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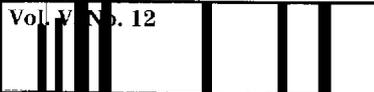
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Comptroller General
of the United States

Vol. V No. 12



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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-236214** **Sept. 5, 1989**

Disbursing officers

Relief

Illegal/improper payments

Fraud

Relief granted accountable officer pursuant to 31 U.S.C. § 3527(c) where improper payment resulted from fraudulent activities of payee and record establishes that accountable officer properly supervised her subordinates.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-235037** **Sept. 18, 1989**

Certifying officers

Relief

Illegal/improper payments

Overpayments

The Financial Management Service of the Department of the Treasury requested GAO to relieve an accountable officer both for the amount of an overpayment and for interest and penalties which have accrued on that amount. Accountable officers are only insurers of funds which were in the possession of the United States. Since interest and penalties accruing on amounts owed to the United States have never been in its possession, accountable officers are not strictly liable for those amounts. Therefore, the Financial Management Service did not need to seek relief for the interest and penalty charges.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-235037** **Con't**
Certifying officers **Sept. 18, 1989**
Relief
Illegal/improper payments
Overpayments

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing officers
Relief
Account deficiency
GAO authority

Requests for GAO to relieve supervisory accountable officers must contain the evidence necessary for GAO to independently determine whether the standards for relief have not met. For supervisory accountable officers, the standards to grant relief are whether the officer maintained a system of controls to prevent the loss and took steps to ensure that the controls were implemented. GAO cannot grant relief based upon an agency's unsubstantiated determination that these standards were met.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-234962 Sept. 28, 1989

Disbursing officers

Relief

Illegal/improper payments

Travel allowances

Five improper travel advances, totalling \$10,692, paid to a U.S. Navy deserter who presented fraudulent travel orders were not the result of the bad faith or lack of reasonable care of a U.S. Marine Corp Finance and Accounting Officer or his subordinates. The Finance and Accounting Officer exercised proper supervision through maintaining and enforcing an informal policy requiring his subordinates to bring to his attention any orders which were not marked "ORIGINAL ORDERS." The record also shows the subordinates questioned the fraudulent orders presented by the deserter and only paid the advances when authorized by the Finance and Accounting Officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Illegal/improper payments

Fraud

Debt collection

Statutory compliance

The U.S. Navy satisfied the collection requirements of GAO's accountable officer cases by referring fraudulently obtained travel advances to the Naval Investigative Service. The Finance and Accounting Officer referred the fraud to the Naval Investigative Service. Since the Naval Investigative Service is required by a Memorandum of Understanding between the Department of Justice and the Department of Defense Directive on fraud cases against the Defense Department, we view the referral to the Naval Investigative Service as sufficient compliance with the Federal Claims Collection Standards for purposes of this request for relief.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL **B-231590** **Sept. 1, 1989**
 Relocation
 Household goods
 Temporary storage
 Expenses
 Weight certification

CIVILIAN PERSONNEL
 Relocation
 Household goods
 Weight restrictions
 Liability
 Computation

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-232454** **Sept. 1, 1989**
 Compensation
 Overpayments
 Debt collection
 Statutes of limitation

Since an agency may not initiate salary offset to collect a debt more than 10 years after the government's right to collect it first accrued, an employee's debt based on salary overpayments that began in 1973 can only be collected for 10 years back from the date that the agency notified him of the debt. See 5 C.F.R. § 550.1106.

CIVILIAN PERSONNEL
Compensation
Overpayments
Error detection
Debt collection
Waiver

B-232454 Con't
Sept. 1, 1989

Employee was overpaid salary due to the agency's mistake in setting step within his grade upon his promotion from one position to another. Waiver is not granted, however, because the employee was furnished with a personnel record which on its face showed the existence of the error which led directly to the incorrect step placement. Therefore, the employee is partially at fault for the overpayment.

CIVILIAN PERSONNEL
Relocation

B-233427.2 Sept. 6, 1989

Residence transaction expenses
Reimbursement
Eligibility
Permanent residences

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL
Relocation

B-235927 Sept. 6, 1989

Residence transaction expenses
Reimbursement
Eligibility
Lot sales

This summary letter decisions addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-235927** **Con't**
Relocation **Sept. 6, 1989**
 Residence transaction expenses
 Reimbursement
 Eligibility
 New residence construction

CIVILIAN PERSONNEL
Relocation
 Residence transaction expenses
 Reimbursement
 Eligibility
 Time restrictions

This summary letter decisions addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-234968** **Sept. 7, 1989**
Relocation
 Travel expenses
 Privately-owned vehicles
 Multiple vehicles
 Mileage

A transferred employee, who was authorized to use two privately owned vehicles for relocation travel, may be reimbursed mileage for both vehicles where she demonstrates that one vehicle could not accommodate her family and their personal belongings.

CIVILIAN PERSONNEL

B-235839 Sept. 7, 1989

Travel

Travel expenses

Official business

Determination

Burden of proof

A school principal employed by Department of Defense Dependents Schools, Germany Region, claims travel allowances for expenses he incurred incident to travel he performed when he received notice of the agency's proposal to remove him. The notice provided for his right to make an oral response pursuant to agency regulation. The employee's duty station was Bremerhaven, Germany, and the agency designated Wiesbaden, Germany, as the location for the oral presentation. The oral response, as part of the proposed adverse action process constitutes official business for which travel expenses are reimbursable.

