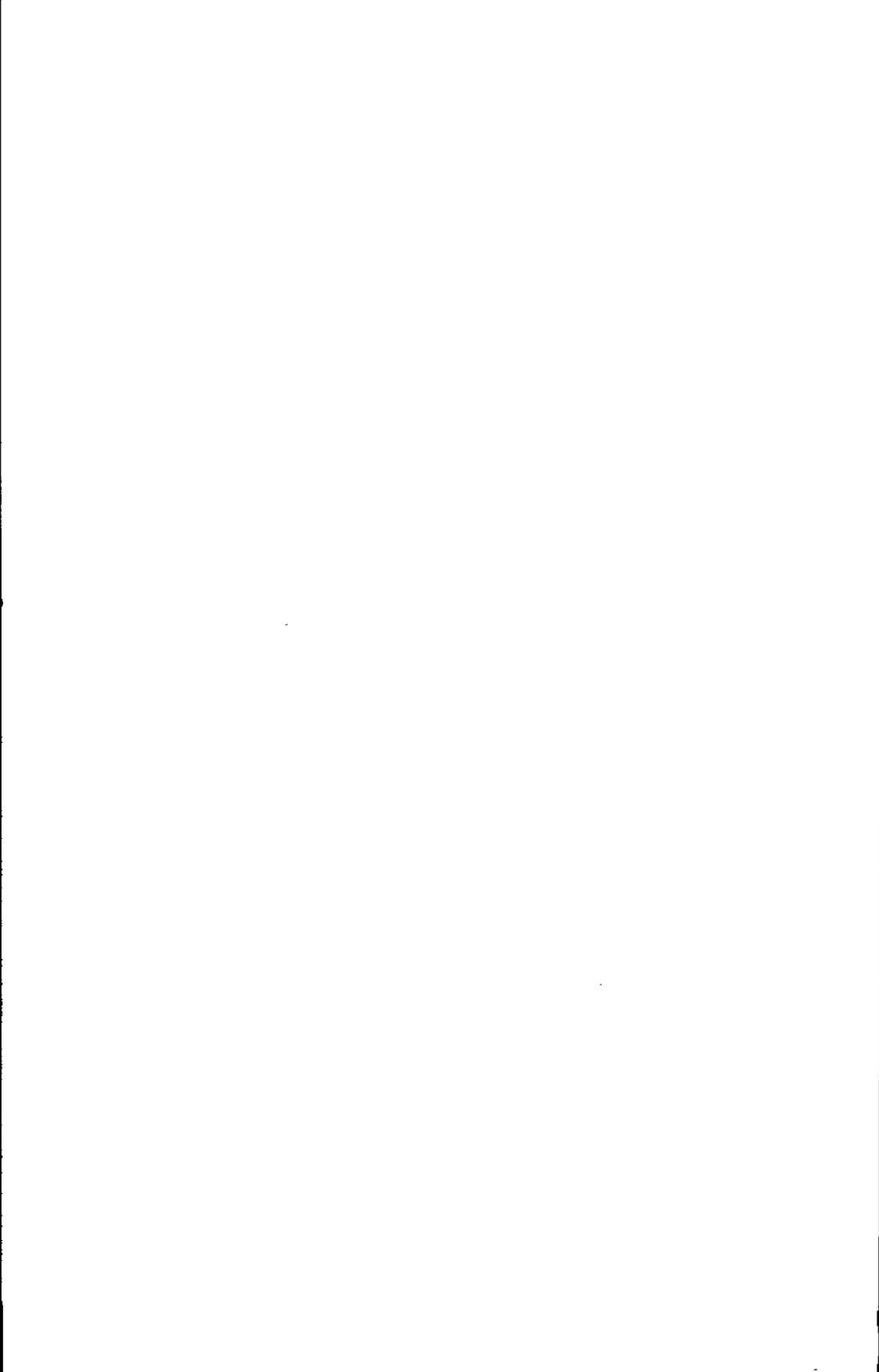


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December 1987

Digests of Unpublished  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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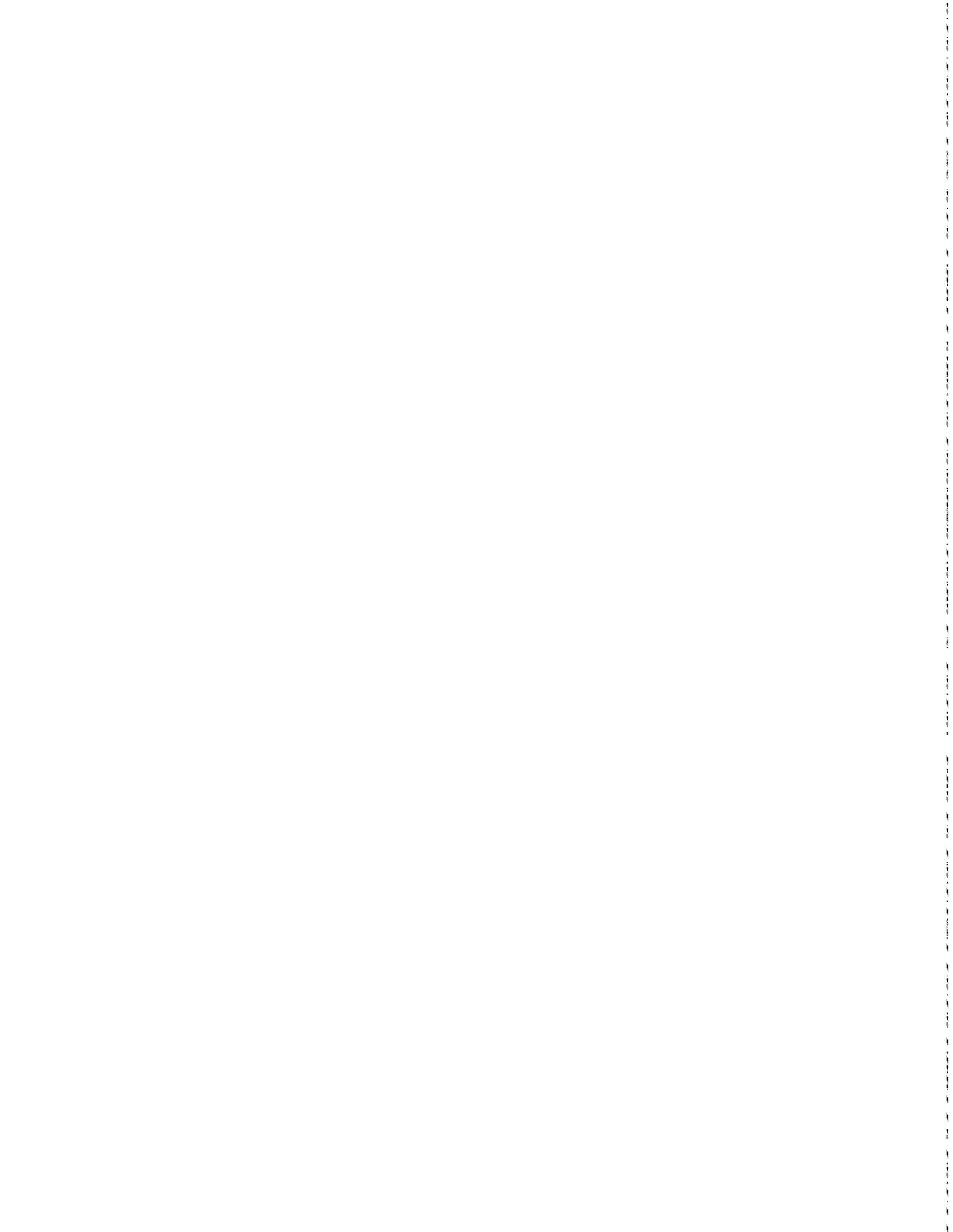


## PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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

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

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



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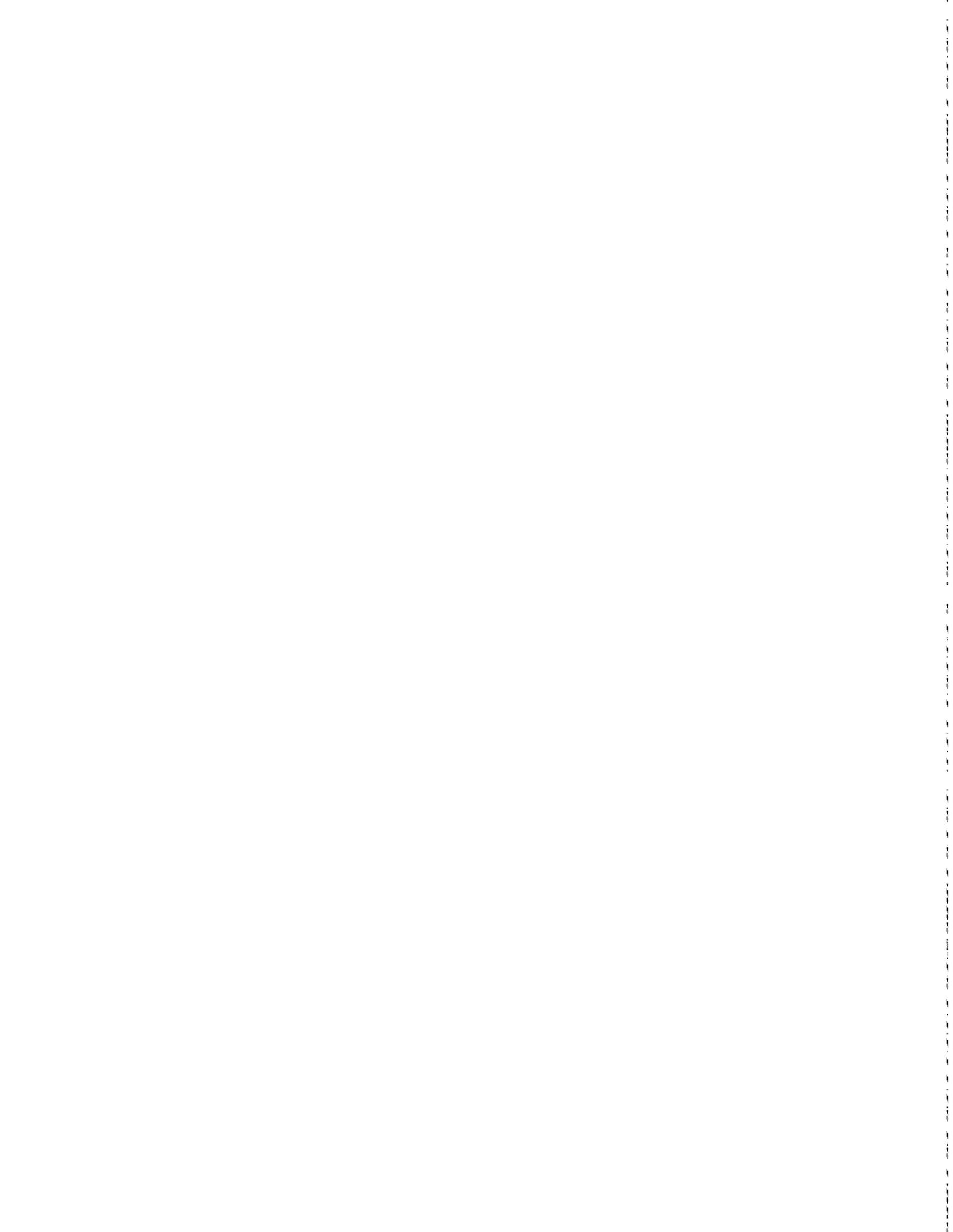


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**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims by Government            B-222845    Dec. 9, 1987**  
**Past Due Accounts**  
**Debt Collection**  
**Penalties**  
**Interest**

Regarding the assessment of interest on delinquent debts (owed to the United States) under Section 11 of the Debt Collection Act of 1982 (DCA), Pub. L. No. 97-365, 96 Stat. 1749, 1755-56, codified in 31 U.S.C. 3717 (1982), GAO advised the Federal Emergency Management Agency that, as a general rule, where interest actually began to accrue prior to the DCA pursuant to the common law and the Federal Claims Collection Standards (FCCS), 4 C.F.R. ch. II, the DCA does not require the interest to be suspended. GAO also advised that, under both the DCA and the common law, interest on delinquent debts should generally be computed on a daily basis, with the interest rate remaining fixed for the life of the debt.

