



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

B-158766

January 31, 1986



The Honorable Thomas P. O'Neill, Jr.  
Speaker of the House of Representatives

Dear Mr. Speaker:

The Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3554(e)(2) (West Supp. 1985), provides that the Comptroller General shall report to Congress each instance in which a federal agency did not fully implement a recommendation made by our Office in discharging our statutory bid protest function during the prior fiscal year. This report follows, along with a summary of our fiscal year (FY) 1985 bid protest activity, consisting of a narrative along with enclosed charts.

Statutory Report

In only two instances (5 percent of the CICA protests sustained) did agencies not strictly comply with our recommendations. Both cases were filed and decided shortly after the CICA bid protest provisions became effective.

In Sabreliner Corp., 64 Comp. Gen. 325 (1985), 85-1 CPD ¶ 280, we considered a procurement for the repair and scheduled maintenance of a CT-39E aircraft. We sustained the protest because we concluded that award had been based on a nonresponsive bid, and we recommended that the Navy terminate the contract and make award to the protester. The Navy had not stopped work and, although the case was decided within 45 calendar days under the express option provision of CICA, 31 U.S.C.A. § 3554(a)(2), the Navy concluded that termination would not be in the government's best interest in view of the termination costs it would incur. (It should be noted, however, that Sabreliner subsequently filed a lawsuit to compel compliance with our decision and that the suit was settled by payment to Sabreliner of \$125,000.)

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The second reportable instance of noncompliance arose in connection with a Federal Bureau of Investigation (FBI) procurement regarding the renovation of its Chicago Field Office. In that decision, W.G. James, Inc., B-218230, May 31, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-1 CPD ¶ 623, we sustained the protest because we determined that the awardee, who had submitted three conflicting bids, had made it impossible to determine what his exact intended bid was. At the highest of the possible intended bids, the awardee's bid would have been tied with the bid submitted by the protester, and we therefore recommended that the award be redetermined by lot as provided by the Federal Acquisition Regulation, 48 C.F.R. § 14.407-6 (1984), in the case of tied bids. We also concluded that the protester would be entitled to recover its protest and bid preparation costs if the FBI failed to follow our recommendation.

By letter dated July 31, 1985, the FBI advised our Office that it had not fully implemented our recommendation, citing the importance of the project and substantial termination costs as justifying its action. The letter also questioned our authority to award costs. In a response to this letter, we advised the FBI that while we were not in a position to question the decision not to follow our recommendation for corrective action, our conclusion that the protester could be entitled to costs of filing and pursuing the protest as well as bid preparation costs was based on authority clearly afforded our Office under CICA, and we stated that, since the recommendation for corrective action had not been followed, the protester was entitled to recover those costs. We understand that the FBI has now accepted this determination and will pay the protester's costs upon receiving documentation of their amount.

Summary of GAO FY 1985  
Bid Protest Activity

The bid protest provisions enacted in CICA, became effective on January 15, 1985.<sup>1/</sup> As a result, FY 1985 was

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<sup>1/</sup> CICA charges GAO with the responsibility for creating an efficient bid protest process to ensure that government contracts are awarded in a manner consistent with the requirements of law. To meet this objective, Congress provided for time restrictions to promote the expeditious resolution of protests, for the suspension of contract award or performance while protests are pending, and for monetary relief in some cases.

a transition year during which GAO endeavored to meet its new statutory obligations while continuing to decide cases that were pending on the effective date of the Act. During the year, GAO closed 2626 cases, of which more than one third (995 cases) were filed before January 15. To provide a true picture of GAO's bid protest activity during FY 1985, therefore, one must consider data for both pre-CICA and CICA cases.

As the data in Enclosure A shows, however, FY 1985 marked a period of significant growth. In FY 1984, the last full pre-CICA fiscal year, GAO received 2100 new cases. Nearly as many cases--2011--were filed between January 15 and September 30, 1985, a period of just 8-1/2 months. This corresponds to an annual filing rate of almost 2900 cases, an increase of nearly 50 percent over the FY 1984 filing rate.

FY 1985 also marked a period of significant change. To meet the challenge posed by CICA, new regulations were adopted, the procurement law staff of the Office of General Counsel was reorganized, computerized case tracking was installed, and a system was developed to produce computer generated form notices to implement a provision of the Act, 31 U.S.C.A. 3554(a)(2), that provides for the speedy dismissal of cases found to be frivolous or otherwise without merit on their face.

These changes made it possible for GAO to meet its initial objectives in implementing the CICA bid protest provisions. CICA requires GAO to issue decisions within 90 working days (or 45 calendar days in "express option" cases) unless GAO states why a longer period is required. No case filed under CICA has exceeded the statutory 90 days. On average, GAO closed CICA bid protests in 22 days, compared to approximately 80 days for non-CICA protests. CICA bid protests that were decided on their merits after full development typically took 61 working days, compared to more than 121 working days for cases filed before CICA became effective.

In turn, rapid processing of CICA cases was facilitated by the prompt receipt of reports from contracting agencies. CICA requires that reports be filed within 25 working days, unless an extension of time is allowed. Reports were received on average in 21.9 working days, down from the typical 45.2 days required for cases filed prior to CICA.

Comparing CICA and pre-CICA data from Enclosure C indicates that there has been a sizable decrease in the percentage of awards made in the face of protests, while the percentage of protests filed and decided before award increased. Of CICA cases decided on their merits, 18.7 percent were sustained, compared with 14.8 percent of pre-CICA cases. Effective remedial relief is easier to fashion when protests can be decided before award, or as soon after award as possible, and the description of cases in which corrective action was recommended (Enclosure G) suggest that remedial relief was more effective than in prior years.<sup>2/</sup>

Of course, protests are sustained only when cases are decided on their merits. A considerable number of cases do not reach a decision on the merits because the contracting activity takes corrective action voluntarily, resulting in their withdrawal by the protester or dismissal by GAO as academic. In all, 270 of the 1424 CICA protests closed during FY 1985 were closed as a result of withdrawal or because corrective action was taken that rendered the protest academic.

In view of the importance of voluntary contracting agency corrective action in promoting the efficient resolution of award disputes, data concerning withdrawals and cases dismissed as academic has been added to the report as part of Enclosure F. Based on percentage of withdrawals and dismissals resulting from corrective action, a "protester effectiveness rate" can be calculated, representing the percentage of protests filed that resulted either in voluntary corrective action by the contracting agency or in a decision sustaining the protest. Effectiveness rates are included in Enclosure F for each agency that was involved in

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<sup>2/</sup> Due to early resistance by the Department of Justice and the Office of Management and Budget (OMB) to enforcement of the CICA suspension of award and performance provisions, the increased effectiveness realized during FY 1985 was achieved for the most part without the benefit of those provisions. Justice and OMB did not lift their objections to compliance with these provisions until May; full compliance did not occur until June. Due to the time required to develop cases, 80 percent of the cases that reached full decision in FY 1985 were filed by June 1.

10 or more protests. Overall effectiveness rates are also calculated for military and civilian agencies, separately, and for all agencies, together. These calculations indicate that about one out of every five CICA protests closed resulted in some kind of corrective action.<sup>3/</sup>

As noted, GAO's response to CICA has included the development of a computerized case tracking system. While this system was primarily designed to support effective case management, it can report certain types of information that have not been readily available in the past. As a result, we have been able to provide, in Enclosure B, a general profile showing the statistical importance of issue areas that arose in bid protests filed under CICA. The data, which is compiled for all cases based on the protester's initial submission, indicates that a large portion of FY 1985 CICA cases were filed by firms that had submitted an offer under a government solicitation and were complaining either of the rejection of their offer or of the acceptance of a competitor's offer. A significant number of complaints dealt with alleged solicitation defects. Only a few of the cases filed sought to overturn improper sole-source awards, a result that is consistent with earlier GAO studies.

