

**Subject Indexes of Protest
Appeal Determinations Issued
From 1974 through 1984**

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PREFACE

In the course of administering its financial assistance programs, EPA has decided over 700 bid protest appeals challenging assistance recipients' procurement actions. These determinations were made pursuant to the EPA protest appeal procedures set forth at 40 C.F.R. §35.939 (assistance awarded prior to May 12, 1982), 40 C.F.R. Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 C.F.R. Part 33, March 28, 1983 Final Rules (assistance awarded on or after March 28, 1983).

Most of the appeals have involved awards of construction contracts by assistance recipients under Title II of the Clean Water Act, Wastewater Treatment Construction Grant Program. There have also been a number of appeals by Architectural/Engineering (A/E) firms concerning award of A/E contracts. In the past two years, there have been two appeal determinations concerning procurement of services for Remedial Actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

To date, seven subject indexes of EPA appeal determinations have been published in the Federal Register. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086-95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812-18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770-74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476-80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004 (September 13, 1984), the index of 1983 determinations published at 50 FR 4148 (January 29, 1985) and the index of 1984 determinations published at 50 FR 23061 (May 30, 1985). Each publication digests only the determinations issued during the designated year or years. Consequently, in order to completely research a subject, it has been necessary to locate that subject in seven different issues of the Federal Register.

To make it easier to research the EPA determinations, we have constructed this index of 1974 through 1984 determinations. This has been accomplished by cutting apart the publications of the Federal Register, reorganizing the subjects into two principal categories, and placing them into this consolidated format.

An eighth index has been published at 51 Fed. Reg. 32038 (September 8, 1986) and is included immediately following the Table of Contents to this Volume. It digests the decisions issued during 1985.

This volume has been prepared with the intent of making it easier to research the large number of protest appeal determinations issued by EPA. Used correctly, it can save time in analyzing and deciding matters under protest. The descriptive parentheticals describing the determinations are short and are meant only to assist you in focusing your research. Of course, before relying on any determination reported in the Federal Registers and this volume, you should read the full text of the determination to ascertain how it may apply to a given situation.

As a further convenience, for EPA personnel (especially attorneys) responsible for completing information forms necessary to enter data into the PATRACS computer system, a copy of the Grants Law Index of bid protest and procurement issues is included immediately before the Table of Contents to this volume. Questions and comments concerning use of the computer should be referred to Anthony Guadagno, Esq. (FTS-382-5313).

A handwritten signature in dark ink, appearing to read "J. Kent Holland, Jr.", with a stylized, cursive script.

J. KENT HOLLAND, JR.

LOCATING A SUBJECT IN THIS VOLUME:

The subjects are digested under two separate alphabetical listings. Substantive procurement subjects such as "Bids," "Responsibility" and "Specifications" are listed under the primary heading "Procurement." Procedural appeal matters such as "Burden of Proof," "Jurisdiction" and "Time Limitations" are listed under the primary heading Appeals - Procedural Matters."

OBTAINING COPIES OF DETERMINATIONS:

Determinations may be examined and obtained from the EPA Offices of Regional Counsel. They may also be examined at the Law Library at EPA Headquarters and may be obtained from the Office of General Counsel at EPA Headquarters.

FOR FURTHER INFORMATION CONTACT:

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**Monday
September 8, 1986**

Part IV

**Environmental
Protection Agency**

**Protest Appeals of Recipients'
Procurement Actions Under Federal
Assistance Agreements; Subject Index
List of EPA Regional Administrator
Protest Appeal Determinations Issued
During 1985; Notice**

ENVIRONMENTAL PROTECTION AGENCY

(FRL-3076-3)

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1985

This notice publishes the subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1985. These determinations were made pursuant to the EPA protest procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR Part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR Part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the Eighth EPA subject index which lists only the decisions for the year stated. The first index, listing Regional Administrator protest appeal determinations issued during the period 1974 through 1977, was published at 43 FR 29086-95 (July 5, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812-18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770-74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476-80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148 (January 29, 1985) and the index of 1984 decisions published at 50 FR 23061 (May 30, 1985).

The index lists 71 appeal determinations and 6 reconsideration request determinations issued by the EPA Regional Administrators in 1985.

The determinations are cited informally with the names of the assistance recipients and protestors shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for the year. This number is not part of the preferred citation which should state the following: Grantee, State, (EPA Region _____, date of determination) (Protest of _____).

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals;" substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA headquarters.

FOR FURTHER INFORMATION CONTACT:
J. Kent Holland, Jr., Esquire: Grants, Contracts, and General Law Division (LE-132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460; (202) 382-5313.

Dated: August 29, 1986.
Gerald H. Yamada,
Acting General Counsel.

Bid Protest Appeals—Procedural Matters

Burden of Proof

- 85:12 Orlando, FL (IV, 2-8-85) (*Drum Owen Valve Co.*) (burden shifts throughout proceedings where unduly restrictive specifications alleged).
85:49 Frederick, MD (III, 9-17-85) (*RDP Co.*) (shifting burden—where protester alleges unduly restrictive specification and shows that its equipment was eliminated, grantee must show the specification is necessary for minimum performance needs and show rational basis for rejecting protester's equipment).

Choice of Law (See Procurement Index—"State and Local Law")

Exhaustion of Administrative Remedy

- 85:14 Lake Accotink Park, Fairfax, VA (III, 2-22-85) (*Lyons Const.*) (protester cannot raise new issue on appeal which was not raised in original protest to grantee).
85:19 Kankakee, IL (V, 3-28-85) (*Mehta & Assoc.*) (issue not raised during initial protest cannot be raised on appeal).

Harmless Error

No entries.

Jurisdiction

- 84:52 Possum Valley Sewer District (III, 2-14-85) (*U-Max Engineering*) (Reconsideration) (where EPA review would require decision on collateral issue pending in State Court, protest may be considered inappropriate for EPA review) (*cf.* Jordan, MI, Region V, 10-21-86).
85:08 Milwaukee, WI (V, 1-31-85) (*Kari-Kool Transports, Inc.*) (reliance on incorrect oral advice given at pre-bid conference is not protestable).
85:11 Austin, TX (VI, 2-8-85) (*Turbo Blowers, Inc.*) (where no federal funds are involved, procurement is not protestable).

- 85:31 Bradenton, FL (IV, 6-4-85) (*Lakeside Equipment Co.*) (subcontractor substitution made by independent decision of prime contractor is not protestable).
85:32 Warren, OH (V, 6-6-85) (*RAM Engineering Inc.*) (substitution of subcontractor is matter of contract administration and is not protestable).
85:43 Troup, TX (VI, 9-4-85) (*McKinney & Moore, Inc.*) (basic design decision is not protestable).
85:48 Frederick, MD (III, 9-17-85) (*Dresser Industries*) (subcontractor substitution is contract administration issue and is not protestable).
85:54 Anne Arundel, MD (III, 9-27-85) (*Roberts Filter Manufacturing Co., Inc.*) (if owner anticipates receiving EPA funding, procurement actions prior to grant award are protestable).
85:57 Pueblo, CO (VIII, 10-11-85) (*WesTech Engineering, Inc.*) (subcontractor substitution is matter of contract administration and not protestable).
85:58 Pueblo, CO (VIII, 10-11-85) (*Tenco Hydro, Inc.*) (independent action of prime contractor is not a grantee decision and is not protestable).
85:59 Georgetown, MN (V, 10-18-85) (*Robert J. Roberts & Associates, Inc.*) (unless contract will receive EPA funding, procurement regulations do not apply and issues are not protestable).
85:61 Jordan, MI (V, 10-21-86) (*Veit & Company*) (protest appeal may be decided by EPA even though there is a pending law suit in State court) (*cf.* Possum Valley, III, 2-14-85).
85:63 State of New Jersey, NJ (II, 12-2-85) (*Marvec All State, Inc.*) (where no EPA grant participation is anticipated, EPA will not hear a protest appeal).
85:70 Modesto, CA (IX, 12-20-85) (*Industrial Pump Supply*) (equipment supplier may protest prime contractor rejection of its equipment where prime contractor's decision was directed by the recipient. However, technical disputes concerning performance are matters of contract administration which are not reviewed by EPA) (*cf.* New York, II, 3-5-84).

Parties to Appeal

No entries.

Procedures

- 84:52 Possum Valley Sewer District (III, 2-14-85) (*U-Max Engineering*) (Reconsideration) (where EPA review would require decision on collateral issue pending in State Court, protest may be considered inappropriate for review).

- 85:07 Maine Dept. of Environmental Protection (I, 1-30-85) (*Metcalf & Eddy*) (where failure of protester to notify other interested parties of protest caused no prejudice, the appeal will be considered).
- 85:09 Carthage, MO (VII, 1-31-85) (*LaForge & Budd Const. Co.*) (grantee is not required to prepare a memo or rationale to accompany its written protest determination).
- 85:15 Lake Accotink Park, Fairfax, VA (III, 2-22-85) (*Lyons Const.*) (only those matters raised before grantee on protest can be raised during appeal).
- 85:19 Kankakee, IL (V, 3-28-85) (*Mehta & Assoc.*) (issue not raised during initial protest cannot be raised on appeal).
- 85:25 Shubuta, MS (IV, 4-29-85) (*Video Pipe Services, Inc.*) (letter addressed to recipient instead of EPA is not a proper appeal).
- 85:35 Willoughby, OH (V, 7-1-85) (*Quasar Const., Inc.*) (letter addressed to City is not proper appeal to EPA).
- 85:47 Sioux City, IA (VII, 9-13-85) (*Industrial and Municipal Engineering, Inc.*) (protest may not be denied on procedural grounds where grantee failed to notify bidders that the procurement was subject to EPA regulation).
- 85:50 Lorain, OH (V, 9-17-85) (*Mosser Const., Inc.*) (where grantee decides protest in favor of protester, other parties to the protest may appeal to EPA without first filing a protest) (where bid rejected as nonresponsive EPA will not consider arguments that bidder could be rejected as nonresponsive) (*cf.* Anne Arundel, III, 9-27-85).
- 85:54 Anne Arundel, MD (III, 9-27-85) (*Robert Filter Manufacturing Co., Inc.*) (although interested parties must be notified of protest, failure to give notice will not justify rejection of protest where no prejudice resulted) (EPA may rely on all information available and is not restricted to the arguments raised by the parties).
- 85:61 Jordan, MI (V, 10-21-85) (*Veit & Co.*) (protest appeal may be decided by EPA although there is a pending law suit in State court) (*cf.* Possum Valley, III, 2-14-85).
- 85:62 Broomfield, CO (VIII, 11-26-85) (*Summit Const., Inc.*) (where project engineer recommended rejection of low bid, it was reasonable for grantee to accept a protest directly from that decision).
- 85:67 Monterey, CA (IX, 12-17-85) (*Dillingham Const., Inc.*) (where third-low bidder failed to participate in protest proceedings initiated by the second-low bidder and had notice of the basis for its protest, it improperly

waited until EPA issued appeal determination and then protested award that grantee made in accordance with the EPA determination).

- 85:70 Modesto, CA (IX, 12-20-85) (*Industrial Pump Supply*) (it is not a conflict of interest for the project engineer who rejected equipment to decide the subsequent bid protest for the grantee).

Rational Basis Test (See also Engineering Judgment)

- 85:09 Carthage, MO (VII, 1-31-85) (*LaForge & Budd Const.*) (EPA refers to other appeal decisions and GAO decisions) (EPA will not reverse grantee decision concerning who is low bidder under State law unless clear showing of violation of State law or federal regulation).
- 85:12 Orlando, FL (IV, 2-8-85) (*Drum Owen Valve Co.*) (no EPA deference to engineer's technical judgment where inaccurate information used or where City's reason for rejection was speculative in nature).
- 85:49 Frederick, MD (III, 9-17-85) (*RDP Co.*) (EPA defers to technical judgment of engineer provided there is rational basis for specification).
- 85:50 Lorain, OH (V, 9-17-85) (*Mosser Const., Inc.*) (potential savings must be material before rejecting bid because it exceeds engineer's estimate).
- 85:62 Broomfield, CO (VIII, 11-26-85) (*Summit Const., Inc.*) (grantee lacked rational basis for finding bid nonresponsive and bidder nonresponsible).

Reconsideration

- 84:52 Possum Valley, PA (III, 2-14-85) (*U-Max Engineering*) (limited review does not permit rearguing points previously discussed and determined).
- 85:39 Lewes, DE (III, 8-28-85) (*Mixing Equipment Co., Inc.*) (denied where no factual mistake or error of law).
- 85:54 Anne Arundel, MD (III, 7-18-85) (*Roberts Filter*) (EPA did not err in looking beyond the arguments made by the parties).
- 85:60 Westborough, MA (I, 12-10-85) (*Dorr-Oliver, Inc.*) (denied) (where no newly discovered evidence, issue of law, factual mistake or error of law, the decision will not be reconsidered).

Regulations

- 85:42 Glenwood and Long Beach, MN (V, 8-9-85) (*J & S Contracting*) (grantee elected to follow Part 33 regulations instead of Part 35 which was in effect on date of grant award) (appeal decisions interpreting certain Part 35 requirements continue to be followed and applied by EPA).

- 85:59 Georgetown, MN (V, 10-18-85) (*Robert of Roberts & Associates, Inc.*) (explanation of whether Parts 33 and 35 apply).

- 85:68 Monterey, CA (IX, 12-17-85) (*Fluor Constructors, Inc.*) (EPA may rely on protest appeal determinations issued under Part 35 regulations and principles stated in those regulations).

Review by EPA

- 85:07 Maine Dept. of Environmental Protection, MA (I, 1-30-85) (*Metcalf & Eddy*) (review of competitive negotiations is limited to whether bid evaluation was based on RFP criteria).
- 85:09 Carthage, MO (VII, 1-31-85) (*LaForge & Budd Const.*) (EPA refers to other appeal decisions and GAO decisions) (EPA will not reverse grantee decision concerning who is low bidder under State law unless clear showing of violation of State law or federal regulations).
- 85:45 Newberg, OR (X, 9-11-85) (*Contractors, Inc.*) (deference given to grantee's responsibility determination).

Sua Sponte Review

- 85:27 Lansing, MI (V, 5-17-85) (*Acrision, Inc.*) (where protest was untimely, EPA summarily dismissed appeal but reversed the merits).
- 84:52 Possum Valley, PA (III, 2-14-85) (*U-Max Engineering*) (Reconsideration) (where no blatant violation of EPA regulations, EPA will not exercise discretion to review).
- 85:47 Sioux City, IA (VII, 9-13-85) (*Industrial & Municipal Engineering, Inc.*) (protests were defective but brought to EPA's attention serious defects in grantee procurement, EPA reviewed merits of protests).
- 85:51 Rantoul, IL (V, 9-18-85) (*American Surfpac Corp.*) (EPA has authority to independently review grantee procurement actions).
- 85:53 Anne Arundel County, MD (III, 9-27-85) (*Allied Contractors, Inc.*) (EPA may review late protest on its merits).

Standing

- 85:19 Kankakee, IL (V, 3-28-85) (*Mehta & Assoc.*) (subcontractor may not protest prime's method of evaluating its equipment).
- 85:39 Lewes, DE (III, 7-19-85) (*Mixing Equipment Co.*) (supplier has standing to protest specifications on prequalification but if protester can meet specifications it cannot challenge them as unduly restrictive).
- 85:48 Frederick, MD (III, 9-17-85) (*Dresser Industries*) (subcontractor

substitution is not protestable) (subcontractor lacks standing to challenge grantee's evaluation of responsiveness of competitor supplier's equipment).

- 85:56 Westchester County, NY (II, 10-9-85) (*Crouse Combustion Systems, Inc.*) (bidder who withdrew bid before contract award lacks standing to protest award to another bidder).
- 85:57 Pueblo, CO (VIII, 10-11-85) (*WesTech Engineering, Inc.*) (substituted subcontractor cannot protest prime's decision to substitute firms).
- 85:60 Westborough, MA (I, 10-21-85) (*Dorr-Oliver, Inc.*) (where supplier was able to compete but chose not to, it lacks standing to protest the later approval by recipient of another supplier's equipment).
- 85:68 Monterey, CA (IX, 12-17-85) (IX, 12-17-85) (*Fluor Constructors Inc.*) (a nonresponsive bidder has no adversely affected direct financial interest and, therefore, lacks standing).
- 85:70 Modesto, CA (IX, 12-20-85) (*Industrial Pump Supply*) (equipment supplier may protest prime contractor rejection of its equipment where prime contractor's decision was directed by the recipient. However, technical disputes concerning performance are matters of contract administration which are not reviewed by EPA).

Summary Disposition

- 85:08 Milwaukee, WI (V, 1-31-85) (*Kari-Kool Transports, Inc.*) (reliance on incorrect oral advice given at pre-bid conference is not protestable).
- 85:33 Milwaukee, WI (V, 6-19-85) (*Staff Electric Co.*) (where grantee waives failure to notarize bid as a minor irregularity and gives legal opinion that State law permits the waiver, EPA will not review the matter where there is no overriding federal interest).
- 85:35 Willoughby, OH (V, 7-1-85) (*Quasar Const., Inc.*) (protest challenged the waiver of minor bid irregularities of a competitor such as signature and seal) (where bidder is not next in line for award, EPA will not review).

Time Limitations

- 84:52 Possum Valley, PA (III, 2-14-85) (*U-Max Engineering*) (Reconsideration) (timeliness of protest is of paramount importance).
- 85:02 New York, NY (II, 1-17-85) (*Schiavone Const. Co.*) (appeal clock starts when protest determination received by address listed on protester's letterhead even if not received by main office at that time).

- 85:05 Carson City, NV (IX, 1-18-85) (*Nevada Const. & Mining*) (protest untimely where filed more than 7 days after protester had notice that contract was awarded to another bidder).
- 85:25 Shubuta, MS (IV, 4-29-85) (*Video Pipe Services, Inc.*) (appeal received by EPA 7 days after protester receives grantee determination is untimely).
- 85:27 Lansing, MI (V, 5-17-85) (*Acrison, Inc.*) (appeal of prequalification rejection dismissed because not filed within 7 days of notice of rejection). *But See* Chelan, WA (X, 6-24-86), which permits prequalification protests filed more than 7 days after receipt of decision if the protest challenges the specifications and is filed before prime contract bid opening.
- 85:30 Pittsylvania, PA (III, 5-24-85) (*J & D Constructors, Inc.*) (where contractor was default terminated for failing to provide performance bonds, its protest was untimely for being not filed within 7 days).
- 85:35 Willoughby, OH (V, 7-1-85) (*Quasar Const. Inc.*) (appeal untimely where filed more than 7 days after receipt of grantee's determination).
- 85:41 Red Oak, LA (VII, 8-5-85) (*Elliott Equipment Co.*) (protest was untimely because it challenged specifications and was not filed before bid opening).
- 85:42 Glenwood and Long Beach, MN (V, 8-9-85) (*J & S Contracting, Inc.*) (protest was untimely because it challenged specifications and was not filed before bid opening).
- 85:50 Rantoul, IL (V, 9-18-85) (*American Surfpac Corp.*) (protest alleging improprieties in specification is timely where filed before bid opening) (this is generally so if protester knew of the improprieties for more than 7 days before filing. *See* Chelan, WA (X, 6-24-86)).
- 85:54 Anne Arundel, MD (III, 9-27-85) (*Roberts Filter Manufacturing Co., Inc.*) (unduly restrictive specifications must be challenged prior to bid opening—protester cannot wait until equipment is rejected after bid opening to file its protest). (*See also* Southbridge, I, 1-24-86).
- 85:55 Little Blue Valley, MO (VII, 10-1-85) (*Roots Division of Dresser Industries*) (where brand name or equal specifications exclude supplier's equipment, protest must be filed prior to bid opening—supplier cannot wait until equipment is rejected to file protest).
- 85:62 Broomfield, CO (VIII, 11-26-85) (*Summit Construction, Inc.*) (where protest was based on action of project engineer rather than grantee, grantee may consider it).

- 85:64 Augusta, GA (IV, 12-5-85) (*Beiler Equipment Co., Inc.*) (where alleged improprieties in specifications were clearly apparent in the IFB, protest was not filed prior to bid opening).
- 85:67 Monterey, CA (IX, 12-17-85) (*Dillingham Const., Inc.*) (where the third-low bidder did not participate in proceedings initiated by the second-low bidder, bidders' subsequent protest of the award was untimely where it had adequate notice of basis for protest).
- 85:71 Binghamton, NY (II, 12-26-85) (*American Bio Tech*) (telegraph appeal notice was timely but subsequent submittal of detailed supplemental statement was untimely).

Waiver (See Procurement Index—"Waiver")

Procurement

A/E Services

- 85:07 Maine Dept. of Environmental Protection (I, 1-30-85) (*Metcalf & Eddy*) (EPA will not review grantee's judgment of what specific services are required for remedial action).
- 85:10 Lake County Sanitation District (IX, 2-5-85) (*Peak & Assoc.*) (bid evaluation of technical proposal is matter of procurement discretion and will not generally be disturbed by EPA).

Award Prime Contract

- 85:14 Washington Suburban Sanitary Commission (III, 2-22-85) (*Hycon and Professional Services Group*) (although state law gives grantee discretion in matters of contract award, that discretion is limited by fundamental federal procurement requirements).

Bid Shopping

- 85:31 Bradenton, FL (IV, 6-4-85) (*Lakeside Equipment Co.*) (subcontractor substitution is not protestable).
- 85:50 Frederick, MD (III, 9-17-85) (*Dresser Industries*) (EPA regulations do not prohibit bid shopping and EPA views equipment listing as informational only unless IFB clearly makes it a matter of responsiveness).
- 85:57 Pueblo, CO (VII, 10-11-85) (*WesTech Engineering, Inc.*) (bid shopping not prohibited unless state, local law or the bidding documents so provide).
- 85:58 Pueblo, CO (VIII, 10-11-85) (*Tenco Hydro, Inc.*) (bid shopping not prohibited by EPA).
- 85:65 Jacksonville, AR (VI, 12-12-85) (*Tenco Hydro, Inc.*) (EPA neither

prohibits nor requires bid shopping—see *EPA Report to Congress: Wastewater Treatment Contracting and Bid Shopping*, June 1978).

Bidders & Offerors

85:56 Westchester County, NY (II, 10-9-85) (*Crouse Combustion Systems, Inc.*) (grantee may obtain cost concessions from lowest bidder after bid opening).

Bids

Acceptance Period

No entries.

Addendum

85:38 Clarence, NY (II, 7-18-85) (*Hydro-Group, Inc.*) (failure to sign formal acknowledgment of receipt of IFB addendum may be waived as minor irregularity where bidder included a quotation for the additional item in its bid and specifically referred to addendum).

Alternates

85:61 Jordan, MI (V, 10-21-85) (*Veit & Co.*) (where bidders were required to list unit prices for several alternates but further required to choose one alternate to base its lump sum bids, a bid is nonresponsive if the bidder fails to list a unit price for one of its alternates).

85:37 Bradenton, FL (IV, 7-15-85) (*ICOS/Hycon*) (where failure to comply with bid terms reflect on responsibility rather than responsiveness they may be waived) (in order to be responsive on one alternate it was not necessary to submit bid on other alternate).

Ambiguity

85:40 Johnson County, KS (VII, 7-25-85) (*Martin Eby Const.*) (where contrary to terms of IFB, bid was conditioned upon grantee approving proposed "or equal" equipment before award, this caused ambiguity concerning bidder's obligation if equipment substitution was later required and made bid nonresponsive).

Base Bids

No entries.

Cancellation of Solicitation

85:47 Sioux City, IA (VII, 9-13-85) (*Industrial & Municipal Engineering, Inc.*) (EPA reversed grantee and directed solicitation be cancelled and readvertised).

Evaluation

85:07 Maine Dept. of Environmental Protection (I, 1-30-85) (*Metcalf &*

Eddy) (where RFP stated cost was of secondary importance, grantee may award contract to more expensive proposal).

85:10 Lake County Sanitation District (IX, 2-5-85) (*Peak & Assoc.*) (A/E procurement—where RFP did not provide that proposer's failure to respond adequately to one of the evaluation factors would result in his rejection, grantee's affirmative evaluation was reasonable).

85:12 Orlando, FL (IV, 2-8-85) (*Drum Owen Valve Co.*) (performance based reason for rejection must be based on more than speculation of problems).

85:18 Mission, TX (IV, 3-1-85) (*Evirondyne Inc.*) (evaluation cannot be based on undisclosed, subjective criteria) (data submission requirement must be based on underlying need for considering data).

85:24 Chelan, WA (X, 4-28-85) (*Walker Process Corp.*) (A/E improperly rejected equipment for failing to meet design features which were not specified).

85:29 San Antonio, TX (VI, 5-23-85) (*Pollution Control, Inc.*) (may not reject equipment on basis of criterion not disclosed in IFB) (IFB clause requiring "experience" in making "similar" equipment cannot be used to require experience in making exactly the same equipment).

85:40 Johnson County, KS (VII, 7-25-85) (*Martin Eby Const.*) (by reviewing bidder's alternate equipment proposal before awarding contract, grantee failed to evaluate the bids in accordance with IFB criteria which stated "or equal" equipment would only be evaluated after award).

85:48 Frederick, MD (III, 9-17-85) (*Dresser Industries*) (subcontractor lacks standing to challenge grantee's evaluation of its competitor's equipment).

Extension

85:62 Broomfield, CO (VIII, 11-28-85) (*Summit Constructors, Inc.*) (active participation in protest proceeding evidences intent to extend bid).

Late

85:36 Chemung County, NY (II, 7-3-85) (*Tougher Ind., Inc.*) (bid nonresponsive where IFB stated late bids would not be accepted and bid was 2 minutes late) (grantee has discretion in applying GAO strict treatment of late bids).

Mistake

85:08 Carthage, MO (VI, 1-31-85) (*LaForge & Budd Const.*) (extrinsic evidence may be used to show intended bid where no bid

displacement) (words over numbers reconciliation clause will not be strictly enforced where intended bid is clearly apparent).

85:17 Mackinac Is., MI (V, 3-13-85) (*Barton-Malow Co. & Omega Const.*) (mistake in bid on entire project did not affect bid on individual pump station).

85:66 Newport, RI (I, 12-17-85) (*Peabody N.E., Inc.*) (bid displacement allowed where mistake and intended bid are apparent on the face of the bid—extended amount price was put in unit price column).

Preparation Costs

No entries.

Public Notice

85:47 Sioux City, IA (VII, 9-13-85) (*Industrial & Municipal Engineering, Inc.*) (where grantee failed to advertise in newspapers and journals of general circulation and only allowed 17 days from notice to bid opening, EPA required resolicitation).

Qualified

85:40 Johnson County, KS (VII, 7-25-85) (*Martin Eby Const.*) (bid that was conditioned on grantee approving "or equal" equipment before award is nonresponsive where IFB provided for post award equipment evaluation only).

Rejection of all Bids

85:47 Neenah-Menasha, IL (V, 3-28-85) (*Flour Bros. Const. Co.*) (where low bid had to be rejected for being late and other bids were deemed too expensive, grantee had rational business reasons for rejecting all bids).

85:02 Lowell, MA (I, 1-11-85) (*Gioiosa & Sons, Inc.*) (not justified by unbalanced bidding) (recipient does not have unfettered discretion).

85:22 Detroit, MI (V, 4-18-85) (*ETS Towers, Inc.*) (IFB failed to specify experience evaluation criteria necessary for determining which bids satisfied requirements—harm to bidder required readvertising the project).

Signature

85:33 Milwaukee, WI (V, 6-19-85) (*Staff Electric Co.*) (failure to notarize bid as required by state law may be waived as minor irregularity).

85:35 Willoughby, OH (V, 7-1-85) (*Quasar Const., Inc.*) (failure to notarize bid waived as minor irregularity).

Time to Prepare

- 85:47 Sioux City, IA (VII, 9-13-85) (*Industrial & Municipal Engineering, Inc.*) (advertising 17 days in advance of bid opening was inadequate) (adequate notice must be placed in newspapers and journals of general circulation).

Unbalanced

- 85:02 Lowell, MA (I, 1-11-85) (*Gioroso & Sons, Inc.*) (Penny bidding is not contrary to federal principles unless it causes bid to be materially unbalanced making it impossible to determine the low bid).
- 85:35 Willoughby, OH (V, 7-1-85) (*Quasar Const., Inc.*) (whether unbalanced bid can be accepted depends on whether it is reasonably certain to result in lowest price).

Unit Pricing

No entries.

Bonds

- 85:30 Pittsylvania, PA (III, 5-24-85) (*J & D Constructors, Inc.*) (failure to provide performance bonds within 10 days of contract award was rational basis for grantee to reject bidder as nonresponsive).
- 85:51 Rantoul, IL (V, 9-18-85) (*American Surfpac Corp.*) (performance bond which ensured performance for 3 years was reasonable where suppliers had no similar equipment in service) (inability of one supplier to obtain bond does not prove undue burden where other suppliers did obtain bond) (EPA no longer requires grantee to accept bond in lieu of experience).

Buy American Act

- 85:28 Osage Beach, MO (VII, 5-22-85) (*Marley Pump Co.*) (because grantee demonstrated that foreign components comprised under 50% total value of the product, the preference did not apply).
- 85:55 Little Blue Valley, MO (VII, 10-1-85) (*Roots, Dresser*) (until prime selects supplier, compliance with the Act cannot be determined) (*See also*, Chelan, Washington, X, 6-24-86).

Conflict of Interest

- 85:19 Kankakee, IL (V, 3-28-85) (*Mehta & Assoc.*) (no evidence of conflict presented, appeal dismissed as without merit).
- 85:70 Modesto, CA (IX, 12-20-85) (*Industrial Pump Supply*) (it is not a conflict of interest for the project engineer who rejected equipment to decide the subsequent bid protest for the grantee).

Engineering Judgment

- 85:13 Dothan, AL (IV, 2-21-85) (*American Bioreactor Co. & Fluid Systems, Inc.*) (rational basis for experience requirements).
- 85:42 Glenwood and Long Beach, MN (V, 8-9-85) (*J & S. Contracting, Inc.*) (rational performance based reasons for requiring single material is given deference by EPA.) (when EPA defers to engineer it does not mean it believes the specifications reflect the best engineering judgment and no opinion is offered regarding relative merits of the material or equipment or their suitability for particular engineering applications).
- 85:49 Frederick, MD (III, 9-17-85) (*RDP Co.*) (protest appeal sustained where design features were not supported by rational performance based needs).
- 85:55 Little Blue Valley, MO (VII, 10-1-85) (*Roots, Dresser*) (performance reasons for design features).

Experience Requirements

- 85:13 Dothan, AL (IV, 2-21-85) (*American Bioreactor Co. and Fluid Systems, Inc.*) (City was justified in rejecting equipment which manufacturer had never before fabricated or designed to the size needed).
- 85:18 Mission, TX (VI, 3-1-85) (*Envirodyne, Inc.*) (experience clause was ambiguous where it did not define applicable period of experience to be objectively applied).
- 85:22 Detroit, MI (V, 4-18-85) (*ETS Towers, Inc.*) (experience requirements must be objectively stated evaluation criteria).
- 85:29 San Antonio, TX (VI, 5-23-85) (*Pollution Control, Inc.*) (where IFB required bidders to have experience manufacturing "similar" equipment, a bidder cannot be rejected for not having manufactured "exactly" the same equipment).
- 85:37 Bradenton, FL (IV, 7-15-85) (*ICOS/Hycon*) (where IFB states experience requirement was for purpose of determining bidders ability, it is a matter of responsibility not responsiveness and can be cured after bid opening).
- 85:45 Newberg, OR (X, 9-11-85) (*Contractors, Inc.*) (experience of key personnel was a matter of responsibility not responsiveness and the affirmative finding of responsibility is a discretionary decision which will not be reviewed in the absence of fraud or bad faith).
- 85:70 Modesto, CA (IX, 12-20-85) (*Industrial Pump Supply*) (where bidder was rejected for lack of experience, EPA found the IFB

adequately defined experience and recipient had rational basis for rejecting bidder) (grantee may require proven product rather than newly designed one).

Innovative Technology

- 84:43 Troup, TX (VI, 9-4-85) (*McKinney & Moore, Inc.*) (more restrictive specifications are permissible).

Invitation for Bids (IFB)**General**

- 85:08 Milwaukee WI (V, 1-31-85) (*Kari-Kool Transports, Inc.*) (bidder unjustifiably relied on oral representations made at pre-bid conference).

Ambiguity

- 85:22 Detroit, MI (V, 4-18-85) (*ETS Towers, Inc.*) (requirement that experience be documented failed to state how experience would be objectively evaluated).
- 85:45 Monterey, CA (IX, 9-12-85) (*Mortenson/Natkin*) (no ambiguity where IFB clearly states that failure to list subcontractor renders bid nonresponsive and adds no other language describing rejection or permitting acceptance of nonconforming bid) (explanation of "two prong" test applied in other EPA decisions).
- 85:67 Monterey, CA (IX, 12-17-85) (*Dillingham Const., Inc.*) (City correctly found bid responsive where bidding documents did not clearly and unequivocally put bidders on notice that failure to comply with requirements that typically concern responsibility would render a bid nonresponsive) (EPA will examine not only the language in relevant portions of IFB but consider the bid documents in their entirety to determine overall clarity).

Defective

No Entries.

License Requirement

- 85:05 Carson City, NV (IX, 1-18-85) (*Nevada Const. & Mining*) (EPA would not consider whether state licensing law requiring license prior to bidding unreasonably restricted competition, since bidder's delay in applying for the license contributed to his inability to obtain it in time).

Listing Subcontractors

- 85:06 Addison, IL (V, 1-25-85) (*Sollitt Const. Co.*) (where IFB clearly required bidders to list manufacturers,

bid was properly rejected for failing to comply).

- 85:08 Addison, IL (V, 3-19-85) (*Sollitt Const. Co.*) (Reconsideration) (bid was nonresponsive because it named several subcontractors but did not identify which was to be used).
- 85:17 Mackinac Is., MI (V, 3-13-85) (*Barton-Malow Co. & Omega Const.*) (where IFB is ambiguous, subcontractor listing is matter of responsibility rather than responsiveness).
- 85:20 Leesburg, VA (III, 4-2-85) (*James Federline and MCI Const., Co.*) (failure to list subcontractors did not render bid nonresponsive).
- 85:32 Warren, OH (V, 6-6-85) (*RAM Engineering, Inc.*) (MBE subcontractor substitution is not protestable because it is a matter of contract administration, not procurement).
- 85:37 Bradenton, FL (IV, 7-15-85) (*ICOS/Hycon*) (bid cannot be rejected for failure to list subcontractors where IFB did not expressly require it as a matter of responsiveness).
- 85:45 Newberg, OR (X, 9-11-85) (*Contractors, Inc.*) (bid cannot be rejected for failure to list subcontractors where IFB did not expressly require it as a matter of responsiveness).
- 85:48 Monterey, CA (IX, 9-12-85) (*Mortenson/Natkin*) (bid failing to list equipment manufacturer must be rejected where IFB clearly stated listing was a matter of responsiveness—under Part 33 regulation IFB need not state that bid will be rejected, provided it clearly states bid will be nonresponsive and contains no conflicting language suggesting grantee may be permitted to accept nonresponsive bid).
- 85:65 Jacksonville, AR (VI, 12-12-85) (*Tenco Hydro, Inc.*) (where IFB did not state that failure to list subcontractors would render bid nonresponsive, grantee may award contract to bidder that did not accurately list its subcontractors) (listing a supplier in its bid did not obligate prime to award subcontract to that supplier).
- 85:67 Monterey, CA (IX, 12-17-85) (*Dillingham Const. Inc.*) (failure of listed equipment to meet the specifications does not render prime's bid nonresponsive where IFB required that equipment be listed but did not require that bids be rejected for listing unqualified equipment).
- 85:68 Monterey, CA (IX, 12-17-85) (*Fluor Constructors, Inc.*) (same analysis as Monterey, Dillingham, IX, 12-17-85, this subject index).

Minority Business and Women's Business Enterprise (MBE/WBE)

- 85:14 Washington Suburban Sanitary Commission (III, 2-22-85) (*Hycon & Professional Services Group*) (documentation was matter of responsibility, not responsiveness).
- 85:15 Lake Accotink Park, Fairfax VA (III, 2-22-85) (*Lyons Const.*) (documentation a matter of responsibility).
- 85:18 Lake Geneva, WI (V, 3-18-85) (*Camosy Const.*) (MBE documentation is matter of responsibility where IFB did not clearly state otherwise).
- 85:19 Kankakee, IL (V, 3-28-85) (*Mehta & Assoc.*) (prime may rely on MBE's self certification) (prime's evaluation of subcontractor is not protestable).
- 85:23 Unalaska, AL (X, 4-28-85) (*Rockford Corp.*) (failure to include documentation did not render bid nonresponsive where IFB did not clearly require it).
- 85:26 Scales Mound, IL (V, 5-14-85) (*Smith & Andrews Const. Co.*) (EPA policy is to treat MBE documentation as matter of responsibility but grantee made it matter of responsiveness and rejected nonconforming bid accordingly).
- 85:32 Warren, OH (V, 6-6-85) (*RAM Engineering, Inc.*) (subcontractor substitution is not protestable) (unsubstantiated allegation that prime negotiated in bad faith does not meet burden of proof needed for protest) (WBE firm has no standing to challenge the goal established by grantee).
- 85:34 Cannon Falls, MN (V, 6-28-85) (*Lysne Const., Inc.*) (bid responsive where it documented positive efforts and reasons for not meeting MBE goal).
- 85:50 Lorain, OH (V, 9-17-85) (*Mosser Const., Inc.*) (grantee cannot reject bid as nonresponsive when bidding documents contain contradictory language and, when read as a whole make documentation a matter of responsibility).
- 85:51 Rantoul, IL (V, 9-18-85) (*American Surfpac Corp.*) (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds).
- 85:53 Anne Arundel County, MD (III, 9-27-85) (*Allied Contractors, Inc.*) (bidder can meet requirements by either meeting goal or showing good faith efforts) (documentation a matter of responsibility) (EPA affirmed grantee determination of good faith).
- 85:57 Pueblo, CO (VIII, 10-11-85) (*WesTech Engineering, Inc.*) (substitution of firms for business reasons does not violate EPA policy)

(prime's business decision to place one large order instead of dividing into smaller orders will not be reviewed by EPA).

- 85:58 Pueblo, CO (VIII, 10-11-85) (*Tenco Hydro, Inc.*) (prime's substitution of firms does not violate EPA regulation and is not protestable) (substitution does not violate affirmative steps) (protester lacks standing to challenge the way grantee calculated MBE participation).
- 85:65 Jacksonville, AR (VI, 12-12-85) (*Tenco Hydro, Inc.*) (MBE policy does not prohibit bid shopping) (prime did not bid shop but rather substituted the MBE based on a reconsideration of previous offers which were less expensive—prime did not negotiate prices with subcontract offerors after bid opening and was not required to do so) (no violation of the policy that total projects be divided into small tasks where it is not economically feasible to do so).
- 85:66 Newport, RI (I, 12-17-85) (*Peabody N.E., Inc.*) (bid documents when read as a whole did not make submission of certificates a matter of responsiveness).

Negotiated Procurement

- 85:07 Maine Dept. of Environmental Protection, MA (I, 1-30-85) (*Metcalfe & Eddy*) (review of competitive negotiations is limited to whether bid evaluation was based on RFP criteria).
- 85:10 Lake County Sanitation District (IX, 2-5-85) (*Peak & Assoc.*) (A/E procurement—where RFP did not provide that proposer's failure to respond adequately to one of the evaluation factors would result in his rejection, grantee's affirmative evaluation was reasonable).

Prequalification

- 85:01 Ft. Lauderdale, FL (V, 1-8-85) (*Compost Systems Co.*) (City changed deadline for prime contract bid submittal but enforced the original deadline for submitting prequalification packages thereby incorrectly rejecting package submitted after that deadline but more than 30 days before the revised bid opening date).
- 85:13 Dothan, AL (IV, 2-21-85) (*American Bioreactor and Fluid Systems, Inc.*) (rejection of proposed composting system which manufacturer had never before designed and fabricated to the required dimensions was affirmed).
- 85:16 Mission, TX (IV, 3-1-85) (*Envirodyne Inc.*) (must be based on specifications, not on undisclosed

subjective criteria) (data submission requirement must be rationally based on underlying need for considering data).

- 85:24 Chelan, WA (X, 4-28-85) (*Walker Process Corp.*) (where only manufacturer could prequalify, it was unjustified sole source procurement).
- 85:27 Lansing, MI (V, 5-17-85) (*Acrison, Inc.*) (equipment rejected for prequalification because insufficient data submitted—protester did not show grantee lacked rational basis for equipment design features) (time limitations for filing protest). (*But see Chelan, WA (X, 6-25-86)*).
- 85:39 Lewes, DE (III, 7-19-85) (*Mixing Equipment Co.*) (requiring submission of working drawings that describe project modifications that will be required by use of equipment does not unduly restrict competition) (failure to submit information gives rational basis for rejecting equipment) (IFB authorizing only general contractors to submit equipment for prequalification unduly restricts competition).
- 85:44 Chariton, IA (VII, 9-9-85) (*Electrical Control Systems, Ltd.*) (proposal may be rejected as nonresponsive for not providing required information needed for determining responsiveness to specifications).
- 85:48 Frederick, MD (III, 9-17-85) (*Dresser Industries*) (successful bidder permitted to substitute a nonprequalified supplier for a prequalified supplier named in its bid).
- 85:49 Frederick, MD (III, 9-17-85) (*RDP Co.*).

Responsibility

- 85:14 Washington Suburban Sanitary Commission (III, 2-22-85) (*Hycon and Professional Services Group*) (MBE documentation is matter of responsibility unless bid documents unambiguously state it to be matter of responsiveness).
- 85:15 Lake Accotink Park, Fairfax VA (III, 2-22-85) (*Lyons Const.*) (documentation a matter of responsibility).
- 85:17 Machinac Is., MI (V, 3-13-85) (*Barton-Malow Co. & Omega Const.*) (where IFB ambiguous, subcontractor listing is matter of responsibility rather than responsiveness).
- 85:18 Lake Geneva, WI (V, 3-18-85) (*Camosy Const.*) (MBE documentation is matter of responsibility where IFB did not clearly state otherwise).
- 85:20 Leesburg, VA (III, 4-2-85) (*James Federline, Inc. & MCI Const., Co.*) (grantee determination of nonresponsibility based on prior poor

contract performance was rationally based) (failure to list registered contract number in bid is matter of responsibility not responsiveness) (subcontractor listing) (inclusion of "experience, equipment and financial statement" is matter of responsibility, not responsiveness).

- 85:22 Detroit, MI (V, 4-18-85) (*ETS Towers, Inc.*) (documentation of experience is a matter of responsibility rather than responsiveness where bid documents did not clearly make it responsiveness).
- 85:26 Scales, Mound, IL (V, 5-14-85) (*Smith & Andrews Const. Co.*) (EPA policy to treat MBE documentation as matter of responsibility).
- 85:30 Pittsylvania, PA (III, 5-24-85) (*J & D Constructors, Inc.*) (responsibility determination is discretionary grantee decision which will not be reversed unless it lacks rational basis or is made in bad faith) (grantee found bidder nonresponsive because it failed to obtain performance bonds within required time after contract award).
- 85:34 Cannon Falls, MN (V, 6-28-85) (*Lysne Const. Co.*) (MBE compliance demonstrated after bid opening).
- 85:37 Bradenton, FL (IV, 7-15-85) (*ICOS/Hycon*) (experience requirements could be cured after bid opening since IFB made it a matter of responsibility).
- 85:45 Newberg, OR (X, 9-11-85) (*Contractors, Inc.*) (affirmative finding of responsibility will not be reviewed in the absence of fraud or bad faith) (manufacturers listing and experience of key personnel were matters of responsibility).
- 85:52 Seneca, IL (V, 9-18-85) (*Mehta & Associates, Ltd. and Shafer Engineering*) (where grantee found bidders nonresponsive due to lack of experience and adequate manpower, EPA will not reverse determination absent showing of clear error or lack of rational basis).
- 85:53 Anne Arundel County, MD (III, 9-27-85) (*Allied Contractors, Inc.*) (EPA affirmed grantee finding that bidder made good faith MBE efforts).
- 85:62 Broomfield, CO (VIII, 11-26-85) (*Summit Const., Inc.*) (information developed post bid opening involves responsibility, not responsiveness) (bid may be rejected where owner determines bidder does not intend to comply with specifications) (grantee rejection of bidder lacked a rational basis and was reversed by EPA).
- 85:66 Newport, RI (I, 12-17-85) (*Peabody N.E., Inc.*) (bid documents when read as a whole did not make submission of certificates a matter of responsiveness).

- 85:69 Anne Arundel, MD (III, 12-20-85) (*Johnson Const. Co.*) (documentation was a matter of responsibility rather than responsiveness) (where grantee had rational basis for rejecting bid for failing to meet MBE requirements, EPA upheld the decision).

Responsiveness

- 85:06 Addison, IL (V, 1-25-85) (*Sollitt Const. Co.*) (bid was nonresponsive for failing to list equipment manufacturers when IFB clearly required it).
- 85:06 Addison, IL (V, 3-19-85) (*Sollitt Const. Co.*) (Reconsideration) (failure to identify intended subcontractor rendered bid nonresponsive).
- 85:23 Unalaska, AK (X, 4-28-85) (*Rockford Corp.*) (bid that failed to include MBE/EEO documentation was responsive since IFB did not clearly require documentation with the bids).
- 85:26 Scales Mound, IL (V, 5-14-85) (*Smith & Andrews Co.*) (bid properly rejected for failing to include MBE documentation).
- 85:37 Bradenton, FL (IV, 7-15-85) (*ICOS/Hycon*) (where failure to comply with bid terms reflect on responsibility rather than responsiveness they may be waived) (in order to be responsive on one alternate it was not necessary to submit bid on other alternate).
- 85:40 Johnson County, KS (VII, 7-25-85) (*Martin Eby Const.*) (where bid conditioned upon prior approval of "or equal" equipment and IFB specified it would be evaluated post award only, bid was nonresponsive).
- 85:43 Troup, TX (VI, 9-4-85) (*McKinney & Moore, Inc.*) (bid offering equipment that failed to conform to the specifications was nonresponsive).
- 85:44 Chariton, IA (VII, 9-9-85) (*Electrical Control Systems, Ltd.*) (under prequalification procedure, equipment was rejected for failure of bidder to submit required information and data with its proposal).
- 85:45 Newberg, OR (X, 9-11-85) (*Contractors, Inc.*) (defined as a bid in exact accord with the material terms of the IFB) (manufacturer's listing was not a matter of responsiveness).
- 85:46 Monterey, CA (IX, 9-12-85) (*Mortenson/Natkin*) (where IFB clearly states that failure to list subcontractors will render bid nonresponsive and IFB does not add language describing bid rejection, a bid which fails to comply is nonresponsive and must be rejected).
- 85:54 Anne Arundel, MD (III, 9-27-85) (*Roberts Filter Manufacturing Co., Inc.*) (bid offering clay instead of

specified plastic underdrains was nonresponsive).

85:55 Little Blue Valley, MO (VII, 10-1-85) (*Roots Division of Dresser Industries*) ("or equal" equipment must be rejected where it does not meet specified design features).

85:61 Jordan, MI (V, 10-21-85) (*Veit & Co.*) (bid was nonresponsive because it failed to bid on one of the required alternative unit items).

85:62 Broomfield, CO (VIII, 11-26-85) (*Summit Const., Inc.*) (bid responsiveness must be determined at time of bid opening based on information submitted in bid) (information developed subsequent to bid opening cannot be used to determine responsiveness) (by submitting responsive bid, bidder agrees to supply equipment meeting specifications and may be required to provide different equipment if that listed in its bid is determined not to meet the specifications) (absent prequalification requirement, grantee need not evaluate equipment listed by low bidder prior to contract award) (rejection of prime bidder because one item of equipment will not qualify as "or equal" was not proper).

85:64 August, GA (IV, 12-5-85) (*Beiler Equipment Co., Inc.*) (equipment failing to meet specifications is properly rejected and bidder cannot rely on grantee's oral statement that led him to believe the nonresponsive equipment would be accepted).

85:68 Monterey, CA (IX, 12-17-85) (*Fluor Constructors, Inc.*) (failure of equipment listed in bid to meet the specifications does not render prime bid nonresponsive where by its bid, bidder has committed to meeting the specifications and substituting other equipment if necessary).

85:69 Anne Arundel, MD (III, 12-20-86) (*Johnson Const. Co.*) (MBE documentation is not a matter of responsiveness unless the IFB clearly so states) (documentation was a matter of responsibility rather than responsiveness) (where grantee had rational basis for rejecting bidder for failing to meet MBE requirements, EPA upheld the decision).

Small Business (SBE)

85:51 Rantoul, IL (V, 9-18-85) (*American Surfpac Corp.*) (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds) (grantee adequately divided its procurement requirements to comply with EPA policy).

Specifications

Ambiguous (See Invitation for Bid (IFB))

Brand Name or Equal.

85:39 Lewes, DE (III, 7-19-85) (*Mixing Equipment Co.*) (improper to use brand name or equal specifications unless it is impractical or uneconomical to use other types of specifications) (specifications defective for not identifying salient requirements).

85:39 Lewes, DE (III, 8-28-85) (*Mixing Equipment Co.*) (Reconsideration) (listing all the specifications of named brand is not a proper listing of salient features).

85:40 Johnson County, KS (VII, 7-25-85) (*Martin Eby Const.*) (where IFB stated that "or equals" would only be evaluated after contract award, grantee improperly accepted a bid that was conditioned on preaward approval of equipment).

85:49 Frederick, MD (III, 9-17-85) (*RDP Co.*) (where IFB was ambiguous concerning what salient features were required, a supplier would be unable to determine or demonstrate that its product is "equal").

85:55 Little Blue Valley, MO (VIII, 10-18-85) (*Roots, Dresser*) (permitting award to supplier whose equipment does not meet specifications would prejudice responsive bidders).

85:67 Monterey, CA (IX, 12-17-85) (*Dillingham Const., Inc.*) (failure of equipment listed in bid to satisfy specifications does not render prime bid nonresponsive where, by its bid, bidder had committed to meeting the specifications and substituting other equipment if necessary).

Competition

85:42 Glenwood and Long Beach, MN (V, 8-9-85) (*J & S Contracting*) (specification limiting competition is not improper unless supplier would be unable to determine or demonstrate that its product is "equal").

85:44 Chariton, IA (VII, 9-9-85) (*Electrical Control Systems, Ltd.*) (requiring equipment supplier to be a manufacturer unduly restricts competition).

85:51 Rantoul, IL (V, 9-18-85) (*American Surfpac Corp.*) (bonding requirement did not violate SBE/MBE policy where several firms obtained the required bonds) (grantee adequately divided its procurement requirements to comply with EPA policy).

85:58 Pueblo, CO (VIII, 10-11-85) (*Tenco Hydro, Inc.*) (prequalified supplier cannot protest that independent decision of prime to substitute another firm harmed its ability to compete).

Design

85:43 Troup, TX (VI, 9-4-85) (*McKinney & Moore, Inc.*) (basic design decision is not protestable).

Local Preference

No Entries.

Minimum Needs (See Performance Based and Unduly Restrictive)

No Entries.

Nonrestrictive (See Unduly Restrictive)

No Entries.

Oral Statements

85:08 Milwaukee, WI (V, 1-31-85) (*Kari-Kool Transports, Inc.*) (reliance on incorrect oral advice given at pre-bid conference is not protestable).

85:18 Lake Geneva, WI (V, 3-18-85) (*Camosy Const.*) (Grantee's oral statements at pre-bid conference do not have force of law and cannot be basis for protesting City's subsequent responsibility determination).

85:64 Augusta, GA (IV, 12-5-86) (*Beiler Equipment Co., Inc.*) (a bidder who relies on oral statements regarding bidding documents does so at its own risk).

Performance Based

85:24 Chelan, WA (X, 4-26-85) (*Walker Process Corp.*) (EPA funds minimum performance needs, not ideal or best design—the specifications improperly focused on design features instead).

85:44 Chariton, IA (VII, 9-9-85) (*Electrical Control Systems, Ltd.*) (EPA rejects arguments that extra safety and economic stability factors that a manufacturer can provide are justified by the minimum performance needs of the project).

85:49 Frederick, MD (III, 9-17-85) (*RDP Company*) (for engineer to specify particular equipment he must show what is unique about a project that justifies it) (must compare operational efficiency of various equipment performing same task but having different configurations) (no rational performance based reasons given for design features).

Salient Requirements (See Brand Name or Equal)

No Entries.

