority.

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EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D. C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

BULK RATE
POSTAGE & FEES PAID
GAO
PERMIT No. G100

