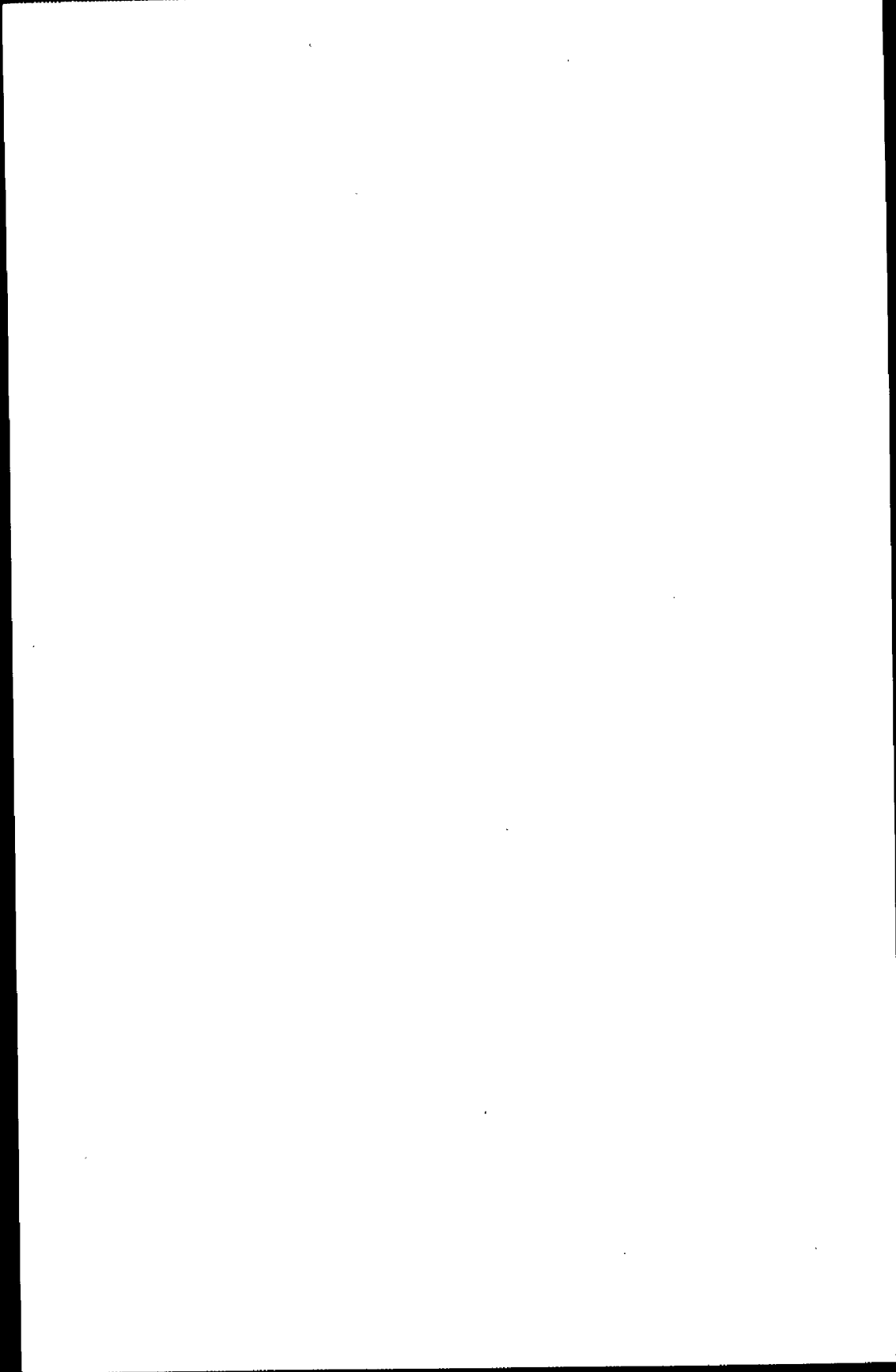


September 1987

**Digests of Unpublished
Decisions of the
Comptroller General
of the United States**



United States General Accounting Office

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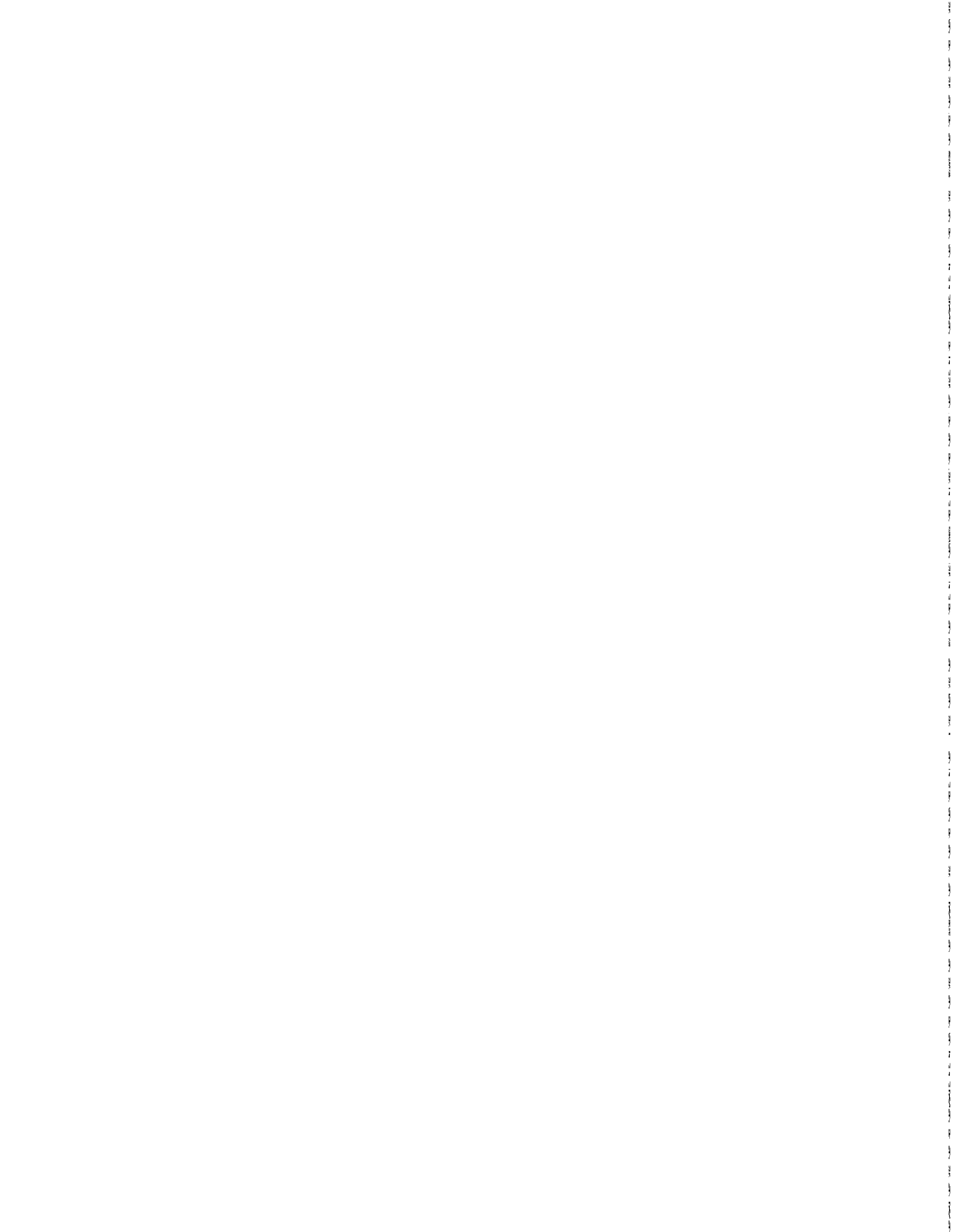


PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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

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

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



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NOTICE

Effective October 1, 1986, a new controlled vocabulary was used to index the documents of GAO's Office of General Counsel, reflecting changes in the chapter titles and the index entries (headings). Copies of this vocabulary with introductory material explaining how to use the vocabulary to retrieve documents was mailed the latter part of October to individuals currently on GAO's distribution list for this publication.

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-226695** **Sept. 1, 1987**
Liability
Debt collection

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Relief
Physical losses
Theft

Messenger, while in actual possession of government funds, is liable for loss resulting from an armed robbery. Relief is granted since messenger was acting in his official capacity and was not implicated in the robbery.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims By Government **B-212222** **Sept. 3, 1987**
Past due accounts
Interest
State/local governments

GAO urges the Justice Department to seek rehearing or appeal (as necessary) of the decision in Arkansas v. Block, Nos. 86-2018 & 86-2060 (8th Cir. Aug. 4, 1987) which held that the definition of "person" contained in section 11 of the Debt Collection Act of 1982, Pub. L. No. 97-365, codified at 31 U.S.C. 3717 (1982), abrogated the government's common law right to assess interest on delinquent debts owed by units of state and local government.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-227388 Sept. 3, 1987

Purpose availability

Specific purpose restrictions

Fines

State/local governments

The false alarm fines imposed by the City of Council Bluffs, Iowa, are not payable by the federal government unless there has been an express statutory waiver of sovereign immunity.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Purpose availability

Specific purpose restrictions

Taxes

State/local governments

The alarm system registration fee imposed by the City of Council Bluffs, Iowa, is actually a tax which is levied to defray the costs of emergency services which are required by law to be provided. These services must be provided to the United States on the same basis as to any citizen, even though the federal government is constitutionally immune from paying the taxes which support these services.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-224961** **Sept. 8, 1987**

Certifying officers

Relief

Illegal/improper payments

Overpayments

Relief granted to finance and accounting officers for loss due to improper payment of active duty pay to individual who had been discharged. Both officers maintained and implemented an adequate system of procedures and controls. Initial filing error appears to be the type of clerical error which will occur even in a well-supervised office. Subsequent failures in the established safeguard system occurred beyond the control of the Finance and Accounting Officers.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Illegal/improper payments

Liability restrictions

Compromises

Personal pecuniary liability of a Finance and Accounting Officer is limited pursuant to 31 U.S.C. 3711(d) which provides that an accountable officer is not liable for an amount paid if the amount is not recovered because of a compromise.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims By Government B-227513 Sept. 8, 1987
Private relief bills
Debt collection
Waiver

Pursuant to the Meritorious Claims Act, 31 U.S.C. 3702(d), we recommend that Congress enact legislation relieving an employee of liability for travel expenses based on equitable considerations present in this case. Employee performed return travel from his temporary duty station under emergency conditions, with permission of his instructor, under reasonable belief that his expenses would be paid. Nothing indicates that employee had knowledge or reason to know that the payment for travel was erroneous, and we believe that collection action would be against equity and good conscience and not in the best interests of the United States. Further, travel predated passage of acts that could have provided relief. Pub. L. 99-234, 102, 99 Stat. 1756 (1986), and Pub. L. 99-234, 1(a), 99 Stat. 1741 (1985).