Finally, Enclosure D outlines the principal bases on which machine generated form dismissal notices were issued. While a number of these bases for dismissal reflect statutory restrictions, several are related to GAO's procedures and practices under CICA. GAO is undertaking a review of its regulations and practices based on its first year of experience under CICA. That review will examine the extent to which changes in our regulations may be justified to assure that the maximum number of cases are considered on their merits consistent with the statutory mandate to provide an efficient bid protest process.

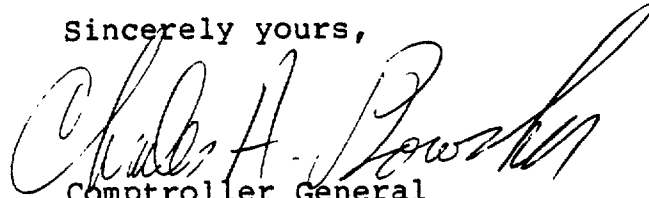
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<sup>3/</sup> The CICA data in Enclosure F is presented by contracting agency. While the effectiveness rate varies from agency to agency, probably reflecting a variety of factors, there is some indication that effectiveness is related to subject matter. A significantly higher percentage of the CICA ADP protests closed during FY 1985 were closed as a result of corrective action taken voluntarily by the contracting agency or because they were sustained.

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We are furnishing a copy of this report and the enclosures to the House Committee on Government Operations, and forwarding an identical report to the President of the Senate with copies to the Senate Committee on Governmental Affairs and its Subcommittee on Oversight of Government Management.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Charles A. Bowsher".

Comptroller General  
of the United States

Enclosures

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**Enclosure A  
Statistical Overview**

	<u>Pre-CICA Cases</u>	<u>CICA Cases</u>	<u>Total Cases</u>
<b>Cases on hand on October 1, 1984 or received before January 15, 1984 .....</b>	<b>997</b>	<b>0</b>	<b>997</b>
 <b>Cases received from January 15, 1984 through September 30, 1985:</b>			
Initial protests .....	0	1760	1760
Reconsideration requests .....	0	251	251
Subtotal .....	0	2011	2011
 <b>TOTAL CASES ON HAND OR RECEIVED DURING FY 1985 ...</b>			
	<b>997</b>	<b>2011</b>	<b>3008</b>
 <b>Cases closed from October 1, 1984 through September 30, 1985:</b>			
Initial protests .....	946	1424	2370
Reconsideration requests .....	49	207	256
 <b>TOTAL CASES CLOSED DURING FY 1985 .....</b>			
	<b>995</b>	<b>1631</b>	<b>2626</b>
 <b>Cases carried forward to FY 1986:</b>			
Initial protests .....	2	336	338
Reconsideration requests .....	0	44	44
 <b>TOTAL CASES CARRIED FORWARD TO FY 1986 .....</b>			
	<b>2</b>	<b>380</b>	<b>382</b>



Disposition Data

	<u>Pre-CICA</u> <u>Cases</u>	<u>CICA</u> <u>Cases</u>	<u>Total</u> <u>Cases</u>
Initial protests closed during FY 1985 --			
Withdrawn:			
Due to corrective action taken .....	N/A <sup>1/</sup>	141	N/A
For other known reasons .....	N/A	31	N/A
For unknown reasons .....	N/A	64	N/A
Total closed by withdrawal .....	191	236	427
Closed by decision on the merits:			
Denied .....	364	187	551
Sustained .....	63	43	106
Total decided on merits .....	427	230	657
Cases otherwise closed:			
Due to corrective action taken .....	N/A	34	N/A
Without known corrective action .....	328	924	1252
Total otherwise closed .....	N/A	958	N/A
TOTAL INITIAL PROTESTS CLOSED .....	946	1424	2370
Sustained rate as a percent of merit decisions .....	14.8%	18.7%	16.1%

Reconsideration requests closed during FY 1985 --

Requests filed before January 15, 1985:			
Reversing prior decision .....	1	4	5
Otherwise closed .....	48	203	251
TOTAL RECONSIDERATION REQUESTS CLOSED ....	49	207	256

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<sup>1/</sup> Information is not available for pre-CICA cases.

Processing Time

TOTAL TIME: 2/

For all cases (including reconsideration requests):

filed before January 15, 1985 but closed  
during FY 1985 ..... 79.2 working days  
filed after January 14, 1985 and closed  
during FY 1985 ..... 21.9 working days  
\* Overall average (CICA and non-CICA) ..... 43.6 working days

For initial protests only:

filed before January 15, 1985 but closed  
during FY 1985 ..... 80.6 working days  
filed after January 14, 1985 and closed  
during FY 1985 ..... 22.1 working days  
\* Overall average (CICA and non-CICA) ..... 45.5 working days

For initial protests closed by full decision on the merits:

filed before January 15, 1985 but closed  
during FY 1985 ..... 121.6 working days  
filed after January 14, 1985 and closed  
during FY 1985 ..... 61.1 working days  
\* Overall average (CICA and non-CICA) ..... 99.8 working days

CONTRACTING AGENCY TIME:

for cases filed before January 15, 1985 but  
closed during FY 1985 ..... 45.2 working days  
for cases filed after January 14, 1985 and  
closed during FY 1985 ..... 21.9 working days  
\* Overall average (CICA and non-CICA) ..... 37.0 working days

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2/ No protest filed under CICA was closed in more than 90 working days.

Enclosure B  
Procurement Type and Issue Area Data

Procurement Type

Cases filed before January 15, 1985:

Advertised .....	54.9%
Negotiated .....	42.4%
Other .....	2.7%

Cases filed after January 15, 1985:

Advertised .....	57.7%
Negotiated .....	42.1%
Other .....	0.2%

Issue Area: \*/

Procurement was improperly sole-sourced.....	2.5%
Solicitation was defective .....	22.2%
Protester's offer was improperly rejected .....	24.2%
Awardee's offer was improperly accepted .....	12.1%
Selection methodology was otherwise improper .....	5.0%
Protester says it was unjustifiably found to be nonresponsible ...	4.5%
Protester says the awardee was not responsible .....	2.6%
Protester raises other issues (or states no issue) .....	26.9%

\*/ Based on protesters' initial statements of protest for cases filed after January 14, 1985 only.

