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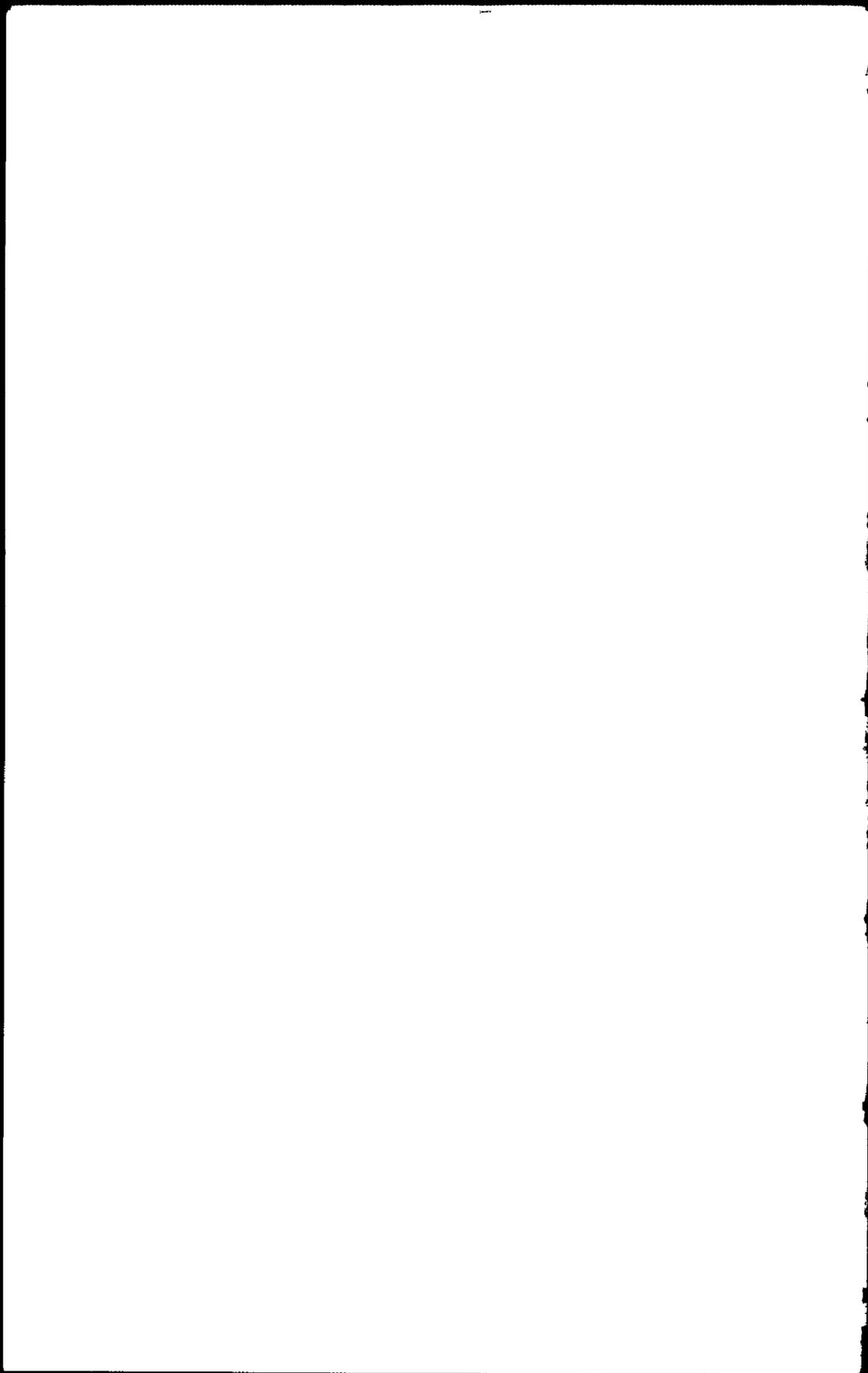
United States General Accounting Office

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April 1987

**Digests of Unpublished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

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United States General Accounting Office

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APRIL 1987

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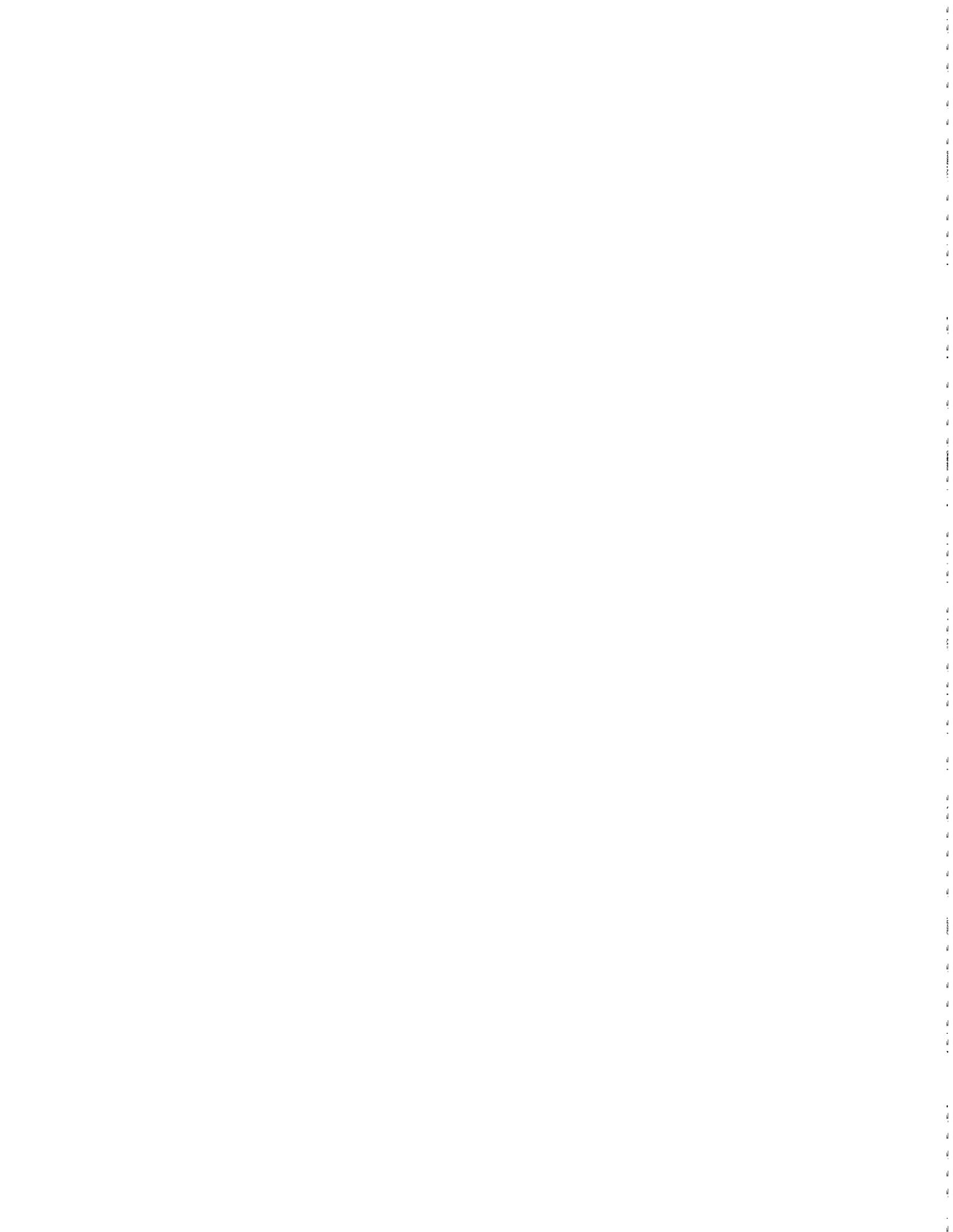


PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code 3529 (formerly 31 U.S.C. 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code 3702 (formerly 31 U.S.C. 71). Decisions on the validity of contract awards re rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g. B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).



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NOTICE

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



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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process B-226473 Apr. 1, 1987

Lump-sum appropriation
Government property
Utility services
Payment procedures

The proposal, contained in the fiscal year 1988 Federal budget, that the Congress no longer appropriate a lump-sum payment to the District of Columbia for water and sewer services, and that instead individual agencies pay the District directly for these services is contrary to existing statutory law. The payment mechanism specified in the District of Columbia Public Works Act of 1954, as amended, contemplates a single appropriation to the District of Columbia for all water and sewer services used by the Federal Government.

The District of Columbia has no statutory authority to bill, or to accept payments directly from, individual Federal agencies for water and sewer services. The payment mechanism specified in the District of Columbia Public Works Act of 1954, as amended, is the exclusive method by which the United States may pay, and the District of Columbia may accept, remuneration for water and sewer services provided to Federal agencies. That statute requires a single annual appropriation to the District for all water and sewer services provided to the Federal Government.

The President's annual budget should contain adjustments to Federal water and sewer payments made to the Federal Government during the two previous years if, in his opinion, adjustments are needed for the payments to correspond to the actual services provided. The payment mechanism contained in the District of Columbia Works Act of 1954, as amended, directs that payment be made based on estimated usage, "subject to subsequent adjustment within 2 fiscal years."

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226584 Apr. 2, 1987
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute 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 subsequent collection attempts are being pursued. However, for cases where the notice of loss from Treasury is received 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.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-222821 Apr. 6, 1987
Purpose availability
Fire fighting services

Under the broad authority contained in 42 U.S.C. 1856a authorizing the heads of Federal installations to enter into mutual aid agreements with local fire departments to protect Federal property against fire and related disasters, the Navy may pay fees assessed by a municipal organization to purchase specialized equipment for training and responding to incidents involving hazardous materials.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-226316, et al.**
Disbursing officers **Apr. 9, 1987**
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official and his deputy under 31 U.S.C. 3527(c) from liability for four improper payments resulting in each case from a payee's negotiation of both original and recertified military checks. Proper procedures were followed in the issuance of the recertified checks, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, we suggest that when there is a delay in issuing a recertified check and the credit information received from Treasury is no longer current, that the finance officer verify the status of the original check with Treasury. Further, for cases involving notices of losses received 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.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-226586; B-226588**
Disbursing officers **Apr. 9, 1987**
Relief
Illegal/improper payments
Substitute checks

Relief is granted two Army Special Disbursing Agents under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. In each case, proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, we will deny relief if Army delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Budget Process

B-224713 Apr. 29, 1987

Funding

Legal services

The Legal Services Corporation's fiscal year 1984 appropriation act (P.L. 98-166) required that all LSC funds made available to basic field programs (grantees) for the general provisions of legal services to the poor would be computed on a census-based formula, while funds awarded to non-field programs would be subject to a more generous straight percentage increase. Solano County Legal Assistance argued unsuccessfully that a litigation coordinator position should be funded as a non-field position.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-226757 Apr. 30, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

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 checks and adequate collection efforts are now being made. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-226761 Apr. 30, 1987

