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Procurement Law

(TRANSPORTATION INCLUDED)

Quarterly Digests
Of Unpublished Decisions
Of The Comptroller General
Of The United States -
OGC/Index-Digest Section

GAO

United States General Accounting Office

July-September 1984

UNITED STATES GENERAL ACCOUNTING OFFICE

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July through September 1984

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July through September 1984

B-212668 July 2, 1984 84-2 CPD 2
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--EXCEPTIONS--OFFERS NOT WITHIN
COMPETITIVE RANGE

There is no obligation for a contracting agency to continue discussions with an offeror judged to be outside the competitive range.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE FORMULA--ADMINISTRATIVE DETERMINATION

There is nothing improper per se in an agency's making more than one competitive range determination.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS

GAO will not disturb an agency's decision to exclude a proposal from the competitive range absent a clear showing that it was unreasonable or contrary to the procurement statutes and regulations.

B-213647.2 July 2, 1984 84-2 CPD 3
BIDS--INVITATION FOR BIDS--INTERPRETATION--INCORRECT

Protester's view that IFB not only required offered equipment to have operated successfully in a production environment for 6 months before the IFB was issued, but also to have operated during that period within specified environmental and compatibility parameters that will be present at the contracting agency's facility, is unreasonable, since the IFB clearly only required the offered equipment to be capable of operating within the specified parameters.

B-213738 July 2, 1984 84-2 CPD 4

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--ADEQUACY*

Contracting agency's analysis of proposals for cost realism involves the exercise of informed judgment, and GAO therefore will not disturb a cost realism determination unless it is shown to lack a reasonable basis.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Protest alleging that agency's cost analysis was not in accord with methodology set forth in RFP and that methodology employed was not reasonable is denied where record indicates that agency's cost analysis had a reasonable basis and did follow the provisions set forth in the RFP.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Determination of agency's minimum needs and best method of accommodating those needs are primarily the responsibility of the contracting agency. Agency decision to eliminate RFP requirement and procure services by amending prime contract and directing prime contractor to compete subcontract for requirement is reasonable where effect of decision is to increase competition for prime contract.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
AWARD PROCEDURES*

Where agency does not notify competing offerors of intention to make award under 100-percent small business set-aside due to a proper urgency determination, effect of Small Business Administration's finding that awardee is not small is prospective and termination of contract is not required. Furthermore, whether options should be exercised is a matter to be resolved by the agency in accordance with applicable regulations.

B-214528 July 2, 1984 84-2 CPD 5
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST

Where potential protester has failed to diligently seek information that will form the basis for its protest, as by not requesting a debriefing until 3 months after notification of the award and 2 months after receipt of the agency's response to its Freedom of Information Act request, GAO will dismiss ultimately-filed protest as untimely.

B-214653 July 2, 1984 84-2 CPD 6
CONTRACTS--MISTAKES--ALLEGATION AFTER AWARD--CORRECTION OF
BID

GAO generally does not consider mistake in bid claims alleged after award, since they are claims "relating to" contracts within the meaning of the Contract Disputes Act of 1978, which requires that all such claims be filed with the contracting officer for decision.

B-214657 July 2, 1984 84-2 CPD 7
CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--MINIMUM
NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

GAO will not disturb a procuring agency's determination of its needs and the specifications necessary to meet them, or the agency's technical evaluation of proposed equipment, absent a clear showing by the protester that the agency has acted unreasonably.

B-215484 July 2, 1984 84-2 CPD 9
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--ADMINISTRATIVE
DETERMINATION--LABOR DEPARTMENT REVIEW

GAO does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, this matter is to be determined by the contracting agency in the first instance subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

*B-215484 July 2, 1984 84-2 CPD 9 - Con.
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

No basis exists to preclude a contract award because a bidder may have submitted a below-cost bid.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility except in limited circumstances not applicable here.

*B-215541 July 2, 1984 84-2 CPD 10
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protests against bid rejection is untimely because it was filed with GAO more than 10 working days after the basis of the protest should have been known.

*B-215553 July 2, 1984 84-2 CPD 11
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO*

Determination whether to set aside procurement under section 8 (a) of Small Business Act is a matter for the contracting agency and SBA and will not be reviewed by GAO absent showing of fraud or bad faith on the part of government officials.

*B-212395.7 July 3, 1984 84-2 CPD 12
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

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

*B-214503 July 3, 1984 84-2 CPD 13
CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED*

An unsupported allegation of conflict of interest fails to meet the protester's burden of proving that the procurement was tainted by the disclosure of confidential agency information or otherwise improperly influenced.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL PROTEST BASIS

Where a protester initially files a timely protest and later supplements it with a new and independent ground of protest, the later ground must independently satisfy timeliness requirements; such new ground is untimely when based on information available from the face of the awardee's bid but is only filed considerably later than 10 days after bid opening.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--TWO-STEP PROCUREMENT--SOLICITATION IMPROPRIETIES--STEP TWO

In protests involving formally advertised two-step procurements, improprieties apparent under step two must be protested prior to the time for the opening bids.

CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--EVALUATION--APPLICATION OF CRITERIA

Although step one technical proposals are to be evaluated on the same basis under stated criteria, the agency's failure to do so is not legally objectionable where a particular proposal's deviation from the stated criteria has little or no effect upon the procurement.

*B-214769 July 3, 1984 84-2 CPD 14
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED*

GAO will not consider protest by third low bidder that neither of the two lowest bidders satisfies the solicitation's experience requirement where

the requirement is not a definitive responsibility criterion and the protester has not shown possible fraud or bad faith by the agency.

B-214889 July 3, 1984 84-2 CPD 15

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--EXCEPTIONS--OFFERS NOT WITHIN COMPETITIVE RANGE

The contracting agency has no obligation to conduct discussions with an offeror whose technical proposal is so deficient due to the omission of material information that it is initially excluded from the competitive range.

CONTRACTS--NEGOTIATION--OFFERS OF PROPOSALS--EVALUATION--TECHNICAL ACCEPTABILITY--OFFEROR'S RESPONSIBILITY TO DEMONSTRATE

In negotiated procurements, since the agency's technical evaluation is based upon information submitted with the proposal, the burden is clearly on the offeror to submit an adequately written proposal.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PRICE CONSIDERATION

Price need not be considered before a proposal is rejected due to the omission of material technical information.

B-215202.2 July 3, 1984 84-2 16

CONTRACTS--PROTESTS--COURT ACTION--DISMISSAL

Protest is dismissed where material issues protested, although not expressly before court of competent jurisdiction, are as practical matter before the court since they concern possible remedies the court could order. GAO will not decide such issues in the absence of an indication of interest by the court in a GAO decision.

B-215583 July 3, 1984 84-2 CPD 17
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER

GAO, except in limited circumstances, will not review a potential subcontractor's protest of the award of a subcontract since the matter involves contract administration.

Contention that prime contractors are supplying non-conforming products is a matter of contract administration not for review under GAO's Bid Protest Procedures.

B-215622 July 3, 1984 84-2 CPD 18
BIDS--EVALUATION--CRITERIA--APPLICATION OF CRITERIA

The term "other factors" in the typical award provision of an invitation for bids refers only to objectively determinable elements of cost that are identified in the solicitation as factors to be evaluated in the selection of a contractor, and not factors that relate to a prospective contractor's responsibility.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not review an agency's affirmative determination of responsibility absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

B-215032 July 5, 1984 84-2 CPD 19
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO will not question an affirmative determination of responsibility absent a showing that the contracting agency acted fraudulently or in bad faith, an allegation not raised here, or that definitive responsibility criteria in the solicitation were not met. Assuming that the required submission of pre-award samples demonstrating conformity with a particular

military specification constituted such a criterion, and therefore was a prerequisite to award, the record shows that the awardee in fact met that criterion by furnishing conforming samples.

*B-215032 July 5, 1984 84-2 CPD 19
GENERAL ACCOUNTING OFFICE--JURISDICTION--PATENT INFRINGEMENT*

Protests alleging infringement of patent rights are not for GAO's consideration, since the law provides that the patent holder's exclusive remedy for any potential infringement resulting from performance under a government contract awarded to another firm is by a suit in the United States Claims Court against the government for money damages.

*B-212257 July 6, 1984 84-2 CPD 20
CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST
COMPARISON--AGENCY IN-HOUSE ESTIMATE--BASIS*

It is not improper under an OMB Circular A-76 cost comparison procurement for an agency to base its in-house estimate of the cost of performing on the results of a management study performed in accordance with cost comparison procedures, even though the information obtained through the study may not have been directly available to bidders.

*CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--
SOLICITATION PROVISIONS--STATEMENT OF WORK*

The fact that historical workload data may have been inaccurate and thus not suitable by itself as a basis for bidders to estimate performance costs is not a sustainable basis of protest where it was the best objective data available.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegations that data furnished with the solicitation was out-of-date and confusing are untimely and will not be considered on the merits where the protester was aware of the alleged deficiencies prior to bid opening but did not file its protest until after bid opening.

B-213059.2 July 9, 1984 84-2 CPD 21
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

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

B-213430 July 9, 1984 84-2 CPD 22
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--OVERSTATED

Protest is sustained where the agency has not shown that specifications which are restrictive of competition are reasonably related to its minimum needs.

B-213865 July 9, 1984 84-2 CPD 23
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--ONE KNOWN SOURCE

Sole-source negotiated procurement was justified where agency had an urgent need which had to be satisfied within a definite timeframe and where record indicates that agency determination that only one source was available was not unreasonable.

B-214036.3 July 9, 1984 84-2 CPD 24
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Prior decision is affirmed on reconsideration where protester makes same basic assertion that was made in initial protest and has not shown that government officials acted fraudulently or in bad faith in refusing to issue certificate of competency.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--REQUEST FOR CONFERENCE--DENIED

Request for conference is denied where merits of protest are not for consideration and conference therefore would serve no useful purpose.

B-214136 July 9, 1984 84-2 CPD 25
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
SUBCRITERIA-REASONABLY RELATED TO CRITERIA

Protest that in evaluating prices agency considered offered prices for first article test data even though

that was not an express element of the solicitation's evaluation scheme is denied, since the agency's intent to consider that factor was reasonably reflected in the solicitation provisions.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest concerning evaluation provisions of a solicitation must be filed prior to the closing date for receipt of initial proposals.

B-214445 July 9, 1984 84-2 CPD 27

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Allegation that a firm fraudulently received an order under a multiple award Federal Supply Schedule contract, on the basis that the firm does not actually have the item listed on the schedule, is denied, since the protester has not met its burden to present affirmative evidence to support the allegation.

B-214466.2, B-214466.3 July 9, 1984 84-2 CPD 28

BIDS--GUARANTEES--BID GUARANTEES--DEFICIENCIES--BID REJECTION

Bidder which limited bid guarantee period to 25 days effectively limited bid acceptance period to 25 days. Although solicitation permitted bidders to offer less than the standard 60-day bid acceptance period, bid which offered 60-day acceptance period with 25-day period. Distinguishes B-186749, Oct. 19, 1976.

*CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--
DISCUSSION WITH ALL OFFERORS REQUIREMENT--LATE PROPOSALS*

Protest that two offerors in step one of two-step procurement which submitted late revised proposals should not be included when negotiations are reopened by subsequent amendment is denied since such action was reasonable and in furtherance of government policy of qualifying as many proposals as possible under step one. Distinguishes B-186749, Oct. 19, 1976.

B-215597 July 9, 1984 84-2 CPD 29
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Questions concerning small business size status will not be considered by GAO since conclusive authority over such matters is vested by statute in the Small Business Administration.

B-215644 July 9, 1984 84-2 CPD 31
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not review a contracting officer's decision that a small business firm is not a responsible bidder since under law the Small Business Administration has authority to certify conclusively whether a small business is responsible.

B-213390 July 10, 1984 84-2 CPD 32
BIDS--UNBALANCED--TO MEET COST LIMITATIONS

Allegation of bid unbalancing by transferring costs from item 1 to item 2 in order to circumvent statutory cost limitation is unproven where validity of government cost estimate for item 1 is not contested or proven and bidders' bid prices for that item were proximate to cost estimate.

B-213998 July 10, 1984 84-2 CPD 33
CONTRACTS--OPTIONS--PRICE COMPARISON PRIOR TO EXERCISING
OPTION--MARKET SURVEY REQUIREMENT--SATISFACTION

An agency is not required to issue a new solicitation to test the market prior to exercising an option simply because the contractor's competitor guarantees a lower price, where the option prices have already been tested by the competition under the original procurement, in which that competitor was a full participant.

B-214011.2 July 10, 1984 84-2 CPD 34

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

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

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest basis not raised in protester's initial submission must independently satisfy the timeliness requirements of our Bid Protest Procedures. Where protester supplements its original timely protest with a new ground of protest more than 10 working days after the basis for it should have been known, the new ground is untimely and will not be considered on the merits.

B-214029 July 10, 1984 84-2 CPD 35

*BIDS--LATE--ACCEPTANCE--DELAY DUE TO IMPROPER GOVERNMENT
ACTION*

Where wrongful government action, i.e., affirmative government action such as improper or conflicting delivery instructions, is the paramount cause for late receipt of a hand-carried bid, late hand-carried bid may be considered where it would not compromise the integrity of the competitive bidding system.

BIDS--LATE--HAND CARRIED DELAY--REJECTION OF BID

Traffic delays do not relieve bidder from responsibility for the timely delivery of its bid.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where there is a conflict of fact and protester's declaration is supported by no other evidence, protester has failed to meet its burden of proof and agency's position will be accepted.

*B-214082 July 10, 1984 84-2 CPD 36
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATION DISCRETION--COST/TECHNICAL TRADEOFFS*

Where award is to be made based upon rental cost and 14 other award factors, award is not improper when made to an offeror with a slightly higher rental cost with property that received a higher evaluation on a number of other important award factors.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Bare allegations will be regarded as pure speculation and will not be considered on the merits.

*CONTRACTS--PROTESTS--CONTRACT--ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Protest that agency failed to give protester adequate notice of intent to vacate its premises concerns a matter of contract administration which is not for resolution under GAO Bid Protest Procedures.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS*

New grounds of protest must independently satisfy the timeliness requirements of GAO's Bid Protest Procedures. Where protester supplements its original protest with new grounds more than 10 working days after the basis for them should have been known, the new grounds are untimely and will not be considered on the merits.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging solicitation improprieties is untimely where it is filed with GAO after the due date for submission of initial proposals.

B-214201 July 10, 1984 84-2 CPD 37

BIDS--LATE--INVITATION MAILING REQUIREMENTS--NONCOMPLIANCE

Although bid was in the post office box designated in the solicitation the morning of bid opening, bid was properly rejected as late because the lateness in bid arriving at government installation was not caused by government mishandling, but rather by the bidder's failure to allow sufficient mailing time.

B-214812 July 10, 1984 84-2 38

BONDS--BID--SIGNATURES--CORPORATE AGENT

Although IFB requires that bid bond signed by an agent is to be accompanied by evidence of his authority, such proof may be provided after bid opening. Accordingly, bid bond signed by agent acting within scope of his authority was properly accepted where proof of agency was submitted prior to award.

B-214905.2 July 10, 1984 84-2 CPD 39

CLAIMS--THIRD PARTY--PAYMENT--SUBROGATION

Payment bond surety is not subrogated to the rights of unpaid or underpaid laborers.

*CONTRACTS--LABOR STIPULATIONS--WAGE UNDERPAYMENTS--CLAIMS
PRIORITY--UNDERPAID WORKERS v. COMPETING CLAIMS*

Payment of withheld contract funds that are claimed by payment bond surety, the Department of Labor (DOL) for wage underpayments, and the Internal Revenue Service (IRS) for tax indebtedness may be made in the full amount of the DOL claim, then of the IRS claim, with the remaining balance payable to the surety.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

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

*B-214905.2 July 10, 1984 84-2 CPD 39 - Con.
SET-OFF--AUTHORITY--FEDERAL TAX LIEN ACT OF 1966 EFFECT*

The federal Tax Lien Act of 1966 does not affect the government's separate remedial right of setoff.

*B-214260.2 July 11, 1984 84 2 CPD 40
BIDS--MISTAKES--CORRECTION--PRICE REDUCTION*

Where bid contains a price discrepancy, bid may be corrected, even though other bidders are displaced, since only one price reasonably could be regarded as having been intended bid.

*B-214920 July 11, 1984 84-2 CPD 41
BIDS--MISTAKES--CORRECTION--NONRESPONSIVE BIDS*

Where a bid offers a delivery schedule exceeding the required delivery schedule and therefore renders the bid nonresponsive, the deviation cannot be corrected under the rules governing mistakes in bids since errors in bids which may be corrected after bid opening are those which do not affect the responsiveness of a bid.

*BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
DELIVERY PROVISIONS*

A bid which on its face offers a delivery schedule which exceeds the required delivery schedule must be rejected as nonresponsive even though the bidder may actually intend to meet all of the requirements in the solicitation.

BIDS--RESPONSIVENESS--LOW PRICE OF BID NOT A FACTOR

A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the competitive bidding system.

B-214920 July 11, 1984 84-2 CPD 41 - Con.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OEPNING/CLOSING DATE FOR PROPOSALS

Protest alleging that bearing assemblies were "too complex" to be procured through an invitation for bids concerns an alleged impropriety apparent on the face of the solicitation and thus must be filed prior to bid opening to be timely and to be considered on the merits.

B-214924.2 July 11, 1984 84-2 CPD 42

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed where request for reconsideration again challenges responsibility determination of low bidder, without demonstrating that prior decision was based on erroneous interpretation of fact or law.

B-213643.2 July 12, 1984 84-2 CPD 43

BUY AMERICAN ACT--WAIVER--AGENCY DETERMINATION--NOT REVIEWABLE
BY GAO

Allegation that contract should be awarded to domestic firm due to national security factors is not for consideration under GAO Bid Protest Procedures.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Where the procuring agency establishes reasonable basis for requirement which is alleged to be unduly restrictive, protester's disagreement with agency's conclusion does not establish that agency determination was unreasonable.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--FOREIGN PROCUREMENT

Buy American Act does not prohibit sole-source award to foreign-based firm.

B-213643.2 July 12, 1984 84-2 CPD 43 - Con.
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--JUSTIFICATION

Sole-source award is justified where record indicates that only one firm is capable of fulfilling agency's needs.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADDITIONAL INFORMATION SUPPORTING
TIMELY SUBMISSION*

Where record indicates that protester reasonably believed that it would be given an opportunity to submit a proposal for a requirement which the agency was conducting sole-source negotiations, protester was justified in awaiting final agency decision concerning its participation in the procurement and protest filed in a timely manner after agency notification will be considered.

B-215111 July 12, 1984 84-2 CPD 44
BIDS--MISTAKES--WITHDRAWAL--EVIDENCE OF ERROR

GAO will not question the contracting agency's decision to allow the bidder to withdraw its bid rather than permit correction where, although there was clear and convincing evidence that a mistake occurred, there was conflicting evidence concerning the profit the bidder intended to charge for one of the bid items; GAO cannot conclude that the agency's determination that the evidence of the bid actually intended was not clear and convincing was without a reasonable basis.

B-212940.3, B-212940.4 July 13, 1984 84-2 CPD 193
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ISSUES IN LITIGATION*

Requests for reconsideration of decision and claim for bid preparation costs are dismissed where the question of whether issues relevant to deciding these matters will be considered by a United States district court is now pending before a United States court of appeals.

B-214489 July 13, 1984 84-2 CPD 45

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REFERENCES*

Protest contending procuring agency should have checked all references and asked for more if those listed proved less than satisfactory is denied since procuring officials have no duty to check references offered or to seek additional references for the offeror's benefit.

CONTRACTS--SUBCONTRACTS--EVALUATION

Protest that subcontract proposal was improperly evaluated by prime contractor managing a government-owned facility is denied since protester has not met its burden of establishing that the evaluation was unreasonable.

B-213915 July 16, 1984 84-2 CPD 47

*BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY
UNBALANCED BIDS"--MATERIALITY OF UNBALANCE*

Award to bidder who submitted a mathematically unbalanced bid is upheld, since material unbalancing is not present here.

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

Where bidders are advised in invitation for bids that oral explanations or instructions given before award of contract would not be binding on contracting agency, bidders rely on oral advice at their own risk.

B-214288 July 16, 1984 84-2 CPD 48

*BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--UNSOLICITED--
DESCRIBING NONCONFORMING EQUIPMENT--BID NONRESPONSIVE*

When unsolicited descriptive literature submitted with a bid refers to same model number as equipment bid and reveals that equipment does not meet material requirements included in a solicitation, contracting agency is not free to accept the bid. Even if bidder

otherwise takes no exception to the specifications, the descriptive literature qualifies the bid and thus renders it nonresponsive.

BIDS--RESPONSIVENESS--LOW PRICE OF BID NOT A FACTOR

Importance of maintaining the integrity of the competitive bidding system outweighs the advantage of any monetary saving that would result if material deviation from specifications is waived or ignored. When agency discovers that specifications overstate its needs, proper course of action is to cancel the invitation for bids and recompete on a less restrictive basis.

BIDS--RESPONSIVENESS--WAIVER OF REQUIREMENT

Waiver of an advertised specification is improper if the deviation from it goes to the substance of a bid or works an injustice to other bidders. Substantial, i.e. material, deviation is one that affects the price, quality, or quantity of the goods or services offered.

B-214339 July 16, 1984 84-2 CPD 49

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION TO USE--AGENCY DISCRETION

Where protester's disagreement with the contracting agency's sole-source determination is essentially a disagreement with the agency's judgment concerning its technical requirements, the protester has not carried its burden of proving that the agency's sole-source determination has no rational basis.

B-214471 July 16, 1984 84-2 CPD 50

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging solicitation improprieties which were apparent prior to the closing date for receipt of initial proposals filed after that date is untimely and not for consideration on the merits.

B-214471 July 16, 1984 84-2 CPD 50 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION

Tribe which was not a potential or actual offeror is not an "interested party" under GAO Bid Protest Procedures to challenge the evaluation criteria used since it is not directly affected by the criteria used and furthermore a disappointed offeror under the solicitation is a party with more direct and substantial interest in asserting this ground of protest.

Tribe whose members are to be recipients of services provided by contractor may be an "interested party" under our Procedures to challenge the responsibility of awardee; however, our Office does not review protests against affirmative determinations of responsibility except in limited circumstances not present here.

B-214516 July 16, 1984 84-2 CPD 51
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

Where a small business concern is determined to be nonresponsible by a contracting officer, GAO will not review the subsequent denial by the Small Business Administration of a certificate of competency absent a prime facie showing of fraud or bad faith, or of the failure to consider information bearing on the concern's responsibility.

B-214834 July 16, 1984 84-2 CPD 52
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS
SOLICITATION CANCELED

Protest against specifications is academic and will not be considered by GAO where agency cancels solicitation containing the specifications.

B-215647 July 16, 1984 84-2 CPD 53
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO

Protest concerning award of a contract under section 8(a) of the Small Business Act is a matter

for the contracting agency and the Small Business Administration (SBA), and will not be reviewed by GAO in absence of showing of possible fraud or bad faith on the part of government officials.