Enclosure C  
Status When Filed and Closed

Percentage of:

	DOD	Civilian	Total
<b>CASES FILED BEFORE JANUARY 15, 1985:</b>			
Protests received and decided before award .....	25.0 %	10.3 %	35.3 %
Protests received before but decided after award ..	5.3 %	7.4 %	12.7 %
Protests received and decided after award .....	29.7 %	22.3 %	52.0 %
<b>TOTAL:</b>	<b>60.0 %</b>	<b>40.0 %</b>	<b>100.0 %</b>

**CASES FILED AFTER JANUARY 14, 1985:**

All cases --

Protests received and closed before award .....	40.4 %	15.1 %	55.5 %
Protests received before but closed after award ..	1.8 %	0.7 %	2.5 %
Protests received and closed after award .....	29.3 %	12.7 %	42.0 %
<b>TOTAL:</b>	<b>71.5 %</b>	<b>28.5 %</b>	<b>100.0 %</b>

Cases decided on their merits --

Protests received and decided before award .....	36.2 %	11.2 %	47.4 %
Protests received before but decided after award ..	4.3 %	2.6 %	6.9 %
Protests received and decided after award .....	29.3 %	16.4 %	45.7 %
<b>TOTAL:</b>	<b>69.8 %</b>	<b>30.2 %</b>	<b>100.0 %</b>

**Enclosure D**  
**Bases for Notice Dismissal**

Protest was abandoned .....	22.6%
No basis of protest was stated .....	13.7%
Protester failed to furnish copy of protest to contracting activity	13.1%
Protest concerning solicitation was filed after opening date .....	7.1%
Protest was not filed within 10 working days after basis was known ..	5.6%
Agency level protest was not timely perfected at GAO .....	4.6%
Protester was not an interested party as defined by CICA .....	4.2%
Protest raised issues that SBA decides .....	9.0%
Protester challenged affirmative determination of responsibility ....	5.8%
Issue protested was matter of contract administration .....	4.8%
Protest concerned wage rate matters for review by Department of Labor	2.2%
Protest raised other issue that was outside GAO's CICA jurisdiction .	4.9%
Protest raised other issues that were not for GAO's consideration ...	2.4%
	Total: 100.0%

**Enclosure E**  
**Data by Contracting Agency -- FY 1985 Pre-CICA Protests 1/**

	Closed	Closed without Decision	w/o Dec Total Days	Total Decisions	Decision Total Days	Summary Decisions	Developed Cases	Agency Days	Sustained	Ratio Sustained to Developed
Agriculture	41	9	44.8	32	98.9	5	27	33.8	7	25.9 %
Air Force	145	54	48.5	91	108.4	17	74	56.0	7	9.5 %
Army	207	85	50.7	122	93.7	41	81	43.5	13	16.0 %
Commerce	11	5	25.8	6	61.2	3	3	56.0	1	33.3 %
Defense 2/	64	20	49.1	44	69.7	16	28	43.3	3	10.7 %
D.C. Govt	7	2	35.5	5	153.6	0	5	69.6	1	20.0 %
Education	1	0	---	1	14.0	1	0	---	0	---
Energy	14	3	53.0	11	62.2	5	6	23.7	0	0.0 %
EPA	8	5	41.8	3	81.0	1	2	21.0	0	0.0 %
BSA	73	22	53.8	51	93.5	15	36	38.4	5	13.9 %
HHS	22	8	57.8	14	105.2	4	10	38.8	4	40.0 %
HUD	5	0	---	5	120.6	1	4	62.0	1	25.0 %
Interior	22	8	67.6	14	54.7	9	5	57.7	2	40.0 %
Justice	14	7	50.7	7	65.1	2	5	34.2	1	20.0 %
Labor	5	0	---	5	90.6	2	3	26.5	1	33.3 %
NASA	11	4	114.7	7	140.9	1	6	63.4	0	0.0 %
Navy 3/	175	76	60.9	99	99.8	23	76	48.1	6	7.9 %
SBA	4	3	64.0	1	38.0	1	0	---	0	---
State	10	2	65.5	8	93.0	3	5	26.7	3	60.0 %
DOT	21	10	41.1	11	108.6	3	8	49.5	3	37.5 %
Treasury	10	6	48.8	4	103.0	1	3	51.0	1	33.3 %
VA	37	6	51.5	31	101.7	8	23	41.1	3	13.0 %
Others	39	19	54.7	20	88.3	3	17	44.7	1	5.9 %
<i>Defense Agencies</i>										
Only:	591	235	53.4	356	96.2	97	259	48.1	29	11.2 %
<i>Civilian Agencies</i>										
Only:	355	119	53.3	236	93.5	68	168	41.1	34	20.2 %
ALL AGENCIES:	946	354	53.3	592	95.1	165	427	45.2	63	14.8 %

1/ The definitions and format used conform to GAO practice in reporting data from FY 1981 through FY 1984.

2/ Consists principally of Defense Logistics Agency cases.

3/ Includes the Marine Corps.

**Enclosure F**  
**Data by Contracting Agency -- FY 1985 CICA Protests**

Agency	Total Cases Days 1/	Total Cases Closed	Average Case Life (Days)	Total Merit Decisions 2/	Merit Decision Time	Cases Withdrawn	Academic Cases 3/	Cases Sustained	Percent Sustained	Protester Effectiveness Rate 4/
Admin. Office of the Courts	26.0	2	48.0	1	52.0	0	0	0	0.0 %	---
Agriculture	18.5	51	23.7	11	47.6	6	1	2	18.2 %	8.6 %
Air Force	19.3	204	22.4	36	65.0	36	3	8	22.2 %	19.3 %
Army	22.4	352	20.9	51	59.5	71	15	7	13.7 %	23.0 %
Commerce	---	12	10.5	0	---	1	0	0	---	0.0 %
DLA	23.5	136	17.6	20	57.8	15	4	6	30.0 %	15.0 %
DOD	25.0	12	21.5	2	65.0	3	1	0	0.0 %	33.3 %
Education	---	3	22.0	0	---	1	0	0	---	---
EEOC	---	1	51.0	0	---	0	0	0	---	---
Energy	24.5	16	20.9	2	62.0	4	0	0	0.0 %	25.0 %
EPA	22.5	10	20.8	2	68.0	2	0	0	0.0 %	20.0 %
FCC	---	2	4.5	0	---	0	0	0	---	---
FEMA	---	2	12.5	0	---	1	0	0	---	---
GAO	---	1	22.0	0	---	0	0	0	---	---
GPO	18.0	5	16.4	1	44.0	0	0	0	0.0 %	---
GSA	22.7	95	22.2	16	62.7	10	1	0	0.0 %	9.8 %

1/ Reports the average number of days taken by contracting agencies in responding to protests.

2/ Includes cases which were decided on their merits (denied or sustained) following full development.

3/ Includes cases dismissed as academic due to corrective action taken voluntarily by the contracting agency.

4/ Provides an approximate measure of the likelihood that a protest resulted in corrective action. The protester effectiveness rate is calculated by projecting the total number of cases closed (through withdrawal or as academic) due to voluntary agency corrective action, by adding protests sustained and by dividing the sum by the number of cases filed. The result is then expressed as a percentage. A rate is reported only if the agency was involved in at least 10 protests during the reporting period. The rates reported do not include cases where protests were abandoned as a result of action taken by the contracting agency; moreover, the rates are based on the number of protests closed and not on the number of procurements affected. More than 10 percent of all procurements protested are subject to multiple protests, often with the protesters seeking incompatible forms of relief. Consideration of these factors would add to the totals reported.

