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United States General Accounting Office

Charles A. Bowsher

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

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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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

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

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

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Office of the General Counsel
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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

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.

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-211079.2 Jan. 2, 1987

Amount availability

Augmentation

Federal work programs

Voluntary services

Deficit Reduction Act of 1984 (DEFRA) amended section 409(a) of the Social Security Act to authorize Federal agencies to accept gratuitous services from Aid to Families with Dependent Children (AFDC) assistance recipients as part of the Community Work Experience Program (CWEP). General assistance recipients under similar state programs are not covered by the DEFRA amendment. Therefore, unless otherwise authorized under another law, Federal agencies may not serve as job sites for and accept gratuitous services from non-AFDC state general assistance participants.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government

Torts

Government liability

Federal work programs

Voluntary services

AFDC participants in CWEP programs on Federal work sites can recover for injuries suffered as a result of the negligence of an officer or employee of the Federal agency under the Federal Tort Claims Act on the same basis as any other non-Federal member of the public. However, there would be no Federal Tort Claims Act coverage for torts committed by CWEP participants.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance **B-211079.2 Con't**
Federal work programs **Jan. 2, 1987**
Workmen's compensation insurance
Eligibility

AFDC participants in work experience programs on Federal job sites cannot be provided with Federal Employees' Compensation Act (FECA) coverage because DEFRA, the authorizing statute, states that they are not to be considered as Federal employees for any "purpose." FECA coverage is limited to Federal employees by 5 U.S.C. § 8101. This result follows even in states which insist that the worksite sponsor and not the state are responsible for providing worker's compensation coverage.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government **B-224938** **Jan. 2, 1987**
Burden of proof

Review of our decision in B-200440, Apr. 9, 1986, was undertaken at the request of Congressman Hoyer. We advised the Congressman that our Office may not effect payment of claims against the United States where the claimant has not met his burden of proof to show the validity of his claim.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-222948 Jan. 9, 1987
Statutes of limitation

Claims received in the General Accounting Office (GAO) more than 6 years after they accrue are barred from consideration. Where claims for hazardous duty differentials were received in GAO on April 28, 1986, portions of the claims that accrued prior to April 29, 1980, cannot be considered for payment notwithstanding that they may have been filed earlier in the administrative office concerned.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225191 Jan. 13, 1987
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 recertified military checks. Proper procedures were followed in the issuance of the recertified 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 cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to your collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225971 Jan. 13, 1987

Certifying officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army Finance and Accounting official under 31 U.S.C. § 3528 from liability for certification of improper payments resulting from individual payee's negotiation of both original issued Army instrument and substitute Treasury check. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payees had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute checks and adequate collection efforts are now being made. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226017 Jan. 14, 1987

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 two improper payments resulting from the same payee twice negotiating both the 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, we recommend that Army develop guidelines for dealing with multiple requests by the same payee for substitute payments. In addition, for cases involving debit vouchers received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officers delay more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-226042 Jan. 15, 1987

Purpose availability

Lump-sum appropriation

Administrative discretion

Where Congress authorizes or appropriates a lump-sum amount and a conflict exists between conferees' directions on what can be done with those funds, the agency affected can expend the lump-sum amount without regard to either conferees' directions since they do not constitute legal requirements.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims By Government B-223385 Jan. 16, 1987
Illegal/improper payments
Collection
Payees

A former service member's request for waiver of his debt to the United States arising out of overpayments of a basic allowance for quarters and a variable housing allowance is denied where it appeared that he knew or suspected he was being overpaid and failed to take appropriate corrective action. He was therefore at least partially at fault in the matter, and under the provisions of the waiver statute such fault precludes favorable consideration of his application to be relieved of his repayment obligations.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225976 Jan. 20, 1987
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 recertified military checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, where the payees have left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process

B-218812 Jan. 23, 1987

Funds transfer

Amount availability

Appropriation restrictions

Section 2257 of title 7 of the United States Code authorizes, at a maximum, a transfer of 7 percent of an amount appropriated to a Department of Agriculture "bureau, division, or office", even in cases of extraordinary emergencies.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223837 Jan. 23, 1987

Purpose availability

Specific purpose restrictions

Telephones

Installation of Government telephones in the residences of certain high Nuclear Regulatory Commission (NRC) officials would be proper, notwithstanding the general prohibition in 31 U.S.C. § 1348(a)(1) (1982) on the use of appropriated funds for the installation of telephones in private residences. GAO has recognized the inapplicability of the prohibition when the telephone service is one of limited use or it is a service involving numerous safeguards and the separate service is essential. Here, NRC reasonably has determined that the telephone service is required to establish immediate communication with high NRC officials in the event of a nuclear accident. The telephones to be installed would be capable of dialing only NRC internal telephone numbers.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-223599 Jan. 5, 1987

Travel

Home leave

Permanent residences

Determination

State Department employee returning from overseas assignment on approved home leave to New York delayed travel to perform interim training assignment in Washington at request of agency. During 5-month training assignment employee's family permanently moved to California and agency approved employee's request for change of actual residence. Fact that employee subsequently completed training assignment and began home leave travel 2 days before approval to amend travel orders to reflect address change does not defeat entitlement to travel expenses to California address.

CIVILIAN PERSONNEL

B-224711 Jan. 8, 1987

Relocation

Actual expenses

Eligibility

Personnel death

Survivor benefits

An employee who was transferred from California to Ohio for a 2-year tour of duty died prior to the end of the 2-year period. There is no authority to pay his widow's claim for moving expenses incurred incident to her return to California. Furthermore, the claim is not appropriate for submission to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

CIVILIAN PERSONNEL

B-194625 Jan. 9, 1987

Leaves of Absence

Leave repurchase

Administrative policies

Authority

This letter responds to a request from the Director, Office of Workers' Compensation Programs, United States Department of Labor, that the Policy and Procedures Manual for the Guidance of Federal Agencies include

**CIVILIAN PERSONNEL
Compensation
Classification
Appeals
GAO review**

B-225011 Jan. 13, 1987

In June 1984, Atlanta Regional Office of OPM issued a classification appeal decision which concluded that the employee's position was properly classified as a GS-301-12. In May 1986, employee requested OPM to reconsider the decision, in citing certain extenuating circumstances. OPM declined to reconsider, citing the delay in the request of almost 2 years. The classification decision issued by OPM and its decision not to reconsider are mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Federal Government. 5 U.S.C. § 5112 (1982); 5 C.F.R. § 511.612 (1982). The GAO has no authority to waive or modify the application of the previously cited law, regulations, or decisions of OPM in classification matters. Moreover, U.S. v. Testan, 424 U.S. 392 (1976), precludes backpay for wrongful classification actions.

CIVILIAN PERSONNEL

B-225011 Con't

Compensation

Jan. 13, 1987

Retroactive compensation

Eligibility

Adverse personnel actions

Classification

In June 1984, Atlanta Regional Office of OPM issued a classification appeal decision which concluded that the employee's position was properly classified as a GS-301-12. In May 1986, employee requested OPM to reconsider the decision, in citing certain extenuating circumstances. OPM declined to reconsider, citing the delay in the request of almost 2 years. The classification decision issued by OPM and its decision not to reconsider are mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Federal Government. 5 U.S.C. § 5112 (1982); 5 C.F.R. § 511.612 (1982). The GAO has no authority to waive or modify the application of the previously cited law, regulations, or decisions of OPM in classification matters. Moreover, U.S. v. Testan, 424 U.S. 392 (1976), precludes backpay for wrongful classification actions.

