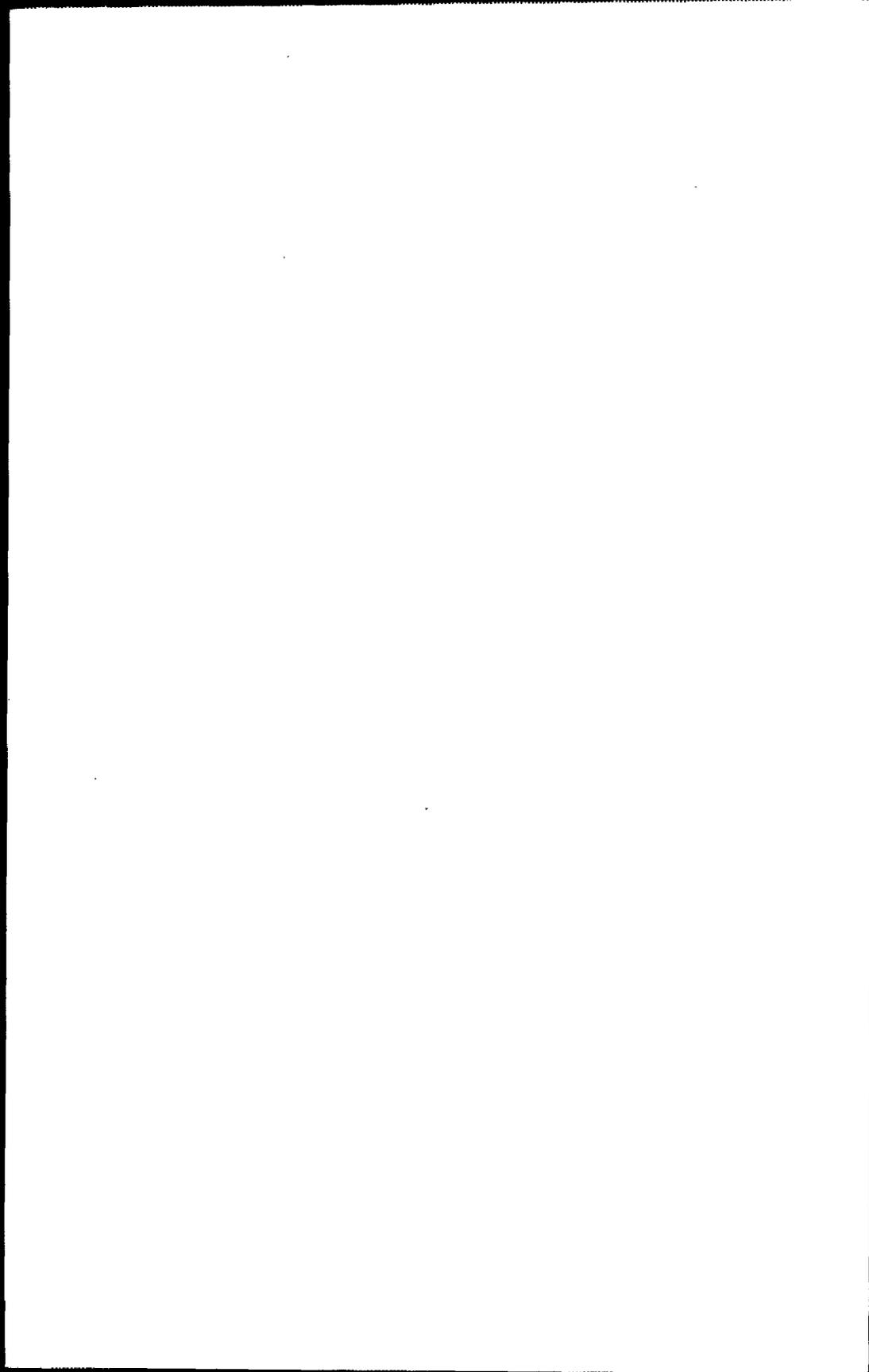

GAO

United States General Accounting Office

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August 1986
Vol II, No. 11

**Digests of Unpublished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



UNITED STATES GENERAL ACCOUNTING OFFICE

CHARLES A. BOWSER

Comptroller General of the United States

MILTON J. SOCOLAR

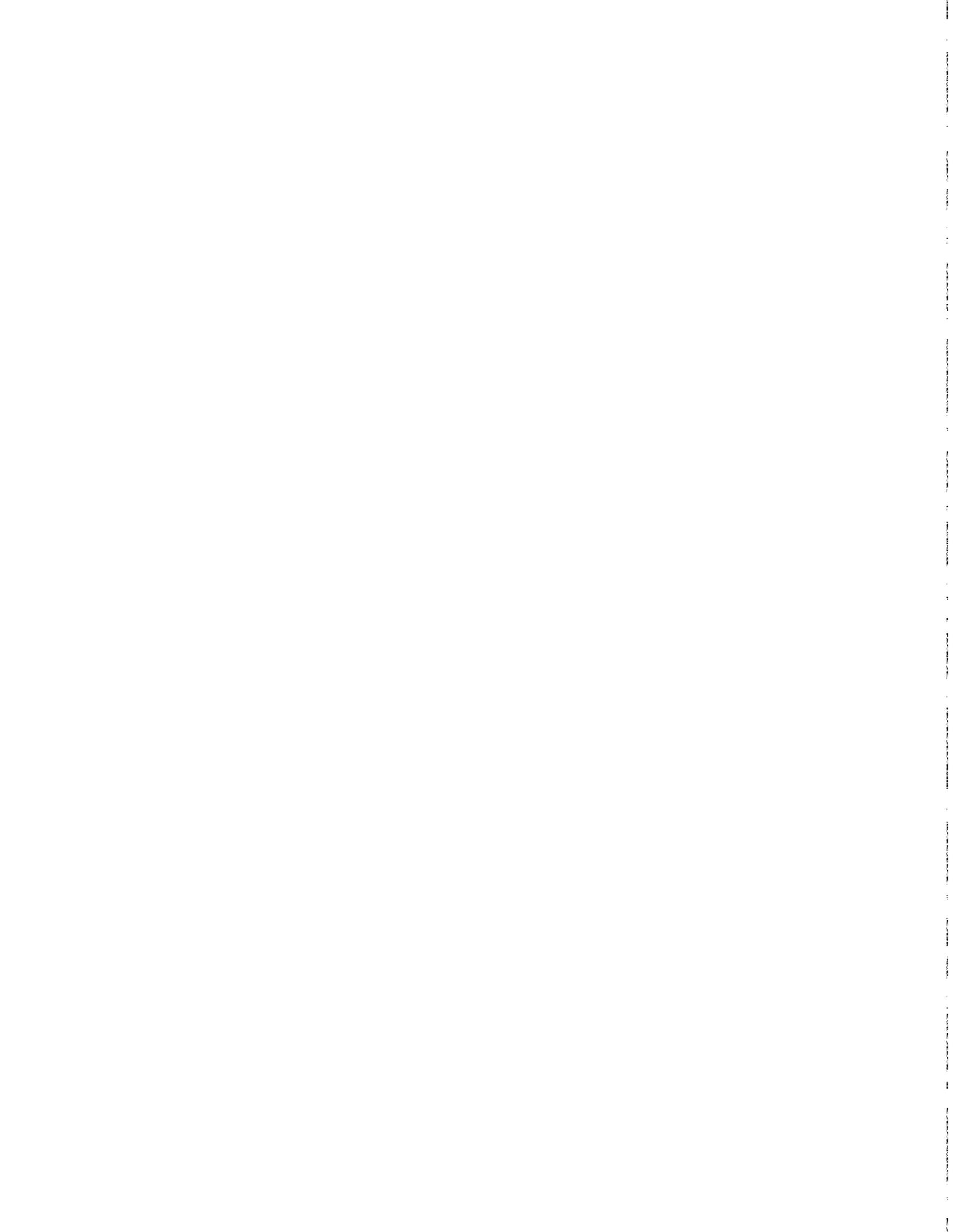
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AUGUST 1986

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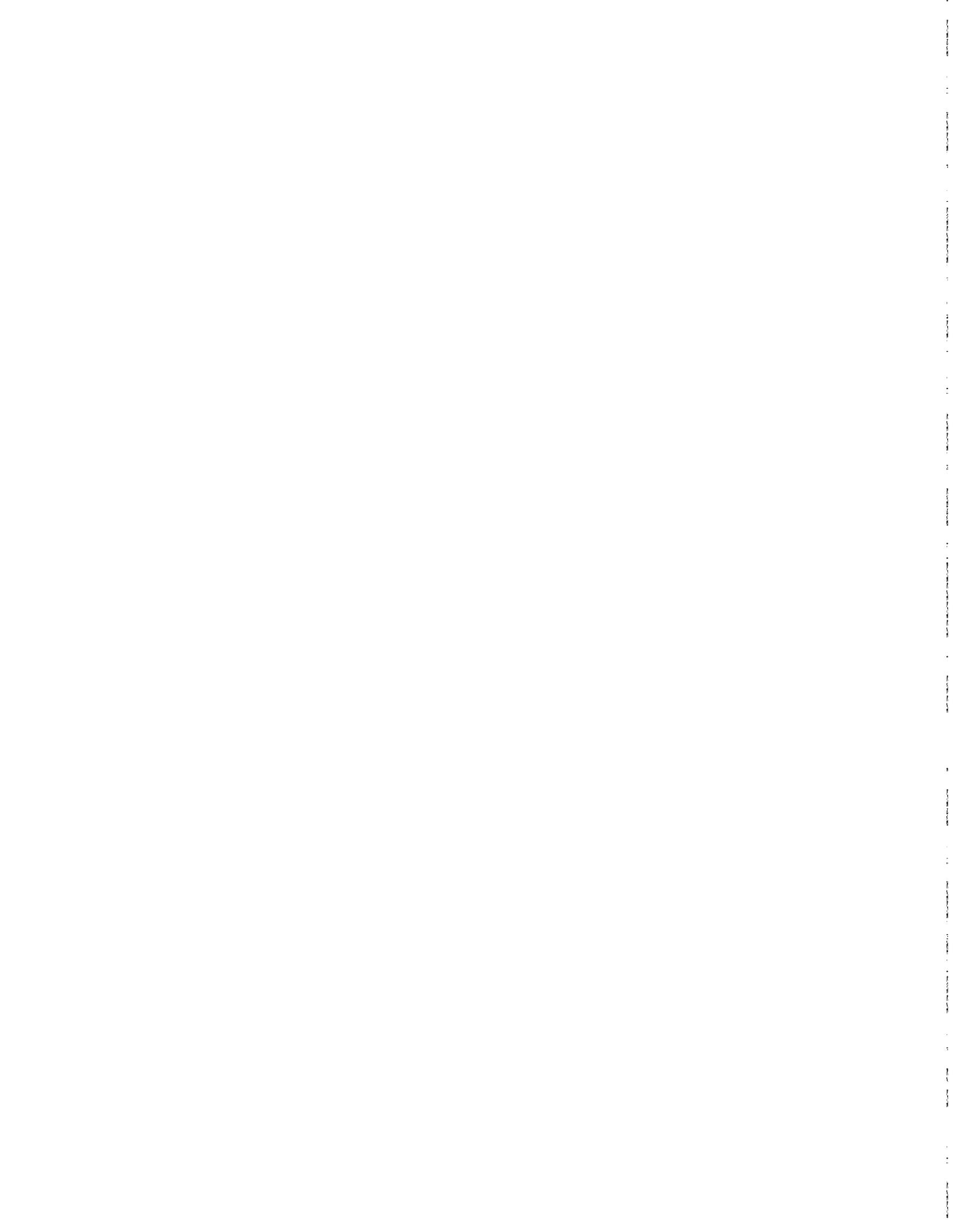


