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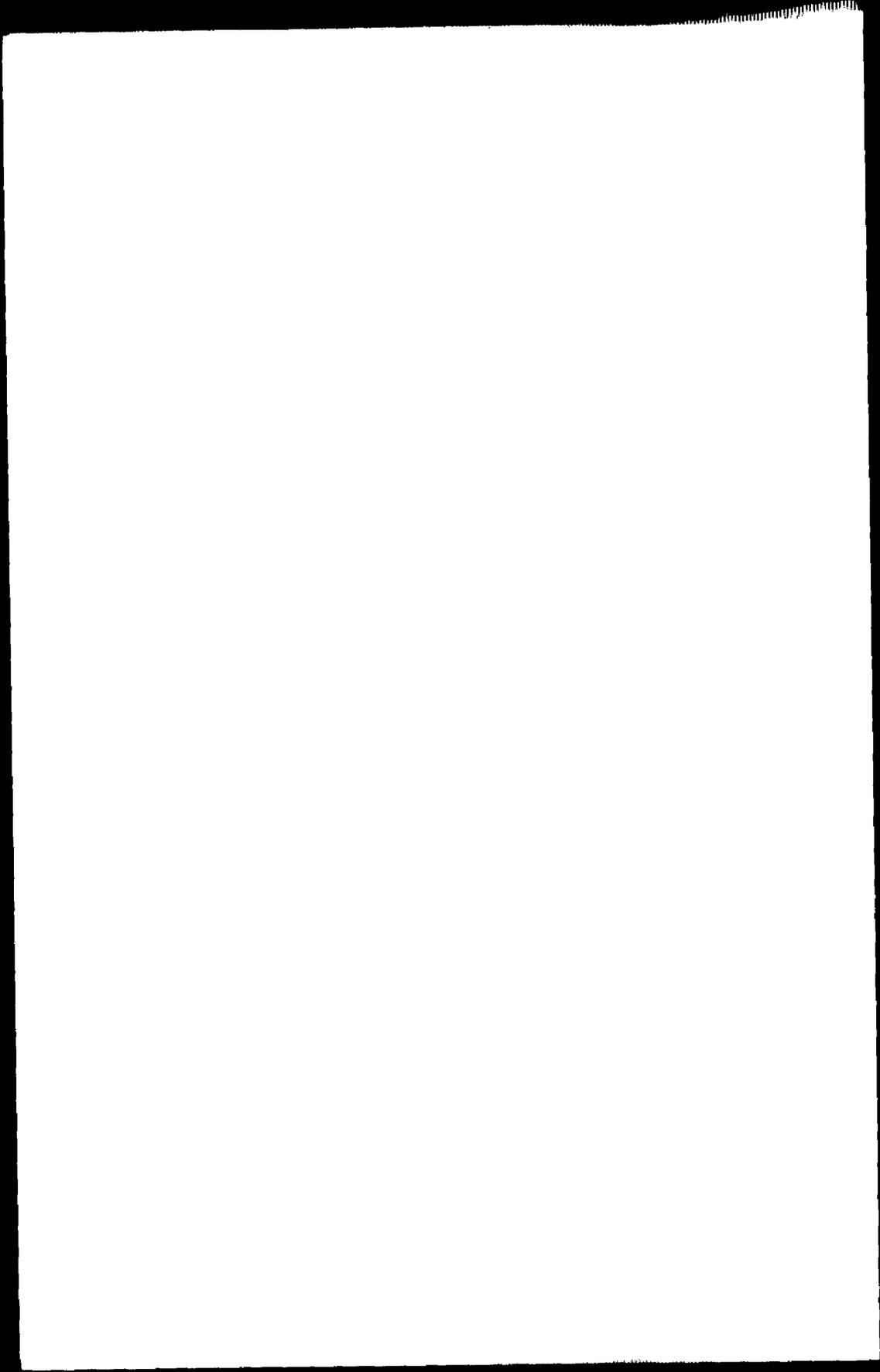
United States General Accounting Office

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March 1987

**Digests of Unpublished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

Vol III, No. 6



United States General Accounting Office

Charles A. Bowshe

Comptroller General of the United States

Milton J. Socolar

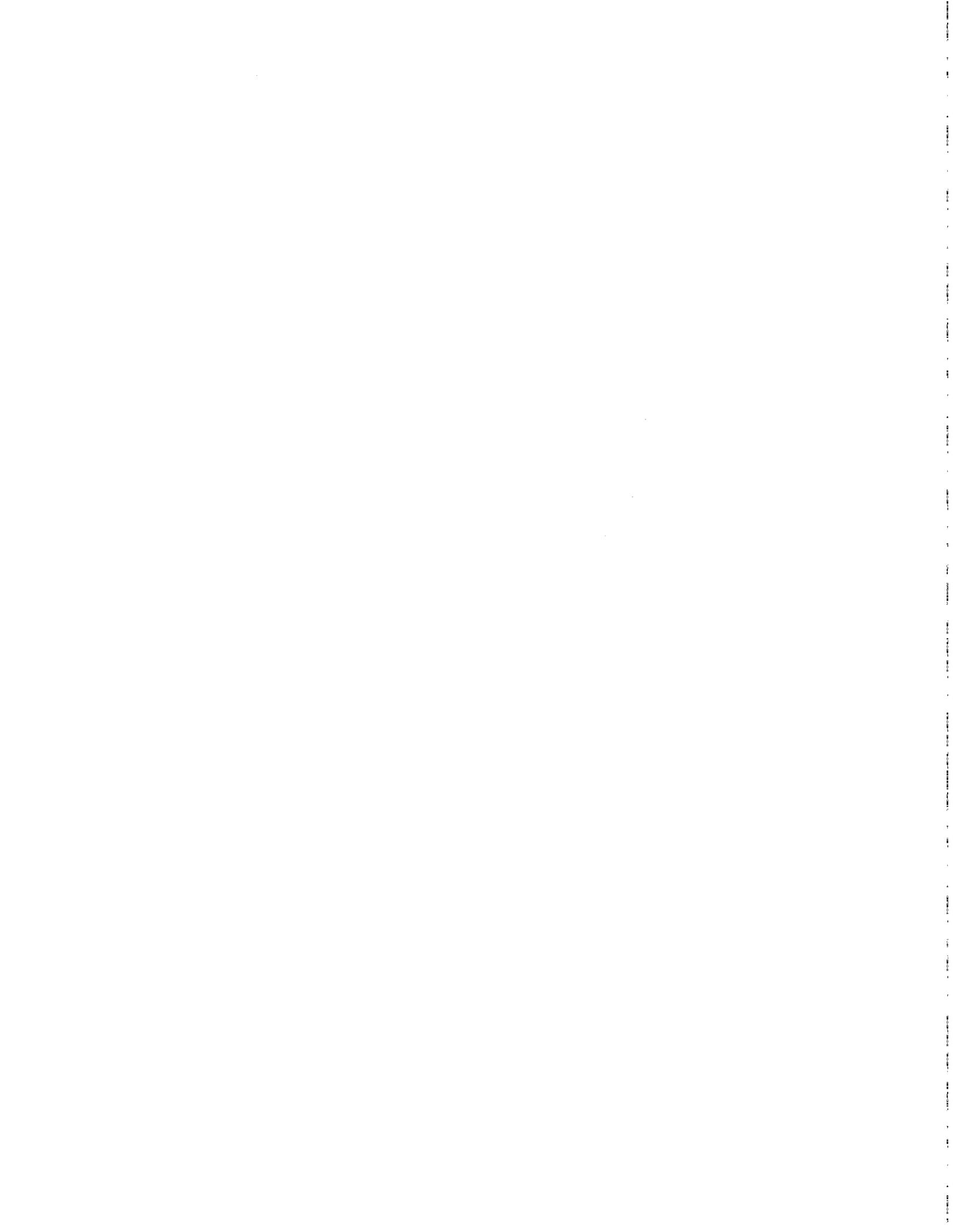
Special Assistant to the Comptroller General

Harry R. Van Cleve

General Counsel

James F. Hinchman

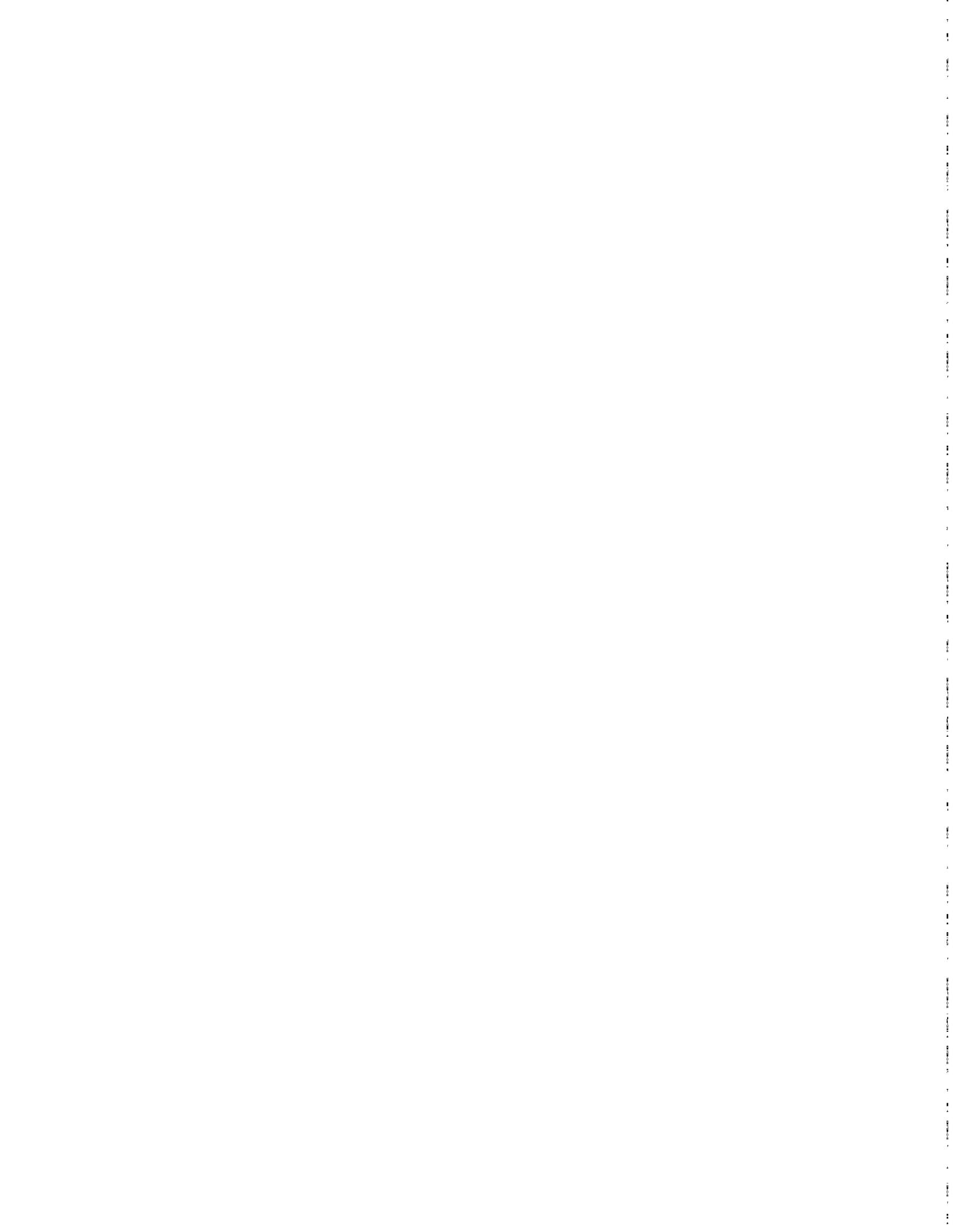
Deputy General Counsel



MARCH 1987

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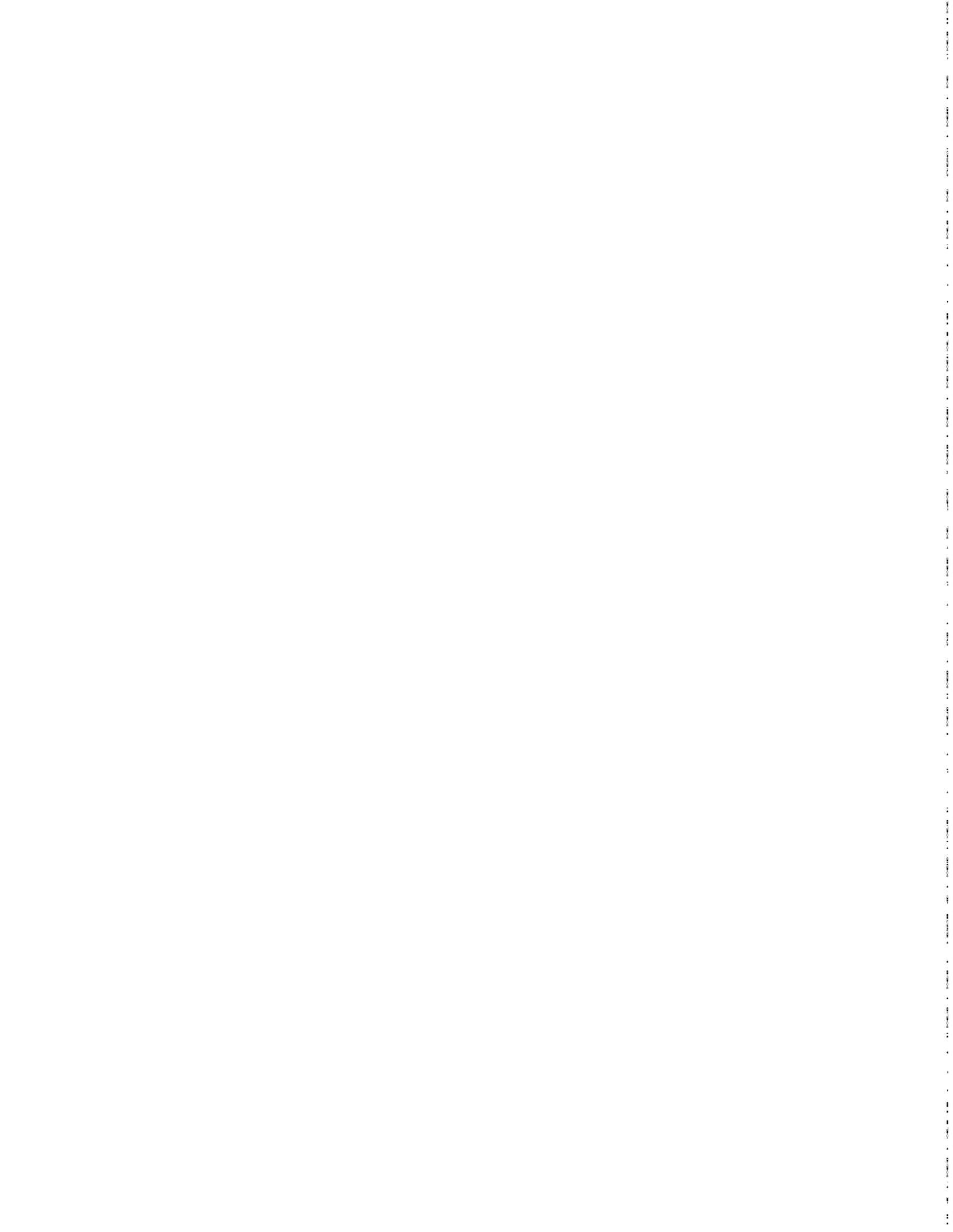


PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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).