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-228859 Sept. 11, 1987
Cashiers
Relief
Illegal/improper payments
Forgeries

U.S. Army Finance and Accounting Officer and his Deputy are relieved of liability for improper payment made by subordinate cashier because they maintained an adequate system of procedures to prevent improper payments. The cashier is also relieved because he followed all prescribed procedures for cashing checks, notwithstanding that the payee circumvented those procedures through criminal activity. We remind the Army of the requirement to promptly report financial irregularities in order to avoid any statute of limitation period.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-228859 Con't

Disbursing officers Sept. 11, 1987

Relief

Illegal/improper payments

Forgeries

U.S. Army Finance and Accounting Officer and his Deputy are relieved of liability for improper payment made by subordinate cashier because they maintained an adequate system of procedures to prevent improper payments. The cashier is also relieved because he followed all prescribed procedures for cashing checks, notwithstanding that the payee circumvented those procedures through criminal activity. We remind the Army of the requirement to promptly report financial irregularities in order to avoid any statute of limitation period.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-222915 Sept. 16, 1987

Cashiers

Relief

Illegal/improper payments

Fraud

Relief is granted to an Army cashier for an improper payment because she followed the payment procedures set out by her supervisor. A cashier can be granted relief when there is a showing that before paying the vouchers she verified that the voucher was certified or audited, the genuineness of the auditor's initials, and that the payee was properly identified by a picture ID.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-222915** **Con't**

Disbursing officers **Sept. 16, 1987**

Relief

Illegal/improper payments

Fraud

Relief is granted to an Army finance and accounting officer for improper payments because he maintained an adequate system of procedures and controls to safeguard his account and supervised his subordinates to ensure that the system was followed. The loss was due solely to the payee's fraud.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Liability

GAO authority

In improper payment cases the GAO has the discretion under 31 U.S.C. 3527(c) to deny relief unless the finance and accounting officer can show "aggressive agency collection" actions as defined by 4 C.F.R. 102.1-102.2.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227627** **Sept. 16, 1987**
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official and his deputy under 31 U.S.C. 3527(c) from liability for improper payments resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, for cases involving notices of loss received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to its Collections Division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-228953** **Sept. 16, 1987**
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army Disbursing official and his deputy under 31 U.S.C. 3527(c) from liability for improper payments resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, for cases involving notices of loss received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to its Collections Division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-227763 Sept. 17, 1987

Purpose availability

Specific purpose restrictions

Telephones

Provisions of 2 U.S.C. which authorize furnishing of telephone and telecommunications services to Senators appear sufficient to authorize acquisition and installation of cellular telephones in Senators' private automobiles, provided the Senate committee on Rules and Administration determines that the expense is "intimately and directly connected with the routine legislative business of the Senate" as required by 2 U.S.C. 68-2. Policy considerations underlying statutory prohibition on use of appropriated funds for residential telephones (31 U.S.C. 1348) are not controlling. B-186872, August 12, 1976, modified.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-226503 Sept. 24, 1987

Purpose availability

Specific purpose restrictions

Taxes

State/local governments

While the Department of Education (Department) may not pay a tax bill levied by the Town of Seneca Falls, New York for sewer services provided in 1986 to property owned by the Department, it must pay the Town the reasonable value of the services on a quantum meruit basis. The services would have constituted a permissible procurement, the government received and accepted the services, and the Town acted in good faith. The GAO offers a formula to assist the Department in calculating the dollar value of the benefits received.

APPROPRIATIONS/FINANCIAL MANAGEMENT

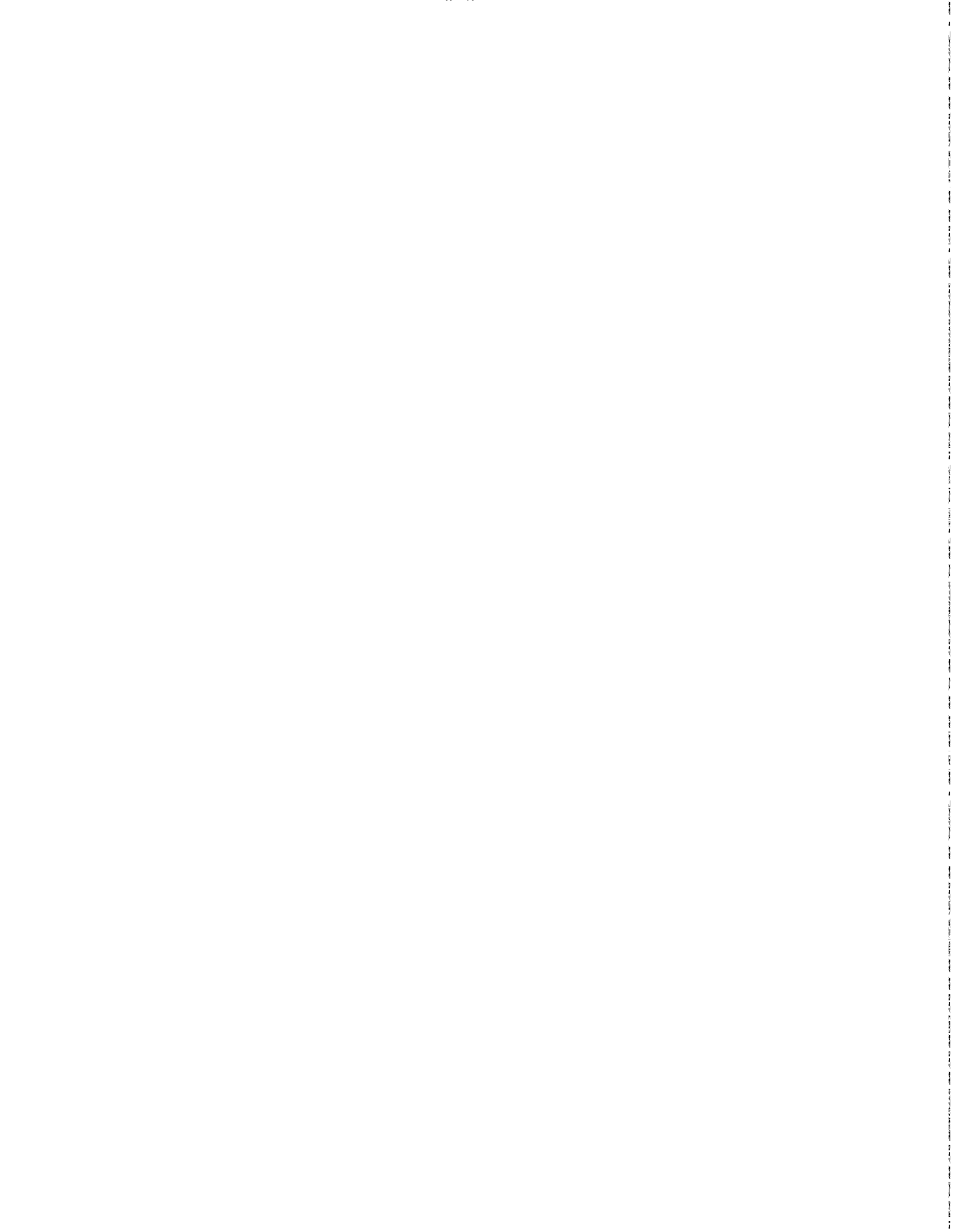
Appropriation Availability B-222853 Sept. 29, 1987

Purpose availability

Lump-sum appropriation

Administrative discretion

Since the Department of Transportation's 1986 Research and Special Programs Administration Appropriation (RSPA) was a lump sum appropriation covering all authorized activities of the RSPA including both the National Gas Pipeline Safety Grant Program and the Hazardous Liquid Pipeline Safety Grant Program, the appropriation is available for both programs even though only one was specifically mentioned in the appropriation act.



CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-226722 Sept. 1, 1987

Travel

Medical emergencies

Travel expenses

Reimbursement

Under 4 C.F.R. Part 22, the National Weather Service and the National Weather Service Employees Organization ask whether an employee stationed in Barrow, Alaska, could be reimbursed under 15 U.S.C. 1514(a) for expenses incurred in traveling to Anchorage, Alaska, to have a growth in his throat removed since there were no facilities to perform the operation in Barrow. Since, in the opinion of the physicians in Barrow and Anchorage, the employee needed immediate attention for the rapidly enlarging growth in his throat and since this condition could not have been foreseen or anticipated, we conclude that a proper basis exists for payment of these travel expenses.

CIVILIAN PERSONNEL

B-225082 Sept. 3, 1987

Travel

Lodging

Reimbursement

Government quarters

Availability

Civilian employee of Air Force on temporary duty may be reimbursed for commercial lodging although he did not obtain a certificate of nonavailability of Government quarters as required by 2 JTR para. C1055. Employee's travel orders referenced agency regulation that orders were complete as regards use of quarters. Therefore, since he received travel advance including a portion of per diem for lodging expenses, his travel orders effectively provided that Government quarters were not available to him, and he may be reimbursed his lodging expenses.

CIVILIAN PERSONNEL**B-225183 Sept. 3, 1987****Compensation****Overtime****Eligibility****Military leave**

An employee's claim for compensation for 8 hours of overtime work which he claims he would have worked but for being on military leave while on duty with his Reserve unit may not be allowed because he presented no evidence that the overtime was regularly scheduled or approved prior to the administrative workweek.

CIVILIAN PERSONNEL**B-227587 Sept. 3, 1987****Relocation****Residence transaction expenses****Reimbursement****Eligibility****Time restrictions**

An employee, who transferred to a new duty station effective November 16, 1982, may not be reimbursed for the sale of former residence since settlement did not occur until May 16, 1986, more than 3 years after the date he reported to his new duty station. The 3-year time limitation imposed by paragraph 2-6.1e of the Federal Travel Regulations has the force and effect of law and may not be waived in any individual case. Furthermore, the failure of the employing agency to exercise its discretion to provide private relocation services, including arrangement for the purchase of the employee's former residence, does not provide a basis to allow this claim.

CIVILIAN PERSONNEL

B-224631 Sept. 17, 1987

Relocation

Actual expenses

Eligibility

Distance determination

CIVILIAN PERSONNEL

Relocation

Expenses

Reimbursement

Eligibility

Government advantage

Department of the Navy employee's transfer to a new duty station 45 miles from his old duty station pursuant to a merit promotion was in the interest of the Government. Because the distance between the two duty stations was more than 10 miles and because the employee relocated his residence from 60 miles to 30 miles from the new station, he is entitled to relocation expenses.

CIVILIAN PERSONNEL

B-202098 Sept. 18, 1987

Compensation

Overtime

Eligibility

Commuting time

It is a well-established rule that normal commuting time between an employee's residence and duty station is not compensable overtime. This rule applies to an employee who commutes in a carpool with his supervisors even if work-related matters are discussed during the commute.

CIVILIAN PERSONNEL

B-202893 Sept. 18, 1987

Compensation**Retired personnel****Government attorneys****Post-employment restrictions**

The case of a former DOE employee who represented an oil company in seeking a resellers refund under the Stripper Well settlement agreement was properly referred to the Department of Justice for possible prosecution under 18 U.S.C. 207(a). As a DOE employee, the same individual negotiated the Stripper Well settlement agreement. Because administration of the resellers fund is part of the remedy provided for by that settlement agreement, it would appear to be part of the same particular matter involving specific parties as the negotiations in which the individual participated as a DOE employee. For this reason, 18 U.S.C. 207(a) would appear to prohibit him from representing anyone seeking a refund under the settlement agreement.

CIVILIAN PERSONNEL

B-225089 Sept. 21, 1987

Travel**Local travel****Travel expenses****Reimbursement****Emergencies**

A Social Security Administration claims representative whose life was threatened by a disability applicant was advised by police to leave home that night and she spent the night at a local hotel. Agency's appropriated funds are available in circumstances of extreme emergencies involving danger to human life or destruction of Federal property. Here, there was a direct threat to the employee's life arising out of her performance of assigned duties and a clear need for immediate protection. Accordingly, the agency's funds may be used for the expenses incurred.

CIVILIAN PERSONNEL**B-225352 Sept. 21, 1987****Travel****Temporary duty****Travel expenses****Return travel****Personal convenience**

A member of the Energy Research Advisory Board was issued a round-trip airline ticket for travel to attend a 3-day Board meeting in Seattle which was due to end on a Friday afternoon. His return flight to his home in Oklahoma City was scheduled for Saturday. When the meeting ended several hours earlier than anticipated on Friday, he decided to return to Oklahoma City that afternoon on a different airline at an additional cost of \$223. Because he unilaterally altered the approved travel schedule, his reimbursement for the additional expense incurred is limited by the constructive cost of the approved travel. His claim for \$223 may be paid only in the amount he would originally have been allowed that Friday and Saturday if he had not departed from Seattle earlier than scheduled.