CIVILIAN PERSONNEL

B-234065 Sept. 8, 1989

Relocation

Relocation service contracts

Reimbursement

Direct costs

A transferred employee, whose sale of his residence at his old duty station was delayed due to the cancellation of a relocation service contract, is denied reimbursement of incidental costs associated with the delay. Under the applicable statute and regulations, losses such as those claimed by the employee are not reimbursable.

CIVILIAN PERSONNEL

B-230390 Sept. 13, 1989

Relocation**Temporary quarters****Actual subsistence expenses****Eligibility****Annual leave**

After terminating temporary quarters at his old duty station in Washington, D.C., an employee and his family took a planned and approved vacation en route to the employee's new duty station in Portland, Oregon. The employee may not be paid temporary quarters subsistence expenses (TQSE) for those days he took as a vacation en route to his new duty station, even though the vacation did not delay occupancy of a permanent residence at his new duty station, since applicable Federal Travel Regulations prohibit TQSE for vacation purposes.

CIVILIAN PERSONNEL

B-232720 Sept. 13, 1989

Relocation**Residence transaction expenses****Miscellaneous expenses****Reimbursement**

A transferred employee may not be reimbursed for an impact fee included in the closing costs for a newly constructed residence which the employee purchased at his new duty station. Under paragraph 2-6.2d of the Federal Travel Regulations, only expenses resulting from the construction of a residence which are comparable to expenses allowable in connection with the purchase of an existing residence may be reimbursed, and there is no indication that a comparable expense would have been paid for the purchase of an existing residence.

CIVILIAN PERSONNEL

B-234027 Sept. 14, 1989

Relocation

Temporary quarters

Determination

Criteria

An employee does not satisfy his burden of establishing intent to occupy permanent-type quarters temporarily through a bare allegation that such intent existed where there is no specific documentary or testimonial evidence on the issue. Thus, an agency's disallowance of a claim for temporary quarters is sustained.

CIVILIAN PERSONNEL

B-234240 Sept. 14, 1989

Travel

Permanent duty stations

Actual subsistence expenses

Prohibition

CIVILIAN PERSONNEL

Travel

Temporary duty

Per diem

Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL

B-234343 Sept. 14, 1989

Relocation

Residence transaction expenses

Reimbursement

Eligibility

Effective dates

An employee may not be reimbursed real estate expenses that were incurred prior to the agency's clearly expressed and definite intention to transfer him.

CIVILIAN PERSONNEL

Relocation

Residence transaction expenses

Reimbursement

Eligibility

Retroactive approval

Retroactive approval of TQSE is permissible provided it is consistent with agency policy and otherwise authorized by law.

CIVILIAN PERSONNEL

Relocation

Temporary quarters

Actual subsistence expenses

Reimbursement

Eligibility

An employee is not entitled to temporary quarters subsistence expenses (TQSE) at his old duty station, where the sale of his residence for personal reasons and prior to notice of transfer created the necessity for occupancy of temporary quarters.

CIVILIAN PERSONNEL **B-234969** **Sept. 14, 1989**
Relocation
Residence transaction expenses
Loan origination fees
Reimbursement

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-235407** **Sept. 14, 1989**
Relocation
Mobile homes
Shipment
Actual expenses
Reimbursement

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-233829** **Sept. 15, 1989**
Relocation
Residence transaction expenses
Reimbursement
Eligibility
Effective dates

An employee may not be reimbursed real estate expenses where he contracted to sell and vacated his old residence before he was first definitely informed of his transfer.

CIVILIAN PERSONNEL **B-235046** **Sept. 18, 1989**
Relocation
Residence transaction expenses
Reimbursement
Eligibility
Effective dates

An employee may not be reimbursed real estate expenses where he entered into contract to sell his residence before there was any administrative intent to transfer him.

CIVILIAN PERSONNEL **B-231512** **Sept. 21, 1989**
Relocation
Expenses
Interest
Eligibility
Delayed payments

Since a federal employee is not a "business concern," the Prompt Payment Act may not be used as authority to pay him an interest penalty on his claim for temporary quarters subsistence expenses.

CIVILIAN PERSONNEL
Relocation
Temporary quarters
Actual subsistence expenses
Reimbursement
Amount determination

When an employee and his family stay in the home of his parents, the amount paid to the host must reasonably reflect the added expenses to the host and must not be determined on the basis of the comparative cost of commercial quarters. Since there are not, and never were, any records of the added expenses to the host, we must deny the employee's claim for the lodgings portion of his temporary quarters subsistence expenses.

CIVILIAN PERSONNEL

B-231512 Con't

Relocation

Sept. 21, 1989

Temporary quarters

Actual subsistence expenses

Reimbursement

Amount determination

Where an employee no longer has any detailed records of meal expenses for his temporary quarters claim but merely estimates the cost, he has failed to meet his burden of proof. However, in view of the length of time between the employee's improper discharge and reinstatement, and the lack of any extant records, we are returning the meal expenses portion of his temporary quarters claim to the Army so that it may determine the reasonableness of that expenditure based on valid statistical references and thus reimburse the employee on that basis.