This publication is prepared in the
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Manager, Legal Information and Reference Service Branch
Randall L. Byle

Supervisory Attorney-Advisor
Christine M. Kopocis

Editor-in-Charge
Margaret L. Carey

For:

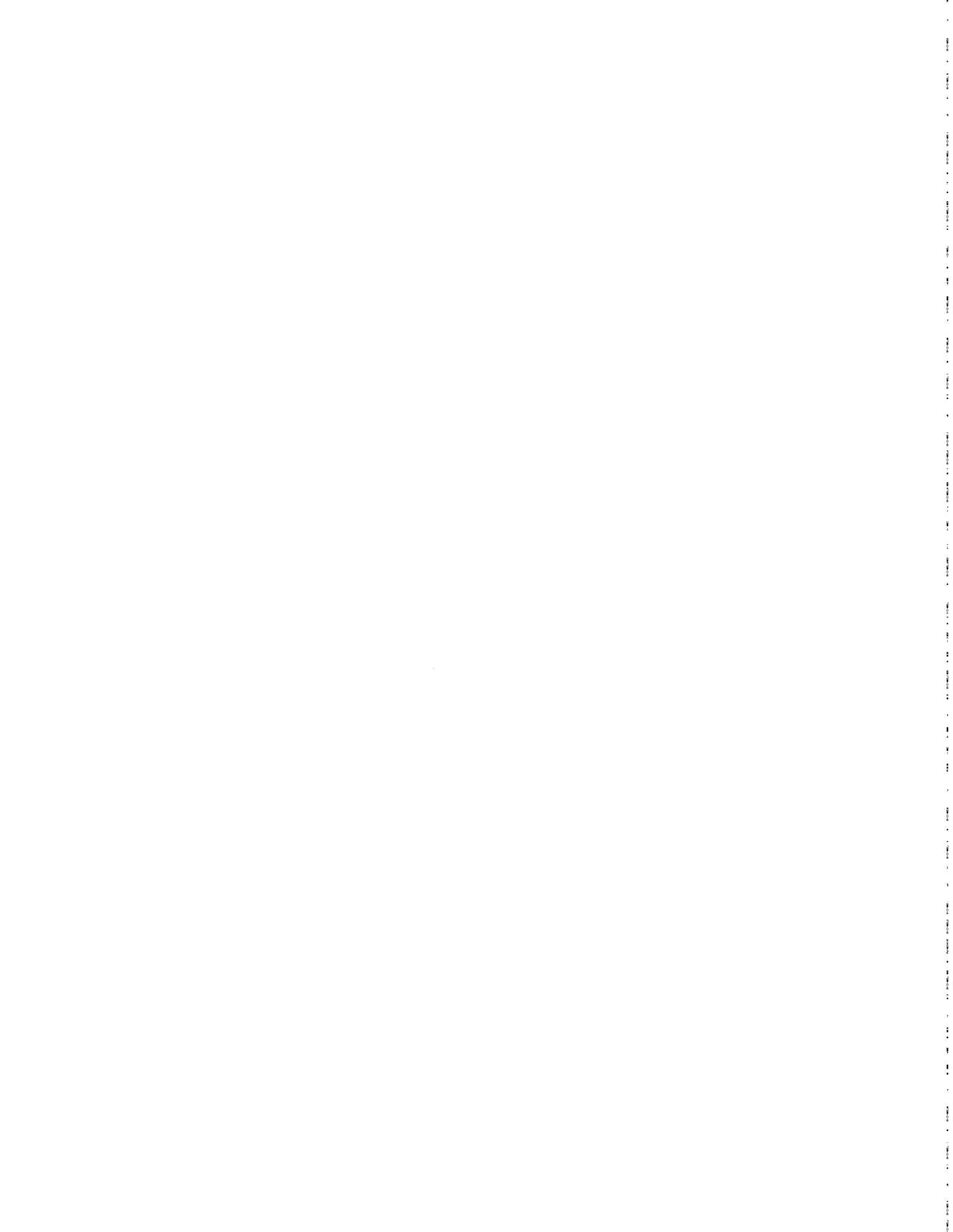
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NOTICE

Effective October 1, 1986, a new controlled vocabulary is being used to index the documents of GAO's Office of General Counsel. Changes in the vocabulary in this publication are reflected in the chapter titles and the index entries (headings). Copies of the vocabulary with introductory material explaining how to use the vocabulary to retrieve documents will be mailed early in 1987 to all individuals currently on GAO's distribution list for this publication.



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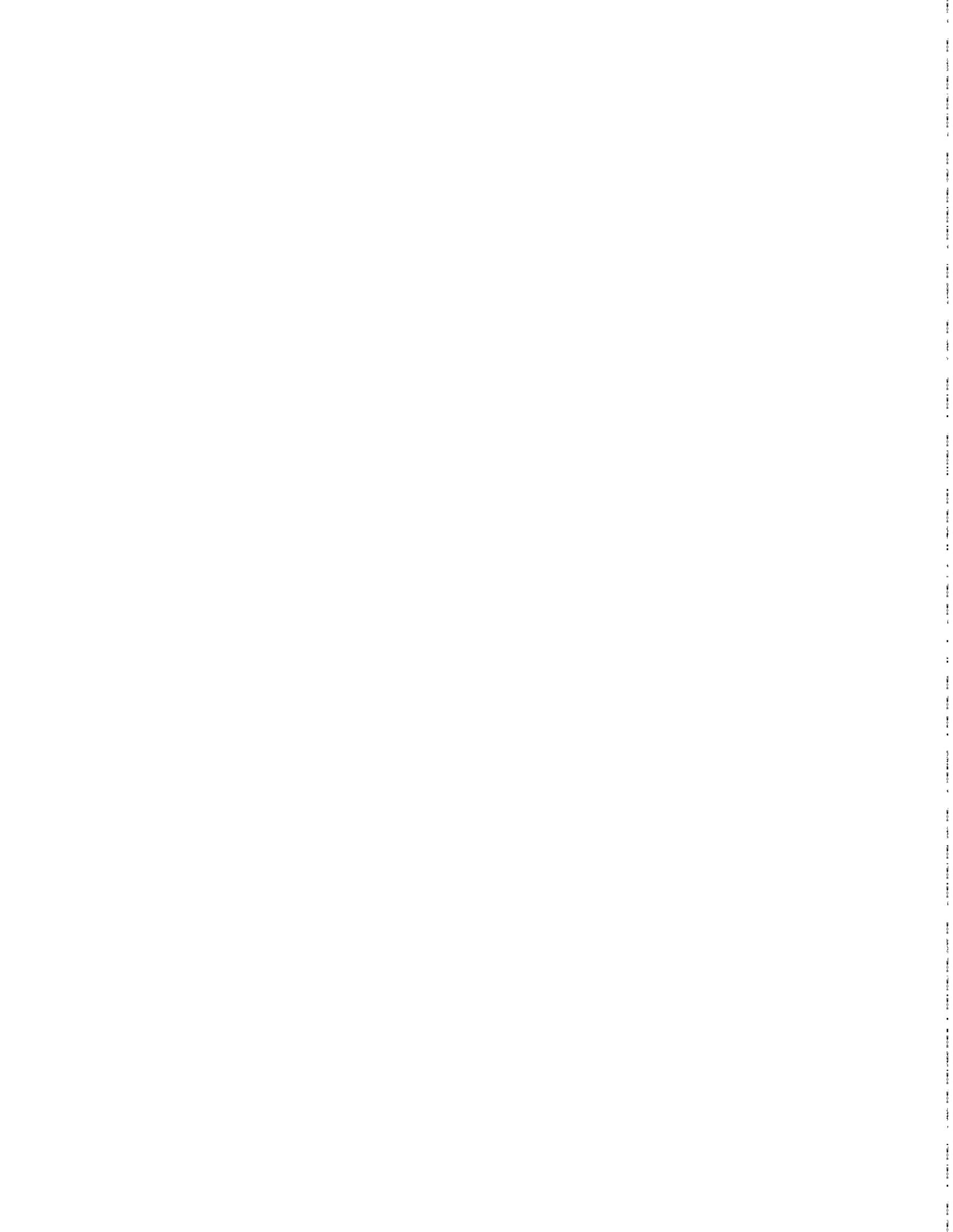
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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-225986 Mar. 2, 1987

Amount availability

Augmentation

Gifts/donations

Travel expenses

The Federal Home Loan Bank Board (Board) has no authority under 12 U.S.C. § 1701c(1) to accept gifts, in cash or kind, from the Federal Home Loan Banks for the travel-related administrative expenses of Board personnel. Such expenses must be paid by the Board using its own funds subject to any limitation on the Board's administrative expenses contained in annual appropriation acts.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226321 Mar. 6, 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 payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will no longer grant relief if the finance officer delays more than 3 months in forwarding the debt to your collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation B-222248 Mar. 13, 1987
Availability
Amount availability
Augmentation
Federal work programs
Voluntary services

The Equal Employment Opportunity Commission questions whether it may be a "host" agency under the Senior Community Service Employment Program, which is funded by federal grant and administered under federal statute by the American Association of Retired Persons. The Commission may properly act as a "host" agency in this context since this would not contravene the provisions of 31 U.S.C. § 1342, which prohibits federal agencies from accepting voluntary services from private citizens in the absence of statutory authority.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-221604 Mar. 16, 1987
Unauthorized contracts
Quantum meruit/valebant doctrine

Airport Authority that contracted and paid for services to halt and clean up an oil spill on Army property may be paid on quantum meruit basis because services constituted a permissible procurement at a fair price which the Government would otherwise have had to provide itself and for which the Army received a benefit.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-226153 Mar. 17, 1987**

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. § 3527(c) from liability for two improper payments resulting from payee's negotiation of both original and recertified military checks in two separate instances. Proper procedures were followed in the issuance of the recertified checks, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1987, where the payee has left the Army with its employ, we will no longer deny relief if finance officer delays more than 3 months in forwarding the debt to your collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation **B-216016 Mar. 23, 1987**

availability

Purpose availability

Specific purpose restrictions

Membership fees

An employee incurred a fee for membership in a private airline club, where he allegedly conducted business with public and private officials. The employee may not retain reimbursement for the fee because entertainment expenses are not payable unless funds are made available pursuant to specific statutory authority. Furthermore, 5 U.S.C. § 5946 (1982) generally prohibits the use of appropriated funds for the payment of membership fees incurred by individual employees.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226483 Mar. 23, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

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

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance B-226544 Mar. 24, 1987

Civil defense

Emergency preparedness

Funds

Withholding

Federal Emergency Management Agency (FEMA) is authorized to withhold Civil Defense Act funds from the State of Oregon based on the State's nonparticipation in a communications exercise designed to test civilian preparedness for imminent nuclear war. Oregon's prior governor agreed to the exercise in the State's Cooperative Agreement with FEMA. If FEMA attempts withholding, it must follow procedural due process called for in its statute and implementing regulations, and it can only withhold the funds provided under the Civil Defense Act, not all emergency planning funds. Additionally, FEMA could exercise its discretion to accommodate Oregon's wish to participate in a drill premised on a less politically sensitive scenario than a nuclear war with the Soviet Union.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-217114 Mar. 26, 1987**
Investigation
Civil rights
Violation
GAO review

General Accounting Office lacks jurisdiction to evaluate or report on constituent's claims that he was denied his civil rights by an Army Board of Officers investigating his actions as an accountable officer of the U.S. Army Corps of Engineers. However, an accountable officer whose pay is being withheld because of arrearages to the United States may request that the Comptroller General report the amount of the debt to the Attorney General, who must in turn commence suit against the individual within 60 days. Claims related to the conduct of the Army Board of Officers could be raised in litigation. To: Rep. Nowak.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-217947; B-226384**
Disbursing officers **Mar. 27, 1987**
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing officials and their deputies under 31 U.S.C. § 3527(c) from liability for three improper payments resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing officials and their deputies and subsequent collection attempts are being pursued. However, we think that the Army should develop guidelines for handling multiple requests by the same payee for substitute payments. In addition, for cases involving notices of losses received after June 1, 1986, we will deny relief if Army delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225932 Mar. 27, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Defense Logistics Agency (DLA) disbursing official under 31 U.S.C. § 3527(c) from liability for improper payments resulting from payee's negotiation of both original and recertified checks. Although proper procedures were not followed in the issuance of the recertified checks this was not the proximate cause of the loss. There was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226120 Mar. 27, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. § 3527(c) from liability for improper payment resulting from vendor'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 subsequent collection attempts are being pursued. However, for cases involving notice of losses received after June 1, 1986, we will deny relief if Army delays more than 3 months in forwarding the debt to Army's collection division.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-219734 Mar. 3, 1987

Travel

Travel expenses

Reimbursement

Labor disputes

Arbitration

Employee requests reconsideration of decision denying her claim for additional travel expenses since the issue was also the subject of grievance procedures and an arbitrator's decision to allow the additional travel expense. Since the agency has agreed to follow the arbitrator's decision, we will not take further action on the reconsideration of our decision. The agency is advised that even in matters not under our labor-management procedures in 4 C.F.R. Part 22, the employee should be advised that the employee's claim has been submitted to GAO for decision.

