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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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

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OVERRULED, MODIFIED AND DISTINGUISHED

B-230619, Nov. 16, 1988 amplifies 54 Comp. Gen. 679 (1975).

B-230873, Nov. 21, 1988 distinguishes B-225014,
Sept. 30, 1987.

B-229873, Nov. 29, 1988 distinguishes 64 Comp. Gen.
359 (1985).

APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223657 Nov. 14, 1988

Purpose availability

Strategic/critical materials

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Time availability

Fiscal-year appropriation

Strategic/critical materials

Implementation of the Federal Emergency Management Agency's proposal to use National Defense Stockpile Transaction Fund (Fund) money to pay for the relocation of stockpile materials, as reflected in the agency's revision to the annual materials plan for the stockpile for fiscal year 1987, was proper under the regular General Services Administration appropriation for that fiscal year.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process B-226389 Nov. 14, 1988

Conflicting statutes

Statutory interpretation

Even though section 1201 of the National Defense Authorization Act for 1987 was enacted into law after section 9085 of the Department of Defense (DOD) Appropriations Act, 1987, section 1201 did not impliedly repeal section 9085. Facts and circumstances surrounding enactment of the two statutes, as well as section 1201(b)'s express repeal of provision of 1986 DOD Appropriation Act, identical to section 9085 do not indicate that Congress intended to repeal by implication section 9085. See cases cited.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-229873 Nov. 29, 1988

Time availability

Bona fide needs doctrine

Applicability

Cooperative agreements

Although the "bona fide needs" rule, 31 U.S.C. § 1502(a), applies to grants and cooperative agreements as well as procurement contracts, the Small Business Administration (SBA) did not violate the bona fide needs rule by making 1-year cooperative agreement awards to Small Business Development Centers (Centers) on September 30 of 1 fiscal year even though the cooperative agreement work was to be done in the next fiscal year. The SBA's bona fide need is to provide assistance to the Centers by entering into grants or cooperative agreements within the fiscal year sought to be charged. 64 Comp. Gen. 359 (1985) distinguished.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL **B-226868** **Nov. 4, 1988**
 Relocation
 Household goods
 Actual expenses
 Reimbursement
 Amount determination

The Internal Revenue Service initially authorized reimbursement for an employee's shipment of household goods under the GBL method, and then, in the light of further evidence which was subsequently found to be erroneous, authorized reimbursement under the higher commuted rate method. We hold that the employee's reimbursement is limited to his actual costs.

CIVILIAN PERSONNEL **B-229395** **Nov. 4, 1988**
 Relocation
 New appointment
 Travel expenses
 First duty stations

A new appointee to a manpower shortage position, who was issued travel orders erroneously authorizing reimbursement for temporary quarters subsistence expenses, a house-hunting trip, and miscellaneous expenses, may only be reimbursed for her travel and shipment of the household goods under 5 U.S.C. § 5723 (1982). In addition, we decline to submit this claim to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

CIVILIAN PERSONNEL

B-220119.1 Nov. 14, 1988

Travel

Travel expenses

Documentation procedures

Burden of proof

Evidence that claimant submitted false receipts in support of vouchers for travel and transportation services that were not rendered and expenses that were not incurred is sufficient to overcome the presumption in favor of honesty and fair dealing.

CIVILIAN PERSONNEL

Travel

Travel expenses

Illegal/improper payments

Correction procedures

Agency that sustains its burden of proof on fraudulent claims is entitled to recoupment. Recoupment by deductions from employee's current pay account is consistent with the purpose of 31 U.S.C. § 3711(c)(1).

CIVILIAN PERSONNEL

Travel

Travel expenses

Reimbursement

False claims

Claimant who submitted fraudulent claims is not entitled to reimbursement even after expenses for travel and transportation are actually incurred approximately one year later.

CIVILIAN PERSONNEL

B-229426 Nov. 14, 1988

Relocation**Privately-owned vehicles****Shipment****Actual expenses****Reimbursement**

Following a divorce, an employee's former spouse and children returned to Oregon from Alaska. The employee, who remained in Alaska and retained his privately owned vehicle, seeks to be reimbursed the cost of shipping the other family automobile back to the conterminous United States. In order for the government to pay for the cost of shipping an automobile, there must be specific statutory authority for this and no such authority exists in the circumstances described. See 5 U.S.C. §§ 5727 and 5729.

CIVILIAN PERSONNEL

B-231537 Nov. 14, 1988

Relocation**Residence transaction expenses****Reimbursement****Eligibility****New residence construction****CIVILIAN PERSONNEL****Relocation****Taxes****Allowances****Eligibility**

A transferred employee constructed a residence at his new duty station and claims reimbursement for a state excise tax imposed on the sale of construction services. Under paragraph 2-6.2d of the Federal Travel Regulations, only those expenses resulting from construction which are comparable to expenses allowable in connection with the purchase of an existing residence may be reimbursed. Since the tax is not imposed on the purchase price of an existing residential property, it is unique to the construction process and may not be reimbursed.

CIVILIAN PERSONNEL

B-232679 Nov. 14, 1988

Relocation

Residence transaction expenses

Loan origination fees

Reimbursement

Amount determination

A transferred employee who purchased a residence at his new duty station may not be reimbursed for the full amount of a loan origination fee of 2.5 percent. Although he has demonstrated by a Federal Home Loan Bank's survey that a fee of 2.5 percent was customary in the locality for the conventional financing involved, the "fees" reflected in the survey include not only loan origination fees but also discounts and points which are not reimbursable expenses.

CIVILIAN PERSONNEL

B-206396 Nov. 15, 1988

Compensation

Waiver

Members of Congress

The Honorable Tom Tauke, Member, United States House of Representatives, is advised that the payment of the salaries of Members of Congress is fixed by law and that absent specific statutory authority, members may not waive any portion of their statutory salaries. However, there is no prohibition against a member accepting his or her salary and then donating such amount to the United States Treasury. United States v. Burnison, 339 U.S. 87 (1950); 31 U.S.C. § 3113 (1982).

CIVILIAN PERSONNEL**B-230619 Nov. 16, 1988****Travel****Permanent duty stations****Actual subsistence expenses****Prohibition**

Two employees were notified that they were being reassigned from New Orleans, Louisiana, to a new duty station and, prior to reporting, they were to undergo 6 months of training at two locations. After their training assignments but before their transfer to the new official station, the employees were assigned to perform temporary duty in New Orleans. While per diem allowances may not ordinarily be paid at an employee's official station, such allowances may be paid under these circumstances where the employees, in reliance on agency notification, vacated their residences, packed their personal belongings, and arranged for their families to travel with them. See 54 Comp. Gen. 679 (1975).

CIVILIAN PERSONNEL**B-230720 Nov. 16, 1988****Compensation****Rates****Determination****Highest previous rate rule**

An employee of the Air Force Accounting and Finance Center who transferred from a higher paying position with the Naval Supply Center claims that under the highest previous rate rule she is entitled to higher grade and pay after a subsequent promotion. Since the employee's salary after promotion exceeded her existing rate of pay by two step increases, as required under 5 U.S.C. § 5334(b) (1982), the highest previous rate rule does not apply.