*B-211803 July 17, 1984 84-2 CPD 54
CONTRACTS--MODIFICATION--GOVERNMENT AGENT'S AUTHORITY*

Protest that contracting agency improperly issued modifications to contract in an effort to grant post-award contract price and cost relief to awardee is dismissed. Record shows that modifications issued were within scope of contract and, therefore, are matters of contract administration.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest that contracting agency erroneously determined that Service Contract Act (SCA) applied to certain RFP labor categories is dismissed as untimely. Record shows that contracting agency discussed matter with protester during negotiations and made its interpretation known to all offerors in its request for best and final offers and that protester acquiesced and submitted best and final offer using SCA minimum wage rates. Since protester should have been aware of this basis for protest at the latest when it received request for best and final offer but did not file protest until almost 1 month after submission of that offer, protest is untimely under section 21.2(b)(1) of GAO Bid Protest Procedures. In any event, based upon Department of Labor report on SCA applicability to the RFP labor categories, we cannot conclude that contracting agency's determination that SCA applied was unreasonable at the time determination was made.

Protest that contracting agency improperly adjusted protester's proposed prices for benchmark tasks upward is untimely. Contracting agency told protester at debriefing that contracting agency believed protester's proposed number of labor hours for benchmark tasks was unreasonably low. Therefore, since labor hours were the major factor making up total benchmark price, pro-

tester should have known that agency would also consider its benchmark prices to be unreasonably low, and protest filed more than 10 days after debriefing is untimely. 4 C.F.R. 21.2(b)(2) (1983). In any event, agency properly adjusted protester's benchmark prices for realism based upon its own "should cost" analysis before deciding which proposal was most advantageous to the government.

GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965

Protest that contracting agency treated protester and awardee unequally and accepted awardee's proposal even though it did not meet or exceed minimum Service Contract Act (SCA) wages specified in two pertinent wage determinations is denied. RFP, as amended during negotiations, did not indicate that offers had to meet or exceed minimum wages specified in both wage determinations nor did RFP indicate what proportion of work would be performed in geographic areas covered by both wage determinations. Therefore, awardee's proposal which met or exceeded wage rates of primary geographic area was acceptable. Moreover, record shows that protester's proposed rates were below minimum wages of one of the wage determination in certain labor categories. Finally, whether awardee performs contract in accord with SCA is matter for Department of Labor.

*B-212425.2, et al. July 17, 1984 84-2 CPD 55
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--TIMELINESS*

Request for reconsideration filed more than 1 month after date of decision denying protest is untimely.

*B-214568.2 July 17, 1984 84-2 CPD 57
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD*

A non-8(a) firm is not an interested party under GAO's Bid Protest Procedures to question the qualifications of a particular 8(a)-eligible firm.

*B-214568.2 July 17, 1984 84-2 CPD 57 Con.
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCTES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO*

Protest against a contracting agency's determination to set aside a procurement under section 8(a) of the Small Business Act on the basis that the agency has acted in bad faith is denied, since the protester has failed to establish that the agency's decision was motivated by a specific and malicious intent to exclude the firm from competing for the contract.

*B-215022, B-215022.3 July 17, 1984 84-2 CPD 58
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DEBARRED
CONTRACTORS*

Protest is dismissed since protester on debarred bidders list is ineligible to receive a contract award and therefore is not an interested party to protest under our Bid Protest Procedures.

*B-215314 July 17, 1984 84-2 CPD 59
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest based upon alleged improprieties in a solicitation that are apparent on the face of a solicitation is untimely when filed after bid opening.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

General rule that GAO will not review a Small Business Administration decision to issue or not to issue a certificate of competency applies both to determinations of nonresponsibility and ineligibility. Only exceptions are when there is a showing of possible fraud on the part of contracting officials or when SBA has not considered all relevant information in making its decision.

B-215526 July 17, 1984 84-2 CPD 60

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest against agency decision to award sole-source contract filed after closing date for receipt of proposals is untimely since agency's publication of notice in Commerce Business Daily of decision to negotiate with one source and of closing date placed protester on notice of basis of protest prior to closing date.

B-215373 July 18, 1984 84-2 CPD 62

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Whether an awardee has the necessary licenses and operating authority to perform its contract involves a matter of responsibility which we will not review absent circumstances not present here.

CONTRACTS--AWARDS--FOREIGN FIRM AWARDEE--PROPRIETY OF AWARD

There is no legal basis to object to a contract award to a qualified, responsible foreign firm that submitted the best proposal in response to the solicitation.

B-215310 July 19, 1984 84-2 CPD 63

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest against restrictive specifications is dismissed as academic where solicitation containing the specifications is canceled.

B-215482.2 July 19, 1984 84-2 CPD 64

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Request for reconsideration of decision in which GAO denied protest alleging that protester should be considered eligible for labor surplus area (LSA) preference in spite of the fact that the protester's bid listed a place of performance which was not in an LSA is dismissed because request for reconsideration alleges no errors of fact or law in decision.

B-214414 July 20, 1984 84-2 CPD 66
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest that specifications are unduly restrictive, vague and in violation of the statutory preference in favor of the use of recovered or recycled materials is academic and will not be considered by GAO where agency cancels solicitation containing the specifications.

B-214823.2 July 20, 1984 84-2 CPD 67
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

To be timely filed, a protest against cancellation of a solicitation must be filed within 10 working days after the protester knew or should have known of the cancellation.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

In negotiated procurement, a protest against alleged improprieties in a solicitation generally must be filed before the closing date for receipt of initial proposals.

B-214834.2 July 20, 1984 84-2 CPD 68
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest against specifications is academic and will not be considered by GAO where agency cancels solicitation containing the specifications.

B-214849, B-214849.2 July 20, 1984 84-2 CPD 69
CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--SMALL
BUSINESS ADMINISTRATION'S DETERMINATION--NOT SUBJECT TO GAO
REVIEW

The Small Business Administration has conclusive authority to decide matters of size standards and size status and, therefore, GAO will not consider these matters.

B-215112 July 20, 1984 84-2 CPD 70
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest that awardee will not perform in labor surplus area as promised in bid challenges affirmative responsibility determination which GAO will not consider, except in limited circumstances.

B-215199 July 20, 1984 84-2 CPD 71
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

Where the Small Business Administration (SBA), by refusing to issue a certificate of competency, confirms the agency's finding of the protester's nonresponsibility and there is no showing of bad faith, fraud, or disregard of vital information, GAO will not make an independent review of the responsibility issue because the SBA has statutory authority to conclusively determine a small business firm's responsibility.

B-215540 July 20, 1984 84-2 CPD 72
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

Absent determination of nonresponsibility, the submission of below-cost bid is not a valid basis upon which to challenge an award.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Whether bidder in line for award may have engaged in collusive bidding is one circumstance to be considered by the contracting officer in determining whether bidder is a responsible prospective contractor.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
ADMINISTRATIVE DETERMINATION

GAO will not consider allegation that firm is not small business eligible for set-aside award since conclusive authority to decide matters concerning small business' size status is vested with Small Business Administration.

B-215568 July 20, 1984 84-2 CPD 73 .
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest is untimely where filed with GAO more than 10 working days after protester should have known the protest basis.

B-215625 July 20, 1984 84-2 CPD 74
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where a firm initially protests an alleged solicitation defect to the contracting agency prior to bid opening, the opening of bids as scheduled without taking any corrective action in response to the protest constitutes initial adverse agency action and a subsequent protest to GAO not filed within 10 working days thereafter is untimely.

B-215641 July 20, 1984 84-2 CPD 75
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review contracting officer's affirmative determination of responsibility except in limited circumstances not applicable here.

B-215642 July 20, 1984 84-2 CPD 76
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10 working days after initial adverse action by contracting agency on protest filed with contracting agency is dismissed as untimely. Protester's continued pursuit of protest with contracting agency does not change this result.

B-215778 July 20, 1984 84-2 CPD 77
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest concerning agency's failure to restrict solicitation to small business and labor surplus

area concerns, filed after award of contract, is untimely and will not be considered on the merits.

B-212860 July 23, 1984 84-2 CPD 78

BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER TO MEET ALL SOLICITATION TERMS

Where model offered is identified in bid by number and bid does not qualify offeror's obligation to furnish item meeting the specifications, the bid is responsive.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest against low bidder's ability to perform a contract according to specifications concerns matter of responsibility and GAO does not review acontracting officer's affirmative determination of responsibility except in limited circumstances not applicable here.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Whether a bidder will be able to comply with specification requirements during performance of contract is a matter of contract administration which GAO will not consider.

B-212873.2 July 23, 1984 84-2 CPD 79

CONTRACTS--PROTESTS--ABANDONED

There is no requirement that a protester restate each protest allegation in every submission to this Office; however, after the initial protest letter, the protester offered no further argument nor evidence in support of its initial protest allegation. It is our position that this protest allegation was abandoned. Nonetheless, since the protester claims in its request for reconsideration that it was not its intention to abandon this allegation, we will consider this issue on the merits.

B-212873.2 July 23, 1984 84-2 CPD 79 - Con.
TRADE AGREEMENTS ACT OF 1979--FOREIGN PURCHASES--DESIGNATED
OR QUALIFYING COUNTRIES

Although products imported from Korean are exempt from import duty under Trade Act of 1974, which applies in all marketplaces, bid based upon furnishing Korean product to the United States was properly rejected since Korea is neither a designated nor qualifying country under Trade Agreements Act of 1979, which prohibits purchases by the government from other than designated or qualifying countries.

B-213017 July 23, 1984 84-2 CPD 80
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DEBARRED
CONTRACTORS

GAO will not consider protest that firm was improperly determined to be nonresponsible because protester has been proposed for debarment from government contracting and under applicable regulations the firm is ineligible for government contract pending a debarment decision.

B-213060.2 July 23, 1984 84-2 CPD 81
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed on reconsideration where protester has not shown any errors of law or fact which warrant reversal of the decision.

B-213559 July 23, 1984 84-2 CPD 82
CONTRACTS--MODIFICATION--BEYOND SCOPE OF CONTRACT--"CARDINAL
CHANGE" DOCTRINE

Although a protested modification clearly exceeded the scope of the original contract, the award of the modification on a sole source basis was justified in- as much as time was of the essence and only one firm could meet the government's needs within the available time.

*B-214186 July 23, 1984 84-2 CPD 83
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
JUSTIFICATION--FEDERAL SUPPLY SCHEDULE APPLICABILITY*

Agency's cancellation of a solicitation after bid opening was proper when it was discovered that an item similar to that covered in the solicitation, and which would meet the agency's minimum needs, would be on a Federal Supply Schedule from which the agency was required to make purchases.

*B-214272 July 23, 1984 84-2 CPD 84
BIDDERS--INVITATION RIGHT--INVITATION NOT RECEIVED*

Award of a contract is not improper solely because a bidder did not receive a copy of the solicitation, so long as there is adequate competition resulting in reasonable prices and there has been no deliberate or conscious intent on the part of the procuring agency to preclude the bidder from competing.

CONTRACTS--PROTESTS--PROCUREMENT PENDING REQUIREMENT

GAO will consider only protests involving specific procurement actions, such as whether an award or proposed award complies with statutory, regulatory and other legal requirements, and will dismiss general allegations of past improprieties.

*B-214468 July 23, 1984 84-2 CPD 85
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
TECHNICALLY UNACCEPTABLE*

Where a best and final offer is found technically unacceptable, it cannot be considered for award even though it proposes a lower price.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
BRAND NAME OR EQUAL--SALIENT CHARACTERISTICS--SATISFACTION OF
REQUIREMENT*

In brand name or equal solicitations, the overriding consideration in determining the equality or similarity of an offered product to the named

product for purposes of acceptability is whether the "equal" product performs the needed function in a like manner and with the desired results.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

A showing of bad faith requires irrefutable proof that contracting officials had the specific and malicious intent to injure the protesting firm.

B-215153 July 23, 1984 84-2 CPD 86

BIDS--RESPONSIVENESS--EXCEPTION TAKEN TO INVITATION TERMS--DELIVERY PROVISIONS

Even though protester's bid acknowledged amendment changing delivery period, contracting agency properly rejected the protester's bid as nonresponsive to the amended delivery period since protester inserted original delivery period on bid form.

B-215296.2 July 23, 1984 84-2 CPD 88

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Decision dismissing original protest of alleged specification defects as untimely because the protest was not filed prior to the closing date for receipt of proposals is affirmed. Although protester contends that it filed its protest with the agency prior to the scheduled closing date, it did not protest to GAO within 10 working days after closing occurred, as required by GAO Bid Protest Procedures.

B-215467 July 23, 1984 84-2 CPD 89

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--DESCRIPTIVE LITERATURE

A bidder's failure to furnish descriptive literature with the bid as required by the solicitation renders the bid nonresponsive.

B-215610 July 23, 1984 84-2 CPD 90

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--DENIAL PROPRIETY*

There exists no legal requirement that an agency reopen negotiations after the final closing date based solely on one offer's claim that it will be able to lower its final price due to a delay in the award.

B-215633 July 23, 1984 84-2 CPD 91

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Labor union is not an interested party to protest that the two low bidders collaborated in determining their bid prices where there is a third bidder who would get the contract award if a protest on this issue was sustained.

B-215690 July 23, 1984 84-2 CPD 92

BIDS--RESPONSIVENESS--WAIVER OF REQUIREMENT

Bidder's use of the wrong Data Universal Numbering System (DUNS) number, and failure by bidder to complete a standard representation and certification on the bid form, may be waived as minor informalities and are not bases for rejection of the bid.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAO will not consider an allegation that a firm is not a small business eligible for a set-aside award since the conclusive authority to decide matters concerning small business size status is vested in the Small Business Administration.

B-215725 July 25, 1984 84-2 CPD 93
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest against alleged solicitation improprieties that were apparent prior to bid opening is untimely where the protest was not filed until after that date.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not review an agency's determination that a small business is nonresponsible since the conclusive authority to decide the responsibility of small businesses is vested in the Small Business Administration.

B-212403.3, et al. July 23, 1984 84-2 CPD 94
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

GAO will not question a nonresponsibility determination unless protester demonstrates bad faith by the contracting agency or lack of any reasonable basis for the determination.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION

Protest against a deviation in the evaluation of offers is not sustained where the deviation did not operate to deny protester an award.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--BIAS ALLEGED

Bias will not be attributed to procurement officials based on inference or supposition.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--QUALIFICATIONS

GAO will not become involved in appraising the qualifications of contracting agency personnel involved in

the technical evaluation of offers except on a showing of fraud, bad faith, conflict of interest actual bias.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

No pattern of discrimination against protester is found where determination that protester was not responsible contractor on two contracts was not without reasonable basis and award under third contract was to contractor whose offer was found to be overall. Although contracting office did not request preaward survey on contractor awarded third contract, which preaward was requested on protester in connection with other two contracts, matter of whether preaward surveys are conducted is within broad discretion of contracting officers.

B-213199 July 24, 1984 84-2 CPD 95

BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS--BOND REQUIREMENTS

Questions concerning an individual surety's financial acceptability are matter of responsibility rather than responsiveness.

BIDS--PREPARATION--COSTS--RECOVERY

Where an agency's rejection of the protester's low responsive bid was arbitrary and capricious, protester is entitled to bid preparation costs if protester can demonstrate to agency that each individual surety had adequate net worth excluding property interests in the principal and property exempt from execution and sale equal to difference between protester's low bid and next higher acceptable bid.

BONDS--BID--SURETY--NET WORTH

Net worth of individual sureties on a bid bond need only be in the amount of the difference between the price stated in the bid and the price stated in the next higher acceptable bid since the bid bond need only be in that amount.

*B-213257.4, B-213257.5 July 24, 1984 84-2 CPD 96
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL
BUSINESS SET-ASIDES*

Where protester, which submitted bid on small business set-aside procurement, was determined by Small Business Administration (SBA) not to be a small business, but was interested party since it filed protest during SBA appeal period and would have been in line for award should the protest be sustained and SBA reverse its determination, may not have its request for reconsideration considered since SBA did not reverse its determination that protester was other than small. Thus, protester is no longer interested party.

Third low bidder whose protest was initially untimely, but whose protest was considered because (1) it raised the same issues as raised by the second low bidder whose protest was timely and (2) bidder was in line for award depending on outcome of protest and appeal of SBA's size determination on second low bidder, may not have request for reconsideration considered where second low bidder, which submitted protest on which GAO decision is based, is no longer interested party.

*B-213311 July 24, 1984 84-2 CPD 98
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--ADMINISTRATIVE DETERMINATION*

An agency's rejection of a firm as technically unacceptable is proper where it is based on an evaluation which is consistent with the stated evaluation criteria.

*B-213464.2 July 24, 1984 84-2 CPD 99
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED*

Claim for proposal preparation costs is denied since agency's math error, which materially prejudiced protester, resulted from negligence and not arbitrary and capricious conduct.

*B-213525 July 24, 1984 84-2 CPD 100
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAIVED AS MINOR INFORMALITY*

Contracting officer should not have rejected bid that failed to acknowledge a solicitation amendment which made changes having only a minimal impact on cost, relaxed a portion of the agency's requirements and reiterated a provision giving the contracting officer control over the amount of extra material removed during excavation. Such an amendment was not material and therefore the protester's failure to acknowledge the amendment should have been waived as a minor informality.

*B-214344 July 24, 1984 84-2 CPD 101
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED--REVIEW BY GAO*

An agency determination that an offered item is the exact product solicited will not be disturbed by this Office without a showing that the determination is unreasonable.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

An allegation that the procuring agency orally awarded a contract to the protester--an allegation denied by the agency--is not supported where the protester participated in negotiations and submitted a best and final offer after the time the award was allegedly made. The protester's participation in the procurement is inconsistent with its view that it had previously been awarded the contract.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

The protester has the burden of proof to support a charge of auctioneering, and the burden is not met where the only evidence is conflicting statements by the protester and agency.

B-214462 July 24, 1984 84-2 CPD 102
BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--SUFFICIENCY

In order to have an error in bid corrected after bid opening, a bidder must submit clear and convincing evidence of the error and the intended bid price. Inherent in the bidder's obligation is the burden to establish the genuineness of evidence submitted in support of a mistake where the procuring agency asserts that the "evidence" was fabricated by the bidder. But the bidder has not carried this burden where the bidder claims only that the procuring agency's assertion--backed up by a detailed analysis--is "speculative."

B-214641 July 24, 1984 84-2 CPD 103
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SUSPENDED, DEBARRED, ETC. CONTRACTORS

Debarred bidder is not an interested party under GAO's Bid Protest Procedures since debarment precludes any possibility of award, therefore rendering resolution of the protest academic.

B-214846 July 24, 1984 84-2 CPD 104
BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS SUBMITTED AT BID OPENING

Where two separate concerns, a motel and restaurant, bid on a food and lodging procurement, the motel bidding on the lodging portion of the solicitation and the restaurant on the food portion, and the two bids were mailed together with a cover letter from a consulting service representing both bidders, which advised the contracting officer that the motel and restaurant were bidding as joint venturers, each bid had to be considered a separate bid and the agency properly rejected the bids because the solicitation provided for aggregate bids.

B-214867 July 24, 1984 84-2 CPD 105
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE--ALLEGATION DENIED

Allegation that assessment of conversion costs unduly restricts competition and favors the incum-

bent contractor is denied where conversion cost assessment accurately reflects estimate of costs to be incurred by the government for converting current system to new system.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--ADMINISTRATIVE DISCRETION--COST/PRICING EVALUATION

Agency may appropriately consider software conversion costs where they are listed as an evaluation factor and where the estimates accurately reflect the government's costs. Allegation that software conversion estimates are unreasonably high is denied where protester has submitted no evidence to dispute the assessment.

B-215083 July 24, 1984 84-2 CPD 106

BIDDERS--RESPONSIBILITY v. BID RESPONSIVENESS

The failure of a bidder's food preparation facility to pass a post-bid opening sanitary inspection concerned the bidder's responsibility rather than the responsiveness of its bid. Since the bidder was a small business, the matter was required to be referred to the Small Business Administration for consideration under the Certificate of Competency procedures.

B-215741 July 24, 1984 84-2 CPD 107

BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--BID NONRESPONSIVE

A bidder's failure to acknowledge receipt of a material amendment renders the bid nonresponsive; the fact that the bidder may not have received the amendment until the day after bid opening is irrelevant absent evidence that the failure to receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the firm from competition.

B-215755 July 24, 1984 84-2 CPD 108

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT INTEREST CRITERION

Labor union protest alleging that awardee had an unfair competitive advantage and participated in col-

lusive bidding practices is dismissed because Union is not an "interested" party for purposes of these issues under GAO Bid Protest Procedures.

*B-213381 July 25, 1984 84-2 CPD 109
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION*

Cost to the government is always a factor in the award of government contracts even if cost is not listed in the solicitation as a specific evaluation factor.

LEASES--NEGOTIATION--EVALUATION OF OFFERS--BASIS

Protest contending that the agency changed its requirements concerning the width of a required office building is denied. The record shows that while the agency provided all offerors with examples of acceptable dimensions, the solicitation did not require that the building be of a certain width.

Protesters contend that a portion of an agency manual that was included in the solicitation package imposed additional requirements on offerors in excess of the specific requirements contained in the solicitation, thus the agency acted improperly when it awarded a lease to an offeror who did not offer to meet those requirements. Protest is denied since the record shows that the portion of the manual was not intended to impose additional requirements but was included to assist offerors in proposal preparation.

*B-213708 July 25, 1984 84-2 CPD 110
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CORRECTIVE ACTION PROPOSED, TAKEN, ETC. BY AGENCY*

Protest that ophthalmological tonometer should have been considered a specialty metal item subject to the restrictions of the preference for domestic specialty metals clause, Defense Acquisition Regulation 7-104.93(b), is dismissed as academic where contracting agency agrees with protester and takes only corrective action possible in the circumstances of the case.

*B-214603 July 25, 1984 84-2 CPD 111
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
CONSTRUCTIVE NOTICE*

Although the protester alleges that it did not know of the requirement concerning the time for filing of a GAO protest, an untimely protest may not be considered because bidders are on constructive notice of the requirement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest objecting to cancellation of invitation for bids not received in our Office within 10 working days after the protester knew or should have known the basis of the protest is untimely and will not be considered.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging deficiency in invitation for bids is untimely when filed after bid opening, since GAO Bid Protest Procedures require protests based upon alleged solicitation defects which were apparent before bid opening to be filed by that time.

*B-215026 July 25, 1984 84-2 CPD 112
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

The allegation that a bidder will violate a bid certification involves an affirmative determination of bidder responsibility which GAO will not review except in limited circumstances.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE
PROCUREMENTS*

GAO dismisses bid protest as premature since it is based on the possibility of future award.

*B-215293 July 25, 1984 84-2 CPD 113
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest filed almost 1 month after contracting agency mailed letter containing basis for protest is untimely under 4 C.F.R. 21.2(b)(2), since it was not filed within 10 working days of knowledge of basis of protest.