CIVILIAN PERSONNEL

Relocation

Travel expenses

Reimbursement

Eligibility

An employee, who was removed from his position in Europe in 1983, returned to the United States at his own expense. When his removal was overturned in 1985, the agency issued travel orders to reimburse him for his and his family's relocation expenses. Under the circumstances, the employee should be given a further opportunity to prove his relocation expenses.

CIVILIAN PERSONNEL

B-233591 Sept. 21, 1989

Travel

Commuting expenses

Reimbursement

Eligibility

An agency reassigned an employee for a 6-month period from one workplace to another workplace within his official duty station, which consisted of a city's corporate limits. The employee's claim for the cost of commuting to the new workplace may not be allowed because an employee must bear the costs of commuting between his residence and his workplace.

CIVILIAN PERSONNEL

B-235109 Sept. 25, 1989

Travel

Advances

Overpayments

Debt collection

Waiver

CIVILIAN PERSONNEL

Travel

Permanent duty stations

Actual subsistence expenses

Prohibition

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-235179** **Sept. 25, 1989**
Relocation
Residence transaction expenses
Leases
Termination costs
Reimbursement

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

CIVILIAN PERSONNEL **B-236557** **Sept. 27, 1989**
Relocation
Residence transaction expenses
Reimbursement
Eligibility
Residency

An employee, who was not occupying her house when she received official notice of a transfer, is entitled to real estate expenses for the sale of the house where arrangements she made evinced an intention to occupy the house but she was prevented from occupying it prior to her transfer notice by circumstances beyond her control.

CIVILIAN PERSONNEL **B-236290** **Sept. 28, 1989**
Relocation
Residence transaction expenses
Litigation expenses
Attorney fees
Reimbursement

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

Relocation

Residence transaction expenses

Reimbursement

Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-234719 Sept. 15, 1989

Travel

Overseas travel

Dependents

Travel expenses

Reimbursement

MILITARY PERSONNEL

Travel

Overseas travel

Foreign air carriers

Use

Prohibition

Member may not be reimbursed for costs of dependent's travel on foreign air carrier in connection with authorized travel in the absence of showing unavailability of a U.S. carrier, even though he was unaware of the Fly America Act requirement to use a U.S. carrier. Also, he is responsible for the cost of travel regardless of any administrative error and even though a travel agent stated, subsequent to the travel, that U.S. carriers were unavailable.

PROCUREMENT

PROCUREMENT

B-235338 Sept. 1, 1989

Bid Protests

89-2 CPD 207

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of amendments to request for proposals, and of their alleged effect on protester's competitive position are untimely since the allegations were first raised before the General Accounting Office after the closing date for receipt of proposals and, otherwise, more than 10 days after the protester knew or should have known of the protest basis.

PROCUREMENT

Competitive Negotiation

Offers

Price disclosure

Allegation substantiation

Evidence sufficiency

Protester's assertion that its price may have been disclosed to its competitor is dismissed as speculative where the allegation is based solely on the circumstances of the awardee's reduction of its price in its best and final offer and the protester's assertions that it was contacted by individuals outside the government concerning what it regarded as confidential business arrangements contained in its proposal.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Amendments
Propriety**

**B-235338 Con't
Sept. 1, 1989**

Where agency amended the request for proposals to reflect a significant change in the initial quantity requirement and called for revised proposals after the initial closing date for receipt of proposals, we do not find that the agency's actions were unnecessary, arbitrary or capricious, or that they constituted technical leveling or auctioneering of the procurement, since the agency's actions had the intent and effect of a request for best and final offers where all offerors submitted revisions to their price proposals and no offerors were prejudiced in the competition.

PROCUREMENT

**Contractor Qualification
Approved sources
Qualification
Standards**

Where, as a result of a corporate transfer in which the successor corporation to a previously approved government contractor becomes the ultimate recipient of a contract restricted to approved sources, the successor corporation may be determined to meet the qualifying requirement if the sale of assets included all aspects of the business that will be required to execute the contract properly.

PROCUREMENT

**Sealed Bidding
Bid guarantees
Responsiveness
Letters of credit
Adequacy**

**B-235342 Sept. 5, 1989
89-2 CPD 212**

Where the issuer of a letter of credit submitted as a bid guarantee is neither a bank nor an otherwise regulated financial institution, it is appropriate for the contracting agency to examine not only the form and content of the letter of credit, but also to ascertain the financial responsibility of the issuer, and a bidder may properly be found nonresponsible if it fails to provide adequate evidence in a timely fashion indicating that the issuer of its letter of credit is financially sound.

PROCUREMENT

**Sealed Bidding
Bid guarantees
Sureties
Acceptability**

Where agency has significant unresolved doubts about financial capability of the bid guarantee surety who issued an irrevocable letter of credit, the bidder's offer that the surety place cash in an escrow account is not sufficient additional security to form an adequate basis to accept the surety.

