Westfall

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

FILE: B-206439 **DATE:** October 27, 1982

MATTER OF: Office of Technology Assessment--Waiver of claims provision

DIGEST: GAO sees no legal objection to Office of Technology Assessment's including provision in certain research services contracts by which contractor waives all claims not presented within a certain time fixed in the provision.

The Director of Contracts of the Office of Technology Assessment (OTA) has requested our opinion as to the validity and effect of a waiver of claims clause which OTA includes in certain contracts for research services. The clause provides that any claims not filed by the contractor within 3 months of a contract's expiration date are waived. We have no objection to the inclusion of such a clause in OTA research service contracts.

Specifically, the waiver of claims clause provides that:

> "Monies reserved for payment under this contract shall be released to other purposes after three months from the expiration date stated or any extension thereof. Claims not made before that time are waived."

The submission notes that an alternative to inclusion of the clause is for OTA to send waiver letters to contractors for signature. This alternative has proved to be ineffective, however, in that deobligation of funds committed to a particular contract cannot be accomplished until the signed letter is returned to OTA, and thus when, as frequently occurs, contractors fail to sign and return the letters or delay several months before returning them, deobligation cannot be accomplished promptly. According to OTA, the use of the waiver letters often results in the loss of funds earmarked for particular contracts, as well as creating a significant administrative cost.

We have no objection to the Office of Technology Assessment's use of this provision. Contractual clauses limiting the period

for the filing of claims by one party against the other have repeatedly been upheld by the courts. See, e.g., East Texas Motor Freight Lines v. United States, 239 F.2d 417 (5th Cir. 1956) (requirement in interstate bill of lading that claims for damages must be filed with carrier within 9 months upheld); McNulty v. Medical Service of the District of Columbia, Inc., 189 A.2d 125 (D.C. 1963) (physician bound by provision, in his written contract with medical services corporation, establishing time limitation for submission of claim, where time limitations were reasonable and necessary for proper financial operation of corporation); Atkinson v. Thrift Super Markets, Inc., 56 Wash. 2d 593, 354 P.2d 709 (1960) (provision in collective bargaining agreement that no grievance or claim of violation of agreement would be recognized unless presented in writing within 90 days held valid). The contractor will have, of course, the option not to sign the contract if it contains this clause or it can try to negotiate a longer period of time to submit any claims. We see no reason why the two contracting parties cannot agree on a provision such as this one.

Milton J. Socolar

Acting Comptroller General
of the United States