

# Digests Of Unpublished Decisions Of The Comptroller General Of The United States- OGC/Index-Digest Section

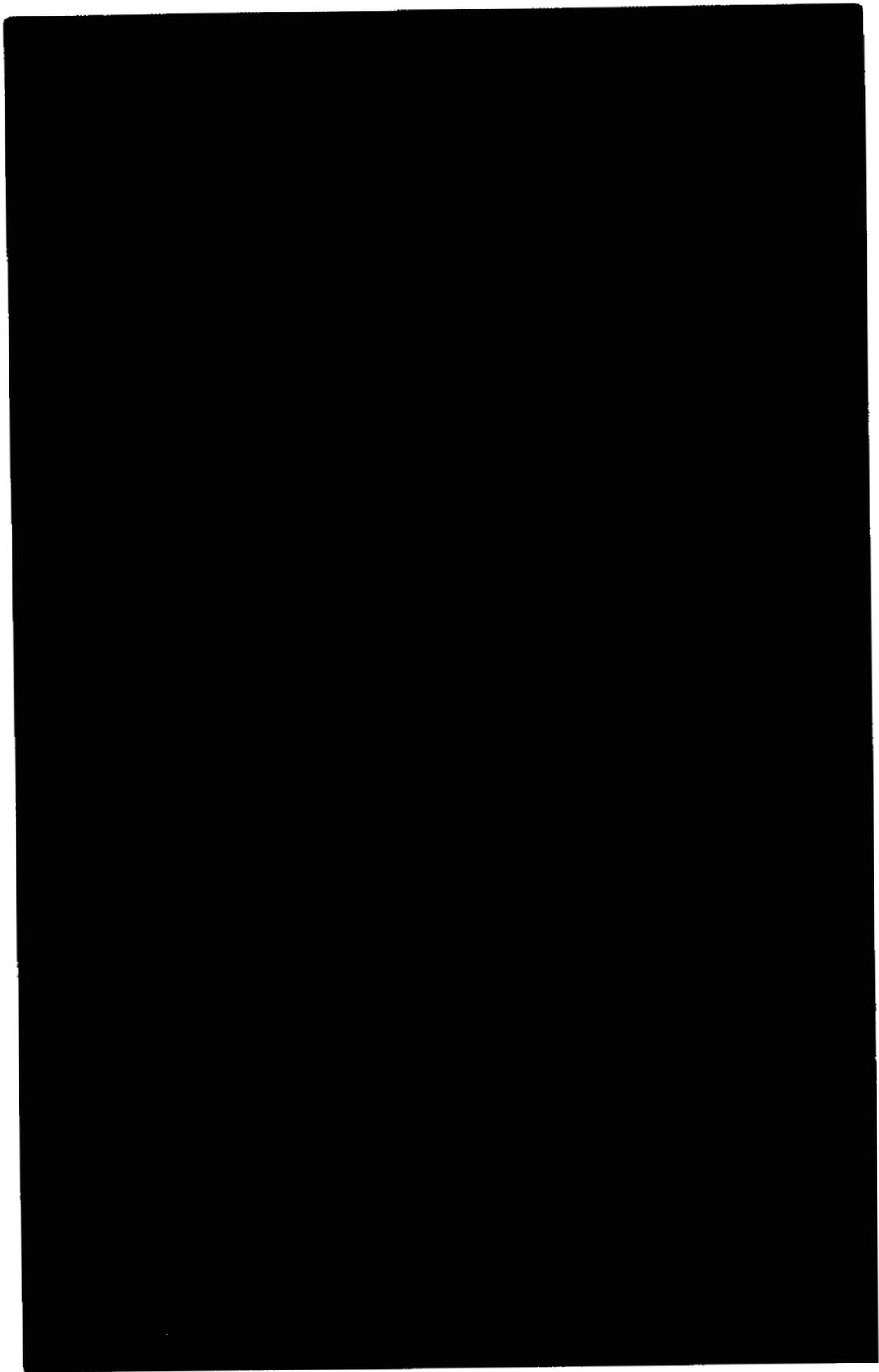
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OCTOBER 1985

Volume II  
Number 1

**GAO**

United States General Accounting Office



**UNITED STATES GENERAL ACCOUNTING OFFICE**

**CHARLES A. BOWSER**

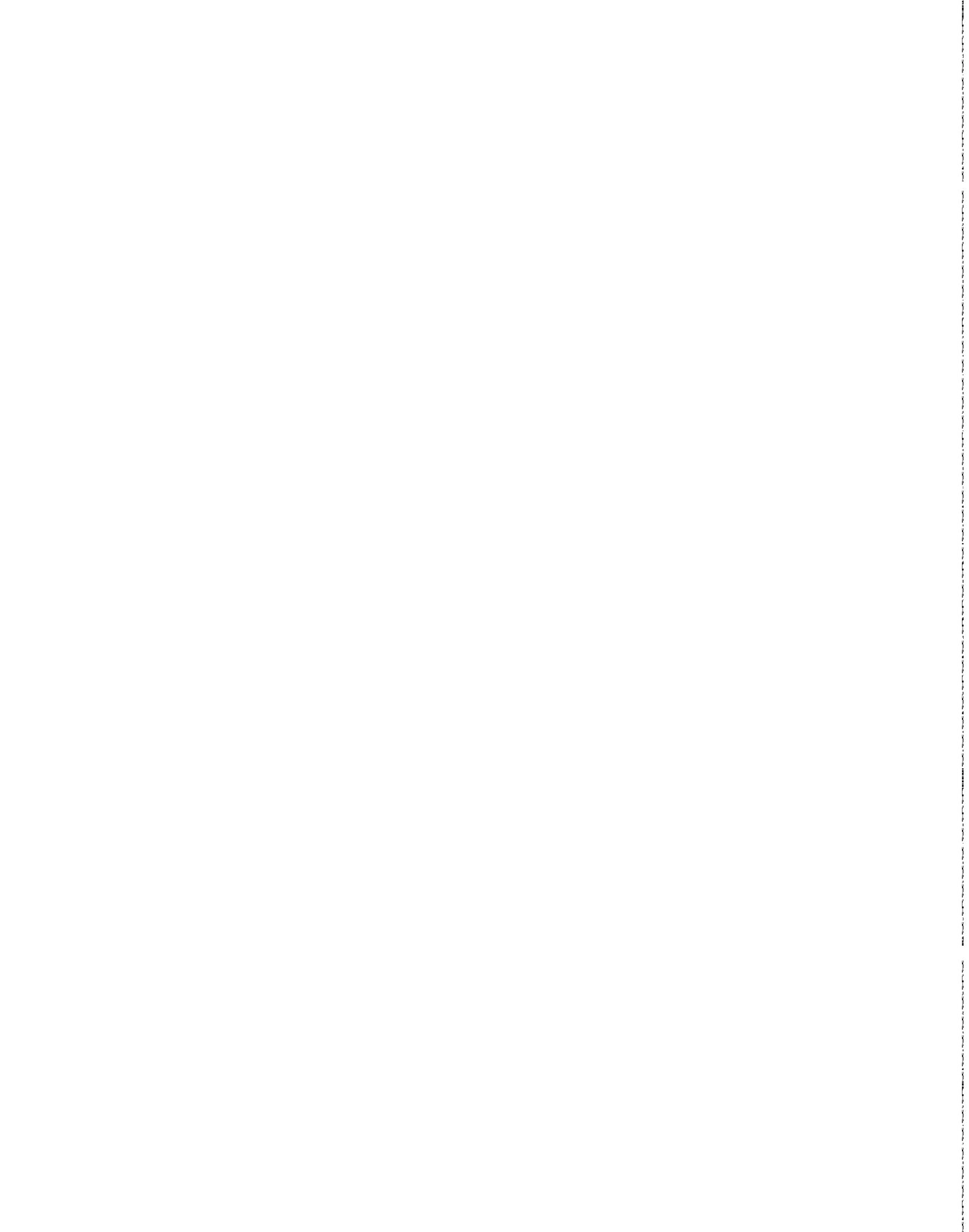
Comptroller General of the United States

**VACANT**

Deputy Comptroller General  
of the United States

**HARRY R. VAN CLEVE**

General Counsel



October 1985

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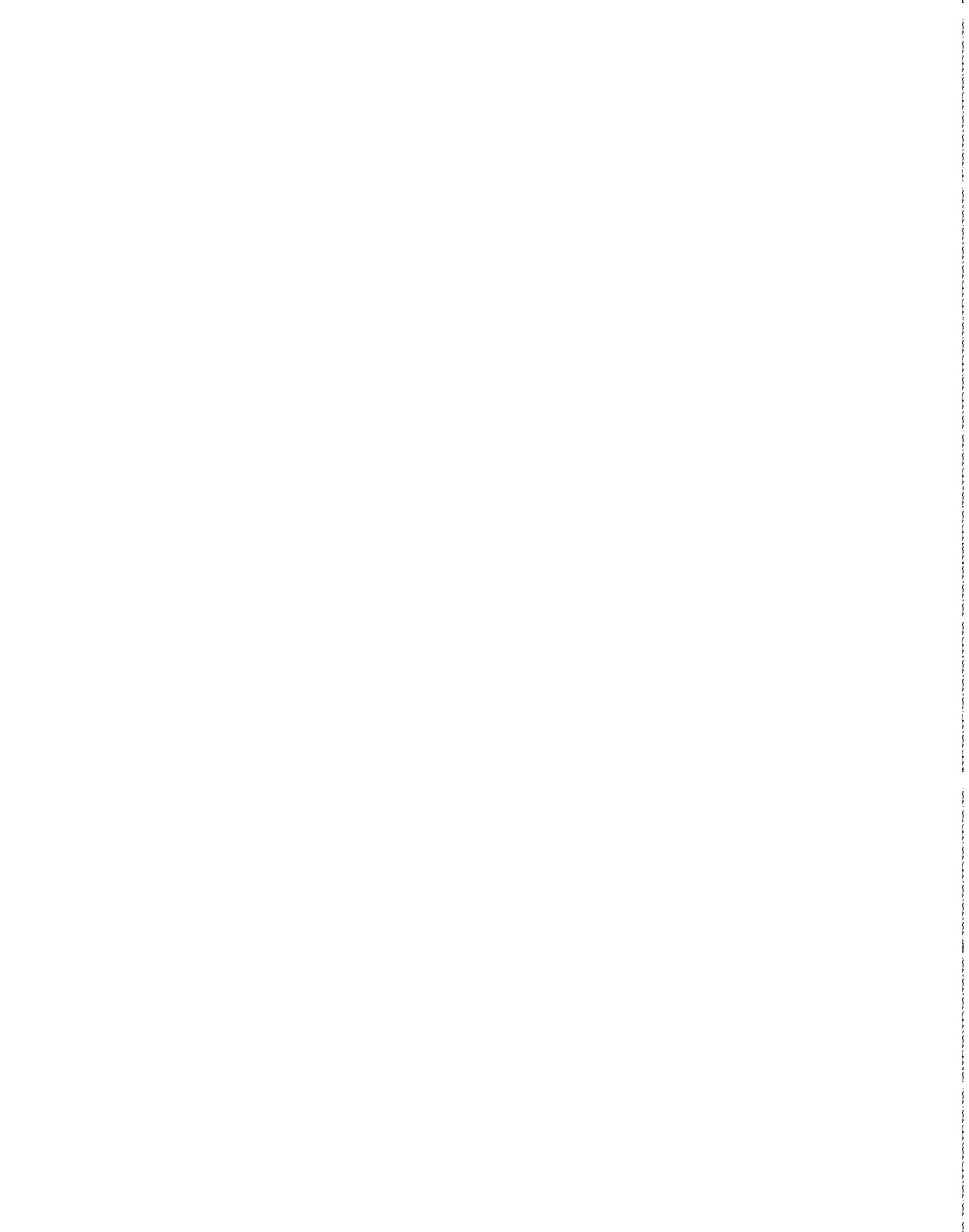


