



133239

**UNITED STATES GENERAL ACCOUNTING OFFICE**

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## PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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).

November 1986

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**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**                      **B-223840**    **Nov. 5, 1986**

**Disbursing Officers**

**Illegal/Improper Payments**

**Liability Restrictions**

**Statutes of Limitation**

Under 31 U.S.C. 3526(c), once the 3-year statutory period has expired an accountable officer can no longer be financially liable for an improper payment and as such there is no need for our Office to consider whether or not to grant relief.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**

**Disbursing Officers**

**Relief**

**Account Deficiency**

**GAO Authority**

Although the running of the statute of limitations does not extend to the amount restored to an account, we are without the authority to reimburse the accountable officer for a deficiency in her account that she has paid for where the deficiency was the result of an illegal, improper or incorrect payment.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**                    **B-222392**    **Nov. 12, 1986**  
**Disbursing Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Forgeries**

Army Finance and Accounting Officer is not relieved of liability for improper payment made by unidentified subordinate who cashed a check with forged endorsements because the record does not contain the evidence needed to show that the officer maintained and monitored a system with adequate controls to prevent losses of this type from occurring.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**  
**Liability**  
**Statutes of Limitation**  
**Effective Dates**  
**Illegal/Improper Payments**

When an improper payment is made by an accountable officer who cashes a check with forged endorsements, the 3-year statute of limitations set forth in 31 U.S.C. § 3526(c) does not begin to run until the command has received a debit voucher from the Treasury Department or other information explaining why the payment was improper.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**                    **B-223372 Nov. 12, 1986**  
**Certifying Officers**  
**Criteria**  
**Determination**

Army official who signs her name to an SF 1180 as deputy to Finance Officer is certifying official on that document which is used to initiate substitute check from Treasury. Finance officer who did not sign name is not certifying official.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers**  
**Disbursing Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Substitute Checks**

Army certifying official who mistakenly assumed that Treasury would use other information to issue substitute check was responsible for loss resulting from issuance of substitute check based on her SF 1180 certification that checks nos. \$53,000 rather than \$550, the amount of the original check. This Office is not authorized to grant relief where as here certifying official knew certificate was erroneous.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers            B-225109    Nov. 12, 1986**  
**Disbursing Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Substitute Checks**

Relief is granted Army disbursing official and his deputy under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, for losses recorded after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to Army's collection division.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers            B-225128    Nov. 13, 1986**  
**Certifying Officers**  
**Relief**  
**Illegal/Improper Payments**  
**Substitute Checks**

Relief is granted Army Finance and Accounting official under 31 U.S.C. § 3528 from liability for certification of improper payment resulting from payee's negotiation of both original issued Army instrument and substitute Treasury check. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute check.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers B-221447 Nov. 21, 1986**

**Relief**

**Physical Losses**

**GAO Decisions**

**Reconsideration**

Request for reconsideration by Veterans Administration of decision denying relief of accountable officer for unexplained loss of patient funds from two part drop safe is denied where new information does not provide the type of affirmative evidence, lacking in the initial request, sufficient to rebut presumption of negligence raised by shortage.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims Against Government B-223253 Nov. 21, 1986**

**Torts**

**Government Liability**

In this letter, we respond to a claim filed against the General Accounting Office (GAO) under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671-2680 (1982) allegedly resulting from work performed at the Rockwell International Rocky Flats Plant in Colorado. The claim was based upon GAO's failure to provide adequate supervision. We respond that GAO has no such duty; the extent of GAO's authority as relevant here is to conduct audits and evaluations, and issue reports. See 31 U.S.C. §§ 712, 717, and 3523 (1982).

**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**

**B-223004 Nov. 3, 1986**

**Relocation**

**Residence Transaction Expenses**

**Reimbursement**

**Eligibility**

**Property Titles**

The employee is not entitled to real estate selling expenses since he had not acquired an interest in the property prior to the time he was first definitely notified of his transfer, as required by the travel regulations. Before notice of the transfer, neither he nor an immediate family member held title to the residence, and he had only an informal arrangement with his in-laws to purchase under indefinite terms as to price and time of purchase.

**CIVILIAN PERSONNEL**

**B-223053 Nov. 10, 1986**

**Travel**

**Temporary Duty**

**Per Diem Rates**

**Amount Determination**

Two employees on official business in Reading, England, resided in London because they claimed only minimal lodging was available in Reading. Their per diem reimbursement is limited to the per diem rate for Reading since there is no evidence that suitable lodgings were unavailable in that locality.

**CIVILIAN PERSONNEL**

**B-224590 Nov. 10, 1986**

**Travel**

**Travel Expenses**

**Air Carriers**

**Liquidated Damages**

**Government Rights**

An employee is not entitled to retain liquidated damages (denied boarding compensation) paid to him by a commercial airline for the inconvenience and delay resulting from denial of a reserved seat for official travel. Such compensation belongs to the Government.

**CIVILIAN PERSONNEL**

**B-222704 Nov. 12, 1986**

**Compensation**

**Compensation Retention**

**Administrative Regulations**

**CIVILIAN PERSONNEL**

**Compensation**

**Grade Retention**

**Administrative Regulations**

GAO Personnel requests review of draft Order concerning grade and pay retention procedures. We have no legal objections to the draft Order with the following changes. We recommend that a paragraph be inserted to explain appeal procedures which are available for (1) reclassification actions, (2) RIF actions, and (3) actions where grade retention is not available. We also recommend that these regulations reflect the recent change in OPM regulations to preclude grade or pay retention incident to a statutory reduction in pay.

**Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****Voluntary Separation**

An employee, transferred in the interest of the government, executed a 12-month service agreement. Pursuant to regulation, she had 2 years from the date she reported for duty at her new station (August 8, 1983) to sell her residence at her old duty station and purchase a residence at her new duty station. She voluntarily separated from government service 13 months after reporting to her new duty station. Subsequent to her separation but within 2 years of her reporting date, she sold her old residence and purchased a new one and claims expense reimbursement. On question of whether her voluntary separation alters her reimbursement rights, the answer is no. So long as an employee performs a minimum of 12 months continuous service following transfer, such conditional rights as she has to real estate expense reimbursement pursuant to a service agreement became vested 12 months later, subject only to the maximum time limitation within which such expenses must be incurred.

**CIVILIAN PERSONNEL****B-224088 Nov. 17, 1986****Travel****Foreign Service Personnel****Federal Travel Regulations****Travel Modes****Vessels**

For Foreign Service Employees engaged in surface transportation between points of departure and destination separated by oceans the use of foreign-flag vessels is restricted by section 901 of the Merchant Marine Act of 1936, 46 U.S.C. § 1241(a) (1982) which requires use of ships registered under the laws of the United States, where such ships are available, unless the necessity of the mission requires use of a ship under a foreign flag. However, since no U.S.-registered ships have been available for some time, foreign-flag vessels may be considered for use subject to further restrictions in 6 FAM § 133.2 which allows use of a foreign-flag ship only when the use of air transportation would be a health hazard or when payment can be made through use of excess foreign currency.

**CIVILIAN PERSONNEL****B-224906 Nov. 17, 1986****Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****Time Restrictions**

Under paragraph 2-6.1e of the Federal Travel Regulations, a transferred employee has 3 years (including a 1-year extension) from the date of reporting at his new duty station in which to incur real estate transaction expenses in order to qualify for reimbursement of real estate purchase or sale expenses. Where closing on purchase of new residence was delayed pending outcome of lawsuit seeking rescission of purchase contract, employee exceeded 3-year period and may not be reimbursed since neither his agency nor the Comptroller General may waive the 3-year period provided for by this regulation.

**Relocation****Miscellaneous Expenses****Reimbursement****Rates****CIVILIAN PERSONNEL****Relocation****Temporary Quarters****Actual Subsistence Expenses****Reimbursement****Deadlines**

Under the Federal Travel Regulations, claims by transferred Government employees for temporary quarters subsistence expenses must be for a period beginning no later than (1) 30 days after they report for duty at their new duty station or (2) 30 days after they vacate their permanent residence at their old duty station, whichever is later. In this case, a transferred employee vacated his residence at his old duty station in Biloxi, Mississippi, and subsequently reported for duty at his new station in Richmond, Virginia, on April 9, 1980. He may not be allowed temporary quarters subsistence expenses commencing on July 13, 1980, based on a visit made by his estranged wife to Richmond beginning on that date, since by then the eligibility period prescribed by regulation for such expenses had elapsed. In addition, he is not entitled to miscellaneous relocation expenses at the "immediate-family" rate of \$200 because his wife was not in his household.