CIVILIAN PERSONNEL**B-230868 Nov. 16, 1988****Relocation****Travel expenses****Illegal/improper payments****Debt waiver**

An appointee to a manpower shortage position was issued travel orders erroneously authorizing reimbursement of certain relocation expenses not available to an appointee. After he incurred expenses in reliance on the erroneous orders, the error was discovered. The employee's legitimate expenses were applied against the travel advance, and he was indebted to the government for \$1,250.03. The indebtedness is waived under 5 U.S.C. § 5584 (Supp. IV 1986) since the travel advance was made to cover the expenses erroneously authorized and the employee actually spent the travel advance in good faith reliance on the erroneous travel orders.

CIVILIAN PERSONNEL**B-231008 Nov. 16, 1988****Relocation****Temporary quarters****Determination****Criteria**

Under the applicable relocation regulations, an employee is ineligible for reimbursement of his expenses incurred while renting his permanent residence following its sale at his old duty station incident to his transfer to a new duty station.

CIVILIAN PERSONNEL

B-229435.2 Nov. 17, 1988

Compensation**Conflicts of interest****Employment applications**

Department of Energy (DOE) official did not violate conflict-of-interest statutes when he provided his resume to a Texaco official with whom he had dealings at the time as a representative of DOE since it appears that he was not negotiating for employment with Texaco. Instead, the evidence suggests that the DOE official sought the Texaco official's help in finding future employment with a firm other than Texaco. Nevertheless, the DOE official's actions violated government-wide and DOE standards of conduct.

CIVILIAN PERSONNEL**Compensation****Conflicts of interest****Gifts/donations**

Administrator of the Economic Regulatory Administration (ERA), in the Department of Energy, violated prohibition in government-wide and DOE standards of conduct against accepting gifts or entertainment from persons having business before his agency when he attended a dinner as the guest of a lobbyist who represented clients having cases pending before ERA.

CIVILIAN PERSONNEL

B-228998 Nov. 21, 1988

Compensation

Reduction-in-force

Compensation retention

Agency abolished employee's position of Quality Assurance Specialist, GS-12, effective November 17, 1981, and offered employee a wage grade position in lieu of separation by reduction in force (RIF). Employee was erroneously notified that acceptance of Laborer position would include indefinite retention of GS-12 pay. Employee elected the lower grade position, rather than discontinued service retirement pursuant to RIF. In January 1984, employee was notified that GS-12 pay was not indefinite, but would be reduced retroactively to November 19, 1983. Employee is not entitled to pay of GS-12 position beyond statutory period of 2 years. Notice by agency official to contrary does not provide a basis to allow him additional compensation. Government cannot be bound beyond the actual authority conferred upon its agents by statute or regulations.

CIVILIAN PERSONNEL

Compensation

Reduction-in-force

Procedural defects

Employee who accepted lower grade position after receiving a reduction-in-force (RIF) notice contends that the agency did not follow the proper procedures in conducting the RIF. This Office cannot consider the employee's contention because challenges to agency RIF actions must either be processed through a negotiated grievance procedure, if applicable, or presented to the Merit Systems Protection Board.

CIVILIAN PERSONNEL**B-228998 Con't****Compensation****Nov. 21, 1988****Retirement compensation****Separation dates****Retroactive adjustments**

A retired civil service employee requests that his separation date be changed retroactively so that he may accept a discontinued service retirement pursuant to reduction-in-force notice. Employee alleges that his electing to forgo discontinued service retirement in November 1981 resulted from erroneous advice that saved pay would be indefinite. Agency may retroactively change employee's date of separation and submit request for retroactive discontinued service retirement to the Office of Personnel Management where agency incorrectly advised employee whose position was abolished that he would receive GS-12 pay indefinitely. The failure of agency to give employee correct information as to consequences of refusing separation and discontinued service retirement constituted administrative error which deprived him of right granted by statute and regulation to elect discontinued service retirement.

Relocation

Overseas personnel

Educational allowances

Overpayments

Waiver

The education allowance authorized by 5 U.S.C. § 5924(4) is an overseas cost-of-living allowance payable to federal employees stationed in foreign areas to assist them in providing their children with educational services ordinarily provided without charge by public schools in the United States. There are two separate statutory provisions--5 U.S.C. §§ 5584 and 5922(b)--authorizing waiver of overpayments of this allowance when collection would be "against equity and good conscience." An employee may properly apply separately for waiver of an overpayment both to the head of the employing agency under 5 U.S.C. § 5922(b), and to the Comptroller General under 5 U.S.C. § 5584, in situations involving an overlapping of these separate waiver authorities.

An employee stationed in the Bahamas received education allowance monies in the amount of \$4,500 for his daughter's room and board at a high school near Miami, Florida, for the 1981-82 academic year. Under the applicable regulations this payment should have been limited to \$2,850 because the school did not provide the room and board. Waiver is granted under 5 U.S.C. § 5584 of the erroneous overpayment of \$1,650, since the record establishes that the employee acted in good faith and without knowledge of the error and that he spent the entire \$4,500 for his daughter's food and lodging in reliance on the erroneous authorization.

CIVILIAN PERSONNEL**Relocation****Overseas personnel****Educational allowances****Overpayments****Waiver****B-226143 Con't****Nov. 22, 1988**

An employee stationed in the Bahamas received an education allowance in the summer of 1982 to provide for his daughter's education at a high school near Miami, Florida, for the 1982-83 school year. He became liable to refund most of the allowance when he was transferred to Miami at the beginning of that academic year in September 1982. Waiver of collection is denied under 5 U.S.C. § 5584 since the transaction did not involve expenses incurred by the employee in detrimental reliance on an erroneous authorization. Further, the Comptroller General has no basis to question the previous denial of waiver by the employing agency under 5 U.S.C. § 5922(b) with respect to those amounts.

CIVILIAN PERSONNEL**Compensation****Overtime****Eligibility****International dateline****B-229355 Nov. 22, 1988**

An employee who is nonexempt from the provisions of the Fair Labor Standards Act (FLSA) crossed the international dateline in both directions while performing official travel between Hawaii and Guam. Under title 5, United States Code, the employee may be paid 8 hours basic pay for a workday "lost" traveling westbound, but receives no pay for the workday "gained" traveling eastbound. However, where the "lost" day and the "gained" day occur in different workweeks, a nonexempt employee traveling eastbound may receive overtime pay under the FLSA for each hour in excess of 40 hours actually worked during that workweek since under the FLSA each scheduled administrative workweek is deemed separate and distinct.

CIVILIAN PERSONNEL**B-229355 Con't****Travel****Nov. 22, 1988****Overseas travel****International dateline****Travel time****Charging**

An employee performing temporary duty in Guam celebrated the Fourth of July holiday there. He commenced return travel on the following day and, after crossing the international dateline, he arrived at his official duty station in Hawaii on the Fourth of July. Since the office was closed, he was unable to work. In accordance with 5 U.S.C. § 6103 (1982) and Exec. Order No. 11,582, the employee's holiday observance was in Guam. However, he should not be required to use annual leave in Hawaii on the Fourth of July since it is appropriate for his agency to exercise its discretion and grant him an excused absence without loss of pay for the day.

CIVILIAN PERSONNEL**B-231658 Nov. 22, 1988****Travel****Lodging****Reimbursement****Government quarters****Availability**

An employee, who attended a training course at a military installation, was scheduled to use base accommodations, but he lodged off-base for personal reasons. Paragraph C1055-1 of Volume 2, Joint Travel Regulations, provides that the lodging portion of per diem may not be paid where adequate government quarters are available, but not used. A statement of nonavailability of government quarters is required to support reimbursement, and absent such a statement, it is assumed that adequate government quarters were available.

