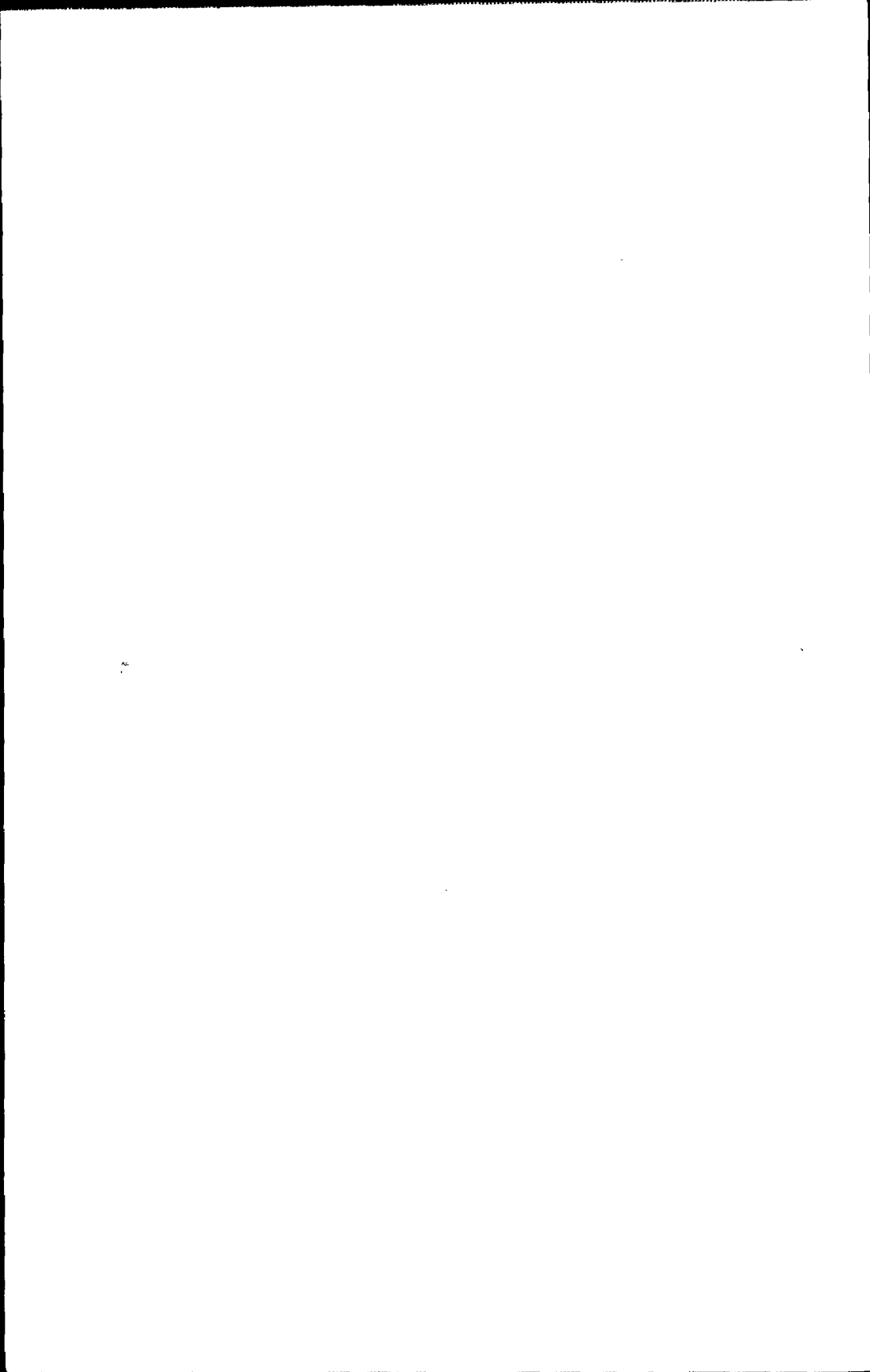

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United States General Accounting Office
Office of the General Counsel

December 1986
Vol. III, No. 3

**Digests of Unpublished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

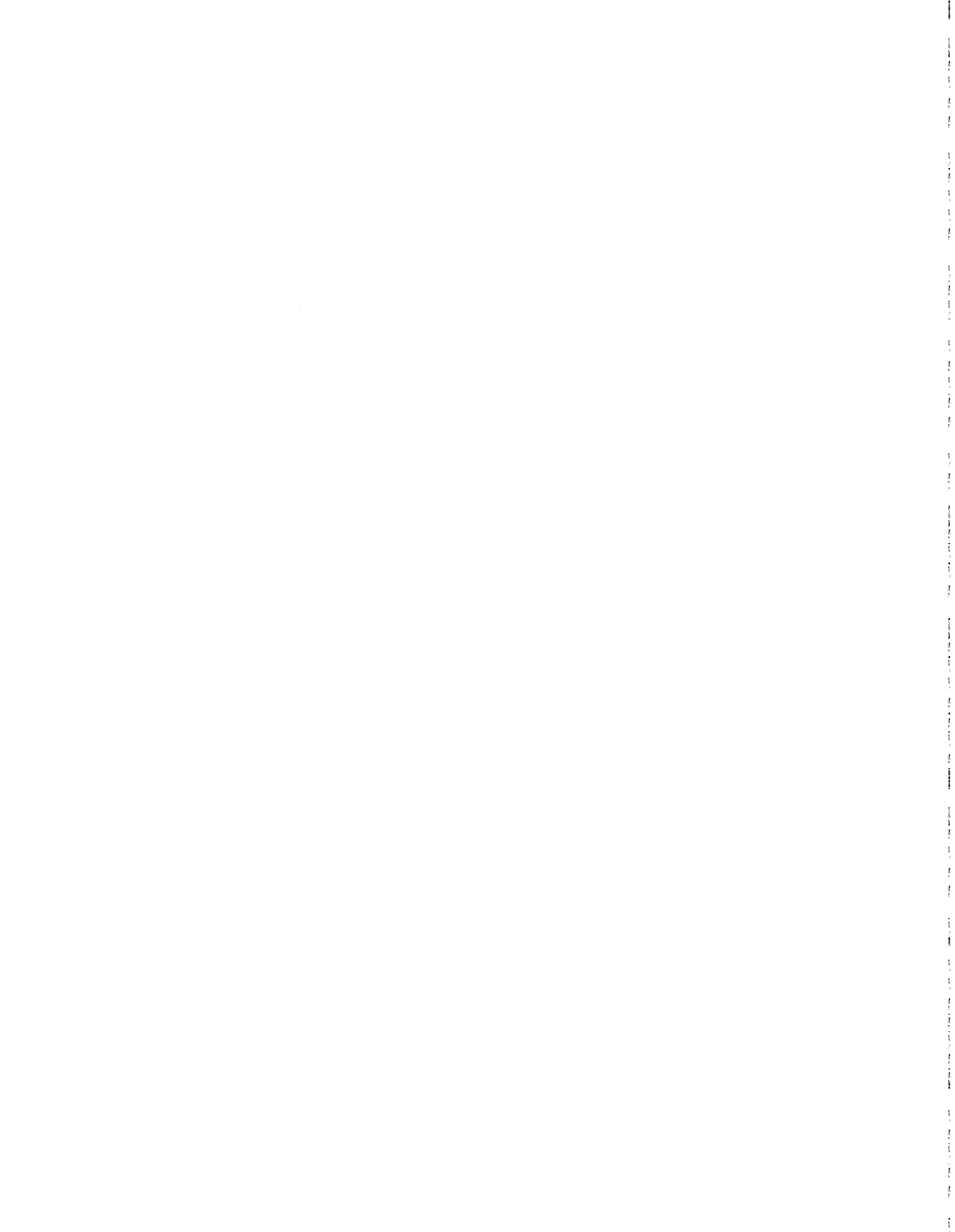
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DECEMBER 1986

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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This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and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 21 U.S. Code 3529 (formerly 31 U.S.C. 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code 3702 (formerly 31 U.S.C. 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text 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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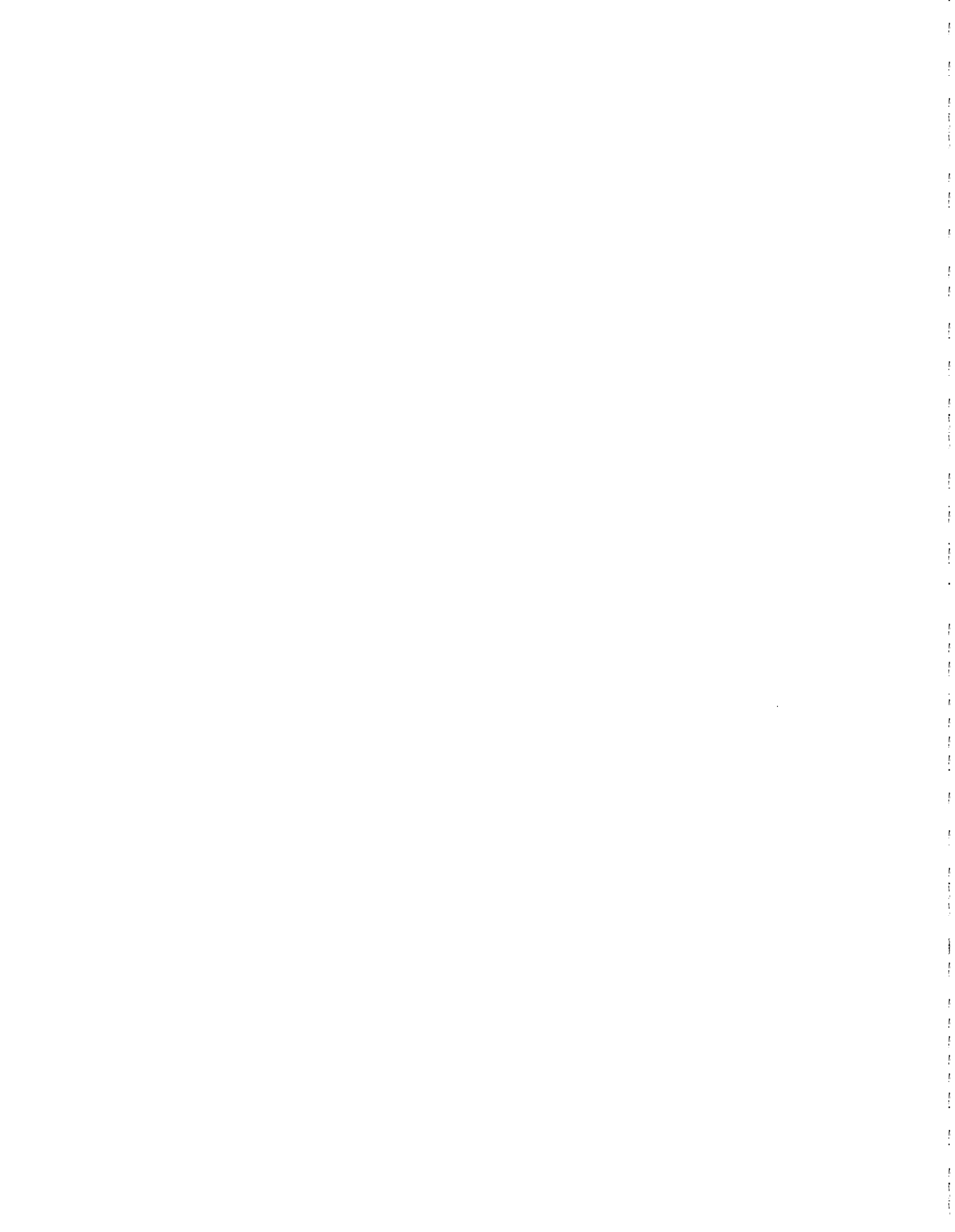
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NOTICE