**CIVILIAN PERSONNEL  
Relocation**

**B-222338 Con't  
Nov. 25, 1986**

**Temporary Quarters  
Determination  
Criteria**

An employee rented a room in the Veterans Administration hospital where he worked following his transfer from Biloxi, Mississippi, to Richmond, Virginia, in 1980. He continued the rental during his entire stay at the new duty station, and his claim for temporary quarters subsistence expenses based on his occupancy of the room was initially denied because it appeared that the room had been his permanent residence rather than temporary quarters. He has produced new evidence that after occupying the room from April 9 to August 11, 1980, he moved into a permanent residence to which he transported his household goods from temporary storage, and that he kept the room at the hospital thereafter simply for occasional use. Consequently, in these particular circumstances the rented room may be considered to be temporary quarters rather than a permanent residence, and he is eligible for 30 days' temporary quarters subsistence expenses beginning within 30 days of April 9, 1980, when he reported for duty at the new duty station and began occupancy of the room.

**CIVILIAN PERSONNEL**

**B-223112 Nov. 25, 1986**

**Relocation**

**Residence Transaction Expenses**

**Additional Expenses**

**Reimbursement**

**Eligibility**

A transferred employee sold his residence at his old duty station and was reimbursed for his authorized expenses. Due to market conditions, the employee had to take back a mortgage to facilitate the sale. Nearly a year later when the new owner defaulted on payments, the employee foreclosed, regained legal title and then resold the property. He now claims additional expenses for the resale. The claim is denied. We have held that para. 2-6.1 of the Federal Travel Regulations permits reimbursement for only one set of authorized expenses relating to one sale of a residence and one purchase of a residence. Since the expenses of a sale were paid, the resale expenses of a resale may not be paid. Douglas D. Walldorff, 57 Comp. Gen. 669 (1978).

**CIVILIAN PERSONNEL**

**B-223872 Nov. 25, 1986**

**Travel**

**Medical Emergencies**

**Travel Expenses**

**Reimbursement**

Employee on temporary duty travel may be reimbursed costs of medically necessitated air ambulance transportation services for herself and infant son prematurely born during employee's temporary duty assignment. The Government may absorb these costs under 5 U.S.C. § 5702(b) and para. 1-2.4 of the Federal Travel Regulations, which provide that an employee, incapacitated by illness or injury not due to his own misconduct while on official travel away from his duty station, is entitled to per diem and "appropriate transportation expenses" to his designated post of duty. We construe the term "appropriate transportation expenses" to be broad enough to authorize payment of the air ambulance transportation expenses essential for the safe return of the newborn child to the duty station.

**CIVILIAN PERSONNEL****B-217044 Nov. 28, 1986****Compensation****Retroactive Compensation****GAO Decisions****Reconsideration**

The denial of a former Federal employee's claim for additional backpay because of a procedurally defective removal from a position is affirmed since the employee has not met his burden of demonstrating that the original decision should be reversed due to an error of law or fact. The employee was removed from a position reserved for local nationals in the Philippines after he became a U.S. citizen. He moved to the U.S.A. less than 3 months later. The Merit Systems Protection Board determined that he should have been provided with a 60-day notice period under reduction-in-force procedures prior to his removal, and he was awarded backpay on that basis. The case record demonstrates that additional backpay is not warranted because of several factors, including the fact that the employee was not available for work and, moreover, there was no position for which he qualified as a U.S. citizen even if he had been available.

**CIVILIAN PERSONNEL****B-223644 Nov. 28, 1986****Relocation****Foreign Service Personnel****Home Service Transfer Allowances****Amount Determination**

Foreign Service Officer with Agency for International Development authorized to travel from Naples, Italy, to Washington, D.C., in June 1982, was authorized a home service transfer allowance (HSTA) covering the period of his stay in Washington, D.C., in contemplation of further reassignment to an overseas post. Employee may be paid HSTA for the period his dependents stayed in Ocean City, Maryland, limited to the maximum allowable period of 30 days and computed on the basis of the statutory per diem rate of \$50.

**MILITARY PERSONNEL**

**MILITARY PERSONNEL**

**B-223425 Nov. 3, 1986**

**Pay**

**Variable Housing Allowances  
Eligibility**

A Marine Corps member was stationed at Camp Lejeune, North Carolina. Cost-free government quarters were available to him there, and he was not eligible for a variable housing allowance (VHA). He traveled to Chicago, Illinois, where he spent 7 days in a leave status awaiting his final discharge. The applicable statute authorizes payment of VHA to service members "assigned to duty" in a high housing cost area in the United States; the allowance may not be paid on the basis of a service member's election to go to a high housing cost area for the purpose of taking leave rather than fulfilling a duty assignment.

**MILITARY PERSONNEL**

**B-223704 Nov. 25, 1986**

**Pay**

**Payroll Deductions  
Underdeductions  
Waiver  
Deadlines**

A Coast Guard member incurred a debt to the United States when payroll deductions were not made between 1975 and 1977 for bonds he received through a savings bond program. This discrepancy was discovered in 1977 and partially corrected with his consent in an installment repayment plan, but the debt was not completely paid under this plan at the time of his discharge from the Coast Guard in 1978. After his discharge he made no further payments toward the satisfaction of his debt. His application for waiver of the remaining indebtedness, first submitted to the Coast Guard in 1984, is precluded from consideration under the provisions of the waiver statute, 10 U.S.C. § 2774, since the date of discovery of the overpayment occurred more than 3 years before the receipt of the application for waiver.

**MILITARY PERSONNEL**

**B-222678 Nov. 28, 1986**

**Pay**

**Personnel Death**

**Balances**

**Payees**

**Spouses**

Where Navy member marries a second wife without dissolving his first marriage, his first wife is his legal widow on the date of his death and is entitled to the balance of his unpaid military retired pay.

**MILITARY PERSONNEL**

**B-224142 Nov. 28, 1986**

**Pay**

**Retirement Pay**

**Increase**

**Eligibility**

**Criteria**

Two retired officers of the Air Force were advanced from the grade of lieutenant general to general on the retirement lists. When retired service members are advanced in grade on the retirement lists, their retired pay may not be recalculated to reflect their advancement in the absence of statutory authority directing a recalculation. In this case, there does not appear to be an Act of Congress authorizing a recalculation of the officers' retired pay, nor does it appear that an increase in their pay was ever intended to result from their advancement on the retirement lists. In these circumstances the Comptroller General is unable to conclude that they are eligible for an increase in the rate of their retired pay.

**PROCUREMENT**

**PROCUREMENT** **B-223594.2 Nov. 3, 1986**  
**Sealed Bidding** **86-2 CPD 510**  
**Bid Guarantees**  
**Responsiveness**  
**Invitations for Bids**  
**Identification**

Prior decision, holding that a bid bond which refers to another solicitation number is materially defective and requires rejection of the bid as nonresponsive, in the absence of other objective evidence on the face of the bond clearly establishing that the bond was intended to cover the bid with which it was actually submitted, is affirmed. In general, the correct bid date on the bond, by itself, is not sufficient to overcome the presence on the bond of the solicitation number for a different on-going procurement.

**PROCUREMENT** **B-224026 Nov. 3, 1986**  
**Sealed Bidding** **86-2 CPD 511**  
**Bids**  
**Responsiveness**  
**Additional Work/Quantities**  
**Price Omission**

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Amendments**  
**Additional Work/Quantities**  
**Acknowledgment**

Low bid that failed to state a separate price for items added by an amendment properly was rejected as nonresponsive where the government's estimated cost of the added items is more than the difference between the two lowest bids. Even though award was on a lump-sum basis, the mere acknowledgment of the amendment without stating a price for the additional items created doubt as to the intended price of the items and whether the bidder obligated itself to provide those items.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-224064.2 Nov. 3, 1986**  
**86-2 CPD 512**

Request for reconsideration is dismissed where protester largely reiterates arguments earlier made in opposition to the proposed dismissal of its protest for failure to provide a copy of the protest to the contracting officer, and where protester does not convincingly show an error of law or fact warranting reversal of original decision.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Interested Parties**  
**Direct Interest Standards**

**B-224208 Nov. 3, 1986**  
**86-2 CPD 513**

Protest is dismissed because protester is not an interested party under GAO's Bid Protest Regulations where protester, third low bidder, would not be in line for award should its protest against low bid be sustained, given that protester has not protested against any possible award to second low bidder.

