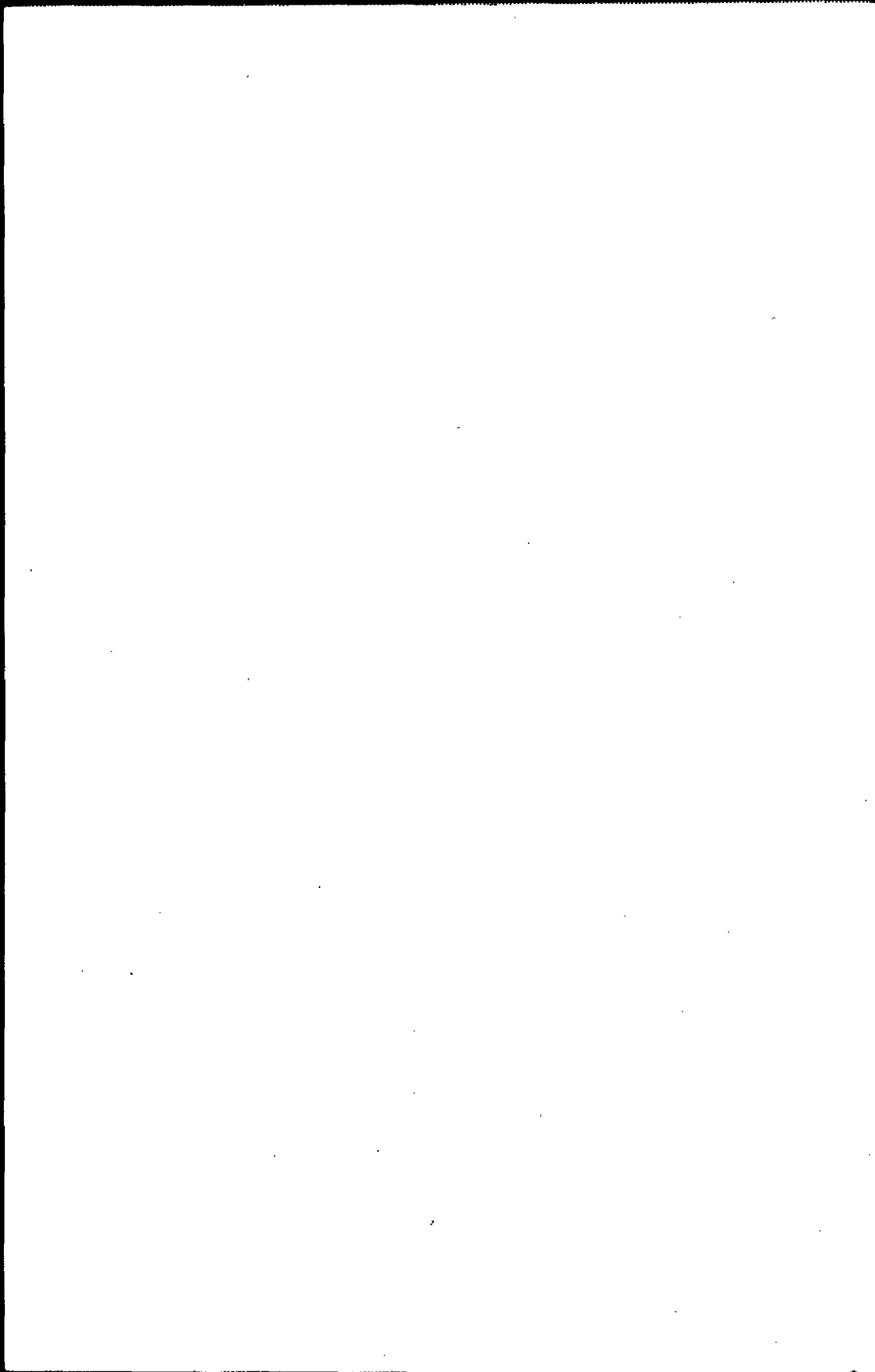


October 1987

Digests of Unpublished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



United States General Accounting Office

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Comptroller General of the United States