Regarding the assessment of late payment penalties on delinquent debts (owed to the United States) under Section 11 of the Debt Collection Act of 1982 (DCA), Pub. L. No. 97-365, 96 Stat. 1749, 1755-56, codified in 31 U.S.C. 3717 (1982), GAO advised the Federal Emergency Management Agency that, as a general rule, late payment penalties are to be assessed on all portions of the debt which are more than 90 days past due (including past due assessments of interest and administrative costs), and accrue from the date that the debt becomes "delinquent." However, where the past due interest began accruing under the common law prior to the DCA, agencies must send a post-Act notice to the debtor before penalties may accrue on that interest.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Claims by Government                    B-224942    Dec. 17, 1987**

**Inspection Fees**

**Liability**

Where agent/broker requests agricultural inspection services on behalf of a disclosed principal, the agent/broker may not be held liable for reimbursable charges incurred in connection with such inspection service under 7 U.S.C. 2260 (1982).

The legal relationship between parties to an inspection service transaction--owner, agent/broker and the Department of Agriculture--is not analogous to the legal relationship between parties to a credit card transaction--cardholder, merchant and bank--since in the latter case there exists no agency relationship.

**APPROPRIATIONS/FINANCIAL MANAGEMENT**

**Accountable Officers                    B-229753    Dec. 30, 1987**

**Cashiers**

**Relief**

**Physical Losses**

**Theft**

Two Class B Cashiers present at the time of an attack on an American Embassy may properly be relieved of liability for the loss of funds from safes at the Embassy where the loss occurred without fault or negligence on the part of either cashier and the cashiers had vacated the section of the Embassy containing the funds pursuant to the instructions of the Budget and Fiscal Officer.

**CIVILIAN PERSONNEL**

**CIVILIAN PERSONNEL**

**B-227466 Dec. 4, 1987**

**Relocation**

**Residence Transaction Expenses**

**Reimbursement**

**Eligibility**

**Time Restrictions**

A transferred employee whose settlement date for the purchase of a residence at his new duty station occurred after the maximum 3-year period had elapsed is not entitled to reimbursement of real estate purchase expenses, even though he signed a purchase contract before the 3-year period expired. Travel regulations require a settlement date within 2 years after reporting to the new duty station, plus a maximum 1-year extension. Settlement date is the day the contract price is paid and the deed or title conveyed, not the date of the contract agreeing to a future settlement date.

**CIVILIAN PERSONNEL**

**B-226532 Dec. 9, 1987**

**Relocation**

**Residence Transaction Expenses**

**Miscellaneous Expenses**

**Reimbursement**

A transferred employee's claim for reimbursement of the cost of a soil examination he incurred in connection with the construction of a residence at his new duty station may not be allowed because it resulted from the construction of the residence and, therefore, may not be reimbursed in view of the specific prohibition contained in Federal Travel Regulations paragraph 2-6.2d.

## Travel

## Permanent Duty Stations

## Actual Subsistence Expenses

## Prohibition

GAO is unable to determine, based on the available record, whether Department of Defense civilian employees and military officers may be reimbursed for meals provided as part of a contractor's seminar held at their permanent duty station. Reimbursement of meal expenses is permitted under 5 U.S.C. 4110 (1982) under these circumstances when the meals were incidental to a formal meeting or conference that extended outside the meal session; the attendance by the employee at the meals was necessary to full participation in the business of the meeting; and the employee was not free to partake his meals elsewhere without being absent from essential business. Moreover, attendance at the meals alone would not be sufficient to justify reimbursement even if the other criteria were met. From the record supplied with the submission, it is impossible for this Office to decide whether the employees attended the full sessions or only the meals for which they claim reimbursement. Accordingly, GAO advises DLA that payment may be made in the case of each employee only if there is substantial evidence that the meals in question were incidental to day-long sessions and the employee claiming reimbursement participated in the entire session on any day for which he submitted a claim. If there is insufficient evidence that those conditions have been met, the claim should be rejected.

**CIVILIAN PERSONNEL**

B-227387 Dec. 11, 1987

**Relocation  
Miscellaneous Expenses  
Reimbursement  
Eligibility**

An employee transferred to an overseas duty station where only leaded fuels are available was authorized to ship his privately owned vehicle (POV) to that location. Although he could remove the catalytic converter to avoid leaded fuel damage to it, he was informed by his POV manufacturer that leaded fuel use could damage the engine and, if so, the damage would not be covered under the warranty. Such damage and repairs would not be reimbursable by the government as a miscellaneous expense under paragraph 2-3.1 of the Federal Travel Regulations. We have previously ruled that repairs of worn or damaged parts of a POV incident to a transfer are not reimbursable as a miscellaneous expense.

**CIVILIAN PERSONNEL**

B-229193 Dec. 11, 1987

**Compensation  
Overtime  
Eligibility  
Burden of Proof**

Record is insufficient to establish entitlement to overtime compensation under 5 U.S.C. 5544 in the absence of clear evidence that the claimant employee was either officially required or was affirmatively authorized or induced to work overtime hours. The claimant's mere statements to this effect, which are not corroborated by agency records or the statements of his supervisors, do not satisfy the claimant's burden of proof.

**CIVILIAN PERSONNEL****B-229193 Con't****Compensation****Dec. 11, 1987****Overtime****Retroactive Compensation****Amount Determination****Statutes of Limitation**

Claim for overtime compensation is time-barred under 31 U.S.C. 3702(b)(1) to the extent that it accrued more than 6 years before it was received by the General Accounting Office (GAO). Filing of a claim with the employing agency does not toll the running of the limitation period, nor is the limitation period affected by the employing agency's delay in processing the claim and forwarding it to GAO.

**CIVILIAN PERSONNEL****B-226041 Dec. 15, 1987****Relocation****Overseas Personnel****Quarters Allowances****Amount Determination****Administrative Discretion**

Agency heads, under statutorily authorized regulations, issued pursuant to the President's authority delegated to the Secretary of State, have discretion to grant their overseas employees a living quarters allowance which provides the cost of rent and utilities for "suitable, adequate, living quarters" when government quarters are not provided. Since the regulations do not further define "suitable, adequate, living quarters," the Secretary of Labor may determine that a privately owned sailboat used by one of his employees as living quarters qualifies for a full living quarters allowance, although the Secretary of State concludes that a sailboat is not suitable, adequate quarters for the purpose of the full allowance for one of his employees.

**CIVILIAN PERSONNEL****B-225960 Dec. 28, 1987**

**Compensation  
Overtime  
Eligibility  
Burden of Proof**

Employees' claim for retroactive overtime pay at the Gillis W. Long Hansen's Disease Center may be granted since such action is consistent with an act of Congress expressing approval of the overtime pay.

**CIVILIAN PERSONNEL****B-226341 Dec. 29, 1987**

**Relocation  
Residence Transaction Expenses  
Reimbursement  
Eligibility  
Time Restrictions**

An employee, who transferred to a new duty station and reported for duty on August 21, 1983, may not be reimbursed for the real estate expenses incurred in association with his purchase of a new residence at the new duty station since settlement did not occur until January 6, 1987, approximately 4 months beyond the 3-year limitation deadline. The time limitation imposed by paragraph 2-6.1e of the Federal Travel Regulations has the force and effect of law and may not be waived in any individual case.

**CIVILIAN PERSONNEL****B-227488 Dec. 29, 1987****Relocation****Household Goods****Temporary Storage****Time Restrictions****Additional Expenses**

An employee, who was transferred and immediately thereafter sent for long-term training at a location distant from his new permanent duty station, was authorized temporary storage of his household goods not to exceed 180 days. He alleges that an agency official misinformed him that the government would pay for storage of the household goods the entire time he was away for training. The employee's request that we waive the time limitation so as to permit reimbursement for his costs for the additional 6-month period based on extenuating circumstances is denied. Regardless of the circumstances, the period for which reimbursement of storage cost may be made is limited to the maximum period authorized in the regulations, and our Office is without authority to disregard those provisions or waive the time limitation imposed therein.

**CIVILIAN PERSONNEL****B-228614 Dec. 30, 1987****Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****Property Titles**

A transferred employee, who purchased a residence at his new duty station with his non-dependent brother, held title at settlement as a joint tenant and may be reimbursed only to the extent of his 50 percent interest in the residence. The fact that the deed referred to him as a married man did not serve to expand his right of ownership since the deed specifically listed him and his brother as joint tenants.

## MILITARY PERSONNEL

### MILITARY PERSONNEL

B-226430 Dec. 4, 1987

#### Relocation Household Goods Shipment Eligibility

A Navy member visited the Philippines 5 years after retirement from the Navy with the stated intention of personally residing there 3 years later, when he planned to resign from employment with the United States Postal Service in California. A few days after his arrival and receipt of his household goods shipped there at government expense, he sold his goods and he and his wife returned to their residence in the United States. The member's plan to have his wife begin residence in the Philippines did not entitle the member to have his household goods transported there as a shipment "to his home of selection" at government expense, since he did not establish residence there.

### MILITARY PERSONNEL

B-228765 Dec. 4, 1987

#### Pay Additional Pay Eligibility Meals

In appropriate circumstances an enlisted member of the Navy may apply to mess separately and receive commuted rations. Until an application is filed and approved by the appropriate officer, the enlisted member has no entitlement to commuted rations, and applicable law and implementing regulations preclude retroactive payments. Thus, where a Navy member claims retroactive commuted rations for a period in excess of 3 years, but he never had an application approved by appropriate authority, he cannot receive retroactive payment, notwithstanding that it may appear that such application would have been approved. The appropriate avenue of relief in such a case would be a petition to the Board for the Correction of Naval Records.