Compensation**Details****Classified positions****Regulations****Interpretation**

This responds to a request from the Chairman, House Committee on Post Office and Civil Service, for an opinion on, "The legality of detailing Schedule C employees * * * to the White House or any agency, other than the one to which the individual was appointed." We conclude that there are no specific prohibitions against detailing a Schedule C employee to the White House or any agency other than the one to which the employee was appointed. Under appropriations law, Federal employees, including Schedule C employees, may not be detailed away from their agencies on a nonreimbursed basis, except in the limited circumstances where the detail involves matters similar or related to matters ordinarily handled by the loaning agency that will aid the loaning agency in accomplishing a purpose for which its appropriations are provided. Also, nonreimbursed details are permissible for brief periods when necessary services cannot be obtained, as a practical matter, by other means and the numbers of persons and cost involved are minimal. However, there is statutory authority to detail Federal employees, including Schedule C employees, to five specific white House offices on a nonreimbursed basis under certain circumstances.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-223385 Jan. 16, 1987

Pay

Overpayments

Error detection

Debt collection

Waiver

A former service member's request for waiver of his debt to the United States arising out of overpayments of a basic allowance for quarters and a variable housing allowance is denied where it appeared that he knew or suspected he was being overpaid and failed to take appropriate corrective action. He was therefore at least partially at fault in the matter, and under the provisions of the waiver statute such fault precludes favorable consideration of his application to be relieved of his repayment obligations.

PROCUREMENT LAW

PROCUREMENT **B-222313.6 Jan. 2, 1987**
Competitive Negotiation **87-1 CPD 1**
Requests for proposals
Amendments
Notification
Contractors

Amendment explaining solicitation requirement need not be issued to an offeror no longer in the competitive range where the subject matter of the amendment is unrelated to the technical reasons for which the offeror was excluded from the competition.

PROCUREMENT **B-224119 Jan. 2, 1987**
Bid Protest **87-2 CPD 2**
GAO procedures
Interested parties

Large business is an interested party to protest the agency's decision to set aside a procurement for small business concerns.

Where a small business set-aside is found to be proper, a large business protester is not an interested party for the purpose of protesting the agency's decision to solicit bids rather than conduct negotiations.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Use
Justification

General Accounting Office will not object to agency's decision to set aside procurement for small business concerns where the record indicates the contracting officer had a reasonable expectation that offers would be obtained from at least two small business concerns and that an award would be made at a reasonable price.

PROCUREMENT B-224022, et al.
Bid Protest Jan. 5, 1987
GAO procedures 87-1 CPD 6
Protest timeliness
Apparent solicitation improprieties

Protest of alleged solicitation defects, apparent on the face of the solicitation, is untimely when it is included in a proposal. Agency has no obligation to publicly open or review proposals on or before closing date, when a protest of this type must be filed.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

Agency evaluation of technical proposals lacks a reasonable basis where, without explanation or discussions, the agency rejects as technically unacceptable a proposal for equipment described as equal to that on which the agency's acquisition plan and specifications are based.

PROCUREMENT
Competitive Negotiation
Offers

B-224022, et al. Con't
Jan. 5, 1987

Technical acceptability
Negative determination
Propriety

Where in its proposal and accompanying catalog, a protester fails to demonstrate compliance with critical specification requirements, and catalog in fact indicates non-compliance, agency's rejection of the proposal without discussions or a request for samples is reasonable.

Protest against rejection of proposal as technically unacceptable is sustained where agency requested samples only from the proposed awardee and evaluated protester's equipment on the basis of previously-purchased item that proposal specifically indicated had been modified in critical areas. Where the procuring activity determines that samples are necessary for evaluation purposes, it should request them from each offeror in the competitive range.

PROCUREMENT

Special Procurement Methods/Categories

- Federal supply schedule**
- Off-schedule purchases**
- Justification**
- Low prices**

Agencies may purchase products from any source, subject to the requirement to obtain competition, when they are available at prices lower than the price of identical products on a mandatory Federal Supply Schedule contract.

PROCUREMENT
Bid Protest
Allegation
Abandonment

B-224249 Jan. 5, 1987
87-1 CPD 7

Where agency specifically rebuts issues raised in the initial protest and protester fails to address the agency's rebuttal in its comments on the agency's report, the issues are deemed abandoned.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Post-award protest challenging experience requirements for technical and engineering personnel in solicitation for technical services is untimely where the basis of protest was evident from the face of the solicitation and the protest was not filed before the closing date for receipt of initial proposals.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

The determination of the relative merits of an offeror's technical proposal is primarily the responsibility of the procuring agency and will be questioned only upon a showing of unreasonableness or that the procuring agency otherwise violated procurement statutes or regulations. Protest is denied where the record shows a reasonable basis for the procuring agency's evaluation of the protester's technical proposal as unacceptable.

PROCUREMENT
Sealed Bidding
Bids

B-224788 Jan. 5, 1987
87-1 CPD 8

Responsiveness
Acceptance time periods
Deviation

Where a solicitation requires a 60-calendar day bid acceptance period and in response to this requirement, bidder inserts the words "As per quote," bid is properly rejected as nonresponsive since it is not clear as to the acceptance period being offered and a bid which does not offer to comply with a solicitation's material requirements must be rejected.

PROCUREMENT
Small Purchase Method
Contractors
Conflicts of interest

B-224888; B-224888.2
Jan. 5, 1987
87-1 CPD 9

Where the low, qualified quoter under a request for quotations was not a government employee at the time of award, award to that quoter was not improper under Federal Acquisition Regulation (FAR), 48 C.F.R. § 3.601 (1985).

GAO has no basis to question agency determination that award to former employee did not violate agency rules of conduct handbook. Whether or not former employee violated handbook guidelines is a matter of policy for resolution by agency, not GAO.

PROCUREMENT
Bid Protest
Premature allegation
GAO review

B-224298 Jan. 6, 1987
87-1 CPD 10

A protest which merely anticipates possible future agency action is speculative and will not be considered.

PROCUREMENT
Sealed Bidding
Bids
Signatures
Conflicts of interest
Retired personnel

Navy contracting activity properly rejected the protester's low bid signed by retired naval officer because the retired naval officer's signing of the bid constituted a sale to the government which violated criminal statute precluding retired officer's representation in any sale to the Navy.

PROCUREMENT
Bid Protest
Allegation
Abandonment

B-224819 Jan. 6, 1987
87-1 CPD 11

Allegation that the contracting agency used improper basis for transportation costs in evaluating bids, raised in initial protest but not mentioned by protester after it was refuted in procuring agency's report, is considered abandoned and will not be considered on the merits.

PROCUREMENT **B-224930 Con't**
Socio-Economic Policies **Jan. 6, 1987**
Small businesses
Contract awards
Pending protests
Justification

Protest against award of purchase orders prior to resolution of size status protest filed with the Small Business Administration is denied in absence of evidence of error in the contracting officer's determination that award without delay was necessary to protect the public interest.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size status
Self-certification
Good faith

Contracting officer may accept offeror's representation that firm is a small business under oral request for quotations in the absence of evidence indicating the representation is erroneous. Any doubt concerning the firm's size status should be resolved by referral to the Small Business Administration which is empowered by statute to determine conclusively matters of size status and eligibility for federal procurements.

PROCUREMENT **B-224990 Jan. 6, 1987**
Competitive Negotiation **87-1 CPD 13**
Offers
Competitive ranges
Exclusion
Administrative discretion

Protest that offeror was improperly excluded from the competitive range is denied where the agency reasonably concluded that the offeror had no reasonable chance of award because its proposal contained major technical weaknesses and scored substantially below the technical proposals of the three highest-rated offerors, and the firm offered the second highest price out of seven offerors.

PROCUREMENT
Bid Protest
Premature allegation
GAO review

B-225125 Jan. 6, 1987
87-1 CPD 14

Protest alleging solicitation improprieties is dismissed as premature where the agency has extended the bid opening indefinitely while it considers the protester's objections.

