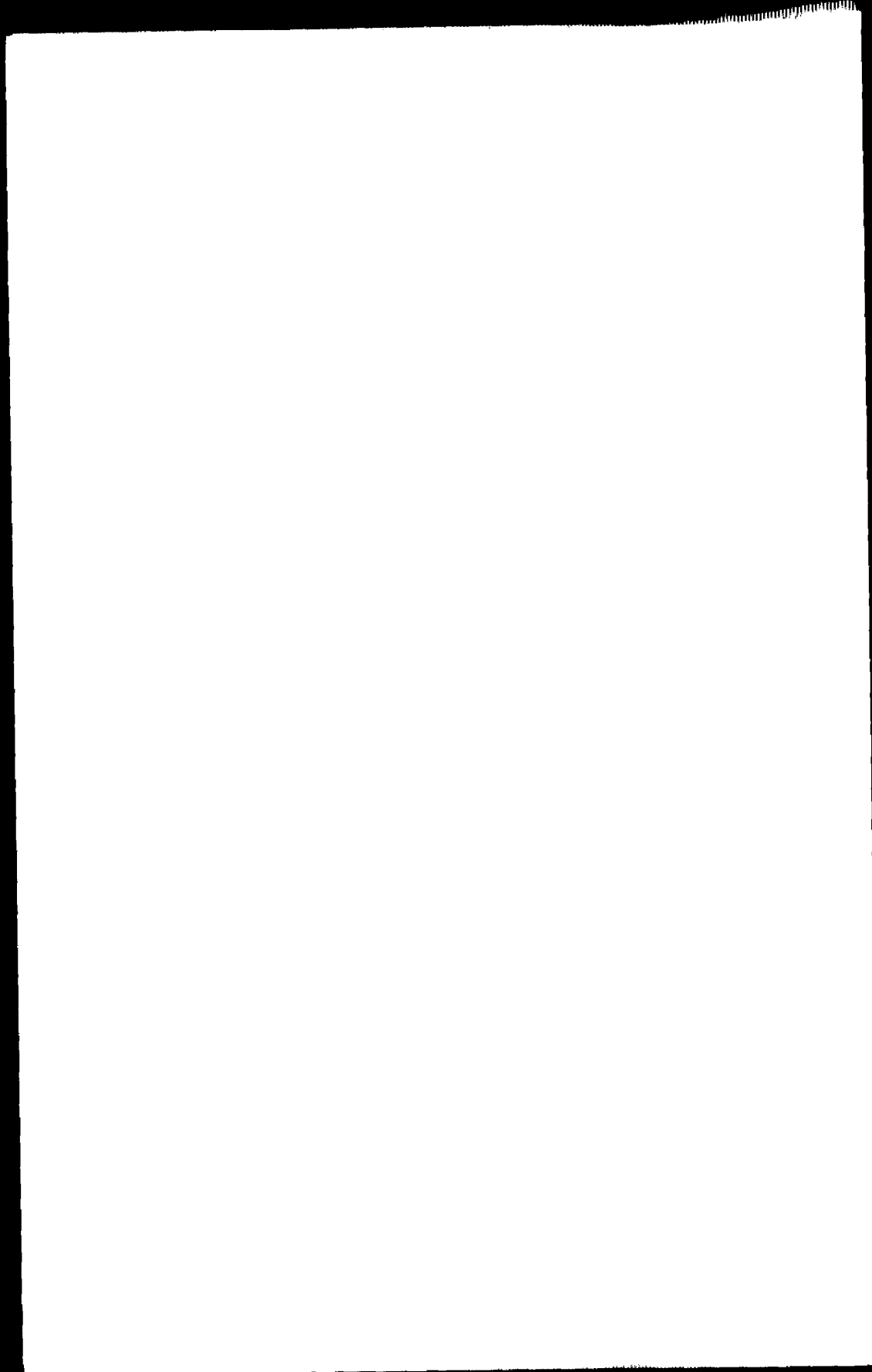


March 1987

**Digests of Unpublished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



United States General Accounting Office

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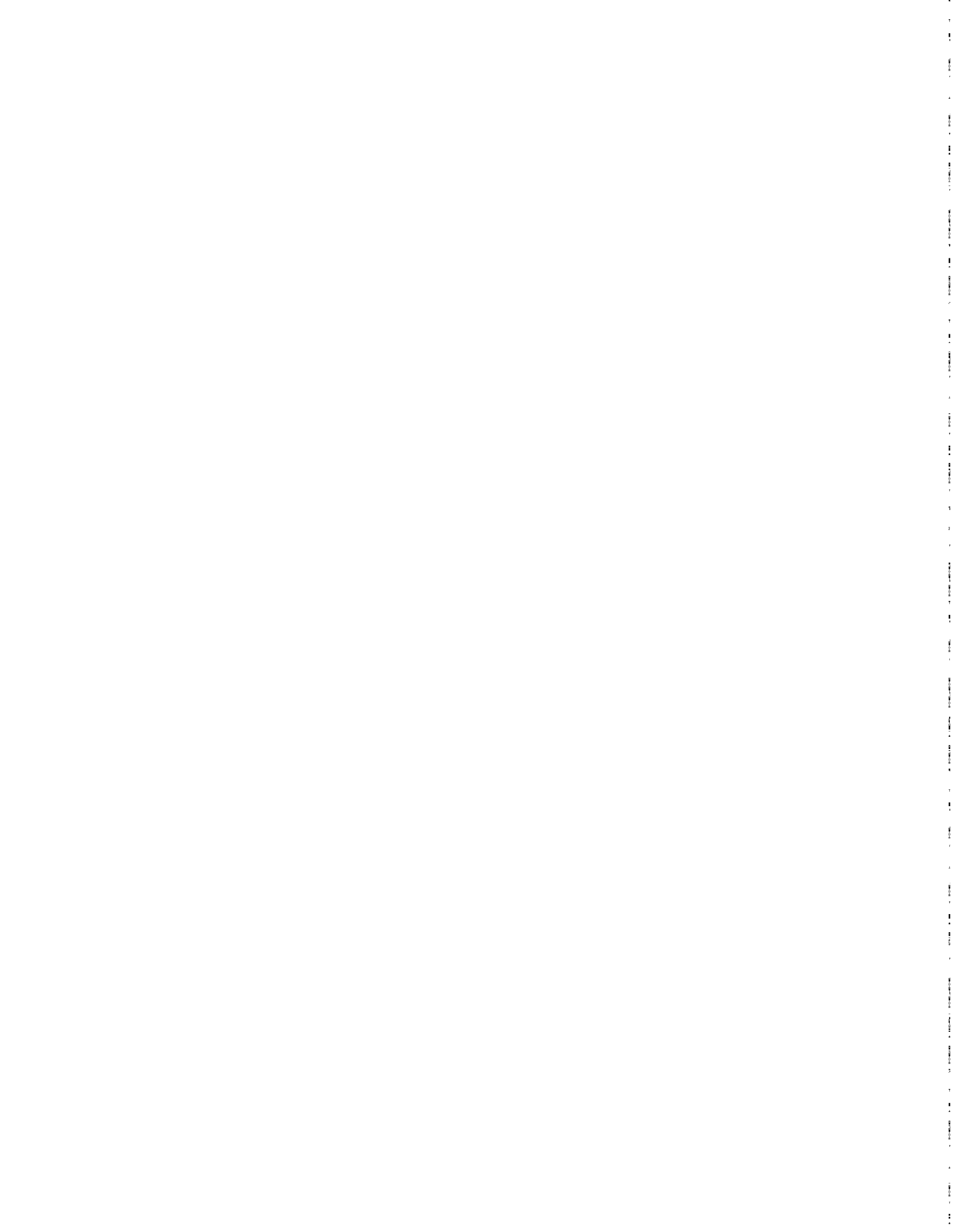
James F. Hinchman

