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UNITED STATES GENERAL ACCOUNTING OFFICE

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GENERAL GOVERNMENT MATTERS

DISBURSING OFFICERS

B-218843 July 8, 1985

Relief

Collection Action Diligency

Concern is expressed over claims collection effort where Army failed to take collection action for three months after receiving notice of loss and while payee was still in Army. Army is notified that delay in commencing collection action may result in the future in denial of relief for failing to pursue claims collection diligently as required by 31 U.S.C. § 3527(c).

DISBURSING OFFICERS

Relief

Erroneous Payments

Not Result of Bad Faith or Negligence

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 subsequent collection attempts have been pursued.

ACCOUNTABLE OFFICERS

B-218517 July 9, 1985

Relief

Physical Losses, etc. of Funds, Vouchers, etc.

Under 31 U.S.C. § 3527(a), Agent Cashier is relieved of liability for loss of funds due to burglary in which entire safe and contents were stolen and agent cashier was without fault or negligence.

FOREIGN ASSISTANCE ACT B-218904 July 10, 1985
Funds Availability
International Atomic Energy Agency Reimbursement

The General Accounting Office would not object to the State Department reimbursing the International Atomic Energy Agency (IAEA) for a lump-sum payment made by IAEA to its insurance company if the payment is determined, pursuant to the voluntary contribution provision of the Foreign Assistance Act, to "further the purposes of that Act." 22 U.S.C. § 2221(a).

DISBURSING OFFICERS B-219124 July 15, 1985
Relief
Erroneous Payments
Not Result of Bad Faith or Negligence

Under 31 U.S.C. § 3527(c) U.S. Army Finance Officer is relieved of liability for improper payments by unknown subordinates resulting from cashing of fraudulently endorsed personal checks, since he maintained and supervised effective control system and adequately supervised staff.

DISBURSING OFFICERS B-217663 July 16, 1985
Relief
Erroneous Payments
Not Result of Bad Faith or Negligence

Navy disbursing officer is relieved of liability pursuant to 31 U.S.C. § 3527(c) (1982) for a deficiency of \$11,441 in his account. The deficiency resulted when several fraudulently altered money orders were successfully negotiated in the ship's disbursing office. Disbursing officer maintained an adequate system of controls and deficiency is the result of criminal activity beyond the control of the disbursing officer. Discrepancies in certain procedures do not constitute proximate cause of the loss.

ACCOUNTABLE OFFICERS

B-217945 July 23, 1985

Physical Losses, etc. of Funds, Vouchers, etc.**Cashiers, etc.****Relief Granted**

Under 31 U.S.C. § 3527(a), relief is granted to Veterans Administration Imprest Fund Cashier from liability for loss of funds resulting from apparent theft. Relief granted despite lack of specified evidence in record rebutting presumption of accountable officer's negligence, since disappearance of locked cash boxes from safe indicates probable theft. Also, definite placement of responsibility for loss is precluded since cashier and two alternates knew combination and had ready access to safe. Relief is granted to two alternate cashiers, despite lack of formal request to do so, because circumstances for each cashier's loss of locked cash box were identical to those for cashier's loss.

APPROPRIATIONS

B-218947 July 23, 1985

Limitations**Construction Projects****Vessels in Foreign Shipyards**

Limitations in annual "Shipbuilding and Conversion, Navy" appropriation (known as Tollefson-Byrnes Amendment) and 10 U.S.C. § 7309, prohibiting construction of "naval vessels" in foreign shipyards apply to construction of floating drydocks which are "naval vessels" for the purpose of these prohibitions. However, the prohibitions do not preclude acquisition of existing foreign-built floating drydocks since they only serve to preclude new construction of "naval vessels" from taking place in foreign shipyards and not acquisitions by other means. The prohibitions do serve to preclude the acquisition of a floating drydock not yet in existence from a domestic shipyard but which will be built for it by a foreign shipyard. Construction of "naval vessels" in a foreign shipyard is precluded by these prohibitions whether contracted for directly or through a subcontractor.

**LOBBYING
Federal Employees**

B-217896 July 25, 1985

In GAO's opinion State Department officials did not violate the antilobbying restrictions contained in 18 U.S.C. § 1913 when they attempted to engage in efforts to convince members of the Congress to oppose Senator Proxmire's proposed sense of the Congress concurrent resolution in opposition to the proposed sale of a plutonium base MOX fuel by France. Therefore, GAO does not believe the evidence in the case warrants referral of the matter to the Department of Justice for prosecution.

GENERAL ACCOUNTING OFFICE B-217954 July 30, 1985

Decisions

**Pending Court, Quasi-Judicial, Appellate Board,
etc. Action**

Since the question of the authority of the Agency for International Development (AID) to include a provision in its grant agreements that would prohibit foreign private family planning organizations from being eligible to receive subgrants of AID funds if they either perform or promote abortions with funds derived from any source is now before the courts, our Office cannot answer that question. However, it has been our position in other cases that potential grantees that are otherwise eligible for Federal assistance should not be declared ineligible for engaging in lawful activities using non-Federal funds.

APPROPRIATIONS

B-219727 July 30, 1985

Continuing Resolutions

Authorizing Legislation Absent

The fiscal year 1985 continuing resolution provides authority for the creation and operation of the Committee on the Ukrainian Famine. Section 136 of the resolution, which appropriates \$400,000 to carry out the provisions of S.2456," incorporates the Senate bill into the resolution by reference. Therefore, the bill, which creates the Commission, became law with the enactment of the continuing resolution.

OFFICERS AND EMPLOYEES
Transfers
Real Estate Expenses
Refinancing

B-217474 Con't
July 19, 1985

A transferred employee who obtained personal interim financing loans in order to purchase a new residence pending receipt of permanent financing by executing a mortgage against the newly purchased residence may be reimbursed expenses in connection with that mortgage transaction as if the mortgage had been executed simultaneously with the earlier transfer of title in the residence to the employee. However, where charges for state revenue stamps at the time of the purchase of the residence are reimbursed, no additional reimbursement may be made for state revenue stamps in connection with the execution of a subsequent mortgage.

OFFICERS AND
EMPLOYEES

B-217518 July 23, 1985

Transfers
Real Estate Expenses
Commuting Requirement
Purchase and/or House Sale

An employee claims reimbursement for the expenses of selling his family residence in Westport, Connecticut, incident to his transfer from Westfield, Massachusetts, to Burlington, Massachusetts. He maintained living accommodations in the immediate vicinity of his Westfield duty station because the distance from Westfield to Westport is 77 miles, but he asserts he commuted to and from the Westport residence two times and occasionally three times weekly. The claim is denied. He has not met his burden of showing that he commuted "regularly" to and from Westport as required by paragraphs 2-4i and 2-6.1 of the Federal Travel Regulations for sales expense reimbursement purposes.