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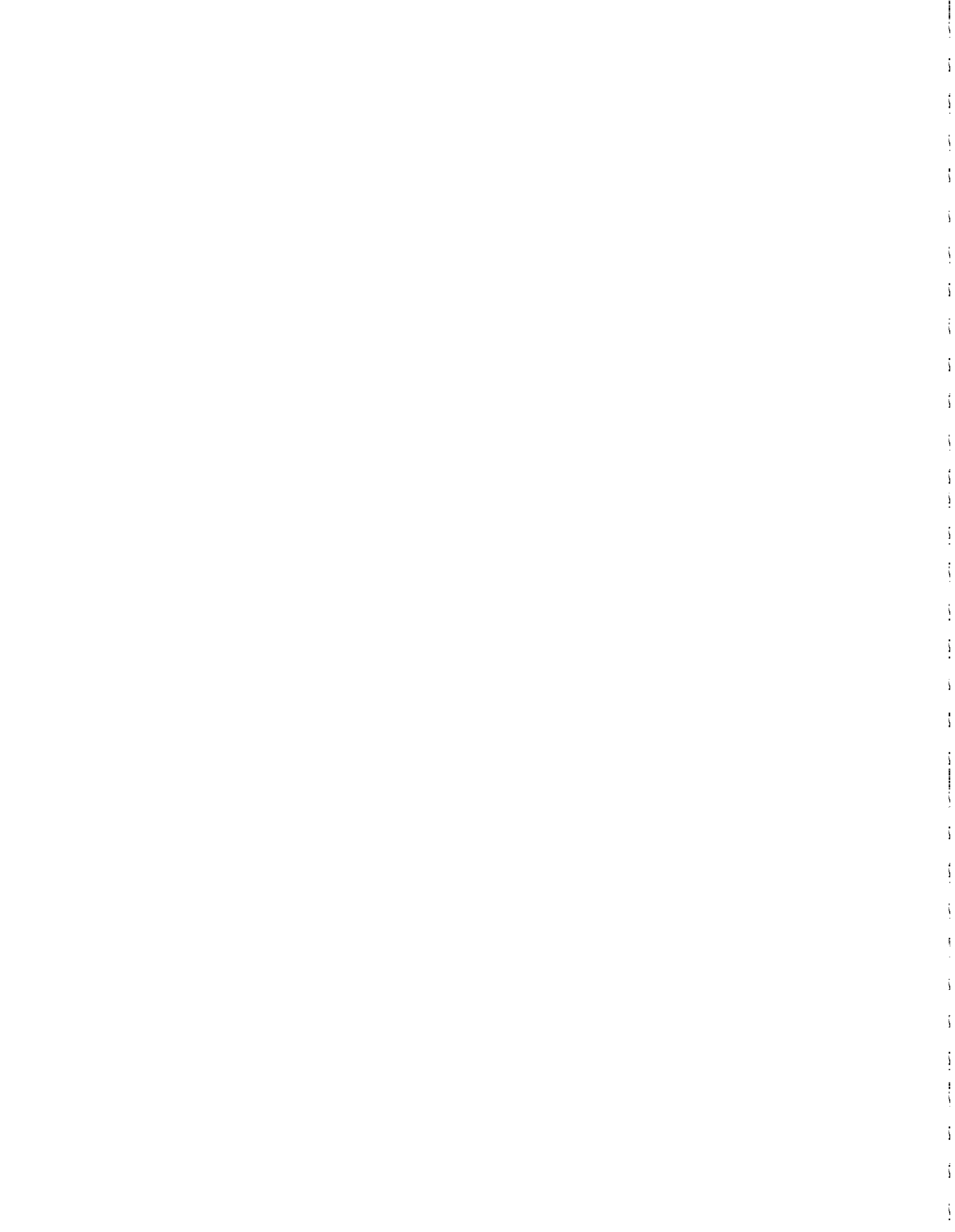
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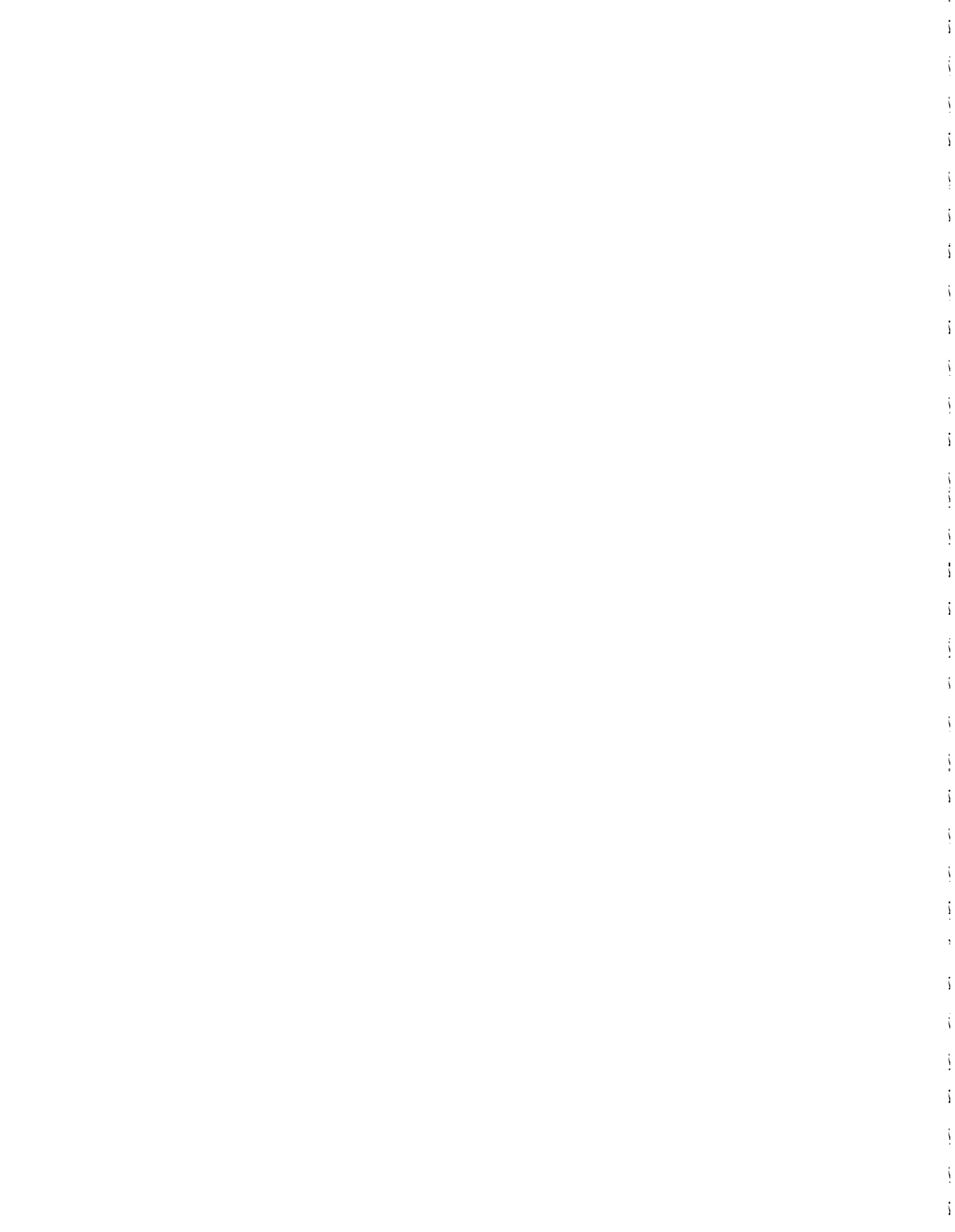
Vacant

Deputy General Counsel



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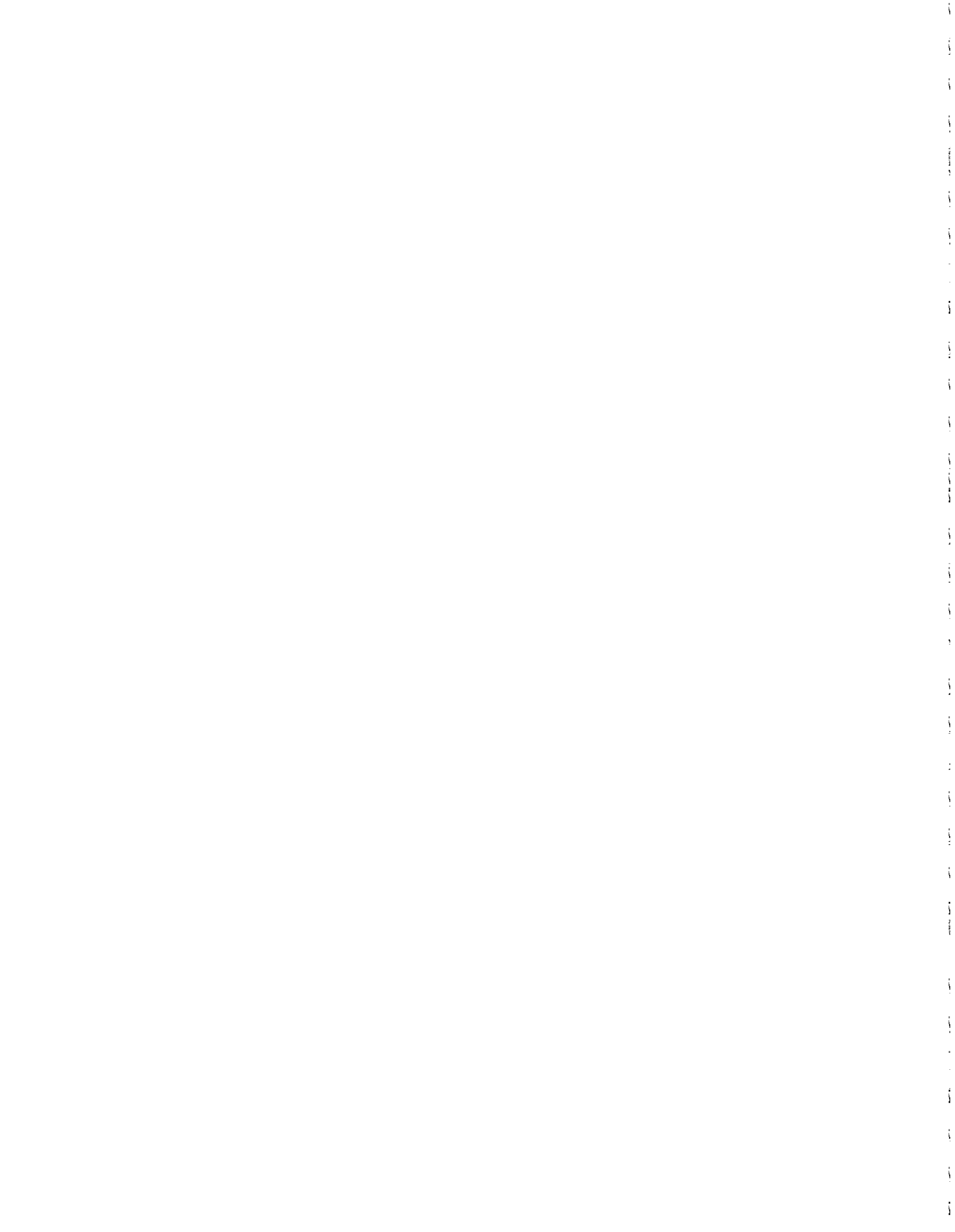


PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and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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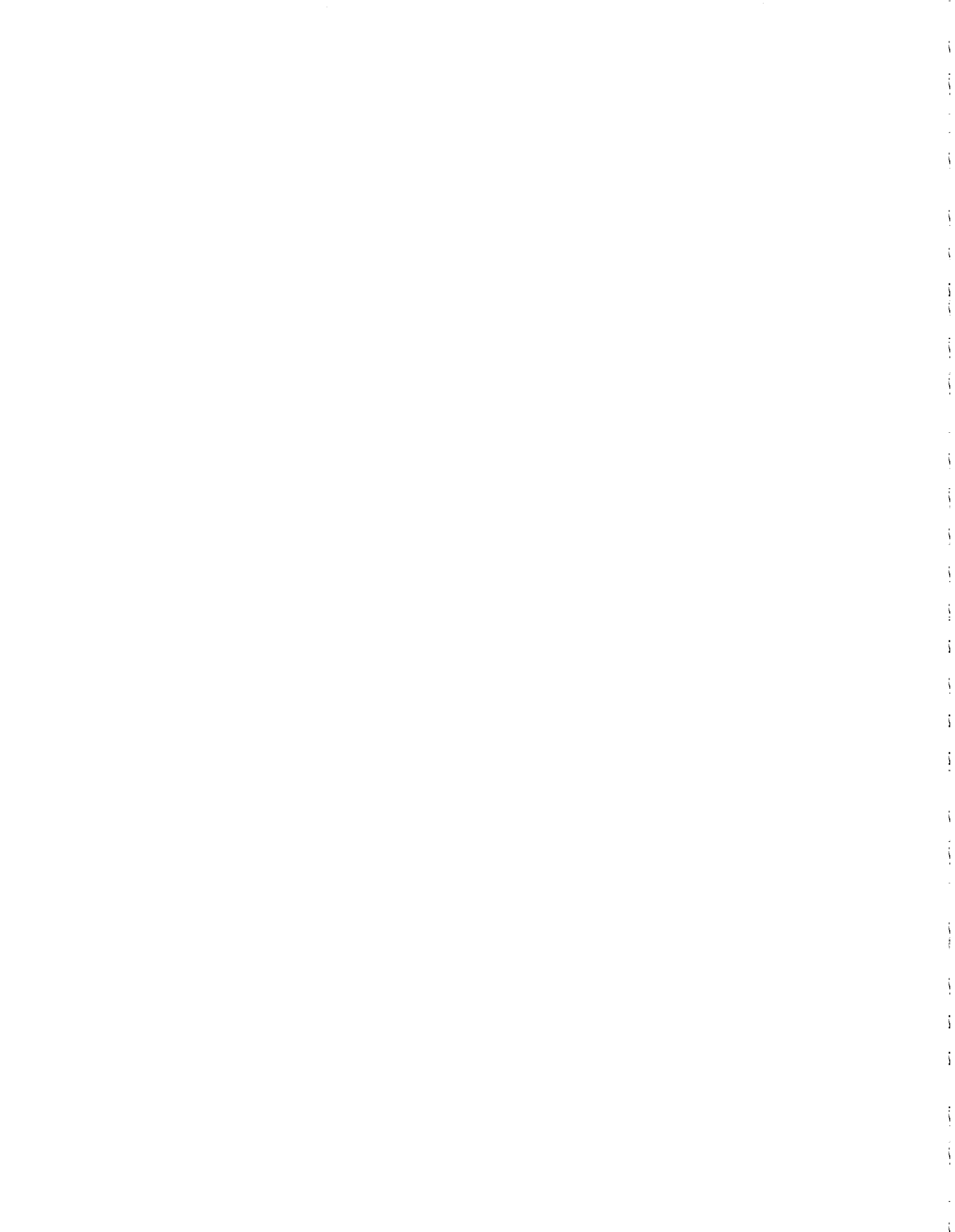
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NOTICE

Effective October 1, 1986, a new controlled vocabulary was used to index the documents of GAO's Office of General Counsel, reflecting changes in the chapter titles and the index entries (headings). Copies of this vocabulary with introductory material explaining how to use the vocabulary to retrieve documents were mailed the latter part of October to individuals currently on GAO's distribution list for this publication.

If you have not received a copy, please call 275-6241.