Deputy General Counsel

MARCH 1987

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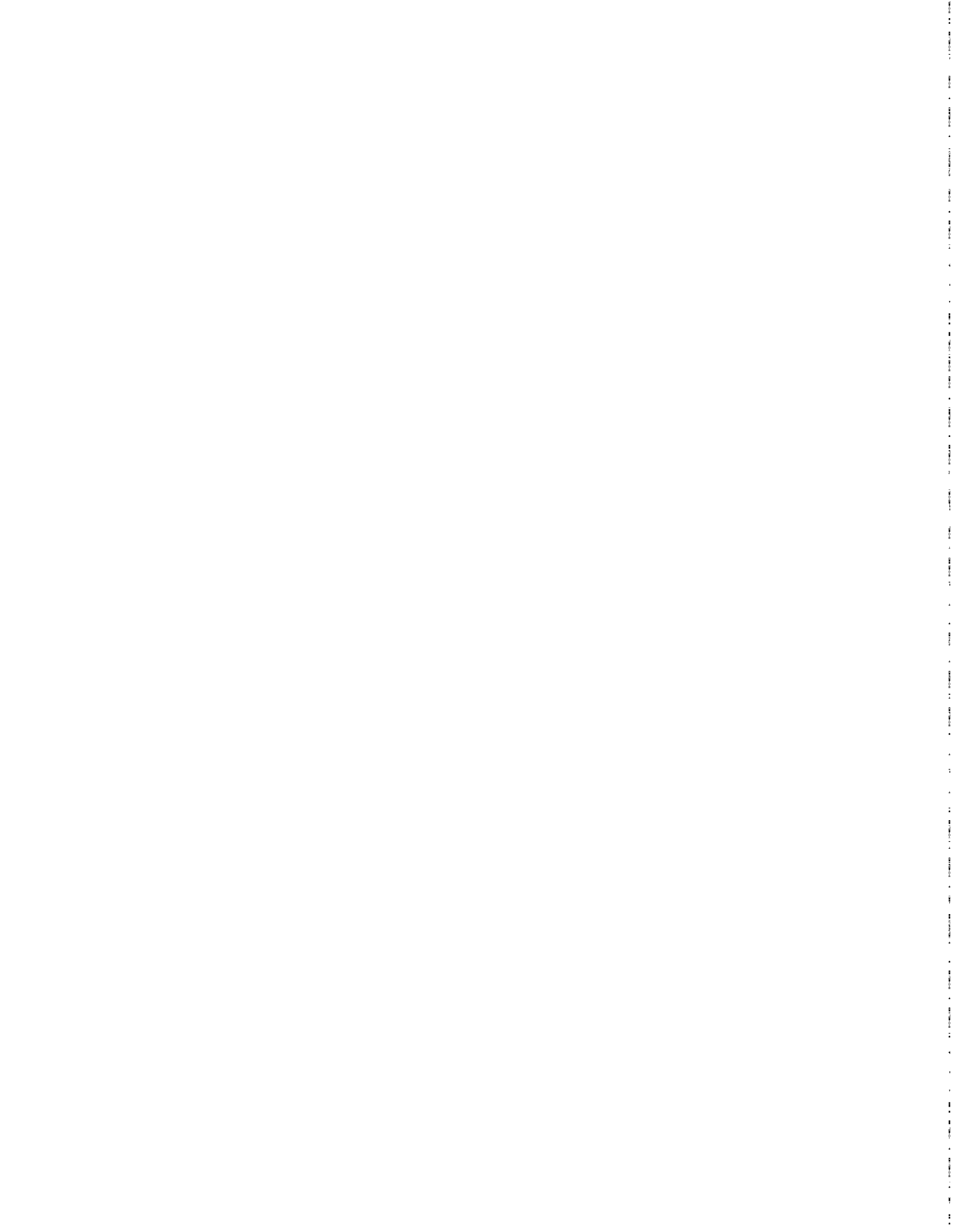


PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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