Transfers**Agency Liability for Expenses of Transfer
Authority not Discretionary**

Employee of the Defense Contract Audit Agency, transferred from Houston to New Orleans, was authorized travel, relocation, and miscellaneous expenses, but not real estate expenses. He is entitled to reimbursement of real estate expenses in accordance with Part 6, Chapter 2 of the Federal Travel Regulations, since the transfer was in the interest of the government and the regulations contemplate that certain expenses will be uniformly allowed to all transferred employees.

ORDERS**Amendment****Retroactive****Administrative Error, Omission, etc.****Correction****Not Supported by Record**

Employee of the Defense Contract Audit Agency, transferred from Houston to New Orleans, was authorized travel, relocation, and miscellaneous expenses. He is entitled to retain such expenses since legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under orders and such orders, if valid, may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations. Since original orders were not clearly erroneous, agency's re-determination 4 years after the fact that the transfer had not been in the best interest of the government cannot be given effect.

PERSONNEL LAW: CIVILIAN PERSONNEL

OFFICERS AND EMPLOYEES B-217719 July 1, 1985

Transfers

Real Estate Expenses

Finance Charges

Reimbursement Prohibition

Veterans Administration Funding Fee

An employee of the Department of the Interior may not be reimbursed for a Veterans Administration funding fee incurred in purchasing a residence at his new duty station. The funding fee is a finance charge imposed in addition to a loan origination fee. Therefore, unlike a loan assumption fee, it may not be reimbursed under Federal Travel Regulations, paragraph 2-6.2d, as a fee that is "similar to" a loan origination fee. See Veterans Administration, 62 Comp. Gen. 456 (1983).

PAY

B-218737 July 3, 1985

Retired

Waiver for Civilian Retirement Benefits

Civil Service Annuity Purposes

An employee who is entitled to military retired pay and waives such retired pay in order to become eligible for an increase in his civil service retirement annuity, must pay 7 percent of his basic military pay into the Civil Service Retirement Fund or be subject to a reduction of his annuity at age 62 on becoming entitled to social security old-age benefits. Subsection 8332(j) of title 5 requires the deduction of military service from the computation of the civil service annuity at age 62, if the payment has not been made.

TRANSPORTATION**B-217382 July 12, 1985****Household Effects
Military Personnel
Weight Limitation
Computation**

Where household goods of a former Air Force employee are shipped from overseas to the United States in lift vans, the provisions of Joint Travel Regulations, vol. 2, para. C-8000-2c, for determining the net weight of containerized shipments are applicable. The fact that the Government Bill of Lading authorized the building of wooden boxes for fragile items loaded into the containers does not warrant application of the procedures for determining the net weight of crated shipments. As in the case of uncrated shipments in vans, no reduction in net weight is authorized for barrels, boxes, cartons and other packaging materials. Only the weight of bracing, blocking, padding and other materials used to secure the shipment in the containers is to be excluded in determining the net weight of the shipment.

OFFICERS AND EMPLOYEES**B-217474 July 19, 1985****Transfers
Real Estate Expenses
Finance Charges
Messenger Service fee**

Under the Federal Travel Regulations in effect when an employee reported at his new duty station in March 1982, a messenger service fee he paid a lending institution in connection with mortgage financing of his new home may not be reimbursed to him. Such a fee was an overhead expense of the lender which when passed to the borrower is considered a finance charge which is nonreimbursable.

MILEAGE

B-217691 July 31, 1985

Travel by Privately Owned**Automobile****Incident to Transfer****More Than one Automobile****Transfers Between Alaska and U.S.**

An employee received an inter-agency transfer from Alaska to Oklahoma. He was authorized to use two privately owned vehicles (POV), as his and his family's mode of personal transportation. His claim for mileage for the second POV was disallowed based on 5 U.S.C. 5727 (1982), which precludes the overseas shipment of more than one POV. Under para. 2-2.3 of the Federal Travel Regulations, the use of one or more POVs, in lieu of other approved modes of personal transportation, may be authorized as advantageous to the government. Thus, the mileage claim for the second POV may be allowed since second POV use for personal travel was approved and such POV use was their only mode of transportation.

OFFICERS AND EMPLOYEES

B-219236 July 31, 1985

Health Insurance**Blue Cross/Blue Shield****Funds**

We have been asked whether the proposal of the Blue Cross/Blue Shield Association to refund \$754 million of surplus funds from their special reserves directly to its enrollees and to the Government is legal. The Office of Legal Counsel, Department of Justice has issued an opinion that the refund is contemplated by 5 U.S.C. 8909(b) but may not be made to annuitants. With certain caveats we concur with that opinion. However, we note that a refund made by one of the "Big Six" (the six carriers whose rates are averaged to determine the Government contribution to the premiums of all plans under 5 U.S.C. 8906) would not result in an adjustment of the Government contribution as would an adjustment of the plan's rates. However, we agree that a refund appears to be covered by the plain language of section 8909(b).

PERSONNEL LAW: MILITARY PERSONNEL

PAY

B-217743 July 15, 1985

Retired

Retired Serviceman's Family

Protection Plan

Dependent's Claims

Spouse

A person who alleges that she was married to a deceased retired Navy officer prior to his death but who was determined not to be his surviving spouse by a court of competent jurisdiction is not entitled to the spouse's annuity under the Retired Serviceman's Family Protection Plan. Neither is the person determined by the court to be the surviving spouse entitled to the annuity because she was not married to the officer at the time he retired or became entitled to retired pay.

PAY

Retired

Survivor Benefit Plan

Remarriage of Member

Spouse's Annuity Eligibility

Annuity payments under the Survivor Benefit Plan may not be made to the surviving spouse of a deceased service member if their marital status at the time of the member's death was of doubtful validity, but such doubts may be resolved to the satisfaction of the accounting officers of the Government if a court of competent jurisdiction renders judgment declaring the marriage valid. Hence, annuity payments may issue to a claimant on the basis of a declaratory judgment of an appropriate State court that she is the sole surviving spouse of a Navy officer, notwithstanding that shortly before his death the officer attempted to end the marriage in foreign divorce proceedings and otherwise attempted to disavow the marriage.

TRANSPORTATION **B-217623/B-217946** **July 31, 1985**
Household Effects
Military Personnel
"Do It Yourself" Movement
Weight Evidence

Three Army members moved their household goods under the do-it-yourself program and claimed to have obtained and submitted valid weight certificates, which were either never received or were lost after receipt. Incentive payments under the program must be denied. Applicable regulations specifically required submission of weight certificates to establish actual weight of household goods in order to compute the costs upon which incentive payment is based. Record does not establish that required certificates were submitted, nor is there other clear evidence of the actual weight.