**PROCUREMENT** **B-224504; B-223938**  
**Competitive Negotiation** **Nov. 3, 1986**  
**Offers** **86-2 CPD 514**  
**Competitive Ranges**  
**Exclusion**  
**Administrative Discretion**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Organizational Experience**  
**Evaluation**  
**Evidence Sufficiency**

When proposal fails adequately to describe experience of key personnel and corporation under prior contracts or to relate that experience to the work to be performed under the protested contract, agency's elimination of offeror from the competitive range, without discussions, is not unreasonable.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Competitive Ranges**  
**Exclusion**  
**Discussion**

Agency has no obligation to conduct discussions with an offeror whose initial proposal is either technically unacceptable or so deficient in information that it is not reasonably susceptible of being made acceptable without major revisions.

**PROCUREMENT**

**B-224504; B-223938 Con't**

**Competitive Negotiation  
Offers**

**Nov. 3, 1986**

**Evaluation**

**Technical Acceptability**

When an in camera review of an agency's technical evaluation, which concluded that the protester's proposal was technically unacceptable, shows that evaluation was reasonable and consistent with solicitation's evaluation scheme, the General Accounting Office will deny the protest. Agency's use of evaluation subfactors such as recentness of experience is proper when the subfactors are reasonably related to or encompassed by stated evaluation criteria, read together with the statement of work and specific experience requirements in the solicitation.

**PROCUREMENT**

**Competitive Negotiation**

**Requests for Proposals**

**Cancellation**

**Resolicitation**

**Propriety**

Cancellation of request for proposals set aside for small business and resolicitation on unrestricted basis is proper where all small business proposals are found technically unacceptable.

**PROCUREMENT**  
**Bid Protest**  
**Conferences**  
**Justification**

**B-222476.3 Nov. 4, 1986**  
**86-2 CPD 515**

Request for an administrative conference will not be granted in connection with a decision on reconsideration where the request should have been made during the original protest proceedings in accordance with the General Accounting Office's Bid Protest Regulations and where a conference clearly would serve no useful purpose.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

Prior decision is reaffirmed where protester's second request for reconsideration advances no new arguments why the prior decision should be reversed or modified.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**  
**Additional Information**

**B-223033.2 Nov. 4, 1986**  
**86-2 CPD 516**

Arguments raised by the protester in its request for reconsideration do not show that prior decision, upholding agency's determination that protester was nonresponsible due to inadequate finances, was erroneous.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Preparation Costs**

**B-223033.2 Con't**  
**Nov. 4, 1986**

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Preparation Costs**

Claim for costs is denied where General Accounting Office affirms decision denying protest.

**PROCUREMENT**  
**Bid Protest**  
**Moot Allegation**  
**GAO Review**

Since a proper finding by the agency that the protester lacked adequate finances to perform the contract work by itself justifies a determination of nonresponsibility, it would be academic to consider the propriety of other independent findings which themselves would support a determination of nonresponsibility.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Preparation Costs**

**B-223999 Nov. 4, 1986**  
**86-2 CPD 517**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Preparation Costs**

Protester is not entitled to recover proposal preparation costs or costs of filing and pursuing protest where protest is found to be without merit.

**PROCUREMENT**

**B-223999 Con't**

**Competitive Negotiation**

**Nov. 4, 1986**

**Best/Final Offers**

**Evaluation Errors**

**Allegation Substantiation**

**Evidence Sufficiency**

There is no basis to question contracting agency's technical evaluation where protester fails to provide any specific support for general contention that its technical proposal should have received a higher score.

**PROCUREMENT**

**Competitive Negotiation**

**Contract Awards**

**Administrative Discretion**

**Cost/Technical Tradeoffs**

**Technical Superiority**

Contracting agency's selection of higher priced, higher rated offeror is proper where request for proposals provided that technical factors were more important than cost and protester provides no evidence to show price/technical tradeoff was unreasonable.

**PROCUREMENT**

**Contractor Qualification**

**Responsibility**

**Contracting Officer Findings**

**Affirmative Determination**

**GAO Review**

General Accounting Office will not consider protester's challenge to contracting agency's affirmative responsibility determination where protester makes only general, unsupported allegation that awardee may not be a responsible contractor.



**PROCUREMENT** **B-224330 Nov. 5, 1986**  
**' Bid Protest** **86-2 CPD 520**  
**GAO Procedures**  
**Interested Parties**  
**Direct Interest Standards**

Protest by the third-low offeror against award to the low offeror is dismissed, since second-low offer was found technically acceptable and protester, who has not contested that finding, thus would not be next in line for award if its protest were sustained.

**PROCUREMENT** **B-224412 Nov. 5, 1986**  
**Sealed Bidding** **86-2 CPD 521**  
**Bids**  
**Error Correction**  
**Pricing Errors**  
**Line Items**

Bid may be corrected to reallocate line item prices where there is clear and convincing evidence that bidder correctly computed total price (which is unchanged by correction) but erred in allocating price to individual line items.

**PROCUREMENT** **B-224816.2 Nov. 5, 1986**  
**Contract Management** **86-2 CPD 522**  
**Contract Administration**  
**Convenience Termination**  
**Propriety**  
**GAO Review**

Protest alleging that termination of a contract because the award was based upon an improper evaluation factor will result in hardship to it is dismissed where the contractor does not allege that the initial award in fact was proper or that the corrective action is insufficient to protect the integrity of the competitive procurement system.



**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**10-Day Rule**

**B-223982.3 Nov. 6, 1986**  
**86-2 CPD 526**

Dismissal of protest as untimely is affirmed where record establishes that protest was filed more than 10 working days after basis for it was known.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**10-Day Rule**  
**Effective Dates**

Protest based entirely on information received pursuant to Freedom of Information Act request or learned during a debriefing will be considered timely if filed within 10 working days after the protester's receipt of the information.

**PROCUREMENT** B-224326.2 Nov. 6, 1986  
**Bid Protest** 86-2 CPD 527  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small Businesses**  
**Responsibility**  
**Negative Determination**  
**GAO Review**

Prior dismissal of a small business protest is affirmed where request for reconsideration seeks GAO review of contracting officer's nonresponsibility determination which has been referred to the Small Business Administration (SBA) for consideration under certificate of competency procedures under which SBA has exclusive authority to determine a small business's responsibility.

**PROCUREMENT** B-224457; B-224020  
**Bid Protest** Nov. 6, 1986  
**GAO Procedures** 86-2 CPD 528  
**Protest Timeliness**  
**10-Day Rule**

Where agency fails to advise protester that its bid price is unreasonable or that its bid has been rejected, and merely indicates that invitation for bids has been converted to a negotiated procurement, protester's allegation that it is entitled to an award at its originally offered price is timely.

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

**B-224457; B-224020 Con't**  
**Nov. 6, 1986**

**Evaluation**  
**Price Reasonableness**  
**Administrative Discretion**

Agency determination concerning price reasonableness is a matter of administrative discretion which will not be questioned unless there is a showing of fraud or bad faith.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Cancellation**  
**Bids**  
**Price Disclosure**

Where procurement is properly canceled the fact that the protester's bid prices have been disclosed does not constitute a basis for denying the government the right to cancel the solicitation.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Cancellation**  
**Justification**  
**Competition Enhancement**

Cancellation of negotiations with only one source and resolicitation is proper where agency has reasonable basis to believe that resolicitation will result in additional competition.



**PROCUREMENT** **B-223953 Con't**  
**Competitive Negotiation** **Nov. 7, 1986**  
**Contract Awards**  
**Administrative Discretion**

**PROCUREMENT**  
**Competitive Negotiation**  
**Contract Awards**  
**Propriety**  
**Evaluation Errors**  
**Materiality**

Agency decision to award contract to the only offeror whose proposal indicated that it would provide satellite communications system by delivery date required in request for proposals (RFP) was proper, where RFP indicated that delivery date was critical and RFP evaluation scheme specifically stated that offers which failed to meet "required service interval may be declared technically non-acceptable." Evaluator's error in calculating protester's evaluated life-cycle price is not sufficient to invalidate award determination.

**PROCUREMENT** **B-224425.2 Nov. 7, 1986**  
**Sealed Bidding** **86-2 CPD 534**  
**Alternate Bids**  
**Terms**  
**Substitution**  
**Post-Bid Opening Periods**

Where firm submitted two bids to perform the required waste disposal services, each based on a different disposal site, and where the bids were priced differently precisely because of the different costs of using the respective sites, agency properly did not allow the substitution after bid opening of the higher-priced disposal site for the lower-priced one once it was determined that the lower-priced one was not actually approved.

**PROCUREMENT**

**B-222601.6 Nov. 7, 1986**

**Bid Protest**

**86-2 CPD 531**

**GAO Procedures**

**GAO Decisions**

**Reconsideration**

**PROCUREMENT**

**Bid Protest**

**GAO Procedures**

**Protest Timeliness**

**10-Day Rule**

**Adverse Agency Actions**

Prior dismissal is affirmed where protest against the rejection of proposal as technically unacceptable was filed with General Accounting Office more than 10 days after adverse action on initial protest to the contracting agency, and protester is not an interested party to raise alleged Buy American Act violation.

