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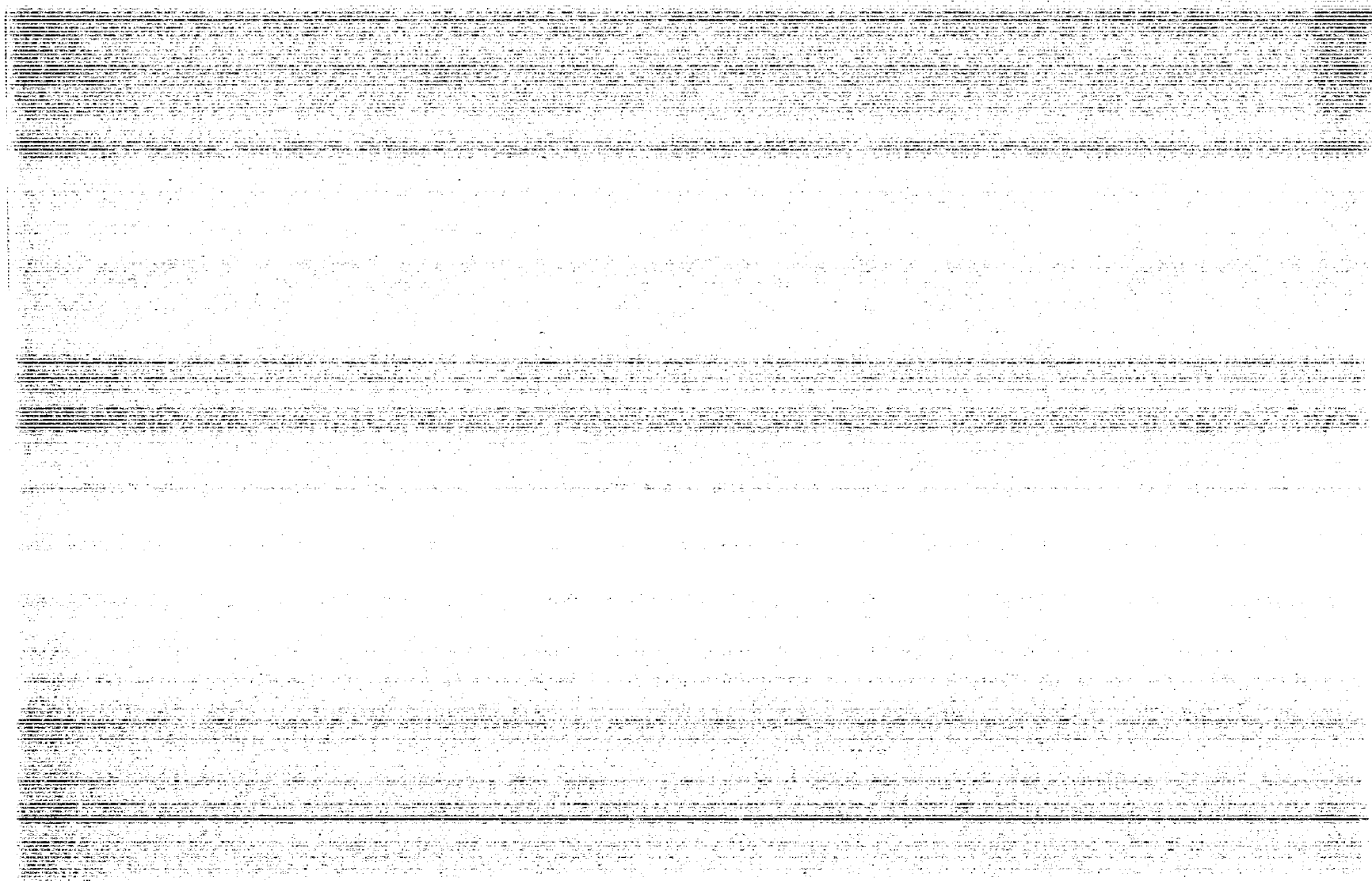
**Digests Of Unpublished Decisions Of
The Comptroller General
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OCTOBER 1984

Volume I
Number 1

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United States General Accounting Office



UNITED STATES GENERAL ACCOUNTING OFFICE

CHARLES A. BOWSER

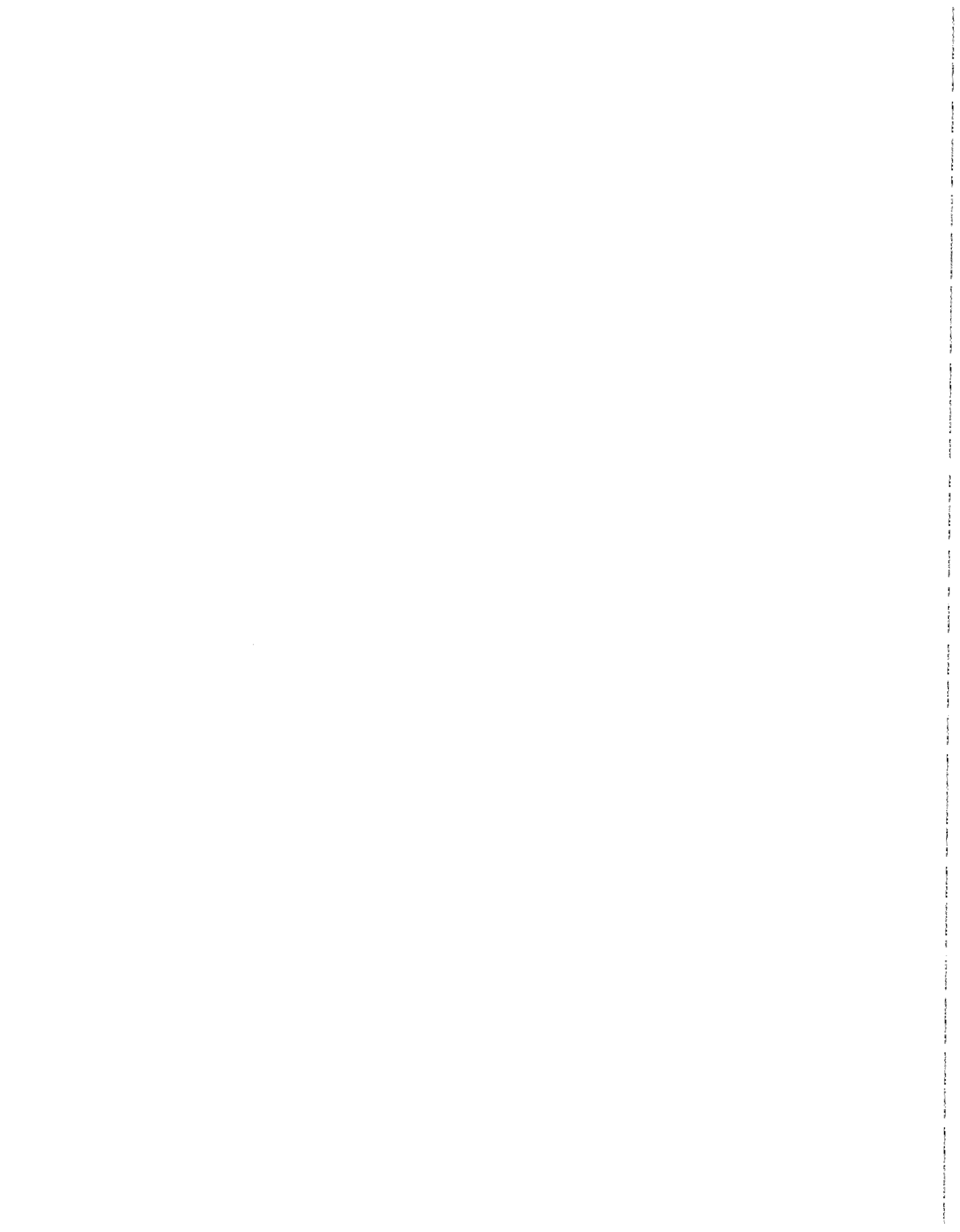
Comptroller General of the United States

VACANT

Deputy Comptroller General
of the United States

HARRY R. VAN CLEVE

General Counsel



October 1984

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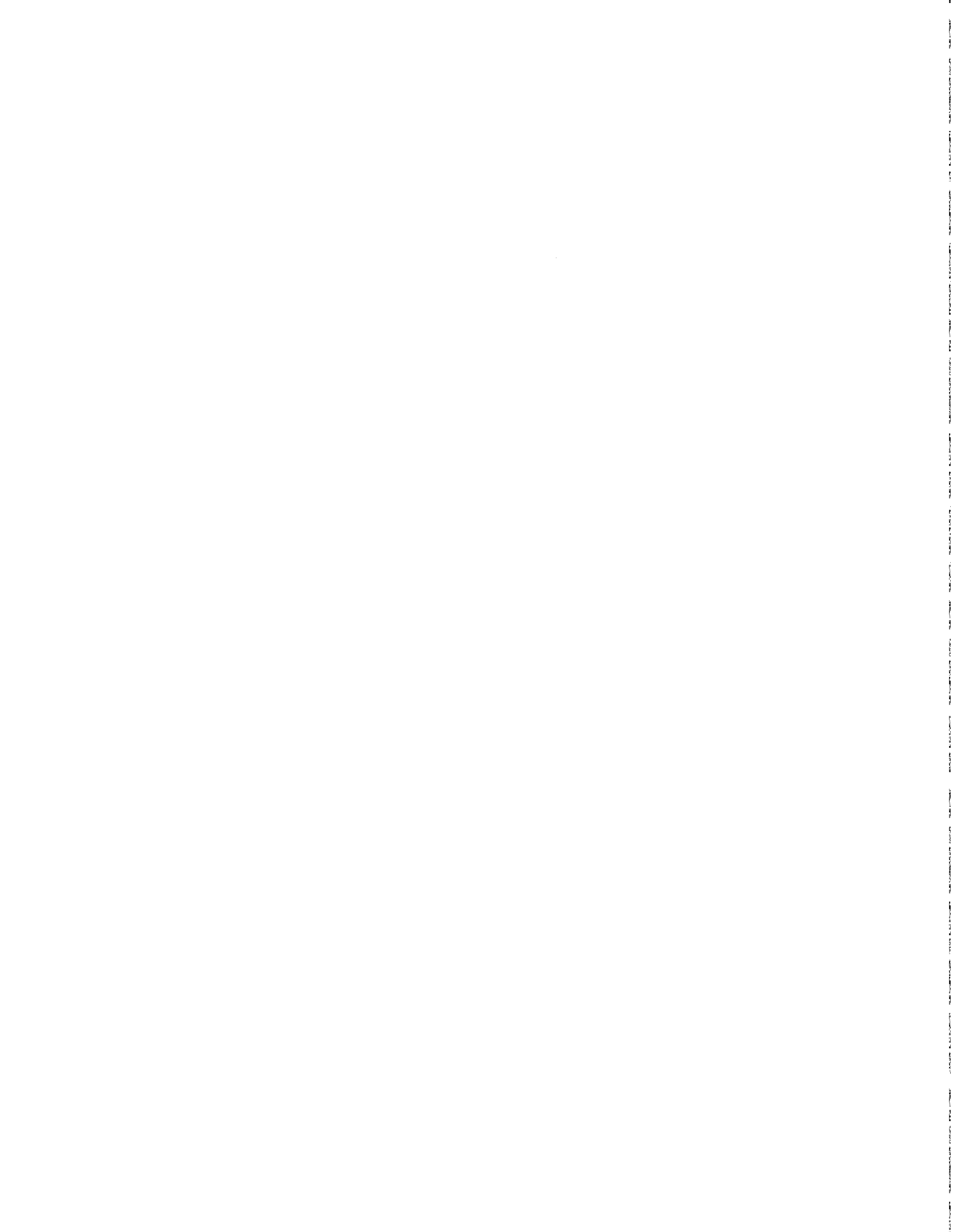