PROCUREMENT
Noncompetitive Negotiation
Industrial mobilization bases
Competitive restrictions
Administrative discretion

B-225376 Jan. 6, 1987

87-1 CPD 15

PROCUREMENT
Noncompetitive Negotiation
Use
Justification
Industrial mobilization bases

By statute, military agencies need not obtain full and open competition and may use other than competitive procedures when it is necessary for industrial mobilization purposes to award the contract to a particular source or sources. Therefore, since the normal concern of maximizing competition is secondary to the needs of industrial mobilization, decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization will be left to the discretion of the military agencies absent compelling evidence of an abuse of that discretion.

Allegation that protester, a foreign firm, could offer a lower price if allowed to compete provides no basis to object to agency's restriction to single domestic source to meet the needs of industrial mobilization where such restriction is not found improper.

PROCUREMENT

B-225383 Jan. 6, 1987

Bid Protest

87-1 CPD 17

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Allegation that a liquidated damages clause should not have been included in request for proposals is untimely and will not be considered where protest was filed after the closing date for receipt of initial proposals.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Terms

Liquidated damages

Waiver

Mandatory liquidated damages requirement under request for proposals may not be considered to have been waived or relaxed by agency request for best and final offers from offeror which took exception to the requirement in its initial offer. A determination to relax or waive such a requirement would have to be made by amendment to the solicitation.

PROCUREMENT

Socio-Economic Policies

Preferred products/services

Domestic sources

Foreign products

Price differentials

Buy American Act does not prohibit purchases of foreign-made products but requires application of differential to foreign offer for price evaluation purposes. Where foreign offeror is only technically acceptable offeror, whether differential is applied is irrelevant.

PROCUREMENT

B-225880 Jan. 6, 1987

Bid Protest

87-1 CPD 20

GAO procedures

Protest timeliness

Apparent solicitation improprieties

A protest to the General Accounting Office (GAO) alleging an impropriety that was apparent on the face of the invitation for bids that is not filed until after bid opening is untimely.

PROCUREMENT

Sealed Bidding

Contract awards

Propriety

Design specifications

Defects

Acceptance of low bid which took no exception to the specifications, even though the specifications were incorrect and no bidder could comply with them, is not legally objectionable when no bidder was misled by the specifications, all submitted bids on the same basis, and the government's needs will be met by the product offered.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule
Effective dates

B-224188 Jan. 7, 1987
87-1 CPD 23

Doubt as to when protester should have known its basis for protest is resolved in favor of protester for timeliness purposes.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price omission
Line items

Where the invitation for bids requires unit and extended prices for every line item including those for 2 option years which were included in the evaluation, the protester's omission of the unit and extended prices for one line item in the second option year renders the bid nonresponsive and not subject to correction as an apparent clerical mistake because no consistent pattern of pricing in the bid exists to establish both the existence of error and the intended bid.

PROCUREMENT
Competitive Negotiation
Competitive advantage
Incumbent contractors

B-224248 Jan. 7, 1987
87-1 CPD 24

An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

PROCUREMENT

B-224684 Jan. 7, 1987

Bid Protest

87-1 CPD 25

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that the price of texts to be used by each offeror in solicitation for a course of instruction should have been included in the evaluation of the offeror's cost is untimely when raised after the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation errors

Personnel experience

Point ratings

Protester has not shown that evaluation was improper by alleging that protester's instructors are superior to awardee's instructors where protester's proposal received higher score for the "qualifications of instructors" criterion, but this criterion accounted for only 20 percent of the total score for technical proposals.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Evaluation criteria

Prior contracts

Contract performance

Where solicitation for a course of instruction requires offerors to disclose the success rate of former students in passing state examination, but does not require any certification or verification of this information, it is not unreasonable for evaluators to evaluate offers on the basis of the rates stated in proposals.

PROCUREMENT

B-224842 Jan. 7, 1987

Competitive Negotiation

87-1 CPD 26

Discussion

Adequacy

Criteria

Even accepting the protester's version on a disputed factual issue--whether contracting officer at oral discussions told protester its proposal was technically acceptable--protester was not deprived of the full benefit of meaningful discussions since it was not reasonable for the protester to conclude, based solely on the contracting officer's remarks, that no further revisions to its technical proposal should be attempted.

PROCUREMENT

Competitive Negotiation

Offers

Technical acceptability

Negative determination

Propriety

Protester fails to show that contracting agency's technical evaluation of its proposal lacked a reasonable basis where protester concedes its proposal contained certain miscalculations identified by the agency and the only evidence offered to support the protester's position are conclusory statements, without further elaboration or support, disagreeing with the agency's technical assumptions and conclusion.

PROCUREMENT
Bid Protest
GAO procedures
Information submission
Timeliness

B-225416 Jan. 7, 1987
87-1 CPD 27

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Apparent solicitation improprieties

A telegram received by an agency prior to bid opening purporting to be a protest and stating that details would follow later is not sufficient to constitute a protest of an alleged solicitation impropriety, and therefore a protest to the General Accounting Office of the same alleged impropriety filed after bid opening is dismissed as untimely.

PROCUREMENT
Competitive Negotiation
Offers
Late submission
Acceptance criteria

B-225994 Jan. 7, 1987
87-1 CPD 28

An agency may consider a proposal that is received after the date required in the solicitation only if one of the exceptions to the rule against considering late proposals applies. These exceptions do not contemplate the submission of an offer after the field of competition has been defined as of the specified date.

PROCUREMENT

B-222581.3 Jan. 8, 1987

Bid Protest

87-1 CPD 30

GAO procedures

Information submission

Timeliness

GAO will decline to review an allegation that a particular aspect of a contracting agency's cost comparison was incorrect if the protester failed to raise the objection in an appeal to the agency.

PROCUREMENT

Special Procurement Methods/Categories

In-house performance

Cost estimates

Contract administration

Personnel

OMB Circular A-76 cost comparison guidelines concerning the number of contract administrators whose cost is to be included in the cost of contract performance also provide for waiver of the recommended levels. Where the contracting activity has obtained a proper waiver, the protester's disagreement with the number of contract administrators required does not provide a basis for overturning the waiver.

PROCUREMENT

Special Procurement Methods/Categories

In-house performance

Cost estimates

GAO review

Office of Management and Budget Circular (OMB) A-76 does not preclude a protest to the General Accounting Office (GAO) from an agency's administrative review of a bidder's appeal of the agency's in-house cost estimate.

PROCUREMENT B-223194.3, et al.
Bid Protest Jan. 8, 1987
GAO procedures 87-1 CPD 31
Interested parties

Individual who did not participate in prior protest proceedings and now is acting as a concerned citizen is not eligible to seek reconsideration of decision.

PROCUREMENT B-223874.2 Jan. 8, 1987
Bid Protest
GAO procedures
GAO decisions
Reconsideration

Prior decision is affirmed where request for reconsideration does not show any error of fact or law which warrants reversal.

PROCUREMENT
Sealed Bidding
Invitations for bids
Defects
Descriptive literature

Descriptive literature clause in an invitation for bids which merely states in general terms what categories of descriptive literature might be required is defective due to lack of specificity.

PROCUREMENT B-224031 Jan. 8, 1987
Contractor Qualification 87-1 CPD 32
Responsibility/responsiveness distinctions

Solicitation requirement that the bid contain name of "at least one [reference] where the [automatic data processing] network is in commercial use" does not relate to responsiveness of bid, where solicitation does not require the furnishing of a standard commercial product compliance with which must be established in the bid, but to responsibility of bidder. Bid omitting name of commercial reference should not have been rejected as nonresponsive.