## Travel

## Permanent Duty Stations

## Actual Subsistence Expenses

## Prohibition

GAO is unable to determine, based on the available record, whether Department of Defense civilian employees and military officers may be reimbursed for meals provided as part of a contractor's seminar held at their permanent duty station. Reimbursement of meal expenses is permitted under 5 U.S.C. 4110 (1982) under these circumstances when the meals were incidental to a formal meeting or conference that extended outside the meal session; the attendance by the employee at the meals was necessary to full participation in the business of the meeting; and the employee was not free to partake his meals elsewhere without being absent from essential business. Moreover, attendance at the meals alone would not be sufficient to justify reimbursement even if the other criteria were met. From the record supplied with the submission, it is impossible for this Office to decide whether the employees attended the full sessions or only the meals for which they claim reimbursement. Accordingly, GAO advises DLA that payment may be made in the case of each employee only if there is substantial evidence that the meals in question were incidental to day-long sessions and the employee claiming reimbursement participated in the entire session on any day for which he submitted a claim. If there is insufficient evidence that those conditions have been met, the claim should be rejected.

**Pay****Survivor Benefits****Annuities****Eligibility****Common Law Marriage**

The widow of an Air Force member claims a Survivor Benefit Plan annuity as his eligible widow. Since the claimant was not married to the member at the time he became eligible for retired pay, to qualify for an annuity she must have been married to him at least 1 year prior to his death. Although the parties had entered into a ceremonial marriage only 7 months prior to the member's death, the widow offered evidence of a *common-law marriage* that allegedly was entered into at least 1 year before the member's death. The disallowance of the claim is sustained on grounds of doubt concerning whether the parties entered into a present agreement to be married at the time their relationship began, as required to establish a *common-law marriage* under the applicable state law.

Pay

Survivor Benefits

Annuity Payments

Eligibility

Amendments made to the Survivor Benefit Plan in 1982 and 1983 gave retired service members the option of voluntarily electing survivor annuity coverage for "a former spouse." A further amendment enacted in 1984 provides that if a retiree agrees in writing to elect annuity coverage for a former spouse and then "fails or refuses" to do so, the retiree nevertheless "shall be deemed to have made such an election." If a retiree dies without ever being eligible to provide annuity coverage for a former spouse, however, the retiree cannot properly be considered to have ever failed or refused to elect such coverage nor can the retiree be "deemed" to have made the election under the terms of the 1984 amendment. Hence, a voluntary election to provide annuity coverage for a former spouse cannot be "deemed" to have been made in the case of a retired Navy officer who died before the effective date of a statutory amendment that would have permitted him to elect coverage for his ex-wife.

**PROCUREMENT**

**PROCUREMENT** B-228596.2 Dec. 1, 1987  
**Bid Protests** 87-2 CPD 532  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

Prior dismissal of protest as untimely is affirmed where protest was filed more than 10 working days after the basis of protest was known.

**PROCUREMENT** B-222476.8 Dec. 2, 1987  
**Bid Protests** 87-2 CPD 533  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

Request for reconsideration is denied where neither error of fact in decision nor failure to specifically reference regulations allegedly violated by the Army provide a basis for reversal of decision.

**PROCUREMENT** B-228048 Dec. 2, 1987  
**Bid Protests** 87-2 CPD 535  
**GAO Procedures**  
**Purposes**  
**Competition Enhancement**

As the objective of the General Accounting Office's (GAO's) bid protest function is to ensure full and open competition for government contracts, GAO will not consider allegation that more restrictive specifications are needed to serve the government's needs.

**PROCUREMENT** **B-228048 Con't**  
**Contractor Qualification** **Dec. 2, 1987**  
**Responsibility**  
**Contracting Officer Findings**  
**Affirmative Determination**  
**GAO Review**

General Accounting Office will not consider question of a bidder's responsibility in absence of a showing of possible fraud in affirmative determination of responsibility or that the solicitation contains definitive responsibility criteria that have been misapplied.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Pre-Award Samples**  
**Waiver**

General Accounting Office finds no merit to protester's contention that submission and evaluation of bid sample from small business bidder was mandatory when clear language of the certification waiver provision in solicitation provides only that agency may require submission and evaluation of bid samples.

**PROCUREMENT** **B-228756.3 Dec. 2, 1987**  
**Bid Protests** **87-2 CPD 536**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

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



**PROCUREMENT**

**B-228184 Dec. 3, 1987**

**Noncompetitive Negotiation 87-2 CPD 544**

**Sole Sources**

**Justification**

**Intellectual Property**

Although the Competition in Contracting Act of 1984 mandates that agencies obtain "full and open competition" in their procurements through the use of competitive procedures, the proposed sole-source award of a contract under the authority of 10 U.S.C. 2304(c)(1) is not objectionable where the agency reasonably determined that only one source could provide the required services because that source holds proprietary software rights for the system to be serviced under the contract, and the protester has failed to prove its allegation that access to software information is unnecessary to perform the contract.

**PROCUREMENT**

**B-228271 Dec. 3, 1987**

**Competitive Negotiation 87-2 CPD 545**

**Offers**

**Evaluation**

**Technical Acceptability**

**Equivalent Products**

Protest by brand-name offeror under negotiated brand-name-or-equal procurement that agency improperly made award to firm whose proposal did not meet one of solicitation's salient characteristics is denied where protester is unable to demonstrate that agency's technical judgment that awardee's product meets the solicitation's salient characteristic is unreasonable.

**PROCUREMENT** **B-228271 Con't**  
**Socio-Economic Policies** **Dec. 3, 1987**  
**Preferred Products/Services**  
**Domestic Products**  
**Interpretation**

Agency properly concluded that low offeror was not subject to evaluation under the Buy American Act where the evidence available at time of award shows that the item offered was a domestic end product as defined under the Act since it is manufactured in the United States and the cost of foreign components do not exceed 50 percent of the cost of all components.

**PROCUREMENT** **B-228491.2 Dec. 3, 1987**  
**Bid Protests** **87-2 CPD 546**  
**Allegation Substantiation**  
**Lacking**  
**GAO Review**

Protest which, on its face, fails to state a valid basis for protest will be summarily dismissed without obtaining an agency report.

**PROCUREMENT** **B-228506; B-228865.2**  
**Sealed Bidding** **Dec. 3, 1987**  
**Bid Guarantees** **87-2 CPD 547**  
**Responsiveness**  
**Signatures**  
**Authority**

Bid submission which included stamped signature for person authorized to sign but no authorization for such execution, or other signed documents referring to the bid, properly was rejected as nonresponsive.

**PROCUREMENT**

**Bid Protests  
Non-Prejudicial  
Allegation  
GAO Review**

**B-228724; B-228724.2**

**Dec. 3, 1987  
87-2 CPD 548**

Even assuming RFP instructions required the inclusion of first article costs in a line item with a short delivery schedule and the protester, but not the awardee, based its price for the first article on this short delivery schedule, the protester was not prejudiced where the RFP did not require delivery of the first article within the shorter period and the protester's cost for meeting the short delivery period is \$275,000 more than for a longer delivery period, since the low offeror's price, including the cost of the first article, is \$2,350,000 lower than the protester's total price.

**PROCUREMENT**

**Competitive Negotiation  
Contract Awards  
Initial-Offer Awards  
Propriety**

An award to the offeror, who proposed the lowest price, was properly made without discussions since the agency reasonably found this would result in the lowest overall cost to the government.

**PROCUREMENT**

**B-228974.2 Dec. 3, 1987**

**Sealed Bidding**

**87-2 CPD 550**

**Bids**

**Responsiveness**

**Descriptive Literature**

**Adequacy**

Where descriptive literature indicates that specifications are subject to change, bid need not be rejected as nonresponsive if provision is immediately followed by contradicting handwritten statement that all specifications will be met.

Where an invitation for bids required the submission of descriptive literature to establish conformance with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature evidences nonconformity with the specifications.

**PROCUREMENT**

**B-228123 Dec. 4, 1987**

**Sealed Bidding**

**87-2 CPD 551**

**Bids**

**Evaluation Errors**

**Evaluation Criteria**

**Application**

Protest of rejection of equal product offered in response to a brand name or equal procurement is sustained where rejection was based on failure to meet salient characteristics that were not listed in the invitation.



**PROCUREMENT**

B-228561 Dec. 4, 1987

**Sealed Bidding  
Bid Guarantees  
Responsiveness  
Signatures  
Powers of Attorney**

87-2 CPD 554

Where surety's power of attorney form attached to bid bond fails to designate the individual who signed the bond on behalf of the surety as authorized to bind the surety, the agency properly determined the bond to be defective and the bid nonresponsive because it is not clear whether the surety would be bound.

**PROCUREMENT**

B-228971 Dec. 4, 1987

**Competitive Negotiation  
Discussion  
Adequacy  
Criteria**

87-2 CPD 555

Where record clearly indicates that deficiencies in protester's proposal were brought to its attention, agency conducted meaningful discussions with protester.

**PROCUREMENT**

**Competitive Negotiation  
Offers  
Evaluation  
Information Submission  
Contractor Duties**

Protest that technical evaluation of proposal was unreasonable is denied where protester failed to respond to agency request for information regarding the qualifications of its employees.



**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Interested Parties**

**B-228015; B-228015.2**  
**Dec. 7, 1987**  
**87-2 CPD 562**

Where the protester's proposal has been evaluated and rejected as technically and commercially unacceptable, the protester is an interested party for purposes of protesting that its proposal was improperly evaluated.

A disappointed offeror in a negotiated procurement is an interested party to file a protest, even though the contracting agency contends that the protester's offer expired before the contract was awarded, because: (1) the protester's offer, though containing an ambiguity as to the offer acceptance period, can reasonably be construed as conforming to the solicitation's offer acceptance period requirement; and (2) the protester's active pursuit of the protest exhibits the protester's willingness to accept a contract award.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**  
**Effective Dates**

A protester may wait until after it has been debriefed to file a protest, where the information available to the protester before the debriefing did not contain sufficient detail for the protester to determine whether it had a basis for protest. Doubt as to the timeliness of a protest is resolved in favor of the protester.



**PROCUREMENT** **B-228169 Dec. 7, 1987**  
**Small Purchase Method** **87-2 CPD 557**  
**Quotations**  
**Evaluation**  
**Technical Acceptability**

Procuring agency's technical evaluation of protester's product under small purchase procedures is upheld where the protester submitted descriptive literature which indicated that the product did not meet the specifications and the protester has not shown that this determination was unreasonable.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small Businesses**  
**Size Determination**  
**GAO Review**

Small business size status is for determination by the Small Business Administration and not by the General Accounting Office.