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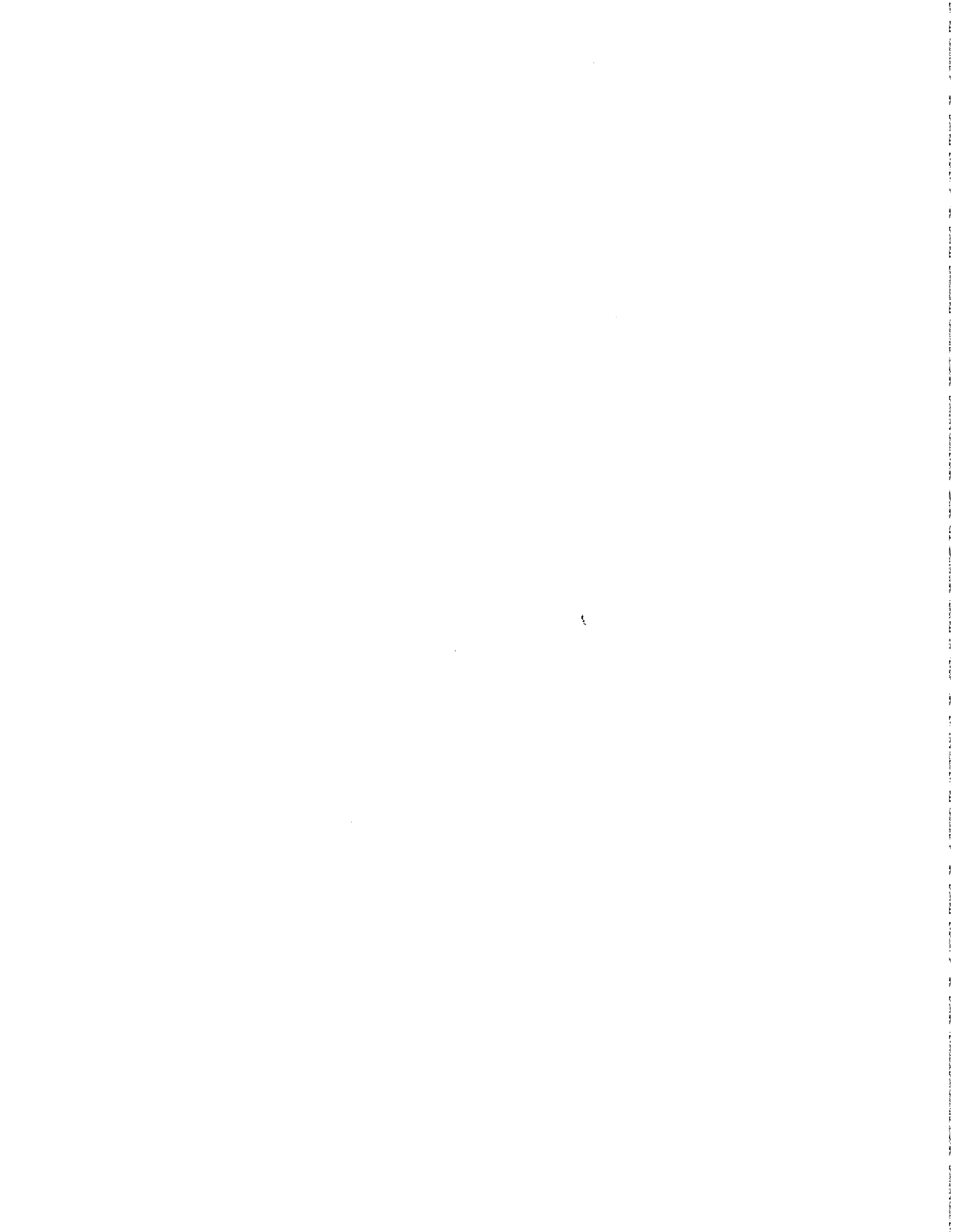
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GENERAL GOVERNMENT MATTERS
APPROPRIATIONS AND MISCELLANEOUS

B-212145 Oct. 2, 1984

STATES--FEDERAL PAYMENTS IN LIEU OF TAXES--DISTRIBUTION TO
UNITS OF LOCAL GOVERNMENT--PROPOSED REGULATIONS--GENERAL
ACCOUNTING OFFICE COMMENTS

Proposed regulations, 43 C.F.R. 1881.1-5(a)(3), 49 Fed. Reg. 31473 (August 7, 1984), provide that a state may not differentiate between moneys received from the various types of entitlement lands in re-allocating payments in lieu of taxes. The controlling statute, 31 U.S.C. 6907(a), contains no such limitation, but provides that any payments may be reallocated and redistributed in whole or in part, if otherwise proper. Accordingly, this restriction in the proposed regulations should be reconsidered by the Department of the Interior.

STATES--FEDERAL PAYMENTS IN LIEU OF TAXES--DISTRIBUTION TO
UNITS OF LOCAL GOVERNMENT--STATE STATUTORY PROVISIONS

In view of the wording of the Payments in Lieu of Taxes Act, 31 U.S.C. 6901, et seq. (1982), as amended, we hold that 1983 Wisconsin Act 470 is within scope of the Interior is required, therefore, to make one payment to State of Wisconsin in accordance with section 6907(b).

B-213720 Oct. 2, 1984

DISBURSING OFFICERS--LACK OF DUE CARE, ETC.--RELIEF DENIED

Relief denied for U.S. Corps. of Army Engineers disbursing officer who authorized payment to assignor of contract proceeds. Although subordinate crossed out invoice instructions directing payment to assignee bank based on absence of assignment in contracting officer's files, in view of strong inference raised by contractor's instruction, disbursing officer had duty to further inquire as to assignment.

B-213720 Oct. 2, 1984 - Con.
DISBURSING OFFICERS--LACK OF DUE CARE, ETC.--RELIEF DENIED

Disbursing officer personally acknowledged receipt of assignment of contract proceeds under 31 U.S.C. 3527(c)(3)(1982). Disbursing officer had duty to retain copy of assignment under his custody or control, independent of contracting officer's files.

B-216279 Oct. 9, 1984
ACCOUNTABLE OFFICERS--RELIEF--LACK OF DUE CARE, ETC.--RELIEF DENIED

Customs Service cashier may not be relieved of liability for deficiency resulting from her failure to obtain funds from Customs auction customer prior to issuing a receipt. Record clearly indicates that cashier acted negligently. Fact that cashier did not actually come into physical possession of funds in question does not prevent her from being held liable for the deficiency.

B-216426 Oct. 9, 1984
DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT OF BAD FAITH OR NEGLIGENCE

Relief is granted Army disbursing official and his supervisor under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his supervisor, and subsequent collection attempts have been pursued.

B-215982 Oct. 17, 1984
DEBT COLLECTIONS--WAIVER--AUTHORITY

Agency request for Comptroller General to allow agency to terminate debt collection in excess of \$20,000 may not be granted since when debt exceeds \$20,000 only the Department of Justice has authority to allow agency's request.

B-214326 Oct. 19, 1984

FUNDS--REVOLVING--AVAILABILITY--GOVERNMENT LOSSES IN SHIPMENT ACT

The revolving fund established by section 2 of the Government Losses in Shipment Act (GLISA), 40 U.S.C. 722 (1982) is not available to provide replacement funds for losses of securities transported by commercial carriers from registered mail facilities to Federal Reserve Banks, up to the amount of the carrier's liability/insurance coverage; the fund would be available to replace losses exceeding that amount. GLISA provides that fund shall not be available with respect to any loss of valuables "of which shipment shall have been made at the risk of persons other than the United States * * *." 40 U.S.C. 723. Under the standard shipping agreement, the private commercial carriers have assumed the risk of loss but only up to the amount of their stated maximum liability.

B-215868 Oct. 22, 1984

ACCOUNTABLE OFFICERS--RELIEF--DUPLICATE CHECKS ISSUED--IMPROPER PAYMENT

Relief is granted Army disbursing officer under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Substitute check appears to have been issued before original check, but this probably was the result of partial obliteration of date causing "12" to appear as "2."

B-214455 Oct. 24, 1984

APPROPRIATIONS--AVAILABILITY--PUBLICITY AND PROPAGANDA--PENDING LEGISLATION

It was not a violation of Federal anti-lobbying statutory and regulatory restrictions for the Governor of South Carolina to use Federal grant funds from the Appalachian Regional Commission in an attempt to influence the State Legislature,

through the use of radio and television spot advertisements, to pass legislation increasing the state's sale taxes to support an improved state education program. The anti-lobbying restrictions contained in 18 U.S.C. 1913 and the annual Treasury, Postal Service, and General Government Appropriation Act only prohibit the use of Federal funds to influence legislation pending in Congress and do not prohibit expenditures to influence legislation pending in state and local legislatures.

B-213379 Oct. 29, 1984

*APPROPRIATIONS--AVAILABILITY--CONSTRUCTION, ETC.--
IMPROVEMENTS--FOREIGN GOVERNMENT PROPERTY*

Absent specific authority, appropriated funds may not be used for permanent improvements to property not owned by Government. Where railroad controlled by the German Government installed safety improvement on U.S. controlled, German-owned railroad tracks U.S. Forces may not contribute to cost because governing North Atlantic Treaty Organization (NATO) treaty provisions do not require U.S. Forces to pay such costs.

B-214446 Oct. 29, 1984

PAYMENTS--ADVANCE--AUTHORITY

The advance payments of performers and judges at the Siglo de Oro Drama Festival are authorized under 41 U.S.C. 255 and since the payments are for the contract price, the checks are held in escrow under Government control until services are issued, and the agency head has apparently determined that the advance payments are in the public interest.

PAYMENTS--ADVANCE--GOVERNMENT CONTROL--ESCROW

Certification of a purchase offer voucher and issuance of a check prior to services being performed constitutes an advance payment even though the issued check is held in escrow under the Government's control and is not released to the payee until performance is complete.

B-214446 Oct. 29, 1984 - Con.
PAYMENTS--PROMPT PAYMENT ACT--DATE OF PAYMENT

Payment is generally considered to be made on the date a Government check for payment is dated.

B-215127 Oct. 30, 1984
APPROPRIATIONS--AVAILABILITY--USER CHARGES--CREDITED TO
APPROPRIATED ACCOUNT--EFFECT

A proposed appropriation act provision authorizing the National Library of Medicine to retain and use payments received for its services would not violate section 401 of the Congressional Budget Act of 1974, as amended, Pub. L. No. 93-344, 88 Stat. 297. Consistent with section 311 of that Act, if such a provision is considered by the Congress after it has completed action on the second concurrent resolution of a particular year's budget, or a required reconciliation bill or resolution, it could be subject to a point of order since it might cause the level of revenues previously set forth to be reduced.

CONGRESS--RULES--POINT OF ORDER--APPLICABILITY--APPROPRIATION
BILLS

To the extent that a provision allowing the National Library of Medicine to make use of the monies collected for services provided its users constitutes a change in substantive law, it could be subject to a point of order in the House of Representatives under Rule XXI and in the Senate under Rule XVI.

DD Released B-214929 Oct. 11, 1984
FOREIGN GOVERNMENTS--DEFENSE ARTICLES AND SERVICES--ARMS EXPORT
CONTROL ACT--REPORTING REQUIREMENTS

The Arms Export Control Act requires the President to report to the Congress within 48 hours after the existence of significant hostilities or terrorist acts which may endanger American lives or property. Under the War Powers

Resolution, a similar reporting requirement exists where U.S. forces have been introduced into hostilities or where imminent involvement in hostilities is clearly indicated. GAO cannot conclude, based on information supplied by the Defense Department, that either reporting requirement was applicable to four recent incidents in El Salvador, where American forces were in the general vicinity of minor attacks against Salvadoran forces.

PERSONNEL LAW: CIVILIAN PERSONNEL

B-214930 Oct. 1, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--MISCELLANEOUS EXPENSES--
AUTO REGISTRATION, ETC. COSTS

Expenses incurred by an employee for re-licensing and re-titling his privately-owned vehicle upon return to his permanent duty station in one state from a temporary duty training assignment in another state whose laws required initial re-licensing and re-titling are reimbursable as miscellaneous expenses.

B-215263 Oct. 1, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
TIME LIMITATION--MANDATORY

An employee who transferred in May 1980, occupied Government quarters at his new permanent duty station immediately upon transfer. In July 1982, he was notified that he had 1 year to vacate those quarters. In June 1983, he purchased a residence there and sold his old residence. He claims reimbursement for real estate expenses incurred 3 years after the date of transfer on the basis that the need to purchase and sell residences did not arise until he was told to vacate those quarters. The claim is denied since under the provisions of Federal Travel Regulations para. 2-6.1e, then in effect, the time limit within which the transactions must occur begins to run when employee reported for duty and expires no later than 2 years after that reporting date. That regulatory limitation does not permit any exceptions and may not be waived.

B-215362 Oct. 1, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--OVERSEAS EMPLOYEES--
TRANSFERRED TO U.S.--HOME SERVICE TRANSFER ALLOWANCE

Employee of Department of Agriculture completed an overseas assignment in Saudi Arabia. He had been assigned there under the Foreign Assistance Act of

1961, as amended, 22 U.S.C. chapter 32 and was thus eligible under 22 U.S.C. 2385(d) (1982) to receive the home service transfer allowance given to Foreign Service Officers. He performed permanent change of station travel from Riyadh, Saudi Arabia, to Winchester, Virginia. Due to a delay in receiving his household goods shipment which was not his fault, he seeks extension of the home service transfer allowance beyond the maximum 30 days allowed by regulation. We hold that such a regulation has the force and effect of law, and is not subject to waiver or exception by the agency on a case-by-case basis.

B-211286 Oct. 2, 1984

LEAVES OF ABSENCE--COMPENSATORY TIME--AGGREGATE SALARY LIMITATION

With respect to calculating compensatory time available to employees, the gross compensatory time earned rather than the net amount of compensatory time earned, less time used by an employee in a pay period, applies in making the determination under 5 U.S.C. 5547 (1982), whether the employee's aggregate rate of pay for any pay period exceeds the maximum rate for grade GS-15. The fact that the employee may have less compensatory time available for use than was actually earned or taken during a pay period is not controlling since the limitation in section 5547 is mandatory.

B-213179 Oct. 2, 1984

COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--SLEEP TIME

Between February 2 and February 12, 1977, employees worked 24-hour shifts because of adverse weather conditions. The Office of Personnel Management (OPM) determined that the shifts consisted entirely of "on-duty" time qualifying for overtime compensation under the Fair Labor Standards Act, but that 8 hours of sleep and mealtime must be deducted from each shift. We hold that the employees are entitled to compensation for sleep and mealtime for the 10-day period in

question because, at the time the employees' claims accrued, there were no OPM regulations or instructions providing a basis for deduction of sleep and meal time from irregular or occasional overtime hours worked.

*FAIR LABOR STANDARDS ACT--GENERAL ACCOUNTING OFFICE--
JURISDICTION*

Since the Office of Personnel Management (OPM) is authorized to administer the Fair Labor Standards Act (FLSA) with respect to most Federal employees, great weight will be accorded to OPM's administrative determinations as to entitlements under the Act. However, since OPM was not given authority to settle or adjudicate claims arising under the FLSA, the General Accounting Office retains jurisdiction to finally decide the propriety of payment on such claims.