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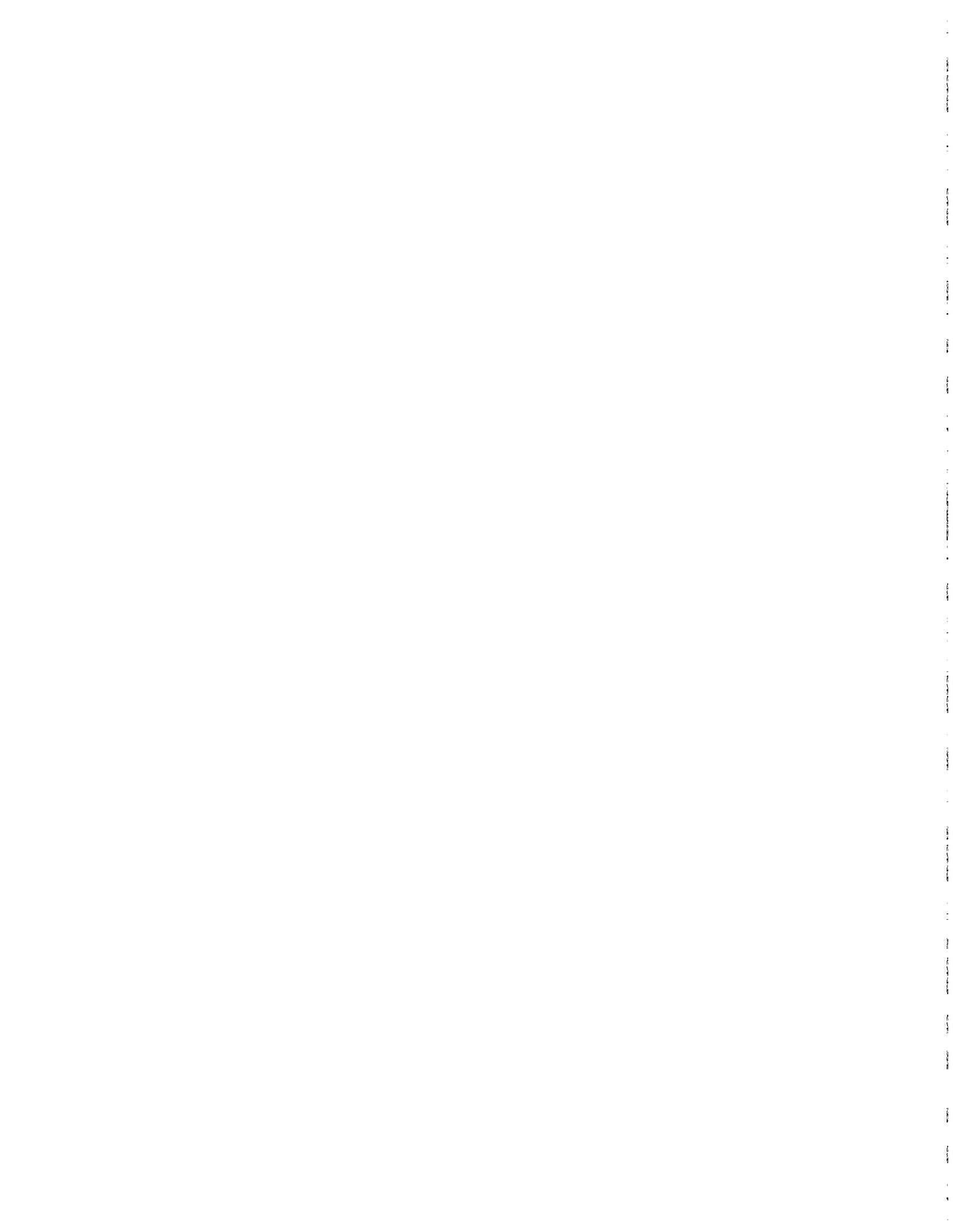
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B-213777, Aug. 8, 1986 distinguishes B-217989,
Sept. 17, 1985.

B-222492.2, Aug. 11, 1986 distinguishes B-220649,
Feb. 21, 1986.



**GENERAL GOVERNMENT MATTERS
APPROPRIATIONS AND MISCELLANEOUS**

APPROPRIATIONS

B-197742 Aug- 1, 1986

Deficiencies

Anti-Deficiency Act

Indemnification Agreements

Public Utility Services Procurement

Section 170(j) of Atomic Energy Act, 42 U.S.C. § 2210(j), part of the so-called Price-Anderson Act, constitutes an express exemption from the Antideficiency Act prohibition against obligations or expenditures in advance of or in excess of appropriations. Under this authority, administering agency (Nuclear Regulatory Commission or Dept. of Energy) can enter into indemnification agreements which would constitute binding contractual commitments enforceable against United States, before any money has actually been appropriated.

NUCLEAR ENERGY

Price-Anderson Act

Liability

Nuclear Accidents

If damages resulting from a nuclear accident exceed the monetary ceiling on Federal indemnification liability established by Price-Anderson Act, 42 U.S.C. § 2210, court may, on petition from interested party, establish distribution plan for allocation of available funds.

Under Price-Anderson Act, 42 U.S.C. § 2210, administering agency may pay indemnification claims from current operating appropriations through reprogramming, subject to any applicable statutory restrictions, although use of current operating appropriations is not required. Although statute does not provide specific funding mechanism, agency would be under obligation to seek necessary funds from Congress.

NUCLEAR ENERGY
Price-Anderson Act
Liability
Nuclear Accidents

B-197742 Con't
Aug. 1, 1986

Under Price-Anderson Act, 42 U.S.C. § 2210, Congress would be under "moral obligation" to appropriate necessary funds to satisfy indemnification claims. If Congress failed to make the appropriation, claimants could bring suit under indemnity agreement, and any resulting final judgments would appear payable from permanent judgment appropriation, 31 U.S.C. § 1304. If Congress made partial appropriation, availability of judgment appropriation would depend on specific facts and circumstances.

Any indemnification statute reflects balance between two factors, assurance of payment and congressional flexibility. It is impossible to maximize both. Letter to Subcomm. on Nuclear Regulation, Senate Comm. on Environment and Public Works, outlines various options for funding mechanism for indemnification statute, from perspective of assurance of payment and congressional control.

DISBURSING OFFICERS
Relief

B-223701 Aug. 5, 1986

Erroneous Payments
Not Result of Bad Faith or Negligence

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

DISBURSING OFFICERS**B-223740; B-223749****Relief****Aug. 7, 1986****Erroneous Payments****Not Result of Bad Faith or Negligence**

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

DISBURSING OFFICERS**B-223738 Aug. 11, 1986****Relief****Erroneous Payments****Duplicate Payments**

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

CERTIFYING OFFICERS**B-223739 Aug. 11, 1986****Relief****Erroneous Payments****Duplicate Payments**

Relief is granted Army Finance and Accounting official under 31 U.S.C. § 3528 from liability for certification of improper payment resulting from payee's negotiation of both original issued Army instrument and substitute Treasury check. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received both checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute check.

GENERAL ACCOUNTING OFFICE**B-219706.2 Aug. 18, 1986****Jurisdiction****Contracts****Disputes****Contract Disputes Act of 1978**

Government contractor brought action in United States Claims Court on Contract Disputes Act (CDA) claims 41 U.S.C. §§ 601-613. Before action was tried, United States and contractor entered into a written agreement to settle case by stipulating to entry of judgment for \$105,000. Both stipulation and judgment were silent on question of interest, although stipulation included broad release provisions. After Government paid judgment, contractor demanded GAO certify payment of interest under 41 U.S.C. § 611. Department of Justice objected to interest certification. Contractor's attorney is advised that since question of entitlement to interest is still in dispute and question relates to contract with the Government, payment cannot be certified, but is for resolution under CDA procedures.

DISBURSING OFFICERS

B-223886 Aug. 18, 1986

Relief**Erroneous Payments****Not Result of Bad Faith or Negligence**

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

ACCOUNTABLE OFFICERS

B-223400 Aug. 22, 1986

Relief**Illegal or Erroneous Payments****Without Fault or Negligence**

Army Finance Officer and subordinate cashier are relieved of liability for improper payment resulting from the fraudulent use of stolen identification card and checks to cash a personal check. Finance officer maintained an adequate system of supervision and the cashier followed these procedures.

ACCOUNTABLE OFFICERS

B-223580 Aug. 22, 1986

Irregularities, etc.**Accounting Procedures**

Army requested relief of accountable officers held liable for incorrect payment of funds. Payment for purchases was considered improper because the ordering officer involved had not been officially appointed. Since the Army received and used the goods purchased and the only defect was in the ordering official's appointment, there was no loss to the government and no need to grant relief.

DISBURSING OFFICERS**B-223865; B-223881****Relief****Aug. 22, 1986****Erroneous Payments****Not Result of Bad Faith or Negligence**

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

ACCOUNTABLE OFFICERS**B-223602 Aug. 25, 1986****Physical Losses, etc. of Funds, Vouchers, etc.****Cashiers, etc.****Imprest Fund****Relief Granted**

Accountable officer who stored imprest fund cash box in a locking filing cabinet after safe broke, and no other safe was available, was found to be without fault or negligence in the loss that resulted from theft of the cash box. Loss was directly related to the failure of Agriculture Department to replace a defective safe resulting in lack of a secure place to store imprest fund cash box.

ACCOUNTABLE OFFICERS**B-223285 Aug. 28, 1986****Relief****Illegal or Erroneous Payments****Without Fault or Negligence**

An Army cashier and her supervisory disbursing official are both relieved from liability for the cashing of a check drawn on an account with insufficient funds. The check was part of an elaborate scheme of check fraud. The evidence is sufficient to show that the supervisor established adequate procedures to protect against improper payments and that the cashier followed those procedures.

TRAVEL EXPENSES
Overseas Employees
Home Leave

B-220104 Con't
Aug. 4, 1986

Personal Convenience Travel

State Department employee was transferred from Tijuana, Mexico, to Mexico City, Mexico, with home leave en route and consultations at State Department. Baggage handling claim cannot be allowed as it was incident to travel segment found not to be authorized but for the personal convenience of employee. Additionally, reimbursement for passport photographs for family members cannot be allowed where family members did not participate in relocation travel. Further, claim for long distance telephone calls to shipping agent, American Embassy in Mexico City, and to State Department may be paid if proper agency official after reexamination determines calls were for official business.

SUBSISTENCE
Actual Expenses
Determination

B-213777 Aug. 8, 1986

An employee who performed temporary duty travel asserted a claim for lodging expenses incident to that travel. That claim was denied in decisions B-213777, October 2, 1984, and June 3, 1985, since Federal Travel Regulations, paragraph 1-8.5 requires documentation of lodging expenses and documents submitted failed to convincingly support his claim. He has now provided additional information. Since that information demonstrates both payment and the amount thereof, the claim may now be allowed.

SUBSISTENCE
Actual Expenses
Laundry Costs

B-213777 Con't
Aug. 8, 1986

An employee who was being reimbursed temporary duty travel on an actual expense basis asserted a claim for laundry and dry cleaning expense. Normal laundry and dry cleaning is deemed an accumulated expense and is to be prorated over temporary duty period. Since his total daily expenses were considerably less than the maximum daily rate authorized, he may be reimbursed the daily pro rata cost of laundry and dry cleaning during that period.

TRAVEL EXPENSES
Miscellaneous Expenses
Telephones
Installation Charges
Temporary Duty Quarters

Employee used quarters during temporary duty that did not have telephone service included within the cost of the quarters. He may be reimbursed as part of his cost of lodgings for the monthly service charge for telephone service, but he may not be reimbursed for installation charge absent a finding that the installation of the telephone was a matter of official necessity.

TRAVEL EXPENSES

B-221760 Aug. 11, 1986

Air Travel**Constructive Cost Reimbursement
Circuitous Routes**

Independent contractor of National Mediation Board (NMB) was authorized round-trip transportation from his residence in Stamford, Connecticut, to St. Paul, Minnesota. On December 3, 1984, he traveled by airplane from New York City to Chicago on personal business and later the same day traveled to St. Paul. He returned to New York City after participating in several hearings the following day. Under FTR para. 1-2.5b, travelers are entitled to reimbursement for travel by indirect route, in an amount not to exceed the cost by the usually traveled route or the actual cost, whichever is lower. Thus, claimant may be reimbursed the cost of round-trip travel, by air coach, between New York City and St. Paul, Minnesota.