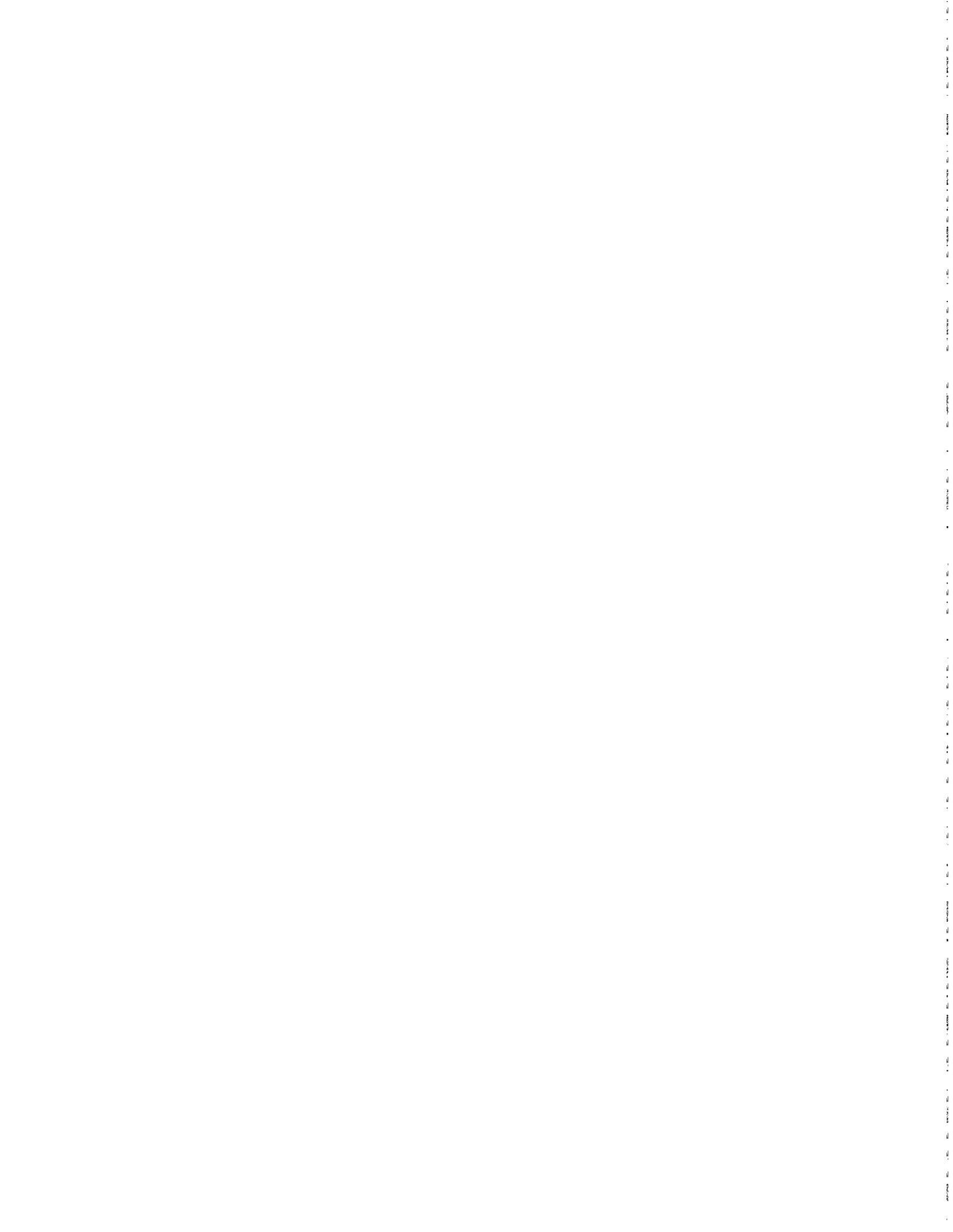
Disbursing officers

Relief

Illegal/improper payments

Substitute checks

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



CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-223239 Apr. 2, 1987

Travel

Temporary duty

Miscellaneous expenses

Reimbursement

An employee on long-term temporary duty in the Atlanta, Georgia, area rented an apartment. Among the expenses claimed for the purpose of establishing average lodging costs were cable TV charges. The employing agency has the primary responsibility to make an administrative determination of whether cable TV charges may be allowed. The proper standard to be used is whether the items claimed are ordinarily included in the price of a hotel or motel room in the area concerned. The claim is remanded to the agency for an administrative determination based on this standard.

CIVILIAN PERSONNEL

B-224775 Apr. 7, 1987

Relocation

**Residence transaction expenses
Appraisal fees
Reimbursement**

CIVILIAN PERSONNEL

Relocation

**Residence transaction expenses
Leases
Termination costs
Reimbursement**

CIVILIAN PERSONNEL

Relocation

**Residence transaction expenses
Loan origination fees
Reimbursement**

CIVILIAN PERSONNEL

Relocation

**Residence transaction expenses
Miscellaneous expenses
Reimbursement**

An employee may not be reimbursed for several real estate expense items incurred incident to two changes of official station since the expenses were determined not to be customarily paid by the seller or purchaser, as applicable in each case. In addition, the costs incurred in termination of a lease are not reimbursable since the payment was not required by the terms of the lease and did not otherwise meet the conditions of the applicable regulation. A loan origination fee incurred in 1974 may not be reimbursed under the regulation in effect at that time. However, the employee may be reimbursed for the cost of an appraisal fee incurred in connection with his purchase of a residence since, under a conventional loan in that area, the purchaser is customarily required to pay an appraisal fee.

CIVILIAN PERSONNEL**B-223115 Apr. 9, 1987****Compensation****Severance pay****Eligibility**

An employee voluntarily sought and received a promotion from a permanent career service position in the Peace Corps to a time-limited appointment, also in the Peace Corps. By statute, the appointment was limited to 5 years and could not be extended. Upon completion of the 5 years, she was separated and claims entitlement to severance pay. The claim is allowed. Although 5 U.S.C. 5595(a)(2)(ii) excludes employees serving under an appointment with a definite time limitation from entitlement to severance pay, the claimant comes within the statutory exception for one so appointed for full-time employment (without a break in service of more than 3 days) following service under an appointment without time limitation. Since she was separated at the end of the 5-year period without her consent, she is entitled to severance pay.

CIVILIAN PERSONNEL**B-222379 Apr. 10, 1987****Compensation****Retroactive compensation****Eligibility****Arbitration decisions****GAO review**

This Office will not inquire into matters relative to a grievance since such matters are within the jurisdiction of the employing agency and the Office of Personnel Management. However, if an employee is found to have undergone an unjustified or unwarranted personnel action, we will authorize the payment of backpay under the provisions of the Back Pay Act, 5 U.S.C. 5596 (1982).

CIVILIAN PERSONNEL **B-222379 Con't**
Compensation **Apr. 10, 1987**
Retroactive compensation
Eligibility
Discretionary authority

Army civilian employee is not entitled to backpay and substitution of sick leave for leave without pay on the sole basis of a favorable grievance examiner's recommendation. The recommendation was denied at a higher level, and the failure of Army officials to forward the recommendation within 8 days as prescribed by agency regulations does not take away the agency's discretionary authority to deny a recommendation since the timeframes are only procedural guidelines.

CIVILIAN PERSONNEL **B-225342 Apr. 15, 1987**
Relocation
Temporary quarters
Actual subsistence expenses
Reimbursement
Eligibility

An employee may not be reimbursed temporary quarters subsistence expenses while temporarily renting a home he planned to purchase at his new duty station, notwithstanding the fact that he was furnished erroneous information by employees of his agency.

CIVILIAN PERSONNEL **B-223797 Apr. 20, 1987**
Relocation
Residence transaction expenses
Finance charges

An employee who purchased a residence incident to transfer may not be reimbursed for underwriter's fee and tax service fee as such payments are considered finance charges under the Truth in Lending Act and Regulation Z and are not reimbursable under Federal Travel Regulations, para. 2-6.2d(2)(e).

CIVILIAN PERSONNEL**B-199549 Apr. 22, 1987****Relocation****Residence transaction expenses****Overseas personnel**

This is a letter to the Chairwoman, Subcommittee on Government Activities and Transportation, Committee on Government Operations, House of Representatives, containing comments by GAO on H.R. 987, 100th Cong., 1st Sess. The bill would amend 5 U.S.C. 5724a(4)(A) (1982) to permit Federal agencies to reimburse their employees for residence sale and purchase expenses incurred upon transfer from an overseas post to a duty station in the United States other than the one from which they transferred overseas. Under the present law, reimbursement of these expenses is allowed only when both the old and new duty stations are located within the United States. Thus, in those instances where Federal civilian employees are reassigned from their overseas posts to a different duty station in the United States, the current law and implementing regulations, the FTR and the JTR, as well as our decisions, prohibit such reimbursement, resulting in severe economic impact upon the affected employees. We have included suggested changes to the specific language of H.R. 987 and recommended favorable consideration of the bill by the Subcommittee.

CIVILIAN PERSONNEL**B-223574 Apr. 23, 1987****Relocation****Miscellaneous expenses****Reimbursement****Eligibility**

After the employee filed his Federal and state income tax returns, his agency issued an amended Form W-2 which reflected higher wages and tax withholdings for his relocation expenses. We deny the employee's claim for reimbursement of a \$70 tax preparation fee for filing amended tax returns. There is no authority to reimburse employees for the cost of an accountant-prepared tax return even though the agency's error necessitated filing amended tax returns.

CIVILIAN PERSONNEL**B-224048 Apr. 24, 1987****Travel****Temporary duty****Travel expenses****Return travel****Personal convenience**

Employee completed his temporary duty in Oklahoma City at 6 p.m. on Friday, but remained at his temporary duty point until Sunday when he returned by air to his permanent duty station in Memphis. He was not required to travel during unreasonable hours and reimbursement of his air travel expense is based on the constructive cost of the next available flight on Saturday with the extra expense of the flight made on Sunday for the employee's convenience to be borne by him.

CIVILIAN PERSONNEL**B-226573 Apr. 27, 1987****Leaves of Absence****Annual leave****Credits****Overpayments****Waiver**

An employee's annual leave account was overcredited because of an error in his service computation date, and he applied for waiver under 5 U.S.C. 5584. We advise the interested Congressman that our Claims Group properly granted waiver only to the extent that reconstruction of the employee's leave account produced a negative leave balance. The overcredited hours of annual leave deducted in reconstructing the employee's leave account may not be considered for waiver, because this adjustment did not constitute an erroneous payment of pay within the meaning of the waiver statute.