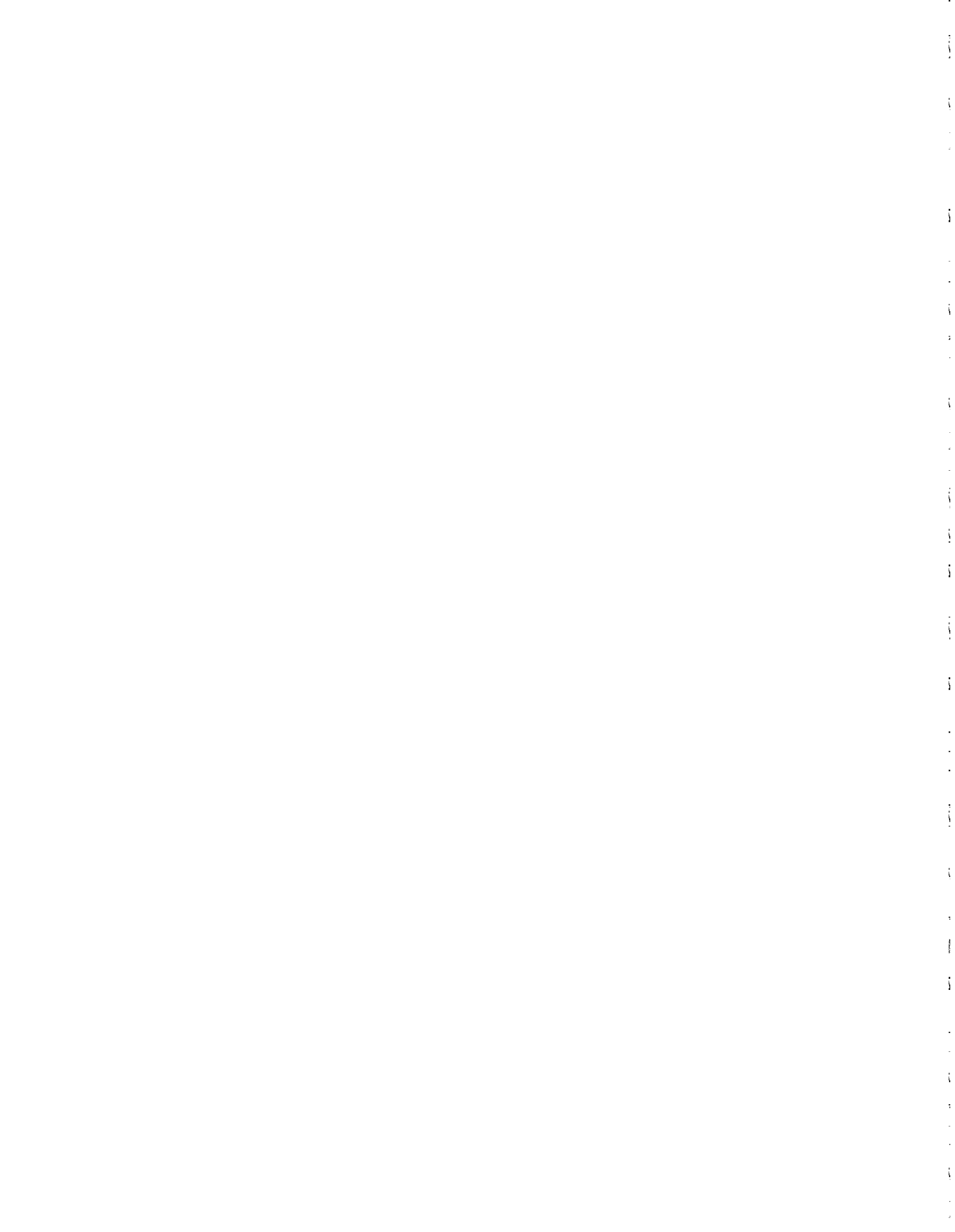


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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-229114** **Oct. 5, 1987**
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

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

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-221940** **Oct. 7, 1987**
Cashiers
Relief
Illegal/Improper Payments
Fraud

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability
Purpose Availability
Specific Purpose Restrictions
Entertainment/Recreation

Although generally meals or snacks may not be provided to government employees at their normal duty station, limited authority exists under Government Employees Training Act. Record is insufficient to determine propriety of expenditure by Internal Revenue Service imprest fund cashier for coffee, donuts, and coffee pot for use at IRS training seminars. However, assuming expenditure was improper, relief may be granted under 31 U.S.C. 3527(c) since there is no indication of bad faith and cashier, who initially questioned propriety and subsequently paid voucher with approvals by proper authorities including a contracting officer, exercised reasonable care under the circumstances.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-214372** **Oct. 9, 1987**
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

The Secretary of the Army or his designee is delegated authority to administratively grant relief in the amounts of \$750.00 or less to present or former Army disbursing officials financially liable for the issuing or certifying of substitute or recertified checks drawn for pay and allowances of civilian and military personnel when the payee presents and receives payment for both checks. These cases must be determined in accordance with the statutory standards of 31 U.S.C. 3527(c) and 3528(b) and applicable Comptroller General decisions.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227623** **Oct. 13, 1987**
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

Army finance officer is relieved of responsibility under 31 U.S.C. 3527(c) for the loss of \$53 that resulted when a pay check was cashed with a forged signature. The finance officer supervised an adequate system of procedures and controls to safeguard government funds and is found to have exercised due care and have acted in good faith.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-228851** **Oct. 13, 1987**
Cashiers
Relief
Illegal/Improper Payments
Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing Officers
Relief
Illegal/Improper Payments
Forgeries

Army disbursing officers are relieved of liability for nine improper payments totaling \$1,800.00 pursuant to 31 U.S.C. 3527(c). Relief is proper since the cashier followed all prescribed procedures, her supervisor established and maintained an adequate system of controls and the loss resulted from criminal activity over which the disbursing officers had no control.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-228884** **Oct. 13, 1987**
Cashiers
Relief
Physical Losses
Theft

Relief granted to Ms. Mildred Hyman, Imprest Fund Cashier for the U.S. Environmental Protection Agency, New York, New York, for a \$963 imprest fund loss under 31 U.S.C. 3527(a). Although cashiers are held to a standard of strict liability, relief is granted because of a finding of faulty agency security and the fact that more than one person had knowledge of the safe combination.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-222392** **Oct. 16, 1987**

Relief

Illegal/Improper Payments

GAO Decisions

Reconsideration

On reconsideration, relief is granted an Army supervising financial officer for an improper payment. Additional information submitted supports conclusion that the officer maintained and policed an adequate systems of procedures and controls to avoid errors.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-226872** **Oct. 16, 1987**

Cashiers

Relief

Illegal/Improper Payments

Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing Officers

Relief

Illegal/Improper Payments

Forgeries

Army finance officer and subordinate cashier are granted relief under 31 U.S.C. 3527(c) for an improper payment of \$745.00. Improper payment resulted from criminal activity over which the finance officer and cashier had no control. The offender was able to cash forged checks with the cashier, who checked her ID and who was not led to believe that a fraud was being perpetrated.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-226911** **Oct. 19, 1987**

Cashiers

Relief

Illegal/Improper Payments

Forgeries

Relief is granted to Veterans Administration agent cashier who deposited an altered U.S. Treasury check into a patient's personal account which resulted in an improper payment from the account. Agent cashier followed procedures and there was no indication that she had not exercised reasonable care in examining the check which was expertly altered. Unnamed cashiers who actually made the payments are relieved of liability as well since there was no reason for these cashiers to be suspicious of the fraudulent nature of the transactions and therefore prevent the improper payment.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-228705** **Oct. 19, 1987**

Disbursing Officers

Relief

Illegal/Improper Payments

Fraud

U.S. Naval Disbursing Officer is relieved of liability for the improper payment made on a fraudulent travel claim. A subordinate travel clerk in compliance with Navy regulations, allowed payment without documentation or receipts, the disbursing officer maintained and supervised a system of procedures under Navy regulations and substantial attempts to recover the funds have been made.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227714 Oct. 20, 1987

Cashiers

Relief

Physical Losses

Theft

Relief is granted two Veterans Administration imprest fund cashiers under 31 U.S.C. 3527(a) from liability for a loss of \$5,050.80. A number of people had access to the places where funds were kept in violation of Treasury standards. GAO agrees with the conclusion that the loss was the result of pervasive laxity in office procedures beyond the control of the cashiers.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-226231 Oct. 23, 1987

Purpose Availability

Specific Purpose Restrictions

Interest

Army Corps of Engineers (Corps) erroneously overbilled City of Aberdeen for 1983 annual payment under water storage contract. When error was discovered, Corps credited overpayment to 1985 charges. Aberdeen's claim for interest on the overpayment may not be allowed in view of long-established prohibition on recovery of interest from United States except where expressly authorized in relevant statute or contract.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL B-227193 Oct. 16, 1987
Relocation
Temporary Quarters
Actual Subsistence Expenses
Reimbursement
Eligibility

A transferred employee may be reimbursed for temporary quarters subsistence expense for himself and his family even though they returned to their old residence on weekends. The employee had for all intents and purposes vacated his residence at his old duty station since he had packed 90 percent of his household goods, which made it necessary that he and his family sleep on mattresses and eat their meals out. His return trips were merely for the purpose of preparing his house for sale and keeping his insurance in effect.

CIVILIAN PERSONNEL B-226020 Oct. 23, 1987
Compensation
Rates
Determination
Highest Previous Rate Rule

An employee who formerly held a position as a structural engineer in the GG system at the GG grade 12, step 7 level when he was working for the Navy during the conflict in Vietnam, which he says was equivalent in duties and responsibilities to a GS grade 12, step 7 level position, claims that he should have received the step 7 rate of pay rather than the step 1 rate of pay in the position in which he was reemployed by the Navy in 1981. The employee was only entitled to the step 1 rate of pay upon reemployment because the highest previous rate rule applies only to the salary rate earned by the employee in his previous position (the GG-12/7 salary rate was lower than the step 1 rate of the grade in which he was reemployed), not to the level of job responsibility in his previous position.