OFFICERS AND EMPLOYEES

B-222006 Aug. 11, 1986

Transfers**Time Limitation on Expense Reimbursement**

Employee claims payment for travel expenses and transportation of household goods associated with a transfer from North Carolina to Kentucky, despite fact that expenses were incurred more than 2 years after effective date of transfer. The agency extended the period for completion of real estate transactions for 1 additional year under a provision of the Federal Travel Regulations. Under the regulations, employee receives an automatic extension of the 2-year period for beginning travel and transportation whenever the agency extends the period for completion of real estate transactions. Employee, therefore, is entitled to reimbursement.

OFFICERS AND EMPLOYEES

B-221059 Aug. 18, 1986

Transfers**Real Estate Expenses****Closing Charges**

A transferred employee claims expenses for an escrow closing fee incident to his purchase of a residence at his new official duty station. His agency denied the claim based on erroneous United States Department of Housing and Urban Development (HUD) information on the local customs. Based on independent inquiry to the local HUD office, we allow the claim as being consonant with the local custom and within the local customary amount.

OFFICERS AND EMPLOYEES**Transfers****Real Estate Expenses****Title Insurance Policy**

A transferred employee claims an expense for title insurance incident to his purchase of a residence at his new official duty station. His agency denied the claim because it was owner's title insurance and also based on erroneous United States Department of Housing and Urban Development (HUD) information on the local customs. While Federal Travel Regulations (FTR) para. 2-6.2d(2)(a) generally prohibits reimbursement of title insurance obtained primarily for the protection of the employee, FTR para. 2-6.2d(1)(i) allows reimbursement if it is a prerequisite to the financing or the transfer of property. Here, a portion of the owner's title insurance expense was a prerequisite to the financing. Based on independent inquiry to the local HUD office, we allow this portion of the claim as being consonant with the local custom and within the customary amount.

OFFICERS AND EMPLOYEES

B-222135 Aug. 18, 1986

Transfers**Real Estate Expenses****Duty Stations Within United States Requirement**

A Customs Service employee, whose position in Arkansas was abolished, was transferred to Canada. His claim for real estate expenses incurred in selling his residence is denied. The relocation statute requires that for reimbursement of real estate expenses, both the old and new duty stations must be located in the United States or its territories or possessions. Any erroneous advice which the employee may have received does not provide a basis for payment of these expenses.

OFFICERS AND EMPLOYEES

B-222277 Aug. 18, 1986

Transfers**Real Estate Expenses****Broker's Fees**

A transferred employee paid a 9 percent real estate commission on the sale of his residence incident to a transfer. However, the agency determined that the prevailing broker's commission rate in the area was 7 percent, and his claim for reimbursement for the additional 2 percent was denied. Employee claimed higher rate was necessary to expedite sale of house because of conditions in local housing market. Employee is not eligible for reimbursement of 2 percent difference since the statute and the prevailing regulations require that the applicable rate is the rate generally charged by real estate brokers in the area, not the rate charged by the particular broker used by the employee. If employee, to expedite sale, pays commission greater than that usually charged, he cannot be reimbursed for the extra commission.

TRANSPORTATION

B-223600 Aug. 18, 1986

Household Effects**Weight Limitation****Excess Cost Liability****Waiver****Propriety**

A transferred Federal employee performed most of the unpacking of his household goods when the carrier delivered them to his new duty station, under a Government Bill of Lading, because the carrier's unpacking services were being performed unsatisfactorily to him. He contends that his liability for excess weight charges should be reduced in an amount equal to the value of the unpacking services that he performed. The provision in the Federal Travel Regulations requiring application of a specific formula to compute excess weight charges cannot be waived regardless of extenuating circumstances. Accordingly, the employee's liability cannot be reduced as a credit for his unpacking services.

OFFICERS AND EMPLOYEES

B-222130 Aug. 22, 1986

Transfers**Real Estate Expenses****Time Limitation**

An employee was transferred in the interest of the government. He had 3 years from the date he reported for duty at his new duty station (September 27, 1982), to sell his residence at his old duty station. Shortly before the third anniversary of that date, he entered into an agreement to sell, which contained a stipulated closing date of October 31, 1985. On the question as to whether that agreement qualifies as settlement under paragraph 2-6.1e of the Federal Travel Regulations (FTR) so as to permit real estate expense reimbursement, the answer is no. The term "settlement" as used in the FTR refers to the closing where the price is paid to the seller and the property is conveyed to the purchaser. Settlement was not concluded within the time limitation provided for in the FTR so as to permit reimbursement. The agreement provided for a future closing date after the third anniversary, and the actual transfer transaction was not concluded until that later date.

OFFICERS AND EMPLOYEES

B-222150 Aug. 22, 1986

Transfers**Miscellaneous Expenses****Real Estate Deposit Forfeiture**

U.S. Customs Service employee who twice incurred lease termination expenses at temporary quarters at his new duty station may be reimbursed up to the maximum miscellaneous expense allowance since the employee acted prudently in entering the leases and the forfeitures were caused by necessary temporary duty assignments that were scheduled by the agency.

COMPENSATION

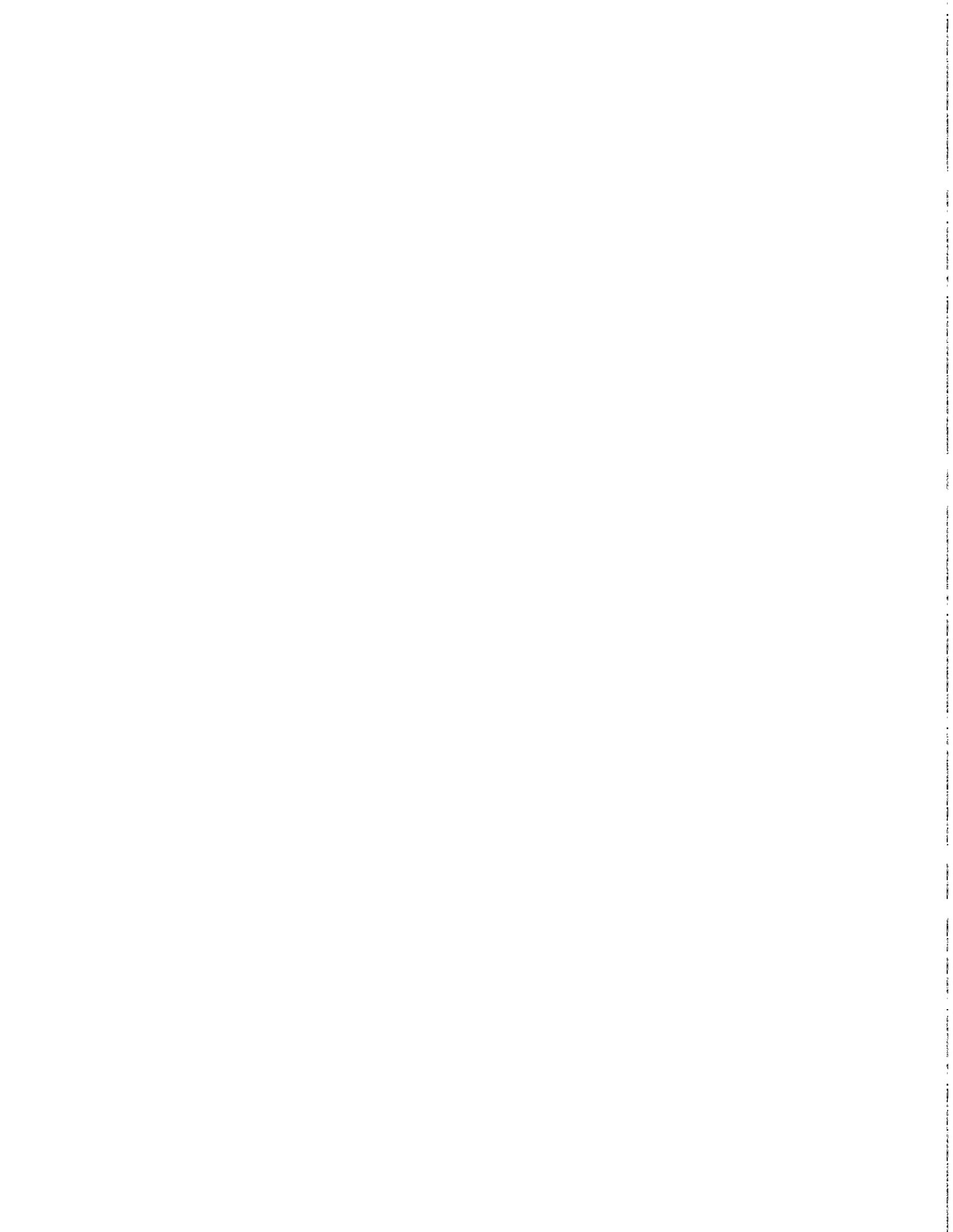
B-222163 Aug. 22, 1986

Overtime**Traveltime****Administratively Uncontrollable**

The Food and Drug Administration (FDA) declared a man-power emergency in its San Francisco District caused by shipments of contaminated watermelons and other foods. On July 10, 1985, FDA officially requested investigators from other FDA districts to travel to San Francisco "as soon as possible." Three investigators traveled that same evening in response to the request. Their claim for overtime pay for non-duty travel hours was denied by FDA on the basis that the travel could have been scheduled the following day. Under 5 U.S.C. § 5542(b)(2)(B)(iv) travel performed as a matter of immediate official necessity outside regular duty hours is compensable as overtime. In this case, since the event was administratively uncontrollable and the travel performed that evening was requested by FDA, the overtime claims are allowed.

Transfers**Real Estate Expenses****House Title in More Than one Person****Pro Rata Expense Reimbursement**

A transferred employee claims reimbursement for expenses incurred incident to the sale of a cooperative residence at his old duty station. Initially, the employee's future wife and father-in-law purchased a unit in a housing corporation which the employee occupied following his marriage. The employee claims entitlement to full reimbursement as a result of a purported oral transfer of his father-in-law's entire interest to the employee and his wife. The employee has not submitted documentation indicating the percentage of ownership held by himself, his wife, and father-in-law at the time he was notified of his transfer. Since reimbursement must be prorated to take into account the outstanding interests of non-dependent co-owners of property and the father-in-law is not claimed as a dependent, the employee's claim may not be allowed without further evidence.