*B-213009 July 26, 1984 84-2 CPD 114
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED*

Protester alleging that solicitation specification requiring a minimum of eight expansion slots for plug-in adapters on microcomputer systems unit is unduly restrictive bears burden of proof and must show that specification and agency's determination of its needs are clearly unreasonable. Protester's disagreement with agency's technical opinion does not establish that the requirement is unreasonable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against alleged impropriety in amended solicitation first raised over 8 months after the closing date for receipt for proposals is untimely under our bid protest procedures.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
NONRESPONSIVE BIDDER*

Protest against alleged impropriety in solicitation will not be considered where protester would not be eligible for award even if issue raised were decided in its favor because its product is otherwise nonconforming to the solicitation.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

Where protester, by letter to procuring activity prior to the closing date for receipt of proposals, did not

use the word "protest," but conveyed its dissatisfaction with a solicitation requirement and requested corrective action, protest submitted to GAO within 10 days of the issuance of solicitation amendment which responded to protester's objection but failed to cure it is timely under our Bid Protest Procedures.

*B-214008 July 26, 1984 84-2 CPD 115
CONTRACTS--PROFITS--ANTICIPATED*

Protester is not entitled to anticipated profits and protest expenses even if it should have received award of Federal Supply Schedule delivery order.

*CONTRACTS--REQUESTS FOR QUOTATIONS--PREPARATION OF QUOTATION--
COST--RECOVERY*

Protesting Federal Supply Schedule (FSS) contractor's claim for quotation preparation costs is allowed where agency action in awarding a delivery order to a more expensive FSS contractor, even though the goods offered by both contractors were equivalent, was arbitrary and capricious and the protester had a substantial chance for award.

*PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
PROCUREMENT AT OTHER THAN LOWEST FSS PRICE--JUSTIFICATION
REQUIREMENT*

Purchases from Federal Supply Schedule must be made from source offering delivered price for item which represents agency's actual minimum needs, although purchase of higher priced item is authorized if fully justified. Where specifications accompanying RFQ stated requirement in excess of minimum need, agency decision to purchase higher priced item, which was erroneously represented as meeting the RFQ specifications, is not justified when the lower priced item meets the agency's essential requirements and there is no showing that the lower priced item is not equivalent to the higher priced item. Therefore, protest is sustained.

*B-214523 July 26, 1984 84-2 CPD 116
ATTORNEYS--FEES--EQUAL ACCESS TO JUSTICE ACT--RECOVERY OF
FEES, ETC. INCURRED IN PURSUING BID PROTEST--NOT AUTHORIZED
BY ACT*

Attorney's fees incurred in connection with a bid protest are not compensable under the Equal Access to Justice Act.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--AWARD
MADE TO PROTESTER*

Protest is dismissed as academic where agency has resolved issue in favor of the protester and awarded it a contract.

*B-215049.2 July 26, 1984 84-2 CPD 117
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Request for reconsideration of protest decision filed more than 10 working days after basis for reconsideration is known is untimely.

*B-215732 July 26, 1984 84-2 CPD 118
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
BID SIGNATURE*

Failure of corporate bidder to place the word "by" before authorized signature clearly indicates the intent of the bidder to be legally bound.

*B-215812 July 26, 1984 84-2 CPD 119
CONTRACTS--DAMAGES--LIQUIDATED--REMISSION--ADMINISTRATIVE
RECOMMENDATION--DENIAL*

Request for remission of liquidated damages assessed by Department of the Interior must be denied in the absence of a favorable recommendation by the head of the agency.

B-213885, et al. July 27, 1984 84-2 CPD 120
BIDS--ESTIMATES OF GOVERNMENT--BASIS OF ESTIMATE

When an agency solicits bids on the basis of estimated quantities, the agency must base its estimates on the best information available. There is no requirement, however, that the estimates be absolutely correct. Rather, the estimated quantities must be reasonably accurate representations of anticipated actual needs. A protester challenging an agency's estimates bears the burden of proving that those estimates are not based on the best information available, otherwise misrepresent the agency's needs, or result from fraud or bad faith.

BIDS--ESTIMATES OF GOVERNMENT--FAULTY--CANCELLATION OF INVITATION

A defect in the estimated quantity of work is generally sufficient justification for cancellation of a solicitation where there is substantial doubt that award to the lowest bidder will result in the lowest cost to the government.

CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL

Allegation that solicitation estimate was overstated is denied where protester was not prejudiced by the alleged error.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--AWARD MADE TO PROTESTER

Protest of solicitation cancellation is dismissed where protester subsequently received award for the same requirement under a resolicitation even though the protester's price was lowered.

B-215198 July 27, 1984 84-2 CPD 121
BIDS--PRICES--REDUCTION PROPRIETY

GAO will deny protest against award to firm that submitted a "token" bid nearly a month before opening, certifying itself as small, and then lowered its price, since until exact time of bid opening, bidders may change their prices for any reason.

B-215198 July 27, 1984 84-2 CPD 121 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

Under 15 U.S.C. 637(b)(6), the Small Business administration has conclusive authority to determine matters of small business size status for federal procurement purposes. Protest challenging firm's self-certification as small therefore must be directed to SBA.

B-215828 July 27, 1984 84-2 CPD 122
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATIONS--MATTER OF CONTRACT ADMINISTRATION

Protest challenging the propriety of the default termination of a contract raises an issue concerning contract administration which is to be resolved under the Contract Disputes Act of 1978, not under GAO Bid Protest Procedures.

B-214489.2 July 30, 1984 84-2 CPD 123
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

GAO will not conduct an independent investigation to establish the validity of a protester's speculative statements, but will instead rely upon the factual record developed by the parties.

B-214538 July 30, 1984 84-2 CPD 124
BIDS--REJECTION--PROPRIETY

Offer for multiple award Federal Supply Schedule contract is properly rejected where past experience shows that sales of offeror's product under previous multiple award schedule contract were not sufficient to warrant retention of firm on contract.

B-214670 July 30, 1984 84-2 CPD 125
CONTRACTORS--INCUMBENT--COMPETITIVE ADVANTAGE

Government is not obligated to equalize the competitive advantage that accrues to one competitor by virtue of its own efforts under a prior contract.

*B-214670 July 30, 1984 84-2 CPD 125 - Con.
CONTRACTS--AWARDS--PROPRIETY*

Mere presence of financial risk in competing for a contract does not render the procurement improper since offerors are expected to take risk into account in formulating their offers.

*B-215678 July 30, 1984 84-2 CPD 128
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
BONDS--BID*

Evidence of authority to sign bid bond on behalf of company may be furnished after bid opening, and failure to furnish it does not render bid nonresponsive.

*CONTRACTS--OFFER AND ACCEPTANCE--ACCEPTANCE--WHAT CONSTITUTES
ACCEPTANCE*

Acceptance of a prospective contractor's offer must be clear and unconditional. Statements by agency personnel that bidder "has the job" do not give rise to a contract when solicitation specifically states that written notice of acceptance will be furnished to the successful bidder and no such notice is sent.

ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED

The government is not estopped from denying the existence of a contract where there is no action or statement by the authorized contracting officer that might reasonably be construed as an inducement for the bidder to take action before written confirmation of award.

*B-215472 July 30, 1984 84-2 CPD 129
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--LACKING*

In the absence of a solicitation provision requiring that bidders possess a specific license or permit, the contracting officer need not consider whether bidders intend to comply with licensing requirements imposed by state or local authorities in determining the bidders' eligibility for award.

B-215742 July 30, 1984 84-2 CPD 129 - Con.
CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--MINIMUM
NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--
REASONABLENESS

GAO will not consider merits of allegation that more restrictive specifications are required to serve the government's interest.

B-215852 July 30, 1984 84-2 CPD 130
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest alleging a defect in a request for quotations, which was initially received by the contracting agency on the date specified for receipt of quotations, along with the protester's quotation, and in our Office after the date for receipt of quotations, is untimely under our Bid Protest Procedures and will not be considered.

B-210376.2 July 31, 1984 84-2 CPD 131
CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST
COMPARISON

Where exclusion of overtime costs from in-house cost estimate is initially justified on basis of planned changes to the agency's staffing and organizational structure, but it later appears that certain of the staffing changes will not take place, the original decision upholding the cost comparison will be affirmed where record supports the conclusion reached albeit for a different reason.

CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL

Although it was unclear that a quantity estimate in the solicitation covered two different types of work, but protester only included the actual total estimated quantity of work in its proposal and has not alleged that its price would have been lower if the estimate's coverage had been broken down, the protester was not prejudiced.

*B-210376.2 July 31, 1984 84-2 CPD 131 - Con.
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

No merit is found to allegation that actual hours of overtime worked in a facility after the protest was filed demonstrate that the agency erred in excluding overtime hours from its in-house cost estimate. The actual overtime hours relied on by the protester include overtime functions not involved in the cost comparison, and were incurred before implementation of the more efficient organizational structure on which the cost comparison was based.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

New issue raised in request for reconsideration is dismissed as untimely because the issue is based on information contained in the agency report on the original protest, but was not raised within 10 working days after receipt of the report.

*B-212304.4 July 31, 1984 84-2 CPD 132
BIDS--COMPETITIVE SYSTEM--PRESERVATION OF SYSTEM'S INTEGRITY--
PECUNIARY DISADVANTAGE TO GOVERNMENT*

A nonresponsive bid may not be accepted even though it would result in monetary savings to the government, since acceptance would be contrary to the public interest in the maintenance of the competitive bidding system.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision is affirmed on reconsideration where the protester has not shown any error of fact or law which would warrant reversal or modification of it.

B-212964 July 31, 1984 84-2 CPD 133

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--WHAT CONSTITUTES NOTICE*

Protest of a delivery order under an indefinite quantity sole-source contract is not a matter of contract administration where protester initially protested award of contract on a sole-source basis, agency agreed to permit competition on portion of contract beyond minimum order requirements, and protester withdrew initial protest based on that agreement. Protest of delivery order is merely a refiling of initial protest based on new agency action inconsistent with agreement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--NOT
APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of sole-source solicitation filed after the closing date of the solicitation is timely where protester had no way of knowing of content of solicitation or closing date, requested copy of solicitation as soon as it was aware of solicitation, received solicitation after closing date, and filed protest within 10 working days of receipt of solicitation.

*CONTRACTS--PROTESTS--SUSTAINED--SOLE-SOURCE PROCUREMENT--
UNJUSTIFIED*

Protest that divisible component of sole-source package should be broken out for competition is sustained where agency provides no basis for requiring total package procurement and, in fact, agrees that component should be procured competitively.

B-213429.2 July 31, 1984 84-2 CPD 134

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
GOVERNMENT MISHANDLING DETERMINATION*

Prior decision holding that the protester's late proposal could not be considered is affirmed since protester has provided GAO with no new evidence to

show that the contracting agency gave special instructions to the post office which caused the proposal sent by express mail to be delivered late to the agency's installation.

*B-213455 July 31, 1984 84-2 CPD 135
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CORRECTIVE ACTION PROPOSED, TAKEN, ETC. BY AGENCY*

Protest is dismissed as academic where procuring agency takes the corrective action urged by the protester.

*B-213683.2 July 31, 1984 84-2 CPD 143
BIDS--MISTAKES--CORRECTION--NONRESPONSIVE BIDS*

A bid that is properly declared nonresponsive due to bidder's failure to include in its bid information material to bid evaluation cannot be corrected through mistake in bid correction procedures.

*BIDS--RESPONSIVENESS--FAILURE TO INCLUDE SOMETHING REQUIRED--
PRICES*

Procuring activity's rejection of protester's bid was proper where bid failed to include information material to evaluation of bid prices.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

Where protester by letter within 10 working days of its receipt of notice that its bid had been rejected adequately conveys its dissatisfaction with procuring agency's decision to reject its bid and award to another firm and asks for corrective action (reconsideration by procuring agency), protest submitted to GAO within 10 working days of procuring agency's affirmation of its decision rejecting protester's bid is timely.

*B-213856, B-213856.2 July 31, 1984 84-2 CPD 136
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EXPERIENCE RATING*

When offeror's experience in specific geographic area covered by solicitation is listed as a sub-factor under "Organizational Qualifications and Experience," agency is required to consider it and may not evaluate proposals on the basis of general or related experience alone.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
GENERAL ACCOUNTING OFFICE REVIEW*

In reviewing alleged arbitrary and capricious evaluation of proposals, GAO's standard is to determine whether evaluation was reasonable and in accord with solicitation criteria. If so, and there are no other violations of the procurement statutes and regulations, an award is not legally objectionable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY*

Mere fact that a protester disagrees with evaluation of its proposal does not prove that the agency's selection was arbitrary or capricious.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

Contracting officials are presumed to be competent and to act in good faith, and GAO will not attribute bias to them on the basis of inference or speculation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
INDEPENDENT INVESTIGATION AND CONCLUSIONS*

GAO does not conduct investigations in its bid protest function. Instead, its decisions are based on written submissions of the parties, with the protester bearing the burden of proof.

*B-213856, B-213856.2 July 31, 1984 84-2 CPD 136 - Con.
CRIMINAL LAW MATTERS--JURISDICTION--GENERAL ACCOUNTING
OFFICE v. ATTORNEY GENERAL*

Purpose of certificate of independent price determination is to prevent collusion between two or more bidders in an attempt to keep a third from submitting a bid; such action may violate antitrust statutes. In GAO's opinion, however, mere bragging by employee of one firm to employee of competing firm does not constitute evidence of such collusion. If protester has additional evidence of alleged criminal acts, it should be submitted to contracting officer for possible forwarding to the Attorney General.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

Alleged plagiarism of material in prior, unsuccessful proposal by former employee of offeror is a dispute between private parties and must be resolved through court action, not in the context of a bid protest.

*B-214293 July 31, 1984 84-2 CPD
CONTRACTORS--RESPONSIBILITY--ADMINISTRATIVE DETERMINATION--
NONRESPONSIBILITY FINDING--SUPPORTED BY RECORD*

Contracting officer's nonresponsibility determination did not lack any reasonable basis when it was based on negative report of bidder's quality control system, production capacity, and purchasing ability.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--FACTORS FOR
CONSIDERATION--PREVIOUS RATING, ETC.*

Positive ratings--previously assigned to bidder for producing products which are different from one being procured--are not controlling for responsibility decision made in protester procurement.

B-214460 July 31, 1984 84-2 CPD 137
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

The requirements that discussions be meaningful is not violated by the agency's failure to inform the protester its estimated price for a time and materials contract is higher than that of the proposed awardee.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION--RELATIVE IMPORTANCE

The presumption that cost and technical factors are equally important is not invalidated where the protester asserts that unidentified agency personnel stated that technical factors would be "most important" and the agency denies that such statements were made.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

The selection official's decision to award the contract to the lower technically rated, lower priced offeror is not unreasonable when the protester's numerical scoring advantage is based on the advantages of incumbency and the RFP stated that the government would retain significant control over the project.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--PRICE CONSIDERATION--RELATIVE IMPORTANCE

Where the RFP does not indicate in relative terms the importance of cost and technical factors, it must be presumed that each will be considered approximately equal in weight.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Protest alleging that the agency intends to use the protester's data to administer the contract is speculative.

B-214460 July 31, 1984 84-2 CPD 137 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A charge that the RFP overstated the number of required man-hours, at least with respect to the protester, should have been brought prior to the closing date of the solicitation and, therefore, is untimely.

B-215687 July 31, 1984 84-2 CPD 138
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest to GAO of defects in solicitation is dismissed as untimely where either initial protest to agency was not filed prior to the closing date of the solicitation or, if it was, then subsequent protest to GAO was not filed within 10 working days of initial adverse agency action--closing the solicitation without making the requested revisions.

B-215789 July 31, 1984 84-2 CPD 144
CONTRACTS--DISPUTES--SETTLEMENT--ADMINISTRATIVE--UNDER
DISPUTES CLAUSE

Request that GAO intervene in a dispute with the General Services Administration under a contract is for resolution under the Disputes clause of the contract and not under GAO's Bid Protest Procedures.

B-215878 July 31, 1984 84-2 CPD 145
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

There is nothing illegal in the government's acceptance of a below-cost offer so long as the offeror is responsible.

B-212996.2 Aug. 1, 1984 84-2 CPD 139
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--DENIED

Claim for bid and proposal preparation costs incurred under a two-step, formally advertised procurement

is denied where the record does not indicate that the agency misled offerors into believing that the owner of proprietary data needed to perform the contract was obligated to release such data.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--RECOVERY CRITERIA*

Fourth low bidder in the second step of a two-step, formally advertised procurement may have a valid claim for bid and proposal preparation costs if it can show that because of arbitrary or capricious agency action it was induced to incur the costs of participating in the procurement.

B-213434 Aug. 1, 1984 83-2 CPD 140

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

Contracting agency enjoys a reasonable range of discretion in evaluating proposals. Mere difference in judgment over a technical evaluation between the protester and the contracting agency is not sufficient in itself to show that the agency's exercise of judgment was unreasonable.

CONTRACTS--NEGOTIATION--PRICES--OPTIONS

Inclusion of an option price in the evaluation of proposals is proper where the RFP provides for it.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--FAILURE TO APPLY*

Although RFP states that options would not be exercised at the time of award, protester was not prejudiced by the exercise at award, since RFP provided for evaluation of options with base price and RFP contemplated that options would be awarded to the contractor.

B-213434 Aug. 1, 1984 84-2 CPD 140 - Con.

CONTRACTS--NEGOTIATION--TECHNICAL EVALUATION PANEL--MEMBERS--QUALIFICATIONS

Absent showing of fraud or allegations of conflict of interest, GAO will not become involved in examining the qualifications of an agency's technical evaluation panel members.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where there is an irreconcilable conflict between a protester and an agency on a factual matter, the protester has failed to meet its burden of proof.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS

Protest alleging a defect in the RFP must be filed prior to the closing date for receipt of proposals.

B-215531 Aug. 1, 1984 84-2 CPD 141

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--IN-HOUSE GOVERNMENT PERFORMANCE

Agency's decision prior to closing date of solicitation to cancel solicitation and perform in-house will not be reviewed, since decision whether to perform in-house generally is matter of executive policy not within protest function.

B-215830 Aug. 1, 1984 84-2 CPD 142

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

A firm's ability to perform is a matter of responsibility, and GAO will not review an affirmative determination in that respect in limited circumstances.

*B-215830 Aug. 1, 1984 84-2 CPD 142 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest against alleged solicitation impropriety that was apparent prior to the closing date for receipt of initial proposals is untimely where the protest was not filed until after that date.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Contract administration is not within the purview of GAO's bid protest function.

*B-213932 Aug. 2, 1984 84-2 CPD 146
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
ADMINISTRATIVE DISCRETION--REASONABLE EXERCISE STANDARD*

Contracting agencies have broad discretion in determining when it is appropriate to cancel a procurement conducted under Brooks Act procedures, and may do so by establishing a reasonable basis for the cancellation. Where the scope of the procurement has dramatically expanded since the evaluation and selection of a prospective contractor, a reasonable basis for cancellation exists.

*B-215472 Aug. 2, 1984 84-2 CPD 147
ADMINISTRATIVE PROCEDURE ACT--TEMPORARY EMERGENCY RULE--
ADMINISTRATIVE DISCRETION*

It is within an agency's discretion under the Administrative Procedure Act to issue a temporary emergency rule without notice and public participation when the agency finds for "good cause" that immediate adoption of the rule is necessary and incorporates that finding and the reasons behind it in the rule itself.

B-215472 Aug. 2, 1984 84-2 CPD 147 - Con.

*SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
CONTRACTOR ELIGIBILITY*

GAO does not object to the Small Business Administration's (SBA) decision to waive, on a temporary basis, the requirement that nonmanufacturing 8(a) oil suppliers furnish small business products, since the SBA has wide discretion in implementing the 8(a) program, and the SBA reasonably has found that the temporary waiver is necessary to further the program's socio-economic policy of fostering the economic self-sufficiency of 8(a) businesses.

*SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO*

GAO will review a protester decision to effect a procurement under the 8(a) program where the protester alleges that Small Business Administration regulations were violated.

B-212471 Aug. 3, 1984 84-2 CPD 148

*BIDS--LATE--MISHANDLING DETERMINATION--BID RECEIVED AT ONE
PLACE FOR DELIVERY TO ANOTHER PLACE*

Where a solicitation identifies both a post office box and a specific building and room number for receipt of bids, a bid not delivered to the specified room prior to the time set for bid opening is late. Delivery to the post office box is not sufficient since the post office box is merely an intermediate stop in transit.

*BIDS--LATE--MISHANDLING DETERMINATION--WHAT CONSTITUTES A
"GOVERNMENT INSTALLATION"*

A post office box is not a government installation for purposes of the late bid clause.

*B-212471 Aug. 3, 1984 84-2 CPD 148 - Con.
BIDS--LATE--REJECTION--PROPRIETY*

A late bid that does not satisfy any of the conditions of the late bid clause generally may not be considered.

*B-213686 Aug. 3, 1984 84-2 CPD 149
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--ALTERNATIVE
OFFERS*

Contracting agency reasonably interpreted a proposal to encompass two categories of services, and not alternative offers to perform either one category only or both, where the proposal intermingled discussion of both categories without any representation or indication that the offeror was presenting alternative offers.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS*

Meaningful discussions are held where the contracting agency sends offeror a letter requesting "clarifications" and containing questions which lead the offeror to the areas of its proposal deemed deficient, and the offeror has an opportunity to modify its proposal to correct the deficiencies.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--COMPETITIVE RANGE REVISION*

Contracting agency may revise its competitive range determination, eliminating an offeror formerly considered within it, if discussions reveal that the offeror's proposal no longer has a reasonable chance of acceptance, and need not give the offeror an opportunity to submit a revised proposal.

B-213287 Aug. 6, 1984 84-2 CPD 151

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--EVALUATION--CRITERIA--APPLICATION OF CRITERIA*

It was not improper for an agency to accept a data base management system as technically acceptable under a nonrestrictive interpretation of the term "user-friendly" where the specification did not advise vendors that a more restrictive definition would be applied.

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,
ETC.--EVALUATION--REASONABLENESS*

Protester's speculation that the awardee's evaluated cost of using its system may not be indicative of the true cost is without merit where the agency confirms that the costing benchmark was in fact run using the vendor's offered system and there is no evidence that the awardee's costs were influenced by specialized benchmark programs any more than were the protester's costs.

Agency properly determined that a data base management system capable of handling exactly ten time periods satisfied a requirement for a system capable of handling "multiple" time periods.

B-213815.2 Aug. 6, 1984 84-2 CPD 152

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
JUSTIFICATION--INACCURATE SPECIFICATIONS*

Cancellation of an invitation for bids after bid opening was proper where the solicitation did not reflect the minimum needs of the government.

B-214818 Aug. 6, 1984 84-2 CPD 153

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

Protest against award to bidder on basis that bidder offered nonconforming product is academic where bidder failed to extend bid acceptance period and is, therefore, ineligible for award.