CIVILIAN PERSONNEL

B-231587 Nov. 23, 1988

**Relocation
Miscellaneous expenses
Reimbursement
Eligibility**

CIVILIAN PERSONNEL

**Relocation
Temporary quarters
Actual subsistence expenses
Eligibility**

A transferred employee claims entitlement to temporary quarters subsistence expenses for the last 3 days she occupied her residence at the old duty station because the kitchen appliances had been disconnected in preparation for shipment. The claim is denied since the residence was not vacated within the meaning of paragraph 2-5.2c of the Federal Travel Regulation (FTR). The claim may not be paid under the FTR provisions governing miscellaneous expense reimbursement since those provisions specifically exclude expenses which are considered and denied elsewhere in the FTR. Gerald G. Shockley, B-230848, Sept. 6, 1988.

CIVILIAN PERSONNEL

B-230698 Nov. 25, 1988

**Relocation
Residence transaction expenses
Leases
Termination costs
Reimbursement**

An employee and another adult shared an apartment for which both signed the lease. The employee is entitled to reimbursement of only 50 percent of the lease termination expenses incurred incident to his transfer, even though he may have paid all the expenses. See Federal Travel Regulations, para. 2-6.1.c and f.

CIVILIAN PERSONNEL**B-231549 Nov. 28, 1988****Compensation****Retroactive compensation****Labor disputes****GAO review**

The GAO will not take jurisdiction under 4 C.F.R. part 22 of a union request for our review of an employee's claim where the agency objects to our consideration, nor will we take jurisdiction under 4 C.F.R. part 31 since the claim was the subject of a grievance and the matter was withdrawn by the union prior to binding arbitration.

CIVILIAN PERSONNEL**B-229067 Nov. 29, 1988****Compensation****Overtime****Eligibility****Non-workday travel****Justification**

An employee who traveled outside of her regularly scheduled administrative workweek in order to be at certain ports 2 or 3 days prior to a ship's arrival is not entitled to overtime compensation. Although the government could not control the arrival of the ships, adequate notice of their arrival was available in ample time to schedule the employee's travel within her regularly scheduled workweek. Her claims for overtime compensation are denied since record fails to indicate any immediate official necessity for travel within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) and decisions of this Office construing that overtime entitlement authority.

Compensation

Fringe benefits

Retroactive adjustments

Intermittent employment

An intermittent employee appeals a claim settlement disallowing his claim for retroactive benefits as a full-time employee. The settlement is affirmed since no material mistake of law or fact in the original settlement is established. The records presented do not clearly establish that the employee served a regular tour of duty scheduled in advance under which he was routinely scheduled for work at specific times and dates for each of the two workweeks of a given pay period.

MILITARY PERSONNEL

MILITARY PERSONNEL **B-226048 Nov. 8, 1988**
Relocation
 Household goods
 Actual expenses
 Reimbursement
 Amount determination

If the service determines that a member's goods he transported in a second privately owned vehicle incident to his change of station were of unusual value, such that they would have been shipped separately by the service, he may be reimbursed the actual expenses he incurred in their transportation. 1 JTR para. M8500. Such reimbursement is limited to actual expenses incurred, such as gasoline, oil and tolls, and may not exceed what it would have cost the government to ship the goods.

MILITARY PERSONNEL
Relocation
 Household goods
 Shipment
 Restrictions
 Privately-owned vehicles

MILITARY PERSONNEL
Relocation
 Travel expenses
 Privately-owned vehicles
 Multiple vehicles
 Mileage

A uniformed service member's use of more than one privately owned conveyance in connection with a permanent change of station was not authorized for the purpose of transporting household goods so as to qualify for an additional mileage allowance. Paragraph M7003-2, 1 Joint Travel Regulations (1 JTR).

MILITARY PERSONNEL

B-230824 Nov. 14, 1988

Pay**Survivor benefits****Annuity payments****Distribution****Wills**

The Survivor Benefit Plan (SBP) is an income maintenance program established under federal law for the dependents of deceased service members. The law governing the program identifies the eligible beneficiaries and specifies an order of precedence among them. The SBP law does not authorize service members to treat annuities as assets of their estates, or to designate annuitants in wills or other testamentary instruments, or to appoint guardians or trustees to oversee the disbursement of annuity payments. Hence, a retired Navy petty officer could not effectively in his will either designate an SBP annuitant or designate guardians to disburse the annuity, and the SBP annuity payable upon his death must instead be disbursed in conformity with the applicable provisions of federal law.

MILITARY PERSONNEL

B-231565 Nov. 14, 1988

Pay**Dual compensation restrictions****Reemployed annuitants****Applicability**

When the military and naval departments enter into statutorily authorized personal services contracts for the services of retired service members who are specialists in medicine and related fields, the retirees do not thereby become civilian federal employees in established government positions. Hence, they are not covered by the dual compensation restrictions of 5 U.S.C. §§ 5531 and 5532 (1982), which apply to a retired service member who holds a civilian "position" in the government.

MILITARY PERSONNEL

B-231022 Nov. 16, 1988

Travel

Travel expenses

Reimbursement

Travel orders

Amendments

Travel expenses of an Army officer whose orders directed him to MacDill Air Force Base, Florida, but whose actual temporary duty location was Honduras, may be reimbursed on the basis of amended orders issued retroactively since there was an error which was apparent on the face of the orders.

MILITARY PERSONNEL

B-228733 Nov. 22, 1988

Travel

Overseas travel

Overseas allowances

Housing allowances

Amount determination

A member who rents a residence shall not be considered a sharer for purposes of reducing his housing allowance entitlement even though the owner of the residence is his fiancée and both live in the residence. The member is not a sharer under the applicable regulations because his fiancée is not entitled to housing allowances and she does not contribute money for his rent or payments.

MILITARY PERSONNEL

B-188452.2 Nov. 25, 1988

Pay

Survivor benefits

Annuities

Amount determination

Based upon a court opinion and our subsequent decisions, we hold that a widow is entitled to a full unreduced Survivor Benefit Plan (SBP) annuity based upon a second marriage, even though she is entitled to receive Dependency and Indemnity Compensation from the Veterans Administration based on her prior marriage to another service member. Her claim is considered filed on the date she requested waiver of SBP overpayments.

MILITARY PERSONNEL

B-231021 Nov. 25, 1988

Pay

Survivor benefits

Eligibility

Where deceased Navy member (retired) failed to change beneficiary designation before death, the person actually listed as beneficiary on the beneficiary designation form at the time of member's death was entitled to receive any arrears of member's retired pay due and unpaid.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-232147.2 Nov. 1, 1988

88-2 CPD 422

Where protester initially protests generally that performance-type specification should have been included in solicitation instead of design-type specification, but presents for the first time in its comments on the agency report its detailed argument as to why its item is acceptable without meeting the design requirements. the detailed argument is untimely and will not be considered; detailed argument, which must independently satisfy timeliness requirements, concerns alleged solicitation deficiency and was not raised prior to closing date for submission of proposals as required under Bid Protest Regulations.