CIVILIAN PERSONNEL

B-226290 Mar. 6, 1987

Compensation

Increase

Approval

Procedures

Effective dates

Under 2 U.S.C. § 359 (Supp. III 1985), when the President submits recommended pay increases to the Congress, the increases go into effect unless within 30 days of submission they are disapproved by a joint resolution of Congress. Where the House did not act on the disapproval resolution passed by the Senate until 31 days after the recommendations were submitted, subsequent signature by the President of a bill containing the disapproval provision has no effect on the recommended pay increases, and those increases go into effect as scheduled.

**CIVILIAN PERSONNEL
Compensation
Increase
Approval
Procedures
Effective dates**

**B-226290 Con't
Mar. 6, 1987**

Under 2 U.S.C. § 359 (Supp. III 1985), the President submitted recommended pay increases to the Congress. The increases were not disapproved by the Congress within the statutory period of 30 days, which ended February 3, 1987. Section 359 provides that the pay increases are not to be actually paid until the first pay period beginning after the end of the disapproval period. Pay periods for Federal Judges, are monthly. Thus, the pay increases for the judges would not be payable until March 1, 1987. If the Congress and the President complete passage of legislation rescinding the pay increases prior to March 1, the judges would not receive the increase. Under United States v. Will, 449 U.S. 200 (1980), pay increases for judges do not vest within the meaning of the Compensation Clause, Article III, section 1 of the Constitution until the increase is "due and payable," and for the judges that would not be until March 1.

CIVILIAN PERSONNEL

B-206508 Mar. 9, 1987

Relocation

Temporary quarters

Actual subsistence expenses

Reimbursement

Eligibility

CIVILIAN PERSONNEL

Relocation

Temporary quarters

Determination

Criteria

An employee, who moved with his family and household goods from his old duty station in Detroit, Michigan, to an apartment in St. Louis, Missouri, pending either his disability retirement or transfer to Houston, Texas, is not entitled to temporary quarters subsistence expenses. When his application for disability retirement was denied, he reported for duty at Houston and established an apartment residence there for himself only, and did not provide any evidence that he had sought other permanent quarters. Neither the apartment in St. Louis or Houston constituted temporary quarters, and the expenses in St. Louis were not incident to the transfer as required by Federal Travel Regulations.

CIVILIAN PERSONNEL

B-223907 Mar. 9, 1987

Relocation

Residence transaction expenses

Litigation expenses

Attorney fees

Reimbursement

CIVILIAN PERSONNEL

Relocation

Residence transaction expenses

Mortgages

Interest

Reimbursement

An employee of the Department of Labor was transferred from North Platte, Nebraska, to St. Louis, Missouri. She was unable to sell her residence at her old duty station. She defaulted on the mortgage payments, and the mortgage holder initiated foreclosure proceedings. She hired an attorney who settled the foreclosure on the residence through an agreement in which the mortgage holder took title to the residence and canceled the mortgage in exchange for payment of overdue interest. The employee claims reimbursement of the attorney fees and the interest payment on the basis that these were real estate expenses necessarily incurred on account of her transfer from Nebraska to Missouri. Her claim is denied, since the attorney fees were litigation costs for services to settle a court suit and the Federal Travel Regulations prohibit reimbursement of litigation costs, as well as interest on loans.

CIVILIAN PERSONNEL**B-224687 Mar. 9, 1987****Relocation****Household goods****Air carriers****Foreign businesses****Restrictions**

A Physician who contracted with Indonesia to perform health related services, and who was paid by funds granted to Indonesia by the United States Agency for International Development, arranged with a freight forwarder to move his personal effects from the United States to Indonesia. The physician's contract provided that he would not be reimbursed for using foreign air carriers if U.S. air carriers were available, but the forwarder did not use available U.S. air carriers. Since the contract provision was based on the requirements of the Fly America Act, which precludes payment of U.S. funds for international air transportation on foreign air carriers where U.S. air carriers are available, the physician may not be reimbursed for the use of the foreign air carrier. Further, there is no authority to permit waiver of the act in this case.

CIVILIAN PERSONNEL**B-210555.18 Mar. 10, 1987****Travel****Commuting expenses****Prohibition****Applicability**

The proposal of the Nuclear Regulatory Commission (NRC) to permit NRC employees using Government vehicles for official travel to stop at their residences overnight prior to beginning or completing that travel is not legally objectionable. NRC offers convincing evidence that requiring employees to pick up and return cars to headquarters on the day travel begins or ends would cost the Government up to 4 hours of productive work time. This circumstance fits the new exception to the general home-to-work prohibition of 31 U.S.C. § 1344(b)(8) for "compelling operational considerations."

CIVILIAN PERSONNEL
Travel
Commuting expenses
Prohibition
Applicability

B-210555.18 Con't
Mar. 10, 1987

Regulations (FTR) for taxicab transportation between home and work on days official travel is performed does not extend to transportation in Government vehicles, which is prohibited by statute. Moreover, no evidence showing a "compelling operational consideration" was offered. Exceptions to the home-to-work prohibition cannot be granted based solely on the comfort or convenience of the employee.

The Chairman of the Federal Home Loan Bank Board (FHLBB) is advised that there is no exception in the law for home-to-work transportation to and from a temporary duty location or meeting site. The home-to-work transportation prohibition applies to transportation between an employee's residence and any location where official business is to be performed. H.R. Rep. No. 451, 99th Cong., 1st Sess. 7 (1985).

CIVILIAN PERSONNEL
Compensation
Voluntary services

B-222248 Mar. 13, 1987

The Equal Employment Opportunity Commission questions whether it may be a "host" agency under the Senior Community Service Employment Program, which is funded by federal grant and administered under federal statute by the American Association of Retired Persons. The Commission may properly act as a "host" agency in this context since this would not contravene the provisions of 31 U.S.C. § 1342, which prohibits federal agencies from accepting voluntary services from private citizens in the absence of statutory authority.

CIVILIAN PERSONNEL

B-222378 Mar. 13, 1987

Compensation**Overtime****Night differentials****Claim accrual dates****Statutes of limitation**

Three employees filed claims with their agency in 1985 for night differential under 5 U.S.C. § 5545 for overtime hours during the period January 1, 1977, through February 28, 1983. Those claims were not received in the General Accounting Office (GAO) until March 20, 1986. Therefore, that portion of the claims which arose prior to March 20, 1980, may not be considered since 31 U.S.C. § 3702(b)(1) (1982) bars consideration of all claims presented to GAO more than 6 years after the date the claims first accrued. Further, the filing with an administrative office does not satisfy the requirement of the barring act.

CIVILIAN PERSONNEL**Compensation****Overtime****Night differentials****Eligibility**

Employees working as petroleum inspectors are not entitled to night differential under 5 U.S.C. § 5545 for overtime performed prior to February 28, 1983, since the nature of their work is not predictable enough to allow the agency to schedule their hours in advance.

CIVILIAN PERSONNEL**B-222899 Mar. 16, 1987****Relocation****Resident transaction expenses****Loan origination fees****Reimbursement****Amount determination**

A transferred employee claimed a 2.5 percent loan origination fee designated on the settlement sheet as a service charge. The agency limited reimbursement to 1 percent based on additional information provided by the bank and on HUD's advice that a 1 percent loan origination fee was customary in the area. The employee's claim for the additional 1.5 percent fee is denied since we are not bound by the designation on the settlement sheet. The information provided by HUD creates a rebuttable presumption as to the prevailing rate for loan origination fees, and the employee has not provided sufficient information to rebut this presumption.

CIVILIAN PERSONNEL**B-223500 Mar. 16, 1987****Travel****Permanent duty stations****Actual subsistence expenses****Prohibition**

An employee was assigned to perform support duties at a government-sponsored conference held at a hotel located within the city limits of her permanent duty station. Even though she stayed overnight at the hotel, the employee is not entitled to meal and lodging costs in view of the express prohibition against payment of per diem or actual subsistence expenses within the limits of the city that constitutes the employee's official duty station.

CIVILIAN PERSONNEL

B-224054 Mar. 17, 1987

Travel
Travel expenses
Discounts
Use
Reimbursement

An employee, who traveled on official business, claims reimbursement for \$50 discount coupon he used in purchasing airline ticket. The discount coupon was earned by the employee in connection with his personal, long-distance telephone calls. We hold that the employee may be reimbursed only for the actual and necessarily incurred travel expenses and not for any gratuitous payments made in the course of official travel. Personally obtained coupons should be used for personal purposes only and not for official travel. Therefore, employee may not be reimbursed for the discount coupon.

CIVILIAN PERSONNEL

B-224791 Mar. 19, 1987

Compensation
Compensation retention
Foreign service personnel
Reclassification
General schedule personnel

Under the Foreign Service Act of 1980, certain employees of the Department of State were to be involuntarily converted to the General Schedule without a reduction in class, grade, or basic rate of pay. During a transition period of 3 years, the individuals converted had a right to be paid under the Senior Foreign Service Schedule. Employee alleges that during conversion to Senior Foreign Service Schedule, he was reduced in grade. Employee was converted consistent with regulations and his belief that he was downgraded was due to ambiguity in and resulting misunderstanding about a form memorializing his conversion.

Travel**Travel expenses****Credit cards****Use****Procedures**

An employee was authorized official round-trip travel from Washington, D.C., to San Diego, California, in November 1985. His wife accompanied him on the trip, and their airline tickets were purchased by the employee's secretary from the agency's Scheduled Airlines Traffic Office. Although the secretary was instructed by the employee to use his personal credit card and the Government credit card to purchase the tickets separately, she inadvertently used the employee's personal credit card to purchase both tickets. The employee may be reimbursed the total cost of his airline ticket, notwithstanding the \$100 cash purchase limitation contained in Federal Travel Regulations para. 1-10.2b and 41 C.F.R. § 101-41.203-2 (1985). The purchase of his ticket by his secretary with his personal credit card occurred through inadvertence and was contrary to the employee's intent and instructions.

CIVILIAN PERSONNEL

B-216016 Mar. 23, 1987

Travel

Commuting expenses

Liability

CIVILIAN PERSONNEL

Travel

Commuting expenses

Prohibition

Applicability

In 1981 and 1982, an employee used a government car for home-to-work travel proscribed by 31 U.S.C. § 1344 (1982), as interpreted by our decision in 62 Comp. Gen. 438 (1983), and also used the car for some travel on weekends and holidays. He need not repay expenses associated with his use of the car for home-to-work travel since that use predated our decision in 62 Comp. Gen. 438, above, which clarified statutory restrictions on home-to-work travel and applied only on a prospective basis. However, he is liable for amounts attributable to his use of the car on nonworkdays, since he has not shown that he used the car for official purposes on those days.

CIVILIAN PERSONNEL

Travel

Rental vehicles

Expenses

Reimbursement

Eligibility

An employee was reimbursed for the costs of renting an automobile for local transportation during a temporary duty assignment. He may not retain reimbursement because he has not shown that the rental was approved based on a determination of advantage to the government, as required by para. 1-3.2 of the Federal Travel Regulations.

CIVILIAN PERSONNEL
Travel
Temporary duty
Travel expenses
Reimbursement

B-216016 Con't
Mar. 23, 1987

CIVILIAN PERSONNEL
Travel
Travel expenses
Official business
Determination
Burden of proof

An employee received reimbursement for seven trips away from his official duty station, but later could not identify the specific purpose of each trip. The employee may not retain expenses associated with the trips because he has not met his burden of proving that the expenses were essential to the transaction of official to the transaction of official business.

CIVILIAN PERSONNEL
Travel
Travel expenses
Documentation procedures
Burden of proof

An employee charged a number of expenses to an agency imprest fund. While he generally explained that the expenses were incurred for purposes of maintaining "official contacts," he did not furnish any receipts or supporting documentation. In the absence of evidence supporting the expenses, we hold that the employee has not met his burden of proving the government's liability under 4 C.F.R. § 31.7 (1986), and his claim may not be allowed.

CIVILIAN PERSONNEL

B-224092 Mar. 23, 1987

Relocation

Travel expenses

Reimbursement

Eligibility

The employee's wife, who resided at the new duty station and was not involved in the employee's change of station, traveled to the old duty station for the purpose of driving the employee's car to the new duty station since the employee was driving a rental truck to transport his household goods. There is no entitlement to mileage and per diem for his wife's travel since her residence was at the new duty station and she was not officially relocating or performing permanent change-of-station travel, and thus was not a person entitled to travel at Government expense. Also, mileage may not be paid as a cost of transporting the automobile because there is no statute specifically authorizing transportation of the automobile within the continental United States at Government expense.

Relocation**Residence transaction expenses****Overseas personnel**

This is a formal legislative proposal by GAO to the President of the Senate and Speaker of the House of Representatives in support of the amendment of 5 U.S.C. § 5724a(4)(A) (1982) to permit Federal agencies to reimburse their employees for residence sale and purchase expenses incurred upon transfer from an overseas post to a duty station in the United States other than the one from which they transferred overseas. Under the present law, reimbursement of these expenses is allowed only when both the old and new duty stations are located within the United States. Thus, in these instances where Federal civilian employees are reassigned from their overseas posts to a different duty station in the United States, the current law and implementing regulations, the FTR and the JTR, as well as our decisions, prohibit such reimbursement, resulting in severe economic impact upon the affected employees. We have included suggested language for a bill which would carry out our proposal.

CIVILIAN PERSONNEL

B-222905 Mar. 30, 1987

Relocation

Purposes

Determination

Administrative discretion

Veterans Administration employee who requested a transfer from the Veterans Administration Medical Center (VAMC), Dallas, Texas, to VAMC, Kansas City, Missouri, in order to be near her seriously ill son is entitled to relocation expenses incurred in connection with that transfer since the agency's need to fill a vacancy with a qualified individual was the controlling factor in her selection. The fact that the transfer also benefited the employee does not preclude payment for otherwise allowable expenses. We will not overturn agency's determination that the employee's transfer was in the Government's interest since the decision was not arbitrary, capricious or clearly erroneous.