PROCUREMENT
Sealed Bidding
Bids

B-224031 Con't
Jan. 8, 1987

Responsiveness
Clerical errors
Ambiguity allegation

Where bid otherwise does not take exception to solicitation specifications for automated data processing cable and includes descriptive literature which shows that the system offered includes "RG-62/U" cable which conforms with the specifications, clerical error in cover letter which refers to nonexistent "RG-69/U" cable does not render bid ambiguous and, therefore, nonresponsive, because under circumstances of this case, bid was not susceptible of more than one reasonable interpretation.

PROCUREMENT

B-224156 Jan. 8, 1987
87-1 CPD 33

Bid Protest
Allegation substantiation
Burden of proof

Protester has not met burden of proving its case that the contracting officer failed to solicit from it an oral quotation for the repurchase services since the only evidence is conflicting statements by the protester and the agency.

PROCUREMENT

Competitive Negotiation
Use
Criteria

Following termination of mowing contract for default, contracting agency acted reasonably in obtaining those services by opening competition to the remaining bidders to the original solicitation so as to mitigate damages resulting from the default, thereby avoiding a sole-source award to the next low bidder on the original procurement.

PROCUREMENT
Bid Protest
Agency-level protests
Information adequacy

B-224257 Jan. 8, 1987
87-1 CPD 34

Letter to a contracting agency which does not use the word "protest" but conveys dissatisfaction with the agency's proposed rejection of a bid and requests that agency reconsider its position constitutes a protest to the agency.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Letters of credit
Adequacy

Where an irrevocable letter of credit submitted as a bid guarantee is a photocopy; is addressed to the bidder rather than the agency; and does not specifically state the terms and conditions upon which the agency can make a demand on the bank issuing it, the letter is of questionable enforceability, and the bid therefore is properly rejected as nonresponsive.

PROCUREMENT
Bid Protest
GAO procedures
Interested parties

B-224577 Jan. 8, 1987
87-1 CPD 36

Second low bidder whose required descriptive literature allegedly is defective is an interested party to protest that low bid was defective for the same reason.

PROCUREMENT

B-224577 Con't

Sealed Bidding

Jan. 8, 1987

Bids

Responsiveness

Descriptive literature

Adequacy

Bidder's circling of individual model and certain options in commercial literature for forklifts and annotating the literature to specify compliance with certain salient characteristics is sufficient to demonstrate compliance with salient characteristics listed in the solicitation for the forklifts.

Where descriptive literature shows compliance with solicitation's salient characteristics as required by the solicitation, the failure of the literature to indicate which other options are being offered is immaterial since the literature does not indicate an exception to the solicitation's requirements.

PROCUREMENT

B-225101.2 Jan. 8, 1987

Bid Protest

GAO procedures

Protest timeliness

Good cause exemptions

Applicability

PROCUREMENT

Bid Protest

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

GAO will not consider the merits of an untimely protest under either the good cause or significant issue exceptions when there is no compelling reason beyond the protester's control that prevented the timely filing of a protest and the protest does not present a unique issue of widespread interest to the procurement community.

PROCUREMENT
Bid Protest
GAO procedures
Purposes
Competition enhancement

B-225568 Jan. 8, 1987
87-1 CPD 38

General Accounting Office will not review the merits of an allegation that a procurement should be conducted on a sole-source basis since the purpose of GAO's role in reviewing bid protests is to ensure that the statutory requirements for free and open competition are met.

PROCUREMENT
Bid Protest
GAO procedures
Agency notification

B-224064.3 Jan. 9, 1987

PROCUREMENT
Bid Protest
GAO procedures
GAO decisions
Reconsideration

GAO declines congressional request to consider on merits protest which had been dismissed in two previous decisions because of protester's failure to furnish contracting officer with a copy of the protest as required by GAO's Bid Protest Regulations. Propriety of dismissal has been thoroughly considered and to now consider protest on merits would suggest to procurement community that requirements of bid protest regulations could be circumvented through congressional intervention.

PROCUREMENT

B-224181 Jan. 9, 1987

Bid Protest

87-1 CPD 40

GAO procedures

Interested parties

Direct interest standards

Issue raised by a protester that is not in line for award even if the issue is decided in its favor will not be considered because the protester does not have the requisite direct economic interest required to be considered an interested party under General Accounting Office Bid Protest Regulations.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation errors

Allegation substantiation

Protest that evaluation of price proposal for a telecommunications system was inaccurate is denied where protester does not demonstrate any error in the evaluation or offer any evidence that an error was made except its opinion that the telecommunications system it proposed was less expensive than that of the other offerors.

PROCUREMENT
Sealed Bidding
Invitations for bids
Defects
Quality control
Criteria

B-224230 Jan. 9, 1987
87-1 CPD 41

Protest contending that an invitation for bids for custodial services is defective because it provides that only after contract award will the contractor be informed of the acceptable deficiency levels and the deduction percentages to be taken from the contractor's billings for exceeding the acceptable deficiency levels is sustained. Since such information could significantly affect the cost of performance, it is essential for bidders to have when they prepare their bids, and its absence could discourage potential bidders from competing or offering as low prices as they might if they knew of the acceptable deficiency levels and deduction percentages to be imposed on the contractor after award.

PROCUREMENT
Specifications
Performance specifications
Adequacy

Protest by incumbent contractor contending that an invitation for bids for custodial services should specify the dimensions of the areas and the number of items such as sand urns, ash trays and waste baskets to be cleaned and the frequency of the required spot cleaning is denied since the IFB provides the floor plans showing dimensions of all buildings and urges bidders to make site visits. Moreover, all such information is readily available to the protester and there is no requirement that specifications be so detailed that site visits become unnecessary.

PROCUREMENT

Sealed Bidding

Low bids

Error correction

Price adjustments

Propriety

B-224538 Jan. 9, 1987

87-1 CPD 43

Correction of low bidder's mistake is appropriate where record clearly establishes the claimed mistake and where the corrected bid is significantly lower than the next low bid despite the fact the low bidder's actual profit markup in calculating its initial bid differed from the markup set forth in its bid worksheets since the range of uncertainty of the intended bid falls within the narrow range of uncertainty for which correction is permitted.

PROCUREMENT

Bid Protest

GAO procedures

Interested parties

Subcontractors

B-224607 Jan. 9, 1987

87-1 CPD 44

General Accounting Office will consider a protest by a potential subcontractor of a prime contractor that is providing large-scale management services to support an Air Force base, since the contractor has ongoing purchasing responsibility and none of the parties disputes that it is acting "for" the government in this capacity.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Cancellation

Justification

GAO review

Decision to cancel a request for proposals after proposal due date is appropriate when inability of prime contractor, acting for the government, to reach agreement with proposed subcontractor reveals solicitation deficiencies necessitating a reconsideration of the minimum requirements of the government.

PROCUREMENT
Payment/Discharge
Payment priority
Subcontractors

B-224953 Jan. 9, 1987
87-1 CPD 45

Where the government holds contract funds to which an unpaid subcontractor claims some right, the government may not enforce the subcontractor's rights against the prime contractor. The government has a nonenforceable equitable obligation, however, to see that subcontractors are paid and therefore should not make payment except under an agreement by all the parties or pursuant to an order of a court of competent jurisdiction.

PROCUREMENT
Payment/Discharge
Unauthorized contracts
Quantum meruit/valebant doctrine

Where the government receives a benefit from services under an agreement exceeding the contracting officer's procurement authority, and the government receives a benefit from the services, payment may be made on a quantum meruit basis--that is the reasonable value of the services.

PROCUREMENT
Bid Protest
Allegation substantiation
Burden of proof

B-225451 Jan. 9, 1987
87-1 CPD 46

PROCUREMENT
Bid Protest
GAO procedures
Interested parties
Non-prejudicial allegation

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest is dismissed where two grounds of protest (that the Navy did not communicate an amendment to protester and that the Navy improperly disclosed protester's price) are unsupported, affirmative responsibility decision is involved in third ground of protest, and fourth ground of protest (alleged contracting agency delay in notifying protester of award) does not affect propriety of award.