PROCUREMENT

Socio-Economic Policies

Small business set-asides

Use

Administrative discretion

B-232303.3 Nov. 1, 1988

88-2 CPD 423

Agency is not required by Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 19.501(g) to issue solicitation as a repetitive small business set-aside where a previous small business set-aside procurement included the services in issue as one element of a broader requirement but immediately preceding contract for the services was awarded through the section 8(a) program; the statutory and regulatory scheme suggest that a small business set-aside is not required in such circumstances.

PROCUREMENT
Bid Protests
Private disputes
GAO review

B-233301 Nov. 1, 1988
88-2 CPD 425

The General Accounting Office will not consider an allegation that awardee will infringe on another's copyright as that is essentially a dispute between private parties.

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Extension
Administrative discretion

B-233359 Nov. 1, 1988
88-2 CPD 426

The granting of an extension to apply for a certificate of competency is a matter within the discretion of the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, controlling.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-230309.4 Nov. 2, 1988
88-2 CPD 429

Request for reconsideration is denied where protester did not show that prior decision contained errors of fact or law or present information not previously considered that would warrant its reversal or modification.

PROCUREMENT B-231343.3 Nov. 2, 1988
Competitive Negotiation 88-2 CPD 430
Offers
Evaluation
Technical acceptability
Tests

Contracting officer reasonably determined, based on the information available to him prior to award, that low bidder's fire extinguisher systems had been laboratory tested and met solicitation requirements.

PROCUREMENT B-231795 Nov. 2, 1988
Noncompetitive Negotiation 88-2 CPD 431
Contract extension
Sole sources
Propriety

Protest that an agency's modification of a contract for sonobuoys to require delivery of additional units constituted an improper sole-source award is sustained where it appears from the record that competition for the additional units was possible and likely would have resulted in the government paying a lower unit price for those units.

PROCUREMENT B-231903 Nov. 2, 1988
Competitive Negotiation 88-2 CPD 432
Offers
Submission time periods
Extension
Propriety

Where the contracting agency allowed over 30 days for the preparation and submission of proposals, we find that offerors were given sufficient time for this purpose; the protester's delay in submitting questions to the agency until approximately 1 week prior to the closing date for proposal submission cannot be used as a basis for extending the closing date.

PROCUREMENT

Bid Protests

Bias allegation

Allegation substantiation

Burden of proof

B-231923; B-231923.2

Nov. 3, 1988

88-2 CPD 438

Allegations that the Navy should have known prospective mobilization base offerors could not have met known funding limitations do not show bad faith. To show bad faith protesters must make a showing that the agency had a specific intent to harm them.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of solicitation provision stating that industrial mobilization factors may be considered, which was not filed until after closing, is not timely since it was filed after the closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Incumbent contractors

The government is under no obligation to eliminate an advantage which a firm may enjoy because of its incumbency on other contracts unless the advantage has resulted from unfair government action.

PROCUREMENT

Competitive Negotiation

Contract awards

Price disclosure

Propriety

Revealing the award price of a current contract does not rise to the level of an improper auction.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Inclusion
Administrative discretion

B-232049 Con't
Nov. 3, 1988

Although award on the basis of an initial proposal that does not meet specific solicitation requirements is improper, a contracting agency can include in the competitive range proposals which are unacceptable as submitted but susceptible of being made acceptable through discussions.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

Protest that evaluation was not conducted under the terms set out in the RFP is denied where, in accordance with solicitation, proposals were evaluated on a pass/fail basis under criteria listed in the solicitation and award was made to the lowest-priced technically acceptable proposal.

PROCUREMENT **B-232264 Nov. 3, 1988**
Competitive Negotiation **88-2 CPD 435**
Offers
Competitive ranges
Exclusion
Administrative discretion

Agency determination that protester's proposal was technically unacceptable and not in the competitive range is reasonable where request for proposals called for the overhaul of existing equipment while the protester offered to redesign the system and make fundamental changes in the existing equipment.

A technically unacceptable proposal need not be included in the competitive range, irrespective of its low price, where the proposal could not be made acceptable without major revisions.

PROCUREMENT **B-232322 Nov. 3, 1988**
Bid Protests **88-2 CPD 436**
GAO procedures
Protest timeliness
10-day rule

Protester's new and independent grounds of protest are dismissed where the later raised issues do not independently satisfy the timeliness rules of General Accounting Office's Bid Protest Regulations.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Notification

B-233248 Con't
Nov. 3, 1988

A bidder bears the risk of not receiving invitation for bid amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing, or the agency failed to furnish the amendment where the bidder availed itself of every reasonable opportunity to obtain the amendment.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-224305.2 Nov. 4, 1988
88-2 CPD 439

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Award of costs of filing and pursuing protest, including attorneys' fees, is granted where initial decision sustained protester's challenge to restrictive design specifications which unreasonably excluded protester from competition.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Sureties
Adequacy

B-231855 Nov. 4, 1988
88-2 CPD 440

Agency rejection of bid because tax appraised value of real estate listed by sureties was not adequate to support required bid guarantee is improper where agency's subsequent appraisal of one property shows that fair market value of property is substantially higher than the tax appraised value and record indicates that fair market value of sureties' property is more than adequate to cover price difference between protester's bid and next low bid, which is considered adequate security under applicable Federal Acquisition Regulation provision.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231934.2 Nov. 4, 1988
88-2 CPD 441

Request for reconsideration that essentially reiterates arguments which were considered and rejected does not warrant reversal or modification of our prior decision.

PROCUREMENT**B-229991.3 Nov. 7, 1988****Sealed Bidding****Bids****Evaluation****Price reasonableness****Administrative discretion**

Four million dollars difference between protester's alleged price as corrected and second low bid does not necessarily mean that the second low bid was reasonable under procurement estimated at over \$22 million.

PROCUREMENT**B-231840, et al.****Bid Protests****Nov. 7, 1988****GAO procedures****88-2 CPD 446****Interested parties**

Where a protester is ranked last technically of the five offerors in the competitive range, it is nevertheless an interested party under the Bid Protest Regulations to protest the evaluation of its proposal, since, if its protest were sustained, it could be in line for award.

PROCUREMENT**Bid Protests****GAO procedures****Protest timeliness****Apparent solicitation improprieties**

An incumbent contractor's protest that its alleged confidential and proprietary data concerning the demographics of its incumbent employees was disclosed during discussions to other offerors on a negotiated procurement is untimely under the Bid Protest Regulations, where this same data was included in an amendment to the solicitation, which also solicited best and final offers (BAFO), and the contractor failed to protest by the BAFO closing date.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Privileged information

Prior contracts

B-231840, et al. Con't

Nov. 7, 1988

Where an incumbent contractor has not shown that the awardee was advised of the incumbent's employee salary and benefit levels during discussions, but only that other offerors have been given some relative information on this subject, the contractor has not met its burden of showing it was prejudiced by the disclosure of the alleged proprietary information or by the alleged improper discussion techniques.

PROCUREMENT

Competitive Negotiation

Contract awards

Source selection boards

Administrative discretion

Source selection official may reasonably rely upon the expert advice and evaluation recommendations of the source evaluation board and need not actually read the proposals to make an integrated assessment of the proposals and make a reasonable and prompt award selection in accordance with Federal Acquisition Regulation § 15.612.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Cost estimates

B-231840, et al. Con't.
Nov. 7, 1988

An agency probable cost analysis on proposals on a base maintenance services contract is reasonable, where the agency relied upon Defense Contract Audit Agency input, made various adjustments to the offerors' elements of cost, determined the offerors' salary levels were realistic and normalized the staffing levels.