Sole Source

85:24 Chelan, WA (X, 4-26-85) (*Walker Process Corp.*) (it was improper to formally advertise for procurement where only one offeror was able to effectively compete) (City

failed to justify need for sole source and failed to perform cost analysis).
 85:42 Glenwood and Longbeach, MN (V, 8-9-85) (*J & S Contracting, Inc.*) (specification allowing a single material which can be obtained from several sources is not "sole source" specification).
 85:43 Troup, TX (VI, 9-4-85) (*McKinney & Moore, Inc.*) (equipment available from a sole source must be procured through negotiation not formal advertising) (grantee should probably find out whether there are two equipment sources before deciding to procure as subcontract items under formally advertised prime bids) (if only one supplier can be used by all primes there is potential for unreasonable bid prices by the supplier).

Unduly Restrictive

85:24 Chelan, WA (X, 4-28-85) (*Walker Process Corp.*) (grantee's description of requirements focused on design features rather than performance characteristics) (specification would require manufacturers to duplicate competitor's design).
 85:42 Glenwood and Long Beach, MN (V, 8-9-85) (*J & S Contracting*) (specification limiting competition is not improper unless its restrictive features are not necessary to the minimum project needs) (grantee explained rational performance basis for requiring single material).
 85:44 Chariton, IA (VII, 9-9-85) (*Electrical Control Systems, Ltd.*) (requiring supplier to be a manufacturer is unduly restrictive—EPA rejects arguments that extra safety and economic stability factors that a manufacturer can provide are justified by the minimum performance needs of the project).
 85:49 Frederick, MD (III, 9-17-85) (*RDP Company*) (where protester shows its

equipment was eliminated, engineer must justify why particular project needs particular equipment—cannot require more than is necessary for the minimum performance needs) (specification that requires manufacturer to duplicate competitor's design places a premium on design rather than performance) (even where manufacturer can duplicate competitor's design, competition is discouraged).

State and Local Law

85:14 Washington Suburban Sanitary Commission (III, 2-22-85) (*Hycon and Professional Services Group*) (although state law gives grantee discretion in matters of contract award, that discretion is limited by federal procurement requirements).
 85:20 Leesburg, VA (III, 4-2-85) (*James Federline, Inc. and MCI Const., Inc.*) (in determining questions of State law, EPA relies on State authorities and will accept a grantee's interpretation of State law unless it lacks a rational basis).
 85:33 Milwaukee, WI (V, 6-19-85) (*Staff Electric Co.*) (where grantee waives failure to notarize bid as a minor irregularity and gives legal opinion that State law permits the waiver, EPA will not review the matter where there is no overriding federal interest).

Subcontract Award

85:44 Chariton, IA (VII, 9-9-85) (*Electrical Control Systems, Ltd.*) (requiring equipment supplier to be a manufacturer unduly restricts competition).
 85:48 Frederick, MD (III, 9-17-85) (*Dresser Industries*) (successful bidder was permitted to substitute a nonprequalified supplier for a prequalified supplier named in its bid).
 85:57 Pueblo, CO (VIII, 10-11-85) (*WesTech Engineering, Inc.*)

(subcontract substitution is matter of contract administration, not protestable).

85:58 Pueblo, CO (VIII, 10-11-85) (*Tenco Hydro, Inc.*) (prime contractor's decision concerning subcontract award, substitution of firms, is not protestable) (EPA policy not to interfere in business judgments of primes) (no EPA restriction of prime requiring subcontractors to meet additional experience, bonding, warranty requirements).

Waiver

85:16 Mission, TX (IV, 3-1-85) (*Envirodyne, Inc.*) (grantee used unduly restrictive specifications and attempted to waive them to accept a nonresponsive offeror).
 85:21 Wheatfield, NY (II, 4-12-85) (*Milherst Const., Inc.*) (grantee could waive IFB requirement that bids on two sections of a project must contain identical unit prices since it had a negligible effect and no unfair advantage occurred).
 85:33 Milwaukee, WI (V, 6-19-85) (*Staff Electric Co.*) (failure to notarize bid as allegedly required by State law may be waived as minor irregularity).
 85:37 Bradenton, FL (IV, 7-15-85) (*ICOS/Hycon*) (failure to comply with terms of bid such as certificates and forms may be waived and cured after bid opening where items reflect on responsibility rather than responsiveness).
 85:38 Clarence, NY (II, 7-18-85) (*Hydro-Group, Inc.*) (failure to sign formal acknowledgment of receipt of IFB addendum waived as minor informality where bidder included a quotation for the additional addendum item in its bid and referred to the addendum).

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Subject Index

Appeal Issues

P R O C E D U R A L A P P E A L M A T T E R S

BURDEN OF PROOF

Burden of proof

- 84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Cons. Co.*) (grantee burden where proposes to award to other than low bidder).
- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (protester's burden where award to apparent low bidder).
- 84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (protester must show specification unduly restricted it from competition).
- 84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Gariup Const. Co., Inc.*) (protester's burden to prove his competitor's equipment was not equal to brand name salient requirements).
- 84:37 Lewistown, MT (VIII, 9-27-84) (*Process Equipment Co.*) (protester's burden where challenges application of specification).
- 84:47 Reelfoot Lake, TN (IV, 11-6-84) (*Carlon, Inc.*) (shifting burden where unduly restrictive specifications alleged).

Burden of Proof

- 83:01 Spearfish, SD (VIII, 1-11-83) (*Rickel Manufacturing Co.*) (grantee must prove exclusionary specification based on minimum performance needs).
- 83:03 Columbus, OH [Reconsideration] (V, 6-6-83) (*Cobey Metro-Waste Compositing System, Inc.*) (grantee must prove rational basis for experience and bonding requirements if protestor shows adverse effect).
- 83:16 Halstead, Hutchinson, KS (VII, 3-9-83) (*Charles E. Stevens*) (protestor's burden to prove intent to bid).
- 83:27 Port Arthur, TX (V, 5-12-83) (*Robert Bossow, Inc.*) (bidder failed to prove reliance on ambiguity).
- 83:39 Philadelphia, PA (III, 6-22-83) (*Fisher & Porter Co.*) (shifting burden).

- 83:43 Toledo, OH (V, 6-29-83) (*Industrial Pump & Equipment Corp.*) (protestor must show specification not minimum performance).
- 83:63 Monterey CA (IX, 11-4-83) (*Power Systems*) (successful supplier cannot prove specifications excluded it).
- 83:68 Tri-City, OR (X, 12-9-83) (*Dresser Industries, Inc.*) (shifting burden where restrictive specification alleged did not exclude equipment).
- 83:69 Conroe, TX (VI, 12-13-83) (*KNC, Inc.*) (protestor must show prejudice to competition).

Burden of Proof

- 81:22 Corvallis, OR (X, 4-10-81) (*Environmental Pollution Control, Inc.*) (shifting burden when grantee awards to apparent nonresponsive bidder).
- 81:24 El Dorado Irrigation District, CA (IX, 4-13-81) (*Lotus Const.*) (protestor's, where award to apparent low bidder).
- 81:33 Lynchburg, OH (V, 4-30-81) (*Dow Const.*) (failure to rebut sworn statements).
- 81:45 Pasadena, TX (VI, 8-17-82) (*Parkson*) (shifting throughout restrictive specification protest).
- 81:69 Houma, LA (VI, 8-19-81) (*Hydromatic Pump*) (shifting).
- 81:80 Sacramento County, CA (IX, 10-2-81) (*Westates Carbon Co.*) (sole source procurement—shifting burden).
- 81:85 Sacramento, CA (IX, 10-14-81) (*Dredge Masters International*) (grantee's, for determining apparent low bid nonresponsive).
- 81:106 Gower, MO (VII, 12-29-81) (*Empire Generator*) (protestant must show restrictive specification excluded it).
- 82:20 Baltimore, MD (III, 4-1-82) (*J. Vinton Schafer & Sons*) (grantee's, if rejects apparent low bidder).

BURDEN OF PROOF (CONTINUED)

82:27 Eveleth, MN (V, 5-3-82)
(Gridor Const.) (protestor's, if award to apparent low bidder).

82:37 Cullman, AL (IV, 7-8-82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (grantee's, if award not to low bidder).

82:41 Abilene, TX (VI, 7-27-82) (R&S Engineering) (shifting on restrictive specifications).

82:43 Brockton, MA (I, 8-18-82)
(Tenco Hydro) (grantee must show minimum performance needs) (grantee must prove untimely appeal).

82:45 Pasadena, TX (VI, 8-17-82)
(Parkson) (protestor must show product excluded).

82:49 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (shifting throughout restrictive specification protest).

82:61 El Dorado, KS (VII, 11-18-82)
(Oursler Brothers Const.) (grantee must show rational basis for exclusionary design requirements).

82:66 Smyrna, TN (IV, 11-29-82)
(Charles Finch Co. and Waterman Industries) (grantee's, where protestor proves restrictive specification).

Burden of Proof

1. DeKalb County, GA (IV, 2-29-80)
(Southeast Grading, Inc.) (on procurement agency in award to other than low bidder).

2. Cordele, GA (IV, 5-1-80) (Franklin Aluminum Division/Hoover Universal, Inc.) (on protester in restrictive specification claim).

3. Clarksville, TN (IV, 6-5-80) (Penetryn Systems, Inc.) (on procurement agency if low bidder is nonresponsive).

4. Ashley Valley Sewer Management Board, UT (VIII, 11-20-80) (Western Utility Contractors, Inc.) (on protester to show violation of procurement principles).

Burden of Proof

1. Bend, OR (X, 5-15-79) (Industrial Pump Sales Co.) (burden on grantee)
2. Cleveland Regional Sewer District, OH—clarification (V, 12-28-79)
(Water Pollution Control Corp.)
3. Laurens County, SC (IV, 7-10-79)
(Carolina Concrete Pipe Co., et al.)
4. Sewer Authority Mid-Coastside, CA (IX, 7-23-79; errata 9-21-79) (Radco Construction, Inc.)
5. Skagit County, WA (X, 5-4-79)
(Glantz Supply, Inc.)
6. Metropolitan Sanitary District of Greater Chicago, IL (V, 10-11-79)
(Morrison-Knudsen-Paschen)
(mistake)

Burden of Proof (e.g., § 35.939(g), as well as subtler issues)

1. Kitsap County, Washington (X, 2-3-78)
(Will Construction Co., Inc.) where grantee may be awarding to other than low bidder)

2. Webster, Iowa (VII, 2-10-78)
(Environmental Systems Division of George A. Hormel & Co. Inc.)

3. Effingham, Illinois (V, 3-6-78) (Mautz & Oren, Inc.) (failure of prime to list line item prices in bid)

4. Turlock, California (IX, 3-6-78) (Riga Inc.)

5. Southern Clinton County, Michigan (V, 8-11-78) (A. Z. Shmina) (for third low bidder where low prime fails to include all subcontractor names and prices at time of bid submission)

6. Toppenish, Washington (X, 10-20-78)
(Ridge Construction Co.) (burden shifting from protestant to grantee)

7. Indianapolis, Indiana (V, 10-31-78)
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Burden of Proof (§ 35.939(g)).

1. Omaha, Nebraska (VII, 9-14-74)
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2. Grand Forks, North Dakota (VIII, 9-25-74) (Komline-Sanderson)

3. Phoenix, New York (II, 5-7-76)
(Vincent J. Fasano Inc.)

4. Round Hill, Virginia (III, 5-13-76)
(Frank L. Black Jr.)

5. Sioux City, Iowa (VII, 7-12-76)
(U.S. Enviro-Con, Inc.)

6. Norwalk, Connecticut (I, 11-16-76)
(Brunalli Construction Co.)

7. Fairfax, Virginia (III, 4-14-77)
(Concrete Pipe & Products Inc.)

8. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-3-77) (Palco; and Kraus-Anderson)

9. Montgomery, Alabama (IV, 5-11-77) (Envirotech Corp.)

10. Ceres, California (IX, 6-20-77)
(W. M. Lyles Co.)

11. Pepperell, Massachusetts (I, 11-22-77) (Catamount Construction Co.)

CHOICE OF LAW

State and Local Law

- 84:05 City of New York, NY (II, 2-2-84)
(*Schiavone Const. Co. & Worth Engineering, Inc., A Joint Venture*) (local law unduly restricting competition by creating local preference is unenforceable on EPA project).
- 84:30 County of Erie, NY (II, 8-16-84)
(*Amadori Const. Co.*) (state law did not give grantee unlimited discretion in determining low bidder).
- 84:53 MSD of Greater Chicago, IL (V, 12-13-84) (*Moretrench American Corp.*) (deference to grantee interpretation of State licensing law).

Choice of Law

A. General

- 83:34 New Concord, OH (V, 8-10-83)
(*Adams Robinson Enterprise, Inc.*) (EPA reliance on grantee interpretation of state and local law).
- 83:51 Santa Barbara, CA (IX, 8-15-83)
(*Namtec Corp. & Union Engineering Co.*) (under State law warranty qualification did not negate express warranty).
- 83:53 New Haven, CT (I, 8-19-83)
(*Blakeslee arpaia Chapman, Inc.*) (interpretation of local law—deference to City's legal opinion).
- 83:61 Johnston, OH (V, 10-24-83)
(*Zimpro, Inc.*) (protestor barred from immediate protest where issues primarily determined by state law).
- 83:66 Boston, MA (I, 12-9-83)
(*Schiavone Const., Co.*) (deference to grantee interpretation where State law unclear and no overriding federal principle).

B. Local Law

- 83:07 Oklahoma City, OK (VI, 2-4-83)
(*D.J. Domas, Inc.*) (requiring submission of duplicate copies of bids).

C. State Law

- 83:05 Morton, MS (IV, 1-25-83)
(*Associated Cosnt., Inc.*) (City attorney opinion on state licensing requirement).
- 83:13 Sandpoint, ID (X, 3-3-83) (*Lying Const., Co.*) (listing subcontractors required, no overriding federal interest).

Choice of Law

State Law

- 81:09 Wilmington, DE (III, 2-12-81)
(*Ashbrook-Simon-Hartley*) (grantee may make price cap matter of responsiveness).
- 81:67 Wanaque Sewerage Authority, NJ (II, 8-18-81) (*A. Cestone Co.*) (correcting bid and displacing low bidder).
- 81:78 Lake County, CA (IX, 9-24-81)
(*Rickel Manufacturing Corp.*) (grantee's attorney's opinion interpreting state law supports award).
- 82:21 Fallbrook Sanitary District, CA (IX, 4-6-82) (*Metro-Young/Lopez Const., A Joint Venture*) (grantee's interpretation).
- 82:22 Goldendale, WA (X, 4-16-82)
(*IMCO General Const.*) (state law requiring bid rejection where irregularity).
- 82:69 Globe, AZ (IX, 12-8-82)
(*Mercury Const., Inc.*) (protest proceedings governed by local law).

Choice of Law

A. General

No entries.

B. Fundamental Federal Procurement Principles

1. Colfax Public Service District, WV (III, 8-29-80) (*Salerno Brothers, Inc.*) (bid rejection for failure to acknowledge wage rate addendum).
2. Alma, NE (VII, 9-4-80) (*William Anderson Company, Inc.*) (bidders advised of basis for evaluation).

C. GAO Decisions—Effect of

1. Norwich, CT (I, 2-1-80) (*Fantoni Company*) (absence of state law).

D. State Law

1. Mount Holly Sewerage Authority, NJ (II, 2-8-80) (*Neshaminy Constructors, Inc.*) (State Court action).
2. Metropolitan Sanitary District of Greater Chicago, IL (V, 2-27-80) (*Shea-Kiewit*) (post-award contract claim).
3. Hastings, NE (VII, 3-7-80) (*Horizon Construction Company; Olson Construction Company*) (State Open Meeting law).
4. Whiteville, NC (IV, 3-28-80) (*Astor Bolden Enterprises, Inc. T/A Quality Sanitary Services Co.*) (contractor bidding license, number of bids).
5. Sacramento Regional County Sanitation District, CA (IX, 5-9-80) (*Burdick Contractors, Inc.*) (state law on bid mistake).

CHOICE OF LAW (CONTINUED)

6. Monmouth, OR (X, 8-21-80) (Chinook Pacific Corporation) (bid withdrawal).
7. Colfax Public Service District, WV (III, 8-29-80) (Salerno Brothers, Inc.) (state law does not require award to low bidder).
8. Northeast Ohio Regional Sewer District, OH (V, 9-4-80) (D. E. Williams Electric, Inc.) (relief for bid mistake).
9. Ashley Valley Sewer Management Board, UT (VIII, 11-20-80) (Western Utility Contractors, Inc.) (correction of error in unit price).
10. Ashley Valley Sewer Management Board, UT (VIII, 11-28-80) (Van Staveren Construction, Inc.) (state license, dollar bid amount).
11. Pierce County, WA (X, 12-23-80) (Frank Coluccio Construction Company) (reversal of decision to reject bids).

Choice of Law

A. General

1. Newton, IA (VII, 12-6-79) (Municipal and Industrial Pipe Services, Ltd.)

B. Fundamental Federal Procurement Principles

1. Atlanta, GA (IV, 3-21-79) (Fruin-Conlon Corp.) (inconsistent local ordinance)
2. Gainesville, GA (IV, 6-15-79) (National Hydro Systems, Inc. (II)) (evaluation of equipment)
3. Skagit County, WA (X, 5-4-79) (Glantz Supply, Inc.)

C. State Law

1. Caldwell, ID (X, 11-1-79) (Neilson & Co)
2. Detroit, MI (V, 6-29-79) (C. J. Rogers, et al., A Joint Venture) (availability of local share)
3. Detroit, MI (V, 12-11-79) (Pollutech Inc. and Glenn E. Wash Associates, A Joint Venture) (material deviation from IFB)
4. Detroit, MI (V, 12-11-79) (Dynamic Construction Co.)
5. Jackson, CA (IX, 7-5-79) (Joseph R. Ramos Pipeline Engineering) (inaccuracies/irregularities in bid)
- *6. Metropolitan Sanitary District of Greater Chicago, IL (V, 10-11-79) (Morrison-Knudsen-Paschen) (mistake)

Choice of Law—General.

1. New York City, New York (II, 1-12-78) (Schiavone Construction Co.) (public interest standard: mistake—bidder intent rule) [Note: The determination was affirmed in *Schiavone Construction Co. v. Samowitz*, 451 F.Supp. 29 (S.D.N.Y. 1978); *aff'd without opinion*, 578 F.2d 1370 (2d Cir. 1978)].
2. Kitsap County, Washington (X, 2-3-78) (Will Construction Co., Inc.)
3. Washington County, Oregon (X, 7-31-78) (North American Contractors Inc.) (fundamental fairness: need for competition)
4. San Francisco, California (IX, 8-9-78) (Slattery Assoc., Fischbach and Moore Inc. and Morrison-Knudsen Co., joint venture) (specification language as controlling—federalizing local law issues)
5. Onondaga County, New York (II, 8-23-78) (Pizzagalli Construction Co. and John W. Cowper Co. Inc.) (public interest standard: mistake—bidder intent rule)

6. Toppenish, Washington (X, 10-20-78) (Ridge Construction Co.) (conformance to both state and federal principles)

Choice of Law—Fundamental Federal Procurement Principles (see also, *Rational Basis Test*).

1. Newcastle, Indiana (V, 5-18-78) (Spencer Terhune Co.) (fair evaluation of subcontract offers)

Choice of Law—State Law, Applicability of §§ 35.936-2, 35.937-5 and 35.939(1)(3).

1. Niagara County Sewer District (No. 1), New York (II, 10-18-78) (Environment One Corp) (building code approvals)

Choice of Law—General

1. Alexandria, Virginia (III, 4-4-75) (taxes) (John C. Grimberg, Inc.)
2. Davenport, Iowa (VII, 4-11-75) (Lametti & Sons)
3. Fresno, California (IX, 7-10-75) (Dorfman Construction Co.)
4. Tahoe-Truckee Sanitation Agency, California (IX, 8-21-75) (Jos. Ramos Co.; and Contri-Hood)
5. Henry, South Dakota (VIII, 9-15-75) (Henningsen Construction Co.)
6. Sunnyvale, California (IX, 12-5-75) (ABF Contractors)
7. Clark County (Las Vegas), Sanitary District (No. 1), Nevada (IX, 12-24-75) (Bovee & Crail Construction Co.)
8. Palmer Lake, Colorado (VIII, 1-16-76) (Dugan Construction Co.)

DEFERRAL OF PROCUREMENT ACTION

Deferral of Procurement Action (§§ 35.938-4(h)(5) and 35.939(h)) (see also, *Award—Prime Contract*).

1. Barrington, Illinois (V, 10-20-78) (Utility & Industrial Construction Co.)

1. Westchester Co., New York (II, 3-3-76) (General Building Contractors)

2. Lynn, Massachusetts (I, 10-21-76) (A/E) (Clinton Bogert Associates)

3. Rhode Island Statewide Planning Program (I, 4-26-77) (§208 grant) (C. E. Maguire Inc.)

4. Jackson, Mississippi (IV, 8-19-77) (restrictive specifications) (American Cast Iron Pipe Co.)

5. Toms Brook-Maurertown, Virginia (III, 9-20-77) (National Hydro Systems)

6. Contra Costa County, California (IX, 10-25-77) (Armco Steel)

EXHAUSTION OF ADMINISTRATIVE REMEDY

Exhaustion of Administrative Remedy

84:29 City of New York, NY (II, 8-15-84) (*Terminal Const. Corp., and Fairfield Service Company*) (appeal dismissed where letter to grantee did not invoke protest procedures).

84:38 Town of Westborough, MA (10-2-84) (*Lynch, et al.*) (letter advising grantee of contemplated legal action does not constitute valid protest).

HARMLESS ERROR

Harmless Error

81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (omission of MBE guidance from IFB).

81:90 Chicago MSD, IL (V, 10-27-81) (S.A. Healy, *et al.*) (reconsideration of 81:76) (ambiguous MBE requirements).

82:45 Pasadena, TX (VI, 8-17-82) (Parkson) (actual notice of reason for rejection not given).

Harmless Error

83:55 Haysville, KS [Reconsideration] (VII, 2-14-83) (*Walker Process Corp.*) (procedural error by not distributing engineer's letter).

83:03 Columbus, OH [Reconsideration] (V, 6-6-83) (*Cobey Metro—Waste Composting System, Inc.*) (incorrect EPA conclusion that grantee had authority to use a sole source).

83:27 Port Arthur, TX (V, 5-12-83) (*Robert Bossow, Inc.*) (where reliance on unclear bid evaluation method).

83:36 Bentonville, AR (VI, 6-14-83) (*Archer Henry Const., Co.*) (ambiguous IFB description of bid evaluation method).

83:48 Heber Spring, AR (VI, 8-2-83) (*Trigon Engineering Co.*) (no prejudice resulted from imperfect bid evaluation process).

CHOICE OF LAW (CONTINUED)

9. Ruston, Louisiana (VI, 3-18-76) (Allan J. Harris Co., Inc.)

10. Concord, North Carolina (IV, 10-8-76) (Mercury Construction Co.)

*11. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 12-3-76) (Kvalsten Electric)

12. Bradford, Vermont (I, 3-4-77) (Cummings)

*13. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-3-77) (Palco; and Kraus-Anderson)

Choice of Law—Federal Procurement Law, Applicability of (§ 35.936-10).

1. Denver (City), Colorado (VIII, 4-22-74) (Pinkard Donovan)

2. Englewood and Littleton, Colorado (VIII, 2-10-75) (Air Products & Chemicals Inc.)

3. Woonsocket, Rhode Island (I, 6-20-75) (Westcott Construction Co.)

4. South Portland, Maine (I, 10-7-75) (Pizzagalli Construction Co.)

5. Winter Haven, Florida (IV 11-26-75) (Griffin Construction Co.)

Choice of Law—Fundamental Federal Procurement Principles (see also, Rational Basis Test).

*1. Monroe, Washington (X, 1-9-76) (Will Construction Co.)

2. Bergen County, New Jersey (II, 9-28-76) (Wm. L. Crow-Wolff & Munier, Joint Venture)

3. Puerto Rico Aqueduct & Sewer Authority (II, 3-31-77) (Blythe Industries, Inc.)

4. Lynden, Washington (X, 5-16-77) (Arcomm Construction Co.)

5. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-24-77) (Eimco-BSP Services Co.)

6. Cheektowaga, New York (II, 8-31-77) (Amadori Construction Co.)

7. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)

8. Brick Township, New Jersey (II, 11-22-77) (P & A Construction Co.)

9. Corvallis, Oregon (X, 12-6-77) (Frank Coluccio Construction Co.)

Choice of Law—GAO Decisions, Effects of (§ 35.939(f)).

1. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 11-13-75) (John C. Grimberg Inc.)

2. Huntington, West Virginia (III, 4-9-76) (National Engineering and Contracting Co.; and Envirotech Corp.)

3. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 6-24-76) (Savoy Construction Co.)

4. Ft. Lauderdale, Florida (IV, 7-18-77) (Inman Inc.)

5. Rawlins, Wyoming (VIII, 11-16-77) (Wind River Constructors, Inc.)

6. Bridgewater, New Jersey (II, 12-2-77) (Lombardo Contracting Co.)

7. Ramsey, New Jersey (II, 12-2-77) (P. & A. Construction Co.)

Choice of Law—State Law, Applicability of (§§ 35.936-2; 35.937-5; 35.939(j)(3)).

1. Lowell, Massachusetts (I, 4-1-76) (United Electrical Contractors)

2. Lowell, Massachusetts (I, 4-2-76) (Honeywell Corp.)

3. Haverstraw, New York (II, 6-24-76) (Fletcher Creamer & Son)

4. Denver (City and County), Colorado (VIII, 7-9-76) (Frank Briscoe Co., Inc.)

5. McKinleyville Community Sanitary District (Humboldt Co.), California (IX, 8-13-76) (McGuire & Hester)

6. San Mateo, California (IX, 8-17-76) (Elmer Freethy)

7. Middlesex (Bound Brook Pump Station), New Jersey (II, 6-3-77) (Campanella Construction Co.)

8. Middlesex (Sayreville Relief Pump Station), New Jersey (II, 6-9-77) (Terminal Construction Co.)

9. San Francisco, California (IX, 6-20-77) (McKee-Berger-Mansueto)

10. Sonoma, California (IX, 6-30-77) (P. C. Jensen)

11. Cumming, Georgia (IV, 9-28-77) (NewKirk Construction Co.)

JURISDICTION

Jurisdiction

- 84:02 City of Bemidji, MN (V, 1-18-84) (*Fiber-Dyne, Inc.*) (supplier substitution by contractor is not protestable as a grantee procurement action).
- 84:08 Western Carolina Regional Sewer Authority, Greenville, SC [Reconsideration] (IV, 6-18-85) (*Ashbrook-Simon-Hartley*) (bid protest not proper forum for disputing eligibility of costs).
- 84:09 City of Los Cruces, NM (VI, 2-27-84) (*Mass Transfer, Inc.*) (equipment exclusion by basic design decision, not protestable).
- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (allegation that bidder cannot satisfy specification is responsibility/contract administration matter and not protestable).
- 84:38 Town of Westborough, MA (I, 10-2-84) (*Lynch, et al.*) (refusal of grantee to require subcontractor substitution is not protestable by subcontractor).

Jurisdiction

- 83:04 Globe, AZ (IX, 1-25-83) (*Brown & Caldwell*) (grantee procurement action premature where prior EPA approval of A/E contract not obtained).
- 83:11 LaPorte, TX (VI, 2-18-83) (*Jess Loveless Const., Co.*) (reprocurement of services after contractor quits job).
- 83:33 Joplin, MI (IX, 6-8-83) (*Advanco Constructors, Inc.*) (summary dismissal where protest based solely on Federal Procurement regulations not adopted by EPA regulations).
- 83:37 Central Valley, UT (VIII, 6-17-83) (*American Surfpac, Inc.*) (selection of filter media not broad design decision—protestable).
- 83:57 Sod Run, Harford County, MD (III, 10-7-83) (*CESCO, Inc.*) (equipment substitution not protestable).
- 83:58 Evanston, WY (VIII 10-18-83) (*WesTech Engineering, Inc.*)

- (equipment substitution by contractor not protestable procurement action).
- 83:61 Johnstown, OH (V, 10-24-83) (*Zimpro, Inc.*) (subcontractor substitution by contractor not protestable).
- 83:63 Monterey, CA (IX, 11-4-83) (*Power Systems*) (contract obligations not addressable in bid protest).
- 83:66 Boston, MA (I, 12-9-83) (*Schiavone Const. Co.*) (violation of State law not protestable unless contravening federal requirement).

Jurisdiction

- 81:01 N.Y. State DEC, NY (II, 1-7-81) (*Sweda Enterprises*) (firms representing other clients not protestable).
- 81:05 Puerto Rico Aqueduct and Sewer Authority, PR (II, 1-29-81) (*Redondo Const.*) (bid withdrawn because of mistake not subject to EPA review).
- 81:08 Morgantown, WV (III, 2-1-81) (*Clow Co.*) (prior EPA approval does not bar review)
- 81:26 Loganville, GA (IV, 4-14-81) (*Miller, Stevenson & Steininchen*) (contract termination dispute).
- 81:41 Grand Haven, MI (V, 6-5-81) (*Equipment & Gravel*) (procurement of services beyond grant scope).
- 81:49 Los Angeles County, CA (IX, 7-1-81) (*Dresser Industries*) (competitor subcontractor's compliance with equipment specifications not protestable)
- 81:59 Metropolitan Wastewater Management Commission, OR (X, 7-30-81) (*Hyland Brothers Const. and Assoc.*) (whether competing bidder will meet MBE goal not protestable).
- 81:64 Loganville, GA (IV, 6-14-81) (*Flygt Corp.*) (personal financial loss not matter of contract award propriety).
- 81:66 Ewing-Lawrence Sewerage Authority, NJ (II, 8-18-81) (*Standard Engineers and Const.*) (equitable adjustment claim not protestable).
- 81:84 Russian River County Sanitation District, CA (IX, 10-14-81) (*Dan Caputo & Wagner Const.*) (withholding payment not protestable).

JURISDICTION (CONTINUED)

81:91 Western Monmouth Utilities Authority, NJ (II, 10-29-81) (Parcoa) (failure to pay contractor not protestable).

81:98 Atlanta, GA (IV, 11-13-81) (Fisher & Porter Co.) (contract performance and administration are post-award matters not protestable).

81:101 Ewing Lawrence Sewerage Authority, NJ (II, 12-14-81) (Neshaminy Const.) (substitution of subcontractor not protestable).

82:02 Rysh-Ryan Sewer Authority, PA (III, 1-22-82) (R & M Assoc.) (state approval of similar facilities not protestable).

82:07 Chattanooga, TN (IV, 2-18-82) (Spencer Turbine Co.) (basic design decision to use existing structure not protestable).

82:23 Passaic Valley, NJ (II, 4-20-82) (Rochester Pump and Machine) (subcontractors selection of supplier not protestable).

82:24 El Dorado, KS (VII, 4-20-82) (Oursler Brothers Const.) (equipment rejection matter of contract administration).

82:29 Syracuse, NY (II, 5-18-82) (Bat-Con, Inc.) (withholding payments to contractors not protestable).

82:39 Russian River, CA (IX, 7-20-82) (Dan Caputo Co. and Wagner Co., A Joint Venture) (contract administration dispute not protestable).

82:42 Philadelphia, PA (III, 7-28-82) (Carr & Duff) (failure to negotiate change order not protestable).

82:57 Cape May County MUA, NJ (II, 11-1-82) (American Bioreactor Corp. and Fairfield Service Co.) (basic project designs not protestable).

82:61 El Dorado, KS (VII, 11-16-82) (Oursler Brothers Const.) (jurisdiction to consider reconsideration request).

82:64 Shady Spring PSD, WV (III, 11-22-82) (Davis Water & Waste Industries, Inc.) (subcontractor substitution not protestable).

Jurisdiction

1. Pima County, AZ (IX, 2-20-80) (Ameron) (change order).

2. Metropolitan Sanitary District of Greater Chicago, IL (V, 2-27-80) (Shea-Kiewit) (change order).

3. Suffolk County, NY (II, 3-3-80) (Davis Construction Corp.) (retainage).

4. Metropolitan Sanitary District of Greater Chicago, IL (V, 3-7-80) (Joint Venture of Pora Construction Company and Minority-Majority Construction Company) (delay claim).

5. Metropolitan Sanitary District of Greater Chicago, IL (V, 3-27-80) (Herlihy Mid-Continent Company) (claims).

6. Northwest Bergen County Sewer Authority, NJ (II, 5-5-80) (Interpace Corporation) (contract interpretation).

7. Portland, OR (X, 6-12-80) (Robbins & Myers, Inc.) (change order).

8. County of Nassau, NY (II, 8-7-80) (Konline-Sanderson Engineering Corporation) (equipment substitution).

9. Portland, OR (X, 8-7-80) (Robbins & Myers, Inc.) (change order).

10. Northeast Ohio Regional Sewer District, OH (V, 9-4-80) (D. E. Williams Electric, Inc.) (State law as to remedy for bid mistake).

Jurisdiction

1. Albuquerque, NM (VI, 2-2-79) (Kent Nowlin Construction Co.)

2. Clarksburg, MA (I, 8-25-79) (Curran Associates, Inc.)

*3. Conneaut, OH (V, 7-18-79) (Hoff-Weston)

4. Detroit, MI (V, 8-29-79) (C. T. Rogers Construction Co., et al., A Joint Venture) (State or local law question)

5. Gainesville, GA (IV, 8-15-79) (National Hydro Systems, Inc., (II)) (by or for the grantee)

6. Hannibal, MO (VII, 6-7-79) (U.S. Enviro-Con, Inc.) (lack of direct grantee involvement)

7. Howard County, MO (III, 2-15-79) (Water Pollution Control Corp.) (not by or for grantee)

8. Metropolitan Sanitary District of Greater Chicago, IL (V, 8-16-79) (Troesch Trucking, Inc.)

JURISDICTION (CONTINUED)

- *9. Metropolitan Sanitary District of Greater Chicago, IL (V, 10-11-79) (Morrison-Knudsen-Paschen) (mistake)
- 10. Middletown, DE (III, 9-17-79) (Mt. Joy Construction, Co.) (change order is not procurement)
- *11. Muskegon County, MI (V, 7-29-79) (Video Media Corp.) (post performance claims)
- 12. Newton, IA (VII, 12-6-79) (Municipal and Industrial Pipe Services, Ltd. (forfeiture of bond))
- 13. Frederick County, MD (III, 4-19-79) (Conewago Contractors, Inc.) (retainage not a procurement issue)
- 14. Sterling, IL (V, 3-9-79) (Neptune CPC Engineering Corp.)
- 15. Stillwater, OK (VI, 3-1-79) (Robicon Corp.) (subcontracts)
- 16. Suffolk County, NY (II, 9-15-79) (Spencer, White & Prentiss, Inc. and Seatec International, Ltd., A Joint Venture) (claims)

Jurisdiction (§ 35.939(j)) (but see, System Design; A/E Procurement; Choice of Law—State Law; Subcontracts; Choice of Law—Federal Procurement Law).

- 1. District of Columbia (Blue Plains) (III, 2-20-75) (§ 35.939(j)(5)) (Kenics Corp.)
- 2. Rhinelander, Wisconsin (V, 3-31-76) (subcontractor selection) (EPCO—Hormel)
- 3. Lowell, Massachusetts (I, 4-1-76) (§ 35.939(j)(3)) (United Electrical Contractors)
- 4. Lowell, Massachusetts (I, 4-2-76) (§ 35.939(j)(3)) (Honeywell Corp.)
- 5. Danville, Illinois (V, 4-15-76) (Honeywell Corp.)

1. Mountaintop, Pennsylvania (III, 1-5-78) (National Hydro Systems, Inc.) (antitrust issues subcontract—business judgment rule)

2. North Little Rock, Arkansas (VI, 2-1-78) (Environmental Equipment Corp.) (subcontract—grantee involvement)

*3. Knoxville, Tennessee (IV, 2-8-78) (Roy F. Weston Inc.) (A/E procurement; local requirements)

4. East Bay Discharges Authority, California (IX, 2-15-78) (R. D. Smith) (A/E subagreements)

5. Turlock, California (IX, 3-6-78) (Riga Inc.) (subcontract protest)

6. Antigo, Wisconsin (V, 3-24-78) (General Filter Co.) (award of subcontract conforming to specifications)

7. Snyderville, Utah (VIII, 4-17-78) (Jacobsen Construction Co. Inc.) (by or for the grantee)

6. Haverstraw, New York (II, 6-24-76) (Fletcher Creamer & Sons)

*7. Amherst, New York (II, 7-2-76) (Air Products & Chemicals, Inc.)

8. Denver (City & County), Colorado (VIII, 7-9-76) (Frank Briscoe)

9. McKinleyville Community Sanitary District (Humboldt County), California (IX, 8-13-76) (McGuire and Hester)

10. San Mateo, California (IX, 8-17-76) (§ 35.939(j)(1) and (j)(3)) (Elmer Freethy)

11. Bridgeport, Connecticut (I, 11-22-76) (Connecticut Engineers in Private Practice)

12. Oxnard, California (IX, 12-1-76) (§ 35.939(j)(5)) (BBR Prestressed Tanks)

13. York, Pennsylvania (III, 4-22-77) (Union Carbide Corp.)

14. Omro, Wisconsin (V, 5-13-77) (§ 35.939(j)(6)) (Can-Tex)

*15. Oklahoma City, Oklahoma (VI, 5-18-77) (grantee involvement; by or for) (Ingersoll-Rand I)

16. Middlesex (Bound Brook Pump Station), New Jersey (II, 6-3-77) (Campanella Construction Co.)

17. Middlesex (Sayreville Relief Pump Station), New Jersey (II, 6-9-77) (Terminal Construction Co.)

18. San Francisco, California (IX, 6-20-77) (A/E; and § 35.939(j)(3)) (McKee-Berger-Mansueto Inc.)

19. Sonoma, California (IX, 6-30-77) (§ 35.939(j)(3)) (P. C. Jensen)

20. Newton, North Carolina (IV, 7-17-77) (project grant ineligible) (Carolina Concrete Pipe)

*21. Oklahoma City, Oklahoma (VI, 7-25-77) (grantee involvement; by or for) (Carborundum)

22. Cumming, Georgia (IV, 9-28-77) (Newkirk Construction Co.)

*23. McFarland, California (IX, 9-29-77) (grantee involvement; by or for) (Lagoon Aeration Corp.)

24. Orange County, California (IX, 11-2-77) (§ 35.939(j)(5)) (Pentech Division of Houdaille Industries)

25. Loxahatchee River Environmental Control District, Florida (IV, 11-3-77) (Guy Villa & Sons)

26. Amherst, New York (II, 11-22-77) (Smith & Associates)

27. Bridgewater, New Jersey (II, 12-2-77) (Lombardo Contracting Co.)

28. Monterey Peninsula Water Pollution Control Agency, California (IX, 12-9-77) (J. M. Bush)

PROCEDURE

Procedure

- 84:09 City of Los Cruces, NM
[Reconsideration] (VI, 2-27-84)
(*Mass Transfer, Inc.*) (accepting evidence on appeal unnecessary where facts not relevant to issues in bid protest).
- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL
[Reconsideration] (V, 4-12-84)
(*Premier Electrical Const. Co.*) (if protester challenges specifications, it must submit copy with appeal).
- 84:22 Mercer County, NW (IL, 5-7-84)
(*RDP Company*) (protest determination by consulting engineer appropriate where acting as grantee's agent) (appeal defective for failure to include copy of grantee's determination).
- 84:24 City of Leominster, MA (I, 8-11-84)
(*P. Gioioso & Sons, Inc.*) (additional grantee rationale for rejecting all bids cannot be relied upon on appeal).
- 84:26 Riverton, WY (VIII, 7-13-84)
(*Martel Const. Co., Inc.*) (appeal filed before improper EPA official may be considered).
- 84:34 Glens Falls, NY (IL, 8-30-84)
(*Dorr-Oliver, Inc.*) (under Part 33 regulations grantee not required to afford protester a conference hearing).
- 84:38 Town of Westborough, MA (I, 10-2-84)
(*Lynch, et al.*) (appeal dismissed for failure to file initial protest).
- 84:39 Town of Thompson WTF
Kiamesha Lake Sewer Dist.
[Reconsideration] (II, 11-1-84)
(*Ultraviolet Purification System, Inc.*) (appeal dismissed for failure to include copy of grantee decision and state what regulations were violated).
- 84:49 Richgrove, CA (IX, 11-8-84)
(*El Camino Const. Co.*) (filing appeal with State agency does not constitute valid appeal to EPA).
- 84:52 Possum Valley, PA (III, 11-9-84)
(*U-Max Engineering & Const. Corp.*) (appeal dismissed for failure of bidder to file proper initial protest).

- 84:55 City of Fort Lauderdale, FL (IV, 12-27-84)
(*Gray Engineering Group, Inc.*) (where appeal dismissed on purely procedural grounds, briefs and arguments on the substance need not be permitted).

Procedure

- 83:01 Spearfish, SD (VIII, 1-11-83)
(*Rickel Manufacturing Co.*) (decision affirmed for different reasons than supplied by grantee).
- 83:02 Columbus, OH (V, 1-12-83)
(*Cobey Metro—Waste Composting Systems, Inc.*) (summary dismissal not justified by failure to notice parties).
- 83:08 Hamilton, MT (VIII, 2-8-83)
(*4G Plumbing & Heating, Inc.*) (grantee duty to afford opportunity to present arguments).
- 83:13 Sandpoint, ID (X, 3-3-83)
(*Lydig Const., Co.*) (appeal premature before grantee issues decision) (applicability of Part 33 regulations).
- 83:14 MSD Chicago, IL (V, 3-4-83)
(*R. Rudnick & Co., Inc. & Namat Const. Co.*) (hearing notice).
- 83:18 Halstead, Hutchinson, KS (VII, 3-9-83)
(*Charles E. Stevens*) (GAO decisions used).
- 83:22 San Jose, CA (IX, 4-11-83)
(*Johnson Controls, Inc.*) (GAO decisions used).
- 83:23 Jerseyville, IL (V, 4-14-83)
(*Clow Corp.*) (citing Part 35 instead of Part 33 regulations not fatal) (failure to seek prequalification not failure to exhaust administrative remedies where futile).
- 83:29 Fargo, ND (VIII, 5-18-83)
(*Van Bergen & Markson, Inc.; The Gray Engineering Group, Inc. & Conservatek, Inc.*) (where IFB improperly included Part 35 regulations EPA applied Part 33 regulations with same result).
- 83:31: Younstown, OH (V, 5-31-83)
(*Floyd Brown Associates*) (new issues may not be raised on appeal) (no allegation how action violated regulations).
- 83:37 Central Valley, UT (VIII, 6-17-83)
(*American Surfpac, Inc.*) (telegraphic notice perfecting appeal).
- 83:38 Sacramento, CA (VIII, 6-17-83)
(*Power Machine Co.*) (adequate notice where regulations not cited).

PROCEDURE (CONTINUED)

- 83:41 MSD, Chicago, IL (V, 6-24-83)
(*Premier Electrical Const., Co.*) (bid bond extension during protest).
- 83:48 Heber Spring, AR (VI, 8-2-83)
(*Trigon Engineering Co.*) (few EPA restraints on manner grantee decides protest).
- 83:49 MSD, Chicago, IL (V, 8-2-83)
(*Door Systems of Elk Grove*) (grantee dismissal for failure to attend hearing and present detailed written statement).
- 83:51 Santa Barbara, CA (IX, 8-15-83)
(*Namtec Corp. & Union Engineering Co.*) (failure to reference regulations and notify parties not fatal).
- 83:81 Johnstown, OH (V, 10-24-83)
(*Zimpro, Inc.*) (specific regulations not cited).

Procedure

- 81:10 N.Y. State DEC, NY (II, 2-13-81) (Sweda Enterprises) (protest not stating bases or referring to EPA regulations).
- 81:17 McHenry, IL (V, 3-16-81) (Pio Lombardo & Assoc.) (failure to notify interested parties having actual knowledge).
- 81:32 Black Diamond, WA (X, 4-29-81) (Bowen Const.) (bidder intent to hold bid open although not formally extended).
- 81:34 San Diego, CA (IX, 5-1-81) (Westates Carbon) (small size and lack of counsel no excuse for not knowing and following procedures).
- 81:44 Tuolumne County, CA (IX, 6-11-81) (Chaudhury & Assoc.) (appeal filed with Regional Counsel not mailed to interested parties).
- 81:48 San Francisco, CA (IX, 3-27-81) (Alliance of Minority Contractors and Suppliers) (failure to notify interested parties or cite regulations) (time limit for filing not waived).
- 81:58 Ashland, KY (IV, 7-27-81) (Fairbanks Morse Pump) (suppliers appeal period not started by notice to prime that equipment rejected) (failure to notify interested parties).
- 81:59 Metropolitan Wastewater Management Commission, OR (X, 7-30-81) (Hyland Brothers Const. and Assoc.) (no prejudice from failure to transmit protest to other parties).

- 81:60 East Troy, WI (V, 7-31-81) (Joseph Lorenz, Inc.) (failure to send copy of initial protest did not require dismissal).
- 81:69 Houma, LA (VI, 3-19-81) (Hydromatic Pump) (detailed initial protest telegram did not require additional written protest).
- 81:81 Columbus, OH (V, 10-5-81) (Cantwell Machinery) (omission of legal report from grantee decision).
- 81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (appeal bond unnecessary).
- 81:100 Harriman, TN (IV, 12-9-81) (Municipal & Industrial Pipe Services) (failure to file detailed protest after telegraphic notice).
- 82:09 Cobden, IL (V, 2-19-82) (R-J Equipment Sales) (elements of protest appeal).
- 82:10 Sauget, IL (V, 2-19-82) (GHA Locks Joint Co.) (appeal not made moot by addendum).
- 82:15 Philadelphia, PA (III, 3-16-82) (Williard, Inc.) (request for review need not contain word "protest").
- 82:20 Baltimore, MD (III, 4-1-82) (J. Vinton Shafer & Sons) (no reference to regulation).
- 82:24 El Dorado, KS (VII, 4-20-82) (Oursler Brothers Const.) (protest appeal must allege regulatory violation) (reversed by reconsideration 82:61).
- 82:48 Claremont, CA (IX, 8-26-82) (Peter Gavrilis) (summary dismissal of nonmeritorious protest).
- 82:61 El Dorado, KS (VII, 11-16-82) (Oursler Brothers Const.) (reconsideration reversed 82:24 concerning necessity of citing regulatory violation in appeal).

Procedure

1. Fall River, MA (I, 2-13-80) (Passavant Corporation) (notice to others).
2. Anne Arundel County, MD (III, 2-13-80) (Sabatini Company) (moot, premature, readvertise).
3. DeKalb County, GA (IV, 2-29-80) (Southeast Grading, Inc.) (authority to award before resolution of subcontract protests, notice to others).
4. Tolleson, AZ (IX, 3-17-80) (Hydro Conduit Corporation) (short notice of pretest hearing, notice to others).
5. Whiteville, NC (IV, 3-28-80) (Astor Bolden Enterprises, Inc. T/A. Quality Sanitary Services, Inc.) (failure to state basis, notice to others).

PROCEDURE (CONTINUED)

6. Soldotna, AK (X, 4-25-80) (Interstate Company) (grantee's hearing procedure).

7. Little Rock, AR (VI, 4-29-80) (Autotrol Corporation) (notice to others, raising new issues at EPA review).

8. Orange County Sanitation Districts of Orange County, CA (IX, 5-22-80) (Ralph B. Carter Co.; Komline-Sanderson Engineering Corp.) (time limits to present evidence).

Procedure

1. Aberdeen, MD (III, 9-7-79) (Chemcon, Inc.) (no proper protest w/o grantee determination)
2. Bardstown, KY (IV, 1-3-79) (E. H. Hughes Co. (I)) (notification of other parties)
3. Decatur, Sanitary District, IL (V, 2-15-79) (Autotrol Corp.) (notice to all interested parties)
5. Gainesville, GA (IV, 11-5-79) (National Hydro Systems, Inc. (III)) (EPA de novo review)
6. Greenville, TX (VI, 5-31-79—Reconsideration) (Ralph B. Carter Co.) (Per Parkson Corp.)
7. Hagerstown, MD (III, 1-4-79) (PCI Ozone Corp.) (telegraphic determination)
8. James Island Public Service District, SC (IV, 5-2-79) (Pyramid Builders, Inc.) (telegraphic determination)
9. Macon-Bibb County Water and Sewage Authority, GA (IV, 3-16-79) (Shirco, Inc.) (telegraphic determination)
10. Meridian, MS (IV, 1-15-79) (Mississippi Pump and Equipment Co.)
11. Metropolitan Sanitary District of Greater Chicago, IL (V, 8-16-79) (Troesch Trucking Inc.) (failure to file with grantee)
12. Miami-Dade Water and Sewer Authority, FL (IV, 4-30-79) (Cobo Co.)
13. Middletown, DE (III, 9-17-79) (Mt. Joy Construction Co.) (change order not procurement)
- * 14. Mill Hall, PA (III, 1-29-79) (Municipal and Industrial Pipe Services, Ltd.) (failure to prosecute appeal)
15. Monterey County, CA (IX, 2-26-79) (Monterey Construction Surveys, Inc.)
16. Plainfield, CT (I, 12-11-79) (Greenman's Trucking, Inc.) (letter: full decision to follow)
17. Seaford, DE (III, 1-8-79) (National Hydro Systems, Inc.) (grantee's failure to comply with its harmless error)
18. Simpsonville, KY (IV, 4-17-79) (Warner A. Broughman III and Associates) (failure to file with grantee)

Procedure (§§ 35.939 (a), (b), (I)) (see also, Burden of Proof; Jurisdiction; Review—Regional Administrator Authority; Standing; Sua Sponte Summary Dispositions; Time Limitations).

1. Glenwood Springs, Colorado (VIII, 1-13-78) (Colorado Environmental Equipment, Inc.) (failure to properly plead protest, §§ 35.939 (c), (I)(7))
2. Sandusky, Ohio (V, 1-13-78) (Bay-Con Corp.) (no proper protest to EPA without grantee determination)
3. Gainesville, Georgia (IV, 1-17-78) (National Hydro Systems, Inc. and Tuttle/White Constructors) (bid bond extension: mootness)
4. West Bend, Wisconsin (V, 3-3-78) (Oliver Construction Co. Inc.) (due process)
5. Turlock, California (IX, 3-6-78) (Riga Inc.) (intervention of competitors)
6. Clayton County, Georgia (IV, 4-19-78) (National Hydro Systems, et al) (participation of an interested party)
7. Front Royal, Virginia (III, 4-21-78) (Lyco-ZI) (bid protest process not APA review)
8. Newton, North Carolina (IV, 4-25-78) (Carolina Concrete Pipe Co.) (consultant as proper party)
9. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 6-14-78) (McLaughlin & Associates) (grantee's apparent threat to protestant for protest action)
- * 10. Contra Costa County Sanitation District No. 15, California—Reconsideration (IX, 7-14-78) (Gladding-McBean Inc. and Pacific Clay Products Co.) (intervention of competitors in bid protest proceeding)
11. Goose Creek, South Carolina (IV, 7-24-78) (Kenney and Assoc.) (notice of grantee determination)
12. Onondaga County, New York—Supplement (II, 9-7-78) (Pizzagalli Construction Co. and John W. Cowper Co. Inc.)
13. Knoxville, Tennessee (IV, 9-25-78) (R. B. Carter) (withdrawal)
14. Grand Rapids, Michigan (V, 9-26-78) (Infilco Degremont) (access to bids)
15. Guilderland, New York (II, 10-3-78) (Clevopak Corp.) (state law claim: exclusive sales arrangement)
16. Shreveport, Louisiana (VI, 10-25-78) (Dumesnil Construction Co. Inc.) (protests withdrawn)
17. Indianapolis, Indiana (V, 10-31-78) (Allis-Chalmers) (deadlines for written arguments)
18. Fairfield, New Jersey (II, 11-8-78) (Autocon Industries) (failed to plead case as required under EPA regulations)
19. Portage, Michigan (V, 12-20-78) (Iacobelli Construction Inc.) (no proper protest to EPA without grantee determination)

PROCEDURE (CONTINUED)

Procedure (§ 35.939(f)) (See also, Standing; Time Limitations; Jurisdiction; Summary Dispositions; Burden of Proof; Review—Regional Administrator Authority).