The fact that one contracting agency may have accepted a letter of credit from the protester's surety in an earlier procurement does not compel another agency to accept a letter of credit from the same surety where based on the information presented to it the second agency reasonably determined the surety to be unacceptable.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-235587 Sept. 6, 1989
89-2 CPD 216

Protest concerning award of contract on a sole-source basis is dismissed as untimely when filed more than 10 working days after protester knew or should have known basis of protest.

PROCUREMENT
Sealed Bidding
Invitations for bids
Evaluation criteria
Adequacy

B-235666, et al.
Sept. 6, 1989
89-2 CPD 217

Protest that agency did not provide sufficient information for protester to submit competitive technical proposal is denied where solicitation provided sufficient information to allow offerors to compete intelligently and where protester did not comply with agency direction to request additional information under the Freedom of Information Act.

PROCUREMENT
Special Procurement Methods/Categories
In-house performance
Cost evaluation
Government advantage
Allegation substantiation

Protest that solicitation requirements concerning insurance and use of government-owned equipment bias cost comparison against potential contractors is denied where the agency determined that requirements were necessary, and protester presents no evidence that this determination was unreasonable.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-236417 Con't
Sept. 6, 1989

Protester's contention that it was improperly excluded from the competitive range for failure to demonstrate during a benchmark test that its equipment had a certain feature is untimely when not filed until after protester received notice of its exclusion from the competitive range since the benchmark manual clearly identified the feature as mandatory and protester was advised during the demonstration that the feature was required.

PROCUREMENT
Competitive Negotiation
Hand-carried offers
Late submission
Acceptance criteria
Acceptance

B-236712 Sept. 6, 1989
89-2 CPD 220

A hand-carried proposal delivered 5 minutes late may not be accepted since protester failed to allow sufficient time to timely deliver its proposal and this was the sole cause of the proposal being late.

PROCUREMENT
Noncompetitive Negotiation
Contract awards
Sole sources
Propriety

B-235653 Sept. 7, 1989
89-2 CPD 222

Allegation that contracting agency improperly solicited contract for tug and towing services on a sole-source basis is denied because the matter was previously resolved in an earlier decision involving the same parties and requirement and the protester has failed to demonstrate that any changed facts or circumstances warrant a different result.

PROCUREMENT
Sealed Bidding
Bids

B-236740 Sept. 7, 1989
89-2 CPD 223

Late submission
Rejection
Propriety

Late bid was properly rejected where there was no allegation or indication of government mishandling and bid, although sent by certified mail, was mailed less than 5 days before bid opening. Bid which is late under applicable regulatory standards may not be accepted under provision which permits consideration of a late modification which makes more favorable to the government the terms of an "otherwise successful" bid.

PROCUREMENT

Bid Protests

B-236822 Sept. 8, 1989
89-2 CPD 224

Administrative policies
GAO review

Contracting agency may properly charge modest fee for solicitation documents to cover costs of providing them.

PROCUREMENT

Socio-Economic Policies
Small businesses

B-233603.3; B-233606.3
Sept. 11, 1989
89-2 CPD 225

Responsibility
Competency certification
GAO review

Where protester was apprised of the reasons for agency's nonresponsibility determination, General Accounting Office will not question a subsequent determination by the Small Business Administration not to issue a certificate of competency in the absence of a showing of bad faith or fraud, or that vital information was not considered.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Terms
Shipment schedules

B-236494 Sept. 11, 1989
89-2 CPD 226

Protest that agency improperly rejected protester's offer as unacceptable is denied where protester took exception to material requirement of the solicitation and attempted to limit liability for delinquent deliveries.

PROCUREMENT
Special Procurement
Methods/Categories
Service contracts
Fixed-price contracts
Options
Rate changes

B-234016.2; B-234017.2
Sept. 12, 1989
89-2 CPD 227

Contracting agency may properly decline to include an economic price adjustment (EPA) clause in a solicitation where agency offers reasonable justification for omission of the clause since use of an EPA clause is a matter within the agency's discretion.

PROCUREMENT

B-235449 Sept. 12, 1989

**Competitive Negotiation
Requests for proposals
Advertising
Omission**

89-2 CPD 229

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Cancellation
Resolicitation
Propriety**

Where a contracting officer learns after proposals are received that the notice of the solicitation was not published in the Commerce Business Daily (CBD), as was presumed under Federal Acquisition Regulation § 5.203(f) (FAC 84-40) since the notice was timely sent to the CBD for publication, his decision to proceed to award, rather than publishing a proper CBD notice and resoliciting the requirement, was reasonable, where there was not sufficient time for resolicitation due to compelling circumstances and where adequate competition was obtained under the RFP.

PROCUREMENT

B-235596 Sept. 12, 1989

**Bid Protests
Moot allegation
GAO review**

89-2 CPD 230

Where protester's offer was properly rejected for failing to meet the delivery schedule required by agency, General Accounting Office need not address protester's argument that approved source requirement which protester's offer did not meet is unduly restrictive of competition.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Terms
Shipment schedules

B-235596 Con't
Sept. 12, 1989

Where agency informed offeror of amended delivery schedule when it requested a best and final offer after initial proposals failed to meet delivery schedule, it should have been clear to the offeror that it was required to meet revised schedule to be considered for award and when the firm's offer did not meet amended schedule agency was not required to reopen discussions to afford offeror yet another chance to meet the agency's delivery needs.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-236847 Sept. 12, 1989
89-2 CPD 231

Protest that bid was improperly rejected as late because agency did not furnish protester with solicitation amendment in time for protester to submit a timely bid is untimely when filed after bid opening since protester, upon receipt of amendment 3 days prior to bid opening, should have protested prior to bid opening if it regarded the time remaining as inadequate.