**CIVILIAN PERSONNEL
Compensation**

B-223381 Apr. 28, 1987

**Overpayments
Error detection
Debt collection
Waiver**

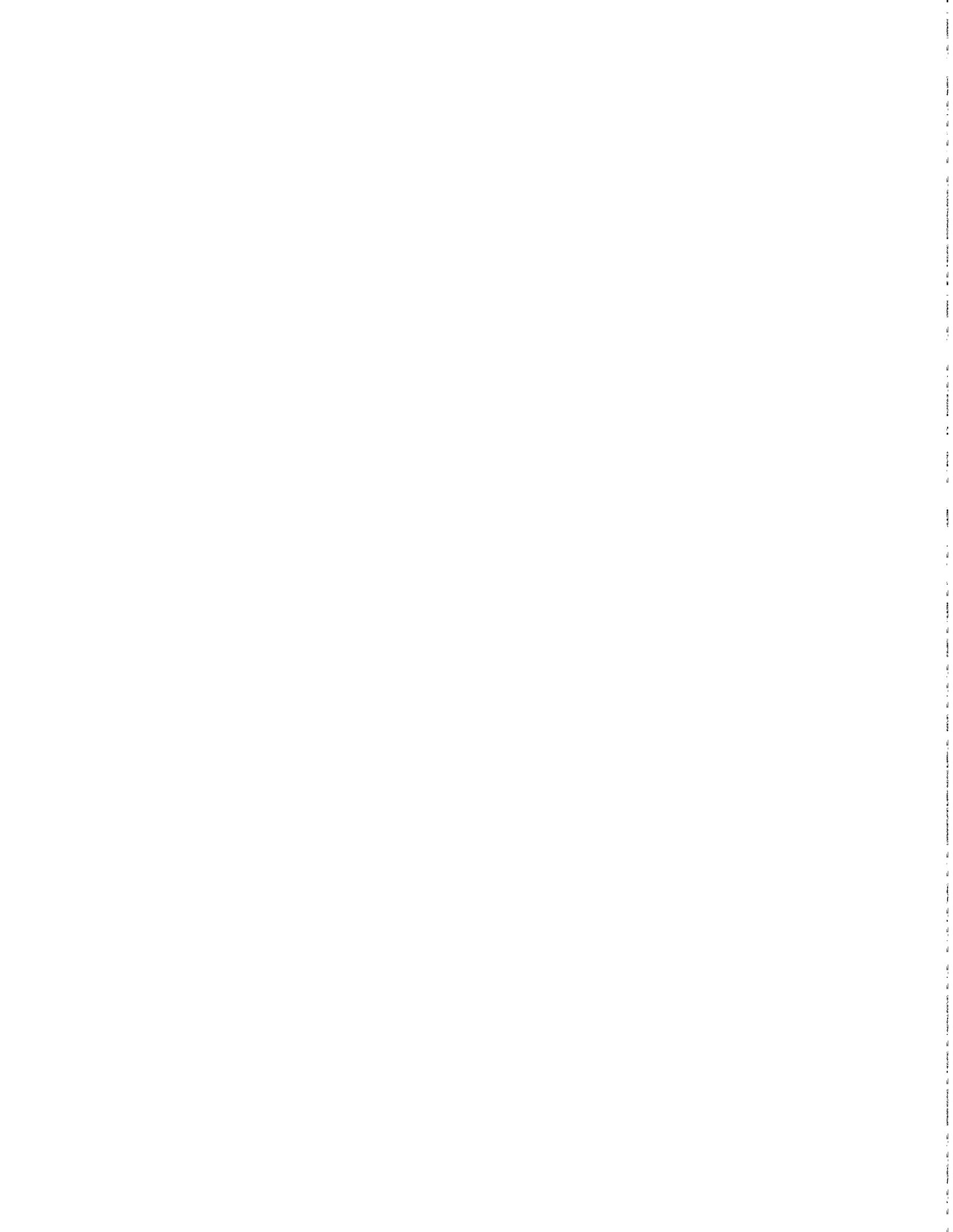
Former Panama Canal Company employee, a Pharmacist, NM-11, step 6, applied for and was selected to fill a career development position, Management Analyst, NM-9, step 10. He erroneously continued to receive pay at the NM-11, step 6, grade level although precluded from pay retention by the provisions of 5 U.S.C. 5363(c)(3), since he was demoted at his own request. There is no evidence of fraud, misrepresentation, or lack of good faith on the part of the employee. The employee was informed by agency officials that he was entitled to "saved pay" and was not counseled as to the financial consequences of his voluntarily requesting a reduction in grade. Thus, employee reasonably believed he was entitled to continue to receive salary at the NM-11, step 6, grade level, and an increase in salary based upon the comparability pay increase. Accordingly, he was not at fault and waiver of the overpayment of salary is granted.

CIVILIAN PERSONNEL

B-225977 Apr. 28, 1987

**Travel
Overseas travel
Emergencies
Travel expenses
Reimbursement**

An employee, not in the Foreign Service, stationed in a foreign area, performed emergency round-trip travel to the United States incident to a death in the family. His claim for reimbursement for the cost of that travel is denied. Travel entitlements of non-Foreign Service employees stationed in foreign areas are governed by the Federal Travel Regulations which do not authorize reimbursement for such personal travel.



MILITARY PERSONNEL

MILITARY PERSONNEL

B-221732 Apr. 10, 1987

Relocation

Temporary quarters

Allowances

Time restrictions

Statutory regulations

A statute enacted in 1981 provides that a member of the uniformed services who is ordered to make a permanent change-of-station move may be allowed up to "four days" of expenses "incurred by the member and the member's dependents" while occupying temporary quarters. A proposal may be approved for the issuance of new regulations under that statute which would authorize service members up to 4 calendar days of temporary lodging expense allowances for themselves, and up to 4 separate days of allowances on behalf of their dependents, subject to a maximum limit on reimbursement of \$440.

MILITARY PERSONNEL

B-222852 Apr. 28, 1987

Pay

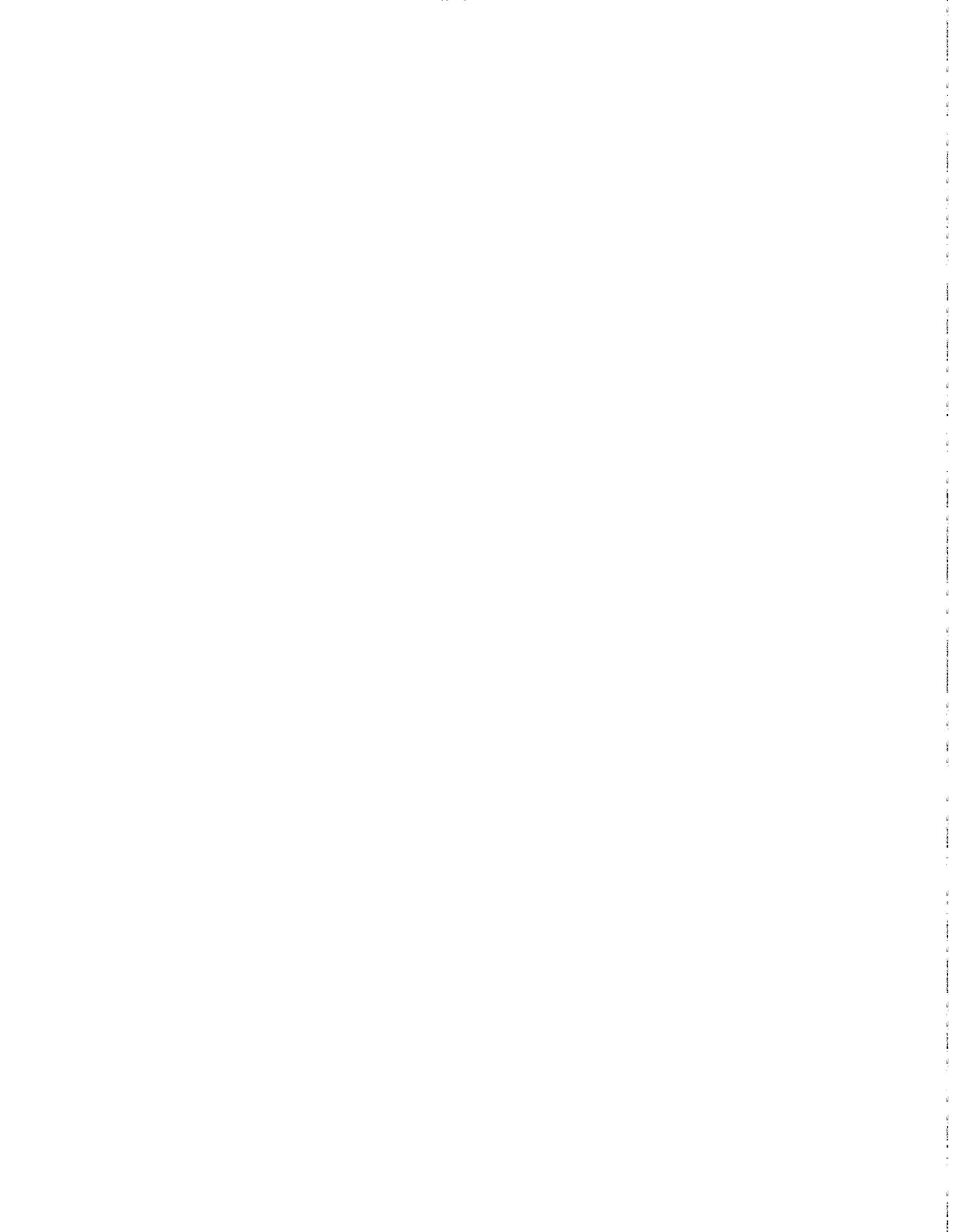
Dual compensation restrictions

Retirement pay

Reduction

Amount determination

Retired members of the uniformed services are required by law to waive their military retired pay in an amount equal to any veterans disability compensation they receive. The waiver of military retired pay is to be based on the amount of disability compensation to which the retiree is actually entitled, as determined and paid by the Veterans Administration. Hence, in the case of a retired Marine Corps sergeant who was paid veterans disability compensation at a reduced rate, as adjudicated by the Veterans Administration due to his concurrent receipt of civil service disability compensation, the waiver of military retired pay is to be based on the reduced rate of the veterans compensation actually paid rather than the full rate that might otherwise have been payable.



PROCUREMENT

PROCUREMENT **B-220418.2 Apr. 1, 1987**
Bid Protests **87-1 CPD 367**
GAO Procedures
Interested parties
Direct interest standards

Protest from an offeror which is not in line for award if the protest is upheld is dismissed because the protester does not have the requisite direct economic interest required to be considered an interested party under GAO Bid Protest Regulations.

PROCUREMENT **B-225179.2 Apr. 1, 1987**
Socio-Economic Policies **87-1 CPD 368**
Small businesses
Research/development contracts
Offers
Evaluation

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

PROCUREMENT B-225631 Apr. 1, 1987
Contractor Qualification 87-1 CPD 369
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Where record shows that contracting officer reasonably relied upon preaward survey in finding bidder to be responsible, there is no basis for concluding that affirmative responsibility determination of contracting officer was made in bad faith.

PROCUREMENT
Socio-Economic Policies
Labor standards
Supply contracts
Manufacturers/dealers
Determination

General Accounting Office (GAO) will not consider protests that another bidder does not qualify as a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act, since the agency determination concerning the status of a bidder under that act is subject to review by the Small Business Administration (SBA) (where a small business is involved) or the Department of Labor. Where the agency has not referred protester's continued disagreement with small business firm's Walsh-Healey Act status to the SBA for its determination, despite being promptly apprised of the disagreement, the agency should now refer matter to SBA as required by the Federal Acquisition Regulation.

PROCUREMENT B-225750 Apr. 1, 1987
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that invitation for bids should not have required a bid guarantee and/or performance and payment bonds is untimely where not filed before bid opening.

PROCUREMENT

B-225750 Con't

**Sealed Bidding
Bid guarantees
Post-bid opening periods
Submission
Responsiveness**

Apr. 1, 1987

Since a bid guarantee is a material requirement that must be met at the time of bid opening, a bid that is nonresponsive due to the lack of an adequate guarantee generally cannot be made responsive by furnishing one in proper form after bid opening.