An agency is not required to verify each and every item of all proposals to ascertain whether the offerors complied with a solicitation requirement that certain salary and benefit levels be retained. A "regression analysis," which showed the awardee's overall salary levels were compliant, and a spot check of the awardee's cost proposal, which found no indication of noncompliance, is a reasonable review in the circumstances.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Downgrading
Propriety

An offeror which proposed significantly lower staffing levels on a base management services contract and which did not respond to suggestions made during discussions that it raise its manning levels, was reasonably downgraded under the solicitation's technical and management evaluation criteria.

PROCUREMENT

B-232263 Nov. 7, 1988

Bid Protests

88-2 CPD 449

Non-prejudicial allegation

GAO review

Protest that request for proposals did not contain labor escalation provision clause to provide for increased Service Contract Act wage determinations in option years is without merit where the Federal Acquisition Regulation does not require the clause.

PROCUREMENT

Competitive Negotiation

Competitive advantage

Incumbent contractors

Agency is not required to release incumbent contractor's personnel information to aid protester in preparing proposal, since such information is an advantage of incumbency that the government has no obligation to eliminate.

PROCUREMENT

Special Procurement Methods/Categories

Service contracts

Fixed-price contracts

Options

Wage rates

It was reasonable to omit from request for proposals the general economic price adjustment clause that would make government responsible for added cost of wage increases in contract option years, where, considering current and future market conditions, agency determined that offerors should be able to calculate with reasonable certainty any future wage and other cost increases, and include those projected costs in their proposed fixed prices.

PROCUREMENT
Sealed Bidding
Bids

B-232289 Nov. 7, 1988
88-2 CPD 450

Responsiveness
Determination criteria

Protest that awardee's bid is nonresponsive is denied where the awardee has unequivocally offered to provide the required video system in conformity with all material terms and conditions of the invitation for bids. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive.

PROCUREMENT
Sealed Bidding
Bids

B-232453 Nov. 7, 1988
88-2 CPD 451

Minor deviations
Acceptability

PROCUREMENT
Sealed Bidding
Bids

Responsiveness
Determination criteria

A bidder's inadvertent completion of a certification in the small business concern representation clause that is not required for the type of contract to be awarded does not affect the responsiveness of the bid.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-232585.2 Nov. 7, 1988
88-2 CPD 452

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Deadlines
Constructive notification

Prior dismissal of protest as untimely is affirmed where the protest against conversion of invitation for bids to a negotiated procurement was not filed in the General Accounting Office (GAO) until 3 weeks after proposals were due. The alleged advice of contracting officer "to wait" to file does not result in waiver of the timeliness requirements of GAO's Bid Protest Regulations.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

B-233053 Nov. 7, 1988
88-2 CPD 453

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Manufacturers/dealers

A manufacturer's protest is dismissed where the offer submitted was from one of its dealers since only an actual or prospective offeror in line for award is an interested party eligible to protest under the General Accounting Office's Bid Protest Regulations.

PROCUREMENT B-233250 Nov. 8, 1988
Contractor Qualification 88-2 CPD 462
Responsibility criteria
Distinctions
Performance specifications

Solicitation requirements that contractor service equipment with trained and experienced personnel are performance requirements, not definitive responsibility criteria, and the ability to comply with these requirements is encompassed within the contracting officer's subjective responsibility determination.

PROCUREMENT B-232237 Nov. 9, 1988
Sealed Bidding 88-2 CPD 463
Contract awards
Propriety
Invitations for bids
Defects

Award under invitation for bids with ambiguous pricing provision to bidder which based its bid on one reasonable interpretation of provision is proper where bid would be low under either interpretation.

PROCUREMENT
Specifications
Ambiguity allegation
Specification interpretation

Solicitation provision calling for unit prices for estimated quantities to correspond to unit prices for stepladder quantities is ambiguous where it can reasonably be interpreted as referring either to the aggregate estimated quantities or the individual quantities designated by destination within each line item.

PROCUREMENT
Sealed Bidding
Bids

B-232488 Nov. 9, 1988
88-2 CPD 464

Error correction
Low bid displacement
Propriety

Agency properly allowed correction of apparent clerical error in bid which resulted in displacement of low bidder where the mistake in the bid and the intended bid were ascertainable substantially from the face of the bid.

PROCUREMENT
Bid Protests
Bills of lading
GAO review

B-233393 Nov. 9, 1988
88-2 CPD 465

PROCUREMENT
Bid Protests
GAO authority

Protest concerning request for carriers' rate tenders is dismissed since the request was issued under authority of the Transportation Act of 1940, and the transportation services will be obtained through the use of a government bill of lading and not under the government's procurement system.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-224215.3 Nov. 10, 1988
88-2 CPD 466

Protest of the contracting agency's exercise of an option in an incumbent contractor's contract is dismissed where the protester fails to set forth a detailed statement of the legal and factual grounds of the protest as required by General Accounting Office Bid Protest Regulations.

PROCUREMENT B-224215.3 Con't
Contract Management Nov. 10, 1988
Contract performance
GAO review

Protest relating to performance of a contract involves matters of contract administration which the General Accounting Office will not review pursuant to its bid protest function.

PROCUREMENT B-231914.2 Nov. 10, 1988
Bid Protests 88-2 CPD 468
GAO procedures
GAO decisions
Reconsideration

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

PROCUREMENT B-232131 Nov. 10, 1988
Bid Protests 88-2 CPD 469
Moot allegation
GAO review

Allegation that awardee's equipment does not satisfy requirements of purchase description is without merit where record shows that awardee's equipment in fact satisfies the requirements.

PROCUREMENT B-232221 Nov. 10, 1988
Bid Protests 88-2 CPD 470
Allegation investigation
GAO review

General Accounting Office does not conduct investigations pursuant to its bid protest function for the purpose of establishing the validity of a protester's speculative statements.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-232221 Con't

Nov. 10, 1988

Protest that procurement should have been set aside for small business concerns is untimely when not filed prior to closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Administrative discretion

Procuring officials are afforded a reasonable degree of discretion in the evaluation of proposals and their evaluation will not be disturbed unless shown to be arbitrary or in violation of procurement laws or regulations. A mere disagreement between the protester and the agency over the technical evaluation is not sufficient to show that the evaluation was unreasonable.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

Direct interest standards

B-233109 Nov. 10, 1988

88-2 CPD 473

Protester, second low bidder, is not an interested party to challenge award to low bidder where protester's bid is nonresponsive and protester thus would not be in line for award even if its protest were sustained.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-233109 Con't
Nov. 10, 1988

Contracting agency properly rejected protester's bid as nonresponsive where the corporate surety for the protester's bid bond is not listed in Treasury Department Circular 570 as of bid opening.

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Competency certification
GAO review

B-233064 Nov. 14, 1988
88-2 CPD 475

The General Accounting Office will not review a protest concerning a determination of the Small Business Administration (SBA) to not issue a certificate of competency (COC) except upon a showing of possible fraud or bad faith or disregard of vital information bearing on the firm's responsibility. An agency's failure to forward the result of a second preaward survey to the SBA which reached essentially the same conclusions as the one initially forwarded to SBA does not provide a basis for a review of SBA's refusal to issue a COC.