*B-215061 Aug. 6, 1984 84-2 CPD 154
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative responsibility determination except when there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that a definitive responsibility criterion has not been met.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Protest from firm not in line for award if protest is upheld is dismissed because protester does not have requisite direct and substantial interest with regard to award to be considered an "interested party" under GAO Bid Protest Procedures.

*B-215079 Aug. 6, 1984 84-2 CPD 155
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
UNDUE RESTRICTION*

Agency's specifications for a precision tool pre-setting machine are not unduly restrictive of competition where the agency presents a reasonable explanation why the restrictions are necessary to meet its minimum needs, and the protester fails to address the explanation or show that the restrictions are unreasonable.

*B-213974.2 Aug. 7, 1984 84-2 CPD 156
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
BID NONRESPONSIVE*

Generally, absent evidence that failure of bidder to receive amendment was result of conscious or deliberate effort by contracting personnel to exclude bidder from competition, where bidder fails to receive and to acknowledge a material amendment, its bid must be rejected as nonresponsive.

B-213974.2 Aug. 7, 1984 84-2 CPD 156 - Con.

*BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
MATERIALITY DETERMINATION*

Where bid was submitted on basis of original invitation f.o.b. destination delivery requirement, fact that unacknowledged amendment changes delivery requirement to f.o.b. origin does not cause bid to be nonresponsive since failure to acknowledge amendment that merely effects a decrease in the cost of performance should be waived as minor informality.

BIDS--INVITATION FOR BIDS--DEFECTIVE--EVALUATION CRITERIA

As a general rule, where invitation amendment provides that bids will be evaluated for award purposes on basis of prices submitted for basic year and for option years that are exercised at time of award (none were exercised) and also on basis of prices submitted for basic year and for all option years, whether exercised or not at time of award, invitation would be defective since bid that did not include option year prices would be responsive under one evaluation method and nonresponsive under the other. However, since clear intent of invitation amendment was, notwithstanding slight ambiguity created by two evaluation provisions, that options would be evaluated, award was properly made.

*BIDS--INVITATION FOR BIDS--DEFECTIVE--NOT PREJUDICIAL TO
PROTESTER--EVALUATION CRITERIA*

Invitation soliciting bids on f.o.b. origin delivery basis which did not include provision for evaluation of transportation costs is defective. However, since failure to provide for such evaluation did not affect relative standing of bidders, defect does not render award invalid.

*B-213904, et al. Aug. 8, 1984 . 84-2 CPD 157
BIDS--COMPETITIVE SYSTEM--EQUAL BIDDING BASIS FOR ALL BIDDERS*

Contract awarded by Air Force appears to have been based on same wage determination on which bidders competed. It is speculative whether Department of Labor (DOL) would have issued--prior to award--new wage determination based on collective bargaining agreement arising out of one of two prior contracts which were combined to result in protested procurement. Moreover, there is no indication in record that DOL ever resolved issues--raised by the procuring agency--relating to the validity of the bargaining agreement and its relevance to the protested procurement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Agency's opening of bids on scheduled date, without taking the corrective action urged by the protester, constitutes initial adverse agency action on the protest. Consequently, a subsequent protest to our Office is untimely when filed more than 10 working days after the bid opening.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO . .
PROTESTER*

Protest filed within 10 days of date protester alleges it first learned of basis for protest is timely.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL
BUSINESS SET-ASIDE*

If protester cannot compete for small business set-aside contract because it is large business, protester is not an interested party, and its protest will not be considered under our Bid Protest Procedures.

*B-213904, et al. Aug. 8, 1984 84-2 CPD 157 - Con.
CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST*

An information copy of a protest letter addressed to a contracting officer is not a protest when filed with our Office. Conversely, an information copy of a protest letter addressed to our Office is not a protest when filed with the contracting officer.

*B-215583.2 Aug. 9, 1984 84-2 CPD 159
CONTRACTS--MODIFICATION--ADMINISTRATIVE FUNCTION*

Absent evidence that at the time of award agency intended to modify contract after award, agency's decision to modify a contract and to accept nonconforming goods is a matter of contract administration within the authority and responsibility of the procuring agency.

CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS

GAO, except in limited circumstances, will not review a potential subcontractor's protest of the award of a subcontract. Additional material submitted in protester's reconsideration request does not indicate that any of the circumstances under which our Office reviews subcontractor protests are present here.

*B-214578 Aug. 10, 1984 84-2 CPD 160
BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--
DETERMINATION BASIS*

Protest that specification requiring nonreversible safety caps prevents full and free competition because firms which cannot supply caps of that type are eliminated from competition is denied since propriety of a particular procurement is judged on whether government obtains reasonable prices through adequate competition and not by whether every potential contractor can compete.

*B-214578 Aug. 10, 1984 84-2 CPD 160 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Allegation that specification requiring nonreversible safety caps for drug prescription bottles is arbitrary and capricious and contrary to Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471 et seq. (1976) and the implementing regulations is denied since neither the Act nor the regulations mandate a particular type of child-resistant packaging and therefore the contracting agency has the responsibility for drafting specifications as to the type of cap which meets its minimum needs. GAO will not object to the specification since it calls for a type of cap permissible under the Act and regulations and protester has not introduced evidence of a lack of reasonable basis for the specification.

An agency need not relax or revise solicitation requirements which reflect its legitimate minimum needs.

*B-212395.8 Aug. 13, 1984 84-2 CPD 161
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision dismissing protest is affirmed because protester has failed to demonstrate that decision was based on erroneous interpretation of fact or law.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--PRIOR
GAO CONSIDERATION OF SAME ISSUE EFFECT*

The "significant issue" exception to our rules concerning untimely protests is not applicable to a protest charging that a solicitation contained overly restrictive specifications.

*B-212395.8 Aug. 13, 1984 84-2 CPD 161 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
PROTESTER NOT IN LINE FOR AWARD*

We will not consider allegations made by a party that would be ineligible for award even if all issues raised were resolved in its favor.

*B-213927, B-213927.2 Aug. 13, 1984 84-2 CPD 162
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE DETERMINATION--ADEQUATELY WRITTEN PROPOSAL
REQUIREMENT*

No matter how capable an offeror may be, it will not be considered in the competitive range if it fails to submit an adequate written proposal, since a technical evaluation must be based upon the information submitted with the proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Agency's determination that proposal should be excluded from the competitive range as technically unacceptable and not susceptible of being made acceptable without major revisions is reasonable where the proposal (1) fails to offer or takes exception to mandatory requirements of the solicitation; (2) fails to provide either the required detailed technical description as to how requirements will be met or the required references to substantiating technical documentation; and (3) contains other informational deficiencies and ambiguities rendering adequate evaluation difficult or impossible.

*CONTRACTS--NEGOTIATION--OFFERS OF PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW*

In reviewing an agency's technical evaluation, GAO will not evaluate the proposals de novo, but instead will only examine whether the evaluation had a reasonable basis.

*B-213927, B-213927.2 Aug. 13, 1984 84-2 CPD 162 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

GAO will not consider protester's contention that specification requiring automatic data processing equipment to be capable of supporting a specific vendor's software is unduly restrictive when the protest was not filed until after closing date for receipt of proposals. Protests based upon alleged improprieties apparent before the closing date must be filed by that date in order to be considered timely under GAO Bid Protest Procedures.

*B-214517.2 Aug. 13, 1984 84-2 CPD 163
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST
ARTICLE--WAIVER*

Agency's decision not to waive first article testing for protester who has other government contracts for item to be procured, but has not gained approval for production, and to grant waiver for firm whose item is on QPL is not arbitrary or capricious and, therefore, will not be disturbed by GAO.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST
ARTICLE--WAIVER DENIED*

Agency's decision not to waive first article testing for protester is not a matter that must be referred to Small Business Administration since it does not constitute a finding of nonresponsibility.

*CONTRACTS--TERMINATION--AWARD TO NEXT LOW RESPONSIVE AND
RESPONSIBLE BIDDER*

Award of contract to bidder that is low with waiver of first article testing is proper when contract with first awardee is terminated due to error in bid evaluation.

B-214604 Aug. 13, 1984 84-2 CPD 164

*BIDS--COMPETITIVE SYSTEM--PRESERVATION OF SYSTEM'S INTEGRITY--
PECUNIARY DISADVANTAGE TO GOVERNMENT*

The public interest in strictly maintaining the normal competitive bidding procedures outweighs any monetary advantage the government might gain in a particular case by violating those procedures.

BIDS--INVITATION FOR BIDS--AMENDMENTS--DISTRIBUTION--ADEQUACY

There is no basis for a charge of inadequate distribution of an amendment when the agency mailed the amendment to the same 103 prospective bidders on the bidders mailing list who had received the IFB.

*BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
MATERIALITY DETERMINATION*

An IFB amendment which doubles the delivery requirements for the first 180 days of the contract is material and a bidder's failure to acknowledge such amendment renders its bid nonresponsive.

B-214697 Aug. 13, 1984 84-2 CPD 165

*CONTRACTS--NEGOTIATION--ADMINISTRATIVE DETERMINATION--
ADVERTISING v. NEGOTIATION*

Protest against agency use of negotiated procurement is denied where agency decides to conduct negotiated procurement because of difficulty in drafting adequate technical specifications and protester's allegations regarding the specifications concede this point.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS*

Where protester initially filed timely protest and later supplements it with new and independent grounds of protest, the later grounds of protest must independently satisfy timeliness requirements.

Such grounds are untimely when they are based on an impropriety apparent from the face of solicitation, but were not filed prior to closing date for submission of offers.

*B-214922 Aug. 13, 1984 84-2 CPD 177
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest is untimely where not filed with either contracting agency or GAO within 10 working days after basis of protest was known or, assuming congressional inquiry to contracting agency to have constituted either inquiry to learn basis of protest or actual protest, where not filed with GAO within 10 working days after knowledge was acquired as to basis of protest or as to denial of protest to contracting agency.

*B-214950.2 Aug. 13, 1984 84-2 CPD 167
BIDS--PRICES--BELOW COST--EFFECT ON BIDDER RESPONSIBILITY*

The fact that a bid price may hold no profit for the contractor is not a proper basis to challenge award to that firm if it is found responsible, a determination that GAO does not review except in limited circumstances.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Whether a firm actually performs according to its contractual obligations is a matter of contract administration, which is the responsibility of the procuring agency, not GAO.

*B-215381 Aug. 13, 1984 84-2 CPD 168
BIDS--OMISSIONS--INFORMATION--INSPECTION LOCATION*

Where bidder fails to designate location where supplies were to be inspected but invitation for bids provides that inspection will occur at contractor's plant where performance will occur, then the omission does not render the bid nonresponsive but instead is

merely a minor informality which contracting officials may either waive or allow the bidder to cure after bid opening.

*B-215479.2 Aug. 13, 1984 84-2 CPD 169
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION*

GAO will not consider the merits of an untimely grant complaint that the complainant argues raises a significant issue--allegedly restrictive requirements--has been considered on many occasions.

*B-215570.2 Aug. 13, 1984 84-2 CPD 170
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
POTENTIAL SUBCONTRACTORS--NOT ELIGIBLE FOR AWARD*

Complaint is dismissed where there is no indication that the potential prime contractor has acquiesced in the complaint of its potential subcontractor against the proposed award of the prime contract to another bidder.

*B-215706 Aug. 13, 1984 84-2 CPD 171
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
LATE MODIFICATION--PRICE REDUCTION*

Protest that procuring agency improperly permitted low offeror to reduce its otherwise low price after the receipt of best and final offers is denied because low offer submitted was successful offer and neither relative standing of offerors nor outcome of the procurement was affected.

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

Protest that based upon the oral advice of a procuring official that negotiations would be reopened after the receipt of best and final offers, protester failed to submit its lowest price in its best and final offer is denied where solicitation warned

offerors that oral instruction given prior to award are not binding on the government and provided the closing date by which final offers must be received.

*B-215883 Aug. 13, 1984 84-2 CPD 172
BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER
TO MEET ALL SOLICITATION TERMS*

A bid that does not offer to conform to the essential requirements of the invitation must be rejected as nonresponsive. Moreover, the bid may not be corrected after bid opening in order to make it responsive, since permitting correction would be tantamount to allowing the submission of a new bid.

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--COMPETITIVE SYSTEM--
COMPLIANCE*

An Indian Housing Authority, which receives funds from the Department of Housing and Urban Development to fund construction, is tantamount to a grantee for purposes of GAO review of the Authority's contract awards.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

A complainant who alleges that contracting officials acted in bad faith must submit virtually irrefutable proof that the officials had a malicious and specific intent to harm the complainant.

*B-215899 Aug. 13, 1984 84-2 CPD 173
BIDS--EVALUATION--DISCOUNT PROVISIONS--ABSENCE OF PROVISION
IN INVITATION*

While the government may consider cost-related factors other than price in determining the low bidder, the invitation must provide for the evaluation of those factors before they may be considered. A bidder's offered prompt payment discount therefore may not be used in bid evaluation where such discounts are not included in the solicitation's evaluation criteria.

*B-214303 Aug. 14, 1984 84-2 CPD 174
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Protest that awardee might provide nonconforming items raises a matter of contract administration which is the responsibility of the procuring agency, not GAO.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that the solicitation did not set forth the salient characteristics essential to the needs of the government is untimely were not submitted before the closing date for receipt of initial proposals.

*CONTRACTS--REQUESTS FOR QUOTATIONS--EVALUATION--TECHNICAL
ACCEPTABILITY--SCOPE OF GAO REVIEW*

GAO will not disturb a contracting agency's technical evaluation of a bid where it is not shown to be unreasonable or violative of procurement laws and regulations.

*B-215067 Aug. 14, 1984 84-2 CPD 175
CONTRACTS--PROTESTS--COURT ACTION--DISMISSAL--WITH PREJUDICE*

A court's dismissal of a complaint following a trial on the merits constitutes a final adjudication of the issues raised and precludes further action by GAO on the same issues.

*B-215104 Aug. 14, 1984 84-2 CPD 176
CONTRACTS--PROTESTS--NONAPPROPRIATED FUND ACTIVITIES*

GAO will not review the award of a contract for mess attendant services where no contract payments are made from appropriated funds and no funds flow to the government as a result of the award. The fact that appropriated funds may be used to provide support services to the nonappropriated fund activity and to administer the contract is not a sufficient basis for review.

B-215385 Aug. 14, 1984 84-2 CPD 177
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Firm that submitted a bid that was properly rejected for arriving late is not an "interested party" qualified to protest award to the lowest of the remaining bidders.

B-215657 Aug. 14, 1984 84-2 CPD 178
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A protest not received in the General Accounting Office within 10 working days after the protester was orally advised of the basis for the protest is untimely and will not be considered.

B-215851 Aug. 14, 1984 84-2 CPD 179
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest alleging that proposed awardee under a negotiated procurement for telemetric data transmitting sets failed to perform satisfactorily on a similar contract and, therefore, should not be awarded a contract under the present solicitation is dismissed since the matter involves a question of the offeror's responsibility and GAO does not review affirmative determinations of responsibility except under circumstances not present here.

B-215901 Aug. 14, 1984 84-2 CPD 180
CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS--

Protest by subcontractor of agency decision that drawings submitted by subcontractor under prime contract are unacceptable will not be considered under GAO Bid Protest Procedures. The question whether a subcontractor meets solicitation requirements is a matter of contract administration between the government and the prime contractor which GAO will not consider.

B-215959 Aug. 14, 1984 84-2 CPD 181

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--
SOLICITATION IMPROPRIETIES

Protest to GAO concerning solicitation defect is untimely where firm protester to the contracting agency prior to the closing date for receipt of quotations, but did not protest to GAO within 10 working days after closing occurred. Where agency does not take corrective action requested, closing constitutes initial adverse action on the agency-level protest.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest is dismissed where underlying solicitation has been canceled, and this cancellation renders the protest academic.

B-212274.2 Aug. 15, 1984 84-2 CPD 182

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION

Protester's mere disagreement with agency's assessment of strengths of competing proposals does not show that agency's selection is clearly unreasonable or provide a basis for GAO to question it.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
POINT RATING--PROPRIETY OF EVALUATION

In negotiated procurement, point scores are merely guides for intelligent decisionmaking by selecting officials, and unless a solicitation sets forth a precise numerical formula and provides that a contract will be awarded to the offeror whose proposal receives the highest number of points, award need not be made on that basis.

*B-212274.2 Aug. 15, 1984 84-2 CPD 182 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
POINT RATING--SIGNIFICANCE OF DIFFERENCES*

Whether the point spread between two competing proposals indicates a significant superiority of one over the other is principally within the discretion of the procuring agency.

*B-214499 Aug. 15, 1984 84-2 CPD 183
BIDS--RESPONSIVENESS--PRICING RESPONSE RESPONSIVE TO IFB
REQUIREMENTS--FAILURE TO BID FIRM, FIXED PRICE*

Determination that bid was nonresponsive because unit prices for indefinite quantity portion of contract were not submitted with the bid was proper, since such unit prices are necessary to set the material terms of the contractor's obligation. Since these prices are material the failure to submit them is not waivable as a minor irregularity.

*B-215222 Aug. 15, 1984
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--CONGRESSIONAL TRANSMITTAL OF PROTEST*

Protest filed by Member of Congress more than 10 working days after protester received notice of initial adverse agency action on its protest to procuring activity is untimely under 4 C.F.R. 21.2(a) (1983).

Concerning applicability of our Bid Protest Procedures to protests filed by or referred to our Office by Members of Congress, it has been decided that no protest will be considered on its merits if untimely filed unless one of the exceptions in 4 C.F.R. 21.1(c) (1983) is applicable regardless of the source of protest.

B-215322.2 Aug. 15, 1984

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest concerning rejection of proposal filed with GAO more than 10 working days after protester received written notice from the agency of the basis for rejection is untimely and not for consideration on the merits.

B-215574 Aug. 15, 1984 84-2 CPD 184

CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

GAO will not consider a bid protest when the issues presented are before a court of competent jurisdiction, the protester has not requested a gao opinion on the matter before it, and the court has not otherwise expressed interest in such a decision.

B-212077.2 Aug. 17, 1984 84-2 CPD 186

CONTRACTORS--RESPONSIBILITY--TIME FOR DETERMINING

Where agency conducting negotiated procurement as part of cost comparison under OMB Circular A-76 had ample time, due to second low offeror's successful appeal of cost estimate, to review additional information bearing on the low offeror's financial responsibility received after the original cost comparison was completed and the results announced, that information should be considered because information relating to responsibility may be received any time prior to award.

B-213046.3, et al. Aug. 17, 1984 84-2 CPD 187
CONTRACTS--NEGOTIATION--COMPETITION--INCUMBENT CONTRACTOR--
COMPETITIVE ADVANTAGE

Solicitation requirements are not objectionable merely because they might be more easily met by an incumbent contractor than by other offerors; a competitive advantage gained by virtue of a firm's incumbency is not an unfair advantage which must be eliminated.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

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

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION

Protests from two firms that are not in line for award if protests are upheld are dismissed because protesters do not have the requisite direct and substantial interest with regard to award to be considered as "interested parties" under GAO Bid Protest Procedures.

B-215241 Aug. 17, 1984 84-2 CPD 188
BIDDERS--INVITATION RIGHT--FAILURE TO SOLICIT BIDS--INCUMBENT
CONTRACTOR

Failure to provide potential supplier, even an incumbent contractor, with a copy of a solicitation does not invalidate an award where the protester has not shown that the procuring agency deliberately precluded the protester from competing, that there was inadequate competition, or that the prices obtained were unreasonable.

*B-215241 Aug. 17, 1984 84-2 CPD 188 - Con.
CONTRACTS--AWARDS--PROTESTS PENDING--LEGALITY OF AWARD*

Failure of agency to follow regulations in awarding contract after receiving notice of protest does not affect validity of award.

*B-215259 Aug. 17, 1984 84-2 CPD 189
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

"Equal" bid in response to brand name or equal invitation for bids was properly rejected as nonresponsive where descriptive material failed to establish that offered item met all salient characteristics of brand name item. A blanket statement of compliance with all salient characteristics included with bid is insufficient to permit determination of responsiveness.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATION DISCRETION--COST/TECHNICAL TRADEOFFS*

Contracting agencies have discretion to determine whether significant technical difference between proposals justifies award to higher priced offeror or whether award to lower priced offeror or whether award to lower priced offeror is more advantageous to the government. The mere fact that technical factors are scored in terms of dollars does not limit this discretion, since agency retains flexibility to determine whether award to a higher or lower cost offeror is justified in view of dollar benefit or dollar assessment of each proposal.

*B-215336, B-215336.2 Aug. 17, 1984 84-2 CPD 190
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ALLEGATION OF BIAS NOT SUSTAINED*

Allegation that customer survey of actual users of proposed equipment to assess equipment reliability will not provide accurate information and is designed to unfairly favor one offeror is without merit, since equipment reliability is a proper factor which may be considered and agency's approach is objective and reasonable and does not confer an unfair advantage to any offeror.

*B-215336, B-215336.2 Aug. 17, 1984 84-2 CPD 190 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--"PRICE AND OTHER FACTORS"*

Where agency will award on the basis of cost and other factors, and other factors are scored in terms of their maximum dollar impact on the overall evaluation, agency has adequately stated the relative importance of the factors to be considered, since offerors are adequately apprised of the cost/technical tradeoffs which will be made.

*B-215486 Aug. 17, 1984 84-2 CPD 191
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
PAYMENT TERMS*

Changes and Disputes provisions constitute a material part of proposed agreement between bidder and contracting agency and bidder's attempt to specify the price adjustment it would be entitled to for the performance of extra services not provided for in the IFB is inconsistent with these provisions and renders its bid nonresponsive.

*B-215732.2 Aug. 17, 1984 84-2 CPD 192
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

A disagreement with the legal conclusions reached in an initial decision does not provide a basis for reversal.

B-211073.3, Aug. 20, 1984-- See page 153

*B-213554 Aug. 20, 1984 84-2 CPD 195
ADVERTISING--COMMERCE BUSINESS DAILY--FAILURE TO SYNOPSISIZE
PROCUREMENT*

Protest that contracting agency improperly published Commerce Business Daily (CBD) synopsis of procurement after issuance of solicitation and allowed only 21 days between issuance of solicitation and closing date for submission of proposals is denied. Protester and four other offerors were able to submit proposals

and protester has provided no evidence that it was prevented from adequately preparing its proposal by the closing date. Therefore, we find that protester was not prejudiced by allegedly late publication of CBD synopsis or short proposal preparation period.

B-213554 Aug. 20, 1984 84-2 CPD 195

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--DEFECTIVE--EVALUATION FACTORS

Protest that RFP was deficient because it did not indicate evaluation factors upon which award would be based is denied where RFP clearly stated that award would be made to offeror with lowest evaluated price after life cycle costing analysis was completed.