PROCUREMENT B-235608 Con't
Competitive Negotiation Sept. 15, 1989
Offers
Technical acceptability
Negative determination
Propriety

Contracting agency reasonably rejected technical proposal of offerors which knowingly proposed nonconforming product that did not meet solicitation requirement for swing arm style pipe bending machine.

PROCUREMENT B-235674 Sept. 15, 1989
Noncompetitive Negotiation 89-2 CPD 235
Sole sources
Justification
Intellectual property

Proposed sole-source award of a subcontract for research, development and prototype testing of software-oriented approach to upgrading meteor burst communications system is unobjectionable where the procuring activity reasonably determined that only one source could provide the required services because only that source possesses patented and proprietary software and technology which offers the potential for significantly enhanced performance capabilities with the least hardware modification.

PROCUREMENT

B-235502 Sept. 18, 1989

Bid Protests

89-2 CPD 237

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Where solicitation provides award may be made to other than low offeror, protest of award to higher priced offeror is untimely.

Where protester contends that Buy American Act differential is nullified by evaluation scheme giving great weight to experience, which only foreign producer possessed, protest is untimely when filed after closing as the evaluation scheme was apparent in the solicitation.

PROCUREMENT

Competitive Negotiation

Contract awards

Source selection boards

Administrative discretion

Source selection official has discretion to determine whether technical advantage of awardee is worth its higher price notwithstanding the fact that price is an evaluation factor equal to technical factors.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Evaluation criteria

Cost/technical tradeoffs

Weighting

Where a solicitation does not expressly state the relative importance of price versus technical factors, price and technical factors are considered to be approximately equal in importance.

PROCUREMENT **B-235502** **Con't**
Competitive Negotiation **Sept. 18, 1989**
Requests for proposals
Evaluation criteria
Cost/technical tradeoffs
Weighting

In negotiated procurements, award need not be made to the firm offering the lowest price where the solicitation does not state that award will be made on that basis but instead provides that award will be made to the offeror whose proposal is most advantageous to the government, price and other factors considered.

PROCUREMENT **B-235603** **Sept. 18, 1989**
Noncompetitive Negotiation 89-2 CPD 238
Contract awards
Sole sources
Propriety

Sole-source award is unobjectionable where the agency complied with statutory requirements for written justification and publication of notice in the Commerce Business Daily (CBD) and the agency reasonably determined that the protester's proposed equipment does not meet its technical requirements and that only one source could supply the desired item.

PROCUREMENT

B-236370 Sept. 18, 1989

Bid Protests

GAO procedures

Interested parties

Direct interest standards

Third-low offeror is not an interested party to protest award to the low offeror where the second low offeror would be in line for award even if the protest were sustained.

PROCUREMENT

B-236709 Sept. 18, 1989

Bid Protests

89-2 CPD 241

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

The General Accounting Office (GAO) will not consider the merits of an untimely protest under the significant issue exception to GAO's timeliness requirements where the issue raised--whether a bidder properly was permitted to correct its bid after bid opening--is not a matter of first impression or of widespread interest to the procurement community.

PROCUREMENT

B-236904 Sept. 18, 1989

Bid Protests

89-2 CPD 242

Sales

Government property

GAO review

Protest concerning the sale of services is not subject to review by the General Accounting Office in the absence of the contracting agency's agreement to have protest considered.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-236363.2 Sept. 19, 1989
89-2 CPD 247

Request for reconsideration is denied where protest against cancellation of solicitation was properly dismissed as being academic and where protest of alleged improprieties in a solicitation not yet announced is premature.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

There is no basis for recovery of bid preparation or protest costs where protest is dismissed as academic.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Determination criteria

B-230298.7 Sept. 20, 1989
89-2 CPD 248

Certification that 52 percent of manufacturing or production costs will be incurred by a subcontractor, made for purposes of establishing eligibility as a labor surplus area concern, does not render bid nonresponsive to Limitations on Subcontracting clause, which provided that submission of the bid constitutes agreement that bidder shall perform at least 50 percent of the cost of manufacturing "not including the cost of materials;" the calculations were based on different measurements--total costs versus total costs other than the cost of materials.

PROCUREMENT

B-235370.2 Sept. 20, 1989

Sealed Bidding

89-2 CPD 251

Invitations for bids

Post-bid opening cancellation

Justification

Sufficiency

Compelling reason to cancel invitation for bids after bid opening existed where invitation required bonding if "contract price/minimum" was \$25,000 or greater, thus rendering solicitation ambiguous; bidders reasonably could interpret solicitation as requiring bonding since bid prices were well above \$25,000, or as not requiring bonding since stated minimum order was only \$8,000, and bids received indicate different bidders adopted different interpretations.