	Agency Days	Total Cases Closed	Average Case Life (Days)	Total Merit Decisions	Merit Decision Time	Cases Withdrawn	Academic Cases	Cases Sustained	Percent Sustained	Protester Effectiveness Rate
HHS	26.0	14	19.4	1	64.0	3	0	1	100.0 %	28.6 %
HUD	27.0	12	17.0	2	60.5	3	0	0	0.0 %	25.0 %
INS	6.0	5	21.8	3	28.3	0	0	1	33.3 %	---
Interior	24.6	30	19.6	5	73.6	7	0	2	40.0 %	30.0 %
Justice	24.0	12	24.8	3	69.0	1	1	3	100.0 %	33.3 %
Labor	---	4	12.5	0	---	1	0	0	---	---
Marine Corps	27.8	11	30.0	4	62.3	3	0	1	25.0 %	22.7 %
NASA	23.5	9	23.9	2	49.0	2	0	0	0.0 %	---
Navy	21.5	302	24.5	47	60.8	56	5	8	17.0 %	21.0 %
NRC	26.0	4	25.3	1	69.0	1	0	0	0.0 %	---
NSF	---	2	1.0	0	---	0	0	0	---	---
NTSB	---	1	1.0	0	---	1	0	0	---	---
OPM	25.0	1	72.0	1	72.0	0	0	0	0.0 %	---
Smithsonian	---	1	12.0	0	---	0	1	0	---	---
State	20.7	11	31.7	3	62.0	1	0	0	0.0 %	9.1 %
Transportation	25.5	36	22.0	6	63.5	3	0	1	16.7 %	5.6 %
Treasury	25.5	10	27.8	2	66.5	1	1	2	100.0 %	20.0 %
TVA	27.0	4	35.5	1	90.0	1	0	0	0.0 %	---
USIA	24.3	7	64.9	6	74.3	0	0	0	0.0 %	---
USRARB	---	1	4.0	0	---	0	0	0	---	---
VA	24.0	32	15.3	1	78.0	2	1	1	100.0 %	9.4 %
<i>Federal Agency Subtotals:</i>										
<i>Military</i>										
Agencies:	21.8	1017	21.9	160	61.0	184	28	30	18.8 %	20.6 %
<i>Civilian</i>										
Agencies:	22.3	396	21.7	70	61.2	52	6	13	18.6 %	13.2 %
<i>Combined (Military + Civilian)</i>										
Agencies:	21.9	1413	22.0	230	61.1	236	34	43	18.7 %	18.7 %
<i>Other Cases:</i>										
Non-Federal <sup>5/</sup>	---	10	6.7	0	---	0	0	0	---	---
Unknown <sup>6/</sup>	---	1	1.0	0	---	0	0	0	---	---
<i>Total Cases:</i>	21.9	1424	21.9	230	61.1	236	34	43	18.7 %	18.5 %

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<sup>5/</sup> Reports cases concerning the contracting practices of organizations such as the Postal Service and government of the District of Columbia that do not qualify as federal agencies under the Competition in Contracting Act of 1984 or do not otherwise qualify for consideration under GAO's Bid Protest Regulations.

<sup>6/</sup> Reports cases where the protesters' submissions were so inadequate as to make it impossible to determine whose procurement practices were the object of complaint.



Enclosure G  
Sustained and Corrective Action Cases \*/  
FY 1985

Jervis B. Webb Co., B-211724.1, January 14, 1985. Finding that sole-source award for the specification, design and installation of an automated materials handling system was unjustified, GAO recommended that agency compete that portion of the contract (contained in contract options) that related to installation. The agency subsequently advised GAO that it would not proceed with implementation without first considering all feasible alternatives. (Defense Logistics Agency)

Centennial Computer Products, Inc. -- Reconsideration, B-212979.2, August 22, 1985. On reconsideration, GAO concluded that agency's rejection of the protester's proposal based on a second benchmark was unjustified and recommended that the agency not exercise the last two one year options on the contract that had been awarded. In subsequent decisions, GAO first modified and later withdrew the recommendation. (Internal Revenue Service)

Mayden & Mayden, B-213872.3, March 11, 1985. Agency improperly permitted awardee to lower its price after receipt of best and final offers without giving all offerors in the competitive range an opportunity to do so. Remedial corrective action was not feasible, but the Secretary of Agriculture was asked to take steps to avoid a recurrence. As a result, the contracting officer was admonished to avoid in the future any action that could have the appearance of discussions after best and final offers, or where continued discussions were required, to reopen negotiations with all offerors as required by law. (Forest Service)

McCotter Motors, Inc., B-214081.2, November 19, 1984. GAO sustained protest that awardee's offer had not complied with RFP provision, noting that in the alternative, the RFP was ambiguous. GAO recommended that the agency refrain from exercising options and resolicit its requirement. Following

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\*/ Note: Cases are listed in order by file number. Those cases filed under CICA (cases filed on or after January 15, 1985) are assigned file numbers greater than B-218000. In each instance, the contracting agency is identified parenthetically following the synopsis.

consideration of a request for reconsideration (the decision was affirmed), the agency implemented the recommendation. (Defense Logistics Agency)

Rowe Contracting Service, Inc., B-214233.1, September 24, 1985. Award to firm lacking required security clearance was improper. However, performance was completed before the case could be decided and it was not feasible to correct the impropriety. (Army-JAG)

Laser Photonics, Inc., B-214356.1, October 29, 1984. Finding that inadequacies in the solicitation contributed to the agency's rejection of proposals, GAO recommended that negotiations be reopened. In response, the agency made substantial revisions to its solicitation and reopened negotiations. (Army Materiel Command)

Environmental Aseptic Services Administration, B-214405.1, November 7, 1984. Although GAO denied the protest, it recommended that liquidated damages provisions used in future solicitations for cleaning services be rewritten to avoid the appearance of imposing a penalty. Agency has complied with the recommendation. (General Services Administration)

Comdisco, Inc., B-214409.2, October 18, 1984. Issuance of an order against a nonmandatory ADP schedule contract was improper because the agency went outside its CBD announcement in making its selection. The protest was considered under the significant issue exception to the timeliness rules; since the case was filed long after it should have been, remedial corrective action was not recommended. However, agency was asked to take action to prevent any recurrence of the deficiency found. The agency complied with the recommendation. (Army-JAG)

Linda Vista Industries, Inc., B-214447.1, October 2, 1984. GAO sustained that portion of the protest that complained that certain liquidated damages provisions could be applied punitively. It recommended that the agency take steps to assure that the questioned provisions would not be so applied. The agency complied with the recommendation. (Naval Facilities Engineering Command)

Vulcan Engineering Co., B-214595.2, October 12, 1984. Award was improper where awardee failed to meet definitive responsibility criterion. Termination was not recommended in view of the advanced state of performance but bid preparation

costs were allowed; to date, the agency has failed to pay the protester's claim. (Naval Facilities Engineering Command)

I.E. Levick and Associates, B-214648.1, December 26, 1984. The agency failed to issue a written amendment to solicitation reflecting changed needs. Since a lease had been awarded containing no termination clause, GAO recommended that the agency take action to prevent a recurrence in future leasing activities. The agency complied. (General Services Administration)

Magnolia-Boyd Corp., B-214716.1, October 5, 1984. Where agency disregarded the evaluation criteria, GAO recommended that agency reopen the procurement and reevaluate proposals. The agency did so, concluding that the protester's proposal was in line for award. (Veterans Administration)

Masstor Systems Corp., B-215046.1, December 3, 1984. Sole-source award was improper where second source was available. However, in view of state of performance, recommendation was limited to request that agency take action to prevent recurrence, which it did. (Air Force)

Advanced Technology Systems, Inc., B-215124.1, March 18, 1985. GAO recommended that agency reprocure cost reimbursement contract rather than exercise contract option where cost realism of awardee's proposal was in doubt and agency's handling of cost realism was defective; the agency terminated the contract. (Housing and Urban Development)

D. J. Findley, B-215230.1, February 14, 1985. GAO recommended that terms of a liquidated damages clause that could be imposed so as to amount to an unreasonable penalty not be so applied. The agency concurred with the recommendation. (Air Force)

Energy Maintenance Corporation, B-215281.3, March 25, 1985. Where cancellation of IFB was improper and where protester's bid was low regardless of which interpretation was given to ambiguous pricing, GAO recommended reinstatement of the original solicitation and award to the protester. The recommendation was followed. (Coast Guard)