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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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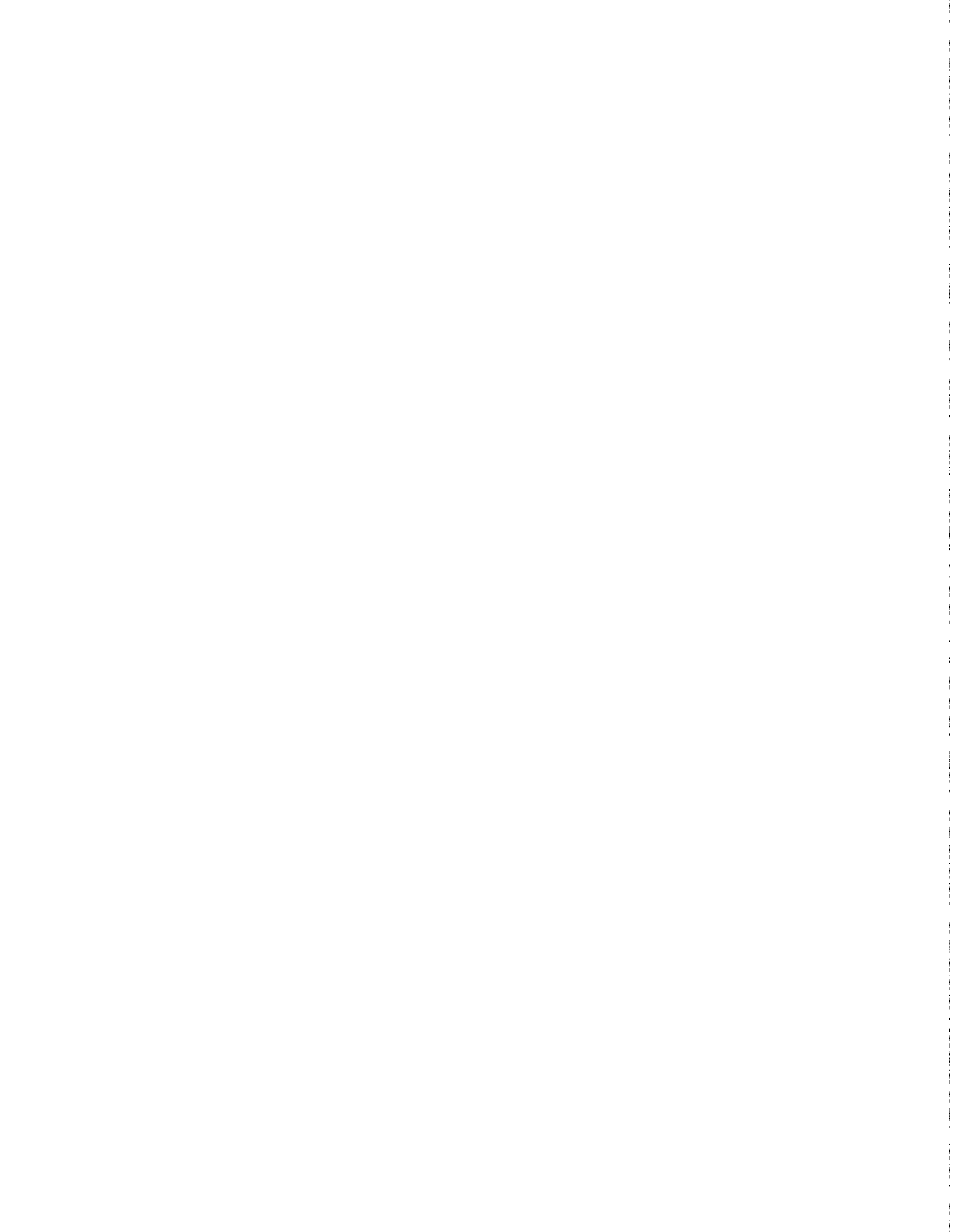
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APPROPRIATIONS/FINANCIAL MANAGEMENT

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.

CIVILIAN PERSONNEL**B-223815 Mar. 20, 1987****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

B-216016 Con't

Travel

Mar. 23, 1987

Temporary duty**Travel expenses****Reimbursement****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

