



132514

UNITED STATES GENERAL ACCOUNTING OFFICE

CHARLES A. BOWSER

Comptroller General of the United States

MILTON J. SOCOLAR

Special Assistant
to the Comptroller General

HARRY R. VAN CLEVE

General Counsel

JAMES F. HINCHMAN

Deputy General Counsel

This publication is prepared in the
Office of the General Counsel
Legal Information and Reference Service Branch
Index-Digest Section

Manager, Legal Information and Reference Service Branch
Randall L. Byle

Supervisory Attorney-Advisor
Christine M. Kopocis

Editor-in-Charge
Margaret L. Carey

For:

Telephone research service regarding Comptroller
General decisions: (202) 275-5028

Information on pending decisions: (202) 275-5436

Copies of decisions: (202) 275-6241

Copies of GAO publications: (202) 275-6241

Request to be placed on mailing list:
(202) 275-5742

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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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

NOTICE

Effective October 1, 1986, a new controlled vocabulary is being used to index the documents of GAO's Office of General Counsel. Changes in the vocabulary in this publication are reflected in the chapter titles and the index entries (headings). Copies of the vocabulary with introductory material explaining how to use the vocabulary to retrieve documents will be mailed early in 1987 to all individuals currently on GAO's distribution list for this publication.

October 1986

Contents

	<u>Page</u>
Table of Decisions	I
Digests:	
Appropriations/Financial Management	A-1
Civilian Personnel	B-1
Military Personnel	C-1
Procurement	D-1
Miscellaneous Topics	E-1
Index	i

TABLE OF DECISIONS

October 1986

	<u>Oct.</u>	<u>Page</u>		<u>Oct.</u>	<u>Page</u>
B-205208.2	21...	D-51	B-223447	10...	A- 4
B-217578	16...	A- 5	B-223493	31...	D-80
B-217935	7...	B- 1	B-223530	15...	D-37
B-218597.3	17...	D-42	B-223531	16...	D-40
B-218981	7...	B- 1	B-223547.2	2...	D- 5
B-219801	10...	E- 2	B-223578	24...	D-58
B-219988.8	23...	D-54	B-223585.2	1...	D- 1
B-220522.2	17...	E- 5	B-223609.2	17...	D-42
B-221641	16...	B- 4	B-223618	10...	A- 4
B-221663	10...	D-30	B-223649	17...	D-43
B-221672	16...	B- 5	B-223660	15...	D-37
B-221888.2	15...	D-36	B-223729	3...	D-11
B-222038	31...	B- 8	B-223734	21...	C- 3
		A- 7	B-223756	9...	D-26
B-222105	3...	D- 9	B-223818	28...	D-66
B-222267	10...	C- 1	B-223826.2	8...	D-21
B-222313.4	2...	D- 3	B-223827	21...	D-52
B-222383	10...	B- 3	B-223849	14...	D-35
B-222425.3	1...	D- 1	B-223923	29...	D-71
B-222448.5	30...	D-75	B-223928	17...	D-43
B-222584.2	16...	D-40	B-223929	27...	D-64
B-222591.2	9...	D-25	B-223945	30...	D-76
B-222603.3	2...	D- 4	B-223947	8...	D-22
B-222635	8...	D-20	B-223951	20...	D-47
B-222645	10...	D-30	B-223968	29...	D-71
B-222700	17...	B- 6	B-223974	24...	D-59
B-222711	17...	B- 6	B-223975.2	28...	D-67
B-222908	17...	E- 6	B-223976	23...	D-55
B-222932	15...	C- 1	B-223988	29...	D-72
B-222996	1...	A- 1	B-223991	20...	D-48
B-223098)			B-224000,		
B-223098.2)	10...	E- 4	et al.)	30...	D-77
		A- 3	B-224007	28...	D-67
B-223146	7...	E- 1	B-224014.3	23...	D-55
B-223289.5	30...	D-76	B-224021.2	24...	D-60
B-223306	23...	B- 7	B-224079	28...	A- 6
B-223364	24...	B- 8	B-224093	15...	D-38
B-223366	3...	D- 9	B-224098.2	6...	D-13
B-223394	14...	D-34	B-224140	29...	D-74

TABLE OF DECISIONS - Con.

	<u>Oct.</u>	<u>Page</u>		<u>Oct.</u>	<u>Page</u>
B-224165	7...	D-19	B-224477	1...	D- 2
B-224166	29...	D-74	B-224491	17...	D-46
B-224173.2	7...	D-19	B-224500	2...	D- 8
B-224176	2...	D- 5	B-224537.2	27...	D-66
B-224211	27...	D-64	B-224539	20...	D-48
B-224233.2	30...	D-77	B-224552	24...	D-62
B-224236	3...	D-11	B-224558	22...	D-54
B-224252	9...	D-27	B-224600	8...	B- 2
B-224256	8...	D-23	B-224612.2	8...	D-24
B-224262	24...	D-61	B-224683	15...	D-39
B-224266	9...	D-28	B-224689	31...	A- 7
B-224266.2	24...	D-61	B-224692.2	20...	D-50
B-224267	24...	D-62	B-224725	20...	D-51
B-224268	9...	D-28	B-224735.2	9...	D-28
B-224269.2	28...	D-68	B-224740.2	21...	D-53
B-224270	16...	D-40	B-224785	10...	D-32
B-224275	31...	D-82	B-224795	7...	A- 2
B-224308	10...	D-30	B-224803	6...	D-17
B-224339.3	16...	D-41	B-224807	8...	A- 2
B-224359	22...	D-53	B-224821	6...	D-18
B-224365	17...	D-44	B-224824	10...	D-32
B-224368	2...	D- 6	B-224828	1...	A- 1
B-224370.2	2...	D- 6	B-224835	1...	D- 3
B-224373	30...	D-78	B-224841	16...	A- 5
B-224375	6...	D-14	B-224843	9...	D-29
B-224392.2	2...	D- 7	B-224877)		
B-224394	17...	D-44	B-224878)	16...	D-42
B-224395	6...	D-16	B-224887	10...	D-33
B-224397	3...	D-12	B-224903	30...	D-79
B-224407	2...	D- 8	B-224923.2	28...	D-69
B-224410.2	3...	D-13	B-224927	23...	D-56
B-224416	17...	D-45	B-224932	22...	D-54
B-224432	7...	D-19	B-224989	28...	A- 6
B-224449	27...	D-65	B-225033	28...	D-69
B-224450)			B-225041	29...	D-75
B-224450.2)	21...	D-52	B-225042	30...	D-79
B-224452	16...	D-41	B-225380	24...	D-63
B-224458	10...	D-31	B-225406	23...	D-56
B-224466	31...	D-83	B-225417	28...	D-70
B-224467	31...	D-84	B-225421	31...	D-85
B-224472	8...	D-23			

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-222996** **Oct. 1, 1986**
Cashiers
Relief
Physical Losses
Theft

Department of Agriculture, Forest Service, principal imprest fund cashier granted relief from liability for shortage of funds caused by burglary of locked safe at night. Thief obtained combination from locked desk of District Ranger. Since evidence was clear that burglary had occurred, and no fault or negligence could be attributed to accountable officer, GAO concurs in agency's determination that relief be granted under 31 U.S.C. § 3527(a).

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process **B-224828** **Oct. 1, 1986**
Funds Transfer
Unobligated Balances
Authority

Proposed language in the Military Construction Appropriation Act, 1987, would permit the transfer of unobligated balances of several fiscal year 1986 appropriations acts to be used for economic assistance for Central American Democracies in fiscal year 1987. Ordinarily such language would not be considered as permitting the transfer of expired unobligated amounts, unless there is a clear indication in the statutory language or legislative history that the intent of the provision is to appropriate expired balances. The legislative history of the Military Construction Appropriation Act, 1987, supports the view that the transfer authority applies to expired balances.

Authority to obligate unobligated balances of appropriations that have expired constitutes new budget authority of the year for which the funds are made available.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-224795 Oct. 7, 1986

Disbursing Officers

Relief

Illegal/Improper Payments

Substitute Checks

Relief is granted Army disbursing official under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. 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-224807 Oct. 8, 1986

Disbursing Officers

Relief

Illegal/Improper Payments

Substitute Checks

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

Appropriation Availability B-223098; B-223098.2

Purpose Availability Oct. 10, 1986

Specific Purpose

Restrictions

Publicity/Propaganda

"Suggested editorials" prepared by the Small Business Administration (SBA) for distribution to newspapers violate section 601 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriation Act, 1986, Pub. L. No. 99-180, 99 Stat. 1136, 1168 (1985), which prohibits the use of SBA appropriations for "publicity and propaganda." The editorials, prepared by SBA for publication as the ostensible editorial position of the recipient newspapers, are misleading as to their origin and reasonably constitute "propaganda" within the common understanding of that term. The SBA "suggested editorials" are beyond the range of acceptable agency public information activities and, accordingly, violate the "publicity and propaganda" prohibition of section 601.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223447 Oct. 10, 1986

Purpose Availability

Training Expenses

Awards/Honoraria

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Purpose Availability

Training Expenses

Membership Fees

Upon a determination that a need for public speaking training exists among its employees, and that this need can most efficiently and effectively be met through membership in the Toastmasters International organization, the Rock Island District Army Corps of Engineers may authorize the payment of Toastmasters International membership fees as a necessary training expense pursuant to 5 U.S.C. §§ 4101-18 (1982). Army Corps of Engineers appropriations are not available to pay for trophies which are to be awarded to selected Toastmasters International members.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Judgment Payments B-223618 Oct. 10, 1986

Distribution

Corporate Entities

Stockholders

Proceeds of Foreign Claims Settlement Commission award to Eitingon Schild Co., Inc., should be distributed to the corporation's shareholders in proportion to the interest which they held at the time the corporation was dissolved.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-217578 Oct. 16, 1986

Purpose Availability

Appropriation Restrictions

Government Corporations

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process

Appropriated Funds

Definition

WORDS AND PHRASES

"Appropriated Funds"

General Counsel of the Saint Lawrence Seaway Development Corporation is advised that the Corporation does operate with appropriated funds. The term "appropriated funds" includes not only funds appropriated by Congress out of the Treasury, but also other funds specifically made available by statute for obligation or expenditure by a Government entity. The Comptroller General, however, has taken the position that the Corporation is subject only to restrictions on its use of appropriations that can be directly implied from its enabling legislation, that are included in appropriation acts applicable to the Corporation, or that are made specifically applicable to Government corporations.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-224841 Oct. 16, 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 no longer grant relief if Army delays more than 3 months in forwarding the debt to your collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-224079 Oct. 28, 1986

Cashiers

Relief

Illegal/Improper Payments

Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing Officers

Relief

Illegal/Improper Payments

Forgeries

U.S. Army Finance and Accounting Officer is relieved of liability for improper payment made by subordinate cashier because he maintained and supervised an adequate system of procedures to prevent improper payments. The cashier is also relieved because she followed all prescribed procedures for cashing checks notwithstanding that the payee circumvented those procedures through criminal activity.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-224989 Oct. 28, 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

**Claims Against Government B-222038 Oct. 31, 1986
Burden of Proof**

In any case involving a claim against the Federal Government for payment, the burden is on the claimant to provide evidence to demonstrate his entitlement to be paid. When the case record demonstrates that a claimant has made material misrepresentations and inconsistent statements of fact in support of his claim, then the claim is too doubtful to be approved for payment.

APPROPRIATIONS/FINANCIAL MANAGEMENT

**Accountable Officers B-224689 Oct. 31, 1986
Disbursing Officers
Relief
Illegal/Improper Payments
Forgeries**

Army Finance Officer and subordinate cashiers are relieved of liability for improper payment resulting from the fraudulent use of improperly issued identification cards and stolen checks. Finance officer maintained an adequate system of supervision and the cashiers followed these procedures.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-217935 Oct. 7, 1986

Compensation

Overtime

Night Differentials

Eligibility

Evidence Sufficiency

Upon reconsideration of decision B-217935, April 30, 1986, the Comptroller General concludes that the claimant, a former employee of the Veterans Administration, is not entitled to night pay differential for overtime work performed during his employment with that agency between 1976 and 1980. The claimant has the burden of proving that night work conducted between 6 p.m. and 6 a.m. is "regularly scheduled" within the meaning of this term as it appears in the applicable statute, 5 U.S.C. § 5545(a). Despite the presentation of new evidence, the claimant has again failed to provide the evidentiary support necessary to establish that the overtime worked at night was regularly scheduled and qualified for night differential under 5 U.S.C. § 5545(a).

CIVILIAN PERSONNEL

B-218981 Oct. 7, 1986

Compensation

Overpayments

Error Detection

Debt Collection

Waiver

Employee of the Department of the Interior requests reconsideration of the denial of his request for waiver of an overpayment he received when he was erroneously credited with a cost-of-living allowance in Alaska. He suggests that since he took responsibility for calling attention to this overpayment resulting from an administrative error, waiver should be granted. If, however, an employee is cognizant of an error, even though he may inform the employing agency of the error, in the absence of official notice that the payments were not in error, the employee cannot reasonably expect to retain the overpayment. Hence, in this case the denial of waiver is sustained.