MILITARY PERSONNEL

MILITARY PERSONNEL

B-107211 Mar. 17, 1987

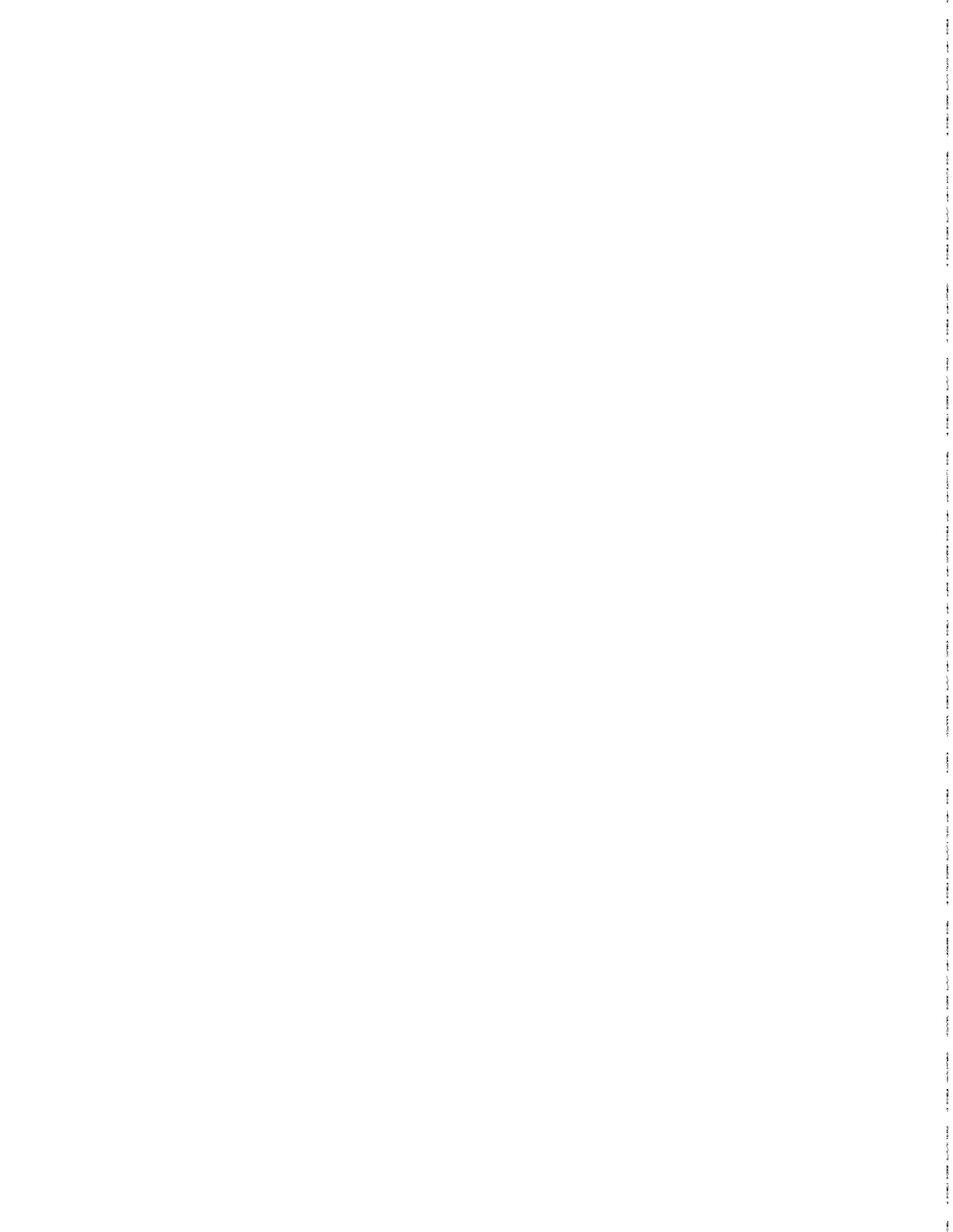
Pay

Retroactive pay

Eligibility

Burden of proof

Former Army member requests payment of active duty pay from October 1, 1944, to October 25, 1945, based on our legal determination in 1952 that he was entitled to such pay. We advise the interested Congressman that the former member has not demonstrated his entitlement to payment, because government records which would verify that his claim was never paid have been destroyed pursuant to law and he has not supplied any other evidence of nonpayment.



PROCUREMENT LAW

PROCUREMENT B-224112.2 Mar. 2, 1987
Competitive Negotiation 87-1 CPD 232
Requests for proposals
Cancellation
Justification
GAO review

Protest against an agency's cancellation of a request for proposal (RFP) is denied where the agency reasonably determines that the RFP does not accurately reflect its minimum needs.

PROCUREMENT B-224156.3 Mar. 2, 1987
Contract Management 87-1 CPD 233
Contract administration
Options
Use
GAO review

Protest of agency's decision whether to exercise an option is dismissed as a matter of contract administration not within the General Accounting Office's bid protest function.

PROCUREMENT B-225323 Mar. 2, 1987
Contract Management 87-1 CPD 234
Contract administration
Contract terms
Compliance
GAO review

Where bidder certifies in accordance with the Buy American Act that it intends to supply a domestic product, it is obligated to do so upon acceptance of its bid, and whether the firm in fact meets its obligation is a matter of contract administration, which the General Accounting Office does not review.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-226002 Mar. 2, 1987
87-1 CPD 237

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Where a protest is dismissed as academic, there is no decision on the merits by the General Accounting Office, and therefore, no basis on which protest or bid preparation costs may be recovered.

PROCUREMENT
Contractor Qualification
Approved sources
Alternate sources
Approval
Government delays

B-224332.2; B-225049
Mar. 3, 1987
87-1 CPD 238

Agency process to approve alternate sources for helicopter spare parts was inconsistent with the statutory and regulatory provisions calling for "prompt" qualification procedures to the extent of depriving the protester of a reasonable opportunity to compete where in certain cases the agency had yet to act on source approval requests submitted by the protester two years earlier.

PROCUREMENT
Bid Protests
Non-prejudicial allegation
GAO review

B-224892.2 Mar. 3, 1987
87-1 CPD 239

Even if solicitation and discussions could have been more specific as to verification requirements for a developmental computer program, when the protester is the lowest-ranked of six offerors and its technical score is 48.5 points less than the awardee's, the protester is not prejudiced by the alleged deficiencies, since it had no reasonable chance for award.

PROCUREMENT
Competitive Negotiation
Discussion
Misleading information
Allegation substantiation

Agency's allegedly misleading advice that protester should increase certain proposed costs to cover verification of a developmental computer program does not necessarily indicate unequal competition when the extent and type of verification required depends upon the program offered and the testing to which it has previously been subjected.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Agency's low rating of a technical proposal for a developmental computer program is reasonable when the proposal relies on equations that the agency considers very old; the equations do not account for numerous variables or produce all the results required by the solicitation; and the agency considers the risks involved in proposed modifications to the equations to be unacceptable.

PROCUREMENT
Competitive Negotiation
Contract awards
Quantities
Increase
Propriety

B-225478.2 Mar. 3, 1987
87-1 CPD 241

Where solicitation reserved to the government the right to increase any offeror's award quantity above the maximum share for which it qualified under its industrial preparedness planning (IPP) participation in the event that other offerors' prices could not be determined fair and reasonable, and contracting officer could not determine that protester's price on only item for which it was in line for award was fair and reasonable, contracting officer's award to another offeror of quantities in excess of its IPP allocation is not objectionable.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest that awardees' prices are unrealistically low because they do not reflect the costs of compliance with a testing procedure required by the solicitation is denied where contracting officer has determined that awardees are responsible.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-225550 Mar. 3, 1987
87-1 CPD 242

Protest that solicitation improperly was restricted to Indian-owned firms pursuant to the Buy Indian Act is dismissed as untimely where protester knew of restriction prior to bid opening but failed to protest before that time.

PROCUREMENT **B-225550 Con't**
Socio-Economic Policies **Mar. 3, 1987**
Preferred products/services
American Indians

Bureau of Indian Affairs' determination that a firm meets eligibility criteria for responding to Buy Indian Act procurement will be questioned by General Accounting Office only when arbitrary or unreasonable. Bureau's decision that Indian-owned firm is eligible for award where it agrees to perform at least 51 percent of the deliveries of bakery products with its own labor force is not unreasonable.

PROCUREMENT
Socio-Economic Policies
Preferred products/services
American Indians
Set-asides
Price reasonableness

Fact that Indian-owned firm's bid on procurement set aside pursuant to Buy Indian Act, which agency has concluded is reasonable in price, is 9.5 percent higher than non-Indian firm's prior year contract price does not in itself require that the bid be rejected as unreasonably high, since it is inherent in set asides that awards often will be made at higher prices than could be obtained in unrestricted competition.

PROCUREMENT **B-223966.2 Mar. 4, 1987**
Bid Protests **87-1 CPD 243**
GAO procedures
Protest timeliness
10-day rule

Prior decision holding that a protest against a solicitation specification initially filed 1 day before the closing date for the receipt of proposals with the procuring agency was untimely where the agency received proposals on the scheduled closing date without taking corrective action and the subsequent protest to our Office was filed more than 10 working days later is affirmed, since the protester has not presented a legal basis for us to overrule our decision or to waive our timeliness rule.

PROCUREMENT

B-224222.2 Mar. 4, 1987

Bid Protests

87-1 CPD 244

GAO decisions

Recommendations

Competitive system integrity

Fact that recommendation may allow protester to benefit from award delay attending protest resolution is unobjectionable where recommendation was necessitated by agency's improper rejection of protester's bid as nonresponsive, and there is no reason to assume protest was not filed in good faith.

PROCUREMENT

Sealed Bidding

Bid guarantees

Sureties

Acceptability

Information submission

General Accounting Office recommendation that acceptability of low bidder's proposed bid bond sureties be determined based on information current at time of award is based on well-established standard for determining responsibility that applies equally to all bidders, and thus is not unfair to bidders who may have proposed sureties that were acceptable at time of bid opening.

PROCUREMENT

B-225432 Mar. 4, 1987

Bid Protests

87-1 CPD 246

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that RFP was tailored to favor traditional optics technology is untimely since alleged improprieties apparent in the solicitation should have been protested prior to the date for receipt of initial proposals.

PROCUREMENT

B-225432 Con't

**Competitive Negotiation
Offers**

Mar. 4, 1987

**Price adjustments
Allegation substantiation
Burden of proof**

PROCUREMENT

**Competitive Negotiation
Offers**

**Price adjustments
Late submission
Acceptability**

Protester has not established contention that agency failed to properly consider price reduction where record does not show that reduced prices were actually proposed. Moreover, any price reduction submitted after the closing date for receipt of best and final offers could not be considered without reopening discussions because protester was not otherwise in line for award.

PROCUREMENT

**Competitive Negotiation
Offers**

**Risks
Evaluation
Technical acceptability**

Where RFP placed emphasis on minimizing technical risk and on assuring that system to be acquired would perform as specified, contracting agency did not act arbitrarily in ranking a proposal to furnish proven equipment as superior to innovative, but less well proven design which the agency believed would perform less satisfactorily.

PROCUREMENT

B-225439 Mar. 4, 1987

Bid Protests

87-1 CPD 247

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest to General Accounting Office (GAO) after denial of agency-level protest challenging specifications as defective is timely even though filed more than 10 days after receipt of initial proposals under challenged solicitation where protester reasonably concluded from the contracting officer's statements that receipt of proposals did not represent adverse action on the protest, and subsequent protest to GAO was filed within 10 days after protester received agency's formal denial of the protest.

PROCUREMENT

Competitive Negotiation

Offers

Designs

Evaluation

Technical acceptability

Contention that contracting agency's decision to allow offerors to propose alternate backing materials for carpet tiles is inconsistent with applicable specification because the alternate materials do not meet the shrinkage standard in the specification is without merit where protester fails to show that the alternate materials exceed the maximum shrinkage rate.

PROCUREMENT

Specifications

Ambiguity allegation

Specification interpretation

Specification for antimicrobial carpet is ambiguous and vague since it does not adequately describe the type of antimicrobial activity or level of effectiveness required.

PROCUREMENT

B-225520 Mar. 4, 1987

Bid Protests

87-1 CPD 249

Bias allegation

Allegation substantiation

Burden of proof

Where there is no evidence in the record, other than the protester's bare allegation, that the contracting agency conducted the procurement in a manner that favored the awardee, the protester has not met its burden of affirmatively proving its case. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that the request for quotations for cryogenic refrigerator system unduly restricts competition must be filed before the closing date for receipt of quotations.

PROCUREMENT

Small Purchase Method

Quotations

Evaluation criteria

Non-prejudicial allegation

Protest is denied where there is no indication that alleged errors in calculating protester's total offered price adversely affected the protester's competitive standing.

PROCUREMENT

B-225520 Con't

**Small Purchase Method
Requests for quotations
Contractors
Notification**

Mar. 4, 1987

Protest that agency did not include protester on its quoters' list is denied where agency gave protester opportunity to quote.

PROCUREMENT

**Small Purchase Method
Requests for quotations
Defects
Purchases
Propriety**

Award of contract under a defective solicitation is proper where the record clearly shows that the award under the solicitation as issued serves the actual needs of the government and does not prejudice the other competitors.

PROCUREMENT

**Small Purchase Method
Requests for quotations
Evaluation criteria
Equipment
Upgrading**

Procuring agency properly did not evaluate cost of upgrading equipment where request for quotations did not provide for such evaluation.

PROCUREMENT
Bid Protests
Definition

B-226073 Mar. 4, 1987
87-1 CPD 250

PROCUREMENT
Bid Protests
Leases
Government property
GAO review

Protest concerning evaluation of proposal to lease government-owned real property is not for consideration under the General Accounting Office's (GAO) bid protest function, since it does not concern a procurement of property or services by a federal agency as defined in the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 (Supp. III 1985). Unless the lessor agency requests in writing that GAO consider the matter under the section of GAO's Bid Protest Regulations providing for the consideration of nonstatutory protests, 4 C.F.R. § 21.11 (1986), GAO will dismiss the protest.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration
Additional information

B-226277.2 Mar. 4, 1987
87-1 CPD 251

The General Accounting Office will not reconsider a protest that was properly dismissed as untimely on the basis of facts presented in the original protest, where the facts presented in the request for reconsideration vary from those in the original protest, since the facts upon which the protester relies in its request for reconsideration were readily available at the time of the original filing.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Effective dates

B-226277.2 Con't

Mar. 4, 1987

Notice from an agency that a bid will not be considered because of the lack of a signature provides a basis for protesting the rejection of the bid without the need for additional details such as a notice of award to another firm. For that reason, the 10 day period for filing a protest commences on the day of receipt of the original notice.