CIVILIAN PERSONNEL
Leaves of Absence
Annual Leave
Military Service
Service Credits
Eligibility

B-226020 Con't
Oct. 23, 1987

Service in the Philippine Commonwealth Army is not active military service that is creditable for the purpose of determining an employee's annual leave accrual rate.

CIVILIAN PERSONNEL
Compensation
Balances
Personnel Death
Payees
Determination

B-227483 Oct. 23, 1987

A claimant who asserts that she is the common-law wife of a deceased employee may not collect his unpaid compensation since no common-law marriage has been established and it is unclear whether the deceased employee believed himself to be or held himself out as married.

Relocation**Expenses****Reimbursement****Eligibility****Government Advantage**

Where an agency issued travel orders allowing the payment of certain relocation allowances to a transferred employee, the agency is presumed to have made the determination that the transfer was in the interest of the Government. Unless the original orders were arbitrary, capricious or clearly erroneous, we will not overturn the agency's original determination that the transfer was made in the interest of the Government.

A transferred employee of the Peace Corps, was authorized transportation expenses, temporary lodging expenses, shipment of household effects and temporary storage, but he was not authorized real estate expenses. He is entitled to reimbursement of real expenses in accordance with part 6, chapter 2, of the Federal Travel Regulations since he was transferred in the interest of the Government and the regulations contemplate that certain expenses will be uniformly allowed to all transferred employees. Budgetary constraints are not an acceptable reason for denying certain relocation expenses to a transferred employee.

CIVILIAN PERSONNEL **B-227663 Con't**
Relocation **Oct. 23, 1987**
Residence Transaction Expenses
Reimbursement
Eligibility
Property Titles

CIVILIAN PERSONNEL
Relocation
Residence Transaction Expenses
Reimbursement
Eligibility
Residency

An employee placed his residence at his old duty station on the market for sale before he received official notice of transfer. However, the employee did not accept an offer to purchase his residence until after official notice of transfer. Therefore, on the date of official notice of transfer, the employee held title to and lived in his residence. The sale of the employee's residence at his old duty station was incident to his transfer, and the employee may be reimbursed for these real estate expenses.

CIVILIAN PERSONNEL

B-225013 Oct. 28, 1987

Travel

Overseas Travel

Eligibility

Service Contracts

Contract Renewal

On September 8, 1982, 5 U.S.C. 5728 was amended to restrict tour renewal travel for employees assigned to Alaska and Hawaii to situations in which travel was necessary to recruit or retain an employee for a tour of duty in Alaska or Hawaii. That statute and the implementing regulations now provide that only employees who have been continuously stationed in Alaska and Hawaii on and since September 8, 1982, may retain unrestricted tour renewal travel rights. Under the plain terms of the applicable statute and regulations

CIVILIAN PERSONNEL

B-226013 Oct. 28, 1987

Relocation

Residence Transaction Expenses

Miscellaneous Expenses

Reimbursement

A transferred employee sold his residence interest in a cooperatively-owned apartment building. He seeks reimbursement for a \$10 a share (798 shares) resale waiver fee or "Flip Tax" charged him by the cooperative, thereby granting him the right to dispose of his ownership interest on the open market in lieu of repurchase by the cooperative at a lower price. Real estate expense reimbursements are strictly governed by the Federal Travel Regulations (FTR), in which FTR para. 2-6.2d(1) authorizes reimbursement of fees which are "similar in nature to" the specific fees listed in FTR

Relocation

Temporary Quarters

Actual Subsistence Expenses

Reimbursement

Eligibility

A transferred employee stayed with a relative near his new duty station and delayed occupying temporary quarters pending the arrival of his family. The employee's family decided not to move to his new duty station, and the employee then made a claim for temporary quarters subsistence expenses for a 30-day period which occurred nearly 2 years after his transfer. Paragraph 2-5.2e of the Federal Travel Regulations requires that in order to qualify for temporary quarters reimbursement, occupancy must begin not later than 30 days after reporting for duty or not later than 30 days after the family vacates the residence at the old station. Where there is no delayed travel by the family, temporary quarters may not be paid unless the occupancy of temporary quarters commences within 30 days after the employee reports for duty.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-228749 Oct. 1, 1987