CIVILIAN PERSONNEL

B-224600 Oct. 8, 1986

Compensation**Employment Status****New Appointment****Vested Rights**

An individual claims a day's pay for the time he spent filling out personnel forms in furtherance of his application for a position of employment with a Federal agency. After completing the initial processing at the personnel office, the claimant declined the offer of employment and departed the facility without ever having engaged in the performance of the duties of the position. His claim may not be paid since it is fundamental that rights to compensation under the civil service laws do not accrue to a person who has been offered an appointment to a position until that person attains the status of a Federal employee by accepting the appointment and entering on duty.

CIVILIAN PERSONNEL

B-222383 Oct. 10, 1986

Compensation**Overpayments****Error Detection****Debt Collection****Waiver****CIVILIAN PERSONNEL****Compensation****Upgrading****Time Restrictions****Violation**

General Schedule (GS) employee, a Public Contact Assistant with 11 years of Federal service, was promoted to GS-6, step 5, on May 15, 1983. After a desk audit which upgraded her position, and due to administrative error, a violation of the 1-year time restriction on promotions, she was promoted to GS-7, step 4, effective August 21, 1983. This action resulted in an overpayment of salary. There is no evidence of fraud, misrepresentation, or lack of good faith on the part of the employee. Although claimant had 11 years of Federal service, she did not possess any specialized knowledge of the Federal pay system. While she should have been generally aware of the 1-year time restriction on promotions, the upgrading of her position to GS-7 and certain ambiguous notations on her Standard Form 50's caused her to reasonably conclude that she was entitled to her promotion to GS-7 at the time she received it. Thus, she was not at fault in the overpayment of salary. Waiver of the overpayment is granted.

CIVILIAN PERSONNEL

B-221641 Oct. 16, 1986

Compensation

Retroactive Compensation

Employment Discrimination

Travel Expenses

Reimbursement

CIVILIAN PERSONNEL

Travel

Commuting Expenses

Reimbursement

Eligibility

A handicapped employee who was found to have suffered discrimination as the result of his handicap may not be awarded expenses for commuting to his permanent duty station even though his transfer to that duty station was found to have been the result of discrimination. Neither the Civil Rights Act, as amended (42 U.S.C. 2000e-16), nor the Back Pay Act (5 U.S.C. § 5586) provides authority to reimburse travel expenses which are incidental to the discrimination and are not of the type which would have been reimbursed but for the acts of discrimination. The expenses in this case were incurred because of the employee's decision to move his residence to a location 80 miles away from his new duty station.

CIVILIAN PERSONNEL

B-221672 Oct. 16, 1986

Compensation

Overpayments

Error Detection

Debt Collection

Waiver

CIVILIAN PERSONNEL

Compensation

Payroll Deductions

Annuity Deductions

Underdeductions

Error Detection

Reemployed annuitant was overpaid due to administrative error in calculating payroll deductions. Part of erroneous overpayment resulted from initial lump sum payment supposedly due employee on account of earlier over-deductions from salary. Employee brought this overpayment to attention of proper authorities and subsequently reasonably relied on their assurance of correctness. Balance of erroneous overpayments resulted from administrative failure to fully deduct annuity payments from employee's pay, and employee failed to review pay records or take corrective action. Waiver with respect to initial lump sum payment is granted pursuant to 5 U.S.C. § 5584 (1982); waiver with respect to subsequent under-deductions is denied since employee is not without fault in failing to review documents indicating overpayments.

CIVILIAN PERSONNEL

B-222700 Oct. 17, 1986

Compensation**Overtime****Eligibility****Non-Workday Travel****Justification**

Department of Army employee may not receive overtime compensation in connection with overseas travel that was performed outside of regularly scheduled administrative workweek. Although meeting dates could not be controlled by agency, 75-day advance notice of meeting dates provided ample opportunity for employee and agency to schedule actual travel planning requirements in advance so that it could be performed within the employee's regularly scheduled workweek. Claims for overtime compensation are denied since record fails to indicate any "immediate official necessity" for employee's travel within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) and decisions of this Office construing that overtime entitlement authority.

CIVILIAN PERSONNEL

B-222711 Oct. 17, 1986

Travel**Temporary Duty****Return Travel****Administrative Discretion**

The Department of Housing and Urban Development (HUD) regulations provide that, generally, employees may be ordered to return to their official duty stations from long term temporary duty stations at intervals of not less than 2 weeks, if the cost is outweighed by such factors as increased morale and reduced recruitment costs. Under these regulations, HUD has the discretion to order return travel on a weekly basis if warranted by the particular circumstances of the case. Under the circumstances of this case the authorization of weekly return travel is proper.

Travel

Temporary Duty

Travel Expenses

Duty Stations

Establishment

An employee stationed in Cheyenne, Wyoming, accepted a demotion and transfer to Denver, Colorado. His family remained in the Cheyenne area and he commuted to Denver. Following the transfer, he appealed that action to the Merit Systems Protection Board. The Board ruled in his favor and required the agency to restore him to his former position and location with backpay. He now claims temporary duty travel expenses for the period, contending that, since the transfer was improper, his permanent duty station remained in Cheyenne and his duty in Denver was temporary. The claim is denied. Remedial action restoring an employee to old position and location does not convert the new station from permanent to temporary, even though expenses incurred were incurred because of the erroneous transfer. The only remedy available to recompense losses sustained due to unwarranted personnel actions is 5 U.S.C. § 5596 which limits recovery to pay, allowances and differentials.

CIVILIAN PERSONNEL

B-223364 Oct. 24, 1986

Relocation

Residence Transaction Expenses

Reimbursement

Eligibility

Lot Sales

Transferred employee sold single residence in two parcels to one purchaser. Although the second parcel not containing the residence was large enough to be used as a separate building site, the presumption that the second parcel was in excess of that reasonably related to the residence site within the meaning of Federal Travel Regulation para. 2-6.1 is successfully rebutted by the facts of this case. The subdivision of the property, which facilitated the sale to the buyer and protected the seller's interests, was done only to ensure the total integral sale of single residential property to sole buyer.

CIVILIAN PERSONNEL

B-222038 Oct. 31, 1986

Relocation

Household Goods

Commuted Rates

Weight Certification

Evidence Sufficiency

Federal employee's claim for reimbursement under commuted rate system for transportation of household effects is denied because employee has not submitted proper weight certificates nor any evidence upon which a constructive weight of goods shipped could be determined. Employee also may not be reimbursed actual expenses since he has provided no evidence of his expenses.

**PERSONNEL LAW:
MILITARY PERSONNEL**

MILITARY PERSONNEL

B-22267 Oct. 10, 1986

Travel

Advances

Foreign Currencies

Exchange Rates

Losses

Military member may not be reimbursed for a loss of \$81.01 he sustained in reconverting Honduran lempiras back to U.S. dollars at an exchange rate less favorable than the rate in effect on the date he converted dollars to lempiras. As a general rule, with limited exceptions not relevant here, the risk of incurring an exchange loss upon converting currency advanced for the purpose of temporary duty in a foreign country lies with the member. See 63 Comp. Gen. 554 (1984).

MILITARY PERSONNEL

B-222932 Oct. 15, 1986

Pay

Overpayments

Error Detection

Debt Collection

Waiver

Army optometry officers who were erroneously advised about their basic pay entitlements and who were then overpaid may receive favorable consideration under the statute authorizing the waiver of such overpayments if the individual in receipt of the excess pay is without fault and collection action "would be against equity and good conscience and not in the best interests of the United States." The fact that these officers were furnished information in a newsletter of a possible error, and of an impending audit, did not in the particular circumstances, operate to put them on notice that they were being overpaid and to bar waiver of subsequent overpayments.

MILITARY PERSONNEL

B-223734 Oct. 21, 1986

Pay

Retirement Pay

Claim Accrual Dates

Continuing Claims

Statutes of Limitation

MILITARY PERSONNEL

Pay

Retirement Pay

Claims

Evidence Sufficiency

An Air Force reservist was transferred to the Retired Reserve at age 60 without entitlement to military retired pay because the official records showed that he had completed only 14 of the 20 years of creditable service required to establish eligibility for Reserve retirement with pay. He claims that he performed an additional 9 years of creditable service as a reservist from July 1943 to April 1952, and that he is therefore entitled to retired pay. His claim for retirement pay first accrued in 1966, but it is a continuing claim that accrues day to day, so that the 6-year limitation period prescribed by the Barring Act, 31 U.S.C. § 3702(b), precludes consideration of only that part of the retirement claim pertaining to more than 6 years before March 1986, when the claim was filed in the General Accounting Office. However, since the member has not furnished sufficient evidence to establish that he performed service for the claimed 9-year period, the entire claim for retirement pay is denied.

MILITARY PERSONNEL**B-223734 Con't****Pay****Oct. 21, 1986****Retroactive Pay****Claim Accrual Dates****Statutes of Limitation**

A member of the Air Force Reserve was transferred to the Retired Reserve in 1966 upon reaching age 60 without receiving credit for a claimed 9-year service period from July 1943 to April 1952. His claim for pay and allowances for this 9-year period was first received in the General Accounting Office in March 1986. His claim for pay and allowances may not be considered, since it accrued no later than the date of his transfer to the Retired Reserve, and the Barring Act, 31 U.S.C. § 3702(b), bars consideration of claims received in the General Accounting Office more than 6 years after they have accrued.

PROCUREMENT LAW

PROCUREMENT B-222425.3 Oct. 1, 1986
Bid Protest 86-2 CPD 371
General Accounting Office Procedures
General Accounting Office Decisions
Reconsideration

Prior decision is affirmed on reconsideration where protester has not shown it contains any error of fact or law.

PROCUREMENT B-223585.2 Oct. 1, 1986
Contract Management
Federal Procurement Regulations/Laws
Revision
Equitable Adjustments

GAO has no comments on Federal Acquisition Regulation (FAR) case No. 85-26, a proposal to amend the Changes clauses of the FAR to provide that within 30 days of receipt of a change order a contractor must assert its right to an equitable adjustment rather than submit a proposal for an adjustment as currently required.

PROCUREMENT
Socio-Economic Policies
Federal Procurement Regulations/Laws
Revision

GAO has no comments on Federal Acquisition Circular 84-17, an interim rule concerning purchases of Caribbean Basin country end products.

PROCUREMENT B-224835 Oct. 1, 1986
Contractor Qualification 86-2 CPD 373
Responsibility
Contracting Officer Findings
Affirmative Determination
General Accounting Office Review

GAO does not review affirmative determinations of responsibility except in certain limited situations.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Contract Awards
Non-Responsible Contractors
Competency Certification

Agency properly made award to second low bidder after Small Business Administration declined to issue certificate of competency for low bidder which agency had found nonresponsible.

PROCUREMENT B-222313.4 Oct. 2, 1986
Bid Protest 86-2 CPD 375
General Accounting Office Procedures
Protest Timeliness
10-Day Rule

Protest that best and final offer was improperly excluded from consideration because it was received 2 minutes late is itself untimely since protester did not file protest within 10 days of learning of its basis for protest.

PROCUREMENT

B-222603.3 Oct. 2, 1986

Bid Protest

86-2 CPD 376

General Accounting Office Procedures

Protest Timeliness

10-Day Rule

Protest is dismissed as untimely when it is not filed within 10 working days of the date the basis for protest is first known or should have been known.

PROCUREMENT

Competitive Negotiation

Requests for Proposals

Cost Evaluation

Evaluation Criteria

Applicability

Protest that the procuring agency changed its evaluation criteria for award without amending the solicitation is dismissed as without merit when the criteria listed in the solicitation were, even by the protester's account, those which were used in the evaluation. The protester's reliance on conflicting oral advice allegedly given by agency personnel was at the protester's own risk.

PROCUREMENT B-223547.2 Oct. 2, 1986
Competitive Negotiation 86-2 CPD 378
Best/Final Offers
Descriptive Literature
Technical Information
Information Adequacy

Decision denying protest against rejection of proposal for failure to provide adequate technical information to permit evaluation is affirmed. Even if added literature describing various models of equipment and available options and configurations were provided with proposal, rather than with protest as record had indicated, literature does not identify precise configuration offered so as to permit evaluation, an inadequacy not cured by protester's blanket offer of compliance in response to the requirement for complete technical information. Moreover, protester should not have expected agency to initiate discussions after best and final offers to correct inadequacies in proposal.

PROCUREMENT B-224176 Oct. 2, 1986
Bid Protest 86-2 CPD 380
General Accounting Office Procedures
Preparation Costs

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Where the General Accounting Office has made no determination that the agency's procurement actions were in violation of applicable statute or regulation, the protester is simply not entitled to the recovery of its protest and bid preparation costs.

PROCUREMENT

B-224392.2 Oct. 2, 1986

Bid Protest

86-2 CPD 384

Bias Allegation

Allegation Substantiation

Evidence Sufficiency

Protest that contracting officials were biased against minority-owned firms is denied where allegation is based solely on inference or supposition.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Administrative Discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals and the General Accounting Office (GAO) will not disturb an evaluation when the record indicates that the conclusions reached in the evaluation were supported by information in the proposals and were consistent with the evaluation factors set forth in the solicitation. Although GAO finds that the agency determined technical scores inconsistently with method prescribed in the solicitation, this did not competitively prejudice the protester because its score remained virtually the same when properly determined.

PROCUREMENT

Competitive Negotiation

Price Reasonableness

Protest that successful offeror's price is unreasonably high based on the fact that the protester's price is about 24 percent lower is without merit, where the successful firm's price is third lowest among five offerors and the range of proposed prices is relatively narrow.