1. Shreveport, Louisiana (VI, 6-1-74) (Section 8 grant) (Mainstay Corp.)
2. Jacksonville, Florida (IV, 8-12-74) (protest pre-regulation) (Adrian Construction Co.)
3. Haverstraw, New York (II, 6-24-76) (Fletcher Creamer & Sons)
4. Chatham County (Isle of Hope), Georgia (IV, 7-8-76) (pre-bid protest resolution) (Kyle-Gifford-Hill Inc.)
5. Denver (City and County), Colorado (VIII, 7-9-76) (Frank Briscoe)
6. Cayce, South Carolina (IV, 7-18-76) (Southeastern Concrete Products Co.)
7. Berkeley-Charleston-Dorchester, South Carolina (IV, 7-19-76) (§ 208 grant) (Davis & Floyd Engineers Inc.)
8. Boynton Beach/Delray Beach, Florida (IV, 10-14-76) (oral protest) (Ecological Services Products Inc.)
9. Lynn, Massachusetts (I, 10-21-76) (pre-grant award) (Clinton Bogert Associates)
10. Detroit, Michigan (V, 11-10-76) (Lotepro Corp.)
11. Waterford, Connecticut (I, 3-9-77) (Loc Pump and Equipment)
- *12. Dothan, Alabama (IV, 3-10-77) (full Regional Administrator review in place of Grantee) (Infilco Degremont)
13. York, Pennsylvania (III, 4-22-77) (Union Carbide Corp.)
14. Atlanta, Georgia (IV, 5-11-77) (Mayer & Associates)
15. Bernice, Louisiana (VI, 6-1-77) (simultaneous mailing issue)
16. Cynthiana, Kentucky (IV, 8-11-77) (Lyco-ZF)
- *17. Lower Salford Township, Pennsylvania (III, 9-8-77) (Gerngross Corp.)
18. Cumming, Georgia (IV, 9-28-77) (Newkirk Construction Co.)
19. Cranberry Township, Pennsylvania (III, 10-20-77) (Bay-Con Corp.)
20. Contra Costa County, California (IX, 10-25-77) (Armco Steel)
21. Orange County, California (IX, 11-2-77) (Pentech Division of Houdaille Industries)
22. Amherst, New York (II, 11-22-77) (Smith & Associates)
23. Bridgewater, New Jersey (II, 12-2-77) (Lombardo Contracting Co.)
24. Corvallis, Oregon (X, 12-6-77) (pre-grant approval) (Frank Coluccio Construction Co.)

RATIONAL BASIS TEST

Rational Basis Test

84:02 City of Bemidji, NM (VV, 1-18-84) (*Fiber-Dyne, Inc.*) (grantee determination not reversed unless clear error or lacks reasonable basis).

84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A./Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (EPA review of appeal not limited to arguments presented to grantee).

84:30 County of Erie, NY (IL 8-16-84) (*Amadori Const. Co.*) (rigid enforcement of words over numerals reconciliation clause lacked rational basis).

84:31 Trumbull County, OH (V, 8-24-84) (*R & K Constructors, Inc.*) (deference to grantee determination that bidder is not responsible based on poor past performance).

84:34 Glens Falls, NY (IL 8-30-84) (*Dorr-Oliver, Inc.*) (deference to affirmative determination of responsibility based on technical evaluation).

84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Gariup Const. Co., Inc.*) (deference to technical decisions of grantee).

84:40 City of Lancaster, PA (III, 10-16-84) (*Parkson Corp.*) (bid rejected for performance reasons).

Rational Basis Test

83:01 Spearfish, SD (VIII, 1-11-83) (*Rickel Manufacturing Co.*) (no rational basis for liquid cooled pump).

83:18 Perryville, MD (III, 3-21-83) (*Lyco Wastewater Equipment Division*) (no performance basis for rejecting RBC equipment).

83:20 Los Angeles, CA (IX, 3-28-83) (*Solar Turbines, Inc.*) (engineering design to use four turbines).

83:23 Jerseyville, IL (V, 4-14-83) (*Clow Corp.*) (for using brand name or equal specifications instead of stating technical requirements).

83:38 Sacramento, CA (VIII, 6-17-83) (*Power Machine Co.*) (defer to grantee

where it and protester have credible cases).

83:41 MSD, Chicago, IL (V, 6-24-83) (*Premier Electrical Const., Co.*) (setting period for bid bond extension).

83:55 Brazo River, TX (VI, 9-23-83) (**Jeffery Manufacturing Div.*) (technical requirements need not be only available choice).

83:62 Wayne, NB (VII, 10-31-83) (*Envirex, Inc.*) (speculation of equipment failure) (post ward equipment substitution not required by subcontractor price—no effect in prime's price).

83:66 Boston, MA (I, 12-9-83) (*Schiavone Const., Co.*) (interpretation of state law).

83:68 Tri-City, OR (X, 12-9-83) (*Dresser Industries, Inc.*) (specifications to achieve uniformity in blowers by requiring single manufacturer).

Rational Basis Test

81:18 Clermont County, IL (V, 3-16-81) (Glenn Rhoades Const.) (EPA reliance on grantee determination of state/local law unless no rational basis).

81:39 Guam PAU (IX, 5-29-81) (John Carollo Engineers—George Chen & Sons) (re-ranking A/E firms).

81:43 Honolulu, HI (IX, 6-11-81) (Hawaii Concrete Products) (vertical cast pipe vs. centrifugal cast pipe).

81:58 Ashland, KY (IV, 7-27-81) (Fairbanks Morse Pump) (design decision).

81:61 Southington, CT (I, 8-7-81) (Chemcon) (pump design).

81:68 Warren County MUA, NJ (II, 8-19-81) (Schuykill Products) (materials limited without test results).

81:69 Houma, LA (VI, 8-18-81) (Hydromatic Pump) (minimum performance needs of pumps) (speculation of maintenance problems not sufficient).

81:83 Rush-Ryan Sewer Authority, PA (III 10-13-81) (R&M Assoc.) (failure

RATIONAL BASIS TEST

(CONTINUED)

to submit test data) (reversed by reconsideration 82:02).

81:85 Sacramento, CA (IX, 10-14-81) (Dredge Masters International) (bid evaluation).

81:89 Harford County, MD (III, 10-19-81) (Schuykill Products) (exclusion of specific manufacturing process).

81:100 Harriman, TN (IV, 12-9-81) (Municipal & Industrial Pipe Services) (single material grout required by soil conditions).

82:01 Bowling Green, OH (V, 1-12-82) (DCK Contracting) (limited EPA review).

82:06 Tangier, Va (III, 2-11-82) (Ultraviolet Purification Systems) (experimental design).

82:07 Chattanooga, TN (IV, 2-18-82) (Spencer Turbine Co.) (grantee reliance on engineer).

82:10 Sauget, IL (V, 2-19-82) (GHA Lock Joint Co.) (sustain grantee where rational basis).

82:12 Channelview, TX (VI, 3-8-82) (Eurasia Ecosystems) (erroneous legal premise not rational).

82:17 Lummi Indian, WA (X, 3-28-82) (Walker Processing Corp.) (deference to engineering judgment).

82:18 Miami-Dade water & Sewer Authority, FL (IV, 3-31-82) (Worthington Group) (engineer's basis for specification).

82:21 Fallbrook Sanitary District, CA (IX, 4-6-82) (Metro-Young/Lopez Const., A Joint Venture) (grantee's interpretation and application of state law).

82:22 Goldendale, WA (X, 4-16-82) (IMCO General Const.) (determination that ambiguity did not give substantial advantage to others).

82:26 Akron, OH (V, 5-3-82) (Environmental Elements) (deference to technical judgment).

82:27 Eveleth, MN (V, 5-3-82) (Gridor Const.) (waiving irregularities in bid).

82:31 Menominee, MI (V, 6-8-82) (Krygoski Const.) (finding bid to be nonconditional in spite of alternative proposal).

82:34 Monterey, CA (IX, 6-24-82) (Frank M. Booth, Inc.) (specification requiring use of nickel, minimum performance needs).

82:38 Fulton, NY (II, 7-18-82) (LOC Pump and Equipment) (specification based on minimum needs).

82:46 Spearfish, SD (VIII, 8-19-82) (Sheesley Plumbing and Heating Co.) (minimum performance needs).

82:49 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (minimum performance needs).

82:53 Monterey, CA (IX, 9-29-82) (Frank M. Booth, Inc.) (longevity in service).

82:59 Rochester Pure Waters District, NY (II, 11-3-82) (Schiavone Const./ Cotton Dean Underground Excavation Co., Joint Venture) (award to low bidder on highest cost alternate).

82:66 Smyrna, TN (IV, 11-29-82) (Waterman Industries, and Charles Finch Co.) (equipment rejection to be for performance reasons not physical differences).

82:70 Metropolitan Wastewater Management Commission, OR (X, 12-22-82) (Robert Dougan Const.) (rejection of all bids because equipment not meeting specifications did satisfy performance requirements).

Rational Basis Test

1. East Bay Dischargers Authority, CA (IX, 1-30-80) (Capital Control Company) (equipment fails to meet salient requirements).

2. Fall River, MA (I, 2-13-80) (Passavant Corporation) (no performance related rational basis for manufacturers only).

3. Cordele, GA (IV, 4-10-80) (Ralph Healey & Associates, Inc.) (no rational basis for manufacturers only).

4. Puyallup, WA (X, 4-24-80) (Rodding-Cleaning Machines, Inc.) (rational basis to require specific method of mixing grout).

5. Orange County Sanitation Districts of Orange County, CA (IX, 5-22-80) (Ralph B. Carter Co.; Komline-Sanderson Engineering Corp.) (high quality specifications had rational basis).

6. County Sanitation Districts of Los Angeles County, CA (IX, 6-26-80) (Ingersoll-Rand Co.) (hard abrasive surface for centrifuge had rational basis).

7. Vista Sanitation District/Encina Joint Powers, CA (IX, 7-30-80) (Don Todd Associates) (evaluation of engineering qualifications had rational basis).

8. Ashley Valley Sewer Management Board, UT (VIII, 11-20-80) (Western Utility Contractors, Inc.) (correction of unit price mistake had rational basis).

RATIONAL BASIS TEST

(CONTINUED)

82:41 Abilene, TX (VI, 7-27-82) (R&S Engineering) (minimum performance needs stated as manufacturers only).

82:43 Brockton, MA (I, 8-16-82) (Tenco Hydro) (minimum needs justification).

82:44 Memphis, TN (IV, 8-16-82) (B.F. Goodrich Co.) (exclusion of plastic media bio filter not rational).

Rational Basis Test

1. Atlanta, GA (IV, 3-21-79) (Fruin-Conlon Corp.)
2. Caldwell, ID (X, 11-1-79) (Neilsen Co.)
3. Hannibal, MO (VII, 6-7-79) (U.S. Enviro-Con, Inc.)
4. Laurens County, SC (IV, 7-10-79) (Carolina Concrete Pipe Co., et al.)
5. Detroit, MI (V, 6-29-79) (C. J. Rogers Construction Co., et al., A Joint Venture)
6. Metropolitan Sanitary District of Greater Chicago, IL (V, 10-11-79) (Morrison-Knudsen-Paschen)
7. Monterey County, CA (IX, 2-26-79) (Monterey Construction Surveys, Inc.)
8. Newton, IA (VII, 12-6-79) (Municipal and Industrial Pipe Services, Ltd.)
9. Portage, MI (V, 12-31-79) (Tom Robinson & Son, Inc.)
10. Greenup County, KY (IV, 11-13-79) (W. Rogers Co.)
11. West County Agency, CA (IX, 6-28-79) (R. D. Smith)

Rational Basis Test (e.g., §§ 35.936-2(b), 35.939 (e)(4) and (j)(3)).

*1. Knoxville, Tennessee (IV, 2-8-78) (Roy F. Weston Inc.) (A/E procurement—evaluation of proposals)

2. Webster, Iowa (VII, 2-10-78) (Environmental Systems Division of George A. Hormel & Co. Inc.)

*3. Chester, South Carolina (IV, 3-29-78) (Carolina Concrete Pipe Co.) (selection of single pipe material)

4. Clayton County, Georgia (IV, 4-19-78) (National Hydro Systems Inc., et al.)

5. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance) (use for analysis of equipment item reviews)

6. Toppenish, Washington (X, 10-20-78) (Ridge Construction Co.) (either federal or state law)

7. Concord, North Carolina (IV, 10-24-78) (EDC/Enviro Development Inc.)

Rational Basis Test.

1. Hannibal, Missouri (VII, 2-15-74) (Sammons Construction Co.)

2. Omaha, Nebraska (VII, 9-14-74) (Datamaster Div.—ACCO)

3. Gainesville-Alachua * * * Board, Florida (IV, 7-10-75) (Grumman Eco-systems Corp.)

4. Miami-Dade Water and Sewer Authority, Florida (IV, 3-11-76) (George Hymen Construction Co.)

5. Ruston, Louisiana (VI, 3-18-76) (Allan H. Harris Co.)

6. Lowell, Massachusetts (I, 4-1-76) (United Electrical Contractors)

7. Lowell, Massachusetts (I, 4-2-76—(Honeywell Corp.)

8. Phoenix, New York (II, 5-7-76) (Vincent J. Fasano)

9. Chatham County (Isle of Hope), Georgia (IV, 7-8-76) (Kyle-Gifford-Hill Inc.)

10. Berkeley-Charleston-Dorchester, South Carolina (IV, 7-19-76) (§ 208 grant) (Davis & Floyd Engineers Inc.)

11. Sacramento, California (IX, 8-12-76) (BBR Prestressed Tanks)

12. Miami-Dade Water & Sewer Authority, Florida (IV, 9-27-76) (Altman-Mvers Construction Co.)

*13. Concord, North Carolina (IV, 10-8-76) (Mercury Construction Co.)

14. Philadelphia, Pennsylvania (Northeast Plant) (III, 12-6-76) (Sovereign Construction Company)

15. Bradford, Vermont (I, 3-4-77) (Cummings)

*16. Dothan, Alabama (IV, 3-10-77) (Infilco Degremont)

17. Pasadena, Texas (VI, 4-1-77) (Union Carbide Corp.)

18. Sussex, Wisconsin (V, 4-14-77) (Fischer & Porter)

19. Rhode Island Statewide Planning Program (I, 4-26-77) (§ 208 grant) (C. E. Maguire Inc. II)

20. Montgomery, Alabama (IV, 5-11-77) (Envirotech)

21. Lynden, Washington (X, 5-16-77) (Arcomm Construction Co.)

22. Ceres, California (IX, 6-20-77) (W. M. Lyles Co.)

23. Ft. Lauderdale, Florida (IV, 7-18-77) (Inman Inc.)

24. Cynthia, Kentucky (IV, 8-11-77) (Lyco-ZF)

25. Jackson, Mississippi (IV, 8-19-77) (American Cast Iron Pipe Co.)

26. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)

RECONSIDERATION

(CONTINUED)

- 84:55 City of Fort Lauderdale, FL
[Reconsideration] (IV, 12-27-84)
(Gray Engineering Group, Inc.)
(summarily dismissed where no
clear error of fact or law
demonstrated and protester's chief
complaint was that EPA did not
permit him to argue the substance of
this complaint where it was
untimely).

Reconsideration

- 84:08 Western Carolina Regional
Sewer Authority, Greenville, SC
[Reconsideration] (IV, 2-17-84)
(Ashbrook-Simon-Hartley)
(summarily dismissed for lack of
evidence of EPA mistake).
- 84:10 Metropolitan Sanitary Dist. of
Greater Chicago, IL
[Reconsideration] (V, 1-3-84)
(Premier Electrical Const. Co.) (EPA
discretion—will review only where
determination clearly erroneous)
(determination affirmed on merits).
- 84:11 City of New York, NY
[Reconsideration] (II, 3-5-84)
(Bristol Babcock, Inc.)
(determination affirmed after
reconsideration granted to consider
merits).
- 84:26 Riverton, WY [Reconsideration]
(VIII, 7-13-84) (Martel Const. Co.,
Inc.) (discretionary review to be
exercised in limited situations)
(time limitation for filing appeal
applies to filing reconsideration
requests. Request denied because
filed 21 days after decision issued).
- 84:32 Bayshore Regional Sewerage
Authority, NJ [Reconsideration] (II,
11-1-84) (RAM Engineering, Inc.)
(affirmed for difference reasons).
- 84:39 Town of Thompson WTF
Kiamesha Lake Sewer Dist.
[Reconsideration] (II, 10-16-85)
(Ultraviolet Purification System
Inc.) (denied reconsideration of
merits because of other procedural
deficiencies in protest).
- 84:54 Summit County, OH
[Reconsideration] (V, 12-28-84)
(Munitech, Inc.) (request denied
when beyond 7 days after receipt of
appeal determination).

Reconsideration

- 82:55 Haysville, KS [Reconsideration]
(VII, 2-14-83) (Waiker Process Corp.)
(affirmed 10-13-82 decision) (inherent
authority of EPA).
- 83:63 Elk Pinch, WV [Reconsideration]
(III, 1-7-83) (Kappe Associates, Inc.)
(cannot raise new argument based on
same facts).
- 83:03 Columbus, OH [Reconsideration]
(V, 6-6-83) (Cobey Metro-Waste
Composting System, Inc.) (affirmed
prior decision—no legal error).
- 83:06 Western Carolina, SC
[Reconsideration] (IV, 5-6-83)
(Ashbrook-Simon-Hartley) (affirmed
prior decision).
- 83:24 Oklahoma City, OK
[Reconsideration] (VI, 3-23-83)
(Fiberglass Engineered Products, Inc.)
(affirmed prior decision—no new
facts).
- 83:37 Central Valley, UT
[Reconsideration] (VIII, 9-22-83)
(American Surfpac, Inc.) (affirmed
83:42—summarily dismissed as
untimely).
- 83:44 Streetsboro, Ravenna, OH
[Reconsideration] (V, 8-28-83) (Robert
Bossow, Inc.) (affirmed prior
decision—no legal error shown).

Reconsideration

- 81:03 Pierce County, WA (X, 1-14-
81) (Frank Culuccio Const.) (substantial
error of law alleged) (affirmed 12-23-80
decision).
- 81:10 N.Y. State DEC, NY (II, 2-13-
81) (Sweda Enterprises) (affirmed 81:01).
- 81:28 Corvallis, OR (X, 4-22-81)
(Environmental Pollution Control, Inc.)
(cannot reargue points previously
discussed and decided or make new
contentions based on same facts
(affirmed 81:22).
- 81:32 Black Diamond, WA (X, 4-29-
81) (Bowen Const.) (affirmed 81:27).
- 81:52 Buncombe County, NC (IV, 7-
17-81) (Carlon, Division of Indian Head)
(no new facts) (affirmed 81:36).
- 81:79 Ashland, KY (IV, 10/1/81)
(Fairbanks Morse Pump) (affirmed
81:58).
- 81:90 Chicago MSD, IL (V, 10-27-81)
(S.A. Healy Co., et al.) (affirmed 81:76).

RECONSIDERATION

(CONTINUED)

82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Associates) (clearly erroneous law or fact) (reversed 81:83).

82:03 Fort Wayne, IN (V, 1-25-82) (Bates & Rogers Const.) (affirmed 81:88).

82:13 Santa Fe, NM (VI, 3-9-82) (Ranger Const.) (renewal of same arguments) (affirmed 82:08).

82:53 Monterey, CA (IX, 9-29-82) (Frank M. Booth, Inc.) (evidence available but not offered) (affirmed 82:34).

82:58 Russian River, CA (IX, 11-1-82) (Dan Caputo Co., and Wagner Const. Co., A joint Venture) (denied where no mistakes, new evidence or error of law) (affirmed 82:39).

82:61 El Dorado, KS (VII, 11-1-82) (Oursler Brothers Const.) (legal error in not permitting protest of restrictive specifications) (reversed 82:24).

82:65 Spearfish, SD (VIII, 11-23-82) (Sheesley Plumbing and Heating Co.) (affirmed 82:46).

82:67 Cullman, AL (IV, 11-30-82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (no mistake, new evidence or legal error) (affirmed 82:37).

Reconsideration of Administrative Determinations

1. Pima County, AZ (IX, 3-17-80) (Ameron) (denied if issue is not protestable).

2. Checotah, OK (VI, 7-25-80) (Sherman Machine and Iron Works, Inc. [Per Lakeside Equipment Corporation]) (denied if no material factual mistake, new evidence or legal error).

3. Portland, OR (X, 8-7-80) (Robbins & Myers, Inc.) (decision affirmed when no material error of law or fact).

4. Vista Sanitation District/Encina Joint Powers, CA (IX, 9-19-80) (Don Todd Associates) (without new evidence or arguments, no reconsideration to require new RFP rather than new evaluation of prior RFP).

Reconsideration of Administrative Determinations

* 1. Cleveland Regional Sewer District OH-Reconsideration (V, 10-18-79) (Water Pollution Control Corp.) (Per Norton Co.)

2. Cleveland Regional Sewer District OH-Clarification (V, 12-28-79) (Water Pollution Control Corp.)

3. Greenville, TX-Reconsideration (VI, 5-31-79) (Ralph B. Carter Co.) (Per Parkson Corp.)

Reconsideration of Administrative Determinations (but see *Finality of Administrative Determinations*; where appropriate see subject listing in 43 FR 29086-95 (July 5, 1978), for pre-1978 determinations).

1. Corvallis, Oregon—Reconsideration (X, 1-19-78) (request of City of Corvallis) (determination of 12-6-77 affirmed)

2. Chester, South Carolina—Reconsideration (IV, 6-23-78) (request of Carolina Concrete Pipe Co.) (determination of 3-29-78 affirmed)

3. Contra Costa County Sanitation District No. 15, California—Reconsideration (IX, 7-14-78) (request of Cladding-McBean Inc. and Pacific Clay Products Co.) (determination of 10-25-78 affirmed in part, modified in part)

4. Onondaga County, New York—Reconsideration (II, 7-19-78) (request of Zimpro) (determination of 6-30-78 affirmed)

5. Newcastle, Indiana—Reconsideration (V, 8-23-78) (request of City of Newcastle) (determination of 5-18-78 and intervening correspondence clarified as to remedy)

Reconsideration of Administrative Determinations (but see, *Finality of Administrative Determinations*).

1. Detroit, Michigan (V, 11-23-76) (denied) (Lotepro Corp.)

2. North Shore Sanitary District, Illinois (V, 2-27-77) (denied) (Biospherics Inc.)

3. Delano, California (IX, 4-15-77) (denied) (California Vitrified Clay Pipe Manufacturers)

*4. Ft. Lauderdale, Florida (IV, 9-1-77) (denied) (Vito's Trucking & Excavating Co.)

5. Jackson, Mississippi (IV, 10-25-77) (denied) (American Cast Iron Pipe Co.)

REGULATIONS

Regulations

- 84:09 City of Los Cruches, NM (VI, 2-27-84) (*Mass Transfer, Inc.*) (Part 33 not substantive change from Part 35).
- 84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3-28-84) (*Catamount Const., Inc.*) (Part 35 procurement principles apply in Part 33 regulations and determinations under Part 35 may be relied upon as precedent).
- 84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (regulation on listing requirement changed but basic principles of Part 35 apply in Part 33).
- 84:18 Town of Milford, MA (I, 4-20-84) (*Euramca Ecosystems, Inc.*) (where prequalification information package and rejection letter erroneously cited Part 35 instead of proper Part 33, no prejudice caused by deciding protest under Part 33).
- 84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (Part 35 improperly relied upon in a Part 33 protest involving a specific regulation).
- 84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (Part 33 regulations incorporated in specifications—grantee decided protest under Part 35—EPA decided appeal using Part 33 reaching some result).

Regulations

- 83:29 Fargo, ND (VIII, 5-18-83) (*Van Bergen & Markson, Inc.; Gray Engineering Group, Inc. & Conservatek, Inc.*) (where IFB incorrectly included Part 35 regulations EPA applied Part 33).
- 83:46 Palatine, IL (V, 7-19-83) (*Di Paolo-Rossetti, Joint Venture*) (grantee opted to use interim Part 33 by reference in IFB).
- 83:68 Boston, MA (I, 12-9-83) (*Schiavone Const., Co.*) (grantee indicated Part 33 applied by reference in IFB).

REVIEW BY EPA

Review

81:12 California SWRCB, CA (IX, 2-28-81) (Navas Pipe Supply and Hydro Conduit Co.) (review of delegated state decision).

81:31 Gildford County Sewer District, MI (VIII, 4-28-81) (Baltrusch Const.) (role of EPA Regional Administrator).

81:39 Guam PUA (IX, 5-29-81) (John Carollo Engineers—George Chen & Sons, Inc.) (A/E procurement) (review of A/E procurement to insure maximum competition and compliance with regulations).

81:74 Tifton, GA (IV, 9-1-81) (Municipal & Industrial Pipe Services) (EPA review of determination by state delegated authority).

81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (issues raised before grantee only).

82:04 Westport, SD (VIII, 2-3-82) (H.P. Jacobs and Sons) (role of EPA Regional Administrator).

82:55 Haysville, KS (VII, 10-13-82) (Walker Process) (on-site maintenance).

82:16 El Dorado, KS (VII, 11-16-82) (Oursler Brothers Const.) (chain vs. cable).

Review—Regional Administrator Authority (see also Procedure; but see Sua Sponte Review)

1. Sandusky, Ohio (V, 1-13-78) (Bay-Con Corp.)

2. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance) (policy direction)

Judicially Directed Review.

1. Miami-Dade Water and Sewer Authority Florida—Supplement (IV, 4-28-78) (Intercounty Construction Co. and Morganti-South, Inc.—Wolff & Munier, a joint venture)

2. Onondaga County, New York—Supplement (II, 9-7-78) (Pizzagalli Construction Co. and John W. Cowper Co. Inc.)

Review—Regional Administrator Authority (See also Procedure; but see Sua Sponte Review).

1. Englewood and Littleton, Colorado (VIII, 2-10-75) (Air Products & Chemicals Inc.)

*2. Fresno, California (IX, 7-10-75) (Dorfman Construction Co.)

3. Cleveland Regional Sewer District, (Westerly Plant) Ohio (V, 11-3-75) (Blount Brothers; Darin and Armstrong)

4. Haverstraw, New York (II, 6-24-76) (Fletcher Creamer & Son)

5. Lynn, Massachusetts (I, 10-21-76) (Clinton Bogert Assoc.)

6. Detroit, Michigan (V, 11-10-76) (Metro Corp.)

7. Waterford, Connecticut (I, 3-4-77) (Loc Pump & Equipment)

*8. Dothan, Alabama (IV, 3-10-77) (Infilco Degremont)

9. York, Pennsylvania (III, 4-22-77) (Union Carbide Corp.)

10. Atlanta, Georgia (IV, 5-11-77) (Mayer and Associates)

11. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-24-77) (Eimco-BSP Services)

12. Cynthia, Kentucky (IV, 8-11-77) (Lyc-ZF)

13. Jackson, Mississippi (IV, 8-19-77) (American Cast Iron Pipe Co.)

14. Lower Salford, Pennsylvania (III, 9-8-77) (Gerngross Corp.)

15. Cumming, Georgia (IV, 9-28-77) (Newkirk Construction Co.)

16. Cranberry Township, Pennsylvania (III, 9-30-77) (Bay-Con Corp.)

Remand to Grantee

84:28 Libby, MT (VIII, 8-9-84)

(Transamerican Contractors, Inc.)

(on remand grantee given option of awarding contract to low responsive bidder or due to seasonal delay and need for additional grant funds City may consider rejecting all bids).

SUA SPONTE REVIEW

Sua Sponte Review

- 84:14 City of Texarkana, TX (VI, 4-5-84) (*Euramca Ecosystems, Inc.*) (sua sponte review denied where no threshold level of showing abuse in procurement).
- 84:26 Riverton, WY (VIII, 7-13-84) (*Martel Const. Co., Inc.*) (appeal filed before improper EPA official considered because of nature of issues raised).
- 84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (restricted to protests containing clear evidence that competition unduly impaired) (not available to protester upon request).

Sua Sponte Review

- 83:01 Spearfish, SD (VIII, 1-11-83) (*Rickel Manufacturing Co.*) (authority to review unduly restrictive specifications).
- 83:08 Hamilton, MT (VIII, 2-8-83) (*4G Plumbing & Heating, Inc.*) (where appeal summarily dismissed EPA may review merits to provide guidance).
- 83:11 LaPorte, TX (VI, 2-18-83) (*Jess Lovelace Const., Co.*) (where integrity of procurement system at issue).
- 83:24 Oklahoma City, OK [Reconsideration] (VI, 5-23-83) (*Fiberglass Engineering Products, Inc.*) (experience clause—integrity of procurement).
- 83:41 MSD, Chicago, IL (V, 6-24-83) (*Premier Electrical Const., Co.*) (strictly discretionary).
- 83:60 Tri-City, OR (X, 10-20-83) (*Donald M. Drake Co.*) (EPA may raise issue not addressed by any party).

Sua Sponte Review

- 81:08 Morgantown, WV (III, 2-11-81) (Clow Co.) (untimely protest, disguised sole source specifications).
- 81:31 Gildford County Sewer District, MI (VIII, 4-28-81) (Baltrusch) Const. (unstated rejection rationale reviewed).
- 81:38 Indianapolis, IN (V, 5-27-81) (American Digital Systems) (denied, no fundamental principles at issue).
- 81:55 Centerville, IA (VII, 7-21-81) (Grady Unlimited) (discretionary).
- 81:62 Cobb County, GA (IV, 8-11-81) (American Bioreactor Corp./BAV) (importance of prospective procurement).
- 81:69 Houma, LA (VI, 8-19-81) (Hydromatic Pump) (untimely protest, exclusionary specifications).
- 81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (issues not raised to grantee).
- 82:25 Perryville, MD (III, 4-28-82) (J. Vinton Schafter & Sons, Inc.) (MBE responsiveness issues).
- 82:44 Memphis, TN (IV, 8-16-82) (B.F. Goodrich Co.) (review of single material specification).
- 82:52 Gwynns Falls Relief Interceptors (III, 9-14-82) (R.J. Longo Const.) (before grantee decision).

Sua Sponte Review

1. Cordele, GA (IV, 1-15-80) (Tuttle/White Constructors, Inc.) (restrictive specifications).
2. Tacoma, WA (X, 4-3-80) (Worthington Pump Corporation) (bid evaluation).
3. Moorhead, MN (V, 6-3-80) (Waldor Pump & Equipment Company) (bid evaluation on cost and performance basis).
4. Checotah, OK (IV, 7-25-80) (Sherman Machine and Iron Works, Inc.) (decision need not be based on parties' arguments).
5. Toledo, OH (V, 7-28-80) (Minority Earth Movers, Inc.) (WBE is not MBE).
6. Bear Creek Valley Sanitary Authority, OR (X, 12-24-80) (Ausland Construction, Inc.) (MBE efforts).

SUA SPONTE REVIEW

(CONTINUED)

Sua Sponte Review

- *1. Albuquerque, NM (VI, 2-2-79) (Kent Nowlin Construction Co.) (initial review by RA)
- 2. Atlanta, GA (IV, 3-21-79) (Fruin-Conlon Corp.) (grantee bidder qualification practices)
- 3. Cochran, GA (VI, 9-14-79) (Municipal and Industrial Pipe Services, Ltd.)
- 4. Glenbard Wastewater Authority, IL (V, 4-6-79) (USEMCO, Inc.)
- 5. Jefferson Parish, LA (VI, 3-28-79) (Moore, Gardener and Associates) (selection criteria for engineering contract)
- 6. Kansas City, MO (VII, 12-20-79) (Garney Companies)
- 7. Mt. Pleasant, MI (V, 6-25-79) (Collavino Brothers Construction Co.)

Sua Sponte Review (§§ 35.935-2 and 35.939(f)(6)) (but see *Review—Regional Administrator Authority*).

- 1. North Little Rock, Arkansas (VI, 2-1-78) (Environmental Equipment Corporation)
- 2. Cynthiana, Kentucky (IV, 2-9-78) (James N. Gray Construction Co.)
- 3. Newcastle, Indiana (V, 5-18-78) (Spencer Turbine Co.)
- 4. Onondaga County, New York (II, 7-11-78) (Pentech Division of Houdaille Industries)
- 5. Chattanooga, Tennessee (IV, 9-20-78) (Passavant Corp.)
- 6. Grand Rapids, Michigan (V, 9-26-78) (Infilco Degremont)
- 7. Guilderland, New York (II, 10-3-78) (Clevopak Corp.)
- 8. Passaic Valley Sewerage Commissioners, New Jersey (II, 10-5-78) (BSP Division of Envirotech Corp. and Wheatley Corp.)

Sua Sponte Review (§§ 35.935-2 and 35.939(f)(6)) (see also, *Review—Regional Administrator Authority*).

- *1. Bergen County, New Jersey (II, 9-28-76) (State law; competition) (Wm. L. Crow Construction Co.-Wolff & Munier Inc.—Joint Venture)
- 2. Norwalk, Connecticut (I, 11-16-76) (Regional Administrator remedy notwithstanding protest dismissal) (Brunall Construction Co.)
- 3. Waterford, Connecticut (I, 3-4-77) (continuing Regional Administrator review notwithstanding protest dismissal-timeliness) (New Ikor II)
- *4. Sussex, Wisconsin (V, 4-14-77) (grantee involvement; delegation to agent) (Fischer & Porter)
- *5. York, Pennsylvania (III, 4-22-77) (policy/regulation review) (Union Carbide Corp.)
- 6. Parsippany-Troy Hills, New Jersey (II, 7-8-77) (Frank Briscoe Co.)
- *7. McFarland, California (IX, 9-28-77) (grantee procurement rule) (Lagoon Aeration Corp.)
- *8. Loxahatchee River Environmental Control District, Georgia (IV, 11-3-77) (contract dispute; procurement) (Guy Villa & Sons, Inc.)
- 9. Brick Township, New Jersey (II, 11-22-77) (bid expiration, bidder ineligibility) (P. & A. Construction Co.)
- *10. Bridgewater, New Jersey (II, 12-2-77) (mootness; State law) (Lombardo Contracting Co.)
- 11. Ramsey, New Jersey (II, 12-2-77) (timeliness) (P. & A. Construction Co.)
- 12. Corvallis, Oregon (X, 12-6-77) (Frank Coluccio Construction Co.)
- 13. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (EPA regulatory-policy review) (BSP Division of Envirotech Corp.)

STANDING

Standing

- 84:02 City of Bemidji, MN (V, 1-18-84)
(*Fiber-Dyne, Inc.*) (supplier lacks standing to protest his substitution by contractor).
- 84:11 City of New York, NY (IL 3-5-84)
(*Bristol Babcock, Inc.*) (supplier has no standing to protest improper bid evaluation).
- 84:18 Town of Milford, MA (I, 4-20-84)
(*Euramca Ecosystems, Inc.*) (because supplier did not dispute A/E's technical reasons for rejecting equipment, EPA relied on A/E judgment).
- 84:20 City of Decorah, IA (VII, 5-1-84)
(*Humboldt Wedag*) (supplier lacks standing to challenge evaluation of prequalification submittal).
- 84:29 City of New York, NY (IL 8-15-84) (*Terminal Const. Corp., and Fairfield Service Co.*) (prime contractor lacks standing to protest grantee rejection of specific equipment offered after contract award) (subcontractor may protest City's negative responsibility determination) (experience and bonding requirement also at issue).
- 84:32 Bayshore Regional Sewerage Authority, NJ (IL 8-30-84) (*RAM Engineering, Inc.*) (subcontractor cannot protest rejection by prime contractors caused by their inability to evaluate his last minute proposals).
- 84:32 Bayshore Regional Sewerage Authority, NJ [Reconsideration] (II, 11-1-84) (*RAM Engineering, Inc.*) (supplier has standing to protest bonding requirements but lacks standing here because he did not submit bid to prime early enough to be considered by prime).
- 84:38 Town of Westborough, MA (I, 10-2-84) (*Lynch, et al.*) (subcontractor lacks standing to protest grantee's refusal to substitute).
- 84:41 City of Lancaster, PA (III, 10-18-84) (*Wyatt Const. Inc.*) (subcontractor was permitted to protest MBE compliance of a prime bidder).
- 84:44 Pepper's Ferry, VA (III, 10-29-84) (*RDP Co.*) (supplier protest of bonding requirement dismissed as untimely).

Standing

- 83:02 Columbus, OH (V, 1-12-83)
(*Cobey Metro—Waste Composting Systems, Inc.*) (supplier protest experience requirements and grantee determination of inadequate experience).
- 83:03 Columbus, OH (V, 1-12-83)
(*Zimpro, Inc.*) (subcontractor not listed by prime lacks direct financial interest).
- 83:08 Hamilton, MT (VIII, 2-8-83) (4G
Plumbing & Heating, Inc.) (MBE subcontractor offeror may protest prime's actions).
- 83:16 Halstead, Hutchinson, KS (VII, 3-9-83) (*Charles E. Stevens*) (protester burden to show intent to bid).
- 83:18 Perryville, MD (III, 3-21-83)
(*Lycow Wastewater Equipment Division*) (RBC supplier may protest specifications which prevented prime from awarding it contract).
- 83:22 San Jose, CA (IX, 4-11-83)
(*Johnson Controls, Inc.*) (low bidder affected by decision to reject all bids).
- 83:29 Fargo, ND (VIII, 5-18-83) (*Van Bergen & Markson, Inc.; The Gray Engineering Group, Inc. & Conservatek, Inc.*) (subcontractor may protest substitution dictated by grantee).
- 83:30 St. Albans, WV (III, 5-27-83)
(*Ralph B. Carter Co.*) (subcontractor may protest City rejection of its equipment).
- 83:38 Sacramento, CA (IX, 6-17-83)
(*Power Machine Co.*) (subcontractor protested specifications).
- 83:43 Toledo, OH (V, 6-29-83)
(*Industrial Pump & Equipment Corp.*) (supplier alleging sole source) (Part 33 regulations).
- 83:51 Santa Barbara, CA (IX, 8-15-83)
(*Namtec Corp. & Union Engineering Co.*) (supplier protested specifications and prime's responsiveness).
- 83:56 Los Angeles, CA (IX, 9-30-83)
(*Bailey Controls Co.*) (to protest competitor's responsiveness bidder must be responsive).
- 83:57 Sod Run, Harford County, MD (III, 10-7-83) (*CESCO, Inc.*) (equipment substitution not protestable).
- 83:58 Evanston, WY (VIII, 10-18-83)
(*WesTech Engineering, Inc.*) (equipment substitution not protestable).

STANDING (CONTINUED)

- 83:62 Wayne, NB (VII, 10-31-83)
(Envirex, Inc.) (prequalified supplier may protest grantee directed substitution).
- 83:63 Monterey, CA (IX, 11-4-83)
(Power Systems) (successful supplier cannot protest specifications).
- 83:68 Tri-City, OR (X, 12-9-83)
(Dresser Industries, Inc.) (where protester can meet specifications no basis for protest).

Standing

- 82:06 Oceanside, CA (IX, 1-30-81)
(Bird Machine Co., Inc.) (subcontractor cannot protest a prime's use of nonresponsible subcontractor).
- 81:07 Albert Lea, MN (V, 2-3-81)
(Pennwalt Corp.) (summary disposition).
- 81:19 Phoenix, AZ (IX, 3-27-81)
(TGK Const. and M.M. Sundt Const.) (second low bidder).
- 81:45 San Francisco, CA (IX, 10-2-81)
(Hydro Conduit Co.) (supplier/offeror with ability to compete has affected financial interest).
- 81:46 San Francisco, CA (IX, 8-15-81)
(Alliance of Minority Contractors and Suppliers) (association representing minority subcontractors).
- 81:47 Jasonville, IN (V, 6-30-81)
(Hinde Engineering) (equipment supplier may protest restrictive application of specifications, may not protest specifications with which it complies).
- 81:49 Los Angeles County, CA (IX, 7-1-81)
(Dresser Industries) (subcontractor lacks standing to protest competitor's equipment compliance with specifications).
- 81:58 Ashland, KY (IV, 7-27-81)
(Fairbanks Morse Pump) (subcontractor protesting restrictive specifications).
- 81:59 Metropolitan Wastewater Management Commission, OR (X, 7-30-81)
(Hyland Brothers Const. and Assoc.) (entitlement to contract award as responsive, responsible bidder not required for filing protest).
- 81:64 Loganville, GA (IV, 8-14-81)
(Flygt Corp.) (subcontractors/suppliers lack standing to protest equipment order cancellation).
- 81:72 Albert Lea, MN (V, 2-3-81)
(Bird Machine Co.) (subcontractors may not protest substitution by prime).
- 81:75 New Castle, IN (V, 9-9-81)
(Joe R. Norman Contractor) (bidder may not challenge acceptance of performance bond absent effect on competition).

- 81:77 Carrboro, NC (IV, 9-23-81)
(Clevepak Corp.) (suppliers protesting procurement from nonresponsible supplier).
- 81:92 Hallandale, FL (IV, 11-3-81)
(Municipal & Industrial Pipe Services; Interstate Pipe Maintenance; and Polymer Chemical Corp.) (supplier challenging single material requirement).
- 81:96 Tallahassee, FL (IV, 11-10-81)
(GS&L Mechanical Const. and Assoc. of Minority Contractors) (association representing minority contractors).
- 82:03 Fort Wayne, IN (V, 1-25-82)
(Bates & Rogers Const.) (equipment supplier lacked standing).
- 82:09 Cobden, IL (V, 2-19-82) (R-J Equipment Sales) (standing of equipment suppliers limited).
- 82:29 Syracuse, NY (II, 5-18-82) (Bat-Con, Inc.) (withholding payments to contractor for failure to meet MBE requirements not protestable).
- 82:46 Spearfish, SD (VIII, 8-19-82)
(Sheesley Plumbing and Heating Co.) (subcontractor protest of restrictive application of specifications).
- 82:48 Claremont, CA (IX, 8-28-82)
(Peter Gavrilis) (city employee allegedly fired for questioning subagreement award lacks standing).
- 82:49 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (potential subcontractor may protest restrictive specifications).
- 82:51 Moline, IL (V, 9-21-82) (Walker Process) (subcontractor/supplier lacks standing to challenge evaluation of prime bid responsiveness).
- 82:58 Russian River, CA (IX, 11-1-82)
(Dan Caputo Co., and Wagner Const., A Joint Venture) (terminated contractor not bidding on corrective work contract lacks standing).
- 82:60 Rochester Pure Waters District, NY (II, 11-3-82) (Schiavone Const. Co./Cotton Dean Underground Excavation Co., Joint Venture) ("public interest" provides no standing).
- 82:63 Elk Pinch, WV (III, 11-18-82)
(Kappe Assoc.) (subcontractor lacks standing to protest nondiscriminatory performance bond requirement).
- 82:64 Shady Spring PSD, WV (III, 11-22-82) (Davis Water & Waste Industries, Inc.) (subcontractor substitution not protestable).
- 82:71 Columbus, OH (V, 12-29-82)
(Zimpro) (adversely affected direct financial interest).
- 82:72 Alliance, OH (V, 9-10-82) (R&S Engineering) (no standing where subcontractor failed to attempt prequalification).

STANDING (CONTINUED)

Standing

1. East Bay Dischargers Authority, CA (IX, 1-30-80) (Capital Controls Company) (supplier).
2. Tacoma, WA (X, 4-3-80) (Worthington Pump Corporation) (supplier alleging sole source).
3. Cordele, GA (IV, 5-1-80) (Franklin Aluminum Division/Hoover Universal, Inc.) (supplier alleging restrictive specifications).
4. Moorhead, MN (V, 6-3-80) (Waldor Pump & Equipment Company) (supplier's standing can be recognized by RA).

Standing

1. Batesville, AR (VI, 1-12-79) (Hinde Engineering Co.)
2. Clarksburg, MA (I, 8-25-79) (Curran Associates Inc.)
3. Concord, NH (I, 10-4-79) (Bethlehem Steel Corp.)
4. Conneaut, OH (V, 7-18-79) (Hoff-Weston)
- *5. Decatur, AL (IV, 3-2-79) (Johnson Controls, Inc.)
6. Decatur, AL (IV, 7-23-79) (International Electric Co.)
7. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.) (equipment supplier)
8. Gainesville, GA (IV, 6-15-79) (National Hydro Systems, (II)), (by or for grantee)
9. Hagerstown, MD (III, 1-4-79) (PCI Ozone Corp.) (suppliers direct financial interest)
10. Laurens County, SC (IV, 7-10-79) (Caroline Concrete Pipe Co., et al.)
11. Macon-Bibb County Water and Sewage Authority, GA (IV, 3-18-79) (Shirco, Inc.) equipment suppliers protesting responsiveness of prime bidder)
12. Meriden, CT (I, 10-4-79) (Carter Construction Co.) (MBE)
13. Seaford, DE (III, 1-8-79) (National Hydro Systems, Inc.)
14. Stillwater, OK (VI, 3-1-79) (Robicon Corp.)
- *15. Sterling, IL (V, 3-9-79) (Neptune CPC Engineering Corp.)

1. Sandusky, Ohio (V, 1-13-78) (Bay-Con Corporation) (protest must be decided by grantee before filing with EPA)
2. Springfield, Missouri (VII, 1-24-78) (Armco Steel Corp.) (equipment supplier)
3. North Little Rock, Arkansas (VI, 2-1-78) (Environmental Equipment Corporation) (limited at subtier levels)
4. Turlock, California (IX, 3-6-78) (Riga, Inc.) (subtier; intervenors)
5. Wells, Maine (I, 3-17-78) (Purcell Pump) (subtier)
6. Effingham, Illinois (V, 3-21-78) (Autotrol)
7. Antigo, Wisconsin (V, 3-24-78) (General Filter Co.) (supplier challenging responsiveness of prime bid)

8. Newcastle, Indiana (V, 5-18-78) (Spencer Turbine Co.) (equipment supplier)

*9. Contra Costa County Sanitation District No. 15, California—Reconsideration (IX, 7-14-78) (Gladding-McBean Inc. and Pacific Clay Products Co.) (intervenors)

10. Lebanon, Pennsylvania (III, 8-28-78) (B. F. Goodrich General Products) (subtier protest)

11. Knoxville, Tennessee (IV, 9-25-78) (R. B. Carter) (subcontractor challenge to prime bid)

12. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance)

13. Frankfort, Kentucky (IV, 10-18-78) (Passavant) (subcontractor protest limitation of § 35.939(j)(6))

14. West Goshen, Pennsylvania (III, 11-1-78) (Electric Machine Mfg. Co.) (subtier)

15. Lake County, Illinois (V, 11-17-78) (Envirex)

16. Delaware County, Ohio (V, 11-21-78) (R. B. Carter)

Standing.

1. Westchester County, New York (II, 3-3-76) (trade association) (General Building Contractors)

2. Baton Rouge, Louisiana (VI, 11-5-76) (National Hydro Systems, Inc.)

3. Bridgeport, Connecticut (I, 11-22-76) (interested parties-associations) (Connecticut Engineers in Private Practice)

4. Rhode Island Statewide Planning Program (§ 208 grant) (I, 3-4-77) (non-offeror to RFP) (C. E. Maguire, Inc.)

*5. York, Pennsylvania (III, 4-22-77) (subcontractor protest of prime award issue) (Union Carbide Corp.)

6. Montgomery, Alabama (IV, 5-11-77) (subcontractor - non - restrictive specifications) (Envirotech Corp.)

7. Daytona Beach, Florida (IV, 6-21-77) (subcontractor protest of prime award; accord York, Pa.) (Hydro-Clear Corp.)

*8. Norwalk, Connecticut (I, 7-22-77) (no valid bid due to price increase on bid extension) (Primiano Construction Co.)

9. McFarland, California (IX, 9-29-77) (subcontractor protest of engineering evaluation; vs. grantee involvement rule) (Lagoon Aeration Corp.)

10. Contra Costa County, California (IX, 10-25-77) (Armco Steel)

11. Loxahatchee River Environmental Control District, Georgia (IV, 11-3-77) (contract disputes; procurement) (Guy Villa & Sons)

12. Brick Township, New Jersey (II, 11-22-77) (P. & A. Construction Inc.)

13. Monterey Peninsula Water Pollution Control Agency, California (IX, 12-9-77) (J. M. Bush)

14. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (Restrictive Specifications—Experience) (BSP Division of Envirotech Corp.)

SUMMARY DISPOSITION

Summary Disposition

- 84:22 Mercer County, NW (II, 5-7-84) (RDP Co.) (untimely appeal).
- 84:24 City of Leominster, MA (I, 6-11-84) (P. Gioioso & Sons, Inc.) (untimely appeal).
- 84:29 City of New York, NY (II, 8-15-84) (Terminal Const. Corp., and Fairfield Service Co.) (failure to exhaust administrative remedy and lack of merit).
- 84:33 Muncie, IN (V, 8-30-84) (Shambaugh & Son, Inc.) (failure to submit anything after initial telegraphic notice).
- 84:37 Lewistown, MT (VII, 9-27-84) (Process Equipment Co.) (failure to file initial protest).
- 84:52 Possum Valley, PA (III, 11-9-84) (U-Max Engineering & Const. Corp.) (failure to file initial protest).
- 84:55 City of Fort Lauderdale, FL (IV, 12-27-84) (Gray Engineering Group, Ind.) (request for reconsideration).

Summary Disposition

- 81:07 Albert Lea, MN (V, 2-3-81) (Pennwalt Corp.) (untimely, no standing).
- 81:41 Grand Haven, MI (V, 6-5-81) (Equipment & Gravel) (work beyond scope of project).
- 81:63 Honolulu, HI (IX, 8-12-81) (Nichols Engineering & Research Co.) (frivolous).
- 81:100 Harriman, TN (IV, 12-9-81) (Municipal & Industrial Pipe Services) (failure to file written protest after telegram).
- 81:104 Elizabethtown, KY (IV, 12-18-81) (Autorol Corp.) (protest used to preserve restrictive specification for protestor's benefit).
- 82:03 Fort Wayne, IN (V, 1-25-82) (Bates & Rogers Const.) (appeal procedurally defective).
- 82:39 Russian River, CA (IX, 7-20-82) (Dan Caputo, Co. and Wagner Co., A Joint Venture) (contractor claim).
- 82:51 Moline, IL (V, 9-21-82) (Walker Process) (supplier lacks standing to challenge bid evaluation/responsiveness).
- 82:57 Cape May County MUA, NJ (II, 11-1-82) (American Bioreactor Co. and Fairfield Service Co.) (protest not frivolous where basic project design not clear from IFB).

- 82:71 Columbus, OH (V, 12-29-82) (Zimpro) (no adversely affected financial interest).

Summary Disposition

1. Anne Arundel County, MD (III, 2-12-80) (Sabatini Company) (moot or premature protest).
2. Pima County, AZ (IX, 2-20-80) (Ameron) (change order).
3. Metropolitan Sanitary District of Greater Chicago, IL (V, 2-27-80) (Shea-Klewit) (unit price claim).
4. Metropolitan Sanitary District of Greater Chicago, IL (V, 3-27-80) (Herlihy Mid-Continent Company) (contract claim).
5. Hudson County Utilities Authority, NJ (II, 3-31-80) (E&R Engineers Limited) (untimely).
6. Moorhead, MN (V, 6-3-80) (Waldor Pump & Equipment Company) (lengthy submittals preclude dismissal).
7. Cecil County, MD (III, 8-11-80) (Hanks Contracting, Inc.) (untimely, lack of bid bond).
8. Whitewater, WI (V, 9-22-80) (Nagle-Hart, Inc.) (untimely).
9. Linden Roselle Sewerage Authority, NJ (II, 10-31-80) (Euramca Ecosystems, Inc.) (untimely).
10. Clear Lake City, TX (VI, 12-29-80) (LEDM Construction Co., Inc.) (MBE compliance affects responsibility).

Summary Disposition

1. Aberdeen MD (III, 9-7-79) (Chemcon, Inc.) (failure to file with grantee)
2. Caldwell, ID (X, 11-1-79) (Neilsen & Co.)
3. Chattanooga, TN (IV, 3-27-79) (Performance Systems, Inc.)
4. Clarksburg, MA (I, 8-25-79) (Curran Associates, Inc.)
5. Decatur, AL (IV, 3-2-79) (Johnson Controls, Inc.)
6. Decatur, AL (IV, 7-23-79) (International Electric Co.)
7. Hagerstown, MD (III, 1-4-79) (PCI Ozone Corp.)
8. James Island Public Service District, SC (IV, 5-2-79) (Pyramid Builders, Inc.)
9. Macon-Bibb County Water and Sewage Authority, GA (IV, 3-16-79) (Shirco Inc.)
10. Meridian, MS (IV, 1-15-79) (Mississippi Pump and Equipment Co.) (untimely protest)
11. Puerto Rico Environmental Quality Board, PR (II, 3-30-79) (Technologists International, Inc.)
12. Muskegon County, MI (V, 7-29-79) (Video Media Corp.)
13. Metropolitan Sanitary District of Greater Chicago, IL (V, 8-18-79) (Troesch Trucking, Inc.)