CONTRACTS--PROTESTS--CONFLICT IN STATEMENTS OF PROTESTER AND CONTRACTING AGENCY

Protest that agency improperly calculated the length of time it took protester's representatives to make repairs during life cycle costing tests is denied. Protester contends that test director's conversations with repair representations were unessential, but were included as part of repair time. Agency denies this charge. GAO accepts agency's version of these conversations since only the parties which were present have actual knowledge of event, and those parties are in clear disagreement as to what took place. Record also shows that other alleged error was corrected by agency during calculations.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Protest alleging numerous deficiencies in life cycle costing (LCC) tests which were used to evaluate offered products and to evaluate proposed prices is denied. Arguments alleging deficiencies in exact same LCC tests were raised by protester and resolved by GAO in previous decision, that decision was reconsidered at request of protester and affirmed by GAO, and protester has not presented any arguments or new information to distinguish present contentions from previous contentions.

*B-213554 Aug. 20, 1984 84-2 CPD 195 - Con.
CONTRACTS--REQUIREMENTS--ESTIMATED AMOUNTS BASIS--BEST
INFORMATION AVAILABLE*

Protest that RFP did not contain estimates of quantities to be purchased by user agencies under General Services Administration (GSA) International Federal Supply Schedule procurement is denied. Record shows that GSA did not have prior purchase records since this was initial procurement and that survey of potential users to estimate future needs was not feasible. Moreover, RFP notified all offerors that no estimate of actual quantities could be computed. In these unusual circumstances, RFP was based upon best available information and protester has not shown that it was prejudiced since all other offerors received same limited information.

*B-213981 Aug. 20, 1984 84-2 CPD 196
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--PROPRIETY*

Decision to sole-source procurement of fiber optic cable assemblies based on agency's reasonable determination that only one firm had expertise and capability to perform specified work is not objectionable.

*B-214331 Aug. 20, 1984 84-2 CPD 197
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
BEST INTERESTS OF THE GOVERNMENT--IN-HOUSE PERFORMANCE FOUND
TO BE CHEAPER, FASTER, ETC.*

Where agency determines that work covered by the solicitation can be accomplished in-house at a substantial cost savings to the government, the agency may cancel solicitation on the ground that the cancellation is in the best interest of the government.

*BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
REGARDLESS OF WHEN INFORMATION JUSTIFYING CANCELLATION FIRST
SURFACES*

An issuing agency properly may cancel a solicitation after bid opening regardless of when information justifying cancellation first surfaces.

B-214331 Aug. 20, 1984 84-2 CPD 197 - Con.
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Where protester is aware that solicitation has been canceled but does not know why until it receives information requested under the Freedom of Information Act, protest founded upon information received under Freedom of Information Act, filed within 10 working days of receipt of the information, is untimely.

B-214711 Aug. 20, 1984 84-2 CPD 198
*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Whether a prospective construction contractor can obtain performance and payment bonds is a matter of responsibility. GAO will not review a contracting agency's affirmative responsibility determination absent circumstances not present here.

*INDIAN AFFAIRS--CONTRACTING WITH GOVERNMENT--PREFERENCE TO
INDIAN CONCERNS*

Whether an awardee complies with contractual provisions requiring preferences for subcontracting with Indian-owned firms and for employing Indians is the procuring agency's responsibility in administering the contract, not GAO's.

*INDIAN AFFAIRS--CONTRACTS--BUREAU OF INDIAN AFFAIRS--INDIAN
SELF-DETERMINATION ACT--COMPLIANCE*

Indian Self-Determination and Education Assistance Act mandates that the Secretary of Health and Human Services award a contract for the construction of an Indian health facility to tribal construction organization where the tribe requests it, and provides authority for such a sole-source award.

B-215283 Aug. 20, 1984 84-2 CPD 199
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSIONS WITH
ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--ELIMINATION
FROM COMPETITIVE RANGE UNJUSTIFIED

Where offeror's proposal indicates a unit charge for tape storage of \$2.50 per tape/per day in one area of its proposal and the price for tape storage in other areas of its proposal reflects a unit charge of \$2.50 per tape/per year, contracting officer is on notice of a material discrepancy which should have been resolved by conducting appropriate discussions.

B-215411.2 Aug. 20, 1984 84-2 CPD 200
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where prior decision is affirmed on reconsideration where protester has not shown any error of fact or law which would warrant reversal of the decision.

B-215793 Aug. 20, 1984 84-2 CPD 201
INDIAN AFFAIRS--CONTRACTING WITH GOVERNMENT--PREFERENCE TO
INDIAN CONCERNS

Where provision in the Highway Improvement Act of 1982 that the Secretary of the Interior "may" award certain contract for construction on Indian reservation roads to Indian tribal concerns "as deemed advisable" does not mandate award of bridge construction contracts to such concerns.

B-215928 Aug. 20, 1984 84-2 CPD 202
BIDS--RESPONSIVENESS--SAMPLE REQUIREMENT

A bid that does not include, at bid opening, a bid sample as required by the invitation for evaluation purposes, is nonresponsive and therefore must be rejected.

B-212820.2 Aug. 21, 1984 84-2 CPD 203

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where on reconsideration no error of fact or law in prior decision is established that would warrant its reversal or modification, the decision is affirmed.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--REQUEST FOR CONFERENCE--DENIED

Request for a conference in connection with a request for reconsideration is denied, since the matter can be promptly resolved without a conference.

B-214704 Aug. 21, 1984 84-2 CPD 204

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE OFFERORS--TECHNICAL CLARIFICATION
QUESTIONS

When requirement for detailed technical literature is included in both requests for proposals and written notice of deficiencies, but offeror fails to provide it by due date for submission of revised proposals, a contracting agency may properly exclude the proposal from the competitive range because it cannot determine whether the proposal is acceptable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
INFORMATION SUFFICIENCY

When automatic data processing system is so new that details have not yet been announced, a single information deficiency, i.e., failure to provide technical literature needed to evaluate proposed software, is material and provides a reasonable basis for eliminating the proposal from the competitive range.

*B-214704 Aug. 21, 1984 84-2 CPD 204 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
INFORMATION SUFFICIENCY*

Contracting agency, exercising reasonable discretion, may exclude a proposal from the competitive range when information deficiencies are so material that upgrading the proposal to an acceptable level would require major revisions or the submission of an entirely new proposal.

In determining whether information deficiencies are material, GAO will consider (1) how definitely or in what detail the solicitation calls for the information; (2) whether the omissions make the proposal unacceptable or merely inferior; (3) the scope and range of the omissions; and (4) whether a deficient but correctable proposal represents a significant cost savings.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DEFICIENT
PROPOSALS--BLANKET OFFER OF COMPLIANCE*

Blanket offer to meet mandatory requirements will not substitute for a detailed description of proposed automatic data processing system and method of performing required services, particularly when more than one proposal remains in the competitive range after elimination of the proposal with information deficiencies.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION--
REVISION OF PROPOSAL OPPORTUNITY*

Whenever offerors are asked for information needed to determine whether proposals are acceptable or given an opportunity to revise their proposals, discussions have occurred.

*B-214704 Aug. 21, 1984 84-2 CPD 204 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PRICE CONSIDERATION--RELATIVE IMPORTANCE*

When a proposal contains material information deficiencies, an offeror's low price need not be considered.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REVISIONS--
CUT-OFF DATE*

When a common cutoff date has been established and offerors have been adequately advised of deficiencies through written and oral discussions, an agency properly may eliminate a revised proposal that still contains information deficiencies. The agency is not required to consider later-submitted information or otherwise to extend the negotiation process.

*B-214977 Aug. 21, 1984 84-2 CPD 205
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--DEFECTIVE--
ALLEGATION NOT SUSTAINED*

Protest that specifications are unclear or impose impossible burden on contractor is denied where record shows that solicitation requirements are reasonably related to the agency's needs and that bidders were provided with an adequate basis to submit well informed bids. The mere presence of risk in a solicitation does not make the solicitation inappropriate.

*B-215281.2 Aug. 21, 1984 84-2 CPD 206
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

A compelling reason exists to cancel a defective invitation where award under it would not necessarily meet the agency's needs and would not be fair to other bidders.

*B-215455 Aug. 21, 1984 84-2 CPD 207
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CORRECTIVE ACTION PROPOSED, TAKEN, ETC. BY AGENCY*

Contracting agency admits that option was improperly awarded and has taken action to prevent similar improprieties in future procurements. Since equipment improperly purchased has already been delivered and installed, no corrective action is recommended by GAO in this case.

*B-216010 Aug. 21, 1984 84-2 CPD 209
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

Submission of a bid which a competitor considers too low does not constitute a legal basis for precluding a contract award if the bidder is deemed responsible. Moreover, GAO will not review an affirmative determination of responsibility except in limited circumstances.

*CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST
NOT FOR CONSIDERATION ON THE MERITS*

Protester's request for a conference on the merits of the protest, which GAO will not consider, is denied because the conference would serve no useful purpose.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Contract administration is not within the purview of GAO's bid protest function

B-215093 Aug. 22, 1984 84-2 CPD 211

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE
PROCUREMENTS*

Protest alleging agency improperly will deny award to protester is premature and will not be considered.

B-215727 Aug. 22, 1984 84-2 CPD 212

CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

GAO will not consider the merits of a protest where the material issues are before a court of competent jurisdiction and the court has not expressed interest in obtaining GAO's views.

B-216013 Aug. 22, 1984 84-2 CPD 213

*CONTRACTS--SMALL BUSINESS CONCERN--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAO will not consider a protest of an awardee's small business size status because the Small Business Administration has statutory authority to conclusively determine small business size status for federal procurements.

B-216020 Aug. 22, 1984 84-2 CPD 214

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION
BY GAO*

Contractor's allegation that when extending the contract another year, the contracting agency must fund the indirect costs of a government-mandated wage rate increase concerns a matter that should be pursued under the contract's disputes procedures, not at GAO.

B-216023 Aug. 22, 1984 84-2 CPD 215

*CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--NONAPPROPRIATED
FUND ACTIVITY PROCUREMENTS*

Protests against the bidding procedures under solicitations for dairy requirements of the Fort Bragg Exchange, a nonappropriated fund activity, is dis-

missed since GAO has no authority to take exception to a contract award which does not involve the expenditure of appropriated funds.

*B-214047 Aug. 22, 1984 84-2 CPD 216
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

GAO will not review a contracting officer's finding that a small business concern is nonresponsible since the Small Business Administration has conclusive authority to determine the responsibility of small business concerns under its certificate of competency procedures.

*B-216050 Aug. 22, 1984 84-2 CPD 217
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO*

Protest against agency decision to award contract under section 8(a) of the Small Business Act is not for consideration by GAO in the absence of a showing of possible fraud or bad faith on the part of government officials or a failure by agency officials to follow applicable regulations.

*B-216055 Aug. 22, 1984 84-2 CPD 218
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--REVIEW*

GAO does not consider the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, this matter is to be determined by the contracting agency in the first instance subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

A firm's ability to perform is a matter of responsibility, and GAO will not review an affirmative determination in that respect except in limited circumstances.

B-216059 Aug. 22, 1984 84-2 CPD 219
CONTRACTS--SMALL BUSINESS CONCERN--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider small business size status since by law conclusive authority over the matter is vested in the Small Business Administration.

B-214738 Aug. 23, 1984 84-2 CPD 220
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Protest against the elimination of the protester's proposal from the competitive range is denied where the agency reasonably determined that the proposed approach would not satisfy essential solicitation requirements.

B-214153(1) Aug. 24, 1984 84-2 CPD
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
WITHDRAWAL--PRICES EXCESSIVE

While 10 U.S.C. 2304(a)(1) provides negotiation authority for small business set-aside, when award is to be made solely on the basis of price, contracting agency is required to use small business restricted advertising procedures. Discussions with offerors concerning a price found to be unreasonable are precluded, and proper course of action is to dissolve the set-aside and procure the requirement on an unrestricted basis.

B-214153 Aug. 24, 1984 84-2 CPD 221
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO generally will not review protest questioning the capability of a first-time offeror of equipment, since this is in effect a challenge to the procuring agency's affirmative determination of responsibility.

*B-214153 Aug. 24, 1984 84 2 CPD 221 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

GAO will not consider a protest when it was not filed within 10 days of initial adverse agency action on protest filed with agency. If improprieties that were obvious on the face of the solicitation are alleged, protest must be filed before the closing date for receipt of initial proposals.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--PRICE
REASONABLENESS--COMPARISON CRITERIA*

In considering price reasonableness for a small business set-aside, the contracting officer may look at procurement history, government estimates, current market conditions, and any other relevant factors that have been revealed by the bidding, including the price submitted by an otherwise ineligible large business.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
WITHDRAWAL--PRICES EXCESSIVE*

Cancellation of small business set-aside and resolicitation on an unrestricted basis was not improper where contracting officer reasonably determined that the only firm eligible under the original solicitation submitted a price which was unreasonable and unfair.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
WITHDRAWAL--PROPRIETY*

Under applicable regulations, a small business set-aside may be withdrawn when it is determined that award under it would be detrimental to the public interest.

*B-214450 Aug. 24, 1984 84-2 CPD 222
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest to GAO filed more than 10 days after protester knew that its bid was rejected as nonresponsive and the reason therefor is untimely and not for consideration.

B-214578.2 Aug. 24, 1984 84-2 CPD 223

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ORIGINAL DECISION RENDERED IN
RESPONSE TO COURT REQUEST--COURT NOT INTERESTED IN GAO
RECONSIDERATION*

GAO will not reconsider a prior decision rendered in response to an expression of interest from a court unless the court expresses an interest in the reconsideration of the decision.

B-213247 Aug. 27, 1984 84-2 CPD 224

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--MOOT, ACADEMIC, ETC.
PROTEST QUESTIONS*

Complaint alleging that grantee's invitation for bids was deficient in several respects is moot where grantee canceled invitation for bids and determined that award on sole-source basis to other than complainant was justified.

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--SPECIFICATIONS--
MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--
REASONABLENESS*

Grantee investigated complainant's assertions that it could provide laser doppler anemometer system adequate to meet grantee's research needs and determined complainant's system to be inadequate in several areas. Complainant disagrees with grantee's findings of inadequacies and sole-source justification. However, complainant bears heavy burden to show that grantee's determination that only awardee could meet grantee's research needs was arbitrary, capricious or abuse of procurement discretion. Where adequacies/inadequacies of complainant's system are subject of technical dispute between complainant and ultimate user of the laser doppler anemometer system, complainant has not carried burden of proof.

B-213311.2 Aug. 27, 1984 84-2 CPD 225

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Original decision is affirmed where protester fails to establish that the decision was based on errors of law or did not take into consideration all relevant evidence timely presented.

*B-213451 Aug. 27, 1984 84 2 CPD 226
CONTRACTS--ARCHITECT, ENGINEERING, ETC. SERVICES--PROCUREMENT
PRACTICES--BROOKS BILL APPLICABILITY--INCIDENTAL SERVICES
THAT A-ES MAY PERFORM*

GAO will not question a contracting agency's determination to secure technical support services through procedures applicable to the procurement of goods and services rather than through the procedures described in the Brooks Act for the selection of architect or engineering firms unless the protester demonstrates that the agency clearly violated the Act. Furthermore, the mere coordination and review of documents prepared by such firms does not indicate that the services in question are covered by the Act.

CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--INTERIM CONTRACT

One-year extension of incumbent's contract to provide critical technical support services while specifications were drawn and competition conducted for a new contract is justified where the agency reasonably concluded that the incumbent was the only firm that could meet the agency's requirements within the required time frame.

*PERSONAL SERVICES--CONTRACTS--COMPLIANCE WITH FEDERAL
PROCUREMENT, ETC. STATUTES*

Agency contract for technical support services does not create illegal employer-employee relationship where the services rendered do not require government direction or supervision of contractor employees and adequate direction is provided through written technical directions issued under the contract.

*B-214191 Aug. 27, 1984 84-2 CPD 227
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COSTS--ARBITRARY AND CAPRICIOUS GOVERNMENT ACTION*

Protester's claim for proposal preparation costs is denied because there is no showing that the government acted arbitrarily or capriciously in relation to protester's proposal.

*B-214191 Aug. 27, 1984 84-2 CPD 227- Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--
ANTICIPATED PROFITS CLAIM*

There is no legal basis for allowing an unsuccessful offeror to recover lost income or profits, legal fees in pursuing a bid protest or other direct and indirect costs other than proposal preparation costs.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--BRAND NAME
"OR EQUAL" PROCEDURE--UNDULY RESTRICTIVE*

Protest alleging that a brand name purchase description was unduly restrictive is denied where agency shows that at the time the decision was made, it had reason to believe that only the brand name product could meet its needs.

*B-214564 Aug. 27, 1984 84 2 CPD 228
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION--
REVISION OF PROPOSAL OPPORTUNITY*

Protest is sustained where GAO in camera examination of documents shows that agency reopened negotiations with only one (the lowest priced) of the two offerors remaining in the competitive range for the purpose of reducing price downward to the level of available funding and in the course of discussions altered the nature of the contract requirements (by substituting government-furnished property for items which the solicitation required the contractor to furnish, and apparently by reallocating some of the work called for), because higher priced protesting offeror was not afforded an opportunity to compete on the altered requirement and it is not clear that protester was not prejudiced.

*B-216030 Aug. 27, 1984 84-2 CPD 230
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--PROTEST ADDRESSED INCORRECTLY*

Protest, addressed in manner other than that set forth in section 21.1(b) of Bid Protest Procedures, is not for consideration since GAO did not timely receive protest within 10 working days after initial adverse agency

action on original protest to contracting agency. Further, delay caused by protester's failure to properly address protest does not merit consideration of untimely protest under either good cause or significant issue or certified mail exceptions of procedures.

B-216089 Aug. 27, 1984 84-2 CPD 231

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER

Protest that procuring activity failed to allow protester to correct a mistake in its bid is untimely when filed more than 10 working days after protester knew or should have known of award to another firm.

B-215931 Aug. 28, 1984 84-2 CPD 233

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

To be eligible for a Certificate of Competency under Small Business Administration regulations, a small business must perform a "significant portion" of the contract with its own facilities and personnel. A determination by the SBA that a firm is ineligible on this basis is tantamount to an affirmation of the contracting officer's determination of nonresponsibility, and except in limited circumstances, GAO will not review it.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--SCOPE--CERTIFICATE OF COMPETENCY REQUIREMENT

Mere allegation that denial of a Certificate of Competency results from harassment of and undue influence on the Small Business Administration by competitors does not constitute the showing of possible fraud or bad faith on the part of contracting officials that warrants GAO's review.

*B-215931 Aug. 28, 1984 84-2 CPD 233 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SIZE STATUS--
DIFFERS FROM COC*

Determination that a business qualifies as a manufacturer for size status purposes does not mean that it meets Small Business Administration's requirement that it perform a "significant portion" of the contract with its own facilities and personnel, making it eligible for a Certificate of Competency. Size status and eligibility for a COC are different matters involving different criteria.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
SCOPE OF FACTORS FOR CONSIDERATION*

Fact that Small Business Administration awarded a Certificate of Competency to protester 4 years ago, in connection with contracts on which protester states it did not perform a significant portion of the work, does not establish that SBA acted improperly in finding the firm ineligible for COC in connection with current procurements. Applicable regulation, 13 C.F.R. 125.5(b), clearly conditions eligibility on the small business's performance of a significant portion of the work with its own facilities and personnel.

*B-216077 Aug. 28, 1984 84-2 CPD 234
CONTRACTS--SMALL BUSINESS CONCERN--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Small Business Administration, not the General Accounting Office, has the statutory authority to conclusively determine matters of small business size status.

*B-206272.3 Aug. 29, 1984 84-2 CPD 235
GENERAL ACCOUNTING OFFICE--JURISDICTION--COOPERATIVE
AGREEMENTS--ADMINISTRATION*

GAO dismisses request to instruct agency to settle claims arising under three cooperative agreements because, with exceptions not applicable here, GAO

does not consider complaints concerning either the award or administration of grants and cooperative agreements, and the existence and amount of claims are clearly matters of administration.

*B-213908.2 Aug. 29, 1984 84-2 CPD 236
CONTRACTS--AWARDS--PROPRIETY--BASIS OF AWARD--SOLICITATION
TERMS*

The government cannot award a contract for services for a period which would extend beyond the date specified in the invitation, as the award must be made on the same terms as those offered to all bidders.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Information provided to contracting officer by third-low bidder in support of its assertion that second-low bidder is not small business is a size status protest which should have been referred to the Small Business Administration prior to award.

*B-214973 Aug. 29, 1984 84-2 CPD 237
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD*

GAO dismisses as academic protest of third low bidder against allegedly unduly restrictive specification, where bids opened after the protest was filed show that the protester is not the low bidder and would not be in line for award even if its protest were sustained and the specification rewritten to its satisfaction.

*B-216082 Aug. 29, 1984 84-2 CPD 239
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
SMALL BUSINESS REQUIREMENTS*

A bid submitted in response to a total small business set-aside, which failed to indicate the bidder would furnish supplies manufactured or produced by a small business concern, was properly rejected as nonresponsive.

*B-216097 Aug. 29, 1984 84-2 CPD 240
CONTRACTS--OPTIONS--EXERCISABLE AT SOLE DISCRETION OF
GOVERNMENT--BID PROTEST NOT FOR CONSIDERATION*

Where an option is exercisable at the discretion of the government, the decision not to exercise the option is a matter of contract administration which GAO will not review under its bid protest function.

*B-215776 Aug. 30, 1984 84-2 CPD 241
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
SCOPE OF REVIEW OF AGENCY ACTIONS*

Under GAO's Bid Protest Procedures, GAO considers the propriety of an award or proposed award and not, as here, general allegations that the agency has acted improperly in regards to unspecified past and present procurements.

FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE AUTHORITY

GAO has no authority under the Freedom of Information Act to determine when or what information must be disclosed by government agencies.

*SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO*

GAO will not review the Small Business Administration's compliance with its own internal guidelines for the Small Business Act's section 8(a) program absent a showing of possible fraud or bad faith on the part of government officials.

*B-216180 Aug. 31, 1984 84-2 CPD 243
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
CONTRACTS DISPUTES ACT OF 1978--CRITERIA OF GAO REVIEW*

A contractor's complaint against the cancellation of its contracts constitutes a dispute under the contract disputes procedures and is not a matter for review under GAO's Bid Protest Procedures.

B-216184 Aug. 31, 1984 84-2 CPD 244
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--TENNESSEE VALLEY
AUTHORITY PROCUREMENTS

GAO will not review Tennessee Valley Authority (TVA) procurement because GAO is precluded by TVA Act from disallowing credit for expenditures which TVA board determines necessary in carrying out TVA Act.

B-214779 Sept. 4, 1984 84-2 CPD 246
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAIVED AS MINOR INFORMALITY

A bidder's failure to acknowledge an amendment formally may be waived as a minor informality where the bid clearly indicates that the bidder received the amendment. Where the amendment, among other things, changes the date of bid opening and the protester's bid contains the new date, the bid may be accepted.