PROCUREMENT B-225571 Jan. 9, 1987
Contractor Qualification 87-1 CPD 47
Responsibility/responsiveness distinctions

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest alleging that low offer in two-step sealed bidding procurement was below cost concerns responsibility, not responsiveness, and General Accounting Office does not review affirmative determinations of responsibility in the absence of conditions not present here.

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Bids
Error allegation
Standing

A protester has no standing to claim an error in a competitor's offer, since it is solely the responsibility of the contracting parties to assert rights and bring forth the necessary evidence to resolve mistake questions.

PROCUREMENT B-225865 Jan. 9, 1987
Bid Protest 87-1 CPD 48
GAO procedures
Interested parties
Direct interest standards

Protester who did not submit a quotation in response to a request for quotations (RFQ) is not an interested party for purposes of protesting an award under the RFQ.

PROCUREMENT
Bid Protest
Moot allegation
GAO review

B-224565 Jan. 12, 1987
87-1 CPD 49

Allegations are academic where agency acknowledges that award for certain items was improper and has determined to terminate those portions of the delivery orders.

PROCUREMENT
Bid Protest
Non-prejudicial allegation
GAO review

Protester was not prejudiced by the contracting agency's failure to indicate in request for quotations (RFQ) that it was for items available from the Federal Supply Schedule, since the protester has not alleged that it would have offered lower-priced schedule items had it known of the restriction, and, in any event, the RFQ specifically stated that it was for informational purposes only.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Terms
Interpretation

Agency correctly interprets maximum order limitation in awardee's Federal Supply Schedule contract as applying to total of items ordered under a special item number in the contract, rather than to each such item individually. When read as a whole, solicitation provision that subsequently was included in awardee's contract supports the agency's position.

PROCUREMENT **B-224565 Con't**
Special Procurement **Jan. 12, 1987**
Methods/Categories
Federal supply schedule
Mandatory use

Protest by a non-Federal Supply Schedule contractor, against award at a higher price to a schedule contractor, is without merit where there is a mandatory schedule in effect and an agency's minimum needs will be met by items listed on the schedule, because the agency is required to purchase its requirements from the schedule.

PROCUREMENT **B-225941 Jan. 12, 1987**
Bid Protest **87-1 CPD 50**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

A protest submitted after receipt of proposals contending that provisions implementing the Davis-Bacon Act, rather than the Walsh-Healey Act, should have been included in the solicitation is untimely since it pertains to an apparent solicitation defect, protests of which must be filed prior to the date set for submission of initial proposals.

PROCUREMENT **B-223475.2 Jan. 13, 1987**
Sealed Bidding **87-1 CPD 51**
Invitations for bids
Post-bid opening cancellation
Justification
Price reasonableness

Protest of agency's cancellation of two line items under an invitation for bids and resolicitation of the requirement is denied where the single responsive bid on each canceled item was significantly higher than the other nonresponsive bids submitted under both line items and 133 percent and 85 percent higher than prices paid for the two items under recent contracts.

PROCUREMENT B-224214 Con't
Competitive Negotiation Jan. 13, 1987
.Offers
Evaluation
Samples

Offerors who demonstrated experience by providing sample reports were reasonably given more credit in the evaluation than the protester who did not demonstrate its experience.

PROCUREMENT B-225444 Jan. 13, 1987
Competitive Negotiation 87-1 CPD 53
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

Protest that technically acceptable proposal, lower in cost than awardee's, was improperly not selected for award is denied since the successful proposal reasonably was considered better technically and technical considerations under the solicitation were of greater importance to the government than cost.

PROCUREMENT B-225531 et al.,
Bid Protest Jan. 13, 1987
GAO procedures 87-1 CPD 54
Interested parties
Direct interest standards

A nonresponsible firm, protesting that award under a negotiated procurement following cancellation of the second step of a sealed bid two-step procurement was made at prices higher than those received under the canceled second step in violation of the Federal Acquisition Regulation, is an interested party who can protest under the Bid Protest Regulations because, if the protest were sustained, the remedy would be a resolicitation under which the protester could compete.

PROCUREMENT B-225531 et al., Con't
Competitive Negotiation Jan. 13, 1987
Contract awards
Propriety

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Low bids
Use

The Federal Acquisition Regulation, 48 C.F.R. § 15.103(c), does not preclude award, following negotiation after the cancellation of a sealed bid procurement, at a price higher than the lowest rejected bid price under the canceled procurement except where the cancellation was based on unreasonable prices or collusive bidding.

PROCUREMENT B-225582.2 Jan. 13, 1987
Bid Protest 87-1 CPD 55
Private disputes
GAO review

General Accounting Office will not consider complaint that protester lost the competition because in preparing its bid it used a high quotation from a prospective subcontractor the protester later discovered was affiliated with the firm that submitted the low bid. Since the government had no part in the subcontractor's actions or the protester's bidding decision, the matter essentially involves a dispute between private parties, and therefore is not a matter to be resolved through the bid protest process.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Decision as to whether a prospective contractor is responsible is within the discretion of the contracting officer, and GAO will not review an affirmative determination in that regard except in limited circumstances.

PROCUREMENT **B-225909 Jan. 13, 1987**
Sealed Bidding **87-1 CPD 56**
Prior contracts
Price disclosure
Non-prejudicial allegation

Prices under a prior contract generally are available to the public, so that the prior contractor is not unfairly disadvantaged by the disclosure of the prior prices in the invitation for the new contract.

PROCUREMENT **B-224292 Jan. 14, 1987**
Competitive Negotiation **87-1 CPD 57**
Requests for proposals
First-article testing
Costs
Liability

Allegation that 10 U.S.C. § 2319 (Supp. III 1985), enacted by Congress to encourage competition for qualified items, requires the agency to afford protester the opportunity to prequalify its product and bear the cost of testing and evaluation is without merit since 10 U.S.C. § 2319 applies only to those situations where the agency has imposed a preaward qualification requirement which limits competition not to situations, where, as here, protester can compete but is subjected to a first article test requirement.

PROCUREMENT **B-225525.2 Jan. 14, 1987**
Bid Protest **87-1 CPD 58**
GAO procedures
Interested parties
Subcontractors

Prospective subcontractor who protests restrictive specification is not an interested party under GAO's Bid Protest Regulations, since it is not a prospective offeror under the solicitation.

PROCUREMENT

B-224924 Con't

Bid Protest

Jan. 15, 1987

GAO procedures

Interested parties

Direct interest standards

Firm that did not submit an offer in response to the solicitation is not an interested party to protest the evaluation of the awardee's cost proposal.

PROCUREMENT

Bid Protest

GAO procedures

Protest timeliness

10-day rule

Protest that delivery orders are outside the scope of a contract is untimely where protester waited until after the first year of contract performance was complete before seeking the information on which its protest is based.

PROCUREMENT

Special Procurement Methods/Categories

Options

Contract extension

Use

Propriety

Protest that agency improperly exercised an option to extend the term of a contract is denied where the protester has not shown that the agency failed to follow applicable regulations or that the agency's determination to exercise the option was unreasonable.

PROCUREMENT

B-224206 Con't

Sealed Bidding

Jan. 16, 1987

Invitations for bids

Post-bid opening cancellation

Justification

Sufficiency

While contracting agency has broad discretion to cancel an invitation for bids, there must be a compelling reason to do so after bid opening because of potential adverse impact on the competitive bidding system of cancellation after exposure of bid prices. Mere fact that the agency mistakenly placed a restrictive specification in solicitation does not justify cancellation if award would meet the government's actual needs and there is no showing of prejudice to other bidders.