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.

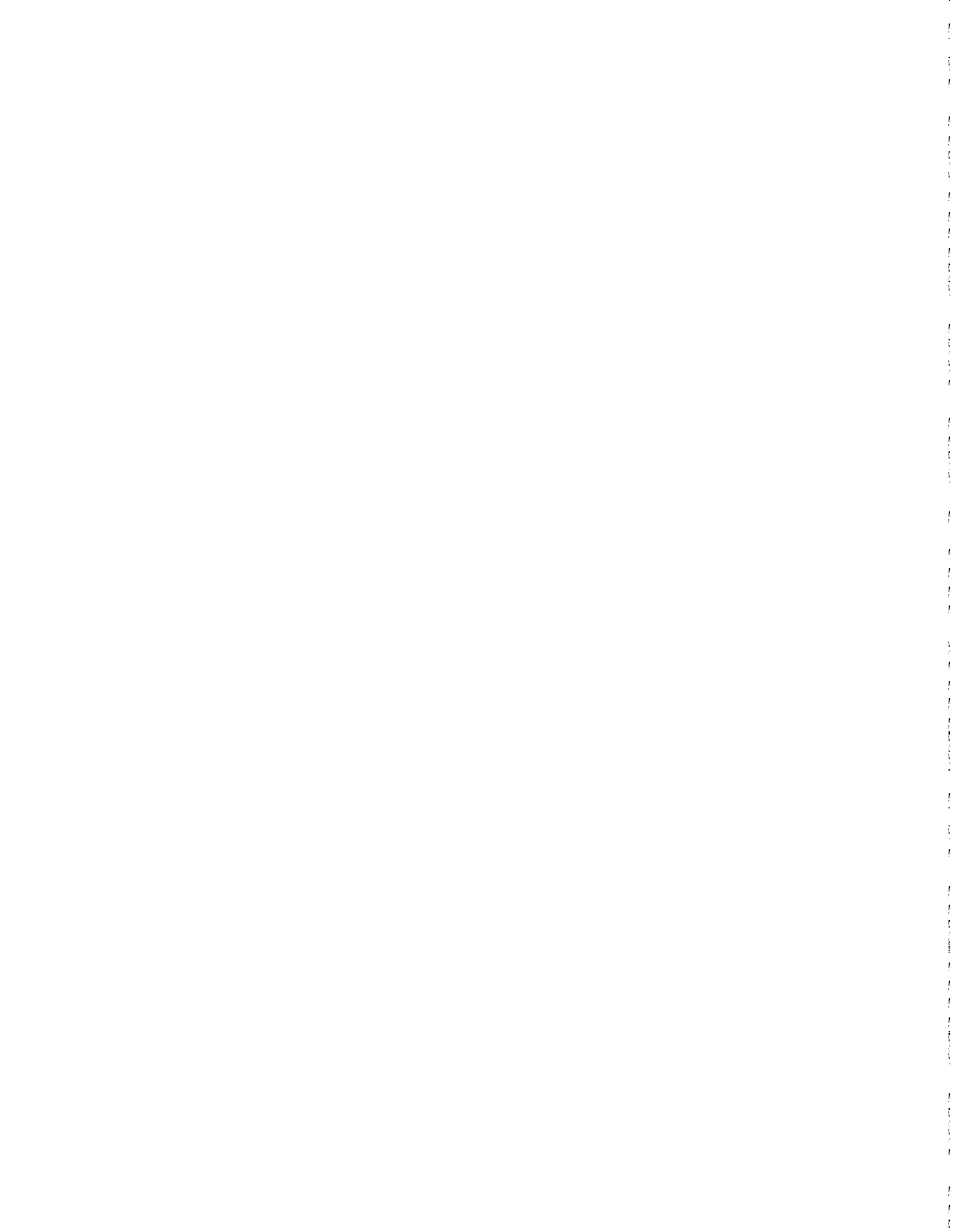


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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225245 Dec. 8, 1986

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official and his deputy under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified military checks. Proper procedures were followed in the issuance of the reprinted 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 debit vouchers dated after June 1, 1986, we will deny relief if Army delays more than 3 months in forwarding the debt to your collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-220466 et al.
Cashiers Dec. 9, 1986
Liability
 Illegal/improper payments
 Quantum meruit/valebant doctrine

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Certifying officers
Liability
 Illegal/improper payments
 Quantum meruit/valebant doctrine

Internal Revenue Service (IRS) request for relief from liability pursuant to 31 U.S.C. § 3528(b) on behalf of five certifying officers who erroneously certified for payment a total of \$4,003.15 in imprest fund replenishment vouchers for improperly procured moving services at the Parkersburg, West Virginia District of the IRS is unnecessary. Under the equitable jurisdiction of GAO's claims settlement authority, 31 U.S.C. § 3702 (1982), this Office authorizes payment of the laborers invoices under a theory of quantum meruit. IRS is authorized to cure the deficiency in each accountable officer's account by making an accounting adjustment, debiting the appropriate account from which the laborers invoices properly may be paid, and crediting the appropriate accounts of the accountable officers in question. For similar reasons, an imprest fund cashier who was required by IRS to reimburse her account as a consequence of a similar improper payment should be reimbursed.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-198730 Dec. 10, 1986

Amount availability

Augmentation

Gifts/donations

Revolving accounts

GAO has no objection to acceptance by Library of Congress of a substantial gift from the Librarian of the Congress and his wife to establish a publication fund in the Library's Center for the Book. The gift document stipulates that the moneys are to constitute a revolving fund to be replenished from proceeds earned from sale of publications produced by the fund. While GAO has in the past recommended against establishment of revolving funds without explicit statutory authority, the provisions of 2 U.S.C. § 175(2), which describe the Librarian's authority for center programs, are tantamount to a grant of authority to operate with a revolving fund.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-225308 Dec. 18, 1986

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 losses the Army receives notice of 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-225309 Dec. 18, 1986**

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official and his deputy under 31 U.S.C. § 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, for 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

Obligation **B-217475 Dec. 24, 1986**

Payments

Estimates

Service contracts

Experts/consultants

National Mediation Board need not obligate estimated amounts due to neutral referee for services he may perform in the future unless the referee submits the proper forms and estimates of compensation and expenses for advance approval, as required by Board's January 1985 regulations. GAO decision B-217475, May 5, 1986 clarified.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-210555.21 Dec. 5, 1986

Travel

Commuting expenses

Liability

CIVILIAN PERSONNEL

Travel

Commuting expenses

Reimbursement

Eligibility

All regular drivers for Commissioner of Customs and Assistant Commissioner for Internal Affairs state that they have at various times transported both officials in Government cars between their respective homes and official functions away from the office. Neither official denies that these trips have taken place although the Commissioner disputes the assertion of one driver that there were as many as 40 such trips over a 3 year period. Since neither official is entitled by statute to receive such transportation, the costs of such trips must be determined by the officials concerned and repaid to the agency.

CIVILIAN PERSONNEL

B-210555.21 Con't

Travel

Dec. 5, 1986

Commuting expenses

Personal convenience

Allegation substantiation

Burden of proof

The Chairman, House Committee on Government Operations, asked GAO to investigate allegations that the Commissioner of Customs and his Assistant Commissioner for Internal Affairs were using Government cars to travel between their homes and places of work in violation of a statutory prohibition against such travel. GAO is unable to confirm these allegations because only one of 5 drivers for the Commissioner claims to have provided such transportation, the Commissioner flatly denies the drivers statements, and there are no written records to refute or support the allegations since the Commissioner ordered the maintenance of logs to be discontinued shortly after he took office.

CIVILIAN PERSONNEL

Travel

Commuting expenses

Reimbursement

Eligibility

Drivers for the Commissioner of Customs state that they made many trips from the airports in the Washington area to the Commissioner's Charlottesville, Virginia farm which he calls his "home of record", at the conclusion of official travel. GAO advises that GSA travel regulations and our decisions regard an official's "home", for purposes of compensation for official travel expenses to be the residence from which the employee regularly commutes to work. The Commissioner should calculate the number of such trips he made, the overtime involved for his driver, and other applicable costs in order to repay these costs to his agency.

CIVILIAN PERSONNEL

B-223277 Dec. 8, 1986

Travel

Actual subsistence expenses

Fraud

Allegation substantiation

Evidence sufficiency

Agency denied an employee's claim for subsistence expenses, determining that he claimed lodging expenses for a weekend when he in fact went home. We find that the agency's evidence is insufficient to establish fraud on the part of the employee, and the record indicates he paid for the lodging in advance and admits he returned home to care for his sick wife. His reimbursement should be computed using a constructive cost basis.