PROCUREMENT

B-235599 Sept. 20, 1989

Competitive Negotiation

89-2 CPD 252

Best/final offers

Technical acceptability

Negative determination

Propriety

Best and final offer which, by its own terms, does not meet specification requirements is not technically acceptable, and the deficiencies contained therein cannot be corrected through a request for clarification.

PROCUREMENT

B-235627 Sept. 20, 1989

Contractor Qualification

89-2 CPD 253

Insurance

State/local laws

Compliance

Contracting agency need not require that bidders furnish verification that they carry insurance coverage mandated by state or local law, such as workers' compensation, since compliance with state and local requirements is a matter to be resolved between the contractor and the state or local authorities.

PROCUREMENT **B-233143.3 Con't**
Competitive Negotiation **Sept. 21, 1989**
Offers
Evaluation
Administrative discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

Fact that protester received higher score in the evaluation of its proposal under original request for proposals (RFP) and a lower score when its second proposal, submitted in response to a revised RFP was evaluated by different evaluators, does not mean that the second evaluation was incorrect or not in accordance with evaluation criteria since the revised RFP was issued to correct evaluation flaws in the initial RFP.

Protest alleging that contracting agency evaluated offerors on requirements that were not stated as evaluation criteria in the request for proposals is denied where the record shows that the requirements were set forth elsewhere in the solicitation.

A contracting agency may properly evaluate a proposal's weaknesses in more than one evaluation area as long as the deficiency reasonably relates to more than one evaluation criteria.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-233695.3 Sept. 21, 1989

89-2 CPD 256

Request for reconsideration of prior decision holding that procuring agency properly rejected bid as nonresponsive because bidder failed to describe proposed modifications and clearly mark its descriptive literature to show the modifications is denied where the protester essentially restates its initial arguments and does not show that the prior decision was based on an error of fact or law.

PROCUREMENT

Bid Protests

Patent infringement

GAO review

B-235682 Sept. 21, 1989

89-2 CPD 261

Claim of possible patent infringement does not provide a basis for the General Accounting Office to object to an award.

PROCUREMENT

Contractor Qualification

Licenses

Applicability

Protest that awardee failed to comply with Food and Drug Administration regulation requiring registration for "medical device products intended to be delivered to the government" is denied where the record indicates that the medical product is exempt from such registration.

PROCUREMENT **B-235782** **Sept. 21, 1989**
Noncompetitive Negotiation 89-2 CPD 262
Contract awards
Sole sources
Propriety

PROCUREMENT
Noncompetitive Negotiation
Use
Justification
Urgent needs

Protest that agency made an improper sole-source award is denied where the record clearly indicates that only one manufacturer, the awardee, was capable of producing the item, a flight-critical part that was urgently required, without the risks of delay attendant on production lot sampling, which would have been required for other approved sources of the item.

PROCUREMENT **B-235872** **Sept. 21, 1989**
Sealed Bidding **89-2 CPD 263**
Invitations for bids
Post-bid opening cancellation
Justification
Evaluation criteria

Cancellation of invitation for bids after bid opening is justified where solicitation evaluation scheme would not ensure that award would be based on most advantageous price to government.

PROCUREMENT B-235826 Sept. 25, 1989
Competitive Negotiation 89-2 CPD 268
Offers
Competitive ranges
Exclusion
Administrative discretion

Protester was properly excluded from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because its proposal contained significant technical weaknesses in the areas of professional and technical staffs, and its understanding of the scope of work, and was scored substantially below the technical proposals of two higher rated offerors.

PROCUREMENT B-235888; B-236190
Sealed Bidding Sept. 25, 1989
Invitations for bids 89-2 CPD 269
Post-bid opening cancellation
Justification
Evaluation criteria

Cancellation after bid opening of solicitation issued on a brand name basis is unobjectionable where agency concludes that tape recorders other than the brand name model will satisfy its minimum needs and it appears that resolicitation on a brand name or equal basis will enhance competition and result in cost savings to the government.

PROCUREMENT B-236479.2 Sept. 25, 1989
Bid Protests 89-2 CPD 270
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where protester does not establish any factual or legal errors in the prior decision which warrant reversal or modification.

PROCUREMENT **B-236355** **Sept. 26, 1989**
Sealed Bidding **89-2 CPD 274**
Bids
Responsiveness
Determination criteria

A bidder need not submit additional information in support of its certification that it would comply with the Drug-Free Workplace Act of 1988, Pub. L. No. 100-690, § 5152(a)(1), since, by its express terms, the solicitation's drug-free workplace clause is self-executing.

PROCUREMENT **B-232190.3; B-232190.4**
Bid Protests **Sept. 27, 1989**
GAO procedures **89-2 CPD 275**
GAO decisions
Reconsideration

Eligibility under the Walsh-Healey Public Contracts Act is not for resolution by the General Accounting Office.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

The award of a contract constitutes an affirmative determination of responsibility.

PROCUREMENT **B-235620.3** **Sept. 27, 1989**
Bid Protests **89-2 CPD 276**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of prior decision denying protest against agency's nonresponsibility determination based upon unacceptability of individual sureties is denied where protester does not establish any factual or legal errors in the prior decision.