PROCUREMENT

B-233071.2 Nov. 14, 1988

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

An untimely protest does not present a significant issue of widespread interest where its resolution would primarily benefit only the protester and the protester never filed a protest over the allegedly objectionable specifications, although involved with the procurement for almost 2 years, and where it waited several weeks after notice to file a protest of the award.

PROCUREMENT

B-232054 Nov. 15, 1988

Bid Protests

88-2 CPD 477

GAO procedures

Protest timeliness

10-day rule

Effective dates

Where a protester alleges that the contracting agency improperly established a competitive range of one firm, the incumbent, by eliminating the protester from the competition, the time for filing a protest runs from when the protester first learns that only one firm remained in the competitive range after its elimination, and not from when the protester learns the technical basis for its elimination.

PROCUREMENT

B-232592.2 Nov. 15, 1988

Sealed Bidding

88-2 CPD 479

Bids

Modification

Post-bid opening periods

Propriety

An otherwise successful bid may be modified at any time to make its terms more favorable to the government.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Price omission

Taxes

Where a solicitation contains the standard tax clause providing that the bid price includes all applicable federal, state and local taxes, a bid that is qualified with the language "no tax included" with no indication elsewhere in the bid as to what tax in what amount is excluded, is properly rejected as nonresponsive even where no state sales tax is applicable because the submission of a bid on a tax-excluded basis is viewed as evidence of the bidder's belief, absent definite information to the contrary, that taxes may be assessed, and of the bidder's unwillingness to assume payment of such taxes at the bid price.

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety
Evaluation errors
Materiality

B-231967 Nov. 16, 1988
88-2 CPD 480

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Options
Prices

General Accounting Office has no legal objection to the award of a construction contract under a solicitation consisting of four base items and an option item where consistent with solicitation's Contract Award clause, the two base items awarded represented the lowest offer within the funds available and where, even though evaluation did not include the option item, contrary to the solicitation, the result would not change whether or not the price of the option item was added to those of the two base items which were properly awarded.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration
Comments timeliness

B-232401.2 Nov. 16, 1988
88-2 CPD 482

General Accounting Office (GAO) affirms its dismissal of a protest where the protester failed to submit written comments on the conference and report within 7 working days of the date on which the conference on the merits of the protest was held as required by GAO's Bid Protest Regulations.

PROCUREMENT

B-233082.2 Nov. 16, 1988

**Bid Protests
Subcontracts
GAO review**

Under its Bid Protest Regulations, the General Accounting Office (GAO) does not consider protests concerning subcontractor selection except when the selection is made "by or for" the government.

PROCUREMENT

**Contract Management
Contract administration
Contract terms
Compliance
GAO review**

Under an existing contract, whether materials supplied will meet contract specifications is a matter of contract administration which the GAO does not review.

PROCUREMENT

B-231822.2 Nov. 17, 1988

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

88-2 CPD 485

Protest of agency's interpretation of requirement that solicited telephone system be for government's exclusive official use is dismissed as untimely where protester was informed during discussions of agency's interpretation of the requirement and revised its proposal in response to the agency's interpretation, and protest on this basis was not filed within 10 working days of such agency advice.

PROCUREMENT
Competitive Negotiation
Alternate offers
Rejection
Propriety

B-231822.2 Con't
Nov. 17, 1988

Protest that agency improperly rejected alternate proposal for failure to comply with solicitation requirement that telecommunication system be for exclusive official government use is denied where solicitation requires the system to be for the exclusive use of the government and the protester does not dispute that its offer did not comply with the solicitation requirement as properly interpreted by agency.

PROCUREMENT
Bid Protests
Allegation
Abandonment

B-232146 Nov. 17, 1988
88-2 CPD 487

Where agency's report specifically addresses arguments raised in initial protest, and protester fails to rebut the agency position in its comments on the agency report, the issues are deemed abandoned.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

To be timely, protest allegation that solicitation amendment allowed insufficient time to prepare a best and final offer (BAFO) must be filed no later than due date for BAFOs.

PROCUREMENT B-232435, et al.
Contract Management Nov. 17, 1988
Federal procurement regulations/laws
Amendments
Additional work/quantities
Prices

The General Accounting Office has no comment on proposed changes to the Federal Acquisition Regulation (FAR) §§ 12.401, 12.403 and the clause at FAR § 52.212-10, which would increase from \$100 to \$250 the value of any excess quantity of items delivered by a contractor which may be retained by the government.

PROCUREMENT B-233185 Nov. 17, 1988
Socio-Economic Policies 88-2 CPD 489
Small businesses
Contract award notification
Notification procedures
Pre-award periods

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Non-prejudicial allegation

Protest of failure to timely notify unsuccessful offeror of Small Business Administration size determination on its size protest of awardee is dismissed since the contracting officer did not make award until the ruling by the SBA and, therefore, the protester was not prejudiced by the procedural deficiency.

PROCUREMENT **B-232156 Nov. 18, 1988**
Competitive Negotiation 88-2 CPD 490
Offers
Competitive ranges
Exclusion
Administrative discretion

Technically unacceptable proposal may be excluded from competitive range notwithstanding its low proposed price.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Allegation substantiation

Protest is denied where protester claims that evaluation of its proposal for questionnaire data analysis was inaccurate, but record indicates that evaluation had a reasonable basis and was made according to the stated evaluation criteria.

PROCUREMENT **B-233322 Nov. 18, 1988**
Bid Protests 88-2 CPD 491
GAO procedures
Interested parties

General Accounting Office does not consider protest issues which are essentially made on behalf of other potential competitors who themselves may properly protest as interested parties.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

Direct interest standards

B-233322 Con't

Nov. 18, 1988

Where firm would not be in line for award were its protest sustained, protest is dismissed since protester does not have the required direct interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Contention that the low quoter will be unable to perform at its quoted price constitutes an allegation that the firm is not responsible; General Accounting Office generally does not review affirmative determinations of responsibility.

PROCUREMENT

Bid Protests

GAO procedures

Preparation costs

B-226984.2 Nov. 21, 1988

88-2 CPD 492

Amounts claimed for costs of filing and pursuing a protest may be recovered to the extent that the claim is adequately documented and shown to be reasonable. To the extent that the claim is inadequately documented and includes items not granted in the bid protest decision, or for which there is no legal authority for payment, claimant is not entitled to recovery.

PROCUREMENT

B-230874 Nov. 21, 1988

**Contract Disputes
Shipment costs
Freight charges**

Comptroller General's decision in Yowell Transportation Services, Inc., B-225014, Sept. 30, 1987, reversed the General Services Administration's (GSA) disallowance of the carrier's supplemental bill for exclusive-use-of-vehicle charges. Upon remand, GSA allowed the exclusive-use charges, but reduced the amount of the carrier's recovery on the basis of a reaudit of the carrier's original line-haul charges. The carrier contends that GSA disregarded the Comptroller General's decision, and should not be allowed to reaudit the original charges since GSA initially considered them to be correct. GSA's actions are sustained since its recomputation of the carrier's original charges was based on the Comptroller General's interpretation of the carrier's tenders, which differed from GSA's original interpretation, and the carrier failed to challenge the technical basis for GSA's reaudit of the line-haul charges.