PROCUREMENT

B-224324 Jan. 16, 1987

Bid Protest

87-1 CPD 64

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest, filed after closing date for receipt of offers, that solicitation contained statement which impliedly excluded protester from competition is untimely since it is a protest of an alleged solicitation deficiency. Under GAO's Bid Protest Regulations such a protest must be filed before closing date.

PROCUREMENT B-225165; B-225166
Competitive Negotiation Jan. 16, 1987
Contracting officer duties
Planning
Federal procurement regulations/laws
Revision

PROCUREMENT
Sealed Bidding
Contracting officer duties
Planning
Federal procurement regulations/laws
Revision

General Accounting Office has no comments on Federal Acquisition Regulation (FAR) case No. 86-57, a proposal to add paragraph (b)(2)(iv) to FAR § 7.105 to require a contracting officer's written acquisition plan to address competition at the subcontract level, when such competition is both feasible and desirable.

PROCUREMENT
Special Procurement Methods/Categories
Multi-year procurement
Prices
Options

In response to request for comments on Federal Acquisition Regulation (FAR) case No. 86-52, a proposal to amend sections of FAR subpart 17.2 and FAR § 52.217-5 concerning contract options, the General Accounting Office offers suggestions with respect to (1) the applicability of the revised sections to service contracts, (2) the need to price all contract options at the time of the initial contract award, and (3) the need for corresponding changes to Federal Procurement Data System reporting requirements.

PROCUREMENT **B-224184.2 Con't**
Competitive Negotiation **Jan. 20, 1987**
Offers
Evaluation
Cost estimates

Protest that agency evaluation of public shipyard's estimated cost of performance as low is unreasonable is denied where agency conducted an analysis, which record does not show was wrong, to ensure that the public shipyard's cost estimate was reasonable and contained cost elements comparable to private shipyard costs and, based on that analysis, public shipyard's estimated cost of performance remained lower.

PROCUREMENT **B-224374.2 Jan. 20, 1987**
Bid Protest **87-1 CPD 71**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest of agency's alleged failure to include reasonable estimated workload for laundry services concerns an alleged impropriety that was apparent on the face of the solicitation but the protest was not filed before bid opening and is therefore untimely.

PROCUREMENT
Sealed Bidding
Invitations for bids
Post-bid opening cancellation
Justification
Price reasonableness

Contracting agency's rejection of sole bid for schedule I of the solicitation requirements on the basis of unreasonable price, resulting in cancellation of that portion of the solicitation, was proper where the bid price was significantly higher than the most recent contract price and a price range developed through a market survey and the record does not disclose fraud or bad faith on the part of the contracting agency in reaching this determination.

PROCUREMENT B-224544; B-224546 Con't
Contractor Qualification Jan. 20, 1987
Responsibility
Contracting officer findings
Negative determination
GAO review

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
Pre-award surveys

Agency's nonresponsibility determination is reasonably based even though one aspect of the protester's capability may have been incorrectly evaluated by the preaward survey team. It is only when the record shows that such determinations are based on unreasonable or unsupported conclusions in many areas that the General Accounting Office will recommend reconsideration of the determinations.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
Pre-award surveys

Contracting officer's findings of nonresponsibility were reasonable where the findings were based on negative preaward survey reports which stated that the protester's prior performance on two similar contracts was unsatisfactory and the preaward survey reports are supported by the record.

PROCUREMENT

B-225885.2 Jan. 20, 1987

Bid Protest

87-1 CPD 73

GAO procedures

Interested parties

Direct interest standards

To be considered an interested party to have standing to protest under the Competition in Contracting Act of 1984, and GAO Bid Protest Regulations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. A firm which may supply its product to bidders in a federal procurement, but which is not an actual or prospective bidder itself, is not an interested party.

PROCUREMENT

B-222591.3 Jan. 21, 1987

Competitive Negotiation

87-1 CPD 74

Best/final offers

Evaluation

Point ratings

Propriety

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

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Cost/technical tradeoffs

Technical superiority

Protest that award was not made to the lowest cost proposal is denied where awardee's proposal was found substantially technically superior, and the selection official determined that the technical superiority warranted the additional cost.

PROCUREMENT **B-222591.3 Con't**
Competitive Negotiation **Jan. 21, 1987**
Discussion
Adequacy
Criteria

Protest that agency failed to hold meaningful discussions with offeror is without merit where agency sent protester detailed questions that apprised the protester of the areas of its proposal with which the agency was concerned, and the protester was given an opportunity to revise its proposal in response to these questions.

PROCUREMENT
Competitive Negotiation
Technical transfusion/leveling
Allegation substantiation
Evidence sufficiency

Allegation that offeror's personnel met with procuring agency personnel does not, by itself, provide any basis for conclusion that agency engaged in technical transfusion.

PROCUREMENT **B-223774.4 Jan. 21, 1987**
Bid Protest **87-1 CPD 75**
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule

Decision dismissing protest grounds as untimely filed is affirmed where protester does not establish on reconsideration that the protest grounds, first raised in comments on agency report, could not have been raised in original protest submission.

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

B-224823 Jan. 21, 1987
87-1 CPD 76

Award to second-low bidder was not improper where protester has not established that agency ever received verification of protester's low--and possibly mistaken--bid and where protester permitted its bid to expire after agency unsuccessfully had requested its verification over a 2-month period.

PROCUREMENT
Bid Protest
Forum election
Finality

B-225590 Jan. 21, 1987
87-1 CPD 77

General Accounting Office (GAO) will dismiss protest where issues raised are before a court of competent jurisdiction; the protester has not asked that the court seek GAO's opinion; and the court has not expressed interest in a GAO decision.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

B-225640 Jan. 21, 1987
87-1 CPD 78

Whether an awardee's delivered equipment actually conforms to the contract requirements is a matter of contract administration which is the responsibility of the contracting agency, not the General Accounting Office's bid protest function.

PROCUREMENT **B-225640** **Con't**
Contractor Qualification **Jan. 21, 1987**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

An offeror's ability to meet its contractual obligations at the price offered is a matter of the firm's responsibility for the contracting agency to determine before award, and General Accounting Office will not review an affirmative determination in that respect except in limited circumstances.

PROCUREMENT **B-225851** **Jan. 21, 1987**
Socio-Economic Policies
Federal procurement regulations/laws
Revision

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 86-59, a proposal to amend FAR § 14.205-5(b) to state that contracting activities may require written requests and establish appropriate procedures with regard to the release of lists of prospective bidders furnished plans and specifications under solicitations for construction contracts.

PROCUREMENT **B-225994.2** **Jan. 21, 1987**
Competitive Negotiation **87-1 CPD 79**
Hand-carried offers
Late submission
Acceptance criteria
Acceptance

Offer delivered by United States Postal Service express mail the day after it was due properly was rejected, since a late hand-carried offer can be considered only if mishandling by the procuring agency was the paramount cause of the late receipt.

PROCUREMENT

B-226036 Jan. 21, 1987

Bid Protest

87-1 CPD 80

GAO procedures

Interested parties

Direct interest standards

A protester has no standing to claim a mistake in a competitor's bid because it is the sole responsibility of the contracting parties--the government and the low bidder--to assert rights and bring forth evidence necessary to resolve mistake in bid questions.

PROCUREMENT

Sealed Bidding

Below-cost bids

Contract awards

Propriety

There is nothing illegal in the submission and acceptance of a below-cost offer. If a below-cost bid has been submitted, whether the bidder can perform successfully at its offered price is to be considered in the contracting officer's determination of whether the firm is responsible.

PROCUREMENT

B-224247 Jan. 22, 1987

Competitive Negotiation

87-1 CPD 81

Offers

Technical acceptability

Negative determination

Propriety

Protest against rejection of offer consisting only of price proposal is denied where solicitation required submission of management and technical proposal and contained factors for evaluation of the management and technical aspects of proposals.