CIVILIAN PERSONNEL

Travel

Actual subsistence expenses

Reimbursement

Amount determination

Agency denied an employee's claim for subsistence expenses, determining that he had misstated his motel expenses because the payments recorded on his receipts were higher than those entered into the motel records. We find that the agency's evidence is insufficient to establish fraud on the part of the employee, and since the motel records contained matching receipts to his, as well as others that were both higher and lower, he may be reimbursed for his entire lodging claim.

CIVILIAN PERSONNEL

B-222234 Dec. 9, 1986

Travel
Gifts/donations
Life insurance
Acceptance
Propriety

General Services Administration questions whether it is proper to accept life insurance coverage for Federal employees under contracts with travel agents or for contractor-issued credit cards. We conclude that such life insurance coverage is permissible since (1) there are no statutory prohibitions, (2) the benefits would not conflict with payments under the Federal Employees' Compensation Act, and (3) the benefits would not conflict with the regulations or our decisions concerning the acceptance of gifts or promotional materials.

CIVILIAN PERSONNEL

B-221787 Dec. 17, 1986

Relocation
Residence transaction expenses
Loan origination fees
Reimbursement
Amount determination

Transferred employee claimed 3 percent loan origination fee but agency limited reimbursement to 1 percent, based on HUD's advice that a 1 percent loan origination fee was customary in the locality of the employee's new residence at the time of the purchase. The information provided by HUD creates a rebuttable presumption as to the prevailing fee in the area, and the employee has not submitted evidence to rebut this presumption. Accordingly, the employee may not be reimbursed for the additional 2 percent fee.

CIVILIAN PERSONNEL

B-223597 Dec. 24, 1986

Compensation

Overpayments

Error detection

Debt collection

Waiver

CIVILIAN PERSONNEL

Compensation

Payroll deductions

Annuity deductions

Underdeductions

Error detection

A reemployed annuitant of the Department of the Navy requests waiver of compensation overpayments where agency failed to deduct proper amount of annuity from salary. Due to administrative error and in spite of fact employee brought the error to the attention of the agency on 10 separate occasions, he continued to be overpaid. Waiver is denied, in part. Even though an employee promptly and repeatedly brings pay errors to the attention of proper authorities, such action does not relieve him of the obligation to repay, when requested. An employee who accepts payments known to be erroneous cannot reasonably expect to retain them and should make provision for eventual repayment. Therefore, collection is not against equity, good conscience, or contrary to the best interest of the United States.

CIVILIAN PERSONNEL**B-223607 Dec. 24, 1986****Relocation****Household goods****Actual expenses****Reimbursement****Amount determination**

Employee of the Internal Revenue Service chose to move his own household goods by private conveyance after agency advised employee that cost comparison between commuted rate and actual expense methods of transporting household goods showed that actual expense method using a Government Bill of Lading (GBL) would be the most economical and, therefore, reimbursement would be limited to the GBL amount. Since the employee chose to use a method other than the authorized method, he can only be reimbursed for the costs he actually incurred in moving his household goods. He may not be reimbursed the GBL amount authorized unless his costs are equal to or exceed the GBL amount authorized under the actual expense method. 41 C.F.R. §101-40.203-2(D).

CIVILIAN PERSONNEL**B-223666 Dec. 24, 1986****Relocation****Taxes****Allowances****Eligibility**

Employees of the Veterans Administration seek payment of a relocation income tax allowance for their transfers which were effective prior to November 14, 1983. The claims are denied because the relocation income tax allowance as authorized by section 118 of Public Law 98-151 is available only to employees whose effective date of transfer is on or after November 14, 1983.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-223384 Dec. 2, 1986

**Pay
Overpayments
Error detection
Debt collection
Waiver**

A former Air Force member received an erroneous standard semimonthly payment of military pay and allowances after his separation from the service, which was nearly four times the amount he reasonably could have expected to receive as his final payment upon discharge. It would not be against equity and good conscience to collect the debt from him since he either knew or should have known that the payment was excessive and in error, and he should have set aside the excess amount for eventual refund. Hence, his application to be excused from his repayment obligation cannot be favorably considered under the waiver statute, 10 U.S.C. § 2774, which authorizes waiver of debts resulting from overpayments of military pay only if collection would be "against equity and good conscience."

MILITARY PERSONNEL

B-222189 Dec. 5, 1986

**Relocation
Household goods
Shipment costs
Rates
Propriety**

The General Accounting Office will not object to the solicitation and payment of rates for the transportation of domestic household goods by the Military Traffic Management Command or the General Services Administration whether the transportation charges simply reflect increased valuation from the current 60 cents per pound per article to \$1.25 per pound of net weight, or are expressed as valuation charges.

MILITARY PERSONNEL

B-223382 Dec. 8, 1986

Travel

Actual subsistence expenses

Fraud

Allegation substantiation

Evidence sufficiency

MILITARY PERSONNEL

Travel

Actual subsistence expenses

Reimbursement

Pro rata shares

Agency recouped subsistence expenses advanced to an employee, determining that he had filed a fraudulent claim for lodgings because he claimed the full amount for a room he had shared, and because the name of his roommate was inked out on the hotel receipt accompanying his travel voucher. We find that the evidence in the record is insufficient to establish a clear inference of fraud on the part of the employee. Accordingly, the employee may recover subsistence expenses recouped from him, with lodging expenses limited to the amount he actually incurred.

MILITARY PERSONNEL

B-222947 Dec. 10, 1986

**Relocation
Household goods
Shipment
Travel regulations
Amendments**

MILITARY PERSONNEL

**Relocation
Relocation travel
Dependents
Travel regulations
Amendments**

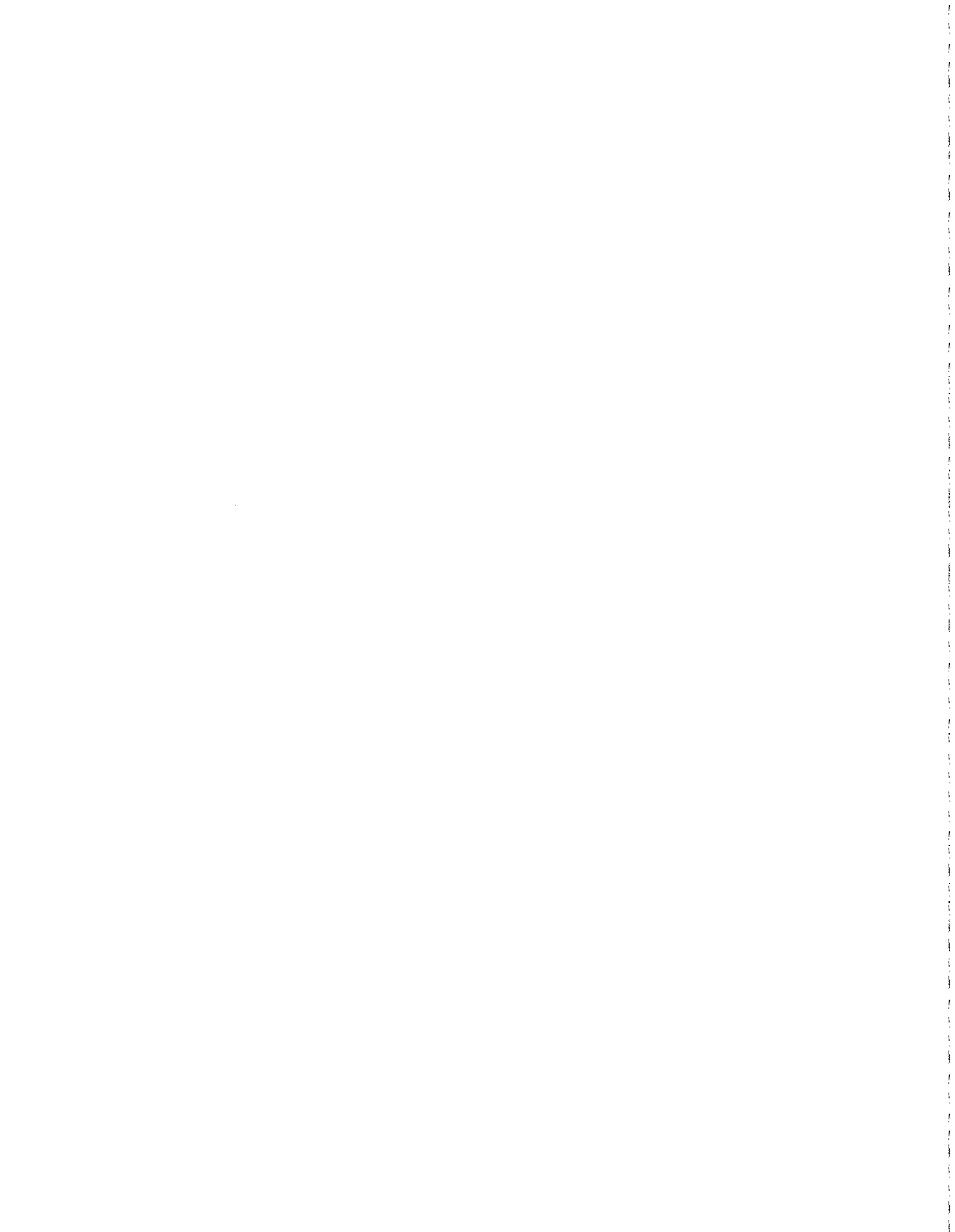
The Joint Travel Regulations may not be amended to authorize the transportation of dependents and household effects of a service member stationed in the continental United States who is confined under a court-martial order since there is no statutory authority for this.

MILITARY PERSONNEL

B-223900 Dec. 24, 1986

**Travel
Travel regulations
Witnesses
Travel expenses**

The Joint Travel Regulations may be amended to provide transportation and travel expenses for uniformed service members who serve as witnesses in criminal cases in local courts and civil cases in local, state government, government of a United States territory or possession or District of Columbia courts in proceedings directly related to the uniformed services or to members of the uniformed services, if the government has a compelling and genuine interest in the matter.