PROCUREMENT

B-235857 Sept. 27, 1989

Sealed Bidding

89-2 CPD 277

Invitations for bids

Procedural defects

Materiality

Protest against use of clauses similar to those in the General Services Administration Acquisition Regulation in a Department of Defense (DOD) procurement is denied where protester does not show that clauses deviate from Federal Acquisition Regulation (FAR) or DOD FAR Supplement.

PROCUREMENT

Sealed Bidding

Invitations for bids

Terms

Performance bonds

Protest of bonding requirement in a solicitation for security guard services is denied since it is within agency's discretion to require bonding even in a small business set-aside and the agency's requirement for uninterrupted performance of security guard services is itself a reasonable basis for imposing bonding requirements in a solicitation where prior experience indicated problems in performance.

PROCUREMENT

B-233493.4 Sept. 28, 1989

Bid Protests

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration of prior decision holding that a bid was improperly rejected as late when it was submitted at 2 p.m., the time called for in the invitation for bids for the submission of bids, is denied where protester restates arguments previously considered and request does not show that initial decision contained errors of fact or of law.

PROCUREMENT B-235255.2 Sept. 28, 1989
Socio-Economic Policies 89-2 CPD 278
Small businesses
Disadvantaged business set-asides
Preferences
Applicability

Protest that agency improperly found firm's surety unacceptable will not be considered where agency, pursuant to statute, properly does not apply small disadvantaged business (SDB) evaluation preference in evaluating bids, and firm is not the low bidder without the SDB preference.

PROCUREMENT B-235568.3 Sept. 28, 1989
Bid Protests 89-2 CPD 279
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Negative determination
Propriety

The General Accounting Office will not question the exclusion of the protester's step-one proposal as unacceptable in two-step negotiated procurement where the proposal was reasonably found deficient, requiring major revisions to make the proposal acceptable.

PROCUREMENT
Bid Protests
GAO authority

B-235688 Sept. 28, 1989
89-2 CPD 280

Protester's claim that its proprietary data rights under a contract awarded pursuant to the Department of Defense's Small Business Innovation Research program have been violated is dismissed where the appropriate remedy is administrative settlement of its claim or a judicial action against the government for damages rather than consideration under the bid protest function of the General Accounting Office.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Allegation substantiation
Evidence sufficiency

B-235706 Sept. 28, 1989
89-2 CPD 281

Where contracting agency determines that an accelerated performance schedule reflects the government's need to achieve cost savings, record does not show otherwise, and protester fails to specify why the schedule is restrictive of competition except to indicate that it alone requires an indefinitely longer period of time to ready itself for performance, there is no basis for the General Accounting Office to object to the schedule established by the agency.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-235880 Sept. 28, 1989
89-2 CPD 282

Allegation that solicitation unfairly permits the contracting agency to withhold final payment under the contract until all disputes and claims under the contract have been settled is rendered academic where the procuring agency deletes the requirement by amending the solicitation.

PROCUREMENT
Sealed Bidding
Bonds
Justification
GAO review

B-235880 Con't
Sept. 28, 1989

Protest that bonding requirements under a solicitation for a ship conversion contract are not in the government's best interest and constitutes an impediment to small businesses is denied because the Miller Act requires the contracting agency to obtain performance and payment bonds for the contract in question.

PROCUREMENT
Sealed Bidding
Invitations for bids
Terms
Progress payments

The contracting officer has the discretion to determine whether and under what terms a provision for progress payments should be included in a solicitation and properly may require bonding and the retainage of a percentage of the contract price from progress payments in the same procurement.

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

B-235976 Sept. 28, 1989
89-2 CPD 283

Award to higher priced, higher technically rated offeror is not objectionable where technical consideration outweighed cost in solicitation award criteria, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

PROCUREMENT **B-235976 Con't**
Competitive Negotiation **Sept. 28, 1989**
Offers
Evaluation
Administrative discretion

In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting agency enjoys a reasonable range of direction, and we will not question a determination of the technical merit of proposals unless it is shown to be arbitrary.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Non-prejudicial allegation

Protest is denied where there is no indication alleged error in evaluating proposals adversely affected the protester's competitive standing.

PROCUREMENT
Contractor Qualification
Contractor personnel
GAO review

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Whether awardee will be able to perform contract using employees whose resumes were included in awardee's proposal is a matter of responsibility and General Accounting Office will not review agency's affirmative determination of awardee's responsibility absent showing of possible agency fraud or bad faith or alleged failure to apply definitive responsibility criteria.

PROCUREMENT

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

**B-235982 Sept. 28, 1989
89-2 CPD 284**

Low bidder whose bid properly was rejected as nonresponsive is not an interested party to argue that second low bidder's bid should be rejected where there is another bidder which could be considered for award if the second low bid were rejected, since protester would not be in line for award even if the protest were sustained.

PROCUREMENT

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

PROCUREMENT

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

Protest challenging adequacy of experience questionnaire submitted by awardee with its bid will not be considered since it was first raised in protester's comments on the agency report and therefore is untimely, and in any event constitutes a challenge to the contracting officer's affirmative responsibility determination, a matter which the General Accounting Office generally does not review.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Terms
Deviation

B-235982 Con't
Sept. 28, 1989

Where bidder's notation in an attachment to its bid clearly takes exception to a material requirement of the solicitation, the performance period, contracting officer properly rejected bid as nonresponsive.