PROCUREMENT

**Sealed Bidding
Bid guarantees
Responsiveness
Letters of credit
Adequacy**

Agency properly rejects a bid as nonresponsive where the irrevocable letter of credit submitted as a bid guarantee is conditioned on the contract being assigned to the issuing bank. If the contractor failed to furnish performance and payment bonds, the contract would be subject to termination for default, and no valid contract that could be assigned would exist. Moreover, such a letter does not provide the required firm commitment.

PROCUREMENT

B-225836 Apr. 1, 1987

**Bid Protests
GAO procedures
Interested parties**

Where the protester's bid was properly rejected and the protester is not eligible for award, the protester is not an interested party to protest the propriety of the agency accepting the awardee's bid.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Letters of credit
Adequacy

B-225836 Con't
Apr. 1, 1987

Where the bidding corporation is not named as principal in a surety agreement but rather the president of the corporation is so named and all other evidence in the letter of credit indicates that it is the president to whom the line of credit is extended and on whose credit rating the line of credit is based, there is a material defect in the letter of credit submitted with the bid requiring its rejection; that the bidding corporation is a small business is immaterial.

The fact that an agency may have accepted an improper bid guarantee in a prior procurement does not compel the agency to perpetuate the error by again accepting the same inadequate bid guarantee.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225841 Apr. 1, 1987
87-1 CPD 370

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Protester may not recover the costs of preparing its response to an invitation for bids that was properly canceled due to insufficient funds.

PROCUREMENT

B-225841 Con't

**Sealed Bidding
Invitations for bids
Cancellation
Justification**

Apr. 1, 1987

Agency has a compelling reason to cancel a solicitation after bid opening where it determines that sufficient funds are not available to make award.

PROCUREMENT

B-225744 Apr. 2, 1987

**Competitive Negotiation
Requests for proposals
Terms**

87-1 CPD 373

**Commercial products/services
Definition**

A solicitation's commercial product requirement must be consistent with the Federal Acquisition Regulation, which essentially provides that an item is not a commercial product when its only use is for the government instead of the general public, or when it has been offered for sale commercially but no sales other than to the government have actually occurred.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Terms
Interpretation**

In the absence of any significant qualifying language to the contrary in the procurement documents, an agency will not be permitted to deny the express terms of its own solicitation.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Notification

B-225498 Apr. 3, 1987
87-1 CPD 374

Contracting agency's unexplained failure to send the protester amendments to invitation for bids where the protester twice requested them effectively prevented the protester from competing and violated the statutory mandate for full and open competition.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-225519.3 Apr. 3, 1987
87-1 CPD 375

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Protest that solicitation is ambiguous is dismissed as academic where contracting agency canceled solicitation as requested by protester. Claim for proposal preparation costs is also dismissed since protest has not been considered on the merits.

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions

B-225653.2 Apr. 3, 1987
87-1 CPD 377

In the absence of an allegation that the awardee took exception in its bid to any solicitation requirement, prior dismissal of a protest contending that the awardee's bid was nonresponsive because the firm's planned method of performance would result in solicitation requirements not being met is affirmed since how a bidder intends to meet contract requirements involves bidder responsibility, not responsiveness.

PROCUREMENT

B-225657 Apr. 3, 1987

**Sealed Bidding
Bids**

87-1 CPD 378

**Evaluation
Price adjustments
Quantity discounts**

Where evidence of substantial sales of typewriter ribbons to the government at newly reduced prices (quantity discounts) is provided by a vendor to the contracting officer prior to bid opening, as permitted by the solicitation, the contracting officer properly evaluated the vendor's bid to reflect the price reduction in effect prior to bid opening.

PROCUREMENT

B-226401 Apr. 3, 1987

**Bid Protests
Moot allegation
GAO review**

87-1 CPD 379

Protest is dismissed as academic where the contracting agency reports that it has taken appropriate action to remedy the procurement deficiency.

PROCUREMENT

B-222422.3 Apr. 6, 1987

**Bid Protests
GAO procedures
Preparation costs**

87-1 CPD 380

PROCUREMENT

**Sealed Bidding
Bids
Preparation costs**

Protester may recover the costs it incurred in filing and pursuing its protest as well as its bid preparation costs where the agency unreasonably excluded the protester from the competition, the firm did not receive the award our Office recommended, and no other remedy is available.

PROCUREMENT B-222821 Apr. 6, 1987
Contracting Power/Authority
Fire fighting services

Under the broad authority contained in 42 U.S.C. 1856a authorizing the heads of Federal installations to enter into mutual aid agreements with local fire departments to protect Federal property against fire and related disasters, the Navy may pay fees assessed by a municipal organization to purchase specialized equipment for training and responding to incidents involving hazardous materials.

PROCUREMENT B-224298.2 Apr. 6, 1987
Bid Protests 87-1 CPD 381
GAO procedures
GAO decisions
Reconsideration

Prior decision is affirmed on reconsideration where it is not shown to contain any errors of fact or law.

PROCUREMENT
Sealed Bidding
Bids
Signatures
Conflicts of interest
Retired personnel

The rejection by the Navy of protester's low bid signed by retired regular Naval officer was not improper where regulation prohibits Navy from dealing with retired regular Naval officer because the officer's signing of the bid constituted a sale to the government which violated a criminal statute.

PROCUREMENT
Sealed Bidding
Bids
Pre-award withdrawal

B-225340 Apr. 7, 1987
87-1 CPD 382

The withdrawal of a bid in person is not the exclusive method that can be utilized for that purpose, since a bid can be withdrawn in person by a bidder prior to bid opening or by mail or telegraphic notice received in the Office designated in the solicitation prior to bid opening.

PROCUREMENT
Competitive Negotiation
Below-cost offers
Acceptability

B-225509 Apr. 7, 1987
87-1 CPD 383

The submission of a below-cost offer on a firm-fixed-price contract is legally unobjectionable. Protester's arguments that awardee's low price calls in question its ability to perform satisfactorily, i.e., the firm's responsibility, or suggests it made a mistake are dismissed since General Accounting Office generally does not review contracting officers' affirmative determinations of responsibility and because a competitor does not have standing to claim an error in another's offer.

PROCUREMENT

B-225509 Con't

Competitive Negotiation

Apr. 7, 1987

Competitive advantage

Non-prejudicial allegation

Contention that all offerors were not competing on an equal basis with regard to the delivery schedule is denied where modification to awardee's contract which extended delivery on certain purchase orders by 3-4 weeks in exchange for a reduction in contract price occurred approximately 3 months after award. In absence of any indication that agency solicited offers on the basis of one delivery schedule with the intent of extending it upon award, the modification here made to the awardee's contract is a matter of contract administration which General Accounting Office will not review.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Terms

Commercial products/services

Certification

Fact that at time of preaward survey one of the awardee's production facilities lacked two items of equipment needed to test disposable paper plates to standards set forth in solicitation's Commercial Item Description does not establish that agency waived the solicitation's "commercial item" producer of such items, would comply with RFP's commercial item certification is a matter of that firm's responsibility and in any event record shows that one of awardee's plants had a full complement of testing equipment and required testing equipment was on order for other plant.

PROCUREMENT B-226957 Apr. 8, 1987
Socio-Economic Policies 87-1 CPD 387
Small businesses
Size determination
Pending protests
Contract awards

Protest against award of contract while size status protest was pending is dismissed, since agency properly waited more than 10 business days after filing of size protest before making award.

PROCUREMENT B-222645.2 Apr. 9, 1987
Bid Protests 87-1 CPD 388
GAO procedures
GAO decisions
Reconsideration

Decision that awardee's proposal was technically unacceptable under solicitation requirement that spray system be capable of being installed in a C-130 aircraft within 30 minutes is affirmed where the contracting agency's request for reconsideration fails to show the decision was incorrect.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-222645.2 Con't
Apr. 9, 1987

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety
Evaluation errors
Materiality

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

While a contracting agency may not properly relax a solicitation's material requirements and award a contract without amending the solicitation, where it has done so and the awardee meets the agency's actual needs at a lower price than the protester can possibly offer, the award should be allowed to stand, but the protester may recover its proposal preparation costs as well as the costs of filing and pursuing the protest.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-224607.2 Apr. 9, 1987
87-1 CPD 390

In order to prevail in a request for reconsideration of a prior decision of the General Accounting Office, the requesting party must convincingly show that the decision contains errors of fact or of law or information not previously considered that warrant its reversal or modification. The repetition of arguments made during resolution of the original protest, or mere disagreement with the decision, does not meet this standard.

PROCUREMENT

B-224607.2 Con't

**Competitive Negotiation
Requests for proposals
Cancellation
Bad faith
Allegation substantiation**

Apr. 9, 1987

Showing of bad faith requires undeniable proof that procuring activity had a malicious and specific intent to injure the party alleging bad faith, and a protester's bare charge regarding intent of the procuring activity in issuing solicitation and suggestion that procuring activity may have been negligent in not "doing its homework" do not constitute such proof.

PROCUREMENT

**Competitive Negotiation
Requests for proposals
Cancellation
Resolicitation
Propriety**

General Accounting Office views solicitation that prevented competition on an equal basis, along with procuring activity's need to reconsider the government's minimum needs, as sufficient reasons to render cancellation and resolicitation, rather than amendment of the original solicitation, reasonable.

PROCUREMENT

Bid Protests

GAO procedures

GAO decisions

Reconsideration

B-225474.2, et al.

Apr. 9, 1987

87-1 CPD 391

PROCUREMENT

Competitive Negotiation

Best/final offers

Modification

Late submission

Acceptance criteria

Decision is affirmed on reconsideration where new evidence furnished by the agency nevertheless fails to establish that the General Accounting Office (GAO) erred in concluding that the agency had improperly accepted an unexcused late modification to a proposal taking exception to material terms and conditions of the solicitation.

PROCUREMENT

Competitive Negotiation

Discussion reopening

Competitive system integrity

GAO decisions

Recommendations

GAO sees no basis to reconsider the appropriateness of its recommended corrective action--the reopening of competitive range discussions--since that remedy preserves the integrity of the competitive procurement system while providing the maximum degree of fairness to all parties.

PROCUREMENT

B-226653 Apr. 9, 1987

Special Procurement Methods/Categories

Computer equipment/services

Federal procurement regulations/laws

Applicability

Commenting on S. 34, Social Security Administration Reorganization Act, General Counsel concludes that bill's provision exempting proposed Social Security Agency from the Brooks Act is inadvisable, since it detracts from the Brooks Act's goal of centralizing authority for automated data processing equipment acquisitions in the General Services Administration.

PROCUREMENT

B-224004.2; B-224005.2

Special Procurement

Apr. 10, 1987

Methods/Categories

87-1 CPD 393

Requirements contracts

Contract durations

Letters from a contractor's suppliers which indicate that those suppliers will not make long-range price commitments do not constitute clear and convincing evidence that the contracting agency acted unreasonably or arbitrarily in choosing to employ a requirement type contract to satisfy several years' needs.

PROCUREMENT **B-224004.2; B-224005.2 Con't**
Special Procurement **Apr. 10, 1987**
Methods/Categories
Requirements contracts
Use
Criteria

Agency properly procured its needs for parachutes under requirements type contracts with ordering periods of 2 years and 3 years, respectively, rather than under a multiyear type procurement, where the agency was uncertain as to how many units it would need over the contract period. Multiyear contracting format requires that quantity solicited remain substantially unchanged throughout contract term.