PROCUREMENT

Bid Protest

Bias allegation

Allegation substantiation

Burden of proof

B-224158; B-224158.2

Jan. 23, 1987

87-1 CPD 83

Protester alleging bias toward a particular type of equipment has the burden of proof, and where an offeror other than the awardee proposes different equipment and still receives a high technical score, the General Accounting Office regards the protester's allegation that its low score was due to bias as mere speculation.

PROCUREMENT

Competitive Negotiation

Below-cost offers

Acceptability

PROCUREMENT

Competitive Negotiation

Offers

Cost evaluation

Cost realism

PROCUREMENT

Competitive Negotiation

Offers

Cost realism

Evaluation

Administrative discretion

There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge a below-cost award to a contractor determined responsible.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Discussion

B-224158; B-224158.2 Con't
Jan. 23, 1987

Agency is not obligated to notify an offeror of deficiencies remaining in its proposal after it has had two opportunities to respond to the agency's questions. The agency need not conduct further discussions once it determines that the proposal has no reasonable chance of being selected for award.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

When responsibility-type factors such as experience are included as technical evaluation factors in a request for proposals, as they properly may be, the General Accounting Office will review the agency's evaluation in the same manner as it does any other evaluation, i.e., to determine whether it was reasonable and complied with applicable statutes and regulations.

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Deficiency
Blanket offers of compliance

Where a proposal for an automated weapons parts storage and retrieval system fails to demonstrate how it will meet solicitation requirements, but instead merely repeats those requirements and makes a blanket offer of compliance, the General Accounting Office has no basis to question agency's exclusion of it from the competitive range.

PROCUREMENT
Bid Protest
Non-prejudicial allegation
GAO review

B-224187 Jan. 23, 1987
87-1 CPD 84

Protest that agency failed to respond to protest of bonding requirements sufficiently in advance of bid opening to permit protester to formulate its bid is denied where alleged delay does not prejudice protester where bonding requirement is proper and protester concedes it cannot secure required bonds.

PROCUREMENT
Sealed Bidding
Bonds
Justification
GAO review

Protest that IFB requirement for bid, performance and payment bonds is unduly restrictive is without merit since it is within the agency's discretion whether to require bonding in a solicitation and General Accounting Office will not upset such a determination made reasonably and in good faith.

Agency's requirement for uninterrupted performance of custodial services is itself a reasonable basis for imposing bonding requirements in solicitation.

PROCUREMENT **B-224466.2; B-224466.3**
Bid Protest **Jan. 23, 1987**
GAO procedures **87-1 CPD 88**
GAO decisions
Reversal
Legal errors

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Offers
Rejection
Propriety

On reconsideration, General Accounting Office reverses prior decision sustaining protest, on ground that agency's contracting scheme (two-step sealed bidding with subsequent negotiation of task orders) renders conventional rules of sealed bid procurement--applied in prior decision--inadequate to protect the government from risk of unsatisfactory performance at other than lowest cost, arising from bidder's failure to price all labor categories in its bid as instructed by solicitation.

PROCUREMENT **B-218566.4 Jan. 27, 1987**
Specifications **87-1 CPD 89**
Ambiguity allegation
Specification interpretation

Protest that specifications were ambiguous is denied where the General Accounting Office finds no ambiguity and where in any case there is no showing of competitive prejudice.

PROCUREMENT **B-225613 Jan. 27, 1987**
Competitive Negotiation 87-1 CPD 91
Contract awards
Pre-qualification
Contractor personnel
Training

Requirement in performance work statement that "contractor" certify technicians' training prior to contract "start date" does not establish a certification requirement as a precondition to receiving award.

PROCUREMENT
Contract Management
Contract performance
GAO review

Whether contractor performs contract with staff with required training and otherwise in accordance with contract requirements concerns contract administration, which General Accounting Office does not review.

PROCUREMENT **B-225635 Jan. 27, 1987**
Bid Protest 87-1 CPD 92
Agency-level protests
Information adequacy

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule

A letter to the contracting officer protesting the award of a contract that does not specify any basis for protest is not sufficient to constitute a protest to the agency; therefore, a protest subsequently filed with the General Accounting Office more than 10 days after the basis for protest was known is dismissed as untimely.

PROCUREMENT
Bid Protest
GAO procedures
Preparation costs

B-224566.3 Jan. 29, 1987
87-1 CPD 93

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Recovery of proposal preparation costs and the costs of pursuing a protest of a contract award that agency terminated while protest was pending is inappropriate when the protester will be afforded an opportunity to compete in a reprocurement.

PROCUREMENT
Contract Management
Contract administration
Convenience termination
Resolicitation
GAO review

Agency decision to resolicit after termination of a contract due to procurement irregularities, rather than to make an award under the original solicitation, is not objectionable where the agency intends to revise the specifications and evaluation plan.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic products
Availability
Criteria

B-225046 Jan. 29, 1987
87-1 CPD 94

Agency determination whether a component is available in the United States for purposes of the Buy American Act must be based on whether the component is mined, produced, or manufactured in the United States in reasonable commercial quantities and not whether it is available from a qualifying country.

PROCUREMENT
Sealed Bidding
Bonds

B-225355 Jan. 29, 1987
87-1 CPD 95

Justification
GAO review

Air Force regulation that generally prohibits the use of performance and payment bonds in nonconstruction contracts does not preclude a requirement for such bonds where the contracting officer's determination to require them is based on the fact that (1) a contract for similar services at another installation was terminated for default and (2) the procuring activity historically has had difficulties with contractors performing similar services.

PROCUREMENT
Bid Protest
GAO procedures

B-225372 Jan. 29, 1987
87-1 CPD 96

Protest timeliness
Apparent solicitation improprieties

Challenge to agency's decision in reprocurement after default to request best and final offers, without discussions, from offerors whose proposals already had been found technically acceptable in connection with original procurement, is untimely when not raised before due date for best and final offers.

PROCUREMENT

Competitive Negotiation
Technical transfusion/leveling
Allegation substantiation
Evidence sufficiency

Contracting agency conducting reprocurement after default does not engage in technical leveling--improper coaching of an offeror in successive rounds of discussions--merely by holding discussions with offeror to determine technical acceptability of its proposal, which had not been considered under original procurement.

PROCUREMENT

B-225372 Con't

Contract Management

Jan. 29, 1987

Contract administration

Default termination

Resolicitation

Discussion

In reprocurement after default, it was reasonable for the contracting officer to hold discussions only with offeror who had not participated in original procurement, since discussions were necessary to determine technical acceptability of the new offeror's proposal and did not prejudice other offerors whose proposals already had been found technically acceptable in connection with original procurement.

PROCUREMENT

Contract Management

Contract administration

Default termination

Resolicitation

Procedures

In reprocurement for services after default by the original contractor, it was reasonable for the contracting officer to consider proposal from an offeror who had not participated in the original two-step procurement, in addition to proposals from offerors who already had been found technically acceptable in connection with original procurement, since a contracting officer is authorized to use any terms and acquisition method deemed appropriate for a repurchase, and considering the new offeror contributed to maximizing competition and repurchasing at as reasonable a price as practicable.

Contention that notice of reprocurement was required to be published in Commerce Business Daily is without merit since reprocurements are not strictly subject to publication requirements applicable to regular procurements and, in any event, protester was not prejudiced by failure to publish synopsis since it had actual notice of and participated in the reprocurement.

PROCUREMENT

B-225469 Jan. 29, 1987

Bid Protest

87-1 CPD 97

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest after bid opening that solicitation improperly called for evaluation of bids exclusive of option-year prices is dismissed as untimely where protest was not filed with contracting agency or General Accounting Office prior to bid opening.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Protest alleging that awardee was improperly found responsible by agency is dismissed since General Accounting Office will not review affirmative determinations of responsibility except in limited circumstances not present here. Moreover, mere fact that awardee has filed for bankruptcy under chapter XI of the United States Bankruptcy Code does not by itself require a finding of nonresponsibility.