B-215389 Sept. 4, 1984 84-2 CPD 248
CONTRACTS--MODIFICATION--ADMINISTRATIVE FUNCTION

Agency decision to modify a contract is a matter of contract administration within the authority and responsibility of the procuring agency.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA

Protest that agency accepted a proposal that did not meet RFP requirements is denied where record shows that offer conformed to the agency's stated requirements.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Protest that awardee will be unable to perform at its offered price is dismissed since acceptance of low offer is not improper where contracting officer determines that awardee is responsible and proposal is otherwise acceptable.

B-215421 Sept. 4, 1984 84-2 CPD 249

*CONTRACTORS--RESPONSIBILITY--DETERMINATION-- REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that the proposed awardee lacks integrity constitutes a protest against an affirmative determination of responsibility, which must be made by the contracting official prior to an award. Our office will not review this determination in the absence of a showing of fraud or bad faith on the part of the contracting officer or a failure to apply definitive criteria of responsibility and neither exception applies here.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION*

Protest that NASA was required to select protester's offer, which was determined within the competitive range, for final negotiations is denied. Procurement was conducted under NASA procurement procedures under which "discussions" with offerors in the competitive range are limited essentially to proposal clarification, after which a contract is "negotiated" with a selected offeror, that is, price and terms are finalized. GAO has recognized this approach as meeting the requirement at 10 U.S.C. 2304(g) (1982) for written or oral discussions in negotiated procurements. Here, discussions were conducted with both offerors in the competitive range and competing offeror was properly selected for final negotiations on the basis of a technically superior proposal.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against NASA negotiated procurement procedures stated in RFP is untimely under section 21.2(b)(1) of our Bid Protest Procedures, since it was filed after the closing date for receipt of initial proposals.

*B-215956 Sept. 4, 1984 84-2 CPD 250
CONTRACTS--AWARDS--SEPARABLE OR AGGREGATE--SINGLE AWARD--
PROPRIETY*

Solicitation provision reserving contracting agency's right to award more than one contract to cover its need for counseling services in a particular area permits, but does not require, that more than one contractor be selected.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester alleging bad faith on the part of the contracting officer must present virtually irrefutable proof that the contracting officer had a specific and malicious intent to harm the protester. Even where bias or bad faith is shown, GAO will deny a protest if there is no indication that it adversely affected the protester's competitive standing.

*B-216108 Sept. 4, 1984 84-2 CPD 251
BIDS--MISTAKES--NONRESPONSIVE BIDS--CORRECTION IMPROPER*

Bid submitted with material deviation was nonresponsive and could not be corrected after bid opening to make it responsive at the bidder's option since an unfair advantage would be gained.

*BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
PAYMENT TERMS*

Bid offering payment terms different from those specified in the solicitation was properly rejected as nonresponsive, since such an offer affects price and constitutes a material deviation.

*BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--
ACCEPTANCE NOT AUTHORIZED*

Maintenance of the integrity of the competitive bidding system outweighs a monetary advantage which might be realized in a particular instance if a non-responsive deviation in a bid were corrected or waived.

*B-216108 Sept. 4, 1984 84-2 CPD 251 - Con.
ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

A contracting agency cannot be estopped, because of erroneous acts of its agents, from rejecting a bid required by law to be rejected as nonresponsive.

*B-206542.2 Sept. 5, 1984 84-2 CPD 253
STORAGE--HOUSEHOLD EFFECTS--MILITARY PERSONNEL--TEMPORARY
STORAGE--TIME LIMITATION*

Claimant may not be paid for temporary storage of household goods of member of Armed Services for a period in excess of 180 days, in view of illegality of such payments, even if claimant's contracts with the government did not refer to the regulatory 180-day limitation and claimant had no actual knowledge of it.

*B-212599 Sept. 5, 1984 84-2 CPD 254
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision holding that government is not liable to assignee after payment to assignor because disbursing officer had not been given notice of assignment is affirmed since no errors of law or fact in the prior decision have been demonstrated.

*B-212914 Sept. 5, 1984 84-2 CPD 255
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED*

Protest against compatibility limited procurement is denied. Requirement for system compatibility was reasonably based on use of acquired systems to augment existing government computer system.

*B-213236 Sept. 5, 1984 84-2 CPD 256
BIDS--EVALUATION--TECHNICAL ADEQUACY--ADMINISTRATIVE
DETERMINATION*

The overall determination of the technical adequacy of bids is primarily a function of the procuring agency.

The judgment of the procuring agency's technicians as to the technical adequacy of the bids will generally be accepted by GAO. GAO will only question such determinations where there is a clear showing by the protester of unreasonableness, arbitrariness, abuse of discretion or violation of procurement statutes or regulations.

BIDS--RESPONSIVENESS--DETERMINATION--ON BASIS OF BID AS SUBMITTED AT BID OPENING

A bidder is not allowed to make its nonresponsive bid responsive after bid opening through telephone clarifications because to do so would be tantamount to permitting the bidder to submit a new bid, which is not permitted.

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--DESCRIPTIVE LITERATURE

Where the solicitation calls for descriptive information to show to what the government would be binding itself by making an award, a blanket statement of compliance by the bidder in its noncomplying descriptive information is not sufficient to make the bidder's nonresponsive bid responsive.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

The protester has the burden of proving bias or favoritism on the part of the procuring agency. Where the written record fails to demonstrate bias, the protester's allegations are to be regarded as mere speculation.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against alleged improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.

B-213828 Sept. 5, 1984 84-2 CPD 257

CONTRACTS--IN-HOUSE PERFORMANCE *v.* CONTRACTING OUT--COST
COMPARISON--AGENCY IN-HOUSE ESTIMATE--READING AT BID OPENING

An agency's failure to announce at bid opening its estimated in-house costs, for the purposes of a cost comparison with commercial bids, provides no valid basis for protest where the agency did not use information from the offers to compute its costs and the protester was not otherwise prejudiced.

CONTRACTS--IN-HOUSE PERFORMANCE *v.* CONTRACTING OUT--COST
COMPARISON--EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--IN-HOUSE
PERFORMANCE *v.* CONTRACTING OUT--COST COMPARISON--ADEQUACY

Protester objecting to a contracting agency's cost comparison between commercial bids and the agency's estimated in-house costs bears burden of showing that agency failed to follow established ground rules and that such failure materially affected the cost comparison's result. GAO will not consider the fairness of the ground rules themselves, and will not object to a cost comparison based on unsupported allegations or mere disagreement with the agency's estimated costs.

B-213882, & .2 Sept. 5, 1984 84-2 CPD 258

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against methods provided in solicitation for evaluating energy consumption and comparing prices is complaint against solicitation. Such protest must be filed prior to the closing date for receipt of proposals. Since this protest was filed after award of the contract, it is untimely.

*B-213882 & .2 Sept. 5, 1984 84-2 CPD 258 - Con.
CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST*

Letter detailing protester's disagreement with agency's evaluation of proposals and asking for corrective action, which was received by agency within 10 working days of knowledge of basis for protest, is a timely protest to the agency.

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR ERRONEOUS
ADVICE, CONTRACT ACTIONS, ETC.*

Protest that agency is estopped from rejecting proposal as unacceptable because protester was misled by oral advice of agency employees is denied because solicitation required written explanation of solicitation provisions and because estoppel may not be used to require agency to consider a proposal for award which does not meet agency's minimum needs.

LEASES--NEGOTIATION--REQUESTS FOR PROPOSALS--INTERPRETATION

Agency rejected protester's proposed site for an office building because it was more than 1 mile from the agency's existing warehouse, and the solicitation required proposed sites to be within 1 mile. Protester argued that other solicitation language required agency to consider its proposed site. Protest is denied because that other language applies only to proposals which offer both an office and a warehouse on separate sites.

Protester's proposal was rejected because its proposed building site was in a base flood plain. Protester contends that, because its site is only partly in a flood plain and building itself can be located on part of site that is not in flood plain, applicable regulations require agency to accept its proposed site. Regulations, however, do not permit acquisition of property in a flood plain unless there are no practicable alternatives. Here, there were alternate sites outside flood plain. Additionally, solicitation clearly stated that no award would be made for a property in a flood plain.

B-216134 Sept. 5, 1984 84-2 CPD 259
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Protest that procuring agency failed to furnish solicitation to protester is summarily denied where the protester has not shown that competition and reasonable prices were not obtained and the failure to furnish the solicitation was not shown to be the result of any deliberate or conscious effort to exclude the protester from competition.

B-215377 Sept. 6, 1984 84-2 CPD 260
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A protest not received in our Office within 10 working days after the basis of the protest is known or should have been known is untimely and will not be considered.

B-216215 Sept. 6, 1984 84-2 CPD 261
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--NONAPPROPRIATED
FUND ACTIVITY PROCUREMENTS

Protest of procurement for nonappropriated fund activity is dismissed since GAO has no authority to consider a bid protest that does not involve the expenditure of appropriated funds.

B-216224 Sept. 6, 1984 84-2 CPD 262
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in an IFB apparent prior to bid opening must be filed with either the contracting agency or GAO before the time set for opening bids in order to be considered.

*B-215619.3 Sept. 7, 1984 84-2 CPD 263
CONTRACTS--OPTIONS--NOT TO BE EXERCISED--CONTRACT
ADMINISTRATION MATTER--NOT FOR GAO RESOLUTION*

GAO will not consider incumbent contractor's protest that agency should have exercised contract option instead of issuing new solicitation where option is renewable at sole discretion of government, since this is a matter of contract administration.

*B-216178 Sept. 7, 1984 84-2 CPD 264
CONTRACTS--FEDERAL SUPPLY SCHEDULE--PRICES--REDUCTION--AGENCY
CONSIDERATION OF REDUCED PRICE*

A Federal Supply Schedule contractor may offer a price reduction to the government at any time and by any method without prior acceptance by the General Services Administration (GSA), and under the contract's terms the price reduction generally will remain in effect for the remainder of the contract. Application of the price reduction is a matter for GSA to resolve in administering the contract.

CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS

Protest of award of a subcontract for office systems furniture to be used by prime contractor with a service contract at government installation is dismissed because the protest does not meet any of the circumstances under which GAO considers protests of subcontract awards.

*B-216200 Sept. 7, 1984 84-2 CPD 265
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility in the absence of a showing of fraud or allegations that definitive responsibility criteria in the invitation were misapplied.

B-212972 Sept. 10, 1984 84-2 CPD 266
ADVERTISING--COMMERCE BUSINESS DAILY--AUTOMATIC DATA
PROCESSING EQUIPMENT--ORDERS UNDER ADP SCHEDULE--PURCHASE
DIFFERENT THAN CED SYNOPSIS--IMPROPER

Agency improperly issued a purchase order against a nonmandatory General Services Administration automatic data processing schedule contract where the equipment purchased under the order differed from that described in the notice of the agency's intent to purchase required to be published in the Commerce Business Daily.

B-213647.3 Sept. 10, 1984 84-2 CPD 267
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

A protester has the burden of presenting sufficient evidence to establish its case, and unsupported allegations do not meet their burden. Moreover, GAO does not conduct investigations to establish the validity of unfounded allegations, nor does it have authority to determine what information a contracting agency must disclose to a firm to aid it in proving its case.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Reconsideration request that merely reiterates arguments or facts considered in GAO's original decision fails to meet the requester's burden of specifying any legal or factual errors in the decision.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

A new basis for protest first raised in a reconsideration request must independently satisfy timeliness requirements, so that a protest of a contracting agency's evaluation filed more than 10 working days after the basis for protest was known or should have been known is untimely.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--VARYING DEGREES OF DISCUSSION--
PROPRIETY*

While an agency's competitive range discussions with an offeror must be meaningful, the agency is not obligated to afford all-encompassing negotiations with the offeror. The content and extent of meaningful discussions in a given procurement are matters primarily for determination by the agency and this determination is not subject to question unless it is clearly without a reasonable basis. GAO finds that the content and extent of discussions with the protester were reasonable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION--COST/TECHNICAL TRADEOFFS*

In negotiated procurements, the agency has broad discretion in determining the manner and extent to which it will make use of the technical and cost evaluation results and award need not be made to the offeror who proposes the lowest costs. GAO finds that in view of the solicitation's award criteria which made technical considerations more important than cost, the agency reasonably concluded that protester's lower proposed cost did not outweigh the high performance risks associated with the protester's technical proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
BASIS FOR EVALUATION--INFORMATION CONTAINED IN PROPOSAL
v. THAT DERIVED FROM PRE-AWARD SURVEY, ETC.*

The agency need not have considered the supporting technical data furnished after award by the manufacturer of the protester's proposed equipment since the RFP specifically cautioned offerors that all statements made in their proposals had to be substantiated. Proposals basically must be evaluated on the basis of the information furnished with them.

B-213949 Sept. 10, 1984 84-2 CPD 268 - Con.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

GAO's Bid Protest Procedures, 4 C.F.R. 21.2(b)(1) (1984), require that alleged solicitation improprieties which do not exist in the initial solicitation, but which are subsequently incorporated therein, must be protested no later than the next closing date for receipt of proposals. GAO finds that protester contention that solicitation's award basis should have changed to cost only when the solicitation was amended to change procurement process from four-step method to conventional negotiating process is untimely because this contention was raised after award.

B-214562 Sept. 10, 1984 84-2 CPD 270

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALAUTION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW

Where protester's proposal for peripheral computer equipment failed to demonstrate that it would meet the contracting agency's need for equipment capable of operating in high humidity conditions, GAO has no basis to question the agency's decision to reject protester's proposal as technically unacceptable.

B-214673 Sept. 10, 1984 84-2 CPD 271

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--"EQUAL" PRODUCT EVALUTIAON

Where the narrative and specifications in descriptive literature submitted with a bid of an allegedly equal item in a brand name or equal procurement establish that the firm is offering a 450-watt system that meets the salient characteristics in the IFB, but the literature also includes a picture of a 900-watt system, the bid is not ambiguous or otherwise nonresponsive if it is unreasonable to conclude that the inclusion of the picture qualified the offer of an acceptable 450-watt system.

*B-214988 Sept. 10, 1984 84-2 CPD 272
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION*

Contracting officials enjoy a reasonable degree of discretion in determining the acceptability of proposals, and GAO therefore will not substitute its judgment for that of a procuring agency by making an independent determination unless the agency's action is shown to be arbitrary or in violation of procurement statutes or regulations.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED--ADMINISTRATIVE
DETERMINATION*

GAO knows of no legal obligation that compels an agency to test, either before or after an award, a product it reasonably has found technically acceptable merely because an allegation of nonconformity has been raised by an unsuccessful competitor.

*B-215382 Sept. 10, 1984 84-2 CPD 274
BIDS--LATE--MISHANDLING DETERMINATION--IMPROPER GOVERNMENT
ACTION--NOT PRIMARY CAUSE OF LATE RECEIPT--HAND CARRIED DELAY*

Acceptance of late proposal delivered by commercial carrier is allowed only if government action is paramount cause of late receipt. When commercial carrier leaves package at central receiving area with no attempt to deliver proposal to designated location for opening, government action is not paramount cause of lateness.

*B-215649.2 Sept. 10, 1984 84-2 CPD 275
BIDS--LATE--MISHANDLING DETERMINATION--IMPROPER GOVERNMENT
ACTION--NOT PRIMARY CAUSE OF LATE RECEIPT--HAND CARRIED DELAY*

Bid delivered late by a commercial carrier properly was rejected where there is no suggestion that wrongful government action was the paramount cause for the late receipt.

B-216026 Sept. 10, 1984 84-2 CPD 276
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID

A provision in an invitation which requires that a bid remain available for acceptance by the government for a prescribed period of time in order to be considered for award is a material requirement, and a bid that is ambiguous as to whether it represents an unequivocal offer to meet such a requirement is nonresponsive.

BIDS--MISTAKES--CORRECTION--NONRESPONSIVE BIDS

The authority of an agency to permit correction of bids is limited to bids that are responsive to the invitation.

B-216166 Sept. 10, 1984 84-2 CPD 277
BIDS--ACCEPTANCE TIME LIMITATION--EXTENSION--REQUESTS BY
AGENCY--PROPRIETY

Protest that contracting agency improperly delayed awarding contract within bid acceptance period is summarily denied since the Defense Acquisition Regulation (DAR) does not require that an award be made within the bid acceptance period and the DAR specifically permits an agency to request a bid extension where administrative difficulties delay an award beyond the bidder's acceptance period.

B-216188 Sept. 10, 1984 84-2 CPD 278
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--TRADE
ASSOCIATIONS, ETC.

Labor union protest, alleging nonresponsiveness of awardee, is dismissed because union is not an "interested" party for purposes of these issues under GAO Bid Protest Procedures.

B-216278 Sept. 10, 1984 84-2 CPD 279
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed several months after basis for protest was known is untimely under GAO Bid Protest Procedures, which require protests to be filed within 10 days of when basis of protest is known. Protester's attempt to have matter handled by the agency board of contract appeals does not toll the 10-day filing requirement.

B-214052 Sept. 11, 1984 84-2 CPD 280
CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
INCUMBENT CONTRACTOR'S ADVANTAGE

Protest that incumbent contractor will have a competitive advantage in future procurements because of its development of a support system in connection with prior contracts is denied because it has not been shown that the advantage will arise because of a preference or other unfair action by the procuring agency.

CONTRACTS--NEGOTIATION--COMPETITION--RESTRICTIONS--UNDUE
RESTRICTION--NOT ESTABLISHED

A solicitation's specifications to which only one firm responds are not unduly restrictive of competition when the procuring agency can establish that the specifications reasonably reflect the agency's minimum needs.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--MINIMUM NEEDS
REQUIREMENT--REASONABLENESS

Where the protester contends that specifications unduly restrict competition, the agency must make a prima facie case that the specifications are reasonably related to its minimum needs. Once the agency has made such a case, the burden shifts to the protester to establish that the agency's determination of its minimum needs has no reasonable basis.

B-214458.2 Sept. 11, 1984 84-2 CPD 281
CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST
COMPARISON--FAULTY--COST ESCALATION FACTOR

Protest against an agency's determination to perform services in-house based on a cost comparison with solicited bids is sustained because the agency failed to follow prescribed guidelines in conducting the comparison. The agency's estimate of in-house costs was based upon fiscal year 1983 operation costs and was not properly adjusted to account for differences between 1983 costs and those which the amended performance work statement indicate will be incurred.

B-214622 Sept. 11, 1984 84-2 CPD 282
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Protest contending that a procurement should be re-solicited because the protester did not receive a copy of the invitation for bids until after bid opening is denied. The protester has not shown a deliberate attempt by the agency to exclude it from the competition and the adequacy of competition and reasonableness of the prices obtained is not in issue.

B-215855 Sept. 11, 1984 84-2 CPD 283
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO
ACKNOWLEDGE--WAGE DETERMINATION CHANGES

Bid was properly rejected for failure to acknowledge a solicitation amendment which changed the applicable wage rate even though bidder did not receive the amendment until after bid opening since the amendment was material and was mailed by agency in sufficient time, and there is no allegation that the agency consciously attempted to exclude bidders from competing.

B-215959.2 Sept. 11, 1984 84-2 CPD 284
CONTRACTS--AWARDS--PROCEDURAL DEFECTS

Protest of procedural irregularities initially raised on reconsideration, even assuming it is filed timely and factually correct, is denied. Protester has not

shown how firm was prejudiced by these irregularities and these procedural deficiencies do not appear to have affected validity of award in this case.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision finding that protest was untimely because the protest was filed with GAO more than 10 working days after initial adverse agency action on agency-level protest is affirmed where request for reconsideration contains no factual or legal grounds upon which decision should be reversed or modified.

*B-215656 Sept. 12, 1984 84-2 CPD 285
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF BIDDER--PLACE OF SUBSTANTIAL PERFORMANCE*

Where bidder indicates that only 34.8 percent of the cost of manufacture or production would be incurred in a labor surplus area (LSA) the bidder is not entitled to the LSA evaluation preference.

*B-216151 Sept. 12, 1984 84-2 CPD 286
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest not filed within 10 working days of date of receipt of decision on initial protest to agency is untimely and not for consideration.

*B-216247 Sept. 12, 1984 84-2 CPD 287
BIDS--PRICES--BELOW COST*

Protest that awardee's bid is too low to permit compliance with both the solicitation's minimum manning requirements and the applicable Service Contract Act wage determination is dismissed. Rejection of a bid as too low requires the agency to find the bidder nonresponsible, and GAO does not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials, or an allegation that definitive responsibility criteria were misapplied.

B-216247 Sept. 12, 1984 84-2 CPD 287 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965

Responsibility for administration and enforcement of the Service Contract Act is vested in the Department of Labor, not with GAO.

B-216299 Sept. 12, 1984 84-2 CPD 288
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

There is no legal basis to object to a below-cost offer. Whether an offeror can meet contract requirements in light of its low price is a matter of offeror responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

B-216316 Sept. 12, 1984 84-2 CPD 289
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed with GAO more than 10 working days after adverse action by contracting agency on protest filed with it is untimely under GAO Bid Protest Procedures. When the adequacy of specifications is challenged prior to bid opening, the bid opening constitutes adverse agency action.

B-216260 Sept. 13, 1984 84-2 CPD 290
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not consider a protest of a firm's small business size status because the Small Business Administration has statutory authority to conclusively determine small business size status for federal procurements.

B-216294 Sept. 13, 1984 84-2 CPD 291
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
ADVERSE AGENCY ACTION

Agency's advice to company which had filed protest with agency to protest to GAO instead constitutes

adverse agency action on that protest under GAO Bid Protest Procedures.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--PROTEST NOT RECEIVED

Protest filed more than 10 working days after protester learned of adverse action on protest filed with agency is untimely, notwithstanding that protester allegedly mailed earlier timely protest letter which GAO never received.

*B-215341 Sept. 13, 1984 84-2 CPD 292
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED*

Assertion that offeror should not have been considered for award because of prior deliberate deviations from specifications is a challenge to a determination that the offeror was a responsible prospective contractor; GAO does not review challenges of affirmative responsibility determinations except in circumstances not apparent here.

*B-213135 Sept. 14, 1984 84-2 CPD 293
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--TWO-STEP PROCUREMENT--STEP ONE*

A protester is entitled to wait to file its protest with GAO until receipt of formal notification from the agency that its offer has been found technically unacceptable where the agency continued to evaluate the offer before sending the notification.

CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS--EVALUATION--TECHNICAL ACCEPTABILITY

The first step of a two-step formally advertised procurement contemplates the qualification of as many technical proposals as possible under negotiation procedures, and requires that an agency make reasonable efforts to bring step one proposals to an acceptable status.

*B-213135 Sept. 14, 1984 84-2 CPD 293 - Con.
CONTRACTS--TWO-STEP PROCUREMENT--STEP ONE--OFFERS OR PROPOSALS
REJECTION--OPPORTUNITY TO CURE PERCEIVED DEFICIENCY*

It is improper to reject a step one proposal on the basis of perceived deficiencies in a "bid sample" without giving the proposer an opportunity, through negotiation, to show the agency that its equipment is, or can readily be modified to be functionally equivalent to the design specified in the solicitation, where the result will be a sole-source procurement.