In a solicitation calling for a requirements contract, an agency need only state a realistic estimate of its requirements for the goods being procured based on most current information available. Although agency admits its needs are difficult to predict, precise or certain statement of quantity is not required since such a requirement would vitiate the purposes of employing a requirements contract format and protester has not shown estimate is not realistic.

PROCUREMENT **B-224026.2 Apr. 10, 1987**
Bid Protests **87-1 CPD 394**
GAO procedures
GAO decisions
Reconsideration

Decision denying protest of bid rejection because of the protester's failure to separately price an item added to the bid schedule by amendment is affirmed where the protester has not shown the decision to be based on any error of fact or law.

PROCUREMENT B-224991.2 Apr. 10, 1987
Sealed Bidding 87-1 CPD 395
Bids
Acceptance time periods
Extension

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

When contracting agency orally requests a bidder to extend its bid before expiration of the acceptance period, and the bidder agrees, both orally and in writing, to do so, an award within the period for which the bid is extended is proper. Under these circumstances, the General Accounting Office need not consider the propriety of the agency's request, made after expiration of the acceptance period, that the protester also extend its bid.

PROCUREMENT B-225408.2; B-225827
Competitive Negotiation Apr. 10, 1987
Offers 87-1 CPD 396
Preparation costs

Proposal preparation costs may be recovered where protester, who had substantial chance of receiving the award, was unreasonably excluded from consideration and no other remedy is appropriate.

PROCUREMENT B-225512.3 Apr. 10, 1987
Bid Protests 87-1 CPD 397
GAO procedures
GAO decisions
Reconsideration

Request for reconsideration that basically only reiterates previously-rejected arguments does not warrant reversal or modification of the prior decision.

PROCUREMENT

B-225578 Apr. 10, 1987

Bid Protests

87-1 CPD 398

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

If a firm initially protests to the contracting agency, alleging an apparent impropriety in the solicitation, the agency's opening of bids without taking the requested corrective action is initial adverse agency action, and a subsequent protest to the General Accounting Office more than 10 working days later is untimely.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

PROCUREMENT

Contractor Qualification

Responsibility/responsiveness distinctions

Whether or not a bidder has the necessary physical facilities to perform the contract is a question of a bidder's responsibility, not its bid's responsiveness. Where the contracting officer has made an affirmative determination of responsibility, the General Accounting Office will not review such determination absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met.

PROCUREMENT

B-225642 Apr. 10, 1987

Specifications

87-1 CPD 399

Ambiguity allegation

Specification interpretation

A protest contending that a solicitation's provisions are ambiguous because they are not as specific as the incumbent contractor desires is denied since all provisions to which the protester objects reasonably describe the work to be performed.

PROCUREMENT

B-225645 Apr. 10, 1987

Small Purchase Method

Competition

Use

Criteria

General Accounting Office will review small purchase procurement to determine if it was conducted in accordance with the principles of fair and open competition.

PROCUREMENT

Small Purchase Method

Purchases

Competitive restrictions

A purchase description is inadequate and unduly restricts competition where only one manufacturer's part number is listed without any further information, since potential offerors of alternate items cannot determine from the part number alone precisely what characteristics are deemed essential, and thus cannot compete effectively.

PROCUREMENT **B-226325, et al., Con't**
Payment/Discharge **Apr. 10, 1987**
Federal procurement regulations/laws
Revision
Cost reimbursement

General Accounting Office has no comment on Federal Acquisition Regulation (FAR) case No. 86-69, a proposal to amend FAR 15.804-8, 31.201-5, and 31.205-6 and to add a contract clause at FAR 52.215-17 to provide rules for determining the government's share of any adjustments of prior years' pension costs that occur as a result of a termination of a defined benefit pension plan.

PROCUREMENT
Special Procurement Methods/Categories
Government property
Use
Federal procurement regulations/laws
Revision

General Accounting Office has no comment on Federal Acquisition Regulation (FAR) case No. 86-68, a proposal to amend FAR 45.101 and the contract clause at FAR 52.245-18 concerning the definition of special test equipment.

PROCUREMENT **B-226543 Apr. 10, 1987**
Special Procurement Methods/Categories
Subcontracts
Contract awards
Prime contractors
Bribes

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 87-08, an interim regulation amending FAR 3.502 and adding a contract clause at FAR 52.203-7 to implement the Anti-Kickback Act of 1986, which will be codified at 41 U.S.C. 51 through 58.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification

B-225625 Apr. 13, 1987
87-1 CPD 401

Determination of whether to cancel a solicitation is primarily within the discretion of the contracting agency and will not be overturned absent clear evidence of abuse of discretion.

In determining whether an agency properly canceled a solicitation, the question is whether the agency had a reasonable basis for its determination under the circumstances at the time it was made, not whether the correct reason was set forth at that time.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Justification
Ambiguous specifications

Agency reasonably determined that a compelling reason existed for canceling a solicitation where the specifications were ambiguous with respect to the amount of work which was required and the specifications were disparately interpreted by the bidders.

PROCUREMENT

Sealed Bidding

Bids

Clerical errors

Error correction

Propriety

B-225768 Apr. 13, 1987

87-1 CPD 402

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Clerical errors

Where bidder offers equipment that does not meet the solicitation's specifications, the procuring agency properly rejected the bid as nonresponsive, even though the bidder alleges that the wrong model number cited in its bid was an obvious clerical error since it cannot be corrected as a minor informality or irregularity.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

B-226386.2 Apr. 13, 1987

87-1 CPD 403

Prior dismissal is affirmed where protester knew of the basis for its protest more than 10 days before filing protest with General Accounting Office.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225667 Apr. 14, 1987
87-1 CPD 404

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Claim for bid preparation costs is denied where there is no indication that agency originally issued the solicitation in bad faith or that cancellation was improper.

PROCUREMENT
Sealed Bidding
Invitations for bids
Cancellation
Notification procedures

There is no requirement that an agency notify the Small Business Administration prior to cancellation of a solicitation that has been set aside for small business.

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

Fact that inadequacy of a solicitation could have been detected prior to bid opening does not preclude cancellation after opening if award under the solicitation would not meet the agency's needs.

PROCUREMENT **B-225875 Con't**
Socio-Economic Policies **Apr. 14, 1987**
Small business set-asides
Use
National defense interests
Applicability

Provision in regulation concerning when a total small business set-aside is appropriate for items procured under Industrial Readiness Program is inapplicable where agency does not procure solicited items pursuant to the Industrial Readiness Program.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size determination
GAO review

Portion of protest alleging that firms are dominant in industry and thus not small business concerns is dismissed since Small Business Administration has conclusive authority to determine matter of small business size status.

PROCUREMENT **B-226333; B-226334**
Bid Protests **Apr. 14, 1987**
GAO procedures **87-1 CPD 408**
Interested parties
Suspended/debarred contractors

Protester is not an interested party to maintain protests where protester is not eligible to receive award under the challenged solicitations as a result of debarment proceedings initiated against protester while protests are pending.

PROCUREMENT B-227004 Apr. 14, 1987
Competitive Negotiation 87-1 CPD 409
Contract awards
Government delays
Justification

A delay in meeting procurement milestones is a procedural deficiency which does not effect the validity of the procurement. Agency delay in awarding contract is not objectionable where delay is due to protests filed and current litigation concerning procurement.

PROCUREMENT B-224086.4 Apr. 15, 1987
Bid Protests 87-1 CPD 410
Bias allegation
Allegation substantiation
Evidence sufficiency

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Allegation substantiation

To support allegations of agency bias in evaluating technical proposals, the record must contain not only "hard facts" showing bias but evidence of unequal treatment unfairly affecting the protester's competitive position.

PROCUREMENT
Sealed Bidding
Two-step sealed bidding
Offers
Rejection
Propriety

Protester's technical proposal under step one of two-step sealed bid solicitation properly was rejected as technically unacceptable where, after the opportunity to submit clarifications, the contracting agency reasonably determined the proposal required a major rewrite to demonstrate its ability to meet the solicitation's stated requirements.

PROCUREMENT **B-225558 Apr. 15, 1987**
Sealed Bidding **87-1 CPD 411**
Contract awards
Eligibility
Suspended/debarred contractors

PROCUREMENT
Sealed Bidding
Suspended/debarred contractors
Bids
Rejection
Propriety

Because the Federal Acquisition Regulation prohibits firms suspended at the time of bid opening from contracting with the government, such firms may not be considered for award even though they may no longer be suspended at the time of award.

PROCUREMENT **B-225648.3 Apr. 15, 1987**
Bid Protests **87-1 CPD 412**
GAO procedures
GAO decisions
Reconsideration

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Dismissal of original protest is affirmed where protester failed to file protest within 10 working days of the date the basis for protest was known, and the protester has not shown that the dismissal was based on errors of law or information not previously considered.

PROCUREMENT B-225648.3 Con't
Bid Protests Apr. 15, 1987
GAO procedures
Interested parties
Direct interest standards

Protest allegations raised against award to firm are dismissed since protester is not interested party to raise issues where it would not be in line for award if these protest allegations were resolved in protester's favor.

PROCUREMENT B-224373.3 Apr. 16, 1987
Bid Protests 87-1 CPD 413
Court decisions
Merits adjudication
GAO review

General Accounting Office (GAO) will dismiss protest where issues raised are before a court of competent jurisdiction; the protester has not asked that the court seek GAO's opinion; and the court has not expressed interest in a GAO decision.

PROCUREMENT B-225556, et al.
Contractor Qualification Apr. 16, 1987
Responsibility 87-1 CPD 415
Contracting officer findings
Negative determination
GAO review

The General Accounting Office generally will not disturb a contracting officer's nonresponsibility determination absent a showing of bad faith or a lack or any reasonable basis for the determination.

PROCUREMENT
Sealed Bidding
Bids

B-225597 Con't
Apr. 16, 1987

Acceptance time periods
Extension
Agency notification

PROCUREMENT
Sealed Bidding
Contract awards
Propriety

When facts concerning a bidder's intent to extend its bid acceptance period are in dispute, and it appears that the bidder could argue either that it had extended or that its bid had expired, the integrity of the competitive system is best served by an award to the second-low bidder.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-225691; B-226177
Apr. 16, 1987
87-1 CPD 418

Protest that sealed bids rather than negotiated procedures should have been used to procure a diffuser system is dismissed as untimely when not filed prior to the closing date for the receipt of proposals.

PROCUREMENT
Bid Protests
Information disclosure
Competitive advantage

Protesters and other interested parties are not entitled to documents related to a protested procurement action that would give one or more parties a competitive advantage or which parties are not otherwise authorized by law to receive.

PROCUREMENT B-225691; B-226177 Con't
Bid Protests Apr. 16, 1987
Non-prejudicial allegation
GAO review

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Protest that technical evaluation was incorrect is dismissed where, even if protester is correct, record shows that protester was not prejudiced by the improper evaluation.

PROCUREMENT B-226583.2 Apr. 16, 1987
Bid Protests 87-1 CPD 419
GAO procedures
Protest timeliness
Delays
Agency-level protests

Where protester waits more than 7 months after filing a protest with the contracting agency before it files a protest with General Accounting Office (GAO)--even though the agency never replied to its protest--the protester did not diligently pursue the matter, and its protest to GAO is untimely.