PROCUREMENT

B-223862 Con't

Bid Protest

Dec. 1, 1986

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Allegation that agency made several changes in specification requirements for physicians to accommodate awardee is dismissed as untimely, since this allegation is grounded on changes in requirements contained in two amendments to the solicitation; under Bid Protest Regulations, such a protest must be filed prior to the next closing date for receipt of proposals.

PROCUREMENT

Competitive Negotiation

Contract awards

Quantity reduction

Propriety

Protest against reduction, from 270 to 240, in estimated number of magnetic resonance imaging scans to be procured under base period of solicitation is denied since solicitation permitted award of contract for less than the required quantity at the unit price offered. Since prices were computed by multiplying the unit price by the estimated quantity and awardee was low for both quantities, protester was not prejudiced.

PROCUREMENT

Competitive Negotiation

Discussion reopening

Propriety

A contracting officer may reopen discussions after the receipt of best and final offers, if he determines that it is in the government's interest to do so. Further, there is nothing improper in the agency conducting discussions with one offeror concerning a deficiency while not holding discussions with the protester whose proposal was not deficient in this area. All that is required is that each time discussions are reopened, each offeror be given an opportunity to respond to the new requirements included in the solicitation.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Options
Prices

B-223862 Con't
Dec. 1, 1986

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Shipment costs

Protest that option prices should not have been included in the evaluation and that transportation costs should have been included in the evaluation, is without merit since solicitation provided that option prices would be included in determining total price and there was no provision for evaluation of transportation costs. The procuring activity is required to make award based on factors included in the solicitation.

PROCUREMENT
Socio-Economic Policies
Small businesses
Contract awards
Preferences
Applicability

Protester is not entitled to award because it, unlike the awardee, was a small-business firm since the procurement was not a small-business set-aside.

PROCUREMENT

B-224848 Dec. 1, 1986

Bid Protest

86-2 CPD 622

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest, filed after receipt of initial proposals, that evaluation criteria were inadequate, is untimely under General Accounting Office Bid Protest Regulations, which require that protests against improprieties in a solicitation which are apparent prior to the closing date be filed before that date.

PROCUREMENT

Competitive Negotiation

Offers

Competitive ranges

Exclusion

Administrative discretion

Agency may reasonably exclude twenty-first low offeror from competitive range on basis of price without consideration of technical factors where agency reasonably determines that offeror's price is so much greater than lowest offers selected for inclusion in competitive range that offeror has no reasonable chance for award.

PROCUREMENT
Bid Protest
GAO procedures
Preparation costs

B-223823 Dec. 2, 1986
86-2 CPD 627

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

Recovery of lost profits is not permitted under any circumstances. Recovery of bid preparation costs and the cost of pursuing a protest is denied where the protest has been found to be without legal merit.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Responsiveness

PROCUREMENT
Sealed Bidding
Non-responsive bids
Post-bid opening periods
Clarification
Propriety

A bid found nonresponsive for failure to acknowledge the receipt of a material amendment prior to bid opening may not be made responsive by the acknowledgment of the amendment after bid opening.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Notification

B-223823 Con't
Dec. 2, 1986

Protest against the nonreceipt of a solicitation amendment is without merit where contracting agency indicates that protester was mailed the amendment and there is no showing that the failure to receive the amendment was caused by a conscious and deliberate effort to exclude the bidder from competing for the contract.

PROCUREMENT
Sealed Bidding
Invitations for bids
Wage rates
Amendments
Acknowledgment

Failure to acknowledge an invitation for bids amendment which increased the wage rate for plasterers cannot be waived after bid opening even assuming that the increase in cost of contract performance is de minimus where the bidder's employees are not covered by a collective bargaining agreement which binds the bidder to pay wages not less than those prescribed by the Secretary of Labor.

PROCUREMENT

Sealed Bidding
Below-cost bids
Contract awards
Propriety

B-224301 Dec. 2, 1986
86-2 CPD 629

Where the low bidder verified its bid for an additive item significantly lower than the other bids and the government estimate, after the contracting officer pointed out the price discrepancy, the agency may properly consider the bid as originally submitted. The mere fact that the bid may be low, or even below cost, is no basis to preclude contract award.

PROCUREMENT

Sealed Bidding
Bids
Error correction
Judgmental errors

PROCUREMENT

Sealed Bidding
Low bids
Cost estimates
Risk assumption

Judgmental error, where bidder made a knowing judgment and assumed a known risk at the time it submitted its bid, by computing the bid on the basis of its own estimate of its subcontractor costs, is not a mistake that requires rejection of the bid since the bid as submitted was the bid actually intended.

PROCUREMENT

B-225216 Dec. 2, 1986

Bid Protest

86-2 CPD 630

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest based on an alleged deficiency that is apparent on the face of an invitation for bids--here allegedly improper differences in delivery schedules based on whether first article testing is required--must be filed before bid opening.

PROCUREMENT

Contract Management

Contract administration

GAO review

While an agency may not properly award a contract with the intent to modify it, when a protester neither alleges nor makes out a prima facie case that this occurred, purported post-award modification increasing prices in exchange for accelerated delivery is a matter of contract administration, not within the bid protest jurisdiction of the General Accounting Office.

PROCUREMENT

B-225237 Dec. 2, 1986

Bid Protest

86-2 CPD 631

GAO procedures

Protest timeliness

10-day rule

Protest, which was initially misaddressed to GAO at address other than that prescribed in our Bid Protest Regulations, is dismissed as untimely where protest was eventually untimely filed in our Office more than 10 days after the basis for the protest was known by the protester.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule

B-225499 Dec. 2, 1986
86-2 CPD 632

Protest against cancellation of solicitation which is not received by General Accounting Office within 10 working days after protester received notification that solicitation had been canceled is untimely and will not be considered on the merits.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that specifications in request for proposals unduly restrict competition is dismissed as untimely when not filed before the closing date for the receipt of proposals.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule
Effective dates

B-224019 Dec. 3, 1986
86-2 CPD 634

Where a protest basis is initially not adequately detailed but is subsequently detailed, timeliness of that basis of protest is measured from the date of receipt of the detailed statement. Protest basis is untimely and not for consideration where the detailed statement of the protest basis is filed more than 10 working days after the protester learned of the basis of its protest.

PROCUREMENT

B-224512 Con't

Sealed Bidding

Dec. 3, 1986

Bids

Responsiveness

Brand name/equal specifications

Equivalent products

PROCUREMENT

Specifications

Brand name/equal specifications

Equivalent products

Salient characteristics

Descriptive literature

Where a brand name or equal solicitation provides that bidders proposing to modify a product to make it conform to the solicitation must clearly describe the proposed modifications, a bid offering a modified "equal" product which merely states that the bidder will demonstrate the proposed modifications on request is nonresponsive.

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Designs

Performance capabilities

A bid offering equipment that would meet the functional requirements of the solicitation only when used in a specific configuration is nonresponsive where the protester's intent to furnish equipment in that configuration is not apparent from the bid.

PROCUREMENT

B-224524 Dec. 3, 1986

Bid Protest

86-2 CPD 636

GAO procedures

Interested parties

Direct interest standards

Where protester would not be next in line for award of contract were its protest sustained, firm is not an interested party eligible to protest cancellation of solicitation and protest, therefore, is dismissed.

PROCUREMENT

B-225181.2 Dec. 3, 1986

Competitive Negotiation

86-2 CPD 637

Contract awards

Initial-offer awards

Propriety

Award on an initial proposal basis after an extension of time of acceptance by offerors is not improper. Contracting agency may make award in a negotiated procurement without holding discussions provided there exists adequate competition to clearly demonstrate that the award will result in the lowest overall cost to the government at a fair and reasonable price and the solicitation advised offerors of such possibility.

PROCUREMENT

Competitive Negotiation

Offers

Price adjustments

Late submission

Acceptability

A price reduction submitted almost one month after the offeror had granted an extension of the time for acceptance of its proposal, and several days after the contract had been awarded on the basis of initial proposals received, properly was not considered by the agency as late.

PROCUREMENT

B-223774.3 Dec. 4, 1986

Bid Protest

86-2 CPD 642

GAO procedures

Information submission

Timeliness

Detailed allegations raised for the first time in protester's comments on agency report are untimely, and will not be considered, where the allegations are not based on new information and are not mere expansions of original protest allegations.

PROCUREMENT

Competitive Negotiation

Requests for proposals

Amendments

Bad faith

Allegation substantiation

Allegation that procuring agency amended solicitation to reduce importance of technical factors in evaluation for purpose of steering award to another firm is without merit, where record shows that amendment was necessary to avoid misleading offerors and protester presents no evidence of agency bad faith or bias.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

Whether awardee will be able to perform contract using employees whose resumes were included in awardee's proposal is a matter of responsibility, and General Accounting Office will not review agency's affirmative determination of awardee's responsibility absent showing of possible agency fraud or bad faith or alleged agency failure to apply definitive responsibility criteria.

PROCUREMENT
Bid Protest
Allegation
Abandonment

B-224232 Dec. 4, 1986
86-2 CPD 643

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

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest of alleged improprieties in a solicitation for two-step sealed bidding is untimely where alleged improprieties were apparent prior to bid opening, but the protest was not filed with the contracting agency or the General Accounting Office until after bid opening.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

B-224253 Dec. 4, 1986
86-2 CPD 644

Whether a bidder is capable of performing a contract concerns the firm's responsibility, and General Accounting Office will not review a contracting officer's determination that a bidder is responsible except in limited circumstances.

PROCUREMENT B-224253 Con't
Contractor Qualification Dec. 4, 1986
Responsibility
Information
Submission time periods

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions

Bidder's failure to complete contractor responsibility questionnaire does not require rejection of bid as nonresponsive since information concerning responsibility may be submitted any time prior to contract award.

PROCUREMENT
Sealed Bidding
Below-cost bids
Contract awards
Propriety

The government's acceptance of a below-cost bid by a responsible firm is not legally objectionable.

PROCUREMENT
Sealed Bidding
Low bids
Error correction
Price adjustments
Propriety

There is nothing objectionable in procuring agency permitting low bidder to reduce its bid further, to actual total of line items, based on mistake.