**PROCUREMENT** **B-228377.2 Dec. 7, 1987**  
**Contractor Qualification** **87-2 CPD 558**  
**Responsibility Criteria**  
**Organizational Experience**

Protest that awardee did not meet definitive responsibility criterion concerning experience in performing similar services is denied where record indicates awardee submitted adequate objective evidence of its past experience from which the contracting officer could reasonably conclude that criterion had been met.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-228393.2 Dec. 7, 1987**  
**87-2 CPD 559**

**PROCUREMENT**  
**Sealed Bidding**  
**Bid Guarantees**  
**Post-Bid Opening Periods**  
**Submission**  
**Responsiveness**

Dismissal of protest for protester's failure to furnish the required bid bond is affirmed. Bid guarantee provision in solicitation is a material requirement which must be met at the time of bid opening. Bid guarantee which was not submitted within the time limits required by the Federal Acquisition Regulation (FAR), although protester offered to submit it upon funding and award of a contract, cannot be accepted as a late bid bond within the meaning of the FAR.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Evaluation**  
**Prices**  
**Options**

**B-228887 Dec. 7, 1987**  
**87-2 CPD 561**

Where solicitation requires a firm to bid on every item including option years, a bid which fails to include prices for a second option year is nonresponsive where evaluation is to include option year prices. A nonresponsive bid may not be changed or corrected on the basis of post bid opening explanations.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Interpretation**  
**Terms**

**B-228887 Con't**  
**Dec. 7, 1987**

A solicitation requirement is ambiguous when it is susceptible to two or more reasonable interpretations, however, a protest alleging an ambiguous solicitation provision must be based upon a reasonable interpretation of the disputed provision.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Propriety**  
**Allegation Substantiation**  
**Evidence Sufficiency**

**B-228053 Dec. 8, 1987**  
**87-2 CPD 564**

Where the only reasonable reading of the awardee's best and final offer (BAFO) is that one of two specified prices would apply to labor hours ordered up to a maximum quantity, there is no merit to the protester's contentions that the awardee failed to offer a price for these hours and that the agency's post-BAFO communication with the awardee to confirm its understanding of the offer constituted discussions.

**PROCUREMENT**  
**Competitive Negotiation**  
**Unbalanced Offers**  
**Materiality**  
**Determination**  
**Criteria**

**B-228053 Con't**  
**Dec. 8, 1987**

Where the lowest overall cost is not the paramount basis for source selection, protester's speculation that acceptance of an unbalanced offer may not result in the lowest overall cost to the government does not, in itself, warrant rejection of the offer, where there is no reason to think the agency would not accept the offer even if the projected costs of such award were higher; the offer will result in lowest cost unless actual orders fall far short of estimated quantities; and the agency is confident its estimates are accurate.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Cancellation**  
**Justification**  
**Minimum Needs Standards**

**B-228394 Dec. 8, 1987**  
**87-2 CPD 565**

An agency has a compelling reason to cancel an invitation for bids where the specifications were inadequate and no longer reflected the agency's minimum needs.

**PROCUREMENT**  
**Sealed Bidding**  
**Hand-Carried Bids**  
**Late Submission**  
**Acceptance Criteria**

**B-228425 Dec. 8, 1987**  
**87-2 CPD 566**

A bid is late when the bidder fails to relinquish control of the bid to the government until the time set for bid opening has past.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid Guarantees**  
**Responsiveness**  
**Letters of Credit**  
**Adequacy**

**B-229556 Dec. 8, 1987**  
**87-2 CPD 567**

Where letter of credit submitted as a bid guarantee does not cover entire acceptance period, and incorporates terms that create uncertainty as to whether the letter would be enforceable against the issuing bank, the letter is unacceptable as a firm commitment within the meaning of the standard bid guarantee clause included in the solicitation, and the bid is nonresponsive.

**PROCUREMENT**  
**Sealed Bidding**  
**Non-Responsive Bids**  
**Post-Bid Opening Periods**  
**Clarification**  
**Propriety**

A nonresponsive bid cannot be made responsive by actions taken after bid opening.

**PROCUREMENT**  
**Bid Protests**  
**Federal Procurement**  
**Regulations/Laws**  
**Applicability**  
**GAO Authority**

**B-229611.2, et al.**  
**Dec. 8, 1987**  
**87-2 CPD 568**

Since General Accounting Office bid protest authority extends only to protests concerning solicitations issued by or for federal agencies, protest challenging award of contract by nonfederal entity is dismissed even though contract may be funded by loan from federal agency.

**PROCUREMENT** B-225449.2, et al.  
**Noncompetitive Negotiation** Dec. 9, 1987  
**Use** 87-2 CPD 569  
**Justification**  
**National Defense Interests**

When a large-volume water purifier, for which no adequate verified technical data package has been developed, is technologically complex, stems from a contract to design, develop and test a prototype and is needed for the national defense, the prototype development contractors' familiarity with work to be performed justifies a limited competition to those contractors for the initial production contract, since an award to another firm may result in an unacceptable delay in fulfilling the agency's military requirements. However, General Accounting Office recommends that procuring agency verify its requirements to assure that the stated needed date for these units is firm and the agency cannot permit a later delivery date in order to achieve full and open competition.

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**Options**  
**Contract Extension**  
**Use**  
**Propriety**

When, due to a long development period, an agency has not obtained a technical data package suitable for competitive procurement, but expects to receive the package concurrent with the first production run, agency should take all practical steps to promptly obtain package, so the option quantity can be competed.

**PROCUREMENT**

**B-228214 Dec. 9, 1987**

**Sealed Bidding**

**87-2 CPD 570**

**Bid Guarantees**

**Post-Bid Opening Modification**

**Propriety**

Since a bid guarantee provision in an invitation for bids is a material requirement which must be met at the time of bid opening, a bid which is nonresponsive, due to a rider to the bid bond, cannot be made responsive by the surety's post-bid-opening offer to remove the rider.

**PROCUREMENT**

**Sealed Bidding**

**Bid Guarantees**

**Responsiveness**

**Sureties**

**Liability Restrictions**

A rider to a bid bond, whose conditions limit the liability of the surety and bidder, and which may be inferred to apply to required performance and payment bonds in the event of award, renders bid nonresponsive.

**PROCUREMENT**

**B-228293 Dec. 9, 1987**

**Competitive Negotiation**

**87-2 CPD 571**

**Requests for Proposals**

**Competition Rights**

**Contractors**

**Exclusion**

Where the agency published its intention of issuing a competitive solicitation in the Commerce Business Daily and contacted the protester regarding its interest in receiving the solicitation package and, thereafter, the agency mailed a solicitation package to the protester's correct address, the protester bears the risk of nonreceipt of the solicitation in the absence of substantive proof that the agency deliberately attempted to exclude the protester from participating in the procurement.

**PROCUREMENT**  
**Sealed Bidding**  
**Unbalanced Bids**  
**Materiality**  
**Responsiveness**

**B-228334 Dec. 9, 1987**  
**87-2 CPD 572**

A bid in which the first article unit prices were approximately 15 and 17 times greater than the unit prices for the production items was properly rejected as materially unbalanced where the first articles were initial samples identical to the production units and the difference in the amount bid could not be attributed to costs associated with the first articles, since acceptance of such a bid would result in the payment of funds early in the contract period, tantamount to an advance payment or interest-free loan, to which a bidder is not entitled with respect to the actual value of the first articles.

**PROCUREMENT**  
**Bid Protests**  
**Allegation**  
**Abandonment**

**B-228220 Dec. 10, 1987**  
**87-2 CPD 573**

Where agency specifically rebuts issues raised in the initial protest and the protester fails to address the agency's rebuttal in its comments on the agency report, the issues are deemed abandoned.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protest against amendment of solicitation is untimely where the protest is filed after the next closing date for receipt of proposals.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Adequacy**  
**Criteria**

**B-228220 Con't**  
**Dec. 10, 1987**

Agency's failure to inform protester of all deficiencies in its technical proposal, which was included in the competitive range, deprived the protester of meaningful discussions. The protester, however, was not prejudiced since its technical proposal was substantially inferior to that of the awardee and even if there had been meaningful discussions the protester could not have supplanted the awardee's substantially superior proposal.

**PROCUREMENT**  
**Sealed Bidding**  
**Contract Awards**  
**Competition Sufficiency**

**B-228312 Dec. 10, 1987**  
**87-2 CPD 574**

The propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained by the government and not upon whether a particular bidder was given an opportunity to bid.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Contractors**  
**Notification**

Where an agency publishes notice of a procurement in the Commerce Business Daily, mails the solicitation to 40 prospective bidders on a randomly selected computerized bidders list and also mails the solicitation to bidders from a previous solicitation, the agency has satisfied the requirement for full and open competition.

**PROCUREMENT** B-228331 Dec. 10, 1987  
Special Procurement 87-2 CPD 575  
Methods/Categories  
In-House Performance  
Administrative Discretion  
GAO Review

Agency's decision to cancel a solicitation prior to the closing date and perform the work in-house will not be reviewed since decision whether to perform work in-house is matter of executive branch policy, not within GAO's bid protest function.

**PROCUREMENT** B-228402 Dec. 10, 1987  
Bid Protests 87-2 CPD 576  
GAO Procedures  
Protest Timeliness  
Apparent Solicitation Improprieties

Protest against solicitation requirement for laboratory certification by the College of American Pathologists is untimely, since protest based on alleged solicitation improprieties must be filed before bid opening.

**PROCUREMENT**  
Contractor Qualification  
Responsibility  
Contracting Officer Findings  
Negative Determination  
GAO Review

Agency's finding of nonresponsibility will not be questioned unless the protester demonstrates bad faith by the agency or a lack of any reasonable basis for the contracting officer's negative responsibility determination.

**PROCUREMENT** B-228402 Con't  
**Contractor Qualification** Dec. 10, 1987  
**Responsibility**  
**Information**  
**Submission Time Periods**

Agency's determination of protester's nonresponsibility will not be questioned where bidder failed to furnish evidence of required College of American Pathologists certification of its laboratory within a reasonable time period after bid opening.

**PROCUREMENT** B-228420.2 Dec. 10, 1987  
**Contract Management** 87-2 CPD 577  
**Contract Administration**  
**Contract Terms**  
**Compliance**  
**GAO Review**

Where a firm offers to supply a domestic end product, it is obligated to do so upon acceptance of the offer, and whether the firm meets its obligation is a matter of contract administration, which the General Accounting Office does not review.

**PROCUREMENT** B-229058 Dec. 10, 1987  
**Competitive Negotiation** 87-2 CPD 579  
**Offers**  
**Cost Realism**  
**Evaluation**  
**Administrative Discretion**

Where positive finding of cost realism was based on favorable Defense Contract Audit Agency report on awardee's proposed costs, challenge to that finding based on financial information that does not reflect the awardee's current position provides no basis to question the finding.