B-213777 Oct. 2, 1984

CLAIMS--EVIDENCE TO SUPPORT--CLAIMANT'S RESPONSIBILITY

An employee, who performed temporary duty travel to old permanent duty station, asserts a claim for lodging expenses incident to that duty. The burden of proof is on the claimant to establish the liability of the United States and his right to receive payment. The employee here may not be reimbursed for the expenses claimed based on the present record since the documents submitted are inconsistent and do not convincingly support the claim. However, the Navy may allow payment if the claimant submits adequate additional documentation.

SUBSISTENCE--PER DIEM--HEADQUARTERS--PERMANENT OR TEMPORARY

An employee returned to his old duty station to perform duties there, 3 days after he was transferred to a new permanent duty station. Since employee was at new station for 3 days and temporary duty travel authorization was not issued until after he arrived at new station for duty, he effected a permanent change-of-station transfer and duty thereafter performed at his old duty station is to be regarded as temporary duty for expense reimbursement purposes.

B-214740 Oct. 2, 1984

*DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION
OVERPAYMENTS--APPOINTMENT TO ERRONEOUS GRADE, ETC.*

An Air Force National Guard Technician erroneously received pay at the GS-10 level after she was improperly promoted from a GS-8 position into a superseded GS-10 position that had been previously reclassified to GS-9. The portion of the Government's claim for sums paid prior to the date she was notified of the error was properly waived under 5 U.S.C. 5584. The portion of the Government's claim for the amount paid after she was notified of the error but before the effective date of corrective action may not be waived since the employee could not have assumed, as of the date of notice, that she could retain the overpayment.

B-215699 Oct. 2, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
FINANCE CHARGES--REIMBURSEMENT PROHIBITION--LOAN CLOSING
FEES*

An employee who was transferred in 1979 incurred a 1 percent loan service fee when he purchased a residence at his new duty station. Paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (May 1973), in effect at the time of the employee's transfer, prohibited reimbursement for any fee constituting a finance charge under Regulation Z, 12 C.F.R. 226.4(a). Since a loan service fee constitutes a finance charge, the employee may not be reimbursed for any part of the fee absent a breakdown of items which are excludable from the definition of a finance charge under 12 C.F.R. 226.4(e).

B-214549 Oct. 5, 1984

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--REST AND RECUPERATION
TRAVEL--ADDITIONAL COSTS--ALTERNATE R & R AREA

A foreign service officer stationed in Nepal was authorized rest and recuperation travel to Los Angeles, California, instead of Hong Kong, the designated relief area for employees in Nepal. He traveled by a circuitous route to Los Angeles where he stayed for just over a day before beginning his return travel to Nepal. Since he did not spend his rest and recuperation time in the continental United States as contemplated, he may be reimbursed only for the constructive cost of travel to Hong Kong, the designated relief area.

B-214942 Oct. 5, 1984

TRANSPORTATION--AUTOMOBILES--OVERSEAS EMPLOYEES--AUTHORITY--
LACKING

Prior to his transfer from the United States to Japan, a Department of Defense employee was erroneously advised that if he purchased an automobile in Japan rather than ship his automobile purchased in the United States to Japan, he would be eligible for Government shipment of the automobile purchased in Japan back to the United States upon a subsequent transfer. Although the employee's travel orders incident to the subsequent transfer from Japan authorized Government shipment of an automobile, the employee may not be reimbursed for the shipping expenses since the Federal Travel Regulations authorize Government shipment of an employee's automobile from an overseas station at Government expense or is a replacement for a vehicle that was shipped to the overseas station.

B-214828 Oct. 11, 1984

*COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--RATE
PAYABLE--RESTORATION TO LOWER GRADE*

An air traffic controller who was selected for promotion to a higher grade position at another air traffic control facility claims backpay on the basis of the salary of the higher grade position where the agency improperly removed him prior to his promotion. Pursuant to a decision by the Merit Systems Protection Board the employee was reinstated by the agency at the lower grade at his original duty station, and the employee now does not wish to transfer to the higher grade at the other station. The employee's backpay for the period of improper separation should be computed on the basis of the salary of the higher grade position where the record clearly establishes that the employee would have been promoted if he had not been improperly removed.

*OFFICERS AND EMPLOYEES--TRANSFERS--CANCELLATION--GOVERNMENT
LIABILITY*

An air traffic controller in Ohio who was selected for a higher grade position in Chicago, Illinois, was removed from his position prior to the consummation of the transfer. Upon reinstatement to his former position in Ohio as a result of a Merit Systems Protection Board decision reversing his removal, the employee requests reimbursement of real estate expenses he incurred. The employee may not receive reimbursement for real estate expenses where he entered into the sales agreement to sell his home after he had received notice of his imminent removal.

B-214837 Oct. 11, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
FORECLOSURE SALE--LITIGATION EXPENSES*

The residence of a transferred employee of the Veterans Administration was sold in a foreclosure sale pursuant to court order. The employee may not be reimbursed under 5 U.S.C. 5724a(a)(4) for costs assess-

ed by the court in connection with the foreclosure sale since the Federal Travel Regulations specifically preclude reimbursement for costs of litigation. Costs deducted from the proceeds of the sale to winterize and secure the premises may not be reimbursed in view of the regulatory prohibition against reimbursement for operating and maintenance expenses.

B-215708 Oct. 11, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
RENTAL OF FORMER RESIDENCE AFTER SALE*

A transferred employee whose family continued to occupy their residence at the old duty station on a rental basis after it had been sold claims temporary quarters subsistence expenses for the period of occupancy. Reimbursement is not authorized because there is no objective evidence of intent to vacate the family's permanent residence quarters. Incorrect advice by an agency official cannot be a basis of reimbursement.

B-212292 Oct. 12, 1984

*TRAVEL EXPENSES--OFFICIAL BUSINESS--REDUCTION-IN-FORCE
HEARINGS*

An individual who was separated through a reduction-in-force prior to the expiration of her term appointment in March 1982, appealed the separation in hearings before the Merit Systems Protection Board in May 1982. The appellant prevailed, was awarded back-pay for the unexpired period of her appointment, and now claims travel expenses for her attendance at the hearings. The appellant may not be allowed travel expenses authorized for a Government employee under 5 U.S.C. 5702 and 5704, since she traveled to the hearings after the expiration of her term appointment. Furthermore, she is not eligible for travel expenses payable to non-employee witnesses under 5 U.S.C. 5703, since she was a party to the proceeding.

B-214204 Oct. 19, 1984
TRAVEL EXPENSES--MISCELLANEOUS EXPENSES--HOTEL, ETC. ROOMS--
RESERVATION PENALTY--FAILURE TO CANCEL

An employee of the Government confirmed a motel reservation in the course of her official duties with her personal credit card for an individual traveling to participate in an agency sponsored program. The employee may be reimbursed when the room is subsequently charged to her credit card where the traveler does not use the room or notify the hotel or the agency of his change in plans.

B-215550 Oct. 23, 1984
TRAVEL EXPENSES--USE OF PERSONAL FUNDS--REIMBURSEMENT

Through administrative error in temporary duty travel arrangements, an employee was issued an airline ticket for travel to the wrong destination. He discovered the error en route, and spent \$284 in personal funds to secure a ticket for the proper destination. The employee may be reimbursed for the full cost of the airline ticket, notwithstanding the \$100 cash limitation stated in the Federal Travel Regulations, since the cash purchase resulted from administrative error, related to circumstances which were not within the employee's control, and documentation of the cost of the transportation has been submitted.

B-216378 Oct. 23, 1984
DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--LEAVE
PAYMENTS--EXCESSIVE LEAVE CREDITED

An employee whose annual leave account was erroneously overcredited due to the employing agency's error in establishing her service computation date requests waiver of the collection of the excess leave under 5 U.S.C. 5584. Since the error is susceptible to correction without creating a negative leave balance, there was no overpayment of pay or allowances which may be considered for waiver under the waiver statute.

B-214146 Oct. 24, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
EVIDENCE OF EXPENSES

An employee who travels with a dependent while en route to a new permanent duty station from her old station may not be reimbursed the lodgings portion of the per diem allowance, when the pertinent regulation gives the agency discretion to require lodging receipts, the agency so requires them in its travel handbook, and the employee fails to supply the required receipts.

B-215334 Oct. 24, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
LOAN ORIGINATION FEE

An employee who purchased a home at his new duty station is not entitled to reimbursement of a loan origination fee since the fee is a finance charge that may not be reimbursed under the regulations in effect at the date of the employee's transfer. Although the lender itemized the fee, that itemization shows that the fee covered the administrative expense of issuing the loan as opposed to costs excluded from the definition of finance charges and generally incurred for the purchase of a home without regard to the manner in which that purchase was financed.

B-215709 Oct. 24, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
FINANCE CHARGES--TAX FEES

Employee who purchased a residence incident to transfer may not be reimbursed for tax service and tax certificate fees paid to a title company, as such payments are service charges imposed incident to the extension of credit and thus are finance charges under the Truth in Lending Act and therefore not reimbursable under Federal Travel Regulations, para. 2-6.2d(2)(e).

B-215398 Oct. 30, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
ELIGIBILITY*

Relocation expenses for changing duty stations are reimbursable only if the receiving and losing agencies meet the definition of "agency" under 5 U.S.C. 5721(1). Since a nonappropriated fund activity is not such an "agency," its employee is not entitled to relocation expenses upon transfer to a civilian position with the U.S. Army.

PERSONNEL LAW: MILITARY PERSONNEL

B-214444 Oct. 2, 1984

TRAVEL EXPENSES--MILITARY PERSONNEL--BETWEEN RESIDENCE AND HEADQUARTERS

Air Force members are responsible for bearing the costs of their ordinary commuting travel between their residences and permanent posts of duty. This is so regardless of whether they reside in private lodgings or Government quarters, although shuttle bus service may be established for enlisted personnel residing in Government quarters when other forms of transportation, including private automobile, are not adequate to meet their commuting needs. Hence, two Air Force sergeants did not become entitled to travel allowances for commuting by private automobile between their dormitory and duty area simply because shuttle bus service between those places was discontinued as unnecessary.

B-198961 Oct. 4, 1984

TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--VISITS--CHILD ATTENDING SCHOOL

The decision holding that a member of a uniformed service is not entitled to reimbursement for the travel of his college student-dependent from the United States to the new overseas duty station as dependent travel incident to the member's permanent change of station when the travel is performed only for a brief visit, is reaffirmed. Enactment of legislation authorizing annual round-trip transportation for student-dependents of members stationed outside the United States and the entitlements of civilian employees of the Government in similar circumstances do not provide evidence that Congress intended to change the longstanding interpretation that dependent travel incident to a change of permanent station must be for the purpose of establishing a residence in order to be considered an obligation of the Government.

B-209342 Oct. 10, 1984
DEBT COLLECTIONS--WAIVER--MILITARY PERSONNEL--ALLOWANCES--
BASIC ALLOWANCE FOR QUARTERS (BAQ)

In June 1983 the Comptroller General decided that Army members without dependents on 6-month periods of field duty with the Multinational Force and Observers in the Sinai Peninsula were not entitled to a basic allowance for quarters under the terms of the statute governing payment of the allowance. This decision involved an original construction of the statute, so that it is not limited to prospective application only but instead applies to all Army members who have served with the Multinational Force beginning in February 1982. Those who received erroneous overpayments of the allowance are however, eligible to apply for a waiver of their refund obligations on an individual basis if they have reason to believe that collection action would be inequitable.

QUARTERS ALLOWANCE--BASIC ALLOWANCE FOR QUARTERS--MEMBER ON
FIELD DUTY

Army members without dependents are not entitled to a basic allowance for quarters during 6-month periods when they are assigned on a rotating basis from the United States to peacekeeping duty with the Multinational Force and Observers in the Sinai Peninsula of Egypt. During those 6-month periods they are furnished with Government quarters in the Sinai, and they are eligible to store their household goods in the United States at Government expense. They are on "field duty" in the Sinai within any acceptable meaning or definition of that term. The applicable statutes and regulations preclude payment of a quarters allowance to service members on field duty in those circumstances. Captain John A. Davis, USA, B-209342, June 1, 1983, affirmed.

B-215253 Oct. 30, 1984

COURTS--JUDGMENTS, DECREES, ETC.--RES JUDICATA--SUBSEQUENT
CLAIMS

The doctrine of res judicata is that a final court judgment on the merits of a claim constitutes an absolute bar to a subsequent action by the claimant on the same issues. The Comptroller General adheres to this doctrine and will therefore not consider the claim of a Coast Guard officer for an additional 4 years' credit in the computation of his retired pay based on his 4 years spent as an academy cadet, since he previously asserted this same claim before the Federal courts and received an adverse final judgment on the merits.

PROCUREMENT LAW

B-215892 Oct. 1, 1984 84-2 CPD 374
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--COMPLIANCE

Contracting officer properly found awardee met definitive responsibility criteria where awardee possesses Canadian government permit and obtaining this permit meant that the proposer had to meet the same requirements as those in the certificate specified in the RFP.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
DEFINITIVE RESPONSIBILITY CRITERIA

Specification requiring pilot to meet specific certification requirements and to provide, with the proposal, evidence of compliance establishes definitive responsibility criteria and GAO will review protest that contracting officer failed to apply this criteria to the awardee.

B-212302.2 Oct. 2, 1984 84-2 CPD
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

Prior decision is affirmed where request for reconsideration reflects protester's disagreement with GAO interpretation of language in solicitation and does not specify information not previously considered, nor demonstrate any error of fact or law.

B-212618 Oct. 2, 1984 84-2 CPD 378
CONTRACTS--GRANT-FUNDED PROCUREMENTS--EVALUATION OF OFFERS,
ETC.--CRITERIA--INSUFFICIENT INFORMATION IN RFP

Complaint is sustained where grantee's request for proposals did not provide information sufficient to apprise potential offerors of the relative importance of technical and cost factors and where actual evaluation used undisclosed evaluation factors that were not subfactors of disclosed factors.