PROCUREMENT
Contractor Qualification
Debarment
Hearings
Notification

B-222105 Oct. 3, 1986

PROCUREMENT
Contractor Qualification
Debarment
Labor Standards
False Statements
Wage Underpayment

A contractor challenging our decision to debar him under the Davis-Bacon Act requests a hearing and cites several factors which he believes militate against his debarment. We advise the contractor's counsel that: (1) he is not eligible for a hearing since he had received the Department of Labor's certified letter offering him an opportunity for a hearing but failed to respond within the specified time frame; and (2) the facts which the contractor cites as militating against his debarment are not material, because the record shows that the contractor falsified certified payroll records and therefore committed a substantial violation of the Davis-Bacon Act.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Agency Notification

B-223366 Oct. 3, 1986
86-2 CPD 389

Dismissal for failure to furnish agency copy of protest within 1 day of filing at GAO as required by GAO Bid Protest Regulations, 4 C.F.R. § 21.1(d)(1986), is not warranted where agency is already on notice of bases for protest through prior agency protest, and agency is able to submit protest report within time limit prescribed under Competition in Contracting Act, 31 U.S.C. § 3553(b)(2)(A) (Supp. III 1985).

PROCUREMENT **B-223729 Oct. 3, 1986**
Small Purchase Method **86-2 CPD 390**
Discussion
Applicability

There generally is no obligation to conduct discussions under small purchase procedures.

PROCUREMENT
Small Purchase Method
Quotations
Rejection
Personnel Experience

Rejection of protester's quotation to provide training services is reasonable where quotation failed to propose personnel with expertise required by the request for quotations to perform a material task.

PROCUREMENT **B-224236 Oct. 3, 1986**
Competitive Negotiation **86-2 CPD 391**
Best/Final Offers
Late Submission
Rejection
Propriety

Protester's best and final offer, received 4 days after the date specified for receipt of best and final offers, was properly rejected where none of the exceptions outlined in the solicitation permitting consideration of a late offer applies and where protester's late best and final offer was not a modification of an "otherwise successful" offer.

PROCUREMENT

B-224397 Oct. 3, 1986

Competitive Negotiation

86-2 CPD 392

Best/Final Offers

Evaluation Errors

Allegation Substantiation

Evidence Sufficiency

Protest that two technical review panel (TRP) members participated in final selection without knowledge of protester's technical clarifications is denied since the two members discussed best and final offers with the TRP chairperson.

PROCUREMENT

Competitive Negotiation

Best/Final Offers

Technical Evaluation

Point Ratings

Protest that agency did not rescore technical proposals following discussions and receipt of best and final offers (BAFOs) is denied where agency's technical review panel discussed BAFOs and adequately reported the results of reevaluation to the selection official.

PROCUREMENT

Competitive Negotiation

Contract Awards

Administrative Discretion

Cost/Technical Tradeoffs

Technical Superiority

Award of a cost-reimbursement contract to a higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the solicitation evaluation criteria and the agency reasonably determined that the difference in technical merit was sufficiently significant to justify cost difference.

PROCUREMENT **B-224397 Con't**
Competitive Negotiation **Oct. 3, 1986**
Requests for Proposals
Government Estimates
Quantity Variances

Agency preference for proposal offering a level of effort which exceeds the government's estimate stated in the request for proposals does not constitute a substantive change in agency requirements for which a written amendment should be issued.

PROCUREMENT **B-224410.2 Oct. 3, 1986**
Specifications **86-2 CPD 394**
Minimum Needs Standards
Competitive Restrictions
Brand Name Specifications

Where a protester challenges a specification as unduly restrictive of competition this Office will not question the agency's determination of its actual needs unless there is a clear showing that the determination has no reasonable basis. Agency has shown that commercial item descriptions for modular furniture will not meet its needs in facility that will process classified information.

PROCUREMENT **B-224098.2 Oct. 6, 1986**
Bid Protest **86-2 CPD 396**
General Accounting Office Procedures
Protest Timeliness
10-Day Rule
Adverse Agency Actions

Dismissal of original protest is affirmed where protester failed to file its protest within 10 working days of adverse agency action on its agency-level protest.

PROCUREMENT **B-224375 Con't**
Competitive Negotiation **Oct. 6, 1986**
National Defense Interests
Industrial Mobilization Bases

Fact that mobilization base firms' Department of Defense Industrial Preparedness Program Production Planning Schedules (DD Form 1519) expired before procurement does not render firms ineligible for awards under solicitation restricted to mobilization base producers, since designation as such does not depend on the form and the firms were still so designated.

PROCUREMENT
Competitive Negotiation
Offers
Quantities
Multiple/Aggregate Awards

Where the solicitation calls for bidding in quantity ranges; allows for awards of any quantity less than the quantity inserted absent a clear contrary indication by the offeror; and permits the selection of any combination of multiple awards, an offeror's insertion of the maximum quantity for each range does not constitute a limitation on its offer to that quantity only, but represents an offer to furnish any quantity within the range at the entered unit price.

PROCUREMENT **B-224395 Con't**
Competitive Negotiation **Oct. 6, 1986**
Use
Criteria

PROCUREMENT
Sealed Bidding
Use
Criteria

Protest that procurement for basic skill education program should have been conducted by soliciting competitive proposals, rather than by sealed bids, is denied since Competition in Contracting Act of 1984 provides specific criteria for determining whether sealed bids or competitive proposals should be solicited, and in the Army's judgment, circumstances in present case dictated use of sealed bids.

PROCUREMENT **B-224803 Oct. 6, 1986**
Sealed Bidding **86-2 CPD 399**
Invitations for Bids
Amendments
Acknowledgment

Where bidders did not bid on any of the items encompassed by an amendment to the solicitation, there is no requirement that bids be rejected for failure to acknowledge this amendment.

PROCUREMENT **B-224821 Oct. 6, 1986**
Bid Protest **86-2 CPD 400**
General Accounting Office Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest challenging invitation for bids' failure to specify type of metal to be used for address plates being procured is untimely where not filed before bid opening.

PROCUREMENT
Sealed Bidding
Bids

B-224821 Con't
Oct. 6, 1986

Late Submission
Rejection
Propriety

Late bid was properly rejected where there was no allegation or indication of government mishandling and bid, although sent by registered or certified mail, was mailed less than 5 days before bid opening. Fact that delay in submitting bid was due to protester's attempts to clarify a provision in the invitation for bids (IFB) with the contracting agency provides no basis for consideration of the late bid.

PROCUREMENT
Sealed Bidding
Bid Guarantees

B-224165 Oct. 7, 1986
86-2 CPD 402

Post-Bid Opening Modification
Materiality

Since a bid guarantee provision in an IFB is a material requirement which must be met at the time of bid opening, a bid which is nonresponsive due to the lack of an adequate bid guarantee cannot be made responsive by furnishing the guarantee in proper form after bid opening, except under those limited conditions set forth in the Federal Acquisition Regulation, none of which are present here.

PROCUREMENT
Sealed Bidding
Bid Guarantees

Post-Bid Opening Modification
Propriety

A surety's agreement after bid opening to delete a nonresponsive provision in a bid guarantee does not constitute a permissible late modification of the bid because the bid was unacceptable as originally submitted for failing to include an adequate bid guarantee.

PROCUREMENT **B-224165 Con't**
Sealed Bidding **Oct. 7, 1986**
Bid Guarantees
Responsiveness
Sureties
Liability Restrictions

A low bid was properly rejected as nonresponsive where the bidder furnished a bid guarantee which qualified the surety's liability.

PROCUREMENT **B-224173.2 Oct. 7, 1986**
Bid Protest **86-2 CPD 403**
General Accounting Office Procedures
General Accounting Office Decisions
Reconsideration

Request for reconsideration of decision dismissing protest as dispute between private parties is denied where protester does not show any error of fact or law which warrants reversal of that decision and consideration on the merits.

PROCUREMENT **B-224432 Oct. 7, 1986**
Bid Protest **86-2 CPD 405**
General Accounting Office Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest, filed after bid opening, that solicitation's brand name or equal purchase description gave an unfair competitive advantage to brand name producer, is untimely, since it alleges solicitation improprieties apparent before bid opening.

PROCUREMENT
Sealed Bidding
Contract Awards
Propriety

B-224432 Con't
Oct. 7, 1986

Allegation Substantiation
Evidence Sufficiency

Contention that contracting agency improperly awarded brand name or equal contract without consideration of protester's low bid of an allegedly equal product lacks merit, where required descriptive literature did not accompany protester's bid, and both protester's subsequent submission of brochures and its advice that the same brochures were available in the contracting agency's copy of the Thomas Register occurred after award.

PROCUREMENT
Bid Protest

B-222635 Oct. 8, 1986
86-2 CPD 406

Non-Appropriated Funds
General Accounting Office Review

Since the General Accounting Office (GAO) decides protests that involve procurements of property or services by a federal agency, the award by a federal agency of a contract to provide the public direct computer access to information on the agency's data base is subject to GAO's bid protest jurisdiction.

PROCUREMENT **B-222635 Con't**
Competitive Negotiation **Oct. 8, 1986**
Requests for Proposals
Cost Evaluation
Evaluation Criteria
Applicability

Protest of award of a contract to provide the public with direct computer access to a copy of the agency's data base is sustained where the agency indicated in a solicitation amendment that three job samples used for the cost evaluation were to be based on transmitting 60 characters per line of data; protester, relying on this amendment, offered a price based on the time needed to transmit 60-character lines of data; and the agency accepted a price from the awardee based on the transmission of fewer than 60 characters per line of data.

PROCUREMENT **B-223826.2 Oct. 8, 1986**
Bid Protest **86-2 CPD 407**
General Accounting Office Procedures
Administrative Reports
Comments Timeliness

Dismissal of original protest for failure to furnish timely comments on agency report is reversed where protester notified GAO through an information copy of a mailgram to the contracting agency that it had not received the report by the due date.

PROCUREMENT **B-224256 Oct. 8, 1986**
Bid Protest **86-2 CPD 409**
Agency-Level Protests
Oral Protests

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
10-Day Rule

Oral complaint to the contracting agency that awardee's offer does not meet specifications did not constitute a protest to the agency since oral protests are no longer provided for under the Federal Acquisition Regulations. Therefore, a subsequent written protest filed with the contracting agency more than 10 working days after the basis of the protest was known is untimely. Since the protest was not initially timely protested to procuring agency, later protest to the General Accounting Office is untimely.

PROCUREMENT **B-224472 Oct. 8, 1986**
Contract Management **86-2 CPD 410**
Contract Administration
Contract Terms
Compliance
General Accounting Office Review

Allegation that awardee's equipment will not conform to contract requirements is a matter of contract administration which is the responsibility of the procuring agency not our Office.

PROCUREMENT
Contractor Qualification
Responsibility Criteria
Organizational Experience

Solicitation provision that bidder must have produced similar equipment and materials for a period of at least 2 years must be met as a condition of award; determination of the similarity of the equipment, however, is essentially within the discretion of the contracting agency.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Responsiveness
Descriptive Literature

B-224472 Con't
Oct. 8, 1986

Although solicitation identified protester's system as the standard for bidding purposes and indicated that equal or better products could be supplied provided all relevant information was submitted to the contracting officer for approval, awardee was not required to provide any descriptive information with its bid demonstrating how its product would meet the IFB requirements since "Brand Name or Equal" clause was omitted from the solicitation and by signing the bid, awardee has agreed to provide the items in accordance with the specifications.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Responsibility
Negative Determination
General Accounting Office Review

B-224612.2 Oct. 8, 1986
86-2 CPD 411

General Accounting Office will not review a contracting officer's determination of nonresponsibility with respect to a small business concern since the Small Business Administration is empowered by statute to determine conclusively whether a small business is responsible.

PROCUREMENT

B-222591.2 Oct. 9, 1986

Bid Protest

86-2 CPD 412

Bias Allegation

Allegation Substantiation

Burden of Proof

Protester has the burden of proving bias on the part of procurement officials, which is not met by mere speculative allegations regarding bias or the unfair conduct of a procurement.

PROCUREMENT

Bid Protest

Evidence Evaluation

Privileged Information

General Accounting Office (GAO) will consider, in camera, relevant, but sensitive material concerning an ongoing procurement which was submitted by a contracting agency to GAO, but which the agency did not provide to the protester.

PROCUREMENT

Competitive Negotiation

Offers

Competitive Ranges

Exclusion

Administrative Discretion

Determination of whether a proposal should be included in the competitive range is primarily within the contracting agency's discretion. Where an agency determines that protester's proposal was not reasonably susceptible of being made acceptable without major revisions, this is a sufficient basis for exclusion from competitive range and preaward notices need not contain specific reasons why proposal was excluded.

Agency is not required to conduct discussions with an offeror whose proposal has been determined to be outside the competitive range.

PROCUREMENT **B-223756 Con't**
Contractor Qualification **Oct. 9, 1986**
Responsibility
Contracting Officer Findings
Negative Determination
Pre-Award Surveys

Contracting officer's negative responsibility determination of protester following preaward survey is not unreasonable where it is based upon finding that one of protester's proposed subcontractors, which would perform a substantial portion of the contract, has not established quality assurance program, and upon an unsatisfactory rating in the area of financial responsibility, absent a showing by the protester to the contrary or allegation of bad faith on part of agency.