PROCUREMENT

B-231177.3 Nov. 21, 1988

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

Request for reconsideration is denied where the protester merely reiterates arguments initially raised and previously considered by the General Accounting Office.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Modification
Propriety

B-231177.3 Con't
Nov. 21, 1988

PROCUREMENT
Contract Management
Contract administration
GAO review

Where protester neither alleges nor makes a prima facie showing that contracting agency awarded a contract intending to modify it, alleged modification of the contract after award is a matter of contract administration, and the General Accounting Office will not review the matter pursuant to its bid protest function.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-232000 Nov. 21, 1988
88-2 CPD 500

Where solicitation calls for analog recorders that provide two computer interfaces, protest that recorders offered by awardee do not conform to the solicitation because they do not provide for the concurrent accommodation of the two interfaces as do the recorders offered by the protester is denied, since the protester has not shown that the solicitation requires simultaneous accommodation of both forms of data communications to the recorder or that both interfaces can or will be used simultaneously.

PROCUREMENT
Competitive Negotiation
Contract awards
Initial-offer awards
Discussion
Propriety

B-232000 Con't
Nov. 21, 1988

Protest is sustained, where following its conduct of discussions—during which it requested and obtained information from offerors to determine the technical acceptability of their offers--the agency failed to afford those offerors an opportunity to submit best and final offers (BAFOs), but instead made award on the basis of initial offers as "clarified," in the course of which it: (1) allowed only the awardee to submit a revised delivery schedule; and (2) improperly excluded the protester from the opportunity to submit a BAFO based on an internal agency "projection" that its price would be too high to be competitive.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-232096 Nov. 21, 1988
88-2 CPD 495

Request for quotations was clear that agency required offerors to directly lease a job fair site and protester should have protested this prior to the due date for best and final quotations.

Protester's objection that it was given inadequate time to offer another job fair site should have been protested prior to due date for best and final quotations.

PROCUREMENT B-232143; B-232143.2 Con't
Competitive Negotiation Nov. 21, 1988
Offers
Cost realism
Evaluation
Administrative discretion

Agency realism analysis of successful offeror's cost proposal was reasonable. Agency is entitled to rely upon advice of Defense Contract Audit Agency in analyzing proposed costs.

PROCUREMENT B-232195 Nov. 21, 1988
Specifications 88-2 CPD 498
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Protest that solicitation for radiometer system unduly restricts competition by including specifications allegedly "written around" design features of a competitor's product is denied where agency establishes that the solicitation requirements are reasonably related to its minimum needs.

PROCUREMENT B-232636 Nov. 21, 1988
Bid Protests 88-2 CPD 499
GAO procedures
Interested parties
Direct interest standards

Protester is not an interested party entitled to protest where the protester, as fourth low offeror, would not be in line for award even if the protest were sustained; the fact that the next low offeror was offering protester's product does not render protester interested since interest is based on protester's own direct economic interest as the firm next in line for award.

PROCUREMENT

B-230216.2 Nov. 22, 1988

Special Procurement

88-2 CPD 501

Methods/Categories

In-house performance

Cost evaluation

Government estimates

Computation errors

Where protester fails to present evidence adequate to establish either the alleged error or the amount of the alleged error in in-house estimate, protest against agency determination made under Office of Management and Budget Circular A-76 cost comparison is denied.

PROCUREMENT

Special Procurement Methods/Categories

In-house performance

Cost evaluation

Personnel

Agency determination of the staffing level required to accomplish the performance work statement under cost comparison will not be questioned where the record does not show the determination was made in a manner tantamount to fraud or bad faith.

Agency properly excluded from in-house cost estimate the cost of support personnel whose positions would not be eliminated if a contract were awarded; cost comparison procedures require inclusion in estimate only of costs for positions that would be eliminated.

PROCUREMENT

B-230381 Nov. 22, 1988

Payment/Discharge
Shipment
Carrier liability
Burden of proof

Where the evidence indicates that part of the damage to a refrigerator was caused by the nature of the refrigerator to deteriorate according to the natural law of heat, the carrier is not liable for that part of the damage because it is an exception to common carrier liability. However, where the evidence does not show that a dented door and broken liner were solely caused by heat, the carrier is liable for that part of the damage. The matter is remanded to the Navy to allocate an amount to each part of the damage out of the total repair bill and then refund to the carrier the amount found to be due, if any, out of the amount the Navy has already collected.

PROCUREMENT

B-230724.5 Nov. 22, 1988

Bid Protests
GAO procedures
GAO decisions
Reconsideration

88-2 CPD 502

Request for reconsideration is denied where protester fails to show error of fact or law or information not previously considered which warrants reversal or modification.

PROCUREMENT

Contract Management
Contract modification
GAO review

As a general rule, the General Accounting Office will not review protests based upon contract modifications since modifications are primarily a matter of contract administration and, thus, the responsibility of the contracting agency.

PROCUREMENT B-232158 Nov. 23, 1988
Competitive Negotiation 88-2 CPD 509
Use
Criteria

Protest of agency's use of competitive negotiation rather than sealed bidding is denied where the agency obtained full and open competition under the solicitation and the protester has not shown that it was prejudiced.

PROCUREMENT B-232201 Nov. 23, 1988
Specifications 88-2 CPD 510
Minimum needs standards
Total package procurement
Propriety

Agency determination to procure pipeline system on package basis rather than break out components for separate competitive procurement is not subject to objection where the decision was based on a reasonable need to minimize the cost and technical risks of ensuring compatibility among the component parts.

PROCUREMENT B-232340 Nov. 23, 1988
Sealed Bidding 88-2 CPD 511
Unbalanced bids
Materiality
Responsiveness

Low bid in which the unit price for the fabrication of the first article test items was 238 times greater than the unit price for production items and included special tooling costs that would be used in the production quantity properly was rejected as materially unbalanced because award, in effect, would have resulted in an advance payment to the contractor since it would have provided funds early in contract performance to which the contractor was not entitled on the basis of value received.

PROCUREMENT

B-232578 Nov. 23, 1988

**Competitive Negotiation
Offers**

88-2 CPD 513

Competitive ranges

Exclusion

Administrative discretion

Determination whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude the protester's proposal was improper is denied where agency's technical evaluation was consistent with the solicitation's provisions and had a reasonable basis.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Evaluation criteria
Personnel
Standards**

Allegation that agency was required to disclose in the solicitation a manning standard developed by the agency evaluators to assess whether proposed personnel were adequate is denied, since the standard was developed based on the work load revealed in the solicitation and merely reflected the evaluators' judgment concerning the minimum manning required to perform the work.

PROCUREMENT
Sealed Bidding
Bids

B-232688 Nov. 23, 1988
88-2 CPD 515

Responsiveness
Contractors
Identification

Where corporation submits bid in abbreviated corporate name and also supplies its Federal Employee Identification Number with bid documents, there is sufficient evidence that identifies corporation as the party to be bound by any contract award, and bid therefore is responsive.

PROCUREMENT
Sealed Bidding
Low bids

Error correction
Price adjustments
Propriety

Upward correction of low bid is proper where the bidder presents clear and convincing evidence, in the form of bid worksheets, that the mistake in bid occurred due to a failure to include item price in subtotal, and then calculation of total price based on the understated subtotal.

PROCUREMENT
Sealed Bidding
Bids

B-233485 Nov. 23, 1988
88-2 CPD 516

Responsiveness
Shipment schedules
Deviation

A bid was properly rejected as nonresponsive where it offered delivery after the government's required delivery date even though the bidder's cover letter stated that the firm would meet all the requirements of the solicitation.