CIVILIAN PERSONNEL**B-226851 Sept. 21, 1987****Relocation****Household goods****Weight restrictions****Liability****Waiver**

Civilian employee whose household goods exceeded his weight allowance in a shipment from the Philippines to the United States seeks reimbursement for excess charges on the ground that a restriction on the sale of personal property in the Philippines at the time of his transfer prevented him from disposing of excess items. The claim is denied since at the time of the employee's transfer there was no authority to relieve him from the costs in excess of those authorized by statute, regardless of the reasons.

CIVILIAN PERSONNEL**B-224884 Sept. 23, 1987****Relocation****Temporary quarters****Actual subsistence expenses****Eligibility****Extension**

To justify an extension of temporary quarters subsistence expenses, the employing agency's policy directive and the Federal Travel Regulations require a need for an extension due to circumstances occurring beyond the employee's control (short-term delay) within the first 60 days in temporary quarters. The employing agency's policy directive also requires scheduling of construction of a new home so that its occupancy can be expected within the first 60 days of temporary quarters. Since construction was not scheduled for completion under the employee's contract until after the first 60 days in temporary quarters, the employee is not entitled to an extension.

CIVILIAN PERSONNEL**B-227695 Sept. 23, 1987****Compensation****Overtime****Eligibility****Commuting time**

Several Charleston Naval Shipyard employees claim overtime compensation when they are in a temporary duty status and travel by bus, outside of their normal duty hours, from their lodgings to the Naval Submarine Base, Kings Bay, Georgia, during extended refit periods. The time spent traveling outside of regular duty hours as passengers by these prevailing rate (wage board) employees who are covered by the Fair Labor Standards Act (FLSA) between the point of temporary duty lodgings and the temporary duty job site is not considered compensable hours of work under either the FLSA or 5 U.S.C. 5544(a) (1982). Thus, the employees' claims for overtime compensation under these statutes are denied.

CIVILIAN PERSONNEL

B-217885 Sept. 25, 1987

Compensation**Retroactive compensation****Eligibility****Adverse personnel actions****Classification**

A former employee of the Department of the Army is not entitled to backpay on the basis that she held a position that was reclassified from grade GS-12 to grade GS-13. The evidence furnished by the Army indicates that the position was in fact occupied by another employee. The burden of proof is upon the employee to establish the liability of the government and her right to payment, and she has not met that burden.

CIVILIAN PERSONNEL

B-223102 Sept. 25, 1987

Relocation**Residence transaction expenses****Loan origination fees****Reimbursement**

A commercial loan application fee charged an employee for the purchase of a house incident to transfer may be reimbursed under FTR para. 2-6.2(d) as a fee similar to an FHA or VA fee for loan application.

CIVILIAN PERSONNEL**Relocation****Temporary quarters****Parking fees****Reimbursement**

A transferred employee occupying temporary quarters rented by the month at his new duty station may not be reimbursed a parking fee that is separate from the monthly rent.

CIVILIAN PERSONNEL **B-223102 Con't**
Temporary Quarters **Sept. 25, 1987**
Actual subsistence expenses
Reimbursement
Amount determination

A transferred employee who rented temporary quarters on a monthly basis should have the total monthly rent prorated to only the days that are counted as part of the temporary quarters period within the monthly rental period. The days that the employee performed temporary duty interrupted the temporary quarters period and are not counted as part of the temporary quarters period.

CIVILIAN PERSONNEL **B-224750 Sept. 25, 1987**
Travel
Travel expenses
Overpayments
Debt collection
Collection procedures

Collection by offset from employees' salaries for excess amounts they received for travel expenses due to their submitting allegedly fraudulent lodging receipts must be made pursuant to 5 U.S.C. 5514. Under that statute and implementing regulations they are entitled to procedural safeguards, including a hearing if they so request.

CIVILIAN PERSONNEL

B-224811 Sept. 25, 1987

Travel

Temporary duty

Per diem

Claims

Statutes of limitation

CIVILIAN PERSONNEL

Travel

Temporary duty

Per diem

Eligibility

An employee of the Forest Service claims per diem in connection with tours of duty at two worksites for the period from May 14, 1979, to November 16, 1984. His claim was received in the General Accounting Office (GAO) on October 8, 1985. That portion of his claim prior to October 8, 1979, is barred and may not be considered by GAO since it accrued more than 6 years prior to the date it was received by GAO. 31 U.S.C. 3702(b) (1982).

CIVILIAN PERSONNEL

Travel

Temporary duty

Per diem

Eligibility

CIVILIAN PERSONNEL

Travel

Temporary duty

Travel expenses

Privately-owned vehicles

Mileage

A Forest Service employee claims per diem while assigned to a remote, seasonal worksite 6 months of every year. Although the agency designated two official duty stations for this employee and officially transferred him every 6 months from one station to the other, we conclude that the remote, seasonal worksite was a temporary duty location. The employee is entitled to appropriate per diem and mileage allowances while performing this temporary duty.

CIVILIAN PERSONNEL
Leaves of Absence
Annual leave
Forfeiture
Restoration

B-226927 Sept. 25, 1987

Employee of the Defense Logistics Agency in September 1986 scheduled use of annual leave to avoid forfeiture at end of leave year. In November 1986 employee suffered cardiac trauma resulting in absence from work until January 1987. Because employee was in a sick leave status he forfeited the annual leave in excess of 240 hours. That annual leave was restored by the agency to the employee's account under 5 U.S.C. 6304(d)(1)(C), with the exception of 8 hours of annual leave scheduled for December 26, 1986, an administratively declared holiday. Those 8 hours of annual leave may be restored, because in cases of prolonged illness preceding the end of a leave year the employee is presumed to have requested proper scheduling of annual leave to avoid forfeiture, and proper scheduling in this case would have avoided forfeiture for December 26.

CIVILIAN PERSONNEL
Travel
Lodging
Expenses
Reimbursement
Mobile homes

B-227383 Sept. 25, 1987

An employee who, incident to the performance of long-term temporary duty travel to a number of locations, chose to use a motor home as his travel residence, is permitted to include certain expenses to compute his average lodging costs for per diem purposes under the Federal Travel Regulations. The expenses permitted are parking space rental fees, utility costs (connection and disconnection fees, bath or shower fees and dumping fees), and where it is established that the motor home was purchased specifically as a travel residence for such temporary duty, monthly interest paid on his motor home loan during the temporary duty period. However, he may not include loan principal payments or the cost of maintenance or depreciation on the motor home.

CIVILIAN PERSONNEL

B-224647 Sept. 28, 1987

Relocation

Relocation travel

Dependents

Eligibility

CIVILIAN PERSONNEL

Relocation

Temporary quarters

Actual subsistence expenses

Dependents

Eligibility

National Security Agency employee transferred to overseas post is not entitled to any travel, transportation or relocation expenses, overseas living quarters allowances, or supplementary post allowances, erroneously paid by the agency on account of employee's dependent son. Son was in sole legal custody of employee's former spouse by virtue of a court order and was therefore not a member of the employee's household as required by the pertinent regulations.

CIVILIAN PERSONNEL
Compensation
Debt collection
Waiver
Authority
Applicability

B-224647 Con't
Sept. 28, 1987

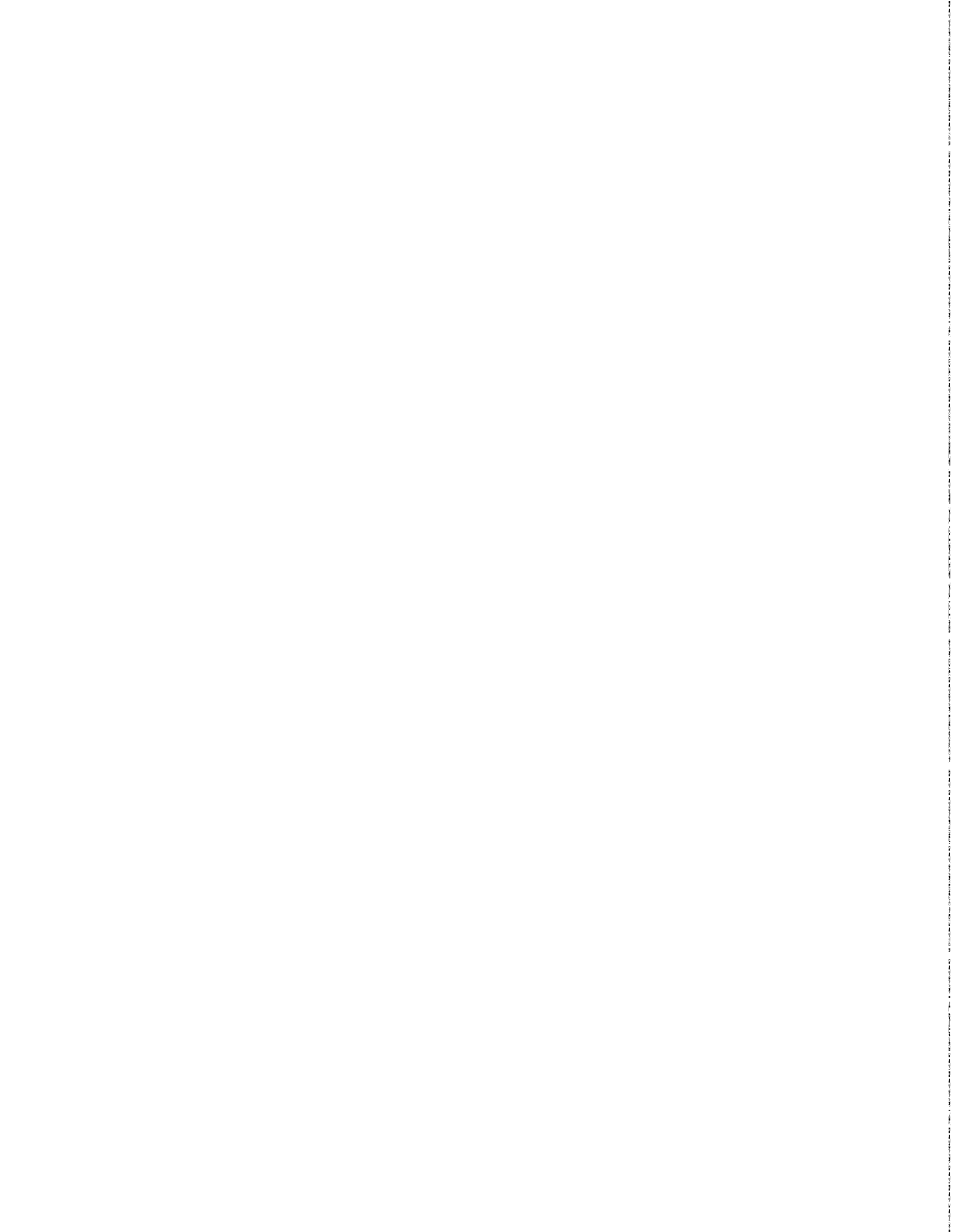
With enactment of Public Law No. 99-224, December 28, 1985, the waiver authority in 5 U.S.C. 5584 has been extended to include erroneous payments of travel, transportation and relocation expenses and allowances. This amendment is not retroactive, so the expanded waiver authority applies only to overpayments made on or after December 28, 1985. The Comptroller General lacks jurisdiction to consider waiver of overpaid travel and transportation expenses and supplementary post allowances for National Security Agency employee's minor son in connection with employee's overseas transfer, since such expenses were paid prior to the December 28, 1985, effective date of the expanded waiver act coverage.

Waiver of overpayments covering living quarters allowance for employee's non-dependent son is denied since misinformation concerning the status of minor sons which the employee provided to agency authorizing officials in connection with his request for overseas transfer allowances constitutes fault on the part of employee within the meaning of 5 U.S.C. 5584(b)(1) (1982). This provision precludes the Comptroller General from exercising equitable waiver authority where the employee was at fault in providing erroneous information that gave rise to the erroneous payment.