TABLE OF DECISIONS

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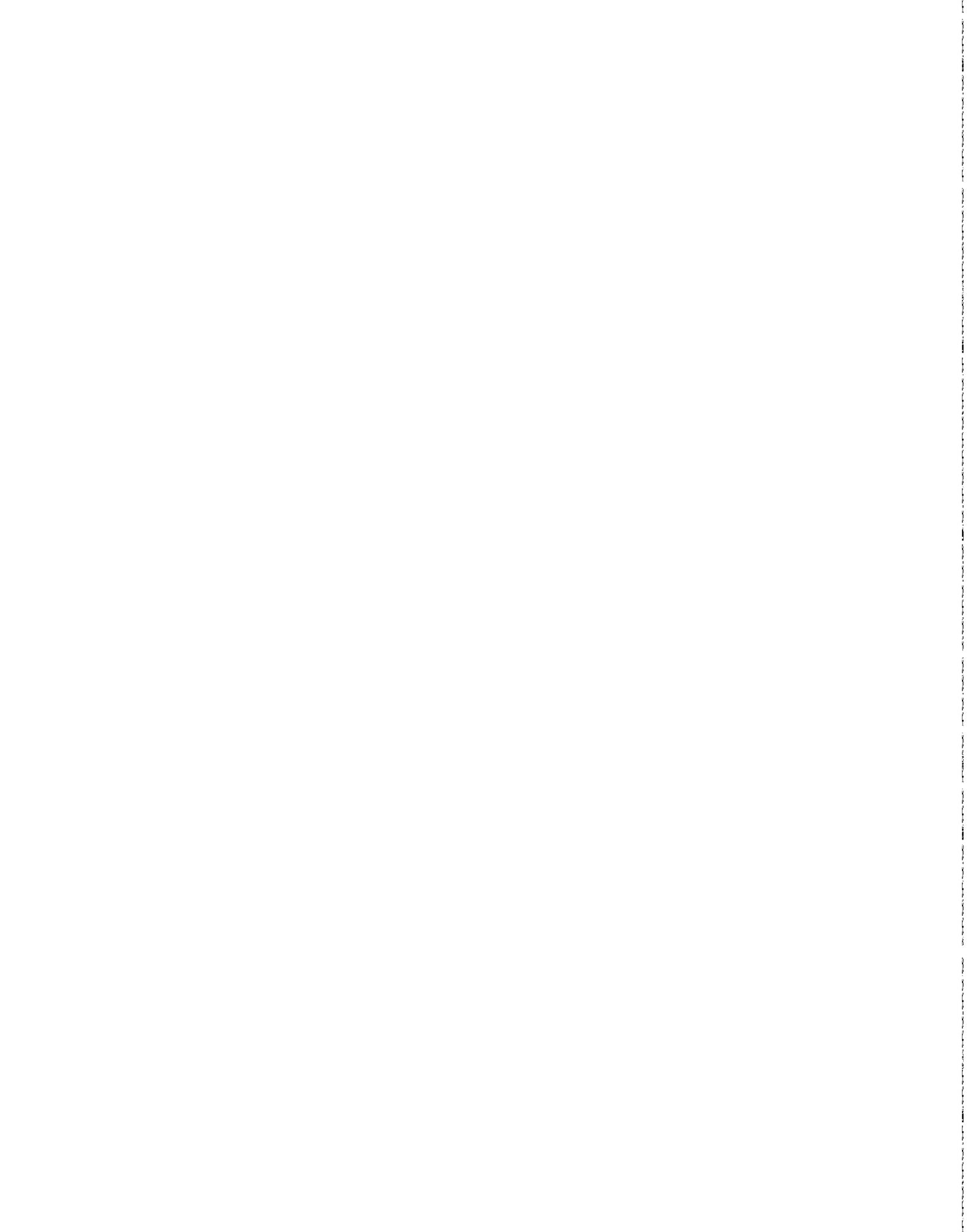
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**GENERAL GOVERNMENT MATTERS  
APPROPRIATIONS AND MISCELLANEOUS**

**ACCOUNTABLE OFFICERS                      B-220310    Oct. 3, 1985**  
**Accounts**  
**Administrative Examination**  
**Air Force Program**

This Office has no legal objection to request by Air Force to relax retention requirements for memorandum copies of accountable officer account by reducing the retention period from 3 years to one year or to when no longer needed since original accountable officer records will still be retained for 6 years and 3 months in order to protect the legal interests of the United States.

**TREASURY DEPARTMENT                      B-138524    Oct. 9, 1985**  
**Secretary of Treasury**  
**Authority**  
**Payment of Obligations**

The Secretary of the Treasury has the authority to determine the order in which obligations are to be paid should the Congress fail to raise the statutory debt ceiling and revenues are inadequate to cover all required payments. There is no statute or any other basis for concluding that the Treasury must pay outstanding obligations in the order they are presented for payment. Treasury is free to liquidate obligations in any order it determines will best serve the interests of the United States.

**PROPERTY**

**B-220866 Oct. 22, 1985**

**Public**

**Private Use**

**Authority**

Director, Regional Office, Department of Health and Human Services, was authorized to permit private institute to hold conference in Federal Office Building, upon determination such use served purpose useful or beneficial to agency, and to determine whether to charge for use of space and for administrative assistance provided by Director's staff under Federal User Charge Statute, 31 U.S.C. § 9701.

**TRANSPORTATION DEPARTMENT B-217744.2 Oct. 25, 1985**

**National Highway Traffic Safety Administration**

**Administration Efficiency**

Restatement of B-217744.2, August 30, 1985, clarifying GAO's position on timely issuance of regulations to lower Corporate Average Fuel Economy Standards. Cited decision stated that National Highway Traffic Safety Administration's interpretation of model year was reasonable, and did not establish a date for the start of the model year or for the issuance of standards. NHTSA has identified the fall as the start of the model year, which coincides with traditional marketing period for new cars.

**TREASURY DEPARTMENT**  
**Secretary of Treasury**  
**Authority**  
**Payment of Obligations**

**B-138524 Oct. 30, 1985**

The transactions on October 9, 1985, whereby the Treasury Department, through the use of the borrowing authority of the Federal Financing Bank, was able to obtain \$5 billion without directly exceeding the statutory limit on the public debt, were legal. Under its authorizing legislation the Bank may borrow from Federal trust Funds. Therefore Bank issuing of its own securities to the Civil Service Retirement and Disability Trust Fund in exchange for Treasury Department Securities was proper.

The transactions on October 9, 1985, whereby the Treasury Department, through the use of the borrowing authority of the Federal Financing Bank, was able to obtain \$5 billion without directly exceeding the statutory limit on the public debt, were legal. When the Bank prepaid part of its outstanding debt to the Treasury with \$5 billion of Treasury securities it reduced Treasury's outstanding debt by \$5 billion. Treasury was therefore able to borrow an additional \$5 billion from the public.

The transactions on October 9, 1985, whereby the Treasury Department, through the use of the borrowing authority of the Federal Financing Bank, was able to obtain \$5 billion without directly exceeding the statutory limit on the public debt, were legal. Public borrowing by the Bank is not counted toward the debt limit. Therefore the transactions did not increase the public debt beyond the statutory limit.

**ARMY DEPARTMENT**

**B-217866 Oct. 30, 1985**

**Corps of Engineers**

**Rivers and Harbors Projects**

**Streambank Stabilization**

Section 707 of Pub. L. No. 95-624 established the Missouri National Recreation River. It provides that operation and maintenance of streambank stabilization structures constructed under section 32 of Pub. L. No. 93-251 is assumed by the Federal Government. Section 707 vested administration of the recreational river in the Secretary of the Interior and directed him to enter into a cooperative agreement with the Secretary of the Army under which the Corps of Engineers would operate and maintain the bank stabilization works. Under the cooperative agreement the Army will operate and maintain the structures and submit budget requirements. Accordingly, the Corps is authorized to operate and maintain the works as well as submit appropriation requests for these activities.

**INTERIOR DEPARTMENT**

**B-219834 Oct. 31, 1985**

**Bureau of Land Management**

**Authority**

**Townsite Administration**

**Funds**

Bureau of Land Management (BLM) may properly pay \$18,244.92 jointly to a BLM trustee and an Alaska townsite representative for deposit in an account in a local bank for the benefit of the townsite. Because the townsite in question is not incorporated, applicable BLM regulations require that funds from sale of lots and assessments be used by the BLM trustee "in making public improvements." A local bank account with joint control constitutes a reasonable mechanism for expending the funds in question.

**PERSONNEL LAW  
CIVILIAN PERSONNEL**

**OFFICERS AND EMPLOYEES            B-218966    Oct. 3, 1985**

**Transfers**

**Government v. Employee Interest  
Relocation Expense Reimbursement  
Administrative Determination  
Propriety**

An employee of the Forest Service stationed in Alaska requested a voluntary transfer with demotion to Idaho. Two years later, when the position to which he had transferred was abolished and he was placed into another position at the same grade; the employee claimed relocation expenses and backpay. There is no basis to pay either backpay or relocation expenses since the transfer was for the benefit of the employee and occurred before he fulfilled the service agreement incident to his transfer to Alaska. The employee has not been affected by an unwarranted or unjustified personnel action.

**COMPENSATION                            B-217490    Oct. 4, 1985**

**Overtime**

**Standby, etc. Time  
Entitlement**

Civilian employees at Kirtland Air Force Base are required to perform stockpile emergency verification duty during nonduty hours approximately 6 or 7 times a year. Their claim for overtime compensation for standby duty performed outside their basic duty hours may not be allowed since they are not restricted to their living quarters or post of duty, but are allowed to carry a pager for the purpose of being contacted. See 5 C.F.R. § 550.143(b)(3).

**COMPENSATION**  
**Overtime**  
**Entitlement**

**B-217874 Oct. 7, 1985**

An administrative law judge who complained that he was permitted only a 30-minute lunch period while some other employees were allowed 45 minutes each day is not entitled to overtime compensation for the difference of 15 minutes. Because there is no indication that the employee worked more than 8 hours a day, he is not entitled to overtime compensation under 5 U.S.C. § 5542(a).

**COMPENSATION**  
**Overtime**  
**Traveltime**  
**Criteria for Entitlement**  
**Non-Compliance**

An administrative law judge may not be allowed overtime compensation where delays in concluding field hearings or in obtaining transportation caused return travel to be performed beyond normal duty hours. To be compensable, return travel must meet one of the conditions set forth in 5 U.S.C. § 5542(b)(2).

**GENERAL ACCOUNTING OFFICE**  
**Jurisdiction**  
**Civil Service Matters**  
**Limitation on GAO Authority**

The General Accounting Office will not consider appeal from agency denial of grievance regarding determination that administrative law judge was absent without leave. The General Accounting Office will not review allegations of irregularities in agency grievance procedures.

**DEBT COLLECTIONS****B-219000 Oct. 9, 1985****Waiver****Civilian Employees****Compensation Overpayments****Excess Leave Allowance**

When a Government employee has leave erroneously credited, the leave account should be reconstructed for each separate year involved to arrive at a proper current leave balance, and to determine whether an erroneous payment of pay has resulted. Waiver may be granted under 5 U.S.C. § 5584 only where the reconstructed leave record for a year shows a use of excess leave. Where an employee is granted a waiver for all years in which an overpayment occurred, that waiver, combined with the appropriate downward adjustment of his leave account, fully extinguishes the employee's indebtedness arising out of the improper crediting of his leave account.

**COMPENSATION****B-218519 Oct. 15, 1985****Overtime****Standby, etc. Time****Entitlement**

A federal employee at a dam reservation claims overtime compensation for standby duty since he was required to live in government-owned housing on the dam site, respond to phone calls after hours and monitor the water elevation at the site. Such off-duty time is not compensable under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., since there is nothing in the record to indicate that his off-duty hours were so severely restricted so as to entitle him to overtime compensation under the Act.

**TRAVEL EXPENSES****B-218523 Oct. 15, 1985****Overseas Employees****Renewal Agreement Travel****Requirements**

On September 8, 1982, 5 U.S.C. § 5728 was amended to restrict tour renewal travel for employees assigned to Alaska and Hawaii to situations in which travel was necessary to recruit or retain an employee for a tour of duty in Alaska or Hawaii. Regulations implementing this change were published on July 15, 1983, to be effective retroactive to September 8, 1982. An employee who was recruited for an assignment to Alaska, with a commitment for tour renewal travel, before the implementing regulations were published may be granted tour renewal travel in these circumstances since it appears that this benefit was necessary for recruitment.

**COMPENSATION****B-216952 Oct. 18, 1985****Increases****Quality Increases**

Former employee of Department of the Interior claims entitlement to a quality step increase (QSI). His supervisor recommended that he be granted a QSI but, upon review, the award was not approved since performance standards had not been established for the employee's unit at that time. Claimant is not entitled to a QSI inasmuch as agency has discretionary authority, under 5 U.S.C. § 5336 (1982), to approve or disapprove a QSI. Claimant does not have a vested right to be granted a QSI unless and until the appropriate agency official approves the recommendation.

**COMPENSATION****B-216952 Con't****Overtime****Oct. 18, 1985****Administrative Approval Requirement**

Former employee of Department of the Interior alleges that he performed overtime work as an Equal Employment Opportunity (EEO) Investigator because of heavy workload and remoteness of worksites, and that the discretionary performance of overtime work was recognized by the agency. Interior had a written policy which stated that overtime work must be approved in advance by the Chief of the EEO Complaints Investigations Branch and that overtime could not be claimed unless approved in advance. Claimant has been paid for overtime work that was approved in advance. Since other overtime work allegedly performed by claimant was not ordered or approved by the Branch Chief, overtime compensation for that work may not be paid. See 5 U.S.C. § 5542 (1982); Baylor v. United States, 198 Ct. Cl. 331 (1972).

**LEAVES OF ABSENCE****B-219974 Oct. 21, 1985****Annual****Recredit on Restoration After Unjustified Removal  
Forfeited Annual Leave**

Federal employees are generally eligible to carry over no more than 240 hours of unused annual leave from one year to the next. An employee who has been suspended from duty without pay, and who cannot use annual leave, is subject to this maximum leave carryover limitation. Thus, an employee who was suspended and was not restored to duty until the next succeeding year forfeited the number of hours of annual leave in excess of 240 hours which were credited to his leave account at the time the suspension began.