**PROCUREMENT**

**B-229630 Dec. 10, 1987**

**Sealed Bidding**

**87-2 CPD 580**

**Bids**

**Responsiveness**

**Price Omission**

**Line Items**

A bid in which a line item price for a material requirement is omitted is nonresponsive and must be rejected.

**PROCUREMENT**

**Sealed Bidding**

**Non-Responsive Bids**

**Post-Bid Opening Periods**

**Clarification**

**Propriety**

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

**PROCUREMENT**

**B-229647 Dec. 10, 1987**

**Bid Protests**

**GAO Procedures**

**Purposes**

**Competition Enhancement**

Given that one of the objectives of its bid protest function is to insure full and open competition in government contracting, the GAO considers it inappropriate generally to review a protest which would mandate that a government agency procure a desired good or service from a sole source.

**PROCUREMENT** **B-229647 Con't**  
**Bid Protests** **Dec. 10, 1987**  
**Premature Allegation**  
**Future Procurement**  
**GAO Review**

A protest of an alleged incorporation of proprietary information in a solicitation is considered premature where the request for proposals has not been issued at the time the protest was filed.

**PROCUREMENT** **B-229671 Dec. 10, 1987**  
**Bid Protests** **87-2 CPD 581**  
**Allegation Substantiation**  
**Lacking**  
**GAO Review**

Protest alleging that awardee received inside information is dismissed where only evidence submitted by protester is fact that awardee submitted a lower price. General Accounting Office does not conduct investigations to establish validity of protester's speculative statements.

**PROCUREMENT**

**B-227065.2 Dec. 11, 1987**

**Competitive Negotiation**

**87-2 CPD 582**

**Offers**

**Evaluation**

**Technical Acceptability**

**Equivalent Products**

Contention that benchmark required under request for proposals (RFP) for computer equipment was performed on a model with greater capacity than model awardee offered under RFP is without merit where model used for benchmark, although initially having greater capacity, was converted through physical and electronic removal of a modular unit to the smaller model awardee offered under the RFP.

Computer equipment offered by awardee constitutes a single model, not a multiple model configuration, despite the fact that it can be broken down into two smaller models, when the model offered by awardee is designated and sold by the manufacturer as a separate model and is recognized as such in the request for proposals.

**PROCUREMENT**

**B-228151 Dec. 14, 1987**

**Competitive Negotiation**

**87-2 CPD 584**

**Offers**

**Evaluation**

**Shipment Costs**

The decision to evaluate the offered cost of dealer delivery of trucks, and not to evaluate the cost of consignee delivery, is reasonable where dealer delivery will be ordered 97 percent of the time and the government is unsure how many and which vehicles will be ordered based on consignee delivery (which is included as an unevaluated option).



**PROCUREMENT**

**Sealed Bidding  
Bids**

**Responsiveness  
Warranties**

**B-228191 Con't**

**Dec. 14, 1987**

Bid which takes exception to warranty provisions in invitation for bids renders bid nonresponsive.

**PROCUREMENT**

**Sealed Bidding**

**Non-Responsive Bids**

**Post-Bid Opening Periods**

**Clarification**

**Propriety**

A bidder is not permitted to make its nonresponsive bid responsive after bid opening by removing an exception to a material solicitation provision because such action would be tantamount to permitting the bidder to submit a new bid.

**PROCUREMENT**

**Sealed Bidding**

**Ambiguous Bids**

**Determination Criteria**

**B-228886 Dec. 14, 1987**

**87-2 CPD 586**

Post-bid-opening protest filed by low bidder, who had been requested by contracting officer to verify its extremely low bid price, in which bidder alleged that solicitation was ambiguous with respect to requirement for supply of altered item is denied since, when read as a whole, solicitation clearly called for entire altered item assembly and not, as the protester contends, simply the unit required to effect the alteration.

**PROCUREMENT** B-229573 Dec. 14, 1987  
**Competitive Negotiation** 87-2 CPD 588  
**Offers**  
**Organizational Experience**  
**Evaluation**  
**Propriety**

A solicitation provision which places substantial weight on an evaluation factor of prior experience in hard rock dredging is not unduly restrictive of competition or in excess of agency needs where contract involves significant hard rock dredging which the record indicates is a complex and difficult task and the agency has established an urgent need for timely and proper completion of the work.

**PROCUREMENT** B-229696 Dec. 14, 1987  
**Bid Protests** 87-2 CPD 589  
**GAO Procedures**  
**Pending Litigation**  
**GAO Review**

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

**PROCUREMENT** B-227084.3 Dec. 15, 1987  
**Bid Protests** 87-2 CPD 590  
**Cooperative Agreements**  
**GAO Review**

General Accounting Office will consider challenge to award of a cooperative agreement where there is a showing that the agency was procuring goods or services and therefore instead was required to obtain the goods or services by means of a procurement.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**

**B-227084.3 Con't**  
**Dec. 15, 1987**

Award to offeror proposing practical, low cost refurbishment of agency computer simulator, instead of to protester proposing more extensive refurbishment program, was reasonable where solicitation provided for capital improvements to be financed in part out of revenues from sale of time on simulator, and protester's more extensive refurbishment program was found to be based on unrealistically high sixfold increase in revenues.

**PROCUREMENT**  
**Contract Management**  
**Contract Administration**  
**Contract Terms**  
**Compliance**  
**GAO Review**

**B-227689.2 Dec. 15, 1987**  
**87-2 CPD 591**

Protester's speculation that awardee does not intend to perform contract properly at the bid price concerns a matter of contract administration which is not reviewable under bid protest function.

**PROCUREMENT**  
**Sealed Bidding**  
**Below-Cost Bids**  
**Contract Awards**  
**Propriety**

Submission of a below-cost bid, allegedly for the purpose of "buying-in," is not illegal and the government may not withhold award merely because a responsive bid is below cost.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Errors**  
**Error Substantiation**

**B-227689.2 Con't**  
**Dec. 15, 1987**

Disparity between awardee's line item bid prices and government estimate and other bids does not establish that a mistake was made in a bid since the awardee, in its business judgment, may decide to submit a below-cost bid.

**PROCUREMENT**  
**Sealed Bidding**  
**Unbalanced Bids**  
**Materiality**  
**Responsiveness**

A low bid for a requirements type contract that is mathematically unbalanced is not materially unbalanced unless it can be shown that the government's estimates are so unreliable that award to the low bidder will not result in the lowest cost to the government.

**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**Federal Supply Schedule**  
**Purchases**  
**Cost/Technical Tradeoffs**  
**Technical Superiority**

**B-228086 Dec. 15, 1987**  
**87-2 CPD 592**

Protest against award to a higher-priced vendor under a mandatory, multiple-award federal supply schedule contract is denied where the agency reasonably determines that the higher-priced vendor's equipment offers features which will satisfy the agency's actual minimum needs and the protester has failed to show that the requirements are clearly unreasonable.

**PROCUREMENT** B-228173 Dec. 15, 1987  
**Contractor Qualification** 87-2 CPD 593  
**Responsibility**  
**Contracting Officer Findings**  
**Affirmative Determination**  
**GAO Review**

General Accounting Office will not consider a protest against an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials or the failure to apply definitive responsibility criteria.

**PROCUREMENT**  
**Sealed Bidding**  
**Contract Awards**  
**Propriety**  
**Evaluation Criteria**  
**Defects**

General Accounting Office will not disturb award because solicitation did not contain adequate estimates for certain items where it appears acceptance of bid will satisfy government's needs without prejudice to any bidder.

**PROCUREMENT** B-228327.2 Dec. 15, 1987  
**Bid Protests** 87-2 CPD 594  
**GAO Procedures**  
**Administrative Reports**  
**Comments Timeliness**

Dismissal of protest for failure to submit timely comments on the agency report is affirmed, where the protester did not fulfill its obligation to notify the General Accounting Office, within the required timeframe, that it had not received the report.

**PROCUREMENT**  
**Sealed Bidding**  
**Contract Awards**  
**Propriety**

**B-228382 Dec. 15, 1987**  
**87-2 CPD 595**

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Pre-Qualification**  
**Contractor Personnel**  
**Certification**

Where solicitation for collection, removal and disposal of harbor debris included alternate schedules, one for disposal in a landfill or by recycling and the other for disposal by ocean burning, and which provided that if the low bid was for ocean disposal, Environmental Protection Agency (EPA) approval for selection of the ocean-disposal bid would be required, award to low bidder for land-based disposal was proper despite the fact that protester's price for ocean-disposal was lower since EPA refused to approve selection of the ocean-disposal bid.

**PROCUREMENT**  
**Bid Protests**  
**Federal Procurement Regulations/Laws**  
**Applicability**  
**GAO Authority**

**B-228896 Dec. 15, 1987**  
**87-2 CPD 596**

General Accounting Office has jurisdiction to consider a protest of an award of a contract, the cost of which will be reimbursed by a local urban renewal authority, because the protest concerns the procurement for property or services by a federal agency.

**PROCUREMENT**  
**Sealed Bidding**  
**Contract Awards**  
**Propriety**

**B-228896 Con't**  
**Dec. 15, 1987**

Where protester argues that award to a bidder, who may own sunken barges slated for removal, violates statute which allows recovery of removal costs from vessel owner, the protest is denied since statute is intended to allow the United States to recover funds it expended and here all costs will be reimbursed by local urban renewal authority.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-228913 Dec. 15, 1987**  
**87-2 CPD 597**

Protest issues arising from agency debriefing, but initially raised for consideration by the General Accounting Office in protester's comments on an administrative report which concerns a previously filed, though related protest, will not be considered since they fail to comply with requirements for timely filing of protest under General Accounting Office Bid Protest Regulations.

**PROCUREMENT**  
**Competitive Negotiation**  
**Best/Final Offers**  
**Technical Acceptability**  
**Negative Determination**  
**Propriety**

Protester's proposal was properly rejected since in its best and final offer protester failed to correct significant deficiencies which the agency had brought to its attention.

**PROCUREMENT** B-229705 Dec. 15, 1987  
Socio-Economic Policies 87-2 CPD 598  
Small Businesses  
Responsibility  
Negative Determination  
GAO Review

Where contracting officer refers nonresponsibility determination to the Small Business Administration (SBA), but protester fails to file for a Certificate of Competency, the General Accounting Office (GAO) will not review the contracting officer's determination since such a review would in effect substitute GAO for SBA.