Pay

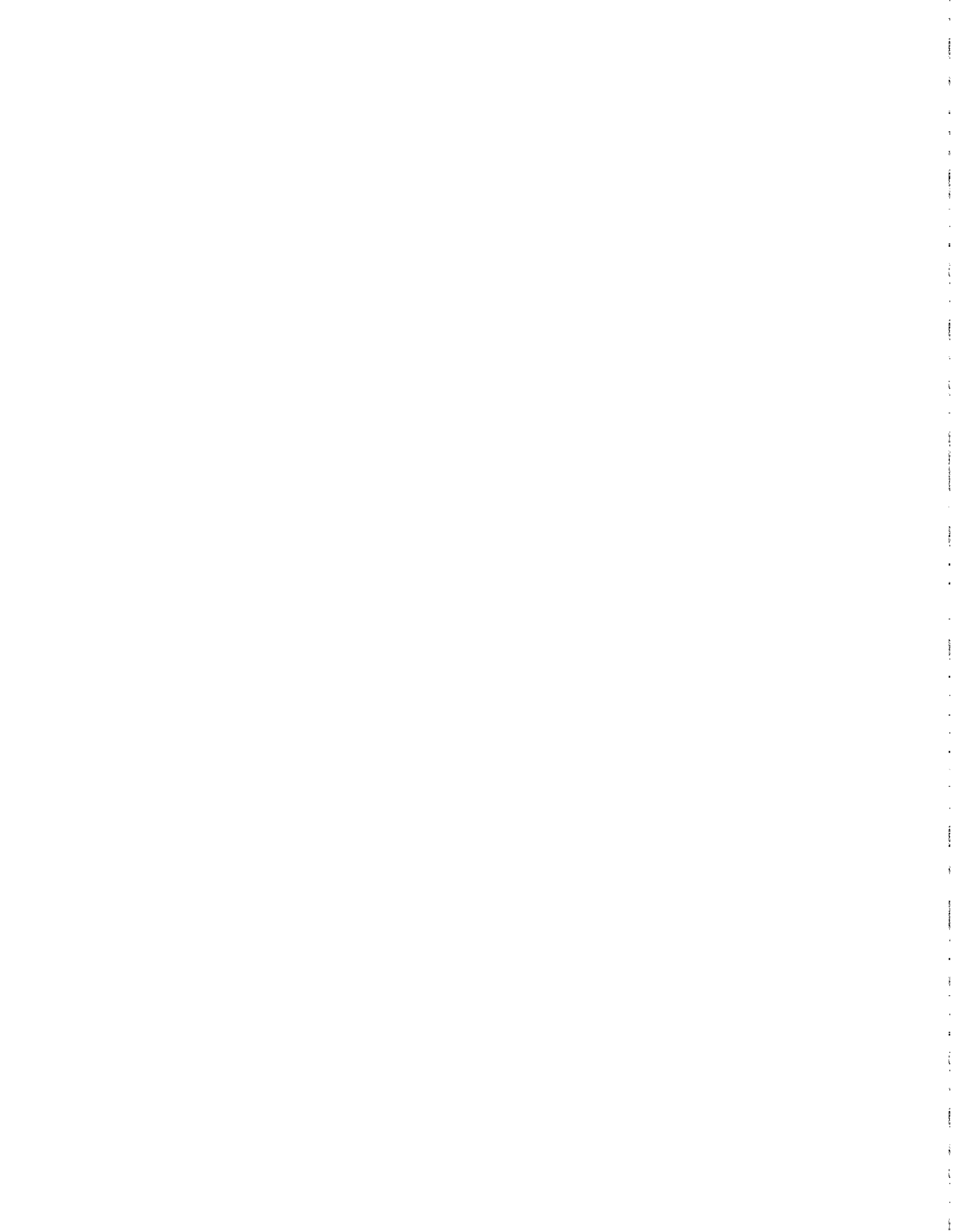
Retirement Pay

Claim Accrual Dates

Continuing Claims

Statutes of Limitation

The Act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of Pub. L. No. 93-604, 88 Stat. 1965, January 2, 1975, codified at 31 U.S.C. 3702(b)(1) provides that every claim or demand against the United States cognizable by the General Accounting Office must be received in that Office within 6 years from the date it accrued or be forever barred. Under that provision of law, as a condition precedent to a claimant's right to have his claim considered by the General Accounting Office, his claim must have been received in this Office within the 6-year period. Accordingly, a claim for compensation for unpaid benefits due a former military member who died on December 29, 1980, presented to this Office by an associate of the deceased on June 15, 1987, is barred by the above-cited Act and may not be considered by the Office.



PROCUREMENT
Bid Protests
Administrative Policies
Violation
GAO Review

B-227843.2 Oct. 2, 1987
87-2 CPD 324

Allegation that value engineering program is not being administered properly concerns policy matter not reviewable by General Accounting Office.

PROCUREMENT
Bid Protests
Premature Allegation
GAO Review

Allegation that agency may accept nonconforming goods under contract is not for review since the General Accounting Office will not anticipate improper agency action.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Royalties
Cost Evaluation

Addition of evaluation factor to offered prices for items manufactured under a value engineering change proposal (VECP), to reflect royalty fee government must pay for VECP items, is unobjectionable--even when the factor is added to offer of the firm that developed the VECP--since the evaluation factor represents an actual cost to the government of contracting for a VECP item.

PROCUREMENT

**Sealed Bidding
Bids**

**Late Submission
Rejection
Propriety**

B-227928.2 Oct. 2, 1987

87-2 CPD 328

Protest that bid improperly was rejected as late is denied where protester was on notice 9 days before bid opening, by reason of the certified mail receipt, that its bid had been delivered to the wrong agency but they took no further action to ensure timely delivery of the bid.

PROCUREMENT

**Competitive Negotiation
Offers**

**Technical Acceptability
Negative Determination
Propriety**

B-227935 Oct. 2, 1987

87-2 CPD 329

The General Accounting Office will not disturb an agency's decision that a technical proposal is unacceptable where the decision is supported by the information in the proposal and the evaluation materials, and is consistent with the criteria set forth in the solicitation.

PROCUREMENT

B-227971 Oct. 2, 1987

Bid Protests

87-2 CPD 330

GAO Procedures

Protest Timeliness

10-day Rule

Where the agency led the protester to believe that its proposal was not yet definitely excluded from the competitive range, despite a letter stating that it was being eliminated, a protest filed with the agency within 10 working days of the agency's definite exclusion of the protester from award is timely. The protester's filing of a protest with the General Accounting Office within 10 working days of adverse agency action on that protest therefore also is timely.

PROCUREMENT

Competitive Negotiation

Offers

Organizational Experience

Evaluation

Propriety

Agency's decision to exclude an offeror from the competitive range on the basis that the firm's experience did not meet the mandatory criteria of the solicitation is proper where the record shows that the agency's evaluation of the offeror's experience was reasonable and consistent with the solicitation's evaluation scheme.

PROCUREMENT
Sealed Bidding
Bids

B-228651 Oct. 2, 1987
87-2 CPD 331

Modification
Submission Methods
Procedural Defects

Agency's determination not to consider a bid price modification written on the bidder's envelope is legally unobjectionable where the bidder did not adhere to the prescribed procedural requirements for modifying a bid; the modification was not signed by the individual who signed the standard bid form; and there was nothing in the bid package indicating that the author of the modification was authorized to modify the bid.

PROCUREMENT
Sealed Bidding

B-227677 Oct. 5, 1987
87-2 CPD 332

Invitations for Bids
Post-bid Opening Cancellation
Justification
Competition Enhancement

Where specifications under a brand name or equal solicitation result in limited competition and the contracting officer determines that other firms would compete under relaxed specifications, the procuring agency has a compelling reason to cancel the solicitation after bid opening because it is in the best interest of the government to enhance competition.

PROCUREMENT
Sealed Bidding
Bonds

Justification
GAO Review

B-227897 Oct. 5, 1987
87-2 CPD 333

Protest that bonding requirement in an invitation for bids is unduly restrictive is without merit since it is within agency's discretion to require bonding even in a small business set-aside and the General Accounting Office will not upset such a determination made reasonably and in good faith.

Agency's requirement for uninterrupted performance of custodial services is itself a reasonable basis for imposing bonding requirements in a solicitation.

PROCUREMENT

Sealed Bidding
Invitations for Bids
Cancellation
Justification
Funding Restrictions

In a negotiated procurement, the contracting officer has broad powers to decide whether to cancel a solicitation and need only to establish a reasonable basis for the cancellation. Lack of funding for a procurement clearly provides a reasonable basis for cancellation.

PROCUREMENT
Bid Protests
Agency-level Protests
Protest Timeliness
GAO Review

B-227939 Oct. 5, 1987
87-2 CPD 334

Protest that contracting agency's failure to forward protester's size protest against a competing firm promptly to the Small Business Administration (SBA) improperly prejudiced the protester is denied where protester's size protest was untimely and, therefore, would not have affected the outcome of the procurement; and the contracting agency filed its own size protest and the SBA determined the protested firm to be a small business concern for the current acquisition.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

Protest allegation first raised in protester's post-conference comments that agency actions improperly prevented protester from filing a preaward appeal of an SBA regional office size status determination is untimely where based on information known to the protester at the time the initial protest was filed.

Protest against proposed award to another bidder based on allegedly improper evaluation of bids on a line item basis is untimely where filed more than 10 working days after the basis of protest was known.

PROCUREMENT
Contract Management
Contract Administration
Domestic Products
Compliance
GAO Review

B-227952 Oct. 5, 1987

Where bidder certifies in accordance with the Buy American Act that it intends to supply a domestic product, it is obligated to do so upon acceptance of its bid, and whether the firm in fact meets its obligation is a matter of contract administration, which the General Accounting Office does not review.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Price Omission
Line Items

Where the solicitation required a bid for all items and the protester misinterpreted a parenthetical phrase advising bidders to combine the bids for two of three items and entered just one bid for all three items, leaving one item without a price, the contracting agency properly rejected the bid as nonresponsive.

PROCUREMENT
Sealed Bidding
Non-Responsive Bids
Acceptance
Propriety
Competitive System Integrity

A nonresponsive bid may not be accepted even if it would result in savings to the government.

PROCUREMENT

B-227954 Oct. 5, 1987

Bid Protests

87-2 CPD 335

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

A protest of a solicitation provision, requiring submission of a first article inspection report and prescribing standards for waiving submission of such a report, is dismissed as untimely where it was not filed prior to the closing date for receipt of initial proposals.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

10-day Rule

Protest of agency decision to waive first article requirements for competitor is dismissed as untimely where not filed within 10 working days after protester received information from agency that competitor had received award based on line items indicating that first article testing had been waived.