PROCUREMENT

Sealed Bidding

Invitations for bids

Evaluation criteria

Government property

Cost evaluation

B-225161.2 Mar. 5, 1987

87-1 CPD 252

Protest that solicitation improperly fails to provide for evaluation of the cost to the government of providing a computer to enhance the x-ray images of competitors' equipment is denied where all bidders, including the protester, will have to use the government-furnished computer for x-ray image storage, transmission and retrieval.

PROCUREMENT

B-225161.2 Con't

Specifications

Mar. 5, 1987

Minimum needs standards

Competitive restrictions

Design specifications

Burden of proof

Protest that design specification (requiring a computer interface on x-ray equipment used to detect contraband) is unduly restrictive, because protester's equipment enhances x-ray images without the aid of a computer, is denied where agency establishes that the interface is also required, even by the protester's equipment, for image storage, transmission and retrieval and the protester has not shown that the agency's justification for the interface is unreasonable.

PROCUREMENT

B-225718.2 Mar. 5, 1987

Competitive Negotiation

87-1 CPD 253

Offers

Late submission

Acceptance criteria

An agency may consider a proposal that is received after the date required in the solicitation only if one of the exceptions to the rule against considering late proposals applies. These exceptions do not contemplate the submission of an offer after the field of competition has been defined as of the specified date.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-223527.3 Mar. 6, 1987
87-1 CPD 254

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Protest ground which appears to challenge the responsibility of an awardee and its subcontractor is dismissed since the protester is not an interested party within the meaning of the General Accounting Office's (GAO's) Bid Protest Regulations and, in any event, GAO will not review challenges to affirmative determinations of responsibility absent a showing on the part of the protester that the determination may have been made fraudulently or in bad faith or that definitive responsibility criteria contained in the solicitation were not met.

PROCUREMENT
Bid Protests
Patent infringement
GAO review

Contention that manufacture of system being procured by government will violate patent of protester will not be considered, since exclusive remedy of aggrieved party is court action against government for damages.

PROCUREMENT **B-224520.2 Mar. 6, 1987**
Competitive Negotiation 87-1 CPD 255
Contract awards
Administrative discretion
Cost/technical tradeoffs
Technical superiority

Contracting agency's decision to award a contract for the installation of technical training equipment at a cost higher than that proposed by the protester was not unreasonable where the awardee's technical proposal was considered superior and worth the cost premium involved.

PROCUREMENT **B-224567.2 Mar. 6, 1987**
Bid Protests 87-1 CPD 256
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Competitive Negotiation
Suspended/debarred contractors
Offers
Rejection
Propriety

Original decision is affirmed where protester in request for reconsideration fails to show error of law or fact in original finding that protester was no longer entitled to be considered for award under request for proposals where protester was suspended from government contracting before best and final offers were due, and contracting agency did not make written finding under applicable regulation that compelling reason existed for continued consideration of protester's proposal.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Effective dates

B-224785.2 Mar. 6, 1987
87-1 CPD 257

Where it is unclear from record when the protester was advised that its bid had been found nonresponsive, an event which would start the time for filing a protest running, protest filed with the General Accounting Office following denial of an agency-level protest against agency determination that firm's bid was nonresponsive will not be considered untimely for failure to file initial timely protest with agency.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price data
Information sufficiency

Bid for the supply of rope, submitted on the basis of price per pound, rather than price per reel as required by the solicitation, is nonresponsive where bid does not contain precise basis to convert price per pound to price per reel and thus bidder's price per reel cannot be determined from the face of the bid.

When a bidder does not bid on the precise quantity, measurement or volume called for in the invitation for bids, the bid must be rejected as nonresponsive unless the intended price for the proper quantity, measurement, or volume can be determined from the face of the bid or the effect or the deficiency on the price of the bid is clearly de minimus and waiver would not be prejudicial to other bidders.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

B-225326, et al., Con't

Mar. 6, 1987

Contracting agency's decision to proceed with bid opening under invitation for bids (IFB) in face of protest filed with agency before bid opening constitutes adverse agency action on protest, and subsequent protest to General Accounting Office is untimely where filed more than 10 working days after bid opening.

PROCUREMENT

Contractor Qualification

Licenses

State/local laws

GAO review

Under IFB for installation of fire sprinkler system, contracting agency properly may include requirement that contractor have state fire sprinkler contractor's license (1) in the interest of avoiding possible interruption to contract performance due to state's efforts to enforce licensing requirement; and (2) where seismic area in which agency facilities are located requires special technical skills on part of sprinkler contractor which contracting officer decides are best assessed by state board through the licensing process.

PROCUREMENT**B-225545 Mar. 6, 1987****Specifications****87-1 CPD 264****Minimum needs standards****Competitive restrictions****Design specifications****Justification**

General Services Administration (GSA) can restrict requirements contract for soft-face hammers to one piece compo-cast type hammers, where the majority of the user agencies who responded to GSA's user survey have established that this restriction is necessary, even though other users may be satisfied with other hammers not meeting this specification.

PROCUREMENT**B-224373.2 Mar. 10, 1987****Bid Protests****Premature allegation****GAO review**

Protester's contention that contract modification proposed by awardee is outside the scope of the contract is premature where contracting agency has not yet decided whether proposed change will be made.

PROCUREMENT**Competitive Negotiation****Contract awards****Administrative discretion****Cost/technical tradeoffs****Cost savings****PROCUREMENT****Competitive Negotiation****Technical evaluation boards****Bias allegation****Allegation substantiation****Evidence sufficiency**

There is no basis to object to award to lowest priced, technically acceptable offeror as provided in request for proposals where there is no support in the record for protester's contention that contracting agency gave awardee more favorable treatment than protester in the course of the procurement.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Terms**

B-224373.2 Con't

Mar. 10, 1987

**Ambiguity allegation
Interpretation**

Under request for proposals (RFP) for computer-based audiovisual training equipment, protester fails to show that provision calling for commercially available, off-the-shelf "equipment" has more than one reasonable interpretation and therefore is ambiguous, since only reasonable interpretation of the broad term "equipment" is that it includes any product which functions as required in the RFP; the protester's interpretation of the term as restricted to existing "systems," and excluding products consisting of "components" brought together to meet RFP requirements, is not reasonable.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Terms**

Interpretation

Protester's contention that it was misled into assuming a restrictive interpretation of request for proposals (RFP) provisions calling for commercially available, off-the-shelf "equipment," and therefore offered a higher priced product, is without merit where RFP provision on its face does not support protester's interpretation and there is no evidence in the record that the contracting agency led the protester to believe the restrictive interpretation applied.

PROCUREMENT

**Bid Protests
GAO procedures
GAO decisions**

Reconsideration

B-224912.2 Mar. 10, 1987

87-1 CPD 268

Request for reconsideration is denied where protester basically reiterates arguments previously made; does not challenge the facts upon which initial decision was based; and does not identify errors of law allegedly made.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Justification
GAO review

B-225057 Mar. 10, 1987
87-1 CPD 269

In a negotiated procurement, a contracting officer need only establish a reasonable basis to support a decision to cancel a solicitation. A reasonable basis exists where the agency determines that there is an urgent need for the requirements and that need can only be met, within the timeframe required, by the reissuance of the solicitation to the only known source capable of meeting the delivery requirements.

PROCUREMENT
Noncompetitive Negotiation
Contract awards
Sole sources
Propriety

Where agency properly determined, due to urgent circumstances, that it must use noncompetitive procedures provided for under the Competition in Contracting Act, agency properly also may limit the procurement to the only firm it reasonably believes can promptly and properly supply the requirements, and is not required to solicit all firms interested in the acquisition.

Protest against agency determination that sole-source contract price was fair and reasonable is denied where record shows that prices obtained were lower than under prior contracts and were in line with prices obtained under the most recent competitive procurement.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

B-225357.2 Mar. 10, 1987
87-1 CPD 270

An agency's determination of whether proposal is in the competitive range is a matter of agency discretion which the General Accounting Office will not disturb absent a clear showing that agency's determination lacked a reasonable basis. Proposal which was reasonably found to be so deficient in its technical adequacy--the most heavily weighted evaluation criterion--that major revisions would have been required to make it acceptable was properly excluded from the competitive range.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Administrative discretion

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Allegation substantiation

Protest that agency improperly evaluated proposal on basis of levels of agency standards not stated in the request for proposals (RFP) is denied since there is no requirement that RFP precisely specify acceptable level of effort and manner of performance where solicitation calls for a performance oriented research and analysis project which, by its nature, lends itself to individual standards of quality and competitiveness.

PROCUREMENT
Sealed Bidding
Invitations for bids
Construction contracts
Wage rates
Omission

B-225925.2 Mar. 10, 1987
87-1 CPD 272

PROCUREMENT
Socio-Economic Policies
Labor standards
Construction contracts
Wage rates
Omission

Although the contracting agency's reasons for deleting a Davis-Bacon Act wage rate determination from a solicitation calling for military housing maintenance services with significant construction elements are not known, the protest is nevertheless denied where there is no evidence that the lack of incorporated wage rates for the affected construction labor categories precluded the submission of intelligent bids prepared on a reasonably equal basis or caused the protester to be competitively prejudiced.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Descriptive literature
Ambiguous bids

B-224603.2 Mar. 11, 1987
87-1 CPD 273

Where unsolicited descriptive literature submitted with a bid is ambiguous regarding whether the bidder intends to comply with material terms of the invitation for bids, the bid is nonresponsive and must be rejected.

PROCUREMENT
Sealed Bidding
Bids

B-224603.2 Con't
Mar. 11, 1987

Responsiveness
Descriptive literature
Restrictive markings

Where bidder submits unsolicited descriptive literature with its bid purporting to propose equipment designed for the solicitation and including a legend restricting disclosure of the literature, the bid violates the statutory requirement for public opening of bids and must be rejected as nonresponsive.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification

B-225437 Mar. 11, 1987
87-1 CPD 274

Agency has a compelling reason for cancellation of invitation for bids after bid opening when it fails to include Service Contract Act provisions, and the omission may prejudice bidders with regard to their prices for option years.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

B-225687.2; B-225687.3
Mar. 11, 1987
87-1 CPD 275

Potential prime contractor for equipment installation is not an interested party to protest that instead of requiring a specific manufacturer's equipment the agency should permit the prime to install a second firm's equipment, since the company does not suggest that the specification will affect its ability to compete on an equal basis with other potential prime contractors.

PROCUREMENT B-225687.2; B-225687.3 Con't
Contract Management Mar. 11, 1987
Contract modification
Change orders
GAO review

General Accounting Office will not review protest that agency should issue a change order under the protester's contract instead of conducting a procurement.

PROCUREMENT B-225711 Mar. 11, 1987
Bid Protests 87-1 CPD 276
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest of an alleged apparent defect in a solicitation is dismissed when filed months after closing date for proposals.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Effective dates

Protest that request for extension of offer was improper is untimely when not filed within 10 days of learning of basis for protest.

PROCUREMENT B-224160.2; B-224161.2
Sealed Bidding Mar. 12, 1987
Invitations for bids 87-1 CPD 277
Post-bid opening cancellation
Justification
Sufficiency

An agency properly may justify a cancellation on a subsequently enunciated basis if that basis would have supported the action had it been raised initially.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225301 Mar. 12, 1987
87-1 CPD 278

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

In the absence of a finding that the agency unreasonably excluded the protester from the procurement, the protester is not entitled to recover the costs of preparing its proposal or of filing and pursuing its protest.

PROCUREMENT
Competitive Negotiation
Best/final offers
Technical acceptability
Negative determination
Propriety

Agency properly determined that a proposal was technically unacceptable based on descriptive material submitted with the best and final offer where the agency reasonably concluded from the material that the offeror's equipment would not possess an essential feature required by the solicitation.

PROCUREMENT
Competitive Negotiation
Discussion reopening
Propriety

Where an agency properly determines that a particular proposal is technically unacceptable based on material submitted with the best and final offer, it is not required to reopen negotiations to permit the offeror to demonstrate the merits of its proposal.

PROCUREMENT **B-225616 Mar. 12, 1987**
Special Procurement **87-1 CPD 280**
Methods/Categories
Federal supply schedule
Purchase orders
Equivalent products
Propriety

Issuance of a delivery order to Federal Supply Schedule contractor who responded to request for quotations (RFQ) by proposing a system which did not meet literally one of the RFQ's requirements is not objectionable where contractor's system was functionally equivalent to system specified and satisfied the government's minimum needs.

PROCUREMENT **B-225770 Mar. 12, 1987**
Bid Protests **87-1 CPD 281**
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Protest filed 11 working days after protester received hand-delivered denial of protest to agency is untimely.

PROCUREMENT **B-226420 Mar. 12, 1987**
Sealed Bidding **87-1 CPD 282**
Bids
Responsiveness
Shipment schedules
Deviation

Bid that deviates from the required delivery schedule is nonresponsive and may not be corrected after bid opening even though the deviation allegedly was due to clerical error.

PROCUREMENT
Sealed Bidding
Competitive advantage
Incumbent contractors

B-225280 Con't
Mar. 13, 1987

Protest contending that a requirement that deliveries begin 90 days after contract award restricts the competition to the two current contractors who already have the necessary facilities and equipment in place is denied, since an agency is not required to consider, or attempt to eliminate, any competitive advantage that a bidder might have because of its present or past incumbency, unless the advantage results from preferential or unfair action by the government. The record contains no evidence of such action by the government in this case.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

B-225347 Mar. 13, 1987
87-1 CPD 285

An agency, during negotiations, does not have to discuss elements of a proposal that are not deficient; it is not the agency's responsibility to help a firm whose proposal, although acceptable, simply is not the best one in the competition, to bring the proposal up to the level of the other ones.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Allegation substantiation

Protest that agency should have found protester's offer more desirable than the awardee's is denied, since a protester's mere disagreement with the contracting agency's evaluation does not render that evaluation unreasonable, and the record does not otherwise suggest the evaluation was improper.

PROCUREMENT**B-221604 Mar. 16, 1987****Payment/Discharge****Unauthorized contracts****Quantum meruit/valebant doctrine**

Airport Authority that contracted and paid for services to halt and clean up an oil spill on Army property may be paid on quantum meruit basis because services constituted a permissible procurement at a fair price which the Government would otherwise have had to provide itself and for which the Army received a benefit.