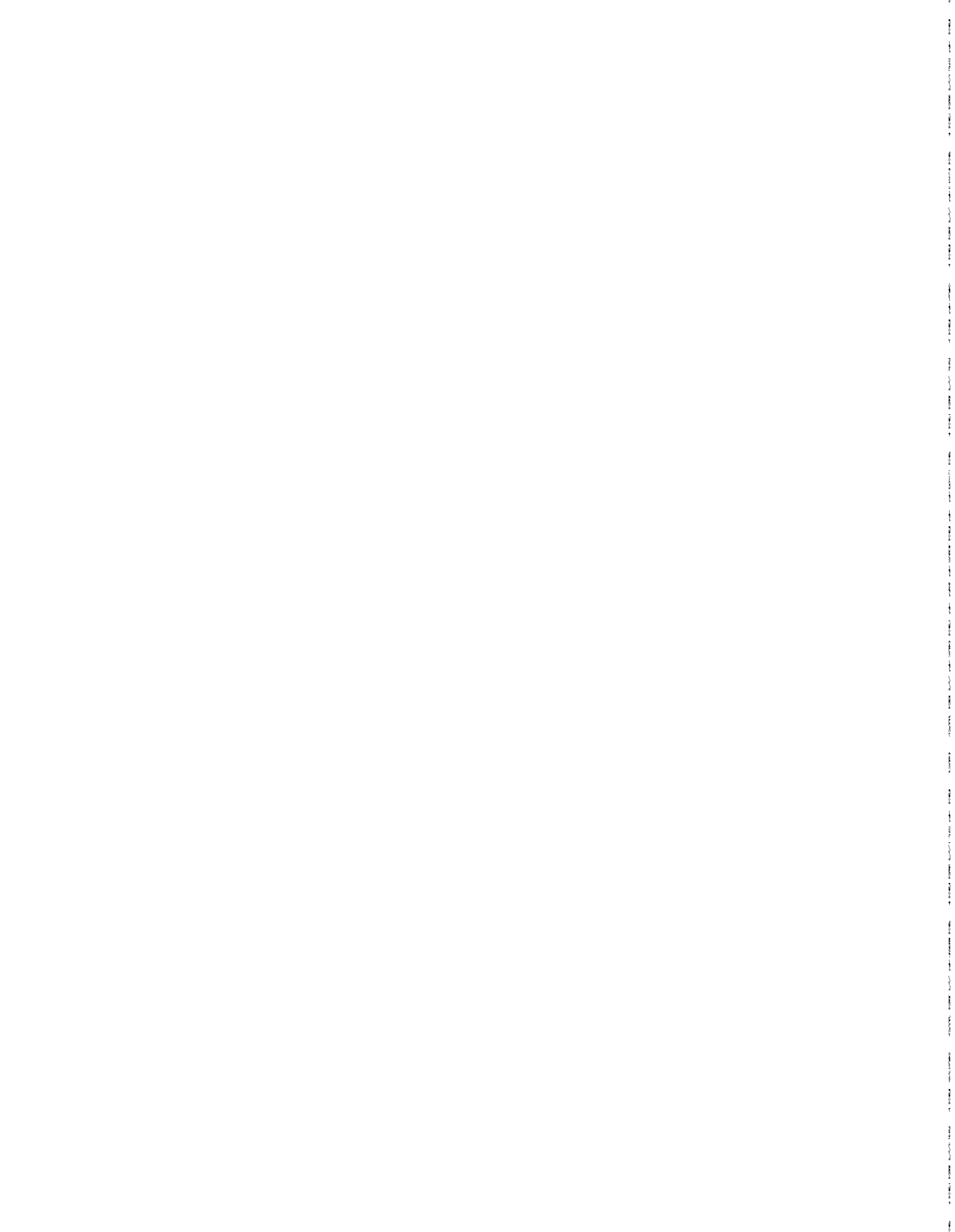
Pay

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	B-225323	Con't
Contractor Qualification	Mar. 2, 1987	
Approved sources		
Alternatives		
First-article testing		

Failure of proposed awardee to appear on certified manufacturers' list does not render firm ineligible for award where solicitation provides alternatively that firms not on list will be required to meet first article test requirements.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Award to bidder on basis of Buy American Act Certification that firm will supply domestic products must be preceded by contracting officer decision that bidder is capable of doing so, and General Accounting Office does not review such affirmative responsibility determinations except in limited circumstances.

PROCUREMENT	B-225396	Mar. 2, 1987
Contractor Qualification	87-1 CPD	235
De facto debarment		
Non-responsible contractors		

Multiple nonresponsibility determinations under contemporaneous procurements do not constitute de facto suspension or debarment where they are based on the current available information reasonably showing recent deficient performance under prior contracts.

B-225396 Con't
Mar. 2, 1987

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Negative determination
Pre-award surveys

PROCUREMENT	B-225524.2	Mar. 2, 1987
Bid Protests	87-1	CPD 236
GAO procedures		
Protest timelines		
10-day rule		
Adverse agency actions		

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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**B-224892.2 Mar. 3, 1987****Bid Protests****87-1 CPD 239****Non-prejudicial allegation****GAO review**

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 **B-225478.2 Mar. 3, 1987**
Competitive Negotiation **87-1 CPD 241**
Contract awards
Quantities
Increase
Propriety

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 **B-225550 Mar. 3, 1987**
Bid Protests **87-1 CPD 242**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

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.

B-225432 Con't

Mar. 4, 1987

Price adjustments

Burden of proof

Competitive Negotiation

Price adjustments

Acceptability

PROCUREMENT

Offers

Evaluation

D-9

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

B-225439 Mar. 4, 1987

87-1 CPD 247

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

Mar. 4, 1987

Requests for quotations

Contractors

Notification

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**B-226277.2 Con't****Bid Protests****Mar. 4, 1987****GAO procedures****Protest timeliness****10-day rule****Effective dates**

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**B-225161.2 Mar. 5, 1987****Sealed Bidding****87-1 CPD 252****Invitations for bids****Evaluation criteria****Government property****Cost evaluation**

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

B-224785.2 Mar. 6, 1987

Bid Protests

87-1 CPD 257

GAO procedures

Protest timeliness

10-day rule

Effective dates

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 **B-225122 Mar. 6, 1987**
Specifications **87-1 CPD 258**
Brand name/equal specifications
Equivalent products
Acceptance criteria

Procuring agency's evaluation of alternate product as technically unacceptable was not unreasonable where the protester failed to supply sufficient information to establish the acceptability of its product as required by the solicitation.

PROCUREMENT **B-225210.3 Mar. 6, 1987**
Bid Protests **87-1 CPD 259**
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of prior decision is denied where the request contains no statement of the facts or legal grounds warranting reversal or modification but merely restates arguments made by the protester and considered previously by the General Accounting Office.

PROCUREMENT **B-225326, et al.,**
Bid Protests **Mar. 6, 1987**
GAO procedures **87-1 CPD 260**
Interested parties

Protester qualifies as interested party despite its status as fourth low bidder where protester seeks resolicitation of procurement on the basis of defective specification and would have an opportunity to rebid if the procurement were resolicited.

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
Bid Protests
Moot allegation
GAO review

B-225346, et al.,
Mar. 6, 1987
87-1 CPD 261

Protests raising the same issues as those resolved in a recent decision on protests by the same protester and involving the same agency and awardee are dismissed because no useful purpose would be served by further consideration of the protester's complaint.

PROCUREMENT
Competitive Negotiation
Contract awards
Initial-offer awards
Propriety
Price reasonableness

B-225408 Mar. 6, 1987
87-1 CPD 262

Determination, in the face of unresolved uncertainties in proposals, that contract award for \$2 million more than protester's offer and \$4 million more than agency's estimate satisfies requirement of Competition in Contracting Act that contracts awarded on basis of initial proposals be at lowest overall cost to the government is unreasonable.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225531.3; B-225532.3
Mar. 6, 1987
87-1 CPD 263

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

Prior decision holding that, after cancellation of sealed bid procurement, award following negotiation at a price higher than the lowest rejected bid is not precluded by FAR, 48 C.F.R. § 15.103(c) unless the cancellation was based on unreasonable prices or collusive bidding, is affirmed on reconsideration.