**CIVILIAN PERSONNEL
Compensation
Resignation
Effective dates**

B-228991 Sept. 29, 1987

An employee resigned from a position with civil service retirement coverage at the end of 1986 so that she and her husband could claim the full deduction for individual retirement account contributions in 1987, under tax law allowing certain couples such a deduction if neither spouse participates in a retirement plan. The employee was paid for 1986 work in 1987, and the IRS ruled that retirement contributions deducted from her pay actively involved her in a retirement plan during 1987. We advise the interested Congressman that the employee's resignation may not be backdated so as to negate 1987 retirement coverage because we have held that separation dates cannot be changed just because the employee chose a date with later proved disadvantageous.



MILITARY PERSONNEL

MILITARY PERSONNEL

B-225035 Sept. 15, 1987

Pay

Educational benefits

Amount determination

Statutory restrictions

Off-duty college tuition assistance provided by military departments is subject to percentage limitation on "charges" of educational institution. 10 U.S.C. 2007. Under North Carolina statute, non-domiciliary military personnel are "charged" out-of-state tuition rate, but portion to be paid by individual is reduced in accordance with statutory formula. Although application of percentage limit to full tuition rate will result in government's paying more than that percentage of actual costs, payment on this basis will not violate 10 U.S.C. 2007 nor constitute improper use of appropriations.

MILITARY PERSONNEL

B-228683 Sept. 15, 1987

Leaves of Absence

Unused leave balances

Lump-sum payments

Former Navy member who had been paid for 30 days' accrued leave during active service and was paid for 30 days' accrued leave at the time of her discharge requests payment for the additional 25 days of accrued leave standing to her credit upon discharge. The former member may not be paid for the additional 25 days' leave because 37 U.S.C. 501(f) and implementing Department of Defense regulations provide that a member may be paid for no more than 60 days of unused accrued leave during his or her military career.

MILITARY PERSONNEL**B-227505 Sept. 21, 1987****Pay****Survivor benefits****Annuity payments****Eligibility**

Claim for Survivor Benefit Plan (SBP) annuity by the alleged fourth wife of a deceased former service member cannot be allowed. Absent a determination by a court of competent jurisdiction of the validity of the service member's foreign divorce from his third wife, the marital status of the service member who obtained the divorce in Mexico and subsequently married the claimant here is too uncertain to determine the proper recipient of the member's SBP annuity. In any event, even if the foreign divorce were validated so as to make the claimant the service member's lawful wife at the time of his death, she could not qualify for the SBP annuity. Member's action in listing his third wife as spouse on the SBP form after his marriage to fourth wife, if the divorce is valid, nullifies his election to participate in the SBP and no one gets the annuity.

MILITARY PERSONNEL**B-224946 Sept. 25, 1987****Pay****Retroactive pay****Compensatory damages****Eligibility**

When an Army member is found to have been erroneously separated from active duty and is retroactively restored to active duty status under the provision of law authorizing the correction of military records, he may properly claim the military "pay, allowances, compensation, emoluments, or other pecuniary benefits," which he lost during the interim period, but payment may not be made on any additional claim he may bring for compensatory damages which may have resulted from his erroneous separation from active military service.

MILITARY PERSONNEL

B-224946 Con't

Pay

Sept. 25, 1987

Retroactive pay

Deductions

Outside employment

If an Army member is involuntarily separated from but later retroactively restored to active duty through the correction of his military records, he thereby becomes entitled to retroactive payment of interim active duty military pay and allowances; however, his interim civilian earnings must be deducted from that award of military readjustment pay and allowances in the settlement of his military pay accounts incident to the records correction proceedings.

MILITARY PERSONNEL

Pay

Retroactive pay

Interest

Interest on unpaid accounts may not be assessed against the United States in the absence of express statutory authority. Provisions of 10 U.S.C. 1552 governing military records correction proceedings contain no authority for the payment of interest on readjustment pay; hence, interest does not accrue on military pay due to a service member on account of a correction of his records under 10 U.S.C. 1552.

MILITARY PERSONNEL

B-224946 Con't

Pay

Sept. 25, 1987

Retroactive pay

Settlement terms

Acceptance effects

In the absence of a mutual mistake in numerical computation or similar undisputed error which remains undetected at the time of settlement, acceptance of settlement by Army member incident to administrative action to correct his military records bars pursuit of further claims by the member against the government in the matter.

Acceptance of settlement by an Army member incident to the administrative correction of his military records would not operate to bar his subsequent request for waiver of erroneous payments of military pay and allowances shown as debits to his account in the settlement statement; and the gross amount of such erroneous payments could be considered for waiver.

MILITARY PERSONNEL

Pay

Social Security

Taxes

Refunds

GAO authority

The Federal and State tax consequences of military records correction proceedings concluded under 10 U.S.C. 1552 are matters primarily for consideration by the concerned revenue authorities; hence, if a retired Army member's records are corrected nullifying his retirement and retroactively restoring him to active duty status, his application for a tax refund believed due for Social Security (FICA) taxes debited against the active duty military readjustment pay credited to him in the settlement of his military pay accounts would be a matter for submission to the United States Internal Revenue Service.

MILITARY PERSONNEL**B-225205 Sept. 25, 1987****Relocation****Temporary quarters****Actual expenses****Reimbursement****Eligibility**

A member of the uniformed services required by Air Force regulations to live on base who for 30 days is forced to relocate with his dependents into temporary quarters without kitchen facilities at his permanent duty station due to uninhabitability of his government quarters incurred additional expenses for meals. Since the member's evacuation was necessary for the proper administration of the facility as well as the personal safety of the member and his family, the member may be reimbursed the expenses he incurred over and above what he would have spent for food had he been allowed to remain in on-base housing.

MILITARY PERSONNEL**B-225873 Sept. 25, 1987****Pay****Insurance premiums****Debt collection**

Life insurance premiums paid by allotment after the death of a member are to be recouped since an insurance company has no right to premiums after the member's death.

MILITARY PERSONNEL
Pay
Overpayments
Error detection
Debt collection
Waiver

B-225873 Con't
Sept. 25, 1987

An allotment erroneously paid from the pay and allowances of a member of the uniformed services after the death of the member may not be recouped from the recipient thereof or charged against the pay of the deceased member, except an allotment for unearned insurance premiums.

The anti-recoupment provisions of 31 U.S.C. 3727(e)(2) and 37 U.S.C. 556(f) apply to any person, including assignees, transferees or allottees, receiving money paid under an assignment or allotment of pay or allowances authorized by law, except unearned insurance premiums. This includes an allottee who may also be the beneficiary of the arrears of pay.

MILITARY PERSONNEL
Pay
Survivor benefits
Eligibility

B-225897 Sept. 25, 1987

Retired military member who has waived military retired pay in order to increase civil service annuity cannot use both military and civilian service to provide a double survivor benefit or annuity for a dependent child. Since by operation of law the dependent child of a civil service employee will receive a civil service survivor annuity, the child may not be a beneficiary for military Survivor Benefit Plan (SBP) annuity.

MILITARY PERSONNEL

B-227435 Sept. 25, 1987

**Pay
Eligibility
Retired personnel
Reserve officers**

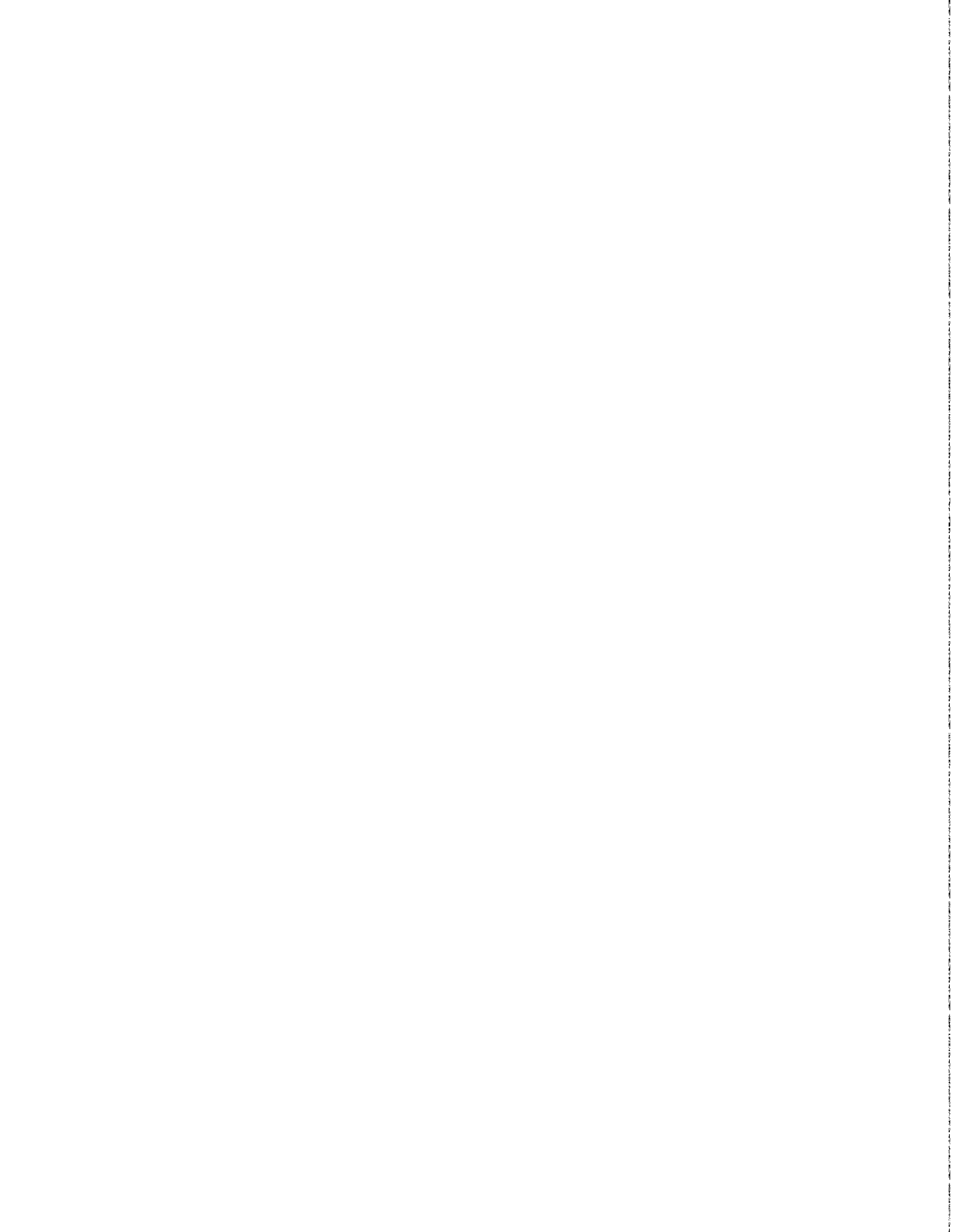
Retired officers of the Regular Air Force who are duly appointed as Reserves of the Air Force for service in the Air National Guard of the United States are entitled to the pay and allowances prescribed by law for duty performed under their Reserve appointments, provided that they waive their military retired pay on the days for which they claim National Guard pay and allowances. Current Air National Guard regulations limit this arrangement to appointments to the position of Adjutant General or Assistant Adjutant General of a State. If the Secretary of the Air Force concludes that retired members of the Regular Air Force should be eligible for appointment to other positions in the Air National Guard, however, the Secretary may amend the regulations to authorize such additional appointments.

MILITARY PERSONNEL

B-228663 Sept. 25, 1987

**Relocation
Household goods
Shipment
Restrictions
Privately-owned vehicles**

Members of the uniformed services are entitled by law to the transportation of an automobile at public expense to an overseas home of their selection upon their retirement, but the terms of the applicable statute and regulations provide no additional entitlement to reimbursement of brokerage fees, handling charges, and storage costs incurred after the automobile arrives at the overseas port of entry. Hence, in the case of a retired Public Health Service officer whose automobile was impounded at port by Peruvian police as suspected contraband while it was in transit to the officer's home of selection in Lima, Peru, the officer may not be allowed reimbursement of the brokerage fees, handling charges, storage costs, and other expenses incurred in obtaining the automobile's release from impoundment.