PROCUREMENT

B-225639 Jan. 29, 1987

Contractor Qualification

87-1 CPD 98

Licenses

State/local laws

GAO review

Where a solicitation does not impose a specific licensing requirement, the contracting agency properly may make award without regard to whether the bidder holds the appropriate state or local operating authority. The state or locality generally is free to impose its laws against the contractor who then may be faced with a termination for default if such enforcement prevents it from performing the contract.

PROCUREMENT

B-218622.5 Jan. 30, 1987

Bid Protest

GAO procedures

GAO decisions

Reconsideration

Prior denial of claim for bid preparation expenses is affirmed where claimant does contest legal rationale for denial of claim.

PROCUREMENT

B-224205 Jan. 30, 1987

Competitive Negotiation

87-1 CPD 99

Discussion

Propriety

Allegation substantiation

Evidence sufficiency

The General Accounting Office denies a protest that an agency failed to discuss areas in which the offeror might have overestimated costs where there is no evidence that the agency considered any cost items to have been unreasonably high.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Best/final offers

Information adequacy

In a request for best and final offers, an agency properly may omit advice that more than one firm remains in the competitive range and that the technical ranking is sufficiently close that the offerors' cost proposals may become the determinative selection factor, since this information relates to the offerors' relative standing and not the merits of their proposals.

PROCUREMENT

B-224527 Jan. 30, 1987

Sealed Bidding

Invitations for bids

Post-bid opening cancellation

Justification

Price reasonableness

Contracting officer may cancel an invitation for bids where he reasonably determines that the acceptable bids offering domestic end products are unreasonable in price notwithstanding that a foreign offer, before the addition of a 50-percent Buy American Act evaluation factor, would be reasonably priced, since the foreign offer is properly evaluated at a higher price than the domestic offers.

PROCUREMENT

Socio-Economic Policies

Preferred products/services

Domestic sources

Foreign products

Price differentials

Defense Logistics Agency properly includes a clause in a solicitation for silica cloth that applies a 50-percent evaluation factor to foreign offers, since Department of Defense (DOD) Federal Acquisition Regulation Supplement provides that such a factor must be applied to foreign offers for DOD acquisitions, and the regulation is a proper implementation of the Buy American Act.

PROCUREMENT

B-224556 Jan. 30, 1987

**Competitive Negotiation
Competitive advantage
Incumbent contractors**

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

PROCUREMENT

**Competitive Negotiation
Discussion
Adequacy
Criteria**

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

PROCUREMENT

**Competitive Negotiation
Discussion
Bad faith
Allegation substantiation**

Protest contending that agency manipulated protester during cost discussions to increase its price to its detriment is denied since record shows that the agency's discussions were fair and reasonable, consisting only of requests for support or explanations of proposed costs.

PROCUREMENT **B-224556 Con't**
Competitive Negotiation **Jan. 30, 1987**
Offers
Evaluation
Point ratings

Protest that agency subtracted technical points for protester's use of an 8(a) firm and a small business firm as subcontractors is denied where agency awarded protester the maximum allowable points under the RFP criterion for use of small or small disadvantaged business concerns as subcontractors.

PROCUREMENT
Competitive Negotiation
Offers
Organizational experience
Evaluation
Propriety

Protest that agency improperly considered that awardee had direct experience in conducting national surveys of household food consumption when evaluating proposals in procurement for nationwide food consumption survey is denied where solicitation listed as an evaluation criterion corporate experience in directly related activities. Agencies need not identify the various aspects of stated evaluation criteria which may be taken into account if, as here, such aspects are reasonably related to the stated criteria.

PROCUREMENT
Competitive Negotiation
Technical evaluation boards
Information adequacy
Allegation substantiation

Protest that technical review panel never had access to protester's responses to questions raised about its proposal is denied where record shows otherwise.

PROCUREMENT
Sealed Bidding
Bids

B-224857 Jan. 30, 1987
87-1 CPD 101

Responsiveness
Price omission
Line items

Where a solicitation requires a bidder to bid all items, a bid which fails to include a price for an item will be rejected where evaluation and award includes the item not bid.

PROCUREMENT
Sealed Bidding
Invitations for bids
Interpretation
Terms

Allegation of vague or ambiguous solicitation provisions is rejected where requirements are stated clearly and allegation is based on an unreasonable interpretation of the solicitation.

PROCUREMENT
Contractor Qualification
Corporate entities
Corporate ownership
Determination
GAO review

B-224912 Jan. 30, 1987
87-1 CPD 102

Issue of whether debarred contractor has a substantial interest in firm seeking a government contract is for determination by the contracting agency and the Secretary of Labor, and our review of the matter is limited to whether that determination was reasonable.

PROCUREMENT **B-224912 Con't**
Contractor Qualification Jan. 30, 1987
Corporate entities
Corporate ownership
Determination criteria
Suspended/debarred contractors

It was reasonable for agency to conclude that an individual debarred from contracting with the government had a substantial interest in a company where he served as company president up until his debarment, the firm is in part owned and is operated by his wife as its current president, and the debarred individual continues to be employed by the firm.

PROCUREMENT
Special Procurement Methods/Categories
Service contracts
Contract awards
Corporate ownership
Suspended/debarred contractors

Provisions of the Service Contract Act preclude award of a contract to firm in which a debarred contractor has a substantial interest. 41 U.S.C. § 354.

PROCUREMENT **B-225571.2 Jan. 30, 1987**
Bid Protest **87-1 CPD 107**
Allegation substantiation
Burden of proof

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Below-cost bids
GAO review

Protest which alleges that low bid in a two-step sealed bidding procurement was below cost is dismissed because it raises an issue not reviewed by General Accounting Office and otherwise is based solely on speculation.

PROCUREMENT

B-225988 Jan. 30, 1987

Bid Protest

87-1 CPD 104

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that solicitation was defective because it failed to include quality assurance requirements is untimely when it is not filed with either the procuring agency or the General Accounting Office before bid opening, because alleged improprieties that are apparent on the face of a solicitation must be filed by that time.

PROCUREMENT

Contractor Qualification

Licenses

State/local laws

GAO review

PROCUREMENT

Contractor Qualification

Responsibility/responsiveness distinctions

Agency may not reject a bid as nonresponsive because it is not accompanied by evidence indicating that the bidder has all necessary licenses and permits when the solicitation requires only that the contractor, as a matter of performance, furnish copies of any necessary licenses to agency and bidder takes no exception to that requirement on its bid.

PROCUREMENT

B-226086 Jan. 30, 1987

Sealed Bidding

87-1 CPD 108

Bids

Acceptance time periods

Expiration

Reinstatement

Protester's expired bid may not be reinstated where in response to agency request for extension of bid acceptance period protester did not extend the bid to the date requested and another bidder did comply with the request.

PROCUREMENT
Bid Protest
Remedies
GAO decisions
Implementation
Administrative delays

B-221889 Jan. 31, 1987

Secretary of the Navy is requested to obtain information to explain why Naval Facilities Engineering Command (NAVFAC) ignored the performance stay provisions of the Competition in Contracting Act (CICA), why it took more than the 60 days statutory period for NAVFAC to advise GAO that it would not implement our recommended remedy in the protest, and to take appropriate action to assure full compliance with the CICA in the future.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-226030 Jan. 20, 1987

Federal Administrative/Legislative Matters

Administrative policies

Records destruction

Time restrictions

This Office has reviewed the Records Retention Schedule (SF 115) submitted by the International Trade Administration, Department of Commerce, proposing to dispose of various classes of records relating to the activities of the Deputy Assistant Secretary for Export Enforcement after specified periods of time and from a legal standpoint have no objection to its issuance.

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