**PROCUREMENT**

**B-223953 Nov. 7, 1986**

**Bid Protest**

**86-2 CPD 532**

**GAO Procedures**

**Preparation Costs**

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Preparation Costs**

Where protest is denied, General Accounting Office will deny claim for proposal preparation expenses and costs of pursuing protest.

**PROCUREMENT**

**B-224426.2 Nov. 7, 1986**

**Socio-Economic Policies  
Labor Surplus Set-Asides  
Geographic Restrictions  
Contractors  
Eligibility**

**86-2 CPD 535**

Where, under invitation for bids set aside for labor surplus area (LSA) concerns, bidder named an LSA and gave the name of an industrial park in completing the solicitation's LSA clause but did not give a specific street address, contracting agency was reasonable in determining from a review of area maps and consultation with city officials in the LSA that the industrial park was located outside the LSA the firm specified. Consequently, the bid was ambiguous as to its commitment to perform in an LSA so that the bidder is ineligible for award.

**PROCUREMENT**

**B-224634 Nov. 7, 1986**

**Bid Protest  
GAO Procedures  
Preparation Costs**

**86-2 CPD 537**

There is no basis for payment to protester of costs of filing and pursuing protests, including attorney's fees, where the General Accounting Office has not found any procurement impropriety committed by the contracting agency.

**PROCUREMENT**

**Special Procurement Methods/Categories  
Service Contracts  
Personal Services  
Criteria**

Agency contract for counseling services does not create illegal employer-employee relationship where the services will not be subject to direct government supervision and adequate direction is provided to the contractor through detailed written specifications contained in the solicitation's statement of work.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid Opening**  
**Extension**  
**Justification**  
**GAO Review**

B-225017 Nov. 7, 1986  
86-2 CPD 538

The General Accounting Office generally will deny protests against extensions of bid opening date that are intended to give offerors sufficient time to prepare their bids and to review their prices. This is because the effect of the extension is to enhance, rather than restrict, competition.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Amendments**  
**Specification Changes**  
**Procedures**

When specifications must be changed, agencies must accomplish this by amendment, considering whether there is a need to extend bid opening date. Even if opening is extended, any bids received before the time set must be kept secure and unopened.

**PROCUREMENT**  
**Bid Protest**  
**Agency-Level Protests**  
**Oral Protests**

**B-225034 Nov. 7, 1986**  
**86-2 CPD 539**

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**10-Day Rule**

Protester's statement during telephone conversation with contracting officer that it would protest award to any other bidder did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Therefore, protest to General Accounting Office, filed more than 10 days after oral notification of the basis of protest, is dismissed as untimely.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protest against apparent IFB improprieties is untimely where filed after bid opening.

**PROCUREMENT**  
**Bid Protest**  
**Agency-Level Protests**  
**Oral Protests**

**B-225459 Nov. 7, 1986**  
**86-2 CPD 540**

Award to low bidder does not appear legally objectionable where protester did not timely perfect its oral status protest.



**PROCUREMENT** **B-220518.2 Con't**  
**Socio-Economic Policies** **Nov. 10, 1986**  
**Labor Standards**  
**Construction Contracts**  
**Worker Classification**  
**Propriety**

When criteria used by the procuring agency to classify previous repair and minor construction work as subject to the Davis Bacon Act reasonably reflect the requirements of the statute, they may be used to estimate the amount of Davis Bacon Act work offerors should expect to perform under a subsequent contract.

**PROCUREMENT** **B-222181.2 Nov. 10, 1986**  
**Bid Protest** **86-2 CPD 542**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

Prior decision is affirmed on reconsideration where requester has not shown any error of law or fact that would warrant reversal of that decision.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**  
**Additional Information**

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Preparation Costs**

Where agency argued in initial protest that specifications were not relaxed, it cannot properly argue on reconsideration that protester is not entitled to costs of preparing proposal because specifications were in fact improperly relaxed and protester did not have substantial chance of receiving award.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Preparation Costs**

**B-222181.2 Con't**  
**Nov. 10, 1986**

Protester had a substantial chance of receiving award where technical data submitted with its offer showed compliance with solicitation's minimum technical specifications and its offer was next low after a noncompliant offer. Therefore, prior decision that protester is entitled to costs of preparing proposal is affirmed.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical Acceptability**

Agency's argument that its own product test results justify acceptance of a product notwithstanding technical literature showing product's noncompliance with minimum technical requirement is rejected where tests were essentially field tests which did not address compliance with this minimum requirement.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Technical Acceptability**  
**Deficiency**  
**Blanket Offers of Compliance**

Where technical literature included in offer shows noncompliance with solicitation's minimum technical requirements, the subsequent submission by the offeror of a blanket statement of compliance is not sufficient to make the offer compliant.

**PROCUREMENT**

B-223943 Nov. 10, 1986

**Competitive Negotiation**

86-2 CPD 545

**Contract Awards**

**Propriety**

Agency may not award a contract with the intention to modify significantly the contract specifications. However, award is proper where agency contemplated possible modifications but determined to award on the basis of existing specifications.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Cost Realism**

**Evaluation**

**Administrative Discretion**

Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's technical approach is feasible, Defense Contract Audit Administration analysis of awardee's rates, and reconciliation of awardee's estimated costs with the independent government cost estimate, making adjustments for less complex technical approach utilized by awardee.

**PROCUREMENT**

**Competitive Negotiation**

**Technical Transfusion/Leveling**

**Allegation Substantiation**

**Evidence Sufficiency**

Neither technical leveling nor transfusion can be shown where awardee's offer was always technically acceptable and was tied for highest technical score initially, and this technical rating dropped slightly over the course of negotiations. Additionally, record reveals no evidence that agency conveyed protester's technical approach to awardee during the course of discussions.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Preparation Costs**

**B-224229 Nov. 10, 1986**  
**86-2 CPD 546**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Preparation Costs**

Where a protest is dismissed, there is no decision on the merits, and therefore, no basis on which protest or proposal preparation costs may be recovered.

**PROCUREMENT**  
**Bid Protest**  
**Moot Allegation**  
**GAO Review**

Protest that offeror's proposal was improperly eliminated from the competitive range is rendered academic as the result of the solicitation's cancellation. The General Accounting Office will not retain jurisdiction of such a protest, despite the protester's request to do so, when the solicitation has been canceled.

**PROCUREMENT**  
**Bid Protest**  
**Premature Allegation**  
**GAO Review**

A protester's speculation as to an agency's future course of action in satisfying a requirement is not a valid basis for the General Accounting Office to consider the merits of the protest.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**10-Day Rule**  
**Effective Dates**

**B-224913.2 Nov. 10, 1986**  
**86-2 CPD 547**

Where protest is initially submitted without a detailed statement of the legal and factual grounds of protest, but is subsequently followed by a letter that includes the requisite detailed explanation, timeliness of the protest must be measured from the date of receipt of the detailed statement. Protest is dismissed as untimely when the detailed statement of protest basis is filed more than 10 working days after the protester learned of the basis of its protest.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**10-Day Rule**  
**Adverse Agency Actions**

**B-225092 Nov. 10, 1986**  
**86-2 CPD 548**

A protest not filed within 10 working days after the protester was orally advised its agency protest was denied is untimely and will not be considered on the merits.

**PROCUREMENT**  
**Bid Protest**  
**Premature Allegation**  
**GAO Review**

**B-225449 Nov. 10, 1986**  
**86-2 CPD 549**

Protest against the contents of a request for proposals (RFP) is dismissed as premature where RFP has not yet been issued.



**PROCUREMENT** **B-224302 Nov. 12, 1986**  
**Competitive Negotiation** **86-2 CPD 552**  
**Offers**  
**Sample Evaluation**  
**Testing**  
**Administrative Discretion**

Contracting agency has considerable discretion in determining the degree of testing required to obtain product conforming to specifications in request for proposals (RFP) and agency's determination will be disturbed only if it is shown to be unreasonable. Under RFP for boresight devices for tank guns which required that the devices adapt to irregularities of shape in worn gun tubes, protester fails to show that contracting agency's testing procedures were unreasonable where agency tested the devices on two tanks with worn gun tubes and protester does not show that more extensive tests were required to determine whether the devices complied with the RFP requirement.