PROCUREMENT

Competitive Negotiation

Requests for Proposals

First-article Testing

Waiver

Administrative Determination

Protest of agency's decision not to waive a first article testing requirement is denied where firm has not produced the item for an extended period of time--12 years.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-228190.2 Oct. 5, 1987
87-2 CPD 336

PROCUREMENT
Bid Protests
GAO Procedures
Purposes
Competition Enhancement

General Accounting Office will not review a protest that the government should issue a solicitation with more restrictive specifications; therefore, prior dismissal of protest on that issue is affirmed.

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

B-228252 Oct. 5, 1987
87-2 CPD 337

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

PROCUREMENT
Sealed Bidding
Bid Guarantees
Responsiveness
Checks
Adequacy

An uncertified corporate check is not an acceptable bid guarantee. Such an instrument lacks the status of the necessary firm commitment because it is subject to dishonor through events such as insufficient funds in the account and stop payment orders.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-228972 Oct. 5, 1987
87-2 CPD 338

Protest to the General Accounting Office is untimely where the protester knew its basis for protest more than 10 working days prior to filing its initial protest with the agency, notwithstanding agency's consideration of protest on its merits.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule
Adverse Agency Actions

Protest filed with the General Accounting Office more than 10 working days after initial adverse action by the contracting agency on protest filed with it is untimely. Protester's continued pursuit of protest with contracting agency does not change this result.

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

B-227746 Oct. 6, 1987
87-2 CPD 340

Contracting officer did not abuse his discretion in deciding not to set aside a particular procurement for small business concerns, even though the service previously was acquired by set-aside, where the record shows that he reasonably did not expect a sufficient number of offers from responsible small business concerns and award at a reasonable price.

PROCUREMENT
Bid Protests
Moot Allegation
GAO Review

B-227842; B-227842.2
Oct. 6, 1987
87-2 CPD 341

Where protester alleges that specifications contain incongruities and the agency states that it will amend the solicitation in order to eliminate these incongruities, the allegation is academic.

PROCUREMENT
Competitive Negotiation
Use
Criteria

PROCUREMENT
Sealed Bidding
Use
Criteria

Agency decision to use negotiation procedures in lieu of sealed bidding procedures is justified where the agency intended to conduct discussions with the responding offerors.

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

Procurement need not be set aside for small business where the contracting officer determines that there is no reasonable expectation of receiving offers from two small businesses and making award at a reasonable price.

**PROCUREMENT
Specifications**

**B-227842; B-227842.2 Con't
Oct. 6, 1987**

**Brand Name/Equal Specifications
Equivalent Products
Acceptance Criteria**

Allegation that specification for fire alarm equipment should have restricted approval of the equipment to Underwriters Laboratory (UL) or Factory Mutual Systems (FMS) is without merit since restricting equipment approval to particular organizations without recognizing equivalents is unduly restrictive and protester has not shown any legal requirement for only UL and FMS approved equipment.

PROCUREMENT

Specifications

Minimum Needs Standards

Competitive Restrictions

Allegation Substantiation

Evidence Sufficiency

Protester's allegation that specification for fire alarm equipment utilizing National Fire Protection Association Standard 72D is unduly restrictive is denied where the agency reasonably supports the specification and the protester has not shown that the restriction is clearly unreasonable.

PROCUREMENT
Bid Protests
GAO Procedures
Interested Parties

B-228912 Oct. 7, 1987
87-2 CPD 344

Large business is not "interested party" within meaning of Bid Protest Regulations for purposes of protesting alleged improprieties in solicitation set aside for small business concerns, since it is not eligible to receive award.

PROCUREMENT
Sealed Bidding
Bids
Errors
Error Substantiation

B-228013 Oct. 8, 1987
87-2 CPD 346

Generally, an asserted mistake in bid alleged prior to award may be corrected where there exists clear and convincing evidence that a mistake was made, of the manner in which the mistake occurred, and of the intended bid price. Where the bidder supports its request for correction of its bid with conflicting affidavits as to what bid price it actually intended, the contracting agency's decision to deny correction was reasonable.

The failure of a bidder alleging a mistake in regard to construction work to make provisions in its worksheets for profit and overhead calls into question whether the alleged intended bid price of the bidder is indeed the bid price actually intended.

PROCUREMENT
Sealed Bidding
Bids
Errors
Post-bid Opening Withdrawal
Propriety

B-228013 Con't
Oct. 8, 1987

By contrast with the clear and convincing evidence required for bid correction, withdrawal of a bid for reason of mistake requires a lesser degree of proof and may be permitted if it reasonably appears that an error was made.

PROCUREMENT
Bid Protests
Federal Grants
Contract Awards
GAO Review

B-228129 Oct. 8, 1987
87-2 CPD 347

The General Accounting Office has no authority to review procurements by other than federal agencies, and also does not review complaints concerning the award of contracts under federal grants.

PROCUREMENT
Bid Protests
Licensing
GAO Review

B-227545 Oct. 9, 1987
87-2 CPD 348

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

If a solicitation requires the contractor to obtain a specific license, but does not indicate that the license must be obtained prior to award, the contractor may obtain the license after award. Where the contracting officer reasonably determined that the prospective awardee, who did not then have the license, could obtain it in time to perform, the award to that firm is legally unobjectionable.

PROCUREMENT B-228239 Oct. 9, 1987
Contractor Qualification 87-2 CPD 349
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

Protests against affirmative determinations of responsibility will not be reviewed unless there is a showing of possible fraud or bad faith or a possible failure by the contracting officer to apply definitive responsibility criteria.

PROCUREMENT B-228250.2 Oct. 9, 1987
Bid Protests 87-2 CPD 350
GAO Procedures
GAO Decisions
Reconsideration

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Bad Faith
Allegation Substantiation

Protest of affirmative determination of responsibility which did not allege, much less show, fraud or bad faith on the part of procuring officials properly was dismissed pursuant to General Accounting Office's (GAO's) Bid Protest Regulations. Contracting officer's alleged remark that protest was "futile," made when copy of it was hand-delivered to him, does not constitute virtually irrefutable proof that he determined lower-priced bidder responsible out of a specific and malicious intent to injure the protester; therefore, showing which is prerequisite to GAO review of matter has not been made.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-228326 Oct. 9, 1987
87-2 CPD 351

Protest that agency conducted an auction by disclosing protester's price position and then requesting best and final offers from a limited number of offerors is dismissed as untimely, since it was not filed within 10 working days after the protester learned the protest basis.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Size Standards
GAO Review

General Accounting Office will not consider protest that a solicitation has the wrong Standard Industrial Classification (SIC) code, used to determine the small business size standard for the procurement, since conclusive authority to determine the proper SIC code is vested in the Small Business Administration.

PROCUREMENT
Bid Protests
GAO Procedures
Purposes
Competition Enhancement

B-228654 Oct. 9, 1987
87-2 CPD 352

Protester's interest in benefiting from more restrictive specifications is not protestable under General Accounting Office bid protest function.

PROCUREMENT

B-227767 Con't

Bid Protests

Oct. 14, 1987

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest that agency provided inadequate information concerning standards by which offers for photographic laboratory services would be evaluated constitutes an alleged solicitation defect which, where filed after closing date for submission of offers, is untimely under General Accounting Office Bid Protest Regulations.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

10-day Rule

Protest allegations raised for the first time in protester's comments on agency report will not be considered where they fail to comply with requirements for timely filing of protest under General Accounting Office Bid Protest Regulations.