**PROCUREMENT** B-228170 Dec. 16, 1987  
Sealed Bidding 87-2 CPD 599  
Invitations for Bids  
Service Contracts  
Wage Rates  
Omission

**PROCUREMENT**  
Socio-Economic Policies  
Labor Standards  
Service Contracts  
Wage Rates  
Omission

Protest that a Department of Labor (DOL) wage determination included in a solicitation for a service contract omitted wage rates for two classes of required employees is denied where contracting agency requested wage rates from DOL, and the administrative procedure set out in the solicitation for determining wages for omitted classes provided a reasonable and common basis for preparation of bids. To the extent protest concerns accuracy and completeness of wage determination, it should be pursued through DOL's administrative process for reviewing such matters, not through a bid protest to the General Accounting Office.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Service Contracts**  
**Wage Rates**  
**Omission**

**B-228170 Con't**  
**Dec. 16, 1987**

**PROCUREMENT**  
**Specifications**  
**Ambiguity Allegation**  
**Specification Interpretation**

Where solicitation for fire prevention and protection services adequately explains agency needs and performance requirements, fact that agency has not provided information on the wages and fringe benefits being paid to government employees that currently are involved in providing the services does not render the solicitation inadequate for intelligent competition.

**PROCUREMENT**  
**Competitive Negotiation**  
**Discussion**  
**Adequacy**  
**Criteria**

**B-228410 Dec. 16, 1987**  
**87-2 CPD 600**

Where protester's proposed deductions to the government's estimates for travel and per diem, even though not considered in the price evaluation because these deductions were inconsistent with the cost evaluation scheme, reasonably were not considered a proposal deficiency, it was not necessary for agency to discuss them with the firm during negotiations.

**PROCUREMENT**

**B-228410 Con't**

**Competitive Negotiation  
Offers**

**Dec. 16, 1987**

**Evaluation Errors  
Evaluation Criteria  
Application**

An agency may not depart in any material way from the evaluation plan set forth in a solicitation without informing all offerors and giving them a chance to structure their proposals with the new evaluation plan in mind.

**PROCUREMENT**

**Competitive Negotiation  
Requests for Proposals  
Evaluation Criteria  
Cost/Technical Tradeoffs  
Weighting**

Although the protester had the highest point-rated technical proposal, it was not unreasonable for the agency to make an award to another firm to take advantage of the awardee's lower price since the agency found the awardee's offer as acceptable as the protester's. Notwithstanding the fact that in an overall evaluation scheme price is of less importance than other evaluation criteria, price may become the determinative consideration in making the award where the proposals are essentially equal technically.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Preparation Costs**

**B-225570.3 Dec. 17, 1987**  
**87-2 CPD 601**

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Preparation Costs**

Protester is entitled to reimbursement of its reasonable bid preparation costs and the costs of filing and pursuing its prior sustained protest since no other remedies are available.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-227939.2 Dec. 17, 1987**  
**87-2 CPD 602**

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small Businesses**  
**Size Determination**  
**GAO Review**

Prior decision that protester was not prejudiced by procuring agency's failure to promptly forward size appeal to Small Business Administration (SBA) is affirmed on reconsideration. Fact that SBA regional office denial of contracting officer's size protest was reversed on appeal does not alter prior result because size protest decision was prospective only.

**PROCUREMENT**

**B-228276.2 Dec. 17, 1987**

**Sealed Bidding**

**87-2 CPD 603**

**Bids**

**Responsiveness**

**Brand Name/Equal Specifications**

**Salient Characteristics**

Rejection of protester's bid for the supply of an "equal" product as nonresponsive for failure to meet one of the salient characteristics of the brand-name product is not objectionable where an important qualifying phrase found in solicitation's specification was omitted from the protester's otherwise identical specification for its own product and where descriptive brochures submitted with protester's bid reasonably could be read, consistent with the specification omission, as indicating that protester's product would not be constructed as to meet the government's needs.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**

**B-228336 Dec. 17, 1987**  
**87-2 CPD 604**

**Late Submission**  
**Rejection**  
**Propriety**

Late bid was properly rejected where paramount cause of lateness was Postal Service's attempted deliveries of express mail parcel outside of contracting agency's normal business hours after which the Postal Service turned express mail parcel over to regular route unit for normal delivery.

Late bid may not be considered on ground that during pre-bid-opening telephone conversation with contracting agency, in which arrival of its bid modification was confirmed, protester inferred its bid also had arrived. Contracting agency has no duty to volunteer bid arrival status. A bidder has the responsibility to ensure the timely arrival of its bid and must bear the responsibility for late arrival.

Protest that agency should have postponed bid opening due to unannounced closure of agency office on day prior to opening date due to Papal visit is denied, where office was open on bid opening day and only protester's bid was late.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Amendments**  
**Acknowledgment**

**B-228378 Dec. 17, 1987**  
**87-2 CPD 605**

Since a solicitation's order of precedence clause will not necessarily protect the government where a conflict between the specifications and the drawings in a solicitation exist, a bidder's failure to acknowledge an amendment issued to resolve the conflict renders the bid nonresponsive.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Amendments**  
**Acknowledgment**

**B-228378 Con't**  
**Dec. 17, 1987**

While it is a general rule of contract interpretation that the specific provision prevails over the more general one, it is reasonable for a contracting officer to reject a bid for failure to acknowledge an amendment intended to resolve inconsistent solicitation provisions since the rule is generally utilized to resolve performance disputes arising from conflicting contract interpretations and may not be applied in the government's favor. The government should not be required to award a contract where the potential for litigation clearly exists.

**PROCUREMENT**  
**Sealed Bidding**  
**Bids**  
**Responsiveness**  
**Shipment Schedule**  
**Deviation**

**B-228451.2 Dec. 17, 1987**  
**87-2 CPD 606**

Bid that deviates from solicitation's required delivery schedule is nonresponsive.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-229704 Dec. 17, 1987**  
**87-2 CPD 607**

Even if doubts are resolved in protester's favor, and protester's letter to contracting agency requesting information is construed as a protest, protester's subsequent protest filed with General Accounting Office 2 months after receiving agency's response detailing basis for award is untimely.

Neither protester's unfamiliarity with General Accounting Office (GAO) Bid Protest Regulations nor its decision to await the outcome of congressional initiated inquiry provides a basis to alter the protester's responsibility to conform to GAO's filing requirements.

**PROCUREMENT**  
**Competitive Negotiation**  
**Requests for Proposals**  
**Cancellation**  
**Resolicitation**  
**Propriety**

**B-228347 Dec. 18, 1987**  
**87-2 CPD 608**

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small Business Set-Asides**  
**Use**  
**Administrative Discretion**

Decision to postpone bid opening and reclassify solicitation as a 100 percent small business set-aside after initially issuing solicitation on an unrestricted basis is proper where based upon information discovered after the solicitation was issued, the contracting officer determines that there is a reasonable expectation that bids will be received from at least two responsible small business concerns and award can be made at reasonable prices.

**PROCUREMENT**

**Bids Protests**

**GAO Procedures**

**Protest Timeliness**

**10-day Rule**

**B-228888 Dec. 18, 1987**

**87-2 CPD 609**

Allegations stemming from presence of competitor's technician at protester's equipment demonstration, and alleged resulting competitive advantage, are untimely and will not be considered where record shows protester was aware of competitor's presence at time of demonstration, but did not file protest within 10 working days after agency request for best and final offers, the point at which protester should have known competitor might be able to gain advantage from presence at demonstration.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Evaluation**

**Technical Acceptability**

**Tests**

Permitting one of two offerors to perform a second equipment demonstration (after first demonstration did not show the proposed computer system met all compatibility requirements) following receipt of best and final offers without reopening discussions with second offeror is unobjectionable where: (1) second offeror already had performed fully successful equipment demonstration; and (2) agency did not contemplate further discussions or proposal revisions based on the second demonstration. Under the circumstances, second demonstration merely verified proposed system and did not constitute discussions.

**PROCUREMENT**

**B-229674.2 Dec. 18, 1987**

**Bid Protests**

**87-2 CPD 610**

**GAO Procedures**

**Information Submission**

**Timeliness**

**PROCUREMENT**

**Bid Protests**

**GAO Procedures**

**Protest Timeliness**

**10-day Rule**

Dismissal of a protest, which appeared untimely on its face because the protester cited the wrong month in its protest letter, is affirmed since the original dismissal was correct based on the information provided by the protester, who is responsible for providing the proper information in a timely manner.

**PROCUREMENT**

**B-228301 Dec. 21, 1987**

**Bid Protests**

**87-2 CPD 611**

**Allegation**

**Abandonment**

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 Protests**

**GAO Procedures**

**Protest Timeliness**

**Apparent Solicitation Improprieties**

Protest against failure to consider costs of qualification testing, which were not included among evaluation factors listed in the solicitation, is untimely as protests relating to solicitation deficiencies must be filed prior to the closing date for receipt of proposals.

**PROCUREMENT**

**Contract Management  
Contract Administration  
Contract Terms  
Compliance  
GAO Review**

**B-228301 Con't  
Dec. 21, 1987**

**PROCUREMENT**

**Contractor Qualification  
Responsibility  
Contracting Officer Findings  
Affirmative Determination  
GAO Review**

Protest that successful offeror is not able to make an aircraft ejection seat survival kit, a vital safety-related item, without obtaining a contract modification for qualification testing is dismissed as concerning an affirmative determination of responsibility and contract administration, neither of which issue is for consideration by the General Accounting Office.

**PROCUREMENT**

**Bid Protests  
GAO Procedures  
GAO Decisions  
Reconsideration**

**B-228465.2 Dec. 21, 1987  
87-2 CPD 612**

GAO will not reconsider a decision where the protester, the fourth low bidder, in its initial protest challenged only the awardees qualifications, but failed to challenge bidders two and three but now tries to do so through a request for reconsideration.

**PROCUREMENT**

**Sealed Bidding  
Invitations for Bids  
Cancellation  
Resolicitation  
Requests for Proposals**

**B-228542 Dec. 21, 1987****87-2 CPD 613**

Where a canceled invitation for bids (IFB) has been converted to a request for proposals (RFP), protest that offeror whose bid was allegedly nonresponsive to the IFB should not be permitted to compete under the RFP is denied, since the applicable regulation only precludes the participation of nonresponsible bidders and the firm in question was considered responsible.

**PROCUREMENT**

**Contract Management  
Federal Procurement Regulations/Laws  
Revision  
Government Property  
Use**

**B-229475 Dec. 21, 1987**

In response to a proposed change to section 45.505 of the Federal Acquisition Regulation (FAR), the General Accounting Office advises that requiring contractors to have property accounting systems for government property which are equivalent to such systems for their own property will not by itself overcome basic problems relating to accounting for government property which are due to inadequate agency surveillance and inadequate agency verification systems.

**PROCUREMENT**

**Sealed Bidding  
Bids  
Responsiveness  
Price Omission  
Line Items**

**B-229506; B-229506.2****Dec. 21, 1987****87-2 CPD 614**

Where bid form did not explicitly require bids on all items, failure to bid on one item did not render bid nonresponsive when low bidder's total price exceeded sum of completed unit prices by amount of omitted line item.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Interested Parties**

B-227094.3 Dec. 22, 1987  
87-2 CPD 615

Fact that protester is incumbent contractor does not in itself make it an interested party to protest subsequent solicitation.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Good Cause Exemptions**  
**Applicability**

The GAO will not consider the merits of an untimely protest under the good cause exception to GAO's timeliness requirements where there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of a protest.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Significant Issue Exemptions**  
**Applicability**

The General Accounting Office (GAO) will not consider the merits of an untimely protest under the significant issue exception to GAO's timeliness requirements where the protester is not an interested party.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-227094.3 Con't**  
**Dec. 22, 1987**

Where protester had insufficient time to respond to an amendment by closing it should have protested within 10 days of the receipt of the amendment and should not have waited until receiving notice of its rejection from the agency at a later time to then file its protest.