**PERSONNEL LAW:
MILITARY PERSONNEL**

PAY **B-204367 Aug. 1, 1986**

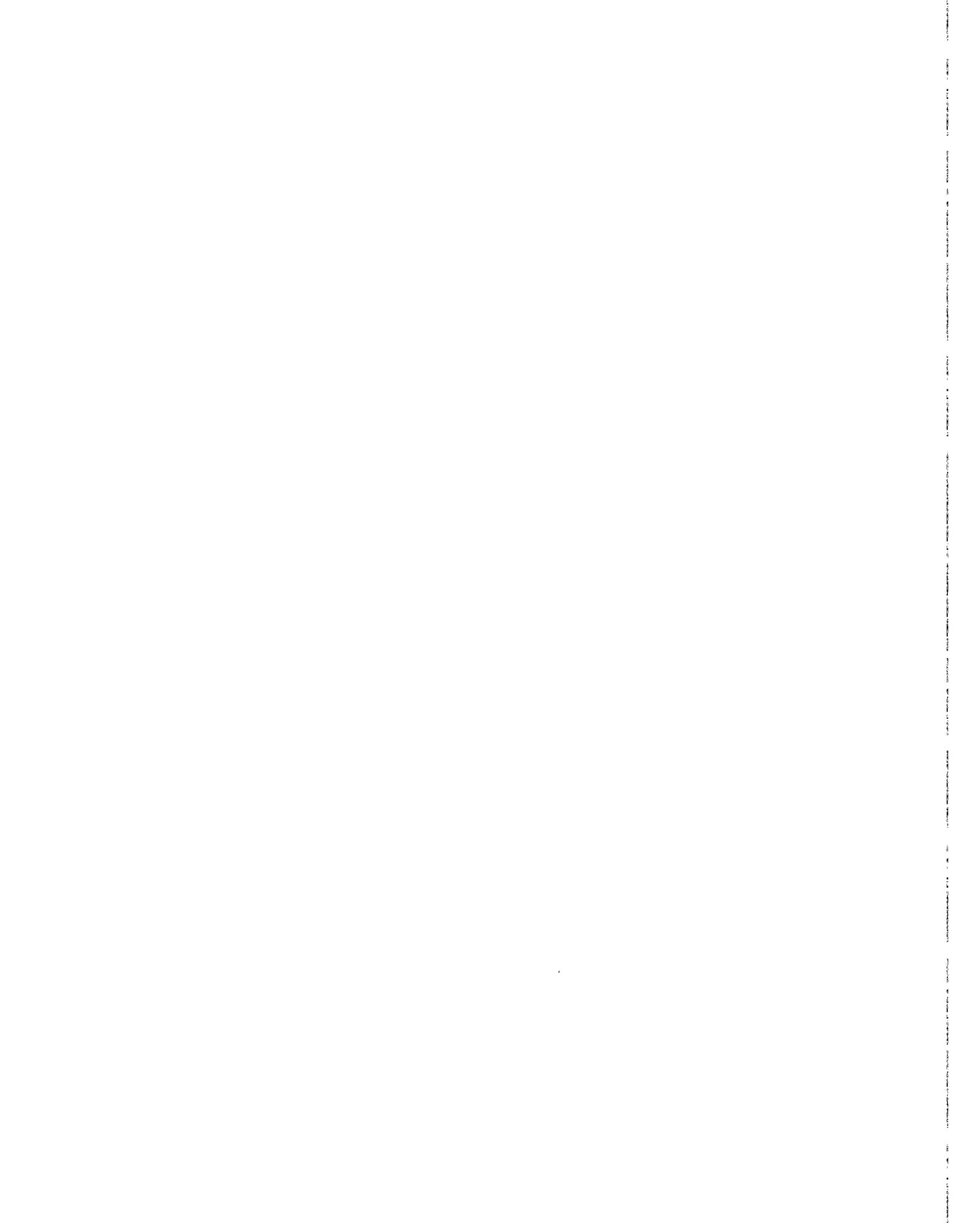
**Retired
Survivor Benefit Plan
Election Status**

A married Navy petty officer who retired prior to the effective date of the Survivor Benefit Plan (SBP) entered into a ceremonial marriage after attempting to dissolve his existing marriage through invalid foreign divorce proceedings, and he then elected SBP coverage for his alleged second spouse, listing her by name on the election form. Since his election into the SBP was under subsection 3(b) of Public Law 92-425, which required an affirmative election to participate in the SBP, and since the person for whom he elected the annuity was not his lawful wife, his election into the SBP was invalid and no annuity is payable.

TRANSPORTATION **B-221153 Aug. 21, 1986**

**Household Effects
Military Personnel
"Do-it-Yourself" Movement
Weight Evidence**

An Air Force member sought to move his household goods under the do-it-yourself program upon his separation from the service. Applicable regulations require that in order for an incentive payment to be made for such a move, the member must provide certified weight certificates establishing the weight of goods actually moved. Since the record does not establish that these requirements of the program were met, and it appears there were other irregularities involved in the move and submission of the claim, incentive pay is not payable to the former service member. Actual expenses of the move may, however, be paid.



PROCUREMENT LAW

CONTRACTS **B-221874.3 Aug. 1, 1986**
Protests **86-2 CPD 133**
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent Prior to Bid Opening/Closing Date
for Proposals

Protest of alleged solicitation impropriety apparent prior to bid opening must be filed prior to bid opening. Even if the protester's request that the contracting agency revise the solicitation before bid opening is regarded as an agency protest, protest to General Accounting Office (GAO) filed 2 months after bid opening still would be untimely since the agency's proceeding with bid opening without taking action on the protest constituted initial adverse agency action, after which any protest to GAO was required to be filed within 10 working days.

CONTRACTS **B-222515.2 Aug. 1, 1986**
Protests **86-2 CPD 134**
General Accounting Office Procedures
Timeliness of Protest
Significant Issue Exception
Prior GAO Consideration of Same Issue Effect

Untimely protest will not be considered under the significant issue exception to the General Accounting Office's timeliness rules merely because the protester is a Canadian firm, where the issues raised are ones that the General Accounting Office routinely considers on the merits.

CONTRACTS

B-222547 Aug. 1, 1986

Negotiation

86-2 CPD 135

Offers or Proposals**Evaluation****Competitive Range Exclusion****Reasonableness**

Determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude protester was unreasonable is denied where agency's technical evaluation and determination that proposal was technically unacceptable had a reasonable basis.

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

Allegation that agency was required to disclose in the solicitation a manning model developed by the agency evaluators to assess whether proposed personnel were adequate is denied since model was developed based on the tasks contained in the solicitation and merely reflected the evaluators' judgment concerning the minimum number of personnel necessary to perform the work.

BIDS

B-222611 Aug. 1, 1986

Invitation for Bids

86-2 CPD 137

Specifications**Minimum Needs Requirement****Administrative Determination****Reasonableness**

Protest that agency requirement for mirror image construction of uninterruptible power supply unit unduly restricts competition is denied where agency establishes that mirror image construction is necessary because of space limitations in existing facilities and protester has not shown that agency justification is clearly unreasonable.

CONTRACTORS

B-219791.2 Aug. 4, 1986

Responsibility

86-2 CPD 140

Determination

Review by GAO

Affirmative Finding Accepted

Allegation that awardee lacks integrity constitutes a protest against an affirmative determination of responsibility, which the General Accounting Office will not review in the absence of a showing of possible fraud or bad faith on the part of the contracting officer or a failure to apply definitive responsibility criteria.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Date Basis of Protest Made Known to Protester

Protest that agency erroneously evaluated and accepted awardee's bid is dismissed as untimely where filed with the General Accounting Office more than 10 working days after the protester received notice of adverse action on its agency-level protest.

ADVERTISING

B-222487 Aug. 4, 1986

Commerce Business Daily

86-2 CPD 141

Automatic Data Processing Equipment

Agency failed to obtain full and open competition, as required by the Competition in Contracting Act of 1984, where it failed to advertise in the Commerce Business Daily that it was soliciting offers for optical disk systems and mailed copies of the solicitation only to microphotographic equipment firms. Firms which specialize in the manufacture or sale of optical disk equipment and supplies were not solicited.

BIDDERS B-222531.4 Aug. 4, 1986
Qualifications 86-2 CPD 142
License Requirement
State, etc. Certifications

Where solicitation does not require bidder to have a specific license, allegation that successful bidder does not possess the necessary state operating authority to permit it to provide moving services required by the solicitation does not affect eligibility of bidder for award; rather, it raises a matter to be settled between the contractor and state authorities, not federal officials.

CONTRACTORS
Responsibility
Determination
Review by GAO
Affirmative Finding Accepted

The General Accounting Office does not review affirmative determinations of responsibility except in limited circumstances not alleged here.

CONTRACTS B-222565; B-222566
Negotiation Aug. 4, 1986
Offers or Proposals 86-2 CPD 143
Unsolicited Proposals
Rejection

Protest that contracting agency failed to notify prospective offerors that engine qualification testing was required for a firm to be approved as a source for aircraft engine parts is without merit, since the protester was aware that it would be required to obtain approval as a source for the parts and the agency had not established specific qualification standards at the time it received the protester's proposal.

CONTRACTS B-221891.2; B-221892.2
Protests Aug. 5, 1986
Interested Party 86-2 CPD 146
Requirement
Protester not in Line for Award

Although original protest filed by the second low bidder against the proposed cancellation of a total small business set-aside was considered by the General Accounting Office (GAO) on the merits where the Small Business Administration (SBA) had yet to determine conclusively whether the low bidder was a small business concern, the protester is no longer an interested party entitled to request reconsideration of GAO's prior decision upholding the propriety of the proposed cancellation because the SBA's subsequent determination that the low bidder is in fact small means that the protester would not be eligible for an award even if the prior decision were to be reversed.

CONTRACTS B-222414.2; B-222415.2
Negotiation Aug. 5, 1986
Requests for Proposals 86-2 CPD 147
Cancellation
Administrative Discretion
Reasonable Exercise

Agency determination to cancel solicitations had reasonable basis where the procuring activity determined that the item being procured could be obtained under an existing contract option, which was not known to the procuring activity at the time of issuance of the solicitations, and exercise of the option was advantageous to the government.

CONTRACTS
Options
Exercised
Administrative Discretion

Option was properly exercised where protester's lower price offer under canceled solicitations does not provide a valid cost comparison because it was for a nonapproved item, requiring lengthy and extensive testing, and a life-cycle cost analysis is required to determine the cost of an alternate configuration to agency inventory.

CONTRACTS B-222437.2 Aug. 5, 1986
Protests 86-2 CPD 148
General Accounting Office Procedures
Reconsideration Requests
Additional Evidence Submitted
Available but not Previously Provided to GAO

Where a party submits in its request for reconsideration arguments that it could have presented at the time of its initial protest but did not, the arguments do not provide a basis for reconsideration.

CONTRACTS B-222462 Aug. 5, 1986
Negotiation 86-2 CPD 149
Offers or Proposals
Discussion With all Offerors Requirement
Varying Degrees of Discussions
Propriety

Successive rounds of discussions for the purpose of advising offerors of deficiencies in their proposals are unobjectionable absent a showing that the contracting agency acted unreasonably or with the intent of providing improper assistance to bring an inferior proposal up to the level of another.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Technical Superiority v. Cost
Solicitation Provisions

Where the evaluation criteria stated that Cost was the least important factor, but would increase in importance in relation to proposals' equality relative to the technical factors, the contracting agency reasonably decided that the slight technical advantage of the protester's proposal did not warrant its 50 percent larger costs.

CONTRACTS
Protests
Allegations
Unsubstantiated

B-222462 Con't
Aug. 5, 1986

Unsupported allegations that the awardee misrepresented personnel availability and qualifications in its proposal fails to meet the protester's burden of proving its case. Fact that the awardee requested to substitute four personnel after award does not show that the original personnel were proposed in bad faith.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Competitive Range Exclusion
Reasonableness

B-222484 Aug. 5, 1986
86-2 CPD 150

A technically acceptable proposal may be excluded from the competitive range under a solicitation for a cost-reimbursement contract when the offeror's proposed cost is substantially higher than both the cost proposals of other offerors submitting technically acceptable proposals and the agency's estimate and the agency determines that the higher cost proposal has no reasonable chance for award.

Protester's contention that the agency erred in excluding its technically acceptable proposal from the competitive range without discussions is denied, since the record shows that the agency had a reasonable basis for its belief that the protester's proposed cost (approximately \$14.5 million), which was more than \$10 million higher than the two other technically acceptable proposals, was so far out of line that the protester's proposal did not have a reasonable chance for award.

BIDDERS

B-222516; B-222791

Debarment

Aug. 5, 1986

De Facto

86-2 CPD 151

**Nonresponsibility Determination v. De Facto
Debarment**

Nonresponsibility determinations do not constitute a de facto debarment from government contracting where the record indicates that the determinations were based upon the protester's current lack of capability, and that future determinations will be based on capability at the time of the procurement.

CONTRACTORS

Responsibility

Determination

Factors for Consideration

Previous Rating, etc.

The fact that a firm has been found responsible and successfully performed on other contracts does not demonstrate the unreasonableness of a determination that a division of that firm has not performed satisfactorily on contracts for the same items as those currently being procured. Responsibility determinations are based upon the circumstances of each procurement and are inherently judgmental.

CONTRACTORS

Responsibility

Determination

Review by GAO

Nonresponsibility Finding

Nonresponsibility determination may be based upon agency's reasonable perception of inadequate prior and current performance, even where the contracts in question have not been terminated for default and the contractor disputes the agency's characterization of them as delinquent or has filed a claim for an equitable adjustment.

CONTRACTS
Protests
Burden of Proof
On Protester

B-222516; B-222791 Con't
Aug. 5, 1986

Protester fails to carry its burden of demonstrating that a nonresponsibility determination was unreasonable or made in bad faith where the contracting officer reasonably determines that (1) the protester is seriously deficient in performing current contracts for the same or related goods; (2) the deficiencies were not beyond the protester's control; and (3) award should not be made until the protester has taken corrective action and proven its effectiveness.