**LEAVES OF ABSENCE**                      **B-219974 Con't**  
**Lump-Sum Payments**                      **Oct. 21, 1985**  
**Removal, Suspension, etc. of Employee**  
**Refund on Reinstatement**

A terminated Federal employee is entitled to a lump-sum payment for unused annual leave upon separation from service, but must refund the full amount if the separation is subsequently set aside, because there then no longer exists any proper basis for the payment. Hence, recoupment of a lump-sum leave payment is required in the case of an employee who was terminated, but whose termination was subsequently changed to a suspension in arbitration proceedings, since the employee would not have received a separation payment for unused leave if suspension rather than termination had been the original disciplinary action.

**OFFICERS AND EMPLOYEES**                      **B-217831 Oct. 23, 1985**  
**Promotions**  
**Retroactive**  
**Rule**

Agency regional personnel office relied upon employee's part-time employment status rather than the actual number of hours worked which equaled an essentially full-time schedule during previous year, thereby causing delay in employee's promotion. In the absence of a nondiscretionary agency policy, the effective date of a promotion may not precede the date action is taken by an official authorized to approve the promotion. The delays here occurred before that official had the opportunity to act. Further, failure to promote the employee at an earlier date did not violate a nondiscretionary agency policy. Therefore, the employee is not entitled to retroactive promotion and backpay.

**SUBSISTENCE**

B-218910 Oct. 23, 1985

**Per Diem****Military Personnel****En Route to New Duty Station**

Where a transferred employee reported to his new administrative headquarters location for a period of orientation before reporting to the contractor facility that was to be his new duty station, he may be paid per diem rather than temporary quarters subsistence expense for the orientation period even though his permanent-change-of-station travel orders did not provide for a period of orientation away from his new duty station. The headquarters was located 60 to 70 miles from the contractor facility, and he was directed in advance, in writing, to report to that location prior to beginning his assignment at the contractor's facility. Under these circumstances the absence of a properly executed travel order form will not prevent payment of appropriate temporary duty allowances.

**COURTS**

B-217270 Oct. 28, 1985

**District of Columbia****Executive Officer****Benefits Status**

District of Columbia (D.C.) Courts question whether Executive Officer is entitled to leave benefits of D.C. judges as well as compensation and retirement benefits which are specifically provided by statute. Since the Executive Officer of the D.C. Courts is no longer subject to the Annual and Sick Leave Act, 5 U.S.C. §§ 6301-6312, the leave entitlement of the Executive Officer is subject to administrative determination by the District of Columbia Courts. Due to legislative changes, 52 Comp. Gen. 111 (1972) will no longer be followed.

**Transfers****Real Estate Expenses****Insurance**

A transferred employee sold his residence at his old duty station. Among the expenses claimed incident to that sale was the cost of a Blue Ribbon Warranty which protects the purchaser against the expense of repair or replacement of major structural or operational defects in the house for a specified period following its sale. Although the claimant asserts that he was required by the purchaser as a condition of sale to secure such insurance, his claim is denied since paragraph 2-6.2d(2) of the Federal Travel Regulations specifically excludes the cost of property loss and damage insurance, and operating and maintenance costs from reimbursement as miscellaneous real estate expenses. Additionally, since there is no general grant of authority to reimburse insurance costs, it is not arbitrary or capricious to reimburse only mortgage title insurance, the reimbursement of which is specifically authorized.

**TRANSPORTATION**

**B-218675 Oct. 31, 1985**

**Household Effects**

**Weight Limitation**

**Excess Cost Liability**

**Waiver**

**Propriety**

An employee of the Bureau of Land Management (BLM) was transferred and reported to her new duty station on June 1, 1982, but did not move her household goods until almost 2 years later. At that time she was erroneously advised that she was entitled to ship and store 18,000 pounds of household goods and was entitled to up to 180 days of temporary storage. The statute and regulation in force on the effective date of her transfer provided for shipment and storage of a maximum of 11,000 pounds and limited the temporary storage period to 60 days. The employee may not be relieved from her indebtedness for amounts shipped and stored above and beyond those limits. There is no authority for either the BLM or the General Accounting Office to waive the application of the appropriate entitlement authorities. Even though the employee received erroneous advice, the government is not estopped by the erroneous acts of its agents. Nor is there authority to waive the employee's indebtedness since waiver authority does not apply to travel and transportation expenses.





**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Best and Final**  
**Additional Rounds**

**B-218668.2 Oct. 2, 1985**  
**85-2 CPD 370**

Where misinformation from agency leads one of two offerors remaining in the competition to miss the original closing date for best and final offers, and the agency is in a position to correct the effect of the misinformation prior to award by reopening discussions with both offerors and setting a new closing date, there is nothing improper in an agency doing so in lieu of rejecting the offer as late, leaving a single offeror in the competition.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Administrative Discretion**  
**Cost/Pricing Evaluation**

Reconsideration argument that the agency improperly evaluated the offerors' prices using a deleted solicitation clause covering the use of option year lease prices is without merit where record shows agency did not use option prices in evaluation.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Propriety**

Protester's reconsideration arguments--questioning the agency's determination that neither the protester's nor the awardee's offered buildings were within three blocks of public transportation and eating facilities, and thus were essentially equal in this regard for evaluation purposes--are without merit where map offered by protester as evidence does not show that the protester's building offered for lease is any closer to eating facilities and transportation than the awardee's building.

**CONTRACTS**

B-218973.2 Oct. 2, 1985

**Negotiation**

85-2 CPD 371

**Sole-Source Basis**

**Reprocurement**

**Default Termination of Original Contract**

Upon termination of a services contract for default the agency procured the services on a sole-source basis as a result of its determination that an unusual and compelling urgency for such services existed. Where the prior contract indicated no urgent need for such services and since the record does not indicate any changed circumstances, the agency's determination to limit the source of the procurement to a sole source was improper.

**CONTRACTS**

**Protests**

**General Accounting**

**Office Procedures**

**Reconsideration Requests**

**Timeliness**

An agency's request for reconsideration filed more than 1 month after the decision is issued is untimely.

**CONTRACTS**

B-219239.2 Oct. 2, 1985

**Protests**

85-2 CPD 372

**General Accounting Office Procedures**

**Timeliness of Protest**

**Date Basis of Protest Made Known to Protester**

Detailed factual statement of basis of protest filed on reconsideration request later than 10 working days after protester knew of basis is untimely and will not be considered.



**CONTRACTS**

**B-220074 Oct. 2, 1985**

**Negotiation**

**Offers or Proposals**

**Evaluation**

**Allegation of Bias not Sustained**

Argument that protester was eliminated from competition only 2 weeks after its proposal was submitted does not demonstrate that the possible selection for award of its proposed subcontractor under an earlier solicitation is due to favoritism on the part of the agency.

**CONTRACTS**

**Protests**

**Allegations**

**Unsubstantiated**

Allegation that agency has interfered with the protester's contractual relations by sending a copy of a solicitation directly to the protester's subcontractor under an earlier solicitation is without merit, since subcontractor apparently requested solicitation and agency is required to obtain full and open competition in procurements.

**CONTRACTS**

**Protests**

**Conferences**

**Request Denied**

**Protest not for Consideration on the Merits**

When protest is dismissed as without legal merit, no useful purpose would be served by holding a bid protest conference, and request for proposal preparation costs and attorney's fees will be denied.

**CONTRACTS** **B-220074 Con't**  
**Protests** **Oct. 2, 1985**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest against the cancellation of an original solicitation is untimely and will not be considered on the merits when it is filed 5 months after the cancellation, in the context of a protest against award under a resolicitation.

**GENERAL ACCOUNTING OFFICE**  
**Jurisdiction**  
**Contracts**  
**Disputes**  
**Between Private Parties**

Whether a proposed subcontractor has violated a contractual relationship with a protester is a dispute between private parties and is thus beyond the scope of the bid protest function.

**CONTRACTS** **B-220321 Oct. 2, 1985**  
**Requests for Quotations** **85-2 CPD 375**  
**Competition**  
**Equality of Competition**

Protest requesting that price modification submitted several weeks after closing date under oral request for quotations be considered for award is dismissed since procuring agency's expressed intent (in letter requesting best and final quotations) was to consider only quotations submitted before closing date.

**CONTRACTS** **B-218365.5 Oct. 3, 1985**  
**Protests** **85-2 CPD 376**  
**Moot, Academic, etc. Questions**  
**Protester not in Line for Award**

Request for reconsideration is dismissed because the period of performance has lapsed making the issues raised academic.

**CONTRACTS**

**B-219524 Oct. 3, 1985**

**Negotiation**

**85-2 CPD 377**

**Offers or Proposals**

**Evaluation**

**Technical Acceptability**

**Administrative Determination**

GAO will not disturb contracting agency's determination that protester's offer is technically unacceptable for failure to propose personnel meeting minimum education and experience requirements where the protester has not established that the determination was unreasonable or in violation of procurement statutes or regulations.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Rejection**

**Failure to Meet Solicitation Requirements**

**Submission of Resumes of Proposed**

**Key Personnel**

Contracting agency's rejection of offer as technically unacceptable is reasonable where offeror submits resumes of proposed key personnel for evaluation and one of the individuals does not meet education and experience requirements.

**CONTRACTS**

**B-218730.3 Oct. 4, 1985**

**Protests**

**85-2 CPD 378**

**General Accounting Office Procedures**

**Reconsideration Requests**

**Error of Fact or Law**

**Not Established**

Prior decision is affirmed because protester has failed to demonstrate that the decision was based upon erroneous interpretation of fact or law or information not previously considered.

**CONTRACTS** B-218730.3 Con't  
**Protests** Oct. 4, 1985  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**For Proposals**

Protest that IFB improperly was advertised rather than negotiated is untimely when not filed prior to bid opening.

**CONTRACTS** B-219052 Oct. 4, 1985  
**Protests** 85-2 CPD 379  
**General Accounting Office Procedures**  
**Timeliness of Protest**

Protester's pre-bid opening oral discussions with contracting agency officials did not constitute a timely agency protest since oral protests are no longer provided for under the Federal Acquisition Regulation.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest that contracting agency should have requested and incorporated into its invitation for bids (IFB) a Davis-Bacon Act wage rate determination for an additional labor classification is based on an alleged impropriety apparent in the IFB, and must be filed before bid opening to be timely.

**BIDS****Invitation for Bids  
Amendments****B-219343.3 Oct. 4, 1985  
85-2 CPD 380****Failure to Acknowledge  
Waived as Minor Informality**

Awardee's inadvertent failure expressly to acknowledge an amendment to a solicitation on the standard form attached to its best and final offer does not affect the validity of the award where the record demonstrates that the awardee's best and final offer incorporated the work required under the amendment.

**CONTRACTS****Negotiation****Offers or Proposals****Discussion With all Offerors Requirement****Failure to Discuss****Situations not Requiring Discussion**

Where an agency does not discuss concerns about proposed key personnel, but the record indicates that even if the offeror were awarded the maximum score for this criterion, in view of its higher proposed price, the relative standing of offerors would not change, the lack of discussions provides no basis to sustain the protest.

**CONTRACTS****Negotiation****Offers or Proposals****Discussion With all Offerors Requirement****"Meaningful" Discussions**

Requirement for meaningful discussions does not obligate agencies to identify every aspect of a technically acceptable proposal that receives less than a maximum score, nor does it require agencies to advise offerors of the relative standing of their price proposals.

**CONTRACTS** **B-219343.3 Con't**  
**Protests** **Oct. 4, 1985**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest that an agency's inclusion of certain elements of a protester's technical approach in an amendment to the solicitation resulted in an unfair technical transfusion is untimely where this contention, which involves an alleged solicitation impropriety, is not raised before the next closing date for receipt of proposals following the amendment.

**FEDERAL ACQUISITION REGULATION** **B-220178 Oct. 4, 1985**  
**Proposed Revision**

GAO has no objection to Federal Acquisition Circular 84-11 which amends the following parts of the Federal Acquisition Regulation with respect to the following issues: part 3, restriction on sales to the government by subcontractors; parts 7, 14 and 15, purchases of supplies in economic quantities; part 9, prequalification requirements.

**CONTRACTORS** **B-220486 Oct. 4, 1985**  
**Responsibility** **85-2 CPD 382**  
**Determination**  
**Factors for Consideration**  
**Previous Rating, etc.**

Protester's contention that the contracting agency was required by procurement regulations to find the prospective awardee nonresponsible based on unsatisfactory performance on a prior contract is without merit since poor prior performance does not automatically render a firm ineligible for future contracts.



**BIDS** **B-218228.2 Con't**  
**Acceptance Time Limitation Oct. 7, 1985**  
**Bids Offering Different Acceptance Periods**  
**Shorter Periods**  
**Responsiveness of Bid**  
**Solicitation Provisions**

Pursuant to the Federal Acquisition Regulation, 48 C.F.R. § 52.214-16 (1984), a bid that offers an acceptance period that is less than that required in the solicitation must be rejected as nonresponsive.