PROCUREMENT
Small Purchase Method
Requests for quotations
Contractors
Exclusion
Propriety

B-235994 Sept. 28, 1989

Where contracting officer refused to provide protester with solicitation for small purchase, small business set-aside, despite protester's repeated requests, protester was improperly excluded from the competition in violation of the Small Business Act and procurement statutes, which require that competition be obtained to the maximum extent practicable and that procuring agencies provide a copy of a solicitation to any small business concern upon request.

PROCUREMENT

B-235999.1 Sept. 28, 1989

Special Procurement Methods/Categories
Computer equipment/services
Contract awards
Authority delegation

PROCUREMENT

Special Procurement Methods/Categories
Computer equipment/services
Federal procurement regulations/laws
Applicability

Contract for accounting, financial and trust services should have been competed under the Brooks Act, 40 U.S.C. § 759 (Supp. IV 1986). The act applies if the contract requires "the performance of a service or the furnishing of a product which is performed or produced making significant use" of automatic data processing equipment. 40 U.S.C. § 759(a)(2)(A). Requirement for offerors to provide detailed analyses of computer and its use was an important and significant element of the services to be provided. Moreover, request for proposals included other services, forming bulk of contract, that could only be performed by computer.

PROCUREMENT

Specifications
Minimum needs standards
Total package procurement
Propriety

Whether individual services should have been broken out from acquisition of integrated financial, accounting and trust services was matter for agency discretion. Total package approach might have justifiable on basis of assuring sufficient compatibility among computer dependent functions to support an integrated system. Investment advisory services, however, appear not to be computer dependent and there is no obvious rationale for not breaking them out, thereby enhancing competition for these services.

PROCUREMENT

B-236240 Sept. 28, 1989

**Bid Protests
Labor standards
GAO review**

Protest of inconsistent application of labor laws by Department of Labor offices in different states is a matter for consideration by that agency and not the General Accounting Office.

PROCUREMENT

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

General Accounting Office will not review an affirmative responsibility determination absent a showing of possible fraud or bad faith or that definitive responsibility criteria were not applied.

PROCUREMENT

B-236662.2 Sept. 28, 1989

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

89-2 CPD 285

Prior dismissal of protest by small business concern against the Small Business Administration's (SBA) refusal to issue a certificate of competency (COC) is affirmed since protester on reconsideration again fails to show possible bad faith or fraud on the part of SBA. Argument on reconsideration that SBA would reconsider matter if contracting officer would agree to request that the case to be reopened does not establish that original dismissal was based on any error of fact or law. In any event, generally, there is no requirement that the agency request that the SBA reconsider its refusal to issue a COC.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-236972 Sept. 28, 1989
89-2 CPD 286

Protest is untimely when filed more than 10 working days after protester received oral notification of award to low technically acceptable offeror.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Resolicitation
Propriety

B-232108.2 Sept. 29, 1989

PROCUREMENT
Specifications
Brand name specifications
Ambiguous specifications
Salient characteristics
Equivalent products

On a solicitation calling for the submission of bids on a brand name or equal basis, where the protester, the exclusive licensee of the brand name part, offered that part, yet the agency made award to the low bidder offering the brand name manufacturer's less expensive part based upon a different, but reasonable, interpretation of the purchase description, the solicitation was prejudicially ambiguous such that the requirement should be resolicited.

PROCUREMENT

B-235663 Sept. 29, 1989

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that issue raised in negotiations was beyond the requirements of the solicitation is untimely since protest was filed after the next closing date for receipt of proposals following negotiations which included allegedly improper issue.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

Agency did not violate requirement for conducting meaningful discussions where in context of solicitation calling for innovative and creative means of assisting agency, questions addressed to offeror in negotiations were reasonably calculated to lead offeror into areas of its proposal requiring improvement or explanation without amounting to technical leveling.

PROCUREMENT

B-235686 Sept. 29, 1989

Sealed Bidding

Bid guarantees

Sureties

Acceptability

Low bid was properly rejected on the basis that individual bid bond surety was nonresponsible where the contracting officer had a reasonable basis to question the accuracy and sufficiency of the surety's evidence of financial acceptability and net worth.

PROCUREMENT **B-235746** **Sept. 29, 1989**
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
GAO review

Protest against a nonresponsibility determination is denied where the contracting officer reasonably determined that the individuals proposed by the protester for key personnel positions did not satisfy the solicitation's minimum qualification requirements.

PROCUREMENT **B-236845** **Sept. 29, 1989**
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that specifications in an invitation for bids are restrictive is untimely where filed after bid opening.

PROCUREMENT **B-236983** **Sept. 29, 1989**
Sealed Bidding
Bids
Responsiveness
Warranties

Bid which offers warranty terms which shortens the warranty period required by solicitation is nonresponsive.

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Where a firm initially protested solicitation's requirements to contracting agency prior to closing date for receipt of initial proposals, the agency's receipt of initial proposals without taking the requested corrective action constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) more than 6 weeks later, based on the agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

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