PROCUREMENT

PROCUREMENT

B-227296 Sept. 1, 1987

Bid Protests

87-2 CPD 215

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

An agency's defense of its evaluation of a proposal at a debriefing held in response to a protest to the agency alleging that the evaluation had been improper constitutes initial adverse agency action on the protest such that any subsequent protest to the General Accounting Office must be filed within 10 working days of the debriefing.

PROCUREMENT

Competitive Negotiation

Discussion

Determination criteria

Where an offeror represents in its proposal that resources of its parent company will be available to it during contract performance, an agency properly may consider the experience of the parent company in evaluating the offeror's proposal.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Protest alleging that the awardee does not have the capacity to perform the contract because of its lack of experience as a separate entity and because the resources of its parent company may not be available to it is dismissed because the protest involves the contracting officer's affirmative determination of the awardee's responsibility, a matter the General Accounting Office generally does not review.

PROCUREMENT
Sealed Bidding
Bids

B-228792 Sept. 1, 1987
87-2 CPD 216

Responsiveness
Acceptance time periods
Deviation

When a bidder, either by intent or mistake, specifies in its bid an acceptance period less than the minimum period expressly required by the government in the solicitation, the bid is nonresponsive on its face and must be rejected.

PROCUREMENT
Competitive Negotiation
Contract awards

B-227175 Sept. 2, 1987
87-2 CPD 217

Administrative discretion
Cost/technical tradeoffs
Cost savings

Contention that agency's decision to make award under oral request for proposals (RFP) to lowest priced, technically acceptable offeror improperly was based on factors other than those identified to the protester is without merit, since protester was advised of agency's decision to award based on price when RFP was issued, and remarks by contracting officer to protester after RFP was issued and before proposals were due could not reasonably be interpreted to mean that the agency had changed the basis for award.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Evaluation criteria
Sufficiency

Statutory provision regarding evaluation factors in award of contracts (10 U.S.C. 2305(a)(3)) does not require that offerors' relative technical quality be included as an evaluation factor in all solicitations; provision requires only that solicitation specify the importance of technical quality relative to the other evaluation factors.

PROCUREMENT **B-228056** **Sept. 2, 1987**
Socio-Economic Policies **87-2 CPD 218**
Small businesses
Competency certification
Extension
Administrative discretion

Section 8(a) subcontracting program is a noncompetitive procedure established by statute, and contracting agencies' broad discretion to determine appropriateness of 8(a) award is not limited by regulations on small business set-aside procurements.

Allegation that Small Business Administration did not perform proper study of impact of 8(a) subcontract on incumbent small business is denied where impact study furnished by agency shows that proper study was made and that 8(a) decision is consistent with findings.

PROCUREMENT **B-226841.4** **Sept. 3, 1987**
Competitive Negotiation
Offers
Late submission
Acceptance criteria

Contracting agency properly rejected a late proposal where the offeror's agent was the paramount cause of late delivery by delivering the proposal to the wrong office even though employees in the office to which the proposal was delivered did not redirect the agent to the office on the address label and did not forward the envelope, which was not marked as a proposal, until the next business day.

PROCUREMENT **B-226935** **Sept. 3, 1987**
Special Procurement Methods/Categories
Computer equipment/services
Competitive restrictions
Federal procurement regulations/laws
Compliance

Army's proposed 3-tier computer architecture standards policy, wherein competition is restricted to only operating system software which can be run on IBM hardware, does not comply with the Federal Information Resources Management Regulation based on the evidence before us, which requires a special justification for a compatibility limited requirement, which justification has not been advanced by the Army.

PROCUREMENT **B-227090; B-227156**
Bid Protests **Sept. 3, 1987**
Allegation **87-2 CPD 219**
substantiation
Burden of proof

Protester has not proven its case when the only evidence on an issue of fact is conflicting statements of the agency and the protester.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Terms
Intellectual property
Incumbent contractors

Protest that agency wrongfully disclosed technical data proprietary to protester is denied where, under the terms of the Defense Acquisition Regulation (DAR), the agency purchased unlimited rights in the disputed technical data. General Accounting Office construes the language of the DAR to permit the agency to use this data in any manner whatsoever. Thus, the agency's use of this data in its current acquisition of this item was proper.

PROCUREMENT

B-227359 Sept. 3, 1987

Sealed Bidding

87-2 CPD 220

Invitations for bids

Cancellation

Justification

Price reasonableness

Protest against cancellation of item in solicitation after opening of bids is denied, where agency relied upon historical costs for determination that bids were unreasonably high, and protester has not met burden necessary to show bad faith or that the determination was unreasonable.

PROCUREMENT

B-228062 Sept. 3, 1987

Sealed Bidding

87-2 CPD 221

Hand-carried bids

Late submission

Acceptance criteria

Where the bid opening officer receives a hand-carried bid after declaring the arrival of the 10:00 a.m. bid opening time as shown on the bid opening room clock, the agency properly rejected the bid as late. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

PROCUREMENT

B-228891 Sept. 3, 1987

Contract Disputes

87-2 CPD 222

GAO review

Contract claim based on improper agency action of awarding contract covered by another firm's contract options is matter to be pursued under firm's contract disputes clause and Contract Disputes Act of 1978.

PROCUREMENT **B-228891 Con't**
Contract Management **Sept. 3, 1987**
Contract administration
Options
Use
GAO review

Question of whether work should be ordered from contractor by extending options or under contract due to be awarded is a matter of contract administration not for review by General Accounting Office.

PROCUREMENT **B-225747.2 Sept. 4, 1987**
Sealed Bidding **87-2 CPD 223**
Bids
Evaluation
Value engineering

Where solicitation allowed bids on only military specification or a specified value engineering change proposal (VECP), and provided for addition of evaluation factor to bid which indicates it is based on VECP, a bid not indicating it was based on VECP nevertheless should have evaluation factor added where it becomes clear that the bid in fact was based on VECP.

PROCUREMENT
Sealed Bidding
Invitations for bids
Terms
Interpretation
Alternate bids

Protester's interpretation of solicitation as providing for three bidding alternatives is unreasonable where item description sets forth only two alternatives and solicitation does not elsewhere expressly establish third alternative or otherwise augment item description.

PROCUREMENT
Bid Protests
Allegation
Abandonment

B-227082.2 Sept. 8, 1987
87-2 CPD 224

Where a protester says that it wants the General Accounting Office (GAO) to consider all the issues it raised in its protest to the contracting agency, and subsequently withdraws one of them, GAO will consider all of the remaining issues whether or not they are specifically reargued.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

Decision which is not shown to be legally or factually incorrect is affirmed on reconsideration.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Amendments
Evaluation criteria
Weighting

B-227140 Sept. 8, 1987
87-2 CPD 225

Nineteen-day period allowed for submission of best and final offers, following an amendment changing the relative weights of evaluation criteria, was not unreasonable where it is not shown that additional time was needed to revise proposals, and it does not appear that the change in criteria prejudiced the protester's competitive position in any event.

PROCUREMENT

Bid Protests

GAO procedures

Purposes

Competition enhancement

B-228093 Sept. 8, 1987

87-2 CPD 228

General Accounting Office (GAO) generally will not consider contention that specification should be made more restrictive since GAO's role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to protect any interest a protester may have in more restrictive specifications.

PROCUREMENT

Bid Protests

Premature allegation

GAO review

Contention that contracting agency improperly will withdraw small business set-aside is premature and will not be considered where there is no evidence supporting contention other than protester's speculation that agency plans to do so.

PROCUREMENT

Bid Protests

GAO procedures

Preparation costs

B-226941 Sept. 10, 1987

87-2 CPD 229

A successful protester of a sole-source purchase order where the items have been delivered and installed is entitled to the costs of pursuing its protest.

PROCUREMENT **B-226941 Con't**
Noncompetitive Negotiation Sept. 10, 1987
Contract awards
Sole sources
Propriety

Where an agency determined that an item should be procured under small purchase procedures on a sole-source basis and the protester shows that there were models of the item that might also have met the agency's needs that were not, but should have been, considered, the sole-source determination was not reasonably based.

PROCUREMENT **B-227502 Sept. 10, 1987**
Bid Protests **87-2 CPD 230**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest challenging contracting agency's decision not to require that products offered under request for proposals (RFP) for electric plug connectors be on qualified products list is untimely where filed after due date for initial proposals since protest involves alleged impropriety apparent on the face of the RFP which must be filed before initial due date.

PROCUREMENT **B-227729 Sept. 10, 1987**
Sealed Bidding **87-2 CPD 231**
Bids
Late submission
Acceptance criteria
Government mishandling

Late receipt of bid delivered by commercial carrier to an office other than the one designated by the solicitation does not warrant consideration of the late bid, the paramount cause for late receipt was not due to any improper government action.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-227831 Sept. 10, 1987
87-2 CPD 232

Protest challenging solicitation requirement for bid samples for battery procurement is dismissed as academic where the protester submitted an offer with required bid samples, the protester's price was substantially higher than that of the low technically acceptable offeror in line for award under the solicitation, and the requirement for bid samples does not appear to otherwise have had a material impact on the protester's price.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic sources
Compliance

B-227812 Sept. 11, 1987
87-2 CPD 235

Where offeror certifies in accordance with the Buy American Act that it intends to supply a domestic product, offer is not subject to addition of evaluation factor, and firm is obligated to abide by its certification upon acceptance of its offer.

PROCUREMENT
Sealed Bidding
Invitations for bids
Post-bid opening cancellation
Justification
Price reasonableness

B-227861 Sept. 11, 1987
87-2 CPD 236

Cancellation of a solicitation after bid opening is proper where the only acceptable bid submitted by the protester was found to be unreasonably priced, and protester does not establish otherwise.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Prices

B-227904 Sept. 11, 1987
87-2 CPD 237

Under a negotiated procurement with award to be made to the lowest priced technically acceptable offer, where, after disclosing prices but before formally awarding a contract, the procuring agency discovers that because of its error in calculating the total price of one of the offerors, the designated awardee was not actually the low offeror, recalculation and award to the low offeror is proper.

PROCUREMENT
Competitive Negotiation
Offers
Unit prices
Labor costs

The Federal Acquisition Regulation's requirement for the integrity of unit prices is not violated by an offer containing an alleged disproportionately low cost for unit labor charges where the solicitation does not require that unit labor charges be separately priced and the alleged violation has not been shown to have prejudiced the protester.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225794.2 Sept. 14, 1987
87-2 CPD 238

Reconsideration request which reiterates arguments made during consideration of original protest and is based on new argument untimely raised fails to establish any error of fact or law which warrants reversal of original decision.

PROCUREMENT **B-225871.2 Con't**
Specifications **Sept. 14, 1987**
Minimum needs standards
Competitive restrictions
Allegation substantiation
Evidence sufficiency

The receipt of only one offer in response to a solicitation does not prove that the specifications were unduly restrictive of competition where the record shows that four firms were capable of responding to the solicitation.

PROCUREMENT **B-227106; B-227106.2**
Bid Protests **Sept. 14, 1987**
GAO procedures **87-2 CPD 241**
Protest timeliness
Apparent solicitation improprieties

Protests alleging that the awardee's proposal was technically unacceptable to the RFP's mandatory performance requirements are timely when filed within 10 days after the award, when the basis for the protests was known.

PROCUREMENT	B-227106; B-227106.2	Con't
Bid Protests	Sept. 14, 1987	
GAO decisions		
Recommendations		
Competitive system integrity		

PROCUREMENT
Specifications
Performance specifications
Modification
Contractors
Notification

Where the awardee's proposal is technically acceptable only if certain formulas contained in the RFP's mandatory performance requirements are revised as proposed in the awardee's proposal, the agency's award and simultaneous contract modification changing those mandatory performance specifications were improper and amounted to a relaxation of the RFP's specifications. The General Accounting Office recommends that the competition be reopened by issuing an amendment notifying all offerors of the relaxation of the performance requirements, and then allowing all offerors to submit revised best and final offers.