PROCUREMENT
Sealed Bidding
Unbalanced bids
Contract awards
Propriety

B-224253 Con't
Dec. 4, 1986

Protest against the procuring agency's acceptance of an allegedly unbalanced bid is denied where there is no allegation or indication that the award will not result in the lowest ultimate cost to the government.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule
Reconsideration motions

B-225023.2 Dec. 4, 1986
86-2 CPD 645

Request for reconsideration filed more than 10 days after the protester received notice of dismissal of its protest is untimely.

PROCUREMENT
Bid Protest
Court decisions
Merits adjudication
GAO review

B-224014.4; B-224014.5
Dec. 5, 1986
86-2 CPD 647

GAO will not further consider protests where after a court of competent jurisdiction requests a GAO advisory opinion on the matter, the court issues a decision addressing the merits of the protests.

PROCUREMENT B-225223 et al.,
Contract Management Dec. 5, 1986
Contract administration 86-2 CPD 650
Contract terms
Compliance
GAO review

Protest that agency is requiring offeror to implement changes to its product not required by the specifications concerns a matter of contract administration which is the responsibility of the contracting agency, not our Office.

PROCUREMENT B-225530 Dec. 5, 1986
Contract Management 86-2 CPD 651
Contract administration
Contract terms
Compliance
GAO review

Whether awardee is performing in accordance with contract terms is matter of contract administration, which is within ambit of procuring agency, not General Accounting Office.

PROCUREMENT
Contractor Qualification
Licenses
State/local laws
GAO review

Whether firm satisfies general solicitation requirement that contractor possess all applicable state and local licenses is a matter to be resolved by the firm and state and local authorities, and the failure to possess certain state license at time of award is not basis for denying the firm the contract.

PROCUREMENT B-225530 Con't
Contractor Qualification Dec. 5, 1986
Responsibility
Contracting officer findings
Affirmative determination
GAO review

General Accounting Office will review protest challenging agency's affirmative determination of awardee's responsibility only under limited circumstances.

PROCUREMENT B-224212 Dec. 8, 1986
Competitive Negotiation 86-2 CPD 653
Offers
Evaluation
Technical acceptability

PROCUREMENT
Competitive Negotiation
Offers
Technical acceptability
Negative determination
Propriety

In negotiated procurements, since the agency's technical evaluation is based upon information submitted with the proposal, the burden is clearly on the offeror to submit an adequately written proposal. Therefore, proposal with material technical informational deficiencies may be rejected as technically unacceptable where the proposal demonstrates that the offeror did not make the effort to adequately address the solicitation's requirements.

PROCUREMENT

B-224284 Dec. 8, 1986

**Sealed Bidding
Bids**

86-2 CPD 654

**Additional information
Incorporation by reference**

Bidder's return of signed Standard Form 33, which includes Table of Contents listing cover sheet as one section of the bidding document, serves to incorporate the cover sheet, although not returned, into the bid.

PROCUREMENT

**Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Responsiveness**

Agency improperly rejected bid as nonresponsive for failure to acknowledge an amendment which merely clarified a period of performance already imposed by the only reasonable reading of inconsistent terms in the cover sheet and the solicitation.

PROCUREMENT

B-224623.2 Dec. 8, 1986

**Competitive Negotiation
Contract awards**

86-2 CPD 655

**Administrative discretion
Cost/technical tradeoffs
Technical superiority**

Contracting agency properly may make award to offeror submitting higher cost proposal where cost is of less importance than technical factors and the superiority of the higher cost proposal is reasonably considered by the agency to be worth the price premium.

PROCUREMENT

B-224776.2 Dec. 8, 1986

Bid Protest

86-2 CPD 657

GAO procedures

Administrative reports

Comments timeliness

A protester has the affirmative duty to notify the General Accounting Office promptly of its failure to receive the agency's administrative report on the protest. Where the protester's counsel was informed that GAO had timely received the report, and advised GAO at that time that he had not yet received the report, this circumstance nevertheless did not mitigate counsel's failure to notify GAO no later than 7 working days after the specified agency report due date of his continued nonreceipt of the report. Prior action dismissing the protest for failure to furnish comments on the report is affirmed.

PROCUREMENT

B-225359.2 Dec. 8, 1986

Bid Protest

86-2 CPD 658

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest of IFB's lack of testing requirements is untimely where filed after bid opening.

PROCUREMENT B-223921 Dec. 9, 1986
Competitive Negotiation 86-2 CPD 659
Best/final offers
Rejection
Price reasonableness
Risks

Agency reasonably determined that the protester's best and final offer, which priced 8 of 15 labor categories at zero, presented an unacceptable cost risk to the government where pricing of other items was unreasonably high and the protester's intent in offering zero-priced items was unclear.

PROCUREMENT B-224289 Dec. 9, 1986
Competitive Negotiation 86-2 CPD 660
Contract awards
Initial-offer awards
Propriety

Contracting agency properly may award contract on the basis of initial proposals, without discussions, where the solicitation advises offerors of that possibility and award will be at the lowest overall cost to the government.

PROCUREMENT
Competitive Negotiation
Discussion
Offers
Price adjustment
Late submission

Where award properly is to be made on an initial-proposal basis, agency acted reasonably in deciding not to open negotiations based on an offeror's submission of a late price reduction several months after the initial closing date and after the expense of conducting preaward surveys of two lower-priced offerors had been incurred. Permitting an offeror to compel opening by offering a late price reduction in such circumstances would defeat the entire purpose of the late proposal rules--to alleviate confusion, assure equal treatment of all offerors, and maintain the integrity of the competitive system.

PROCUREMENT

B-224818 Dec. 9, 1986

Competitive Negotiation

86-2 CPD 662

Hand-carried offers

Late submission

Acceptance criteria

Protest that handcarried proposal was not late because it was delivered to the agency's mailroom before the time proposals were due is denied since to be timely a proposal must be received in the place designated for the receipt of proposals by the required time.

PROCUREMENT

Competitive Negotiation

Offers

Late submission

Acceptance criteria

Government mishandling

Agency's actions did not cause proposal to be submitted late where it appears that one commercial carrier's mailing label which indicated that the package contained a proposal requiring expedited delivery was covered by a second carrier's label and agency, therefore, did not know the package contained a proposal due shortly and properly treated it as regular mail.

PROCUREMENT

B-225358.2 Dec. 9, 1986

**Bid Protest
Moot allegation
GAO review**

PROCUREMENT

**Competitive Negotiation
Offers
Foreign products
Evaluation
Equality**

PROCUREMENT

**Contract Management
Contract administration
Convenience termination
Administrative determination
GAO review**

In response to Congressional inquiry concerning bid protest, General Accounting Office explains that its decision on the protest 1) found procuring agency's termination of a competitor's contract for the convenience of the government proper because the addition of a Buy American Act, 41 U.S.C. § 10a (1982), evaluation factor resulting in protester's displacement as low offeror, was erroneous, and 2) dismissed as academic protest alleging improper evaluation because the agency asserted that an award under the original solicitation would no longer meet its needs and the protester would have an opportunity to compete for the solicitation.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule

B-225472-2 Dec. 9, 1986
86-2 CPD 663

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Deadlines
Constructive notification

The General Accounting Office (GAO) affirms its dismissal of a protest that was filed more than 10 working days after protester's formal notification of the contracting officer's rejection of its offer as technically unacceptable, as protesters are charged with constructive knowledge of GAO's Bid Protest Regulations and time consumed to make inquiries about them does not provide a basis for not meeting the regulatory requirement for filing a protest within 10 days of when the basis for protest is known.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Late submission

B-224209 Dec. 10, 1986
86-2 CPD 666

Mailgram acknowledging IFB amendment was properly rejected as late where only documentary evidence as to time of receipt at government installation shows it was received after bid opening.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment
Responsiveness

B-224209 Con't
Dec. 10, 1986

An amendment that imposes a different legal obligation on the contractor than was contained in the original solicitation is material; thus, rejection of a bid as nonresponsive for failure to include acknowledgment of the amendment is proper.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-224543.6 Dec. 10, 1986
86-2 CPD 667

Protest against solicitation requirement for bid and performance bonds is untimely when filed after bids are opened.

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

When required, a bid bond is a material part of the solicitation. Therefore, failure to furnish a required bond cannot be cured after bid opening.

PROCUREMENT

B-225400 Dec. 12, 1986

Bid Protest

GAO procedures

Administrative agencies

Determination criteria

Applicability

General Accounting Office (GAO) will not review a protest of a procurement conducted by the Architect of the Capitol, who has agreed to have GAO review its protests, where the procurement was conducted on behalf of the Senate, whose procurements GAO lacks jurisdiction to review, and the Senate has approved the resulting award.

PROCUREMENT

B-223941 Dec. 15, 1986

Bid Protest

86-2 CPD 674

GAO procedures

Preparation costs

PROCUREMENT

Noncompetitive Negotiation

Contract awards

Sole sources

Justification

Procedural defects

PROCUREMENT

Noncompetitive Negotiation

Contract awards

Sole sources

Propriety

Justification and approval which authorizes sole-source awards to government-owned contractor-operated (GOCO) facilities where it is deemed necessary to maintain the GOCO facility as an active mobilization base producer does not provide a sufficient basis for the sole-source award contemplated since the Justification and Approval contains no finding as to the particular facts and circumstances which justify the sole-source award. Since the sole-source award is improperly justified, protester is entitled to recover the costs of pursuing its protest.

PROCUREMENT **B-224152 Dec. 15, 1986**
Contract Types **86-2 CPD 675**
Fixed-price contracts
Incentive contracts
Use
Administrative determination

Where protester's contention that a fixed-price, award-fee contract is unnecessary for obtaining excellent food services is not supported by convincing evidence, there is no basis for questioning agency's position that an award-fee contract could improve the food services.

PROCUREMENT **B-225270 Dec. 15, 1986**
Bid Protest **86-2 CPD 676**
GAO procedures
Protest timeliness
10-day rule
Effective dates

Where agency advises a protester that its proposal is unacceptable and that it has made an award to another firm, and the record reveals no request for a debriefing, agency-level protest, or other action that would toll the General Accounting Office's requirement for protesting within 10 working days of when the basis for protest is known, a protest filed more than 6 weeks after the date of the rejection letter is untimely.