PROCUREMENT LAW

CONTRACTS **B-216798.2 July 1, 1985**
Two-Step Procurement **85-2 CPD 1**
Step One
Offers or Proposals
Evaluation
Technical Acceptability

Where request for technical proposals in first step of two-step formally advertised procurement required offerors to submit their proposed technical approach for item being procured, rejection of technical proposal, which simply referenced incomplete prior performance history of the firm under a separate contract for the same item, and which contained inadequate technical data for current evaluation, was proper.

EQUIPMENT **B-216998 July 1, 1985**
Automatic Data **85-2 CPD 3**
Processing Systems
Acquisition, etc.
Federal Supply Schedule

Agency acts improperly where CBD announcement is used to justify award to nonmandatory ADP schedule vendor, but order placed with that vendor deviates materially from the terms of its schedule contract. Federal Information Resources Management Regulation § 32.206, concerning the use of nonmandatory schedule contracts, authorizes award only where the order conforms to the terms of an existing schedule contract.

BIDS **B-217049 July 1, 1985**
Invitation for Bids **85-2 CPD 4**
Cancellation
After Bid Opening
Defective Solicitation

Cancellation of a portion of a solicitation which contains a flawed evaluation scheme and inaccurate estimates is justified where those defects made it impossible to accurately determine which bid represented the lowest cost to the government.

CONTRACTS
Awards
Separable or Aggregate
Partial Award
Propriety

Award on another portion of the defective solicitation was proper where award would meet government's needs and no other bidder would be prejudiced.

CONTRACTS
Protests
General Accounting Office Function
Independent Investigation and Conclusions

GAO does not conduct investigations pursuant to its bid protest authority.

CONTRACTS **B-218201.5 July 1, 1985**
Awards **85-2 CPD 5**
Validity
Procedural Deficiencies
Notice of Award

Failure of a procuring agency to notify an unsuccessful bidder that a contract has been awarded is merely a procedural deficiency and does not affect the validity of an otherwise proper award.

CONTRACTS **B-218201.5 Con't**
Small Business Concerns **July 1, 1985**
Awards
Responsibility Determination
Nonresponsibility Finding
New Information--Effect

Unless new information concerning a small business bidder's responsibility is presented to the contracting officer after the Small Business Administration (SBA) has refused to issue a certificate of competency to the bidder but before the contract is awarded, the contracting officer may not reverse the SBA's finding of nonresponsibility.

CONTRACTS
Small Business Concerns
Awards
Responsibility Determination
Nonresponsibility Finding
Notice to Bidder/Offeror

Where a small business concern is found nonresponsible, the contracting officer must refer the matter to the Small Business Administration (SBA); however, there is no regulation requiring the contracting officer to notify the bidder of the referral. Rather, this is SBA's responsibility.

BIDS **B-218547 July 1, 1985**
Invitation for Bids **85-2 CPD 6**
Specifications
Minimum Needs Requirement
Administrative Determination
Reasonableness

Specifications which require certain thicknesses for various types of plastic bags are not unduly restrictive for not allowing a thinner film for high density polyethelene bags where the agency determines that additional testing is necessary to assure that the high density bags are suitable for the government's needs and the protester fails to establish that the agency's determination is unreasonable.

CONTRACTS **B-218358 July 8, 1985**
Small Business Concerns **85-2 CPD 30**
Awards
Set-Asides
Withdrawal
Propriety

In the absence of convincing evidence of arbitrary or capricious action, GAO will not question a contracting officer's decision, made in consultation with the small business representative, to withdraw a small business-small purchase set-aside.

A contracting officer may properly withdraw a small business-small purchase set-aside after the submission of quotations where no quotes are received from responsible small nonmanufacturers that will, as required by applicable regulations, provide a domestic product.

CONTRACTS
Small Business Concerns
Size Standards
Small Business Administration's Determination
Not Subject to GAO Review

Protester's challenge of the definition of a small nonmanufacturer or the requirement that, under a small business-small purchase set-aside, a domestic product be provided is not a matter for resolution under GAO Bid Protest Regulations.

CONTRACTS **B-218473 July 8, 1985**
Protests **85-2 CPD 31**
Moot, Academic, etc. Questions
Protester Not in Line for Award

Where a firm protests that a procurement should have been set aside for small business, and the firm is subsequently found to be other than a small business, the protest is academic since the protester was not prejudiced by the failure to set aside.

CONTRACTS
Negotiation
Awards

B-218540 July 8, 1985
85-2 CPD 32

Propriety
Technical Superiority-Paramount Consideration

Where a solicitation for a negotiated procurement advises offerors that technical and management factors are more important than cost, award may be made to an offeror with a superior technical and management proposal even though its price is higher than other technically acceptable proposal if the lower price is offset by the advantages of the technically superior proposal.

CONTRACTS

Negotiation
Offers or Proposals
Best and Final
Evaluation

Protest that agency requested offeror during negotiations to reduce management proposal and then allegedly improperly penalized the offeror for the requested management reductions in the evaluation of best and final offers is denied where record shows that the ranking of protester's management proposal as lowest rated did not change based on its best and final offer. There is no indication that the protester was prejudiced by agency request which was made to all offerors.

CONTRACTS

Protests
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent Prior to Bid Opening/Closing Date
for Proposals

Protest after award that price should have been the most significant factor for award and that the weight given certain RFP technical and management evaluation factors should have been reversed is untimely where RFP advised that technical and management areas were more important than cost and further indicated the relative importance of the evaluation factors.

CONTRACTORS
Responsibility
Determination
Review by GAO
Affirmative Finding Accepted

B-218470 July 11, 1985
85-2 CPD 39

Protest challenging awardee's business qualifications concerns agency's affirmative determination of awardee's responsibility which, except in limited circumstances not alleged by protester, GAO does not review.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Competitive Range Inclusion
Reasonableness

Establishment of competitive range does not signify that technical proposals in competitive range are equal, since competitive range consists of all proposals having a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions.

CONTRACTS
Protests
Allegations
Unsubstantiated

Protest challenging selection of higher rated, higher cost proposal is denied where protester makes no showing beyond bare allegation that selection was unreasonable.

CONTRACTS

B-218295 July 12, 1985

Negotiation

85-2 CPD 44

Offers or Proposals

Evaluation

Criteria

Application of Criteria

Protest against subjective evaluation of proposals is without merit where solicitation sets forth evaluation factors which can only be evaluated subjectively.