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**B-224373.2 Con't****Competitive Negotiation****Mar. 10, 1987****Requests for proposals****Terms****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**B-224912.2 Mar. 10, 1987****Bid Protests****87-1 CPD 268****GAO procedures****GAO decisions****Reconsideration**

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

B-225057 Mar. 10, 1987

Competitive Negotiation

87-1 CPD 269

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

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

B-225357.2 Mar. 10, 1987

Competitive Negotiation

87-1 CPD 270

Offers

Competitive ranges

Exclusion

Administrative discretion

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**B-225925.2 Mar. 10, 1987****Sealed Bidding****87-1 CPD 272****Invitations for bids****Construction contracts****Wage rates****Omission****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**B-224603.2 Mar. 11, 1987****Sealed Bidding****87-1 CPD 273****Bids****Responsiveness****Descriptive literature****Ambiguous bids**

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**B-224603.2 Con't****Sealed Bidding****Mar. 11, 1987****Bids****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**B-225437 Mar. 11, 1987****Sealed Bidding****87-1 CPD 274****Invitations for bids****Cancellation****Justification**

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**B-225687.2; B-225687.3****Bid Protests****Mar. 11, 1987****GAO procedures****87-1 CPD 275****Interested parties****Direct interest standards**

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.

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

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

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

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

B-224160.2; B-224161.2 Con't

Sealed Bidding

Mar. 12, 1987

Invitations for bids

Post-bid opening cancellation

Resolicitation

Auction prohibition

Where the post-bid opening cancellation of an invitation for bids was consistent with governing legal requirements, an impermissible auction has not been created upon resolicitation, and the fact that lower bids may have been submitted under the successor invitation generally has no bearing upon the propriety of the original cancellation.

PROCUREMENT

Sealed Bidding

Invitations for bids

Post-bid opening cancellation

Resolicitation

Non-prejudicial allegation

Prior decision upholding an agency's post-bid opening cancellation of an invitation for bids in part on the ground that the protester was not materially harmed by the action since it was the apparent low bidder under the resolicitation is affirmed upon reconsideration where, even though events subsequent to the decision now reveal that the protester was in fact prejudiced, the agency's original decision to cancel nevertheless remains justified upon reexamination of the record.

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-225552.2	Mar. 12, 1987
Socio-Economic Policies	87-1 CPD	279
Small businesses		
Competency certification		
Bad faith		
Allegation substantiation		

To establish bad faith, the protester must prove that government officials had a specific and malicious intent to injure the firm. Burden of showing the Small Business Administration (SBA) acted in bad faith to deny the protester an opportunity to file for a certificate of competency is not met where the record shows that the SBA, with the cooperation of the contracting agency, granted several extensions to the filing deadline to assure the protester ample time to file its application.

PROCUREMENT

- Socio-Economic Policies
 - Small businesses
 - Competency certification
 - Extension
 - Administrative discretion

The granting of an extension for filing a certificate of competency application is a matter solely within the contracting agency's discretion, with the government's interest in proceeding with the acquisition, not the bidder's interests in obtaining an extension, the controlling consideration.

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Competency certification
GAO review

In the absence of a showing of bad faith or fraud, or that vital information was not considered, General Accounting Office will not question a determination by the Small Business Administration not to issue a certificate of competency following a finding by the contracting agency that a small business was nonresponsible.

PROCUREMENT
Special Procurement
Methods/Categories
Federal supply schedule
Purchase orders
Equivalent products
Propriety

B-225616 Mar. 12, 1987
87-1 CPD 280

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

B-225770 Mar. 12, 1987
87-1 CPD 281

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

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Shipment schedules
Deviation

B-226420 Mar. 12, 1987
87-1 CPD 282

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 **B-225058 Mar. 13, 1987**
Competitive Negotiation **87-1 CPD 283**
Contract awards
Initial-offer awards
Propriety
Price reasonableness

The General Accounting Office sustains a protest where the procuring agency awarded a contract on the basis of initial proposals, but there was a reasonable chance that by conducting discussions the agency would find a proposal offering a lower overall cost to the government to be more advantageous under the evaluation factors listed in the solicitation.

PROCUREMENT **B-225280 Mar. 13, 1987**
Sealed Bidding **87-1 CPD 284**
Bids
Submission time periods
Time restrictions
Administrative discretion

Protest contending that the contracting agency improperly allowed only 30 days for bid preparation, thereby preventing protester from competing with the two current contractors, is denied since selection of a bid opening date is within the discretion of the contracting officer and the fact that a firm is not able to prepare a bid within the time allowed does not render the procurement improper.

PROCUREMENT**B-225280 Con't****Sealed Bidding****Mar. 13, 1987****Competitive advantage****Incumbent contractors**

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**B-225347 Mar. 13, 1987****Competitive Negotiation****87-1 CPD 285****Discussion****Adequacy****Criteria**

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-225347 Con't
Contract Management	Mar. 13, 1987
Contract administration	
Contract terms	
Compliance	
GAO review	

Whether or not a firm actually performs in compliance with contract requirements is a matter of contract administration, which the General Accounting Office does not review as part of its bid protest function.

PROCUREMENT	B-225672 Mar. 13, 1987
Bid Protests	87-1 CPD 286
GAO decisions	
Recommendations	
Competitive system integrity	

PROCUREMENT
Socio-Economic Policies
Preferred products/services
Domestic products
Applicability

Although the General Accounting Office (GAO) denies on legal grounds a postaward protest against the agency's alleged failure to investigate adequately challenges to the awardee's certifications in its bid concerning its obligation to supply only domestic small business end products in performing the contract, as the protest touches upon issues generally beyond the scope of GAO's Bid Protest Regulations, GAO nevertheless recommends in the face of conflicting evidence that the agency verify the awardee's intent to meet the requirements of the total small business set-aside procurement.

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**Bid Protests****GAO procedures****GAO decisions****Reconsideration****B-225580.2 Mar. 16, 1987****87-1 CPD 289****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**Competitive Negotiation****Best/final offers****Price adjustments****Misleading information****Allegation substantiation****B-225595 Mar. 16, 1987****87-1 CPD 290**

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.