PROCUREMENT

B-223798 Dec. 16, 1986

**Socio-Economic Policies
Preferred products/services
Domestic products
Interpretation**

Sand to be used by Corps of Engineers for beach nourishment on beaches of Presque Isle Park is a "construction material" under provisions of 33 U.S.C. § 426e(c) for purposes of the Buy American Act, 41 U.S.C. §§ 10a-10d.

PROCUREMENT

**Socio-Economic Policies
Preferred products/services
Domestic products
Waiver
Administrative discretion**

Provisions of Buy American Act, 41 U.S.C. §§ 10a-10d, cannot be waived automatically, but may be waived only for reasons prescribed by statute. Automatic waivers provided in some international agreements are inapplicable here.

A waiver of Buy American Act may be granted only for reasons prescribed by statute, 41 U.S.C. §§ 10a-10d.

PROCUREMENT

B-225093.2 Dec. 16, 1986

Bid Protest

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

PROCUREMENT

Bid Protest

GAO procedures

Protest timeliness

Deadlines

Constructive notification

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Shipment schedules

Effective dates

In response to inquiry from Member of Congress, General Accounting Office (GAO) advises the Member of the basis for GAO's dismissal of a constituent's protest and that, in any event, it appeared that the protest was without merit.

PROCUREMENT

B-224191; B-224191.2

Sealed Bidding

Dec. 17, 1986

Hand-carried bids

Late submission

Acceptance criteria

A hand-carried bid that is received at the bid opening location after the time set for bid opening may not be accepted for award where bidder's failure to follow IFB procedures rather than improper government action, was the paramount cause of the late delivery.

PROCUREMENT
Special Procurement
Methods/Categories
Federal supply schedule
Price adjustments
Reduction

B-224299 Dec. 17, 1986
86-2 CPD 677

A Federal Supply Schedule contractor may offer a price reduction to the government at any time and by any method without prior acceptance by the General Services Administration (GSA), and under the contract's terms the price reduction generally will remain in effect for the remainder of the contract. Whether the contractor notifies GSA of the price reduction so that GSA can revise the Schedule prices is a matter for GSA to resolve in administering the contract.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Acknowledgment

B-224744 Dec. 17, 1986
86-2 CPD 678

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Materiality

An amendment which deletes the option of using asbestos roofing materials in the construction of a building is material since it significantly affects the quality of performance; thus, rejection of a bid as nonresponsive for failure to acknowledge receipt of the amendment is proper.

PROCUREMENT	B-224744 Con't
Sealed Bidding	Dec. 17, 1986
Non-responsive bids	
Acceptance	
Propriety	
Competitive system integrity	

A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the competitive bidding system.

PROCUREMENT	B-224004; B-224005
Socio-Economic Policies	Dec. 18, 1986
Small businesses	86-2 CPD 679
Contract awards	
Preferences	
Applicability	

An agency is not required to compromise the government's needs in order to maximize competition for small businesses. With certain exceptions not pertinent to the instant case, there is no requirement that a particular solicitation be set aside for small businesses.

PROCUREMENT
Special Procurement Methods/Categories
Multi-year procurement
Administrative discretion

Contracting agency has primary responsibility for determining its minimum needs and the method of accommodating them. This Office will not upset such determinations absent clear evidence that agency's decision is arbitrary or unreasonable.

PROCUREMENT
Bid Protest
GAO procedures
Interested parties

B-224531 Dec. 18, 1986
86-2 CPD 682

Protest is dismissed where record shows that protester, as third low offeror, would not be in line for award even if the protest were sustained.

PROCUREMENT
Bid Protest
GAO procedures
Interested parties
Direct interest standards

Protest of award to low offeror filed by firm that manufacturers products that might be supplied by the second low offeror is dismissed, since only an actual or prospective offeror is an interested party eligible to maintain a protest under General Accounting Office's Bid Protest Regulations.

PROCUREMENT
Bid Protest
Agency-level protests
Oral protests

B-225443.2 Dec. 18, 1986
86-2 CPD 683

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
10-day rule

Protest filed in General Accounting Office more than 10 days after protester knew basis for protest is untimely. Oral complaint to contracting agency did not constitute timely protest since Federal Acquisition Regulation no longer provides for oral protests.

PROCUREMENT **B-225443.2 Con't**
Bid Protest **Dec. 18, 1986**
GAO procedures
Protest timeliness
Deadlines
Constructive notification

Protester's lack of knowledge concerning filing deadlines is not a basis for waiving timeliness requirements, since prospective contractors are on constructive notice of Bid Protest Regulations.

PROCUREMENT **B-223980 Dec. 19, 1986**
Sealed Bidding **86-2 CPD 684**
Bid opening
Extension
Refusal
Competition sufficiency

Procuring agency took reasonable steps to obtain competition under the Competition in Contracting Act, when it mailed solicitations to 79 firms, notwithstanding objections against failure to extend bid opening by 7 firms which received solicitation 8 days before opening, because the agency contacted other bidders to assure they received the solicitation and six potential bidders were present for the pre-bid site visit.

PROCUREMENT **B-223997 Dec. 19, 1986**
Bid Protest **86-2 CPD 685**
GAO procedures
Protest timeliness
10-day rule
Effective dates

New bases of protest raised in the protester's comments on the contracting agency's report must independently satisfy Bid Protest Regulations' timeliness requirements to be considered on the merits.

PROCUREMENT

B-224087 Dec. 19, 1986

Contract Disputes

86-2 CPD 686

Liquidated damages

Amount determination

Liquidated damages may not be fixed without any reasonable relationship to actual damages caused by work not performed or unsatisfactorily performed. However, the government does not have the burden of setting a measure of damages for each possible variation of a required task to establish a valid system of liquidated damages.

PROCUREMENT

Contract Management

Contract administration

GAO review

PROCUREMENT

Contract Management

Contract performance

GAO review

Agency's determination of whether deficient performance has occurred is a matter of contract administration, not for review by the General Accounting Office. The contractor may, however, challenge allegedly improper deductions under the Disputes Clause of the contract.

PROCUREMENT **B-224087 Con't**
Specifications **Dec. 19, 1986**
Ambiguity allegation
Specification interpretation

PROCUREMENT
Specifications
Performance specifications
Adequacy

When solicitation for hospital custodial services, read as a whole, provides sufficient information for formulating a bid, the General Accounting Office will deny a protest alleging that an additional, detailed breakdown of tasks should be provided. Solicitation provisions are not objectionable merely because they fail to account for every eventuality, and thus may expose the contractor to some risk.

PROCUREMENT **B-224108 Dec. 19, 1986**
Bid Protest **86-2 CPD 687**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protester's post-bid opening argument that the solicitation contained an apparent conflict between the bid acceptance period and the contract performance schedule, is untimely, since an alleged impropriety in the solicitation must be raised prior to bid opening where the impropriety is apparent on the face of the solicitation.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Acceptance time periods
Deviation

An offer which includes a bid acceptance period shorter than that required by the solicitation is properly rejected as nonresponsive. The fact that an apparent conflict existed between the bid acceptance period expressed in the solicitation and the contract performance schedule does not affect the application of this rule.

PROCUREMENT

B-224303 Dec. 19, 1986

Sealed Bidding

86-2 CPD 688

Unbalanced bids

Allegation substantiation

Evidence sufficiency

There is no merit to the contention that a bid is materially unbalanced because prices for data items are higher than those of the other bidders where the work required to produce the data items will occur early during contract performance and the bidder's pricing structure therefore will not result in contract financing tantamount to an advance payment.

PROCUREMENT

Socio-Economic Policies

Preferred products/services

Domestic sources

Construction contracts

Assuming that the solicitation for a pier facility and associated technical data involved the construction of a "public work" under the Buy American Act, the supply of technical data of foreign origin would not violate the Act since the Act and implementing regulations only concern the use of domestic construction materials in the construction of a public work, and technical data are not construction materials.

PROCUREMENT

B-224804 Dec. 19, 1986

Sealed Bidding

86-2 CPD 689

Bids

Interpretation

Line items

Production capabilities

Contracting agency properly interpreted bidder's indication of a 10,000 unit monthly supply potential for the 24 bid items noted on a list attached to the bid to mean a 10,000 unit potential for all 24 items and not, as the protester argues it meant, for each of the 24 items, since the agency's interpretation, not the protester's argument, is consistent with the bid as submitted.

PROCUREMENT
Sealed Bidding
All-or-none bids
Responsiveness

B-224862 Dec. 19, 1986
86-2 CPD 691

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Additional work/quantities
Acknowledgment

A bidder submitted its low price on initial invitation for bids (IFB) schedule calling for bid on "complete" construction project, instead of on the revised schedule contained in an amendment which, among other things, deleted six buildings and requested a base bid price on the remaining work plus three additive alternates for three buildings included in the initial IFB. Since the low bidder expressly acknowledged the amendment, bid in effect was an "all or none" bid and award may be made for complete project since sufficient funds existed to make award of base bid and all additive alternates.

PROCUREMENT
Sealed Bidding
Bid guarantees
Responsiveness
Money orders
Defects

B-224950 Dec. 19, 1986
86-2 CPD 692

The failure of a high bidder under a sealed bid timber sale to submit an acceptable bid guarantee required rejection of its bid as nonresponsive.

PROCUREMENT B-225164 Dec. 19, 1986
Noncompetitive Negotiation
Federal procurement regulations/laws
Revision

General Accounting Office has no comments on Federal Acquisition Regulations (FAR) case No. 86-54, a proposal to amend FAR § 15.402 to permit the use of letter requests for proposals in sole-source procurements.

PROCUREMENT B-225320 Dec. 19, 1986
Bid Protest 86-2 CPD 693
GAO procedures
Interested parties
Direct interest standards

Protest by firm not in line for award if the protest were to be sustained is dismissed, since the protester does not have the requisite direct and substantial interest in the contract award to be considered an interested party under GAO Bid Protest Regulations.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Protest that agency improperly failed to provide prospective offerors with product information necessary to prepare their proposals filed after the closing date for receipt of initial proposals is untimely.