California Image Media, Inc., B-215399.2, December 26, 1984. Where agency improperly rejected protester's proposal based on irregularities in test data, but evidence supports protester's assertion that discrepancies must have been caused by agency,

GAO recommended that agency recompete its requirement at the end of the initial contract period and that it not exercise the contract renewal option. The agency found it had to extend the incumbent's contract by six months, but expects to complete the reprocurement by April. (Health and Human Services)

Canon U.S.A., Inc., B-215493.1, December 7, 1984. Agency solicitation of trade-in allowances for items being replaced should have been on an exchange (trade-in) and/or cash basis. GAO recommended that steps be taken to avoid a recurrence of the deficiency found. The agency implemented the recommendation. (General Services Administration)

Aurora Associates, Inc., B-215565.1, April 26, 1985. Where agency improperly evaluated cost, GAO recommended that option years be recompeted. The agency indicates it will compete further requirements. (Agency for International Development)

Provost's Small Engine Service, Inc., B-215704.1, February 4, 1985. Finding that a requirement for authorized dealer status was a matter of responsibility, not responsiveness, that the responsibility determination should have been referred to SBA under COC procedure, and that it was highly likely that a COC would have been issued, GAO concluded that the protester was entitled to bid preparation costs. The agency has agreed to pay reasonable costs; amount is being negotiated. (Army--JAG)

Consolidated Technologies, Inc., B-215723.1, December 7, 1984. Although GAO concluded that the protester's bid was nonresponsive to a bid guarantee, and therefore denied the protest, it recommended that in the future the agency base the adequacy of the bid guarantee on the amount bid for the base quantities or periods only. Agency complied. (Naval Sea Systems Command)

Pan Am World Services, Inc., B-215829.1, June 24, 1985. Where A-76 cost comparison was improperly conducted, cost comparison should be corrected and award made to the protester if the cost of in-house performance is found to exceed the cost of contracting out. Agency complied with recommendation; protester was awarded the contract. (Army-JAG)

A to Z Typewriter Co., B-215830.2, February 14, 1985. Although solicitation was defective, GAO concluded that the contracting agency should make award to the properly evaluated low offeror since the Government's needs would be thereby met

and award would not be legally prejudicial to other offerors. Agency reinstated the solicitation; the protester was awarded the contract. (General Services Administration)

The Standard Products Co., B-215832.1, January 23, 1985. GAO determined that agency could consider late telegraphic bid modification where modification was received late because the agency had suspended its telex service. GAO recommended that the protester's bid be considered for award; the protester was awarded the contract. (Army Materiel Command)

AVCO Corporation, Systems Division, B-216015.1, February 27, 1985. Although protest asserting lack of sufficient information to prepare proposals was denied because information was not available, GAO asked the agency to determine whether information should be acquired to permit competitive follow-on procurements. Agency advised GAO that it has determined that it has no expected requirements for similar equipment, or for modifications to such equipment. (Navy)

All-States Railroad Contracting, Inc., B-216048.2, February 11, 1985. Where bid was timely delivered to the bid box which was not checked on schedule, GAO held that the bid was not late. GAO recommended contract termination and award to the protester, if practical, or alternatively, payment of bid preparation costs. Agency determined that termination was not practical. Corps paid \$5095.46 in bid preparation costs. (Army Corps of Engineers)

Grumman Aerospace Corp., B-216068.1, May 24, 1985. Where the agency failed to provide written confirmation of a telephonic amendment, leading to a defective low bid, GAO recommended that agency consider terminating the contract awarded or resoliciting in lieu of exercising contract options. The agency decided not to exercise the option and resolicited its requirement. (Navy)

W.A. Strom Contracting, Inc. and Seubert Excavators, Inc., B-216115.1; B-216115.2, December 26, 1984. Agency should allow protester to extend its bid acceptance period since it offered the minimum acceptance period required in the IFB. Road construction that was the subject of the procurement was subsequently blocked by the 9th Cir. Court of Appeals and the solicitation, therefore, was canceled. (Forest Service)

Hewlett-Packard Co., Medical Products Group, B-216125.2, May 24, 1985. Where solicitation was ambiguous, GAO held that the protester should be provided with an opportunity to retest equipment to demonstrate compliance, and, in the event the test was successful and the protester was found to be responsible, awarded the contract. Agency offered retesting, but the protester elected not to pursue the matter. (Veterans Administration)

Patterson Pump Co., B-216133.1, March 22, 1985. Where descriptive data submitted with bid did not qualify it, rejection of protester's bid (along with rejection of other bids for similar reasons) was improper. GAO recommended that the agency reinstate the solicitation, reevaluate bids, and make an appropriate award. The agency complied with the recommendation. (Army Corps of Engineers).

U.S. Polycon Corp., B-216185.1, December 27, 1984. Agency should determine whether plastic conduit could meet its needs before proceeding with contract awarded under solicitation that restricted competition to metallic conduit. Agency stopped work on the contract and evaluated the use of plastic conduit. Work was resumed once it was determined that plastic pipe would not be satisfactory. (Agriculture)

AGP/GENTech Inc., B-216268.1, December 17, 1984. Bid offering acceptance period shorter than contemplated in solicitation could be revived for items for which no other bid was received. Protester received award for the line items in question. (General Services Administration)

Tenavision, Inc., B-216274.1, April 15, 1985. Protest was sustained where agency improperly failed to conduct discussions with protester. In view of state of performance, GAO recommended that agency take steps to prevent a recurrence of the deficiencies noted. Recommended action was taken. (Veterans Administration)

Alternative House, B-216331.1, December 7, 1984. Where cancellation of RFP was not justified, agency should reinstate original RFP, evaluate proposals and make award. The recommendation was followed. (Federal Prison Industries)

Lamari Electric Co., B-216397.1, December 24, 1984. Since bid was responsive (notwithstanding agency's contrary finding) and since COC procedure was applicable to determination of nonresponsibility, matter should have been referred to SBA for

COC determination. No remedial action was proposed due to the state of the procurement. A bid preparation cost claim was denied once it was determined, based on SBA action in a related procurement, that a COC would not be issued. (NIH)

Indian and Native American Employment and Training Coalition, B-216421.1, April 16, 1985. Work covered by contract modification, materially altering the services to be provided, should have been competed. Contract should be terminated and a competition conducted. The agency did not comply but rather, terminated the original contract for default (stemming from other causes) and modified a second contract to provide for completion of the work. GAO, in a subsequent decision (B-218973.2, October 2, 1985) concluded that the modification amounted to second improper sole-source award that, in the second instance, failed to conform to the requirements of CICA. DOL has recently advised GAO that it expects to avoid any recurrence of these circumstances in the future. (Labor (IG's Office))

University Research Corporation, B-216461.1, February 19, 1985. Where GAO found that specifications were inadequate to assure effective competition, it recommended termination for convenience and resolicitation using properly drafted specifications. (Agency for International Development)

ITC-Distribution & Control Division, B-216462.1, March 25, 1985. Subcontractor protest of terms of solicitation was sustained where requirement excluding its product from consideration by the prime contractor was unduly restrictive. GAO recommended that the agency amend the contract to permit alternative products to be considered. The agency complied with the recommendation. (Naval Facilities Engineering Command)

U.S. Polycon Corp./Sigma Piping Co., B-216464.1, February 6, 1985. Where agency failed to show that metallic pipe was necessary to meet its need, GAO concluded that exclusion of nonmetallic pipe had not been justified and recommended that agency determine whether other types of pipe systems would meet its needs and if so, terminate the contract awarded and resolicit its requirements. The agency requested and received information from the protester concerning its proposed piping systems but determined that the systems proposed would not meet its needs. (Agriculture)