B-225595 Con't
Mar. 16, 1987

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

D-38

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

**Competitive Negotiation
Offers**

B-224518.2 Con't

Mar. 17, 1987

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.

B-225583 Mar. 17, 1987

Competitive Negotiation
Contract awards
Initial-offer awards
Propriety

87-1 CPD 296

Award on an initial proposal basis, without discussions, is proper where the solicitation advises offerors of this possibility and the competition and prior cost experience clearly demonstrate that acceptance of an initial proposal will result in the lowest overall cost to the government.

PROCUREMENT

Competitive Negotiation
Initial offers
Rejection
Propriety

Where the contracting agency decides to make award on an initial proposal basis, an initial proposal taking exception to a material solicitation requirement is unacceptable and must be rejected.

PROCUREMENT

B-225871 Mar. 17, 1987

Competitive Negotiation Use Criteria

87-1 CPD 297

Agency decision to use negotiation procedures in lieu of sealed bidding procedures to acquire a fire alarm system is justified where technical discussions are essential and contract award will be based on technical considerations in addition to cost and cost-related factors.

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
Contract awards
Initial-offer awards
Propriety
Price reasonableness

Contracting agency did not abuse its discretion in proceeding with award on an initial proposal basis to the low offeror, even though the second low offeror reduced its initial proposal price below that of the low offeror when reviving its proposal at the request of the agency. Agency was not required to conduct discussions upon receipt of the lower price in view of the relatively small monetary savings, the uncertainty that discussions would result in lower prices, and the agency's legitimate interest in making a timely award.

PROCUREMENT	B-225216.2; B-225216.3
Contract Management	Mar. 18, 1987
Contract modification	87-1 CPD 302
Change orders	
Contracting officers	
Authority	

When contract modification is within the scope of an original contract and is supported by consideration, the contracting officer acts within his authority in agreeing to it, and in fact is the only person authorized to execute a change order.

B-225216.2; B-225216.3 Con't

Contract Management

Mar. 18, 1987

Contract modification

GAO review

While an agency may not properly award a contract with the intent to modify it, when a protester neither alleges nor makes out a prima facie case that this occurred, a modification executed 5 months after award is a matter of contract administration, not within the bid protest jurisdiction of the General Accounting Office.

PROCUREMENT

Sealed Bidding

Bids

Modification

Late submission

Rejection

A bidder's attempt after opening to modify its bid to provide an accelerated delivery schedule at the same price cannot be accepted because it constitutes a late modification.

PROCUREMENT

B-225495 Mar. 18, 1987

Bid Protests

87-1 CPD 303

GAO procedures

Interested parties

Direct interest standards

To be considered an interested party to have standing to protest under the Competition in Contracting Act of 1984 and GAO Bid Protest Regulations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or failure to award a contract. A potential supplier to a government contractor which is not an actual bidder or offeror itself, is not an interested party.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-225495 Con't

Mar. 18, 1987

Protest against amended solicitation award scheme filed after closing date established by the amendment is untimely.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

Protest filed with General Accounting Office more than 10 working days after initial adverse agency action at that level is untimely and will not be considered on the merits.

PROCUREMENT

Bid Protests

Non-prejudicial allegation

GAO review

Allegation that agency improperly waived provision which requires that successful offeror hire a single firm window fabricator with 5 years experience to assume responsibility for all components of window work is denied where record shows that this provision was superseded by a subsequent amendment to the solicitation and that all offerors were aware that the provision was no longer applicable.

PROCUREMENT**B-225495 Con't****Competitive Negotiation****Mar. 18, 1987****Discussion reopening****Propriety****Best/final offers****Price adjustments**

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-225504; B-225504.2** **Con't**
Competitive Negotiation Mar. 18, 1987
Offers
Evaluation
Administration discretion

In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting officers enjoy a reasonable range of discretion and we will not question such a determination unless there is a clear showing of unreasonableness, abuse of discretion, or a violation of the procurement statutes or regulations.

PROCUREMENT **B-225542.2** **Mar. 18, 1987**
Socio-Economic Policies 87-1 CPD 306
Small business 8(a) subcontracting
Contract awards
Administrative discretion

Agency decision not to award a contract under the section 8(a) program because of concerns regarding the capacity of intended subcontractor, a debtor under Chapter 11 of the bankruptcy laws, to perform the contract does not violate 11 U.S.C. §525, prohibiting discriminatory action against such debtors, since the decision was not based solely on the subcontractor's bankrupt status and simply reflected a legitimate exercise of the agency's broad discretion to determine whether to award a section 8(a) contract.

PROCUREMENT **B-225696.2** **Mar. 18, 1987**
Bid Protests 87-1 CPD 307
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Dismissal of protest against failure to consider firm's proposal in procurement restricted to mobilization base producers, not filed until after closing date of solicitation, is affirmed. Restriction was clearly stated in solicitation and protester, who is not a mobilization base producer, was not eligible for award of contract.

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-225447	Con't
Competitive Negotiation	Mar. 19, 1987	
Offers		
Evaluation		
Administrative discretion		

Agency did not exceed the discretion committed to it in concluding that protester's failure adequately to address in its written proposal how it planned to manage the project, including start-up activities, despite repeated requests that it do so could not be compensated for by its preliminary work on a prototype machine of the same general design as that being procured.

PROCUREMENT	B-225484	Mar. 19, 1987
Specifications	87-1 CPD	311
Brand name/equal specifications		
Equivalent products		
Acceptance criteria		

Protest that offer for an "equal" product was improperly accepted is denied where protester is unable to show that agency's technical judgment that awardee's product meets the solicitation's salient characteristics is unreasonable.

PROCUREMENT	B-225614.2	Mar. 19, 1987
Bid Protests	87-1	CPD 313
GAO procedures		
Administrative reports		
Comments timeliness		

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

Dismissal of original protest, for failure to timely comment on agency report, is affirmed despite the protester's assertion that it received the report late (after the due date of the report). The protester was on notice of its obligation to notify the General Accounting Office that it had not received the report by the due date, but failed to do so.