PROCUREMENT **B-224252 Oct. 9, 1986**
Bid Protest **86-2 CPD 414**
Agency-Level Protests
Oral Protests

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protester's pre-bid-opening oral complaint to contracting agency that specifications described equipment offered by only one vendor did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation. Therefore, protest to GAO, following bid opening, is dismissed as untimely.

PROCUREMENT **B-224735.2 Con't**
Bid Protest **Oct. 9, 1986**
General Accounting Office Procedures
Protest Timeliness
10-Day Rule
Effective Dates

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.

PROCUREMENT **B-224843 Oct. 9, 1986**
Sealed Bidding **86-2 CPD 418**
Bid Guarantees
Responsiveness
Signatures
Powers of Attorney

Where surety's power of attorney form attached to bid bond fails to designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety, the agency properly determined the bond to be defective and the bid nonresponsive because it is not clear whether the surety would be bound. Evidence of the authority of surety's agent to sign bid bond on behalf of the surety generally must be furnished with a bid prior to bid opening, and failure to furnish it renders bid nonresponsive.

PROCUREMENT
Contract Management
Shipment Costs
Rates
Overcharge
Set-off

B-221663 Oct. 10, 1986

Where there is persuasive evidence showing that the billing/delivering carrier advised the government to call another carrier to pick up a shipment as its agent, and the Government Bill of Lading, which was issued to the billing/delivering carrier, was receipted by the other carrier as its agent, the General Services Administration's (GSA) audit determination that charges based on the billing/delivering carrier's single-line rates were applicable (rather than the charges based on higher joint-line rates the carrier collected) was correct. Therefore, GSA's recovery of the difference as overcharges is sustained.

PROCUREMENT
Competitive Negotiation
Offers
Designs
Evaluation
Technical Acceptability

B-222645 Oct. 10, 1986
86-2 CPD 419

Contracting agency unreasonably determined that a proposal to design, develop, and supply a modular aerial spray system (MASS) for C-130 aircraft was technically acceptable where the proposed design materially fails to conform with the solicitation's requirement that the MASS be capable of being installed in any C-130 aircraft within 30 minutes.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Interested Parties
Suspended/Debarred Contractors

B-224308 Oct. 10, 1986
86-2 CPD 421

General Accounting Office will not consider a protest from a suspended firm since the firm is ineligible for a contract award and, therefore, is not an interested party to protest.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Interpretation
Terms

B-224458 Oct. 10, 1986
86-2 CPD 422

Protest that bidder was prejudiced by agency's failure to provide quantities of hazardous wastes to be collected and disposed of under the contract or to respond to protester's complaint about the question before bid opening is without merit, since the solicitation for solid waste collection and disposal services did not include handling of hazardous wastes and was not ambiguous in this respect.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Service Contracts
Wage Rates
Omission

PROCUREMENT
Socio-Economic Policies
Labor Standards
Service Contracts
Wage Rates
Omission

Protest that a Department of Labor wage determination included in a solicitation for a service contract omitted wage rates for several classes of required employees is denied since the administrative procedure for determining wages for omitted classes of prospective employees in the solicitation provided a reasonable and common basis for preparation of bids.

PROCUREMENT

B-224887 Oct. 10, 1986

Competitive Negotiation

86-2 CPD 425

Competitive Advantage

Subcontractors

Prior Contracts

There is no basis on which to prohibit potential offeror from competing under solicitation issued to reprocur services under a contract terminated for default since, even assuming offeror derived competitive advantage from subcontract work under terminated contract, the government is not required to neutralize competitive advantage enjoyed by one offeror absent evidence of preferential treatment or other unfair action by the government.

PROCUREMENT

Competitive Negotiation

Contract Awards

Default Termination

Resolicitation

Competition Enhancement

In view of requirement to maximize competition to the extent practicable when reprocurring services against a defaulting contractor's account, contracting officer acted properly in issuing a new solicitation instead of obtaining the services from the offeror next in line for award under the original solicitation.

PROCUREMENT

B-223394 Oct. 14, 1986

Bid Protest

86-2 CPD 426

**Agency-Level Protests
Information Request**

PROCUREMENT

Bid Protest

GAO Procedures

Protest Timeliness

10-Day Rule

Adverse Agency Actions

Protester's original request that contracting agency make a change in its advertised specifications did not constitute a protest and was merely an informational inquiry. Consequently, protest filed with the General Accounting Office within 10 working days of the agency's denial of the protester's subsequent protest to the agency is timely.

PROCUREMENT

Bid Protest

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest against agency's failure to purchase battery chargers along with the forklift trucks to be purchased is untimely since the fact that battery chargers would not be purchased was apparent prior to bid opening and allegation was not raised by protester until its comments to the agency report.

PROCUREMENT **B-223394** **Con't**
Specifications **Oct. 14, 1986**
Minimum Needs Standards
Competitive Restrictions
Design Specifications
Burden of Proof

Where agency has established prima facie support for its requirement that forklifts be powered by 36-volt batteries, the protester has the burden of showing the agency's position to be clearly unreasonable. Protester has not demonstrated that agency's determination that 36-volt batteries will provide more reliable and efficient forklifts is clearly unreasonable.

PROCUREMENT **B-223849** **Oct. 14, 1986**
Special Procurement **86-2 CPD 427**
Methods/Categories
Architect/Engineering Services
Contractors
Evaluation
Additional Information

Contracting agency, in procuring architect-engineering (A-E) services, may properly evaluate material other than the required qualification forms submitted by firms to show their special qualifications for the specific project even if such submissions are not specifically requested in the public announcement in the Commerce Business Daily, because Standard Form (SF) 255, "Architect-Engineer and Related Services Questionnaire for Specific Project," by which A-E firms submit qualifications data, specifically permits accompanying supplemental submissions at the discretion of competing firms.

PROCUREMENT
Specifications
Performance Specifications
Adequacy

B-223530 Con't
Oct. 15, 1986

Agency has taken sufficient steps to advise bidders of expected requirements in a maintenance contract where renovation of the facilities is underway, since the solicitation contains an inventory as of certain date, apprises the bidders of the ongoing renovation and urges bidders to conduct site visits to ascertain actual conditions of performance.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
10-Day Rule

B-223660 Oct. 15, 1986
86-2 CPD 430

Protest that agency improperly failed to send protester a solicitation is timely when filed within 10 working days of bid opening date as published in the Commerce Business Daily.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Cancellation
Justification

Contracting agency's failure to provide protester with a copy of the solicitation does not provide a compelling reason for cancellation and resolicitation where there was a significant effort to obtain competition, reasonable prices were obtained and there was no deliberate or conscious attempt to preclude the protester from competing.

PROCUREMENT

B-224093 Oct. 15, 1986

**Competitive Negotiation
Preferred Products/Services
Domestic Products
Applicability**

The restrictions of the Buy American Act do not apply to Department of Defense purchases of supplies mined, produced, or manufactured in Canada. Therefore, allegation that the contract awardee, a Canadian firm, will not manufacture the contract items at its Florida subsidiary, contrary to the certification made in its offer, provides no valid legal basis to object to award.

PROCUREMENT

**Competitive Negotiation
Small Business Set-Asides
Foreign Businesses
Eligibility**

A foreign business entity may qualify for award under a total small business set-aside when it has a place of business located in the United States and makes a significant contribution to the United States economy, and when the firm, including its affiliates, meets the small business size standard applicable to the procurement.

PROCUREMENT
Bid Protest
Agency-Level Protests
Oral Protests

B-224683 Oct. 15, 1986
86-2 CPD 431

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
10-Day Rule

Protest filed in General Accounting Office more than 10 days after protester knew basis for protest is dismissed as untimely. Oral complaint to contracting agency did not constitute timely protest since Federal Acquisition Regulation no longer provides for oral protests.

PROCUREMENT
Bid Protest
GAO Procedures
Protest Timeliness
Deadlines
Constructive Notification

Protester's lack of knowledge concerning filing deadlines is not a basis for waiving timeliness requirements, since prospective contractors are on constructive notice of Bid Protest Regulations.

PROCUREMENT B-224339.3 Oct. 16, 1986
Bid Protest 86-2 CPD 435
General Accounting Office Procedures
General Accounting Office Decisions
Reconsideration

Request for reconsideration denied where protester essentially only reiterates allegations previously considered, and otherwise does not establish that the decision was based on a mistake of law or fact.

PROCUREMENT B-224452 Oct. 16, 1986
Competitive Negotiation 86-2 CPD 437
Best/Final Offers
Omission
Leases
Materiality

Failure to complete vessel berthing arrangements at the time that best and final offers were submitted does not affect offeror's acceptability for award where the requirement for such arrangements is a performance requirement which need only be satisfied by the contractor after award.

PROCUREMENT
Competitive Negotiation
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Technical Superiority

The contracting agency properly may make award to a higher priced, higher rated offeror where the solicitation specifically states that the government's primary concern is the offeror's technical capabilities and the agency, in making a cost/technical trade-off, reasonably concluded that the technical advantages of the awardee's offer were significant enough to offset the lower price of protester's proposal.

PROCUREMENT
Sealed Bidding
Below-Cost Bids
Contract Awards
Propriety

B-223649 Oct. 17, 1986

Allegation that a competitor's prices are too low provides no legal basis for objection to the award of a fixed-price contract unless the contracting officer also finds the bidder nonresponsible.

PROCUREMENT
Sealed Bidding
Contracting Officer Duties
Bids
Price Determination

When bid schedule does not provide a place for bidders to insert prices reflecting the number of times that particular services must be performed, but this information is in an attachment to the solicitation, a contracting officer properly may multiply the apparent low bidder's prices for one-time performance by the required frequency of performance to determine total bid price. Such action permits evaluation on an equal basis with the second-low bidder, who has performed the calculations itself.

PROCUREMENT
Sealed Bidding
Invitations for Bids
First-Article Testing
Pricing
Price Reasonableness

B-223928 Oct. 17, 1986

Agency's incorporation into the solicitation of a provision cautioning bidders that first article prices must reflect only the reasonable costs associated with the production and testing of those units clearly was an appropriate response to the General Accounting Office's earlier recommendation to the agency that steps be taken to discourage the practice of submitting bids with grossly inflated first article prices as a device to obtain unauthorized contract financing.

PROCUREMENT

B-224365 Oct. 17, 1986

Bid Protest**Premature Allegation****General Accounting Office Review**

Protest founded on assumption that Navy, by pursuing research and development using one of several alternative technologies, will, at later date, limit competition to approaches it has developed is premature. The Navy has made no selection of equipment it may procure once its current research and development effort is completed.

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

Notwithstanding protester's contention that Navy's needs can be met by alternative circuit breaker technologies, solicitation which restricts research and development proposals to one technology is not unduly restrictive of competition where Navy seeks to limit procurement in order to permit it to evaluate the specified technology for shipboard application. The government will not obtain the information it needs unless competition is limited to proposals for technology to be evaluated.

PROCUREMENT

B-224394 Oct. 17, 1986

Competitive Negotiation**Contract Awards****Fixed-Price Contracts****Cost/Technical Tradeoffs****Justification**

Agency has not justified its selection for a fixed price contract of an offeror which proposed a 53 percent higher price than another acceptable proposal. A low acceptable offeror cannot be rejected or downgraded in the price evaluation for its low price.

PROCUREMENT

B-224416 Oct. 17, 1986

Bid Protest

General Accounting Office Procedures

Protest Timeliness

Significant Issue Exemptions

Applicability

Untimely filed ground of protest concerning bidding provision which would allegedly result in unenforceable contract is not considered "significant" so as to be considered notwithstanding untimeliness since protest involving similar issue has been previously decided.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting Officer Findings

Affirmative Determination

General Accounting Office Review

Protest involving issues either of prospective awardee's responsibility or of contract administration are not for General Accounting Office's review. See 4 C.F.R. §§ 21.3(f)(1) and (5) (1986).

PROCUREMENT

Sealed Bidding

Unbalanced Bids

Allegation Substantiation

Evidence Sufficiency

For a bid to be rejected as unbalanced, bid must be shown to be both mathematically and materially unbalanced and that award based on the questioned bid will not result in the lowest ultimate cost. Since protester has not made this showing about questioned bid, basis of protest is denied.

PROCUREMENT

B-224491 Oct. 17, 1986

Specifications

Brand Name/Equal

Specifications

Equivalent Products

Salient Characteristics

Descriptive Literature

Protest that awardee's product was not equal to the brand name product specified in request for proposals is denied. The protester has failed to establish as unreasonable agency's acceptance of best and final offer to furnish the two salient requirements which agency determined were not offered in the awardee's descriptive literature submitted with its initial offer.

PROCUREMENT

B-223951 Oct. 20, 1986

Bid Protest

Agency-Level Protests

Oral Protests

Even if oral argument presented to contracting agency was intended to constitute a protest to the agency, oral protests are no longer provided for under the Federal Acquisition Regulation. Consequently, those oral arguments can not be considered as a protest.

PROCUREMENT **B-223951 Con't**
Bid Protest **Oct. 20, 1986**
General Accounting Office Procedures
Protest Timeliness
10-Day Rule

Specific objections to contracting agency's technical findings that protester's product did not meet agency requirements which resulted in agency's rejection of protester's offer, first raised several weeks after bases of objections were known, are untimely filed and will not be considered. See 4 C.F.R. § 21.2(a)(2) (1986). Protester's generalized earlier protest was not sufficient to constitute a timely protest when the protester was on notice of specific bases of protest at time earlier protest was filed but chose not to raise them.