PROCUREMENT	B-227110.3; B-227111.3
Bid Protests	Sept. 14, 1987
GAO procedures	87-2 CPD 242
GAO decisions	
Reconsideration	

Second request for reconsideration of a protest dismissed as untimely is denied where the protester does not show errors of law or fact in the dismissal which warrant reversal or modification.

PROCUREMENT **B-227110.3; B-227111.3 Con't**
Bid Protests **Sept. 14, 1987**
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Protester's reliance on time of receipt denial of agency-level protest after the proposal closing date, which constitutes initial adverse agency action on the agency-level protest, does not extend the time for filing a protest with the General Accounting Office.

PROCUREMENT **B-227144 Sept. 14, 1987**
Specifications **87-2 CPD 243**
Minimum needs standards
Competitive restrictions
Justification
Sufficiency

Protest that specification for the acquisition of an exterior/interior signage system is unduly restrictive is denied where the agency's determination of its minimum needs and the necessity of restricting competition is not shown to be unreasonable.

Agency procurement of design and installation of signage system as a total package rather than on the basis of separate awards for each phase was reasonable where the agency reasonably concluded on the basis of prior difficulties encountered with separate awards for each phase that the total package approach would best meet its need.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

B-227491.2 Sept. 14, 1987
87-2 CPD 244

Allegation that contractor may be unable to complete work on time because of delays in awarding the contract involves question of contract administration, which General Accounting Office does not review.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Liability restrictions

Bid for renovation work including asbestos removal was properly rejected as nonresponsive where bid bond included with bid disclaimed responsibility for damages, expenses or costs resulting from the performance of asbestos work required by the solicitation.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic sources
Compliance

Protester's allegation that Buy American Act evaluation differential should have been applied to awardee's bid is denied where awardee's bid contained certification that contractor would supply domestic construction material and other than protester's speculation that awardee would not meet this contractual obligation, record provides no basis to question the certification.

PROCUREMENT **B-227883.2** **Sept. 14, 1987**
Bid Protests **87-2 CPD 245**
GAO procedures
Administrative reports
Comments timeliness

Dismissal of original protest for failure to file comments on agency report in timely manner is affirmed, even though protester received report after date it was due, because despite notice of its responsibility, protester allowed lapse of more than 7 working days after report was due before notifying the General Accounting Office of late receipt.

PROCUREMENT **B-227926** **Sept. 14, 1987**
Competitive Negotiation **87-2 CPD 246**
Offers
Competitive ranges
Exclusion
Administration discretion

Where the solicitation specifically advises offerors that the failure to address all subfactors in a technical proposal might result in the proposal being considered unacceptable, and the protester fails to address all subfactors, the contracting agency's determination to exclude the protester's proposal--rated 34th technically--from the competitive range is reasonable.

PROCUREMENT **B-227964.2** **Sept. 14, 1987**
Bid Protests **87-2 CPD 247**
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

Prior decision dismissing protest as untimely is affirmed where issue raised, allegedly unequal treatment of offerors because of agency acceptance of an alternative proposal, does not warrant invocation of the "significant issue" exception to our timeliness regulations because it does not present a matter of first impression that would have widespread interest to the procurement community.

PROCUREMENT
Sealed Bidding
Bid guarantees
Modification
Propriety

B-227982 Sept. 14, 1987
87-2 CPD 248

Bid accompanied by a materially altered bid bond in which the solicitation number and the project title have been typed over a white-out and the alteration initialled by the bidder, without any evidence in the bid documents that the surety consented to the changes, is nonresponsive.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-222476.6; B-222476.7
Sept. 15, 1987
87-2 CPD 249

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Claim for monetary damages arising from rejection of bid as nonresponsive is denied where General Accounting Office (GAO) previously denied the protest and affirms prior positions that agency's actions leading to the bid rejection and GAO and agency reliance on recent GAO decisions, was not improper or based on bias.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-224908.6 Sept. 15, 1987
87-2 CPD 250

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Where the General Accounting Office finds that the protester has not been unreasonably excluded from competing in the procurement, the award of proposal preparation and protest costs is inappropriate.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Resolicitation
Propriety

B-225769.2; B-225769.3
Sept. 15, 1987
87-2 CPD 251

Resolicitation under revised specifications, rather than award to protester, is appropriate where solicitation requirements exceeded agency's minimum needs and ambiguity in solicitation--disparity between specifications of brand name product and salient characteristics--precluded competition on a common basis.

PROCUREMENT

Bid Protests

**Information disclosure
Competitive advantage**

B-227832 Con't

Sept. 15, 1987

Under the Competition in Contracting Act of 1984, agencies are not required to provide to protesters and other interested parties documents related to a protest that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Nevertheless, decisions on bid protests are based on the entire record and not merely on those portions that have been released to the protester and other interested parties.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

Meaningful discussions do not have to be all encompassing, but rather must lead an offeror into the area of its proposal needing amplification. Questions posed during discussions regarding qualification of personnel and how scheduling conflicts would be reconciled should have alerted offeror that agency was concerned about staffing plan in proposal.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Information submission

Contractor duties

Offeror has the burden of submitting an adequately written proposal upon which the evaluation will be based. An evaluation is not based on the agency's knowledge of an offeror's capabilities or past experience or performance when such is not reflected in the written proposal.

PROCUREMENT **B-227109** **Sept. 16, 1987**
Contractor Qualification **87-2 CPD 258**
Responsibility criteria
Distinctions
Performance specifications

In a procurement for the time charter of a tug and barge, allowing the substitution, after the conclusion of discussions, of an acceptable vessel in place of the proposed vessel that apparently would not meet a performance requirement, is proper where the solicitation as a whole treated vessel characteristics specified in the proposals as performance requirements that would not preclude finding an offer technically acceptable.

PROCUREMENT **B-227905** **Sept. 16, 1987**
Competitive Negotiation **87-2 CPD 259**
Requests for proposals
Competition rights
Contractors
Exclusion

Where protester failed to provide agency with its current mailing address and neglected to inquire of publicized solicitation for more than 3 months, during which time the solicitation was issued and offers were accepted, protest alleging that agency failed to obtain full and open competition because agency did not provide protester a solicitation package is denied.

PROCUREMENT **B-228079.2** **Sept. 16, 1987**
Bid Protests **87-2 CPD 260**
GAO procedures
Agency notification

Dismissal of protest for protester's failure to file a copy of protest with contracting officer within 1 day after filing with General Accounting Office is affirmed. Agency did not receive copy of protest and otherwise had no knowledge of protest basis; and whether the protester may have forwarded a copy within the necessary period is not relevant, since the requirement is for receipt by the agency.

PROCUREMENT **B-228135** **Sept. 16, 1987**
Bid Protests **87-2 CPD 261**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that sealed bidding, rather than negotiated procedures, should have been used to procure printing, collating and mailing services is dismissed as untimely when not filed prior to the closing date for the receipt of proposals.

PROCUREMENT
Competitive Negotiation
Offers
Public opening

Unlike sealed bid procurements where bids are publicly opened, there is no requirement for public opening of offers received under a negotiated procurement.

PROCUREMENT **B-228835.2** **Sept. 16, 1987**
Bid Protests **87-2 CPD 262**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

A protest that is based on alleged improprieties in an IFB that were apparent from the face of the solicitation is untimely if the detailed statement of the legal and factual grounds of protest is not filed until after bid opening.

PROCUREMENT **B-226780.3** **Sept. 17, 1987**
Contractor Qualification **87-2 CPD 263**
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest against current financial acceptability of surety concerns matter of responsibility which can be established before contract award. The General Accounting Office generally does not review a challenge to firms' responsibility.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Minor deviations
Time/date notations

A bid bond which was executed approximately 5 months prior to bid opening does not render the bid nonresponsive since there is no indication from the face of the bond that the bond is not enforceable.

PROCUREMENT **B-226960.2** **Sept. 17, 1987**
Bid Protests **87-2 CPD 264**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration is denied where protester presents no new arguments or information in support of its position that prior decision was erroneous.

PROCUREMENT

B-227304 Sept. 17, 1987

**Competitive Negotiation
Unbalanced offers
Materiality
Determination
Criteria**

87-2 CPD 265

PROCUREMENT

**Competitive Negotiation
Unbalanced offers
Rejection
Propriety**

Contracting agency properly rejected offer as materially unbalanced where the inherent uncertainty of the solicitation's estimated requirements, notwithstanding that the estimate was based on the best information available, combined with extreme skewing of the offered unit prices, create a reasonable doubt whether acceptance of the offer would result in the lowest cost to the government.

PROCUREMENT

**Competitive Negotiation
Unbalanced offers
Rejection
Propriety**

Solicitation clause prohibiting material unbalancing "as to prices for the basic requirement and the option quantities" is not limited to unbalancing between the base-year price and prices for option years, but also prohibits unbalancing between unit prices for items in the same year. Moreover, unbalancing poses such an obvious danger to the integrity of a price competition that the rejection of a materially unbalanced offer is required.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-227399 Sept. 17, 1987
87-2 CPD 266

Protest challenging responsiveness of second and third low bids is dismissed as untimely where protester learned of its bases of protest more than a month before it raised the arguments.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Terms
Deviation

Bid for fire safety inspection services which bidder qualified with regard to inspection schedule with the notation "4 visits" was properly rejected as nonresponsive since invitation for bids (IFB) required that inspection schedule be in accordance with applicable regulations and codes which require that certain fire safety equipment included in the IFB be inspected more frequently than four times over the term of the contract.

PROCUREMENT
Bid Protests
GAO procedures
Administrative reports
Comments timeliness

B-227900.2 Sept. 17, 1987
87-2 CPD 268

Prior dismissal of protest because of protester's failure to comment timely on the contracting agency's report on the protest is affirmed where protester has not provided any corroborative evidence to establish that its comments were timely received at General Accounting Office.

PROCUREMENT **B-227912 Sept. 17, 1987**
Small Purchase Method **87-2 CPD 269**
Quotations
Evaluation
Technical acceptability

Protest of agency's rejection of protester's proposal to supply complex antenna systems is without merit where the agency advised potential offerors that access to a complete and current technical data package would be a prerequisite for award of a contract but the protester demonstrated access to only 15 percent of the required drawings, most of which are outdated.

PROCUREMENT **B-228144 Sept. 17, 1987**
Bid Protests **87-2 CPD 270**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest alleging that solicitation is deficient because the time period allowed for preparation of proposals is too short and because the specifications unduly restrict competition in a number of ways is untimely, where the protest was filed in the General Accounting Office after the time set for receipt of initial proposals.

PROCUREMENT **B-229060 Sept. 17, 1987**
Bid Protests **87-2 CPD 271**
Antitrust matters
GAO review

General Accounting Office will not consider an allegation of collusive bidding. An allegation of collusive bidding raises a matter for determination by the contracting officer in the context of responsibility of the bidder. If the contracting officer suspects collusive bidding, he should refer the matter to the Attorney General.

PROCUREMENT

B-225496.3 Sept. 18, 1987

Bid Protests

87-2 CPD 272

Non-prejudicial allegation

GAO review

Contention that awardee's proposal does not satisfy requirement in specifications for standard, current product because one component is listed as "to be designed" is without merit since reasonable interpretation of requirement is that standard product may be modified to meet specialized requirements set out in specifications.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

General Accounting Office will not review contracting officer's affirmative responsibility determination where there is no showing that it was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met.

PROCUREMENT

Contractor Qualification

Responsibility criteria

Performance capabilities

In request for proposals (RFP) for radio fire alarm system, provisions included in specifications requiring that equipment provided consist of standard products of a manufacturer regularly engaged in manufacture of radio fire alarm systems products, which has in service a system similar to that called for by the RFP, do not constitute definitive responsibility criteria since they do not set out specific, objective standards for measuring offerors' capability to perform.