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-223970.2; B-223970.4****Mar. 20, 1987****87-1 CPD 317**

Decision sustaining protest on ground that awardee engaged in discussions with agency and that protester thus also should have been included in discussions is affirmed on reconsideration where there is no showing that General Accounting Office erroneously concluded that discussions took place.

PROCUREMENT**Competitive Negotiation****Discussion reopening****Competitive system integrity****GAO decisions****Recommendations**

Fact that protester may have difficulty preparing competitive best and final offer in response to General Accounting Office recommendation that discussions be reopened is not a sufficient basis for eliminating competition altogether by instead recommending award to protester.

PROCUREMENT**Bid Protests****Court decisions****Merits adjudication****GAO review****B-224023.2 Mar. 20, 1987****87-1 CPD 318****PROCUREMENT****Bid Protests****GAO procedures****GAO decisions****Reconsideration**

The General Accounting Office (GAO) will not reconsider a prior decision where the material issues are before a court of competent jurisdiction and the court has not expressed an interest in a reconsideration decision by the GAO of the prior decision.

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-225526 Mar. 20, 1987**
Competitive Negotiation **87-1 CPD 322**
Competitive advantage
Non-prejudicial allegation

Protester's contention that it was placed at a competitive disadvantage because FCC waived material requirement for competitor is denied where record shows that if there was any waiver it was applied equally.

PROCUREMENT **B-225644 Mar. 20, 1987**
Special Procurement **87-1 CPD 323**
Methods/Categories
In-house performance
Administrative discretion
GAO review

The General Accounting Office will not review an agency decision to issue a project order to a federal agency rather than contract for the services, where no competitive solicitation was issued for the purpose of determining the cost of contracting out.

PROCUREMENT **B-225715.2 Mar. 20, 1987**
Sealed Bidding **87-1 CPD 324**
Bids
Modification
Late submission
Rejection

Federal Acquisition Regulation, 48 C.F.R. § 14.304-1(d) (1986), which provides for consideration of a late modification of an otherwise successful bid which makes its terms more favorable to the government, does not apply where the bid only becomes low if the modification is considered.

The maintenance of confidence in the government procurement system is of greater importance than the possible monetary advantage to be gained by considering a late bid modification in a particular procurement.

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-226395 Mar. 23, 1987**
Competitive Negotiation **87-1 CPD 335**
Offers
Late submission
Acceptance criteria

Protester, having been orally informed that the solicitation was amended to provide for a later closing date and yet submitted its proposal past the amended closing date because it had not been sent a copy of the amendment was properly found to have submitted its offer late.

PROCUREMENT **B-226533 Mar. 23, 1987**
Bid Protests **87-1 CPD 336**
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

General Accounting Office will not consider the merits of an admittedly untimely protest by invoking the significant issue exception of our Bid Protest Regulations where the protest does not raise an issue of first impression that would have widespread significance to the procurement community.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest to General Accounting Office which was not filed within 10 working days of actual knowledge of initial adverse agency action with protest to contracting agency is dismissed as untimely.

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**B-225593 Mar. 26, 1987****Sealed Bidding****87-1 CPD 345****Bids****Responsiveness****Ambiguous prices**

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**B-225611 Mar. 26, 1987****Contractor Qualification 87-1 CPD 346****Licenses****Interstate transportation**

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**B-225636 Mar. 26, 1987****Sealed Bidding****87-1 CPD 347****Invitations for bids****Post-bid opening cancellation****Justification****Sufficiency**

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 **B-225496 Con't**
Specifications **Mar. 27, 1987**
Minimum needs standards
Competitive restrictions
Standards
Certification

Protest that solicitation requirement that fire alarm equipment be certified by nationally recognized testing laboratory as meeting National Fire Protection Association standards is unduly restrictive is denied where the requirement was included because of safety concerns and the protester offers no reason, other than its contention that competition is restricted, why the standards or certification should not be used.

PROCUREMENT **B-225665.2 Mar. 27, 1987**
Bid Protests **87-1 CPD 355**
GAO procedures
Preparation costs

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Where protest is dismissed as academic because challenged solicitation line item is canceled, there is no basis for the award of proposal preparation and protest costs, since a prerequisite to the award of such costs is a decision on the merits of the protest.

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

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

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****Error correction****Low bid displacement****Propriety****B-225647 Mar. 30, 1987****87-1 CPD 361**

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****Multi-year leases****Competition rights****Contractors****Exclusion****B-225954 Mar. 30, 1987****87-1 CPD 362**