Geiger Co., B-216502.1, February 7, 1985. Where the proposed awardee did not follow the bid delivery instructions contained in the IFB, GAO recommended that the bid be rejected, placing the protester in line for award. The bid was rejected; the protester was awarded the contract. (Army-JAG)

CACI, Inc. - Federal, B-216516.1, November 19, 1984. GAO found the agency's analysis of the protester's cost proposal to be deficient and recommended that negotiations be reopened. (Second holding, concerning award fee limitation, was modified on reconsideration, B-216516.2, April, 1, 1985.) Agency has complied with the recommendation. (Naval Supply Systems Command)

Spectrum Leasing Corp., B-216615.1, February 19, 1985. GAO found that bid offering certain items at no charge was responsive and that its rejection was improper. GAO recommended that agency not exercise its option to extend the term of the contract and resolicit any further needs it might have for the items covered by the protested award; the options were not exercised. (Commerce)

Medical Gas & Respiratory Services, Inc., B-216632.1, February 27, 1985. While GAO denied the protest against termination of the protester's contract (which GAO found had been improperly awarded), GAO noted that the solicitation was defective and recommended that the agency correct the defect in future procurements for similar products. Agency has taken steps to assure that the problem will not recur. (Veterans Administration)

Coflexip & Services, Inc., B-216634.1, May 16, 1985. Where agency failed to advise protester that material solicitation requirements were relaxed, but state of performance prevented remedial corrective action, protester was awarded proposal preparation costs. Agency accepted liability for costs. Action was also taken to prevent recurrence of the deficiency found. (Transportation)

Arthur Young & Co., B-216643.1, May 24, 1985. GAO agreed that solicitation was ambiguous, resulting in competition on an unequal basis. However, no corrective action was recommended because performance was half completed and GAO could not conclude with any certainty that award would have gone to another offeror had the ambiguity not occurred. (Naval Supply Systems Command)



Riverport Industries, Inc., B-216707.1, April 1, 1985. Agency should not have awarded contract to bidder whose first article prices were grossly unbalanced mathematically. Since first articles had been accepted, GAO recommended only that issues in question be brought to the attention of appropriate officials. On reconsideration (at agency's request), prior decision was affirmed; GAO's position was reaffirmed in Edgewater Machine & Fabricators, Inc., B-219828.1, December 5, 1985 (also involving AMC). (Army Materiel Command)

Simpson Electric Co., B-216713.1, March 18, 1985. Where agency improperly found protester to be nonresponsible, GAO recommended termination of prior contract for convenience and award to protester. On reconsideration, the decision was affirmed. By letter filed January 3, 1986, the agency advised GAO that a recent preaward survey indicated that the protester is responsible but that in its view it would not be in the government's best interest or feasible to terminate the contract. No final action has been taken on this matter by GAO. (Army Materiel Command)

Woodward Associates, Inc., B-216714.1, March 5, 1985. Where agency may have misled offeror as to closing date for best and final offers, GAO recommended that the agency conduct a second round of best and final offers. Noting that lack of a clear FAR requirement that oral requests for best and final offers be followed-up in writing contributed to the problem, GAO asked the FAR Secretariat to amend section 15.611 of the FAR. Negotiations were reopened. In addition, the agency adopted changes to its regulations; the recommendation for changes to the FAR remains pending. (Interior)

Monterey Technologies, Inc., B-216714.2, March 5, 1985. Where agency may have misled offeror as to closing date for best and final offers, GAO recommended that the agency conduct a second round of best and final offers. Noting that lack of a clear FAR requirement that oral requests for best and final offers be followed-up in writing contributed to the problem, GAO asked the FAR Secretariat to ammend section 15.611 of the FAR. Negotiations were reopened. In addition, the agency adopted changes to its regulations; the recommendation for changes to the FAR remain pending. (Interior)

Walsky Construction Co., B-216737.1, January 29, 1985. Agency should have accepted bid which conditioned award on receipt of a minimum schedule price of \$500,000 since protester was in line for award of line items exceeding that amount. GAO

recommended partial termination of previously awarded contract and award to the protester if the protester was found to be responsible. The agency complied with the recommendation and the protester was awarded the line items in question. (Army Corps of Engineers)

Sargent Industries, B-216761.1, April 18, 1985. Where agency failed to give protester an equal opportunity to compete for its requirement, but state of performance precluded contract termination, protester was awarded proposal preparation costs. Agency has agreed to pay costs, but no agreement has been reached between the parties as to amount. (Air Force)

Patterson Pump Co., B-216778.1, March 22, 1985. Where descriptive data submitted with bid did not qualify it, rejection of protester's bid (along with rejection of other bids for similar reasons) was improper. GAO recommended that the agency reinstate the solicitation, reevaluate bids, and make an appropriate award. The agency complied with the recommendation. (Army Corps of Engineers)

Vac-Hyd Corporation, B-216840.1, July 1, 1985. While GAO agreed with the agency that the incumbent contractor was the only qualified source for the repair of TF30 compressor stators (and therefore denied the protest), it recommended that the Air Force take strong steps to qualify new sources. The Air Force is now attempting to qualify two additional sources for this work. (Air Force)

Sess Construction Co., B-216924.1, March 18, 1985. Where agency improperly failed to refer nonresponsibility determination to SBA but SBA later issued a COC, GAO recommended contract termination and award to the protester. Contract was terminated and reawarded to the protester. (Forest Service)

Fleetwood Electronics, Inc., B-216947.2, June 11, 1985. GAO recommended that unduly restrictive design specifications should be revised to permit competition by firms offering equipment capable of meeting the agency's functional needs. Agency complied by revising its specifications. (Air Force)

Ashland Chemical Co., B-216954.1, May 16, 1985. Although GAO found that solicitation defect (failure to include a payment due date), did not prejudice bidders, or therefore justify sustaining the protest, it recommended that similar contracts in the future contain specific required payment due dates.

The agency took corrective action. (Air Force)

Mobile Drilling Co., B-216989.1, February 14, 1985. Where agency acted improperly in accepting nonresponsive bid, but found it impractical to recommend termination, agency was advised of the deficiencies to avoid their recurrence. (Federal Highway Administration)

American Management Systems, Inc., B-216998.1, July 1, 1985. Agency's use of ADP schedule contract was improper where order placed with the schedule contractor deviated materially from the terms of the schedule contract. GAO recommended competitive solicitation for requirements protested. Decision was affirmed on reconsideration. Agency is complying with the recommendation. (Health and Human Services)

T.S. Head & Associates, Inc., B-217039.1, April 26, 1985. Use of public exigency exception for not synopsising procurement in CBD was improper but performance was completed. Air Force voluntarily took corrective action to prevent recurrence of problem. (Air Force)

Mid-America Industrial Park, Inc., B-217042.1, February 15, 1985. Where geographical limitation in solicitation for offers to lease was unjustified, GAO recommended opening the solicitation to all property located within the Bloomington, Illinois metropolitan area. Solicitation was redrafted as recommended. (General Services Administration)

Sess Construction Co., B-217057.1, March 18, 1985. Where agency improperly failed to refer a nonresponsibility determination to SBA, which subsequently issued a COC, GAO recommended contract termination, award to protester and action by SBA to advise contracting agencies of statutory changes not incorporated in its regulations. Both agencies complied. (Forest Service)

Connecticut Telephone & Electric Corp., B-217101.1, February 25, 1985. Bid was improperly rejected as nonresponsive. Performance was complete but bid preparation costs were allowed. Agency paid \$1,696.50 in bid preparation costs. (Air Force)