SUMMARY DISPOSITION (CONTINUED)

14. Meriden, CT (I, 10-4-79) (Carter Construction Co.)
15. Miami-Dade Water and Sewer Authority, FL (IV, 4-30-79) (Cobo Construction Co.)
16. Mill Hall, PA (III, 1-29-79) (Municipal and Industrial Pipe Services, LTD.)
17. Plainfield, CT (I, 12-11-79) (Greenman's Trucking, Inc.)
18. Frederick County, MD (III, 4-19-79) (Conewago Contractors, Inc.)
19. Greenup County, KY (IV, 11-13-79) (W. Rogers Co.)
20. Rocky Mount, NC (IV, 1-15-79) (Enviro Development Co.)
21. City and County of San Francisco, CA (IX, 12-20-79) (Chemcon, Inc.)
22. Simpsonville, KY (IV, 4-17-79) (Warner A. Broughman III and Associates)
23. Stillwater, OK (VI, 3-1-79) (Robicon Corp.)
24. Wood County Parks and Recreation Commission, WV (III, 3-15-79) (GAL Construction, Inc.)
25. Worcester County (Ocean City), MD (III, 3-14-79) (Charles E. Brohawn and Brothers, Inc. (II))

Summary Disposition (§ 35.939(k)).

1. Mountaintop, Pennsylvania (III, 1-5-78) (National Hydro Systems, Inc.)
2. Glenwood Springs, Colorado (VIII, 1-13-78) (Colorado Environmental Equipment, Inc.) (procedures; timeliness)
3. Sandusky, Ohio (V, 11-3-78) (Bay-Con Corporation) (timeliness)
4. Glen Ellyn, Illinois (V, 4-7-78) (Lyco-Zf) (timeliness)
5. Atwater, California (IX, 4-26-78) (Warren C. T. Wong & Assoc.) (A/E procurement)
6. Olympia, Washington (X, 5-30-78) (Pentech Division of Houdaille Industries, Inc.)
- *7. Bay City, Michigan (V, 6-28-78) (Greenfield Construction Co.) (contract 10 D) (timeliness)
8. Miami-Dade Water and Sewer Authority, Florida (IV, 7-13-78) (Ed. L. Nezelek Inc.) ("without merit")
9. Goose Creek, South Carolina (IV, 7-24-78) (Kenney and Associates) (timeliness)
10. Pepperell, Massachusetts (I, 7-28-78) (Wescor Associates, Inc.) (timeliness)
11. Bay County, Michigan (V, 8-11-78) (Frank V. Louis Equipment Co.)

12. Penns Grove, New Jersey (II, 8-24-78) (Pandullo Quirk Associates) (timeliness)
13. Bay County, Michigan (V, 9-1-78) (Roose Contracting Co. Inc.) (Contract Nos. 3 and 7) (timeliness)
14. Knoxville, Tennessee (IV, 9-25-78) (R. B. Carter)
15. Niagara County Sewer District (No. 1), New York (II, 10-18-78) (Environment One Corporation) ("without merit")
16. Frankfort, Kentucky (IV, 10-20-78) (Stewart Mechanical Enter./Sigmamotor Inc.)
17. Shreveport, Louisiana (VI, 10-25-78) (Dumesnil Construction Co. Inc.) (procedure: protest withdrawn)
18. Fairfield, New Jersey (II, 11-8-78) (Autocon Industries) (procedural omissions, § 35.939(f)(7))
19. Delaware County, Ohio (V, 11-21-78) (R. B. Carter) (subcontractor selection issues)
20. Portage, Michigan (V, 12-20-78) (Iacobelli Construction Inc.) (procedures)

Summary Disposition (§ 35.939(k)).

1. Westchester County, New York (II, 3-3-76) (standing-trade association; state law; vagueness) (General Building Contractors)
2. Bridgewater, New Jersey (II, 3-31-76) (state procedures for A/E negotiations) (Havens & Emerson)
3. Rhinelander, Wisconsin (V, 3-31-76) (subcontractor issue limitation rule—substitution) (EPCO-Hormel)
4. Lowell, Massachusetts (I, 4-1-76) (state law—substitution) (United Electrical Contractors)
5. Lowell, Massachusetts (I, 4-2-76) (state law—substitution) (Honeywell Corp.)
6. Fredonia, New York (II, 4-15-76) (timeliness—subtier) (Tenco Hydro/Aerosciences)
7. Appleton, Wisconsin (V, 5-17-76) (choice of alternate system design) (Philadelphia Mixers Corp.)
8. Haverstraw, New York (II, 6-24-76) (state law) (Fletcher Creamer & Son)
- *9. Amherst, New York (II, 7-2-76) (supplier substitution) (Air Products & Chemicals Inc.)
10. Hancock, Michigan (V, 7-12-76) (timeliness) (Maclean Construction Co.)
11. Sacramento, California (IX, 8-12-76) ("or equal" technical challenge) (BBR Prestressed Tanks)
12. McKinleyville Community Services District (Humboldt County), California (IX, 8-13-76) (state law) (McGuire & Hester Co.)

SUMMARY DISPOSITION (CONTINUED)

*13. Sacramento, California (IX, 9-13-76) (timeliness—restrictive specification challenge) (Amoco Reinforced Plastics)

14. Deposit, New York (II, 10-5-76) (timeliness—challenged procurement upon default of contractor) (Albin Construction Co.)

15. Boynton Beach/Delray Beach, Florida (IV, 10-14-76) (timeliness—subtier) (Ecological Services Products)

16. Concord, North Carolina (IV, 10-14-76) (timeliness—subtier) (Air Products & Chemicals Inc.)

17. Baton Rouge, Louisiana (IV, 11-5-76) (business judgment) (National Hydro Systems)

18. Detroit, Michigan (V, 11-10-76) (timeliness—subtier) (Lotepro Corp.)

19. Occoquan-Woodbridge (Potomac Plant), Virginia (III, 11-12-76) (EO 11246—Washington Imposed Plan—noncompliance) (Briscoe/Courter/Conduit—Joint Venture)

20. Danville, Illinois (V, 11-15-76) (Honeywell Corp.)

21. Norwalk, Connecticut (I, 11-16-76) (timeliness; but see sua sponte review) (Brunalli Construction Co.)

22. Oxnard, California (IX, 12-1-76) (design choice issue) (BBR Prestressed Tanks)

23. Gregory, South Dakota (VIII, 1-4-77) (bid informality) (Schweigert Construction Co.)

24. Fredonia, New York (II, 2-28-77) (timeliness—subtier; restrictive specification interpretation) (National Hydro Systems)

25. Rhode Island Statewide Planning Program (I, 3-4-77) (A/E procurement—standing—nonproposer) (C. E. Maguire)

*26. Waterford, Connecticut (I, 3-4-77) (timeliness—"or equal" challenge) (New Ikor II)

*27. York, Pennsylvania (III, 4-22-77) (standing; subcontract limitation issues) (Union Carbide Corp.)

28. Omro, Wisconsin (V, 5-13-77) (subcontract issue limitation rule) (Can-Tex)

29. Lynden, Washington (X, 5-16-77) (procedure—oral modification) (Arcomm Construction Co.)

*30. Marion, North Carolina (IV, 5-17-77) (timeliness—subtier—admission against interest) (Carolina Concrete Pipe Co.)

31. Bernice, Louisiana (VI, 6-1-77) (timeliness—subtier, restrictive specification issue—performance curves) (National Hydro Systems)

32. Middlesex (Bound Brook Pump Station), New Jersey (II, 6-7-77) (choice of law—state law—mistake issue) (Campanella Construction Co.)

33. Middlesex (Sayreville Relief Pump Station), New Jersey (II, 6-9-77) (mistake—grantee intent) (Terminal Construction Co.)

34. Daytona Beach, Florida (VI, 6-14-77) (timeliness—subtier; grantee's mailing of determination) (Key Power Systems, Inc.)

35. San Francisco, California (IX, 6-20-77) (A/E procurement—time; choice of law—state law) (McKee-Berger-Mansueto)

36. Sonoma, California (IX, 6-30-77) (timeliness, choice of law—state law) (P. C. Jensen)

37. Newton, North Carolina (IV, 7-17-77) (project grant ineligible) (Carolina Concrete Pipe)

38. Cayce, South Carolina (IV, 7-18-77) (timeliness—subtier) (Southeastern Concrete)

*39. Oklahoma City, Oklahoma (VI, 7-25-77) (subcontract issue limitation rule) (Carborundum)

40. Jackson, Mississippi (IV, 8-19-77) (restrictive specification—pipe; competition) (American Cast Iron Pipe Co.)

41. Huntington, Massachusetts (I, 8-29-77) (EEO—EO 11246 Certificate) (Warner Brothers)

42. Lower Salford, Pennsylvania (III, 9-8-77) (EEO—EO 11246 Washington Imposed Plan) (Gerngross Corp.)

43. Cumming, Georgia (IV, 9-28-77) (state law—compel issuance of payment and performance bond) (Newkirk Construction Co.)

44. Pepperell, Massachusetts (I, 11-22-77) (timeliness) (Catamount Construction Co.)

45. Bridgewater, New Jersey (II, 12-2-77) (moot—state appellate determination) (Lombardo Construction Co.)

46. Monterey Peninsula Water Pollution Control Agency, California (IX, 12-9-77) (subcontract limitation rule—standing) (J. M. Bush)

TIME LIMITATIONS

Time Limitations

- 84:14 City of Texarkana, TX (VI, 4-5-84) (*Euramca Ecosystems, Inc.*) (appeal dismissed as untimely).
- 84:18 Town of Milford, MA (I, 4-20-84) (*Euramca Ecosystems, Inc.*) (protest dismissed because received one day late. Copy received by A/E did not constitute grantee receipt).
- 84:19 Clinton County, NY (II, 4-30-84) (*Compost Systems Co.*) (specifications restrictive on their face must be protested before bid opening).
- 84:22 Mercer County, NW (II, 5-7-84) (*RDP Co.*) (appeal received on eighth day dismissed as untimely).
- 84:25 City of Revere, MA (I, 6-13-84) (*Polymer Chemicals, Inc.*) (appeal received on eleventh day is untimely).
- 84:28 Riverton, WY (VIII, 7-13-84) (*Martel Const. Co., Inc.*) (protest appeal alleging impropriety in solicitation dismissed where not filed before bid opening).
- 84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (dismissal where protest of restrictive specifications filed after bid opening).
- 84:31 Trumbull County, OH (V, 8-24-84) (*R & K Constructors, Inc.*) (dismissed appeal filed 10 days after receipt of granted decision).
- 84:33 Muncie, IN (V, 8-30-85) (*Shambaugh & Son, Inc.*) (failure to submit anything after initial telegraphic notice).
- 84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (dismissed appeal received 11 days after receipt of grantee decision).
- 84:37 Lewistown, MT (VIII, 9-27-84) (*Process Equipment Co.*) (must protest prequalification rejection prior to bid opening).
- 84:39 Town of Thompson WTF Kiamesha Lake Sewer Dist. (II, 10-16-84) (*Ultraviolet Purification System Inc.*) (dismissed appeal received 11 days after receipt of grantee decision).
- 84:41 City of Lancaster, PA (III, 10-16-84) (*Wyatt Const. Inc.*) (initial protest filed untimely).

- 84:44 Pepper's Ferry, VA (III, 10-29-84) (*RDP Co.*) (must protest specifications containing alleged unduly restrictive experience and bonding requirements before bid opening).
- 84:48 Indianapolis, IN (V, 11-7-84) (*Bechtel Const. Corp.*) (protest of specification that required contract clause inconsistent with EPA model clause dismissed because protest was after bid was rejected).
- 84:49 Richgrove, CA (IX, 11-8-84) (*El Camino Const. Co.*) (dismissed appeal filed with State agency and not received by EPA until 18 days after receipt of grantee decision).
- 84:51 City of New York, NY (II, 11-8-84) (*Williams & Lane Energy Systems Corp.*) (dismissed where mailgram not supplemented within 7 days).

Time Limitations

- 83:01 Spearfish, SD (VIII, 1-11-83) (*Rickel Manufacturing Co.*) (mailed appeal must be received within one week).
- 83:02 Columbus, OH (V, 1-12-83) (*Cobey Metro-Waste Composting Systems, Inc.*) (documents must be promptly filed following mailgram notice and protest).
- 83:08 Hamilton, MT (VIII, 2-8-83) (*4G Plumbing & Heating, Inc.*) (communications between protestor and EPA do not excuse untimely filing of appeal).
- 83:22 San Jose, CA (IX, 4-11-83) (*Johnson Controls, Inc.*) (clock not started by engineer's communication to bidder concerning adequacy of equipment).
- 83:25 Onondaga County, NY (II, 5-9-83) (*Herbert F. Darling, Inc.*) (appeal of post bid determination of good faith MBE efforts ripe when award announced).
- 83:28 Des Moines, WA (X, 5-18-83) (*Will Const., Co., Inc.*) (protester's burden of proving timeliness).
- 83:31 Youngstown, OH (V, 5-31-83) (*Floyd Brown Associates*) (must challenge evaluation criteria before submitting proposal).

TIME LIMITATIONS (CONTINUED)

- 83:38 Sacramento, CA (IX, 8-17-83)
(*Power Machine Co.*) (protest after bid opening where specification not clearly restrictive on its face) (rejection of equipment started clock).
- 83:39 Philadelphia, PA (III, 6-22-83)
(*Fisher & Porter Co.*) (good faith negotiations delayed clock).
- 83:40 Elkhart, IN (V, 8-22-83) (*Penn Equipment & Tool Corp.*) (strictly construed 1 week).
- 83:43 Toledo, OH (V, 8-29-83)
(*Industrial Pump & Equipment Corp.*) (sole source must be protested before bid opening).
- 83:50 Detroit, MI (V, 8-2-83) (*Dynamic Const., Co., Inc.*) (timely where no knowledge of grantee intent to award to competitor).
- 83:51 Santa Barbara, CA (IX, 8-15-83)
(*Namtec Corp. & Union Engineering Co.*) (7 days to protest restrictive specifications) (nonresponsive bid must be protested within 1 week of learning of award) (oral notice of City Council meeting starts appeal clock).
- 83:54 Dorchester, MD (III, 9-20-83)
(*F.E. Meyers Co.*) (specifications must be protested prior to bid opening).
- 83:55 Brazos River, TX (VI, 9-23-83)
(*Jeffery Manufacturing Div.*) (where protester reasonably believed equipment met specifications protest may be filed after bid opening).
- 83:58 Evanston, WY (VIII, 10-18-83)
(*Westech Engineering, Inc.*) (protester risks late delivery of express mail protest appeal).
- 83:60 Tri-City, OR (X, 10-20-83)
(*Donald M. Drake Co.*) (telegraphic notice received after close of business deemed timely).
- 83:63 Monterey, CA (IX, 11-4-83)
(*Power Systems*) (protest of specifications).

Time Limitations

- 81:01 N.Y. State DEC, NY (II, 1-7-81)
(*Sweda Enterprises*) (7 days from IFB).
- 81:08 Morgantown, WV (III, 2-11-81)
(*Clow Co.*) (protest 10 days after receipt of IFB) (*sua sponte* review granted).
- 81:09 Wilmington, DE (III, 2-12-81)
(*Ashbrook-Simon-Hartley*) (knowledge of restrictive specification requires protest before bid opening).

- 81:23 Tifton, GA (IV, 4-13-81) (*Astor Bolden Enterprises, Inc. and Municipal Industrial Pipe Services, Ltd.*) (protest to be within week of factual event giving notice of basis).
- 81:25 Hopkinsville, KY (IV, 4-14-81)
(*Price, Inc. and Neal Inc., Joint Venture*) (protest within week of constructive knowledge).
- 81:33 Lynchburg, OH (V, 4-30-81)
(*Dow Const.*) (clock starts on bid evaluation issue when access to bid content allowed).
- 81:34 San Diego, CA (IX, 5-1-81)
(*Westates Carbon*) (time limits protect public interest).
- 81:36 Buncombe County, NC (IV, 5-7-81) (*Carlson, Division of Indian Head*) (advance knowledge of restrictive specifications before bid opening made protest late).
- 81:38 Indianapolis, IN (V, 5-27-81)
(*American Digital Systems*) (clock starts on procurement method issue on receipt of IFB).
- 81:40 Memphis, TN (IV, 6-2-81)
(*American Digital Systems*) (where RFP not in conformity with request for qualifications must protest week after proposal meeting).
- 81:44 Tuolumne County, CA (IX, 6-11-81) (*Chaudhury & Assoc., Inc.*) (protest 6 days late, appeal 1 day late).
- 81:46 San Francisco, CA (IX, 6-15-81) (*Alliance of Minority Contractors and Suppliers*) (5 days late).
- 81:47 Jasonville, IN (V, 6-30-81)
(*Hydro Conduit*) (each issue's timeliness considered separately).
- 81:49 Los Angeles County, CA (IX, 7-1-81) (*Dresser Industries*) (timely filed three months post bid opening).
- 81:54 Monmouth County, NJ (II, 7-21-81) (*Fellows, Read & Assoc.*) (for protesting short proposal preparation period).
- 81:55 Centerville, IA (VII, 7-21-81)
(*Grady Unlimited*) (understandable but inexcusable delay).
- 81:57 Newaygo County Board of Public Works, MI (V, 7-24-81) (*D.J. Domas*) (one day late).
- 81:58 Ashland, KY (IV, 7-27-81)
(*Fairbanks Morse Pump*) (notice to prime that supplier's equipment rejected does not start clock on supplier) (failure to notify interested parties does not affect dismissal).
- 81:62 Cobb County, GA (IV, 8-11-81)
(*American Bioreactor Corp./BAC*) (*sua sponte* review after time for protest

TIME LIMITATIONS

appeal) (one week means seven consecutive calendar days).

81:64 Loganville, GA (IV, 8-14-81) (Flygt Corp.) (Supplier's protest due week after letter advising equipment would not be used).

81:69 Houma, LA (VI, 8-19-81) (Hydromatic Pump) (untimely appeal, *sua sponte* review of exclusionary specifications).

81:70 Tuscaloosa, AL (IV, 8-20-81) (Naylor Supply Co.) (receipt of determination by law firm, not individual attorney, starts clock).

81:80 Sacramento County, CA (IX, 10-2-81) (Westates Carbon Co.) (restrictive specification protest filed after bid opening).

81:81 Columbus, OH (V, 10-5-81) (Cantwell Machinery) (receipt by counsel is receipt by protestor).

81:86 Huntsville, AL (IV, 10-5-81) (Municipal, & Industrial Pipe Services and Astor Bolden Enterprises) (unduly restrictive specification exception to time limitation).

81:88 Fort Wayne, IN (V, 10-16-81) (Bates and Rogers Const.) (53 days late).

81:94 Oneida County Sewer District, NY (II, 11-4-81) (C.O. Falter Const.) (grantee letter interpreting specifications starts clock).

81:95 Fowlerville, MI (V, 11-9-81) (Normco Const.) (verbal notice does not start appeal clock).

81:96 Tallahassee, FL (IV, 11-10-81) (GS&L Mechanical Const.; Assoc. of Minority Contractors) (timely protest after termination of post bid-opening negotiations).

81:99 South Seminole and North Orange County, FL (IV, 11-20-81) (DeZurik Valve Manufacturing (where bidder knew specifications were ambiguous, protest must be filed prior to bid opening).

81:104 Elizabethtown, KY (IV, 12-18-81) (Autorol Corp.) (one week means seven days).

81:105 South Seminole and North Orange County Wastewater Transmission Authority, FL (IV, 12-22-81) (Terra Video) (seven days to protest to grantee).

81:107 Colchester, CT (I, 12-31-81) (Clark Sewer Const.) (clock begins on responsiveness issue at bid opening).

82:03 Fort Wayne, IN (V, 1-25-82) (Bates & Rogers Const.) (knew or should have know test for timeliness).

82:05 Wawarsing, NY (II, 2-8-82) (A. Ceston Co.) (time not tolled by further discussions).

82:07 Chattanooga, TN (IV, 2-18-82) (Spencer Turbine Co.) (protestor should have known specification restrictive before bid opening).

82:08 Cobden, IL (V, 2-19-82) (R-I Equipment Sales) (one week time limitation).

82:10 Sauget, IL (V, 2-19-82) (GHA Lock Joint) (protest of specifications after bid opening).

82:12 Channelview, TX (VI, 3-8-82) (Euramca Ecosystems) (interlocutory grantee decision resolved initial protest but created grounds for second protest).

82:19 Mt. Pleasant, SC (IV, 3-31-82) (Bird Machine Co.) (letter denying prequalification starts clock).

82:25 Perryville, MD (III, 4-28-82) (J. Vinton Schafer & Sons) (constructive knowledge) (*sua sponte* review granted).

82:26 Akron, OH (V, 5-3-82) (Environmental Elements) (grantee dismissal as untimely).

82:27 Eveleth, MN (V, 5-3-82) (Gridor Const.) (knew or should have known).

82:31 Menominee, MI (V, 6-8-82) (Krygoski Const.) (knew or should have known).

82:39 Russian River, CA (IX, 7-20-82) (Dan Caputo Co. and Wagner Co., A Joint Venture) (supplemental protest raising new issues).

82:43 Brockton, MA (I, 8-16-82) (Tenco Hydro) (grantee has burden of demonstrating untimeliness).

82:44 Memphis, TN (IV, 8-16-82) (B.F. Goodrich Co.) (protest late) (*sua sponte* review granted).

82:46 Spearfish, SD (VIII, 8-19-82) (Sheesley Plumbing and Heating Co.) (restrictive application starts clock).

82:47 Bedford Heights, OH (V, 8-20-82) (Suburban Power Piping, *et al.*) (knew or should have known).

82:54 Palm Beach, FL (IV, 10-7-82) (Polymer Chemical Co.).

82:60 Rochester Pure Waters District, NY (II, 11-3-82) (Schivone Const. Co./ Cotton Dean Underground Excavation Co., Joint Venture) (clear manifestation starts clock).

TIME LIMITATIONS

82:64 Shady Spring PSD, WV (III, 11-22-82) (Davis Water & Waste Industries) (where negotiation letters and requests for clarification, grantee reply needed before protestable).

82:68 Atwood, OH (V, 12-1-82) (Munitech) (waiver of deviation from specifications) (appeal filed with EPA 5 days late).

Time Limitations

1. Cordela, GA (IV, 1-15-80) (Tuttle/White Constructors Inc.) (written notice to supplier of rejection).

2. Fall River, MA (I, 2-13-80) (Passavant Corporation) (delay aggravated by grantee and EPA).

3. Hudson County Utilities Authority, NJ (II, 3-31-80) (E&R Engineers Limited) (one week to protest and to appeal).

4. Tacoma, WA (X, 4-3-80) (Worthington Pump Corporation) (oral notice of rejection).

5. Little Rock, AR (VI, 4-29-80) (Autotrol Corporation) (before bid opening).

6. Rochester, MN (V, 7-24-80) (Darin & Armstrong, Inc.; Kraus-Anderson/PMW Construction; Newberg, Foster & Paschem; Premier Electric Construction) (notice).

7. Toledo, OH (V, 7-28-80) (Minority Earth Movers, Inc.) (seeking clarification before filing protest).

8. Rockford, MI (V, 8-1-80) (Nagle Construction, Inc.; Interstate Pipe Maintenance, Inc.; Clytus Industries, Inc.) (RA refusal to waive one week appeal limit).

9. Cecil County, MD (III, 8-11-80) (Hanks Contracting, Inc.) (one week to appeal to RA).

10. Marquette County, MI (V, 8-14-80) (Brumm Construction Company; O'Dovero Construction Company) (prompt action on actual knowledge).

11. Whitewater, WI (V, 9-22-80) (Nage-Hart, Inc.) (59 days after bid opening).

12. Linden Roselle Sewerage Authority, NJ (II, 10-31-80) (Euramca Ecosystems, Inc.) (appeal one month after grantee determination).

13. Dorchester County Sanitary Commission, MD (III, 11-5-80) (Andrews, Miller and Associates, Inc.) (9 days after grantee determination).

14. Newaygo County Board of Public Works, MI (V, 11-7-80) (D. J. Domas, Inc.) (failure to file detailed statement).

15. Bear Creek Valley Sanitary Authority, OR (X, 12-24-80) (Ausland Construction, Inc.) (8 days after bid opening).

Time Limitations

1. Atlanta, GA (IV, 3-21-79) (Fruin-Conlon Corp.)

2. Chattanooga, TN (IV, 3-27-79) (Performance Systems, Inc.)

3. Concord, NH (I, 10-4-79) (Bethlehem Steel Corp.)

4. Danville, KY (IV, 10-28-79) (Andrew Enterprises, Inc.)

*5. Decatur, AL (IV, 3-2-79) (Johnson Controls, Inc.)

6. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.)

7. Detroit, MI (V, 12-11-79) (Pollutech, Inc. and Glenn E. Wash Associates, A Joint Venture)

8. Howard County, MD (III, 2-15-79) (Water Pollution Control Corp.)

9. Kansas City, MO (VII, 12-20-79) (Garney Companies, Inc.) (exception to specifications)

10. Laurens County, SC (IV, 7-10-79) (Carolina Concrete Pipe Co., et al.) (pipe specifications)

11. Meridan, MS (IV, 1-15-79) (Mississippi Pump and Equipment Co., Inc.)

12. Meriden, CT (I, 10-4-79) (Carter Construction Co.)

13. Metropolitan Sanitary District of Greater Chicago, IL (V, 8-16-79) (Troesch Trucking Inc.)

14. Miami-Dade Water and Sewer Authority, FL (IV, 4-30-79) (Cobo Co., Inc.)

15. Passaic Valley Sewerage Commissioners, NJ (II, 4-18-79) (Passavant Corp.)

16. Plainfield, CT (I, 12-11-79) (Greenman's Trucking, Inc.)

17. Rocky Mount, NC (IV, 1-15-79) (Enviro Development Co.)

18. City and County of San Francisco, CA (IX, 12-20-79) (Chemcon, Inc.)

19. Simpsonville, KY (IV, 4-17-79) (Warner A. Broughman III and Associates)

20. Stillwater, OK (VI, 3-1-79) (Robicon, Corp.)

21. Worcester County (Ocean City), MD (III, 3-14-79) (Charles E. Brohawn and Brothers, Inc. (II))

TIME LIMITATIONS

Time Limitations (§§ 35.939(b), (f))

1. Glenwood Springs, Colorado (VIII, 1-13-78) (Colorado Environmental Equipment Inc.)
2. Sandusky, Ohio (V, 1-13-78) (Bay-Con Corporation)
3. North Little Rock, Arkansas (VI, 2-1-78) (Environmental Equipment Corp.)
4. Cynthiana, Kentucky (IV, 2-9-78) (James N. Gray Construction Co.) (Post Office delay; risk of nondelivery)
5. Chicago (Metropolitan Sanitary District of Greater Chicago), Illinois (V, 3-12-78) (Howard Martin Construction)
6. Wells, Maine (I, 3-17-78) (Purcell Pump)
7. Effingham, Illinois (V, 3-21-78) (Autotrol)
8. San Francisco, California (IX, 3-22-78) (E & I, Inc.)
9. Glen Ellyn, Illinois (V, 4-7-78) (Lyco-Zf) (post-contract award)
- *10. Mt. Olive, North Carolina (IV, 5-18-78) (Lyco-Zf) (prequalification)
11. Newcastle, Indiana (V, 5-18-78) (Spencer Turbine Co.)
12. Waterford, Connecticut (I, 5-19-78) (Mulholland Construction Co.)
13. Bay City, Michigan (V, 6-28-78) (Greenfield Construction Co.) (Contract No. 10 D)
14. Urbana-Champaign, Illinois (V, 6-30-78) (Paddock Refinite)
15. Washtenaw County, Michigan (V, 7-13-78) (Spence Bros.)
16. Goose Creek, South Carolina (IV, 7-24-78) (Kenney and Associates)
17. Pepperell, Massachusetts (I, 7-28-78) (Wescor Associates, Inc.)
18. Washington County, Oregon (X, 7-31-78) (North American Contractors Inc.)
19. Bay County, Michigan (V, 8-11-78) (Frank V. Louis Equipment Co.) (Contract No. 1)
20. Penns Grove, New Jersey (II, 8-24-78) (Pandullo Quirk Association)
21. Oklahoma City, Oklahoma (VI, 8-25-78) (Automatic Engineering Inc.) (subcontract award)
22. Lebanon, Pennsylvania (III, 8-28-78) (B. F. Goodrich General Products) (change order as notice event)
23. Bay County, Michigan (V, 9-1-78) (Roese Contracting Co. Inc.) (Contract Nos. 3 and 7)
24. Hinsdale, New Hampshire (I, 9-1-78) (Enviro Development Co. Inc.)
- *25. Bay County, Michigan (V, 9-12-78) (Roese Contracting Co. Inc.) (Contract No. 1-D)
26. Grand Rapids, Michigan (V, 9-26-78) (Infilco Degremont) (method of delivery; bearing risk; telegram)
27. Guilderland, New York (II, 10-3-78) (Clevopak Corp.)

- *28. Passaic Valley Sewerage Commissioners, New Jersey (II, 10-5-78) (BSP Division of Envirotech Corp., and Wheatley Corp.) (estoppel)
29. Indianapolis, Indiana (V, 10-6-78) (FMC Corp.)
30. Silver City, New Mexico (VI, 10-13-78) (Enviro Development Co. Inc.)
31. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance)
32. Frankfort, Kentucky (IV, 10-20-78) (Stewart Mechanical Enter./Sigmamotor Inc.) (subtier level protest)
- *33. Indianapolis, Indiana (V, 10-31-78) (Allis-Chalmers) (linkage to preceding contracts; estoppel) (see *Passaic Valley Sewerage Commissioners, New Jersey* (II, 10-5-78) (BSP Division of Envirotech corp. and Wheatley Corp.))
34. Urbana-Champaign, Illinois (V, 11-9-78) (Norton Co.)
35. Lake County, Illinois (V, 11-17-78) (Envirex)
36. Delaware County, Ohio (V, 11-21-78) (R. B. Carter)

Time Limitations (§ 35.939(b)).

1. Denver, (City) Colorado (VIII, 4-22-74) (waiver, reversed by new regulations) (Pinkard Donovan)
2. Hudson, Wyoming (VIII, 8-1-74) (Environmental Equipment)
3. Omaha, Nebraska (VII, 9-14-74) (Datamaster Div.—ACCO)
4. Henry, South Dakota (VIII, 9-15-75) (Henningsen)
5. Oregon, Ohio (V, 11-6-75) (timeliness as jurisdictional) (Ohio Control Systems)
6. Sunnyvale, California (IX, 12-5-75) (oral protest—revised by new regulations) (ABF Contractors)
7. Butler County (LeSourdsville Plant), Ohio (V, 1-7-76) (restrictive specifications—subtier—grantee finality rule) (EPCO—Hormel)
- *8. Spokane, Washington (X, 1-9-76) (restrictive specifications—grantee finality rule) (BBR Prestressed Tanks)
9. Palmer Lake, Colorado (VIII, 1-16-76) (grantee finality rule) (Dugan Construction Co.)
10. Predonia, New York (II, 4-15-76) (Tenco Hydro-Aerosciences)
11. Denver (City and County), Colorado (VIII, 7-9-76) (Frank Briscoe)
12. Hancock, Michigan (V, 7-12-76) (grantee decision to use negotiated procurement) (Maclean Construction Co.)

TIME LIMITATIONS

- *13. Sacramento, California (IX, 9-9-76) (restrictive specifications—equal—grantee's finality) (Air Products & Chemicals Inc.)
- *14. Sacramento, California (IX, 9-13-76) (restrictive specifications—equal—grantee's finality) (Amoco Reinforced Plastics)
- *15. North Shore Sanitary District, Illinois (V, 9-28-76) (restrictive specifications—rejection of equipment—grantee finality rule) (Keene Corp.; Premier Electric Co.)
- *16. Deposit, New York (II, 10-5-76) (Albin Construction Co.)
- *17. Boynton Beach/Delray Beach, Florida (IV, 10-14-76) (oral protest) (Ecological Services Products)
- *18. Concord, North Carolina (IV, 10-14-76) (subtler—timely oral request but untimely written) (Air Products & Chemical Inc.)
- 19. Lynn, Massachusetts (I, 10-21-76) (A/E procurement; grantee finality rule) (Clinton Bogert Associates)
- 20. Baton Rouge, Louisiana (VI, 11-5-76) (restrictive specifications—subtler) (National Hydro Systems)
- 21. Detroit, Michigan (V, 11-10-76) (estoppel—bidder on second procurement to challenge rejection of all bids on first) (Lotebro Corp.)
- 22. Cleveland Regional Sewer District (Southerly Plant), Ohio (V, 11-15-76) (restrictive specifications) (Powercon Corp.)
- 23. Norwalk, Connecticut (I, 11-16-75) (letter to State) (Burnall Construction Co.)
- *24. Waterford, Connecticut (I, 12-28-76) (restrictive specifications—equal; finality rule) (New Ikor I)
- 25. Fredonia, New York (II, 2-28-77) (restrictive specifications—subtler—equipment acceptability determination) (National Hydro Systems)
- *26. Waterford, Connecticut (I, 3-4-77) (restrictive specifications—equal) (New Ikor II)
- *27. Dothan, Alabama (IV, 3-10-77) (restrictive specifications—equal—grantee reversed) (Infilco Degremont)
- 28. Sioux City, Iowa (VII, 3-17-77) (restrictive specifications—rejection of shop drawings necessary) (Ralph Carter Co.; U.S. Enviro-Con)
- 29. Puerto Rico Aqueduct & Sewer Authority (II, 3-31-77) (carbon copy to local EPA office) (Blythe Industries Inc.)
- 30. Pasadena, Texas (VI, 4-1-77) (restrictive specifications—Subtler—grantee finality rule) (Union Carbide Corp.)
- 31. York, Pennsylvania (III, 4-22-77) (grantee finality rule stated) (Union Carbide Corp.)
- 32. Marion, North Carolina (IV, 5-17-77) (restrictive specifications—admission against interest), (Carolina Concrete Pipe)
- 33. Bernice, Louisiana (VI, 6-1-77) (restrictive specifications—subtler—performance data) (National Hydro Systems)
- 34. Bradford, Vermont (I, 6-6-77) (no simultaneous mailing; contract action as grantee's final act) (Carvel Co.)
- 35. Daytona Beach, Florida (IV, 6-14-77) (letter of intent to file—subsequent untimely filing) (Key Power Systems)
- 36. San Francisco, California (IX, 6-20-77) (A/E procurement—Newspaper column 'as notice') (McKee-Berger-Mansueto)
- 37. Parsippany-Troy Hills, New Jersey (II, 7-8-77) (knowledge of grantee finality from totality of facts) (Frank Briscoe)
- 38. Cayce, South Carolina (IV, 7-18-77) (restrictive specifications—pipe) (Southeastern Concrete)
- 39. Canonsburg-Houston Joint Authority, Pennsylvania (III, 7-2-77) (National Hydro Systems)
- 40. Cranberry Township, Pennsylvania (III, 9-30-77) (restrictive specifications—preapproval) (Ray-Con Corp.)
- 41. Pepperell, Massachusetts (I, 11-22-77) (not decisional—statement of notice rule) (Catamount Co.)

Subject Index

PROCUREMENT

S U B S T A N T I V E

P R O C U R E M E N T

M A T T E R S

ARCHITECT/ENGINEER PROCUREMENT

A/E Procurement

- 83:04 Globe, AZ (IX, 1-25-83) (*Brown & Caldwell*) (prior EPA approval required).
- 83:04 Globe, AZ [Reconsideration] (IX, 4-11-83) (*Brown & Caldwell*) (prices and identities of proposers publicly disclosed).

A/E Procurement

- 81:17 McHenry County, IL (V, 3-16-81) (Pio Lombardo & Assoc.) (evaluation criteria).
- 81:39 Guam PUA (IX, 5-29-81) (John Carollo Engineers—George Chen & Sons) (failure to list evaluation criteria and procedures).

A/E Procurement

- 1. Northwest Bergen County Sewer Authority, NJ (II, 1-10-80) (URS/MSR Engineers, Inc.) (oral interview, cost submission).
- 2. Hudson County Utilities Authority, NJ (II, 3-31-80) (E&R Engineers Limited) (time to protest).
- 3. San Antonio, TX (VI, 7-15-80) (Camp Dresser and McKee, Inc.) (terminate negotiations with initial selectee).
- 4. Vista Sanitation District/Encina Joint Powers, CA (IX, 7-30-80) (Don Todd Associates) (cost in evaluation).
- 5. Vista Sanitation District/Encina Joint Powers, CA (IX, 9-19-80) (Don Todd Associates) (reconsideration, reevaluate proposals).
- 6. Southwest Florida Regional Planning Council (Fort Myers), FL (IV, 12-3-80) (Jones, Edmunds and Associates/Missimer & Associates) (evaluation).

A/E procurement

- 1. Clarksburg, MA (I, 8-25-79) (Curran Associates, Inc.)
- 2. Conneaut, OH (V, 7-18-79) (Hoff-Western)
- 3. Jefferson Parish, LA (VI, 3-28-79) (Moore, Gardner and Associates)
- 4. Puerto Rico Environmental Quality Board, PR (II, 3-30-79) (Technologists International, Inc.)

- 5. Monterey County, CA (IX, 2-26-79) (Monterey Construction Surveys, Inc.)
- 6. Simpsonville, KY (IV, 4-17-79) (Warner A. Brougham III and Associates)
- 7. West County Agency, CA (IX, 6-28-79) (R. D. Smith)
- 8. Muskegon County, MI (V, 7-29-79) (Video Media Corp.)

Architect/Engineering Procurement (\$ 35.937).

- *1. Knoxville, Tennessee (IV, 2-8-78) (Roy F. Weston Inc.) (grantee reranking of technical committee evaluation of proposals)
- *2. East Bay dischargers Authority, California (IX, 2-15-78) (R.D. Smith) (subagreements: minority business enterprise)
- 3. Alwater, California (IX, 4-26-78) (Warren C.T. Wong & Assoc.) (price competition)
- 4. Penns Grove, New Jersey (II, 8-24-78) (Pandullo Quirk Assoc.) (evaluation of proposals)

Architect/Engineering Procurement (\$ 35.937).

- 1. Bridgewater, New Jersey (II, 3-31-76) (Havens and Emerson, Ltd.)
- 2. Berkeley - Charleston - Dorchester, South Carolina (IV, 7-19-76) (\$ 208 grant) (Davis & Floyd Engineers Inc.)
- *3. Lynn, Massachusetts (I, 10-21-76) (Clinton Bogert Associates)
- 4. Bridgeport, Connecticut (I, 11-22-76) (Connecticut Engineers in Private Practice)
- 5. Rhode Island Statewide Planning Program (I, 3-4-77) (\$ 208 grant) (C. E. Maguire Inc.)
- 6. Rhode Island Statewide Planning Program (I, 3-26-77) (\$ 208 grant) (C. E. Maguire Inc.)
- 7. Atlanta, Georgia (IV, 5-11-77) (Mayer and Associates)
- *8. San Francisco, California (IX, 6-20-77) (McKee-Berger-Mansueto Inc.)

AWARD-PRIME CONTRACT

Award-Prime Contract

83:59 Puerto Rico, PR (II, 10-18-83)
(Longo—Puerto Rico, Inc.) (no right to public contract).

Award—Prime Contract

81:63 Honolulu, HI (IX, 8-12-81)
(Nichols Engineering & Research)
(equipment procurement by subcontract instead of separate direct prime contracts).

82:14 Atlanta, GA (IV, 3-15-82)
(Ruby-Collins and John D. Stephens) (no award to reconstituted joint venture with sub-entities different from bidder).

Award—Prime Contract

*1. Albuquerque, NM (VI, 2-2-79) (Kent Nowlin Construction Co.) (single bidder)

Award-Prime Contract (e.g., pending resolution of subcontract issue).

1. Grand Forks, North Dakota (VIII, 8-15-74) (Komline-Sanderson)
2. Omaha, Nebraska (VII, 9-14-74) (Datamaster Division—ACCO)
3. Spokane, Washington (X, 1-9-76) (BBR Prestressed Tanks Inc.)
- *4. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)

Award-Prime Contract (e.g., pending resolution of subcontract issue. see 40 C.F.R. § 35.938-4(h)(5), as amended by 43 FR 44080, September 27, 1978) (see also *Deferral of Procurement*).

*1. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance)

*2. Portage, Michigan (V, 12-20-78)
(Iacobelli Construction Co.) (award on 2 of 10 contracts advertised)

BIDS

General

Bids

A. General

- 83:07 Oklahoma City, OK (VI, 2-4-83)
(D.J. Domas, Inc.) (duplicate copies of bid required by IFB).
- 83:09 Covington, GA (IV, 2-9-83)
(Griffin Const., Co., & Ethridge Brothers Const., Inc.) (must be signed and bidder clearly identified).
- 83:15 Union City, OH (V, 3-8-83) (Mote Const., Co.) (separate bids required for two related projects with different IFBs).
- 83:21 Chester, CT (I, 4-7-83) (Maple Hill Const., Co.) (unsigned bid responsive where accompanied by signed bid bond) (failure to indicate authority of signatory not fatal if sufficient evidence of authority).

Addenda

B. Addenda

- 83:21 Chester, CT (I, 4-7-83) (Maple Hill Const. Co.) (addenda not submitted but acknowledged in writing prior to bid opening).
- 83:34 New Concord, OH (V, 6-10-83)
(Adams Robinson Enterprise, Inc.) (failure to acknowledge addendum made bid nonresponsive).
- 83:69 Conroe, TX (VI, 12-13-83) (KNC, Inc.) (verbal addenda generally prohibited) (inadequate time to consider addenda).

BIDS

Alternative

Bids

A. Alternate

- 84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-8-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (unsolicited responsive alternate bid must be accepted where bidder is bound upon its acceptance).
- 84:09 City of Los Cruces, NM (VI, 2-27-84) (*Mass Transfer, Inc.*) (alternative requiring substantial redesign of project is nonresponsive).
- 84:17 Fresno County, CA (IX, 4-20-84) (*Valley Engineers, Inc. and McGuire & Hester*) (IFB forbade bidders having an interest in more than one bid for same work—protester filed one bid as individual and one as part of joint venture).
- 84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Cariup Const. Con. Inc.*) (unsolicited voluntary alternate does not affect responsiveness of bid).

C. Alternative

- 83:10 Needles, CA (IX, 2-10-83) (*Hefley Bros., Corp.*) (principal bid not rendered nonresponsive by nonresponsiveness of alternate bid) (must be rational performance basis for grantee switching selected alternative).
- 83:38 Bentonville, AR (VI, 6-14-83) (*Archer Henry Const., Co.*) (choice between equal alternatives based on cost).

Alternate

- 82:59 Rochester Pure Waters District, NY (II, 11-3-82) (*Schiavone Const./Cotton Dean Underground Excavation Co., Joint Venture*) (award to low bidder on highest cost alternate).

Ambiguity

Ambiguity

1. San Buenaventura, CA (IX, 3-28-80) (*A. Portanova & Sons*) (difference between unit price and extended total).
2. Glennville, GA (IV, 4-4-80) (*J. W. Meadors and Company*) (unsolicited discount).

3. Port Austin Area Water and Sewer Authority, MI (V, 7-2-80) (*Amado Cardenas, d/b/a Nashville Excavating Company*) (MBE efforts prior to bidding).

4. Newaygo County Board of Public Works, MI (V, 7-21-80) (*M. D. Taddie & Company, Inc.*) (discount applied to single contract).

5. Rochester, MN (V, 7-24-80) (*Darin & Armstrong, Inc.; Kraus-Anderson/PMW Construction; Newberg, Foster & Paschen; Premier Electric Corporation*) (MBE effort prior to bidding).

6. Newaygo County Board of Public Works, MI (V, 7-28-80) (*R. S. Bennett & Company*) (prequalified equipment to comply with specifications).

7. Ashley Valley Sewer Management Board, UT (VIII, 11-20-80) (*Western Utility Contractors, Inc.*) (difference between unit price and extended total).

Ambiguity

- *1. Cochran, GA (IV, 9-14-79) (*Municipal and Industrial Pipe Services, Ltd.*)
2. Mt. Pleasant, MI (V, 6-25-79) (*Collavino Brothers Construction Co.*)

Deduct Items

D. Deduct items

- 83:06 Western Carolina, SC (IV, 2-2-83) (*Ashbrook-Simon-Hartley*) (grantee review of low bidder's deduct equipment).
- 83:15 Union City, OH (V, 3-8-83) (*Mote Const., Co.*) (deduct cannot be considered unless all bidders had opportunity to offer deduct).
- 83:36 Bentonville, AR (VI, 6-14-83) (*Archer Henry Const., Co.*) (deductive alternates used where grantee knows material changes in scope of services may occur).
- 83:47 Topeka, KS (VII, 7-21-83) (*Walters-Morgan, Inc.*) (where bids on two separate projects opened same day combined bid deduction offered by bidder is unacceptable).

Evaluation

C. Evaluation

- 84:03 Town of Williston, VT (I, 1-25-84) (*Cooley Corp.*) (reasonableness of responsive bid evaluated using non-responsive bids).
- 84:12 Town of Grantsville, MD (III, 3-20-84) (*Mattingly Const., Inc.*) (cannot ignore price limitation established by specification but not contained in IFB).

BIDS

Evaluation (CONTINUED)

84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (energy consumption figures provided in bid do not justify grantee inferring that bidder selected a specific supplier) (material ambiguities required cancelling solicitation).

84:17 Fresno County, CA (IX, 4-20-84) (*Valley Engineers, Inc. and McGuire & Hester*) (grantee could consider bid on combined work of collection system and treatment plant as severable bids on separate parts) (cannot accept bid from bidder who contrary to IFB had an interest in more than one bid).

84:18 Town of Milford, MA (I, 4-20-84) (*Euramca Escosystems, Inc.*) (because supplier did not dispute A/E's equipment evaluation, EPA relied on A/E judgment).

84:20 City of Decorah, IA (VII, 5-1-84) (*Humboldt Wedag*) (supplier lacks standing to protest engineer's evaluation of prequalification submittal).

84:21 Ardmore, OK (VI, 5-4-84) (*LYCO and Walker Process Corp.*) (must not enforce specifications selectively on different bidders).

84:17 City of Leonminister, MA (I, 8-11-84) (*R. Gioioso & Sons, Inc.*) (nonresponsive bids may be used in evaluating reasonableness of the only responsive bid).

84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (communications between grantee and bidder after bid opening relating to responsibility are permissible).

84:36 Austin, TX (VI, 9-8-84) (*Olson Const., Inc.*) (base bid evaluation with adjustments for equipment substitutions).

84:40 City of Lancaster, PA (III, 10-16-84) (*Parkson Corp.*) (engineer had rational performance reasons for rejecting equipment offered).

Bid Evaluation

83:04 Globe, AZ [Reconsideration] (IX, 4-11-83) (*Brown & Caldwell*) (must clearly state method and criteria).

83:06 Western Carolina, SC [Reconsideration] (IV, 5-8-83) (*Ashbrook-Simon-Hartley*) (no right to contract but right to be fairly judged under performance specifications).

83:11 LaPorte, TX (VI, 2-18-83) (*Jess Lovelace Const., Co.*) (estimated quantities of work must be reasonable) (award of unit price contract may not be based on total prices on alternative means of performance).

83:21 Chester, CT (I, 4-7-83) (*Maple Hill Const. Co.*) (deference to exercise of discretion by public official).

83:24 Oklahoma City, OK [Reconsideration] (VI, 5-23-83) (*Fiberglass Engineered Products, Inc.*) (ambiguous experience clause requirement).

83:27 Port Arthur, TX (V, 5-12-83) (*Robert Bosow, Inc.*) (IFB unclear as to low alternative and deduction to be evaluated—harmless error).

83:30 St. Albans, WV (III, 5-27-83) (*Ralph B. Carter Co.*) (must be clearly stated method).

83:36 Bentonville, AR (VI, 6-14-83) (*Archer Henry Const. Co.*) (ambiguous IFB description harmless error if no reliance by bidder).

83:45 Casper, WY (VIII, 7-8-83) (*Shawnee Const., Inc.*) (must award based on stated criteria).

83:48 Heber Spring, AR (VI, 8-2-83) (*Trigon Engineering Co.*) (operation and maintenance costs, cost-effectiveness considered).

83:51 Santa Barbara, CA (IX, 8-15-83) (*Namtec Corp. & Union Engineering Co.*) (failure to follow evaluation criteria by waiving specifications).

83:60 Tri-City, OR (X, 10-20-83) (*Donald M. Drake Co.*) (bid evaluated on component item amounts not summary total).

Bid Evaluation

81:31 Gildford County, MI (VIII, 4-28-81) (*Baltrusch Const.*) (separate bid schedules erroneously combined to determine low bidder).

82:66 Smyrna, TN (IV, 11-29-82) (*Charles Finch Co. and Waterman Industries*) (bid rejection must be based on performance not just physical differences).

82:67 Cullman, AL (IV, 11-30-82) (*Cal Corp., Encore Corp., and Drew and Assoc.*) ("performance" refers to minimum needs, not best facilities but adequate ones).

BIDS

Evaluation (CONTINUED)

Evaluation of Bids

81:02 Little Blue Valley, MO (VII, 1-8-81) (Eby Const.) (evaluation factors not in IFB).

81:17 McHenry County Board, IL (V, 3-16-81) (Pio Lombardo & Assoc.) (A/E evaluation to be based on performance criteria not local preference).

81:39 Guam PUA (IX, 5-29-81) (John Carollo Engineers—George Chen & Sons) (failure to list evaluation criteria and procedures).

81:62 Cobb County, GA (IV, 8-11-81) (American Bioreactor Corp./BAV) (single base method of evaluation prohibited).

82:47 Bedford Heights, OH (V, 8-20-82) (Suburban Power Piping, *et al.*) (subcontractor listing errors not basis for rejection unless IFB clear).

82:59 Rochester Pure Water District, NY (II, 11-3-82) (Schiavone Const./Cotton Dean Underground Excavation Co., Joint Venture) (award to low bidder on highest cost alternate).

Evaluation of Bids

1. Mount Holly Sewerage Authority, NJ (II, 2-8-80) (Neshaminy Constructors, Inc.) (deletion of alternate item).

2. Tacoma, WA (X, 4-3-80) (Worthington Pump Corporation) (acceptance of equipment of different size).

3. Soldotna, AK (X, 4-25-80) (Interstate Company) (MBE documents as to positive efforts).

4. Branford, CT (I, 5-28-80) (C. H. Nickerson & Co.) (zero unit price, identical price for alternates).

5. Moorhead, MN (V, 6-3-80) (Waldor Pump & Equipment Company) (cost and performance basis).

6. Newaygo County Board of Public Works, MI (V, 7-21-80) (M. D. Taddie & Company, Inc.) (discount).

7. Newaygo County Board of Public Works, MI (V, 7-28-80) (R. S. Bennett & Company) (equipment efficiency and operating costs).

Evaluation of Bids

1. Cleveland Regional Sewer District, OH (V, 8-14-79) (Water Pollution Control Corp.)

2. Cleveland Regional Sewer District, OH (V, 9-18-79) (Passavant Corp.)

3. Cleveland Regional Sewer District, OH—Reconsideration (V, 10-18-79) (Water Pollution Control Corp.) (*Per* Norton Co.)

4. Cleveland Regional Sewer District, OH—Clarification (V, 12-28-79) (Water Pollution Control Corp.) (O and M Costs)

5. Cochran, GA (IV, 9-14-79) (Municipal & Industrial Pipe Services, Ltd.)

6. Hannibal, MO (VII, 6-7-79) (U.S. Enviro-Con, Inc.) (equipment listing)

7. Mt. Pleasant, MI (V, 6-25-79) (Collavino Brothers Construction Co.)

8. Passaic Valley Sewerage Commissioners, NJ (II, 4-13-79) (Passavant Corp.) (adequate basis for evaluation provided in IFB)

9. Portage, MI (V, 12-31-79) (Tom Robinson & Son, Inc.)

10. West County Agency, CA (IX, 6-28-79) (R. D. Smith)

11. Wood County Parks and Recreation Commission, WV (III, 3-15-79) (GAL Construction, Inc. (tied contracts))

Evaluation of Bids (*but see Responsibility:*

Responsiveness; Formal Advertising;

Negotiation; Mistake; Rejection of All Bids; Award Prime Contracts).