CONTRACTS

Negotiation

Offers or Proposals

Evaluation

Propriety

Assertion that evaluation improperly was based on minimizing risk is without merit because risk may properly be considered in determining which proposal is most advantageous to the government.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest against award of a contract, based on allegation that evaluation placed disproportionate emphasis on subjective evaluation factors and not enough on cost, is untimely because relative weight of criteria was stated in solicitation and protest was filed after closing date for receipt of proposals.

BIDS **B-218413 July 12, 1985**
Invitation for Bids **85-2 CPD 45**
Specifications
Minimum Needs Requirement
Administrative Determination
Reasonableness

Agency's specifications are not unduly restrictive of competition where the agency presents a reasonable explanation why the specifications are necessary to meet its minimum needs, and the protester fails to show that the restrictions are clearly unreasonable under the circumstances.

CONTRACTS **B-218546 July 12, 1985**
Negotiation **85-2 CPD 46**
Offers or Proposals
Evaluation
Improper
Nondisclosure of Criteria Weights

When a solicitation is silent as to the relative importance of cost and technical factors, they must be considered approximately equal, and GAO will sustain a protest where the agency instead considered them worth 20 and 80 percent, respectively.

CONTRACTS
Negotiation
Requests for Proposals
Specifications
Quantity Estimates
Best Available Information Requirement

A request for proposals with an estimate of orders totaling from \$100,000 to \$1,500,000, without further explanation, does not give offerors sufficient details to enable them to compete intelligently and on an equal basis.

BIDDERS
Qualifications
Preaward Surveys
Information Timeliness

B-218473.3 July 11, 1985
85-2 CPD 40

Contracting officer did not act improperly in not seeking a second preaward survey on protester where protester, alleging that contracting officer's nonresponsibility determination was not based on current financial information, provided no specific new information to the contracting officer in support of the allegation.

CONTRACTS

Protests
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

Protest issue raised more than 10 days after protester knew basis of protest is untimely.

CONTRACTS

Protests
Moot, Academic, etc. Questions
Corrective Action Proposed, Taken, etc. by Agency

B-218633 July 11, 1985
85-2 CPD 41

When a contracting agency agrees with the essential allegation of a protest that a government estimate was erroneous, and has taken corrective action by revising the estimate, the protest is academic.

GENERAL ACCOUNTING OFFICE

Jurisdiction
Contracts
Disputes
Between Private Parties

B-219346.2 July 11, 1985
85-2 CPD 42

Protest that actions of another party restricted possible performance under a solicitation making it impossible for any other bidder to compete, thereby creating a sole-source procurement, relates to a matter which GAO will not consider under its bid protest function.

CONTRACTS

B-219413, B-219413.2

Protests

July 11, 1985

General Accounting

85-2 CPD 43

Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

Protest challenging the propriety of an agency's decision to reject all bids as unreasonably high (including the protester's low bid) and to cancel a solicitation is untimely and not for consideration on the merits where it was filed with GAO more than 10 days after the protester knew of the cancellation and the reason for cancellation.

Where protest against cancellation of original solicitation is filed untimely, award of a contract under resolicitation at a price higher than the protester's low bid under the original solicitation does not create a new basis for protesting against the cancellation of the original solicitation, because the results of the resolicitation have no bearing on the propriety of the cancellation.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest alleging that the protester was not accorded adequate time to prepare its bid is untimely because the bid opening date was set forth in the solicitation and the protest was not filed prior to bid opening.

CONTRACTS **B-218546 Con't**
Protests **July 12, 1985**
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

A protest against application of evaluation criteria differs from a protest against allegedly deficient criteria, and GAO will consider the former timely when a protest is filed within 10 working days after the protester learns how an agency evaluated its proposal.

CONTRACTS **B-218601 July 12, 1985**
Protests **85-2 CPD 47**
Allegations
Speculative

Protest allegation that is not supported by evidence in the written record is regarded as speculative and will not be considered.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

Protest that RFP was vague about how information would be provided to contractor is untimely because it was not filed within 10 days of protester's knowledge that agency would adhere to different interpretation than protester's.

Protest that award should not have been made on the basis of initial proposals is untimely because it was not filed within 10 days of protester learning of agency's intention to award on basis of initial proposals.

CONTRACTS **B-219031.3 Con't**
Protests **July 12, 1985**
General Accounting Office Procedures
Reconsideration Request
Error of Fact or Law
Not Established

Request for reconsideration is dismissed where it does not contain a detailed statement of the factual or legal grounds upon which reversal is deemed warranted.

CONTRACTS **B-218317.2 July 15, 1985**
Protests **85-2 CPD 49**
General Accounting Office Procedures
Reconsideration Request
Error of Fact or Law
Not Established

Original decision is affirmed where party requesting reconsideration does not demonstrate that it was legally or factually incorrect.

CONTRACTS **B-218353 July 15, 1985**
Negotiation **85-2 CPD 50**
Offers or Proposals
Best and Final
Notification of Offerors
Sufficiency

Oral request for best and final offers without written confirmation does not provide a basis to overturn an award where no prejudice is shown to have resulted.

CONTRACTS
Negotiation
Offers or Proposals
Best and Final
Time Limit
Reasonable

Request for best and final offers which allows less than 2 days to respond is not objectionable where both offerors in the competitive range are able to respond in the required timeframe.

CONTRACTS

B-218353 Con't

Negotiation

July 15, 1985

Offers or Proposals

Evaluation

Point Rating

Significance of Differences

Question of whether difference in point scores assigned to competing technical proposals is significant is within the discretion of the procuring agency.

CONTRACTS

Negotiation

Offers or Proposals

Evaluation

Technical Superiority v. Cost

Award of a cost-reimbursement contract to a lower technically rated proposer offering substantial cost savings to the government is within the procuring agency's discretion.

CONTRACTS

Protests

Allegations

Unsubstantiated

Allegation that agency improperly evaluated estimated costs because of delay in awarding contract is unsubstantiated. The agency conducted a detailed cost analysis and the record shows that the travel reimbursement costs which are questioned by the protester were based on an equalized estimate for all offerors throughout the procurement. The other estimate which is questioned concerns an alleged change in the awardee's personnel, which would not have any effect on the agency's labor cost estimate calculations since the agency used normalized hourly rates by job category which are not specific to individual employees.

CONTRACTS
Negotiation
Offers or Proposals
Rejection
Improper

B-218408 July 15, 1985
85-2 CPD 51

The rejection of the protester's proposal was unreasonable where (1) the agency improperly evaluated the proposed equipment's ability to meet one performance requirement based on the actual performance of different equipment previously supplied by the protester; and (2) the technical deficiencies were minor in relation to the scope of work and the revisions necessary to correct them.