Harris Corporation, B-217174.1, April 22, 1985. Agency acted improperly by awarding contract on sole-source basis prior to the expiration of the mandatory 30-day CBD notice period and by failing to properly consider the protester's proposal that

was received during that period. In view of substantial performance, however, GAO limited recommendation, recommending that Secretary take steps to prevent recurrence. Agency has indicated its intention to comply with the recommendation once anticipated regulatory changes are completed. (Army-JAG)

Hugo Auchter GmbH, B-217400.1, July 22, 1985. Where solicitation required that offerors describe carpet fibers offered in meeting requirements of each line item, award to proposed awardee on two line items for which fibers were not identified would not be appropriate. Line items in question were not awarded. (Air Force)

Corporate Supply Center, Inc., B-217427.1, June 3, 1985. GAO found that District of Columbia Minority Contracting Act did not authorize noncompetitive award to firm considered to be an exemplary minority business concern. GAO recommended that the District consider the feasibility of competing its remaining contract requirements; it complied with the recommendation. (District of Columbia)

Neal R. Gross and Co., B-217508.1, April 2, 1985. Agency failed to refer non-responsibility determination to SBA. GAO recommended that it refer the determination and, if a COC were issued, terminate and reaward the contract. Question was referred, SBA issued a COC, and the agency terminated and reawarded the contract to the protester. (Federal Maritime Commission)

Scott Fischman Co., B-217535.1, May 24, 1985. Sole-source procurement was improper where 30 day CBD notice was not given. Since equipment had been delivered, GAO recommended only that actions be taken to assure proper publication in the future. Agency complied with the recommendation. (State Department)

Continental Forest Products, Inc., B-217548.1, March 19, 1985. Where telegraphic bids were allowed, telegraphic bid that priced all items and indicated intent to be bound by the terms of the solicitation was responsive and should have been accepted. GAO recommended that agency terminate and reaward the contract to the protester; recommendation was later withdrawn because termination was shown to be impractical. (Defense Logistics Agency)

Energy Efficient Improvements, B-218014.3, April 24, 1985. Where offerors were not prejudiced by defective solicitation,

cancellation of IFB was not justified, solicitation should be reinstated, and award should be made to protester if otherwise appropriate. Protester was awarded the contract. (Air Force)

Mil-Base Industries, B-218015.1, April 12, 1985. Where agency's price analysis was insufficient to support conclusion that protester's price was unreasonable, GAO recommended that an appropriate analysis be performed. The agency followed the recommendation (but again concluded that the price was unreasonable). (Naval Supply Systems Command)

NI Industries, Inc., B-218019.1, April 2, 1985. Where agency departed from evaluation criteria in making award, GAO recommended that it determine the feasibility of terminating the existing contract and of making award to the protester. When the agency determined that it would not be feasible to do so, GAO found that the protester was entitled to protest and proposal preparation costs. The agency is examining several elements of the protester's claim for \$24,807 and expects to settle the matter shortly. (Army Materiel Command)

Sabreliner Corp., B-218033.1, March 6, 1985. Acceptance of qualified bid was improper; GAO recommended that award be terminated and that a contract be awarded to the protester. Agency decided not to comply with GAO's recommendation in view of state of performance and protester initiated legal action in the U.S. District Court for the District of Columbia. Case was settled with the payment of \$125,000 to the protester. (Naval Air Systems Command)

The Analytic Sciences Corp., B-218074.1, April 23, 1985. Where exclusion of protester based on an organizational conflict of interest was questionable under the FAR, the agency was asked to reexamine its decision excluding the protester. The agency complied with the recommendation but concluded that the exclusion was appropriate. This action was reviewed by GAO in a decision (B-218074.2) dated October 24, 1985. GAO concurred with the Air Force's action. (Air Force)

Oceanside Moving and Storage, B-218075.2, May 23, 1985. Agency improperly failed to refer rejection of responsive small business bidder to SBA for COC determination. Matter should be referred, followed if a COC is issued by termination of the existing contract and award to the protester. Matter was referred; SBA action has been postponed pending resolution of alleged labor violations. (Marine Corps)

Reliable Trash Service Co., B-218131.1, April 9, 1985. Cancellation of solicitation was not proper, notwithstanding solicitation defect, since award to protester would not prejudice any other firm. GAO recommended that the protester be awarded the contract if it was otherwise eligible for award. The protester was awarded the contract. (Air Force)

Steam Specialties Co., B-218156.1, May 14, 1985. Where there was no effective waiver of first article test requirement, GAO recommended that the contracting officer refer the matter to appropriate personnel for determination. The agency referred the question of waiver to the Naval Sea Systems Command, which concluded that a waiver was justified based on past test reports and correspondence showing that the requirements had been previously met. (Defense Logistics Agency)

Nero and Associates, Inc., B-218166.1, June 11, 1985. Where agency failed to follow procedures for conducting A-76 cost comparison, evaluation should be reopened. The evaluation was reopened. (Army Materiel Command)

Systems, Terminals & Communications Corp., B-218170.1, May 21, 1985. Where agency had no basis for requiring an aggregate award for various line items of peripheral equipment, GAO recommended that the agency amend the solicitation to permit multiple awards on severable line items in order to maximize competition. The recommendation was followed. (Air Force)

Federal Properties of R.I., Inc., B-218192.2, May 7, 1985. Where agency departed from solicitation evaluation criteria in making selection, procurement should be reopened. Agency complied with recommendation. (Immigration and Naturalization Service)

Devils Lake Sioux Manufacturing Corp., B-218209.1, June 4, 1985. Agency's modification of existing contract was improper because competition should have been obtained. Moreover, the contract that was modified was found to have been improperly awarded. GAO recommended that other firms be permitted to compete and that the protested contract be terminated if a more favorable offer was received. Agency is complying with the recommendation. (Federal Prison Industries)

W. G. James, Inc., B-218230.1, May 31, 1985. Agency improperly permitted one of two tied bidders to correct its bid downward. GAO recommended that the agency apply the established tie bid rules and, in the event the protester won

on that basis, to terminate the existing contract and make award to the protester. In the alternative, GAO found the protester would be entitled to protest and bid preparation costs in the event the agency failed to implement the recommendation, which it did not do. The agency has since indicated its willingness to pay costs; to date, however, the protester has not submitted documentaion concerning the amount of its costs. (Federal Bureau of Investigation)

Hamilton Tool Co., B-218260.1, May 17, 1985. Agency improperly relaxed its requirements during discussions without amending the solicitation and seeking new offers. GAO recommended termination of the existing contract and resolicitation of the requirement. The contract was terminated. (Treasury)

Computer Data Systems, Inc., B-218266.1, May 31, 1985. Protest was sustained due to an erroneous evaluation of the awardee's best and final offer and the award of a contract that omitted a material solicitation requirement. Remedial corrective action was not feasible but protest and proposal preparation costs were awarded. Protester was paid \$52,728.15 for protest and proposal preparation costs. (Agriculture)

Steller Industries, Inc., B-218287.1, May 30, 1985. GAO initially held that the agency should not have disqualified a bidder, even though the firm failed to properly certify that supplies furnished would be manufactured by a domestic small business, and recommended termination and award to the protester if that firm were determined to be small. Decision was reversed on reconsideration. (Defense Logistics Agency)

Lavelle Aircraft Co., B-218309.1, June 12, 1985. Request for progress payments did not render bid nonresponsive. Agency should terminate existing contract and make award to the protester. Agency complied with the recommendation. (Defense Logistics Agency)