CONTRACTS
Negotiation
Awards

B-222520 Aug. 5, 1986
86-2 CPD 152

Price Determinative Factor

Where RFP for lathes neither required identification of the lathes proposed by offerors nor required any technical data and the sole evaluation criterion was price, agency properly accepted the low offer where the offeror did not take any exception to the solicitation's requirements. Although the awardee submitted an unsolicited brochure on a particular model lathe with its initial proposal (the model offered was not specified), the proposal indicated that the descriptive literature was not intended to qualify the offeror's obligation to meet the specifications.

CONTRACTS
Protests

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

Grounds for protest are dismissed as untimely where the bases for protest are initially presented almost 1 month after the protester should have known of the basis of the protest grounds as a result of information received under a Freedom of Information Act request.

BIDS
Invitation for Bids
Clauses
Commercial Product

B-222538 Aug. 5, 1986
86-2 CPD 153

The intent of the term "commercial product" used in a clause in a government solicitation requiring the delivery of a "standard commercial product" is the use that appears in the Federal Acquisition Regulation. A product is not a "commercial product" when its only use is for a military application.

The agency's waiver of a commercial product clause, after bid opening, is proper where the IFB required a product which is only used by the government to test military vehicles and the clause was included in the IFB by mistake.

BIDS
Responsiveness
Test to Determine
Unqualified Offer to Meet all Solicitation Terms

A bid which, on its face, takes no exception to the IFB's requirements is responsive, since it is an unqualified promise to do the exact thing called for in the solicitation.

BIDS
Invitation for Bids
Cancellation
After Bid Opening
Low Bid in Excess of Government Estimate

B-222586; B-223260
Aug. 5, 1986
86-2 CPD 154

Where no award could be made under indefinite quantity IFB because the low bid had expired and remaining two bids were reasonably found to be excessive, contracting agency properly issued new solicitation to meet its needs for the item being procured.

BIDS
Prices
Excessive

B-222586; B-223260 Con't
Aug. 5, 1986

Contracting agency reasonably found that protester's bid under indefinite quantity invitation for bids (IFB) was excessive where the bid was significantly higher than both the low bid under the current IFB and the price at which award was made under the prior requirements contract for the same item. The fact that the protester's current bid was close to the price at which award to the protester was made under a prior definite quantity procurement for the item does not indicate that the current bid was reasonable since the prior procurement was conducted on an exigency basis and the agency paid a premium price for the item because the protester was the only bidder with sufficient stock on hand to meet the agency's needs.

CONTRACTS
Protests
Allegations
Not Prejudicial

Protest that synopsis of solicitation was not properly published in Commerce Business Daily is denied as the protester actually knew of the procurement in time to submit an offer and has not specifically challenged agency's determination that the urgent nature of the procurement made it exempt from publication requirement.

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

B-222602.3 Aug. 5, 1986
86-2 CPD 155

Prior decision is affirmed on reconsideration where requester does not demonstrate that the decision was legally or factually incorrect.

SMALL BUSINESS ADMINISTRATION B-222610 Aug. 5, 1986
Contracts 86-2 CPD 156
Contracting With Other Government Agencies
Procurement Under 8(a) Program
Review by GAO

Small Business Administration failure to follow Federal Acquisition Regulation requirement to prepare a request to the contracting agency that an effort be committed to the section 8(a) program, and the resultant failure by the contracting agency to evaluate such request, do not provide a basis to object to the placement of the contract in the 8(a) program, since the infringed provisions only provide information and guidance and the record indicates that required procedures were followed in substance.

BIDS B-222641 Aug. 5, 1986
Invitation for Bids
Cancellation
After Bid Opening
Compelling Reasons Only

Although a compelling reason must exist to cancel an invitation for bids after bids have been opened in order to preserve the integrity of the sealed bidding system, such a reason exists where no responsive bid has been received from a responsible bidder.

BIDS
Responsiveness
Solicitation Requirements not Satisfied
Conformability of Equipment, etc. Offered

Where an invitation for bids requires the submission of descriptive literature, a bid must be rejected as nonresponsive if the literature submitted evidences nonconformity with the material specifications of the solicitation. Thus, a bid was properly rejected as nonresponsive where the firm's printed product literature accompanying its bid stated that the firm's offered machine had a spindle speed range of 55-4250 rpm, rather than 50-3500 rpm as called for in the solicitation.

CONTRACTS

B-222773 Aug. 5, 1986

Negotiation

86-2 CPD 157

Requests for Proposals**Specifications****Minimum Needs****Not Overstated**

Protest that agency should not impose requirement that downtime of nontactical vehicles, primarily cars and trucks, not exceed 5 percent of available time is unreasonable because agency has not complied with its own regulation concerning the replacement of those vehicles is denied since regulation does not require agency to replace vehicles at specified time periods and record shows that agency determined that applying this standard to its fleet of older vehicles is necessary to satisfy its minimum needs.

CONTRACTS

Negotiation

Requests for Proposals**Specifications****Restrictive****Inability to Meet**

Protest that performance standards for maintenance of motor vehicle fleet are commercially impossible to meet and result in excessive contract payment deductions is denied where reduction of excessive downtime of vehicles is critical to the agency's needs and agency's assertion that requirements can be met through more diligent efforts by the contractor is not found unreasonable. Furthermore, solicitation indicates that deductions will be made if performance is unsatisfactory and clearly the contractor's fault so that ample opportunity exists for the contractor to establish mitigating circumstances.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Experience Rating

B-223155 Aug. 5, 1986
86-2 CPD 158

Protest that proposed awardee, a newly formed corporation, could not receive acceptable score under "organizational experience and past performance" evaluation criterion is denied where the agency based its evaluation on the performance of the predecessor to the proposed awardee, since the operations of the predecessor firm were the same and included the same key personnel.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Technical Acceptability

Protest alleging that protester's technical proposal should have received a higher score than the proposed awardee's technical proposal is denied where agency's evaluation of proposals had a reasonable basis and was consistent with evaluation factors set forth in the solicitation.

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

Protest that RFP is overly restrictive, improperly allocates score points among the evaluation factors, and fails to specify normalization factors for areas of cost variance, is based on alleged improprieties apparent on the face of the solicitation and must be filed in General Accounting Office before closing date for receipt of initial proposals.

CONTRACTS

B-222793 Con't

Negotiation

Aug. 6, 1986

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

The requirement for meaningful discussions is fulfilled when an agency advises an offeror with specificity of areas of its proposal requiring elaboration, even though agency does not raise experience weaknesses, where agency apparently believed these were actual weaknesses not subject to remedy through discussions rather than mere inadequacies in the way the proposal was assembled.

CONTRACTS**Negotiation****Source Selection****Board, Commission, etc.****Overruled by Source Selection Official**

Even where a technical evaluation panel does not find protester weak in experience based on evaluation of its initial proposal, source selection official may rely on opposite conclusion by a second evaluation panel based on review of best and final proposal, so long as those conclusions reasonably reflect the contents of the protester's proposal.

BIDS

B-223099.2 Aug. 6, 1986

Mistakes

86-2 CPD 162

Correction**Nonresponsive Bids**

A bid that is nonresponsive may not be corrected after opening.

BIDS **B-223099.2 Con't**
Responsiveness **Aug. 6, 1986**
Solicitation Requirements not Satisfied
Conformability of Equipment, etc. Offered

Where the flight manual for a helicopter bid by the protester shows that the helicopter cannot meet the terms of the solicitation, the bid was properly rejected as nonresponsive.

A deficiency or deviation which goes to the substance of a bid by affecting the price, quality, or quantity of the article offered is a major deviation that requires the bid to be rejected as nonresponsive. Protester's bid of a helicopter with a 94 knot airspeed, six knots less than called for in the solicitation, is not an immaterial deviation.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

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

A protest based on alleged improprieties in a solicitation which are apparent prior to the bid opening date must be filed before that time.

CONTRACTS

B-223121-2, et al.

Protests

Aug- 6, 1986

Allegations

86-2 CPD 163

Unsubstantiated

Protest that procuring activity did not provide adequate specifications and drawings and refused to supply samples is denied where protester does not produce any evidence to support its protest.

CONTRACTS **B-224492 Aug. 6, 1986**
Protests **86-2 CPD 165**
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent Prior to Closing Date for Receipt
of Quotations

Protest that specifications in a request for quotations are unduly restrictive is untimely where the protest was filed after the closing date set for receipt of quotations. Protester's alleged reliance on oral advice from the contracting officer that the specifications were a "reference point only" was unreasonable where such advice was inconsistent with the clear meaning of the specifications and with the fundamental principle that an agency may not solicit quotations on one basis and then make award on another basis.

BIDS **B-221914.2, et al.**
Invitation for Bids **Aug. 7, 1986**
Pricing Structure **86-2 CPD 166**
Risk

Solicitations that impose cost risks on the contractors are not improper.

CONTRACTS
Requirements
Estimated Amounts Basis
Best Information Available

Large disparity between minimum and maximum order limit on requirements contract does not indicate government estimates of requirements are not based upon the best information or made in bad faith. Solicitation properly based evaluation on government estimates rather than minimum order limits.

CONTRACTS
Requirements
Use Basis

B-221914.2, et al. Con't
Aug. 7, 1986

Agency is not prohibited by the Federal Acquisition Regulation, 48 C.F.R. § 16.503(b), from entering into requirements contracts for complex spare parts, whether or not they are commercial or commercial-type products.

CONTRACTS
Negotiation
Offers or Proposals
Preparation
Costs
Denied

B-222458.2 Aug. 7, 1986
86-2 CPD 167

Claim for attorney's fee and proposal preparation costs is not for consideration where protest is dismissed as untimely.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Failure to Diligently Pursue Protest

Protest to the General Accounting Office subsequent to agency-level protest filed 6 weeks after agency notified protester of rejection of proposal is untimely since protester did not diligently pursue information that formed basis for protest.

CONTRACTS **B-224431.3 Aug. 7, 1986**
Protests **86-2 CPD 170**
Remedial Relief Possibility Requirement

An allegation that a government employee's improper disclosure of the protester's proprietary manufacturing information permitted a competitor to offer an "equal" product in a brand name or equal procurement is dismissed, since there is no relief the General Accounting Office can grant.

GENERAL ACCOUNTING OFFICE
Jurisdiction
Contracts
Disputes
Between Private Parties

Protest that a competitor may be using the protester's proprietary data presents a dispute between private parties, which General Accounting Office therefore will not consider.

CONTRACTS **B-221900.2 Aug. 8, 1986**
Negotiation
Awards
To Other Than low Offeror

Based upon the record before GAO, it appears that award to a higher priced, technically superior firm was reasonable and consistent with the stated evaluation and award criteria.

CONTRACTS **B-222928.2 Aug. 8, 1986**
Small Business Concerns **86-2 CPD 171**
Awards
Small Business Administration's Authority
Certificate of Competency

Protest Small Business Administration's failure to issue certificate of competency is dismissed where protester does not show that government officials acted in bad faith or that material information was not considered.

CONTRACTS **B-222928.2 Con't**
Small Business Concerns **Aug. 8, 1986**
Awards
Small Business Administration's Authority
Certificate of Competency

Small Business Administration's (SBA) failure to provide protester an opportunity to rebut agency's version of the facts prior declining to issue a certificate of a competency (COC) does not demonstrate bad faith. The regulations encourage complete exchange of information between the contracting agency and SBA to resolve any disagreement about a firm's ability to perform, but do not require that SBA provide COC applicants with an opportunity to present information other than that in their original applications.

CONTRACTS **B-221374.9 Aug. 11, 1986**
Negotiation **86-2 CPD 172**
Offers or Proposals
Evaluation
Criteria
Application of Criteria

When an evaluation formula set forth in a solicitation already gives equal weight to technical factors and cost, cost may not properly be given additional weight.