CONTRACTS
Negotiation
Sole-Source Basis
Administrative Determination
Reasonable Basis

B-218578; B-218579
July 15, 1985
85-2 CPD 52

Sole-source negotiated procurement was justified where the agency's need for the procured items was urgent, the protester only recently had been found nonresponsible under a procurement for identical items and had failed to complete a certificate of competency application, and the contracting officer reasonably determined that there was, therefore, only one qualified source.

CONTRACTS
Small Business Concerns
Awards
Responsibility
Determination
Nonresponsibility Finding
Review by GAO

A contracting officer's negative finding of a small business concern's responsibility and subsequent transfer of the matter to the Small Business Administration (SBA) for final determination will not be reviewed by GAO when the small business fails to submit to SBA the information necessary for issuance of a certificate of competency as proof of its responsibility.

BIDS**B-219382 Con't****Opening****July 16, 1985****Postponement****Administrative Determination**

A procuring agency's decision not to extend bid opening after issuing an amendment clarifying the Small Business Concern Representation clause in an invitation for bids was reasonable when protester received amendment at least 4 business days before bid opening, the amendment was not of a material nature, and the amendment allowed bidders to submit by telegram any modifications to their bids.

BIDS**Responsiveness****Exceptions Taken to Invitation Terms****Small Business Requirements**

Bid on total small business set-aside which indicates in the appropriate block that not all supplies to be furnished will be the product of a small business concern is not responsive and must be rejected unless the bidder's intent to supply items manufactured by a small business concern is clearly ascertainable from the face of the bid.

ESTOPPEL**Against Government****Not Established****Prior Erroneous Advice, Contract Actions, etc.**

Prior improper contract actions do not prevent an agency from applying correct procedures in later procurements.

CONTRACTS

B-219117.2 Con't

Protests

July 19, 1985

General Accounting Office Procedures

Reconsideration Requests

Error of Fact or Law

Not Established

Prior decision is affirmed on reconsideration where the claimant has not shown that it contained errors of fact or law.

**FEDERAL ACQUISITION REGULATION B-219293 July 19, 1985
Proposed Revision**

GAO recommends that a section be added to the interim rule amending the FAR to comply with the "stay" and "damages" provisions of the Competition in Contracting Act be amended defining the date of award and requiring that contracting officers promptly notify offerors that award has been made.

Sections 33.104(c)(2)(i) and (ii) should be changed to inform contracting officials that use of the "best interests of government" standard for proceeding with performance in the face of a post-award protest will result in GAO ignoring the impact of cost or program disruption in making a recommendation.

CONTRACTS

B-219459.2 July 19, 1985

Protests

Moot, Academic, etc. Questions

Future Procurements

Where Protester merely anticipates that the contracting activity will improperly perform an act that has not yet been performed the protest is premature.

CONTRACTS

B-217400 July 22, 1985

Negotiation

85-2 CPD 64

Requests for Proposals

Specifications

Conformability of Equipment, etc. Offered

Commercial Product Requirement

Protest that proposal, which did not identify registered trade name of fibers for carpet, failed to comply with descriptive data requirement is denied because the apparent awardee complied with the RFP requirement, which only required identification of generic fiber. However, two subitems for which no fiber identification was given should not be awarded to the intended awardee.

CONTRACTS

Protests

Burden of Proof

On Protester

Where protester has not supported its assertion that product offered does not conform to required wear classification, the protest is denied.

CONTRACTS
Negotiation
Prices

B-218587 Con't
July 22, 1985

Reasonableness
Administrative Determination

A contracting officer's determination concerning price reasonableness is a matter of administrative discretion which GAO will not question unless the determination is clearly unreasonable or there is a showing of possible bad faith or fraud.

CONTRACTS

Protests
Allegations
Unsubstantiated

To prove bad faith on the part of an agency, a protester must present virtually irrefutable proof that agency officials acted with a specific and malicious intent to injure the protester. Inference and suspicion alone will not support a finding of bad faith.

CONTRACTS
Protests

B-219178 July 22, 1985
85-2 CPD 68

Moot, Academic, etc. Questions
Corrective Action Proposed, Taken, etc. by Agency

Protest is dismissed as academic where agency modifies the challenged solicitation as the protester requests.

CONTRACTS
Protests

B-219242 July 22, 1985
85-2 CPD 69

General Accounting Office Procedures
Timeliness of Protest
Adverse Agency Action Effect

Protest that agency allowed awardee to perform work in location different from that specified in IFB is untimely when filed with GAO more than 10 days after protester receives notice of adverse agency action on protest filed with contracting agency.

CONTRACTS

B-219455 July 22, 1985

Protests

85-2 CPD 70

Basis for Protest Requirement

Mere assertion that small business awardee's price was unreasonable, by large business bidder whose price was less than 5-percent lower, does not state a sufficiently detailed valid basis of protest.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protests

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest after bid opening that a solicitation should not have been set aside for small business because of adverse impact of set-aside is untimely.

CONTRACTS

Small Business Concerns

Awards

Set-Asides

Propriety

The fact that only one bid from a qualified small business may have been received in response to a small business set-aside solicitation does not affect the propriety of the set-aside.

CONTRACTORS
Conflict of Interest
Organizational
Agency Determination
Reasonable basis

B-218457 July 19, 1985
85-2 CPD 60

Request for proposals for study of Guam Power Authority excluded "offerors who, within the last seven years, have had a contract with the Guam Power Authority to study the electric utility power system on Guam." Since protester's 1978 study contract with Guam was similar to contemplated contract, and protester would be required to evaluate 1978 contract report as part of contract effort under present procurement, GAO cannot question procuring agency's view that protester should not be permitted to participate in procurement in the interest of obtaining current, independent study of Authority. Protester also could not substitute new employees who had not participated in prior study in attempt to eliminate exclusion since new employees would still know identity of prior study which they would have to review under contemplated contract.

CONTRACTS
Negotiation
Late Proposals and Quotations
Rejection Propriety

B-218600 July 19, 1985
85-2 CPD 61

Protester's allegation, that it submitted late proposals based on oral advice that the solicitation's requirements were changed, provides no basis for consideration of the proposals where the advice was not given by a procurement official with authority to change the solicitation requirements and the solicitation expressly warned that oral advice would not be binding.

CONTRACTS

B-217400 Con't

Protests

July 22, 1985

General Accounting Office Procedures**Timeliness of Protest****Date Basis of Protest Made Known to Protester**

Protest filed 6 months following award is untimely under GAO Bid Protest Procedures which require that a protest must be filed within 10 working days after the basis of protest is known or should have been known. Record does not show that the protester, who received one of several awards made and protested only when a portion of its contract was later terminated, diligently sought information to determine whether a basis of protest existed.