**PROCUREMENT** **B-224307 Nov. 12, 1986**  
**Sealed Bidding** **86-2 CPD 553**  
**Bonds**  
**Justification**  
**GAO Review**

Protest alleging that requirements for performance and bid bonds in a solicitation for fire protection services unduly restrict competition is without merit. Procurement regulations authorize requiring performance bond in a nonconstruction situation where, as here, the services are essential and the contractor will have the use of government-owned property, and a bid bond requirement is valid where a performance bond also is required.

**PROCUREMENT**  
**Sealed Bidding**  
**Performance Bonds**  
**Justification**

**B-224307 Con't**  
**Nov. 12, 1986**

**PROCUREMENT**  
**Sealed Bidding**  
**Pre-Award Surveys**  
**Purposes**

Fact that a preaward survey will be conducted does not in itself establish that solicitation requirement for performance bond is unreasonable. Survey is an evaluation of the prospective contractor's capability to perform, and does not offer an agency any legal protection after award, whereas performance bond secures the contractor's obligation to perform.

**PROCUREMENT**  
**Bid Protest**  
**Moot Allegation**  
**GAO Review**

**B-224545 Nov. 12, 1986**  
**86-2 CPD 554**

**PROCUREMENT**  
**Contract Management**  
**Contract Administration**  
**Convenience Termination**  
**Administrative Determination**  
**GAO Review**

The General Accounting Office will not review an agency's termination of a contract for convenience in order to perform the work with its own personnel. Therefore, since contract awarded pursuant to protested procurement has been terminated for convenience, protest that agency improperly determined protester to be nonresponsible and that agency improperly did not suspend performance under contract after protest was filed is academic.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Evaluation**  
**Prices**  
**Options**

**B-224573 Nov. 12, 1986**  
**86-2 CPD 555**

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Evaluation Criteria**  
**Prices**  
**Options**

Where solicitation specifies that bids will be evaluated by totaling the prices for the basic quantities and option quantities exercised at time of award, a protester who submits the low price for the basic quantities but not for the option quantities exercised is not in line for award since it did not offer the lowest total price.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Options**  
**Price Adjustments**  
**Post-Bid Opening Periods**

Clause in solicitation allowing contractor to voluntarily reduce option price or delivery time does not apply to allow a bidder, whose bid is not yet accepted, to reduce option price after bid opening.

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

**B-224573 Con't**  
**Nov. 12, 1986**

**Price Negotiation**  
**Allegation Substantiation**  
**Evidence Sufficiency**

Allegation that awardee may have negotiated its option price, contrary to sealed bidding principles, is unsubstantiated where record indicates that option price, upon which option was exercised at time of contract award, was same as that contained in awardee's low bid upon bid opening.

**PROCUREMENT**  
**Sealed Bidding**  
**Contract Award Notification**  
**Procedural Defects**

Failure to adequately notify protester of award, and exercise of option at time of award, is merely a procedural deficiency and does not affect the validity of an otherwise properly awarded contract.

**PROCUREMENT**  
**Sealed Bidding**  
**Post-Bid Opening Modification**  
**Low Bid Displacement**  
**Propriety**

Exception allowing consideration of late modification of an otherwise successful bid does not apply to a protester whose bid was not low. A bidder may not revise its bid price downward, after bid opening, where the revision has the effect of displacing the low bid of another bidder.

**PROCUREMENT**

**B-224824.2 Nov. 12, 1986**

**Bid Protest**

**86-2 CPD 556**

**GAO Procedures**

**GAO Decisions**

**Reconsideration**

**PROCUREMENT**

**Contract Management**

**Contract Administration**

**GAO Review**

Prior decision is affirmed which held that compliance with a solicitation's U.S.-flag vessel preference clause is a matter of contract administration not for review under the General Accounting Office's bid protest function where the agency's interpretation and application of the clause had no direct bearing upon the propriety of the source selection decision, which was solely on the basis of the lowest-priced technically acceptable offer as set forth in the solicitation.

**PROCUREMENT**

**B-224058 Nov. 13, 1986**

**Socio-Economic Policies**

**86-2 CPD 557**

**Small Businesses**

**Discrimination Allegation**

**Allegation Substantiation**

**Evidence Sufficiency**

**PROCUREMENT**

**Specifications**

**Minimum Needs Standards**

**Competitive Restrictions**

**Performance Specifications**

**Geographic Restrictions**

Protest that procurement of oxygen supply services on a state-wide basis discriminates against small businesses is without merit where the record establishes reasonable competition from small business concerns, which submitted the three lowest bids.



**PROCUREMENT**  
Contract Management  
Contract Administration  
GAO Review

B-224325 Con't  
Nov. 13, 1986

**PROCUREMENT**  
Sealed Bidding  
Invitations for Bids  
Terms  
Liquidated Damages  
Propriety

Protest concerning allegedly improper service contract liquidated damages clause is denied where protester does not show that the clause by its terms imposes an impermissible penalty in that there is no possible relationship between its provisions and any contemplated losses. Moreover, propriety of actual implementation of the clause involves a matter of contract administration, which General Accounting Office does not review.

**PROCUREMENT**  
Bid Protest  
GAO Procedures  
Protest Timeliness  
Deadlines  
Constructive Notification

B-224980.2 Nov. 13, 1986  
86-2 CPD 559

**PROCUREMENT**  
Bid Protest  
GAO Procedures  
Protest Timeliness  
10-Day Rule

Protest is untimely where not filed within 10 days after protester knew the basis of its protest. Protester's apparent lack of knowledge of the 10-day filing requirement is not a defense to dismissal of its protest as untimely since protesters are held to have constructive notice of GAO Bid Protest Regulations through their publication in the Federal Register.

**PROCUREMENT**  
**Bid Protest**  
**Moot Allegation**  
**GAO Review**

**B-225358 Nov. 13, 1986**  
**86-2 CPD 560**

Protest against rejection of an offer is academic where the agency terminates the protested contract for the convenience of the government because it agrees that evaluation under the Buy American Act was improper.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Foreign Products**  
**Evaluation**  
**Equality**

Under Department of Defense Supplement to the Federal Acquisition Regulation, when all offers are for foreign end products, they should be evaluated on an equal basis, without application of a Buy American Act factor.

**PROCUREMENT**  
**Contract Management**  
**Contract Administration**  
**Convenience Termination**  
**Resolicitation**  
**GAO Review**

Agency's decision to resolicit after termination of an improperly awarded contract is not objectionable when the agency's needs have changed and the change may have an effect on price. Under these circumstances, a protester is not entitled to an award under the original solicitation.

**PROCUREMENT** **B-224485 Nov. 14, 1986**  
**Competitive Negotiation 86-2 CPD 561**  
**Offers**  
**Price Adjustments**  
**Late Submission**  
**Acceptability**

Agency is not obligated to consider late offer to reduce price where record shows that agency had reasonable basis for not holding discussions and requesting best and final offers which would have permitted timely consideration of revised price.

**PROCUREMENT** **B-225100 Nov. 14, 1986**  
**Socio-Economic Policies 86-2 CPD 562**  
**Small Businesses**  
**Responsibility**  
**Competency Certification**  
**GAO Review**

General Accounting Office will not review an agency's rejection of a small business bidder as nonresponsible where, following the agency's referral of the contracting officer's negative responsibility determination to the Small Business Administration (SBA), the bidder failed to provide information required by the SBA for a certificate of competency.

**PROCUREMENT** **B-225424 Nov. 14, 1986**  
**Bid Protest**  
**Non-Prejudicial Allegation**  
**GAO Review**

Protest of contracting agency's unspecified past, present and proposed actions involving the planning, construction and acquisition of a telecommunications system will not be considered because under Bid Protest Regulations only timely protests filed by interested parties involving specific procurement actions are considered.



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

**B-223635.3 Con't**  
**Nov. 17, 1986**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Competitive Ranges**  
**Exclusion**  
**Discussion**

Protest that agency failed to hold meaningful discussions before eliminating proposal from competitive range is without merit where agency sent protester questions that should have led the protester into the areas of its proposal with which the agency was concerned, and protester was given opportunity to revise proposal with responses to these questions.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation Errors**  
**Allegation Substantiation**

Protest that in evaluating protester's proposal, the agency failed to follow the stated evaluation criteria and evaluated related subfactors inconsistently, is without merit where the criteria applied by the agency were reasonably related to the stated factors and the record shows that scoring under different subfactors in fact is consistent.

**PROCUREMENT**  
**Sealed Bidding**  
**First-Article Testing**  
**Prior Contractors**  
**Waiver**  
**Propriety**

**B-223742 Nov. 17, 1986**  
**86-2 CPD 564**

General Accounting Office recommends that contracting agency waive requirement for first article tests for prior producer of aluminum frame folding cots where agency determination not to waive was based on extended break in production combined with changes to specifications since then, and record does not establish that agency considered lack of complexity of cots, apparent insignificance of changes or fact that since its last full cot contract firm has furnished satisfactory cot components that include those changes.