**BIDS**  
**Ambiguous**  
**What Constitutes an Ambiguity**

Bid that includes two different acceptance periods, one inserted by the government and the other by the bidder, is ambiguous and must be rejected as nonresponsive.

**CONTRACTS** **B-220220.2 Oct. 7, 1985**  
**Protests** **85-2 CPD 386**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest filed more than 10 working days after protester learned of initial adverse agency action--agency determination that protester's proposal was technically insufficient--in response to protest filed with agency is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.





**BIDS** **B-219732 Con't**  
**Invitation for Bids** **Oct. 8, 1985**  
**Amendments**  
**Failure to Acknowledge**  
**Materiality Determination**

Bid's failure to acknowledge an amendment adding terms necessary to meet local legal requirements for construction project may not be waived as being trivial since the terms are necessary to meet county requirements and there is no showing that those requirements could be met by severing and procuring anew a negligible portion of the project.

**BIDS**  
**Invitation for Bids**  
**Amendments**  
**Nonreceipt**  
**Bidder's Risk**  
**Bidder Exclusion not Intended**

A bidder is responsible for receipt of amendments unless it is shown that the contracting agency made a deliberate effort to exclude the bidder from competing. Where no such effort is shown, a bid that fails to acknowledge a material amendment is properly rejected as nonresponsive.

**CONTRACTS** **B-219896 Oct. 8, 1985**  
**Negotiation** **85-2 CPD 393**  
**Late Proposals and Quotations**  
**Government's Mishandling Determination**

Before the issue of possible government mishandling of a late best and final offer can be considered, the time of receipt at the government installation must be established, and a protester has not shown that its best and final offer was tendered to agency personnel on time when it says only that its representative conversed with the agency's procurement assistant for a few minutes before the offer was time-stamped 6 minutes late.

**CONTRACTS**  
**Negotiation**  
**Offers or Proposals**  
**Deficient Proposals**

**B-219896 Con't**  
**Oct. 8, 1985**

An agency reasonably may conclude that an offeror has not agreed to the solicitation's 120-day delivery requirement where the offeror's latest acceptable submission is equivocal with respect to a firm delivery date.

**GENERAL ACCOUNTING OFFICE**  
**Jurisdiction**  
**Contracts**  
**Walsh-Healey Act**

Protest alleging that an offeror does not qualify as a regular dealer under the Walsh-Healey Public Contracts Act is dismissed because an agency's determination concerning the status of an offeror under that act is subject to review by the Small Business Administration (if a small business is involved) and the Department of Labor, not GAO.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Error of Fact or Law**  
**Not Established**

**B-220041.2 Oct. 8, 1985**  
**85-2 CPD 394**

Determination to dismiss protest, without obtaining agency report, under 4 C.F.R. § 21.3(f) is affirmed on reconsideration where protester fails to establish that determination was based on either errors of fact or of law.

**CONTRACTS** B-220060.2 Oct. 8, 1985  
**Protests** 85-2 CPD 395  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest based on alleged solicitation improprieties apparent prior to the closing date for receipt of initial proposals must be filed before that date.

**CONTRACTS** B-220088.2; B-220089.2  
**Small Business Concerns** Oct. 8, 1985  
**Awards** 85-2 CPD 396  
**Small Business Administration's Authority**  
**Certificate of Competency**  
**Conclusiveness**

Request for reconsideration of decision dismissing protest is denied where the protester has not shown that the agency's nonresponsibility determination and the subsequent denial of a Certificate of Competency (COC) by the Small Business Administration (SBA) resulted from possible fraud or bad faith on the part of government officials. Neither agency communications with the SBA concerning the protester's ability to perform nor the agency's failure to return the COC referral to SBA for reconsideration constitute sufficient evidence of fraud or bad faith.

**CONTRACTS** B-219644.2 Oct. 9, 1985  
**Protests** 85-2 CPD 397  
**Allegations**  
**Speculative**

Protest that agency may have revealed protester's prices to the other offerors will not be considered where it is based on unsupported speculation only.

**CONTRACTS** **B-219644.2 Con't**  
**Protests** **Oct. 9, 1985**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest that agency failed to conduct preaward survey on protester, filed more than 10 working days after the basis for protest--notice that award was made to another offeror--is known, is dismissed as untimely.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that closing date in order to be timely.

**GENERAL ACCOUNTING OFFICE** **B-219806 Oct. 9, 1985**  
**Jurisdiction** **85-2 CPD 398**  
**Contracts**  
**Defaults and Terminations**  
**Matter of Contract Administration**

Protest asserting that contract terminated to correct evaluation error made during award process should be reinstated is dismissed. GAO reviews such terminations for the limited purpose of examining whether the initial award was improper, and if so, whether the corrective action taken is sufficient to protect the integrity of the competitive procurement system, and these matters are not in issue.



**BIDS** **B-219855 Con't**  
**Responsiveness** **Oct. 10, 1985**  
**Test to Determine**  
**Unqualified Offer to Meet all Solicitation Terms**

A bid is responsive to a solicitation where it unequivocally offers to provide the requested items or services in total conformance with the specification requirements and the conditions of the invitation. The fact that the bid may be subject to correction under the procurement regulations thus does not in itself mean the bid is nonresponsive.

**CONTRACTS** **B-220576 Oct. 10, 1985**  
**Protests** **85-2 CPD 402**  
**Moot, Academic, etc. Questions**  
**Award Made to Protester**

Protest is dismissed as academic where agency has resolved issue in favor of the protester and awarded it a contract.

**CONTRACTS** **B-219305.3 Oct. 11, 1985**  
**Protests** **85-2 CPD 403**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Error of Fact or Law**  
**Not Established**

Prior decision is affirmed where the request for reconsideration fails to indicate that errors of fact or law exist in the prior decision to warrant its reversal or modification. In addition, several contentions raised in the reconsideration request essentially concern matters of contract administration which GAO will not consider under its bid protest function.

**CONTRACTS****Protests****Interested Party Requirement****Protester not in Line for Award****B-219529.2 Oct. 11, 1985****85-2 CPD 404**

Protester is not an interested party entitled under the Competition in Contracting Act and General Accounting Office Bid Protest Regulations to protest issuance of a delivery order to a firm which the protester contends offered a product which does not conform to the RFQ specifications, since, even if its protest were sustained, the protester itself offered a nonconforming product and therefore would not be eligible to receive the delivery order, and there would be no basis for soliciting new quotations.

**CONTRACTS****Requests for Quotations****Specifications****Brand Name or Equal****"Equal" Product Evaluation**

Protester's quotation is properly found unacceptable where description in Federal Supply Schedule catalog shows that the product offered by the protester does not conform to the salient characteristics of the brand name product specified in the request for quotations (RFQ) and the protester fails to demonstrate through descriptive literature or otherwise that its product conforms to the RFQ specifications.

**CONTRACTS****Protests****General Accounting Office Procedures****Timeliness of Comments on****Agency's Report****B-219581.2 Oct. 11, 1985****85-2 CPD 405**

Dismissal of original protest for failure to file written comments on the agency report within 7 working days of report due date is affirmed, notwithstanding that protester asserts it received the report late and filed its comments within 7 days of that receipt, since protester failed in its duty to notify GAO that it did not receive the report by the due date.

**CONTRACTS**

**B-219749 Oct. 11, 1985**

**Negotiation**

**85-2 CPD 406**

**Offers or Proposals**

**Evaluation**

**Not for SBA Review**

Agency's determination that it is unable to evaluate an offer because of insufficient technical information need not be referred to the Small Business Administration since, in rejecting the offer, the agency has not reached the question of the offeror's responsibility.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Rejection**

**Propriety**

Agency's rejection of a proposal to provide an aircraft part assembled from components purchased from the same source used by a previous supplier is not unreasonable where the protester has not provided evidence that its proposal can be evaluated without the final assembly drawing used by the previous supplier.

**CONTRACTS**

**B-219814.3 Oct. 11, 1985**

**Protests**

**85-2 CPD 407**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Date Basis of Protest Made Known to Protester**

Protest that award should have been made to protester as second low bidder under prior solicitation, filed more than 10 working days after protester knew agency was recompeting requirement, is dismissed as untimely.

**CONTRACTS**

**B-219814.3 Con't**

**Protests**

**Oct. 11, 1985**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protest that oral solicitation should not have been used and was improperly conducted, filed after bids were due, is untimely.

**FEDERAL ACQUISITION REGULATION B-219923 Oct. 11, 1985**

**Proposed Revision**

GAO comments on a proposal to revise Federal Acquisition Regulation (FAR) Subpart 27.4 concerning rights in data and copyrights and to add at FAR § 52.227-14, a Rights in Data--General clause, by suggesting (1) that consideration be given to defining the phrase "developed at private expense" and (2) that the definition of "form, fit and function data" be revised to indicate more specifically what the government expects to receive when it requires that such data be delivered in connection with the acquisition of computer software.

**CONTRACTS**

**B-220512 Oct. 11, 1985**

**Protests**

**85-2 CPD 408**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protest that National Aeronautics and Space Administration's acquisition methodology set forth in the solicitation is overly restrictive and not based upon proper evaluation of alternative methods for procuring the subject telecommunications system, filed after the closing time for the receipt of proposals, is untimely since it concerns apparent solicitation improprieties and, thus, had to be raised before that time.

**CONTRACTS****B-220530 Oct. 11, 1985****Protests****85-2 CPD 409****Moot, Academic, etc. Questions****Protester not in Line for Award**

Protest that proposal should not have been rejected is dismissed as academic where the protester's offered price is substantially higher than the proposed awardee's price and there is no evidence or allegation that the awardee's proposal was unacceptable. The protester therefore would not be in line for the award even if the protest were resolved in its favor.

**ACCOUNTABLE OFFICERS****B-218867 Oct. 15, 1985****Relief****Illegal or Erroneous Payments****Without Fault or Negligence**

Army finance officer relieved of liability for erroneous payment resulting from fraudulently obtained temporary I.D. that was obtained through negligence of clerk in another unit. The finance officer was found to have maintained an adequate system of procedures and controls to safeguard funds in the control of his subordinates. Proximate cause of loss was outside his control.

Army cashier relieved of liability for erroneous payment when cashier complied with established procedures, but relied on a fraudulent I.D. that was obtained outside of her control.

**BIDS**

**Invitation for Bids  
Clauses**

**Liquidated Damages  
Legality**

**B-219418 Oct. 15, 1985  
85-2 CPD 410**

Liquidated damages provisions for the defective performance of toilet room cleaning services, consisting of several tasks, are not invalid for failing to apportion the damages among the tasks where, to collect damages, the contracting officer's representative must determine that any deficiencies are of such proportion as to render the room unsuitable for the government's purpose.

In solicitation for custodial services, the contracting agency reasonably may designate toilet room care, including both cleaning and basic servicing, as a single category for establishing liquidated damages. The government does not have the burden of setting forth a measure of damages for each required task to establish a valid system of liquidated damages.

**CONTRACTS**

**Damages**

**Liquidated  
Assessment Propriety**

Protester, incumbent contractor, has not shown that the contracting agency has a policy of administering valid liquidated damages provisions to penalize contractors, where the only evidence is the protester's self-serving allegation that the contracting officer's representative under the prior contract so administered the provisions. Moreover, how the representative actually administered the provisions is a matter of contract administration, not for GAO's review.

**SALES**  
**Bids**  
**Rejection of Low Bid**

**B-219556 Oct. 15, 1985**  
**85-2 CPD 411**

Protest alleging that rejection of lower bid in sale of lower quality wolframite (a type of tungsten ore) was unfair in view of agency's acceptance of higher bid for slightly higher quality wolframite where price/quality differential of rejected bid is greater than that of bid accepted by the agency is denied. Agency determination of acceptable sale bid prices is a matter of business judgment which will not be reviewed by GAO absent an abuse of the discretion inherent in such judgments.

**CONTRACTS**  
**Protests**  
**Interested Party Requirement**  
**Debarred Contractors**

**B-220691; B-220692 Oct. 15, 1985**  
**85-2 CPD 412**

Firm proposed for debarment from government contracting generally is precluded from receiving government contracts pending debarment decision.

**CONTRACTS**  
**In-House Performance v.**  
**Contracting Out**  
**Solicitation Provisions**  
**Statement of Work**

**B-217544 Oct. 16, 1985**  
**85-2 CPD 413**

Protest challenging agency decision to perform services in-house, based on comparison of government cost estimate with protester's bid, is sustained where the estimate and the bid were not based on the same statement of work, as required by OMB Circular A-76. While the agency omitted from its estimate the cost of operating a work reception desk called for in the solicitation, based on a determination that it is a governmental function and therefore should not be performed by an outside contractor, the agency failed to amend the solicitation and notify bidders that the cost of operating the desk should not be included in their bids.

**GENERAL ACCOUNTING OFFICE**      **B-217544 Con't**  
**Jurisdiction**                      **Oct. 16, 1985**  
**Contracts**  
**In-House Performance v. Contracting Out**  
**Cost Comparison**  
**Adequacy**

Office of Management and Budget (OMB) Circular A-76 does not preclude a protest to GAO from an agency's administrative review of a bidder's appeal of the agency's in-house cost estimate.