CONTRACTS**Protest****Interested Party Requirement**

Protester is not an interested party who may complain of the reaward of portions of contracts originally awarded to other firms where those contracts were terminated so agency could correct a deficiency in its procurement and the vendors who initially received the awards would be in line for reinstatement if the protest were sustained.

BIDDERS

B-217859 July 22, 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 failed to pay its employees the minimum wages required by the Act and 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 nonpayment of employees and subsequent falsification of records was intentional. Therefore, the contractor will be debarred under the Act.

BIDS **B-218493 July 22, 1985**
Invitation for Bids **85-2 CPD 65**
Specifications
Brand Name or Equal
"Equal" Product Evaluation
Salient Characteristics Not Met

Where protester's descriptive literature in response to a solicitation specifying a brand name or equal product shows that the protester's equal product failed to conform to a salient characteristic listed in the solicitation, the bid was properly rejected as nonresponsive.

CONTRACTS **B-218585 July 22, 1985**
Negotiation **85-2 CPD 66**
Offers or Proposals
Evaluation
Competitive Range Exclusion
Reasonableness

Where protester, following discussions with procuring activity, submitted revised proposal which failed to resolve procuring activity's initial objection that protester's offer deviated from solicitation's requirement for unlimited data rights in operations manuals, contracting officer properly excluded protester from further award consideration.

CONTRACTS **B-218587 July 22, 1985**
Negotiation **85-2 CPD 67**
Competition
Equality of Competition
Not Denied to Protester

A firm's reliance on agency action that precludes it from competing for a contract does not constitute a reason to cancel a solicitation and recompute the requirement, as long as there is no showing that the contracting agency deliberately attempted to exclude the firm and the agency obtained adequate competition and reasonable prices.

BIDDERS
Qualifications
Certifications
Minority Firm Status

B-217242 July 23, 1985
85-2 CPD 71

Requirement under District of Columbia solicitation, set aside for minority business participation, that bidder submit with its bid certification from an agency of the District of Columbia Government that bidder is a minority business enterprise pertains to the bidder's eligibility to bid. Therefore, GAO finds that the fact that bidder is certified at bid opening excuses the bidder's failure to provide evidence of the certification with its bid.

BIDS
Unbalanced
Propriety of Unbalance
"Mathematically Unbalanced Bids"
Materiality of Unbalance

Even assuming low bid is mathematically unbalanced, low bid is not materially unbalanced since protester has not shown estimates stated in invitation for bids (IFB) for indefinite quantity contract are unreliable and that award to low bidder will not result in lowest cost to government. Protester's challenges to estimates primarily concern provisions properly included in IFB to make bidders aware of risks involved in performing contract, and protester has not shown that government will not require services for the full estimated quantities.

CONTRACTS
Negotiation
Offers or Proposal
Evaluation
Criteria
Application of Criteria

B-218483 July 23, 1985
85-2 CPD 72

Where an offeror's proposal has been found technically unacceptable, the contracting agency need not evaluate the offeror's price proposal, since the offeror is not being considered for award.

CONTRACTS

B-218483 Con't

**Negotiation
Offers or Proposals
Evaluation
Reasonable**

July 23, 1985

Protest challenging contracting agency's technical evaluation of protester's proposal is denied where the protester fails to show that the agency's determination that the proposal does not provide for adequate quality control oversight was unreasonable. The principal ground for the agency's determination, the small size of the protester's staff, clearly is relevant to the protester's capacity to oversee concurrent multiple projects as contemplated by the solicitation.

CONTRACTS

Protests

**Award Withheld Pending GAO Decision
Exceptions**

Agency has complied with the Competition in Contracting Act where it has notified GAO of its written finding that urgent and compelling circumstances which significantly affect the interests of the United States require that award be made notwithstanding a pending protest.

CONTRACTS

B-219008.2 July 23, 1985

Protests

85-2 CPD 74

**General Accounting Office Procedures
Timeliness of Protest**

Date Basis of Protest Made Known to Protester

A protest not filed within 10 working days after the protester knew or should have known of the basis for protest is untimely and will not be considered.

CONTRACTS **B-219008.2 Con't**
Protests **July 23, 1985**
General Accounting Office Procedures
Timeliness of Protest
"Good Cause" Exception Applicability

GAO will not consider the merits of an untimely protest nor invoke the "significant issue" or "good cause" exceptions to timeliness requirements where the untimely protest does not raise issues of first impression which would have widespread significance to the procurement community and no compelling reason beyond protester's control prevented timely filing.

CONTRACTORS **B-219593 July 23, 1985**
Responsibility **85-2 CPD 75**
Determination
Review by GAO
Affirmative Finding Accepted

GAO will not review challenges to affirmative determinations of responsibility absent a showing of fraud or bad faith on the part of the contracting officials or a failure to apply definitive responsibility criteria.

CONTRACTS
Protests
Moot, Academic, etc. Questions
Protester not in Line for Award

Second low bidder's protest concerning alleged negative reports on its responsibility is dismissed as academic where award was made under the procurement to the low bidder.

BIDDERS**B-217705 July 24, 1985****Debarment****Labor Stipulation Violations****Davis-Bacon Act****Wage Underpayments****Debarment Required**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had failed to pay the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the subcontractor 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. Therefore, the subcontractor will be debarred under the Act.

CONTRACTS**B-218102.4 July 24, 1985****Protests****85-2 CPD 77****General Accounting Office Procedures****Reconsideration Requests****Error of Fact or Law****Not Established**

Prior decision dismissing protest is affirmed on reconsideration where protester has failed to show either errors of fact or law in prior decision. Moreover, GAO will not consider evidence submitted for the first time in the request for reconsideration where the evidence was available to the protester at the time protest was filed.

CONTRACTS

B-219424 Con't

Negotiation

July 24, 1985

Offers or Proposals

Evaluation

Factors Not in Solicitation

Statutory Requirements

Protest contending that the agency erred in not considering the cost of returning leased containers when evaluating the costs of purchasing other containers is without merit since the RFP did not include transition costs as an evaluation factor and an agency must adhere to the evaluation criteria listed in the solicitation or inform all offerors of any changes made in the evaluation scheme.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

An allegation that the agency did not comply with the Federal Acquisition Regulation factors that an agency must consider before making a determination to lease or purchase is not timely because the protest was not filed within 10 days of the time the protester knew or should have known of the basis for protest.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Receipt of Proposals**

To be timely, a protest challenging the propriety of a specification that does not require shipping containers to have a full plywood lining, must be filed prior to the closing date for the receipt of initial proposals.

CONTRACTS

B-217246 July 26, 1985

Negotiation

85-2 CPD 90

Offers or Proposals

Evaluation

Technical Superiority

Significant

Agency determination that innovative management plan should receive a higher score in technical evaluation than plan submitted by incumbent was reasonable where solicitation left method of providing required services largely to the discretion of the offerors and determination was consistent with evaluation criteria.