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

General Accounting Office denies request for reconsideration of a prior decision which held that a protester was not prejudiced by the failure of the solicitation to state that an annual cost ceiling was expressed in present value terms. Where the request for best and final offers, in effect, amended the solicitation by deleting the ceiling, protester does not show error of law or fact that would warrant reversal of the prior decision.

CONTRACTS

B-221374.9 Con't

Protests

Aug. 11 1986

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

The General Accounting Office denies request for reconsideration of a prior decision which held that where a solicitation did not specify the inflation rates that would be used for cost evaluation purposes, the agency was free to use any reasonable rates and there was not a reasonable possibility of prejudice due to the agency's use of inflation rates that were lower than those used by the protester.

BIDS

B-222492.2 Aug. 11, 1986

Responsiveness

86-2 CPD 173

Pricing Response Nonresponsive to IFB Requirements**Pricing Formula**

A low lump-sum bid for repair and modification of military family housing units that contains line item prices which exceed the statutory price limitation for some line items is technically nonresponsive. This bid may not be corrected to reallocate prices to other line items even where the lump-sum bid price would not change on reallocation because the bidder has not claimed or furnished proof of a mistaken price allocation. Although the bidder generally argues that it would not have intentionally submitted a nonresponsive bid, but for a mistake of some sort, this general claim of mistake is not sufficient to permit a reallocation of the bid price over the line items.

BIDS **B-222855 Aug. 11, 1986**
Responsiveness **86-2 CPD 174**
Exceptions Taken to Invitation Terms

Except as warranty in preprinted terms and conditions of sale may have limited the protester's obligation to perform, inclusion of the preprinted form does not render its bid nonresponsive, provided the protester indicates elsewhere in the bid that the form is submitted for the limited purpose of demonstrating the terms of the protester's standard commercial warranty.

Bid is nonresponsive where the protester omits a portion of the bid package and instead submits a typewritten "Introduction" clarifying its understanding of related material obligations and modifying some of them.

BIDS **B-223091; B-223156**
Responsiveness **Aug. 11, 1986**
Failure to Furnish **86-2 CPD 175**
Something Required

Forest Service properly rejected bid as nonresponsive on timber sale where bidder failed to submit form 2400-43, Certification of Non-Substitution, since requirement was material term of the sale which cannot be waived after bid opening.

BIDS **B-223154 Aug. 11, 1986**
Invitation for Bids **86-2 CPD 176**
Cancellation
Not Required, Warranted, etc.

Protest alleging that IFB should be canceled and resolicited where bid may have been lost by the government is denied, since the government obtained full and open competition where three bids were received and there is nothing in the record which suggests that reasonable prices were not obtained or that the loss of the bid had anything to do with a specific intent to exclude the protester.

BIDS
Late
Lost

B-223154 Con't
Aug. 11, 1986

It is not permissible to make award to a bidder whose bid may have been lost by the government prior to bid opening; to do so would be inconsistent with protecting the integrity of the competitive bidding system.

BIDS
Prices
Below Cost

B-223680 Aug. 11, 1986
86-2 CPD 177

Not Basis for Precluding Award

There is no legal basis to object to a below-cost bid. Whether a bidder can meet contract requirements in light of its low price is a matter of bidder responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not involved here.

CONTRACTS

Protests

Interested Party Requirement

Protester not in Line for Award

Protest that low bid should be rejected as unbalanced is dismissed where protester is not next in line for award if protest is sustained.

SMALL BUSINESS ADMINISTRATION B-224347 Aug. 11, 1986

Contracts 86-2 CPD 178

Contracting With Other Government Agencies

Procurement Under 8(a) Program

Withdrawal of Procurement

Protest of agency's withdrawal of procurement from the Small Business Act's section 8(a) program is denied where the protester does not present evidence that demonstrates a specific and malicious intent by government officials to injure the firm.

CONTRACTS

B-224411.2 Aug. 11, 1986

Protests

86-2 CPD 179

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

Prior decision is affirmed where request for reconsideration, while revealing an inaccurate statement in the prior decision, does not show an error of fact or law that would warrant reversal of that decision.

BIDS

B-224367 Aug. 12, 1986

Responsiveness

86-2 CPD 181

Solicitation Requirements not Satisfied**Conformability of Equipment, etc. Offered**

Where bidder offers to supply equipment that does not comply with the material terms of the solicitation, the bid properly was rejected as nonresponsive.

BIDS**Responsiveness****Test to Determine****Unqualified Offer to Meet all Solicitation Terms**

Protest that awardee's bid was nonresponsive is denied where the awardee offered to supply equipment that met the requirements of the solicitation.

CONTRACTS

B-224367 Con't

Protests

Aug. 12, 1986

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

Protest that specification restricts competition concerns an impropriety apparent from the face of the solicitation and, therefore, is dismissed as untimely where not filed before the bid opening date. Moreover, even if protester's pre-bid opening expression of concern to the contracting agency is considered a protest, firm's receipt of solicitation amendment that clearly indicated agency's adverse position on the matter constitutes knowledge of initial agency action, so that protest to the General Accounting Office, filed more than 10 working days later, is untimely on that basis as well.

BIDDERS

B-222063 Aug. 13, 1986

Debarment**Labor Stipulation Violations****Davis-Bacon Act****Debarment Unwarranted**

The Department of Labor recommended debarment of a contractor and two of its officers under the Davis-Bacon Act because the contractor had underpaid wages to its employees. Based on our independent review of the record, we find insufficient evidence that the underpayment constituted a substantial violation of the Act. Accordingly, neither the contractor nor its two officers will be debarred under the Act.

CONTRACTS **B-222650 Aug. 13, 1986**
Negotiation **86-2 CPD 183**
Late Proposals and Quotations
Modification of Proposal
Telegraphic
Evidence of Timely Delivery

Where there is no evidence to establish that a proposal modification ever was received by the procuring activity, notwithstanding protester's assertion that it in fact sent a telex modifying its price, or that government mishandling in the process of receipt was the paramount cause of nonreceipt, copy of modification submitted with postaward protest may not be considered.

CONTRACTORS **B-223033 Aug. 13, 1986**
Responsibility **86-2 CPD 184**
Determination
Review by GAO
Nonresponsibility Finding

Protest against contracting officer's negative responsibility determination is denied where the determination was based on a negative preaward survey report which found that the prospective contractor lacked adequate financial resources to perform the contract and the record contains documentation that provides a reasonable basis for the preaward survey findings and the contracting officer's determination.

CONTRACTS
Protests
Allegations
Unsubstantiated

Record does not support protester's contention that contracting agency deliberately delayed in providing it with a copy of the solicitation, which protester asserts adversely affected its ability to arrange contract financing acceptable to the agency.

CONTRACTS
Protests
Burden of Proof
On Protester

B-223033 Con't
Aug. 13, 1986

Where an agency rebuts an issue raised in the initial protest and the protester fails to respond to the agency's rebuttal in its comments on the agency report, the issue is deemed abandoned.

CONTRACTS
Protests
Preparation
Costs
Noncompensable

Claim for bid preparation and protest filing costs is denied where General Accounting Office finds a protest to be without merit.

BIDS
Responsiveness
Brand Name or Equal Procurement

B-223131 Aug. 13, 1986
86-2 CPD 185

Solicitation's purchase description was defective where it permitted the submission of brand name or equal products but contained no listing of the salient characteristics equal products must meet. Nevertheless, where protester offered "equal" product which is significantly different from brand name product, agency properly rejected protester's bid as nonresponsive.

CONTRACTS

Protests

Allegations

Unsubstantiated

B-224509.2 Aug. 13, 1986

86-2 CPD 182

Where a protester fails to offer any evidence that the agency disclosed proposed prices to other offerors, its contention in this regard is mere conjecture and provides no basis to sustain a protest.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

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

Protest based on alleged solicitation improprieties incorporated into the solicitation after a closing date for receipt of proposals must be filed before the next closing date.

CONTRACTS

Small Business Concerns

Awards

Small Business Administration's Authority

Size Determination

B-224506 Aug. 14, 1986

86-2 CPD 186

Where the Small Business Administration (SBA) determined that an offeror is not small based on its affiliation as a joint venturer with large business subcontractors, the contracting agency properly rejected the offeror's proposal without giving the offeror an opportunity to cure the deficiency, since a concern cannot become eligible for a particular procurement by taking steps to meet the size standard after SBA has determined the concern is not small for the purposes of that procurement.

CONTRACTS B-223743.2 Aug. 15, 1986
Protests 86-2 CPD 187
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent Prior to Closing Date for Receipt
of Quotations

General Accounting Office will not reconsider dismissal of protest as untimely where protester has not provided an understandable explanation of why it was unable to protest "ambiguous" and "restrictive" specifications prior to receipt of quotations.

CONTRACTS B-224496.2 Aug. 15, 1986
Protests 86-2 CPD 188
Subcontractor Protests
Award "for" Government

Dismissal of a protest against the award of a subcontract is affirmed where the subcontract is not made by or for the government, which are the only circumstances in which the General Accounting Office will review such protests. A subcontract is "for" the government where the prime contractor is operating a government-owned facility, is a construction management prime contractor under a cost-type contract, or is otherwise serving as a mere conduit between the government and the subcontractor.

CONTRACTS B-224511 Aug. 15, 1986
Negotiation 86-2 CPD 189
Late Proposals and Quotations
Rejection Propriety

Late hand-carried proposals may not be considered where there is no showing that wrongful government action was the paramount cause of lateness. A proposal that admittedly was late due to delays in a flight from the city where the protester's office is located to where the procuring activity is located therefore was properly rejected.

BIDDERS**B-214365 Aug. 18, 1986****Debarment****Labor Stipulation Violations****Davis-Bacon Act****Subcontractors****Debarment Required**

The Department of Labor requested reconsideration of our prior determination not to debar a subcontractor for violations of the Davis-Bacon Act. Upon reconsideration and based on another review of the record before us, we conclude that the subcontractor disregarded its obligations to its employees under the Act by underpaying the employees and by submitting inaccurate, incomplete, and falsified payroll records. Therefore, the subcontractor will be debarred under the Act.

CONTRACTS**B-219886.3 Aug. 18, 1986****Protests****86-2 CPD 193****Preparation****Costs****Compensable**

Claimant is entitled to recover undisputed amount for cost of pursuing its protest; however, request for payment of attorney fees is denied where protester presents no evidence from the attorneys involved as to the time spent on the case and the fees charged for these services.

CONTRACTS**B-220425.2 Aug. 18, 1986****Protests****86-2 CPD 192****Preparation****Costs****Compensable**

Protester may recover the costs it incurred in filing and pursuing its protest as well as its proposal preparation costs where the agency unreasonably excluded the protester from the competition and no other remedy is available.

CONTRACTS B-221347.4 Aug. 18, 1986
Protests 86-2 CPD 194
General Accounting Office Procedures
Reconsideration Requests
Additional Evidence Submitted
Available but not Previously Provided to GAO

An argument that a protest was untimely may not be asserted for the first time in a reconsideration request where the agency could have, but did not, challenge timeliness in its report on the protest.

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

Prior decision is affirmed where the party requesting reconsideration has established no mistake of law or fact in holding that a firm, relying on solicitation amendment misstating agency's requirement, did not offer an item it otherwise would have offered.

CONTRACTS B-222562 Aug. 18, 1986
Negotiation 86-2 CPD 190
Offers or Proposals
Discussion With all Offerors Requirement
"Meaningful" Discussions

Contracting agencies generally must hold discussions with all responsible offerors for a negotiated procurement whose proposals are within the competitive range, and in order for these discussions to be meaningful, agencies must point out weaknesses, deficiencies, or excesses in proposals unless doing so would result in technical transfusion or technical leveling.

CONTRACTS **B-222562 Con't**
Negotiation **Aug. 18, 1986**
Offers or Proposals
Discussion With all Offerors Requirement
"Meaningful" Discussions

Protest is sustained where the agency conducted a limited form of discussions--identical technical and cost questions asked of all competitive range offerors--which were not justified by the agency's concerns as to technical transfusion or technical leveling and which effectively precluded the protester from any reasonable opportunity to improve its offer because the questions were unrelated to perceived areas of weakness or deficiency existing in the firm's initial proposal.