**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**Federal Supply Schedule**  
**Purchases**  
**Justification**  
**Low Prices**

**B-223977 Nov. 17, 1986**  
**86-2 CPD 565**

Protest against issuance of delivery order to lower priced Federal Supply Schedule contractor on the ground that selected system did not offer all of the features required by contracting agency is denied where system ordered meets all written specifications and record indicates that protester's belief that more features were required resulted from its communications with unauthorized agency personnel.

**PROCUREMENT**

**B-224013 Nov. 17, 1986**

**Bid Protest**

**86-2 CPD 566**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest against solicitation impropriety--allegedly ambiguous and overly restrictive specification--is untimely when filed with agency after the closing date for receipt of proposals. Subsequent protest to GAO is untimely where initial protest is untimely filed with contracting agency.

**PROCUREMENT**

**B-224104.2 Nov. 17, 1986**

**Bid Protest**

**86-2 CPD 567**

**GAO Procedures**

**Preparation Costs**

**PROCUREMENT**

**Sealed Bidding**

**Bids**

**Preparation Costs**

When the General Accounting Office finds that an agency had a compelling reason for canceling a solicitation, and the protester will be able to compete under a resolicitation, the protester is not entitled to bid preparation costs or the costs of pursuing the protest. These are only available when the agency has unreasonably excluded the protester from the procurement and other remedies are not available.



**PROCUREMENT** **B-224448 Con't**  
**Competitive Negotiation** **Nov. 17, 1986**  
**Requests for Proposals**  
**Evaluation Criteria**  
**Cost/Technical Tradeoffs**  
**Technical Superiority**

Although Federal Acquisition Regulation, 41 C.F.R. § 15.605(c) (1985), states that the lowest price is properly the deciding factor in many source selections, that provision does not require award on the basis of price where the solicitation specifically provides that technical factors are given greater weight.

**PROCUREMENT** **B-224595 Nov. 17, 1986**  
**Contractor Qualification** **86-2 CPD 569**  
**Responsibility**  
**Contracting Officer Findings**  
**Affirmative Determination**  
**GAO Review**

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility/Responsiveness Distinctions**

When the protester does not allege that a low bidder has taken exception to military specifications and drawings, but rather questions the firm's intent and ability to provide an interchangeable part, the allegations concern responsibility. If the procuring agency determines that the firm is responsible--a determination that the General Accounting Office generally will not review--it will be legally obligated under any contract awarded to it to provide supplies in accord with the specifications and drawings.

**PROCUREMENT**

**B-224622 Nov. 17, 1986**

**Bid Protest**

**86-2 CPD 570**

**Bias Allegation**

**Allegation Substantiation**

**Burden of Proof**

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

**PROCUREMENT**

**Competitive Negotiation**

**Competitive Advantage**

**Incumbent Contractors**

An agency is not required to discount a competitive advantage that might accrue to an offeror by virtue of incumbency so long as the advantage did not result from preferential treatment or other unfair government action.

**PROCUREMENT**

**Competitive Negotiation**

**Contract Awards**

**Administrative Discretion**

**Cost/Technical Tradeoffs**

**Technical Superiority**

Contracting agency properly may award a contract to a higher-priced, higher-rated offeror where the solicitation specifically states that the government's primary concern is the offeror's technical and management capabilities and the agency reasonably concludes that the technical and management advantages of the awardee's offer are significant enough to offset the lower evaluated cost of the protester's proposal.

**PROCUREMENT**  
**Bid Protest**  
**Agency-Level Protests**  
**Oral Protests**

B-224672 Nov. 17, 1986  
86-2 CPD 571

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Agency-level protest that agency's competitive solicitation misappropriated protester's idea is untimely when filed after proposal due date, since protest basis was apparent from the face of the solicitation. Protester's oral complaint to agency before proposal due date did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Therefore, protest to GAO, after proposal due date, is dismissed as untimely.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Purposes**  
**Competition Enhancement**

GAO will not review protest that the government should procure feasibility study from a particular firm on a sole-source basis.

**PROCUREMENT**  
**Bid Protest**  
**Agency-Level Protests**  
**Oral Protests**

**B-224672 Con't**  
**Nov. 17, 1986**

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Protest Timeliness**  
**10-Day Rule**

Protest contending proposal was improperly determined to be outside of the competitive range is dismissed as untimely when first filed with contracting agency more than 10 working days after protester was notified of the reasons for its exclusion. Protester's oral complaint to contracting agency about its exclusion did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Since the protest was not initially timely protested to procuring agency, later protest to the General Accounting Office is untimely.

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Interested Parties**  
**Direct Interest Standards**

**B-224820.2 Nov. 17, 1986**  
**86-2 CPD 572**

Direct economic interest of third-low offeror is not affected by award where second-low offeror would be awarded contract if protest of acceptance of low offer were successful. Protester therefore is not an interested party under Bid Protest Regulations to pursue the matter.

**PROCUREMENT**

**B-225377 Nov. 17, 1986**

**Bid Protest**

**86-2 CPD 573**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest of solicitation's evaluation factors is dismissed as untimely when filed with the agency after closing date.

**PROCUREMENT**

**Bid Protest**

**Premature Allegation**

**GAO Review**

Protest of evaluation of protester's proposal is premature and is dismissed when filed while agency is still considering protester's proposal for award.

**PROCUREMENT**

**B-222534.2 Nov. 18, 1986**

**Bid Protest**

**86-2 CPD 574**

**GAO Procedures**

**Preparation Costs**

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Preparation Costs**

Claim for costs is denied where record shows that protester was not denied a fair opportunity to compete for this requirement since there has been no showing that protester was unreasonably excluded from the competition.

Claim for costs based on alleged errors in agency's technical evaluation is denied where record fails to show that protester was unreasonably excluded from the competition and where there is no showing that if the alleged evaluation errors were corrected, that there is a substantial likelihood that protester would receive the award.

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

**B-222534.2 Con't**  
**Nov. 18, 1986**

Allegation that meaningful discussions were not held is denied where agency's main concern was whether protester could meet the solicitation's delivery schedule and where agency specifically requested protester during negotiations to indicate how it would meet the schedule.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Technical Acceptability**

Protest that agency should have advised offerors that agency believed that retained hardware and software was necessary in order to meet the solicitation's delivery schedule is without merit where agency's actual requirements, including the delivery dates which were to be met, were clearly stated since it was incumbent on offerors to propose a technical approach which would satisfy all contract requirements.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Risks**  
**Evaluation**  
**Technical Acceptability**

Allegation that agency improperly evaluated the risk that the protester would not meet the agency's delivery schedule because risk was not stated as an evaluation factor is denied since risk is clearly a relevant consideration in evaluating an offeror's capability and approach and where technical approach is the most important evaluation factor, risk of performance and of meeting solicitation's delivery schedule is sufficiently correlated to the offeror's technical approach so as to put offerors on notice of its application.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for Proposals**  
**Terms**  
**Interpretation**

**B-222534.2 Con't**  
**Nov. 18, 1986**

Allegation that solicitation for the Trident Sonar Maintenance Trainer--Front End Simulator (TSMT FES) which will be used to train sonar technicians for Trident submarines was issued solely as a full scale design and development effort is without merit where solicitation not only required offerors to design and develop the TSMT FES but also to fabricate and install a production unit approximately 24 months after contract award.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for Proposals**  
**Terms**  
**Liquidated Damages**  
**Propriety**

**B-223263.2 Nov. 18, 1986**  
**86-2 CPD 575**

Solicitation provision for contract payment deductions for failure to meet required delivery schedule does not impose an impermissible penalty where the protester has not shown that there is no possible relationship between the provision and reasonable contemplated losses.

**PROCUREMENT**  
**Specifications**  
**Minimum Needs Standards**  
**Competitive Restrictions**  
**Performance Specifications**  
**Management Services**

Performance standards for operation of an automotive parts store are not considered overly restrictive where the procuring agency has presented prima facie support that the restrictions are necessary to meet the agency's legitimate minimum needs and the protester has failed to show that the requirements are clearly unreasonable.



**PROCUREMENT**

**B-223994 Nov. 18, 1986**

**Competitive Negotiation**

**86-2 CPD 578**

**Offers**

**Organizational Experience**

**Evaluation**

**Propriety**

Proposal responding to solicitation leading to multiple award, task order, indefinite delivery, indefinite quantity contracts for automatic data processing planning services was properly rejected for failing to meet solicitation qualification criteria requiring the implementation of two or more major information systems, where the procuring agency reasonably found that the projects identified in the proposal were not the implementation of "major" information systems.