1. New York City, New York (II, 1-12-78) (Schiavone Construction Co.) (mistake: bidder intent test)

2. North Little Rock, Arkansas (VI, 2-1-78) (Environmental Equipment Corp.) (subtier selection by grantee: price)

3. Kitsap County, Washington (X, 2-3-78) (Will Construction Co., Inc.) (equipment listing—matter of responsibility)

4. Effingham, Illinois (V, 3-6-78) (Mautz & Oren, Inc.)

5. Chicago (Metropolitan Sanitary District of Greater Chicago) Illinois (V, 3-12-78) (Howard Martin Construction) (waiver under local procedures)

6. Fairfax County, Virginia (III, 3-17-78) (John W. Cowper Co., Inc.) (subcontractor listing)

7. Snyderville, Utah (VIII, 4-17-78) (Jacobsen Construction Co. Inc.) (base bidding)

8. Miami-Dade Water and Sewer Authority, Florida (IV, 5-18-78) (Enviro Development Co. and Poole & Kent Co.) (equipment listing)

9. Newcastle, Indiana (V, 5-18-78) (Spencer Turbine Co.) (fundamental federal procurement principles)

10. Onondaga County, New York (II, 6-30-78) (Zimpro, Inc.) (offering competitor's system, patent infringement allegation)

11. Miami-Dade Water and Sewer Authority, Florida (IV, 7-13-78) (Ed. L. Nezelek Inc.) (prime's listing of previously unaccepted equipment)

12. Washtenaw County, Michigan (V, 7-13-78) (Spence Bros.) (implementing the specification by its terms: award to low bidder)

13. Washington County, Oregon (X, 7-31-78) (North American Contractors Inc.) (base bidding, use of multiple schedule)

BIDS

Evaluation (CONTINUED)

14. San Francisco, California (IX, 8-9-78) (Slattery Assoc., Fischbach and Moore Inc. and Morrison-Knudsen Co. Inc., joint venture) (minority business enterprise-local requirements)

15. Southern Clinton County, Michigan (V, 6-11-78) (A. Z. Shmina) (subcontractor listing)

16. Bay County, Michigan (V, 9-12-78) (Roose Contracting Co. Inc.) (Contract No. 1-D)

17. Grand Rapids, Michigan (V, 9-26-78) (Infilco Degremont) (life-cycle cost acceptable)

18. Guilderland, New York (II, 10-3-78) (Clevapak Corp.) (base bidding)

19. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance) (base bidding)

20. Barrington, Illinois (V, 10-20-78) (Utility & Industrial Construction Co.)

21. Lake County, Illinois (V, 11-17-78) (Envirex) (listing nonresponsive equipment in bid)

22. Greenville, Texas (VI, 12-7-78) (R. B. Carter)

Evaluation of Bids (but see, Responsibility; Responsiveness; Formal Advertising; Negotiation; Mistake; Rejection of All Bids; Award-Prime Contracts).

(A) General Concepts:

1. Denver (City), Colorado (VIII, 4-22-74) (Pinkard Donovan)

2. Davenport, Iowa (VII, 4-11-75) (Lametti & Sons)

3. Fresno, California (IX, 7-10-75) (Dorfman Construction Co.)

4. Gainesville-Alachua * * * Board, Florida (IV, 7-10-75) (Grumman Eco-systems)

5. Palmer Lake, Colorado (VIII, 1-16-76) (Dugan Construction Co.)

6. Huntington, West Virginia (III, 4-9-76) (National Engineering and Contracting Co.; and Envirotech Corp.)

7. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 5-13-76) (Blount Brothers)

8. Bergen County, New Jersey (II, 9-28-76) (Wm. L. Crow-Wolff & Munier, Joint Venture)

9. Concord, North Carolina (IV, 10-8-76) (Mercury Construction Co.)

10. Superior, Wisconsin (V, 12-1-76) (Acton Construction Co., Inc.)

11. Puerto Rico Aqueduct and Sewer Authority (II, 3-31-77) (Blythe Industries Inc.)

12. Sussex, Wisconsin (V, 4-14-77) (Fischer & Porter)

13. Montgomery, Alabama (IV, 5-11-77) (Envirotech)

14. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-24-77) (Eimco-BSP Services Co.)

15. Middlesex (Sayreville Relief Pump Station), New Jersey (II, 6-9-77) (Terminal Construction Co.)

16. Ft. Lauderdale, Florida (IV, 7-18-77) (Inman Incorporated)

17. Norwalk, Connecticut (I, 7-22-77) (Primiano Construction Co.)

18. Cheektowaga, New York (II, 8-31-77) (Amadori Construction Co.)

19. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)

20. Brick Township, New Jersey (II, 11-22-77) (P. & A. Construction Co.)

21. Ramsey, New Jersey (II, 12-2-77) (P. & A. Construction Co.)

22. Corvallis, Oregon (X, 12-6-77) (Frank Coluccio Construction Co.)

(B) O. & M. Costs (evaluation of):

1. Omaha, Nebraska (VII, 9-14-74) (Datamaster Division-ACCO)

2. Englewood & Littleton, Colorado (VIII, 2-10-75) (Air Products and Chemicals Inc.)

3. Ruston, Louisiana (VI, 3-18-76) (Allan J. Harris Co.)

4. Sacramento, California (IX, 10-6-76) (Air Products and Chemicals Inc.)

5. Pasadena, Texas (VI, 4-1-77) (also base bid) (Union Carbide Corp.)

6. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)

Extension of Bids

E. Extension of Bids

83:59 Puerto Rico, PR (II, 10-18-83) (Longo—Puerto Rico, Inc.) (revival of expired bid not in public interest).

Extension of Bids

81:32 Black Diamond, WA (X, 4-21-81) (Bowen Const.) (bidder intent to hold bid open although not formally extended).

BIDS

Irregularities

D. Irregularities

- 84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (minor irregularities must be waived).

Late

E. Late

- 84:57 Neenah-Menasha Sewerage Commission (V, 12-31-84) (*Flour Bros. Const. Co.*) (time for submitting bids may not be extended after deadline has passed) (failure to submit bid on time may not be waived by grantee).
(A) *Late:*
1. Rawlins, Wyoming (VIII, 11-16-77) (*Wind River Constructors Inc.*)
1. Puerto Rico Environmental Quality Board, PR (II, 3-30-79) (*Technologists International, Inc.*)

Mistake

F. Mistake

- 84:26 Riverton, WY (VIII, 7-13-84) (*Martel Construction Co., Inc.*) (where numerical bid differed from words, grantee properly permitted correction to intended bid without regard to reconciliation clause) (bid remained low even after correction).
84:26 Riverton, WY [Reconsideration] (VIII, 7-13-84) (*Martel Construction Co., Inc.*) (because there was no bid displacement, information outside the bid could be considered).
84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (extension price listed in unit price space causes ambiguity in bid price requires rejection rather than correction).
84:30 County of Erie, NY (II, 8-16-84) (*Amadori Const. Co.*) (words over numerals reconciliation clause cannot be applied to conflict with bidders clear intent).
84:43 Chippewa Township, PA (III, 10-24-84) (*Modany Bros., Inc.*) (where bid contained discrepancy in lump sum and unit price and bidder requested his bid be withdrawn or that he be awarded the contract at the higher amount, the bid was nonresponsive due to ambiguity).

- 84:56 City of Fort Lauderdale, FL (IV, 12-27-84) (*Gray Engineering Group, Inc.*) (where difference between unit lump sum price and bidder acknowledges he intended the higher lump sum amount he cannot elect to take the contract at the lower mistaken amount).

Mistake

- 83:10 Needles, CA (IX, 2-10-83) (*Hefley Bros., Corp.*) (where bidder alleges mistake he cannot waive right to have bid rejected unless absent mistake he would be low bidder).
83:36 Bentonville, AR (VI, 6-14-83) (*Archer Henry Const., Co.*) (correction of math error displacing another bidder) (bidder cannot compel upward correction of competitor's bid).
83:45 Casper, WY (VIII, 7-8-83) (*Shawnee Const., Inc.*) (not necessarily require finding bid nonresponsive, bidder must be given chance to verify apparent mistake).
83:60 Tri-City, OR (X, 10-20-83) (*Donald M. Drake Co.*) (where mistake not claimed reconciliation clause waived).

Mistake

- 81:05 Puerto Rico Aqueduct and Sewer Authority, PR (II, 1-29-81) (*Redondo Const.*) (withdrawal of mistaken bid not protestable).
81:48 Cleveland, MS (IV, 7-1-81) (*Roland Pugh Const.*) (corrected bid displaced bidder, intent ascertainable from bid).
81:67 Wanaque Sewerage Authority, NJ (II, 8-19-81) (*A. Cestone Co.*) (corrected unit price bid displaced low bidder).
82:30 Panorama Village, TX (VI, 5-21-82) (*Ranger Const.*) (unit price extensions may be corrected if intent clear from face of bid).

Mistake

1. San Buenaventura, CA (IX, 3-28-80) (*A. A. Portanova & Sons*) (unit price corrected).
2. Sacramento Regional County Sanitation District, CA (IX, 5-8-80) (*Burdick Contractors, Inc.*) (State law).
3. Marquette County, MI (V, 8-14-80) (*Brumm Construction Company; O'Dovero Construction Company*) (change order to cover bid mistake).
4. Northeast Ohio Regional Sewer District, OH (V, 9-4-80) (*D. E. Williams Electric, Inc.*) (upward adjustment relief as State law issue).
5. Ashley Valley Sewer Management Board, UT (VIII, 11-20-80) (*Western Utility Contractors, Inc.*) (unit price corrected).

BIDS

Mistake (CONTINUED)

Mistake

1. Jackson, CA (IX, 7-5-79) (Joseph R. Ramos Pipeline Engineering) (mathematical errors)
- *2. Metropolitan Sanitary District of Greater Chicago, IL (V, 10-11-79) (Morrison-Knudson-Paschen)
- *3. Sewer Authority Mid-Coastside, CA (IX, 7-23-79; errata 9-21-79) (Radco Construction, Inc.)
4. Newton, IA (VII, 12-6-79) (Municipal and Industrial Pipe Services, Ltd.)

Mistake.

1. Denver (City), Colorado (VIII, 4-22-74) (Pinkard Donovan)
2. Omaha, Nebraska (VII, 9-14-74) (offensive use) (Datamaster Div.—ACCO)
3. Davenport, Iowa (VII, 4-11-75) (Lametti & Sons)
4. Fresno, California (IX, 7-10-75) (Dorfman Construction Co.)
5. Clark County (Las Vegas), Sanitary District (No. 1), Nevada (IX, 12-24-75) (Bovee & Crail Construction Co.)
6. Bergen County, New Jersey (II, 9-28-76) (Wm. L. Crow-Wolff & Munier, Joint Venture)
7. Bradford, Vermont (I, 3-4-77) (Cummings)
8. Puerto Rico Aqueduct & Sewer Authority (II, 3-31-77) (Blythe Industries Inc.)
- *9. Middlesex (Bound Brook Pump Station), New Jersey (II, 6-3-77) (Campanella Construction Co.)
10. Middlesex (Sayreville Relief Pump Station), New Jersey (II, 6-9-77) (Terminal Construction Co.)
11. Corvallis, Oregon (X, 12-6-77) (Frank Coluccio Construction Co.)

Negotiated Procurement (§§ 35.936-18 and 35.937-5).

- *1. Spokane, Washington (X, 1-9-76) (BBR Prestressed Tanks)
2. Berkeley-Charleston-Dorchester, South Carolina (IV, 7-19-76) (§ 208 grant) (Davis & Floyd Engineers, Inc.)
3. Rhode Island Statewide Planning Program (I, 4-26-77) (§ 208 grant) (C. E. McGuire Inc.)
4. Bradford, Vermont (I, 6-6-77) (Carvel Co.)

MODIFICATION

B. Modification

1. Monmouth, OR (X, 8-21-80) (Chinook Pacific Corporation) (limiting time to accept bid).
1. Bardstown, KY (IV, 1-3-79) (E. H. Hughes Co.) (I)
2. Detroit, MI (V, 12-11-79) (Polutech, Inc. and Glenn E. Wash Associates, A Joint Venture)

3. East Bay Dischargers Authority, CA (IX, 11-16-79) (Brantley Instruments) (Contra Costa Electric, Inc.)
 - *4. Kansas City, MO (VII, 12-20-79) (Garney Companies) (exception to method of tunnelling)
- (B) *Modification:*

1. Gainesville-Alachua County . . . Board, Florida (IV, 7-10-75) (Grumman Ecosystems)
2. Monroe, Washington (X, 12-31-75) (Will Construction Co.)
3. Concord, North Carolina (IV, 10-8-76) (Mercury Construction Corp.)
4. Gary, Indiana (V, 10-19-76) (Pora Construction Co.; and the Robinson Group, Inc.)
5. Lynden, Washington (X, 5-16-77) (oral) (Arcomm Construction Co.)

Qualified

G. Qualified

- 84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (A./Maggio Co.; Dresser Ind., and Klein Const. Co.) (bid calling itself "voluntary alternate if acceptable" is not qualified or ambiguous).

F. Qualified

- 83:46 Palatine, IL (V, 7-19-83) (Di Paolo-Rossetti, Joint Venture) (offer to deduct amount if given two separate contracts is a conditional bid).
- 83:51 Santa Barbara, CA (IX, 8-15-83) (Namtec Corp. & Union Engineering Co.) (warranty provisions).

Qualified

- 81:22 Corvallis, OR (X, 4-10-81) (Environmental Pollution Control, Inc.) (bid reserved right to substitute equipment).

Seal

H. Seal

- 84:28 Libby, MT (VIII, 8-9-84) (Transamerican Contractor, Inc.) (defects, seal and attestation relate to authority of agent which may be established after bid opening).

Severable

I. Severable

- 84:17 Fresno County, CA (IX, 4-20-84) (Valley Engineers, Inc. and McGuire & Hester) (bid on combined collection system/treatment plant severable into bids on separate parts).

BIDS

Signature

J. Signature

84:28 Libby, MT (VIII, 8-9-84)
(*Transamerican Contractors, Inc.*)
(defects in signature, seal and
attestation relate to authority of
agent which may be established
after bid opening).

Unbalanced

G. Unbalanced

83:66 Boston, MA (I, 12-9-83)
(*Schiavone Const., Co.*) (penny
bidding not per se unbalanced and
nonresponsive).

Unbalanced

81:53 Timmons ville, SC (IV, 7-17-81)
(Quality Sanitary Services) (not
automatically nonresponsive—depends
whether award will result in lowest
cost).

C. Unbalanced

1. Glennville, GA (IV, 4-4-80) (J. W.
Meadors and Company) (not automatically
rejected).
2. Branford, CT (I, 5-28-80) (C. H.
Nickerson & Co.) (zero unit price deduct).

(C) Unbalanced:

1. Omaha, Nebraska (VII, 9-14-74)
(Datamaster Division—ACCO)
*2. Philadelphia, Pennsylvania
(Northeast Plant) (III, 12-6-76) (Sov-
ereign Construction Co.)
3. Bridgewater, New Jersey (II, 12-2-
77) (Lombardo Contracting Co.)
*4. Ramsey, New Jersey (II, 12-2-77)
(P. & A. Construction Co.)

BID SHOPPING

Bid Shopping

83:13 Sandpoint, ID (X, 3-3-83) (*Lydig
Const., Co.*) (subcontractor listing as
material term).

Bid Shopping

81:20 Tupelo, MS (IV, 4-7-81) (Jesco,
Inc.) (ambiguous equipment listing
requirement).

82:02 Rush-Ryan Sewer Authority,
PA (III, 1-22-82) (R&M Assoc.) (listing
prequalified subcontractors was not to
prevent bid shopping) (reversed 81:83).

82:16 Ottawa County, OH (V, 3-16-
82) (Munitech) (substantial deviation).

82:21 Fallbrook Sanitary District, CA
(IX, 4-6-82) (Metro-Young/Lopez Const.,
A Joint Venture) (controlling state
statute).

82:23 Passaic Valley, NJ (II, 4-20-82)
(Rochester Pump and Machine, Inc.) (not
limited by EPA).

Bid Shopping

1. Hastings, NE (VII, 3-7-80) (Horizon
Construction Company; Olson Construction
Company) (failure to list MBE subs).

2. Johnson County, KS (VII, 4-1-80) (Sharp
Brothers Contracting Company) (failure to list
MBE subs).

3. Tacoma, WA (X, 4-3-80) (Worthington
Pump Corporation) (equipment substitution).

4. Glennville, GA (IV, 4-4-80) (J. W.
Meadors and Company) (Failure to list
suppliers).

5. Port Austin Area Water and Sewer
Authority, MI (V, 7-2-80) (Amado Cardenas,
d.b.a. Nashville Excavating Company)
(failure to list MBE subs).

6. County of Nassau, NY (II, 8-7-80)
(Konline-Sanderson Engineering
Corporation) (substitution for listed
equipment).

7. San Jacinto River Authority
(Woodlands), TX (VI, 10-3-80) (Industrial
Contractors, Inc.) (listing of MBE subs).

8. DuPage County (Department of Public
Works), IL (V, 12-15-80) (Paschen
Contractors, Inc.) (failure to list subs).

9. Pierce County, WA (X, 12-23-80) (Frank
Coluccio Construction Company) (failure to
list subs).

Bid Shopping

1. Caldwell, ID (X, 11-1-79) (Neilson &
Co.) (subcontractor listing)

2. Hannibal, MO (VII, 6-7-79) (U.S.
Enviro-Con, Inc.) (subcontractor
listing)

3. Mt. Pleasant, MI (V, 6-25-79)
(Collavino Brothers Construction Co.)

Bid Shopping (The Administrator, on June 29,
1978, submitted a report to congress entitled,
*Waste Water Treatment Contracting and Bid
Shopping* which concluded that among other
things, EPA would not impose a procurement
standard upon grantees with the effect of
preventing bid shopping. see 40 C.F.R.
§ 35.938-4(h)(6), as amended by 43 FR 44080,
September 27, 1978).

*1. Fairfax County, Virginia (III, 3-17-78)
(John W. Cowper Co. Inc.) (failure of low
bidder to name preapproved supplier)

BID SHOPPING (CONTINUED)

Bid Shopping.

- *1. Hollywood, Florida (IV, 3-13-74) (Morganti-South Inc.)
2. Jacksonville, Florida (IV, 8-12-74) (Adrian Construction Corp.)
3. Washington Suburban Sanitary Commission, Maryland (III, 10-15-75) (Volpe Construction Co.; and John C. Grimberg Co.)
4. Winter Haven, Florida (IV, 11-26-75) (Griffin Construction Co.)
- *5. Miami-Dade Water and Sewer Authority, Florida (IV, 3-11-76) (George Hyman Construction Co.)
- *6. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 6-24-76) (Savoy Construction Co.)
7. Amherst, New York (II, 7-2-76) (Air Products & Chemicals Inc.)
8. York, Pennsylvania (III, 4-22-77) (Union Carbide Corp.)
- *9. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-3-77) (Palco; and Kraus-Anderson)

BIDDERS

Bidders

- 83:06 Western Carolina, SC (IV, 2-2-83) (*Ashbrook-Simon-Hartley*) (where specifications required supplier to submit equipment for review through prime contractor grantee may refuse to review equipment directly offered).

Bidders

- 82:14 Atlanta, GA (IV, 3-15-82) (Ruby-Collins and John D. Stephens) (no award to reconstituted joint venture with sub-entities different from bidder).

BONDS

Bonds

- 83:02 Columbus, OH (V, 1-12-83) (*Cobey Metro—Waste Compositing Systems, Inc.*) (5 year bond not unduly restrictive if available at nonburdensome cost).
- 83:03 Columbus, OH [Reconsideration] (V, 6-8-83) (*Cobey Metro—Waste Compositing System, Inc.*) (review of numerous EPA decisions concerning bonds) (must prove rational basis for bond requirement if protestor shows effect on competition) (5 year bond requirement deemed reasonable).
- 83:41 MDS, Chicago, IL (V, 6-24-83) (*Premier Electrical Const., Co.*) (summary dismissal of protest where bid bond not extended).

Bonds

- 84:03 Town of Williston, VT (I, 1-25-84) (*Cooley Corp.*) (failure to include bid bond with bid is nonresponsive) (bid bond with no stated penal sum is nonresponsive).
- 84:06 City of Toronto, OH (IV, 2-2-84) (*J.L. Cavanaugh Co., Inc.*) (subcontractor's warranty may be furnished post-bid opening absent subcontractor listing requirement).
- 84:16 Back River Waste Water Treatment Plant, MD (III, 4-17-84) (*James A. Federline, Inc., H.A. Harris Co.*) (bid guarantee not furnished with bid in proper form and amount renders bid nonresponsive).
- 84:19 Clinton County, NY (II, 4-30-84) (*Compost Systems Co.*) (requiring performance guarantee for liquidated damages in amount of bid price is not undue restriction on competition).
- 84:32 Bayshore Regional Sewerage Authority, NJ (II, 8-30-84) (*RAM Engineering, Inc.*) (five year performance bond in lieu of five year experience is not unduly restrictive where such bond is available at reasonable price).
- 82:44 Pepper's Ferry, VA (III, 10-29-84) (*RDP Co.*) (subcontractor protest of bonding requirement dismissed as untimely).

Bonds

- 81:49 Los Angeles County, CA (IX, 7-1-81) (Dresser Industries) (performance bond demonstrates responsibility)
- 81:56 New Castle, IN (V, 7-22-81) (Ralph Reed and Sons) (single vs. incremental performance bonds).
- 81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (no appeal bond required to protest).
- 82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Assoc.) (submission of bond in lieu of experience) (reversed 81:83).
- 82:15 Philadelphia, PA (III, 3-16-82) (Willard, Inc.) (two bonds if bid on separate contracts, one if bid covers both) (performance bond guaranteeing lowest energy costs).
- 82:43 Brockton, MA (I, 8-16-82) (Tenco Hydro) (experience bond must be accepted in lieu of specified experience) (bond language generally unacceptable to sureties unduly restricts competition).

BONDS(continued)

82:57 Cape May County MUA, NJ (II, 11-1-82) (American Bioreactor Corp. and Fairfield Service Co.) (bond not acceptable alternative in lieu of construction meeting specifications).

82:63 Elk Pinch, WV (III, 11-18-82) (Kappe Assoc.) (nondiscriminatory performance bond requirement, standing of subcontractor).

Bonds

1. Norwich, CT (I, 2-1-80) (Fantoni Company) (bid bond not signed by principal).
2. Cecil County, MD (III, 8-11-80) (Hanks Contracting, Inc.) (bid bond not submitted).
3. Pierce County, WA (X, 12-23-80) (Frank Coluccio Construction Company) (bid bond as a percentage of bid).

Bonds (§§ 35.936-13(c) and 35.936-22).

1. West Bend, Wisconsin (V, 3-3-78) (Oliver Construction Co. Inc.) (bid—goes to responsiveness)
- *2. Effingham, Illinois (V, 3-21-78) (Autotrol) (performance: combined 200% bond requirement)
- *3. San Francisco, California (IX, 3-22-78) (E & I, Inc.) (experience)
4. Front Royal, Virginia (III, 4-21-78) (Lycot-Zf) (prequalification)
5. San Francisco, California (IX, 8-17-78) (E & I, Inc.) (performance)
- *6. Passaic Valley Sewerage Commissioners, New Jersey (II, 10-5-78) (BSP Division of Envirotech Corp. and Wheatley Corp.) (warranty and performance bond—ambiguity: operation and maintenance costs) (Note.—The first determination in this matter was issued 12-10-77 and was affirmed in *CCTW&M v. U.S. EPA*, 452 F.Supp. 69 (D.N.J. 1978)).
7. Silver City, New Mexico (VI, 10-13-78) (Enviro Development Co. Inc.) (experience)
8. Concord, North Carolina (IV, 10-24-78) (EDC/Enviro Development Inc.) (5 year-justification)
- *9. Chattanooga, Tennessee (IV, 11-2-78) (Philadelphia Gear) (5 year period: cost)
10. Rivanna Water and Sewer Authority, Charlottesville, Virginia (III, 11-2-78) (National Hydro Systems)

Bonds (§§ 35.935-3 and 35.936-13(c))

1. Lexington, Virginia (III, 8-14-74) (surety bond; subcontractor performance) (Hydro Systems, Inc.)
2. Manitowoc, Wisconsin (V, 12-18-74) (Paul A. Lawrence Co.)
3. Clearwater, Florida (IV, 3-14-75) (bid bond) (Harry Pepper & Associates)
4. Bradford, Vermont (I, 6-8-77) (Carvel Co.)
5. Cumming, Georgia (IV, 9-28-77) (performance bond) (Newkirk Construction Co.)
6. Kansas City, Kansas (VII, 11-17-77) (experience bond) (Nichols Engineering and Research Corp.; and Zimpro, Inc.)
- *7. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (experience bond) (BSP Division of Envirotech Corp.)

Bonds

- *1. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.) (performance bond)
2. Hannibal, MO (VII, 6-7-79) (U.S. Enviro-Con, Inc.) (experience bond)
3. Howard County, MD (III, 2-15-79) (Water Pollution Control Corp.) (performance bond)
4. Newton, IA (VII, 12-8-79) (Municipal and Industrial Pipe Services, Ltd.) (bid bond)
5. Seaford, DE (III, 1-8-79) (National Hydro Systems, Inc.) (experience bond)

BUY AMERICAN

Buy American

81:49 Los Angeles County, CA (IX, 7-1-81) (Dresser Industries) (preference depending upon delivered price).

81:58 Ashland, KY (IV, 7-27-81) (Fairbanks Morse Pump) (domestic preference) (reversed by reconsideration 81:79).

81:79 Ashland, KY (IV, 10-1-81) (Fairbanks Morse Pump) (domestic preference mandatory).

82:23 Passaic Valley, NJ (II, 4-20-82) (Rochester Pump and Machine) (price comparison by informal negotiation after bid opening).

82:38 Fulton, NY (II, 7-16-82) (LOC Pump and Equipment) (refers to place of manufacture not to design features).

Buy American Act Requirements

- *1. Concord, NH (I, 4-18-79) (Passavant Corp.) (construction materials)
2. Concord, NH (I, 10-4-79) (Bethlehem Steel Corp.) (6% preference)
3. Miami-Dade Water and Sewer Authority, FL (IV, 10-3-79) (Radiation Dynamics)
4. Newton, IA (VII, 12-8-79) (Municipal and Industrial Pipe Services, Ltd.) (protestant must prove jurisdiction)

Buy American Act Requirements (Recently made applicable by Section 215 of the Clean Water Act of 1977; Pub. L. No. 95-217).

COMPETITION

Competition

84:21 Ardmore, OK (VI, 5-4-84) (LYCO and Walker Process Corp.) (to obtain maximum open free competition specification must be performance based when possible).

Competition

A. General

81:92 Hallandale, FL (IV, 11-3-81) (Municipal & Industrial Pipe Services, Interstate Pipe Maintenance; and Polymer Chemical Corp.) (sufficient competition on single material distributed by independent sources).

B. Free and open

81:02 Little Blue Valley, MO (VII, 1-8-81) (Eby Const.) (award to low responsive responsible bidder).

81:17 McHenry County, IL (V, 3-16-81) (Pio Lombardo & Assoc.) (local preference impermissible A/E evaluation criterion).

81:19 Phoenix, AZ (IX, 3-27-81) (TCK Const. and M.M. Sundt Const.) (no unfair advantage from supplier substitution).

81:43 Honolulu, HI (IX, 6-11-81) (Hawaii Concrete Products) (disguised sole source).

81:80 Sacramento County, CA (IX, 10-2-81) (Westates Carbon Co.) (unduly restrictive experience requirement).

82:17 Lummi Indian, WA (X, 3-26-82) (Walker Processing Corp.) (approval of only one supplier not proof of violation).

C. De Facto

82:34 Monterey, CA (IX, 6-24-82) (Frank M. Booth, Inc.) (competition where one manufacturer exists but others can meet specifications).

Competition

A. General

1. Odessa, TX (VI, 2-4-80) (Gifford-Hill and Company) (single pipe material).

2. Tolleson, AZ (IX, 3-17-80) (Hydro Conduit Corporation) (single pipe material).

3. Northeast Ohio Regional Sewer District, OH (V, 10-14-80) (ICI Americas, Inc.) (single material for carbon columns).

B. De Facto

1. Alma, NE (VII, 9-4-80) (William Anderson Company, Inc.) (4 of 8 bidders bid no charge for sealant).

C. Free and Open

1. Cordele, GA (IV, 4-10-80) (Ralph Healey & Associates, Inc.) (manufacturers only).

Competition

A. General

1. Atlanta, GA (IV, 3-21-79) (Fruin-Conlon Corp.)

2. Chattanooga, TN (IV, 3-27-79) (Performance Systems, Inc.)

*3. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.)

4. Gainesville, GA (IV, 6-15-79) (National Hydro Systems, Inc. (II)) (supply of equipment)

COMPETITION (CONTINUED)

5. Laurens County, SC (IV, 7-10-79) (Carolina Concrete Pipe Co., et al.) (pipe)

B. DeFacto

*1. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.)

C. Free and Open

1. Passaic Valley Sewerage Commissioners, NJ (II, 4-13-79) (Passavant Corp.)

Competition (e.g. §§ 35.936-3, 35.936-13: see preamble to recent recodification of 40 C.F.R., Part 35 Subpart E, at 43 FR 44046, September 27, 1978) (see also *Non-Restrictive Specifications: Salient Requirements*).

(A) *DeFacto* (This category is primarily, though not exclusively, intended to connote those determinations in which a defined class or subclass is precluded, or sought to be precluded, from actually competing under a solicitation and is distinguished from circumstances where the sole issue concerns the restrictiveness of an individual "or equal" determination: the Regional Administrator will review the procurement to determine, *inter alia*, whether an acceptable level of competition, in fact, occurred):

1. Chester, South Carolina (IV, 3-29-78) (Carolina Concrete Pipe Co.) (single pipe material selection—vitrified clay)
2. Cumberland County, New Jersey (II, 3-11-78) (Dorr-Oliver Inc.) (ultimately nonconforming, prequalified equipment supplier)
3. Newton, North Carolina (IV, 4-25-78) (Carolina Concrete Pipe Co.) (pipe material selection limited to 3 types—vitrified clay, steel reinforced concrete or ductile iron)
4. Olympia, Washington (X, 5-30-78) (Pentech Division of Houdaille Industries Inc.) (project design exclusion, § 35.939(j)(5)—on-site oxygenation generation system for sludge treatment)
5. Onondaga County, New York (II, 7-11-78) (Pentech Division of Houdaille Industries Inc.) (project design exclusion, § 35.939(j)(5)—on-site oxygenation generation system for sludge treatment; licensee—licensor relationship as permitting competition)
6. Indianapolis, Indiana (V, 10-6-78) (FMC Corp.) (project design exclusion; § 35.939(j)(5)—closed tank nitrification system)

(B) General—Free and Open.

1. Effingham, Illinois (V, 3-21-78) (Autotrol) (rotating biological disc equipment—salient performance requirements)
 2. Newcastle, Indiana (V, 5-18-78) (Spencer Turbine Co.) (approval of offered equipment items as controlled by specification)
 3. Onondaga County, New York (II, 6-30-78) (Zimpro Inc.) (bidding competitor's system)
 4. Onondaga County, New York—Reconsideration (II, 7-19-78) (Zimpro Inc.) (EPA competitive process and overview)
 5. Prince William County, Virginia (III, 8-4-78) (Spencer Turbine Co.) (approval of offered equipment under rational basis analysis)
 6. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance) (functional equivalency—carbon steel to solid stainless steel pump shaft)
 7. Frankfort, Kentucky, (IV, 10-18-78) (Passavant)
 8. Fairfield, New Jersey (II, 10-20-78) (Loc Pump) (salient performance requirements as standard: functional equivalency—rubber gasket to metal-to-metal connection of pump at discharge pipe)
 9. Chattanooga, Tennessee (IV, 11-2-78) (Philadelphia Gear) (functional equivalency—parallel to right angle shaft for design of aerator speed reducer driver)
- Competition (§ 35.935).**
- (A) DeFacto:**
1. Cleveland Regional Sewer District (Southerly Plant), Ohio (V, 11-15-76) (Powercon Corp.)
 2. Hope, Arkansas (VI, 9-1-77) (pipe) (Hydro Conduit; Choctaw Culvert (Division of Choctaw Inc.); Jonesboro Concrete Pipe Co.)
 3. Contra Costa County, California (IX, 10-25-77) (Armco Steel)
- (B) General—free and open:**
1. Miami-Dade Water and Sewer Authority, Florida (IV, 3-11-76) (George Hyman Construction Co.)
 2. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 6-24-76) (subcontractor listing) (Savoy Construction Co.)
 3. Chatham County (Isle of Hope), Georgia (IV, 7-8-76) (pipe) (Kyle-Gifford-Hill Inc.)
 4. Westchester County, New York (II, 9-7-76) (Union Carbide Corp.)

COMPETITION (CONTINUED)

5. Bergen County, New Jersey (II, 9-28-76) (Wm. L. Crow-Wolff & Munier, Joint Venture)

6. Greenwood (Rocky-Coronaca), South Carolina (IV, 10-6-76) (pipe) (Metromount Materials; Carolina Concrete Pipe Co.; Wallace Concrete Pipe Co., Inc.; South Carolina Pipe Association; Amoco Reinforced Plastics Co.)

*7. Palm Beach County, Florida (IV, 10-8-76) (pipe) (Price Brothers)

*8. Waterford, Connecticut (I, 3-4-77) (Loc Pump and Equipment)

9. Puerto Rico Aqueduct and Sewer Authority (II, 3-31-77) (Blythe Industries, Inc.)

10. Pasadena, Texas (VI, 4-1-77) (Union Carbide Corp.)

11. Parsippany-Troy Hills, New Jersey (II, 7-8-77) (Frank Briscoe)

12. Jackson, Mississippi (IV, 8-19-77) (pipe) (American Cast Iron Pipe Company)

13. Cheektowaga, New York (II, 8-31-77) (Amadori Construction Co.)

14. Orange County, California (IX, 11-2-77) (Pentech Division of Houdaille Industries)

15. Ramsey, New Jersey (II, 12-2-77) (P. & A. Construction Co.)

*16. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (BSP Division of Envirotech Corp.)

CONFLICT OF INTEREST

Conflict of Interest

83:29 Fargo, ND (VIII, 5-18-83) (*Van Bergen & Markson, Inc.; The Gray Engineering Group, Inc. & Conservatek, Inc.*) (Code of Conduct must be maintained by grantee) (potential conflict where City official engaged in contracting business).

Conflict of Interest

81:01 N.Y. State DEC, NY (II, 1-7-81) (Sweda Enterprises) (firms representing other clients, not protestable).

Conflict of Interest

1. Southwest Florida Regional Planning Council (Fort Myers), FL (IV, 12-3-80) (Jones, Edmunds and Associates/Missimer & Associates) (A/E with contracts to assess and to inspect seawalls).

Conflict of Interest

1. Miami-Dade Water and Sewer Authority, FL (IV, 10-3-79) (Radiation Dynamics, Inc.)

Conflict of Interest.

*1. Newton, North Carolina (IV, 4-25-78) (Carolina Concrete Pipe Co.) (personal—competitor supplier's counsel as counsel for grantee consultant)

Conflict of Interest.

1. Atlanta, Georgia (IV, 5-11-77) (Mayer & Associates)

Davis-Bacon Act.

DESCRIPTIVE LITERATURE

Descriptive Literature Requirement (Test Data, etc.)

81:47 Jasonville, IN (V, 6-30-81) (*Hinde Engineering*) (incorrect information submitted late).

82:12 Charnelview, TX (VI, 3-8-82) (*Euramca Ecosystems*) (must allow 30 days for submitting data).

Descriptive Literature Requirement (see also, Responsiveness; Responsibility.)

1. South Portland, Main (I, 10-7-75) (*Pizzagalli Construction Co.*)

2. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 11-13-75) (John C. Grimberg)

3. Miami-Dade Water and Sewer Authority, Florida (IV, 9-27-76) (Altman-Myers Construction Inc.)

4. Norwalk, Connecticut (I, 7-22-77) (Primiano Construction Co.)

DESIGN DECISIONS

System Design

1. Kansas City, MO (VII, 12-20-79) (Garney Companies) (tunnelling)
2. Metropolitan Sanitary District of Greater Chicago, IL (V, 8-16-79) (Troesch Trucking, Inc.)

System Design. Choice of (e.g., §§ 35.917 and 35.939(j)(5)) (see also Engineering Judgments: Jurisdiction; Non-Restrictive Specifications).

1. Olympia, Washington (X, 5-30-78) (Pentech Division of Houdaille Industries, Inc.)
2. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 6-14-78) (McLaughlin & Associates) (v restrictive specification)
- *3. Onondaga County, New York (II, 7-11-78) (Pentech Division of Houdaille Industries, Inc.)

System Design. Choice of (§§ 35.917 and 35.939(j)(5)) (See also, Engineering Judgment).

1. Hudson, Wyoming (VIII, 8-1-74) (Environmental Equipment Co.)
- *2. District of Columbia (Blue Plains) (III, 2-20-75) (submerged turbine aerators vs. without turbines) (Kenics Corp.)
3. St. Joseph, Missouri (VII, 2-20-76) (specification amendment which deletes use of a performance method) (Turzillo Contracting Co.)
4. Appleton, Wisconsin (V, 5-17-76) (engineering judgment) (Philadelphia Mixers)

5. Sacramento, California (IX, 10-6-76) (specifying O. & M. factors—energy efficiency) (Air Products and Chemicals Inc.)

6. Oxnard, California (IX, 12-1-76) (specification for digester prestressing) (BBR Prestressed Tanks)

7. Orange County, California (IX, 11-2-77) (oxygen generation facilities vs. alternate system) (Pentech Division of Houdaille Industries).

Time Limitations (§ 35.939(b)).

1. Denver, (City) Colorado (VIII, 4-22-74) (waiver, reversed by new regulations) (Pinkard Donovan)
2. Hudson, Wyoming (VIII, 8-1-74) (Environmental Equipment)
3. Omaha, Nebraska (VII, 9-14-74) (Datamaster Div.—ACCO)
4. Henry, South Dakota (VIII, 9-15-75) (Henningsen)
5. Oregon, Ohio (V, 11-6-75) (timeliness as jurisdictional) (Ohio Control Systems)

6. Sunnyvale, California (IX, 12-5-75) (oral protest—revised by new regulations) (ABF Contractors)

7. Butler County (LeSourdsville Plant), Ohio (V, 1-7-76) (restrictive specifications—subtier—grantee finality rule) (EPCO—Hormel)

- *8. Spokane, Washington (X, 1-9-76) (restrictive specifications—grantee finality rule) (BBR Prestressed Tanks)

9. Palmer Lake, Colorado (VIII, 1-16-76) (grantee finality rule) (Dugan Construction Co.)

10. Predonia, New York (II, 4-15-76) (Tenco Hydro-Aerosciences)

11. Denver (City and County), Colorado (VIII, 7-9-76) (Frank Briscoe)

12. Hancock, Michigan (V, 7-12-76) (grantee decision to use negotiated procurement) (Maclean Construction Co.)

- *13. Sacramento, California (IX, 9-9-76) (restrictive specifications—or equal—grantee's finality) (Air Products & Chemicals Inc.)

- *14. Sacramento, California (IX, 9-13-76) (restrictive specifications—or equal—grantee's finality) (Amoco Reinforced Plastics)

- *15. North Shore Sanitary District, Illinois (V, 9-28-76) (restrictive specifications—rejection of equipment—grantee finality rule) (Keene Corp.; Premier Electric Co.)

16. Deposit, New York (II, 10-5-76) (Albin Construction Co.)

- *17. Boynton Beach/Delray Beach, Florida (IV, 10-14-76) (oral protest) (Ecological Services Products)

- *18. Concord, North Carolina (IV, 10-14-76) (subtier—timely oral request but untimely written) (Air Products & Chemical Inc.)

19. Lynn, Massachusetts (I, 10-21-76) (A/E procurement; grantee finality rule) (Clinton Bogert Associates)

20. Baton Rouge, Louisiana (VI, 11-5-76) (restrictive specifications—subtier) (National Hydro Systems)

21. Detroit, Michigan (V, 11-10-76) (estoppel—bidder on second procurement to challenge rejection of all bids on first) (Lotepro Corp.)

22. Cleveland Regional Sewer District (Southerly Plant), Ohio (V, 11-15-76) (restrictive specifications) (Powercon Corp.)

23. Norwalk, Connecticut (I, 11-16-75) (letter to State) (Burnalli Construction Co.)

- *24. Waterford, Connecticut (I, 12-28-76) (restrictive specifications—or equal; finality rule) (New Ikor I)

DESIGN

DECISIONS

(CONTINUED)

25. Fredonia, New York (II, 2-28-77) (restrictive specifications—subtier—equipment acceptability determination) (National Hydro Systems)

*26. Waterford, Connecticut (I, 3-4-77) (restrictive specifications—or equal) (New Ikor II)

*27. Dothan, Alabama (IV, 3-10-77) (restrictive specifications—or equal—grantee reversed) (Infilco Degremont)

28. Sioux City, Iowa (VII, 3-17-77) (restrictive specifications—rejection of shop drawings necessary) (Ralph Carter Co.; U.S. Enviro-Con)

29. Puerto Rico Aqueduct & Sewer Authority (II, 3-31-77) (carbon copy to local EPA office) (Blythe Industries Inc.)

30. Pasadena, Texas (VI, 4-1-77) (restrictive specifications—Subtier—grantee finality rule) (Union Carbide Corp.)

31. York, Pennsylvania (III, 4-22-77) (grantee finality rule stated) (Union Carbide Corp.)

32. Marion, North Carolina (IV, 5-17-77) (restrictive specifications—admission against interest), (Carolina Concrete Pipe)

33. Bernice, Louisiana (VI, 6-1-77) (restrictive specifications—subtier—performance data) (National Hydro Systems)

34. Bradford, Vermont (I, 6-6-77) (no simultaneous mailing; contract action as grantee's final act) (Carvel Co.)

35. Daytona Beach, Florida (IV, 6-14-77) (letter of intent to file—subsequent untimely filing) (Key Power Systems)

36. San Francisco, California (IX, 6-20-77) (A/E procurement—Newspaper column as notice) (McKee-Berger-Mansueto)

37. Parsippany-Troy Hills, New Jersey (II, 7-8-77) (knowledge of grantee finality from totality of facts) (Frank Briscoe)

38. Cayce, South Carolina (IV, 7-18-77) (restrictive specifications—pipe) (Southeastern Concrete)

39. Canonsburg-Houston Joint Authority, Pennsylvania (III, 7-2-77) (National Hydro Systems)

40. Cranberry Township, Pennsylvania (III, 9-30-77) (restrictive specifications—preapproval) (Bay-Con Corp.)

41. Pepperell, Massachusetts (I, 11-22-77) (not decisional—statement of notice rule) (Catamount Co.)

E.E.O.

E.E.O.

83:12 Le Clarie, IA (VII, 2-23-83) (C. Iber & Sons, Inc.) (submittal of documents after bid opening).

E.E.O.

81:59 Metropolitan Wastewater Management Commission, OR (X, 4-29-81) (Hyland Brothers Const. and Assoc.) (responsibility, not responsiveness).

81:95 Fowlerville, MI (V, 11-9-81) (Normco Const.) (responsiveness, not responsibility).

81:101 Chicago MSD, IL (V, 12-16-81) (Walsh Const.) (responsibility, not responsiveness).

82:04 Westport, SD (VIII, 2-3-82) (H.F. Jacobs and Sons) (responsibility, not responsiveness).

E.E.O.

1. Skagit County, WA (X, 5-4-79) (Glantz Supply, Inc.)

2. Meriden, CT (I, 10-10-79) (Standard Engineers and Constructors, Inc.)

Equal Employment Opportunity (40 C.F.R. Part 8) (Notice: the President, through Executive Order 12086 (October 5, 1978), transferred all primary contract compliance responsibilities and functions from previously designated contract compliance agencies (e.g. EPA) to the Department of Labor. EPA contract compliance activities are being integrated into the Department of Labor. Accordingly, Part 8 no longer reflects the obligations and responsibilities of EPA as a primary contract compliance agency for contract compliance functions under the construction grants program) (see also, *Responsiveness, Minority Business Enterprise*).

1. Sandusky, Ohio (V, 1-13-78) (Bay-Con Corp.) (certification)

*2. West Goshen, Pennsylvania (III, 3-2-78) (Philips Bros. Electrical Contractors) (EO 11246—Philadelphia Imposed Plan)

*3. San Francisco, California (IX, 8-9-78) (Slattery Assoc., Fischbach and Moore Inc. and Morrison-Knudsen Co. Inc., joint venture) (Minority business enterprise-local requirements)

Equal Employment Opportunity, (40 CFR Part 8) (see also, *Responsiveness*, but see *Minority Business Enterprise*).

1. Philadelphia, Pennsylvania (Southwest Plant) (III, 2-28-75) (EO 11246—Philadelphia Imposed Plan) (Air Products & Chemicals Inc., and Remsco Associates)

*2. Woonsocket, Rhode Island (I, 6-20-75) (EO 11246—Certificate) (Westcott)

3. Williston Township, Pennsylvania (III, 9-26-75) (EO 11246—Philadelphia Imposed Plan) (Tioga Electric Shop)

*4. Washington Suburban Sanitary Commission, Maryland (III, 12-4-75) (EO 11246—Washington Imposed Plan) (Fattore Construction Co.)

5. Sunnyvale, California (IX, 12-5-75) (EO 11246—Certificate) (ABF Contractors)

*6. Westerville, Ohio (V, 4-2-76) (EPA regulations, 40 CFR § 8.8) (Davis-McKee; and G. Igel)

7. Denver (City and County), Colorado (VIII, 7-9-76) (Frank Briscoe)

8. Occoquan-Woodbridge (Potomac Plant), Virginia (III, 11-12-76) (EO 11246—Washington Imposed Plan) (Briscoe/Courter/Conduit, Joint Venture)

9. Washington Suburban Sanitary Commission, Maryland (III, 3-2-77) (EO 11246—Washington Imposed Plan) (C.F. & B. and State Construction Corp., Joint Venture)

*10. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-3-77) (EO 11246—Certificate) (Palco; and Kraus-Anderson)

11. Ft. Lauderdale, Florida (IV, 7-18-77) (EO 11246—Certificate) (Inman Inc.)

*12. Huntington, Massachusetts (I, 8-29-77) (EO 11246—Certificate) (Warner Brothers)

13. Lower Salford Township, Pennsylvania (III, 11-12-77) (EO 11246—Washington Imposed Plan) (Gerngross Corp.)

ENFORCEMENT

Enforcement

1. St. Petersburg, FL (IV, 1-10-80)
(Municipal and Industrial Pipe Services, Ltd.)
(limiting grant eligibility in rebidding).

2. Checotah, OK (VI, 6-18-80) (Sherman
Machine and Iron Works, Inc.) (limiting
additional cost if equipment reprocured).

Enforcement

1. Glenbard Wastewater Authority, IL
(V, 4-6-79) (USEMCO, Inc.)
- *2. Mt. Pleasant, MI (V, 6-25-79)
(Contracts 2 & 3) (Collavino Brothers,
Construction Co.)

Enforcement.

*1. Knoxville, Tennessee (IV, 2-8-78) (Roy
F. Weston Inc.) (A/E procurement-EPA
remand authority)

2. Wells, Maine (I, 3-17-78) (Purcell Pump)
(barring grantee rejection of equipment)

*3. Cumberland County, New Jersey (II, 3-
31-78) (Dorr-Oliver Inc.) (Technical
nonrestrictive specification requirement in
post-contract context)

4. Mt. Olive, North Carolina (IV, 5-18-78)
(Lyco-Zf)

5. Washtenaw County, Michigan (V, 7-13-
78) (Spence Bros.) (award to low base bid or
readvertise)

*6. Washington County, Oregon (X, 7-31-
78) (North American Contractors Inc.) (EPA
directed rejection of all bids and negotiation
on rebid)

7. Chester, South Carolina (IV, 8-7-78)
(Preston Carroll Construction Co.) (EPA
directed rejection of all bids; accelerated
reprocurement by negotiation approved)

8. San Francisco California (IX, 8-17-78) (E
& I Inc.) (rational basis justification for
performance bond)

9. Newcastle, Indiana—Reconsideration (V,
8-23-78) (request of Newcastle, Indiana)
(retrofit items procured to conform to
determination)

10. Oklahoma City, Oklahoma (VI, 8-25-78)
(Automatic Engineering Inc.) (award to other
subcontractors or reprocure at no extra cost
to EPA)

11. Chatanooga, Tennessee (IV, 9-20-78)
(Passavant Corp.)

12. Concord, North Carolina (IV, 10-24-78)
(EDC/Enviro Development Inc.)

Enforcement.

1. Lexington, Virginia (III, 8-14-74)
(bond) (Hydro-Systems Inc.)

2. Grand Forks, North Dakota (VIII,
8-15-74) (Komline-Sanderson)

3. Lake Charles, Louisiana (VI, 12-
15-74) (Flygt Corp.)

4. Tonawanda, New York (II, 8-1-75)
(Ingersoll-Rand)

5. Clark Co. (Las Vegas) Sanitary
District (No. 1) Nevada (IX, 12-24-75)
(alternative) (Bovee & Crail Construc-
tion Co.)

*6. Spokane, Washington (X, 1-9-76)
(BBR Prestressed Tanks Inc.)

7. Palmer Lake, Colorado (VIII, 1-
16-76) (Dugan Construction Co.)

8. Miami-Dade Water and Sewer Au-
thority, Florida (IV, 3-11-76) (George
Hyman Construction Co.)

9. Sioux City, Iowa (VII, 7-12-76)
(U.S. Enviro-Con Inc.)

10. Sacramento, California (IX, 9-9-
76) (Air Products & Chemicals Inc.)

11. Bergen County, New Jersey (II,
9-28-76) (Wm. L. Crow-Wolff &
Munier, Joint Venture)

12. Palm Beach County, Florida (IV,
10-8-76) (Price Brothers)

13. Philadelphia, Pennsylvania
(Northeast Plant) (III, 12-6-76) (Sov-
ereign Construction Co.)

14. Waterford, Connecticut (I, 12-28-
76) (New Ikor I)

15. Bradford, Vermont (I, 3-4-77)
(Cummings)

16. Waterford, Connecticut (I, 3-4-
77) (New Ikor II)

17. Sioux City, Iowa (VII, 3-17-77)
(Ralph B. Carter Inc.; and U.S. Enviro-
Con Inc.)

18. Puerto Rico Aqueduct and Sewer
Authority (II, 3-31-77) (Blythe Indus-
tries Inc.)

19. Delano, California (IX, 4-8-77)
(specification revision) (Hydro Con-
duit Corp. and Cen-Vi-Ro Concrete
Pipe & Products Co., Inc.)

*20. Oklahoma City, Oklahoma (VI,
5-18-77) (Ingersoll-Rand I)

21. Miami-Dade Water and Sewer
Authority, Florida (IV, 5-25-77) (Mor-
ganti South-Wolff & Munier Joint
Venture and Intercounty Construction
Corp.)

22. Watertown, New York (II, 7-5-
77) (Vincent J. Fasano, Inc.)

23. Oklahoma City, Oklahoma (VI,
7-13-77) (Ingersoll-Rand II)

24. Toms Brook—Maurertown, Vir-
ginia (III, 9-20-77) (National Hydro
Systems)

25. McFarland, California (IX, 9-29-
77) (Lagoon Aeration Corp.)

26. Cranberry Township, Pennsylvan-
ia (III, 10-20-77) (Bay-Con Corp.)

27. Contra Costa County, California
(IX, 10-25-77) (Armco Steel)

28. Loxahatchee River Environmen-
tal Control District, Florida (IV, 11-3-
77) (Guy Villa & Sons Inc.)

29. Brick Township, New Jersey (II,
11-22-77) (P. & A. Construction Co.)

30. Bridgewater, New Jersey (II, 12-
2-77) (Lombardo Contracting Co.)

31. Ramsey, New Jersey (II, 12-2-77)
(P. & A. Construction Co.)

32. Corvallis, Oregon (X, 12-6-77)
(Frank Coluccio Construction Co.)

33. Passaic Valley Sewerage Commis-
sioners, Newark, New Jersey (II, 12-
10-77) (BSP Division of Envirotech
Corp.)

ENGINEERING JUDGMENT

Engineering Judgment

- 84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (A./Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.) (technical feasibility of equipment offered).
- 84:08 Western Carolina Regional Sewer Authority, Greenville, SC (IV, 2-17-84) (Ashbrook-Simon-Hartley) (EPA compares engineer's minimum performance requirements with his reasons for rejecting supplier).
- 84:18 Town of Milford, MA (I, 4-20-84) (Euramca Ecosystems, Inc.) (rational basis for denying prequalification of a proposal not meeting specifications).