**TRANSPORTATION SERVICES**      **B-219088, et al.**  
**Procurement Procedures**          **Oct. 16, 1985**  
**85-2 CPD 414**

GAO will not consider under our Bid Protest Regulations, 4 C.F.R. Part 21 (1985), three protests against the award of a contract to arrange international ocean freight transportation because the services are to be performed at no cost to the government and the shipment of cargo by ocean carriers is not subject generally to procurement procedures.

**CONTRACTS**                              **B-219088(1), et al.**  
**Negotiation**                              **Oct. 16, 1985**  
**Offers or Proposals**  
**Discussion With all Offerors Requirement**  
**"Meaningful" Discussions**

Discussions are not meaningful where technical evaluation of initial offers indicates that several offerors' technical proposals, which were found in the competitive range, did not contain business affiliations list worth 10 percent of total evaluation points, and agency fails to advise these offerors of this omission during discussions.

**CONTRACTS**

**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Administrative Discretion**

B-219088(1), et al. Con't  
Oct. 16, 1985

The determination of the relative merits of a proposal, particularly with respect to technical considerations, is primarily a matter of administrative discretion, and the exercise of that discretion will not be disturbed unless it is shown to be arbitrary or in violation of the procurement laws or regulations.

**CONTRACTS**

**Negotiation**  
**Offers or Proposals**  
**Evaluation**  
**Propriety**

Where agency, while generally limiting evaluation of offerors' proposals to technical proposals, considers one offeror's business proposal without evaluating all offerors' business proposals and gives it a higher rating based on information in that proposal, agency has acted improperly by not treating all offerors equally.

**CONTRACTS**

**Negotiation**  
**Offers or Proposals**  
**Qualifications of Offerors**  
**Adequacy of Finances, Personnel, Facilities,**  
**etc.**

While RFP stated that offerors were to be assessed on their "demonstrated ability" to meet RFP requirements, offerors may show this ability not only through historical experience, but also by submission of plans in offer demonstrating ability to meet requirements and also through proposed use of subcontractors.





**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Evaluation**

**Allegation of Bias not Sustained**

**B-219428; B-219440 Con't**

**Oct. 17, 1985**

Protester's allegation of procedural prejudice which prevented a fair evaluation by source selection officials is denied. GAO will not attribute arbitrariness or bias to source selection officials on the basis of inference or supposition alone. Where, as here, there is no probative evidence of actual prejudice to the protester or arbitrariness on the part of any source selection officials, the protester's allegation is speculative and the protester has not met its burden of proof.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Evaluation**

**Cost Realism Analysis**

**Adequacy**

Protests that evaluation of proposals for cost realism was conducted improperly and contrary to the evaluation scheme set forth in the solicitation are denied. GAO's in camera review of all of the evaluation materials reveals no basis for finding that selection officials abused their discretion, and cost realism analysis which compared agency cost estimates to proposed costs and which was completed in accordance with the solicitation scheme and source selection plan was reasonable.

**CONTRACTS**

B-219428; B-219440 Con't

**Negotiation**

Oct. 17, 1985

**Offers or Proposals**

**Evaluation**

**Cost Realism Analysis**

**Reasonableness**

The Navy was not required to delay its cost evaluation and award decision in order to incorporate Defense Contract Audit Agency reports which were requested and then canceled when the Navy decided to use information available on contractors' current audited forward pricing rates to assist in formulating each proposal's "cost to the government" evaluation factor. The extent to which proposed costs will be examined is generally a matter within the contracting agency's discretion, and when cost data is required, the contracting officer may use special forward pricing rates prescribed in an existing advance agreement to assist in determining the reasonableness of the proposed costs.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Evaluation**

**Reasonable**

GAO will not object to an evaluation on the ground that the agency spent insufficient time conducting the evaluation, where the evaluation was fair, reasonable, and consistent with the stated evaluation criteria.

**CONTRACTS**

**Protests**

**Authority to Consider**

**Contract Administration Matters**

**B-219428; B-219440 Con't**

**Oct. 17, 1985**

Protester's general allegation that the proposed awardee will not be able to perform the contract in accordance with all of its terms either relates to the proposed awardee's responsibility (before award) or is a matter of contract administration (after award) that is within the purview of the contracting agency and is not encompassed by our bid protest function.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protests that combining overhauls for three ships under one procurement unnecessarily restricts competition are dismissed as untimely under our GAO Bid Protest Regulations because they were filed after the date set for receipt of proposals. Alleged improprieties should have been apparent to protesters from the solicitation and any protest based on alleged improprieties apparent from the face of the solicitation must be filed prior to the closing date set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1985).

**CONTRACTS** B-219902 Oct. 17, 1985  
Federal Supply Schedule 85-2 CPD 417  
Purchases for System  
Multi-Award Schedule Contracts  
Minimum Needs Requirement  
Administrative Determination

Protest against the issuance of a delivery order for printing equipment to multiple award Federal Supply Schedule contractor by protester with similar FSS contract is denied where agency reasonably determined that awardee's on-line equipment met its minimum need and the protester did not.

**CONTRACTS** B-219982.2 Oct. 17, 1985  
Protests 85-2 CPD 418  
General Accounting Office Procedures  
Reconsideration Requests  
Error of Fact or Law  
Not Established

Prior decision dismissing a protest as untimely is affirmed where the request for reconsideration fails to show either errors of fact or of law in the prior decision which warrant its reversal or modification.

**CONTRACTS**  
Protests  
General Accounting Office Procedures  
Timeliness of Protest  
Adverse Agency Action Effect  
Solicitation Improprieties

When a protester continues to pursue an agency-level protest alleging solicitation improprieties for several months after the agency acts adversely to that protest, the protester has effectively made its choice of administrative forum and cannot reasonably complain that the benefit of GAO's review authority is no longer available to it.





**CONTRACTS****B-219355.3 Oct. 18, 1985****Protests****85-2 CPD 422****General Accounting Office Procedures****Timeliness of Comments on Agency's Report**

Dismissal of protest because protester did not submit comments on agency report or state interest in having the protest decided based on the existing record within 7 working days after receipt of the agency report is affirmed. Contracting agency's advice to protester that it had right to submit comments within 7 days after receipt of the report did not contradict protester's obligation, of which protester was advised in notice acknowledging protest, to advise GAO if it wanted the protest decided based on the existing record.

**BONDS****B-219763 Oct. 18, 1985****Bid****85-2 CPD 423****Requirement****Administrative Determination**

Bid bond requirement is valid where a performance bond is required and the services covered are essential to operation of an installation.

**BONDS****Requirement****Bid, Performance, etc.****Administrative Determination**

Protest that requirement for performance and payment bonds in a custodial services contract unduly restricts competition is without merit since the awardee will use and clean a considerable amount of government property in 122 buildings at two government installations and the services are essential to operation of the installations.

<b>CONTRACTS</b>	<b>B-220181, B-220182</b>
<b>Protests</b>	<b>Oct. 18, 1985</b>
<b>Interested Party Requirement</b>	<b>85-2 CPD 424</b>
<b>Potential Contractors, etc. not Submitting Bids, etc.</b>	

To be considered an interested party so as 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 a contract or the failure to award a contract. A manufacturer which may supply its product to the bidders in a federal procurement, but which is not an actual or prospective bidder itself, is not an interested party.

<b>CONTRACTS</b>	<b>B-220204.2; B-220205.2</b>
<b>Protests</b>	<b>Oct. 18, 1985</b>
<b>General Accounting Office Procedures</b>	<b>85-2 CPD 425</b>
<b>Reconsideration Requests</b>	
<b>Error of Fact or Law</b>	
<b>Not Established</b>	

Request for reconsideration is denied where protester neither alleges nor shows that prior decision was factually or legally erroneous.

<b>BIDS</b>	<b>B-220635</b>	<b>Oct. 18, 1985</b>
<b>Prices</b>	<b>85-2</b>	<b>CPD 427</b>
<b>Below Cost</b>		
<b>Not Basis for Precluding Award</b>		

Allegation that the low bid was below cost does not provide a valid basis on which to challenge a contract award. Such a protest questions the bidder's responsibility, which GAO does not review except in limited circumstances not present here.

**CONTRACTORS**

**B-220710 Oct. 18, 1985**

**Responsibility**

**85-2 CPD 428**

**Determination**

**Review by GAO**

**Affirmative Finding Accepted**

Protest of contracting agency's affirmative determination of responsibility is dismissed since GAO does not review such determinations unless possible fraud on the part of the procuring officials is shown or the solicitation contains definitive responsibility criteria which allegedly have not been applied.

**CONTRACTS**

**Protests**

**Contract Administration**

**Not for Resolution by GAO**

Whether the awardee fulfills its contractual obligations is a matter for the contracting agency in the administration of the contract.

**GENERAL ACCOUNTING OFFICE**

**Jurisdiction**

**Labor Stipulations**

**Service Contract Act of 1965**

Responsibility for administration and enforcement of the Service Contract Act is vested in the Department of Labor, not GAO.

**CONTRACTORS**

**B-220743 Oct. 18, 1985**

**Responsibility**

**85-2 CPD 429**

**Determination**

**Review by GAO**

**Affirmative Finding Accepted**

GAO does not review an agency's affirmative determination of responsibility in the absence of a showing of possible fraud or bad faith, or that the definitive responsibility criteria of the solicitation were not met.

**BIDDERS**

B-218740 Oct. 21, 1985

**Debarment****Labor Stipulation Violations****Davis-Bacon Act****Wage Underpayments****Debarment Required**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay its employees the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that nonpayment of employees and subsequent falsification of records was intentional. The contractor further demonstrated bad faith by refusing to cooperate in the compliance investigation. Therefore, the contractor will be debarred under the Act.

**BIDS**

B-219443 Oct. 21, 1985

**Invitation for Bids**

85-2 CPD 430

**Cancellation****After Bid Opening****Defective Solicitation**

Specifications for level of harbor dredging in invitation for bids that do not adequately describe the government's actual needs provides a compelling reason for the agency's rejection of all bids and cancellation of the solicitation.

**BIDS****Invitation for Bids****Cancellation****Justification****Minimum Needs Reassessment**

Provision of the Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(a)(3), that requires separate procurement for increased requirements of items being procured instead of cancellation of solicitation does not apply where procurement is for maintenance dredging to assure navigability of harbor.

**BIDS** **B-219443 Con't**  
**Invitation for Bids** **Oct. 21, 1985**  
**Defective**  
**Evaluation Criteria**

Where evaluation method in invitation for bids is structured so as to encourage unbalanced bidding, the invitation is defective, per se, and no bid can be evaluated properly because there is insufficient assurance that award will result in the lowest ultimate cost to the government.

**CONTRACTS** **B-220268; B-220269**  
**Protests** **Oct. 21, 1985**  
**Moot, Academic,** **85-2 CPD 431**  
**etc. Questions**  
**Protester not in Line for Award**

Defensive protests filed prior to award and limited solely to the issue of the protesting firm's alleged nonresponsibility are dismissed as academic upon receipt of advice from contracting agency that protester is not the apparent low offeror and that for this reason the issue of protester's responsibility will not arise.

**CONTRACTS** **B-220365 Oct. 21, 1985**  
**Requests for Quotations** **85-2 CPD 432**  
**Cancellation**

Protest that firm should have received the award for a rotary filing system as the lone acceptable offeror is dismissed where the agency canceled the solicitation due to a change in its needs dictated by modifications in its office floor plan, and the protester does not challenge the agency's justification for canceling.





**CONTRACTS** **B-219687 Oct. 22, 1985**  
**Protests** **85-2 CPD 439**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on its earlier protest filed with contracting agency is untimely.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest against alleged improprieties in a solicitation amendment that also requested best and final offers, filed after the closing date established by the amendment is untimely.

**CONTRACTS** **B-220122; B-220122.2**  
**Protests** **Oct. 22, 1985**  
**Moot, Academic, etc.** **85-2 CPD 440**  
**Questions**  
**Contract Terminated for Convenience**

Protest against an award to another firm at a higher cost is academic when the contract in question is terminated for the convenience of the government because the contracting agency determined after award that a significant amount of the work could be performed in-house at a substantial savings.

**BIDS** **B-220535 Oct. 22, 1985**  
**Responsiveness** **85-2 CPD 441**  
**Descriptive Literature**  
**Indication That Item Offered Failed to Meet**  
**Specifications**

Bid was properly rejected as nonresponsive where the descriptive literature required to be submitted contained a legend stating that design and specifications are subject to change without notice because there is nothing else in the bid indicating that the legend was not intended to affect the bidder's obligations under its bid.

**BIDS** **B-218767.2 Oct. 23, 1985**  
**Responsiveness** **85-2 CPD 443**  
**Brand Name or Equal Procurement**  
**Compliance Requirements**

Where invitation for bids (IFB) specifies brand name as modified or equal, bid which offers brand name and takes no exception to specifications is responsive to IFB. Bidder of brand name solicited by IFB need not address all salient characteristics in its descriptive literature since the salient characteristics merely describe features needed by the agency which the agency has determined are characteristics of the brand name product bid by firm.