CONTRACTS

Negotiation

Offers or Proposals

Evaluation

Technical Superiority v. Cost

Agency decision to award to high cost, technically superior proposal was consistent with evaluation criteria and rationally based.

CONTRACTS

Negotiation

Requests for Proposals

Specifications

Personnel Commitment

Evidence Sufficiency

Solicitation direction to offerors to submit signed commitments as evidence of availability of proposed personnel was satisfied by submission of resumes of individuals that are current employees of the offeror in the locality who are represented as available to work under any contract resulting from the solicitation.

CONTRACTS

B-217246 Con't

Protests

July 26, 1985

Allegations

Bias

Unsubstantiated

The protester has the burden of proving bias on the part of selection officials, and unfair or prejudicial motives will not be attributed to those officials on the basis of inference or supposition.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

Issues first raised in response to agency report on protest, more than 10 working days after protester knew of additional protest grounds, are untimely and not for consideration.

GENERAL ACCOUNTING OFFICE

B-217351 July 26, 1985

Jurisdiction

85-2 CPD 91

Subcontracts

Protest against prime contractor's award of subcontract is dismissed since it does not meet any of the circumstances under which GAO considered protests of subcontract awards under the Bid Protest Procedures then in effect.

CONTRACTS **B-218881.2 July 24, 1985**
Protests **85-2 CPD 78**
General Accounting Office Procedures
Timeliness of Comments on Agency's Report

GAO will not reopen a case that was closed because of the protester's failure to file its written comments on the agency's report within the 7-day period prescribed by GAO Bid Protest Regulations. Those regulations specifically provide that comments on the agency's report shall be filed (received) no later than 7 working days after the protester receives the agency's report, and the statement in GAO's form notice acknowledging a protest that the protester must "submit" its comments within the 7-day period does not imply that placing the comments into the mails by the 7th working day constitutes a timely filing.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Significant Issue Exception
Not for Application

GAO will not invoke the "significant issues" or "good cause" exceptions to the timeliness requirements where the protest, which was dismissed because of the protester's failure to file timely comments on the agency's administrative report, does not raise issues of first impression which would have widespread significance to the procurement community, and no compelling reason beyond the protester's control prevented the filing of timely comments.

CONTRACTS **B-219171.2 July 24, 1985**
Protests **85-2 CPD 79**
General Accounting Office Procedures
Filing Protest With Agency

Dismissal of protest for failure to file a copy of the protest with the contracting agency is affirmed where the agency was not furnished a copy until 8 working days after the protest was filed with GAO.

CONTRACTS
Negotiation
Offers or Proposals
Best and Final
Evaluation

B-216799 Con't
July 25, 1985

Agency concerns that 1) offeror would not have necessary staff or facility before commencement of contract performance and 2) key employees were only temporarily available are reasonable where protester's best and final offer merely offers to comply with requirements without providing plans for their accomplishment.

CONTRACTS
Negotiation
Offers or Proposals
Discussion With all Offerors Requirement
"Meaningful" Discussions

Allegation that discussions were not meaningful is without merit where they concerned deficient areas of the offeror's proposal and the protester had an opportunity to revise its proposal.

FEDERAL ACQUISITION REGULATION B-217780 July 25, 1985
Proposed Revision

GAO has no objection to a proposal to add Federal Acquisition Regulation (FAR) § 32.103 and revise FAR clause 52.323-5, both of which concern construction contract progress payments.

FEDERAL ACQUISITION REGULATION B-217918 July 25, 1985
Proposed Revision

GAO is in favor of a proposal to change Federal Acquisition Regulation §§ 31.205-46(d) and (e) which cover the allowability of the costs of a contractor's air travel.

BIDS **B-218416 July 25, 1985**
Invitation for Bids **85-2 CPD 86**
Specifications
Minimum Needs Requirement
Administrative Determination
Reasonableness

Where the specifications for sun control window film are reasonably related to the government's minimum needs, the fact that the specification may call for a patented item which is only available from one source does not make the specification unduly restrictive.

GAO generally will not consider a protest allegation that agency's needs are different from those the agency seeks to satisfy, since the determination of its needs is a matter for the agency.

BONDS **B-219591; B-219594**
Bid **July 25, 1985**
Penal Sum **85-2 CPD 88**
Omission

A bid accompanied by a bid bond on which no penal sum has been inserted is nonresponsive and must be rejected.

BIDDERS **B-197903 July 26, 1985**
Debarment
Labor Stipulation Violations
Davis-Bacon Act
Wage Underpayments
Debarment Required

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor had failed to pay the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the subcontractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and falsification of records was intentional. Therefore, the subcontractor will be debarred under the Act.

BIDDERS**B-217688-O.M. July 26, 1985****Debarment****Labor Stipulation Violations****Davis-Bacon Act****Wage Underpayments****Debarment Not Required**

The Department of Labor recommended that no further administrative action be taken against a contractor for violations of the Davis-Bacon Act. Based on our independent review of the record, we conclude that the contractor underpaid an employee, but this was only a technical/non-substantial violation of the Act in that the underpayment resulted from legitimate disagreement concerning classification and was not intentional. Therefore, the contractor will not be debarred under the Act.

FEDERAL ACQUISITION REGULATION B-217933 July 26, 1985**Proposed Revision**

GAO favors proposed changes to Federal Acquisition Regulation §§14.304-1 and 52.214-7 to require that before a late bid sent by certified or registered mail 5 days before bid opening may be considered for award, the date the bid was mailed must be established by a postmark on both the envelope and the sender's receipt.

BIDS**B-218614 July 26, 1985****Late****85-2 CPD 94****Hand Carried Delay****Rejection of Bid**

A hand-carried bid that is received at the bid opening location after the time set for bid opening may not be accepted for award where the bidder's failure to follow IFB procedures, rather than improper government action, was the paramount cause of the late delivery.

CONTRACTS
Protests
Allegations
Not Prejudicial

B-218638 July 26, 1985
85-1 CPD 95

Where solicitation was not set aside for labor surplus area concerns, there was not a tie bid situation and offers were not evaluated under Buy American Act clause, protester was not prejudiced by agency's failure to consider its status as a labor surplus area concern since consideration of protester's labor surplus area status would not have changed outcome of competition. See Federal Acquisition Regulation, 48 C.F.R. § 52.220-1 (1984).

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent Prior to Bid Opening/Closing Date
for Proposals

Protest that awardee's product was not properly qualified and, therefore, awardee should not have been competitively solicited is untimely when filed with both contracting agency and GAO after closing date for receipt of proposals where solicitation indicated that the awardee's product had been approved as a qualified product and awardee was being solicited for the required part.