*B-212618 Oct. 2, 1984 84-2 CPD 378 - Con.
CONTRACTS--GRANT-FUNDED PROCUREMENT--PROTESTS--INTERESTED
PARTY REQUIREMENT--POTENTIAL OFFEROR*

Potential offeror for contract under grant is interested party to complain of solicitation defects and alleged bias toward it, even though it did not submit an offer. It is not an interested party, however, to complain of unrelated problems in the evaluation of offers received in response to the solicitation, even though it participated as a proposed subcontractor.

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

Complainant has not provided "hard facts" showing bias against it and grantee has provided reasonable explanations for actions cited by complainant as evidence of bias. Therefore, we deny the complaint on this issue.

*B-214103.2 Oct. 2, 1984 84-2 CPD 379
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY EQUAL PROPOSALS--PRICE DETERMINATIVE FACTOR*

Selection of awardee based on lower expected cost was proper where proposals to furnish Sterling engine driven generator sets on cost-plus-fixed-fee basis were otherwise considered equal.

*B-214447, B-214447.2 Oct. 2, 1984 84-2 CPD 380
BIDS--INVITATION FOR BIDS--CLAUSES--INSPECTION OF SERVICES--
PRICE REDUCTION v. REPERFORMANCE PROVISIONS--RECONCILABILITY*

A damages provision in a solicitation for a service contract which permits the government to deduct amounts from the contractor's payments for unperformed or unsatisfactory services does not conflict with any reperformance rights of the contractor. Neither the standard "inspection of services" clause nor the damages provision requires that the government, in the case of unsatisfactory services, permit reperformance. Both provisions permit re-

performance under certain circumstances and both provisions reserve the same rights to the government.

BIDS--INVITATION FOR BIDS--CLAUSES--MANDATORY--OMISSION EFFECT

Where a mandatory provision is omitted from the solicitation, rendering it defective, award still may be made under the solicitation if there was full and free competition, the actual needs of the government will be met by the award and none of the bidders were prejudiced.

BIDS--INVITATION FOR BIDS--CLAUSES--PAYMENT--WITHHOLDING

A provision in the solicitation which permits the contracting officer to withhold 10 percent of the estimated amount owed the contractor for services performed until final completion and acceptance of the work is not in conflict with the standard payments clause, since the standard payments clause states that certain deductions may be taken. The 10-percent withholding was such a deduction.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

In the absence of evidence clearly establishing a substantial adverse impact on competition, GAO will not object to agency's continued use of minimum manning and equipment requirements to ensure adequate service.

CONTRACTS--AMOUNTS--INDEFINITE--GOVERNMENT'S REQUIREMENT

Where invitation anticipated combination firm, fixed-price and indefinite-quantity contract, protester which objected to the fact that the government made no representation as to the actual amount of work that would be requested under indefinite-quantity portion of contract was not prejudiced since, as incumbent contractor, it had special knowledge of the amount of work that would probably be required under indefinite-quantity portion of contract.

B-214447, B-214447.2 Oct. 2, 1984 84-2 CPD 380 - Con.
CONTRACTS--DAMAGES--LIQUIDATED--ACTUAL DAMAGES v. PENALTY--
PRICE REDUCTIONS--REASONABLENESS

A damages provision in solicitation for a service contract which permits the government to deduct from the contractor's payment an amount representing the value of several tasks making up a service item, even though the nonperformance or unsatisfactory performance may have been in connection with less than all of the tasks, imposes an unreasonable penalty since the record does not indicate that these deductions are reasonable in light of the circumstances.

B-215252 Oct. 2, 1984 84-2 CPD 381
BIDS--PRICES--PRICING RESPONSE NONRESPONSIVE--SUBITEMS

Bid for custodial services properly was rejected as nonresponsive where by leaving subitem blank on solicitation schedule the bidder failed to commit itself to a predetermined equitable adjustment factor to be used in the event the time of performance of certain cleaning tasks was changed from nights to days, or vice versa, which from experience the agency reasonably anticipated could occur and for which the agency had paid a substantial sum under the prior year's contract.

B-215471.2 Oct. 2, 1984 84-2 CPD 382
BIDS--PRICES--BELOW COST

Submission of below-cost bid is not illegal.

BIDS--RESPONSIVENESS

Where awardee takes no exception to the solicitation terms in its bid, GAO has no basis for finding the bid nonresponsive.

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

GAO does not generally review protests of affirmative determinations of responsibility.

*B-215471.2 Oct. 2, 1984 84-2 CPD 382 - Con.
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Protest against failure of awardee to submit proof with bid that solicited facility was zoned for intended use is denied where uncontroverted evidence shows that proof was submitted with bid.

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

Whether contractual obligations are met during performance of contract is a matter of contract administration which GAO will not consider.

*B-215697 Oct. 2, 1984 84-2 CPD 384
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS*

Protester's contention that the contracting agency improperly requested a second round of quotations, raised after the closing date for receipt of quotations, is untimely since GAO Bid Protest Procedures require such a protest to be filed prior to closing.

*PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
REDUCTION*

There is no legal restriction on the amount that can be offered to an agency as a trade-in allowance for used equipment. If a high trade-in allowance is viewed as a reduction from prices stated in vendor's Federal Supply Schedule contract, enforcement of the contract's price reduction provision is a matter of contract administration for the General Services Administration.

*B-216246 Oct. 2, 1984 84-2 CPD
CONTRACTS--PAYMENTS--ASSIGNMENT--VALIDITY OF ASSIGNMENT--
ASSIGNEES' RIGHT TO PAYMENT*

Where assignment was properly executed and notice given in accordance with statutory requirements,

the assignee is entitled to payment. Obligor (United States in this case) which had notice of valid assignment and, nevertheless, paid assignor is liable to the assignee for amount of erroneous payment.

*B-215168 Oct. 3, 1984 84-2 CPD 385
BIDS--PRICES--REASONABLENESS--ADMINISTRATIVE DETERMINATION*

Contracting officer's determination concerning price reasonableness is a matter of administrative discretion which GAO will not question unless the determination is unreasonable or there is a showing of bad faith or fraud.

BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--CONFORMABILITY OF EQUIPMENT, ETC. OFFERED

A bid is properly rejected as nonresponsive where the offered product does not conform to the solicitation's specifications.

BUY AMERICAN ACT--CONTRACTOR COMPLIANCE WITH CERTIFICATION--CONTRACT ADMINISTRATION MATTER

GAO will not review a protest challenging a bidder's intended compliance with its representation in its Buy American certificate that domestic source end products will be supplied.

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

Protests alleging deficiencies in an invitation for bids apparent prior to bid opening must be filed with either the contracting agency or GAO before bid opening in order to be timely.

*B-212531.2 Oct. 5, 1984 84-2 CPD 386
CONTRACTS--AWARDS--PREFERENCE--WOMAN-OWNED FIRMS*

Protest alleging that protester should have been given preferential consideration as a woman-owned business is denied. There is no law or regulation which requires an agency to structure its requirements to make award to a woman-owned firm in a particular procurement.

CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL

Protest alleging that protester was prejudiced because it was not informed until last day of negotiations that it was in competition with another firm for word processing services contract and that usual negotiation procedures were not used is denied. Since agency first attempted to negotiate 1-year extension of protester's previous contract to provide such services under option clause of protester's contract, but negotiations reached an impasse on the day that contract was to expire, protester was informed that a second offeror would be solicited and protester was given an opportunity to provide revised proposal, protester was not prejudiced. Moreover, protester's lowest offer was significantly higher than awardee's offer.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Allegation that protester should have been awarded cost-plus-award-fee contract because its offer was approximately \$100,000 less than awardee's offer is denied, because record shows that awardee's offer was actually significantly lower than protester's best offer.

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

Protest issues concerning agency actions which took place during discussions and evaluation process are untimely where first raised in supplemental protest letter filed more than 5 weeks after award of contract and more than 4 weeks after protester filed

initial protest. Later-raised issues are different from initial protest issues and must independently satisfy timeliness requirement that they be filed within 10 working days after protester knew these bases for protest. 4 C.F.R. 21.2(b)(2) (1983).

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

Agency is not required to set aside a procurement for onsite word processing services for small businesses where the particular services required were not previously procured as a small business set-aside.

*B-214311.3 Oct. 5, 1984 84-2 CPD 387
CONTRACTS--TERMINATION--RESOLICITATION--ORIGINAL EVALUATION
IMPROPER*

Agency's decision to request new quotations after terminating a contract upon discovering that it had improperly evaluated the awardee's quotation is not legally objectionable where other quoter was not entitled to award for remaining contract term because its original quotation was not low and included services not needed by the government.

*B-214716.1 et al. Oct. 5, 1984 84-2 CPD 388
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALAUTION
CRITERIA--FAILURE TO APPLY*

Protest is sustained where record shows agency disregarded evaluation criterion in considering cost of expected overtime use of facilities to be leased.

CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL

Protests filed by other firms that are not prejudiced by agency's error in evaluating proposals are denied.

B-215224 Oct. 9, 1984 84-2 CPD 389

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AGGREGATE
v. SEPARABLE ITEMS, PRICES, ETC.--IMPROPER AGGREGATION*

Aggregation of unrelated requirement for replacement of one computer system (not IBM-compatible) and requirement to provide backup capability for separate IBM system is improper. Requirements should have been stated as separate line items with vendors free to propose on either. Moreover, GAO questions requirement for 8-year backup capability for computer system for which contracts expire in less than 2 years.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--PERFORMANCE v. DESIGN SPECIFICATIONS*

Requirement for "reentrant software"--a design specification--is improper where record does not provide full justification for specific requirement to exclusion of other approaches to providing same capability--multiuser access to programs. Although untimely, this question was considered at request of court.

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

Protest alleging vagueness in requirement for offered computer system to have 12 megabytes of memory is denied where protester offers system of such capacity and has not demonstrated how this requirement may have precluded protester's participation in procurement.

B-215355 Oct. 9, 1984 84-2 CPD 390

CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION

Protest is dismissed where the material issues are before a court of competent jurisdiction, judicial relief pending a decision by GAO has not been requested, and the court has not expressed interest in receiving GAO's views.

B-215411.3 Oct. 9, 1984 84-2 CPD 391
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS

Request for reconsideration of prior decision, filed with GAO more than 10 working days after decision was issued and, presumably, received by the protester, is dismissed as untimely.

B-215662, B-215662.2 Oct. 9, 1984 84-2 CPD 392
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest is dismissed as academic where solicitation underlying protest has been canceled.

B-216424 Oct. 9, 1984 84-2 CPD 393
CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS

Protest against prime contractor's award of subcontract is dismissed since it concerns contract administration, a function of the procuring agency, and the protester has not alleged the existence of any of the limited circumstances under which GAO reviews subcontract awards.

B-216452 Oct. 9, 1984 84-2 CPD 394
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--
ADMINISTRATIVE DETERMINATION--LABOR DEPARTMENT REVIEW

GAO does not consider complaint that a firm is not a manufacturer under the Walsh-Healey Public Contracts Act. By law, such matters are for determination by the contracting agency in the first instance, subject to final review by the Small Business Administration (if a small business is involved) and the Secretary of Labor.

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

Allegation that firm does not have adequate facilities to perform contract concerns affirmative responsibility determination which will not be reviewed absent circumstances not present here.

*B-216474 Oct. 9, 1984 84-2 CPD 395
BIDDERS--QUALIFICATIONS--MANUFACTURER OR DEALER--
ADMINISTRATIVE DETERMINATION--LABOR DEPARTMENT REVIEW*

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

*B-216511 Oct. 9, 1984 84-2 CPD 396
GENERAL ACCOUNTING OFFICE--JURISDICTION--PATENT INFRINGEMENT*

An allegation that a solicitation is improper because it could lead to the infringement of patents, licenses and proprietary data rights concerns issues for review by the courts, not by GAO under its Bid Protest Procedures.

*B-216544 Oct. 9, 1984 84-2 CPD 397
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL v.
SPECIFIC--EFFECT ON RESPONSIBILITY*

Where a solicitation for ambulance services contains only a general licensing requirement and does not indicate that a specific state or city license is required, the responsibility for obtaining whatever licenses might be necessary is the contractor's, and the contracting officer need not be concerned with the licensing requirement in determining the bidder to be responsible.

*B-216413 Oct. 10, 1984 84-2 CPD 398
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION*

Untimely protest does not raise a significant issue so as to warrant its consideration on the merits where the issue is not of first impression and does not sufficiently impact on the procurement community.

B-216554 Oct. 10, 1984

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--CONGRESSIONAL TRANSMITTAL OF PROTEST*

GAO declines to issue a decision on the merits of a protest forwarded by a member of Congress because the protest is untimely under GAO's Bid Protest Procedures, but advises member for constituent's benefit that a bid delivered late by a commercial courier does not come within the "registered or certified mail" exception to the late bid rules.

B-215595 Oct. 11, 1984 84-2 CPD 399

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
FACTORS NOT IN SOLICITATION--WRITTEN DISCLOSURE DURING
NEGOTIATIONS*

When offerors are advised of changes in the government's requirements, offerors have actual notice of the changes regardless of any inconsistency between the changes and the solicitation and regardless of the procuring agency's failure to formally amend the solicitation to incorporate the changes.