PROCUREMENT B-212935.4 Apr. 17, 1987
Bid Protests 87-1 CPD 420
GAO procedures
Pending litigation
GAO review

General Accounting Office will not consider a protest where it involves a matter that is the subject of litigation before a court of competent jurisdiction unless the court requests a decision.

PROCUREMENT

B-212935.4 Con't

Bid Protests

Apr. 17, 1987

GAO procedures

Protest timeliness

10-day rule

Reconsideration motions

Timeliness dismissal is affirmed where the protester presents for the first time facts available when the protest was filed to establish timeliness.

PROCUREMENT

B-224512.3; B-224512.4

Sealed Bidding

Apr. 17, 1987

Bids

87-1 CPD 421

Responsiveness

Brand name/equal specifications

Equivalent products

There is no merit to the contention that a bid is nonresponsive when it is accompanied by a statement offering to supply additional equipment as options where the solicitation did not require the additional equipment to be supplied.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size determination
GAO review

B-226272.2 Apr. 17, 1987
87-1 CPD 422

Since the Small Business Administration has conclusive statutory authority to determine small business status for federal procurement purposes, the General Accounting Office does not consider size status protests.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-226320 Apr. 17, 1987
87-1 CPD 423

Protest of agency's cancellation of solicitation is dismissed because the protester is the third low bidder and has not raised a viable objection to the acceptability of the two lower bids and is therefore not an interested party under General Accounting Office Bid Protest Regulations.

PROCUREMENT
Bid Protests
GAO procedures
Information submission
Timeliness

B-223905.2 Apr. 20, 1987
87-1 CPD 424

Protester's new and independent ground of protest is dismissed where the later-raised issue does not independently satisfy the rules of GAO's Bid Protest Regulations.

PROCUREMENT

**Bid Protests
Information disclosure
Competitive advantage**

B-223905.2 Con't

Apr. 20, 1987

Under the Competition in Contracting Act of 1984, agencies are not required to provide to protesters and other interested parties documents related to a protest that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Nevertheless, decisions on bid protests are based on the entire record and not merely on those portions that have been released to the protester and other interested parties.

PROCUREMENT

**Competitive Negotiation
Contract awards
Award procedures
Procedural defects**

PROCUREMENT

**Competitive Negotiation
Contract awards
Source selection boards
Administrative discretion**

Agencies are required to document the relative differences among proposals and their strengths, weaknesses and risks in terms of the stated evaluation criteria. Where source selection is based upon the average of the scores given to proposals by three technical evaluators, the two top ranked proposals are within one percentage point, but the scores are not adequately supported by written narratives, the source selection official lacked a sufficient basis to make a reasoned award decision.

PROCUREMENT

B-223905.2 Con't

**Competitive Negotiation
Discussion
Adequacy
Criteria**

Apr. 20, 1987

Requirement that agencies generally must conduct "meaningful" negotiations or discussions with all responsible offerors within a competitive range was satisfied when the protester was advised in writing concerning the two major weaknesses in its initial proposal. When a proposal is acceptable and in the competitive range, an agency is not under an obligation to discuss every aspect of the proposal that has received less than the maximum possible score.

PROCUREMENT

**Competitive Negotiation
Initial offers
Rejection
Propriety**

Where an initial proposal is not fully in accord with the requirements of an RFP, the proposal should not be rejected if the deficiencies are reasonably susceptible to being made acceptable through negotiations.

PROCUREMENT

**Competitive Negotiation
Technical evaluation boards
Qualification
GAO review**

The composition of technical evaluation panels is within the discretion of the contracting agency and GAO will not review the composition absent a showing of possible fraud, bad faith, or conflict of interest.

PROCUREMENT
Contract Management
Contract performance
GAO review

B-223905.2 Con't
Apr. 20, 1987

Once an offeror promises to perform in accordance with a solicitation's requirements, whether the offeror actually does perform as contractually required is a matter of contract administration which is to be monitored by the procuring agency and is not a subject of GAO review as a part of its bid protest function.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Where an offeror promises to comply with the requirements of a solicitation, a contention that the offeror will be unable to comply with the requirements constitutes an allegation that the offeror is not responsible. GAO does not review affirmative determinations of responsibility absent circumstances not applicable here.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225260.4; B-225260.5
Apr. 20, 1987
87-1 CPD 425

Request for reconsideration is denied where protester fails to specify any errors of law made or information not previously considered which would warrant reversal or modification of that decision.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-225658; B-225692
Apr. 20, 1987
87-1 CPD 426

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

PROCUREMENT
Bid Protests
Allegation substantiation
Burden of proof

B-225701 Apr. 20, 1987
87-1 CPD 427

General Accounting Office will not conduct an investigation for the purpose of establishing whether protester has a valid basis of protest. The protester bears the burden of presenting its case.

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Bad faith
Allegation substantiation

Contracting officer did not improperly influence Small Business Administration (SBA) decision not to issue certificate of competency (COC) by communicating her negative views regarding protester's responsibility and recommending against issuance of a COC. The Federal Acquisition Regulation encourages a full exchange of information between the contracting agency and the SBA.

Fact that Small Business Administration (SBA) agreed with contracting officer that protester lacked integrity does not establish that SBA merely adopted the contracting officer's view without conducting its own investigation.

PROCUREMENT
Sealed Bidding
Bid guarantees
Sureties
Acceptability

B-226164 Apr. 21, 1987
87-1 CPD 429

Contracting agency properly considered the low bid responsive, even though individual sureties submitted on the bid bond pledged the same assets, where the bid bond was legally sufficient to establish the joint and several liability of the sureties and where affidavits submitted disclosed a net worth which was more than adequate to cover the requirement that each surety have a net worth equal to the difference between the low bidder's price and the price of the next low acceptable bid.

PROCUREMENT
Noncompetitive Negotiation
Contractors
Notification
Procedural defects

B-224277.3 Apr. 22, 1987
87-1 CPD 430

A determination not to synopsise a noncompetitive award cannot itself justify statement for a noncompetitive award, which is subject to high-level approval must also contain information indicating the basis for not synopsizing.

PROCUREMENT
Noncompetitive Negotiation
Use
Justification
Urgent needs

A justification for using other than full and open competition which cites 41 U.S.C. 253(c)(1) (Supp. III 1985) does not meet the requirements of a justification for using the "urgent need" exception from using full and open competition under 41 U.S.C. 253(c)(2) (Supp. III 1985).

PROCUREMENT B-225559; B-225559.2
Contractor Qualification Apr. 22, 1987
Responsibility 87-1 CPD 431
Contracting officer findings
Negative determination
GAO review

Protest of nonresponsibility determination is denied where the agency had a reasonable basis for concluding that there was a significant risk that the protester might not be able to perform the contract in a timely manner in accordance with the required performance schedule.

PROCUREMENT
Contractor Qualification
Responsibility criteria
Performance capabilities

There is no merit to protester's contention that the agency violated statutory requirements that an agency inform prospective bidders of what must be done to satisfy a qualification requirement and that it promptly furnish a firm seeking qualification with specific information why qualification was not obtained where the agency provided detailed information concerning the qualification requirement to a number of prospective bidders, including the protester, several months prior to issuance of a solicitation and provided the protester with a detailed list of reasons for the agency's determination that the protester had not satisfied the qualification requirement.

PROCUREMENT
Sealed Bidding
Bids
Evaluation
Prices

B-225804.2 Apr. 23, 1987

Price-related factors such as overhead and cost of money may be considered in evaluating bids only if the solicitation specifically so provides.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Shipment schedules
Deviation

Bid offering delivery on more accelerated basis than specified in invitation for bids (IFB) is responsive where IFB specifically authorizes accelerated delivery schedule.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-226289.3 Apr. 23, 1987

Protest after bid opening that solicitation's wage rates were incorrect is untimely.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-224434.2, et al.
Apr. 24, 1987
87-1 CPD 434

Request for reconsideration is denied where awardee and agency do not show errors in law or fact.

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Claim for costs incurred in preparing a proposal is allowed where the protester was unreasonably excluded from the competitive range and the only recommended remedy is that options not be exercised.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-224534.2; B-224534.3
Apr. 24, 1987

Decision that contracting agency improperly evaluated option prices to determine low bidder under solicitation that effectively indicated such prices would not be evaluated is affirmed on reconsideration since it has not been shown to be legally or factually wrong.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

Protest costs may be paid where protester would have been found low if bids had been evaluated properly but General Accounting Office recommends recompetition with revised bid evaluation method instead of award to the firm.

PROCUREMENT **B-225562 Apr. 24, 1987**
Competitive Negotiation **87-1 CPD 436**
Contract awards
Award procedures
Procedural defects

General Accounting Office denies a protest against award of a contract while an agency-level protest was pending where the agency failed to make certain determinations required by regulation, because the agency's alleged actions are unrelated to the validity of the selection decision.

PROCUREMENT
Competitive Negotiation
Offers
Competitive ranges
Exclusion
Administrative discretion

Agency's decision to exclude protester's proposal from the competitive range, based upon major deficiencies in personnel experience and management planning and reporting, weaknesses in other areas of the proposal, and a total evaluation score about 43 percent less than that of the other offeror was not unreasonable or otherwise in violation of applicable statutes and regulations.

PROCUREMENT **B-225602.2 Apr. 24, 1987**
Specifications **87-1 CPD 437**
Performance specifications
Adequacy

Solicitation specifying that calibrator must be capable of applying 0-4000 pounds of force within a specified percentage of uncertainty is deficient, and protest on that ground is sustained where: (1) record shows that uncertainty percentage cannot reasonably apply at or near zero pounds of force; (2) solicitation does not specify some number above zero at which the uncertainty percentage becomes applicable; and (3) absence of such a number has a significant cost and technical impact.

PROCUREMENT

B-225983 Apr. 24, 1987

Sealed Bidding

Bids

Responsiveness

Level-pricing clauses

Compliance

Bid was responsive and did not violate level pricing provision of the solicitation where the IFB only required level pricing of production quantities with first article and bid contained a permissible different price for production quantities without first article.

PROCUREMENT

B-226335 Apr. 27, 1987

Contractor Qualification

Responsibility/responsiveness distinctions

Small business sizes

Self-certification

PROCUREMENT

Socio-Economic Policies

Small businesses

Size status

Self-certification

Information evaluation

The question of the accuracy of a bidder's small business status certification under a small business set-aside is not a matter of bid responsiveness. Rather, when the agency doubts the accuracy of that certification, it may refer the matter to the Small Business Administration for a size status determination.

PROCUREMENT

B-226335 Con't

Sealed Bidding

Apr. 27, 1987

Bid guarantees

Responsiveness

Bid opening

Hand-written terms

A bid bond on which the original bid opening date has been altered to reflect the date as changed by amendment does not affect the enforceability of the bond by the government against the surety and therefore does not affect the bid's responsiveness.