PROCUREMENT

B-225886 Dec. 19, 1986

Bid Protest

86-2 CPD 694

GAO procedures

Protest timeliness

Apparent solicitation improprieties

PROCUREMENT

Bid Protest

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Protest of alleged solicitation deficiencies is untimely and will not be considered where not filed prior to bid opening and "significant-issue" exception to timeliness requirements does not apply.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

PROCUREMENT

Sealed Bidding

Below-cost bids

Contract awards

Propriety

There is no legal basis for objecting to the submission or acceptance of a below-cost bid; whether a bidder can meet the contract requirements in light of its low bid is a matter of bidder responsibility, the affirmative determination of which General Accounting Office does not review except in limited circumstances.

PROCUREMENT B-223966 Dec. 22, 1986
Specifications 86-2 CPD 695
Minimum needs standards
Competitive restrictions
Justification
Sufficiency

Provision restricting solicitation for ocean transportation to only common carriers, where a contract carrier asserts that it can meet government requirements, violates the Competition in Contracting Act requirement for full and open competition, since the procuring agency has not reasonably established that the requirement is necessary to meet the government's needs or is otherwise authorized by law.

PROCUREMENT B-223970 Dec. 22, 1986
Bid Protest 86-2 CPD 696
GAO procedures
Agency notification

Protest need not be dismissed for the protester's failure to provide the contracting officer a copy of the protest within 1 working day after filing with the General Accounting Office (GAO), as required to under GAO Bid Protest Regulations, where prior agency protest provided the contracting agency with the grounds of protest and the agency was able to submit its protest report on time.

PROCUREMENT
Bid Protest
GAO procedures
Protest timeliness
Conflicting evidence
Burden of proof

Where, regarding timeliness, the contracting agency and the protester provide conflicting statements about when the basis for protest was known or should have been known, the General Accounting Office will resolve the doubt in favor of the protester.

PROCUREMENT
Bid Protest
GAO procedures
Preparation costs

B-224664 Dec. 22, 1986
86-2 CPD 700

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

When the General Accounting Office sustains a protest against an unjustified sole-source award, the protester is entitled to recover the costs of filing and pursuing the protest.

PROCUREMENT
Specifications
Brand name/equal specifications
Salient characteristics
Sufficiency

The General Accounting Office sustains a protest alleging improper use of brand name or equal procedures where the contracting agency failed to meet statutory obligations to draft specifications and use advance planning to obtain full and open competition. The agency effectively deprived offerors of any opportunity to qualify their products so that they could compete with the "brand name" manufacturer, thus conducting a sole-source procurement without justifying it.

PROCUREMENT
Bid Protest
Bias allegation
Allegation substantiation
Evidence sufficiency

B-224706; B-224849
Dec. 22, 1986
86-2 CPD 701

Protester's contention that it was not treated equally, since as the incumbent contractor it was not able to offer an alternative product, is denied because there was nothing in the solicitation to prohibit protester from offering an alternative product.

PROCUREMENT

B-224706; B-224849 Con't

Bid Protest

Dec. 22, 1986

GAO procedures

Purposes

Competition enhancement

As the objective of the General Accounting Office's (GAO) bid protest function is insure full and open competition for government contracts, GAO will not review a protest the purpose of which is to further restrict competition.

PROCUREMENT

Bid Protest

Non-prejudicial allegation

GAO review

Protest that contracting officer should have informed the protester (which previously had been a sole source contractor with respect to supplying the items being procured) that the present protested solicitations were being conducted on a competitive basis is denied, since the solicitations were requests for proposals rather than the requests for quotations used in the past and the RFPs clearly indicated that alternative products would be considered. Moreover, the protester is experienced with government contracts and protests and should have known of the likelihood of competition in view of the agency's responsibility to encourage new competitors where only limited sources have been available in the past.

PROCUREMENT B-225375 Dec. 22, 1986
Specifications 86-2 CPD 703
Minimum needs standards
Competitive restrictions
Performance specifications
Geographic restrictions

Protest that requirement for on-base switching equipment under solicitation for base telecommunications system unduly restricts competition is without merit where agency establishes that requirement is needed to minimize potential for disruption of on-base communications in all circumstances including emergency or wartime situations by maintaining system within the security of the base.

PROCUREMENT B-223987 Dec. 23, 1986
Specifications 86-2 CPD 704
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Solicitation requirements that continuous roll blank paper check stock be used in an integrated checkprinting and document processing systems with post/print verification and that there be no manual intervention from the creation of the checks through the insertion of checks into envelopes are not unduly restrictive of competition where the agency has justified the requirements and protester's alternate approaches do not provide the needed security underlying the requirements.

PROCUREMENT
Bid Protest
Allegation substantiation
Lacking
GAO review

B-224210 Dec. 23, 1986
86-2 CPD 707

PROCUREMENT
Competitive Negotiation
Below-cost offers
Acceptability

General Accounting Office will not consider unsupported allegations that competitor's lower price must be the result of a below cost buy-in or of a leak of the protester's price. In any event, the submission of a below cost offer does not, in itself, provide grounds for rejection of an offer.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Justification
GAO review

In a negotiated procurement, the contracting officer need only establish a reasonable basis to support a decision to cancel the solicitation. A reasonable basis exists where the agency determines that the solicitation's data package needs to be extensively revised to insure that the manufacture of highly complex parts is properly controlled and the parts properly tested. The fact that there have been several attempts to revise the data package by amendments to the solicitation does not mean that the data package is adequate; nor does the fact that original source manufactured parts from data package, since the data package must be used by firms who have not previously manufactured the parts.

PROCUREMENT

B-224578 Dec. 23, 1986

Bid Protest

86-2 CPD 708

Information disclosure

Administrative determination

GAO review

GAO has no authority to determine what information must be disclosed by another agency in response to a Freedom of Information Act request.

PROCUREMENT

Contractor Qualification

Responsibility

Contracting officer findings

Affirmative determination

GAO review

PROCUREMENT

Contractor Qualification

Responsibility

Corporate entities

Certification

Protest that agency improperly awarded contract to a firm that "falsely" certified itself as a corporation is dismissed because certification pertains to matters of bidder's responsibility which GAO will not consider. Any error in the certification by the awardee in identifying the type of business concern may be corrected by the firm and confirmed by the agency after the closing date for offers.

PROCUREMENT

Contractor Qualification

Responsibility criteria

Organizational experience

Protest that awardee did not meet requirement that offeror have at least 1 year's experience in work solicited is denied where record shows agency reasonably determined awardee had requisite experience based on performance on previous similar government contracts.

PROCUREMENT

B-224592 Dec. 23, 1986

Bid Protest

86-2 CPD 709

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest against deduction provisions in solicitation, filed after bid opening, is untimely.

PROCUREMENT

Special Procurement Methods/Categories

Service contracts

Personal services

Criteria

Minimum manning requirement in solicitation for fixed-price services contract does not create a personal services contract where the contractor is required to maintain control and supervision of its employees.

PROCUREMENT

Specifications

Performance specifications

Work schedules

Monitoring

Requirement to maintain a daily work log showing employees on duty and hours worked, along with requirement that the log be available for agency review, used solely to ensure contract performance, is not objectionable, where agency is authorized to monitor and inspect contract performance.

PROCUREMENT

B-224605 Dec. 23, 1986

Bid Protest

86-2 CPD 710

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest that agency improperly solicited both computer equipment and maintenance for that equipment in the same solicitation is untimely since the procurement and its contents were synopsized in the Commerce Business Daily and the protest was filed after the closing date for receipt of proposals.

PROCUREMENT

Special Procurement Methods/Categories

Computer equipment/services

Options

Use

Justification

Protest that option for maintenance services for numerous computer equipment locations was improperly exercised is denied where contracting agency conducted informal market surveys for available maintenance services and found that the incumbent contractor's prices were low and further determined that the administrative time and cost to conduct a new procurement would be onerous.

PROCUREMENT

B-225194.2 Dec. 23, 1986

Socio-Economic Policies 86-2 CPD 711

Small business 8(a) subcontracting

Administrative policies

Compliance

GAO review

Dismissal of protest that Small Business Administration (SBA), in approving the restriction of a procurement for award under the section 8(a) program, acted contrary to SBA's Standard Operating Procedures (SOPs) is affirmed because the General Accounting Office will not review the SBA's compliance with its SOPs, which merely provide internal SBA guidelines, absent a showing of possible fraud or bad faith.

PROCUREMENT

B-224170; B-224172

Bid Protest

Dec. 24, 1986

GAO procedures

86-2 CPD 712

Information submission

Timeliness

Issue that protester could have raised in its initial submission, but did not raise until it submitted comments on a bid protest conference, is dismissed. The Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues.

PROCUREMENT

Bid Protest

GAO procedures

Interested parties

Direct interest standards

The General Accounting Office dismisses a protest alleging that a specification limiting the methods that may be used to repair metal welds is unduly restrictive when the protester admittedly can satisfy this requirement and will be competing on an equal basis with bidders who must meet the same specification.

PROCUREMENT

Specifications

Performance specifications

Adequacy

Contention that solicitation is defective because additional work not contemplated by the parties will have to be performed is denied where the only evidence of the need for such work consists of the conflicting statements of the protester and the contracting activity.

PROCUREMENT B-224175 Dec. 24, 1986
Socio-Economic Policies 86-2 CPD 713
Preferred products/services
Domestic sources
Foreign products
Price differentials

For purposes of the Trade Agreements Act, an offer of a designated country's end products is subject to application of a Buy American Act differential where the offered price is less than the dollar threshold established pursuant to the Trade Agreements Act, but should be evaluated at no more than the threshold.

PROCUREMENT B-225388 Dec. 24, 1986
Bid Protest 86-2 CPD 716
Allegation substantiation
Burden of proof

Allegation that awardee was afforded the opportunity to review the protester's proposal is regarded as mere speculation where no evidence is submitted to support the allegation.

PROCUREMENT
Competitive Negotiation
Offers
Price omission
Line items
Allegation substantiation

Allegation that awardee failed to consider a line item in pricing its proposal is without merit where awardee priced all required items and the line item in question was a fixed amount which was added to all offerors' prices.