**PROCUREMENT**  
**Bid Protests**  
**Non-Prejudicial Allegation**  
**GAO Review**

Protester was not prejudiced by agency's failure to notify it that its best and final offer (BAFO) was late where the BAFO was not otherwise for consideration.

**PROCUREMENT**  
**Bid Protests**  
**Interagency Agreements**  
**GAO Review**

**B-228236 Dec. 22, 1987**  
**87-2 CPD 616**

Protest of Defense Logistics Agency's alleged failure to comply with intra-agency procedures, or with an operational agreement between the agency and the military departments concerning which activity would evaluate the technical acceptability of noncritical application items offered as alternates to specified brand name items, is dismissed. Compliance with such procedures and agreements is a matter for the agencies involved to address, not the General Accounting Office as part of a bid protest.

**PROCUREMENT**  
**Bid Protests**  
**Non-Appropriated Funds**  
**GAO Review**

**B-228398 Dec. 22, 1987**  
**87-2 CPD 617**

Procurement by private foreign concern using its own funds is not a federal procurement and, therefore, protest of that procurement is not reviewable under General Accounting Office bid protest jurisdiction.

**PROCUREMENT**  
**Sealed Bidding**  
**Invitations for Bids**  
**Contractors**  
**Notification**

Where examination of record reasonably shows that bidder was sent bid package and received it and protester fails to persuasively rebut evidence of receipt, protest that potential bidder failed to receive solicitation is denied.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Preferred Products/Services**  
**Domestic Products**  
**Applicability**

Award to firm furnishing foreign parts under solicitation does not violate Buy American Act where agency has determined that exception which permits use of foreign parts where domestic-end product is not of satisfactory quality is applicable.

**PROCUREMENT**  
**Competitive Negotiation**  
**Unbalanced Offers**  
**Cost Allocation**  
**Labor Costs**  
**Justification**

**B-228485 Dec. 22, 1987**  
**87-2 CPD 618**

Protest that awardee proposed materially unbalanced fixed hourly labor rates, in response to solicitation for indefinite quantity, time and materials contract, is denied where there is no evidence of mathematical unbalancing.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

**B-228241 Dec. 23, 1987**  
**87-2 CPD 619**

Protest that specifications for dictating system unduly restrict competition must be filed before the closing date for receipt of quotations.

**PROCUREMENT**  
**Small Purchase Method**  
**Quotations**  
**Evaluation**  
**Technical Acceptability**

Where protester failed to demonstrate that its product conformed with the salient characteristics of the brand name product specified in the request for quotations, protester's offered equipment properly was rejected as unacceptable by agency.

**PROCUREMENT**  
**Small Purchase Method**  
**Requests for Quotations**  
**Defects**  
**Purchases**  
**Propriety**

**B-228241 Con't**  
**Dec. 23, 1987**

Award will not be disturbed where approval required under agency regulations to deviate from standard specifications in a request for quotations (RFQ) was not obtained prior to issuance of the RFQ, but deviation was approved after award, since protester was not prejudiced by approving official's ratification of the contracting officer's actions after award.

**PROCUREMENT**  
**Sealed Bidding**  
**Contract Awards**  
**Propriety**

**B-228363 Dec. 23, 1987**  
**87-2 CPD 620**

Where the low bidder alleges its bid was mistaken but submits no evidence to support the allegation, the government may award the firm the contract where the bidder is willing to accept the award at the original bid price and the bid would be low even if corrected.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Interested Parties**

**B-228530; B-228530.2**  
**Dec. 23, 1987**  
**87-2 CPD 621**

When a procurement has properly been reserved exclusively for small disadvantaged business participation, an offeror that is not a small disadvantaged business concern is not an interested party for the purpose of objecting to how the procurement is conducted.

**PROCUREMENT****Bid Protests****Non-Prejudicial Allegation****GAO Review****B-228530; B-228530.2 Con't****Dec. 23, 1987**

The Army's violation of an Army regulation which requires approval to contract out work previously performed solely by military personnel without a cost study prior to issuing a solicitation is not a valid basis of a protest where the approval was received shortly after the solicitation was issued and the protester has not shown any harm or prejudice caused by the violation.

**PROCUREMENT****Competitive Negotiation****Requests for Proposals****Amendments****Compliance Time Periods****Adequacy**

The regulations require that offerors be afforded sufficient time to consider the information in an amendment in preparing or modifying their offers. It is within the contracting officer's discretion to determine the appropriate preparation time. Where the agency receives numerous timely proposals, including one from the protester, we have no reason to question the contracting officer's determination.

**PROCUREMENT****Payment/Discharge****Unauthorized Contracts****Quantum Meruit/Valebant Doctrine****B-229548.2 Dec. 23, 1987****87-2 CPD 623**

Protester is not entitled to reimbursement for start-up costs incurred in anticipation of receiving contract award where there is no evidence that the government received a benefit.

**PROCUREMENT  
Sealed Bidding  
Bids**

**B-229548.2 Con't  
Dec. 23, 1987**

**Acceptance Time Periods  
Expiration  
Reinstatement**

Agency's request for extension of the bid acceptance period from the first four low bidders whose bids had expired is proper where there is no indication that the bidders whose bids are revived will gain any unfair advantage over other bidders.

**PROCUREMENT  
Sealed Bidding  
Bids**

**B-229715 Dec. 23, 1987  
87-2 CPD 625**

**Responsiveness  
Acceptance Time Periods  
Deviation**

Bidder's insertion of "30" in the space provided to designate the number of calendar days in the offered bid acceptance period renders the bid nonresponsive where the solicitation required a minimum acceptance period of 60 days, notwithstanding protester's alleged intention to offer 30 days in addition to the minimum period.

The minimum bid acceptance period is a material requirement of a solicitation and must be complied with at bid opening for a bid to be responsive; a nonresponsive bid must be rejected and may not be altered or amended based on information provided by the bidder after bid opening.

**PROCUREMENT**  
**Socio-Economic Policies**  
**Small Businesses**  
**Contract Awards**  
**Pending Protests**  
**Justification**

**B-229733 Dec. 23, 1987**  
**87-2 CPD 626**

Award made pending an appeal of an initial adverse determination concerning small business status does not require a written determination that award is necessary to protect public interest and does not require notification to Small Business Administration.

**PROCUREMENT**  
**Sealed Bidding**  
**Bid Opening**  
**Extension**  
**Justification**  
**GAO Review**

**B-228291 Dec. 24, 1987**  
**87-2 CPD 627**

An extension of the bid opening date is reasonable where it is made for the purpose of enhancing competition because only one bid had been received shortly before the time set for bid opening and another potential bidder had requested but not received a copy of the solicitation.

**PROCUREMENT**  
**Bid Protests**  
**Bias Allegation**  
**Allegation Substantiation**  
**Burden of Proof**

**B-228084 Dec. 28, 1987**  
**87-2 CPD 630**

There must be irrefutable proof that an agency has a malicious and specific intent to injure a protester before we may presume bad faith.

**PROCUREMENT** B-228084 Con't  
**Competitive Negotiation** Dec. 28, 1987  
**Offers**  
**Evaluation**  
**Work Site Visits**  
**Propriety**

Agency acted reasonably in conducting a site visit of each offeror's laboratory to gather further information to aid in the evaluation of proposals.

**PROCUREMENT** B-228325 Dec. 28, 1987  
**Competitive Negotiation** 87-2 CPD 631  
**Contract Awards**  
**Administrative Discretion**  
**Cost/Technical Tradeoffs**  
**Cost Savings**

Where the contracting agency reasonably determines that competing proposals are "very close technically," award based primarily upon cost savings to the government is reasonable.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Cost Estimates**

Contracting agency properly did not evaluate start-up costs of a new contractor in evaluating the realism of the offerors' cost proposals since the solicitation did not provide for the evaluation of such costs.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-229757 Dec. 28, 1987**  
**87-2 CPD 632**

Protest is untimely where the protester waited more than 3 months after the date of award of the contract to seek information through the Freedom of Information Act.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

**B-228566 Dec. 29, 1987**  
**87-2 CPD 635**

Protest against the failure of a solicitation to include an evaluation factor for the price of maintenance support is untimely when not filed prior to the initial closing date for submission of proposals.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation**  
**Cost Estimates**

An agency properly did not consider the cost of extended maintenance support, since the request for proposals (RFP) required only that offerors agree to provide such support at reasonable and customary rates and did not provide that such costs were an evaluation factor.

**PROCUREMENT**

B-228895 Dec. 29, 1987

**Competitive Negotiation  
Competitive Advantage  
Incumbent Contractors**

87-2 CPD 636

A contractor is not prohibited from enjoying a competitive advantage by reason of its own incumbency unless the advantage results from a preference or unfair action by the procuring agency.

**PROCUREMENT**

**Competitive Negotiation  
Requests for Proposals  
Competition Rights  
Contractors  
Exclusion**

The United States Department of Agriculture Graduate School may participate in competitive procurements because of its unique status as a nonappropriated fund instrumentality.

**PROCUREMENT**

**Competitive Negotiation  
Requests for Proposals  
Evaluation Criteria  
Sufficiency**

Protest that a request for proposal contains sufficient detail to enable protester to compete intelligently and on a relatively equal basis is denied where review of RFP shows that most information has been given or is unnecessary for proposal preparation.

Evidence that the procuring agency accepted proposals from contractors other than the incumbent indicates that the specifications were clear, not uncertain or risky.

**PROCUREMENT**

B-228924 Dec. 29, 1987

**Competitive Negotiation**

87-2 CPD 637

**Offers**

**Competitive Ranges**

**Exclusion**

**Administrative Discretion**

Where an offeror fails to comply with a solicitation requirement for the submission of detailed information concerning proposed staff, thereby failing to demonstrate the ability to provide the required continuity of services, and its proposal otherwise lacks a reasonable chance for award because of the significant superiority of a competing offeror, the agency does not act unreasonably in eliminating the proposal from the competitive range even though that results in a competitive range of one.

**PROCUREMENT**

**Competitive Negotiation**

**Offers**

**Technical Acceptability**

**Deficiency**

**Blanket Offers of Compliance**

A blank offer of compliance or a reference to information held by the offeror but not provided in the proposal is insufficient to comply with a solicitation requirement for the submission of detailed information--names and resumes--concerning proposed staff which an agency deems necessary for evaluation purposes.