PROCUREMENT**B-225483 Mar. 16, 1987****Sealed Bidding****87-1 CPD 288****Bids****Responsiveness****Drawings****Restrictive markings****PROCUREMENT****Sealed Bidding****Invitations for bids****Cancellation****Justification**

Bid should not be rejected as nonresponsive merely because a drawing accompanying the bid contained a restriction on its disclosure where the drawing is not necessary to evaluate the bid. Cancellation of invitation for bids (IFB) because agency determined all bidders were nonresponsive to drawing requirement is not justified where the drawing is not necessary for evaluation of bids. Therefore, the agency should reinstate IFB and make award to the low, responsive bidder eligible for award.

PROCUREMENT **B-225580.2 Mar. 16, 1987**
Bid Protests **87-1 CPD 289**
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

Request for reconsideration of prior decision dismissing a subcontractor protest is denied. Although the protester asserts that its protest should have been considered because the contract award was made by or for the government, the protester would not be in line for award if its protest were upheld, and therefore, is not an interested party to protest in any event.

PROCUREMENT **B-225595 Mar. 16, 1987**
Competitive Negotiation **87-1 CPD 290**
Best/final offers
Price adjustments
Misleading information
Allegation substantiation

There is no merit in protester's complaint that it was misled into not submitting revised prices with its best and final offer where request for proposals stated that technical factors were only slightly more important than cost; protester itself was aware that its costs were high; and protester was reminded several times of the opportunity to revise its costs.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-226386 Mar. 16, 1987
87-1 CPD 291

Protest filed more than 10 working days after protester knew the basis of protest is untimely under our Bid Protest Regulations.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Competition sufficiency

B-224518.2 Mar. 17, 1987
87-1 CPD 292

Protester's contention, that its elimination from the competitive range will result in a de facto sole-source award to another firm, is without merit where the final competitive range actually contains more than one offer.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Discussion

Where protester in fact was advised of deficiencies in its proposal and given an opportunity to correct them, there is no merit to its contention that it should have been included in the competitive range because all of the deficiencies in its proposal could have been resolved through discussions.

PROCUREMENT **B-224518.2 Con't**
Competitive Negotiation **Mar. 17, 1987**
Offers
Evaluation
Technical acceptability

Protester's contention, that the agency improperly eliminated it from the competitive range based on requirements not stated in the solicitation, is without merit where the protester either was on actual notice of the agency's requirements or has misinterpreted the agency's reasons for finding that the offer was technically unacceptable.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Applicability

Where a small business offer was found unacceptable under the evaluation criteria in the solicitation, the matter is one of technical acceptability rather than responsibility, and there is no requirement for referral to the Small Business Administration under the certificate of competency program.

PROCUREMENT **B-225179** **Mar. 17, 1987**
Socio-Economic Policies **87-1 CPD 293**
Small businesses
Research/development contracts
Offers
Evaluation

In light of agency discretion under the Small Business Innovation Research Program to fund or reject any particular proposal, General Accounting Office review of agency's rejection of a proposal submitted under that program is limited to determining whether agency complied with any applicable regulations and solicitation provisions and whether agency acted fraudulently or in bad faith.

PROCUREMENT **B-225270.2** **Mar. 17, 1987**
Bid Protests **87-1 CPD 294**
GAO procedures
Protest timeliness
Conflicting evidence
Burden of proof

When on its face a protest appears to be untimely, a protester who is in possession of facts that would establish its timeliness, but who does not initially present those facts to the General Accounting Office, runs the risk of dismissal and of refusal to reconsider the matter when the protester subsequently presents all relevant facts.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

The General Accounting Office will not consider the merits of an untimely protest or invoke the "significant issue" exception to its timeliness regulations where the issues raised are not matters of first impression or of widespread interest to the procurement community.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-225270.2 Con't
Mar. 17, 1987

General Accounting Office affirms prior holding that protester's failure to request a debriefing or to file a protest either with the contracting agency or the General Accounting Office until 6 weeks after the agency advises it that its proposed equipment does not meet the government's needs and that a contract is being awarded to another offeror renders the protest untimely.

PROCUREMENT
Contract Management
Contract modification
Cardinal change doctrine
Criteria
Determination

B-225489 Mar. 17, 1987
87-1 CPD 295

Where a company protesting award to another bidder has a fundamental disagreement with the contracting agency about the meaning of certain specifications, the agency's interpretation of the specifications, which are subject to varying interpretations, does not constitute a cardinal change.

PROCUREMENT
Contract Management
Contract modification
Cardinal change doctrine
GAO review

Although General Accounting Office does not consider issues relating to the acceptance of first articles or the modification of specifications after award since these are contract administration matters, allegations that a modification went beyond the scope of the contract are reviewed since such a modification would represent a new procurement.

PROCUREMENT

B-225871 Con't

Socio-Economic Policies

Mar. 17, 1987

Small business set-asides

Use

Justification

A procurement need not be set aside for small business concerns where the contracting officer properly determines, based on the prior history of other unsuccessful similar procurements involving small businesses, that there is no reasonable expectation of offers from at least two responsible small business concerns.

PROCUREMENT

Specifications

Ambiguity allegation

Specification interpretation

PROCUREMENT

Specifications

Minimum needs standards

Competitive restrictions

GAO review

Where the contracting agency determines generally that specifications reflect government's minimum needs, record does not show otherwise, and protester refuses agency request to specify why specifications allegedly are ambiguous and unduly restrictive of competition, there is no legal basis for General Accounting Office to object to the specifications.

PROCUREMENT **B-226186.2 Mar. 17, 1987**
Bid Protests **87-1 CPD 298**
GAO procedures
GAO decisions
Reconsideration

Dismissal is affirmed on reconsideration where it is not shown to be legally or factually erroneous.

PROCUREMENT **B-226477 Mar. 17, 1987**
Socio-Economic Policies **87-1 CPD 299**
Small businesses
Size status
Self-certification
Post-bid opening periods

Bidder's failure to certify itself as a small business in its bid on a small business set-aside may be corrected after bid opening.

PROCUREMENT **B-223159.3 Mar. 18, 1987**
Bid Protests **87-1 CPD 300**
GAO procedures
Administrative reports
Comments timeliness

Protest originally dismissed for failure to file timely comments on agency report will be considered on the merits where General Accounting Office (GAO) letter advising of responsibility to contact GAO within 7 days after report due date was sent by surface rather than air mail to protester's counsel in West Germany and was not received for more than 2 months, and protester's comments on the report were filed with GAO within 7 days after the date protester actually received the agency report.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-223159.3 Mar. 18, 1987
87-1 CPD 300

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Protester is not entitled to recover its proposal preparation costs under canceled RFP where cancellation was proper and there is no indication that contracting agency originally issued the RFP in bad faith.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Justification
Government advantage

Reasonable basis exists for canceling request for proposals (RFP) for road and grounds maintenance services where consolidating requirements under canceled RFP with overall base maintenance contract will reduce the total cost for all the services needed and the costs of contract administration.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-224842.3 Mar. 18, 1987

Request for reconsideration is denied where request by protester who challenged rejection of its proposal as technically unacceptable does not show any error of fact or law in original decision but only reiterates argument made in initial protest that it was misled by contracting officer's remarks during discussions into concluding that no further revisions to its technical proposal should be attempted.

PROCUREMENT
Competitive Negotiation
Discussion reopening
Propriety
Best/final offers
Price adjustments

B-225495 Con't
Mar. 18, 1987

Agency decision in a procurement for construction of a new embassy not to reopen negotiations after receipt of best and final offers to give protester the opportunity to incorporate its late price modification is not objectionable where record indicates that protester had a fair opportunity to submit a best and final offer with its most favorable terms by the closing date for receipt of best and final offers and agency determined that any further delay in the procurement would unreasonably jeopardize embassy construction project.

PROCUREMENT
Competitive Negotiation
Offers
Acceptance time periods
Extension
Propriety

Where the acceptance period on all proposals has expired, the contracting officer may allow an offeror to waive the expiration of its proposal acceptance period without reopening negotiation to make an award on the basis of the offer as submitted since waiver under these circumstances is not prejudicial to the competitive system.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

General Accounting Office does not review affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procuring officials or the misapplication of a definitive responsibility criteria.

PROCUREMENT

B-225502 Mar. 18, 1987

Bid Protests

87-1 CPD 304

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest against failure to include proposal in the competitive range is untimely and not for consideration when not filed within 10 days of protester's receipt of letter detailing specific basis for rejection of the proposal. In such circumstances, rejected offerors cannot wait for a debriefing before protesting because the basis for protest is already known.

PROCUREMENT

B-225504; B-225504.2

Competitive Negotiation

Mar. 18, 1987

Discussion

87-1 CPD 305

Adequacy

Criteria

An agency must notify an offeror of the central weakness of its offer, but does not have to discuss every element of a technically acceptable competitive range proposal that has received less than the maximum possible score.

PROCUREMENT

Competitive Negotiation

Discussion reopening

Propriety

An agency has no obligation to reopen negotiations so that an offeror may remedy defects introduced into a previously acceptable proposal by a best and final offer as the offeror assumes the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation.

PROCUREMENT **B-225845 Mar. 18, 1987**
Competitive Negotiation 87-1 CPD 308
Offers
Evaluation
Administrative discretion

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

General Accounting Office will question a selection official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes and regulations.

PROCUREMENT **B-224171.3 Mar. 19, 1987**
Bid Protests 87-1 CPD 309
GAO procedures
GAO decisions
Reconsideration

Reconsideration request that merely reiterates prior arguments is denied.

PROCUREMENT **B-225447 Mar. 19, 1987**
Bid Protests 87-1 CPD 310
Allegation substantiation
Lacking
GAO review

Record does not support protester's contention that it was not given the same opportunity as other offerors in the competitive range to submit a third best and final offer.

PROCUREMENT **B-225624 Mar. 19, 1987**
Sealed Bidding **87-1 CPD 314**
Invitations for bids
Post-bid opening cancellation
Justification
Funding restrictions

Contracting agency may properly cancel a solicitation after bid opening where funds may not be available for the option years because of a congressional appropriations restriction, and the competition, involving a cost comparison under Office of Management and Budget Circular A-76, was conducted on the basis of basic and option years requirements.

PROCUREMENT **B-225678 Mar. 19, 1987**
Bid Protests **87-1 CPD 315**
GAO procedures
Interested parties
Direct interest standards

Fifth low offeror under a canceled solicitation is not an interested party to protest the cancellation and alleged subsequent sole-source award. Even if the protest were sustained and the solicitation reinstated, the protester would not be in line for award.

PROCUREMENT **B-223440.3 Mar. 20, 1987**
Bid Protests **87-1 CPD 316**
GAO procedures
GAO decisions
Reconsideration

Prior decision is affirmed where request for reconsideration fails to show legal error or information not previously considered.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-224199.2 Mar. 20, 1987
87-1 CPD 319

Original decision is affirmed where protester in request for reconsideration fails to show error of fact or law in prior holding that there was no evidence of improper influence on contract award decision due to participation in technical evaluation of contracting agency officials with alleged conflict of interest.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Shipment costs

B-225512.2 Mar. 20, 1987
87-1 CPD 320

Even if agency relaxed its requirements by not requiring successful offeror to furnish information about guaranteed maximum shipping weights and dimensions, agency had sufficient information with which to evaluate transportation costs for the successful offeror and difference in price between successful offeror and protester amounted to more than \$25,000 while transportation costs amounted to approximately \$5,000 so that protester was not prejudiced by alleged waiver of requirements by the agency.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price omission
Line items

B-225517 Mar. 20, 1987
87-1 CPD 321

Bid for printing of judicial opinions on which bidder drew a series of diagonal lines across schedule page for "rush work," although solicitation instructed bidders to enter a notation of "No Charge" for items for which no separate additional charge will be made, does not constitute an offer to perform that portion of the work and should have been rejected as nonresponsive.

PROCUREMENT B-225784 Mar. 20, 1987
Competitive Negotiation 87-1 CPD 325
Offers
Submission time periods
Extension
Propriety

Protest that agency improperly refused to extend closing date to allow protester the opportunity to submit a proposal is denied where adequate competition was obtained by the closing date and there was no deliberate attempt to exclude the protester from the competition.

PROCUREMENT B-226059, et al.,
Bid Protests Mar. 20, 1987
GAO procedures 87-1 CPD 326
GAO decisions
Reconsideration

Protests presenting the same issue which was resolved adversely to the protester in recent protests under different procurements are denied since the protester has not presented any arguments or new information distinguishing its current protests from those previously considered and denied.

PROCUREMENT B-225257 Mar. 23, 1987
Sealed Bidding 87-1 CPD 327
Unbalanced bids
Materiality
Responsiveness

Low bid in which the unit price for the fabrication of first article test items was more than 36 times greater than the unit price for production items properly was rejected as materially unbalanced because award, in effect, would have resulted in an advance payment to the contractor since it would have provided funds early in the contract performance to which the contractor was not entitled on the basis of payment for value received.

PROCUREMENT **B-225257 Con't**
Socio-Economic Policies **Mar. 23, 1987**
Small businesses
Competency certification
Effects

Consideration of a bid, including referral of low bidder to the Small Business Administration for consideration under certificate of competency (COC) procedures, and subsequent issuance of a COC, does not establish irrevocably that a bid is acceptable, nor does it estop the government from later rejecting the bid as nonresponsive.

PROCUREMENT **B-225472.3 Mar. 23, 1987**
Bid Protests **87-1 CPD 328**
GAO procedures
GAO decisions
Reconsideration

The General Accounting Office denies a second request for reconsideration of the dismissal of an untimely protest where the protester fails to show that the protest was timely or that the dismissal otherwise may have been based on any errors of fact or law.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

In the absence of affirmative evidence to show that a contracting agency sent a letter rejecting a proposal on a date other than that stamped on the letter, the General Accounting Office will assume that the letter was actually sent on or about that date, and for timeliness purposes will assume receipt within 1 calendar week.

PROCUREMENT

B-225617 Mar. 23, 1987

Bid Protests

87-1 CPD 329

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Contention, not raised until after contract award, that specifications unduly restrict competition in that they do not permit consideration of innovative and distinctive offers is untimely under Bid Protest Regulations.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Cost evaluation

Evaluation criteria

Applicability

Agencies must adhere to evaluation criteria stated in a solicitation. When a solicitation contemplates the leasing of only office and related space, the agency properly evaluates prices for such space, without considering either the monetary value of hotel and meeting rooms also included in a protester's proposal or the alleged cost savings that would result from accepting the proposal.