PROCUREMENT B-225490(1) Dec. 24, 1986
Socio-Economic Policies 86-2 CPD 717
Small businesses
Administrative policies
Form letters

General Accounting Office informs the Small Business Administration (SBA) of the potentially misleading nature of its form letter notifying bidders of the referral to the SBA of an agency's nonresponsibility determination, because the letter indicates that the SBA, in deciding whether to issue a certificate of competency, will review only the bidder's financial capacity and credit.

PROCUREMENT B-225490(2) Dec. 24, 1986
Contractor Qualification
Responsibility
Administrative proceedings
Criteria

Responsibility determinations are administrative in nature, and they do not require the procedural due process--notice and an opportunity for a hearing--that is necessary in judicial proceedings. Thus, the Small Business Administration's failure to provide protester with a specific opportunity to challenge complaints regarding poor prior performance is not a denial of due process.

PROCUREMENT
Sealed Bidding
Contract award notification
Procedural defects

Although the Federal Acquisition Regulation requires the contracting officer to notify unsuccessful bidders "promptly" of award, it does not specify a particular time. When a protester learns of award and protests within 10 calendar days, so that it can take advantage of the statutory "stay" provision, the agency's alleged failure to notify the protester of award is not prejudicial.

PROCUREMENT **B-225490(2) Con't**
Socio-Economic Policies **Dec. 24, 1986**
Small businesses
Responsibility
Competency certification
GAO review

General Accounting Office generally will not review the Small Business Administration's denial of a certificate of competency (COC) unless the protester's submission indicates that the action may have been the result of fraud, bad faith, or failure to consider information vital to the decision regarding issuance of the COC.

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Negative determinaton
Notification

Where a small business concern is found nonresponsible, the contracting officer must refer the matter to the Small Business Administration (SBA); however, there is no regulation requiring the contracting officer to notify the bidder of the referral. Rather, this is the SBA's responsibility.

PROCUREMENT **B-224024 Dec. 29, 1986**
Sealed Bidding **86-2 CPD 718**
Bid guarantees
Responsiveness
Contractors
Identification

Where bid is submitted in the name of one firm and is accompanied by a bid bond in the name of a joint venture consisting of the bidder and another entity, the bid bond is materially deficient, as the obligation of the surety is unclear and, therefore, the bid must be rejected as nonresponsive.

PROCUREMENT
Bid Protest
GAO procedures
Preparation costs

B-224306 Dec. 31, 1986
86-2 CPD 722

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Where no other corrective action is possible, successful protester is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including reasonable attorney's fees.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

PROCUREMENT
Competitive Negotiation
Offers
Evaluation errors
Evaluation criteria
Application

General Accounting Office sustains a protest where the procuring agency failed to conduct meaningful discussions regarding aspects of the protester's proposal and failed to evaluate fully in accord with stated evaluation factors.

PROCUREMENT B-224306 Con't
Competitive Negotiation Dec. 31, 1986
Offers
Evaluation errors
Allegation substantiation

Protest that agency evaluated proposals too quickly and committed other procedural errors is without merit where the procedures used were not irregular and none of the issues raised relates to the protester's competitive standing or to the validity of the protested award.

PROCUREMENT B-224541 Dec. 31, 1986
Competitive Negotiation 86-2 CPD 723
Ambiguous offers
Determination criteria

A proposal is ambiguous only when it is susceptible to more than one reasonable interpretation, and where awardee's best and final cost proposal clearly indicated the specific manner in which the firm would apply the different proposed fixed hourly rates for contractor and subcontractor personnel in performing the work, the proposal was not ambiguous and was properly evaluated by the agency as the low cost offer.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Technical acceptability

Offeror was not prejudiced by agency's determination that two competing proposals were essentially equal technically where both proposals received superior overall technical evaluation ratings even though protester's proposal was not rated quite as highly as awardee's in all technical areas.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-219857 Dec. 1, 1986
Environment/Energy/Natural Resources
Regulatory agencies
Authority
Filing fees

Federal Energy Regulatory Commission may impose filing fee on applicants for permits or on owners of conduit facilities or small hydroelectric power projects who apply for exemption from requirements of Federal Power Act. FERC may impose such fees under regulations issued pursuant to the User Charge Statute, 31 U.S.C. § 9701. In some circumstances, FERC may also set charges at a level which does not recover all costs of administering Part I. 16 U.S.C. § 803(e).

MISCELLANEOUS TOPICS B-223893 Dec. 2, 1986
National Security/International Affairs
Foreign aid programs
Funding restrictions
Military assistance

Section 722(d) of the International Security and Development Cooperation Act of 1985 (ISDCA) prohibits conditioning of foreign assistance, expressly or impliedly, the provision of foreign assistance on the recipient's provision of assistance to the Nicaraguan democratic opposition. The prohibition applies only to aid under the 1985 ISDCA or under the Arms Export Control Act. GAO does not consider the prohibition applicable to disbursements of funds to the government of Honduras authorized under legislation predating the 1985 ISDCA. In addition, GAO finds no evidence to indicate that the disbursements of funds to Honduras were pursuant to an arrangement relating to Honduran assistance to the Nicaraguan democratic opposition.

MISCELLANEOUS TOPICS

B-225344 Dec. 5, 1986

**Law Enforcement
Civil penalties
Escrow
Securities
Sales**

Escrow agent, holding securities constituting a civil penalty pursuant to order of the District Court in the case of Securities and Exchange Commission v. Ivan Boesky may sell the securities and deduct all costs directly related to the sale, subject to approval by the Court, before depositing the net proceeds in the Treasury, as authorized by 40 U.S.C. § 485a.

MISCELLANEOUS TOPICS

B-223011 Dec. 24, 1986

**National Security/International Affairs
Executive powers
Military activities
Statutory restrictions
Compliance**

GAO cannot conclude that the President, when he ordered the April 14, 1986 air raid on Libya, violated section 3 of the War Powers resolution, 50 U.S.C. § 1542 (1982) which provides that the President "in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities * * *." The President complied with the literal terms of section 3 when he met with the congressional leadership shortly before the raid. Further, the lack of precision of the consultation provision and its qualifying opening clause require that this Office permit the President a great degree of discretion regarding when and how he is to "consult."

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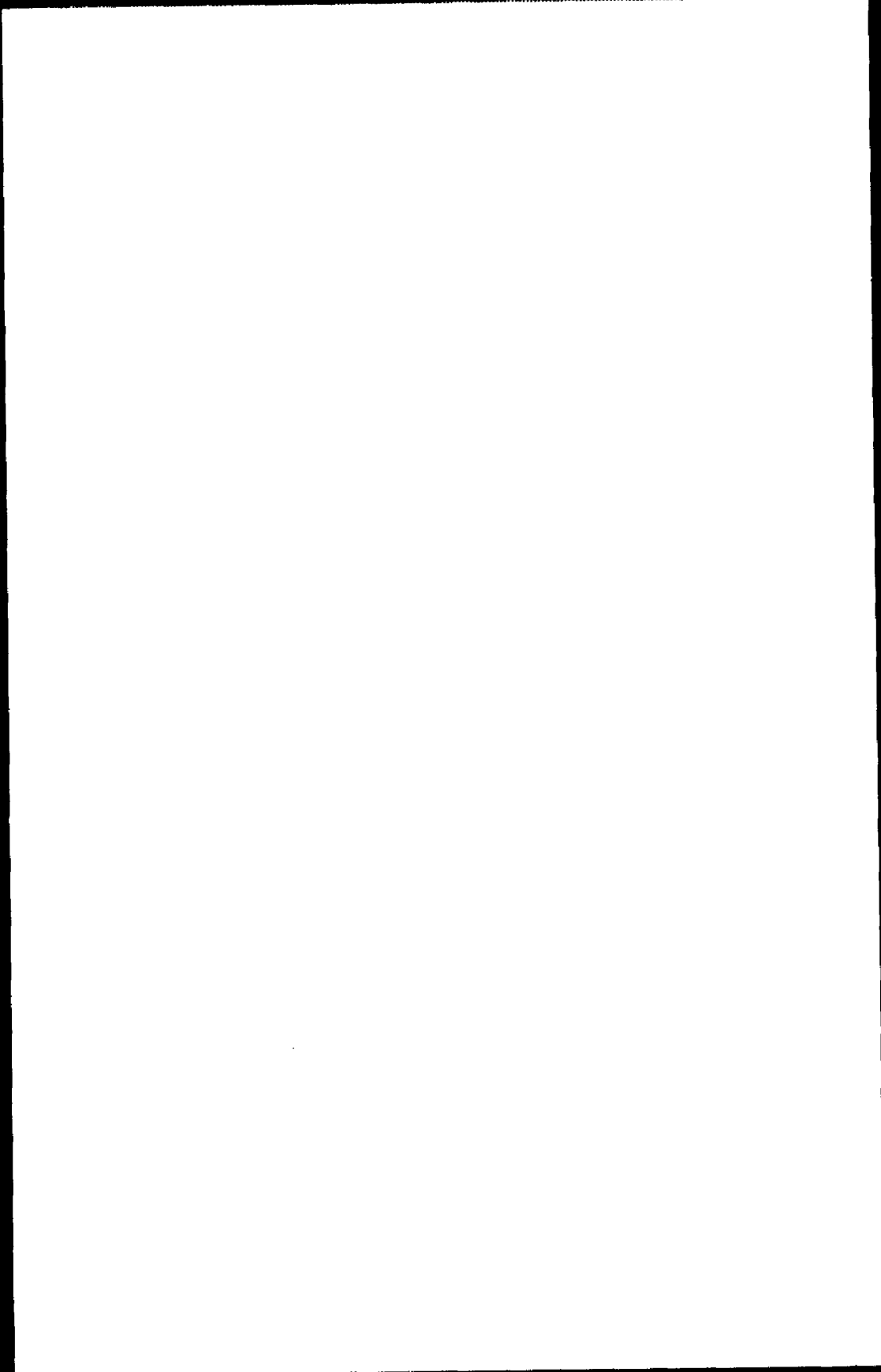
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