Engineering Judgment

- 83:20 Los Angeles, CA (IX, 3-28-83) (Solar Turbines, Inc.) (basic design decision not protestable where based on performance needs).
- 83:23 Jerseyville, IL (V, 4-14-83) (Clow Corp.) (must show rational basis for using brand name specification).
- 83:30 St. Albans, WV (III, 5-27-83) (Ralph B. Carter Co.) (performance tests of equipment).
- 83:37 Central Valley, UT (VIII, 6-17-83) (American Surfpac, Inc.) (choice of filter media not basic design and may be protested).
- 83:55 Brazos River, TX (VI, 9-23-83) (Jeffery Manufacturing Div.) (technical features need not be only choice available if rational) (reliability requirements consideration).

Engineering Judgment

- 81:08 Morgantown, WV (III, 2-1-81) (Clow Co.) (sole sourcing must be based on minimum needs).
- 81:58 Ashland, KY (IV, 7-27-81) (Fairbanks Morse Pump) (speculative maintenance problems).
- 81:61 Southington, CT (I, 8-7-81) (Chemcon) (pump design).
- 81:69 Houma, LA (VI, 8-18-81) (Hydromatic Pump) (conclusory representations).
- 81:74 Tifton, GA (IV, 9-1-81) (Municipal & Industrial Pipe Services) (deference to engineer's judgment).
- 81:83 Rush-Ryan Sewer Authority, PA (III, 10-13-81) (R&M Assoc.) (ability to develop test data).

81:86 Huntsville, AL (IV, 10-15-81) (Municipal & Industrial Pipe Services, and Astor Bolden Enterprises) (selection of single material grout).

81:89 Harford County, MD (III, 10-19-81) (Schuylkill Products) (exclusion of a specific manufacturing process).

81:92 Hallandale, FL (IV, 11-3-81) (Municipal & Industrial Pipe Services; Interstate Pipe Maintenance; and Polymer Chemical Corp.) (use of single material grout).

81:100 Harriman, TN (IV, 12-9-81) (Municipal & Industrial Pipe Services) (best able to restore technical matters and evaluate specific project requirements).

82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Assoc.) (bond submittal in lieu of experience).

82:06 Tangier, VA (III, 2-11-82) (Ultraviolet Purification Systems) (excess capacity requirement is rational where design is experimental).

82:07 Chattanooga, TN (IV, 2-18-82) (Spencer Turbine Co.) (cast iron to insure reliability and performance).

82:10 Sauget, IL (V, 2-19-82) (CHA Lock Co.) (deference to technical judgment of grantee).

82:18 Miami-Dade Water & Sewer Authority, FL (IV, 3-31-81) (Worthington Group) (requiring heavy duty pump).

82:44 Memphis, TN (IV, 8-18-82) (B.F. Goodrich Co.) (exclusion of plastic media bio filter not rational).

82:45 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (deference to engineer is not absolute).

82:57 Cape May MUA, NJ (II, 11-1-82) (American Bioreactor Co. and Fairfield Service) (basic project design).

82:61 El Dorado, KS (VII, 11-16-82) (Oursler Brothers Const.) (must be rationally based).

82:67 Cullman, AL (IV, 11-30-82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (deference to engineer's action not absolute).

ENGINEERING JUDGMENT (CONTINUED)

Engineering Judgment

1. East Bay Dischargers Authority, CA (IX, 1-30-80) (Capital Controls Company) (rational basis to reject proposed equal).
2. Odessa, TX (VI, 2-4-80) (Gifford-Hill and Company) (rational basis for single material).
3. Whitehall, NY (II, 2-5-80) (Davis Water & Waste Industries, Inc.) (salient requirement to meet minimum need).
4. Tolleson, AZ (IX, 3-17-80) (Hydro Conduit Corporation) (justification for single material).
5. Puyallup, WA (X, 4-24-80) (Rodding-Cleaning Machines, Inc.) (requirement based on performance need).
6. Moorhead, MN (V, 6-3-80) (Waldor Pump & Equipment Company) (consultant's judgment to be rationally based).
7. Clarksville, TN (IV, 6-5-80) (Penetryn Systems, Inc.) (justification for single material).
8. County Sanitation Districts of Los Angeles County, CA (IX, 6-28-80) (Ingersoll-Rand Co.) (rational performance related basis).
9. Richmond, VA (III, 7-1-80) (Lane Construction Company; Clevepak Corporation) (equipment rejection for performance needs has rational basis).
10. Northeast Ohio Regional Sewer District, OH (V, 10-14-80) (ICI Americas, Inc.) (single material requirement has rational basis).

Engineering Judgment

1. Batesville, AR (VI, 1-12-79) (Hinde Engineering Co.)
2. Cape May County, NJ (II, 8-31-79) (Clow/Envirodisc Corp.)
3. Chattanooga, TN (IV, 3-27-79) (Performance Systems, Inc.)
4. Cleveland Regional Sewer District, OH—Clarification (V, 12-28-79) (Water Pollution Control Corp.)
5. Concord, NH (I, 4-18-79) (Passavant Corp.) (Buy American)
6. Concord, NH (I, 10-4-79) (Bethlehem Steel Corp.) (Buy American)
7. Gainesville, GA (IV, 6-15-79) (National Hydro Systems, Inc. (II))
8. Kansas City, MO (VII, 12-20-79) (Garney Companies) (alternate method for tunnelling)
- *9. Laurens County, SC (IV, 7-10-79) (Carolina Concrete Pipe Co. et al.) (justification for limiting choice of materials)
11. Meriden, CT (I, 10-10-79) (Standard Engineers and Constructors, Inc.)
12. Miami-Dade Water and Sewer Authority, FL (IV, 10-3-79) (Radiation Dynamics, Inc.)

13. Monterey County, CA (IX, 2-28-79) (Monterey Construction Surveys, Inc.)
14. Skagit County, WA (X, 5-4-79) (Glantz Supply, Inc.)

Engineering Judgment (And see, Non-Restrictive Specifications)

1. Turlock, California (IX, 3-6-78) (Rega Inc.) ("or equal" judgment).
- *2. Chester, South Carolina (IV, 3-29-78) (Carolina Concrete Pipe Co.) (single pipe material selection)
3. Cumberland County, New Jersey (II, 3-31-78) (Dorr-Oliver Inc.) (noncomplying preapproved supplier)
4. Front Royal, Virginia (III, 4-21-78) (Lycot-ZI)
5. Olympia, Washington (X, 5-30-78) (Pentech Division of Houdaille Industries Inc.) (project design issue—oxygenation sludge treatment system)
6. Cleveland Regional Sewer District (Westerly Plant) Ohio (V, 6-14-78) (McLaughlin & Associates)
- *7. Prince William County, Virginia (III, 8-4-78) (Spencer Turbine Company) ("or equal" determination reviewed on rational basis standard)
8. Winchester, New Hampshire (I, 9-1-78) (Enviro Development Co. Inc.)
9. Indianapolis, Indiana (V, 10-6-78) (Allis-Chalmers) ("or equal" decision)
- *10. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance) (Rational basis standard)
11. Fairfield, New Jersey (II, 10-20-78) (Loc Pump)
12. Indianapolis, Indiana (V, 10-31-78) (Allis-Chalmers) ("or equal" decision)
13. Chattanooga, Tennessee (IV, 11-2-78) (Philadelphia Gear)
14. Urbana-Champaign, Illinois (V, 11-9-78) (Norton Co.) (rational basis standard)
15. Waterford, Connecticut (I, 11-17-78) (Purcell Pump)

Engineering Judgment

1. Hudson, Wyoming (VIII, 8-1-74) (Environmental Equipment Co.)
2. Grand Forks, North Dakota (VIII, 8-15-74) (Komline-Sanderson)
3. Lake Charles, Louisiana (VI, 12-15-74) (Flygt Corp.)
4. Englewood and Littleton, Colorado (VIII, 2-10-75) (Air Products and Chemicals Inc.)
5. District of Columbia (Blue Plains) (III, 2-20-75) (Kenics Corp.)
6. Appleton, Wisconsin (V, 5-17-76) (Philadelphia Mixers Corp.)
- *7. Chatham Co., (Isle of Hope), Georgia (IV, 7-8-76) (Kyle-Gifford-Hill Inc.)

ENGINEERING JUDGMENT (CONTINUED)

8. Sioux City, Iowa (VII, 7-12-76)
(U.S. Enviro-Con)
9. Sacramento, California (IX, 8-12-76) (BBR Prestressed Tanks)
10. Miami-Dade Water and Sewer Authority, Florida (IV, 9-27-76)
(Altman-Myers Construction Co.)
11. North Shore Sanitary District, Illinois (V, 9-28-76) (Keene Corp.; and Premier Electrical Construction Co.)
12. Cleveland Regional Sewer District (Southerly Plant), Ohio (V, 11-15-76) (Powercon Corp.)
13. Oxnard, California (IX, 12-1-76)
(BBR Prestressed Tanks)
14. Fredonia, New York (II, 2-28-77)
(National Hydro Systems)
15. Waterford, Connecticut (I, 3-4-77) (Loc Pump and Equipment)
16. Dothan, Alabama (IV, 3-10-77)
(Infilco-Degremont)
17. Delano, California (IX, 4-8-77)
(Hydro Conduit Corp. and Cen-Vi-Ro Concrete Pipe & Products Co., Inc.)
18. Sussex, Wisconsin (V, 4-14-77)
(Fisher & Porter)
19. Montgomery, Alabama (IV, 5-11-77) (Envirotech Corp.)
20. Bernice, Louisiana (VI, 6-1-77)
(performance data) (National Hydro Systems)
21. Watertown, New York (II, 7-5-77) (Vincent J. Fasano, Inc.)
22. Oklahoma City, Oklahoma (VI, 7-13-77) (Ingersoll-Rand II)
23. Cynthiana, Kentucky (IV, 8-11-77) (Lyco-ZF)
24. Hope, Arkansas (VI, 9-1-77)
(burden of proof) (Hydro Conduit; Choctaw Culvert (Division of Choctaw Inc.); Jonesboro Concrete Pipe Co.)
25. Toms Brook—Maurertown, Virginia (III, 9-20-77) (National Hydro Systems)
26. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)
27. Amherst, New York (II, 11-22-77)
(Smith & Associates)

EXPERIENCE REQUIREMENTS (CONTINUED)

Experience Requirements

- 84:29 City of New York, NY (II, 8-15-84) (*Terminal Const. Corp., and Fairfield Service Co.*) (bond permits flexibility in accepting manufacturer with less experience but does not require grantee to accept unproven designs and untested equipment).
- 84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (matter of responsibility not responsiveness) (affirmative determination that bidder has sufficient experience based on its principal officer's experience from former working with a competitor).

Experience Requirements

- 83:02 Columbus, OH (V, 1-12-83) (*Cobey Metro—Waste Composting Systems, Inc.*) (experience clause justified by complexity of the equipment and innovative technology) (supplier standing under Part 35 to challenge clause and determination of inadequate experience).
- 83:03 Columbus, OH (Reconsideration) (V, 6-8-83) (*Cobey Metro—Waste Composting System, Inc.*) (only must prove rational basis for experience requirement if protestor shows competition affected).
- 83:24 Oklahoma City, OK (VI, 4-29-83) (*D.J. Domas, Inc.*) (general clause requiring experience installing similar equipment—no bond alternative).
- 83:24 Oklahoma City, OK (Reconsideration) (VI, 5-23-83) (*Fiberglass Engineered Products, Inc.*) (requiring unspecific period of experience is ambiguous).
- 83:38 Sacramento, CA (VIII, 6-17-83) (*Power Machine Co.*) (must be justified).

Experience Requirements

- 81:77 Carrboro, NC (IV, 9-23-81) (*Cleopak Corp.*) (award to newly formed corporation—experience requirements discouraged).
- 81:80 Sacramento County, CA (IX, 10-2-81) (*Westates Carbon Co.*) (unduly restrictive).
- 81:83 Rush-Ryan Sewer Authority, PA (III, 10-13-81) (*R&M Assoc.*) (test results or installation listing).
- 82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (*R&M Assoc.*) (bond submittal in lieu of experience) (reconsideration).
- 82:83 Brockton, MA (I, 8-16-82) (*Tenco Hydro*) (may be justified during protest—must permit bond in lieu).

Experience Requirements

1. Orange County Sanitation Districts of Orange County, CA (IX, 5-22-80) (Ralph B. Carter Co.; Komline-Sanderson Engineering Corp.) (experience as prequalification factor).

Experience Requirements

1. Barnstable, MA (I, 8-24-79) (Chemcon, Inc.)
2. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.) (RBD equipment)
3. Howard County, MD (III, 2-15-79) (Water Pollution Control Corp.)
4. Seaford, DE (III, 1-8-79) (National Hydro Systems, Inc.)

Experience Requirements (§ 35.936-13(c)) (see Bonds: Non-Restrictive Specifications).

- *1. Effingham, Illinois (V, 3-21-78) (Autotrol) (rotating biological discs—100% performance and 100% process guarantee bonds: specifications waived)
- *2. San Francisco, California (IX, 3-22-78) (E & I, Inc.) (bar screen equipment—prior supply of equipment: no provision for bond: no prior justification)
3. Front Royal, Virginia (III, 4-21-78) (Lyco-Zf) (clarifier and related equipment: performance data prequalification requirement)
4. Miami-Dade Water and Sewer Authority, Florida (IV, 5-18-78) (Enviro Development Co. and Poole & Kent Co.) (sludge dewatering system—bond in lieu of experience requirement: responsiveness)
5. San Francisco, California (IX, 8-17-78) (E & I, Inc.) (bar screen equipment—175% bond in lieu of experience)
6. Indianapolis, Indiana (V, 10-6-78) (FMC Corp.)
7. Silver City, New Mexico (VI, 10-13-78) (Enviro Development Co. Inc.)
8. Fairfield, New Jersey (II, 10-20-78) (Loc Pump) (submersible pumps—list of installations required in lieu of operating data)
9. Concord, North Carolina (IV, 10-24-78) (EDC/Enviro Development Inc.) (sludge dewatering system—5 years: procedures for: written justification requirement)
10. Chattanooga, Tennessee (IV, 11-2-78) (Philadelphia Gear) (oxygen generation and oxygenation system—5 years: overlap with warranties: justification)
11. Rivanna Water and Sewer Authority, Charlottesville, Virginia (III, 11-2-78) (National Hydro Systems) (3 year: warranty bonds: justification)

- *1. Butler Co. (LeSourdsville Plant) Ohio (V, 1-7-76) (EPCO—Hormel)
2. Bernice, Louisiana (VI, 6-1-77) (National Hydro Systems)
3. Kansas City, Kansas (VII, 11-17-77) (Nichols Engineering & Research Corp.; and Zimpro)
4. Amherst, New York (II, 11-22-77) (Smith & Associates)
- *5. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (BSP Division of Envirotech Corp.)

FORMAL ADVERTISING

81:38 Indianapolis, IN (V, 5-27-81)
(American Digital Systems) (may be
used to procure SSES contractor).
82:08 Santa Fe, NM, (VI, 2-18-82)
(Mesa Grande) (verbal IFB amendment).
82:83 Elk Pinch PSD, WV (III, 1-18-
82) (Kappe Assoc., Inc.) (communicate
addenda in time for bid preparation).
82:88 Atwood, OH (V, 12-1-82)
(Munitech) (bidders on equal footing).

1. Springfield, Missouri (VII, 1-24-78)
(Armco Steel Corp.) (local preference rules
for supply of materials)
2. Effingham, Illinois (V, 3-6-78) (Mautz &
Oren, Inc.) (waiver of bid irregularities)
3. Snyderville, Utah (VIII, 4-17-78)
(Jacobsen Construction Co. Inc.) (supplier
price and delivery data)
4. Washtenaw County, Michigan (V, 7-13-
78) (Spence Bros.) (bid evaluation—base vs
alternate bid)
5. Washington County, Oregon (X, 7-31-78)
(North American Contractors Inc.)
(explanation of method of contract award,
award to low bidder)

6. Greenville, Texas (VI, 12-7-78) (R. B
Carter)
7. Portage, Michigan (V, 12-20-78)
(Iacobelli Construction Inc.) (reject 8 of 10
contracts)

1. Grand Forks, North Dakota (VIII,
8-15-74) (Komline-Sanderson)
2. Henry, South Dakota (VIII, 9-15-
75) (in-state) (Henningsen Construc-
tion Co.)

3. South Portland, Maine (I, 10-7-75)
(Pizzagalli Construction Co.)

4. Washington Suburban Sanitary
Commission, Maryland (III, 10-15-75)
(notice of state court case) (Volpe
Construction Co.; and John C. Grim-
berg)

5. Monroe, Washington (X, 12-31-75)
(Will Construction Co.)

6. St. Joseph, Missouri (VII, 2-20-76)
(Addenda issuance) (Turzillo Contract-
ing Co.)

7. Huntington, West Virginia (III, 4-
9-76) (National Engineering and Con-
tracting Co.; and Envirotech Corp.)

8. Phoenix, New York (II, 5-7-76)
(Vincent J. Fasano)

9. Deposit, New York (II, 10-5-76)
(reprocurement) (Albin Construction
Corp.)

*10. St. Paul (Metropolitan Waste
Control Commission), Minnesota (V,
12-3-76) (Kvalsten Electric)

11. Puerto Rico Aqueduct & Sewer
Authority, (II, 3-31-77) (Blythe Indus-
tries Inc.)

12. Lynden, Washington (X, 5-16-77)
(Arcomm Construction Co.)

*13. Bradford, Vermont (I, 6-6-77)
(Carvel Co.)

14. Middlesex (Sayreville Relief
Pump Station), New Jersey, (II, 6-9-
77) (Terminal Construction Co.)

15. Parsippany-Troy Hills, New
Jersey (II, 7-8-77) (Frank Briscoe)

16. Loxahatchee River Environ-
mental Control District, Florida (IV,
11-3-77) (reprocurement) (Guy Villa &

Recipient RESPONSIBILITY

Grantee Responsibility

81:33 Lynchburg, OH (V, 4-30-81)
(Dow Const.) (state/local legal
determination).

81:46 San Francisco, CA (IX, 3-27-
81) (Alliance of Minority Contractors
and Suppliers) (contract administration
to maximize MBE).

81:68 Warren County MUA, NJ (II, 8-
19-81) (Schuylkill Products) (evaluation
of other materials where two materials
specified).

82:12 Channelview, TX (VI, 3-8-82)
(Euramca Ecosystems) (when
prequalifying equipment, must allow 30
days for submitting data).

82:22 Goldendale, WAS (X, 4-16-82)
(IMCO General Const.) (give parties
notice of protest procedure and
opportunity to express views).

8:41 Abilene, TX (VI, 7-27-82) (R&M
Engineering) (allow contractor rebuttal
before finding nonresponsible for prior
inadequate performance).

82:45 Pasadena, TX (VI, 8-17-82)
(Parkson) (pre-rejection notice of
reasons for rejection not necessary).

82:49 Dumas, AR (VI, 9-7-82) (Hinde
Engineering) (rebuttal opportunity).

82:70 Metropolitan Wastewater
Management Commission, OR (X, 12-
22-82) (Robert Dougan Const.) (rejection
of all bids if specifications unduly
restrictive).

Grantee Responsibilities

1. Cleveland Regional Sewer District,
OH—Clarification (V, 12-28-79)
(Water Pollution Control Corp.)

2. Cochran, GA (IV, 9-14-79) (Municipal
and Industrial Pipe Service, Ltd.)

3. Conneaut, OH (V, 7-18-79) (Hoff-
Weston)

4. Gainesville, GA (IV, 6-15-79)
(National Hydro System, Inc. (II))
(review of shop drawings, notification
of defects)

5. Glenbard Wastewater Authority, IL
(V, 4-8-79) (USEMCO, Inc.)

6. Monterey County, CA (IX, 2-28-79)
(Monterey Construction Surveys, Inc.)

Grantee Responsibilities

1. Nashville, MI (V, 10-24-80) (Clark
Construction Company) (MBE goals,
investigation of MBE status).

Grantee Responsibilities (§§ 30.210 and
35.936-5).

1. Sussex, Wisconsin (V, 4-14-77)
(Fisher & Porter)

2. Bradford, Vermont (I, 6-6-77)
(Carvel Co.)

3. Parsippany-Troy Hills, New Jersey
(II, 7-8-77) (Frank Briscoe)

INNOVATIVE TECHNOLOGIES

Ambiguity

Innovative and Alternative Technology

1. Miami—Dade Water and Sewer Authority, FL (IV, 10-3-79) (Radiation Dynamics, Inc.)

Innovative and Alternative Technologies (§§ 35.908, 35.917-1(d), 35.930-5, 35.935-20, and 35.936-13, and 43 Fed. Reg. 44026-29 September 27, 1978) (see also, *Jurisdiction*).

1. Olympia, Washington (X, 5-30-78) (Pentech Division of Houdaille Industries, Inc.) (protest design considerations: cost-effectiveness)
2. Onondaga County, New York (II, 7-11-78) (Pentech Division of Houdaille Industries, Inc.)
- *3. Indianapolis, Indiana (V, 10-6-78) (FMC Corp.) (open tank nitrification system)

INVITATION FOR BIDS

Invitation for Bids

A. Addenda

- 83:16 Halstead, Hutchinson, KS (VII, 3-9-83) (*Charles E. Stevens*) (where addenda had no connection with bid preparation no harm in short notice period).
- 83:69 Conroe, TX (VI, 12-13-83) (*KNC, Inc.*) (verbal addenda generally prohibited) (inadequate time to consider addenda).

Invitation for Bid (IFB)

A. Ambiguity

- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (non prejudicial ambiguity in specification as to how post-bid opening submittal considered in determining responsibility).
- 84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3-28-84) (*Catamount Const., Inc.*) (IFB not clear and unequivocal as to equipment listing requirement) (two prong test considers all bid documents).
- 84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (material ambiguities as to bid evaluation and what constitute responsiveness potentially affected competition and required cancelling solicitation).
- 84:24 City of Leominster, MA (I, 6-11-84) (*P. Gioioso & Sons, Inc.*) (potential ambiguity not shown to have affected competition does not justify rejecting all bids).
- 84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (listing requirement was responsibility matter due to ambiguity inspite of grantee intent).

Ambiguity

- 83:06 Hamilton, MT (VIII, 2-8-83) (4C *Plumbing & Heating, Inc.*) (MBE requirements unclear as to responsiveness).
- 83:27 Port Arthur, TX (V, 5-12-83) (*Robert Bossow, Inc.*) (unclear bid evaluation method harmless error where no reliance by or prejudice to bidder).
- 83:36 Bentonville, AR (VI, 6-14-83) (*Archer Henry Const., Co.*) (harmless error where no prejudice to bidder).
- 83:64 Los Angeles, CA (IX, 11-25-83) (*C K Pump & Dewatering Corp.*) (ambiguous MBE requirements cause for rejecting all bids).
- 83:68 Tri-City, OR (X, 12-9-83) (*Dresser Industries, Inc.*) (to determine if specifications restrictive consider extrinsic factors like trade custom).

INVITATION FOR BIDS

Ambiguity (CONTINUED)

- 81:03 Pierce County, WA (X, 1-14-81) (Frank Coluccio Const.) (MBE requirements).
- 81:20 Tupelo, MS (IV, 4-7-81) (Jesco, Inc.) (equipment listing requirement).
- 81:22 Corvallis, OR (X, 4-10-81) (Environmental Pollution Control, Inc.) (reject all bids and readvertise).
- 81:30 Portage, IN (V, 4-28-81) (Associated Mechanical Services) (MBE requirements).
- 81:50 Kalida, OH (V, 7-2-81) (Sherburn Co.) (alternate pipe materials not prejudicial).
- 81:51 Lynchburg, OH (V, 7-21-81) (Dow Construction Corp.) (bid clarified after opening).
- 81:73 Valparaiso, IN (V, 8-28-81) (H. DeWulf Mechanical Contractor) (MBE requirements).
- 81:76 Chicago MSD, IL (V, 10-27-81) (S.A. Healy) (MBE requirements).
- 81:82 Batesville, IN (V, 10-7-81) (Bowen Engineering) (MBE requirements).
- 81:90 Chicago MSD, IL (V, 10-27-81) (S.A. Healy, *et al.*) (MBE requirements) (reconsideration see 81:76).
- 81:97 Elmhurst, IL (V, 11-12-81) (Miller-Davis) (MBE requirements).
- 82:15 Philadelphia, PA (III, 3-16-82) (Williard, Inc.) (prejudice to bidders justifies rejection of all bids).

Ambiguity

- 1. San Buenaventura, CA (IX, 3-28-80) (A. A. Portanova & Sons) (difference between unit price and extended total).
- 2. Glennville, GA (IV, 4-4-80) (J. W. Meadors and Company) (unsolicited discount).
- 3. Port Austin Area Water and Sewer Authority, MI (V, 7-2-80) (Amado Cardenas, d/b/a Nashville Excavating Company) (MBE efforts prior to bidding).
- 4. Newaygo County Board of Public Works, MI (V, 7-21-80) (M. D. Taddie & Company, Inc.) (discount applied to single contract).
- 5. Rochester, MN (V, 7-24-80) (Darin & Armstrong, Inc.; Kraus-Anderson/PMW Construction; Newberg, Foster & Paschen; Premier Electric Corporation) (MBE effort prior to bidding).

6. Newaygo County Board of Public Works, MI (V, 7-28-80) (R. S. Bennett & Company) (prequalified equipment to comply with specifications).

7. Ashley Valley Sewer Management Board, UT (VIII, 11-20-80) (Western Utility Contractors, Inc.) (difference between unit price and extended total).

Defective IFB

- 1. Bend, OR (X, 5-15-79) (Industrial Pump Sales Co.) (minimum project requirements)
- 2. Cochran, GA (IV, 9-14-79) (Municipal and Industrial Pipe Services, Ltd.)
- 3. Passaic Valley Sewerage Commissioners, NJ (II, 4-13-79) (Passavant Corp.)

Ambiguity (but see Bids: Mistake).

- 1. Amherst, New York (II, 5-15-78) (Cimato Bros. Inc.)
- 2. Barrington, Illinois (V, 10-20-78) (Utility & Industrial Construction Co.) (method of bidding: basis for contract award)

Ambiguity (but see Bids: Mistake).

- 1. Huntington, West Virginia (III, 4-9-76) (National Engineering and Contracting Co.; and Envirotech Corp.)
- 2. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (BSP Division of Envirotech Corp.)

Defective

Defective IFB

- 1. Bend, OR (X, 5-15-79) (Industrial Pump Sales Co.) (minimum project requirements)
- 2. Cochran, GA (IV, 9-14-79) (Municipal and Industrial Pipe Services, Ltd.)
- 3. Passaic Valley Sewerage Commissioners, NJ (II, 4-13-79) (Passavant Corp.)

Defective Invitation for Bids (see also Ambiguity: Specifications).

- 1. Snyderville, Utah (VIII, 4-17-78) (Jacobsen Construction Co. Inc.)
- 2. Washtenaw County, Michigan (V, 7-13-78) (Spence Bros.) (impossibility of performance, unavailability of alternate disposal site)
- 3. Washington County, Oregon (X, 7-31-78) (North American Contractors Inc.) (alternates)
- 4. Chester, South Carolina (IV, 8-7-78) (Preston Carroll Construction Co.) (multiple low bidders)

LICENSE

License

- 84:53 MSD of Greater Chicago, IL (V, 12-13-84) (*Moretrench American Corp.*) (obtaining license is responsibility matter permitting award of contract before license obtained).

License

- 83:05 Morton, MS (IV, 1-25-83) (*Associated Const., Inc.*) (license requirement affects responsibility not responsiveness).

License Requirement

- 82:33 Henderson, NV (IX, 6-22-82) (Nielson, Vasko & Earl, Inc.) (state law requiring license before bidding).

LISTING SUBCONTRACTORS

Listing Requirement

- 84:01 Gwynns Falls, MD (III, 1-13-84) (*Joseph L. Cardinale & Sons, Inc.*) (bid responsive where MBE goal not satisfied by subcontractor).
- 84:06 City of Toronto, OH (IV, 2-2-84) (*J.L. Cavanaugh Co., Inc.*) (not responsiveness matter where specification not intended to prevent bid shopping).
- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (failure to submit letter of intent to MBE subcontractor is not responsiveness matter absent clear IFB).
- 84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3-28-84) (*Catamount Const., Inc.*) (equipment listing not matter of responsiveness absent clear IFB).
- 84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (listing supplier is responsibility matter absent clear IFB).
- 84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (listing of manufacturers is responsibility matter where IFB is ambiguous).

Listing Subcontractors and Equipment

- 83:13 Sandpoint, ID (X, 3-3-83) (*Lydig Const., Co.*) (required by state law) (follow Part 35 determinations).
- 83:17 Patapsco, MD (III, 3-17-83) (*J. Vinton, Schafer & Sons, Inc.*) (failure to list MBEs did not render bid nonresponsive).
- 83:21 Chester, CT (I, 4-7-83) (*Maple Hill Const., Co.*) (subcontractor listing not matter of responsiveness unless clear IFB).
- 83:22 San Jose, CA (IX, 4-11-83) (*Johnson Controls, Inc.*) (equipment listing responsibility matter under Part 33 unless IFB clear to contrary).
- 83:26 Waynesburg [Stark County], OH (V, 5-12-83) (*Robert Bossow, Inc.*) (bid may be accepted and contractor required to do substitution).
- 83:28 Des Moines, WA (X, 5-18-83) (*Will Const. Co. Inc.*) (listing MBE subcontractor responsibility matter).
- 83:32 Los Angeles, CA (IX, 6-6-83) (*Advanco Constructors, Inc.*) (bid not deemed nonresponsive for listing more than one subcontractor).
- 83:35 Pleasant Hill, IL (V, 6-10-83) (*State Mechanical Contractors, Inc.*) (because bidder required to perform to specifications and substitute equipment if necessary, listing nonconforming equipment is not nonresponsive).
- 83:44 Streetsboro, Ravenna, OH (V, 7-1-83) (*Robert Bossow, Inc.*) (substitution of noncomplying equipment) (listing errors not grounds for rejection).
- 83:44 Streetsboro, Ravenna, OH [Reconsideration] (V, 8-28-83) (*Robert Bossow, Inc.*) (bid accepted and contractor required to substitute equipment).
- 83:49 MSD, Chicago, IL (V, 8-2-83) (*Door Systems of Elk Grove*) (not grounds for rejection where IFB required listing) (listing to list MBEs).
- 83:51 Santa Barbara, CA (IX, 8-15-83) (*Namtec Corp. & Union Engineering*

MINORITY AND WOMEN'S BUSINESS ENTERPRISE

Minority and Women's Business Enterprise (MBE/WBE)

- 84:01 Gwynns Falls, MD (III, 1-13-84)
(*Joseph L. Cardinale & Sons, Inc.*)
(bid responsible though failed to
meet MBE requirements within 10
days as required by IFB).
- 84:06 City of Toronto, OH (TV, 2-2-84)
(*J.L. Cavanaugh Co., Inc.*)
(ambiguity in specifications as to
time for meeting MBE goal renders
listing requirement matter of
responsibility) (unconditional
certification to comply with MBE
subcontracting makes bid
responsive even though all MBE
forms not completed).
- 84:16 Back River Waste Water
Treatment Plant, MD (III, 4-17-84)
(*James A. Federline, Inc. H.A.
Harris Co.*) (where bidder required
to list and use certified MBEs bid
was responsive though MBE's not
certified until after bid opening).
- 84:41 City of Lancaster, PA (III, 10-16-
84) (*Wyatt Const. Inc.*) (grantee
correctly determined bidder made
good faith efforts) (good faith effort
does not require bidder to negotiate
with subcontract offer or).
- 84:42 St. Paul MWCC, MN (V, 10-18-
84) (*Hoffman Electric Co.*) (grantee
may make compliance with MBE
requirements a matter of
responsiveness but did not do so).
- 84:45 Arvin County, CA (IX, 11-2-84)
(*Blois Const., Inc.*) (not matter of
responsiveness where IFB did not
clearly so state).
- 84:49 Richgrove, CA (IX, 11-8-84) (*El
Camino Const. Co.*) (matters of
responsibility where although IFB
though attempted to make it
responsiveness requirement did not
clearly do so).
- 84:50 Richgrove, CA (IX, 11-8-84)
(*W.M. Lyles Co.*) (matters of
responsibility where although IFB
attempted to make it
responsiveness requirement did not
clearly do so).

Minority Business Enterprise (MBE) (See Responsibility and Responsiveness for Other Determinations)

- 83:08 Hamilton, MT (VIII, 2-8-83) (4G
Plumbing & Heating, Inc.) (positive
efforts satisfied by meeting goal)
(MBE rejected by prime for business
reasons not discriminatory motive).
- 83:14 MSD Chicago, IL (V, 3-4-83) (*R.
Rudnick & Co., Inc. & Namat Const.,
Co.*) (prime receives MBE
subcontractor credit only for work
actually done by MBE) (where bid met
MBE goal on its face but MBE not
bonafide, evaluate contractor pre-bid
opening positive efforts).
- 83:17 Patapsco, MD (III, 3-17-83) (*J.
Vinton, Schafer & Sons, Inc.*) (bidder
may demonstrate positive efforts until
contract award).
- 83:25 Onondaga County, NY (II, 5-9-
83) (*Herbert F. Darling, Inc.*)
(responsibility challenged where MBE
goal not met in bid and good faith
efforts not demonstrated) (post-bid
determination of good faith efforts
ripe for appeal when award
announced).

MINORITY AND WOMEN'S BUSINESS ENTERPRISE (CONTINUED)

- 83:26 Waynesburg [Stark County], OH (V, 5-12-83) (*Robert Bossow, Inc.*) (ambiguous MBE requirements requires resolicitation due to effect on competition).
- 83:28 Des Moines, WA (X, 5-18-83) (*Will Const. Co., Inc.*) (MBE responsibility curable after bid opening).
- 83:34 New Concord, OH (V, 6-10-83) (*Adams Robinson Enterprise, Inc.*) (where IFB unequivocally required bidder state MBE offer, failure to do so nonwaivable).
- 83:35 Pleasant Hill, IL (V, 6-10-83) (*State Mechanical Contractors, Inc.*) (documentation of positive efforts made bid responsive though no MBE participation proposed).
- 83:46 Palatine, IL (V, 7-19-83) (*Di Paolo-Rossetti, Joint Venture*) (IFB made self certification affidavit and 20 day advertising matters of responsiveness).
- 83:49 MSD, Chicago, IL (V, 8-2-83) (*Door Systems of Elk Grove*) (MBE subcontractor listing not material to bid).
- 83:84 Los Angeles, CA (IX, 11-25-83) (*C K Pump & Dewatering Corp.*) (ambiguous MBE requirements cause to reject all bids).

Minority Business Enterprises (see also Responsibility and Responsiveness)

- 81:04 Central Contra Costa Sanitary District, CA (IX, 1-27-81) (D.W. Young Const.) (MBE share in joint venture).
- 81:12 California SWRCB, CA (IX 2-26-81) (Navas Pipe Supply and Hydro Conduit Co.) (middleman MBE, no commercially useful function).
- 81:27 Black Diamond, WA (X, 4-21-81) (Bowen Const.) (failure to meet goal or show positive efforts) (remanded for bidder to show efforts).
- 81:32 Black Diamond, WA (X, 4-29-81) (Bowen Const.) (need not segregate supply and construction components to determine compliance with twin MBE goals).
- 81:37 Crescenta Valley County, CA (IX, 5-18-81) (J.C. Plumbing Co.) (failure to demonstrate positive efforts).
- 81:45 San Francisco, CA (IX, 6-15-81) (Hydro Conduit Co.) (MBE firms not required to demonstrate social or economic disadvantage resulting from discrimination).

- 81:46 San Francisco, CA (IX, 6-15-81) (Alliance of Minority Contractors and Suppliers) (must be clearly defined role for MBE in joint venture).
- 81:55 Centerville, IA (VII, 7-21-81) (Grady Unlimited) (policy establishes no right to subcontract) (maximum positive efforts not required).
- 81:59 Metropolitan Wastewater Management Commission, OR (X, 7-30-81) (Hyland Brothers Const. and Assoc.) (MBE subcontractors listing, curable after bid opening).
- 81:72 Sun Valley, NV (IX, 8-21-81) (Hydro Conduit Co.) (protest premature because contractor not yet designated MBE).
- 81:76 Chicago MSD, IL (V, 9-18-81) (S.A. Healy Co., *et al.*) (commercially useful function) (minority control).
- 81:87 Cridersville, OH (V, 10-16-81) (Miami Valley Contractors) (omission of MBE guidance from IFB).
- 81:90 Chicago MSD, IL (V, 10-27-81) (S.A. Healy, *et al.*) (reconsideration of 81:76) (ambiguous MBE requirements).
- 81:93 Marengo, IN (V, 11-3-81) (E.H. Hughes Co.) (lack of State assistance no excuse for lack of positive efforts).
- 81:96 Tallahassee, FL (IV, 11-10-81) (GS&L Mechanical Const. and Assoc. Minority Contractors) (MBE association may challenge MBE compliance on behalf of members) (failure to meet MBE goal requires examination of positive efforts).
- 82:29 Syracuse, NY (II, 5-18-82) (Bat-Con, Inc.) (withholding payments to contractor for failure to meet MBE requirements not protestable).
- 82:36 Williamstown, MI (V, 6-28-82) (Barnhart & Son) (pre-bid positive efforts documentation).
- 82:52 Gwynn Falls, MD (HI, 9-14-82) (R.J. Longo Const.) (meet goal or demonstrate positive efforts).
- 82:68 Atwood, OH (V, 12-1-82) (Munitech) (failure to provide MBE documentation).

MINORITY AND WOMEN'S BUSINESS ENTERPRISE (CONTINUED)

Minority Business Enterprise

1. DeKalb County, GA (IV, 2-29-80) (Southeast Grading, Inc.) (good faith negotiations).
2. Hastings, NE (VII, 3-7-80) (Horizon Construction Company; Olson Construction Company) (failure to list MBE subs is curable).
3. Johnson County, KS (VII, 4-1-80) (Sharp Brothers Contracting Company) (failure to list MBE subs is curable).
4. Huntsville, TX (VI, 4-18-80) (Angleton General Mechanical, Inc.) (failure to furnish documentation of positive efforts is curable).
5. Burlingame, CA (IX, 4-25-80) (Pat Kennelly Construction Company) (failure to contact assistance center can be waived).
6. Soldotna, AK (X, 4-25-80) (Interstate Company) (failure to file MBE for with bid is curable).
7. Port Austin Area Water and Sewer Authority, MI (V, 7-2-80) (Amado Cardenas, d.b.a. Nashville Excavating Company) (specifications ambiguous in requiring positive efforts prior to bidding).
8. Rochester, MN (V, 7-24-80) (Darin & Armstrong, Inc.; Kraus-Anderson/PMW Construction; Newberg, Foster & Paschen; Premier Electric Construction) (specifications ambiguous in requiring positive efforts prior to bidding).
9. Toledo, OH (V, 7-28-80) (Minority Earth Movers, Inc.) (MBE policy does not extend to WBE).
10. Rockford, MI (V, 8-1-80) (Nagel Construction, Inc.; Interstate Pipe Maintenance, Inc.; Clytus Industries, Inc.) (timeliness).
11. Albert Lea, MN (V, 9-18-80) (Orvedahl Construction, Inc.; Centennial Contractors Corp.; Johnson Brothers Corp.) (Grantee can make responsiveness dependent on pre-bid positive efforts).
12. San Jacinto River Authority [Woodlands], TX (VI, 10-3-80) (Industrial Contractors, Inc.) (goal attainment or positive efforts go to responsibility).
13. Nashville, MI (V, 10-24-80) (Clark Construction Company) (grantee can make MBE data a matter of responsiveness).
14. Webster, TX (VI, 10-31-80) (LEM Construction Company, Inc.) (positive efforts).
15. DuPage County [Department of Public Works], IL (V, 12-15-80) (Paschen Contractors, Inc.) (positive efforts).
16. Pierce County, WA (X, 12-23-80) (Frank Coluccio Construction Company) (MBE documentation as responsibility factor).
17. Bear Creek Valley Sanitary Authority, OR (X, 12-24-80) (Ausland Construction, Inc.) (post-bid efforts to meet MBE goals).
18. Clear Lake City, TX (VI, 12-29-80) (LEM Construction Co., Inc.) (MBE documentation is responsibility factor).

Minority Business Enterprise

1. Burlingame, CA (IX, 12-20-79) (D. W. Young Construction Co.)
2. Danville, KY (IV, 10-28-79) (Andrews Enterprises Inc.)
- *3. Decatur, AL (IV, 7-23-79) (International Electric Co.) (good faith efforts)
- *4. Detroit, MI (V, 12-11-79) (Dynamic Construction Co.)
5. Meriden, CT (I, 10-4-79) (Carter Construction Co.)
6. Metropolitan Sanitary District of Greater Chicago, IL (V, 8-16-79) (Troesch Trucking, Inc.)
7. Miami-Dade Water and Sewer Authority, FL (IV, 4-30-79) (Cobo Co.)
8. Monterey County, CA (IX, 2-28-79) (Monterey Construction Surveys, Inc.)
- *9. Sewer Authority Mid-Coastside, CA (IX, 7-23-79; errata (9-21-79)) (Radco Construction, Inc.)
10. West County Agency, CA (IX, 6-28-79) (R. D. Smith)

Minority Business Enterprise (§ 35.936-7, and see the EPA minority business enterprise policy at 43 FR 60220-24, December 26, 1978) (but see *Equal Employment Opportunity*).

- *1. Knoxville, Tennessee (IV, 2-8-78) (Roy F. Weston Inc.) (A/E procurement)
2. East Bay Discharges Authority, California (IX, 2-15-78) (R. D. Smith)
- *3. Chicago (Metropolitan Sanitary District of Greater Chicago), Illinois (V, 3-12-78) (Howard Martin Construction) (local procedures and requirements)
4. Atwater, California (IX, 4-26-78) (Warren C. T. Wong & Assoc.) (A/E procurement)
5. San Francisco, California (IX, 8-9-78) (Slattery Assoc., Fischbach and Moore Inc. and Morrison-Knudson Co., joint venture) (local requirements)

Mistake (but see *Ambiguity: Evaluation of Bids, Formal Advertising*).

- *1. New York City, New York (II, 1-12-78) (Schiaivone Construction Co.) (bidder's intent test)
2. Kitsap County, Washington (X, 2-3-78) (Will Construction Company, Inc.) (patent error in addition of line items correction)
3. Onondaga County, New York (II, 8-23-78) (Pizzagalli Construction Co. and John W. Cowper Co. Inc.) (standard of review bidder intent test; use of extrinsic evidence)
4. Onondaga County, New York—Supplement (II, 9-7-78) (Pizzagalli Construction Co. & John W. Cowper Co. Inc.)

NEGOTIATED PROCUREMENT

Negotiated Procurement

83:04 Globe, AZ [Reconsideration] (IX, 4-11-83) (*Brown & Caldwell*) (prices and identities of proposers publicly disclosed) (right to revise proposal) (essential to have clear statement of evaluation criteria and method).

Negotiated Procurement

81:38 Indianapolis, IN (V, 5-27-81) (*American Digital Systems*) (not required in procurement of SSES contractor).

Negotiated Procurement (§§ 35.936-18 and 35.937-5) (and see *Enforcement*).

1 Chester, South Carolina (IV, 8-7-78) (*Preston Carroll Construction Co.*) (use of, on solicitation)

84:18 Town of Milford, MA (I, 4-20-84) (*Euramca Ecosystems, Inc.*) (proposal rationally rejected where its specifications did not comply with prequalification information package).

84:36 Austin, TX (VI, 9-8-84) (*Olson Const., Inc.*) (failure to list pre-approved manufacturer did not render bid non-responsive where manufacturer satisfied specifications) (lengthy discussion of theory of prequalification).

84:37 Lewistown, MT (VIII, 9-27-84) (*Process Equipment Co.*) (to successfully challenge rejection protester burden to show specification unduly restrictive or that equipment satisfied the specifications and rejection is unreasonable).

Prequalification

83:02 Columbus, OH (V, 1-12-83) (*Cobey Metro-Waste Composting Systems, Inc.*) (time between notification of prequalification and bid opening is discretionary) (supplier not entitled to "marketing" time).

83:23 Jerseyville, IL (V, 4-14-83) (*Clow Corp.*) (not required to seek prequalification before protesting unduly restrictive specifications).

83:82 Wayne, NB (VII, 10-31-83) (*Envirex, Inc.*) (specifications interpreted restrictively caused rejection of prequalified supplier).

83:68 Tri-City, OR (X, 12-9-83) (*Dresser Industries, Inc.*) (failure to timely submit equipment information).

PATENTS

Patents

1. Macon-Bibb County Water and Sewage Authority, GA (IV, 3-18-79) (*Shirco, Inc.*)

Patents (§§ 30.500 *et seq.*, 35.908, 35.936-3 and 35.936-13).

1. Onondaga County, New York (II, 6-30-78) (*Zimpro, Inc.*)

PREQUALIFICATION

Prequalification

84:04 Livingston Parish, LA (VI, 1-27-84) (*Parson & Sanderson, Inc.*) (must result in final evaluation of equipment before bid opening).

84:16 Back River Waste Water Treatment Plant, MD (III, 4-17-84) (*James A. Federline, Inc., H.A. Harris Co.*) (financial prequalification is responsibility matter grantee must consider all available information up until contract award).

Prequalification

81:13 Atlanta, GA (IV, 3-5-81) (*R.J. Longo Const.*) (bidder's responsibility for assuring receipt of prequalification package) (general contractor) (one year between prequalification and bidding not *per se* restrictive).

81:22 Corvallis, OR (X, 4-10-81) (*Environmental Pollution Control, Inc.*) (bid must conform to all elements of specifications even if lists prequalified equipment).

81:23 Tifton, GA (IV, 4-13-81) (*Astor Bolden Enterprises and Municipal & Industrial Pipe Serv.*) (only permissible for selection of major equipment items in situations of public exigency).

PREQUALIFICATION (CONTINUED)

81:47 Jasonville, IN (V, 8-30-81)

(Hinde Engineering Co.) (grantee representation created de facto prequalification, not conclusive responsiveness determination).

81:82 Cobb County, GA (IV, 8-11-81) (American Bioreactor Corp./BAV) (must conform to PRM 79-10 and requirement must be justified).

81:83 Rush-Ryan Sewer Authority, PA (III, 10-13-81) (R&M Assoc.) (single manufacturer prequalified on open specifications is not sole source procurement) (reversed by reconsideration 82:02).

81:108 Gower, MO (VII, 12-29-81) (Empire Generator) (clarification of submittals).

82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Assoc.) (grantee cannot reject bid as nonresponsive for failure to list prequalified supplier unless IFB so clearly states) (reconsideration of 81:83).

82:12 Channelview, TX (VI, 3-8-82) (Euramca Ecosystems) (must allow 30 days for submitting data).

82:14 Atlanta, GA (IV, 3-15-82) (Ruby Collins, Inc. and John D. Stephens) (prequalified joint venture cannot change its component entities and be awarded the contract).

82:19 Mount Pleasant, SC (IV, 3-31-82) (Bird Machine Co.) (description of major item sufficient without describing ancillary items).

82:37 Cullman, AL (IV, 7-6-82) (Cal Co.; Encore Co.; and Drew and Assoc.) (30 days for submitting equipment data).

82:49 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (notification procedures).

82:56 Macon-Bibb County, GA (IV, 10-26-82) (Charles Finch Co.) (time for submitting presubmittals).

82:57 Cape May County MUA, NJ (II, 11-1-82) (American Bioreactor Co. And Fairfield Service Co.) (decision not to pre-qualify processes as "or equal").

Prequalification

1. Fall River, MA (I, 2-8-80) (Performance Systems, Inc.) (sludge filter press).
2. Orange County Sanitation Districts of Orange County, CA (IX, 5-22-80) (Ralph B. Carter Co.; Euramca, Inc.; Komline-Sanderson Engineering Corp.) (belt filter press).
3. Newaygo County Board of Public Works, MI (V, 7-28-80) (R. S. Bennett & Company) (pumps).

Prequalification (§§ 35.936-3 and 35.936-13) (see EPA Report to Congress, *Waste Water Treatment Contracting and Bid Shopping*, Section IV, D, which discusses certain minimum principles to insure competition, the criterion to any acceptable prequalification system).

1. Cynthiana, Kentucky (IV, 2-9-78) (James N. Gray Construction Co.)
2. Webster, Iowa (VII, 2-10-78) (Environmental Systems Division of George A. Hormel & Co. Inc.)

Prequalification

- *1. Atlanta, GA (IV, 3-21-79) (Fruin-Conlon Corp.)
- *2. Aurora Sanitary District, IL (V, 7-3-79) (Ralph B. Carter Co.)
3. Decatur, AL (IV, 3-2-79) (Johnson Controls, Inc.)
4. Macon-Bibb County Water and Sewage Authority, GA (IV, 3-18-79) (Shirco, Inc.)

3. Fairfax County, Virginia (III, 3-17-78) (John W. Cowper Co. Inc.)

*4. Front Royal, Virginia (III, 4-21-78) (Lyco-Zf) (procedures: failure to comply with prequalification procedures, failure to be listed as equivalent)

5. Miami-Dade Water and Sewer Authority, Florida (IV, 5-18-78) (Enviro Development Co. and Poole & Kent Co.)

*6. Mt. Olive, North Carolina (IV, 5-18-78) (Lyco-Zf) (time for data presentation must be clear)

7. Rivanna Water and Sewer Authority, Charlottesville, Virginia (III, 11-2-78) (National Hydro Systems) (descriptive literature)

PROGRAM INTEGRITY

Program Integrity (§ 30.245).

- *1. Daytona Beach, Florida (IV, 6-21-77) (Hydro-Clear Corp.)

Rational Basis Test.

- 1. Hannibal, Missouri (VII, 2-15-74) (Sammons Construction Co.)
- 2. Omaha, Nebraska (VII, 9-14-74) (Datamaster Div.—ACCO)
- 3. Gainesville-Alachua . . . Board, Florida (IV, 7-10-75) (Grumman Eco-systems Corp.)
- 4. Miami-Dade Water and Sewer Authority, Florida (IV, 3-11-76) (George Hyman Construction Co.)
- 5. Ruston, Louisiana (VI, 3-18-76) (Allan H. Harris Co.)
- 6. Lowell, Massachusetts (I, 4-1-76) (United Electrical Contractors)
- 7. Lowell, Massachusetts (I, 4-2-76—(Honeywell Corp.)
- 8. Phoenix, New York (II, 5-7-76) (Vincent J. Fasano)
- 9. Chatham County (Isle of Hope), Georgia (IV, 7-8-76) (Kyle-Gifford-Hill Inc.)
- 10. Berkeley-Charleston-Dorchester, South Carolina (IV, 7-19-76) (§ 208 grant) (Davis & Floyd Engineers Inc.)
- 11. Sacramento, California (IX, 8-12-76) (BBR Prestressed Tanks)
- 12. Miami-Dade Water & Sewer Authority, Florida (IV, 9-27-76) (Altman-Mvers Construction Co.)
- *13. Concord, North Carolina (IV, 10-8-76) (Mercury Construction Co.)
- 14. Philadelphia, Pennsylvania (Northeast Plant) (III, 12-6-76) (Sovereign Construction Company)
- 15. Bradford, Vermont (I, 3-4-77) (Cummings)
- *16. Dothan, Alabama (IV, 3-10-77) (Infilco Degremont)
- 17. Pasadena, Texas (VI, 4-1-77) (Union Carbide Corp.)
- 18. Sussex, Wisconsin (V, 4-14-77) (Fischer & Porter)
- 19. Rhode Island Statewide Planning Program (I, 4-26-77) (§ 208 grant) (C. E. Maguire Inc. II)
- 20. Montgomery, Alabama (IV, 5-11-77) (Envirotech)
- 21. Lynden, Washington (X, 5-16-77) (Arcomm Construction Co.)
- 22. Ceres, California (IX, 6-20-77) (W. M. Lyles Co.)
- 23. Ft. Lauderdale, Florida (IV, 7-18-77) (Inman Inc.)
- 24. Cynthiana, Kentucky (IV, 8-11-77) (Lyco-ZF)
- 25. Jackson, Mississippi (IV, 8-19-77) (American Cast Iron Pipe Co.)
- 26. McFarland, California (IX, 9-29-77) (Lagoon Aeration Corp.)

Program Integrity

- 1. Albuquerque, NM (VI, 2-2-79) (Kent Nowlin Construction Co.)