PROCUREMENT **B-223991 Oct. 20, 1986**
Bid Protest
General Accounting Office Procedures
Preparation Costs

Proposal preparation costs may not be recovered where protest is denied since recovery of such costs is allowed only where protest is found to have merit.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Contracting Officers
Discretion

When determining which proposals will be considered for award, contracting officer may consult with the contracting agency's project manager, provided that the contracting officer's ultimate determination regarding the technical merits of a proposal is consistent with the evaluation criteria in the solicitation.

PROCUREMENT **B-224539 Con't**
Contract Management **Oct. 20, 1986**
Contract Administration
Contract Terms
Compliance
General Accounting Office Review

Protester's contention that awardee will not furnish products conforming to specifications in invitation for bids concerns a matter of contract administration which is not reviewed by General Accounting Office as part of its bid protest function.

PROCUREMENT **B-224692.2 Oct. 20, 1986**
Bid Protest
General Accounting Office Procedures
Protest Timeliness
Deadlines
Constructive Notification

Protesters are charged with constructive knowledge of Bid Protest Regulations, and an alleged misrepresentation by an agency as to the timeliness requirements of those regulations therefore is not a defense to dismissal of a protest as untimely.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
Good Cause Exemptions
Applicability

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
Significant Issue Exemptions
Applicability

Protester's assertion that it needed more than 10 days to review agency's evaluation of its technical proposal submitted in a complex, large dollar value procurement does not warrant consideration of the untimely protest, since neither the timeliness exception for good cause, nor the exception for significant issues, applies.

PROCUREMENT

B-223827 Oct. 21 1986

Contract Management

Federal Procurement Regulations/Laws

Revision

Payment Procedures

GAO comments on Federal Acquisition Regulation (FAR) case No. 84-30, a proposal to amend sections of FAR Subpart 32.5 and to add Subpart 32.9 and a clause at FAR § 52.232-25 to implement the requirements of the Prompt Payment Act, 31 U.S.C. § 3901 et seq. (1982), and the policies and procedures of Office and Management Budget Circular No. A-125.

PROCUREMENT

Small Purchase Method

Federal Procurement Regulations/Laws

Revision

Small Business Set-Asides

Domestic Products

GAO has no objection to a proposal to amend the clause at FAR § 52.219-4 to clarify that small business-small purchase acquisitions shall be made only from a small business concern furnishing a domestic product.

PROCUREMENT

B-224450; B-224450.2

Competitive Negotiation

Oct. 21, 1986

Requests for Proposals

86-2 CPD 439

Wage Rates

Incumbent Contractors

Collective Bargaining Agreements

Contracting officer acted reasonably and did not prejudice incumbent contractor when he included an old wage determination in the solicitation since a new collective bargaining agreement covering the incumbent contractor's workers did not come into effect until after the proposed start date of the new contract.

PROCUREMENT

B-224725 Con't

Sealed Bidding

Oct. 20, 1986

Bid Guarantees

Post-Bid Opening Modification

Propriety

PROCUREMENT

Sealed Bidding

Bid Guarantees

Responsiveness

Liability Restrictions

Bid with a bid guarantee of 14 percent of the bid price, rather than the required 20 percent, is nonresponsive, and the bidder may not correct the deficiency by submission of performance and payment bonds after bid opening.

PROCUREMENT

B-205208.2 Oct. 21, 1986

Contract Management

Federal Procurement Regulations/Laws

Revision

Cost Accounting

GAO suggests that action on a proposal to incorporate the Cost Accounting Standards (CAS) into Part 30 of the Federal Acquisition Regulations (FAR) be suspended pending consideration of legislation that would reestablish a CAS Board. If the proposed plan is carried out, GAO recommends the establishment of an independent, expert body to provide counsel on the CAS, and suggests the CAS Preambles also be incorporated into the FAR.

PROCUREMENT **B-224740.2** **Oct. 21, 1986**
Socio-Economic Policies **86-2 CPD 440**
Small Businesses
Competency Certification
Eligibility
Criteria

To be eligible for a certificate of competency under Small Business Administration procedures, a small business bidder must perform a significant portion of the contract with its own facilities and personnel. An ineligibility finding on the basis that this criterion is not met is tantamount to an affirmation of the agency's original determination of nonresponsibility and therefore not subject to General Accounting Office review.

PROCUREMENT **B-224359** **Oct. 22, 1986**
Competitive Negotiation **86-2 CPD 442**
Offers
Designs
Evaluation
Technical Acceptability

Proposal to develop an accelerometer properly was rejected as being technically unacceptable, without discussions, where the proposal failed to comply with the power-consumption requirement set forth in the request for proposals and major revisions would be required to make proposal acceptable.

PROCUREMENT **B-224558** **Oct. 22, 1986**
Bid Protest **86-2 CPD 443**
General Accounting Office Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest concerning defect apparent on the face of the solicitation is untimely since it was not filed before the closing date for the receipt of proposals.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Amendments
Acknowledgment
Waiver

B-223976 Oct. 23, 1986
86-2 CPD 448

A bidder's failure to acknowledge a solicitation amendment which deleted line item regarding overtime services from evaluation and made award of item optional, may be waived because even if bid required award of item, overtime could only be authorized by contracting officer and therefore government incurred no extra cost.

Failure to acknowledge amendment which merely alerted bidders that other contractors would be doing renovation which could cause delays in performance may be waived because such amendment did not change obligations of parties. Delays could have been handled without amendment through changes clause.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
General Accounting Office Decisions
Reconsideration

B-224014.3 Oct. 23, 1986
86-2 CPD 449

Prior decision affirming the dismissal of a protest as untimely is affirmed where the argument raised by the protester in the request for reconsideration does not show that the prior decision was erroneous.

PROCUREMENT
Bid Protest
Allegation
Substantiation
Burden of Proof

B-223578 Oct. 24, 1986
86-2 CPD 452

The protester has not met its burden of affirmatively proving its case where the protest allegations are based on "information and belief" with no supporting evidence and the protester's speculations are disputed by the agency.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Preparation Costs

Where a protest has been found to be without legal merit, the protester's claim for all costs, including legal fees, is denied.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest--alleging that procurement should have been advertised and that solicitation was unduly restrictive --submitted 5 months after receipt of proposals is untimely since the General Accounting Office Bid Protest Regulations (4 C.F.R. § 21.2(a)(1) (1986)) require that protests based upon alleged improprieties that were apparent prior to the receipt of proposals be filed prior to the closing date for receipt of proposals.

PROCUREMENT **B-223578** **Con't**
Competitive Negotiation **Oct. 24, 1986**
Offers
Technical Acceptability
Evidence
Submission Time Periods

Protest that agency unfairly required the protester to provide proof that it was offering the specified parts, since under previous contracts protester had an understanding with the agency that such proof could be furnished at the time of inspection of the parts before delivery, is denied since such an understanding conflicts with the RFP provisions which require such proof with submission of the offer.

PROCUREMENT **B-223974** **Oct. 24, 1986**
Contractor Qualification **86-2 CPD 453**
Responsibility
Contracting Officer Findings
Affirmative Determination
General Accounting Office Review

PROCUREMENT
Contractor Qualification
Responsibility/Responsiveness Distinctions

Protest challenging the ability of the apparent low bidder, whose bid took no exception to the invitation for bids, to provide the required product raises an issue of responsibility, rather than of responsiveness. The General Accounting Office does not review affirmative determinations of responsibility unless there has been a showing of possible fraud or bad faith by government officials or that definitive responsibility criteria have not been met. Neither showing was made here.

PROCUREMENT
Sealed Bidding
Bids

B-223974 Con't
Oct. 24, 1986

Minor Deviations
Government Advantage
Acceptability

An otherwise acceptable product need not be rejected solely because it exceeds the IFB's specifications since it does not present the type of deviation that gives the bidder an unfair advantage over its competition.

PROCUREMENT
Bid Protest

B-224021.2 Oct. 24, 1986
86-2 CPD 454

General Accounting Office Procedures
Protest Timeliness
10-day Rule
Adverse Agency Actions

Protest initially filed with contracting agency is dismissed as untimely when filed with General Accounting Office (GAO) more than 10 working days after the protester has received notice of adverse agency action. Protester's continued pursuit of the protest with the contracting agency, resulting in a subsequent letter from agency repeating grounds for denial, neither extends the time for filing a protest with GAO, nor provides a new basis for protest.

PROCUREMENT
Bid Protest
Agency-Level Protests
Oral Protests

B-224262 Oct. 24, 1986
86-2 CPD 455

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
10-Day Rule

Notwithstanding oral protest made to the contracting officer, protest filed more than 10 working days after the protester knew the basis of protest is untimely since oral protests are no longer provided for under the Federal Acquisition Regulation.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
General Accounting Office Decisions
Reconsideration

B-224266.2 Oct. 24, 1986
86-2 CPD 456

PROCUREMENT
Sealed Bidding
Bid Guarantees
Responsiveness
Contractors
Identification

Request for reconsideration is denied where protester fails to show any error of law or fact in prior decision holding that contracting agency properly rejected protester's bid as nonresponsive since letter of credit protester submitted as bid guarantee was materially deficient because it named the protester's parent company, not the protester, as principal on whose behalf letter of credit was issued.

PROCUREMENT
Bid Protest
Conferences
Justification

B-224267 Oct. 24, 1986
86-2 CPD 457

Where protest on its face is without legal merit, no useful purpose would be served by holding a bid protest conference.

PROCUREMENT
Contractor Qualification
Responsibility Criteria
Distinctions
Performance Specifications

Request for proposals provisions that high pressure steam boiler services be performed by certified employees that are merely a part of the general specifications concerning how and by whom the work is to be accomplished do not establish a precondition to award and therefore are contract performance requirements and not definitive responsibility criteria.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Agency Notification

B-224552 Oct. 24, 1986

Protest is dismissed where protester failed to comply with requirement that contracting agency receive a copy of the protest within 1 working day after the protest is filed. Merely mailing a copy of the protest to the contracting officer does not satisfy the notice requirement which specifies actual receipt of the protest by the contracting agency.

PROCUREMENT B-225380 Oct. 24, 1986
Competitive Negotiation
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Technical Superiority

The award of a contract to an offeror who offered supplies that meet all of the requirements of the specifications is proper, notwithstanding the receipt of a lower priced offer from a firm that could not furnish conforming supplies for four of the line items in the solicitation.

PROCUREMENT B-223929 Oct. 27, 1986
Bid Protest
General Accounting Office Procedures
Preparation Costs

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Although solicitation failed to indicate whether the evaluation for award would include or exclude optional items, protester's claim for costs is denied since record fails to establish that agency's evaluation of both definite and optional items was arbitrary or that protester was unreasonably excluded from the competition.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Defects
Evaluation Criteria

B-223929 Con't
Oct. 27, 1986

An invitation for bids, which required bidders to submit prices for two schedules and identified the items in Schedule II as optional supplies and services, is defective where the solicitation fails to indicate whether the evaluation for award will include or exclude the optional Schedule II items.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Post-Bid Opening Cancellation
Justification
Funding Restrictions

B-224211 Oct. 27, 1986

Cancellation of invitation for bids after bid opening for lack of sufficient funds is proper. Since statutory limitations prohibit the award of a contract when funds are not available, the contract could not be awarded to the protester and then terminated in part, since that would have required an obligation of funds in excess of the funds available.

PROCUREMENT
Sealed Bidding
Post-Bid Opening Cancellation
Resolicitation
Requests for Proposals
Justification

Protest against continuation of procurement by negotiation following proper cancellation of invitation for bids after bid opening is without merit where requirement was urgent and both bidders under invitation were afforded an equal and reasonable opportunity to compete for requirement under oral request for proposals.

PROCUREMENT

B-224449 Oct. 27, 1986

Bid Protest

General Accounting Office Procedures

Interested Parties

Non-Prejudicial Allegation

Protester is not an interested party under Bid Protest Regulations to protest a specification requirement that it admits it can meet.

PROCUREMENT

Special Procurement Methods/Categories

Federal Supply Schedule

Multiple/Aggregate Awards

Mandatory Use

Allegation Substantiation

Protest that agency was required to use a mandatory multiple-award Federal Supply Schedule (FSS) for a multi-million dollar procurement of modular furniture lacks merit where the schedule contracts contain a maximum order limitation of \$75,000, and where reference in FSS solicitation reference to the use of a "requote" procedure for procurements over \$75,000 appears to have been included for informational and administrative purposes only.

PROCUREMENT

Specifications

Minimum Needs Standards

Competitive Restrictions

Allegation Substantiation

Evidence Sufficiency

Protest that specifications unduly restrict competition is denied where the agency amended the solicitation to respond to many of the protester's concerns, and with respect to its remaining concerns, the protester has not met its burden of proving that the agency's requirements are clearly unreasonable.

PROCUREMENT

B-223975.2 Oct. 28, 1986

Bid Protest

General Accounting Office Procedures

Administrative Reports

Comments Timeliness

Prior dismissal of protest because of protester's failure to express continued interest in the protest after receipt of the agency report is affirmed, notwithstanding protester's contention that its response to the first of two agency submissions was enough to express its continuing interest, where first agency submission was not a report, but a letter urging summary dismissal of the protest, and the second agency submission clearly was the contemplated report which required timely comment by the protester.