**BIDDERS** **B-219132.2 Oct. 23, 1985**  
**Debarment** **85-2 CPD 444**  
**De Facto**  
**Nonresponsibility Determination v. De Facto**  
**Debarment**

The Small Business Administration's independent and conclusive authority to determine protester's responsibility precludes the possibility of the contracting agency's five consecutive nonresponsibility determinations, based on same Defense Contract Administration Services Management Area's negative preaward survey, from constituting a de facto debarment of protester.

**BIDDERS** **B-219132.2 Con't**  
**Qualifications** **Oct. 23, 1985**  
**Preaward Surveys**  
**Utilization**  
**Administrative Determination**

Preaward surveys are conducted at the discretion of the contracting officer and are not required for each procurement.

**CONTRACTS** **B-219272 Oct. 23, 1985**  
**Protests**  
**Authority to Consider**  
**Bonneville Power Administration Procurements**

Letter to Deputy General Counsel, Bonneville Power Administration (BPA), expressing GAO's preliminary views on legal memorandum submitted by BPA for GAO comment, concludes that BPA is subject to GAO's bid protest jurisdiction under the Competition in Contracting Act of 1984.

**BIDS** **B-219550 Oct. 23, 1985**  
**Invitation for Bids** **85-2 CPD 445**  
**Ambiguity Allegation**  
**Not Sustained**  
**Only one Reasonable Interpretation**

Allegation that invitation for bids for cleaning services is ambiguous because it does not state whether the contractor may provide one person for a work "crew" is without merit where, read as a whole, the solicitation can only reasonably be read as permitting a crew to consist of one or more persons.



**CONTRACTS** **B-219724 Oct. 23, 1985**  
**Small Business Concerns** **85-2 CPD 448**  
**Awards**  
**Set-Asides**  
**Withdrawal**  
**Prices Excessive**

Dissolution of a small business set-aside and solicitation on an unrestricted basis is not improper where the contracting officer reasonably determined that the prices submitted by eligible small businesses were unreasonable. In considering price reasonableness under a small business set-aside, the contracting officer has discretion in deciding which factors to consider, and a price submitted by an otherwise ineligible large business properly may be considered.

**CONTRACTS** **B-219797 Oct. 23, 1985**  
**Protests** **85-2 CPD 449**  
**Basis for Protest Requirement**

Allegation that specifications contained in request for proposals (RFP) are unduly restrictive of competition states a basis of protest under our Bid Protest Regulations. Fact that specifications are based on agency policy which, standing alone, would not be reviewable generally by GAO does not alter our conclusion since the policy was incorporated into the RFP specifications which are subject to review by our Office.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Filing Protest With Agency**

Under GAO Bid Protest Regulations, a protest may be dismissed where the protester fails to furnish a copy of the protest to the contracting officer within 1 day after the protest is filed with GAO. Dismissal is not warranted where, as here, the protester could have refiled the protest timely if the protest was dismissed for failure to furnish a copy to the contracting officer timely. Furthermore, the agency has not been prejudiced by the delay in receiving a copy of the protest since it filed its report within 25 working days of the contracting officer's receipt of the copy of the protest.



**ADVERTISING**

**B-220717 Oct. 23, 1985**

**Commerce Business Daily  
Information**

**85-2 CPD 452**

**Date of Bid Opening, etc.**

**Constructive Notice From Publication**

Synopsis of a procurement in the Commerce Business Daily constitutes constructive notice of the procurement action, and the fact that the publication is not regularly delivered in a remote area is not relevant.

**CONTRACTS**

**B-220823 Oct. 23, 1985**

**Negotiation**

**85-2 CPD 453**

**Offers or Proposals**

**Discussion With all Offerors Requirement**

**Failure to Discuss**

**Situations not Requiring Discussion**

A contracting officer is not required to conduct discussions in negotiated procurement and may, in appropriate circumstances, decide to award on the basis of initial proposals.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Solicitation Improprieties**

**Apparent Prior to Bid Opening/Closing Date  
for Proposals**

Protest alleging that RFP should not have contained requirement for bid guarantee and performance bond is dismissed as untimely since protest was not filed until after the closing date for receipt of proposals.

**CONTRACTS**  
**Protests**

**B-220838 Oct. 23, 1985**  
**85-2 CPD 454**

**Interested Party Requirement**  
**Trade Associations, etc.**

To be considered an interested party so as 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 or failure to award the contract involved. A union local which represents federal employees is not an interested party to protest the contracting agency's decision to contract for services rather than perform them in-house, since it is not an actual or prospective bidder or offeror under the challenged solicitation.

**CONTRACTS**

**B-218074.2 Oct. 24, 1985**  
**85-2 CPD 455**

**Negotiation**  
**Conflict of Interest**  
**Prohibitions**  
**Organizational**

Protest of an agency's decision to exclude the protester from the competition due to an organizational conflict of interest is denied where the agency reasonably canceled the initial solicitation, and notwithstanding the determination that the protester was ineligible to compete, received and evaluated the protester's proposal submitted under the resolicitation and the results of the evaluation show that the protester would not be entitled to award even if the protest of the conflict of interest determination were sustained.

**CONTRACTORS**

**B-219435 Oct. 24, 1985**

**Responsibility**

**85-2 CPD 456**

**Determination**

**Review by GAO**

**Affirmative Finding Accepted**

Protest that awardee's price proposal is unreasonably low and indicates either that the awardee does not understand the solicitation requirements or is "buying in," concerns an affirmative responsibility determination which GAO will not review except in circumstances not applicable here.

**CONTRACTS**

**Negotiation**

**Cost, etc. Data**

**Exemptions**

**Basis of Market or Catalog Prices**

Allegation that awardee should not have been exempted from the requirement that cost or pricing data be submitted is without merit where the protester fails to establish that the contracting officer abused his discretion in granting the exemption based on the existence of established market or commercial prices for the items.

**CONTRACTS**

**Negotiation**

**Requests for Proposals**

**Specifications**

**Conformability of Equipment, etc. Offered**

**Commercial Product Requirement**

Protest that awardee's proposal should have been rejected because some offered items were not commercially available as required by the solicitation is denied where the awardee certified that the offered items were commercially available and the solicitation did not require that the products be listed in commercial catalogs.





**BIDS** **B-219405.2 Con't**  
**Responsiveness** **Oct. 25, 1985**  
**Exceptions Taken to Invitation Terms**

Where a solicitation provision, implementing the Trade Agreements Act of 1979, provides that foreign end products exceeding in total value a specific dollar threshold will not be accepted unless those products originate in a designated country, a bidder's offer of non-designated country items that would exceed the dollar limitation is properly rejected as nonresponsive. The fact that the solicitation provides only estimates of quantities to be furnished does not change this result because the estimates provide the basis for evaluation and award.

**OFFICERS AND EMPLOYEES** **B-219584 Oct. 25, 1985**  
**Contracting With Government** **85-2 CPD 461**  
**Public Policy**  
**Objectionality**  
**Exception**  
**Unwarranted**

A government contract may not knowingly be awarded to a business that is substantially owned or controlled by a government employee. Although the agency may properly invoke an exception to this rule where there is a most compelling reason to do so, such a determination is a discretionary matter, and no abuse of discretion is found where the agency declines to invoke the exception even though doing so would result in cost savings and promote competition.

**BIDS**

**B-219629.2 Oct. 25, 1985**

**Responsiveness**

**85-2 CPD 462**

**Test to Determine**

**Unqualified Offer to Meet all Solicitation Terms**

Where the protester has not shown that the prospective awardee's bid on its face reflects anything other than an unqualified offer to comply with the essential terms of the solicitation, the prospective awardee's bid must be deemed responsive.

**BUY AMERICAN ACT**

**Contractor Compliance With Certification**

**Contract Administration Matter**

Where bidder excludes no end products from Buy American certificate in bid and submits no additional information that otherwise would indicate that it is offering anything other than domestic end products, acceptance of bid results in obligation of bidder to furnish domestic end products. Compliance with that obligation is matter of contract administration which has no effect on the validity of contract award, and is not for consideration under GAO's bid protest function.

**CONTRACTORS**

**Responsibility**

**Determination**

**Review by GAO**

**Affirmative Finding Accepted**

GAO will not review an agency's affirmative responsibility determination absent fraud or bad faith on the part of government officials, or a failure to apply definitive responsibility criteria. An invitations requirement to furnish bonds is not a definitive criterion, but instead involves bid responsiveness (the bid bond) and contract administration (the performance and payment bonds).

**CONTRACTS** **B-219629.2 Con't**  
**Small Business Concerns** **Oct. 25, 1985**  
**Awards**  
**Small Business Administration's Authority**  
**Size Determination**

Protest that prospective awardee's subcontract with large business will result in a de facto joint venture is, in effect, a challenge to the size status of the prospective awardee as a small business. GAO does not consider protests involving small business size status because the Small Business Administration has conclusive authority to determine the matter.

**BONDS** **B-219645 Oct. 25, 1985**  
**Bid** **85-2 CPD 463**  
**Deficiencies**  
**Waiver**

Bid bond is defective where it misidentifies solicitation it is intended to cover, but actually identifies another solicitation recently issued by the same procuring agency and bears no evidence that the surety consented to be bound on the solicitation with which it is submitted. Defect in bond, allegedly caused by clerical error, may not be waived since under the circumstances it is not clear that government received an enforceable bond covering subject solicitation.

**BIDS** **B-219669 Oct. 25, 1985**  
**Invitation for Bids** **85-2 CPD 464**  
**Cancellation**  
**Justification**

A protester's argument that only one bid will be found to be responsive to an IFB so as to require its cancellation is purely speculative when the bids have yet to be opened, and GAO notes that there is no requirement in the Federal Acquisition Regulation that an IFB be canceled even if only one bid is found to be responsive. Cancellation is only warranted where no responsive bid has been received from a responsible bidder.

**BIDS** **B-219669 Con't**  
**Invitation for Bids** **Oct. 25, 1985**  
**Specifications**  
**Restrictive**  
**Burden of Proving Undue Restriction**

When a protester challenges certain specifications as being unduly restrictive of the competition, it is incumbent upon the agency to establish prima facie support for the reasonableness of the specifications by demonstrating that the requirements are necessary to meet its actual minimum needs. But once the agency establishes this support, the burden is then clearly on the protester to show that the requirements are arbitrary or otherwise unreasonable, a burden not met here.

**CONTRACTS** **B-219997.2 Oct. 25, 1985**  
**Protests** **85-2 CPD 465**  
**Allegations**  
**Unsubstantiated**

Where protester has furnished nothing which establishes that contracting agency knew that licensing agreement which formed basis for sole-source determination was not firm, GAO is unable to conclude that sole-source determination lacked a reasonable basis when made.

**CONTRACTS**  
**Protests**  
**Contract Administration**  
**Not for Resolution by GAO**

Where contract provides choice of equipment to be furnished, whether contracting agency accepts one or the other is a matter of contract administration rather than contract modification that went beyond the original procurement that we would consider.

**CONTRACTS** **B-220611 Oct. 25, 1985**  
**Small Business Concerns** **85-2 CPD 466**  
**Awards**  
**Size Status**  
**Protests to Agency**  
**Timeliness**

Protest that award under a small business set-aside to a firm alleged to be a large business was improper is denied, where protester did not file size status protest with the contracting officer within 5 days after bid opening, as required by the regulations. Further, Small Business Administration determination in another procurement that same awardee was other than a small business was not reached until after bid opening in the protested procurement; was not brought to the contracting officer's attention before award; and by its terms was to apply prospectively only.

**CONTRACTS** **B-220680 Oct. 25, 1985**  
**Protests** **85-2 CPD 467**  
**To Agencies, etc. Other Than GAO**  
**Timeliness of Protest**

If an initial protest to the agency is not filed within the time limits prescribed in the GAO Bid Protest Regulations, a subsequent protest to GAO will be dismissed as untimely and not considered on its merits.

**BIDS** **B-219131.2 Oct. 28, 1985**  
**Invitation for Bids** **85-2 CPD 469**  
**Ambiguous**  
**Objective Test**

Protest that bidders did not compete on an equal basis because of ambiguous term in solicitation is denied where protester has not shown that solicitation was subject to more than one reasonable interpretation. Even assuming, arguendo, that the solicitation was ambiguous, protester did not establish that there was a reasonable possibility that it was displaced due to the unfair competitive advantage afforded another bidder as a result of the defect.

**CONTRACTS** **B-219173.2 Oct. 28, 1985**  
**Protests** **85-2 CPD 470**  
**General Accounting Office Procedures**  
**Piecemeal Development of Issues by Protester**

Issue raised for first time in request for reconsideration will not be considered unless the request itself is a timely protest.

**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Contention that contracting agency officials acted fraudulently and in bad faith in determining that protester was not responsible, first raised in request for reconsideration but based on some allegations made in original protest, is untimely and will not be considered since the request was not filed within 10 days of filing of original protest, the date on which, at the latest, the protester knew or should have known the basis of protest.

Challenge to denial of certificate of competency (COC) by Small Business Administration (SBA) on grounds that SBA officials acted fraudulently and in bad faith, first raised in request for reconsideration, is untimely and will not be considered since request was not filed within 10 days after the protester was notified that its COC application had been denied, and thus knew or should have known the basis of protest.