*CONTRACTS--NEGOTIATION--PRICES--REDUCTION--AFTER BEST AND
FINAL OFFERS--PROPRIETY*

Protest that procuring agency improperly permitted low offeror to reduce its otherwise low price after the receipt of best and final offers is denied because low offer submitted was determined to be acceptable and most advantageous to government at time reductions were received. Further, there is no evidence that the procuring agency lessened the contract requirements in any way in permitting these reductions.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Allegation that procuring agency relaxed requirement that all office doors swing outward is denied when review indicates that solicitation does not require that all office doors swing outward.

*B-216146 Oct. 11, 1984 84-2 CPD 400
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--SAMPLES--
NONCOMPLIANCE WITH SPECIFICATIONS*

Where a solicitation required submission of bid samples with the bid to determine compliance with a specification requirement, a bid not accompanied by the samples was properly rejected as nonresponsive.

*B-216583 Oct. 11, 1984 84-2 CPD 401
BONDS--BID--DISCREPANCY BETWEEN BID AND BID BOND--BID
NONRESPONSIVE*

Bid of small business bidder who submits bid bond naming large business as principal is nonresponsive because bid bond does not protect government's interests.

CONTRACTS--AWARDS--ERRONEOUS--EFFECT ON SUBSEQUENT ACTIONS

Prior improper awards based on bids offering defective bid bonds do not justify repetition of error of accepting nonresponsive bid for award.

*B-214111 Oct. 12, 1984 84-2 CPD 402
CONTRACTS--AWARDS--VALIDITY--PROCEDURAL DEFICIENCIES--NOTICE
OF AWARD*

Agency's failure to follow regulation concerning postaward notification to unsuccessful offeror is a procedural deficiency which does not invalidate an otherwise proper award.

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

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

*B-214111 Oct. 12, 1984 84-2 CPD 402 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COST REALISM ANALYSIS--REASONABLENESS*

Protest alleging that agency's cost analysis was improper is denied where record indicates that agency's cost analysis had a reasonable basis and followed the provisions set forth in the RFP.

*B-214595 Oct. 12, 1984 84-2 CPD 403
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--COMPLIANCE*

Protest that awardee did not meet definitive responsibility criteria requiring experience in successfully installing six specific foundry process systems which have been in satisfactory operation for at least 24 months is sustained since the information submitted to contracting agency prior to award did not provide a reasonable basis for agency's determination that awardee met requirement.

Vague references to a firm's general reputation do not suffice to show compliance with definitive responsibility criteria requiring detailed information documenting satisfactory experience in installing specific, narrowly-defined types of foundry process systems.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NOT BASIS FOR DETERMINATION BY GAO*

GAO has no basis upon which to determine the validity of the protester's contention that the intermediate bidder between it and the awardee is nonresponsible, where the protester's argument is only in general terms and the agency advises it never determined the intermediate bidder's responsibility because that firm was not in line for award.

B-214595 Oct. 12, 1984 84-2 CPD 403 - Con.
*CONTRACTORS--RESPONSIBILITY--DETERMINATION--TIME FOR
MAKING DETERMINATION*

Prospective contractor's responsibility should be measured with respect to information available at time of award rather than at an earlier or later time.

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

Claim for bid preparation costs is sustained even though there is another bidder, whose responsibility has not been determined, between protester and awardee, where agency proceeded to make award to a firm which did not meet unusually detailed and stringent definitive responsibility criteria.

*GENERAL ACCOUNTING OFFICE--RECOMMENDATIONS--CONTRACTS--
TERMINATION--NOT REQUIRED--RESULTING DELAYS, COSTS, ETC.*

GAO does not recommend that improperly-awarded contract be terminated for convenience of the government since termination would result in substantial delays for long-needed project and substantial termination costs.

B-216221 Oct. 12, 1984
*COMPROMISES--TRANSPORTATION MATTERS--ACCEPTANCE OF OFFER--
TIMELINESS*

Compromise offer submitted to carrier by agency to settle loss and damage claim does not bind an agency unless carrier timely accepts offer.

SET-OFF--TRANSPORTATION--PROPERTY DAMAGE, ETC.

Where carrier does not indicate timely acceptance of compromise offer, offer may be revoked by agency, and agency may set off from monies due carrier higher amount which represents full contractual liability of carrier to agency.

B-215532 Oct. 15, 1984 84-2 CPD 404
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD

GAO dismisses as academic protest of second low bidder against inclusion of warranty provision in solicitation, where bids opened after the protest was filed show that the protester is not the low bidder and would not be in line for award even if its protest was sustained and the warranty provision was omitted from the solicitation.

B-216235 Oct. 15, 1984 84-2 CPD 405
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
PROTESTER NOT IN LINE FOR AWARD

Protest that solicitation specifications restrict competition to only one manufacturer and are, therefore, overly restrictive is dismissed as academic where protester's bid was found responsive to the specifications but protester was second low bidder and not in line for award because of high price and not because of inability to meet allegedly restrictive specifications.

B-216526 Oct. 15, 1984 84-2 CPD 406
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest contending that specification was unduly restrictive of competition is dismissed as untimely because it was not filed prior to closing date for receipt of initial proposals.

B-216551 Oct. 15, 1984 84-2 CPD 407
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest to GAO concerning alleged solicitation defects is untimely filed where the firm protested to the contracting activity prior to the closing date for receipt of best and final offers but did

not protest to GAO within 10 working days after the closing occurred. Where an agency does not take corrective action as requested, a proposal closing constitutes initial adverse action on the agency-level protest.

*B-216593 Oct. 15, 1984 84-2 CPD 408
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--ADVERSE AGENCY ACTION EFFECT*

Even if pre-closing date complaints to the contracting agency concerning allegedly unduly restrictive specifications could be considered as a protest, a subsequent protest to GAO filed more than 10 days after the agency received proposals on the closing date without relaxing the specifications is untimely under GAO Bid Protest Procedures.

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

A protest complaining about allegedly unduly restrictive specifications filed with GAO after the closing date for receipt of proposals is untimely under GAO Bid Protest Procedures.

*B-216659 Oct. 15, 1984 84-2 CPD 409
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Assertion that a competitor cannot meet the specifications or the delivery schedules is a challenge to a determination that the competitor is responsible. GAO does not review such determinations except in circumstances not present here.

*B-211128.2 Oct. 16, 1984 84-2 CPD 410
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility unless there is a showing of possible fraud on the part of the contracting officials or an allegation that definitive responsibility criteria have been misapplied.

*B-211128.2 Oct. 16, 1984 84-2 CPD 410 - Con.
CONTRACTS--NEGOTIATION--AWARDS--PROCEDURAL DEFICIENCIES--
CORRECTIVE ACTION--REVIEW BY GAO*

A contractor who acted in good faith and did not induce the procurement error for which recommended corrective action is intended can still be subject to the corrective action even when hardship will result.

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

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

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DEFAULTS
AND TERMINATION--MATTER OF CONTRACT ADMINISTRATION*

Request for a hearing prior to termination for convenience of awarded leases relates to contract administration and is not for consideration under GAO Bid Protest Procedures.

*B-214333 Oct. 16, 1984 84-2 CPD 411
CONTRACTS--OPTIONS--SOLICITATION PROVISIONS--DEFINITE
QUANTITY CONTRACTS--EFFECT*

The existence in a solicitation for a definite quantity contract of an option for increased quantities does not transform the proposed contract into an indefinite quantity contract.

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

Protest concerning alleged improprieties in a solicitation must be filed prior to the closing date for receipt of initial proposals. Therefore, protest after closing date that solicitation is structured to permit de facto sole-source procurement is untimely.

*B-214791 Oct. 16, 1984 84-2 CPD 412
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Exclusion of the protester's non-metallic piping conduit from use on a steam distribution system with an operating temperature of 353 degrees is justified where the record shows: (1) that the protester's conduit can be damaged by steam at temperatures in excess of 250 degrees; and (2) that the procuring activity's decision to exclude the conduit was based on an informed engineering determination that the conduit likely would be exposed to excessive steam temperatures in the event of a system rupture.

*B-216674 Oct. 16, 1984 84-2 CPD 414
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--
ELIGIBILITY OF OFFEROR--FAILURE TO COMPLETE ELIGIBILITY
PROVISION--EFFECT*

Offeror which indicates in a "place of performance" clause that it will perform contract in a city which is in a labor surplus area, but which does not complete the "Eligibility For Preference As A Labor Surplus Concern" provision, is not entitled to labor surplus area evaluation preference because place of performance does not, under circumstances, establish that offeror is a labor surplus area concern.

*CONTRACTS--NEGOTIATION--COMPETITION--EQUALITY OF COMPETITION--
NOT DENIED TO PROTESTER*

Agency's acceptance of an offer that deviated from specifications provides no basis to sustain protest where protester submitted offer on same basis as did awardee so that no competitive prejudice accrued to protester as a result of the acceptance.

*B-214625, B-214625.2 Oct. 17, 1984 84-2 CPD 415
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Protesters have not shown that burial depths specified by Army Corps of Engineers for installing a direct buried underground heat distribution system are un-

reasonable or arbitrary or that Corps improperly permitted innovative engineering approaches to be used for installing the shallow trench underground heat distribution system, but not for the direct buried system.

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

Protests filed with GAO more than 2 months after protester's learn of initial adverse agency action on their pre-bid-opening date protests to procuring activity are dismissed as untimely.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION*

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

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

Protests against solicitation improprieties raised several months after bid opening date are untimely under GAO Bid Protest Procedures, which require protests alleging improprieties apparent on the face of the solicitation to be filed prior to the bid opening date. See Comp. Gen. dec. cited.

*B-215053 Oct. 18, 1984 84-2 CPD 417
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION*

In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the agency's evaluators, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.

B-215053 Oct. 18, 1984 84-2 CPD 417 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION
ALLEGATION OF BIAS NOT SUSTAINED

GAO will not attribute bias to an agency merely on the basis of supposition or conjecture.

LEASES--NEGOTIATION--EVALUATION OF OFFERS--COST COMPARISON--
OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-104--PROTESTER'S
BURDEN OF PROOF

When the procurement is affected by an OMB Circular No. A-104 cost analysis comparison of various lease proposals, it is incumbent upon a protester challenging the analysis to demonstrate that the analysis was faulty or misleading to a material degree.

B-215383 Oct. 18, 1984 84-2 CPD 418
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS

Determination of competitive range is primarily a matter of procurement discretion which will not be disturbed by our Office in the absence of a clear showing that such determination was an arbitrary abuse of discretion or in violation of procurement statutes or regulations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

The evaluation of proposals is primarily the responsibility of the procuring agency and not subject to objection unless shown to be unreasonable, arbitrary, or a violation of law. Where protester's proposal was determined to be technically unacceptable due to lack of historical expertise, evaluation was not unreasonable, arbitrary or violative of the law where three evaluators gave protester scores of zero, one and two, respectively, out of a possible score of five.

B-216546 Oct. 18, 1984 84-2 CPD 419
BIDS--LATE--MISHANDLING DETERMINATION--EXPRESS MAIL

Bid sent by Postal Service express mail that arrives after bid opening is late and may not be accepted. Fact that Postal Service promised to deliver bid earlier than it actually did does not constitute government mishandling at government installation so as to permit consideration of bid.

B-216566, B-216566.2 Oct. 18, 1984 84-2 CPD 420
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO does not consider protests relating to the small business size status of a concern because the Small Business Administration has conclusive authority to determine size status.

B-216591 Oct. 18, 1984 84-2 CPD 421
BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

Submission of a below-cost bid is not illegal and provides no basis for challenging the award of a government contract to a responsible bidder.

B-216684 Oct. 18, 1984 84-2 CPD 422
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--TENNESSEE VALLEY AUTHORITY PROCUREMENTS

GAO will not review Tennessee Valley Authority (TVA) procurement because GAO is precluded by TVA Act for disallowing credit for expenditures which TVA Board determines necessary in carrying out TVA Act.

B-215864 Oct. 19, 1984 84-2 CPD 423
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED

Protest which is also the subject of court action, generally questioning awardee's ability to comply with contract requirement that successful offeror operate government vessels in worldwide trade, constitutes challenge to procuring activity's affirmative

responsibility determination which neither GAO nor the courts will review except under circumstances not present here. Similarly, a protest challenging an affirmative determination of responsibility that is based on allegation that award of the contract to offeror will result in offeror violating a subsidy contract which offeror holds with the Maritime Administration and Maritime regulations governing the payment of subsidies is not a basis of protest that GAO will review.

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

Allegation that vessel operator receiving government subsidies to operate United States commercial vessels in foreign commerce is precluded, without prior approval from the Maritime Administration, from submitting an offer under solicitation which requires operation of government-owned vessels in United States domestic coastal trade is denied where solicitation does not require that subsidized vessel operators have such approval as prerequisite to award.

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

Protest filed with procuring activity within 10 working days of protester's discovery of information which formed its basis of protest is timely under GAO Bid Protest Procedures.

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

Where RFP clearly did not provide for evaluation of subsidy paid by government to offeror, protest filed after the closing date that subsidy should have been a factor under solicitation evaluation scheme is untimely. 4 C.F.R. 21.2(b) (1984). However, court is advised that agency properly did not provide for subsidy evaluation.

*B-216501 Oct. 19, 1984 84-2 CPD 424
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against alleged impropriety in solicitation of best and final offers made after closing date for best and final offers is untimely.

*B-216650 Oct. 19, 1984 84-2 CPD 425
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or misapplication of definitive criteria against which responsibility is to be determined.

CONTRACTS--PROTESTS--ALLEGATIONS--VAGUE

Protest allegation that "missing acknowledgment has far ranging legal effects and is not a minor informality," without any identification of what was not acknowledged or other factual statement or explanation of why something other than a minor informality is involved, is insufficient as a protest allegation which GAO will review.