PROCUREMENT

B-225635.2 Mar. 23, 1987

Bid Protests

87-1 CPD 330

GAO procedures

Protest timeliness

10-day rule

Decision dismissing protest of exclusion from competitive range as untimely is affirmed because subsequent protest filed after award was made is also untimely; the fact that award was made to another offeror is not relevant to the propriety of the rejection of the protester's proposal.

PROCUREMENT
Bid Protests
Conferences
Justification

B-225669.2 Mar. 23, 1987
87-1 CPD 331

Request for a conference in connection with a request for reconsideration is denied since the matter can be promptly resolved without a conference.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

Prior decision is affirmed on reconsideration where protester has not shown that it contains any error of fact or law.

PROCUREMENT
Bid Protests
Definition

B-225707 Mar. 23, 1987
87-1 CPD 332

PROCUREMENT
Bid Protests
Sales
Government property
GAO review

PROCUREMENT
Government Property Sales
GAO review

To be subject to review by the General Accounting Office (GAO) under the Competition in Contracting Act of 1984 (CICA), a protest must pertain to a procurement of property or services by a federal agency. Protest concerning the sale of natural gas does not involve a procurement of property or services within the meaning of CICA, and the GAO will review it only where the federal agency involved has agreed to such review.

PROCUREMENT **B-225810 Mar. 23, 1987**
Bid Protests **87-1 CPD 333**
GAO procedures
Interested parties
Suspended/debarred contractors

General Accounting Office dismisses protest where debarment proceeding against the protester has been initiated, because pending a debarment decision, the firm is not eligible for award of a government contract.

PROCUREMENT **B-225963 Mar. 23, 1987**
Specifications **87-1 CPD 334**
Minimum needs standards
Competitive restrictions
Design specifications
Burden of proof

PROCUREMENT
Specifications
Minimum needs standards
Competitive restrictions
Design specifications
Overstatement

General Accounting Office (GAO) dismisses protest that specifications exceed procuring activity's minimum needs, that drawings are incomplete, and that activity improperly refused to supply samples where the protester does not produce any evidence to support its general allegations. GAO has previously considered virtually identical protests and repeatedly advised the protester that it has the burden of proof.

PROCUREMENT **B-225447.2 Mar. 24, 1987**
Competitive Negotiation 87-1 CPD 337
Contract awards
Propriety

Award of contract for prototype currency printing press for the Bureau of Engraving and Printing is proper where record shows that: (1) Bureau's decision was made on valid technical evaluation of submitted proposals; (2) meaningful discussions were held with protester in area of proposal which was considered at first deficient and then weak; and (3) award was not the result of improper political influence or bias.

PROCUREMENT **B-226012.2 Mar. 24, 1987**
Bid Protests 87-1 CPD 338
GAO procedures
Agency notification

General Accounting Office (GAO) affirms dismissal of original protest for failure to file a copy of the protest with the contracting officer within 1 day after filing with GAO where the agency had not received a copy of the protest 4 working days after it was filed with GAO.

PROCUREMENT **B-226455 Mar. 24, 1987**
Bid Protests 87-1 CPD 339
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest based on an alleged solicitation impropriety incorporated into the solicitation after initial proposals were due is untimely because it was not filed before the next closing date for receipt of proposals.

PROCUREMENT

B-225302 Mar. 25, 1987

Bid Protests

87-1 CPD 340

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that solicitation clause--requiring offerors for multiyear, multiple-award Federal Supply Service contracts to demonstrate that their anticipated total sales under the contract are at least \$25,000--is ambiguous is untimely when submitted after the closing date for receipt of proposals.

PROCUREMENT

Special Procurement Methods/Categories

Federal supply schedule

Offers

Rejection

Propriety

Agency properly rejected offer for Federal Supply Schedule contract where record does not demonstrate that offeror met minimum sales requirement set forth in solicitation, and agency's determination based upon sales records supplied by offeror was reasonably based.

PROCUREMENT

B-225492; B-225492.2

Bid Protests

Mar. 25, 1987

GAO procedures

87-1 CPD 341

Protest timeliness

10-day rule

Under GAO's Bid Protest Regulations, a protester must protest within 10 working days of when it is informed of its basis for protest; a protester may not wait until it obtains under the Freedom of Information Act additional information pertaining to the protest before filing the protest.

PROCUREMENT

B-225492; B-225492.2 Con't

Bid Protests

Mar. 25, 1987

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

A protest that certain allegedly required information was not submitted by the awardee with its proposal is timely filed under GAO's Bid Protest Regulations, where the protester diligently pursues obtaining a copy of the information under the Freedom of Information Act, and the agency does not supply the information, erroneously tells the protester that it has already supplied him with the information and finally admits that the information was not submitted by the awardee, since the protester filed the protest within 10 working days of receiving the agency's admission.

PROCUREMENT

Competitive Negotiation

Best/final offers

Price data

Omission

Effects

The awardee's failure to submit pricing for data items on the Contract Data Rights List (CDRL), DD Form 1423, with its best and final offer for the contract does not adversely affect the acceptability or price of the proposal or the government's rights under the contract, where the awardee submitted acceptable CDRL pricing data with the initial proposal, since CDRL pricing data is not part of the contract, the cost of data items is included in contract line item prices, and the purpose for obtaining such data prices is to evaluate the cost of data items in terms of their management or product or engineering value to the government.

PROCUREMENT

B-225529 Mar. 26, 1987

Competitive Negotiation

87-1 CPD 344

Contract awards

Administrative discretion

Cost/technical tradeoffs

Cost savings

Contracting agency may properly make an award to a lower-priced, lower-rated offeror although the solicitation provides that cost will be less important than technical factors in the selection, where the contracting officer reasonably determines that the technical advantage from the highest-rated proposal is less significant than the possible cost savings from a lower-rated proposal and the cost-technical tradeoff is otherwise consistent with the evaluation scheme in the solicitation.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Cost estimates

Protest that an offeror cannot provide qualified personnel at its proposed cost and that the contracting agency failed to consider this in determining the most probable cost of the offeror's proposal is denied, where the proposed personnel are almost all current employees paid at levels included in the offeror's proposal and the record does not establish that required substitute additional personnel will materially increase the offeror's costs.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Ambiguous prices

B-225593 Mar. 26, 1987
87-1 CPD 345

Bidder's note on bid that price offered under invitation for bids to print and mail legal opinions is conditioned on electronic transmission of opinions in a particular format did not constitute a qualification rendering bid nonresponsive since solicitation essentially provided that the specified format would be used anyway.

PROCUREMENT
Contractor Qualification
Licenses
Interstate transportation

B-225611 Mar. 26, 1987
87-1 CPD 346

Where solicitation for moving services does not require that Interstate Commerce Commission (ICC) authority be held by bidder as a prerequisite to being found responsible, joint venture does not have to be found nonresponsive because only one joint venturer has ICC authority.

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

B-225636 Mar. 26, 1987
87-1 CPD 347

Cancellation of hospital laundry services solicitation after bid opening is proper where agency determines specifications have to be revised to establish that only certain types of washing machines will satisfactorily safeguard against contamination of clean laundry from contact with soiled laundry bacteria; protesting low bidder's facility is not equipped with specified machine types; and protester does not establish that the requirement for certain types of machines exceeds the government's needs.

PROCUREMENT **B-225676 Mar. 26, 1987**
Socio-Economic Policies **87-1 CPD 348**
Small business set-asides
Use
Justification

Decision to amend solicitation to set-aside procurement for small businesses after initially issuing solicitation on an unrestricted basis is proper where agency shows set-aside determination based on information discovered after the solicitation was issued was reasonable.

PROCUREMENT **B-225950.2 Mar. 26, 1987**
Bid Protests **87-1 CPD 349**
GAO procedures
GAO decisions
Reconsideration

Prior dismissal of protest, because an agency's decision to cancel an RFP and to perform the work in-house is a matter of executive branch policy that the General Accounting Office does not review, is affirmed where the protester fails to show the dismissal was based upon error of fact or law.

PROCUREMENT **B-225989 Mar. 26, 1987**
Noncompetitive Negotiation **87-1 CPD 350**
Use
Justification
Urgent needs

General Accounting Office will not object to agency's decision to limit competition to approved manufacturers where agency's requirements are urgent and the agency does not have the technical data package needed to conduct a competitive procurement.

PROCUREMENT **B-226447.1 Mar. 26, 1987**
Special Procurement Methods/Categories
Architect/engineering services
Corporate entities
Qualification

Question whether general corporations may be considered under District of Columbia law adopting the federal Brooks Act procedures, 40 U.S.C. § 541-544, for awarding architect and engineer contracts is answered in the negative, since the Act limits consideration to those entities permitted by law to practice those professions, and District law does not permit general corporations to perform architect and engineer services.

PROCUREMENT **B-223203.2 Mar. 27, 1987**
Competitive Negotiation **87-1 CPD 351**
Discussion
Adequacy
Criteria

Contracting agency failed to conduct meaningful discussions with offeror under brand name or equal request for proposals for hydraulic test stands where agency failed to advise offeror that its proposal was seriously deficient due to lack of detailed parts data.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-223779.3 Mar. 27, 1987
87-1 CPD 352

PROCUREMENT
Bid Protests
Premature allegation
GAO review

Request for reconsideration of a dismissal of a protest as premature is dismissed where the request for reconsideration does not contain a statement of factual or legal grounds upon which the reversal of the dismissal could be deemed warranted, but instead, merely contains a single argument which indicates that the original protest was properly judged to be premature and that a protest at this time would still be premature.

PROCUREMENT
Payment/Discharge
Federal procurement regulations/laws
Revision
Cost reimbursement

B-224782.2 Mar. 27, 1987

General Accounting Office's Office of General Counsel concludes that the provisions of Department of Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 231.70 and two contract clauses to be set out at DFARS §§ 252.231-7001 and 252.231-7002 are consistent with the provisions of 10 U.S.C. § 2324 (Supp. III 1985), which pertains to penalties for the inclusion of unallowable costs in settlement proposals, and also appear to be consistent with the intent of the Congress to eliminate the charging of unallowable costs to defense contracts.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-225337 Mar. 27, 1987
87-1 CPD 353

PROCUREMENT
Government Property Sales
Invitations for bids
Government property
Information adequacy

Protest that description of aircraft scrap residue in a sale invitation for bids was misleading because it did not identify specific aircraft type included is without merit where description was broad enough to encompass scrap from various aircraft and protester could have inspected lot to determine what was included in it.

PROCUREMENT
Competitive Negotiation
Use
Criteria

B-225496 Mar. 27, 1987
87-1 CPD 354

PROCUREMENT
Sealed Bidding
Use
Criteria

Sealed bid procedures are not appropriate where, based on a previous attempt to procure equipment, the contracting agency believes discussions are required.

PROCUREMENT
Socio-Economic Policies
Small business set-asides
Use
Justification

Protest that solicitation should be set aside for small business is denied where the record does not show that contracting officer abused his discretion in determining that there was no reasonable expectation of receiving proposals from at least two responsible small business concerns.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225176.3; B-225176.4
Mar. 30, 1987
87-1 CPD 356

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Claims for bid preparation costs and costs of filing and pursuing protests are denied where protests are dismissed because they have been rendered academic by changed agency requirements and the withdrawal of funding for the procurement.

Principle enunciated by the court in Keco Industries, Inc. v. United States, 428 F.2d 1233 (Ct. Cl. 1970), that the government has an implied-in-fact contract to fairly and honestly consider bids, provides no basis for recovery of the costs of filing and pursuing a protest. Keco stands only for the proposition that a claimant is entitled to recovery of its bid preparation costs if its bid is not fairly and honestly considered.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification

Where a solicitation has been canceled and the funding for the requirement withdrawn, the mere fact that the agency may at some point in the future find it necessary to acquire the items covered by the canceled solicitation, provides no basis to conclude that the protested solicitation has not been canceled unequivocally or that the agency has a current requirement for the equipment covered by the canceled solicitation.

PROCUREMENT	B-225534; B-225535
Specifications	Mar. 30, 1987
Minimum needs standards	87-1 CPD 359
Competitive restrictions	
Pre-qualification	
Design specifications	

There is no merit to a protester's contention that by incorporating an aircraft prime contractor's process specification into solicitations for canopies for the aircraft the contracting agency established preaward approval by the prime contractor as a precondition to any contract award where the solicitations provided for offerors to propose on the basis of first article approval by the government and provided that such provisions would prevail over any conflicting provisions contained in other solicitation documents.

PROCUREMENT	B-225543 Mar. 30, 1987
Sealed Bidding	87-1 CPD 360
Bids	
Responsiveness	
Descriptive literature	
Adequacy	

Where invitation for bids set forth minimum acceptable engine size for dredge with a particular size pump discharge pipe, required detailed description of dredge and related equipment, and contained an itemized sheet listing the information that had to be supplied with bids, failure of bid to supply required, material information rendered bid nonresponsive.

PROCUREMENT
Sealed Bidding
Bids

B-225647 Mar. 30, 1987
87-1 CPD 361

Error correction
Low bid displacement
Propriety

Where bid correction would result in displacing one or more lower bids, correction may not be permitted unless the mistake and intended bid are apparent from the invitation and the bid itself. It is not apparent that line item bid of "19(19)" was intended as a bid of zero instead of a bid of 19, as the agency viewed it.

PROCUREMENT
Sealed Bidding
Bids

Error correction
Pricing errors
Line items

Agency reasonably may rely upon a solicitation clause providing that line item prices are subject to verification of addition to correct bidders' aggregate bids to reflect the proper sum of these line items.

PROCUREMENT
Special Procurement
Methods/Categories

B-225954 Mar. 30, 1987
87-1 CPD 362

Multi-year leases
Competition rights
Contractors
Exclusion

Where contracting agency did not provide protester/incumbent contractor with solicitation because of agency's unconfirmed and, apparently, incorrect belief that contractor was unable to provide enough space to meet increased space requirements, incumbent contractor was improperly excluded from the competition in violation of requirement in the Competition in Contracting Act of 1984 for full and open competitive procedures.

PROCUREMENT **B-225964 Mar. 30, 1987**
Competitive Negotiation **87-1 CPD 363**
Contract awards
Initial-offer awards
Propriety

Award on an initial proposal basis without discussions to the firm judged to be technically superior but proposing other than the lowest overall cost offer was improper where at least one lower-priced proposal would have been in the competitive range.