**CONTRACTS** **B-219420 Oct. 28, 1985**  
**Negotiation** **85-2 CPD 471**  
**Debriefing Conference**  
**Entitlement to**  
**Denied**

Procurement regulations do not require an agency to debrief unsuccessful offerors until after contract award.



**CONTRACTS** **B-219439 Oct. 28, 1985**  
**Small Business Concerns** **85-2 CPD 473**  
**Awards**  
**Small Business Administration's Authority**  
**Certificate of Competency**  
**Conclusiveness**

Where a contracting officer refers a nonresponsibility determination to the Small Business Administration (SBA) under the certificate of competency (COC) procedures, and agrees to withhold award until the matter is resolved, award to another firm after receiving advice from the SBA within the agreed-upon time that a COC would be issued was improper. The fact that the contracting officer did not believe the SBA's review was thorough enough is irrelevant, since the SBA's decision on a small business' responsibility is conclusive.

**BIDS** **B-219450 Oct. 28, 1985**  
**Rejection** **85-2 CPD 474**  
**Propriety**

Rejection of a bid based on a bidder's statements after bid opening that it could not obtain the required equipment needed to start contract performance on time is proper.

**CONTRACTS**  
**Small Business Concerns**  
**Awards**  
**Responsibility Determination**  
**Certificate of Competency Requirement**

Referral of a bid rejection to SBA under the certificate of competency (COC) procedure would be a meaningless act where the bidder indicated it could not start contract performance on time and only wanted an extension of the contract starting date. SBA has no authority to grant an extension of the contract starting date under the COC procedure.

**BIDS** **B-219682 Oct. 28, 1985**  
**Acceptance Time Limitation** **85-2 CPD 475**  
**Bids Offering Different Acceptance Periods**  
**Shorter Periods**  
**Responsiveness of Bid**  
**Solicitation Provision**

Where solicitation permits bidders to offer less than the standard 60-day bid acceptance period, bid which offered 60-day acceptance period but which provided a shorter expiration date in its bid guarantee effectively limits bid acceptance period to that in the bid guarantee. While this acceptance period may not be extended, award is permissible if made before the expiration date in the bid guarantee.

**BONDS**  
**Bid**  
**Alteration**

Bid guarantee which includes typographical alteration of two letters in work performance description is not materially altered where the guarantee is otherwise correct and sufficient and includes solicitation number as part of the same clause.

**CONTRACTS** **B-220238.2 Oct. 28, 1985**  
**Protests** **85-2 CPD 476**  
**General Accounting Office Procedures**  
**Reconsideration Requests**  
**Error of Fact or Law**  
**Not Established**

Prior decision dismissing protest as untimely is affirmed where protester fails to show that GAO was in error in finding that protester became aware of basis of its protest in oral conversation with contracting agency official.

**BIDS** **B-220550 Oct. 28, 1985**  
**Responsiveness** **85-2 CPD 477**  
**Failure to Furnish Something Required**  
**Descriptive Literature**

Protest concerning rejection of "equal" bid in response to brand name or equal solicitation is dismissed. Bid did not include descriptive literature to establish that item offered met salient characteristics and the protester has not supported its contention that the failure should be waived as a minor technicality.

**BIDS** **B-220852 Oct. 28, 1985**  
**Responsiveness** **85-2 CPD 478**  
**Test to Determine**  
**Unqualified Offer to Meet all Solicitation Terms**

In order to be responsive a bid must contain an unequivocal offer to provide the requested item in total conformance with the material terms of the solicitation. An offer to provide a 38-foot boat in response to a requirement for a 36-foot boat, where boat must maneuver in a tight work area, renders the bid nonresponsive.

**CONTRACTS**

**Protests**

**General Accounting Office Function**  
**Independent Investigations and Conclusions**

GAO does not conduct investigations under its bid protest function to ascertain whether a protester has a basis for protest.

**CONTRACTS**

**B-208159.2 Oct. 29, 1985**

**Protests**

**Summary Dismissal**

Letter responding to potential protester's request for definition of the difference between dismissals and denials of bid protests states that protests are dismissed when the issues raised are not for consideration on the merits, or on their face, are without merit. Protests are denied when they are fully developed and then found to be without merit.

**CONTRACTS**

**B-217376 Oct. 29, 1985**

**Negotiation**

**85-2 CPD 479**

**Requests for Proposals**

**Specifications**

**Minimum Needs**

**Administrative Determination**

GAO will not object to specifications required by the agency for sweepers and sweeper/scrubbers where the agency has shown that it has a reasonable basis for its requirements and the protester has not presented any evidence which would establish that such specifications are arbitrary or unreasonable.

**CONTRACTS**

**Negotiation**

**Requests for Proposals**

**Restrictive of Competition**

Solicitation requirement that offered equipment have Underwriters Laboratories, Inc. seal of approval attached to each item is unduly restrictive of competition and, therefore, improper.

**CONTRACTS** **B-217376 Con't**  
**Negotiation** **Oct. 29, 1985**  
**Requests for Proposals**  
**Specifications**  
**Restrictive**  
**Agency Determination to Use Less Restrictive**  
**Specifications**

Protest which alleges that certain specifications should be made more restrictive will not be considered since such specifications violate no laws or regulations.

**BIDDERS** **B-218853 Oct. 29, 1985**  
**Debarment**  
**Labor Stipulation Violations**  
**Davis-Bacon Act**  
**Debarment Unwarranted**

The Department of Labor stated that, in view of the circumstances, it did not consider further administrative action (i.e., debarment) necessary against a subcontractor for violations of the Davis-Bacon Act. Based on our independent review of the record, we conclude that the subcontractor underpaid employees, but the record does not contain sufficient evidence of intentional violation of the labor standards provisions of the Act to warrant debarment, as opposed to legitimate disagreement concerning classification. Therefore, the subcontractor will not be debarred under the Act.

**CONTRACTS** **B-219790.3 Oct. 29, 1985**  
**Protests** **85-2 CPD 480**  
**Same Issue(s) Raised In Prior**  
**Case by Same Protester**

Protest which attempts to reassert an objection to an agency procurement action which was properly dismissed as untimely in the first instance is untimely as well and will not be considered.



**BIDS**  
**Invitation for Bids**  
**Amendments**  
**Nonreceipt**  
**Bidder's Risk**  
**Bidder Exclusion not Intended**

**B-220673 Oct. 29, 1985**  
**85-2 CPD 484**

Protest of rejection of bid for failure to acknowledge a material amendment is dismissed notwithstanding agency's failure to send the amendment to the protester. There is no allegation of a deliberate attempt to exclude the protester from the competition, or that the agency's failure was more than an isolated oversight, and it appears competition was adequate to ensure a reasonable price.

**CONTRACTS**  
**Awards**  
**Propriety**  
**Upheld**

**B-220733 Oct. 29, 1985**  
**85-2 CPD 485**

The award of a contract is not improper solely because a bidder did not receive a complete copy of the solicitation so long as there is adequate competition resulting in reasonable prices and there has been no showing of a conscious or deliberate intent on the part of the procuring agency to preclude a certain bidder from competing.

**CONTRACTS**  
**Protests**  
**Allegations**  
**Unsubstantiated**

Protester's contention that it was not aware that award could be made on the basis of other than the listed brand name product where the solicitation did not contain a listing of salient characteristics is not reasonable in light of solicitation provisions indicating that bidders could offer a brand name product "or equal."







**BIDS** **B-219649 Con't**  
**Late** **Oct. 30, 1985**  
**Telegraphic Modifications**  
**Mishandling by Government**  
**Not Supported by Record**

Where bidder allegedly transmits modification lowering bid price by Western Union telex at 1:52 p.m. on the day of a 2 p.m. bid opening, its late receipt is due to the bidder's failure to allow sufficient time for delivery to the office designated in the solicitation, rather than to mishandling in the process of receipt. Agency therefore properly did not consider the modification.

**BIDS** **B-219852; B-219957**  
**Invitation for Bids** **Oct. 30, 1985**  
**Specifications** **85-2 CPD 492**  
**Defective**  
**Allegation not Sustained**

Protest challenging specification obligating contractor for certain portion of repair costs of government equipment is denied where protester fails to show that requirement, imposed in procurement for audiovisual services, is unreasonable. The mere presence of risk in a solicitation does not render it inappropriate.

**CONTRACTS** **B-220203 Oct. 30, 1985**  
**Protests** **85-2 CPD 493**  
**Interested Party Requirement**  
**Protester not in Line for Award**

Where third low bidder protests award to any other firm on the basis that its price modification mailgram was late due to government mishandling, the protest is dismissed since protester is not eligible for award with or without timely receipt of price modification. Therefore, under our Bid Protest Regulations, the protester cannot be considered an "interested party."

**BIDS****Ambiguous  
Nonresponsive Bid****B-220788 Oct. 30, 1985  
85-2 CPD 494**

Bid that is ambiguous in a material provision, so that it is nonresponsive under one interpretation and responsive under the other, cannot be accepted.

**BIDS****Mistakes  
Correction  
After Bid Opening  
Rule**

A bid rendered nonresponsive by an alleged error may not be corrected after bid opening through mistake in bid procedures.

**BIDS****Responsiveness  
Exceptions Taken to Invitation Terms  
Delivery Provisions**

A bid containing a notation specifying delivery F.O.B. origin is nonresponsive to an IFB requiring that bids be submitted on an F.O.B. destination basis.

**CONTRACTS****Negotiation  
Awards  
To Other Than Low Offeror****B-219389.2 Oct. 31, 1985  
85-2 CPD 495**

Protest alleging that award to higher technically rated, higher cost offeror was not justified is denied where that result is consistent with the evaluation criteria stated in the solicitation and supported by the agency's cost realism analysis.

**CONTRACTS**

**B-219389.2 Con't**

**Negotiation**

**Oct. 31, 1985**

**Offers or Proposals**

**Cost Realism**

**Scope of GAO Review**

Contracting agency's analysis of proposals for cost realism involves the exercise of informed judgment and this Office will not question such an analysis unless it clearly lacks a reasonable basis. General Accounting Office's in camera review of all the evaluation materials in light of the protest issues raised reveals no basis for finding that selection officials abused their discretion, and cost realism analysis which compared independent government estimate with proposed costs and which was completed in accordance with solicitation evaluation scheme was reasonable.

**CONTRACTS**

**Negotiation**

**Offers or Proposals**

**Evaluation**

**Criteria**

**Application of Criteria**

Protest that evaluation scheme employed by the agency was inconsistent with the criteria set forth in the solicitation is denied where the solicitation clearly advises offerors of the broad scheme of scoring to be employed with reasonably definite information concerning the relative importance of the evaluation factors and the description contained in the solicitation adequately supports the weights which were used in the evaluation scheme.

**CONTRACTS**

**Protests**

**General Accounting Office Procedures**

**Timeliness of Protest**

**Date Basis of Protest Made Known to Protester**

Where protester does not learn of specific grounds for protest until agency debriefing, a protest filed within 10 working days after the debriefing is timely.

**CONTRACTS**

B-219406 Oct. 31, 1985

Negotiation

85-2 CPD 496

Offers or Proposals

Evaluation

Improper

On Basis Other Than RFP

Protest is sustained where the source selection official failed to properly apply the evaluation factors established by the solicitation.

**CONTRACTS**

Protests

Preparation

Costs

Noncompensable

Where corrective action consists of a recommendation that the source selection be independently reconsidered consistent with the RFP's established award criteria, the protester's request for allowance of its proposal preparation costs and the costs of filing and pursuing the protest is denied.

**CONTRACTS**

B-220146 Oct. 31, 1985

Protests

85-2 CPD 498

General Accounting Office Procedures

Timeliness of Protest

Adverse Agency Action Effect

Interim Appeals to Agency—Effect on 10

Working Day GAO Filing Period

Where initial protest filed with the contracting agency is untimely because the protest, based on information received under Freedom of Information Act (FOIA) request, was filed with the agency more than 10 working days after the protester's receipt of the FOIA information, subsequent protest to GAO will not be considered.

**CONTRACTS** **B-220146 Con't**  
**Protests** **Oct. 31, 1985**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Date Basis of Protest Made Known to Protester**

Protest based on information provided to protester at debriefing filed with GAO more than 10 working days after debriefing is untimely.

**CONTRACTS** **B-220382 Oct. 31, 1985**  
**Protests** **85-2 CPD 499**  
**Contract Administration**  
**Not for Resolution by GAO**

Whether contractor will comply with contract terms during performance is a matter of contract administration which GAO will not consider.