DLI Engineering Corp., B-218335.1, June 28, 1985. Where agency improperly deviated from RFP evaluation criteria in selecting awardee, GAO recommended that the agency reopen the evaluation to examine the reasonableness of the protester's prices and if those prices are reasonable, consider the feasibility of terminating the present contract and awarding the remaining work to the protester. The decision was affirmed on reconsideration. The agency is complying with recommendation and expects to terminate and award to the

protester. (Naval Supply Systems Command)

Introl Corp., B-218339.1, July 9, 1985. Agency improperly awarded contract on a basis that differed from that on which the procurement was solicited. Other remedies were inappropriate, but protest and proposal preparation costs were allowed. Agency accepts liability; dispute concerning amount payable is pending at GAO. (Naval Supply Systems Command)

R. R. Mongeau Engineers, Inc., B-218356.1; B-218357.1, July 8, 1985. Agency improperly restricted procurement to brand name product. GAO recommended that solicitation be rewritten to allow competition by equal products. The agency complied with the recommendation. (Air Force)

MRL, Inc., B-218379.2, August 2, 1985. Rejection of sample was improper where solicitation failed to list required characteristics. GAO recommended that contract be terminated with award to MRL if otherwise appropriate or, in the alternative, payment of protest and bid preparation costs. Termination was not feasible and the protester was paid \$12,310.46 for its protest and bid preparation costs. (National Guard Bureau)

Harris Construction Co., B-218387.1, July 26, 1985. Bid amended by garbled telegraphic modification should have been rejected. GAO recommended termination of improperly awarded contract and award to protester. The contract was terminated and awarded to the protester. (Naval Facilities Engineering Command)

Raytheon Co., B-218408.1, July 15, 1985. Rejection of proposal was unreasonable where rejection was not based on the equipment proposed and other alleged deficiencies were minor. GAO recommended reopening discussions. Agency accepted the recommendation. (Air Force)

Mounts Engineering, B-218489.1, B-218489.2, August 16, 1985. Where agency failed to properly apply Brooks Act in selecting architect-engineer, selection process should be reopened. If protester is then selected, previously awarded contract should be terminated. Agency complied with recommendation but determined that the protester was not the best qualified firm. A protest of that determination is now pending. (Interior)

Fabrics Plus, Inc., B-218546.1, July 12, 1985. Where solicitation was silent, requiring that technical and cost be



given approximately equal weight in selecting an awardee, application of a 20/80 formula was improper. In the circumstances, GAO recommended resolicitation using a properly revised solicitation. Agency complied with the recommendation. (Federal Prison Industries)

ITT Courier Terminal Systems, B-218563.1, August 8, 1985. Solicitation restricting competition to one manufacturer's microcomputer equipment was unduly restrictive. GAO recommended that solicitation be amended to allow competition by equal products that can be shown to meet the government's needs. Solicitation was twice amended, satisfying the protester. (ITT filed a second protest, B-218563.2, on December 2, 1985, complaining of remaining restrictions but withdrew the protest when the Corps made further changes.) (Army Corps of Engineers)

Russell Drilling Co., B-218577.1, July 25, 1985. Agency improperly allowed correction of bid where existence of error was not discernable from the face of the bid. GAO concluded that the protester should receive award, if otherwise eligible, and the contract previously awarded was terminated and awarded to the protester. (Health and Human Services)

Julie Research Laboratories, Inc., B-218593.1, August 29, 1985. Agency, which failed to submit a report responsive to the merits of the protest, did not demonstrate that sole-source procurement was justified. GAO recommended that any undelivered portion of the requirement be reprocured. All equipment ordered had been delivered. (Air Force)

Aviation Specialists, Inc., B-218597.1, August 15, 1985. Agency improperly classified requirement as relating to responsibility rather than responsiveness. Treated correctly, protester's bid should not have been rejected, and since the protester was a small business, any question of responsibility should have been referred to SBA. The agency awarded the contract to the protester. (Federal Aviation Administration)

Imperial Maintenance, B-218614.1, July 26, 1985. Late bid was not acceptable. GAO recommended that award be made to the protester if that firm was found to be otherwise eligible for award. The protester was awarded the contract. (Naval Facilities Engineering Command)

Monterey City Disposal Service, Inc., B-218624.1, September 3, 1985. Solid Waste Disposal Act required compliance with local

city ordinance restricting competition to firms franchised by local municipality. Solicitation should be canceled and agency's needs should be met by placing orders with local franchisee. Request for reconsideration in related case was dismissed because case was pending in U.S. District Court for the Northern District of California. Litigation is not completed; in the interim agency is obtaining services from local franchisee. (Naval Facilities Engineering Command)

Dillingham Ship Repair, B-218653.1, August 14, 1985. Agency improperly accepted bid that failed to price a required item. However, no corrective action was recommended. (Military Sealift Command)

Bartlett Technology Corp., B-218786.1, August 20, 1985. Sole-source acquisition of loop-extenders was not justified. However, since equipment had been delivered, recommendation was limited to steps to avoid a recurrence of the problem in future procurements. Agency complied with the recommendation. (Treasury)

Monterey City Disposal Service, Inc., B-218880.1, September 3, 1985. Solid Waste Disposal Act required compliance with local city ordinance restricting competition to firms franchised by local municipality. Solicitation should be canceled and agency's needs should be met by placing orders with local franchisee. Request for reconsideration was dismissed because case was pending in U.S. District Court for the Northern District of California. Litigation is not completed; in the interim agency is obtaining services from local franchisee. (Naval Facilities Engineering Command)

W.H. Smith Hardware Co., B-218975.1, August 23, 1985. Where bid failed to commit bidder to furnish items manufactured by a small business, bid should have been rejected. Improperly awarded contract should be terminated and award made to the protester if otherwise appropriate. Agency complied with the recommendation. (Defense Logistics Agency)

American Sterilizer Co., B-219021.1, September 20, 1985. Agency failed to properly evaluate "equal" product offered in response to a brand name or equal solicitation. Protest and bid preparation costs were allowed in lieu of contract termination. The agency subsequently decided that the government's best interest would be served by terminating the improperly awarded contract and did so. (Veterans Administration)

Reyes Industrices, Inc., B-219348.1; B-219348.2, September 29, 1985. Contracting officer should have not rejected bid, or therefore canceled solicitation, based merely on speculation that bid may not have been mailed as shown on certified mail receipt. GAO recommended that the solicitation be reinstated and award made to protester if otherwise appropriate. The agency accepted the recommendation but found that award would be otherwise improper. A protest concerning that question is pending at GAO. (Defense Logistics Agency)

C.M. & W.O. Sheppard, B-219376.1, September 24, 1985. Award to "equal" product that agency knew did not meet the salient characteristics contained in the solicitation was improper. Protest and bid preparation costs were allowed. Agency paid \$3204.70 in protest and bid preparation costs. (Forest Service)

System Development Corp., B-219400.1, September 30, 1985. Agency improperly awarded technical evaluation points for TEMPEST certification when the equipment offered was in fact not certified. Since record showed that protester was entitled to award, contract should be terminated and award made to the protester. Agency terminated existing contract and intended to make award to the protester at which time the original contractor filed litigation in the U.S. District Court for the District of Columbia. Award has since been made to the protester. (Defense Supply Service)

T.L. James & Co., B-219444.1, September 17, 1985. IFB was defective per se because it was structured so as to encourage unbalanced bidding. GAO recommended that agency cancel IFB and resolicit using an evaluation method that reflects the actual work to be performed. Agency is complying. (Army Corps of Engineers)