*B-216671 Oct. 19, 1984 84-2 CPD 426
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that a solicitation contained improprieties is dismissed as untimely because it was not filed prior to the time set for receipt of proposals.

*B-213428.3 Oct. 22, 1984 84-2 CPD 427
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
COMPELLING REASONS ONLY*

Agency had cogent and **compelling** reason to cancel IFB for generators where IFB had no specification for spare parts, which was one line of IFB, or standard to

evaluate bidder's proposed spare parts, because interests of both government and bidder are prejudiced by such vague specification.

*B-214793 Oct. 22, 1984 84-2 CPD 428
CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST
COMPARISON--AGENCY IN-HOUSE ESTIMATE--BASIS*

Navy properly considered "retained pay" of government employees as separate item to be added to contractor's proposed cost in making cost comparison under TM-6 of OMB Circular A-76 and Cost Comparison Handbook, rather than as "retained pay" part of flat rate "conversion" factor. Solicitation was issued and proposals were opened when TM-6 was still effective, prior to issuance of August 1983 revision of OMB Circular A-76, which made "retained pay" part of "conversion" factor. August 1983 revision specifically excepted cost comparisons which had already begun.

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

Protester has not met burden of showing Navy's complex and subjective calculations of estimate of retained pay, which were based upon mock-reduction of force and which were part of cost comparison between in-house and contract effort conducted pursuant to OMB Circular A-76 and Cost Comparison Handbook, were erroneous or excessive.

*B-215308.3 Oct. 22, 1984 84-2 CPD 426 ,
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

When a protest alleging that an agency determined improperly that a proposal was unacceptable is filed more than 1 month after the agency mailed to the protester a letter of unacceptability, the protest is untimely.

*B-215402.2 Oct. 22, 1984 84-2 CPD 430
BONDS--BID--REQUIREMENT--ADMINISTRATIVE DETERMINATION*

Protest that RFP requirement for 100-percent performance bond discriminates against small business

is denied since contracting officer has discretion to determine whether need exists for bonding requirement and record shows that bond was considered necessary due to critical nature of services being provided and the large inventory of government equipment being furnished the contractor.

BONDS--BID--REQUIREMENT--REASONABLENESS

Where record shows that bonding requirement is reasonably imposed, requirement does not constitute a predetermination of contractor responsibility.

B-215485 Oct. 22, 1984 84-2 CPD 431

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--FACTORS NOT IN SOLICITATION--ORAL DISCLOSURE DURING NEGOTIATIONS

Even where an agency's requirement for certain computer software may not have been clearly set forth in a procurement synopsis, an offeror's failure to satisfy the requirement during equipment demonstrations constitutes a proper basis for rejecting the offeror's computer system as technically unacceptable where agency comments and actions during the demonstrations should have made the offeror aware of the requirement

B-216024 Oct. 22, 1984 84-2 CPD 432

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protest against price ceiling imposed by agency for one item in a multi-item IFB is without merit since determination of what will satisfy government's needs is primarily within the discretion of procuring officials and GAO will not interpose its judgment for that of the contracting agency where it is not shown that the agency's judgment was erroneous and that award under solicitation will unduly restrict competition.

B-216207 Oct. 22, 1984 84-2 CPD 433
INDIAN AFFAIRS--CONTRACTING WITH GOVERNMENT--PREFERENCE
TO INDIAN CONCERNS

Buy Indian Act does not require that particular contracts be set aside for exclusive participation of Indian firms and, therefore, GAO will not consider protest that procurement should have been restricted to Indian firms absent a clear showing of an abuse of the broad discretion conferred by the act.

B-216284.2 Oct. 22, 1984 84-2 CPD 434
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest against agency request that bidders revive expired bids by extension of bid acceptance period is untimely when protest is filed with GAO more than 10 days after protester was advised of the request.

B-216436 Oct. 22, 1984 84-2 CPD 435
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Protest filed more than 10 working days after protester learned of the denial of an agency-level protest is untimely.

B-216540 Oct. 22, 1984 84-2 CPD 436
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest of amendment making solicitation initially issued as a total small business set-aside an unrestricted procurement filed with both contracting agency and out Office after bid opening is untimely since agency's publication of amendment in Commerce Business Daily placed protester on notice of basis of protest prior to bid opening.

B-216572 Oct. 22, 1984 84-2 CPD 437
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

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

B-216584 Oct. 22, 1984 84-2 CPD 438
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Bidder's ability to perform contract according to
specifications is a matter of responsibility and
GAO does not review a contracting officer's affir-
mative determination of responsibility except in limi-
ted circumstances not applicable here.

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

Whether specification requirements are met during
performance of contract is a matter of contract
administration which GAO will not consider.

B-216587 Oct. 22, 1984 84-2 CPD 439
GENERAL ACCOUNTING OFFICE--JURISDICTION--COOPERATIVE
AGREEMENTS--AWARDS

Complaint regarding award of cooperative agreements will
not be considered where complainant has not made some
showing that contracts rather than cooperative agree-
ments should have been used or that conflict of interest
was involved.

B-216630, B-216630.2 Oct. 22, 1984 84-2 CPD 440
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protests alleging improprieties in an IFB apparent
prior to bid opening, but filed after bid opening,
are untimely and not for consideration.

B-216698 Oct. 22, 1984 84-2 CPD 441
GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR STIPULATIONS--
SERVICE CONTRACT ACT OF 1965

Protest that awardee will not comply with the wage rate and benefit provisions of the Service Contract Act is dismissed because enforcement of the Service Contract Act rests with the Department of Labor, and whether contract requirements actually are met is a matter of contract administration, which is a function of the contracting agency.

B-216721 Oct. 22, 1984 84-2 CPD 442
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging improprieties in an IFB apparent prior to bid opening must be filed before that date with either the contracting agency or GAO.

B-216747 Oct. 22, 1984 84-2 CPD 443
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review protests concerning affirmative determination of responsibility unless there is a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied.

CONTRACTS--NEGOTIATION--PRICES--BELOW COST--EFFECT ON
RESPONSIBILITY

Absent a finding of nonresponsibility, no basis exists to withhold contract award merely because the low offeror may have submitted a below-cost proposal where the contract award is not on a cost reimbursement basis.

B-216760. Oct. 22, 1984 84-2 CPD 444
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest concerning an alleged solicitation improp-
riety that is not filed prior to bid opening is
untimely.

B-213209.2 Oct. 23, 1984 84-2 CPD 445
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED

A request for reconsideration in which protester
disagrees with prior decision but does not present
any arguments or facts to show that that decision
was erroneous provides no basis for modifying that
decision.

REGULATIONS--COMPLIANCE--FAILURE TO COMPLY

Agency's failure to follow its own regulation that
does not define substantive rights of offerors but is
designed for the benefit of the government does not
provide a basis for upholding complaint. Agency regu-
lation that prohibits disclosure of government cost
estimate in a negotiated procurement is such a regula-
tion.

B-213430.2 Oct. 23, 1984 84-2 CPD 446
CONTRACTS--AWARDS--ERRONEOUS

An improperly awarded contract is not void where the
deviation from the procurement regulations is neither
egregious nor obvious to the awardee.

CONTRACTS--TERMINATION--NOT IN THE GOVERNMENT'S BEST INTEREST

Decision not to recommend contract termination where
a protest was sustained is affirmed. Termination would
not be in the best interests of the government because
it would be costly and potentially disruptive to the
agency's mission, and the prejudice to potential offerors

or the integrity of the competitive system is not so egregious that it outweighs the negative effects on the government of termination.

*B-214493.2 Oct. 23, 1984 84-2 CPD 447
BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION
THAT ITEM OFFERED FAILED TO MEET SPECIFICATIONS*

A bid is nonresponsive where descriptive data required to be submitted with it for evaluation purposes fails to show conformance with specifications.

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

Where the only evidence on an issue is the conflicting statements of the contracting agency and the protester, the protester has not met its burden of affirmatively proving its case.

*B-214746 Oct. 23, 1984 84-2 CPD 448
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ALLEGATION OF BIAS NOT SUSTAINED*

Where procuring agency has reasonably found awardee's proposal to be superior, protester has not met its burden of proving that procuring agency favored awardee.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY v. COST*

In negotiated procurement, award need not be made to the lowest cost offeror where request for proposals so provides and decision to award to higher cost offeror is reasonable.

*CONTRACTS--PROTESTS--INFORMATION EVALUATION--SOURCES LISTED
IN PROPOSAL--REBUTTAL BY OFFEROR*

Procuring agency is not required to permit offeror to rebut information that agency received from sources listed in offeror's proposal.

B-214746 Oct. 23, 1984 84-2 CPD 448 - Con.
GENERAL ACCOUNTING OFFICE--JURISDICTION--COOPERATIVE
AGREEMENTS--ADMINISTRATION

GAO will not consider whether recipient of federal assistance under cooperative agreement was required to have its own protest procedure since failure to have such procedure would not affect award propriety.

GENERAL ACCOUNTING OFFICE--JURISDICTION--COOPERATIVE
AGREEMENTS--AWARDS ;

GAO reviews complaint by prospective contractor concerning award by recipient of federal assistance under cooperative agreement to insure compliance with statutory and regulatory requirements and terms of the cooperative agreement.

B-215135 Oct. 23, 1984 84-2 CPD 449
FEDERAL ACQUISITION REGULATION--SOLICITATIONS ISSUED AFTER
EFFECTIVE DATE--APPLICABILITY

GAO has no basis to question agency's issuance of solicitation using clauses specified by Defense Acquisition Regulation (DAR) when solicitation is issued after the effective date of the Federal Acquisition Regulation (FAR), but where agency implementing regulations and agency internal guidance provides that solicitations already in process of preparation prior to the effective date of FAR may be issued using DAR clauses when inclusion of FAR clauses would cause an undue delay in solicitation. By issuing solicitation under DAR, the contracting officer implicitly determined that substitution of FAR provisions would unduly delay the solicitation process, which is a judgment for the agency to make.

B-215538 Oct. 23, 1984 84-2 CPD 450
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--
ADMINISTRATIVE DETERMINATION

Establishment of inspection procedures, including imposition of random sampling inspection, to insure that services being procured meet specifications is the

responsibility of the contracting agency. GAO will not question an agency's determination as to what provisions should be included in the solicitation for this purpose unless they unduly restrict competition or violate statutes or regulations.

*B-215624, B-215624.2 Oct. 23, 1984 84-2 CPD 451
BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY
UNBALANCED BIDS"--MATERIALITY OF UNBALANCE*

In order to prevail in its allegation that a bid is unbalanced and therefore nonresponsive, the protester must show that there is a reasonable doubt that the bid will not result in the lowest ultimate cost to the government.

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

Meaningful discussions have been held where the agency has identified those areas in a proposal which are deficient, and has afforded the offeror an opportunity to correct those deficiencies in a revised proposal.

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

If a revised proposal still remains unacceptable, there is no legal obligation that compels an agency to reopen discussions to allow another opportunity for revision of the proposal.

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

In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.

*B-215624, B-215624.2 Oct. 23, 1984 84-2 CPD 451 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--OFFEROR'S RESPONSIBILITY TO
DEMONSTRATE*

An offeror clearly bears the burden to furnish satisfactory responses to concerns raised by the agency when given the opportunity to revise a deficient technical proposal.

*B-216008 Oct. 23, 1984 84-2 CPD 452
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAGE DETERMINATION CHANGES--UNION AGREEMENT EFFECT*

A bidder can cure its failure to acknowledge the receipt of an amendment containing a wage determination only where no competitive advantage would accrue to the bidder and the bidder's employees are already covered by a collective bargaining agreement which requires the bidder to pay them at the wage rate included in the amendment.

*CONTRACTS--LABOR STIPULATIONS--SOLICITATION PROVISIONS--
INCORPORATING STATUTES BY REFERENCE--NOT ACCEPTABLE
UNDER DAVIS-BACON ACT*

Only a specific Davis-Bacon wage rate determination included in a solicitation can legally bind a contractor under the Davis-Bacon Act to pay the rates specified in the solicitation.

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

Protest regarding insufficient notice of a solicitation's wage determination amendment is untimely when notice was received before bid opening, there was no effort to request an extension of the bid opening date and protest was filed after bid opening.

B-216515 Oct. 23, 1984 84-2 CPD 453
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL v.
SPECIFIC--EFFECT ON RESPONSIBILITY

Protest alleging apparent low bidder's failure to hold necessary state licenses is dismissed since the matter concerns either: (1) an affirmative determination of responsibility (if the IFB required a particular license), or (2) a matter between the apparent low bidder and the licensing authority and/or a matter of contract administration (if the IFB requires general compliance with applicable licensing requirements).

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
AFFILIATES AFFIDAVIT--WAIVER--AS MINOR INFORMALITY

Protest objecting to apparent low bidder's failure to furnish with its bid a list of affiliates required by IFB is summarily denied for lack of legal merit since agency may properly waive failure as minor informality.

B-216520 Oct. 23, 1984 84-2 CPD 454
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID

Bid offering a 3-day acceptance period when the solicitation essentially requested a 60-day acceptance period was properly rejected when award could not be made within the 3-day period. Bidder may not be permitted to extend that period in order to qualify for award since such an extension would be prejudicial to other bidders who offered the requested acceptance period.

BIDS--COMPETITIVE SYSTEM--COMPLIANCE REQUIREMENT--
PECUNIARY ADVANTAGE NOTWITHSTANDING

Possibility that government might realize monetary savings in particular procurement if bidder is permitted to extend shorter-than-requested acceptance period is outweighed by importance of maintaining integrity of the competitive bidding system.