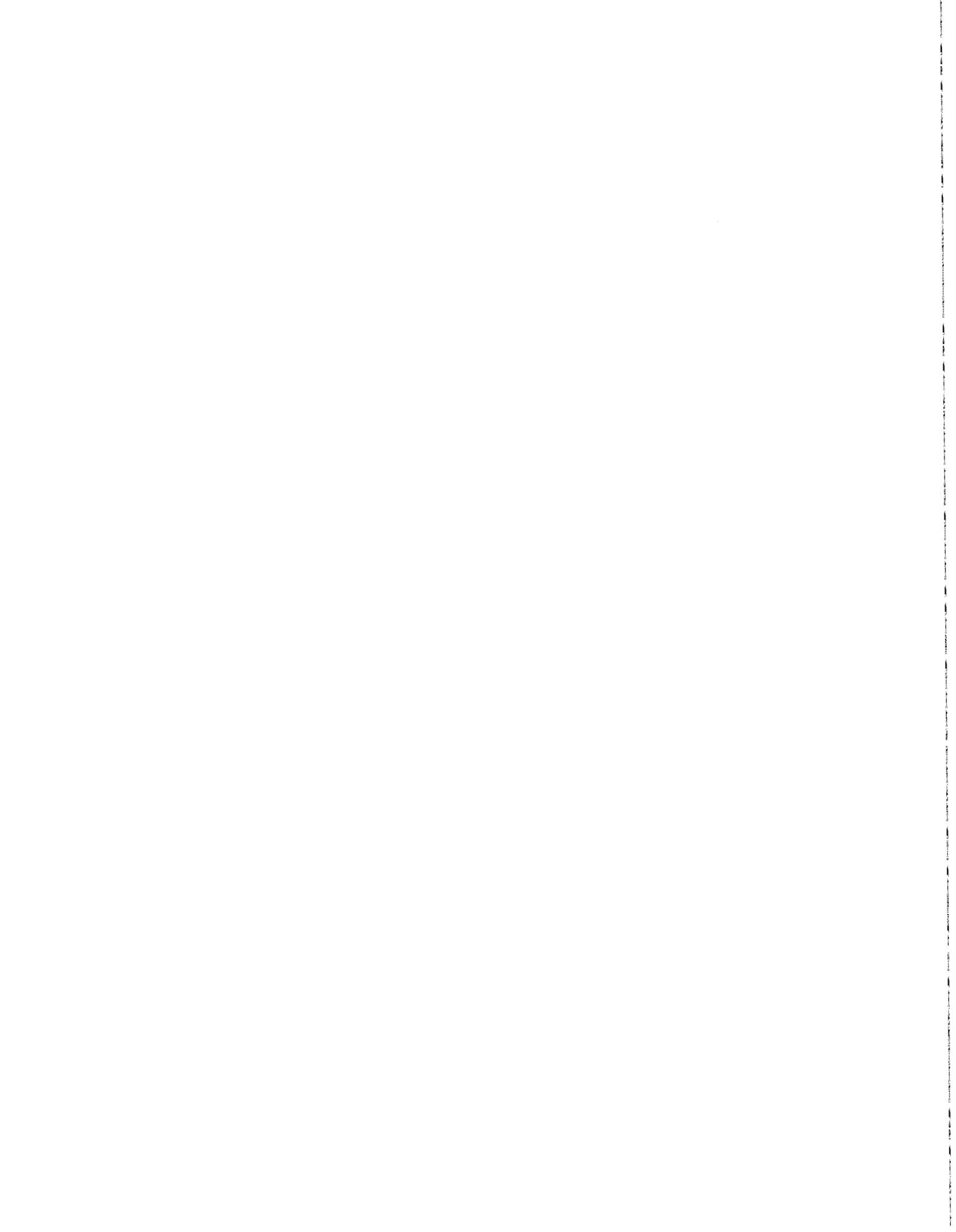
**CONTRACTS**  
**Protests**  
**General Accounting Office Procedures**  
**Timeliness of Protest**  
**Solicitation Improprieties**  
**Apparent Prior to Bid Opening/Closing Date**  
**for Proposals**

Protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed before that time in order to be timely.

**GENERAL ACCOUNTING OFFICE** **B-220388 Oct. 31, 1985**  
**Jurisdiction** **85-2 CPD 500**  
**Cooperative Agreements**  
**Awards**

GAO generally does not review complaints regarding an agency's decision not to enter into a cooperative agreement with the complainant.





**SPECIAL STUDIES & ANALYSIS**

**FRAUD**

**B-204345 Oct. 21, 1985**

**False Claims  
Administrative Action  
Penalties**

Comptroller General's comments on S. 1134, the Program Fraud Civil Penalties Act of 1985, to the Chairman, Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, United States Senate. Comments express GAO's continued support for the enactment of legislation to authorize federal agencies to levy administrative penalties for certain false claims and statements made to the United States. GAO firmly believes such legislation would further strengthen the government's overall ability to combat fraud, waste and abuse within government programs.

**EXPORT-IMPORT BANK**

**B-219310 Oct. 22, 1985**

**Officers  
Term of Office**

Section 614 of Export-Import Bank Act Amendments of 1983, Pub. L. No. 98-181, 97 Stat. 1255, limiting Bank President's term of office to 4 years does not apply to incumbent Bank President since there is no indication Congress intended section 614 to apply retroactively and since retroactive application would arguably present constitutional issues that would be avoided by prospective application.

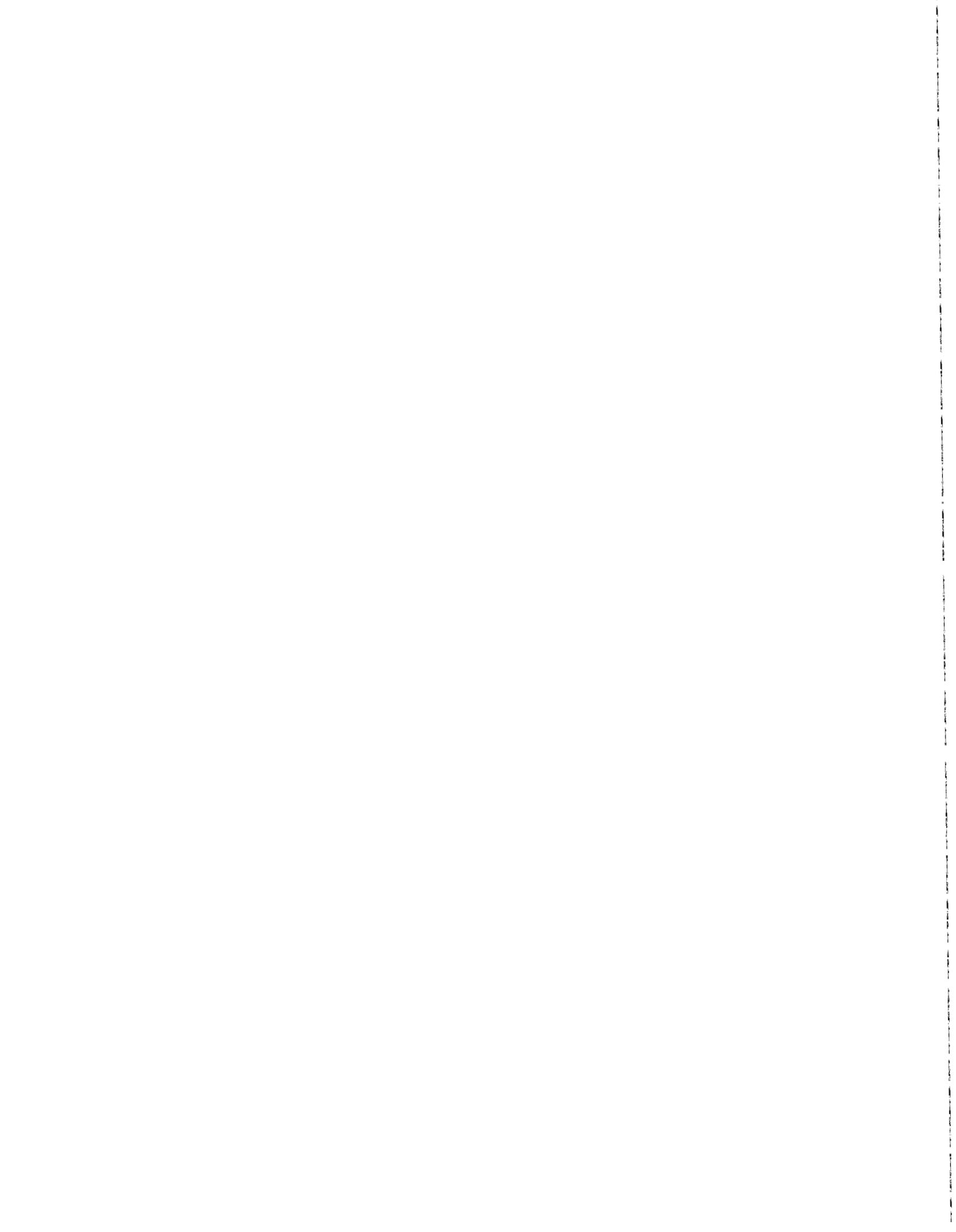


**TRANSPORTATION LAW**

**TRANSPORTATION  
Overcharges  
Set-Off**

**B-218696; B-218697 Oct. 30, 1985**

The destination/billing carrier on several Government shipments contends that single-line rates used by the General Services Administration as the basis for recovering overcharges were not applicable where another carrier picked up the shipments at origin and transferred them to the billing carrier after providing some line-haul transportation. The General Services Administration's deduction actions are sustained where the record contains evidence that the Government tendered the shipments to the origin carrier based on a prior communication from the billing carrier that it would provide "direct" or single-line service from origin to destination through named pick-up agents on days its own vehicles were not scheduled to provide the pick-up service.



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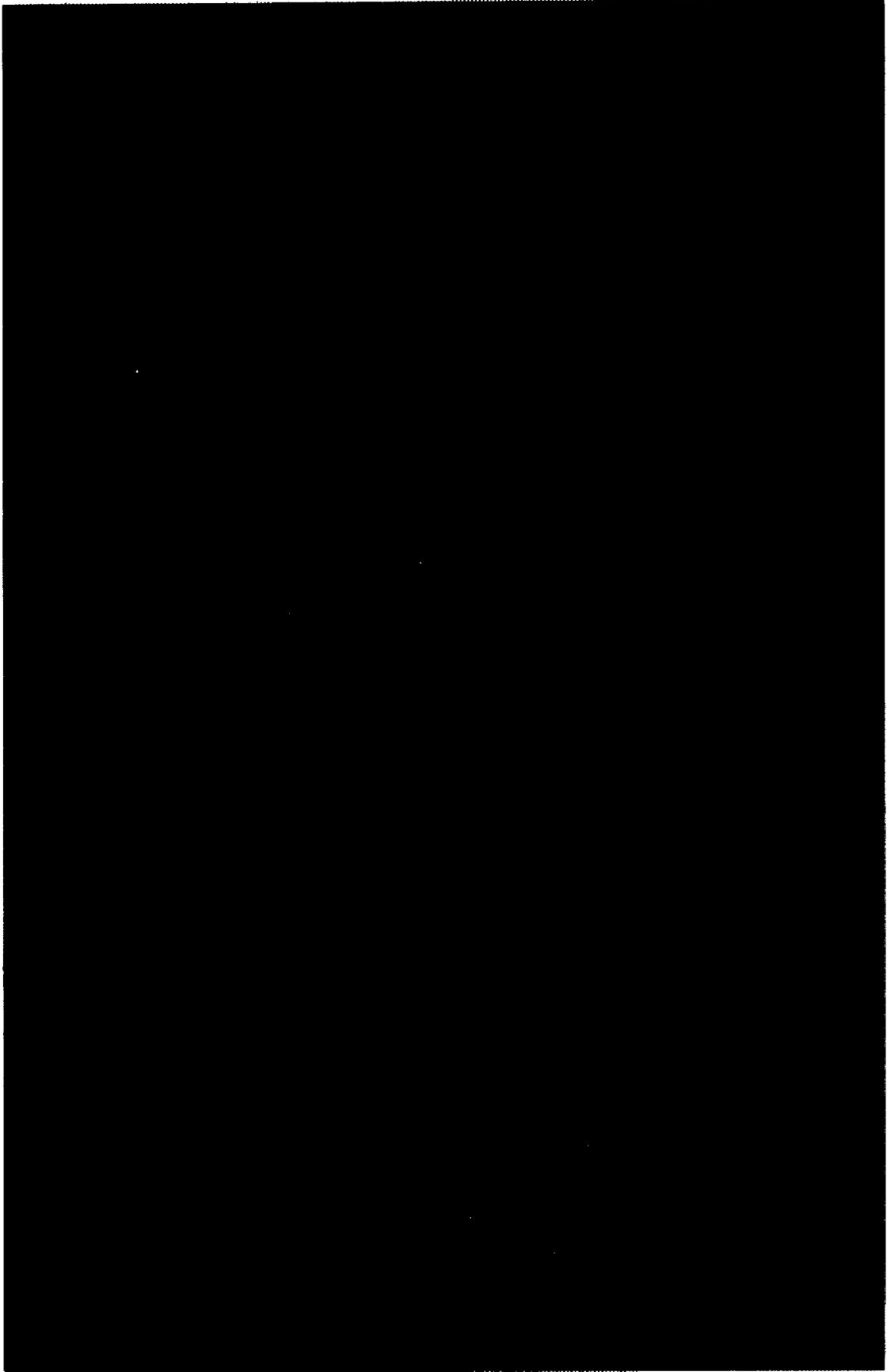
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