PROCUREMENT

B-224007 Oct. 28, 1986

Sealed Bidding

Bids

Responsiveness

Shipment Schedules

Effective Dates

Even though protester's bid acknowledged amendment changing assumed award date on which solicitation based the required delivery date, contracting agency properly rejected protester's bid as nonresponsive since protester inserted unamended proposed award date in its delivery schedule and, therefore, was not legally bound to deliver in accordance with solicitation's required delivery schedule.

PROCUREMENT
Sealed Bidding
Bids

B-224007 Con't
Oct. 28, 1986

Shipment Schedules
Deviation
Materiality

Where bid offers a delivery schedule deviating from the required delivery schedule, the deviation cannot be treated as a minor informality or corrected after opening, since delivery terms represent material requirements.

PROCUREMENT

Sealed Bidding

Competitive System Integrity
Non-Responsive Bids
Acceptability

A nonresponsive bid may not be accepted, notwithstanding any savings it might represent to the government, since its acceptance would compromise the integrity of the competitive bidding system.

PROCUREMENT

B-224269.2 Oct. 28, 1986

Bid Protest

General Accounting Office Procedures
Protest Timeliness
Significant Issue Exemptions
Applicability

General Accounting Office will not consider the merits of an untimely protest by invoking "significant issue" exception to timeliness requirements where untimely protest does not raise issue of first impression which would have widespread significance to the procurement community.

PROCUREMENT

B-224923.2 Oct. 28, 1986

Contractor Qualification

Responsibility

Contracting Officer Findings

Affirmative Determination

General Accounting Office Review

Prior action dismissing a protest against an agency's affirmative determination of responsibility is affirmed where the General Accounting Office (GAO) again finds nothing in the protester's original submission which would reasonably constitute an allegation that the solicitation contained definitive responsibility criteria which were not met so as to provide for GAO's review.

PROCUREMENT

B-225033 Oct. 28, 1986

Bid Protest

Agency-Level Protests

Oral Protests

PROCUREMENT

Bid Protest

General Accounting Office Procedures

Protest Timeliness

10-Day Rule

Protester's oral complaint to contracting officer before the time for bid opening that solicitation contained "ambiguous and equivocal technical provisions, amendments and specifications" did not constitute a timely protest since an oral complaint to agency does not constitute a protest. Therefore, written protest of alleged solicitation improprieties filed with General Accounting Office more than 2 weeks after bid opening is dismissed as untimely.

PROCUREMENT **B-223923 Con't**
Competitive Negotiation **Oct. 29, 1986**
Offers
Competitive Ranges
Exclusion
Evaluation Errors

PROCUREMENT
Competitive Negotiation
Offers
Evaluation Errors
Personnel Experience
Point Ratings

Procuring agency unreasonably evaluated protester's technical proposal by omitting from consideration the person offered by the protester as principal investigator where the solicitation provided that the principal investigator's qualifications constituted the most important factor in determining technical score.

PROCUREMENT **B-223968 Oct. 29, 1986**
Sealed Bidding
Bids
Responsiveness
First-Article Testing
Price Omission

Where IFB states that a first article test report is required and cautions bidders that failure to include a price for the report or indicate that it would be furnished at no charge may result in rejection of the bid, bid which does not indicate a price for the report is properly rejected as nonresponsive, despite the fact that no separate line item for the first article report was set forth and no blank space was provided bidders to price this item, since IFB clearly required bidders to provide this information and agency's failure to include a separate line item in the IFB or space for pricing the item does not excuse the bidder from providing this information.

PROCUREMENT **B-223988 Con't**
Competitive Negotiation **Oct. 29, 1986**
Technical Evaluation Boards
Bias Allegation
Allegation Substantiation
Evidence Sufficiency

Protest that members of the technical evaluation team were biased is denied where there is no evidence in the record to support the protester's bare allegation.

PROCUREMENT
Competitive Negotiation
Technical Evaluation Boards
Qualification
General Accounting Office Review

It is not generally the General Accounting Office's function to appraise the qualifications of agency contracting personnel, and with nothing more than the protester's opinion that technical proposal evaluators lack sufficient experience, we will not examine or question the evaluators' qualifications.

PROCUREMENT

B-224140 Oct. 29, 1986

Sealed Bidding

Bids

Responsiveness

Price Omission

Taxes

Where IFB requires that bid prices include all applicable taxes, a bid which provides "Price does not include any applicable taxes," without specifying amount of tax excluded, is nonresponsive.

PROCUREMENT

B-224166 Oct. 29, 1986

Bid Protest

General Accounting Office Procedures

Protest Timeliness

Good Cause Exemptions

Applicability

PROCUREMENT

Bid Protest

General Accounting Office Procedures

Protest Timeliness

Significant Issue Exemptions

Applicability

Untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules where the issue raised--primarily that of an alleged agency failure to conduct meaningful discussions--has been considered on numerous occasions. The good cause exception is not for application since the untimely filing was due to a deliberate choice on the protester's part and was not the result of some compelling reason beyond the protester's control which prevented the timely filing of a protest.

PROCUREMENT **B-224166 Con't**
Bid Protest **Oct. 29, 1986**
General Accounting Office Procedures
Protest Timeliness
10-Day Rule
Effective Dates

Protest which was filed initially with, and sustained by, the General Services Administration Board of Contract Appeals (GSBCA) and was reversed by the Court of Appeals on the basis that the GSBCA lacked jurisdiction is untimely when subsequently filed with General Accounting Office within 10 working days of the Court of Appeals decision but almost 1 year after the date on which the protester knew its basis for protest and made an election of forum.

PROCUREMENT **B-225041 Oct. 29, 1986**
Sealed Bidding
Bids
Responsiveness
Acceptance Time Periods
Deviation

Bid containing 30-day acceptance period is nonresponsive to invitation for bids requiring a minimum acceptance period of 60 days, and therefore is not correctable through mistake-in-bid procedures.

PROCUREMENT **B-222448.5 Oct. 30, 1986**
Bid Protest
Moot Allegation
General Accounting Office Review

Protest of the contracting agency's decision not to restrict acquisition of missile launchers to domestic firms and that the low bid was nonresponsive is rendered academic where the two low bidders--both foreign firms--are ineligible to receive the award because they were determined to be nonresponsive.

PROCUREMENT

B-223289.5 Oct. 30, 1986

Bid Protest

**General Accounting Office Procedures
Interested Parties**

Where opposing parties within a firm bring into question whether the firm's protest to General Accounting Office (GAO) has been withdrawn, and the agency considers that the firm's proposal submitted in the protested procurement has been withdrawn, GAO dismisses the protest as the protester is not considered an interested party.

PROCUREMENT

B-223945 Oct. 30, 1986

Contract Types

Fixed-Price Contracts

Price Determination

Cost Increase

Risk Allocation

It is a bidder's responsibility in bidding on a fixed-price contract to project costs and include in the basic contract price a factor covering any otherwise uncompensated cost increases.

PROCUREMENT

Specifications

Minimum Needs Standards

Competitive Restrictions

Performance Specifications

Messes

GAO will not object to an agency's use, in an advertised procurement for food services, of minimum staffing requirements which are intended to ensure that the agency's minimum needs are met.

PROCUREMENT **B-224000, et al.**
Bid Protest **Oct. 30, 1986**
General Accounting Office Procedures
Preparation Costs

There is no basis for payment to protester of costs of filing the pursuing protests, including attorney's fees, where the protests are either academic or 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 **B-224233.2 Oct. 30, 1986**
Sealed Bidding
Bid Guarantees
Responsiveness
Invitations for Bids
Identification

Protester's bid is properly rejected as nonresponsive where bid bond submitted with the bid does not identify the solicitation or the work to be performed.

PROCUREMENT
Sealed Bidding
Bid Guarantees
Validity
State/Local Laws
Applicability

General Accounting Office will not look to state law to determine the validity of a bid bond submitted for a federal procurement.

PROCUREMENT

B-224373 Oct. 30, 1986

**Competitive Negotiation
Offers
Designs
Evaluation
Technical Acceptability**

Protester's proposal was properly rejected as unacceptable where the proposal merely repeated solicitation requirements and the government's evaluation of sample system submitted with the proposal disclosed that the proposed design contains serious deficiencies that cannot be corrected without extensive redesign.

PROCUREMENT

**Contracting Power/Authority
Computer Equipment/Services
Authority Delegation
Federal Procurement Regulations/Laws
Compliance**

PROCUREMENT

**Special Procurement Methods/Categories
Computer Equipment/Services
Contract Awards
Authority Delegation**

General Accounting Office (GAO) will review a protester's complaint that an agency is required to obtain a delegation of procurement authority (DPA) from the General Services Administration under the Brooks Act, 40 U.S.C. § 759 (1982). The applicability of the Act and its implementing regulations presents questions concerning whether a contracting agency has complied with procurement statutes or regulations, which are reviewable by GAO under the Competition in Contracting Act of 1984, 31 U.S.C. § 3552 (Supp. III 1985).

A delegation of procurement authority is not required under the Brooks Act, 40 U.S.C. § 759, or implementing regulations, where the government is acquiring micro-computer-based audio-visual systems incorporating laser disk technology which are specially designed to meet the government's needs and where it has not been shown that the system is suitable for use in general purpose data processing applications.

PROCUREMENT

B-224903 Oct. 30, 1986

Bid Protest

General Accounting Office Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest against restrictive specifications is dismissed as untimely where protester failed to file written protest to either agency or General Accounting Office prior to bid opening.

PROCUREMENT

B-225042 Oct. 30, 1986

Competitive Negotiation

Requests for Proposals

Terms

Wage Rates

Applicability

Provision in solicitation advising offerors, for informational purposes only, of the minimum wages and fringe benefits that the class of service employees expected to be employed under the contract would be paid if employed by the government does not itself establish the minimum wages to be paid by the contractor; consequently, a proposal reflecting a wage rate lower than indicated in the informational provision need not be rejected.

PROCUREMENT

B-223493 Oct. 31, 1986

Bid Protest

GAO Procedures

Information Submission

Timeliness

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Point Ratings

Protest that evaluation system established in request for proposals improperly favors one offeror's product is untimely where the protester did not provide factual details of this basis of protest until protester filed comments on agency report. In any event, evaluation point score system does not appear to be improper since the system is based directly on the specifications and merely incorporates a numerical system to reflect the degree of compliance with the specifications.

PROCUREMENT

Bid Protest

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest based on alleged improprieties in a solicitation is untimely where these alleged improprieties were not raised until conference on initial grounds of protest which did not take place until after the closing date for receipt of initial proposals.

PROCUREMENT **B-223493 Con't**
Bid Protest **Oct. 31, 1986**
General Accounting Office Procedures
Purposes
Competition Enhancement

Protester's interest in benefiting from more restrictive specifications is not protectable under General Accounting Office bid protest function.

PROCUREMENT
Bid Protest
Moot Allegation
General Accounting Office Review

Protest against allegedly restrictive specifications is academic where the protester's products are, in fact, acceptable under these specifications.

PROCUREMENT
Specifications
Minimum Needs Standards
Competitive Restrictions
Design Specifications
Overstatement

Specification that storage modules be made of material with "integral color throughout," and specification requiring wall-unit storage modules to have hooks that are molded on, rather than adjustable, are overly restrictive where the agency does not make a prima facie showing that the restrictions are necessary to meet its actual minimum needs.

PROCUREMENT

B-224275 Oct. 31, 1986

Bid Protest

Moot Allegation

General Accounting Office Review

Protest issue related to restrictions imposed on awards of contracts by the Department of Defense to Fiat S.p.A. and its subsidiaries because of 15-percent ownership of Fiat by the government of Libya is dismissed as moot where, subsequent to the filing of the protest, Libya has sold its entire interest in Fiat to Italian and other non-Libyan shareholders.

PROCUREMENT

Contract Management

Contract Administration

Domestic Products

Compliance

General Accounting Office Review

An offeror's ultimate compliance with the Buy American Act certification made in its offer is a matter of contract administration which is the responsibility of the contracting agency, and not the General Accounting Office under its bid protest function.

PROCUREMENT

Contractor Qualification

Responsibility Criteria

Performance Capabilities

An offeror's ability to comply with a solicitation requirement that the offered model is the vendor's "latest model of its standard product," as it certified in its offer, is a matter to be considered as part of the determination as to whether the offeror is responsible.

PROCUREMENT

B-224466 Oct. 31, 1986

**Sealed Bidding
Below-Cost Bids
Contract Awards
Propriety**

There is no prohibition against below cost bidding so long as the bidder is a responsible concern.

PROCUREMENT

**Sealed Bidding
Two-Step Sealed Bidding
Bids
Responsiveness
Prices**

Protest of agency's rejection of low bid under two-step sealed bid procurement as nonresponsive for entering notation of "NSP" for two labor categories is sustained, since "NSP" equates with zero dollars and evidences bidder's intent to be bound to furnish labor at no charge to the government.

PROCUREMENT

**Sealed Bidding
Unbalanced Bids
Materiality
Responsiveness**

A mathematically-unbalanced bid should not be rejected as nonresponsive if it is not also materially unbalanced, i.e., if there is no reasonable doubt that the bid represents the lowest ultimate cost to the government.

PROCUREMENT

B-224467 Oct. 31, 1986

Contractor Qualification

Responsibility

Contracting Officer Findings

Affirmative Determination

General Accounting Office Review

Protest that awardee is not qualified to build the system specified in the solicitation is a protest against an affirmative determination of responsibility that the General Accounting Office will not review absent a showing of possible fraud or bad faith on the part of procuring officials or that definitive responsibility criteria have not been applied.