*B-208687.2 Sept. 17, 1984 84-2 CPD 294
CONTRACTS--GRANT-FUNDED PROCUREMENTS--GENERAL ACCOUNTING
OFFICER REVIEW*

In grant-funded procurement, where complainant chooses not to raise certain issues with grantee and where grantor thereafter declines to consider these issues under its protest procedures, GAO also refuses to review these matters since such action would tend to undermine the effectiveness of grantor's grant administration function.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Complaint that firm was improperly excluded from competitive range based on weaknesses in proposal in comparison to competition is without merit where firm has not shown that exclusion from competitive range was unreasonable.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Complaint regarding deficiency apparent on the face of a solicitation in procurement funded with federal funds must be filed prior to the closing date of receipt of proposals.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DEFICIENT PROPOSALS--OPPORTUNITY TO CORRECT

GAO finds that the agency afforded the protester the opportunity to correct its proposal where it asked questions concerning the protester's proposal and conducted two benchmarks on the protester's proposed computer software.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--FACTORS NOT IN SOLICITATION--ORAL DISCLOSURE DURING NEGOTIATIONS

Where the offeror is orally informed during negotiations of the meaning of a solicitation requirement and the methodology by which the requirement will be applied in the benchmarking, the offeror is on notice of the requirement and method of application and GAO will dismiss a protest based on the agency's failure to adequately state the requirement in the solicitation when filed more than 10 days after offeror is informed.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--EXTENT OF GAO REVIEW

Where the reasons advanced by the agency justifying the rejection of the protester's offer were erroneous at the time of rejection, a subsequent statement by the agency of different reasons which would have supported the rejection, if advanced initially, is acceptable. GAO's function is to look to whether, in light of the record, the agency's action has any supporting basis, not just to examine the basis which the agency advanced at the time it took the action.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Since alleged ambiguities involve language in the solicitation itself, they ordinarily must be protested in accordance with GAO's Bid Protest Procedures, 4 C.F.R.

21.2(b)(1) (1984), prior to the solicitation's closing date. The only exception is where the protester is unaware prior to the closing date that its interpretation is not the only one possible. GAO is unable to conclude that the protester's interpretation of the allegedly ambiguous solicitation provision was the only one possible.

B-213885.3 Sept. 17, 1984 84-2 CPD 296

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--TIMELINESS

Request for reconsideration of prior decision dismissing the protest, filed with GAO more than 10 working days after decision was issued and, presumably, received by the protester, is dismissed as untimely.

B-214749 Sept. 17, 1984 84-2 CPD 297

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--FACTORS NOT IN SOLICITATION--WRITTEN DISCLOSURE DURING NEGOTIATIONS

An agency need not issue an amendment to reflect a change in its delivery requirements when all offerors are notified of the change in the agency's request for best and final offers, and an offer that does not comply with those delivery requirements is properly rejected.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest alleging solicitation defects must be filed independently prior to the appropriate bid opening or proposal closing date, and cannot be filed with a bid or included in a proposal.

B-215022.4 Sept. 17, 1984 84-2 CPD 298

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ADDITIONAL EVIDENCE SUBMITTED--AVAILABLE BUT NOT PREVIOUSLY PROVIDED TO GAO

Request for reconsideration is dismissed where new information raised by protester was available at the time the initial protest was pending.

*B-215022.4 Sept. 17, 1984 84-2 CPD 298 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ELIGIBLE PARTY REQUIREMENT*

Request for reconsideration is dismissed since requester, a potential supplier of materials to firms which might have competed for prime contract, is not an interested party to protest agency's sole-source award.

*B-215275 Sept. 17, 1984 84-2 CPD 299
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--SALIENT CHARACTERISTICS--CONFORMABILITY REQUIREMENT*

In "brand name or equal" procurement, "equal" product need not meet unstated features of brand name item, but only item's salient characteristics expressed in the solicitation.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--SALIENT CHARACTERISTICS--DIFFERING FROM THOSE OF BRAND
NAME PRODUCT*

"Brand name or equal" procurement method does not allow for award to bidder whose product meets t government's needs, but does not comply with salient characteristics. The proper remedy in this situation is a readvertisement under specifications reflecting the government's actual needs.

*B-215589 Sept. 17, 1984 84-2 CPD 300
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME--
REASONABLENESS*

Agency's decision to procure computers on a brand name only basis will be upheld where the agency offers a rational basis for the decision and the protester does not prove the decision to be clearly unreasonable.

Procuring agency's decision to procure computer equipment on a brand name only basis is reasonable where only the specified computer has been fully tested and the agency does not have the resources to test other equipment in time to meet its needs.

B-215816 Sept. 17, 1984 84-2 CPD 301
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not filed within 10 days after protester learns the basis of its protest is dismissed as untimely.

B-215897 Sept. 17, 1984 84-2 CPD 302
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

Protest is dismissed where material issues are before a court of competent jurisdiction and the court has not expressed an interest in GAO's decision.

B-216088 Sept. 17, 1984 84-2 CPD 303
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

GAO will not consider a protest where the material issues are before a court of competent jurisdiction and the court has not expressed interest in GAO's decision.

B-216282 Sept. 17, 1984 84-2 CPD 304
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest alleging other than solicitation improprieties must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. A protest filed within 10 working days after the protester's receipt of related documents in response to a Freedom of Information Act request thus is untimely if the protester knew the basis for protest before receiving the documents.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest based upon alleged improprieties which do not exist in an initial RFP but which are subsequently incorporated therein must be filed with either the

contracting agency or GAO not later than the next closing date for receipt of proposals following the incorporation.

*B-216315 Sept. 17, 1984 84-2 CPD 306
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--
EXHAUSTION OF ADMINISTRATIVE REMEDIES*

Protest concerning validity of cost comparison made pursuant to OMB Circular A-76 will not be considered where protester has not availed itself of contracting agency's administrative appeal procedure.

*B-216323 Sept. 17, 1984 84-2 CPD 306
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

GAO Bid Protest Procedures were established for the purpose of considering protests over the award of contracts by agencies of the federal government whose accounts are subject to settlement by GAO and in some limited circumstances protests over the award of contracts by federal prime contractors. GAO will not consider a protest that essentially involves a dispute between private parties.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

GAO will not consider matters that involve contract administration, nor will it consider protests filed more than 10 working days after the protester became aware of its basis for protest.

*B-203855.7 Sept. 18, 1984 84-2 CPD 307
CONTRACTS--GRANT-FUNDED PROCUREMENTS--SPECIFICATIONS--
RESTRICTIVE*

Complaints alleging that specifications used for grant procurements of electrical utility poles, by the Rural Electrification Board of Bangladesh, are unduly restrictive are denied where complainants have failed to show that the needs determination is unreasonable.

B-212779.2 Sept. 18, 1984 84-2 CPD 308

CONTRACTS--NEGOTIATION--ADMINISTRATIVE DETERMINATION

Use of negotiated method of procurement is proper where agency has reasonable basis for believing that equipment to be furnished likely could be supplied by only one firm.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED

Request for proposals requiring mechanical-hydraulic wheel-load scales is not unduly restrictive of competition even though it effectively limited competition to a single source where requirement is dictated by agency's minimum needs for scales that would be subject to rough handling and used in remote areas.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROCEDURES

Protest of solicitation cancellation must be filed within 10 days of when protester learns of basis to object to cancellation.

B-213525.2 Sept. 18, 1984 84-2 CPD 309

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

GAO affirms prior decision where reconsideration request merely reflects the protester's disagreement with the decision and does not provide any evidence that the decision was erroneous.

B-213541 Sept. 18, 1984 84-2 CPD 310

BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--COMPELLING REASONS ONLY

Use of specifications in an invitation which need material revisions in order to describe government's actual needs provides compelling reason to cancel

invitation after bid opening since award would not enable agency to satisfy its minimum needs and would also be prejudicial to other bidders.

BIDS--INVITATION FOR BIDS--CANCELLATION--JUSTIFICATION

Even though original basis for cancellation may have been erroneous, subsequently enunciated basis, which would have supported cancellation had it been advanced originally, is acceptable.

*B-213932.2 Sept. 18, 1984 84-2 CPD 311
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision holding that contracting agency properly canceled a Brooks Act procurement, because of a significant increase in the scope of the project that was originally advertised is affirmed, since there has not been a showing of material errors of fact and/or law in the decision which warrant its reversal or modification.

*B-214098.2 Sept. 18, 1984 84-2 CPD 312
BIDDERS--AFFILIATES--LISTING*

Bidder is requested to list its affiliates only for the purpose of assisting in determining whether bidder is small business. Bidder was found to be small business despite allegation that bidder failed to disclose its affiliates in bid. Thus, bidder's alleged failure was of no consequence.

BIDS--UNBALANCED--EVALUATION--OPTIONS

Air Force reports that low bid had lower price for base year work and higher price for option years' work because low bidder was incumbent contractor and would not incur "phase-in" costs associated with new contractors. Also, Air Force reports that it is reasonably certain that the final cost to the government will be awardee's low bid price. Thus, the bid is not materially unbalanced.

*B-214098.2 Sept. 18, 1984 84-2 CPD 312 - Con.
BONDS--BID--SURETY--STOCKHOLDERS OF CORPORATION*

Several stockholders of a corporation may serve as sureties on the corporation's bid bond provided the stockholders comply with applicable regulatory restrictions.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--FACTORS FOR
CONSIDERATION--ACCEPTABILITY OF SURETIES*

The question of the acceptability of individual sureties is one of responsibility, which our Office will not review except in limited circumstances not present here.

*CONTRACTS--AWARDS--DELAYED AWARDS--AWARDEE NO LONGER LOW
BIDDER*

Award date was unavoidably delayed by protest so as to shorten contract performance period for first year by 3 months. Nevertheless, award to bidder evaluated as low under original performance period is not improper even though bidder was not low on bid evaluation based on shorter period and even though cost of resolicitation may be less than difference between protester's bid and contract price. Bid prices have been exposed, and the protest was the major cause of the delayed award.

*B-214543.2 Sept. 18, 1984 84-2 CPD 313
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Protest that procuring activity accepted nonconforming equipment is denied where protester has not shown precisely where procuring activity's opposite conclusion is incorrect.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--WHAT CONSTITUTES NOTICE*

Protest that item offered by awardee is not equal to brand name equipment solicited need not be filed until protester received information identifying

allegedly "unequal" item offered by awardee which placed protester on notice of its basis for protest.

*B-214676 Sept. 18, 1984 84-2 CPD 314
FOREIGN GOVERNMENTS--DEFENSE ARTICLES AND SERVICES--ARMS EXPORT
CONTROL ACT--FOREIGN MILITARY SALES PROGRAM--COMPETITION
REQUIREMENT INAPPLICABILITY--SOLE-SOURCE AWARD REQUESTED*

Protest concerning agency's failure to permit protester to compete is denied since procurement was conducted under the Arms Export Control Act, 22 U.S.C. 2751 et seq., and foreign government on whose behalf procurement was conducted requested that award be made to a specific source.

*B-214699 Sept. 18, 1984 84-2 CPD 315
BIDS--COMPETITIVE SYSTEM--EQUAL BIDDING BASIS FOR ALL BIDDERS--
AMBIGUOUS SPECIFICATIONS*

When solicitation clearly requires the contractor to provide satisfactory evidence of title to material stored either on the construction site or elsewhere before its value can be considered in calculating progress payments, and the contracting agency, before bid opening, advises the protester in writing that "title" generally refers to evidence that the seller of the material has been paid or has released all claim to them, GAO cannot conclude that the agency's alleged failure to define the title requirement prevented the protester from submitting a bid.

*BIDS--INVITATION FOR BIDS--AMBIGUOUS--ALLEGED INCONSISTENT
PROVISIONS*

A protest against a contracting agency's allegedly incorrect interpretation of a solicitation provision is without merit when there is only one reasonable interpretation, that advanced by the agency. Allegation that the provision imposes requirements that are inconsistent with and more stringent than either the general provision that it supplements or applicable procurement regulations also is without merit when such an interpretation would render the protested provision redundant.

*B-214699 Sept. 18, 1984 84-2 CPD 315 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
UNDUE RESTRICTION*

GAO will deny a protest against an allegedly unreasonable requirement that the contractor provide satisfactory evidence of title to material stored either on the construction site or elsewhere before its value can be considered in calculating progress payments when the protester has not shown that without such evidence, the government is protected from liens or other encumbrances on the property that the progress payments cover. Moreover, the fact that 14 bids were submitted refutes the protester's argument that the requirement unduly restricted competition.

CONTRACTS--PAYMENTS--PROGRESS--TITLE PASSAGE

Since, under applicable procurement regulations, the contracting officer's consideration of the value of material stored on a construction site in calculating progress payments is itself discretionary, a requirement that the contractor provide evidence of title to such goods as a precondition to progress payments is not an abuse of discretion.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest allegation that bidders were not treated equally because the agency did not formally amend an allegedly deficient solicitation is untimely when the protest was not filed until approximately 3 months after bid opening, since the protester knew at opening that the agency did not intend to issue an amendment.

*B-215003 Sept. 18, 1984 84-2 CPD 316
BIDS--RESPONSIVENESS--PRICING RESPONSE NONRESPONSIVE TO
IFB REQUIREMENTS--FAILURE TO BID FIRM, FIXED PRICE*

A bid submitted in response to an invitation soliciting bids for an indefinite-quantity contract was properly rejected where the bid did not contain a

schedule of indefinite-quantity work with list of unit prices, but only the total bid price. Unit prices are necessary at bid opening to set material terms of contractor's obligations since, without unit prices, there is no way to establish prices for the indefinite-quantity work covered by the contract.

ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.

Bidder was not entitled to rely on erroneous oral advice given the bidder by one of the procuring activity's contracting personnel since the invitation provided that any explanation desired by a bidder regarding meaning or interpretation of solicitation, drawings, specifications, etc., had to be in writing and that oral explanations or instructions were not binding.

*B-215663 Sept. 18, 1984 84-2 CPD 318
BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--SUFFICIENCY*

Where mistake in bid is alleged prior to award and the bidder presents clear and convincing evidence of the mistake, the manner in which it occurred, and of the bid actually intended by submitting worksheets and a statement showing the mistake resulted from improper addition in calculating a subtotal, and the bid as corrected remains low, there is a reasonable basis for the agency determination to allow bid correction to reflect the intended bid.

*B-215706.2 Sept. 18, 1984 84-2 CPD 319
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decision is affirmed where reconsideration request merely reflects protester's disagreement with prior decision and does not raise any new facts or legal arguments which show that prior decision was erroneous.

*B-216147 Sept. 18, 1984 84-2 CPD 320
BIDS--COMPETITIVE SYSTEM--PRESERVATION OF SYSTEM'S INTEGRITY--
PECUNIARY DISADVANTAGE TO GOVERNMENT*

The importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if the material deficiency in the bid is corrected or waived.

*BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
DELIVERY PROVISIONS*

Bid offering a delivery period greater than the maximum delivery period permitted under the terms of the invitation was properly determined to be nonresponsive.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging deficiencies in an invitation for bids apparent prior to bid opening must be filed with either the contracting agency or GAO before the time set for opening bids in order to be timely.

*B-216277 Sept. 18, 1984 84-2 CPD 321
BIDS--OPENING--PROTEST FILING EFFECT*

Where there has been a public bid opening, protester should know whether low bidder included in its bid a restriction on the amount of the payment and performance bonds to be furnished, and a mere statement that the protester "has reason to believe" that the restriction was imposed is not a sufficient statement of protest.

BONDS--BID--DEFICIENCIES--WAIVER

A bid bond accompanying the low bid, although in an amount less than the required 20 percent of the bid, may be accepted where the amount of the bond is greater than the difference between the low bid and the next low acceptable bid.

*B-216277 Sept. 18, 1984 84-2 CPD 321 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protests of a bidder's small business size status are to be resolved by the Small Business Administration (SBA), not GAO, since by law SBA has exclusive jurisdiction over such questions.

*B-216304 Sept. 18, 1984 84-2 CPD 322
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--
SMALL BUSINESS REQUIREMENTS*

Bid on total small business set-aside from a small business manufacturer which indicates that not all supplies to be furnished will be the product of a small business concern properly is rejected as non-responsive because bidder would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.

*B-216336 Sept. 18, 1984 84-2 CPD 323
BIDS--MISTAKES--CORRECTION--RULE*

Contracting agency properly may accept telephonic bid modification received from Western Union receiving office provided written confirmation of the modification is received.

*B-216350 Sept. 18, 1984 84-2 CPD 324
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Requirements in invitation for bids that contractor/supervisor have 3 years of relevant experience and that bidders submit personnel resumes are not improper merely because they limit the people contractor can provide for contract performance; to be legally objectionable, such requirements must exceed agency's legitimate minimum needs.

B-214639 Sept. 19, 1984 84-2 CPD 325
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALAUTION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS

Protester's contention that its proposal should be retained in the competitive range because it is technically acceptable is denied because all technically acceptable proposals need not be retained; rather, only those which have a reasonable chance of being selected for award. Consequently, where, as here, each of the three firms within the competitive range submitted proposals that are both higher scored technically and lower in cost than the protester's, the agency had a reasonable basis for excluding the protester's proposal.

B-213745 Sept. 20, 1984 84-2 CPD 326
BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE

A bid to provide insurance which allegedly contains a clerical error and which is nonresponsive on its face for failure to conform to the solicitation's cancellation of coverage clause may not be corrected after bid opening to be made responsive.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
NONRESPONSIVE BIDDER

Bidder who submitted a nonresponsive bid is not considered an "interested party" to protest the responsiveness of another bid under Bid Protest Procedures because protester is ineligible for award on the procurement and resolicitation would not be necessary even if the protest contentions were valid since there are six other bidders above the awardee.

B-216306 Sept. 21, 1984 84-2 CPD 327
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

When protest is filed initially with contracting agency, subsequent protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on protest is untimely.

*B-216374 Sept. 21, 1984 84-2 CPD 328
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO*

Selection of contractor for award under section 8(a) of the Small Business Act is within the discretion of the contracting agency and the Small Business Administration (SBA) and will not be questioned by GAO absent a showing of fraud or bad faith on the part of government officials or allegation that SBA regulations have been violated.

*B-213747 Sept. 24, 1984 84-2 CPD 330
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Protest that agency improperly excluded the protester from the competitive range as the result of an inadequate evaluation of its technical proposal is denied. The record shows that the evaluation panel found a substantial number of weaknesses in the protester's proposal and while the protester challenges some of those weaknesses, it has not disputed others. Thus, the protester has failed to show that the agency's ultimate determination, that the proposal could not be made acceptable without substantial revision, is unreasonable.

*CONTRACTS--NEGOTIATION--TECHNICAL EVALUATION PANEL--MEMBERS--
QUALIFICATIONS*

GAO will not review the qualifications of agency technical evaluation panel members absent a showing of possible fraud, bad faith or conflict of interest.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DEBRIEFING CONFERENCES--ISSUES
PROVIDING PROTEST BASIS*

Protest filed within 10 days of agency debriefing at which protester learned specific reasons for its exclusion from the competitive range, is timely and will be considered.

*B-214914 Sept. 24, 1984 84-2 CPD 331
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Where agency determines that descriptive literature submitted with awardee's bid adequately demonstrates that its proposed equipment will meet the solicitation's specifications, protester's bare contrary allegations do not provide a basis for GAO to question the agency's judgment.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD*

Where protester would not be in line for award even if protest were sustained, it is not an interested party to protest the responsiveness of a lower bid.

*B-215084 Sept. 24, 1984 84-2 CPD 332
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--BRAND NAME OR
EQUAL--"EQUAL" PRODUCT EVALUATION--SALIENT CHARACTERISTICS NOT
MET*

In "brand name or equal" procurement, bid based on allegedly "equal" product is nonresponsive where descriptive information submitted with bid does not show "equal" product's conformity with brand name product's salient characteristics.

*B-215167 Sept. 24, 1984 84-2 CPD 333
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest is untimely where it was not filed within 10 working days after the protester notified the agency of its intent to file a protest with GAO, and neither the protester nor the record suggests that the protester subsequently received any information constituting a further basis of protest.

*B-215328 Sept. 24, 1984 84-2 CPD 334
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--HAND
CARRIED--DELAY NOT DUE TO GOVERNMENT ACTION*

A late hand-carried proposal may not be considered unless there is a showing that wrongful government action was the paramount cause of the late delivery.

*CONTRACTS--PROTESTS--CONFLICT IN STATEMENTS OF PROTESTER
AND CONTRACTING AGENCY*

Where the protester has only offered evidence that conflicts with the agency's evidence as to the time that its proposal was submitted, the protester has failed to carry the burden of affirmatively proving its case that the proposal was timely submitted.

*B-216250 Sept. 24, 1984 84-2 CPD 336
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that awardee lacks integrity constitutes a protest against an affirmative determination of responsibility which our Office will not review in the absence of a showing of fraud or bad faith on the part of the contracting officer or a failure to apply definitive criteria of responsibility.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--PRIOR TO
RESOLUTION OF SIZE PROTEST*

Under applicable Federal Acquisition Regulation, the agency properly could rely on a Small Business Administration regional administrator's determination that a firm was small and award contract to that firm notwithstanding protester's subsequent appeal of regional administrator's decision which reversed initial ruling.

*B-216272 Sept. 24, 1984 84-2 CPD 337
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest that award should not have been made to low offeror because it allegedly did not meet obligations under prior contracts will not be reviewed

by GAO since it involves a challenge to an affirmative determination of responsibility, which GAO does not consider in the absence of a showing of fraud by contracting officials or misapplication of definitive responsibility criteria set forth in the solicitation.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Protest that awardee might provide a nonconforming item raises a matter of contract administration which is the responsibility of the procuring agency, not GAO.

*B-216284 Sept. 24, 1984 84-2 CPD 338
BIDS--PRICES--REDUCTION PROPRIETY*

A bidder may not revise its bid price downward when granting an extension of the bid acceptance period where revision has effect of displacing low bidder. To allow this would be tantamount to permitting a bidder to submit a second bid after bid opening.

CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST NOT FOR CONSIDERATION ON THE MERITS

Where it is clear from a protester's initial submission that the protest is without legal merit, GAO will neither request an agency report nor hold a conference on the protest, since no useful purpose would be served.

*B-216305 Sept. 24, 1984 84-2 CPD 339
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER*

A protest not received in the contracting agency within 10 working days after the basis of the protest is known or should have been known and not received in our Office within 10 working days

after the initial adverse agency action is untimely under section 21.2 of our Bid Protest Procedures and will not be considered.

*B-216321 Sept. 24, 1984 84-2 CPD 340
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether bus used to perform transportation services under contract conforms to contract terms is a matter of contract administration which is the responsibility of the procuring agency.

*B-216325 Sept. 24, 1984 84-2 CPD 341
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review an affirmative determination of responsibility except in limited circumstances which have not been alleged by the protester.