BIDS **B-222593 Aug. 18, 1986**
Alternative **86-2 CPD 191**
Acceptability

Where a bidder submits a bid offering alternative items that meet the specifications, the government is not precluded from evaluating and accepting the bid.

CONTRACTS **B-222614.2 Aug. 18, 1986**
Protests **86-2 CPD 196**
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

Prior decision upholding agency's cancellation of solicitation because of lack of sufficient funds is affirmed where the arguments raised by the protester in its request for reconsideration do not show that the prior decision was erroneous.

CONTRACTS B-222648.2 Aug. 18, 1986
Protests 86-2 CPD 198
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

Dismissal of protest for failure to diligently pursue information which forms the basis of protest is affirmed where the request for reconsideration does not establish that the initial decision was factually or legally incorrect.

CONTRACTS B-222649 Aug. 18, 1986
Negotiation 86-2 CPD 195
Offers or Proposals
Rejection
Propriety

Procuring agency's rejection of protester's proposal was reasonable where the protester's best and final offer made significant reductions in its proposed staffing from levels that were agreed to during discussions, and that the agency had informed the protester were only marginally acceptable.

BIDS B-223894 Aug. 18, 1986
Prices 86-2 CPD 197
Below Cost
Not Basis for Precluding Award

Allegation that bid was below cost does not provide a valid basis on which to challenge a contract award. Allegations regarding the possible violation of anti-trust laws are properly for referral to the Department of Justice.

BONDS **B-222631 Aug. 19, 1986**
Requirement **86-2 CPD 199**
Bid, Performance, etc.
Administrative Determination

Where contract for mechanical operation and maintenance services in a federally-owned building is for a 3-year term, a requirement for a bid guarantee and a performance bond, each equal to 20 percent of the contract price for the entire period, does not unduly restrict competition. The government reasonably may seek to protect its interest for the effective period of the contract.

CONTRACTS **B-223614.2 Aug. 19, 1986**
Protests **86-2 CPD 200**
General Accounting Office Procedures
Filing Protest With Agency

Dismissal of a protest for failure to meet the requirement that a protester provide the contracting agency with a copy of the protest within 1 working day after the protest is filed, is affirmed. The sending of a mailgram copy of the protest to the contracting agency does not satisfy the notice requirement where the agency did not receive the mailgram.

CONTRACTS **B-223664 Aug. 19, 1986**
Protests **86-2 CPD 201**
Allegations
Unsubstantiated

Allegation that contracting activity and the Small Business Administration acted fraudulently and in bad faith in finding a small business concern nonresponsible is dismissed where the protester fails to submit any evidence substantiating its claim.

CONTRACTS
Awards
Propriety

B-222575 Aug. 20, 1986
86-2 CPD 202

Agency properly refused to issue protester a special use permit for campground operations when protester failed to satisfy condition precedent to award of permit.

BIDS
Responsiveness
Exceptions Taken to Invitation Terms

B-223137 Aug. 20, 1986
86-2 CPD 203

Bid must be rejected as nonresponsive when commercial warranty policy included with bid deviates from warranty provisions in invitation for bids.

CONTRACTS
Small Business Concerns
Awards
Small Business Administration's Authority
Certificate of Competency
Inapplicability of COC Procedures

Since only cases involving the responsibility of a small business firm are referred to the Small Business Administration (SBA) under its certificate of competency (COC) procedures, a contracting officer is not required to refer rejection of a nonresponsive bid to SBA for possible issuance of a COC.

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

B-223623 Aug. 20, 1986
86-2 CPD 204

A protest filed with the General Accounting Office more than 10 working days after the contracting agency denied the firm's agency-level protest is untimely and will not be considered.

CONTRACTS

B-223978 Aug. 20, 1986

Protests

86-2 CPD 205

Authority to Consider**Contract Administration Matters**

A protester's complaints regarding an agency's alleged failure to mitigate damages under a defaulted contract are matters of contract administration, which the General Accounting Office does not consider.

CONTRACTS**Protests****Interested Party Requirement****Direct Interest Criterion**

A protester complaining that an agency improperly determined that an offeror under a reprocurement solicitation was nonresponsible is not an interested party for purposes of maintaining a protest at the General Accounting Office where there is no allegation that the protester was an offeror under the solicitation.

CONTRACTS

B-224503 Aug. 20, 1986

Protests

86-2 CPD 206

Basis for Protest Requirement

Protest is dismissed for failure to set forth a detailed statement of the legal and factual grounds of protest where the protester states only that the contracting agency improperly rejected its proposal as technically unacceptable, but gives no explanation of the basis of the agency's rejection of its proposal or why the rejection was improper.

CONTRACTS **B-222517.3 Aug. 21, 1986**
Protests **86-2 CPD 207**
General Accounting Office Procedures
Reconsideration Requests
Error of Fact or Law
Not Established

Prior decision is affirmed in response to request for reconsideration where request does not establish that the decision included errors of law or fact that would warrant its reversal.

BIDDERS **B-222548.2 Aug. 21, 1986**
Suspension **86-2 CPD 208**
Eligibility for Contract Award

Where seller of business which has not been formally dissolved and remains in existence as a legal entity was suspended at time of submission of a proposal and the firm remains suspended, under applicable regulation, the suspended firm's proposal could not be evaluated for award or included in the competitive range absent a waiver from the Secretary of the Navy or his authorized representative. Accordingly, the Navy properly excluded proposal from consideration notwithstanding that the proposal was assigned as part of sale to another firm which currently is eligible to contract with the government.

BIDS **B-222646 Aug. 21, 1986**
Responsiveness **86-2 CPD 209**
Exceptions Taken to Invitation Terms
Small Business Requirements

Bid received under total small business set-aside, wherein the bidder represented that it was a small business and listed its own (small business operated) plant as the place of performance but represented that not all supplies to be furnished would be manufactured by a small business, is ambiguous. Its rejection as nonresponsive was therefore proper, notwithstanding the inclusion of a clause prohibiting any change in the designated place of performance absent agency approval.

CONTRACTS

B-223845 Aug. 21, 1986

Protests

86-2 CPD 212

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

Protest is untimely when the first submission received at the General Accounting Office (GAO) from the protester indicates that the protester knew the basis for its protest more than 10 days prior to GAO's receipt of the protest.

BIDS

B-223940 Aug. 21, 1986

Prices

86-2 CPD 213

Below Cost**Not Basis for Precluding Award**

There is no legal basis to object to a below-cost bid. Whether a bidder can meet contract requirements in light of its low price is a matter of responsibility, the affirmative determination of which is not reviewed by GAO except in circumstances not present in this case.

BIDS**Responsiveness****Responsiveness v. Bidder Responsibility****Small Business Concerns****Subcontracting Plan Requirement**

The fact that bidder did not submit a subcontracting plan concurrently with its bid at bid opening did not render bid nonresponsive because the requirement relates to the bidder's responsibility and therefore can be furnished any time before award of the contract.

CONTRACTS
Negotiation
Offers or Proposals
Prices
Unprofitable

B-223179.2 Aug. 22, 1986
86-2 CPD 215

Protest that awardee's offer was too low will not be considered since the question of whether the awardee is able to provide the goods or services at the price offered is a matter of responsibility which the General Accounting Office will not review except in circumstances not present in this case.

CONTRACTS
Protests
Authority to Consider
Contract Administration Matters

Protest that awardee violated the pricing provisions of its separate contract with the General Services Administration (GSA) involves a matter for GSA and does not provide a legal basis to upset the contract award.

Whether potential awardee will perform in accordance with the terms of the solicitation is a matter of contract administration which the General Accounting Office will not review.

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

Protest alleging that prior solicitation for fire alarm system should not have been canceled because current solicitation for same item does not differ substantially from previous year's solicitation is untimely since protest was not filed within 10 days of time that protester knew, or should have known, of basis of protest.

CONTRACTS
Negotiation
Awards
Propriety
Upheld

B-223355 Con't
Aug. 22, 1986

Agency is not required to separately purchase services where the agency's overall needs can be most effectively provided through a "total package" procurement approach involving award of the total requirement to one contractor.

CONTRACTS
Protests
Allegations
Speculative

Protest which merely anticipates possible future agency action is speculative and will not be considered.

CONTRACTS
Protests
Basis for Protest Requirement

Air Force regulation concerning the development of a statement of work and quality assurance plan for base-level services contracts implements Air Force policy and is for the benefit of the government, not potential offerors. Therefore, the Air Force's alleged failure to comply with regulation does not provide a basis for protest.

CONTRACTORS
Responsibility
Determination
Review by GAO
Nonresponsibility Finding

B-223718.2 Aug. 22, 1986
86-2 CPD 217

Request for reconsideration of decision dismissing protest challenging contracting agency's affirmative responsibility determination is denied where protester makes no reasonable showing of possible fraud or bad faith in connection with the determination.

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

B-223954 Aug. 22, 1986

86-2 CPD 218

Protest challenging awardee's bid as both too high (for failure to reflect a reduction in the scope of effort called for by amendment) and too low (because it is based on inaccurate labor rates) is without merit on its face because (1) protester offers no evidence to support its position that the bid is too high; and (2) there is no legal basis on which to object to below-cost bid.

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

Protest challenging contracting agency's decision not to extend bid opening date after issuing amendment to invitation for bids is untimely where the protester was aware of the agency's decision before bid opening, but did not file protest until after bid opening.

Protest challenging allegedly defective specifications is untimely where not filed before bid opening.

CONTRACTS **B-223165 Con't**
Protests **Aug. 25, 1986**
Allegations
Unsubstantiated

Protest of various solicitation provisions is without merit where record indicates that provisions are reasonable.

CONTRACTS **B-223307 Aug. 25, 1986**
Negotiation **86-2 CPD 221**
Requests for Proposals
Cancellation
Administrative Discretion
Reasonable Exercise

Cancellation of a request for proposals is reasonable where the agency determines that solicitation for a product that meets a military specification, rather than by manufacturer's name and part number, will increase small business competition and reduce costs.

CONTRACTS **B-223952; B-223952.2**
Protests **Aug. 25, 1986**
Authority to Consider **86-2 CPD 222**
Contract Administration Matters

Protest against agency's action to rectify the improper award of a contract by rescinding the written notice of award is dismissed where the protester readily acknowledges that its proposal took explicit exception to certain requirements of the solicitation. The question of whether contract cancellation or termination for the convenience of the government is the correct method to rectify an improper award is a matter of contract administration for resolution under the procedures of the Contract Disputes Act of 1978, and, therefore, not for consideration under General Accounting Office's bid protest function.

BIDS**Ambiguous****Ambiguity not Established**

B-222533 Aug. 26, 1986

86-2 CPD 224

Bidder's statement in its bid cover letter that it is offering its model, identified by number, to meet the agency's needs does not create an ambiguity when it is accompanied by further statement that the model meets or exceeds all specification requirements.

BIDS**Evaluation****Discount Provisions**

Issue concerning evaluation of prompt payment discount will not be considered since contracting regulations now provide that prompt payment discounts will not be considered in the evaluation of bids.

BIDS**Responsiveness****What Constitutes**

Business strategy of low bidder to bid same price for unit whether first article testing was required or not does not affect responsiveness of bid since bidder submitted prices for all items required under invitation for bids.

CONTRACTS**Protests****Moot, Academic, etc. Questions****Future Procurements**

Since protest against award to low bidder is denied, GAO will not consider protest against second low bidder who is not in line for award.

CONTRACTS B-222594 Aug. 26, 1986
Small Business Concerns 86-2 CPD 226
Awards
Set-Asides
Withdrawal
Propriety

Withdrawal of a small business set-aside is proper where the contracting officer reasonably determined that the "best and final" price submitted by the sole eligible small business offeror was unreasonable.

CONTRACTS B-222918; B-222918.2
Negotiation Aug. 26, 1986
Offers or Proposals 86-2 CPD 227
Cost Realism Analysis
Reasonableness

Agency cost evaluation of successful offeror's cost proposal was reasonable. Agency is entitled to rely upon advice of Defense Contract Audit Agency in analyzing overhead and general and administrative costs rates.