**PROCUREMENT**  
**Sealed Bidding**  
**Bid Guarantee**  
**Responsiveness**  
**Signatures**  
**Authority**

**B-229486 Con't**  
**Dec. 29, 1987**

Evidence of the authority of surety's agent to sign bid bond on behalf of the surety generally must be furnished with a bid prior to bid opening, and failure to furnish it renders bid nonresponsive.

**PROCUREMENT**  
**Special Procurement**  
**Methods/Categories**  
**In-House Performance**  
**Cost Estimates**  
**Contract Administration**  
**Personnel**

**B-228032.2 Dec. 30, 1987**  
**87-2 CPD 641**

The General Accounting Office will not question properly obtained waivers of Office of Management and Budget Circular No. A-76 cost comparison guidelines concerning the number of contract administrators needed to monitor contractor performance.

**PROCUREMENT**  
**Special Procurement Methods/Categories**  
**In-House Performance**  
**Cost Estimates**  
**GAO Review**

The General Accounting Office will not consider protest of an agency's calculation in connection with an Office of Management and Budget Circular No. A-76 cost comparison where protester did not specifically raise its objection to the calculation in an appeal to the agency.

**PROCUREMENT**  
**Sealed Bidding**  
**Bonds**  
**Justification**  
**GAO Review**

**B-228225 Dec. 30, 1987**  
**87-2 CPD 642**

Although agencies generally should not require performance and payment bonds for other than construction contracts, inclusion of bonding requirements in solicitation for maintenance services is reasonable, and thus, legally unobjectionable, where, due to location and climatic factors, reprocurement would be difficult in the event of default and the services could not be performed by government personnel in the event of default due to understaffing at the facility.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

**B-228306 Dec. 30, 1987**  
**87-2 CPD 643**

Protest alleging that awardee's equipment is not equal to the specified brand name is timely where filed within 10 days after award. Preaward statement by agency official that type of equipment offered by awardee was being considered for award did not obligate protester to file a defensive protest before award was made.

**PROCUREMENT** **B-228306 Con't**  
**Specifications** **Dec. 30, 1987**  
**Brand Name/Equal Specifications**  
**Equivalent Products**  
**Acceptance Criteria**

Pursuant to Commerce Business Daily (CBD) notice announcing contracting agency's intent to purchase brand name or equal microfiche equipment from schedule contract, agency properly found awardee's non-brand name equipment was equal to brand name model even though it used a different method to produce the microfiches, since the CBD notice did not list the production method as a salient characteristic and awardee's equipment was functionally equivalent to the brand name.

**PROCUREMENT** **B-228909 Dec. 30, 1987**  
**Bid Protests** **87-2 CPD 644**  
**Bias Allegation**  
**Allegation Substantiation**  
**Evidence Sufficiency**

Assertion that agency has never previously requested multiple proposals for a single delivery order is insufficient basis to conclude that such agency action constituted unfairness.

General Accounting Office will not attribute improper action to agency officials on basis of unsupported allegations that officials disclosed proprietary information.

**PROCUREMENT** **B-228909 Con't**  
**Competitive Negotiation** **Dec. 30, 1987**  
**Discussion**  
**Bad Faith**  
**Allegation Substantiation**

Assertion that agency failed to enter into good faith negotiations is without merit where record indicates agency questioned several price-related elements of protester's proposal.

**PROCUREMENT**  
**Contract Management**  
**Contract Administration**  
**GAO Review**

Protest challenging agency's award of a delivery order pursuant to an existing indefinite-quantity contract (IQC) will not be dismissed as a matter involving issue of contract administration where underlying IQC does not establish several significant terms which had to be negotiated prior to execution of the delivery order.

**PROCUREMENT** **B-228958.2 Dec. 30, 1987**  
**Bid Protests** **87-2 CPD 645**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

Request for reconsideration is denied where the protester essentially restates arguments previously considered in original decision because a request for reconsideration must detail the factual and legal grounds warranting reversal of decision, specifying errors of law made or information not previously considered.

**PROCUREMENT** **B-229648.2 Dec. 30, 1987**  
**Bid Protests** **87-2 CPD 646**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Protester's letter of protest accompanying a proposal was not a timely protest of alleged solicitation deficiencies.

Oral protest of alleged solicitation deficiencies prior to closing date did not constitute timely protest under the Federal Acquisition Regulation.

**PROCUREMENT** **B-229751 Dec. 30, 1987**  
**Bid Protests** **87-2 CPD 647**  
**GAO Procedures**  
**Protest Timeliness**  
**Apparent Solicitation Improprieties**

Allegation questioning the propriety of an amendment to a solicitation must be filed before proposals in response to the amendment are due.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Protest Timeliness**  
**10-day Rule**

Protest initially filed with the contracting agency is dismissed as untimely when filed with General Accounting Office (GAO) more than 10 working days after the protester received notice that the contracting agency denied the firm's agency-level protest. Protester's continued pursuit of the protest with the contracting agency resulting in a subsequent letter from the agency repeating grounds for denial neither extends the time for filing a protest with GAO, nor provides a new basis for protest.



**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**Preparation Costs**

**B-228187; B-228188**  
**Dec. 31, 1987**  
**87-2 CPD 650**

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Preparation Costs**

The protester is entitled to recover the costs of filing and pursuing its protest, including reasonable attorney's fees, as well as proposal preparation costs, where the protester was improperly denied fair and equal opportunity to compete and other corrective action is not appropriate under the circumstances.

**PROCUREMENT**  
**Competitive Negotiation**  
**Offers**  
**Evaluation Errors**  
**Evaluation Criteria**  
**Application**

Where the contracting agency evaluated proposals on the basis of criteria not stated in the solicitation, protest that the evaluation was unfair is sustained.

**PROCUREMENT**  
**Bid Protests**  
**Premature Allegation**  
**Future Procurement**  
**GAO Review**

**B-228244.3 Dec. 31, 1987**

Where no solicitation has yet been issued, protest against proposed procurement is premature and, therefore, not for consideration.

**PROCUREMENT**  
**Bid Protests**  
**GAO Procedures**  
**GAO Decisions**  
**Reconsideration**

**B-228911.2 Dec. 31, 1987**

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

**MISCELLANEOUS TOPICS**

**MISCELLANEOUS TOPICS**            **B-229152.2 Dec. 2, 1987**  
**Housing/Community Development**  
**Mortgage Insurance**  
**Refunds**  
**Distribution**

Decision concerning Mutual Mortgage Insurance Fund claims, B-201699, November 26, 1985, did not address the propriety of third-party tracers informing citizens of money owed them by the government and offering to assist them in recovering payment for a fee.

**MISCELLANEOUS TOPICS**            **B-226375 Dec. 28, 1987**  
**Federal Administrative/Legislative Matters**  
**Administrative Policies**  
**Records Destruction**  
**Time Restrictions**

This Office has no objection to the National Archives and Records Administration adopting and issuing revision to General Records Schedule 12, item 4 to authorize disposal of telephone use records (excluding records relating to investigation of employee abuse of telephone use and related claims) since proposed retention period is adequate to protect the legal and financial interests of the government.



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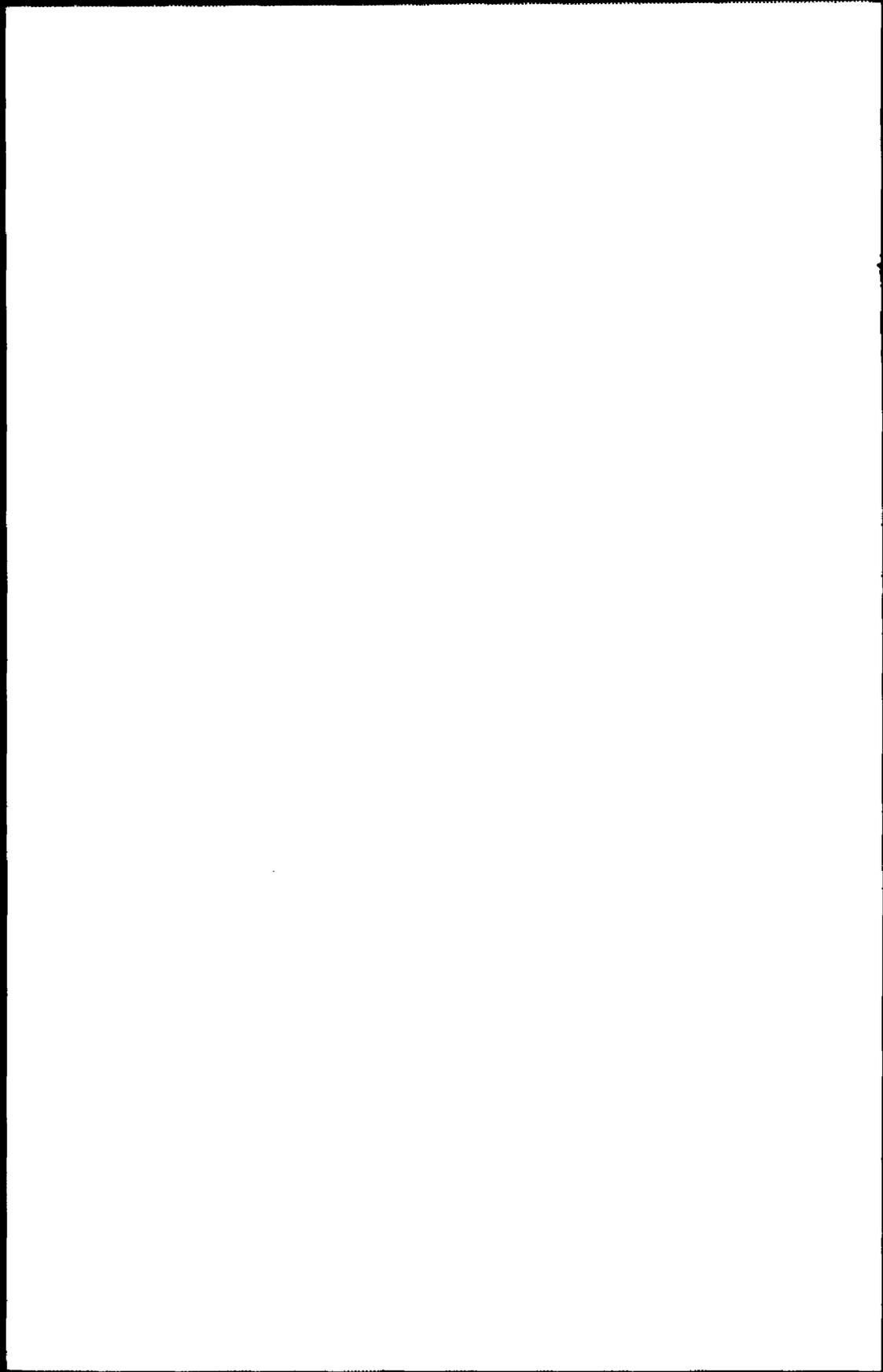
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