*B-216349 Sept. 24, 1984 84-2 CPD 342
BIDS--HAND CARRIED--DELIVERY LOCATION*

Solicitation provision designating a particular room for the receipt of bids does not preclude hand delivery of a bid to the bid opening room instead of the room so designated, and such a bid may be accepted if it is tendered to the appropriate official by the time set for bid opening.

*B-216356 Sept. 24, 1984 84-2 CPD 343
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--FAILURE TO DILIGENTLY PURSUE PROTEST*

Where a potential protester fails to diligently seek information that would form the basis for its protest, such as by not requesting a debriefing or other procurement information, GAO will dismiss ultimately-filed protest as untimely.

*B-216392 Sept. 24, 1984 84-2 CPD 344
BIDS--"BUYING IN"--LOSSES--RECOVERY*

When a "buy-in" is suspected, contracting officer must take appropriate action to ensure that buy-in losses are not recovered through change orders or otherwise.

BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

There is no legal basis to object to a below-cost bid. Whether a bidder can meet contract requirements in light of its low price is a matter of bidder responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

*B-216419 Sept. 24, 1984 84-2 CPD 345
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 days after protester receives denial of protest it filed with the contracting agency is untimely.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION*

Protest regarding propriety of evaluation of competing proposals does not raise an issue significant to procurement practices such as to warrant invoking the significant issue exception to GAO bid protest timeliness requirements.

*B-216428 Sept. 24, 1984 84-2 CPD 346
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

Protest of agency determination that small business offeror is nonresponsible will not be considered by GAO since by law the Small Business Administration conclusively determines the responsibility of small business offerors.

*B-216438 Sept. 24, 1984 84-2 CPD 347
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION*

GAO will not consider an untimely protest under the exception to GAO's timeliness rules for significant issues where the protest does not raise an issue of widespread interest or importance to the procurement community which has not been considered on the merits in previous decisions.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that agency should have used negotiated procurement procedures instead of formally advertised ones, filed after bid opening, is untimely, since it concerns an apparent solicitation impropriety and thus had to be raised before bids were opened.

*B-216440 Sept. 24, 1984 84-2 CPD 348
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or misapplication of definitive criteria against which responsibility is to be determined.

*B-214170 Sept. 25, 1984 84-2 CPD 350
BIDS--MISTAKES--CORRECTION--STILL LOWEST BID*

An allegedly mistaken bid that is low both as submitted and if corrected upward may be corrected where it is obvious that the bidder failed to multiply its unit prices as stated for the base year by the increased equipment quantity estimates for the succeeding option years.

*B-214246 Sept. 25, 1984 84-2 CPD 351
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Agency had a reasonable basis for excluding the protester's proposal from the competition where its best and final technical offer, although technically acceptable, had no reasonable chance for award based on the array of scores obtained by the offerors, and where its proposed price was so low that it could have distorted the final evaluation results if included in the scoring.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
SUBCRITERIA-REASONABLY RELATED TO CRITERIA*

Protest against the evaluation of the protester's technical proposal is denied where the primary technical deficiencies found by the agency were reasonably related to the stated evaluation criteria and where the agency's conclusions regarding those deficiencies have not been proven arbitrary, despite obvious disagreement between the protester and the agency.

*B-214591.2 Sept. 25, 1984 84-2 CPD 352
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION THAT
ITEM OFFERED FAILED TO MEET SPECIFICATIONS*

Protester's bid for the supply of a total hospital laundry system properly was rejected as nonresponsive where the descriptive literature required to be submitted with the bid did not include computations establishing that protester's washroom equipment was capable of processing the workload specified.

*B-215007 Sept. 25, 1984 84-2 CPD 353
CONTRACTS--GRANT-FUNDED PROCUREMENTS--CONTRACTORS--
RESPONSIBILITY DETERMINATION*

State finance agency's attempt to clarify or even expand the role of the vice president of one of the firms proposed by a developer to serve as its general contractor for a federally-assisted public

housing project does not violate federal statutes or regulations and is consistent with state law. The fact that clarification occurred after proposal submission does not establish that the housing authority accepted a late proposal, since the record does not support an allegation that the general contractor has been substituted for the developer.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--SLIGHT INACCURACIES IN COMMENTS*

Rule that if correction of inaccuracies in evaluators' comments does not change the relative standing of offerors, the inaccuracies do not provide a basis to sustain a protest, applies to a complaint concerning selection of a developer by a federally-assisted public housing authority.

*B-215018 Sept. 25, 1984 84-2 CPD 354
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review a contracting officer's affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith or that definitive responsibility criteria in the solicitation have not been met.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--DENIAL PROPRIETY*

Agency did not act improperly in not granting protester's request for further negotiations if its offer was not low, since agency was not legally required to reopen negotiations and request a second round of best and final offers from all offerors in the competitive range, negotiations with the protester alone would have been improper, and it would also have been improper to inform protester during negotiations that its price was not low in relation to that of other offerors.

*B-215018 Sept. 25, 1984 84-2 CPD 354 - Con.
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Protester fails to carry its burden of affirmatively proving its case where its allegation that the contracting agency denied it the opportunity given to the awardee of revising its initial offer is refuted by the agency's account of negotiations and by the record.

*B-215091.2, B-213046.6 Sept. 25, 1984 84-2 CPD 355
CONTRACTS--PROTESTS--CONFLICTING IN STATEMENTS OF PROTESTER
AND CONTRACTING AGENCY*

When the only evidence of an issue of fact is a protester's statement which conflicts with that of contracting officials, the protester has not carried its burden of proof.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Prior decisions are affirmed on reconsideration where protester has not shown any error of law or fact, which would warrant reversal of those decisions.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
PROTESTER NOT IN LINE FOR AWARD*

GAO will not consider the merits of a case where protester is not in line for award even if its protest is sustained because protester is not an "interested party" under GAO Bid Protest Procedures.

*B-215201 Sept. 25, 1984 84-2 CPD 356
BIDS--PREPARATION--COSTS--NONCOMPENSABLE--INVITATION PROPERLY
CANCELED*

Claim for bid preparation costs is denied where claimant has not shown that agency abused its discretion in canceling the solicitation.

*B-215201 Sept. 25, 1984 84-2 CPD 356 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--
ADMINISTRATIVE DISCRETION--REASONABLE EXERCISE*

Protest of agency's cancellation of request for proposals (RFP) issued as part of an Office of Management and Budget Circular A-76 cost comparison is denied where agency determines that RFP does not accurately reflect its minimum needs and where reasonable basis exists for agency belief that resolicitation with revised specifications will enhance competition.

*B-215215 Sept. 25, 1984 84-2 CPD 357
CONTRACTORS--RESPONSIBILITY--DETERMINATION--TIME FOR MAKING
DETERMINATION*

Protest against the contracting agency's decision to permit the low bidder to obtain sanitary approval of its facility after bid opening, even though the solicitation required such approval before that date, is denied, since the requirement concerns bidder responsibility which, regardless of the wording of the solicitation provision, must be measured as of the time of contract award.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

A protester has the burden of proving its case, and GAO does not conduct investigations for the purpose of establishing the validity of a protester's assertions.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS*

Certificate of Competency issued by the Small Business Administration is conclusive on the contracting agency as to a bidder's responsibility to perform a particular contract.

*B-215215 Sept. 25, 1984 84-2 CPD 357 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

Protest based upon allegation that the protester was given false information by a competitor pertains to a dispute between private parties and is not for consideration by GAO under its bid protest function.

*B-211627.3, B-211627.4 Sept. 26, 1984 84-2 CPD 358
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review allegations concerning successful offeror's financial capability, equipment and security clearance in view of agency affirmative determination of responsibility pursuant to preaward survey and issuance of interim clearance.

*CONTRACTS--MODIFICATION--CHANGE ORDERS--GOVERNMENT FURNISHED
EQUIPMENT*

Modification of contract after award to provide contractor with government-furnished equipment (GFE), which agency knew to be required prior to award, is permissible where the agency was initially required to furnish similar GFE and the need for the additional GFE was only identified after announcement of tentative awardee, since contractor did not obtain any competitive advantage over other offerors during either evaluation or award selection.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
TIME LIMIT*

Where agency is using staggered best and final offer (BAFO) due dates and use of dates has not been timely protested, protest against extension of awardee's BAFO due date is denied since all offers remained sealed until one specific date and there is no showing that any prejudice resulted from alteration of due date.

B-211627.3, B-211627.4 Sept. 26, 1984 84-2 CPD 358 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Protest that agency failed to conduct meaningful negotiations (did not advise of perceived weakness in manning) is denied where record shows that agency raised the issue during negotiations and left it up to the protester to correct the deficiency as it saw fit.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--ADEQUACY

Protest that awardee's cost proposal was unrealistically low is denied where in camera review of source selection documents discloses only that agency intentionally negotiated down the costs of awardee's initially higher cost proposal.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EXPERIENCE RATING

Protest of alleged irregularities in proposal scoring is denied where GAO in camera review of source selection documents discloses only that agency decided during evaluations to score the "past performance" criterion, in the case of newly formed companies, on the basis of the past experiences of proposed employees with the maximum possible score of an established company since scoring is consistent with prior GAO decisions.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EXPERIENCE RATING--PERSONNEL EXPERIENCE v. EXPERIENCE OF
ORGANIZATION

Protest that awardee (firm newly engaged in the type of work called for under the RFP) was so lacking in corporate experience that it should have received a score of "zero" under the past performance and past cost performance criteria is denied where its key personnel had both past technical and cost experience in the type of work called for and the cost proposals were not point-scored, but only reviewed under the past cost performance criteria to ascertain a firm's potential.

*B-211627.3, B-211627.4 Sept. 26, 1984 84-2 CPD 358 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
PERSONNEL AVAILABILITY--REASONABLENESS*

Protest that tentative awardee intended to improperly substitute personnel (based on tentative awardee's advertising of employment opportunities) is denied where RFP encouraged hiring of incumbent personnel and did not specifically require offeror to assign to the contract particular individuals whose resumes were submitted.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--NOT UNDERSTATED*

Allegation that specification (allowing the use of twin screw tugboats) is lax and fails to reflect agency's minimum needs (as reflected in report issued by another agency) is denied where agency's technical evaluation board rated twin screw tugboats higher than any other tugboats and awardee has successfully performed with twin screw tugboats.

*CONTRACTS--PROTESTS--ALLEGATIONS--INTERNAL AGENCY DOCUMENTS--
TYPOGRAPHICAL ERROR*

Allegation growing out of agency's admitted typographical error in the preparation of agency report is dismissed as not constituting proper basis for protesting award.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

GAO will neither investigate nor cause other agencies to investigate speculative allegations of protester because protester has burden of proving its case.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest of alleged conflict of interest first orally filed with agency is untimely when subsequently filed with GAO more than 10 working days after initial adverse agency action (use of person alleged to have conflict of interest on technical evaluation panel conducting negotiations with protester).

*B-211627.3, B-211627.4 Sept. 26, 1984 84-2 CPD 358 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--INTERIM
APPEALS TO AGENCY-EFFECT ON 10 WORKING DAY GAO FILING PERIOD*

Protest against distribution of a letter at preproposal conference is untimely filed with GAO when it was first untimely filed with agency (more than 10 days after basis of protest was known), since initial filing with agency must be timely.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

Allegation that agency improperly allowed firm with known association with large business to participate in small business set-aside is dismissed as academic when complained-of firm has been declared ineligible for award and agency promptly presented issue to SBA for resolution.

CONTRACTS--PROTESTS--PROTEST AND DEBRIEFING PROCEDURES

Unsuccessful offeror has no right to attend agency debriefing given to another unsuccessful offeror.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAC will not review allegations concerning the size of a firm competing for the award of a 100-percent small business set-aside.

*B-214259 Sept. 26, 1984 84-2 CPD 359
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

When protest initially is filed with a procuring agency and the protester has requested that performance be suspended, the agency's acquiescence in continued performance constitutes initial adverse agency action, requiring filing of protest with GAO within 10 working days.

Fact that a protester continues to pursue its protest with the procuring agency following initial adverse

action does not extend the time for filing a protest with GAO. This rule applies even when agency regulations permit an appeal to a higher level within the agency.

B-216352 Sept. 26, 1984 84-2 CPD 360
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protester's contention that prospective awardee's bid price is so low that the firm will not be able to profitably perform the contract will not be considered because it constitutes a challenge of the bidder's responsibility. GAO will not review affirmative determinations of responsibility absent a showing that procuring officials committed fraud or failed to apply definitive responsibility criteria.

B-216388 Sept. 26, 1984 84-2 CPD 361
BIDS--UNBALANCED--PROPRIETY OF UNBALANCE

An allegation that a bid price on one item was too low does not establish the existence of an unbalanced bid, which includes prices on items which are unreasonably low and prices on other items which are unreasonably high.

Submission of a below-cost bid in response to an invitation containing a wage determination does not mean that the bidder would not be obligated to adhere to the specified wage rates.

B-216377 Sept. 27, 1984 84-2 CPD 362
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

Eligibility for a certificate of competency under Small Business Administration regulations is conditioned on a small business' performance of a "significant portion" of the contract work. An SBA determination that a firm is ineligible for a COC on this ground is tantamount to an SBA affirmation of a procuring agency's determination of nonresponsibility and, except in limited circumstances, GAO will not review it.

B-216395 Sept. 27, 1984 84-2 CPD 363
CONTRACTS--SUBCONTRACTS--PROPRIETY--FOREIGN SUBCONTRACTORS

Protest against proposed award of contract to domestic firm which allegedly intends to subcontract to British firm is dismissed since there is no federal law or regulation preventing domestic firm which subcontracts work to foreign firm from competing on government contracts.

B-216447 Sept. 27, 1984 84-2 CPD 364
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

A below-cost offer, or "buy-in," is not legally objectionable.

BIDS--UNBALANCED--PROPRIETY OF UNBALANCE

An offer is not materially unbalanced merely because solicitation estimates are not precise; the estimates must be inaccurate, such as to cast doubt on the government's getting the lowest price by acceptance of the unbalanced offer, for the offer to be regarded as materially unbalanced.

B-206272.4 Sept. 28, 1984
GENERAL ACCOUNTING OFFICE--JURISDICTION--CLAIMS--SETTLEMENT--AUTHORITY

Although GAO dismissed request that it intervene in complainant's negotiations with HUD concerning claims arising under three cooperative agreements, claimant has two possible courses of action: it may file a claim directly with GAO under 31 U.S.C. 3792 (1982) or it may pursue the matter in the United States Claims Court.

B-214026 Sept. 28, 1984 84-2 CPD 365
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--SURPLUS PARTS

Protest that agency improperly rejected an offer of surplus spare parts under a solicitation that required the parts to be unused is sustained where the agency's only reason for rejecting the offer--

that there is no practical way for it to determine whether the offered parts are in fact unused--applies equally to offers from manufacturers as well as to those from surplus dealers and therefore does not provide a rational basis for rejecting offers from the latter but not the former.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where agency rejects an offer of surplus spare parts because it says that technical data necessary for inspection are unavailable, the protester has not met its burden of proof merely by alleging that technical data are available.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where agency mails to the protester a letter stating that the protester's offer of surplus spare parts was not acceptable and explaining the reasons for that determination, and the protester does not deny receiving the letter, a protest of the agency's rejection of the offer filed with GAO more than 5 weeks after the agency mailed the letter is untimely.

B-215915 Sept. 28, 1984 84-2 CPD 366

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIRED--PROTESTER NOT IN LINE FOR AWARD

Firm which is not eligible for award because it submitted a late bid under solicitation is not an "interested" party under our Bid Protest Procedures to protest award to another firm.

B-215994 Sept. 28, 1984 84-2 CPD 367

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

GAO will not consider protest by firm that will not be next in line for award if protest is sustained because that firm is not an interested party under our Bid Protest Procedures.

*B-215994 Sept. 28, 1984 84-2 CPD 367 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965*

GAO will not review a protest alleging that bidders were not in compliance with the Service Contract Act since the contracting agency and the Secretary of Labor are responsible for enforcing the act.

*B-216318 Sept. 28, 1984 84-2 CPD 368
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging specification improprieties which was not filed until after bid opening is untimely.

*B-216320 Sept. 28, 1984 84-2 CPD 369
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO will not review affirmative determination of responsibility except in limited circumstances.

*B-216372 Sept. 28, 1984 84-2 CPD 370
CONTRACTS--AWARDS--ABEYANCE--APPEAL SIZE OF SMALL BUSINESS
CONCERN*

GAO has no authority to order the withholding of an award pending a size status appeal to the Small Business Administration Office of Hearings and Appeals.

*B-216383 Sept. 28, 1984
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Complaint concerning rejection of a bid because of the use of a rubber stamp signature forwarded to GAO by a congressman will not be considered because it does not meet the timeliness requirements of GAO's Bid Protest Procedures in that the complaint was not filed within 10 working days of when the basis for protest was known.

*B-216405 Sept. 28, 1984 84-2 CPD 371
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest that Commerce Business Daily synopsis for order against General Services Administration schedule contract did not permit sufficient time for sources to respond which was filed with GAO after closing date is untimely under 4 C.F.R. 20.2 (1984).

*B-216486 Sept. 28, 1984 84-2 CPD 372
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

An allegation that a low bidder lacks the expertise to perform a contract and that the low bidder's lack of understanding of the performance requirements is reflected in its extremely low bid concerns the low bidder's responsibility as a prospective contractor.

GAO does not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or that the solicitation contains definitive responsibility criteria that have not been applied.

*B-216491 Sept. 28, 1984 84-2 CPD 373
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD*

Protest that low bid price was too low is dismissed because below-cost bids are not illegal and affirmative determination of responsibility are not generally reviewed by GAO.

*B-216518 Sept. 28, 1984 84-2 CPD 375
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest filed more than 10 days after basis for protest was known is untimely under GAO Bid Protest Procedures.

B-211073.3 Aug. 20, 1984
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SIZE STATUS--
RECERTIFICATION--ELIGIBILITY FOR AWARD

Air Force properly awarded contract set-aside for small business to a firm the Small Business Administration (SBA) Size Appeals Board had found was large the previous year, since the appropriate SBA regional office recertified the firm as a small business, based on efforts to restructure ownership and management, after the Size Appeals Board finding.

TRANSPORTATION

B-213773 July 23, 1984 84-2 CPD 150

TRANSPORTATION--AIR CARRIERS--OVERCHARGES--RECOVERY

Air Carrier is not entitled to charges for emergency air service when notations on the government bill of lading supported by the evidence of record indicate that the shipping agency requested deferred air service.

TRANSPORTATION--BILLS OF LADING--GOVERNMENT--RATE ON B/L v.
APPLICABLE RATES

Where the Army requested on the government bill of lading (GBL) deferred air service but also indicated on the GBL that the shipment was on pallets, on which deferred air service was not applicable by the terms of the governing rate tender, the carrier was obligated to notify the shipper of the conflict and, on failure to do so, is obliged to honor the lower deferred air service charges.

B-193432, B-211194 Aug. 16, 1984

PROPERTY--PRIVATE--DAMAGE, LOSS, ETC.--CARRIER'S LIABILITY--
PRIMA FACIE CASE

A prima facie case of liability is established when the shipper shows a failure by the carrier to deliver goods at destination in the same quantity or quality as received by the carrier at origin and the amount of damages.

Prima facie case of carrier liability for damage or loss of mobile homes has not been overcome where, in one case, the carrier's evidence of shipper fault is based on tire blowouts and, in the other case, is based on speculation, conjecture and inference from the fact of damage that the mobile home structure was defective.

B-193432, B-211194 Aug. 16, 1984 - Con.
TRANSPORTATION--CARMACK AMENDMENT OF 1906--DAMAGE TO MOBILE HOME SHIPMENTS

At common law, codified by section 20(11) of the Interstate Commerce Act, 49 U.S.C. 11707 (Supp. IV, 1980), a common carrier is liable without proof of negligence for all damage to goods transported unless the carrier shows that the damage was caused solely by (1) an act of God, (2) the public enemy, (3) the fault of the shipper, (4) act of public authority, or (5) the inherent nature of the goods shipped.

TRANSPORTATION--CARRIERS--LIABILITY--EVIDENCE

The defense that damage in transit was the sole result of a common law exception to carrier liability must be established by the carrier by affirmative evidence and not by conjecture or inference.

B-215927 Aug. 21, 1984 84-2 CPD 208
TRANSPORTATION--OVERCHARGES--RECOVERY

A transportation overcharge claim by the General Services Administration generally is not reviewable by the GAO until the disputed amount has been recovered by the government.

B-213839 Aug. 29, 1984
PROPERTY--PUBLIC--DAMAGES, LOSS, ETC.--REPAIR, REPLACEMENT, ETC. COSTS--EXCESSIVE

In determining the cost of repair, a repair estimate, based upon an average repair cost for like items and computed by qualified personnel experienced in repairing similar property, is acceptable to establish the measure of damages. Allegation that repair estimate is unreasonable is denied where carrier has presented no evidence to support its claim.

B-212302 Sept. 4, 1984 84-2 CPD 245
TRANSPORTATION--PROCUREMENT PRACTICES

Procurement for transportation services which could have been negotiated under applicable regulations, but which was conducted by procuring activity as a formally advertised procurement, must meet the standards and requirements applicable to formal advertising.

BIDS--MISTAKES--CORRECTION--NONRESPONSIVE BIDS

Bid which is nonresponsive by virtue of listing items with less than required holding capacity may not be corrected after bid opening on the basis of clarification from bidder in order to make bid responsive.

B-212547 Sept. 17, 1984
TRANSPORTATION--BILLS--SUPPLEMENTAL--WEIGHT DISCREPANCY

Where applicable rate tender provides for the use of lower net scale weight to determine freight charges, higher net weight based on reweigh may not be used on the basis of alleged extenuating circumstances where the carrier has provided no plausible basis for its contention that the reweigh would properly compensate for the extenuating circumstances, nor has the carrier shown any legal basis for disregarding the explicit terms of the tender.

B-210600 Sept. 18, 1984
SET-OFF--STATUTES OF LIMITATION EFFECT--OVERPAYMENTS--AIR CARRIER

Under the Federal Claims Collection Act, a government claim for the value of unused airline tickets may be satisfied by means of administrative setoff within 10 years after accrual of the claim.

TRANSPORTATION--OVERPAYMENTS--PROCEDURE FOR COLLECTION--SET-OFF

Where a calculation of the amount of unreimbursed ticket refunds due the government from an airline is

based solely on amounts owed by other airlines and the subject airline's estimated revenues, the government has not established a certain or liquidated amount owed as required under the regulations and collection of the amount thus may not be accomplished by administrative set-off.

B-213841 Sept. 18, 1984

TRANSPORTATION--HOUSEHOLD EFFECTS--DAMAGE, LOSS, ETC.--CLAIMS

Carrier has failed to establish that government set-off for loss and damage claim was excessive where agency based amount of setoff for damage to sofa on repair estimate by upholsterer which specifically indicated that complete reupholstery was necessary because of the nature of the damages, and carrier has offered no evidence to refute the reasonableness of this estimate, instead offering subjective opinion that the failure to estimate on the basis of a lesser repair demonstrates the lack of expertness of the upholsterer.

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