B-216532 Oct. 23, 1984 84-2 CPD 455

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

Protest filed in GAO more than 10 working days after
protester syss it obtained information upon which its
protest is based is untimely under GAO Bid Protest Procedures.

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

Protest against failure to set aside procurement exclusively
for small business concerns is untimely under GAO Bid Protest
Procedures since protest was filed after bid opening date.

B-216620 Oct. 23, 1984 84-2 CPD 456

*BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--UTILIZATION--
ADMINISTRATIVE DETERMINATION*

Contracting officer has discretion not to conduct a
preaward survey, and in the absence of fraud or
the failure to apply definitive responsibility criteria, GAO
will not review a decision not to conduct a preaward
survey or the contracting officer's affirmative determination
of responsibility.

BIDS--PRICES--BELOW COST--NOT BASIS FOR PRECLUDING AWARD

No basis exists to preclude a contract award merely
because bidder submitted a below cost bid. A below cost
bid presents a question of responsibility.

B-216685 Oct. 23, 1984 84-2 CPD 457

BIDS--MISTAKES--APPARENT TO AGENCY

Protest is denied summarily where protester alleges only
that it should have received award as the low responsive,
responsible offeror and submits documentation showing
that agency rejected its bid after concluding, on the basis
of substantial evidence, that bid was obviously mistaken.
A bid must be rejected under such circumstances even though
the bidder refuses to admit the mistake.

B-216742 Oct. 23, 1984 84-2 CPD 458
CONTRACTS--NEGOTIATION--PRICES--REDUCTION--AFTER BEST AND
FINAL OFFERS--PROPRIETY

Protest than an offeror was permitted to reduce its price as the result of the contracting activity's request for best and final offers is summarily denied, since discussions and best and final offers that include price changes are a normal aspect of negotiated procurements.

B-215105 Oct. 24, 1984 84-2 CPD 460
BIDS--RESPONSIVENESS--WAIVER OF REQUIREMENT

Failure of low bidder to provide proof with bid that the product offered has "current approval" was properly waived as a minor informality where bidder offered United States government surplus item and no bidders were prejudiced by failure to comply with requirement.

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

Under our Bid Protest Procedures, a protest must be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. FOIA request does not toll that requirement.

Protest untimely filed with procuring agency (more than 10 days after basis of protest was known) and then filed with GAO after denial by contracting officer is not for consideration on merits under 4 C.F.R. 21.2(a) which requires that initial protest to agency be filed on timely basis.

Protest issue, that awardee failed to acknowledge an amendment, filed within 10 days after receipt of awardee's amendment requested under FOIA is timely.

B-215638.2 Oct. 24, 1984 84-2 CPD 461
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
EVALUATORS--SELECTION

Selection of evaluators is within the contracting agency's discretion and GAO will not object in the absence of evidence of fraud, bad faith, conflict of interest or actual bias.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

Award to firm with the best technical proposal and overall lowest weighted cost when technical considerations are factored in was not improper simply because another firm offered a lower price, since agency evaluation was reasonable and RFP indicated that award would be made based on lowest weighted cost rather than on lowest offered cost.

B-215692 Oct. 24, 1984 84-2 CPD 462
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

Complaint that grantee failed to award a food management services contract to the firm offering the lowest management fee has no merit where the solicitation requested information regarding other cost factors and provided for the evaluation of such factors and possible negotiation, and thus did not contemplate that award would be based on management fee alone.

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

Complaint that grantee's procurement of food management services should have based award on low proposed management fee instead of on the criteria identified in the solicitation is untimely where filed after the time set for receipt of proposals.

*B-215875 Oct. 24, 1984 84-2 CPD 463
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

Where contracting agency erroneously advised protester that award of a contract had been made when it had not and protester's bid is currently being evaluated for award, protest has been rendered moot and any allegations concerning the prospective evaluation are premature.

*B-215881 Oct. 24, 1984 84-2 CPD 464
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

Protest alleging that agency's acceptance of alternate product is improper is denied since procuring agency is responsible for determining the acceptability of awardee's alternate item and record does not show that agency's determination that awardee's alternate item was acceptable was unreasonable.

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

Allegation that RFP was defective because it did not contain a first article testing requirement is untimely since allegation concerns apparent solicitation impropriety which, under Bid Protest Procedures, must be filed prior to the closing date for receipt of proposals.

*B-216323.2 Oct. 24, 1984 84-2 CPD 465
CONTRACTS--PROTESTS--SUBCONTRACTOR PROTESTS*

Prior decision dismissing a subcontractor's protest is affirmed, since the request for reconsideration fails to establish that the federal government had a significant direct involvement with the procurement so as to invoke GAO's bid protest authority under the circumstances enunciated in Optimum Systems.

B-216827 Oct. 24, 1984 84-2 CPD 466
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

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

B-215352 Oct. 25, 1984 84-2 CPD 467
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protest contending that a solicitation specifi-
cation exceeds the agency's minimum needs is denied
where the agency provides a rational basis for its
specification and the protster fails to show that the
ageny's position is unreasonable.

B-215393 Oct. 25, 1984 84-2 CPD 468
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Regardless of whether low bid was unbalanced,
agency's cancellation of IFB after bid opening
is reasonable where award is to be made on basis of
extended unites prices for estimated quantities and
estimated quantities are found to be grossly erroneous.

B-215290 Oct. 26, 1984 84-2 CPD 469
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
GENERAL ACCOUNTING OFFICE REVIEW

The General Accounting Office will consider a
protest that a proposal has been improperly
evaluated under an RFP even though the result
may be a sole-source procurement.

B-215290 Oct. 26, 1984 84-2 CPD 469 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--SCOPE OF GAO REVIEW

Our Office will not question a contracting officer's technical evaluation of a proposal in the absence of a showing that the evaluation was arbitrary, unreasonable or contrary to procurement laws or regulations.

B-214356 Oct. 29, 1984 84-2 CPD 470
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DISCRETION

The initial determination of whether a proposal is in the competitive range is a matter of agency discretion which will not be disturbed absent a clear showing that the determination lacked a reasonable basis. Moreover, a protester's mere disagreement with the agency's judgment does not meet its burden of proving that the evaluation of proposals and competitive range determination were unreasonable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE DETERMINATION--IMPROPER

GAO will closely scrutinize evaluations which result in only one firm being included in the competitive range. In cases where only one offeror remains in the competitive range, and it is apparent that solicitation inadequacies contributed to the technical deficiency of proposals, then those affected proposals should be included in the competitive range and discussions should be held.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

An agency's judgment that a proposed approach to sophisticated technical hardware presents an unnecessarily high-risk research and development effort will not be questioned where the offeror

did not establish the feasibility of the approach within the confines of the proposal.

B-214578.3 Oct. 29, 1984

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--COURT INTERESTED EXCEPTION*

GAO will reconsider bid protest decision, issued at the request of a court upon the court's request that it do so without regard to the 10-day period allowed for requesting reconsideration in section 21.9 of GAO's Bid Protest Procedures.

B-215186 Oct. 29, 1984 84-2 CPD 471

*BIDS--LATE--TELEGRAPHIC MODIFICATIONS--CRITERIA FOR
ACCEPTANCE*

Late telegraphic bid modification addressed to a nonexistent TWX machine at agency's installation specified by the solicitation can be considered since the government's error in removing the TWX before bid opening without informing bidders was the paramount cause for the late receipt and interests of the other bidders and the integrity of the procurement system will not be prejudiced if the late modification is considered.

B-215662.3 Oct. 29, 1984 84-2 CPD 472

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Where protester's allegation is not supported by any evidence, and record contains evidence refuting allegation, allegation is considered to be without merit.

B-215893 Oct. 29, 1984 84-2 CPD 473

*CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--NATIONAL
RAILROAD PASSENGER CORPORATION*

Protests against National Railroad Passenger Corporation (Amtrak) procurement will not be considered by GAO because the corporation's accounts are not subject to settlement by GAO

and the federal government has not been involved in a way that would allow GAO to take jurisdiction.

*B-216781 Oct. 29, 1984 84-2 CPD 474
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

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

*B-216787 Oct. 29, 1984 84-2 CPD 475
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS*

Protest against procuring activity's failure to include wage rate determination in Requests for Quotations is dismissed as untimely since it was not filed before the closing date for receipt of initial quotations.

*B-216788 Oct. 29, 1984 84-2 CPD 476
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS*

Protest against procuring activity's failure to include wage rate determination in Request for Quotations is dismissed as untimely since it was not filed before the closing date for receipt of initial quotations.

*B-216826 Oct. 29, 1984 84-2 CPD 477
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Where firm initially protester allegedly unduly restrictive specifications to contracting agency prior to bid opening, opening of bids is adverse agency action on protest and subsequent protest to GAO filed more than 10 working days after protester's actual or constructive knowledge of bid opening is untimely.

B-214823 Oct. 30, 1984 84-2 CPD 478
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION

Cancellation of an IFB for a requirements contract after bid opening but before award is proper where the contracting officer determines that the IFB was defective because it failed to include estimated quantities for all items.

CONTRACTS--NEGOTIATION--AWARDS--INITIAL PROPOSAL BASIS--
PROPRIETY

Award may be made on the basis of initial proposals where adequate price competition exists and the solicitation advises that award might be made without discussions.

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

Protester has met its burden of proof where the protest is based on allegations that awardee's offer was submitted late while the agency states it was submitted on time.

B-215391 Oct. 30, 1984 84-2 CPD 479
CONTRACTS--DAMAGES--LIQUIDATED--ACTUAL DAMAGES v. PENALTY--
PRICE REDUCTIONS--REASONABLENESS

An hourly deduction rate for work unsatisfactorily performed is unobjectionable and not excessive where the record establishes that the rate used accurately reflects the cost to the government in the event of unsatisfactory performance.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

An allegation that a price deduction formula for a reduction in space is defective and thus arbitrary and unjust is without merit where the record establishes that the formula is not defective as alleged.

B-215959.3 Oct. 30, 1984 84-2 CPD 481
CONTRACTS--PROFITS--ANTICIPATED

No legal basis for an unsuccessful offeror to recover anticipated profits or similar monetary damages.

*B-215959.3 Oct. 30, 1984 84-2 CPD 481 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Where reconsideration fails to establish error of fact or law in prior decisions that would warrant the reversal or modification of the decisions are affirmed.

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

Claim for quotation preparation costs will not be considered in connection with untimely filed protest.

*B-216487.2 Oct. 30, 1984 84-2 CPD 482
BIDS--INVITATION FURNISHING REQUIREMENT--EFFECT OF FAILURE TO
RECEIVE*

Protest that the procuring agency failed to furnish the solicitation to the incumbent contractor is summarily denied where the protester has not alleged or shown that competition and reasonable prices were not obtained and that the failure to furnish the solicitation was the result of a deliberate or conscious effort to exclude the protester from competition.

*B-216597 Oct. 30, 1984 84-2 CPD 483
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION*

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

*B-211525.2 Oct. 31, 1984 84-2 CPD 484
BIDS--COMPETITIVE SYSTEM--PRESERVATION OF SYSTEM'S INTEGRITY--
INVITATION CANCELLED AND RESOLICITED*

The integrity of the competitive bidding system precludes an agency from awarding a contract competed under given requirements with the intention of increasing those requirements after award. Such an action clearly would be

prejudicial to the other bidders under the invitation, because the contractor would be awarded the new requirements essentially on a sole-source basis, thus circumventing the competitive procurement statutes.

BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--ADMINISTRATIVE DETERMINATION

A contracting officer's decision to cancel after bid opening will not be questioned as long as it reflects a reasoned judgment based upon the investigation and evaluation of information reasonably available at the time the decision is made.

BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--CONPELLING REASONS ONLY

An invitation for bids may be canceled after bid opening and the exposure of bid prices when a cogent and compelling reason exists for doing so. As a general rule, changing the requirements of a procurement after bid opening to express properly the agency's minimum needs constitutes such a reason.

CONTRACTS--IN-HOUSE PERFORMANCE v. CONTRACTING OUT--COST COMPARISON--CANCELLATION OF SOLICITATION--SPECIFICATION CHANGES--ANTICIPATED PRIOR TO AWARD

In a procurement resulting from an OMB Circular No. A-76 comparison of in-house versus contracting costs, it would be detrimental to the competitive system to award a contract when the requirements which formed the bases for the comparative analysis are foreseen to change materially during the contract period.

B-215805 Oct. 31, 1984 84-2 CPD 485

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD

Fourth low bidder is not an "interested party" under GAO Bid Protest Procedures to protest reduction of low bid after bid opening where that bidder would not be in line for award if the protest were sustained.

B-216824 Oct. 31, 1984 84-2 CPD 492
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
SUBCONTRACTOR, SUPPLIER, ETC. SIZE STATUS

Subcontracting with a large business in connection with a construction contract set aside for small businesses is not legally objectionable.

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

Protest that proposed awardee under small business set-aside should not be considered a small business firm because a large business allegedly will perform most of the contract work is dismissed since the Small Business Administration is empowered to make conclusive determinations on matters of small business size status.

B-216868 Oct. 31, 1984 84-2 CPD 493
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

The capacity of a company to provide supplies or services in accordance with solicitation requirements concerns a matter of responsibility. GAO does not review affirmative determinations of responsibility unless there has been a showing of possible fraud or bad faith on the part of procurement officials or that the solicitation contains definitive responsibility criteria that have not been applied.

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

An allegation that a small business contractor will subcontract the performance of a contract to a large business contrary to the intent of a small business set-aside is matter of contract administration and is the responsibility of the procuring agency rather than GAO.

B-216868 Oct. 31, 1984 84-2 CPD 493 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
SUBCONTRACTOR, SUPPLIER ETC. SIZE STATUS

Subcontracting with a large business under a service contract set-aside for small business is not legally objectionable.