PROCUREMENT

Special Procurement Methods/Categories

Subcontracts

Contract Awards

General Accounting Office Review

General Accounting Office review of subcontract awards by Department of Energy operating contractors is only to determine whether such awards were consistent with the federal norm, i.e., the policy objectives in the federal statutes and regulations.

PROCUREMENT

Special Procurement Methods/Categories

Subcontracts

Quotations

Deficiency

Discussion

Prime contractor is not required to discuss deficient areas in an offeror's quotation where solicitation indicated that discussions might not be held and procurement was handled like sealed bidding.

PROCUREMENT
Special Procurement
Methods/Categories
Subcontracts
Quotations
Rejection
Propriety

B-224467 Con't
Oct. 31, 1986

Prime contractor's rejection of subcontractor proposal was reasonable where offeror failed to address a number of the solicitation's requirements.

PROCUREMENT
Bid Protest
General Accounting Office Procedures
Protest Timeliness
10-Day Rule

B-225421 Oct. 31, 1986

Protest of award filed more than a year after award is made is untimely where there is no indication the matter has been previously protested to the agency or a showing that protester has diligently pursued the information necessary for the protest.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS **B-223146 Oct. 7, 1986**
Federal Administrative/Legislative Matters
Government Corporations
Trustees
Fiduciary Duties
Pension Plans

Pension Benefit Guaranty Corporation (PBGC), when serving as trustee for terminated pension plan, is authorized to exercise all powers possessed by private party when serving as trustee for pension plan and is not constrained by laws applicable to contracting by Federal agencies or expenditures from public funds. Therefore PBGC may modify existing contract and enter into a contingent fee contract with outside counsel for litigation services.

MISCELLANEOUS TOPICS **B-219801 Oct. 10, 1986**
Finance Industry
Financial Institutions
Corporate Entities
Affiliates
Conflicts of Interest

While some officers and employees of the National Consumer Cooperative Bank (NCB) also serve as officers or directors of the Share Loan Service Corporation (SLSC), an affiliate of the NCB, no conflict of interest exists because NCB's Board of Directors has issued an addendum to its conflict of interest rules that specifically exempts the SLSC and its officers and directors from the application of those rules. Considering the special relationship between the NCB and the SLSC and the common purpose of the two corporations, the Board's actions are within its discretion under the NCB Act which authorizes the Board to establish conflict of interest rules that are no less stringent than those set forth in Executive Order 11222.

MISCELLANEOUS TOPICS

B-219801 Con't

Finance Industry

Oct. 10, 1986

Financial Institutions

Affiliates

Loans

Propriety

MISCELLANEOUS TOPICS

Finance Industry

Financial Institutions

Subsidiaries

Authority

The activities engaged in by corporate subsidiaries and affiliates of the National Consumer Cooperative Bank (NCB) and NCB's relationships with them are not prohibited by anything in the NCB Act. While NCB's subsidiaries cannot legally perform any activities that NCB could not perform directly, all of the activities the subsidiaries have engaged in are activities that NCB is authorized by statute to perform. In addition, NCB's extension of a loan to its corporate affiliate is permissible since the affiliate is an eligible cooperative under the NCB Act.

MISCELLANEOUS TOPICS

B-219801 Con't

Finance Industry

Oct. 10, 1986

Financial Institutions

Corporate Entities

Authority

Investments

MISCELLANEOUS TOPICS

Finance Industry

Financial Institutions

Government Corporations

Corporate Ownership

After the National Consumer Cooperative Bank (NCB) was converted from a mixed-ownership Government corporation to a Federally-chartered private banking institution owned and controlled by its cooperative stockholders, which occurred on December 31, 1981, the NCB gained the authority to form subsidiaries and invest in affiliates. In addition to NCB's express statutory authority to acquire real and personal property (including corporate stock) and, after its conversion to a private institution, to make other investments as authorized by its Board of Directors, NCB has such other incidental powers as may be necessary or expedient to perform its duties under the NCB Act. These provisions authorize NCB to form subsidiaries and invest in affiliates in order to help NCB fulfill its statutory mandate.

MISCELLANEOUS TOPICS

B-223098; B-223098.2

Law Enforcement

Oct. 10, 1986

Lobbying

Public Information

Funding Restrictions

Public information materials of the Small Business Administration (SBA), provided to GAO for review, do not appear to violate the criminal anti-lobbying statute, 18 U.S.C. § 1913, such that referral to the Justice Department is warranted. The Department of Justice interprets 18 U.S.C. § 1913 to apply only when funds are spent in a "grass roots" lobbying effort--where an attempt is made to induce members of the public to contact their representatives in Congress to persuade them to either support or oppose pending legislation. Those circumstances are not present here. No civil anti-lobbying statute is applicable to the SBA in these circumstances.

MISCELLANEOUS TOPICS **B-220522.2 Oct. 17, 1986**
Federal Administrative/Legislative Matters
Executive Branch Personnel
Vacancies
Temporary Appointment
Durations

Provisions of the Vacancies Act, 5 U.S.C. §§ 3345-49 (1982), govern the filling of vacancies in those offices which require Senate confirmation in the Departments of Labor and Education, except where there is specific statutory authority to fill such vacancies. The Vacancies Act applies to the position of Director of the Women's Bureau within the Department of Labor and to the positions of Assistant Secretary for Vocational and Adult Education and Assistant Secretary for Civil Rights within the Department of Education. The Vacancies Act limits acting appointments to fill such positions to 30-days duration.

Actions by individuals occupying offices subject to the Vacancies Act which are taken subsequent to the expiration of 30-day time limitation set forth in 5 U.S.C. § 3348 (1982) are of uncertain validity. Accordingly, at the end of the 30-day period, such individuals should refrain from taking any further action in an acting capacity.

MISCELLANEOUS TOPICS B-222908 Oct. 17, 1986
Environment/Energy/Natural Resources
Regulatory Agencies
Authority
Utility Services
Foreign Sources

Western Area Power Authority (WAPA) of the Department of Energy (DOE) is negotiating on behalf of several American utilities with the Province of Manitoba, Canada, for a power supply from a hydroelectric plant to be built in Canada. There is no statutory prohibition preventing WAPA from dealing with a foreign government. However, the authorities cited by DOE in support of the negotiations, sections 9(c) and 15 of the Reclamation Project Act of 1939, 43 U.S.C. §§ 485h(c) and 485i, and sections 102(10) and 646 of the DOE Organization Act, 42 U.S.C. §§ 7112(10) and 7256, do not authorize WAPA to contract for power on behalf of the utilities.

INDEX

OCTOBER 1986

	<u>Oct.</u>	<u>Page</u>
APPROPRIATIONS/FINANCIAL MANAGEMENT		
Accountable Officers		
Cashiers		
Relief		
Illegal/Improper Payments		
Forgeries	B-224079	28... A- 6
Physical Losses		
Theft	B-222996	1... A- 1
Disbursing Officers		
Relief		
Illegal/Improper Payments		
Forgeries	B-224079	28... A- 6
	B-224689	31... A- 7
Substitute Checks	B-224795	7... A- 2
	B-224807	8... A- 2
	B-224841	16... A- 5
	B-224989	28... A- 6
Appropriation Availability		
Purpose Availability		
Appropriation Restrictions		
Government Corporations	B-217578	16... A- 5
Specific Purpose Restrictions		
Publicity/Propaganda	B-223098)	
	B-223098.2)	10... A- 3
Training Expenses		
Awards/Honoraria	B-223447	10... A- 4
Membership Fees	B-223447	10... A- 4
Budget Process		
Appropriated Funds		
Definition	B-217578	16... A- 5

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
APPROPRIATIONS/FINANCIAL MANAGEMENT - Con.		
Budget Process - Con.		
Funds Transfer		
Unobligated Balances		
Authority	B-224828	1... A- 1
Claims Against Government		
Burden of Proof	B-222038	31... A- 7
Judgment Payments		
Distribution		
Corporate Entities		
Stockholders	B-223618	10... A- 4
CIVILIAN PERSONNEL		
Compensation		
Employment Status		
New Appointment		
Vested Rights	B-224600	8... B- 2
Overpayments		
Error Detection		
Debt Collection		
Waiver	B-218981	7... B- 1
	B-221672	16... B- 5
	B-222383	10... B- 3
Overtime		
Eligibility		
Non-Workday Travel		
Justification	B-222700	17... B- 6
Night Differentials		
Eligibility		
Evidence Sufficiency	B-217935	7... B- 1
Payroll Deductions		
Annuity Deductions		
Underdeductions		
Error Detection	B-221672	16... B- 5

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
CIVILIAN PERSONNEL - Con.		
Compensation - Con.		
Retroactive Compensation		
Employment Compensation		
Travel Expenses		
Reimbursement	B-221641	16... B- 4
Upgrading		
Time Restrictions		
Violation	B-222383	10... B- 3
Relocation		
Household Goods		
Commuted Rates		
Weight Certification		
Evidence Sufficiency	B-222038	31... B- 8
Residence Transaction Expenses		
Reimbursement		
Eligibility		
Lot Sales	B-223364	24... B- 8
Travel		
Commuting Expenses		
Reimbursement		
Eligibility	B-221641	16... B- 4
Temporary Duty		
Return Travel		
Administrative Discretion	B-222711	17... B- 6
Travel Expenses		
Duty Stations		
Establishment	B-223306	23... B- 7
MILITARY PERSONNEL		
Pay		
Overpayments		
Error Detection		
Debt Collection		
Waiver	B-222932	15... C- 1

INDEX - Con.

		<u>Oct.</u>	<u>Page</u>
MILITARY PERSONNEL - Con.			
Pay - Con.			
Retirement Pay			
Claim Accrual Dates			
Continuing Claims			
Statutes of Limitation	B-223734	21...	C- 2
Claims			
Evidence Sufficiency	B-223734	21...	C- 2
Retroactive Pay			
Claim Accrual Dates			
Statutes of Limitation	B-223734	21...	C- 3
Travel			
Advances			
Foreign Currencies			
Exchange Rates			
Losses	B-222267	10...	C- 1
MISCELLANEOUS TOPICS			
Environment/Energy/Natural Resources			
Regulatory Agencies Authority			
Utility Services			
Foreign Sources	B-222908	17...	E- 6
Federal Administrative/Legislative Matters			
Executive Branch Personnel Vacancies			
Temporary Appointment Durations	B-220522.2	17...	E- 5
Government Corporations Trustees			
Fiduciary Duties			
Pension Plans	B-223146	7...	E- 1

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
MISCELLANEOUS TOPICS - Con.		
Finance Industry		
Financial Institutions		
Affiliates		
Loans		
Propriety	B-219801	10... E- 2
Corporate Entities		
Affiliates		
Conflicts of Interest	B-219801	10... E- 1
Authority		
Investments	B-219801	10... E- 3
Government Corporations		
Corporate Ownership	B-219801	10... E- 3
Subsidiaries		
Authority	B-219801	10... E- 2
Law Enforcement		
Lobbying		
Public Information		
Funding Restrictions	B-223098) B-223098.2)	10... E- 4
PROCUREMENT		
Bid Protest		
Agency-Level Protests		
Information Request	B-223394	14... D-34
Oral Protests	B-223951	20... D-46
	B-224252	9... D-27
	B-224256	8... D-23
	B-224262	24... D-61
	B-224683	15... D-39
	B-225033	28... D-69
	B-225406	23... D-56

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Bid Protest - Con.		
Agency-Level Protests - Con.		
Protest Timeliness		
Waiver		
Merits Adjudication	B-224785	10... D-32
Allegation Substantiation		
Burden of Proof	B-223578	24... D-57
Bias Allegation		
Allegation Substantiation		
Burden of Proof	B-222591.2	9... D-25
Evidence Sufficiency	B-224392.2	2... D- 7
Conferences		
Justification	B-224267	24... D-62
Evidence Evaluation		
Privileged Information	B-222591.2	9... D-25
General Accounting Office Procedures		
Administrative Reports		
Comments Timeliness	B-223826.2	8... D-21
	B-223975.2	28... D-67
Agency Notification	B-223366	3... D- 9
	B-224552	24... D-62
General Accounting Office		
Decisions		
Reconsideration	B-219988.8	23... D-54
	B-222425.3	1... D- 1
	B-223609.2	17... D-42
	B-224014.3	23... D-55
	B-224173.2	7... D-19
	B-224266.2	24... D-61
	B-224339.3	16... D-41
	B-224735.2	9... D-28

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Bid Protest - Con.		
General Accounting Office Procedures - Con.		
General Accounting Office Decisions - Con.		
Reconsideration - Con.		
Additional Information B-221888.2	15...	D-36
Information Submission		
Timeliness B-223493	31...	D-80
Interested Parties B-223289.5	30...	D-76
Non-Prejudicial Allegation B-224449	27...	D-65
Suspended/Debarred Contractors B-224308	10...	D-30
Preparation Costs		
B-223366	3...	D-10
B-223578	24...	D-57
B-223923	29...	D-70
B-223929	27...	D-63
B-223991	20...	D-47
B-224000)		
B-224000.2)	30...	D-77
B-224176	2...	D- 5
Protest Timeliness		
Apparent Solicitation		
Improprieties		
B-223394	14...	D-34
B-223493	31...	D-80
B-223530	15...	D-36
B-223578	24...	D-57
B-223818	28...	D-66
B-224252	9...	D-27
B-224432	7...	D-19
B-224537.2	27...	D-66
B-224539	20...	D-48
B-224558	22...	D-53
B-224821	6...	D-17
B-224903	30...	D-79