PROCUREMENT **B-226585 Mar. 30, 1987**
Bid Protests **87-1 CPD 364**
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

When a protest alleging solicitation improprieties is filed initially with the contracting agency before the bid opening date, a subsequent protest to GAO before bid opening is untimely when filed more than 10 days after the protester receives notice of the initial adverse agency action on the protest.

PROCUREMENT **B-226616 Mar. 30, 1987**
Competitive Negotiation **87-1 CPD 365**
Offers
Price disclosure
Allegation substantiation
Evidence sufficiency

Where a protester fails to offer any evidence that the agency disclosed the firm's proposed price to another offeror, its contention in this regard is mere conjecture and thus provides no basis to sustain the protest.

PROCUREMENT

B-224730 Mar. 31, 1987

**Contract Management
Contract modification
Sales contracts
Timber sales
Propriety**

PROCUREMENT

**Government Property Sales
Timber Sales**

Where prices in timber sale contract under which purchaser is credited, against bid price, for cost of building roads to reach the timber, are adjusted downward pursuant to statute to point where no such credits are available, contract may be modified to provide for government contribution of funds to offset road construction costs, since contribution would have been made if such lower rates had been bid initially.

PROCUREMENT

B-225711.2 Mar. 31, 1987

**Bid Protests
GAO procedures
GAO decisions
Reconsideration**

PROCUREMENT

**Competitive Negotiation
Offers
Acceptance time periods
Extension
Propriety**

Where protester expressly refused to extend its offer and months after its offer expired filed protest of the agency's request for an extension of its offer, prior dismissal is affirmed even though protester thought its offer was still being considered.

PROCUREMENT

B-226103 Mar. 31, 1987

Specifications

87-1 CPD 366

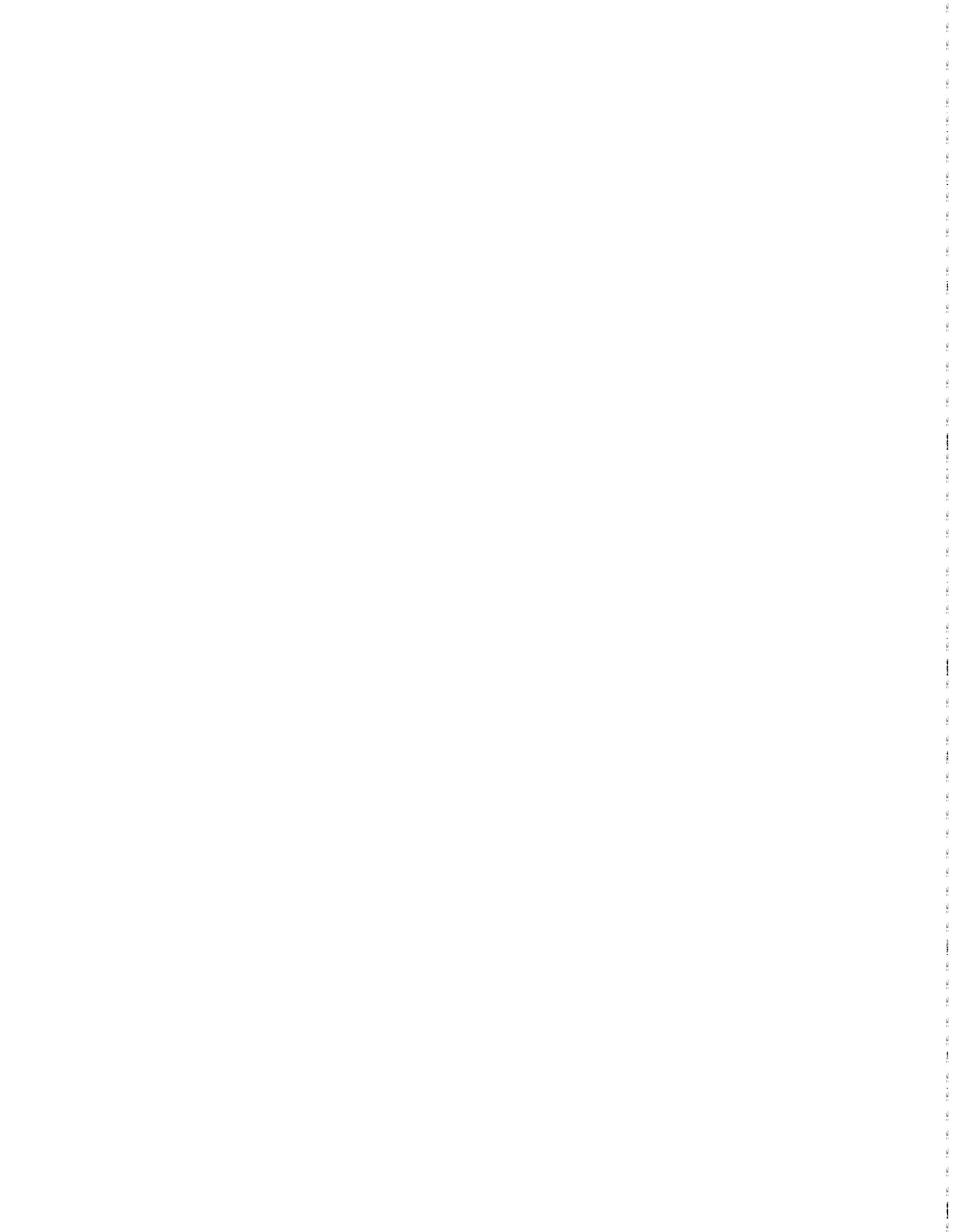
Minimum needs standards

Competitive restrictions

Allegation substantiation

Evidence sufficiency

Specifications for new equipment are not unduly restrictive of competition where the agency presents a reasonable explanation of why the specifications are necessary to meet its minimum needs and the protester fails to show that the restrictions are clearly unreasonable.



MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS

B-225986 Mar. 2, 1987

Finance Industry

Financial institutions

Administrative agencies

Gifts/donations

Travel expenses

The Federal Home Loan Bank Board (Board) has no authority under 12 U.S.C. § 1701c(1) to accept gifts, in cash or kind, from the Federal Home Loan Banks for the travel-related administrative expenses of Board personnel. Such expenses must be paid by the Board using its own funds subject to any limitation on the Board's administrative expenses contained in annual appropriation acts.

MISCELLANEOUS TOPICS

B-226375 Mar. 10, 1987

Federal Administrative/Legislative Matters

Administrative policies

Records destruction

Time restrictions

We recommend that proposal submitted by National Archive and Records Administration to revise General Records Schedule 12, Item 4, to destroy investigative reports including reports relating to employees unauthorized use of long distance telephone service for two years after the investigation, be modified to exclude reports related to any pending claims collection actions by the Government.

We recommend that proposal submitted by National Archive and Records Administration to revise General Records Schedule 12, Item 4, to require that records relating to determinations of unauthorized use of long distance telephone service by employees be retained for more than two years (suggest five) in order to determine whether this is a isolated occurrence or pattern of abuse warranting disciplinary action.

MISCELLANEOUS TOPICS B-226343 Mar. 13, 1987
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

This Office has no objection to the adoption and issuance of an exception to HUD's Record Disposition Schedule 20, Item 1.a. proposing to dispose of all single family home mortgage insurance case files insured through 1967 since HUD's Counsel, IG and Office of Enforcement have determined that the legal interests of the Government will be adequately protected.

MISCELLANEOUS TOPICS B-226508 Mar. 16, 1987
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

This Office has no legal objection to the adoption and issuance of the proposal of the International Trade Commission, Department of Commerce to dispose of records relating to the activities of the Office of Export Licensing after specified periods of time.

MISCELLANEOUS TOPICS B-177806 Mar. 20, 1987
Federal Administrative/Legislative Matters
Congress
Special offices

Under the Technology Assessment Act, 2 U.S.C. § 471, et seq., the Office of Technology Assessment (OTA) is permitted to establish salary and compensation levels for staff employees without regard to the classification laws in chapter 51 of title 5. The Director, OTA may appoint and fix compensation of employees in accordance with the law and regulations governing appointment and compensation of congressional staff employees.

MISCELLANEOUS TOPICS**B-226515 Mar. 26, 1987****National Security/International Affairs****Foreign aid programs****Foreign countries****Prohibition****Executive powers**

The President's removal of a country from Foreign Assistance Act prohibition against assistance to Communist countries for an indefinite length of time is authorized by 22 U.S.C. § 2370(f)(2). A literal reading of the language comprising this provision supports a broad delegation of authority to the President and its legislative history indicates congressional intent that the President have broad discretion in determining how long a particular country should be removed from the prohibition.

MISCELLANEOUS TOPICS**B-226539 Mar. 26, 1987****Federal Administrative/Legislative Matters****Administrative policies****Records destruction****Time restrictions**

Request for Records Disposition Authority (SF-115) in which Commerce Department proposes to dispose of files relating to waiver of collection of overpayment of pay and allowances should be revised to include waivers granted or denied either by Commerce or the General Accounting Office and should provide that they be retained either 6 years and 3 months from the year in which the waiver is approved or 6 years and 3 months from final payment.

Request for Records Disposition Authority, (SF-115) submitted by the Commerce Department relating to disposal of records relating to claims for overpayment of pay which have been terminated under 4 C.F.R. pt. 104, should be revised to require retention for 10 years and 3 months following the year in which the Government's right to collect the claim first accrued, unless extended on a case-by-case basis when the period of collection has been extended by various tolling provisions, or when it is otherwise in the best interest of the Government to retain them.

MISCELLANEOUS TOPICS

B-224915 Mar. 30, 1987

Human Resources

Health care

State/local assistance

Statutory compliance

Under Section 9508 of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA), Pub. L. No. 99-272, 100 Stat. 210-211 (1986), a state plan amendment for case management services is effective no earlier than the first day of the calendar quarter in which it was submitted, but no earlier than April 7, 1986, the date of COBRA's enactment.

Section 9508 of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA), Pub. L. No. 99-272, 100 Stat. 210-211 (1986), was intended to allow states to amend their state plans to cover case management services without requiring that the services be available throughout a state and without requiring that covered service be equal in amount, duration and scope for certain Medicaid beneficiaries.

MISCELLANEOUS TOPICS

B-226554 Mar. 30, 1987

Federal Administrative/Legislative Matters

Administrative policies

Records destruction

Time restrictions

This Office has no legal objection to the adoption and issuance of records disposition schedule submitted by the Department of Medicine and Surgery, Veterans Administration, proposing to destroy patient records after various periods of time, except those to which the provision of the Protective Order--NARS v. Turnage, apply.

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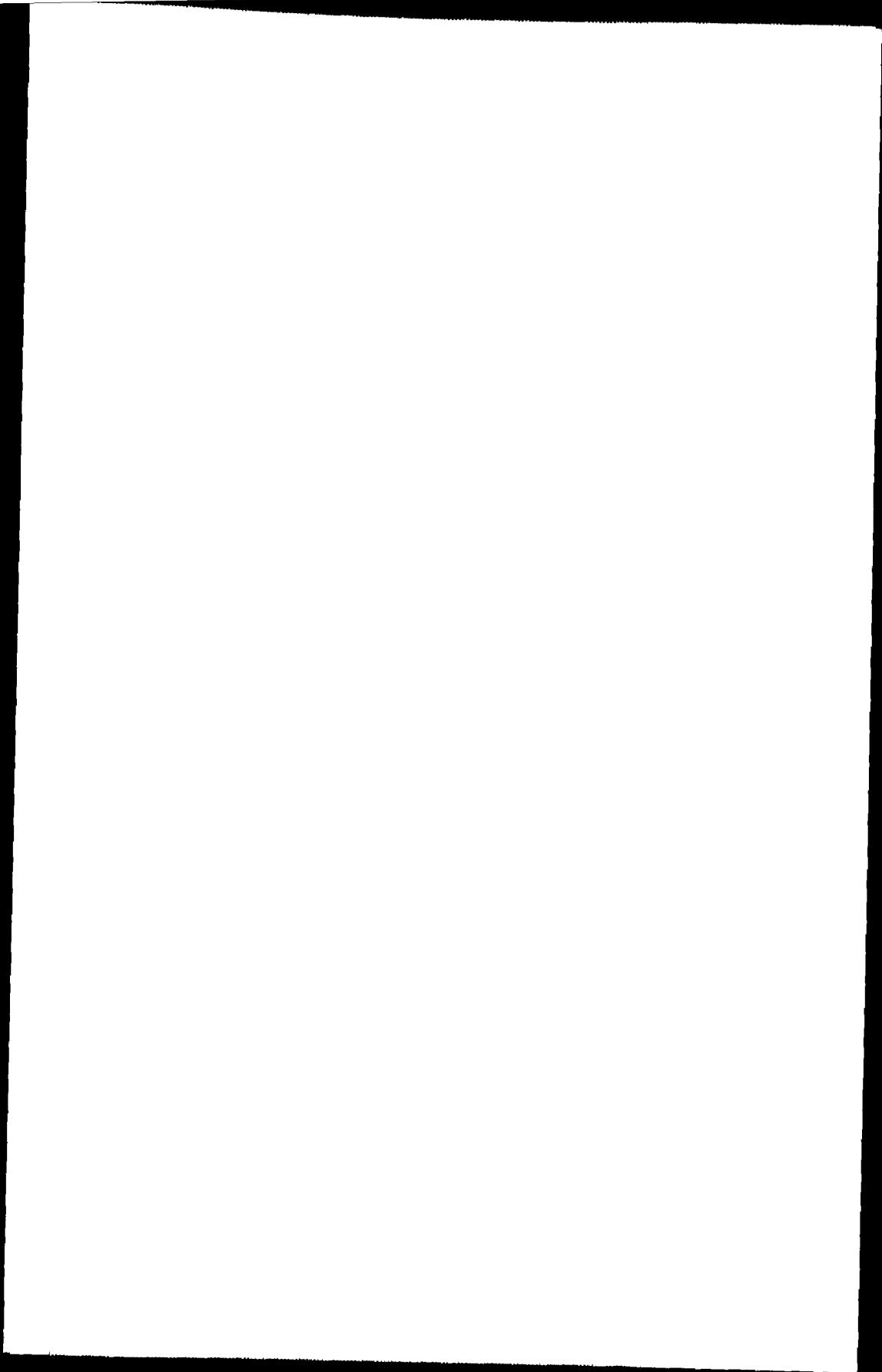
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