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

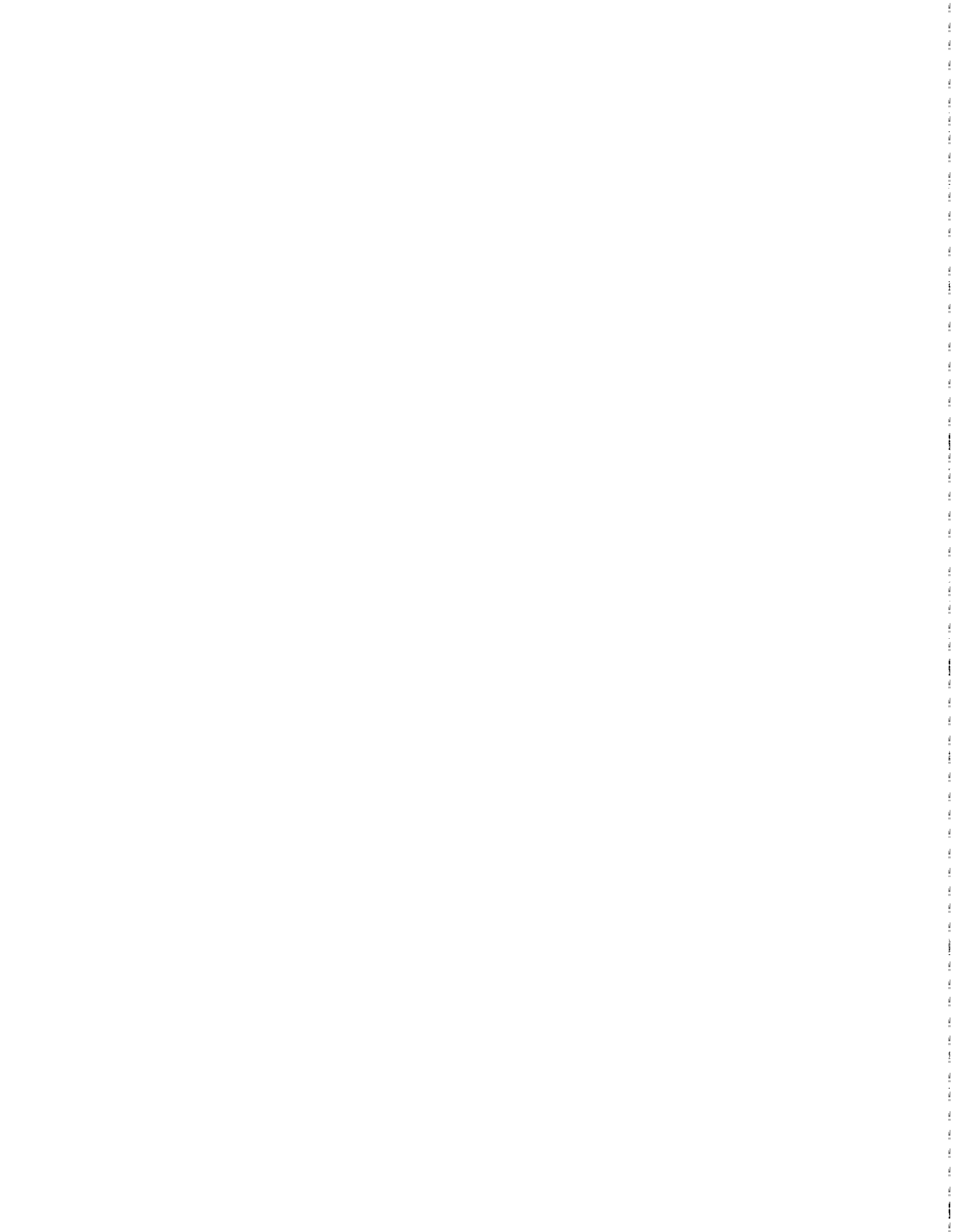
Minimum needs standards

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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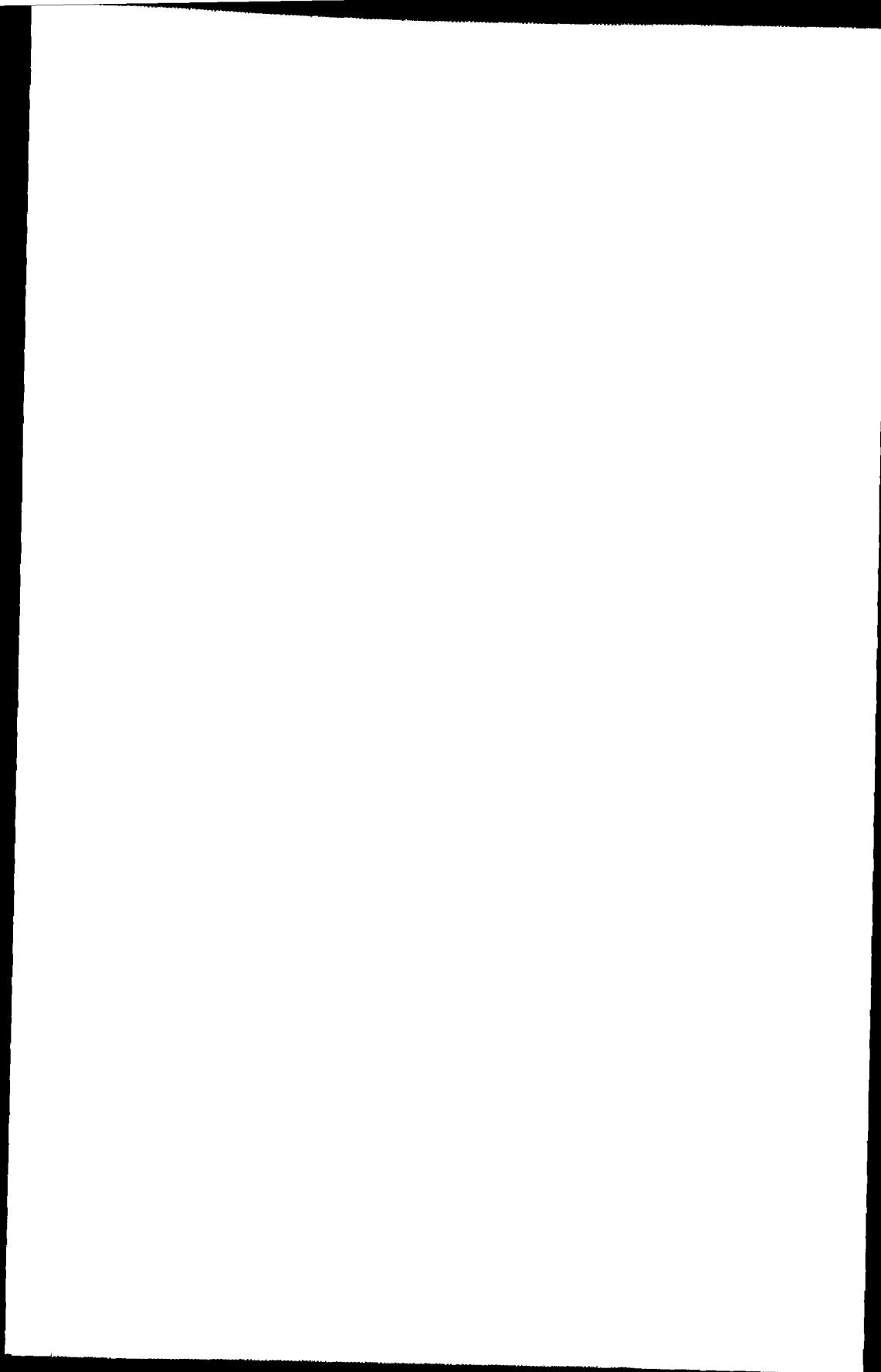
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