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Bid Protest - Con.		
General Accounting Office Procedures - Con.		
Protest Timeliness - Con.		
Deadlines		
Constructive		
Notification	B-224683	15... D-39
	B-224692.2	20... D-49
Good Cause Exemptions		
Applicability	B-224166	29... D-74
	B-224692.2	20... D-49
Significant Issue Exemptions		
Applicability	B-224166	29... D-74
	B-224269.2	28... D-68
	B-224416	17... D-45
	B-224692.2	20... D-49
10-Day Rule		
	B-222313.4	2... D- 3
	B-222603.3	2... D- 4
	B-223660	15... D-37
	B-223947	8... D-22
	B-223951	20... D-47
	B-224256	8... D-23
	B-224262	24... D-61
	B-224375	6... D-14
	B-224477	1... D- 2
	B-224683	15... D-39
	B-225033	28... D-69
	B-225406	23... D-56
	B-225417	28... D-70
	B-225421	31... D-85
Adverse Agency Action		
	B-223394	14... D-34
	B-224021.2	24... D-60
	B-224098.2	6... D-13
	B-224368	2... D- 6
	B-224539	20... D-48
	B-224785	10... D-32

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Competitive Negotiation - Con.		
Best/Final Offers - Con.		
Evaluation Errors		
Allegation Substantiation		
Evidence Sufficiency	B-224397	3... D-12
Late Submission		
Rejection		
Propriety	B-223366	3... D-10
	B-224236	3... D-11
Omission		
Leases		
Materiality	B-224452	16... D-41
Submission		
Timeliness	B-223366	3... D-10
Technical Acceptability		
Negative Determination		
Propriety	B-223988	29... D-72
Technical Evaluation		
Point Ratings	B-224397	3... D-12
Competitive Advantage		
Non-Prejudicial Allegation	B-224558	22... D-54
Subcontractors		
Prior Contracts	B-224887	10... D-33
Contract Awards		
Administrative Discretion		
Cost/Technical Tradeoffs		
Technical Superiority	B-224397	3... D-12
	B-224452	16... D-41
	B-225380	24... D-63

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Bid Protest - Con.		
General Accounting Office Procedures - Con.		
Protest Timeliness - Con.		
10-Day Rule		
Effective Dates	B-224166	29... D-74
	B-224735.2	9... D-29
Time/Date Notations		
Establishment	B-223947	8... D-22
	B-224692.2	20... D-50
Purposes		
Competition Enhancement	B-223493	31... D-81
Information Request		
Timeliness	B-225417	28... D-70
Moot Allegation		
General Accounting Office		
Review	B-222448.5	30... D-75
	B-223493	31... D-81
	B-224275	31... D-82
	B-224375	6... D-14
	B-224395	6... D-16
Non-Appropriated Funds		
General Accounting Office		
Review	B-222635	8... D-20
Premature Allegation		
General Accounting Office		
Review	B-224270	16... D-40
	B-224365	17... D-44
Competitive Negotiation		
Best/Final Offers		
Descriptive Literature		
Technical Information		
Information Adequacy	B-223547.2	2... D- 5

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Competitive Negotiation - Con.		
Offers - Con.		
Evaluation	9...	D-26
Administrative Discretion	2...	D- 7
Contracting Officers Discretion	20...	D-47
Point Ratings	31...	D-80
Evaluation Errors		
Personnel Experience		
Point Ratings	29...	D-71
Salient Characteristics		
Allegation		
Substantiation	9...	D-28
Organizational Experience		
Evaluation		
Evidence Sufficiency	9...	D-26
	20...	D-48
Preparation Costs	3...	D-10
	29...	D-70
Price Adjustments		
Allegation Substantiation		
Burden of Proof	24...	D-58
Prices		
Evaluation		
Technical Acceptability	29...	D-72
Quantities		
Multiple/Aggregate Awards	6...	D-15

INDEX - Con.

		<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.			
Competitive Negotiation - Con.			
Suspended/Debarred Contractors			
Offers			
Rejection			
Propriety	B-224268	9...	D-28
Technical Evaluation Boards			
Bias Allegation			
Allegation Substantiation			
Evidence Sufficiency	B-223988	29...	D-73
Qualification			
General Accounting Office			
Review	B-223988	29...	D-73
Use			
Criteria	B-224395	6...	D-17
Contract Disputes			
Contract Cancellation			
Payments			
Amount Determination			
General Accounting Office			
Review	B-224725	20...	D-50
Contract Management			
Contract Administration			
Contract Terms			
Compliance			
General Accounting Office			
Review	B-224472	8...	D-23
	B-224539	20...	D-49
	B-224824	10...	D-32
Convenience Termination			
Payments			
General Accounting Office			
Review	B-218597.3	17...	D-42

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Contract Management - Con.		
Contract Administration -Con.		
Default Termination		
Resolicitation		
General Accounting Office		
Review	B-223826.2	8... D-22
Domestic Products		
Compliance		
General Accounting Office		
Review	B-224275	31... D-82
Federal Procurement Regulations/ Laws		
Revision		
Cost Accounting	B-205208.2	21... D-51
Equitable Adjustments	B-223585.2	1... D- 1
Payment Procedures	B-223827	21... D-52
Shipment Costs		
Rates		
Overcharge		
Set-Off	B-221663	10... D-30
Contract Types		
Fixed-Price Contracts		
Price Determination		
Cost Increase		
Risk Allocation	B-223945	30... D-76
Contracting Power/Authority		
Computer Equipment/Services		
Authority Delegation		
Federal Procurement		
Regulations/Laws		
Compliance	B-224373	30... D-78

INDEX - Con.

		<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.			
Contractor Qualification			
Debarment			
Hearings			
Notification	B-222105	3...	D- 9
Labor Standards			
False Statements			
Wage Underpayments	B-222105	3...	D- 9
Responsibility			
Contracting Office Findings			
Affirmative			
Determination			
General Accounting Office			
Review	B-223974	24...	D-59
	B-224375	6...	D-16
	B-224416	17...	D-45
	B-224467	31...	D-84
	B-224835	1...	D- 3
	B-224923.2	28...	D-69
Negative Determination			
General Accounting Office			
Review	B-223756	9...	D-26
	B-224407	2...	D- 8
Pre-Award Surveys	B-223756	9...	D-27
Responsibility Criteria			
Distinctions			
Performance			
Specifications	B-224267	24...	D-62
Organizational Experience	B-224472	8...	D-23
Performance Capabilities	B-224275	31...	D-82
Responsibility/Responsiveness			
Distinctions	B-223974	24...	D-59

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Sealed Bidding		
Below-Cost Bids		
Contract Awards		
Propriety	B-223649	17...
	B-224466	31... D-43
Bid Guarantees		
Post-Bid Opening		
Modification		
Materiality	B-224165	7... D-18
Propriety	B-224165	7... D-18
	B-224725	20... D-51
Responsiveness		
Contractors		
Identification	B-224266	9... D-28
	B-224266.2	24... D-61
Invitations for Bids		
Identification	B-224233.2	30... D-77
Letters of Credit		
Adequacy	B-224877)	
	B-224878)	16... D-42
Liability Restrictions	B-224725	20... D-51
Minor Deviations		
Restrictive Markings	B-222584.2	16... D-40
Signatures		
Powers of Attorney	B-224843	9... D-29
Sureties		
Liability Restrictions	B-224165	7... D-19
Validity		
State/Local Laws		
Applicability	B-224233.2	30... D-77

INDEX - Con.

		<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.			
Sealed Bidding - Con.			
Bids			
Error Correction			
Low Bid Displacement			
Propriety	B-223531	16...	D-40
Expiration			
Reinstatement			
Propriety	B-224725	20...	D-50
Late Submission			
Rejection			
Propriety	B-224821	6...	D-18
Minor Deviations			
Government Advantage			
Acceptability	B-223974	24...	D-60
Preparation Costs			
	B-223929	27...	D-63
	B-224176	2...	D- 5
Responsiveness			
Acceptance Time Periods			
Deviation	B-225041	29...	D-75
Descriptive Literature			
Absence	B-224927	23...	D-56
First-Article Testing			
Price Omission	B-223968	29...	D-71
Pre-Award Samples			
Absence	B-224500	2...	D- 8
Price Omission			
Taxes	B-224140	29...	D-74

INDEX - Con.

		<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.			
Sealed Bidding - Con.			
Bids - Con.			
Responsiveness - Con.			
Shipment Schedules			
Effective Dates	B-224007	28...	D-67
Shipment Schedules			
Deviation			
Materiality	B-224007	28...	D-68
Competitive System Integrity			
Non-Responsive Bids			
Acceptability	B-224007	28...	D-68
Contract Awards			
Propriety	B-223818	28...	D-66
Allegation Substantiation			
Evidence Sufficiency	B-224432	7...	D-20
Contracting Officer Duties			
Bids			
Price Determination	B-223649	17...	D-43
Invitations for Bids			
Amendments			
Acknowledgment	B-224803	6...	D-17
Waiver	B-223976	23...	D-55
Cancellation			
Justification	B-223660	15...	D-37
Defects			
Evaluation Criteria	B-223929	27...	D-64

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Sealed Bidding - Con.		
Invitations for Bids - Con.		
First-Article Testing		
Pricing		
Price Reasonableness	B-223928	17... D-43
Interpretation		
Terms	B-224458	10... D-31
Post-Bid Opening		
Cancellation		
Justification		
Funding Restrictions	B-224211	27... D-64
Responsiveness		
Descriptive Literature	B-224472	8... D-24
Service Contracts		
Wage Rates		
Omission	B-224458	10... D-31
Post-Bid Opening Cancellation		
Resolicitation		
Requests for Proposals		
Justification	B-224211	27... D-64
Two-Step Sealed Bidding		
Bids		
Responsiveness		
Prices	B-224466	31... D-83
Unbalanced Bids		
Allegation Substantiation		
Evidence Sufficiency	B-224416	17... D-45
Materiality		
Responsiveness	B-224466	31... D-83
Use		
Criteria	B-224395	6... D-17

INDEX - Con.

		<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.			
Small Purchase Method			
Discussion			
Applicability	B-223729	3...	D-11
Federal Procurement			
Regulations/Laws			
Revision			
Small Business Set-Asides			
Domestic Products	B-223827	21...	D-52
Quotations			
Rejection			
Personnel Experience	B-223729	3...	D-11
Socio-Economic Policies			
Federal Procurement			
Regulations/Laws			
Revision	B-223585.2	1...	D- 1
Labor Standards			
Service Contracts			
Wage Rates			
Omission	B-224458	10...	D-31
Small Businesses			
Competency Certification			
Applicability	B-224392.2	2...	D- 8
Eligibility			
Criteria	B-224740.2	21...	D-53
Contract Awards			
Non-Responsible			
Contractors			
Competency			
Certification	B-224835	1...	D- 3

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Socio-Economic Policies - Con.		
Small Businesses - Con.		
Responsibility		
Negative Determination		
General Accounting		
Office Review	B-224612.2	8... D-24
Size Determination		
Bad Faith		
Allegation		
Substantiation	B-224932	22... D-54
Special Procurement Methods/ Categories		
Architect/Engineering Services		
Contractors		
Evaluation		
Additional Information	B-223849	14... D-35
Computer Equipment/Services		
Contract Awards		
Authority Delegation	B-224373	30... D-78
Federal Procurement		
Regulations/Laws		
Revision		
Service Contracts		
Utility Services	B-223585.2	1... D- 2
Federal Supply Schedule		
Multiple/Aggregate Awards		
Mandatory Use		
Allegation		
Substantiation	B-224449	27... D-65
Service Contracts		
Personal Services		
Criteria	B-224000, et al.)	30... D-77

INDEX - Con.

	<u>Oct.</u>	<u>Page</u>
PROCUREMENT - Con.		
Special Procurement Methods/Categories - Con.		
Subcontracts		
Contract Awards		
General Accounting Office		
Review	B-224467	31... D-84
Quotations		
Deficiency		
Discussion	B-224467	31... D-84
Rejection		
Propriety	B-224467	31... D-85
Specifications		
Ambiguity Allegation		
Specification		
Interpretation	B-223530	15... D-36
Brand Name/Equal		
Specifications		
Equivalent Products		
Salient Characteristics		
Descriptive Literature	B-224491	17... D-46
Minimum Needs Standards		
Competitive Restrictions		
Allegation Substantiation		
Evidence Sufficiency	B-224449	27... D-65
Brand Name Specifications		
	B-224370.2	2... D- 6
	B-224410.2	3... D-13
Design Specifications		
Burden of Proof	B-223394	14... D-35
Justification	B-224365	17... D-44
Overstatement	B-223493	31... D-81

INDEX - Con.

Oct. Page

PROCUREMENT - Con.

Specifications - Con.

Minimum Needs Standards - Con.

Competitive Restrictions - Con.

Performance Specifications

Messes

B-223945

30...

D-76

Performance Specifications

Adequacy

B-223530

15...

D-37

WORDS AND PHRASES

"Appropriated Funds"

B-217578

16...

A- 5