REJECTION OF ALL BIDS

Rejection of All Bids

- 84:03 Town of Williston, VT (I, 1-25-84) (*Cooley Corp.*) (where only one bid was responsive grantee may reject all bids if price unreasonable).
- 84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (ambiguity in bid evaluation method and responsiveness affected competition).
- 84:24 City of Leominster, MA (I, 6-11-84) (*P. Gioioso & Sons, Inc.*) (grantee lacked good cause and was reversed by EPA) (potential ambiguity in specifications did not affect competition) (not *per se* justified because only one of several bidders was responsive).

Rejection of All Bids

- 83:07 Oklahoma City, OK (VL 2-4-83) (*D.J. Domas, Inc.*) (all bids may be rejected if in best interest to EPA and grantee).
- 83:22 San Jose, CA (IX, 4-11-83) (*Johnson Controls, Inc.*) (protestable procurement action) (must be good cause, PRM 78-8 example of good cause).
- 83:28 Waynesburg [Stark County], OH (V, 5-12-83) (*Robert Bossow, Inc.*) (ambiguous MBE requirements).
- 83:80 Tri-City, OR (X, 10-20-83) (*Donald M. Drake Co.*) (not good cause for rejection where prejudicial ambiguity).
- 83:84 Los Angeles, CA (IX, 11-25-83) (*C K Pump & Dewatering Corp.*) (ambiguity in MBE requirements).

Rejection of All Bids

- 81:14 Puerto Rico Aqueduct and Sewer Authority, PR (II, 3-6-81) (Spearin, Preston & Burrows, and Conduit and Foundation Corp., Joint Venture) (work divided into two contracts and readvertised).
- 81:22 Corvallis, OR (X, 4-10-81) (Environmental Pollution Control, Inc.) (ambiguous specification).
- 81:30 Portage, IN (V, 4-28-81) (Associated Mechanical Services) (MBE requirements ambiguous).
- 81:53 Timmonsville, SC (IV, 7-17-81) (Quality Sanitary Services) (inaccurate quantity estimates).
- 81:71 Central Contra Costa Sanitary District, CA (IX, 8-21-81) (D.W. Young Const.) (litigation not good cause).
- 81:73 Valparaiso, IN (V, 8-28-81) (H. DeWulf Mechanical Contractor) (MBE requirements ambiguous).
- 81:82 Batesville, IN (V, 10-7-81) (Bowen Engineering) (MBE requirements ambiguous).
- 81:95 Fowlerville, MI (V, 11-9-81) (Normco Const.) (no evidence of good cause).
- 82:01 Bowling Green, OH (V, 1-12-82) (DCK Contracting) (good cause defined).
- 82:11 Carmel, IN (V, 3-3-82) (E.H. Hughes Co.) (rejection where bids unreasonable in light of cost estimates).
- 82:15 Philadelphia, PA (III, 3-16-82) (Williard, Inc.) (justified if ambiguity prejudiced bidders).
- 82:22 Goldendale, WA (X, 4-16-81) (IMCO General Const.) (justified by inconsistencies in bidding documents).
- 82:40 Whitestone, NY (II, 7-26-82) (F.G. Compagni Const.) (IFB stating inaccurate quantities).
- 82:70 Metropolitan Wastewater Management Commission, OR (X, 12-22-82) (Robert Dougan Const.) (rejection of all bids because equipment not meeting specifications did satisfy performance requirements).

REJECTION OF ALL BIDS (CONTINUED)

Rejection of All Bids

1. St. Petersburg, FL (IV, 1-10-80) (Municipal and Industrial Pipe Services, Ltd.) (Grantee's financial situation, limit federal share).
2. Anne Arundel County, MD (III, 2-13-80) (Sabatini Company) (specifications restrictive).
3. Port Austin Area Water and Sewer Authority, MI (V, 7-2-80) (Amado Cardenas, d.b.a. Nashville Excavating Company) (RA directed, ambiguous MBE specifications).
4. Newaygo County Board of Public Works, MI (V, 7-21-80) (M.D. Taddie & Company, Inc.) (no adverse effect of bid form ambiguity).
5. Rochester, MN (V, 7-24-80) (Darin & Armstrong, Inc.; Kraus-Anderson/PMW Construction; Newberg, Foster & Paschen; Premier Electric Construction) (RA directed, ambiguous MBE specifications).
6. Newaygo County Board of Public Works, MI (V, 7-28-80) (R.S. Bennett & Company) (RA directed, ambiguous MBE specifications).

Rejection of All Bids

1. Albuquerque, NM (VI, 2-2-79) (Kent Nowlin Construction Co.)
2. Bardonia, NY (IV, 5-24-79) (E. H. Hughes Co. (II))
3. Bend, OR (X, 5-15-79) (Industrial Pump Sales Co.) (RA directed, defective IFB)
4. Detroit, MI (V, 6-29-79) (C. J. Rogers Constructors, et al., A Joint Venture) (local share lacking)
5. Suffolk County, NY (II, 9-15-79) (Spencer, White & Prentiss, Inc. and Seatec International, Ltd., A Joint Venture)
6. Wheeling, WV (III, 2-16-79) (Manning Environmental Corp; and Sugmamotor, Inc.) (change in grantee's needs)
7. Greenup County, KY (IV, 11-13-79) (W. Rogers Co.) (cannot fund non-federal share)

Rejection of All Bids (§ 35.938-4(h)(2), and see PRM 78-8, published at 43 FR 14725-26, April 7, 1978) (see also *Enforcement*).

1. Rivanna Water and Sewer Authority, Charlottesville, Virginia (III, 5-25-78) (National Hydro Systems, Inc.) (no good bids at reasonable prices)
2. Bay City, Michigan (V, 6-28-78) (Greenfield Construction Co.) (contract 10 D)
3. Chester, South Carolina (IV, 8-7-78) (Preston Carroll Construction Co.) (EPA directed)

4. Onondaga County, New York (II, 8-23-78) (Pizzagalli Construction Company and John W. Cooper)
5. Bay County, Michigan (V, 9-1-78) (Roese Contracting Co., Inc.) (contract Nos. 3 and 7)
6. Onondaga County, New York—Supplement (II, 9-7-78) (Pizzagalli Construction Co. and John W. Cowper Co. Inc.)
7. Portage, Michigan (V, 12-20-78) (Iacobelli Construction Inc.)

Rejection of All Bids (§ 35.938-4(h)(2), and see, PRM 78-8 published at 43 FR 14725-26, April 7, 1978) (also see, *Enforcement*).

1. Philadelphia, Pennsylvania (Southwest Plant) (III, 2-28-75) (EEO) (Air Products & Chemicals Inc.; and Remsco Assoc.)
2. Henry, South Dakota (VIII, 9-15-75) (cogent and compelling reason standard) (Henningsen Construction Co.)
3. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 11-3-75) (Blount Brothers; and Darin & Armstrong)
4. Miami-Dade Water and Sewer Authority, Florida (IV, 3-11-76) (rational basis standard) (George Hyman Construction Co.)
5. Chicago (Metropolitan Sanitary District of Greater Chicago), Illinois (V, 3-23-76) (above Engineer's estimate) (Blount Brothers)
6. DePere, Wisconsin (V, 5-17-76) (Holiday Court Co.)
7. Berrien County, Michigan (V, 6-15-76) (above Engineer's estimate) (J. P. Reilly)
8. Bergen County, New Jersey (II, 9-28-76) (EPA directed) (Wm. L. Crow-Wolff & Munier, Joint Venture)
9. Philadelphia, Pennsylvania (Northeast Plant) (III, 12-6-76) (EPA concurrence function; unbalanced bid, denial) (Sovereign Construction Co.)
10. Bradford, Vermont (I, 3-4-77) (Cummings)
11. Puerto Rico Aqueduct and Sewer Authority (II, 3-31-77) (EPA directed) (Blythe Industries Inc.)
12. Norwalk, Connecticut (I, 7-22-77) (EPA concurrence function; initial denial; grantee option) (Primiano Construction)
13. Bridgewater, New Jersey (II, 12-2-77) (unbalanced bid) (Lombardo Contracting Co.)
14. Corvallis, Oregon (X, 12-6-77) (EPA directed) (Frank Coluccio Construction Co.)

RESPONSIBILITY

Responsibility

- 84:01 Gwynns Falls, MD (III, 1-13-84)
(*Joseph L. Cardinale & Sons, Inc.*)
(MBE requirements).
- 84:06 City of Toronto, OH (IV, 2-2-84)
(*J.L. Cavanaugh Co., Inc.*) (MBE requirements).
- 84:07 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 2-6-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (grantee broad discretion in making affirmative finding) (submittal of forms including percent of work force are responsibility matter absent clear IFB).
- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (allegation that bidder cannot meet specification is responsibility/contract administration matter).
- 84:13 New Hampshire Water Supply & Pollution Control, NH (I, 3-28-84) (*Catamount Const., Inc.*) (*Catamount Const., Inc.*) (where language in different parts of IFB/bid documents gives different meaning to listing requirement, it is responsibility matter).
- 84:15 Mattabassett Dist. Regional Sewer Auth., Cromwell, CT (I, 4-12-84) (*Peabody N.E., Inc.*) (where language requiring listing is clear in one part of IFB but different in another, it is matter of responsibility).
- 84:16 Back River Waste Water Treatment Plant, MD (III, 4-17-84) (*James A. Federline, Inc., H.A. Harris Co.*) (financial prequalification).
- 84:26 Riverton, WY (VIII, 7-13-84) (*Martel Const. Co., Inc.*) (where IFB did not make manufacturer's letter of approval a responsiveness matter, engineer may evaluate whether item offered meets projects needs) (descriptive literature requirement).
- 84:28 Libby, MT (VIII, 8-9-84) (*Transamerican Contractors, Inc.*) (proof of authority of agent submitting bid) (listing of manufacturers).
- 84:31 Trumbull County, OH (V, 8-24-84) (*R & K Constructors, Inc.*) (poor past performance is rational basis for grantee finding bidder nonresponsible) (grantee in best position to determine responsibility).

- 84:34 Glens Falls, NY (II, 8-30-84) (*Dorr-Oliver, Inc.*) (deference to affirmative finding of responsibility based on technical evaluation) (communications between grantee and bidder after bid opening concerning responsibility are permissible).
- 84:36 Austin, TX (VI, 9-6-84) (*Olson Const., Inc.*) (prime contractors rather than grantees usually determine subcontractor responsibility and in this IFB grantee did not reserve right to make determination).
- 84:42 St. Paul MWCC, MN (V, 10-18-84) (*Hoffman Electric Co.*) (deference to grantee determination that bidder was responsible based on good faith MBE effects).
- 84:45 Arvin County, CA (IX, 11-2-84) (*Blois Const., Inc.*) (failure of bidder to submit MBE information within 10 days after bid opening did not cause it to be nonresponsible because responsibility can be demonstrated anytime before award).
- 84:49 Richgrove, CA (IX, 11-8-84) (*El Camino Const. Co.*) (MBE requirements not made responsiveness matters even though IFB attempted to do so).
- 84:50 Richgrove, CA (IX 11-8-84) (*W.M. Lyles Co.*) (MBE requirements not made responsiveness matter even though IFB attempted to do so).

Responsibility

- 83:02 Columbus, OH (V, 1-12-83) (*Cobey Metro-Waste Composting Systems, Inc.*) (inadequate experience).
- 83:05 Morton, MS (IV, 1-25-83) (*Associated Const., Inc.*) (failure to obtain license).
- 83:10 Needles, CA (IX, 2-10-83) (*Hefley Bros., Corp.*) (affirmative determination not reversed by EPA unless fraud, bad faith or violation of objective standards of responsibility).
- 83:14 MSD Chicago, IL (V, 3-4-83) (*R. Rudnick & Co., Inc. & Namat Const. Co.*) (contractor must demonstrate positive efforts if it fails to meet MBE goal) (EPA may reverse affirmative determination if grantee fails to consider all relevant information).

RESPONSIBILITY (CONTINUED)

- 83:17 Patapsco, MD (III, 3-17-83) (J. Vinton, Schafer & Sons, Inc.) (failure to attach MBE documentation) (positive efforts may be cured anytime before contract award).
- 83:23 Des Moines, WA (X, 5-18-83) (Will Const., Co., Inc.) (MBE form incomplete).
- 83:42 Eastern Avenue Baltimore, MD (V, 6-28-83) (Allied Contractors, Inc.) (MBE requirements can be met by satisfying goal or showing good faith efforts).
- 83:45 Casper, WY (VIII, 7-3-83) (Shawnee Const., Inc.) (MBE requirements).
- 83:49 MSD, Chicago, IL (V, 8-2-83) (Door Systems of Elk Grove) (MBE subcontractor listing).
- 83:50 Detroit, MI (V, 8-2-83) (Dynamic Const., Co., Inc.) (MBE requirements—positive efforts demonstrated after bid opening)
- 83:52 Berkeley, CA (IX, 8-13-83) (Gerl Const., Co.) (MBE requirements).
- 83:53 New Haven, CT (I, 8-19-83) (Blakeslee Arpaia Chapman, Inc.) (local affirmative action agreement).

Responsibility

- 81:03 Pierce County, WA (X, 1-14-81) (Frank Coluccio Const.) (MBE requirements).
- 81:04 Central Contra Costa Sanitary District, CA (IX, 1-27-81) (D.W. Young Const.) (MBE requirements—failure to demonstrate positive efforts).
- 81:19 Phoenix, AZ (IX, 3-27-81) (TGK Const. & M.M. Sundt Const.) (unacceptable subcontractor did not make prime non-responsible).
- 81:20 Tupelo, MS (IV, 4-7-81) (Jesco, Inc.) (equipment listing requirement) (substitute more expensive equipment if listed equipment unsatisfactory).
- 81:27 Black Diamond, WA (X, 4-21-81) (Bowen Const.) (MBE goals not met, requires examination of positive efforts).
- 81:31 Gildford County Sewer District, MI (VIII, 4-28-81) (Baltrush Const.) (MBE requirements).
- 81:32 Black Diamond, WA (X, 4-29-81) (Bowen Const.) (MBE responsibility shown by positive efforts).
- 81:37 Crescenta Valley County, CA (IX, 5-18-81) (J.C. Plumbing Co., & Channel Const.) (MBE requirements—failure to demonstrate positive efforts).
- 81:38 Indianapolis, IN (V, 5-27-81) (American Digital Systems) (deference to grantee responsibility determination).

- 81:49 Los Angeles County, CA (IX, 7-1-81) (Dresser Industries) (performance shows capability to meet obligations).
- 81:50 Kalida, OH (V, 7-2-81) (Sherburn Co.) (submission of catalog cuts and equipment guarantee).
- 81:59 Metropolitan Wastewater Management Commission, OR (X, 7-20-81) (Hyland Brothers Const.) (failure to list MBE subcontractors).
- 81:60 East Troy, WI (V, 7-31-81) (Joseph Lorenz) (MBE requirements).
- 81:71 Central Contra Costa Sanitary District, CA (IX, 8-21-81) (D.W. Young Const.) (failure to comply with MBE requirements).
- 81:75 New Castle, IN (V, 9-9-81) (Joe R. Norman Contractor) (financial standing, performance bond).
- 81:76 Chicago MSD, IL (V, 9-18-81) (S.A. Healy, et al.) (MBE requirements remain a matter of responsibility despite IFB's attempt to make it responsiveness).
- 81:77 Carrboro, NC (IV, 9-23-81) (Clevopak Corp.) (deference to affirmative determination of responsibility unless fraud, bad faith or evidence that specific objective standards violated).
- 81:82 Batesville, IN (V, 10-7-81) (Bowen Engineering) (subcontractor listing).
- 81:90 Chicago MSD, IL (V, 10-27-81) (S.A. Healy, et al.) (MBE requirements).
- 81:95 Fowlerville, MI (V, 11-9-81) (Normco Const.) (MBE requirements).
- 81:96 Tallahassee, FL (IV, 11-10-81) (GS&L Mechanical Const.; Assoc. of Minority Contractors) (MBE requirements).
- 81:101 Chicago MSD, IL (V, 12-16-81) (Walsh Const.) (EEO forms).
- 81:103 Atlanta, GA (IV, 12-18-81) (Rocco Ferrera & Co.) (MBE requirements).
- 82:03 Fort Wayne, IN (V, 1-25-82) (Bates & Rogers Const.) (fiscal integrity requirements).
- 82:04 Westport, SD (VIII, 2-3-82) (H.F. Jacobs and Sons) (MBE requirements, EEO Certification, nonsegregated facilities certificate).
- 82:08 Santa Fe, NM (VI, 2-18-82) (Mesa Grande) (MBE documentation).
- 82:21 Fallbrook Sanitary District, CA (IX, 4-8-82) (Metro—Young/Lopez Const., A Joint Venture) (MBE requirements).
- 82:25 Perryville, MD (III, 4-28-82) (J. Vinton Schafer & Sons) (MBE requirements).
- 82:28 Gwynn Falls Relief Interceptors (III, 5-7-82) (R.J. Longo and B&B Tunnelling Contractors) (MBE requirements).

RESPONSIBILITY (CONTINUED)

- 82:33 Henderson, NV (IX, 6-22-82) (Nielson, Vasko & Earl, Inc.) (MBE requirements and possession of work license).
- 82:41 Abilene, TX (VI, 7-27-82) (R&S Engineering) (contractors right to rebut allegations of prior inadequate performance).
- 82:49 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (supplier's right to rebut allegations of prior inadequate performance).
- 82:52 Gwynn Falls, MD (III, 9-14-82) (R.J. Longo Const.) (MBE requirements).
- 82:61 El Dorado, KS (VII, 11-16-82) (Oursler Brothers Const.) (rebuttal opportunity).
- 82:62 Statesville, NC (IV, 11-17-82) (DPS Contractors) (contrasted responsiveness) (bid documentation and certifications submittal).
- 82:64 Shady Spring PSD, WV (III, 11-22-82) (Davis Water & Waste Industries (MBE requirements).

Responsibility (see also Responsiveness)

1. Huntsville, TX (VI, 7-8-80) (Angleton General Mechanical, Inc.) (prior performance).
2. Webster, TX (VI, 10-31-80) (LEM Construction Company, Inc.) (positive MBE efforts).

Responsibility

1. Bardstown, KY (IV, 1-3-79) (E. H. Hughes Co. (I))
2. Barnstable, MA (I, 8-24-79) (Chemcon, Inc.)
3. Burlingame, CA (IX, 12-20-79) (D. W. Young Construction Co.) (failure to complete MBE form)
4. Caldwell, ID (X, 11-1-79) (Neilsen & Co.) (licenses)
- * 5. Cleveland Regional Sewer District, OH (V, 9-18-79) (Passavant Corp.) (failure to complete local EEO form)
6. Detroit, MI (V, 12-11-79) (Dynamic Construction Co.)
7. James Island Public Service District, SC (IV, 5-2-79) (Pyramid Builders, Inc.)
8. Skagit County, WA (X, 5-4-79) (Glantz Supply, Inc.)

Responsibility (§§ 35.936-15 and 30.340-2).

1. Miami-Dade Water and Sewer Authority, Florida (IV, 1-13-78) (Continental Consolidated Corp.) (licensing)
2. Knoxville, Tennessee (IV, 2-8-78) (Roy F. Weston, Inc.) (A/E procurement; fraud and corrupt practices)
3. Fairfax County, Virginia (III, 3-17-78) (John W. Cowper Co. Inc.) (subcontractor listing)
- * 4. San Francisco, California (IX, 8-9-78) (Slattery Assoc., Fischbach and Moore Inc. and Morrison-Knudsen Co., joint venture) (vs. responsiveness—compliance with local minority business enterprise requirements)
5. Bay County, Michigan (V, 8-11-78) (Frank V. Louis Equipment Co.) (Contract No. 1) (addendum acknowledgment—minor informality)
8. Chattanooga, Tennessee (IV, 9-20-78) (Passavant Corp.)
7. Niagara County, Sewer District (No. 1), New York (II, 10-18-78) (Environment One Corporation) (v. responsiveness; U. I. certification and building codes)

Responsibility (§§ 35.936-15, 30.340-2).

(A) General:

- * 1. Hannibal, Missouri (VII, 2-15-74) (procedural requirements) (Sammons Construction)
- * 2. Hollywood, Florida (IV, 3-13-74) (parent-subsidiary relationship) (Morganti-South, Inc.)
3. Lexington, Virginia (III, 8-14-74) (of equipment supplier; standards) (Hydro-Systems, Inc.)
- * 4. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 11-13-75) (descriptive literature; vs. responsibility) (John C. Grimberg Co., Inc.)
- * 5. Phoenix, New York (II, 5-7-76) (grantee burden of proof) (Vincent J. Fasano, Inc.)
6. Round Hill, Virginia (III, 5-13-76) (subcontract information; past practices) (Frank L. Black, Jr., Inc.)

- * 7. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 6-24-76) (subcontractor listing requirement; vs. responsibility) (Savoy Construction Co.)

8. Kansas City, Kansas (VII, 11-17-77) (applicable standards to subcontract award) (Nichols Engineering & Research; and Zimpro Inc.)

9. Pepperell, Massachusetts (I, 11-22-77) (grantee judgment; past practices) (Catamount Corp.)

(B) Licensing:

- * 1. Jacksonville, Florida (IV, 8-12-74) (State construction industry board license) (Adrian Construction Co.)

- * 2. Tahoe-Truckee Sanitation Agency, California (IX, 8-21-75) (State landscaping license) (Jos. Ramos and Contri-Hood)

RESPONSIVENESS

Responsiveness

- 84:09 City of Los Cruces, NM (VI, 2-27-84) (*Mass Transfer, Inc.*) (bid offering item requiring substantial redesign of project is nonresponsive).
- 84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (forms and certifications not affecting PQQD are not responsiveness matters absent clear IFB).
- 84:12 Town of Grantsville, MD (III, 3-20-84) (*Mattingly Const., Inc.*) (responsiveness must be determined at bid opening and cannot be waived by grantee permitting adjustment to comply with specifications).
- 84:16 Back River Waste Water Treatment Plant, MD (III, 4-17-84) (*James A. Federline, Inc., H.A. Harris Co.*) (bid promising to meet good faith efforts) (good faith effort does not require bidder to negotiate with subcontract offer or).
- 84:42 St. Paul MWCC, MN (V, 10-18-84) (*Hoffman Electric Co.*) (grantee may make compliance with MBE requirements a matter of responsiveness but did not do so).
- 84:45 Arvin County, CA (IX, 11-2-84) (*Blois Const., Inc.*) (not matter of responsiveness where IFB did not clearly so state).
- 84:49 Richgrove, CA (IX, 11-8-84) (*El Camino Const. Co.*) (matters of responsibility where although IFB though attempted to make it responsiveness requirement did not clearly do so).
- 84:50 Richgrove, CA (IX, 11-8-84) (*W.M. Lyles Co.*) (matters of responsibility where although IFB attempted to make it responsiveness requirement did not clearly do so).

Responsiveness

- 83:01 Spearfish, SD (VIII, 1-11-83) (*Rickel Manufacturing Co.*) (pump not capable of meeting specified cubic feet per minute is nonresponsive).
- 83:09 Covington, GA (IV, 2-9-83) (*Griffin Const., Co., & Ethridge Brothers Const., Inc.*) (bid signing, bidder identity and bid bonds).

- 83:10 Needles, CA (IX, 2-10-83) (*Hefley Bros., Corp.*) (principal bid not rendered nonresponsive by failure to bid on alternate).
- 83:13 Sandpoint, ID (X, 3-3-83) (*Lydig Const. Co.*) (subcontractor listing).
- 83:15 Union City, OH (V, 3-8-83) (*Mote Const., Co.*) (separate bids required for two related projects with different IFBs).
- 83:19 Oklahoma City, OK (VI, 3-25-83) (*Envirex, Inc.*) (bid nonresponsive due to qualifications to liquidated damages, time and warranty clauses).
- 83:21 Chester, CT (I, 4-7-83) (*Maple Hill Const., Co.*) (unsigned bid responsive where accompanied by signed bid bond) (addenda not submitted but written acknowledgement prior to bid opening).
- 83:22 San Jose, CA (IX, 4-11-83) (*Johnson Controls, Inc.*) (equipment listing requirement not matter of responsiveness under Part 33) (nonconforming equipment did not make bid nonresponsive where grantee can require substitution).
- 83:34 New Concord, OH (V, 6-10-83) (*Adams Robinson Enterprise, Inc.*) (MBE forms and information) (where addendum not acknowledged bid nonresponsive).
- 83:35 Pleasant Hill, IL (V, 6-10-83) (*State Mechanical Contractors, Inc.*) (MBE documentation satisfied) (bid listing nonconforming equipment is responsive; substitution permitted).
- 83:44 Streetsboro, Ravenna, OH (V, 7-1-83) (*Robert Bossow, Inc.*) (bid listing nonconforming equipment is responsive substitution permitted).
- 83:46 Palatine, IL (V, 7-19-83) (*Di Paolo-Rossetti, Joint Venture*) (MBE information and 20 day advertising required by IFB cannot be waived as immaterial) (self certification affidavits).
- 83:50 Detroit, MI (V, 8-2-83) (*Dynamic Const., Co., Inc.*) (acknowledged bid addendum but did not adjust bid).
- 83:51 Santa Barbara, CA (IX, 8-15-83) (*Namtec Corp. & Union Engineering Co.*) (material, technical and commercial terms cannot be waived) (bid cannot be clarified after bid opening).

RESPONSIVENESS (CONTINUED)

- 83:56 Los Angeles, CA (IX, 9-30-83) (*Bailey Controls Co.*) (exception to contract conditions and bid bond amount nonresponsive).
 83:69 Conroe, TX (VI, 12-13-83) (*KNC Inc.*) (inclusion of extraneous information in bid OK where bid terms not qualified).
 83:70 Contra Costa, CA (IX, 12-16-83) (*Perkin-Elmer*) (principal bid not rendered nonresponsive by submittal of uninvited alternate).

Responsiveness

- 81:06 Oceanside, CA (IX, 1-30-81) (*Bird Machine Co.*) (unacceptable subcontractor listed).
 81:15 Myrtle Beach, SC (IV, 3-13-81) (*Paul N. Howard Co.*) (omission of unit prices) (oral questions and answers concerning IFB unreliable).
 81:16 Clermont County Sewer District, IL (V, 3-16-81) (*Glenn Rhoades Const.*) (MBE requirements).
 81:19 Phoenix, AZ (IX, 3-27-81) (*TGK Const. & M.M. Sundt Const.*) (unacceptable supplier listing).
 81:20 Tupelo, MS (IV, 4-7-81) (*Jesco, Inc.*) (failure to satisfy IFB listing requirements did not affect responsiveness).
 81:22 Corvallis, OR (X, 4-10-81) (*Environmental Pollution Control, Inc.*) (grantee's right to require equipment substitution does not permit waiver of nonresponsive equipment offer).
 81:24 El Dorado Irrigation District, CA (IX, 4-13-81) (*Lotus Const.*) (failure to acknowledge addenda waived as minor defect).
 81:30 Tomah, WI (V, 4-10-81) (*W.G. Jaques*) (MBE requirements).
 81:38 Indianapolis, IN (V, 5-27-81) (*American Digital Systems*) (deference to technical judgment of grantee).
 81:46 San Francisco, CA (IX, 6-15-81) (*Alliance of Minority Contractors and Suppliers*) (MBE requirements).
 81:50 Kalida, OH (V, 7-2-81) (*Sherburn Co.*) (failure to list unit prices).
 81:51 Lynchburg, OH (V, 7-2-81) (*Dow Const.*) (failure to list unit prices).
 81:65 South Lyon, MI (V, 8-27-81) (*DCK Contracting*) (MBE requirements).
 81:76 Chicago MSD, IL (V, 9-18-81) (*S.A. Healy, et al.*) (MBE requirements).
 81:85 Sacramento, CA (IX, 10-14-81) (*Dredge Masters International*) (failure to submit equipment description) (exception to payment terms).

- 81:90 Chicago MSD, IL (V, 10-27-81) (*S.A. Healy, et al.*) (MBE requirements).
 81:93 Marengo, IN (V, 11-3-81) (*E.H. Hughes*) (MBE requirements).
 81:95 Fowlerville, MI (V, 11-9-81) (*Normco Const.*) (EEO requirements).
 81:97 Elmhurst, IL (V, 11-12-81) (*Miller-Davis*) (MBE requirements).
 81:106 Gower, MO (VII, 12-29-81) (*Empire Generator*) (deviation from warranty requirement).
 81:107 Colchester, CT (I, 12-31-81) (*Clark Sewer Const.*) (failure to bid on alternate).
 82:01 Bowling Green OH (V, 1-12-82) (*DCK Contracting*) (MBE requirements).
 82:22 Goldendale, WA (X, 4-16-82) (*IMCO General Const.*) (failure to list subcontractors or suppliers).
 82:27 Eveleth, MN (V, 5-3-82) (*Gridor Const.*) (MBE requirements).
 82:31 Menominee, MI (V, 6-8-82) (*Krygoski Const.*) (conditional bid).
 82:35 Van Buren County, MI (V, 6-28-82) (*Union Const.*) (bid responsive despite failure to acknowledge addendum).
 82:36 Williamstown, MI (V, 6-28-82) (*Barnhart & Son*) (MBE requirements).
 82:45 Pasadena, TX (VI, 9-17-82) (*Parkson*) ("better" equipment than specified must meet design specifications).
 82:67 Cullman, AL (IV, 11-30-82) (*Cal Corp.; Encore Corp. and Drew and Assoc.*) (bidder able to comply with solicitation requirements need not offer equipment listed in solicitation).
 82:68 Atwood, OH (V, 12-1-82) (*Munitech*).
 82:69 Globe, AZ (IX, 12-8-82) (*Mercury Const.*) (addendum must be included with bid).

Responsiveness

1. Norwich, CT (I, 2-1-80) (*Fantoni Company*) (authority to sign bid, bid bond not signed by principal).
2. Hastings, NE (VIII, 3-7-80) (*Horizon Construction Company; Olson Construction Company*) (bidder cannot offer different warranty).
3. Johnson County, KS (VII, 4-1-80) (*Sharp Brothers Contracting Company*) (MBE sub listing).
4. Tacoma, WA (X, 4-3-80) (*Worthington Pump Corporation*) (pump dimensions differing from specifications).
5. Glennville, GA (IV, 4-4-80) (*J.W. Meadors and Company*) (discount offer, sub listing).

RESPONSIVENESS (CONTINUED)

6. Huntsville, TX (VI, 4-18-81) (Angleton General Mechanical, Inc.) (MBE documentation of positive efforts).
7. Soldotna, AK (X, 4-25-80) (Interstate Company) (MBE documentation).
8. Northwest Bergen County Sewer Authority, NJ (II, 5-5-80) (R.J. Longo Construction Co.) (failure to identify type of pipe to be used).
9. Sacramento Regional County Sanitation District, CA (IX, 5-9-80) (Burdick Contractors, Inc.) (acceptance of part of combination bid).
10. Branford, CT (I, 5-28-80) (C.H. Nickerson & Co.) (zero unit price, identical price for alternatives).
11. Clarksville, TN (IV, 6-5-80) (Penetryn Systems, Inc.) (compliance with specifications).
12. Port Austin Area Water and Sewer Authority, MI (V, 7-2-80) (Amado Cardenas, d.b.a. Nashville Excavating Company) (MBE sub listing).
13. Newaygo County Board of Public Works, MI (V, 7-21-80) (M.D. Taddie & Company, Inc.) (discount offer).
14. Rochester, MN (V, 7-24-80) (Darin & Armstrong, Inc.; Kraus-Anderson/PMW Construction; Newberg, Foster & Paschen; Premier Electric Construction) (MBE sub listing).
15. Newaygo County Board of Public Works, MI (V, 7-28-80) (R.S. Bennett & Company) (prequalified equipment not meeting specifications, efficiency guarantee).
16. Rockford, MI (V, 8-1-80) (Nagel Construction, Inc.; Interstate Pipe Maintenance, Inc.; Clytus Industries, Inc.) (MBE documentation).
17. Cecil County, MD (III, 8-11-80) (Hanks Contracting, Inc.) (need for bid bond).
18. Monmouth, OR (X, 8-21-80) (Chinook Pacific Corporation) (conditional bid, limiting bid acceptance time).
19. Colfax Public Service District, WV (III, 8-29-80) (Salerno Brothers, Inc.) (failure to acknowledge addendum).
20. Alma, NE (VIII, 9-4-80) (William Anderson Company, Inc.) (bid of "free" for bid item).
21. Albert Lea, MN (V, 9-18-80) (Orvedahl Construction, Inc.; Centennial Contractors Corp.; Johnson Brothers, Corp.) (MBE documentation).
22. San Jacinto River Authority (Woodlands), TX (VI, 10-3-80) (Industrial Contractors, Inc.) (failure to attain MBE goal).
23. Nashville, MI (V, 10-24-80) (Clark Construction Company) (MBE documentation).
24. DuPage County [Department of Public Works], IL (V, 12-15-80) (Paschen Contractors, Inc.) (MBE documentation).
25. Pierce County, WA (X, 12-23-80) (Frank Coluccio Construction Company) (MBE sub listing).
26. Clear Lake City, TX (VI, 12-29-80) (LEM Construction Co., Inc.) (MBE documentation).

Responsiveness

1. Alpine Sanitary District, AZ (IX, 9-28-79) (Gus's Trenching and Pipeline Co.)
2. Bardstown, KY (IV, 1-3-79) (E. H. Hughes Co. (I))
3. Caldwell, ID (X, 11-1-79) (Neilsen and Co.)
4. Chattanooga, TN (IV, 3-27-79) (Performance Systems, Inc.)
5. Cleveland Regional Sewer District, OH (V, 8-14-79) (Water Pollution Control Corp.)
- * 6. Cleveland Regional Sewer District, OH (V, 9-18-79) (Passavant Corp.) (qualified bid)
7. Cleveland Regional Sewer District, OH-Reconsideration (V, 10-18-79) (Water Pollution Control Corp.) (Per Norton Co.)
8. Cochran, GA (IV, 9-14-79) (Municipal and Industrial Pipe Services, Ltd.)
9. Detroit, MI (V, 12-11-79) (Pollutec, Inc., and Glenn E. Wash Associates, A Joint Venture) (exception to IFB)
10. Detroit, MI (V, 12-11-79) (Dynamic Construction Co.) (bid bond)
11. East Bay Dischargers Authority, CA (IX, 11-18-79) (Brantley Instruments) (Contra Costa Electric, Inc.) (exception to IFB)
12. Hannibal, MO (VII, 6-7-79) (U.S. Enviro-Con Inc.) (rejection of unapproved equipment)
13. Jackson, CA (IX, 7-5-79) (Joseph R. Ramos Pipeline Engineering) (waiver of mistake; failure to acknowledge addendum)
14. James Island Public Service District, SC (IV, 5-2-79) (Pyramid Builders, Inc.)
- * 15. Kansas City, MO (VII, 12-20-79) (Garney Companies) (exception to IFB)
16. Meriden, CT (I, 10-10-79) (Standard Engineers and Constructors, Inc.) (failure to file EEO certificate)
- * 17. Mt. Pleasant, MI (V, 8-25-79) (Collavino Brothers Construction Co.) (subcontractor listing)
18. Portage, MI (V, 12-31-79) (Tom Robinson & Son, Inc.)
19. Skagit County, WA (X, 5-4-79) (Glantz Supply, Inc.) (EEO certificates)

Responsiveness (see also *Equal Employment Opportunity: Waiver*).

1. Gainesville, Georgia (IV, 11-7-78) (National Hydro Systems, Inc. and Tuttle/White Constructors) (subcontractor listing)
2. Kitsap County, Washington (X, 1-1-78) (Will Construction Company, Inc.) (equipment listing—matter of responsibility)
3. Cynthia, Kentucky (iv, 2-9-78) (James N. Gray Construction Co.) (listing nonapproved equipment manufacturer)

RESPONSIVENESS (CONTINUED)

4. West Bend, Wisconsin (V, 3-3-78) (Oliver Construction Co. Inc.) (subcontractor listing; bid bond as material requirement)
5. Fairfax County, Virginia (III, 3-17-78) (John C. Cowper Co. Inc.) (subcontractor listing)
6. Bloomington, Indiana (V, 3-20-78) (Huber, Hunt & Nichols) (subcontractor listing)
7. Antigo, Wisconsin (V, 3-24-78) (General Filter Co.) (concerning equipment selected by prime bidder)
8. Amherst, New York (III, 5-15-78) (Cimato Bros. Inc.) (informality)
9. Miami-Dade Water and Sewer Authority, Florida (IV, 5-18-78) (Enviro Development Co. and Poole & Kent Co.) (listing unapproved equipment)
10. Onondaga County, New York (II, 6-30-78) (Zimpro, Inc.)
11. Onondaga County, New York (II, 7-11-78) (Pentech Division of Houdaille Industries) (alternative system)
12. Miami-Dade Water and Sewer Authority, Florida (IV, 7-13-78) (Ed. L. Nezelek Inc.) (prime's listing of previously unaccepted equipment)
13. Bay County, Michigan (V, 8-11-78) (Frank V. Louis Equipment Co.) (Contract No. 1) (addendum acknowledgment—minor informality)
14. Southern Clinton County, Michigan (V, 8-11-78) (A. Z. Shmina) (subcontractor listing)
15. Onondaga County, New York (II, 8-23-78) (Pizzagalli Construction Company and John W. Cowper Co. Inc.)
16. Onondaga County, New York—Supplement (II, 9-7-78) (Pizzagalli Construction Company and John W. Cowper Co. Inc.)
17. Bay County, Michigan (V, 9-12-78) (Roose Contracting Co. Inc.) (Contract No. 1-D (conditional/qualified bid))
18. Barrington, Illinois (V, 10-20-78) (Utility & Industrial Construction Co.)
19. Toppenish, Washington (X, 10-20-78) (Ridge Construction Co.) (failure to acknowledge addendum)
- *20. West Goshen, Pennsylvania (III, 11-1-78) (Philips Bros. Electrical Contractors) (EO 11246—Philadelphia Imposed Plan)
- *1. Hollywood, Florida (IV, 3-13-74) (equipment listing) (Morganti-South, Inc.)
2. Denver (City), Colorado (VIII, 4-22-74) (Pinkard Donovan)
3. Jacksonville, Florida (IV, 8-12-74) (State construction industry board license) (Adrian Construction Co.)
4. Manitowoc, Wisconsin (V, 12-18-74) (Absence of bid bond) (P. A. Lawrence Co.)
5. Philadelphia, Pennsylvania (Southwest Plant) (III, 2-28-75) (EO 11246—Philadelphia Plan compliance) (Air Products & Chemicals, Inc. and Remsco)
6. Clearwater, Florida (IV, 3-14-75) (subcontractor listing) (Harry Pepper & Associates)
9. Gainesville-Alachua . . . Board, Florida (IV, 7-10-75) (ambiguous specification; bid notation) (Grumman Eco-systems)
10. Tahoe-Truckee Sanitation Agency, California (IX, 8-21-75) (license; vs. responsibility) (Jos. Ramos and Contri-Hood)
11. Williston Township, Pennsylvania (III, 9-26-75) (EO 11246—Philadelphia Imposed Plan) (Tioga Electric Shop)
12. South Portland, Maine (I, 10-7-75) (equipment pump-performance data) (Pizzagalli Construction Co.)
13. Washington Suburban Sanitary Commission, Maryland (III, 10-15-75) (subcontractor listing) (Volpe Construction Co., and John C. Grimberg)
14. Calhoun County, Michigan (V, 11-13-75) (unit pricing) (North Construction Co.)
- *15. Upper Occoquan Sewer Authority (Manassas Park), Virginia (III, 11-13-75) (descriptive literature; vs. responsibility)
- *16. Winter Haven, Florida (IV, 11-26-75) (prime contractor work identification; subcontractor listing) (Griffin Construction Co.)
17. Washington Suburban Sanitary Commission, Maryland (III, 12-4-75) (EO 11246—Washington Imposed Plan compliance; trade applicability "de minimis" theory) (Fattore Construction Co.)
- *18. Monroe, Washington (X, 12-31-75) (Two bites theory; bid exception) (Will Construction Co.)
19. Ruston, Louisiana (VI, 3-18-76) (price escalation in bid) (Allan H. Harris & Co.)
20. Chicago (Metropolitan Sanitary District of Greater Chicago), Illinois (V, 3-23-76) (exception to specifications; qualified bid) (Blount Brothers)
- *21. Westerville, Ohio (V, 4-2-76) (EEO, EPA regulations at 40 CFR § 8.8) (Davis-McKee and G. Igel)
22. Sioux City, Iowa (VII, 7-12-76) (listing of approved equipment supplier; grantee pre-contract judgment) (U.S. Enviro-Con)
23. Occoquan-Woodbridge (Potomac Plant), Virginia (III, 11-12-76) (EO 11246—Washington Plan compliance) (Briscoe/Courter/Conduit—Joint Venture)
24. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 12-3-76) (acknowledgement of addenda) (Kvalsten Electric)
25. Gregory, South Dakota (VIII, 1-4-77) (Schweigert Construction Co.)
26. Washington Suburban Sanitary Commission, Maryland (III, 3-2-77) (EO 11246—Washington Imposed Plan compliance; no covered trade) (C. F. & B. and State Construction Corp.—Joint Venture)
27. Ceres, California (IX, 6-20-77) (subcontractor listing) (W. M. Lyles Co.)

SMALL BUSINESS

Small Business—Procurement of (§ 35.936-7)

- *1. Mountaintop, Pennsylvania (III, 1-5-78)
(National Hydro Systems, Inc.)
- 2. Marshfield, Wisconsin (V, 6-16-78)
(Empire Generator Corporation)
- 3. Chattanooga, Tennessee (IV, 9-20-78)
(Passavant Corp.)

Small Business—Procurement of (§ 35.936-7).

- *1. Cleveland Regional Sewer District, (Southerly Plant) Ohio (V, 11-15-76) (Powercon Corp.)
- 2. Bernice, Louisiana (VI, 6-1-77)
(National Hydro Systems)

SPECIFICATIONS

General

Specifications

A. General

- 83:39 Philadelphia, PA (III, 6-22-83) (*Fisher & Porter Co.*) (must not include requirements unrelated to minimum performance needs).
- 83:48 Heber Spring, AR (VI, 8-2-83) (*Trigon Engineering Co.*) (operation and maintenance costs of equipment).
- 83:70 Contra Costa, CA (IX, 12-16-83) (*Perkin—Elmer*) (bidder could not rely on oral interpretation of specifications when IFB required they be in writing).

Specifications

A. General

- 81:08 Morgantown, WV (III, 2-1-81) (*Clow Co.*) (prior EPA approval does not bar review).
- 81:53 Timmonsville, SC (IV, 7-17-81) (*Quality Sanitary Services*) (bidder reliance on quantities approximated in IFB).
- 82:06 Tangier, VA (III, 2-11-82) (*Ultraviolet Purification Systems*) (brand name or equal-identify salient requirement and how related to minimum needs).
- 82:07 Chattanooga, TN (IV, 2-18-82) (*Spencer Turbine Co.*) (basic design decision to utilize existing structure not protestable).
- 82:37 Cullman, AL (IV, 7-6-82) (*Cal Corp.*; *Encore Corp.*; and *Drew and Assoc.*) (IFB must clearly explain information to be submitted and method of award).
- 82:57 Cape May County MUA, NJ (II, 11-1-82) (*American Bioreactor Co.* and *Fairfield Service Co.*) (basic project design not met when "or equal" proposal fails to meet key features).

Specifications (but see Non-Restrictive Specifications; see also, Engineering Judgments).

1. Omaha, Nebraska (VII, 9-14-74) (unbalanced bid) (*Datamaster Div.—ACCO*)
2. Gainesville-Alachua . . . Board, Florida (IV, 7-10-75) (ambiguity; bid notation; addenda) (*Grumman Ecosystems*)
3. Washington Suburban Sanitary Commission, Maryland (III, 10-15-75) (*Volpe Construction Co.*, and *John C. Grimberg Inc.*)

Brand Name or Equal

A. Brand Name or Equal

- 84:04 Livingston Parish, LA (VI, 1-27-84) (*Parson & Sanderson, Inc.*) (specification defective because salient feature not present in named brand) (superior equipment differing in design from named features in nonresponsive—EPA required new specifications conforming to minimum needs).
- 84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Gariup Const. Co., Inc.*) (evaluation of "or equal" occurs after bid opening) (rejection of equipment on "or equal" basis must be for performance reasons not physical differences).

B. Brand Name or Equal

- 83:23 Jerseyville, IL (V, 4-14-83) (*Clow Corp.*) (used as disguised sole source) (can only be used if rational basis for not stating technical requirements) (must state salient features).

Competition

B. Competition

- 84:19 Clinton County, NY (II, 4-30-84) (*Compost Systems Co.*) (no undue restriction where supplier obligated by specifications for performance guarantee in amount of total bid price).

Design

C. Design

- 84:21 Ardmore, OK (VI, 5-4-84) (*LYCO and Walker Process Corp.*) (in procuring off-the-shelf equipment, design specifications can only be used where specific features required for particular application) (design catalog specifications must be avoided if possible).

Defective

1. Miami-Dade Water and Sewer Authority, Florida (IV, 4-28-78) (*Intercounty Construction Co.* and *Morgan-South, Inc.—Wulff & Munier*, a joint venture) (defective)

SPECIFICATIONS

General

4. Westchester County, New York (II, 9-7-76) (minimum needs; competition) (Union Carbide Corp.)

5. Bergen County, New Jersey (II, 9-28-76) (words-numbers reconciliation) (Wm. L. Crow Construction Co.-Wolff & Munier, Inc.—Joint Venture)

*6. North Shore Sanitary District, Illinois (V, 9-28-76) (salient performance characteristics) (Keene Corp.; and Premier Electrical Construction Co.)

7. Philadelphia, Pennsylvania (Northeast Plant) (III, 12-6-76) (unbalanced bid) (Sovereign Construction Co.)

Local Preference

D. Local Preference

84:05 City of New York, NY (II, 2-2-84) (*Schiavone Const. Co. & Worth Engineering, Inc., A Joint Venture*) (requirement that corporation be 51% owned by licensed plumbers unduly restrictive).

Local Preference

83:29 Fargo, ND (VIII, 5-18-83) (*Van Bergen & Markson, Inc.; The Gray Engineering Group, Inc. & Conservatek, Inc.*) (procedures or practices creating preference prohibited).

Local Preference

License Requirement

82:33 Henderson, NV (IX, 6-22-82) (*Nielson, Vasko & Earl, Inc.*) (state law requiring license before bidding).

Minimum Need

E. Minimum Need

84:04 Livingston Parish, LA (VI, 1-27-84) (*Parson & Sanderson, Inc.*) (where equipment superior to design specifications satisfies minimum needs, specifications must be revised).

Nonrestrictive

(See also -

UNDULY RESTRICTIVE)

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL (V, 3-1-84) (*Premier Electrical Const. Co.*) (where protester alleges he can meet the specifications, he cannot challenge restrictions).

84:10 Metropolitan Sanitary Dist. of Greater Chicago, IL [Reconsideration] (V, 3-1-84) (*Premier Electrical Const. Co.*) (if protester wants specifications reviewed by EPA it must submit them with appeal).

84:18 Town of Milford, MA (I, 4-20-84) (*Eufamca Ecosystems, Inc.*) (performance based specifications not unduly restrictive where equipment offered would not fit in building).

84:19 Clinton County, NY (II, 4-30-84) (*Compost Systems Co.*) (requiring performance guarantee from supplier for liquidated damages in amount of its bid price is not unduly restrictive).

84:20 City of Decorah, IA (VII, 5-1-84) (*Humboldt Wedag*) (supplier cannot challenge specifications when he claims he can meet them) (high standard of proof where asserting restrictive application of specifications).

84:21 Ardmore, OK (VI, 5-4-84) (*LYCO and Walker Process Corp.*) (catalog design specification unduly restrictive) (performance specifications required).

84:23 Erie County, NY (II, 5-10-84) (*Vianini Pipe Inc.*) (where specifications using national standard for concrete pipe eliminated protester's method of processing it was not unduly restrictive because sufficient competition of suppliers meeting specifications).

84:46 Athens, AL (IV, 11-6-84) (*Polymer Chemical Corp.*) (sole source grout unduly restricted competition beyond the minimum needs of project).

84:47 Reelfoot Lake, TN (IV, 11-6-84) (*Carlson, Inc.*) (requiring specific PVC pipe exceeding minimum needs of project is unduly restrictive).

SPECIFICATIONS

Nonrestrictive (CONTINUED)

Nonrestrictive Specifications

1. Cordele, GA (IV, 1-15-80) (Tuttle/White Constructors, Inc.) (manufacturers only).
2. East Bay Dischargers Authority, CA (IX, 1-30-80) (Capital Control Company) (rejection of equipment).
3. Whitehall, NY (II, 2-5-80) (Davis Water & Waste Industries, Inc.) (pump lacks salient feature).
4. Fall River, MA (I, 2-13-80) (Passavant Corporation) (manufacturers only).
5. Anne Arundel County, MD (III, 2-13-80) (Sabatini Company) (pipe).
6. Tolleson, AZ (IX, 3-17-80) (Hydro Conduit Corporation) (pipe).
7. Cordele, GA (IV, 4-10-80) (Ralph Healey & Associates, Inc.) (manufacturers only).
8. Puyallup, WA (X, 4-24-80) (Rodding—Cleaning Machines, Inc.) (performance requirement).
9. Little Rock, AR (VI, 4-29-80) (Autotrol Corporation) (performance specifications).
10. Cordele, GA (IV, 5-1-80) (Franklin Aluminum Division/Hoover Universal, Inc.) (protester has burden of proof).
11. Northwest Bergen County Sewer Authority, NJ (II, 5-5-80) (New Holland Newcrete Products Division of New Enterprise Stone & Lime Co.) (national standards).
12. Clarksville, TN (IV, 6-5-80) (Penetryn Systems, Inc.) (single grout material).
13. Checotah, OK (VI, 6-18-80) (Sherman Machine and Iron Works, Inc.) (performance needs).
14. County Sanitation Districts of Los Angeles County, CA (IX, 6-28-80) (Ingersoll-Rand Co.) (cost effectiveness, equipment life).
15. Richmond, VA (III, 7-1-80) (Lane Construction Company; Clevepak Corporation) (performance requirements).
16. Northeast Ohio Regional Sewer District, OH (V, 10-14-80) (ICI Americas, Inc.) (single material).

Nonrestrictive Specifications

1. Aurora Sanitary District, IL (V, 7-3-79) (Ralph B. Carter Co.) (prequalification of suppliers)
2. Batesville, AR (VI, 1-12-79) (Hinde Engineering Co.)
3. Chattanooga, TN (IV, 3-27-79) (Performance Systems, Inc.)
4. Cochran, GA (IV, 9-14-79) (Municipal and Industrial Pipe Services, Ltd.)
- *5. Decatur, AL (IV, 3-2-79) (Johnson Controls, Inc.) (manufacturers only)
6. Gainesville, GA (IV, 11-5-79) (National Hydro Systems, Inc.) (III) (application of specifications)

7. Glenbard Wastewater Authority, IL (V, 4-8-79) (USEMCO, Inc.)
- *8. Laurens County, SC (IV, 7-10-79) (Carolina Concrete Pipe Co. et al.) (pipe)
9. Middletown, DE (III, 9-17-79) (Mt. Joy Construction Co.) (rejection of pre-approved supplier)

Non-Restrictive Specifications (§ 35.936-13, (see also *Engineering judgments: Salient Requirements*) but see *Experience Requirements: Sole Source Specifications: Specifications*).