PROCUREMENT
Sealed Bidding
Invitations for bids
Terms
Shipment schedules

B-233485 Con't
Nov. 23, 1988

A solicitation clause allowing bidders to propose an alternative to the government's desired delivery date is not ambiguous where clause clearly stated that proposed time for delivery must be within the required period set forth in the solicitation.

PROCUREMENT
Sealed Bidding
Non-responsive bids
Error correction
Propriety

A nonresponsive bid may not be corrected by the rules governing mistakes in bids.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Resolicitation
Information disclosure

B-232003 Nov. 25, 1988
88-2 CPD 517

Protest that procurement must be disturbed because sensitive information was leaked outside the government is denied where the evidence currently available points only to an unsuccessful offeror as a possible recipient of the leaked information and the record contains statements by the two awardees that they did not receive the information.

PROCUREMENT

B-233148 Nov. 28, 1988

Bid Protests

88-2 CPD 521

Agency-level protests

Protest timeliness

GAO review

Protest against cancellation of request for proposals will not be considered where the initial agency-level protest was not timely filed.

PROCUREMENT

Special Procurement Methods/Categories

In-house performance

Administrative discretion

GAO review

General Accounting Office will not review an agency's determination to perform services in-house rather than by contracting out unless agency has issued a solicitation for purposes of cost comparison under Office of Management and Budget Circular A-76.

PROCUREMENT

B-233358.2 Nov. 28, 1988

Bid Protests

88-2 CPD 522

GAO procedures

Protest timeliness

Time/date notations

Establishment

A protest is filed for purposes of General Accounting Office (GAO) timeliness rules when it is received at the GAO. The time/date stamp establishes the time of receipt absent other evidence to show actual earlier receipt.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size determination
Pending protests
Contract awards

B-233477 Nov. 28, 1988
88-2 CPD 523

When an appeal of an initial small business size status determination has been filed with the Small Business Administration against a prospective awardee, the contracting officer need not await the results of the appeal as the regulations do not prohibit an award based on the initial determination.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Cancellation
Unrestricted resolicitation
Propriety

B-231457.2 Nov. 29, 1988
88-2 CPD 524

Decision to withdraw small business set-aside was reasonable where it was based on the agency's experience in prior procurement and with firms that responded to agency's size inquiry.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-231579.2 Nov. 29, 1988
88-2 CPD 525

Request for reconsideration which essentially restates arguments previously considered and does not establish any error of law or provide information not previously considered is denied.

PROCUREMENT B-231815.5 Nov. 29, 1988
Bid Protests 88-2 CPD 526
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and fails to show any error of fact or law that would warrant reversal or modification.

PROCUREMENT B-232098 Nov. 29, 1988
Bid Protests 88-2 CPD 527
Dismissal
Definition

Protest is dismissed where it merely asks that the General Accounting Office require the agency to supply information in support of arguments which are not supported by the record.

PROCUREMENT B-232133; B-232133.2
Competitive Negotiation Nov. 29, 1988
Contract awards 88-2 CPD 528
Cost savings
Technical superiority

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

Relative weakness in offeror's proposal with respect to mission suitability and financial condition (where solicitation provided for consideration of financial condition and capability in the evaluation of technical proposals) provides a reasonable basis for selection of another more highly evaluated offeror.

PROCUREMENT

B-232414 Nov. 29, 1988

Specifications

88-2 CPD 532

Minimum needs standards

Competitive restrictions

GAO review

General Accounting Office 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.

PROCUREMENT

B-232624.2 Nov. 29, 1988

Socio-Economic Policies 88-2 CPD 533

Small business 8(a) subcontracting

Use

Administrative discretion

Protest challenging decision to continue a procurement under section 8(a) of the Small Business Act is without merit absent a showing of fraud or bad faith on the part of government officials, or that specific regulations have been violated.

There is no legal requirement that a procurement be removed from the section 8(a) program in order to allow the incumbent contractor, a former 8(a) concern, to compete to continue performing the requirement.

PROCUREMENT

B-233013 Nov. 29, 1988

Bid Protests

88-2 CPD 535

GAO procedures

Interested parties

Direct interest standards

Protest that solicitation specifications for construction project are unduly restrictive of competition, filed by firm whose interest is that of a prospective supplier, is dismissed since protester is not an "interested party" eligible to have its protest considered under the Competition in Contracting Act of 1984 and General Accounting Office's implementing Bid Protest Regulations.

PROCUREMENT

B-233570 Nov. 29, 1988

Bid Protests

88-2 CPD 536

Dismissal

Definition

Protest of procurement is dismissed where a protest filed by another party involving the same procurement is pending before the General Services Administration Board of Contract Appeals.

PROCUREMENT

B-232140.2 Nov. 30, 1988

Bid Protests

88-2 CPD 537

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration is denied where the protester has not shown any error of fact or law which would warrant reversal of prior decision.

PROCUREMENT

B-232262 Nov. 30, 1988

Specifications

88-2 CPD 538

Minimum needs standards

Competitive restrictions

GAO review

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

Justification

Sufficiency

Protest that specifications unduly restrict competition is denied where the agency presents reasonable explanations in support of the specifications as necessary to meet its minimum needs and protester fails to show that the restrictions are clearly unreasonable.

PROCUREMENT

Specifications

Minimum needs standards

Total package procurement

Propriety

An agency decision to procure photocopier machines and related services on a total package basis was legally unobjectionable where the agency reasonably believed that this contracting method would reduce administrative costs attributable to duplicate efforts; allow greater flexibility in redistributing copiers to meet changing needs; and increase competition for certain categories of copiers.

PROCUREMENT **B-232434.2 Nov. 30, 1988**
Competitive Negotiation 88-2 CPD 539
Contract awards
Propriety
Post-award discussion

Protest that information submitted by awardee to contracting agency incident to a protest filed in our Office constituted improper post-award discussions is dismissed where the agency award determination was properly made without reference to this information.

PROCUREMENT **B-232586 Nov. 30, 1988**
Bid Protests 88-2 CPD 540
Private disputes
GAO review

Allegation that other offerors may have acquired proprietary information from a former employee of protester involves a dispute between private parties which does not provide a basis for protest to the General Accounting Office.

PROCUREMENT
Competitive Negotiation
Offers
Acceptance time periods
Extension
Propriety

Where an offer which had been extended for the period requested by the contracting agency nevertheless expires (as do all other offers), the contracting officer may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations to make an award on the basis of the offer as submitted since waiver under these circumstances is not prejudicial to the competitive system.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-232435, et al.
Federal Administrative/ Nov. 17, 1988
Legislative Matters
Administrative agencies
Audits
Financial information

The General Accounting Office favors the proposed changes to Federal Acquisition Regulation § 52.215-2, which would illustrate the type and form of contractor cost and financial information which is to be made available to auditors for conducting audits of contract costs.

MISCELLANEOUS TOPICS
Federal Administrative/Legislative Matters
Federal procurement regulations/laws
Revision
Congressional committees
Printing

The General Accounting Office has no comment on proposed changes to the Federal Acquisition Regulation (FAR) which would withdraw from coverage in FAR § 8.802(a) and (c) the requirements concerning the Congressional Joint Committee on Printing approval of the acquisition of printing.

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