APPROPRIATIONS
Defense Department
Contracts
Statutory Restrictions

B-218884.2 July 26, 1985
85-2 CPD 96

Regulation defining the term "domestic end product" for purposes of the Buy American Act is not applicable to appropriation act requirement that agency only purchase clothing that is of domestic origin and manufacture.

CONTRACTS
Construction
Conflicting Provisions

B-218884.2 Con't
July 26, 1985

Requirement that clause providing for reports on the use of foreign subcontractors be included in all contracts expected to exceed \$500,000 does not conflict with clause in specific contract prohibiting foreign subcontracts.

ESTOPPEL

Against Government
Not Established
Prior Erroneous Advice, Contract Actions, etc.

Prior improper awards based upon bids failing to comply with appropriation act requirement of domestic manufacture do not justify repetition of error by accepting nonresponsive bid for award.

CONTRACTS
Protests
Basis for Protest Requirement

B-219239 July 26, 1985
85-2 CPD 98

Protest of contracting agency's failure to release prior procurement history does not present valid basis for protest where protester fails to detail the information obtained by the protester after award allegedly indicating the history; and where there appears to be no legal basis for requiring the history's disclosure.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

B-219282.2 July 26, 1985
85-2 CPD 99

When a protest alleging solicitation improprieties is filed initially with the contracting agency before the closing date for receipt of proposals, a subsequent protest to GAO before the closing date is untimely when filed more than 10 days after protester learns of initial adverse agency action on the protest.

BIDS **B-219595 July 26, 1985**
Late **85-2 CPD 101**
Mishandling Determination
Improper Government Action
Not Primary Cause of Late Receipt
Hand Carried Delay

A late hand-carried bid may not be considered where there is no showing that wrongful government action was the paramount cause of the lateness.

CONTRACTS **B-218428.2 July 29, 1985**
Protests **85-2 CPD 102**
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

GAO will not reverse or modify a prior decision where the protester fails to provide in its request for reconsideration new evidence or legal arguments which show that the decision was erroneous. Protester has essentially reiterated arguments fully considered in the prior decision.

CONTRACTS **B-218619 July 29, 1985**
Negotiation **85-2 CPD 103**
Requests for Proposals
Cancellation
Administrative Discretion
Reasonable Exercise Standard

In a negotiated procurement, cancellation of a solicitation requires only a reasonable basis as distinguished from the cogent and compelling reason required to cancel a formally advertised solicitation after bid opening.

CONTRACTS

B-218950 July 29, 1985

Negotiation

85-2 CPD 106

Requests for Proposals

Construction

Reasonable Interpretation

Award under solicitation for word processing system to offeror meeting technical specification as interpreted by the contracting agency is proper, since agency's interpretation is clearly reasonable when specification is considered in the context of the type of word processing system being procured.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

**Apparent Prior to Bid Opening/Closing Date
for Proposals**

Protest alleging that specifications in request for proposal unduly restrict competition is untimely where not filed before closing date for receipt of initial proposals.

CONTRACTS

B-219226.2 July 29, 1985

Protests

General Accounting Office Procedures

Reconsideration Requests

Error of Fact or Law

Not Established

Prior decision is affirmed where, contrary to contention by an interested party requesting reconsideration, GAO did not accept without question the technical views contained in two documents submitted on behalf of the protester. Rather, GAO performed an independent review of the technical issues involved in the protest to support its determination that the Army had not established a prima facie case for the protested specifications.

Where interested party on reconsideration disputes only one of several of GAO's technical conclusions in support of a recommendation to revise specification to broaden competition, we need not decide dispute since the interested party has not challenged the validity of other reasons which support GAO's position on this issue.

CONTRACTS

B-219419 July 29, 1985

Protests

85-2 CPD 107

Moot, Academic, etc. Questions

Solicitation Cancelled

Protest that agency improperly set aside a procurement exclusively for small business is dismissed as academic when the agency cancels the solicitation.

SPECIAL STUDIES & ANALYSIS

**STRATEGIC AND CRITICAL
MATERIALS**

B-219247 July 12, 1985

Barter Exchange

Excess Stockpile Materials

National Defense Stockpile Fund

Effect on Unobligated Balance

Department of Energy (DOE), at request of General Services Administration (GSA), has authority to temporarily stop monthly transfers of 30 percent of net receipts from Naval Petroleum Reserves to GSA's National Defense Stockpile Transaction Fund since transfer authority, section 905, Department of Defense Authorization Act, 1985, Pub. L. No. 98-525, 98 Stat. 2573, does not specify when during fiscal year receipts must be transferred. As long as transfers are eventually made during fiscal year DOE can determine exact timing of any transfer within the year.

Limitation on disposals of national stockpile materials when unobligated balance in National Defense Stockpile Transaction Fund exceeds \$250 million is not applicable when General Services Administration barter stockpile material since barter in kind, not involving any cash receipts for deposit in Fund, do not affect Fund's unobligated balance.

CONTRACTS **B-218656.2 July 31, 1985**
Protests **85-2 CPD 108**
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

Prior decision, which found that a grossly mathematically unbalanced bid should be rejected since acceptance of the bid would be tantamount to an advance payment, is affirmed.

FEDERAL ACQUISITION REGULATION B-219113 July 31, 1985
Proposed Revision

GAO suggests that proposed Federal Acquisition Regulation § 3.705(c)(4) require that an agency's written decision to declare void and rescind a contract with respect to which there has been a final conviction for a violation of Chapter 11 of Title 18 of the U.S. Code contain a summary of the facts upon which the decision is based.

BIDS **B-219317.2 July 31, 1985**
Mistakes **85-2 CPD 109**
Correction
Nonresponsive Bids

A bid rendered nonresponsive by an alleged mistake cannot be corrected after bid opening to make it responsive.

BIDS
Responsiveness
Responsiveness v. Bidder Responsibility
Small Business Concerns
Subcontracting Plan Requirement

Bid on a total small business set-aside which indicates that all supplies to be furnished will not be the product of small businesses must be rejected as nonresponsive, because the bidder otherwise would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.

CONTRACTS

B-219485.2 July 31, 1985

Protests

85-2 CPD 110

General Accounting Office Procedures

Reconsideration Requests

Additional Evidence Submitted

Available but not Previously Provided to GAO

A protester may not successfully raise a new argument in a reconsideration request that it could and should have raised in its original protest, since GAO Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues.

CONTRACTS

Protests

General Accounting Office Procedures

Reconsideration Requests

Error of Fact or Law

Not Established

Prior decision is affirmed on reconsideration where protester requesting reconsideration fails to show any error of law or of fact warranting reversal of prior decision.

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