PROCUREMENT

B-226365; B-227049

Socio-Economic Policies

Apr. 27, 1987

Small business

87-1 CPD 438

set-asides

Use

Justification

Protester fails to show that contracting officer's decision to set aside procurements for small businesses was unreasonable where (1) contracting officer decided, based on survey of potential small business bidders, that a sufficient number of responsible small businesses could be expected to compete and only evidence protester offers to refute contracting officer's determination is unsupported statement that small business bidders lack capacity to perform the required work; and (2) even assuming, as protester argues, that lower prices could be expected in an unrestricted procurement, protester offers no evidence to show that the small business bidders' prices in prior set-aside procurements have been unreasonably high.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Responsiveness

B-226438 Apr. 27, 1987
87-1 CPD 439

The failure to acknowledge an IFB amendment increasing wage rates cannot be cured after bid opening by a bidder whose employees are not already covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Notification

A bidder bears the risk of not receiving invitation amendments unless it is shown that the contracting agency made a deliberate effort to exclude the company from competing.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-226961.2 Apr. 27, 1987

Prior dismissal of untimely protest concerning allegedly defective solicitation is affirmed where protest was not filed prior to closing date for receipt of proposals and record indicates that alleged impropriety was apparent to protester prior to that closing date.

PROCUREMENT

B-225057.2 Apr. 28, 1987

Bid Protests

87-1 CPD 440

GAO procedures

GAO decisions

Reconsideration

Additional information

A protester cannot use a request for reconsideration to furnish information that was available, but not submitted, at the time of its original protest.

PROCUREMENT

Noncompetitive Negotiation

Contract awards

Sole sources

Propriety

PROCUREMENT

Noncompetitive Negotiation

Use

Justification

Urgent needs

Where agency properly determined due to urgent circumstances that it must use noncompetitive procedures provided for under the Competition in Contracting Act, agency properly may limit the procurement to the only firm it reasonably believes can promptly and properly supply the requirements, and need not solicit all firms interested in the acquisition. Agency is not required, under these circumstances, to refer agency conclusion that a firm is not capable of meeting delivery schedule to Small Business Administration for a certificate of competency determination.

PROCUREMENT

Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225451.2; B-225451.3

Apr. 28, 1987
87-1 CPD 441

PROCUREMENT

Bid Protests
Moot allegation
GAO review

Protester's request for reconsideration of prior decision is dismissed as academic where all issues addressed in the earlier decision, which is subject of reconsideration request, have been dealt with at length on the basis of an expanded record in the present decision denying the protest.

PROCUREMENT

Competitive Negotiation
Offers
Evaluation

PROCUREMENT

Competitive Negotiation
Technical transfusion/leveling
Allegation substantiation
Evidence sufficiency

Protest alleging that contracting agency improperly waived equipment demonstration requirement for the awardee, permitted technical transfusion of some of the protester's proposal, engaged in improper price prompting, and entered into certain agreements only with awardee is denied. The Navy reasonably determined that the awardee's equipment met contract requirements based on performance under prior contract and trade show demonstration and protester has not alleged nor shown any prejudice resulting from waiver of the demonstration, and there is no evidence of improper technical transfusion, price prompting, or agreements.

PROCUREMENT B-225623 Apr. 28, 1987
Bid Protests 87-1 CPD 442
Non-prejudicial allegation
GAO review

PROCUREMENT
Socio-Economic Policies
Small businesses
Size determination
GAO review

Protest of alleged failure by contracting agency to comply with regulatory requirements concerning the handling of a protest challenging a small business certification is dismissed since, in light of a determination by the Small Business Administration that the certifying firm is indeed a small business concern for this procurement, protester was not prejudiced by the alleged procedural deficiencies and thus no useful purpose would be served by consideration of the protest.

PROCUREMENT B-225823.2 Apr. 28, 1987
Competitive Negotiation 87-1 CPD 443
Offers
Late submission
Acceptance criteria

Proposal received by the agency 2 days after closing date for receipt of initial proposals properly was rejected, since it was sent by regular mail and no government mishandling was involved.

PROCUREMENT B-225856.2 Apr. 28, 1987
Bid Protests 87-1 CPD 444
Non-prejudicial allegation
GAO review

Protest that the awardee's proposed thermal imaging system failed to comply with requirements of the solicitation lacks merit where, in response to the contracting agency's request for additional information from offerors, the awardee clearly indicated compliance with the requirements.

PROCUREMENT

B-226130 Apr. 28, 1987

**Bid Protests
GAO procedures
Protest timeliness
10-day rule**

Where a protester is advised of the reason its proposal was rejected, which forms the basis of its protest, it may not wait 2 months until a formal debriefing before protesting.

PROCUREMENT

**Competitive Negotiation
Contract awards
Source selection boards
Administrative discretion**

Source selection official is not bound by the recommendations and conclusions of a source evaluation board.

PROCUREMENT

B-226415 Apr. 28, 1987

**Contract Disputes
Shipment costs
Freight charges
Self-certification**

Where a purchase order contains a disputes clause requiring factual disputes to be resolved by decision of the contracting officer, a claim raising a factual question over delivery terms is for the contracting officer's resolution. In the absence of a decision clearly finding the government to be legally liable for freight charges and risk of loss of items not delivered, a claim for recovery of the amounts deducted from the supplier's bill for freight charges and missing items should not be paid.

PROCUREMENT

B-226631 Apr. 28, 1987

Bid Protests

87-1 CPD 446

GAO procedures

Interested parties

Direct interest standards

To be considered an interested party to protest government solicitations, a party must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Potential subcontractor which is not an actual or prospective bidder itself is not an interested party.

PROCUREMENT

B-226659.2 Apr. 28, 1987

Bid Protests

87-1 CPD 447

GAO procedures

GAO decisions

Reconsideration

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Decision dismissing protest because it raised an issue of affirmative determination of responsibility is affirmed upon reconsideration since the protest challenged the prospective contractor's intent to comply with a Department of Agriculture regulation concerning the use of timber purchased from the government and since the evaluation of a bidder's responsibility includes a determination whether the bidder is eligible to receive the award under applicable laws and regulations.

PROCUREMENT **B-226664 Apr. 28, 1987**
Sealed Bidding **87-1 CPD 448**
Bid guarantees
Responsiveness
Liability restrictions

Low bid containing bid bond in amount less than the solicitation required and also less than the difference between the bid price and the next higher acceptable bidder was properly rejected as nonresponsive.

PROCUREMENT **B-226963 Apr. 28, 1987**
Bid Protests
Moot allegation
GAO review

Protest raising same issues as those resolved in a recent decision on a protest by the same protester and involving the same agency and awardee is dismissed as no useful purpose would be served by further consideration of the protest.

PROCUREMENT **B-227031 Apr. 28, 1987**
Bid Protests **87-1 CPD 449**
GAO procedures
Protest timeliness
10-day rule

Protest of an award under section 8(a) of the Small Business Act after the protester was in line for award under a competitive solicitation is untimely where filed 5 months after the protester knew of the award.

PROCUREMENT
Competitive Negotiation
Contract awards
Propriety

Contention that current solicitation for janitorial services is improper based on the protester's failure to receive the predecessor contract presents no valid basis for protest.

PROCUREMENT

B-225576 Apr. 29, 1987

Bid Protests

87-1 CPD 451

Allegation substantiation

Lacking

GAO review

General Accounting Office will not conduct an independent investigation in connection with a bid protest in order to substantiate a protester's speculative allegations.

PROCUREMENT

Bid Protests

Evidence evaluation

Privileged information

Under the Competition in Contracting Act of 1984, agencies are not required to provide to protesters and other interested parties documents related to a protest that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Nevertheless, decisions on bid protests are based on the entire record and not merely on those portions that have been released to the protester and other interested parties.

PROCUREMENT

Competitive Negotiation

Best/final offers

Technical acceptability

Negative determination

Propriety

Protester's best and final (BAFO) offer properly was rejected as being technically unacceptable where protester failed to rectify technical deficiencies brought to protester's attention prior to the date for submission of BAFO's.

PROCUREMENT
Specifications
Performance
specifications
Adequacy

B-225745 Con't
Apr. 29, 1987

Protest that requirement for grout cleaning should be separately priced and contain an estimate of the amount of work required is denied where agency has determined that grout cleaning is an integral part of floor cleaning and cannot be separated from that task.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties

B-225752 Apr. 29, 1987

A protester complaining that an agency improperly awarded a contract to awardee whose technology was of dubious value is not an interested party for purposes of maintaining a protest at the General Accounting Office where protester was not an offeror under the solicitation.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest that was not filed within 10 working days after basis of protest was known or should have been known is dismissed as untimely.

PROCUREMENT B-225752 Con't
Competitive Negotiation Apr. 29, 1987
Offers
Evaluation errors
Allegation substantiation

Protester has not satisfied burden of demonstrating that rejection of proposal was improper where protester does not respond to specific deficiencies cited by agency as justifying rejection. Mere disagreement with evaluation does not satisfy burden.

PROCUREMENT B-225892 Apr. 29, 1987
Sealed Bidding 87-1 CPD 453
Bids
Modification
Late submission
Rejection

Procuring agency properly rejected protester's low bid where the bid was grossly front-loaded with respect to first article pricing because an award to a bidder with grossly front-loaded first article prices would result in payment of funds to which the firm is not entitled with respect to the actual value of the first articles.

PROCUREMENT B-226775 Apr. 29, 1987
Bid Protests 87-1 CPD 454
Allegation substantiation
Lacking
GAO review

Mere speculation that agency improperly disclosed price information is rejected in the absence of evidence of a price leak. General Accounting Office does not conduct investigations to establish the validity of such speculative statements.

PROCUREMENT
Contract Management
Contract expiration
Urgent needs
Contract extension
Propriety