**PROCUREMENT**

**B-224009 Nov. 18, 1986**

**Socio-Economic Policies**

**Small Businesses**

**Responsibility**

**Competency Certification**

**GAO Review**

Allegation that agency's preaward survey and determination of nonresponsibility is in error will not be reviewed by the General Accounting Office since Small Business Administration (SBA) is empowered by statute to conclusively determine whether a small business is responsible, and after consideration of the matter under the SBA's certificate of competency (COC) procedures, the SBA declined to issue a COC.

Protest that contracting officer did not give adequate consideration to changed circumstances affecting the protester's responsibility after the Small Business Administration had declined to issue a certificate of competency (COC), is denied where record shows that contracting officer was aware of the new information and determined the offeror still was nonresponsible, and the protester has not shown that the determination was made in bad faith.



**PROCUREMENT** **B-224293 Nov. 18, 1986**  
**Sealed Bidding** **86-2 CPD 581**  
**Bid Guarantees**  
**Responsiveness**  
**Invitations for Bids**  
**Identification**

Contracting officer acted reasonably in rejecting corporate guarantee which contained no information other than an erroneous solicitation number to identify the procurement to which it pertained.

**PROCUREMENT** **B-224421.2 et al.**  
**Competitive Negotiation** **Nov. 18, 1986**  
**Requests for Proposals** **86-2 CPD 582**  
**Cancellation**  
**Justification**  
**GAO Review**

General Accounting Office will closely scrutinize whether agency has reasonable basis to cancel request for proposals where the prices have been disclosed and price is the sole award selection criteria.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for Proposals**  
**Cancellation**  
**Resolicitation**  
**Propriety**

Where the agency terminates negotiated contracts awarded to two mobilization base producers because the awards were not in accordance with request for proposals' evaluation criteria, and resolicits the requirements, instead of making the proper awards, the resolicitation can be justified by the agency decision to make three awards for substantially increased quantities of the mobilization base items in order to keep all three mobilization base producers "warm," even where this decision is first made in response to the protests against the resolicitation.



**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-223175.2 Nov. 19, 1986**  
**86-2 CPD 585**

Allegation by interested party that prior decision ignored uncontroverted evidence in the record is without merit where review shows that alleged factual misstatements are not in error.

**PROCUREMENT**  
**Specifications**  
**Minimum Needs Standards**  
**Competitive Restrictions**  
**Geographic Restrictions**  
**Justification**

**B-223905 Nov. 19, 1986**  
**86-2 CPD 586**

Protest that geographic restriction in a solicitation for international ocean freight transportation services to be provided at no cost to the government unduly restricts competition is denied where the procuring agency has shown that the restriction is needed to satisfy its minimum needs, the protester has submitted a proposal which satisfies the requirement and has not shown itself to have been competitively prejudiced, and where substantial competition under the solicitation has been received.

**PROCUREMENT**  
**Competitive Negotiation**  
**Unbalanced Offers**  
**Cost Allocation**  
**Labor Costs**  
**Justification**

**B-223935; B-223935.2**  
**Nov. 19, 1986**  
**86-2 CPD 587**

Where an offeror explains that the reason its base year price is 2.6 percent higher than its first option year price is because it will incur lower labor costs in the option year due to a shift in location of production facilities to a lower labor cost area, its offer is not mathematically unbalanced.



**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-224176.2 Nov. 19, 1986**  
**86-2 CPD 589**

**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**Preparation Costs**

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Preparation Costs**

Prior decision dismissing a protest and denying an attendant claim for the recovery of protest and bid preparation costs is affirmed. It is an essential rule of the General Accounting Office (GAO) bid protest process that a protester's entitlement to costs only arises upon a determination by GAO that an agency's procurement actions were in violation of applicable statute or regulation, and there simply can be no recovery of costs without a decision on the merits sustaining a protest filed with GAO.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Cancellation**  
**Justification**

**B-224327 Nov. 19, 1986**  
**86-2 CPD 590**

Cancellation of invitation for bids is justified when agency, after consulting with the Department of Labor, concluded that original wage determination was erroneous.



**PROCUREMENT** B-225441.2 Nov. 19, 1986  
Contract Management 86-2 CPD 593  
Contract Administration  
Subcontracts  
GAO Review

General Accounting Office (GAO) will not review a proposed award by a second-tier subcontractor because the award is not by or for the government as is necessary for GAO to review subcontractor protests.

**PROCUREMENT** B-223937; B-223937.2  
Bid Protest Nov. 20, 1986  
Non-Prejudicial 86-2 CPD 594  
Allegation  
GAO Review

Protest that agency relaxed specifications without notifying protester is dismissed where there is no showing that protester was prejudiced by the agency's actions.

**PROCUREMENT** B-224262.2 Nov. 20, 1986  
Bid Protest 86-2 CPD 595  
GAO Procedures  
GAO Decisions  
Reconsideration

**PROCUREMENT**  
Bid Protest  
GAO Procedures  
Protest Timeliness  
10-Day Rule

Decision dismissing protest as untimely on the grounds that bid documents and our decision refer to Bid Protest Regulations of different dates (1985 and 1986) is affirmed because the regulations did not change between the two dates.

**PROCUREMENT**

**B-224481; B-224489**

**Bid Protest**

**Nov. 20, 1986**

**GAO Procedures**

**86-2 CPD 596**

**Interested Parties**

**Direct Interest Standards**

Protester is not an interested party to protest that agency's issuance of solicitations restricted to one name brand only and determination of one contractor as the only responsible source resulted in the improper exclusion of a product the protester does not distribute and should, therefore, be canceled, since even if the protests were sustained on this basis, the protester would not be eligible for award because it does not market the product which it claims is excluded.

**PROCUREMENT**

**Competitive Negotiation**

**Potential Contractors**

**Exclusion**

**Justification**

Should a firm, which has not protested its exclusion from the procurements at issue, decide to attempt to meet the government's needs in the future, it should not be excluded solely upon the assumption that its equipment would be far too expensive because that is a question to be decided by the marketplace.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for Proposals**  
**Evaluation Criteria**  
**Sufficiency**

**B-224481; B-224489 Con't**  
**Nov. 20, 1986**

**PROCUREMENT**  
**Specifications**  
**Brand Name Specifications**  
**Salient Characteristics**  
**Sufficiency**

Protests alleging that requests for proposals were defective because they did not list salient characteristics or evaluation criteria are denied where the solicitations were restricted to one brand name only and contained provisions that sufficiently advised potential offerors that cost would be the determining award factor.

**PROCUREMENT**  
**Specifications**  
**Minimum Needs Standards**  
**Competitive Restrictions**  
**Brand Name Specifications**

Agency's procurement of certain cameras and camera accessories does not unduly restrict competition where agency establishes convincingly that its needs can only be met by one contractor, and while disagreeing with the agency's determination of its minimum needs, protester fails to show that agency's determination has no reasonable basis or, as protester argues, that it has cameras which will meet the government's minimum needs.

**PROCUREMENT**

B-225213-O.M. Nov. 20, 1986

**Socio-Economic Policies  
Labor Standards  
GAO Procedures  
Procedural Changes**

By this memorandum, new procedures are established for Davis-Bacon Act and Related Acts case-handling. It provides that all submissions involving the Davis-Bacon Act be sent to the Office of General Counsel first; immediately thereafter, copies of the documents necessary to make payment and to debar for Related Acts are to be sent to the Claims Group. The Claims Group is to send the Office of General Counsel information indicating the status of funds in the case. When one of these cases is closed, the Department of Labor submission will be forwarded to the Claims Group for storage in the associated Z-file. All submissions not involving the Davis-Bacon Act are to be sent directly to the Claims Group for processing in accordance with established procedures. In cases involving both Davis-Bacon Act and Related Acts debarments, any subsequent debarment under the Davis-Bacon Act relates back to the date of the Related Acts debarments where the debarments arose out of the same event. Standard forms---including one to be sent to the Department of Labor when all the payments that can be made have been made---are also provided for use in transmitting required materials and information under these procedures.

**PROCUREMENT**

B-224250 Nov. 21, 1986

**Bid Protest**

86-2 CPD 597

**Moot Allegation****GAO Review**

Protest that contracting agency extended and expanded the coverage of a contract, by contract modification, without obtaining competitive bids is academic where agency rescinds protested contract modification.