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

B-225630.4 Sept. 18, 1987
87-2 CPD 273

Protester has not established that inadequate competition was obtained under small business set-aside where bids were received from two apparently eligible small business concerns and the contracting activity determined that adequate competition and reasonable prices had been obtained.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

B-227285.3 Sept. 18, 1987
87-2 CPD 274

Protest that offer was improperly excluded from the competitive range is denied where the agency reasonably concluded that the offer had major technical weaknesses as well as informational deficiencies requiring major revisions before it could be made acceptable; the offer received the lowest score out of four offers, and was scored substantially below the two highest-rated offers; and the offer was the highest-priced of those received.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227306 Sept. 18, 1987
87-2 CPD 275

Contention that estimated requirement for an item is understated and does not reflect the government's actual needs, based on actual requirements under protester's prior contract, is untimely where it is not filed in our Office until after contract award.

PROCUREMENT B-227697 Sept. 18, 1987
Specifications 87-2 CPD 276
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Protest that solicitation requirements that hospital beds be retractable, have permanently located constant pressure controls and emergency CPR instant lowering release mechanisms are restrictive of competition is denied where the requirements are reasonably shown to represent minimum needs of the agency.

PROCUREMENT B-227915 Sept. 18, 1987
Sealed Bidding 87-2 CPD 277
Bids
Evaluation
Options
Low bid displacement

PROCUREMENT
Sealed Bidding
Bids
Evaluation
Prices
Options

Contention that protester should receive award because its bid is low for basic quantity is without merit where solicitation stated that award would be based on evaluation of basic and option prices.

PROCUREMENT
Bid Protests
Forum election
Finality

B-228915 Sept. 18, 1987
87-2 CPD 280

Protest challenging contracting agency's evaluation of protester's proposal under request for proposals which also is the subject of a pending lawsuit by the protester challenging the agency's actions on other grounds is dismissed since the protester could have raised the protest issues in the lawsuit and the relief requested, if granted by the court, would make further consideration of the protest academic.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-229061 Sept. 18, 1987
87-2 CPD 281

Protest that bid was improperly rejected as nonresponsive is dismissed as untimely where protest was filed more than 10 working days after the basis of protest was known.

Protest after bid opening of agency's failure to provide adequate notice of delay of bid opening which allegedly precluded protester from obtaining an extension of its irrevocable letter of credit is untimely. Assuming that the protester did not have a reasonable opportunity to protest prior to bid opening, it was required to protest within 10 working days after its protest basis was known.

PROCUREMENT **B-225445.4** **Sept. 21, 1987**
Bid Protests **87-2 CPD 282**
GAO decisions
Recommendations
Convenience termination
Withdrawal

Prior decision withdrawing recommendation for corrective action (termination of awarded contract) is affirmed on reconsideration where the protester has not shown any error of fact or law and has provided no new information which would warrant reversal of that decision.

PROCUREMENT **B-227470** **Sept. 21, 1987**
Small Purchase Method **87-2 CPD 283**
Requests for quotations
Cancellation
Justification
Minimum needs standards

Where solicitation's purchase description called for a brand name or equal fire alarm system, but failed to list any salient characteristics for use in evaluating equal products, solicitation was properly canceled as defective.

PROCUREMENT **B-227696** **Sept. 21, 1987**
Competitive Negotiation **87-2 CPD 284**
Contracting officer duties
Communications
Restrictions
Contractors

Contracting officer's insistence that offeror communicate with her rather than with members of preaward survey activity, none of whom have authority to bind the government contractually, was not unreasonable.

PROCUREMENT **B-228645** **Sept. 21, 1987**
Competitive Negotiation
Federal procurement regulations/laws
Revision
Price data

PROCUREMENT
Sealed Bidding
Federal procurement regulations/laws
Revision
Price data

General Accounting Office has no objection to proposed revisions to Federal Acquisition Regulation (FAR) Subpart 15.8 and the contract clauses at FAR 52.214-27, 52.215-2, 52.215-22, and 52.215-23, that would implement statutory changes enacted as section 952 of the Defense Acquisition Improvement Act of 1986, Pub. L. Nos. 99-500 and 99-661.

PROCUREMENT **B-227754** **Sept. 22, 1987**
Bid Protests **87-2 CPD 289**
Moot allegation
GAO review

Contention that award under invitation for bids for river improvement work is improper where low bid exceeds original government estimate by more than 25 percent, in view of statutory prohibition on performing such work by private contract where contract price is more than 25 percent higher than government estimate, is dismissed as academic where contracting agency subsequently increased government estimate and, as a result of the revision, which the protester does not challenge, low bid falls within 25 percent statutory limitation.

PROCUREMENT

Sealed Bidding
Bid guarantees
Responsiveness
Signatures
Authority

B-227754 Con't
Sept. 22, 1987

Absence of bidder's and surety's corporate seals from bid and bid bond does not make bid nonresponsive since evidence of a signer's authority to bind bidding company or surety may be furnished after bid opening.

PROCUREMENT

Bid Protests
Agency-level protests
Protest timeliness
GAO review

B-226605.2 Sept. 23, 1987
87-2 CPD 290

PROCUREMENT

Bid Protests
GAO procedures
Protest timeliness
Deadlines
Constructive notification

Protest which is initially untimely filed with the contracting agency will not be considered by the General Accounting Office. Protesters are charged with constructive knowledge of Bid Protest Regulations and lack of familiarity with filing requirements is not a defense to dismissal of a protest as untimely.

PROCUREMENT **B-226605.2 Con't**
Socio-Economic Policies **Sept. 23, 1987**
Small businesses
Size determination
GAO review

General Accounting Office does not consider challenges to small business size status because the Small Business Administration has conclusive authority to decide such matters.

PROCUREMENT **B-227676.2 Sept. 23, 1987**
Bid Protests **87-2 CPD 291**
GAO procedures
Protest timeliness
10-day rule
Reconsideration motions

Request for reconsideration of the dismissal of a protest is dismissed as untimely since it was filed more than 10 working days after the protester received the dismissal of the protest.

PROCUREMENT **B-227894 Sept. 23, 1987**
Competitive Negotiation **87-2 CPD 292**
Offers
Technical acceptability
Deficiency
Blanket offers of compliance

Proposal was properly found technically unacceptable where proposal did not affirmatively demonstrate that offered keyboard met specification requirement of 101 keys and blanket statement of compliance does not override noncompliant technical data submitted with proposal.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-228145 Sept. 23, 1987
87-2 CPD 293

Where a protest against the exclusion of the protester's proposal from the competitive range was filed more than 5 weeks after the protester learned of the rejection of its proposal, the protest is untimely even though the new president of the protesting company may not have known of the earlier rejection until after acquiring the company from its previous owner.

PROCUREMENT
Payment/Discharge
Unauthorized contracts
Quantum meruit/valebant doctrine

B-226503 Sept. 24, 1987

While the Department of Education (Department) may not pay a tax bill levied by the Town of Seneca Falls, New York for sewer services provided in 1986 to property owned by the Department, it must pay the Town the reasonable value of the services on a quantum meruit basis. The services would have constituted a permissible procurement, the government received and accepted the services, and the Town acted in good faith. The GAO offers a formula to assist the Department in calculating the dollar value of the benefits received.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-227375 Sept. 24, 1987

87-2 CPD 294

Protester's allegation that certain material solicitation requirements, with which its proposal failed to comply, overstated the agency's needs or otherwise were not essential, will not be considered where the protester did not timely protest inclusion of the requirements in the solicitation.

PROCUREMENT

Sealed Bidding

Two-step sealed bidding

Offers

Rejection

Propriety

Contracting agency reasonably evaluated the protester's proposal under step one of two-step sealed bid procedure as being technically unacceptable where the proposal ignored important requirements of the purchase description; since major proposal revisions would have been necessary to make the proposal acceptable, rejection of the proposal without discussions was proper.

Protest that contracting agency should be estopped from finding the protester's proposal technically unacceptable on basis that agency had previously told protester the proposed design was acceptable, is without merit where allegation is unsupported by the record.

PROCUREMENT

B-228689 Sept. 24, 1987

Sealed Bidding

87-2 CPD 297

Bids

Responsiveness

Descriptive literature

Adequacy

Where an invitation for bids requires descriptive literature to establish compliance with solicitation specifications, bid submitted with literature that does not address or otherwise show compliance with the specifications must be rejected as nonresponsive.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Determination time periods

Bidder cannot cure the inadequacy of submitted descriptive literature with post-bid opening explanations regarding the meaning of the bid.

PROCUREMENT

B-228908 Sept. 24, 1987

Bid Protests

87-2 CPD 298

GAO procedures

Protest timeliness

10-day rule

Protest based on knowledge obtained by protester during a telephone conversation with an employee of the contracting agency is untimely when filed more than 10 working days after the conversation.

PROCUREMENT**B-224046 Sept. 25, 1987****Payment/Discharge****Shipment costs****Additional costs****Payment time periods****Statutes of limitation**

Forwarders' supplemental bills for single factor ocean rate adjustments were received in the General Services Administration (GSA) more than 3 years after delivery and original payment dates. They are not barred from consideration and payment by the GSA where, under the Military Traffic Management Command's (MTMC) rate adjustment procedures, forwarders' claims do not accrue until MTMC approves forwarders' requests for adjustment, and under GSA's regulations claims are "received" when received either by GSA or by the agency out of whose activities the claims arose. The forwarders' claims were received in GSA within 3 years of the dates on which MTMC approved the rate adjustments, and MTMC received the requests for rate adjustments within 3 years of the original payment dates.

PROCUREMENT**B-225087 Sept. 25, 1987****Payment/Discharge****Shipment costs****Overcharge****Payment deductions****Propriety**

Where no benefit results to the government from a carrier's tender supplement that retroactively increased freight charges by application of actual miles rather than lower constructive miles published in a mileage guide, the supplement is legally ineffective because no government officer or employee has authority to waive the government's contractual rights in these circumstances.

PROCUREMENT
Sealed Bidding
Bids

B-225087 Con't
Sept. 25, 1987

Responsiveness
Contractor liability
Liability restrictions

Where it is the custom to apply mileages from an industry mileage guide to rates offered in a carrier's rate tenders, the mileage guide, rather than actual miles, applies even though a particular tender's rate schedule does not specify whether it is governed by actual miles or the mileage guide.

PROCUREMENT

B-227014.2 Sept. 25, 1987
87-2 CPD 299

Bid Protests
GAO procedures
GAO decisions
Reconsideration

Argument advanced by protester in its request for reconsideration that basically reiterates previously-rejected argument does not warrant reversal or modification of the prior decision.

PROCUREMENT

Bid Protests
Information disclosure
Administrative determination
GAO review

Where an agency declines to make relevant documents available to a protester because the agency considers such documents to be privileged, the General Accounting Office will still review such documents in arriving at its decision.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-227805 Sept. 25, 1987
87-2 CPD 302

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

After reviewing procurement in response to the protest, agency concedes that award was improper. Thus, the protester is entitled to recover the costs of preparing its proposal and of filing and pursuing the protest since it was unreasonably excluded from the competition for the base contract period.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Suspended/debarred contractors

B-228122 Sept. 25, 1987
87-2 CPD 303

Where administrative sanction imposed by contracting agency against protester precludes protester from competing under solicitation, protest of award under that solicitation is dismissed because protester has no legitimate interest in the procurement, as required by General Accounting Office Bid Protest Regulations.

PROCUREMENT

B-228731 Sept. 25, 1987

Socio-Economic Policies

Labor standards

Federal procurement regulations/laws

Revision

GAO, in commenting on the proposed amendments to the debarment and suspension procedures of the Federal Acquisition Regulation, concurs with those proposals that are responsive to the following GAO recommendations made in an earlier report: (1) proposed debarments be made effective governmentwide, (2) the term "affiliation" be better defined, and (3) the coverage of the regulations be extended to include subcontractors. GAO also concurs with proposed change which would require prospective contractors to make certain certifications (e.g., whether or not they are presently debarred or suspended).

PROCUREMENT

B-224027.7 Sept. 28, 1987

Bid Protests

87-2 CPD 304

Allegation substantiation

Lacking

GAO review

The General Accounting Office will not consider a protest that fails to set forth a detailed statement of the legal and factual grounds of protest, and does not include copies of relevant documents.