B-225626; B-225627
Apr. 30, 1987

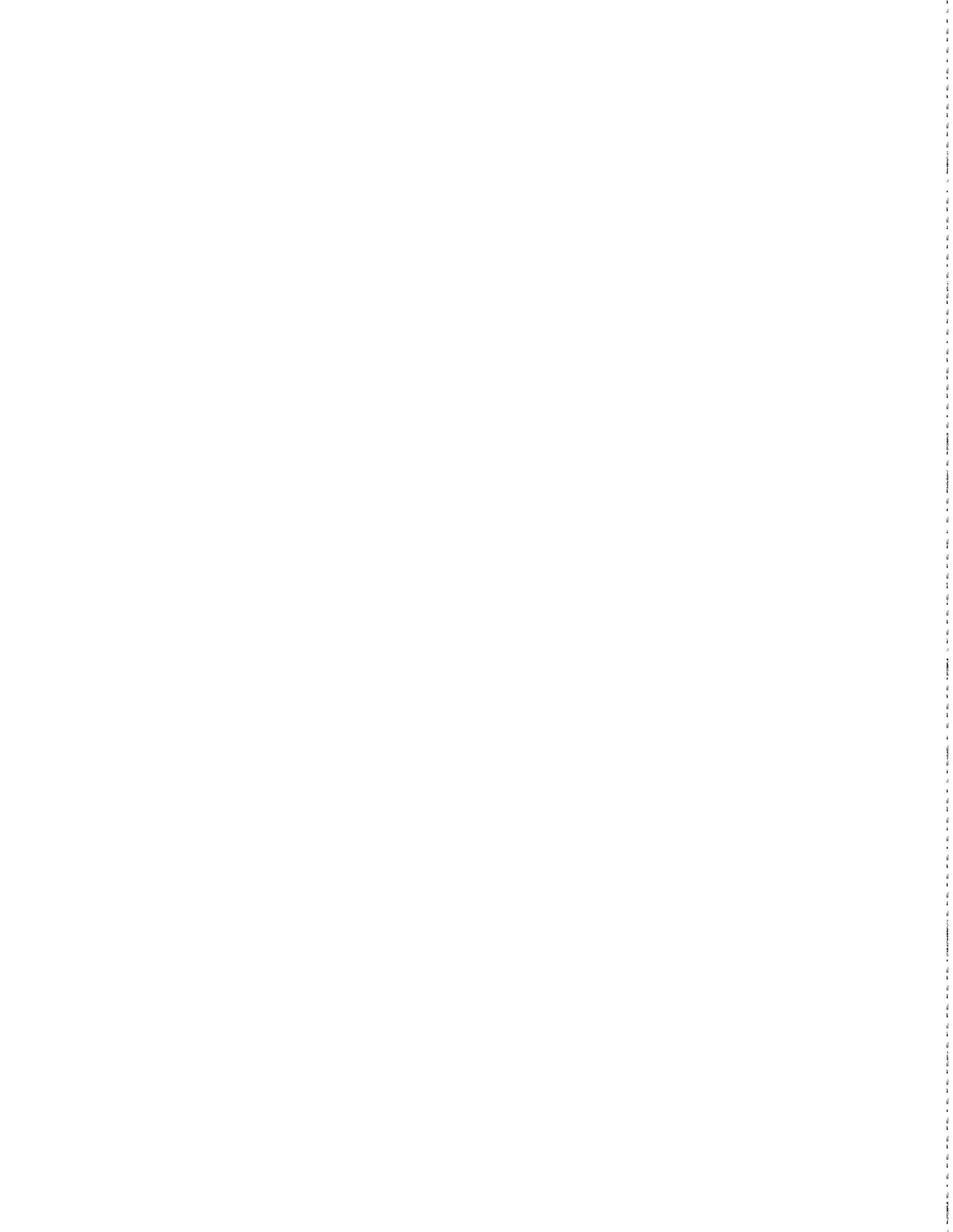
The interim extensions of two contracts about to expire pending awards under competitive follow-on procurement is justified where ongoing, critical services otherwise would be interrupted and only the incumbent contractors can meet the government's needs within the 4-month timeframe covered by the extensions.

Allegation that award of 4-month interim contract extensions pending competitive procurement was necessitated by agency failure to conduct proper advance planning is without merit, where the record shows that agency did in fact begin planning a competitive acquisition more than 1 year before existing contracts' scheduled expirations.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-225758 Apr. 30, 1987

Protest that certain equipment test should not have been required by solicitation is dismissed as untimely since it was filed after bid opening.



MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS

B-226499 Apr. 1, 1987

Agriculture

Agricultural commodities

Price supports

Administrative regulations

The Wool and Mohair Act of 1954, Pub. L. No. 83-897, 910, as amended, authorizes the Secretary of Agriculture, to prevent abuses, to issue regulations establishing limitations on price support payments to wool and mohair producers based on reasonably appraised sales prices.

Department of Agriculture Notice LD-276 (May 21, 1986), which at most, is an interpretive regulation, and thus does not have the force and effect of law, is in conflict with 1985 revisions to Departmental Regulations covering the wool and mohair programs, 7 C.F.R. 1468, et seq., 1472 et seq., since it allows support payments to producers who sell to persons and entities not engaged in the business of buying and selling wool.

The 1985 revisions to Department of Agriculture regulations covering wool and mohair support programs, 50 Fed. Reg. 34079-83 (Aug. 23, 1985), provided that a bona fide marketing of wool occurs when (1) the wool is sold to a person or business that normally buys wool; (2) the producer selling the wool does not sell wool to a family member or to any business in which the producer has more than a 20 percent interest; (3) the sale is based on a reasonably appraised price for wool; and (4) the person or business buying the wool also is engaged in the business of buying and selling grease basis wool and buys the wool in the course of that business.

MISCELLANEOUS TOPICS

B-226499 Con't

Agriculture

Apr. 1, 1987

Agricultural commodities**Price supports****Administrative regulations**

Interim regulations published in the Federal Register on February 11, 1987, 52 Fed. Reg. 4275-77, covering wool and mohair price support program which established certain limitations on price support payments to producers does not directly conflict with discussion in the conference report, H.R. Rep. No. 447, 99th Cong., 1st Sess. 341 (1985), accompanying the Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354, 1378. The conference report only rejected a Senate amendment that would have placed a limit of \$50,000 on total support payments to producers for any marketing year, but neither directed that no such limit be set nor discussed support limitations on the price of wool or mohair per pound.

MISCELLANEOUS TOPICS

B-208593 Apr. 2, 1987

Environment/Energy/Natural Resources**Environmental protection****Air quality****Standards****Enforcement**

Environmental Protection Agency (EPA) General Counsel's Memorandum dated November 25, 1986 analyzes risks of litigating EPA's Reasonable Extra Efforts Program and Sustained Progress Program. These programs extend attainment deadlines contained in Part D of the Clean Air Act and solicit additional efforts toward attainment of the primary National Ambient Air Quality Standards on the part of non-attainment areas. The Memorandum concludes that the programs are legally defensible, but risky. GAO agrees with the risk assessment, but continues to maintain that the Clean Air Act requires enforcement of statutory penalties for non-attainment after the Act's deadlines.

MISCELLANEOUS TOPICS B-226731 Apr. 13, 1987
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

Government Bills of Lading necessary for completion of an audit currently underway by this Office may not be destroyed under authority of General Records Schedule (GRS) 9, Item 1.a., even though the prescribed retention period has been exceeded and even though this is not stated in GRS 9. All records disposition schedule are subject to this requirement regardless of whether it is stated, since as long as they are being used for audit, investigative or litigative purposes, they are valuable to the Government and necessary for the conducting of the Government's business and the protection of its interests and therefore, may not be destroyed.

MISCELLANEOUS TOPICS B-226727 Apr. 20, 1987
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

This office has no legal objection to the adoption and issuance of a Request for Records Disposition Authority proposing to change the retention period for Material Procurement Program Control Records (Table 401-1, Rule 1, AFR 12-50, Volume II) from "Permanent" to "Destroy 2 years after the last year for which the funds are available for obligation" and also the description of the records from "Directives, HQ USAF-approved program" to "Procurement Authorizations (PA) for Material Procurement Program".

MISCELLANEOUS TOPICS **B-226730 Apr. 23, 1987**
Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions

This Office has no objection to the adoption and issuance of Request for Records Disposition Authority by the Social Security Administration, Department of Health and Human Services, proposing to dispose of Representative Payee files under titles II and XVI of the Social Security Act, 2 years after report is filed or questions are resolved whichever is later.

MISCELLANEOUS TOPICS **B-226404 Apr. 24, 1987**
Federal Administrative/Legislative Matters
Congress
Legislative/judicial personnel
Wage increase

The issue presented is the correct starting date for pay increases under 2 U.S.C. 359 (Supp. III 1985) for employees of the House of Representatives. While section 359 is open to two interpretations it is GAO's view that the interpretation requiring all such increases to begin at the start of the next pay period after the end of the period allowed for disapproval is the better view. Although it can be argued that under the other interpretation of section 359, House employees whose salary is set at amounts not to exceed specific levels of the Executive Schedule, may have their pay increased as soon as any employee of the government begins receiving pay at the new rate under the Executive schedule, we do not believe that that interpretation comports with overall spirit of section 359 or comparable statutes.

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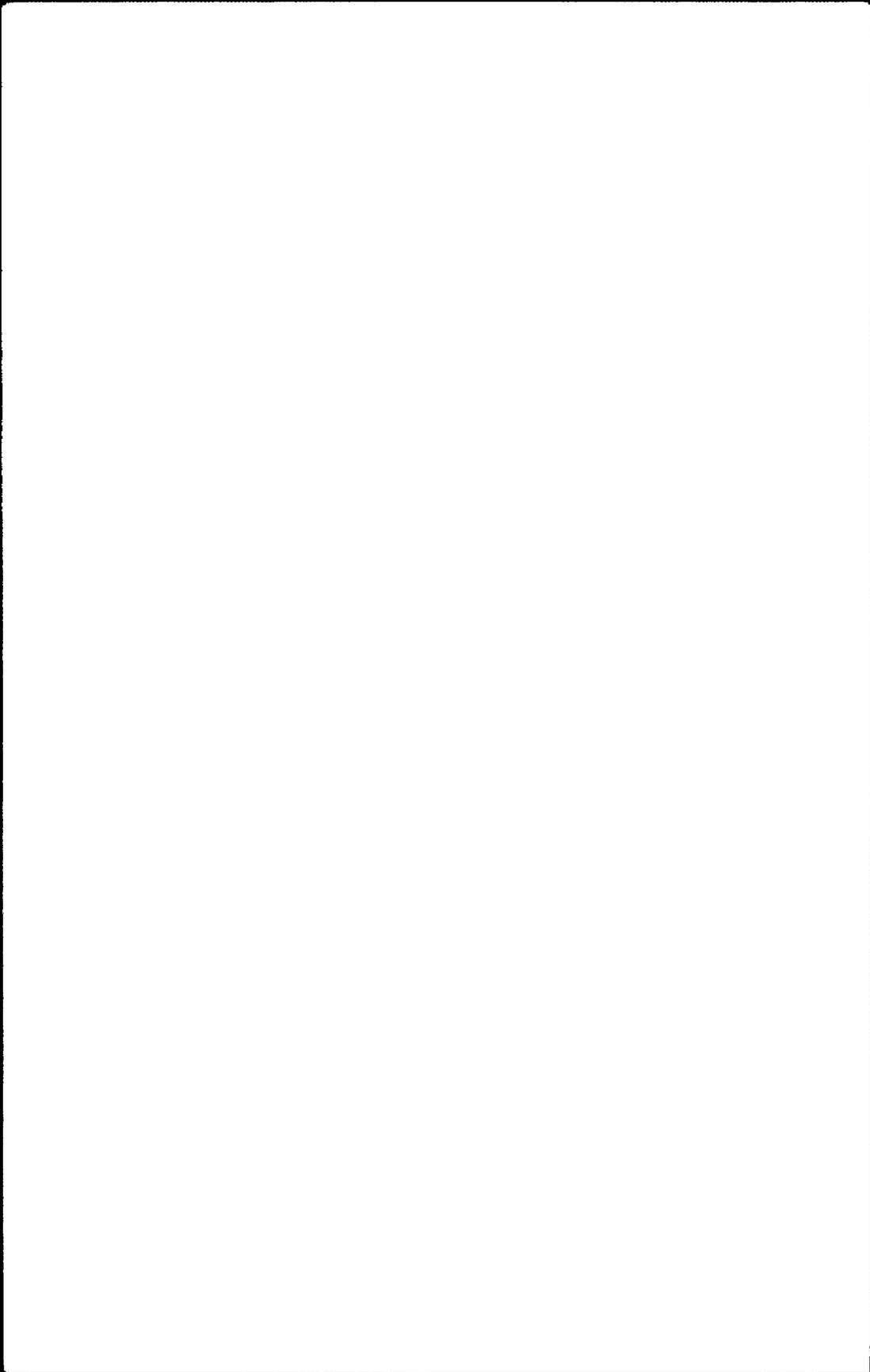
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