**PROCUREMENT**

**B-224312 Nov. 21, 1986**

**Bid Protest**

**86-2 CPD 598**

**Bias Allegation**

**Allegation Substantiation**

**Evidence Sufficiency**

**PROCUREMENT**

**Competitive Negotiation**

**Technical Evaluation Boards**

**Bias Allegation**

**Allegation Substantiation**

**Evidence Sufficiency**

Even though a solicitation originally describes one manufacturer's equipment, when the contracting agency amends it to permit consideration of proposals for equipment that either eliminates the need for special features or meets requirements in a different way than that specified, the protester has not shown bias in favor of the equipment originally described. Moreover, the General Accounting Office will not sustain a protest based on inference or supposition.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Technical Acceptability**

The General Accounting Office does not sustain protests regarding technical acceptability determinations in the absence of a showing that contracting officials acted unreasonably or violated procurement statutes and regulations. When a protester does not address specific deficiencies cited by evaluators or explain unsatisfactory performance during a demonstration of its equipment, the protester has not established unreasonableness or statutory and regulatory violations.



**PROCUREMENT**  
**Sealed Bidding**  
**Unbalanced Bids**  
**Materiality**  
**Responsiveness**

**B-224273 Con't**  
**Nov. 24, 1986**

A bid is not materially unbalanced where there is no reasonable doubt that the estimated quantities in the solicitation are inaccurate so as to call into question whether the bid represents the lowest ultimate cost to the government.

**PROCUREMENT**  
**Bid Protest**  
**Allegation Substantiation**  
**Burden of Proof**

**B-224505 Nov. 24, 1986**  
**86-2 CPD 603**

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**In-House Performance**  
**Cost Evaluation**  
**Government Estimates**  
**Deadlines**

Where the protester contends that the agency submitted its management study under an Office of Management and Budget Circular A-76 cost comparison more than 2 months late, and the protester's only evidence is its own unsupported statement, but the record indicates that the management study was in fact completed and submitted on time, protester has not carried its burden of proof.



**PROCUREMENT**  
**Bid Protest**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-225000.2 Nov. 24, 1986**  
**86-2 CPD 605**

Request for reconsideration of a decision dismissing a protest as untimely filed is dismissed where the request for reconsideration does not contain a statement of factual or legal grounds upon which reversal could be deemed warranted, but instead merely contains a single allegation, which, even if accepted as fact, would not warrant reversal of the dismissal of the protest.

**PROCUREMENT**  
**Contractor Qualification**  
**Responsibility**  
**Contracting Officer Findings**  
**Affirmative Determination**  
**GAO Review**

**B-225217 Nov. 24, 1986**  
**86-2 CPD 606**

General Accounting Office will not review a contracting agency's affirmative determination of responsibility unless there is a showing that the determination may have been made fraudulently or in bad faith by the contracting officials or that definitive responsibility criteria in the solicitation have not been applied properly. Protester fails to make any reasonable showing of bad faith where protester merely makes unsupported statement that awardee was found responsible despite negative preaward survey recommendation based on contracting agency's desire to make award before funds for the contract expired.



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

**B-223924 Nov. 25, 1986**  
**86-2 CPD 608**

**Errors**  
**Post-Bid Opening Withdrawal**  
**Propriety**

**PROCUREMENT**  
**Sealed Bidding**  
**Low Bids**  
**Error Correction**  
**Price Adjustments**  
**Propriety**

Protest of the contracting agency's decision to allow upward price correction of an allegedly mistaken low bid is sustained where the worksheets, adding machine tape, and subcontractor quotation telephone memorandum submitted to support the mistake claim do not establish the intended bid by clear and convincing evidence; claimant may, however, withdraw its bid since the evidence presented does reasonably support the existence of a mistake.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for Proposals**  
**Advance Approval**  
**Administrative Policies**  
**GAO Review**

**B-224251 Nov. 25, 1986**  
**86-2 CPD 609**

Alleged failure by contracting agency to comply with internal instructions regarding preissuance approval of solicitation is a matter for consideration within the agency itself rather than through the bid protest process.



**PROCUREMENT** **B-224434 Nov. 25, 1986**  
**Competitive Negotiation 86-2 CPD 611**  
**Offers**  
**Competitive Ranges**  
**Exclusion**  
**Administrative Discretion**

Determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. However, GAO will determine whether the evaluation was arbitrary, that is, unreasonable or in violation of procurement regulations.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Competitive Ranges**  
**Exclusion**  
**Evaluation Errors**

Where offeror excluded from the competitive range was found marginally satisfactory on the technical evaluation, but was never scored on its price proposal and the solicitation called for evaluation of technical and price proposals, agency violated FAR § 15.609(a) by not scoring offeror's price proposal prior to determining competitive range.

**PROCUREMENT** **B-225069.2 Nov. 25, 1986**  
**Bid Protest 86-2 CPD 612**  
**Patent Infringement**  
**GAO Review**

Claim of possible patent infringement does not provide a basis for the General Accounting Office to object to an award since questions of patent infringement are not encompassed by GAO's bid protest function.



**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Signatures**  
**Omission**

**B-223995 Nov. 26, 1986**

Bid which included typewritten name and title of person authorized to sign, but no signature, was properly rejected as nonresponsive and omission was not subject to waiver as minor informality.

Failure of invitation for bid to require a bid bond or contain an explicit warning that failure to sign one's bid would result in rejection of bid as nonresponsive does not provide grounds to waive, as a minor informality, missing signature in protester's bid.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Procedural Defects**  
**Materiality**

Use of an outdated Standard Form 33 bid form was a procedural deficiency which did not eliminate the requirement for a signature on the bid.

**PROCUREMENT**  
**Bid Protest**  
**Allegation**  
**Abandonment**

**B-224128 Nov. 26, 1986**

Where the agency report rebuts protester's allegations with regard to invitation for bids deficiencies, and protester fails to respond to agency's rebuttal in its comments on the agency's report, the issues are considered abandoned and will not be considered.



**PROCUREMENT**

**B-224185 Nov. 28, 1986**

**Bid Protest**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest based upon alleged improprieties in a solicitation (allegedly unduly restrictive terms) which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Technical Acceptability**

**PROCUREMENT**

**Specifications**

**Performance Specifications**

**Product Reliability**

**Performance Capabilities**

Solicitation requirement that microwave radio equipment to be furnished have been operated successfully as a full integrated system carrying real traffic in either military or commercial applications is not satisfied by an offeror proposing to furnish equipment that will not become operational until the scheduled delivery of the system in the future.

**PROCUREMENT**

**B-224198 Nov. 28, 1986**

**Competitive Negotiation  
Discussion  
Adequacy  
Criteria**

Although procuring agencies generally must conduct meaningful discussions with all offerors whose proposals are in the competitive range in order to point out weaknesses or deficiencies in the proposals and to allow an opportunity for proposal revision, this requirement does not extend to an explicit exception taken by an offeror to a material solicitation requirement. Therefore, where a proposal was ultimately rejected as technically unacceptable because of the protester's expressed intent not to comply with a clear requirement to provide full software maintenance, the fact that the agency may not have conducted comprehensive discussions with regard to the exception taken did not unreasonably exclude the protester from the procurement.

**PROCUREMENT**

**B-224682 Nov. 28, 1986**

**Contract Management  
Contract Administration  
Contract Terms  
Compliance  
GAO Review**

Contractor's inability to begin performance on scheduled date, where contractor's quotation took no exception to this requirement, is a matter of contract administration and not for consideration by General Accounting Office.

**PROCUREMENT**  
**Small Purchase Method**  
**Competition**  
**Use**  
**Criteria**

**B-224682 Con't**  
**Nov. 28, 1986**

Small purchase procedures, as implemented by the Federal Acquisition Regulation, require agencies to obtain competition to the maximum extent practicable. The use of competitive procedures by prime contractor for federal agency is therefore proper, notwithstanding that previous awards for similar acquisitions were allegedly made on a sole-source basis.

**MISCELLANEOUS TOPICS**

**MISCELLANEOUS TOPICS                      B-216021    Nov. 18, 1986**

**Federal Administrative/Legislative Matters**

**Administrative Reports**

**Congressional Submission**

**Executive Branch Personnel**

**Part-Time Employment**

General report on OPM's actions in administration of competitive service required by 5 U.S.C. § 1308(a) was medium for OPM's reporting to Congress on part-time employment as required by section 3(a) of the Federal Employees Part-Time Career Employment Act of 1978, as amended, 5 U.S.C. § 3407. Since subsequent enactment of Congressional Reports Elimination Act of 1980 amended 5 U.S.C. § 1308 so as to eliminate the general annual report of 5 U.S.C. § 1308(a), OPM is no longer required to submit to Congress annual report on agency part-time programs.

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United States

General