PROCUREMENT

Bid Protests

Antitrust matters

GAO review

Patent infringement allegations are not encompassed within the General Accounting Office's bid protest function.

PROCUREMENT

B-224027.7 Con't

Bid Protests

Sept. 28, 1987

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest based upon alleged improprieties in a solicitation--vague and ambiguous specifications and evaluation criteria--that are apparent prior to the closing date for receipt of initial proposals is untimely where not filed prior to that date; a protest included in the initial proposal is not a timely pre-opening protest, since there is no requirement that the agency open or read proposals on or before the closing date.

PROCUREMENT

B-226939.4 Sept. 28, 1987

Bid Protests

87-2 CPD 305

GAO procedures

Interested parties

Request that General Accounting Office (GAO) reconsider its dismissal of the protester's objections to the adequacy of another offeror's technical proposal, and decide those issues on the merits, is denied where protester, by virtue of the rejection of its own proposal on another ground (which action GAO upheld in its prior decision and has not been asked to reconsider) was not eligible for award of the contract and therefore not an "interested party" under GAO's Bid Protest Regulations for purposes of challenging the award to another.

PROCUREMENT
Special Procurement
Methods/Categories
Federal supply schedule
Purchases
Justification
Low prices

B-227833 Sept. 28, 1987
87-2 CPD 307

Protester's claim that the award was made to other than the low quoter on small purchase request for quotations because the purchase order confirming the award was for a higher price than the protester's quote is not supported by the record, which shows the initial oral order was to the lowest quoter and the confirming order reflected a changed condition discussed when the low quoter started work before the confirming purchase order was issued.

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Geographic restrictions
Justification

B-227849 Sept. 28, 1987
87-2 CPD 308

Geographical restriction in solicitation for lease of office space does not unduly restrict competition where the agency reasonably concluded that the restriction was needed to reduce the time spent by inspectors in travel to and from coal mines and coal preparation plants in the area to be served by the office.

There is no law or regulation requiring an agency soliciting the lease of office space to delineate the acceptable geographical area so as to include women-owned buildings whose location will not satisfy the agency's minimum needs.

PROCUREMENT
Contract Disputes
GAO review

B-221578 Sept. 29, 1987

PROCUREMENT
Payment/Discharge
Payment time periods
Government delays
Interest

GAO does not have jurisdiction to resolve disputes involving payment of interest on transportation claims, including Government bill of lading. Its general claims authority under 31 U.S.C. 3529 has been superseded by the more specific authority conferred on the General Services Administration (GSA) by the Transportation Act of 1940, as amended, 31 U.S.C. 3726, which has authority to audit transportation payments and effect settlements of amounts in dispute, although claimants could ask GAO to review GSA decisions.

PROCUREMENT
Contract Disputes
GAO review

GSA regulations are ambiguous on the question as to whether disputes concerning Prompt Payment Act interest payments on transportation claims are to be resolved by the originating agency's Board of Contract Appeals or by the General Services Administration under the Transportation Act of 1940. In either case, GAO has no initial jurisdiction to resolve such disputes.

PROCUREMENT **B-225587.2** **Sept. 29, 1987**
Competitive Negotiation **87-2 CPD 312**
Contract awards
Administrative discretion

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

Contracting officer's award of a contract to the second low bidder following an initial determination by the Small Business Administration (SBA) that the low bidder was other than small, without waiting for the result of an appeal to the SBA's Office of Hearings and Appeals, was proper and did not constitute an abuse of the contracting officer's discretion even though the contracting officer was notified of the appeal prior to making the award.

PROCUREMENT **B-225685.2** **Sept. 29, 1987**
Bid Protests **87-2 CPD 313**
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Competitive Negotiation
Requests for proposals
First-article testing
Waiver
Administrative determination

Prior decision is affirmed on reconsideration where protester fails to show any error of law or fact warranting reversal of finding that contracting agency reasonably decided not to waive first article requirement for protester who had not produced the item being procured, a complex aircraft part, for an extended period of time.

PROCUREMENT
Socio-Economic Policies
Labor standards
Construction contracts
Suspended/debarred contractors
Listings

B-226424 Sept. 29, 1987

The United States General Services Administration requested changes in the coding of the Comptroller General's "List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Acts Incorporating Labor Standards Provisions". The request is that the Davis-Bacon Act related statutes be identified individually by a distinct code, rather than by one collective code. We approve the requested change.

PROCUREMENT
Bids Protests
GAO procedures
Protest timeliness
10-day rule

B-227603 Sept. 29, 1987
87-2 CPD 314

Protest that proposal improperly was found unacceptable and that no discussions were held is dismissed as untimely where it was not filed within 10 working days after the protester learned the basis for protest.

PROCUREMENT

B-225014 Sept. 30, 1987

**Contract Disputes
Shipment costs
Freight charges
Self-certification**

The General Services Administration (GSA) disallowed a carrier's supplemental bill for exclusive-use-of-vehicle charges on grounds that the carrier's exclusive-use rule was inconsistent with other provisions in its rate and rules tenders, and the ambiguity thus created should be construed against the carrier. Where, however, a reasonable construction of the provisions conforms to the carrier's intent and the shipper's understanding the provisions are not considered ambiguous. Thus, the exclusive-use charge is applicable and it was improper for GSA to disallow the carrier's claim.

PROCUREMENT

B-227872 Sept. 30, 1987

**Competitive Negotiation
Requests for proposals
Cancellation
Justification
GAO review**

Agency reasonably canceled solicitation for lease of office space on the ground that the contracting officer improperly amended the solicitation, which had been issued for 10,365 square feet of space, to increase the needed space to 22,565 square feet instead of advertising the increase, since the change in requirement was so substantial that a new competition was warranted.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-228068.3 Sept. 30, 1987
87-2 CPD 316

A protester makes use of the mail service at its own risk and a delay or loss in the mails does not serve as a basis for considering untimely filed materials.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Time/date notations
Establishment

In the absence of affirmative evidence to show actual earlier receipt, GAO's time/date stamp is accepted as evidence of the time of receipt of materials relating to protests at GAO.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-228180 Sept. 30, 1987
87-2 CPD 317

Protest of alleged improprieties in a solicitation and of agency's failure to allow adequate time for bidders to respond to clarifying amendment is dismissed as untimely where not filed until well after bid opening, where not only were alleged improprieties apparent but from circumstances it should have been apparent to protester in sufficient time to protest prior to bid opening that little time would be available to respond to the amendment.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Signatures
Authority

B-228201 Sept. 30, 1987
87-2 CPD 318

Evidence of an agent's authority to sign bid may be furnished after bid opening.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Contractors
Identification

B-228254 Sept. 30, 1987
87-2 CPD 319

Where a bid is submitted in the name of a parent corporation and is accompanied by a bid bond in the name of its subsidiary corporation, the bond is materially deficient and the bid must be rejected as nonresponsive, because the surety would not be liable for the default of the bidder.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-221037 Sept. 15, 1987
 Environment/Energy/Natural Resources
 Environmental protection
 Air quality
 Standards
 Enforcement

Clean Air Act, 172(b), 42 U.S.C. 7502(b), does not require Environmental Protection Agency to find "stage II" vapor recovery controls (installed on gasoline pumps to capture emissions) to be a reasonably available control measure without making an independent determination whether that treatment is warranted.

Although Environmental Protection Agency's (EPA) study of technology installed on automobiles to control vapor emissions while refueling under 202(a)(6) of Clean Air Act, 42 U.S.C. 7521(a)(6), does not preclude EPA from declaring controls installed on gas pumps (stage II controls) to be reasonably available control measure (RACM), we cannot say that EPA must now declare stage II as RACM and require that it be put in place.

Clean Air Act, 42 U.S.C. 7502(b)(2), requires Environmental Protection Agency (EPA) to provide for implementation, by areas which have not achieved national ambient air quality standard for ozone by statutory deadline, "of all reasonably available control measures" (RACM). Despite this language, dictum in Court of Appeals decision suggests that EPA might have a basis for not requiring adoption of all RACM, if required standard could be achieved without all. National Steel Corp. v. Gorsuch, 700 F.2d 314 (6th Cir. 1983).



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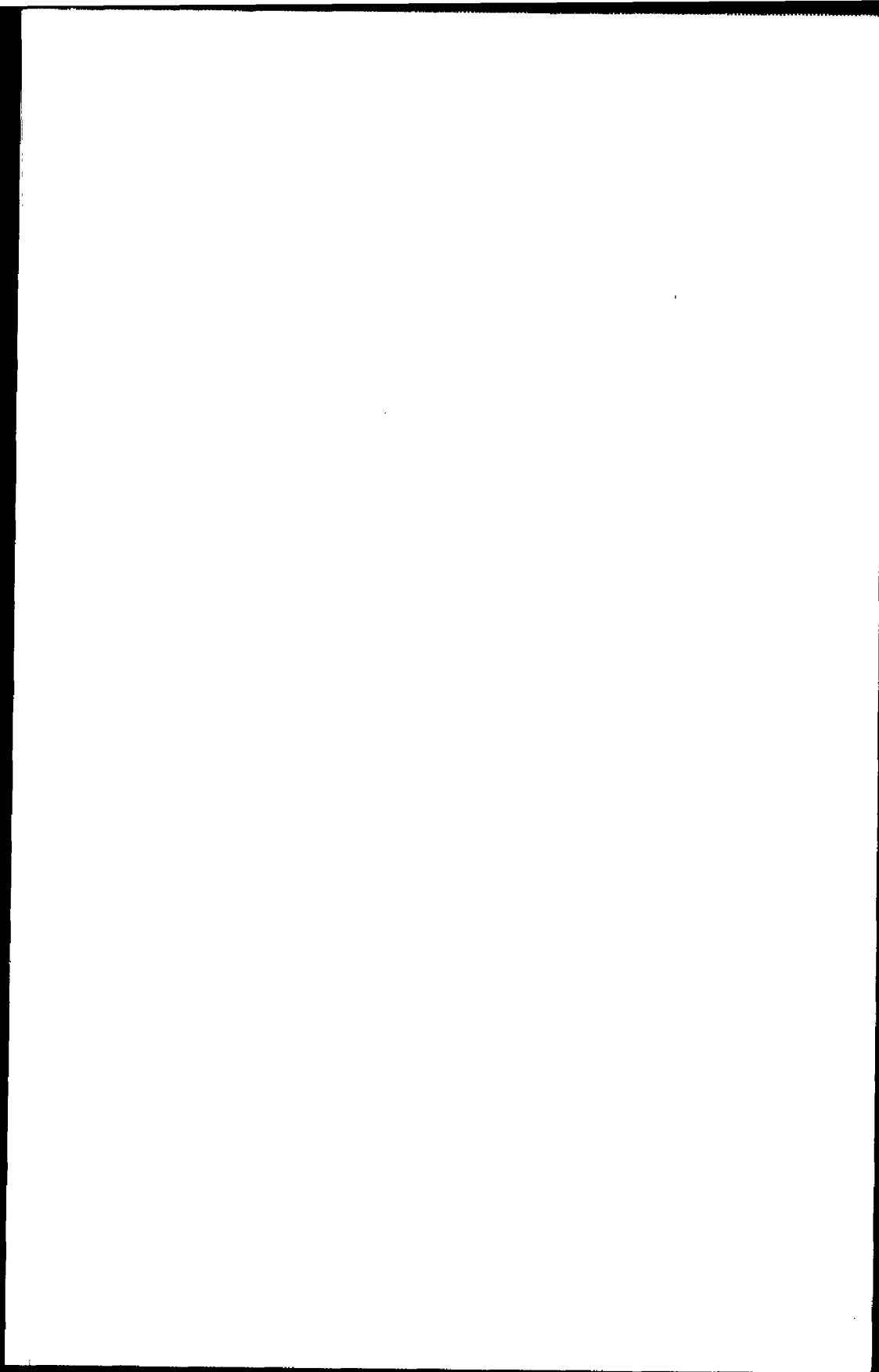
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