B-216899 Oct. 31, 1984 84-2 CPD 494
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

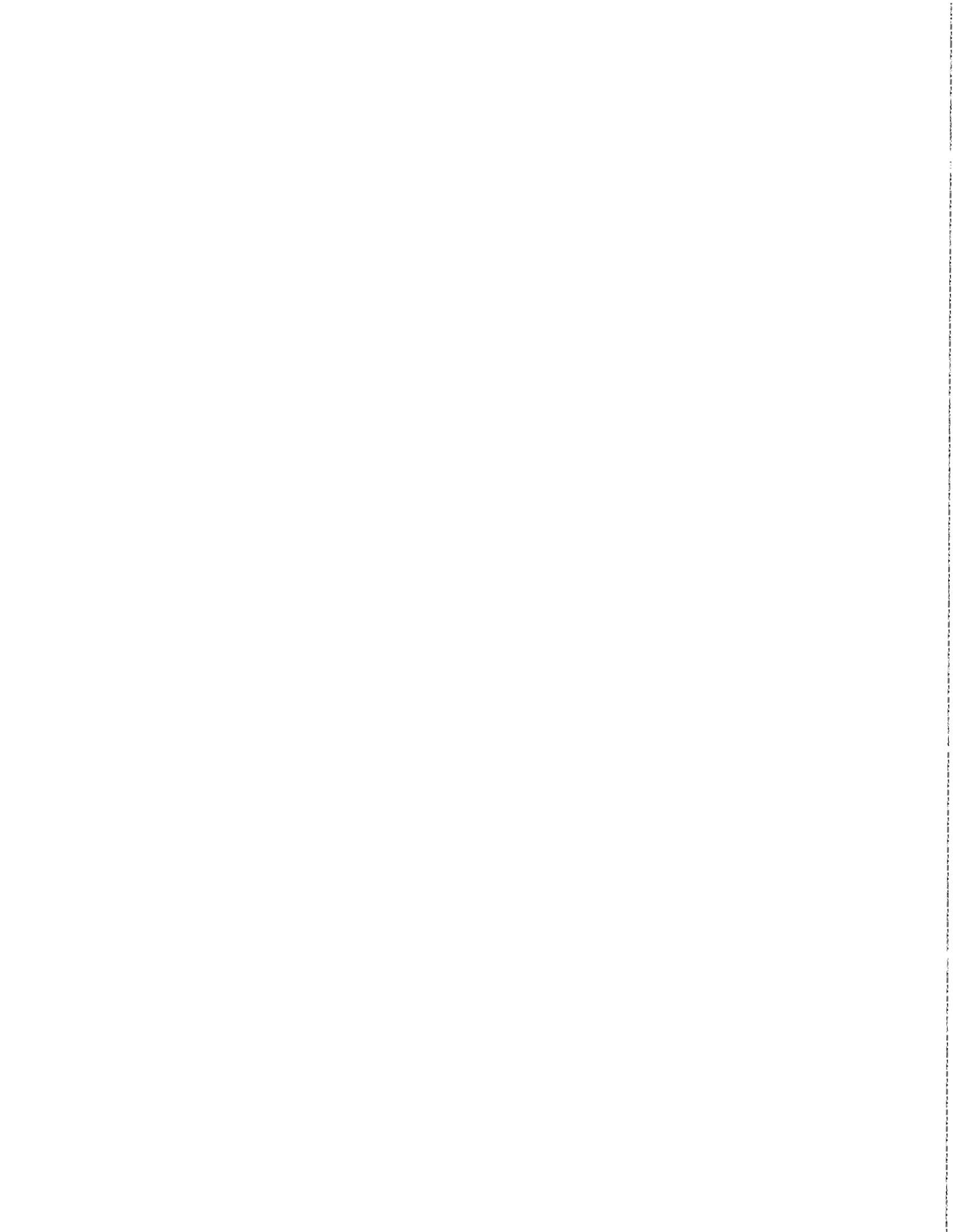
Protest that the procuring agency allowed an insufficient amount of time to prepare proposals after issuing a significant amendment is untimely where not filed prior to the amended closing date.

SPECIAL STUDIES & ANALYSIS

B-215845 Oct. 23, 1984

*INTERSTATE LAND SALES FULL DISCLOSURE ACT--ENFORCEMENT--
SECRETARY OF HOUSING AND URBAN DEVELOPMENT*

The Interstate Land Sales Full Disclosure Act, as amended, 43 U.S.C. 1701 et seq., authorizes Secretary of Housing and Urban Development (HUD) to investigate alleged fraud in real estate transactions. Willful violations of Act are punishable upon conviction by criminal penalties. 15 U.S.C. 1717. Whereas HUD's investigation of developer's alleged failure to include a statement of topography and other information in property report failed to uncover any evidence of willful violation of Act, matter was properly resolved without HUD seeking criminal action.



TRANSPORTATION LAW

B-215507 Oct. 11, 1984

PROPERTY--PRIVATE--DAMAGE, LOSS, ETC.--CARRIER'S LIABILITY--
BURDEN OF PROOF

Where carrier has supplied no evidence to demonstrate that goods were not damaged while in the carrier's possession, carrier has not met its burden of proof and, therefore, request for return of withheld funds is denied.

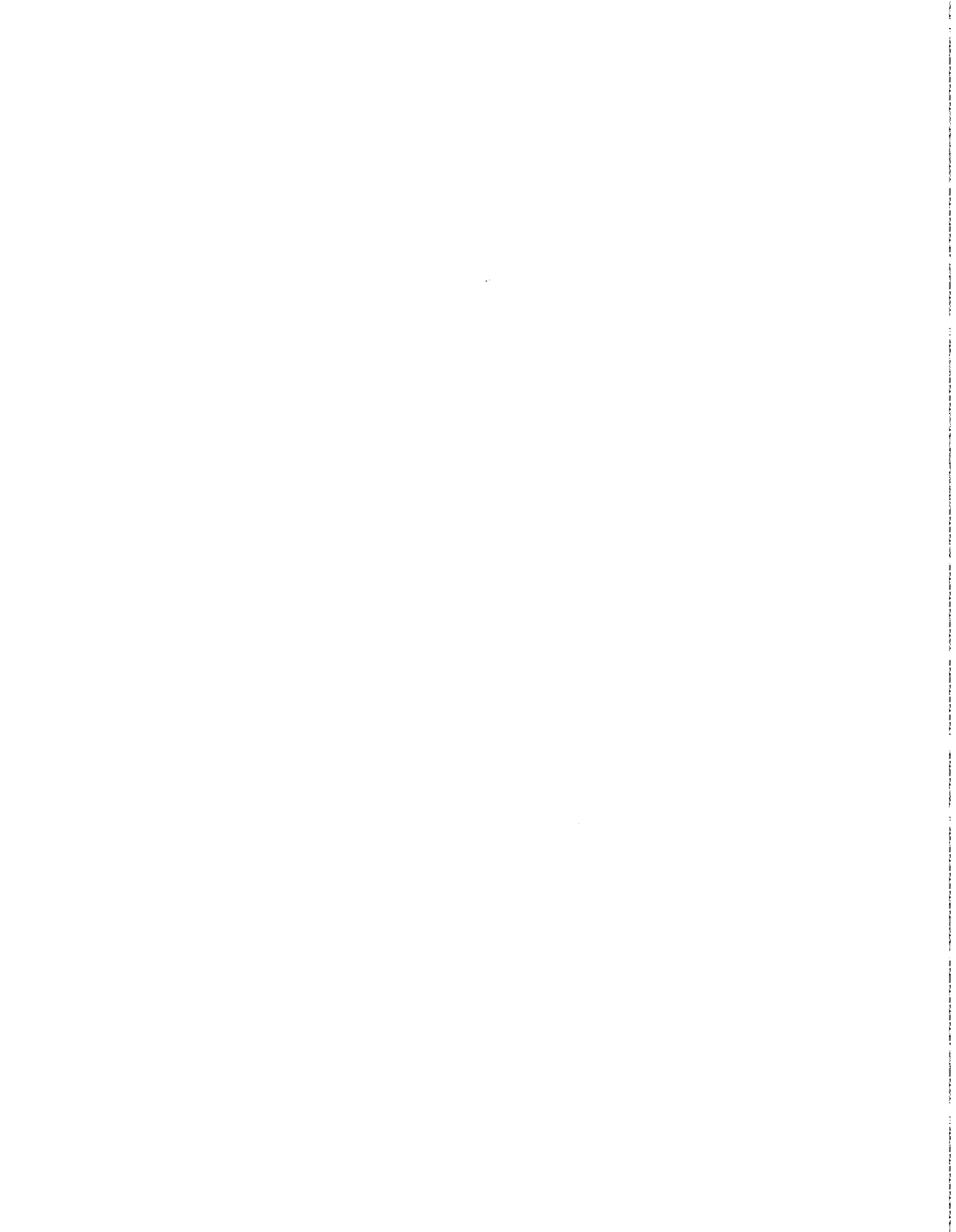
TRANSPORTATION--DELIVERY--RECEIPTS--EFFECT ON LIABILITY FOR
DAMAGES

Written notice of damage which gives bill of lading number and informs carrier that property owner intends to file a claim for damages is sufficient to rebut presumption that clear delivery receipt is correct.

B-215559 Oct. 11, 1984

PROPERTY--PRIVATE--DAMAGES, LOSS, ETC.--HOUSEHOLD EFFECTS--
CARRIER LIABILITY--BURDEN OF PROOF

Once a prima facie case of liability has been established by showing a failure to deliver the same quantity or quality of goods at destination as received at origin, a common carrier is relieved of liability only by showing that the loss or damage did not occur while in the custody of the carrier or that the damage was the result solely of one of five specified causes. A carrier is not relieved of liability where it does not inspect the damages.



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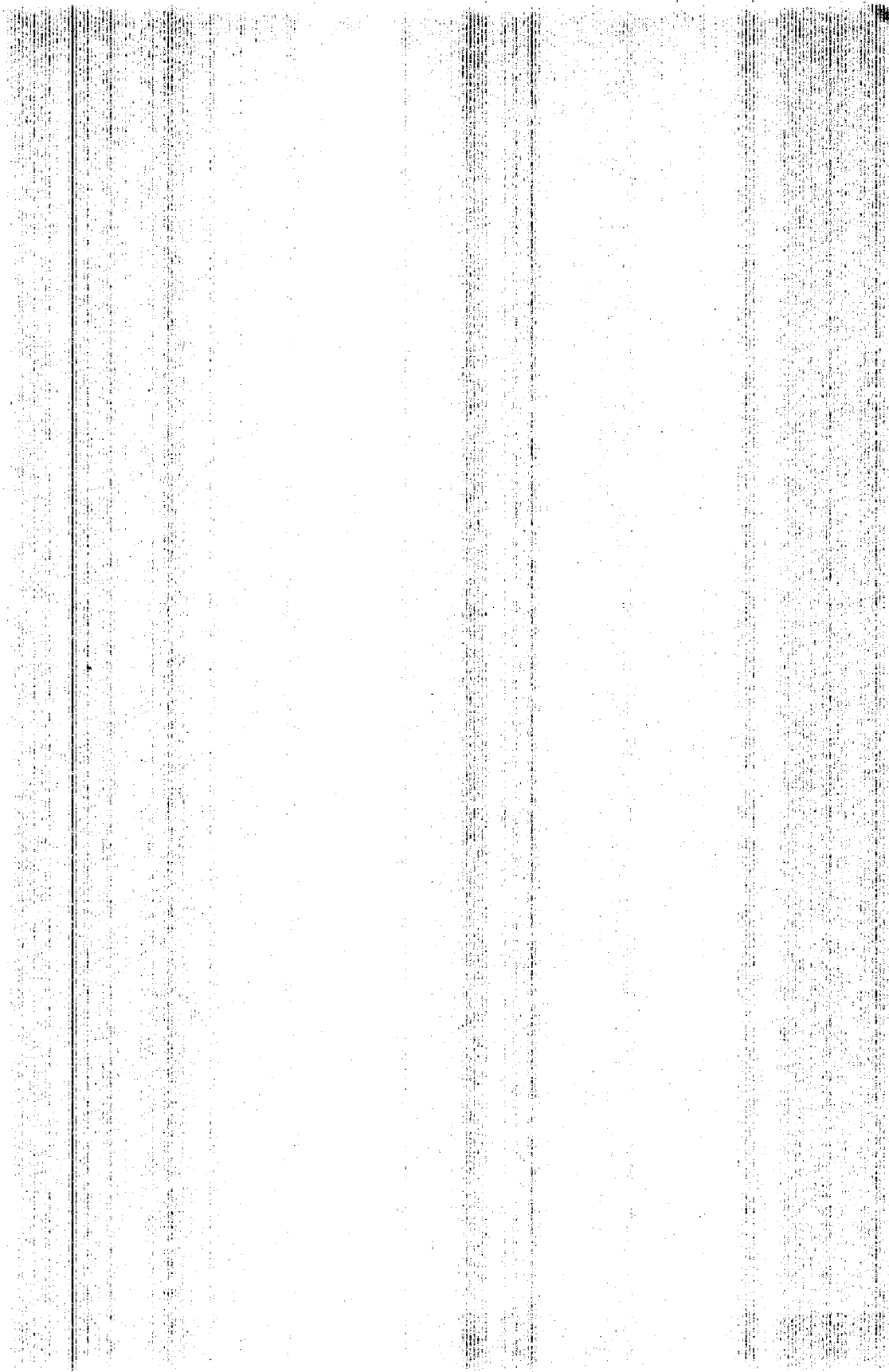
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