1. Webster, Iowa (VII, 2-10-78) (Environmental Systems Division of George A. Hormel & Co. Inc.)
2. Turlock, California (IX, 3-6-78) (Riga Inc.)
3. Wells, Maine (I, 3-17-78) (Purcell Pump)
4. Effingham, Illinois (V, 3-21-78) (Autotrol) (salient performance requirements)
- *5. Chester, South Carolina (IV, 3-29-78) (Carolina Concrete Pipe Co.) (single material pipe selection)
- *6. Cumberland County, New Jersey (II, 3-31-78) (Dorr-Oliver Inc.) (post-contract interpretation: ultimately nonconforming preapproved equipment)
7. Snyderville, Utah (VIII, 4-17-78) (Jacobsen Construction Co. Inc.) (prices of subitems)
8. New Smyrna Beach, Florida (IV, 4-18-78) (Carl E. Widell & Son)
9. Clayton County, Georgia (IV, 4-19-78) (National Hydro System Inc., et al.)
10. Front Royal, Virginia (III, 4-21-78) (Lyco-Zn) (prequalification)
11. Newton, North Carolina (IV, 4-25-78) (Carolina Concrete Pipe Co.) (pipe selection limitation to three materials)
12. Waterford, Connecticut (I, 5-19-78) (Mulholland Construction Co.) (prime protest on rejection of its proposed subcontractor)
- *13. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 6-14-78) (McLaughlin & Associates) (salient performance requirements)
14. Marshfield, Wisconsin (V, 6-16-78) (Empire Generator Corporation)
- *15. Urbana-Champaign, Illinois (V, 6-30-78) (Paddock Refinite) (state exemption, as creating)
- *16. Prince William County, Virginia (III, 8-4-78) (Spencer Turbine Co.) (equivalency determination: salient requirements)
17. Oklahoma City, Oklahoma (VI, 8-25-78) (Automatic Engineering Inc.) (as applied: specifications drafted around single manufacturer)

SPECIFICATIONS

Nonrestrictive

(CONTINUED)

18. Winchester, New Hampshire (I, 9-1-78) (Enviro Development Co. Inc.)
19. Chattanooga, Tennessee (IV, 9-20-78) (Passavant Corp.)
20. Passaic Valley Sewerage Commissioners, New Jersey (II, 10-5-78) (BSP Division of Envirotech Corp. and Wheatley Corp.)
21. Indianapolis, Indiana (V, 10-6-78) (FMC Corp.)
22. Breese Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance) (base bidding)
23. Frankfort, Kentucky (IV, 10-18-78) (Passavant) (performance-related requirements as limitation)
24. Fairfield, New Jersey (II, 10-20-78) (Loc Pump) (or equal: specification generally drafted around single manufacturer)
25. Indianapolis, Indiana (V, 10-31-78) (Allis-Chalmers)
26. Chattanooga, Tennessee (IV, 11-2-78) (Philadelphia Gear) (functional equivalency: experience)
27. Urbana-Champaign, Illinois (V, 11-9-78) (Norton Co.) (performance criteria)
28. Waterford, Connecticut (I, 11-17-78) (Purcell Pump) (as applied)
1. Shreveport, Louisiana (VI, 6-1-74) (pipe liner) (Mainstay Corp.)
2. Hudson, Wyoming (VIII, 8-1-74) (Environmental Equipment Inc.)
3. Grand Forks, North Dakota (VIII, 8-15-74) (Kornlin-Sanderson)
- *4. Lake Charles, Louisiana (VI, 12-15-74) (Flygt Co.)
5. District of Columbia (Blue Plains) (III, 2-20-75) (Kenics Corp.)
6. Tonawanda, New York (II, 8-1-75) (Ingersoll-Rand)
7. Butler County (LeSourdsville Project), Ohio (V, 1-7-76) (grantee pre-approval) (EPCO-Hormel)
8. Fredonia, New York (II, 4-15-76) (Tenco Hydro/Aerosciences)
- *9. Chatham County (Isle of Hope), Georgia (IV, 7-8-76) (pipe) (Kyle-Gifford-Hill Inc.)
10. Sioux City, Iowa (VII, 3-12-76) (U.S. Enviro-Con)
11. Sacramento, California (IX, 8-12-76) (BBR Prestressed Tanks Inc.)
12. Sacramento, California (IX, 9-13-76) (Amoco Reinforced Plastics)
13. North Shore Sanitary District, Illinois (V, 9-28-76) (Keene Corp.; and Premier Electrical Construction Co.)
- *14. Greenwood (Rocky-Coronaca), South Carolina (IV, 10-6-76) (pipe; clay v. concrete) (Metromount Materials; Carolina Concrete Pipe Co.; Wallace Concrete Pipe Co., Inc.; South Carolina Pipe Association; Amoco Reinforced Plastics Co.)
15. Sacramento, California (IX, 10-6-76) (Air Products & Chemicals Inc. II)
16. Palm Beach County, Florida (IV, 10-8-76) (pipe; sole source) (Price Brothers)
17. Baton Rouge, Louisiana (VI, 11-5-76) (National Hydro-System)
18. Cleveland Regional Sewer District (Southerly Plant) (V, 11-15-76) (Powercon Corp.)
19. Superior, Wisconsin (V, 12-1-76) (Acton Construction Co. Inc.)
20. Waterford, Connecticut (I, 12-28-76) (New Ikor I)
21. Fredonia, New York (II, 2-28-77) (National Hydro Systems)
22. Waterford, Connecticut (I, 3-9-77) (Loc Pump & Equipment Co.)
23. Dothan, Alabama (IV, 3-10-77) (shop drawing evaluation) (Infilco-De-gremont)
24. Sioux City, Iowa (VII, 3-17-77) (Ralph B. Carter Inc.; and U.S. Enviro-Con Inc.)
25. Pasadena, Texas (VI, 4-1-77) (Union Carbide Corp.)
26. Delano, California (IX, 4-8-77) (pipe) (Hydro Conduit Corp. and Cen-Vi-Ro Concrete Pipe & Products Co., Inc.)
27. Fairfax, Virginia (III, 4-14-77) (Concrete Pipe & Products Inc.)
28. Montgomery, Alabama (IV, 5-11-77) (Envirotech)
29. Marion, North Carolina (IV, 5-17-77) (pipe) (Carolina Concrete Pipe Co.)
30. Oklahoma City, Oklahoma (VI, 5-18-77) (Ingersoll-Rand I)
31. Miami-Dade Water and Sewer Authority, Florida (IV, 5-25-77) (grantee approval) (Morganti South-Wolff Munier (Joint Venture); and Intercounty Construction Corp.)
32. Bernice, Louisiana (VI, 6-1-77) (National Hydro Systems)
33. Watertown, New York (II, 7-5-77) ("or equal," grantee review) (Vincent J. Fasano)
34. Oklahoma City, Oklahoma (VI, 7-13-77) (Ingersoll-Rand II)
35. Norwalk, Connecticut (I, 7-22-77) (Primiano Construction Co.)
36. Cynthiana, Kentucky (pre-selection) (IV, 8-11-77) (Lyco-ZF)
37. Jackson, Mississippi (IV, 8-19-77) (pipe) (American Cast Iron Pipe Co.)
38. Hope, Arkansas (VI, 9-1-77) (Hydro Conduit; Choctaw Culvert (Div. of Choctaw Inc.); Jonesboro Concrete Pipe Co.)
39. Toms Brook-Maurertown, Virginia (III, 9-20-77) (pre-selection) (National Hydro Systems)
40. Cranberry Township, Pennsylvania (III, 10-20-77) (pre-selection) (Bay-Con Corp.)
41. Contra Costa County, California (IX, 10-25-77) (pipe) (Armco Steel)
42. Orange County, California (IX, 11-2-77) (Pentech Division of Houdaille Industries)
43. Kansas City, Kansas (VII, 11-17-77) (experience) (Nichols Engineering & Research Corp.; and Zimpro)
44. Amherst, New York (II, 11-22-77) (Smith & Associates)

SPECIFICATIONS

Performance Based

G. Performance Based

- 84:04 Livingston Parish, LA (VI, 1-27-84) (*Parson & Sanderson, Inc.*) (specification must be revised to remove unnecessary specified features of brand name).
- 84:08 Western Carolina Regional Sewer Authority, Greenville, SC (IV, 2-17-84) (*Ashbrook-Simon-Hartley*) (engineer to establish minimum performance specifications for equipment—purpose is to compare machine capability and not necessarily configuration).
- 84:21 Ardmore, OK (VI, 5-4-84) (*LYCO and Walker Process Corp.*) (equipment specifications must be performance based using qualitative terms rather than design specifications).
- 84:35 Portage Sanitary Bd., Portage, IN (V, 8-31-84) (*Gariup Const. Co., Inc.*) (rejection of equipment on "or equal" basis must be for performance reasons and not physical differences).
- 84:47 Reelfoot Lake, TN (IV, 11-6-84) (*Carlson, Inc.*) (engineer to establish minimum performance needs and write performance specifications to reflect minimum needs) (purpose of performance specifications is to compare operational levels of various equipment that may have different physical configurations).

Salient Requirements

H. Salient Requirements

- 84:27 Metropolitan Sewer Dist., Cincinnati, OH (V, 7-16-84) (*Parkson Corp.*) (where specification includes only technical and performance requirements and is not brand name or equal specification, all specifications are meaningful terms that must be met).

Salient Requirements

- 81:43 Honolulu, HI (IX, 6-11-81) (*Hawaii Concrete Products*) (vertical cast pipe vs. centrifugal cast pipe).
- 81:58 Ashland, KY (IV, 7-27-81) (*Fairbanks Mores Pump*) (speculative maintenance problem not salient).
- 81:69 Houma, LA (VI, 8-19-81) (*Hydromatic Pump*) (recirculation port size) (speculative maintenance problems not salient).
- 81:79 Ashland, KY (IV, 10-1-81) (*Fairbanks Morse Pump*) (maintenance cost).
- 82:06 Tangier, VA (III, 2-11-82) (*Ultraviolet Purification Systems*) (minimum performance needs).
- 82:34 Monterey, CA (IX, 8-24-82) (*Frank M. Booth, Inc.*) (minimum performance needs for brand names).
- 82:37 Cullman, AL (IV, 7-6-82) (*Cal Corp.; Encore Corp. and Drew and Assoc.*) (based on mechanical reliability and maintenance considerations) (design features enhancing safety and efficiency).
- 82:41 Abilene, TX (VI, 7-27-82) (*R&S Engineering*) (manufacturers only—unrelated to performance).
- 82:46 Spearfish, SD (VIII, 8-19-82) (*Sheesley Plumbing and Heating Co.*) (drawn around single named brand).
- 82:49 Dumas, AR (VI, 9-7-82) (*Hinde Engineering*) (unidentified).
- 82:50 Eaton, OH (V, 9-14-82) (*Wagner Machinery*) (unidentified).
- 82:53 Monterey, CA (IX, 9-29-82) (*Frank M. Booth, Inc.*) (longevity in service).
- 82:55 Haysville, KS (VII, 10-13-82) (*Walker Process*) (on-site maintenance).
- 82:16 El Dorado, KS (VII, 11-16-82) (*Oursler Brothers Const.*) (chain vs. cable).

SPECIFICATIONS

Salient Requirements

(CONTINUED)

Salient Requirements

1. Cordele, GA (IV, 1-15-80) (Tuttle/White Constructors, Inc.) (manufacturers only not performance related).
2. East Bay Dischargers Authority, CA (IX, 1-30-80) (Capital Controls Company) (equipment will not satisfy needs).
3. Whitehall, NY (II, 2-5-80) (Davis Water & Waste Industries, Inc.) (metal connection was needed performance characteristic).
4. County Sanitation Districts of Los Angeles County, CA (IX, 6-26-80) (Ingersoll-Rand Co.) (hard surface abrasive requirement decreased maintenance cost).

Salient Requirements

1. East Bay Dischargers Authority, CA (IX, 11-16-79) (Brantley Instruments) (Contra Costa Electric, Inc.)

Salient Requirements (§ 35 936-13(a) and 43 FR 44046, September 27, 1978) (see also *Non Restrictive Specifications*).

1. Webster, Iowa (VII, 2-10-78) (Environmental Systems Division of George N. Hormel & Co. Inc.)
2. Wells, Maine (I, 3-17-78) (Purcell Pump)
3. Waterford, Connecticut (I, 5-19-78) (Mulholland Construction Co.)
- *4. Prince William County, Virginia (III, 8-4-78) (Spencer Turbine Company) (minimum project needs based upon performance)
5. Winchester, New Hampshire (I, 9-1-78) (Enviro Development Co., Inc.)
- *6. Breese, Illinois (V, 10-18-78) (Midwest Soil Products and Davco-Defiance)
7. Frankfort, Kentucky (IV, 10-18-78) (Passavant)
8. Fairfield, New Jersey (II, 10-20-78) (Lor Pump)
9. Urbana-Champaign, Illinois (V, 11-9-78) (Norton Co.) (exclusion on performance basis)
10. Waterford, Connecticut (I, 11-17-78) (Purcell Pump)

Sole Source

I. Sole Source

- 84:20 City of Decorah, IA (VII, 5-1-84) (*Humboldt Wedag*) (fact that only one source prequalified does not prove sole source violation).
- 84:46 Athens, AL (IV, 11-6-84) (*Polymer Chemical Corp.*) (specification describing grout made by sole source manufacturer is unduly restrictive even if it could be supplied by more than one supplier).

C. Sole Source

- 83:23 Jerseyville, IL (V, 4-14-83) (*Clow Corp.*) (brand name or equal specifications satisfied by only one supplier).
- 83:37 Central Valley, UT (VIII, 6-17-83) (*American Surfpac, Inc.*) (where two manufacturers able to bid on equipment, not sole source).
- 83:38 Sacramento, CA (IX, 6-17-83) (*Power Machine Co.*) (EPA may review sole source even if State agency prior approval) (not justified to reduce spare parts and maintenance through standardization).
- 83:39 Philadelphia, PA (III, 6-22-83) (*Fisher & Porter Co.*) (catalog design features which can be met by only one manufacturer).
- 83:62 Wayne, NB (VII, 10-31-83) (*Envirex, Inc.*) (grantee directed particular equipment be substituted after prime contract award).

Sole Source

- 81:08 Morgantown, WV (III, 2-1-81) (*Clow Co.*) (not justified by cost effectiveness analysis).
- 81:43 Honolulu, HI (IX, 6-11-81) (*Hawaii Concrete Products, Inc.*) (disguised).
- 81:47 Jasonville, IN (V, 6-30-81) (*Hinde Engineering Co.*) (catalog specifications not sole source).
- 81:82 Cobb County, GA (IV, 8-11-81) (*American Bioreactor Corp./BAV*) (single manufacturers "or equals").

SPECIFICATIONS

Sole Source

81:80 Sacramento County, CA (IX, 10-2-81) (Westates Carbon Co.) (inadequate justification).

81:83 Rush-Ryan Sewer Authority, PA (III, 10-13-81) (R&M Associates) (single manufacturer prequalified).

81:86 Huntsville, AL (IV, 10-15-81) (Municipal & Industrial Pipe Services and Astor Bolden Enterprises) (must justify naming single grout material whether sole source or single material).

81:92 Hallandale, FL (IV, 11-3-81) (Municipal & Industrial Pipe Services; Interstate Pipe Maintenance; and Polymer Chemical Corp.) (single material distinguished) (competition among suppliers).

81:100 Harriman, TN (IV, 12-9-81) (Municipal & Industrial Pipe Services) (distinguished from single material with several available suppliers).

82:02 Rush-Ryan Sewer Authority, PA (III, 1-22-82) (R&M Assoc.) (prequalification procedures) (reversed 81:83).

82:10 Sauget, IL (V, 2-19-82) (GHA Lock Joint Co.) (specifications allowing only one product is not sole source since available from more than one source).

82:17 Lummi Indian, WA (X, 3-28-82) (Walker Processing Corp.) (type RBC available from sole source but other brands could be modified).

82:18 Miami-Dade Water & Sewerage Authority, FL (IV, 3-31-82) (Worthington Group) (not sole source if two or more manufactures can meet specification).

82:19 Mount Pleasant, SC (IV, 3-31-82) (Bird Machine Co.) (justification for sole sourcing inadequate).

82:37 Cullman, AL (IV, 7-8-82) (Cal Corp.; Encore Corp.; and Drew Assoc.) (equipment available from more than one source not sole source).

82:44 Memphis, TN (IV, 8-16-82) (B.F. Goodrich Co.) (inadequate justification for single material activated filtration process).

82:68 Atwood, OH (V, 12-1-82) (Munitech) (deviation from specifications).

Sole Source

1. Tacoma, WA (X, 4-3-80) (Worthington Pump Corporation) (not sole source if available from protester).

Sole Source

1. Cape May County, NJ (II, 8-31-79) (Clow/Envirodisc Corp.) (cost effectiveness analysis procedure)

2. De Kalb Sanitary District, IL (V, 2-15-79) (Autotrol Corp.)

* 3. Miami-Dade Water and Sewer Authority, FL (IV, 10-3-79) (Radiation Dynamics, Inc.) (justification)

Sole Source Procurement (§ 35.936-13(b))

1. Monroe County, Michigan (V, 4-7-78) (Paddock Refinite) (justification based on interchangeability)

2. Waterford, Connecticut (I, 5-19-78) (Mulholland Construction Co.) (procedure)

3. Passaic Valley Sewerage Commissioners, New Jersey (II, 10-5-78) (BSP Division of Envirotech Corp. and Wheatley Corp.)

Sole Source Procurement (§ 35.936-13(b)).

1. Lake Charles, Louisiana (VI, 12-15-74) (Flygt Corp.)

2. Tonawanda, New York (II, 8-1-75) (Ingersoll-Rand)

3. Palm Beach County, Florida (IV, 10-8-76) (pipe) (Price Brothers)

4. Cranberry Township, Pennsylvania (III, 9-30-77) (Bay-Con Corp.)

SPECIFICATIONS

Unduly Restrictive

D. Unduly Restrictive

- 83:01 Spearfish, SD (VIII, 1-11-83) (*Rickel Manufacturing Co.*) (requiring liquid cooled pump exceeded minimum performance needs).
- 83:06 Western Carolina, SC (IV, 2-2-83) (*Ashbrook-Simon-Hartley*) (engineer is to establish minimum performance needs and specifications should be performance based).
- 83:18 Perryville, MD (III, 3-21-83) (*Lycow Wastewater Equipment Division*) (RBC equipment arbitrarily rejected) (must not include requirements that are not performance related).
- 83:23 Jerseyville, IL (V, 4-14-83) (*Clow Corp.*) (requiring RBC be air driven not minimum performance need) (competition adversely affected—not cured by manufacturer of described item and not cured by ability of others to create copy item).
- 83:30 St. Albans, WV (III, 5-27-83) (*Ralph B. Carter Co.*) (performance test allegedly made specifications restrictive as applied).
- 83:38 Sacramento, CA (IX, 6-17-83) (*Power Machine Co.*) (limitation of type of filter media not unduly restrictive where two suppliers).
- 83:39 Philadelphia, PA (III, 6-22-83) (*Fisher & Porter Co.*) (proprietary design features) (specifications cannot be modified through private agreement involving testing).
- 83:43 Toledo, OH (V, 6-29-83) (*Industrial Pump & Equipment Corp.*) (pumps selected for lower capital and repair costs and less installation space).
- 83:48 Heber Spring, AR (VI, 8-2-83) (*Trigon Engineering Co.*) (nonexcluded bidder cannot protest specifications).
- 83:51 Santa Barbara, CA (IX, 8-15-83) (*Namtec Corp. & Union Engineering Co.*) (grantee willingness to waive requirement indicates specifications overstated minimum needs).
- 83:55 Brazos River, TX (VI, 9-23-83) (*Jeffery Manufacturing Div.*) (shifting burden of proof) (technical features need not be only possible choice so long as rational).
- achieve uniformity in blowers requiring single manufacturer).
- 83:70 Contra Costa, CA (IX, 12-16-83) (*Perkin—Elmer*) (exact compliance with design specifications must be determined from face of bid without extrinsic evidence) (post bid evaluation of equipment not permitted where not provided for by IFB).
- 83:82 Wayne, NB (VII, 10-31-83) (*Envirex, Inc.*) (by requiring equipment substitution grantee restrictively applied specifications).
- 83:88 Tri-City, OR (X, 12-9-83) (*Dresser Industries, Inc.*) (temperature rise specifications for blower equipment to lower operating costs rationally based) (specifications to

B. Unduly Restrictive

- 81:02 Little Blue Valley, MO (VII, 1-8-81) (Eby Const.) (restrictive as applied; local preference).
- 81:09 Wilmington, DE (III, 2-12-81) (*Ashbrook-Simon-Hartley*) (maximum unit price).
- 81:29 North Plainfield, NJ (II, 4-24-81) (*Schuylkill Products*) (two pipe materials specified).
- 81:43 Honolulu, HI (IX, 6-11-81) (*Hawaii Concrete Products*) (vertical cast pipe lacked performance basis).
- 81:47 Jasonville, IN (V, 6-30-81) (*Hinde Engineering Co.*) (catalog specifications that competitors capable of copying).
- 81:50 Kalida, OH (V, 7-2-81) (*Sherburn Co.*) (single base bid pipe procurement prohibited).
- 81:58 Ashland, KY (IV, 7-27-81) (*Fairbanks Morse Pump*) (EPA funds minimum performance not ideal or best design).
- 81:61 Southington, CT (I, 8-7-81) (*Chemcon*) (pump design).
- 81:62 Cobb County, GA (IV, 8-11-81) (*American Bioreactor Corp./BAV*) (single base bidding prohibited) (no sole source violation where contract permitted use of "equal").
- 81:68 Warren County MUA, NJ (II, 8-19-81) (*Schuylkill Products*) (design criteria permitted only two types pipe—other processes not evaluated).

SPECIFICATIONS

Unduly Restrictive

(CONTINUED)

81:69 Houma, LA (VI, 8-19-81)
(Hydromatic Pump) (catalog design specifications).

81:74 Tifton, GA (IV, 9-1-81)
(Municipal & Industrial Pipe Services) (single material).

81:79 Ashland, KY (IV, 10-1-81)
(Fairbanks Morse Pump) (documented maintenance costs as performance requirements).

81:86 Huntsville, AL (IV, 10-15-81)
(Municipal & Industrial Pipe Services, and Astor Bolden Enterprises) (single material grout).

81:85 Sacramento, CA (IX, 10-14-81)
(Dredge Masters International) (performance testing of equipment).

81:89 Harford County, MD (III, 10-19-81) (Schuykill Products) (nationally accepted concrete pipe standard; exclusion of Packerhead pipe).

81:92 Hallandale, FL (IV, 11-3-81)
(Municipal & Industrial Pipe Services, Interstate Pipe Maintenance, and Polymer Chemical Corp.) (single material grout).

82:06 Tangier, VA (III, 2-11-82)
(Ultraviolet Purification Systems) (excess capacity justified by experimental design).

82:07 Chattanooga, TN (IV, 2-18-82)
(Spencer Turbine Co.) (requiring cast iron for reliability, and performance).

82:18 Miami-Dade Water & Sewer Authority, FL (IV, 3-31-82) (Worthington Group) (design features requiring heavy duty pump justified on past experience and performance needs).

82:19 Mount Pleasant, SC (IV, 3-31-82) (Bird Machine Co., Inc.) (specifications must be performance based, not require duplication of competitors design) (exclusionary requirements not based on performance resulted in unjustified sole source).

82:34 Monterey, CA (IX, 6-24-82)
(Frank M. Booth, Inc.) (not unduly restrictive where only one manufacturer supplies equipment but others are capable).

82:37 Cullman, AL (IV, 7-6-82) (Cal Corp.; Encore Corp.; and Drew and Assoc.) (performance requirements may include safety, efficiency, reliability and

maintenance factors) (requiring single brand "or equal" does not require resoliciting because substitute equipment permitted in alternate bid).

82:38 Fulton, NY (II, 7-16-82) (LOC Pump and Equipment) (minimum needs).

82:41 Abilene, TX (VI, 7-27-82) (R&S Engineering) (manufacturers only) (performance refers to minimum not best).

82:43 Brockton, MA (I, 8-16-82)
(Tenco Hydro) (may be unduly restrictive even with two acceptable materials).

82:44 Memphis, TN (IV, 8-16-82)
(B.F. Goodrich Co.) (inadequate justification for single material activated filtration process).

82:45 Pasadena, TX (VI, 8-17-82)
(Parkson) (protestor must show product excluded).

82:46 Spearfish, SD (VIII, 8-19-82)
(Sheesley Plumbing and Heating Co.) (restrictive applications drawn around single name brand).

82:49 Dumas, AR (VI, 9-7-82) (Hinde Engineering) (detailed catalog specifications related to design more than performance unduly restrictive) (minimum performance not necessarily "best").

82:50 Eaton, OH (V, 9-14-82)
(Wagoner Machinery) (catalog specifications) (same as one manufacturer's machine) (salient requirements not identified).

82:53 Monterey, CA (IX, 9-29-82)
(Frank M. Booth, Inc.) (only one supplier, not proof of undue restriction).

82:55 Haysville, KS (VII, 10-13-82)
(Walker Process) (on-site maintenance as minimum performance need for major equipment).

82:57 Cape May County MUA, NJ (II, 11-1-82) (American Bioreactor Co. and Fairfield Service Co.) ("or equal" alternatives).

82:61 El Dorado, KS (VII, 11-16-82)
(Oursler Brothers Const.) (catalog specifications) (failure to state minimum performance needs).

82:66 Smyrna, TN (IV, 11-29-82)
(Charles Finch Co. and Waterman Industries) (rejection of "equal" must be performance based).

82:68 Atwood, OH (V, 12-1-82)
(Munitech, Inc.) (sole source/deviation from specifications).

82:70 Metropolitan Wastewater Management Commission, OR (X, 12-22-82) (Robert Dougan Const.) (rejection of all bids if grantee finds its specifications unduly restrictive).

SUBCONTRACT AWARD

Subcontract Award

- 84:02 City of Bemidji, MN (V, 1-18-84)
(*Fiber-Dyne, Inc.*) (supplier
substitution by contractor not
protestable).
- 84:32 Bayshore Regional Sewerage
Authority, NJ (II, 8-30-84) (*RAM
Engineering, Inc.*) (subcontractor
may not protest his rejection by
prime contractors where proposal
submitted too late to be evaluated).
- 84:36 Austin, TX (VI, 9-6-84) (*Olson
Const., Inc.*) (subcontractor
responsibility normally determined
by prime contractor unless grantee
reserves right to do so in IFB).

Subcontract—Award

- 83:08 Hamilton, MT (VIII, 2-8-83) (*4C
Plumbing & Heating, Inc.*) (contractor
rejected MBE subcontractor for
business reasons).
- 83:29 Fargo, ND (VIII, 5-18-83) (*Van
Bergen & Markson, Inc.; The Gray
Engineering Group, Inc. &
Conservatek, Inc.*) (business reasons
for substituting subcontract).
- 83:24 Oklahoma City, OK
[Reconsideration] (VI, 5-23-83)
(*Fiberglass Engineered Products, Inc.*)
(anticipated receipt of contract not
protected by Fifth Amendment due
process).
- 83:57 Sod Run, Harford County, MD
(III, 10-7-83) (*CESCO, Inc.*)
(equipment substitution by contractor
not protestable).
- 83:58 Evanston, WY (VIII, 10-18-83)
(*WesTech Engineering, Inc.*)
(equipment substitution not
protestable).
- 83:61 Johnstown, OH (V, 10-24-83)
(*Zimpro, Inc.*) (subcontractor
substitution by contractor not
protestable).

(Continued on Next Page)

SUBCONTRACT AWARD (CONTINUED)

Subcontract—Award

81:06 Oceanside, CA (IX, 1-30-81) (Bird Machine Co.) (prime bid responsive though listed nonresponsible subcontractor).

81:23 Passaic Valley, NJ (II, 4-20-82) (Rochester Pump and Machine, Inc.) (no EPA regulation for subcontractor procuring supplies) (competitive

negotiation principles do not apply to subcontractor selection).

81:55 Centerville, IA (VII, 7-21-81) (Grady Unlimited) (MBE policy establishes no right to award).

81:63 Honolulu, HI (IX, 8-12-81) (Nichols Engineering & Research Co.) (equipment procurement by subcontract instead of separate direct contracts).

81:101 Ewing Lawrence Sewerage Authority, NJ (II, 12-14-81) (Neshaminy Const.) (substitution of subcontractors not protestable).

82:22 Goldendale, WA (X, 4-16-82) (IMCO General Const.) (failure to list subcontractors made of responsiveness).

82:64 Shady Spring PSD, WV (III, 11-22-82) (Davis Water & Waste Industries) (subcontractor substitution not protestable).

82:71 Columbus, OH (V, 12-29-82) (Zimpro) (grounds for subcontractor protest).

82:72 Alliance, OH (V, 9-10-82) (R&S Engineering) (no standing where subcontractor failed to attempt prequalification).

Subcontracts—Award

1. Tacoma, WA (X, 4-3-80) (Worthington Pump Corporation) (cancellation of subcontract).

2. Moorhead, MN (V, 6-3-80) (Waldor Pump & Equipment Company) (cost savings in alternate bid).

3. County of Nassau, NY (II, 8-7-80) (Komline-Sanderson Engineering Corporation) (supplier obtains no protest rights by being listed).

Subcontracts—Award

1. Aurora Sanitary District, IL (V, 7-3-79) (Ralph B. Carter Co.)

2. Gainesville, GA (IV, 6-15-79) (National Hydro Systems, Inc. (II)) (substitution of equipment, business judgment)

3. Gainesville, GA (IV, 11-5-79)

(National Hydro Systems, Inc. (III))

4. Hannibal, MO (VII, 6-7-79) (U.S. Enviro-Con, Inc.) (business judgment)

5. Howard County, MD (III, 2-15-79) (Water Pollution Control Corp.) (business judgment).

6. Sterling, IL (V, 3-9-79) (Neptune CPC Engineering Corp.) (substitution, business judgment)

7. Stillwater, OK (VI, 3-1-79) (Robicon Corp.)

Subcontracts, Awards of (§§ 35.937-12, 35.938-9 and 35.939(j)(6)).

1. Mountaintop, Pennsylvania (III, 1-5-78) (National Hydro Systems Inc.) (substitution)

2. Gainesville, Georgia (IV, 1-17-78)

(National Hydro Systems Inc. and Tuttle/White Constructors)

3. North Little Rock, Arkansas (VI, 2-1-78) (Environmental Equipment Corp.) (fairness: selection by grantee)

4. Cynthia, Kentucky (IV, 2-9-78) (James N. Gray Construction Co.) (prequalification)

5. Webster, Iowa (VII, 2-10-78) (Environmental Systems Division of George A. Hormel & Co., Inc.)

6. East Bay Dischargers Authority California (IX, 2-15-78) (R. D. Smith) (A/E subagreements: minority business enterprise)

7. Fairfax County, Virginia (III, 3-17-78) (John W. Cowper Co. Inc.)

8. Antigo, Wisconsin (V, 3-24-78) (General Filter Co.) (obligation of prime to furnish conforming equipment)

9. Cumberland County, New Jersey (II, 3-31-78) (Dorr-Oliver Inc.) (restrictive effect of mistaken specification listing as equivalent)

10. Newton, North Carolina (IV, 4-25-78) (Carolina Concrete Pipe Co.) (pipe: alternate materials)

11. Waterford, Connecticut (I, 5-19-78) (Mulholland Construction Co.)

12. Prince William County, Virginia (III, 8-4-78) (Spencer Turbine Co.) (prequalification, rational basis as standard)

13. Newcastle, Indiana—Reconsideration (V, 8-23-78) (Newcastle, Indiana) (EPA overview)

14. Oklahoma City, Oklahoma (VI, 8-25-78) (Automatic Engineering Inc.)

15. Frankfort, Kentucky (IV, 10-18-78) (Passavant)

16. Urbana-Champaign, Illinois (V, 11-9-78) (Norton Co.)

17. Lake County, Illinois (V, 11-17-78) (Envirex)

18. Delaware County, Ohio (V, 11-21-78) (R. B. Carter)

SUBCONTRACT AWARD (CONTINUED)

Subcontracts, Award of (§§ 35.938-9, and 35.939(j)(6)).

1. Hollywood, Florida (IV, 3-13-74) (equipment manufacturer listing) (Morganti-South Inc.)
2. Jacksonville, Florida (IV, 8-12-74) (Subcontractor listing) (Adrian Construction Co.)
3. Lexington, Virginia (III, 8-14-74) (performance bond) (Hydro-Systems, Inc.)
- *4. Grand Forks, North Dakota (VIII, 8-15-74) (Restrictive Specification; award to prime with low equipment offer) (Konline-Sanderson)
5. Omaha, Nebraska (VII, 9-14-74) (Datamaster Division—ACCO)
- *6. Clearwater, Florida (IV, 3-14-75) (equipment suppliers listing) (Harry Pepper & Associates)
7. Tonawanda, New York (II, 8-1-75) (Restrictive Specifications—sole source) (Ingersoll-Rand)
- *8. Washington Suburban Sanitary Commission, Maryland (III, 10-15-75) (equipment supplier listing; State law) (Volpe Construction Co. and John C. Grimberg Co.)
9. Winter Haven, Florida (IV, 11-26-75) (subcontractor listing work amount) (Griffin Construction Co.)
10. St. Joseph, Missouri (VI, 2-20-76) (Turzillo Contracting Co.)
- *11. Miami-Dade Water and Sewer Authority, Florida (IV, 3-11-76) (equipment item listing; bid shopping) (George Hyman Construction Co.)
12. Rhinelander, Wisconsin (V, 3-31-76) (substitution; business judgment) (EPCO-Hormel)
13. Lowell, Massachusetts (I, 4-1-76) (State law issues; business judgment; substitution) (United Electrical Contractors)
14. Lowell, Massachusetts (I, 4-2-76) (State law issues; business judgment; substitution) (Honeywell Corp.)
15. Danville, Illinois (V, 4-15-76) (Honeywell Corp.)
- *16. Upper Occoquan Sewer Authority, Virginia (III, 6-24-76) (subcontractor listing; amount of work to be performed) (Savoy Construction Co.)
17. Amherst, New York (II, 7-2-76) (substitution of supplier during prime contract performance) (Air Products & Chemicals, Inc.)
18. Denver (City and County), Colorado (VIII, 7-9-76) (Frank Briscoe)
19. Sioux City, Iowa (VII, 7-12-76) (listing preapproved subcontractor) (U.S. Enviro-Con)
20. Westchester County, New York (II, 9-7-76) (competition among systems) (Union Carbide Corp.)
21. Sioux City, Iowa (VII, 3-17-77) (Restrictive Specifications; approved listing) (Ralph Carter and U.S. Enviro-Con)
22. Omro, Wisconsin (V, 5-13-77) (equipment substitution; business judgment) (Can-Tex Industries)
23. Oklahoma City, Oklahoma (VI, 5-18-77) (Restrictive Specifications; business judgment; grantee involvement; rational basis) (Ingersoll-Rand I)
24. Ceres, California (IX, 5-20-77) (equipment manufacturer listing) (W. M. Lyles Co.)
25. Watertown, New York (II, 7-5-77) (Vincent J. Fasano Inc.)
- *26. Oklahoma City, Oklahoma (VI, 7-13-77) (Restrictive Specifications; evident and presumed equality; need for rational basis on technical judgments; competition) (Ingersoll-Rand II)
- *27. Oklahoma City, Oklahoma (VI, 7-25-77) (Restrictive Specification; business judgment; grantee involvement) (Carborundum)
28. McFarland, California (IX, 9-28-77) (Engineering judgment vs. rational basis and grantee involvement) (Lagoon Aeration Corp.)
29. Kansas City, Kansas (VII, 11-17-77) (Experience of equipment supplier) (Nichols Engineering & Research; and Zimpro)
30. Amherst, New York (II, 11-22-77) (no technical review of "or equal" determination during prime contract performance) (E. C. Smith & Associates)
- *31. Monterey Peninsula Water Pollution Control Agency, California (IX, 12-9-77) (J. M. Bush)
32. Passaic Valley Sewerage Commissioners, Newark, New Jersey (II, 12-10-77) (experience requirements; competition) (BSP Division of Envirotech Corp.)

WAIVER

Waiver

- 84:01 Gwynns Falls, MD (III, 1-13-84) (*Joseph L. Cardinale & Sons, Inc.*) (bid in amount less than required) (late submittal of payment and performance bond).
- 84:03 Town of Williston, VT (I, 1-25-84) (*Cooley Corp.*) (failure to submit bid bond with bid is nonwaivable).
- 84:07 Metropolitan Sanitary Dist. of Greater Chicgo, IL (V, 2-6-84) (*A.J. Maggio Co.; Dresser Ind., Inc., and Klein Const. Co.*) (minor irregularities must be waived).
- 84:36 Austin, TX (VI, 9-8-84) (*Olson Const., Inc.*) (failure to bid on an alternate that was unnecessary for bid evaluation was minor informality).
- 84:56 City of Fort Lauderdale, FL (VI, 12-27-84) (*Gray Engineering Group, Inc.*) (bidder cannot waive right to have bid withdrawn where he admits mistake).
- 84:57 Neenah-Menasha Sewerage Commission (V, 12-31-84) (*Flour Bros. Const. Co.*) (failure to file bid on time may not be waived as minor irregularity).

Waiver

- 83:05 Morton, MS (IV, 1-25-83) (*Associated Const., Inc.*) (license requirement waived as technicality).
- 83:07 Oklahoma City, OK (VI, 2-4-83) (*D.J. Domas, Inc.*) (grantee must have rational basis for refusing to waive minor informalities).
- 83:09 Covington, GA (IV, 2-9-83) (*Griffin Const., Co., & Ethridge Brothers Const., Inc.*) (discretionary authority of grantee cannot be compelled by bidder).
- 83:32 Los Angeles, CA (IX, 6-8-83) (*Advanco Constructors, Inc.*) (irregularities in listing subcontractors must be waived as minor where IFB did not make it matter of responsiveness).
- 83:34 New Concord, OH (V, 6-10-83) (*Adams Robinson Enterprise, Inc.*) (failure to acknowledge receipt of addendum not waivable where material).

- 83:40 Elkhart, IN (V, 6-22-83) (*Penn Equipment & Tool Corp.*) (minor deviations involving bid bond surety form caused no competitive advantage).
- 83:46 Palatine, IL (V, 7-19-83) (*Di Paolo-Rossetti, Joint Venture*) (where MBE requirements are responsiveness matters, waiver not permitted).
- 83:68 Tri-City, OR (X, 12-9-83) (*Dresser Industries, Inc.*) (bidder waives protest issue by not submitting evidence).

Waiver

- 81:20 Tomah, WI (V, 4-10-81) (W.G. Jaques) (MBE requirement designated responsiveness not waivable).
- 81:24 El Dorado Irrigation District, CA (IX, 4-13-81) (*Lotus Const.*) (failure to acknowledge addenda).
- 81:48 Cleveland, MS (IV, 7-1-81) (*Roland Pugh Const.*) (waiver of minor deviation not giving bidder advantage).
- 81:50 Kalida, OH (V, 7-2-81) (*Sherburn Co.*) (failure to list unit prices not waivable).
- 81:107 Colchester, CT (I, 12-31-81) (*Clark Sewer Const.*) (failure to bid on alternate waivable).
- 82:03 Fort Wayne, IN (V, 1-25-82) (*Bates & Rogers Const.*) (waiver of fiscal integrity requirements).
- 82:21 Fallbrook Sanitary District, CA (IX, 4-8-82) (*Metro-Young/Lopez Const., A Joint Venture*) (demonstration of positive MBE requirements).
- 82:27 Eveleth, MN (V, 5-3-82) (*Gridor Const.*) (may waive dib defect where immaterial).
- 82:35 Van Buren County, MI (V, 6-28-82) (*Union Const.*) (omission waivable as minor where no competitive edge results).
- 82:68 Atwood, OH (V, 12-1-82) (*Munitech*) (Waiver of deviation from specifications) (appeal filed with EPA 5 days late).
- 82:69 Globe, AZ (IX, 12-8-82) (*Mercury Const.*) (failure to acknowledge addenda).

WAIVER (CONTINUED)

Waiver

1. Alpine Sanitary District, AZ (IX, 9-28-79) (Gus's Trenching and Pipeline Co.)
2. Bardstown, KY (IV, 1-3-79) (E. H. Hughes Co.) (I)
3. Detroit, MI (V, 12-11-79) (Dynamic Construction Co., Inc.)
4. Jackson, CA (IX, 7-5-79) (Joseph R. Ramos Pipeline Engineering)
5. James Island Public Service District, SC (IV, 5-2-79) (Pyramid Builders, Inc.)
6. Kansas City, MO (VII, 12-20-79) (Garney Companies)

Waiver.

1. Cynthiana, Kentucky (IV, 2-9-78) (James N. Gray Construction Co.) (listing nonapproved equipment)
2. Effingham, Illinois (V, 3-6-78) (Mautz & Oren Inc.) (omissions of line items)
3. Chicago (Metropolitan Sanitary District of Greater Chicago), Illinois (V, 3-12-78) (Howard Martin Construction) (local procedures)
4. Amherst, New York (II, 5-15-78) (Cimato Bros. Inc.)
- *5. Bay County, Michigan (V, 8-11-78) (Frank V. Louis Equipment Co.) (Contract No. 1) (addendum acknowledgment—Minor informality)
6. Onondaga County, New York (II, 8-23-78) (Pizzagalli Construction Company and John W. Cowper)

Waiver.

1. Denver, (City) Colorado (VIII, 4-22-74) (price omission—subtier (1 item)) (Pinkard Donovan)
2. Manitowoc, Wisconsin (V, 12-18-74) (grantee cannot waive failure to include bid bond) (P. A. Lawrence Co.)
3. Alexandria, Virginia (III, 4-4-75) (non-computation of state taxes) (John C. Grimberg)
- *4. Woonsocket, Rhode Island (I, 6-20-75) (failure to complete EO 11246 Certification of prior work) (Westcott)
5. South Portland, Maine (I, 10-7-75) (pump data) (Pizzagalli Construction Co.)
6. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 11-3-75) (rejection of all bids context—supply of subitem) (Blount Brothers and Darin & Armstrong)
- *7. Sunnyvale, California (IX, 12-5-75) (handwritten prices; EO 11246 Certificate; corporate by-laws-signor of bid) (ABF Contractors)
8. Monroe, Washington (X, 12-31-75) (stated exception in bid to design specifications) (Will Construction Co.)

9. Cleveland Regional Sewer District (Westerly Plant), Ohio (V, 5-13-76) (subcontractor list-broker issue) (Blount Brothers)

*10. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 12-3-76) (acknowledgement of addenda) (Kvalsten Electric)

11. Gregory, South Dakota (VIII, 1-4-77) (time schedule—work commencement and completion) (Schweigert Construction Co.)

*12. St. Paul (Metropolitan Waste Control Commission), Minnesota (V, 5-3-77) (listing of equipment of suppliers; EO 11246 Certification; and unit price supplemental schedule—add/deduct price difference) (Palco; Kraus-Anderson)

13. Middlesex (Sayreville Relief Pump Station), New Jersey (II, 6-9-77) (bid mistake—bidder intent test) (Terminal Construction Co.)

14. Ft. Lauderdale, Florida (IV, 7-18-77) (price omission—subtier) (Inman Corp.)

*15. Rawlins, Wyoming (VIII, 11-16-77) (late bid—5 minutes—other bids not opened) (Wind River Constructors Inc.)

A P P E N D I X

GUIDANCE FOR UTILIZATION OF S/M/WBES

CHAPTER 10 - BID PROTESTS

The bid protest chapter of the Guidance concisely explains the issues which most often arise in bid protests concerning small, minority and womens' business enterprise requirements. The OGC Grants Branch recommends that, upon receiving an appeal concerning these issues, the EPA attorney refer immediately to this chapter and rely as much as possible on its analysis of the issues. This should result in shorter and more promptly issued decisions.

Questions and comments concerning this area should be referred to Kent Holland or Anthony Guadagno, EPA Office of General Counsel; Phone: (202) 382-5313.

EPA

Guidance for Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements - 6010

1986 Edition

EPA GUIDANCE FOR UTILIZATION OF S/M/WBE IN PROCUREMENT
UNDER ASSISTANCE AGREEMENTS

NOTICE

This guidance was prepared by the United States Environmental Protection Agency for use by EPA personnel, State and local government officials and business persons interested in participating in EPA financial assistance programs. The purpose of the guidance is to provide information regarding the utilization of small, minority and women-owned business entities under EPA's financial assistance programs.

In the event there are any conflicts between this guidance and EPA regulations, the regulations will govern.

ACKNOWLEDGEMENTS

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EPA GUIDANCE FOR UTILIZATION OF S/M/WBE IN PROCUREMENT
UNDER ASSISTANCE AGREEMENTS

CHAPTER 10

BID PROTESTS

A. CHALLENGES TO MBE/WBE STATUS

Complaints by firms challenging another firm's status as an MBE/WBE will not be entertained under the bid protest procedures of 40 CFR Part 33. Any firm or individual that files a false statement may be prosecuted under 18 U.S.C. 1001. Because of the interest of bona fide MBEs/WBEs in obtaining subagreements, it is reasonable to conclude that such bona fide firms will help EPA and appropriate Federal authorities identify "bogus" or "front" MBEs/WBEs. In the event that allegations are made that a firm misrepresented its status as an MBE/WBE, the matter may be investigated by the Office of the Inspector General and, where appropriate, turned over to the Department of Justice for criminal and/or civil prosecution.

Such firms can also be excluded from further participation in Federal programs by debarment or suspension action. Actions for exclusion from all Federal Acquisition activities are taken under the Federal Acquisition Regulations, 48 CFR Subpart 9.4; actions for exclusion from EPA assistance programs are taken under 40 CFR Part 32. See Chapter 11.

B. MBE/WBE COMPLIANCE -- BIDDER RESPONSIBILITY vs BID RESPONSIVENESS

1. As a general rule, MBE/WBE documentation (i.e., documentation demonstrating positive efforts or compliance with grantee MBE/WBE requirements) is a matter of bidder "responsibility".

a. Responsibility. The term responsibility means the apparent ability of the bidder to successfully carry out the requirements of a contract. Aspects of responsibility include such things as financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, ability to meet the completion schedule, satisfactory contract performance record and compliance with or willingness to comply with civil rights laws and other legal requirements. See 40 CFR 33.220. The determination of bidder responsibility focuses upon the bidder's apparent ability to perform in the required manner on the date performance is required. Where a bidder has failed to submit information required to demonstrate its responsibility, such information may be submitted after bid opening, but prior to contract award. Consequently, a bidder who is not responsible when bids are submitted may still qualify for contract award if it can establish its responsibility before the contract award date.

MBE/WBE compliance documentation serves the principle purpose of assisting the recipient in determining whether the bidder is responsible, i.e., has the ability to meet, or make good faith efforts to meet, the

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UNDER ASSISTANCE AGREEMENTS

recipient's MBE/WBE goals and satisfy the EPA MBE/WBE policy. Therefore, if a bidder fails to complete all the MBE/WBE forms with its bid or fails to take positive efforts prior to submitting the bid, these shortcomings may be corrected after bid opening. The exception to this rule occurs when the recipient has specifically made MBE/WBE requirements and demonstration of positive efforts matters of bid "responsiveness" to be determined at the time of bid opening.

b. Responsiveness. A "responsive" bid is one which on its face meets the specifications and the material terms of the Invitation for Bid (IFB). Material terms are those terms affecting price, quantity, quality or delivery and any other terms which are clearly identified by the bid solicitation documents as requirements that must be complied with at the time of bid in order for the bid to be accepted as "responsive".

A failure of a bid to meet a material term of the IFB cannot be cured after bid opening. This is the most significant difference between matters of responsiveness and responsibility.

2. Careful and Clear Drafting. Recipients may make compliance with MBE/WBE requirements a matter of responsiveness instead of responsibility. However, because such requirements are normally matters of responsibility, they will have to be treated as such unless the recipient clearly and unequivocally states in the bid solicitation documents that failure to meet the MBE/WBE requirements will cause the bid to be rejected as nonresponsive. In deciding to make these requirements matters of responsiveness, the recipient must exercise extreme care in drafting the IFB and all bid solicitation documents. If there is any ambiguity in these documents concerning whether a bid failing to comply with the requirements will be automatically rejected as nonresponsive, the requirement will be considered to be a matter of responsibility which can be cured by the bidder after bid opening. Consequently, where there is such ambiguity in the bid solicitation documents the recipient must not reject a nonconforming bid as nonresponsive.

3. Protest Examples. EPA has reviewed numerous recipient procurement actions involving the issue of whether MBE/WBE requirements were made matters of responsiveness or responsibility. The rule which is consistently followed by EPA is that in order for a recipient to reject a bid as nonresponsive due to a failure to do something which is generally a matter of responsibility (such as listing subcontractors and submitting positive efforts information), the solicitation for bids must have clearly and unequivocally stated that such failure would cause the bid to be rejected as nonresponsive. Many of the bid protest appeals considered by EPA involve bid solicitations which were ambiguous as to when the MBE/WBE requirements had to be met by the bidder.

a. Examples of language which failed to make it sufficiently clear and mandatory that MBE/WBE documentation and requirements must be submitted with the bid include provisions in the bid solicitation stating that:

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(1) Failure to submit such information "may be cause to reject the bid," City of Mt. Pleasant, Michigan, (Region V, June 25, 1979) (Protest of Collavinc Const., Inc.);

(2) "Failure to list . . . will render the bid nonresponsive and may cause its rejection." Sand Point, Idaho (Region X, March 3, 1983) (Protest of Ludig Const., Inc.); and

(3) "Failure to complete the equipment manufacturers form shall be grounds for rejection of his bid as nonresponsive" New Hampshire Water Supply and Pollution Control Commission (Region I, March 16, 1984) (Protest of Cattamount Const., Inc.)

b. In each of these examples the language failed to provide for the automatic, mandatory rejection of non-conforming bids. The statement that failure to do something may result in the rejection of the bid is ambiguous. The action verb "may" is equivocal and non-mandatory because of its permissive nature. The fact that it may be rejected implies the possibility that it "may not" be rejected. Where such language is used in the bid solicitation, the recipient cannot reject as nonresponsive a bid which fails to provide documentation of a requirement which is generally considered to be a matter of responsibility. Where an IFB clearly and unequivocally states that failure to submit a subcontractor list or MBE documentation will make a bid nonresponsive, but the IFB does not state what action will be taken regarding such a nonresponsive bid (e.g., rejection), it is nevertheless correct to reject the bid since pursuant to 40 CFR Sec. 33.430(b), award can only be made to responsive bids. See Monterey, California (EPA Region IX, September 12, 1985) (Protest of Mortenson/Natkin).

4. In reviewing bid solicitations to determine whether MBE/WBE matters have been made matters of responsiveness, EPA looks beyond the specific language in the bid form or IFB and examines all areas of the bid solicitation documents to determine whether they are clear and unequivocal. For example, if the language in one portion of the bid documents clearly states that documentation is a matter of responsiveness but the language which appears elsewhere in the document gives a different meaning, the requirement cannot be considered a matter of responsiveness. See, New Hampshire Water Supply and Pollution Control Commission. supra. If the recipient chooses to make certain items, such as commitment to a fair share percentage, a matter of responsiveness, and other items, such as submission of data sheets, a matter of responsibility, the recipient should clearly separate these items and make it clear to bidders which items are matters of responsiveness and which are matters of responsibility.

5. Consequence of Responsiveness. If the recipient makes MBE/WBE documentation and requirements matters of responsiveness, it must then reject any bid which fails to satisfy the requirements of the solicitation as of the time of bid opening. The recipient has no real discretion in making this decision because a nonresponsive bid cannot be cured and made

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responsive after bid opening. Consequently, a bid which is not responsive to the MBE/WBE requirements must be rejected even if the recipient believes that accepting the bid is in its best interests and the best interests of the MBE/WBE program. For example, it would be necessary to reject a bidder that did not submit documentation (if it were a matter of responsiveness) even though after bid opening that bidder demonstrates it satisfies the affirmative steps and attained or promised to attain MBE/WBE participation exceeding the grantee's goals and/or exceeded the MBE/WBE participation offered by the next low bidder. See, Village of Palatine, Illinois (EPA Region V, July 19, 1983) (Protest of Di Paolo-Rossetti). However in Toronto, Ohio (EPA Region V, February 2, 1984) (Protest of Cavanaugh Co.), a bid that failed to submit documentation required by the IFB was nevertheless responsive because it specifically committed to meeting the grantee's MBE goals. Since the bidder was contractually committed to the goal, the documentation was only relevant to evaluating the bidder's responsibility, that is, its ability to meet the goal.

6. Effective Use of Responsibility Criteria. Assistance recipients can effectively use definitive responsibility criteria to assure that bidders exercise the affirmative steps required by 40 CFR Sec. 33.240. For example, the Invitation For Bids (IFB) may require that bidders advertise in various newspapers and trade journals, solicit subcontractors by using lists of MBE/WBEs provided by federal, state or local agencies, and take other specific action to demonstrate that the affirmative steps were taken. The recipient can then determine after bid-opening (before contract award) whether the low bidder satisfied the required definitive responsibility criteria and reject any bidder that failed to meet the criteria. See, San Bernardino, Ca. (EPA, Region 9, January 15, 1986) (Protest of MCI Constructors, Inc.).

C. EPA PROTEST APPEALS PUBLICATION

A publication containing extracts of EPA protest appeal determinations concerning MBE/WBE matters is available from OSDPU and the Regional EPA offices.