CONTRACTS
Negotiation
Offers or Proposals
Evaluation
Reasonable

Proposals offering less than 2,080 direct labor hours per labor category in response to request for revised proposals, which solicited a man-year's effort per labor category, are acceptable where the hours less than 2,080 hours represent holiday and leave benefits and are included in those offerors' overhead pools under their accounting systems.

CONTRACTS **B-222918; B-222918.2 Con't**
Protests **Aug. 26, 1986**
General Accounting Office Procedures
Filing Protest With Agency

Copy of protester's timely second protest on a RFP on which he earlier protested the cost evaluation, was not provided to the contracting officer within 1 day of filing as required by the Bid Protest Regulations. Second protest, which also relates to an aspect of the cost evaluation, will not be dismissed where the agency report is provided within 25-day statutory time limit.

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

Protest of interpretation and application of letter requesting revised proposals is timely, if filed within 10 days of when protester is apprised that agency interpreted letter inconsistent with protester's view of letter's meaning.

BIDS **B-223579 Aug. 26, 1986**
Responsiveness **86-2 CPD 228**
Bid Guarantee Requirement

Agency properly rejects protestor's bid as nonresponsive when the bid did not contain a required bid guarantee. Although the guarantee requirement did not appear in the "Bid Requirements" section of the solicitation where such provisions are usually placed, it was contained in another section, and offerors are expected to read the entire solicitation.

CONTRACTS
Protests
Burden of Proof
On Protester

B-224393 Aug. 26, 1986
86-2 CPD 229

Where contention that Navy did not evaluate protester's information engineering methodology is contradicted both by request for best and final offers and Navy's comments on final evaluation and protester has not provided evidence to rebut this evidence, GAO concludes that Navy did evaluate protester's methodology.

CONTRACTS
Protests
General Accounting Office Procedures
Timeliness of Protest
Solicitation Improprieties
Apparent in Request for Best and Final Offers

Where request for best and final offers specifically points out deficiency in protester's coordination of information engineering with agency's information resources management function, protest not filed prior to next closing date for receipt of proposals which alleges agency evaluation of information engineering in conjunction with agency's information resources management function was inconsistent with evaluation criteria, is untimely; protester should have known of basis for protest upon receipt of request for best and final offers.

CONTRACTS
Awards
Erroneous
Corrective Action
Not Recommended

B-222599 Aug. 27, 1986
86-2 CPD 230

Contract award was improper where agency's intent to eliminate a solicitation requirement was not clearly communicated in a solicitation amendment, so that protester reasonably was misled as to the agency's actual needs into offering a more expensive system than it otherwise would have.

BIDS B-222632 Aug. 27, 1986
Acceptance or Rejection 86-2 CPD 231

A nonresponsive bid may not be accepted, notwithstanding any savings it might represent to the government, since such acceptance would compromise the integrity of the competitive bidding system.

BIDS
Mistakes
Correction
Nonresponsive Bids

A nonresponsive bid may not be modified after bid opening in order to make it responsive.

BIDS
Responsiveness
Expectations Taken to Invitation Terms

Bidder's notation on IFB Schedule that "Drum = 450 # Net" renders bid nonresponsive to solicitation for the supply of a chemical compound in 55-gallon drums of 500 pounds net weight, since for logistical reasons agency needs uniformity in the drums requisitioned from its inventory by using activities and offer of lesser quantity of chemical per drum provided protester with a competitive advantage over other bidders.

BIDS
Responsiveness
Pricing Response Nonresponsive to IFB Requirements
Failure to Bid Firm, Fixed Price

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

CONTRACTS

Negotiation

Requests for Proposals

Specifications

Minimum Needs

Not Overstated

B-223291 Con't

Aug. 27, 1986

Where adequate technical data is not available, but the agency indicates in the solicitation that it will consider alternate offers and in fact receives such offers, a requirement identified by the part numbers of two manufacturers does not unduly restrict competition.

CONTRACTS

Protests

General Accounting Office Procedures

Timeliness of Protest

Solicitation Improprieties

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

Protest alleging that a request for proposals for equipment identified by the part numbers of two manufacturers unduly restricts competition, filed after the due date for initial proposals, is untimely and does not fall within the significant issue exception to the Bid Protest Regulations.

BIDS
Invitation for Bids
Ambiguous
Objective Test

B-223328 Aug. 27, 1986
86-2 CPD 234

A solicitation requirement is ambiguous when it is susceptible to two or more reasonable interpretations. Although a protester's particular interpretation need not be the most reasonable one for a finding of ambiguity, the protester is nonetheless required to show that its interpretation of the language in issue is reasonable and susceptible of the understanding it reached. Accordingly, protest is denied where the protester has made no credible showing that an invitation for bids allowing the submission of either new or used part prices for certain items could reasonably be read as requiring both new and used part prices for the items in question.

BIDS
Invitation for Bids
Cancellation
After Bid Opening

An agency's cancellation of an invitation for bids after bids have been exposed is not justified where the solicitation as written was not ambiguous and where an award under the invitation, even if defective, would satisfy the government's needs without prejudice to any bidder.

CONTRACTS
Protests
Authority to Consider
Contract Administration Matters

B-223888 Aug. 27, 1986
86-2 CPD 235

Protest that contractor is not complying with specification requirements involves a matter of contract administration, not reviewable by the General Accounting Office.

CONTRACTS **B-223888 Con't**
Protests **Aug. 27, 1986**
General Accounting Office Procedures
Timeliness of Protest
Adverse Agency Action Effect
Solicitation Improprieties

Protest of allegedly defective specifications filed 3 months after award is untimely even if protester initially filed a timely protest with the contracting agency, since proceeding with the closing date for receipt of proposals without taking action on the protest constituted initial adverse agency action after which any protest to General Accounting Office was required to be filed within 10 working days.

CONTRACTS **B-223590.2 Aug. 28, 1986**
Protests **86-2 CPD 237**
General Accounting Office Procedures
Timeliness of Protest
Date Basis of Protest Made Known to Protester

Protest against sole-source procurement, filed more than 10 working days after protester learned of basis for protest, is untimely and therefore will not be considered.

CONTRACTORS **B-223959 Aug. 28, 1986**
Responsibility **86-2 CPD 238**
Determination
Review by GAO
Affirmative Finding Accepted

Protester's contention that contracting officer should verify affidavits listing affiliated firms concerns bidder responsibility and the depth of investigation necessary to make a determination thereon. These are matters which are primarily within the broad discretion of the contracting officer. Prior to awarding contract, contracting officer must make an affirmative determination of proposed awardee's responsibility; General Accounting Office does not review contracting officer's affirmative determination of responsibility in the absence of conditions not present here.

CONTRACTS

B-223547 Aug. 29, 1986

Negotiation

86-2 CPD 242

Offers or Proposals

Rejection

Failure to Meet Solicitation Requirements

Submission of Technical Data

Where request for proposals requires offerors to furnish sufficient technical literature to establish that equipment offered would satisfy the Navy's requirements, rejection of proposal is reasonable where the literature provided clearly does not meet this standard. Contention that the Navy should have recognized that equipment would meet the Navy's needs was not an adequate substitute for the requested complete proposal information to establish that what was offered would in fact do so. What may have happened in other procurements is not relevant, since each procurement must stand alone.

BIDS

B-223641 Aug. 29, 1986

Responsiveness

86-2 CPD 243

Exceptions Taken to Invitation Terms

Delivery Provisions

Procuring agency properly rejected the protester's bid to deliver a first article 90 days after receipt of government-furnished tools rather than 90 days after contract award as required by the solicitation, since procurement regulations require rejection of a bid that does not conform to the delivery schedule in the solicitation.

CONTRACTS

B-224398 Con't

Protests

Aug. 29, 1986

General Accounting Office Function**Free and Full Competition Objective**

General Accounting Office (GAO) will not consider the merits of an allegation that more restrictive specifications are necessary to meet the government's needs. GAO's role in resolving bid protests is to ensure that statutory requirements for full and open competition have been met; protester's interest in benefitting from more restrictive specifications is not protectable under this bid protest function.

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

Protest speculating that other bidders may not qualify as manufacturers or regular dealers under the Walsh-Healey Public Contracts Act is dismissed because an agency's determination concerning the status of a bidder under that act is subject to review by the Small Business Administration (if a small business is involved) and the Department of Labor, not General Accounting Office.

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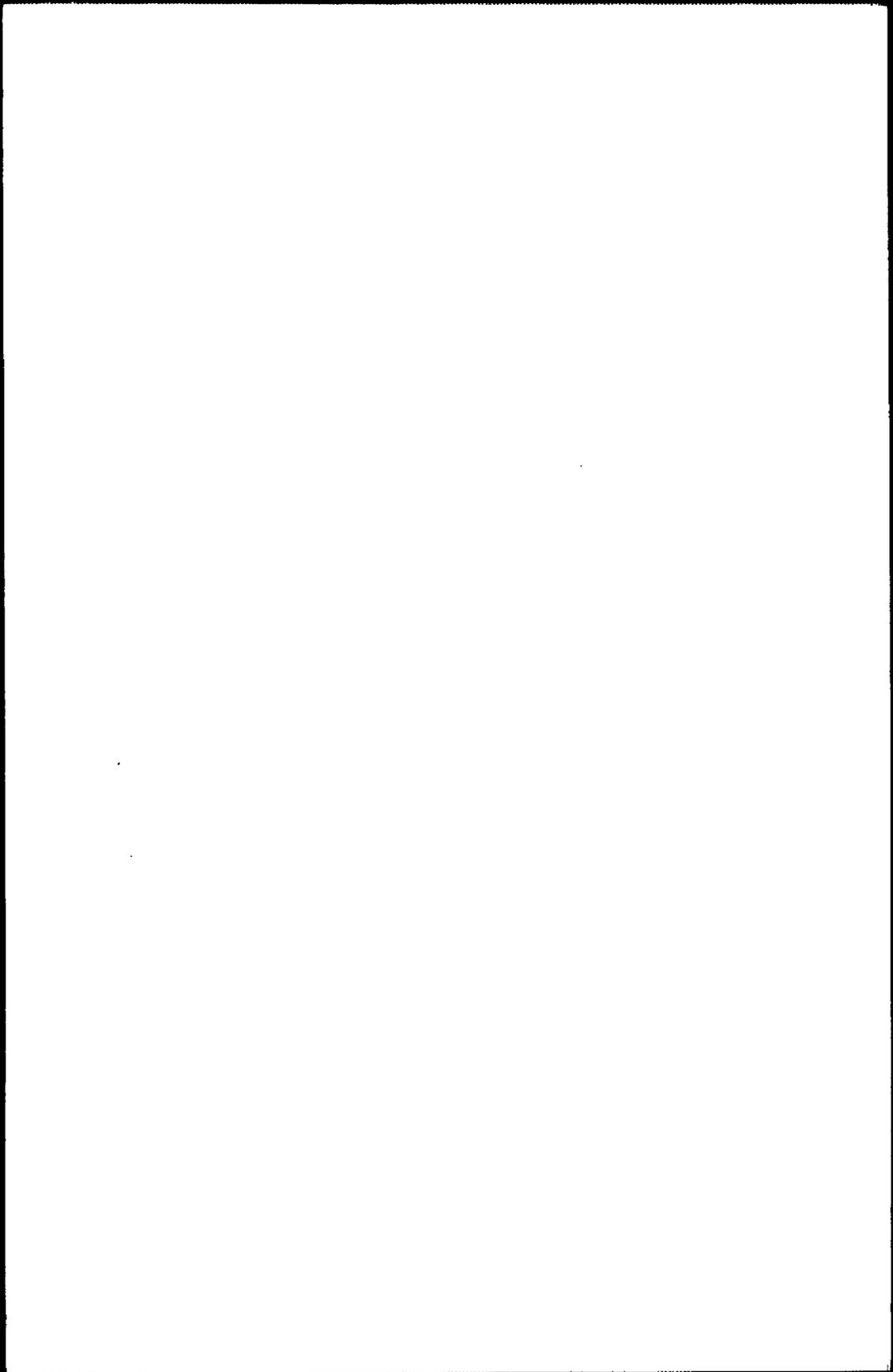
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