PROCUREMENT

Sealed Bidding

Two-Step Sealed Bidding

Offers

Evaluation

Administrative discretion

Protest that agency improperly evaluated offers because it did not use certain specialized measuring equipment which protester allegedly assumed would be used is denied since the solicitation did not indicate such procedures would be used in judging submissions, agency did not consider those evaluation methods relevant to government's needs, and protester has not shown that evaluation as conducted by agency was unreasonable or arbitrary.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Service Contracts
Wage Rates
Omission

B-228096 Oct. 14, 1987
87-2 CPD 357

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

Protest that a Department of Labor wage determination included in a solicitation for a service contract improperly did not include the wage rate for a class of required employees is denied, since the administrative procedure for determining wages for omitted classes of prospective employees in the solicitation provided a reasonable and equal basis for preparation of bids.

PROCUREMENT
Socio-Economic Policies
Labor Standards
Service Contracts
Wage Rates
GAO Review

A challenge to the correctness or completeness of Department of Labor wage determination contained in a solicitation subject to the Service Contract Act should be pursued through Labor's administrative process for reviewing such matters, not through a bid protest to the General Accounting Office.

PROCUREMENT
Sealed Bidding
Bids
Errors
Error Substantiation

B-225815.2 Oct. 15, 1987
87-2 CPD 362

When a bidder denies that a mistake has been made, but it is nonetheless apparent that the bid is in error, the contracting officer properly may reject the bid because of his concern about whether the bid actually intended would be low.

PROCUREMENT
Competitive Negotiation
Offers
Evaluation
Personnel Experience

B-228008 Oct. 15, 1987
87-2 CPD 363

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Evaluation Criteria
Prior Contracts
Contract Performance

The contracting agency's evaluation of the protester's proposal under the evaluation factors for previous experience with the agency and management and support personnel experience and capability was reasonable where the agency had limited experience with the protester compared to the awardees of the protested contracts, and the protester's performance of a contract with the agency had been faulty.

PROCUREMENT
Bid Protests
Allegation
Abandonment

B-228043 Oct. 15, 1987
87-2 CPD 364

Where agency rebuts protest allegations in administrative report and protester does not expressly continue those allegations in its comments on the report, the allegations are deemed abandoned and will not be considered.

PROCUREMENT
Sealed Bidding
Below-cost Bids
Contract Awards
Propriety

Allegation that awardee cannot perform at its low bid price does not provide a sustainable basis of protest; submission of below-cost bid on fixed-price contract provides no basis for challenging award to responsible bidder.

PROCUREMENT
Bid Protests
GAO Procedures
Preparation Costs

B-227060.2 Oct. 16, 1987
87-2 CPD 366

Reimbursement of protest costs is not appropriate where protester received interim contract for remainder of base year requirement covered by protested solicitation.

PROCUREMENT
Bid Protests
Moot Allegation
GAO Review

When protester challenging agency decision to resolicit rather than reinstate invitation for bids and award to protester after termination of an improperly awarded contract is awarded an interim contract, General Accounting Office (GAO) dismisses protest as academic; even if protest were sustained, ultimate remedy would be recommendation for award to protester, and where this has already occurred, no useful purpose would be served by GAO's considering the matter further.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-227953 Oct. 16, 1987
87-2 CPD 368

Contentions that amendment of solicitation after submission of best and final offers (BAFOs) which consequently led to the reopening of the competition for a second round of BAFOs was unnecessary and unreasonable, and that the reopening of the competition created an improper auction, are untimely where asserted in protest filed after the closing date for receipt of the second round of BAFOs.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Responsibility
Competency Certification
GAO Review

B-228369 Oct. 16, 1987
87-2 CPD 369

The General Accounting Office will not review a protest concerning a determination of the Small Business Administration to issue a certificate of competency except upon a prima facie showing of fraud, bad faith, or willful disregard of vital information bearing on the firm's compliance with definitive responsibility criteria.

PROCUREMENT
Payment/Discharge
Unauthorized Contracts
Quantum Meruit/Valebant Doctrine

B-228637 Oct. 16, 1987

Electric supply company that performed emergency repair services to restore air conditioning and hot water to an Army facility, including a hospital, may be paid on a quantum meruit basis. The services would have constituted a permissible procurement, the government received and accepted the services and the company acted in good faith.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-225496.4 Oct. 19, 1987
87-2 CPD 370

Original decision denying protester's challenge to awardee's technical acceptability and dismissing challenge to contracting officer's affirmative responsibility determination is affirmed where protester merely disagrees with decision and reiterates arguments raised initially, but makes no showing that decision was based on error of fact or law.

PROCUREMENT
Competitive Negotiation
Contract Awards
Administrative Discretion

B-227848.3; B-227848.4
Oct. 19, 1987
87-2 CPD 371

An agency may conduct post best and final offer, preaward clarification negotiations with only the selected offeror to address minor provisions unrelated to the award evaluation.

PROCUREMENT
Competitive Negotiation
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Cost Savings

Where the technical point score of the lower cost proposal is marginally less than another offeror's point score, the agency may reasonably find the proposals are technically equal and use cost as the award selection factor.

PROCUREMENT

B-227853 Oct. 19, 1987

Bid Protests

87-2 CPD 372

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest of extensions of time for submission of proposals and of solicitation delivery schedule is untimely since extensions were incorporated into the solicitation by amendments and thus were required to be protested prior to the next closing date after their incorporation.

PROCUREMENT

Competitive Negotiation

Offers

Designs

Information Submission

Waiver

Agency decision to waive a requirement for submission of complete design information before award was reasonable since neither of the two offers submitted provided the required information.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Shipment Schedules

Although solicitation warned that offers failing to meet required delivery schedule would be considered nonresponsive and rejected, such a provision does not require agency to automatically reject a nonconforming proposal in the same manner that it would reject a nonresponsive bid.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-228304.2 Oct. 19, 1987
87-2 CPD 374

Protester's allegations in a request for reconsideration that merely reiterates the facts and arguments previously considered in its original protest do not provide a basis for reconsideration.

PROCUREMENT
Bid Protests
GAO Procedures
Purposes
Competition Enhancement

General Accounting Office will not review the merits of an allegation that a contract should be awarded on a sole-source basis since the purpose of GAO's role in resolving bid protests is to ensure that the statutory requirements for free and open competition for government contracts are met.

PROCUREMENT
Bid Protests
GAO Procedures
Interested Parties
Direct Interest Standards

B-225043.5 Oct. 20, 1987
87-2 CPD 375

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

A firm that manufactures a product that would be supplied by second low bidder is not an interested party since only an actual or prospective offeror in line for award is an interested party eligible to protest under GAO's Bid Protest Regulations.

PROCUREMENT

B-226782 Oct. 20, 1987

**Payment/Discharge
Letter Contracts
Contract Awards
Intent
Cost Reimbursement**

Claimant expended funds to purchase equipment pursuant to a letter of intent issued by the Department of the Army. At the time the letter of intent was signed, both parties contemplated execution of a formal contract shortly thereafter. However, for a variety of reasons, including uncertainty by the Army of the propriety of a contingent fee arrangement in which claimant was involved, the formal contract was never issued. Nevertheless, the letter constituted a valid agreement for procurement of specified items for the government's account and claimant should be reimbursed for the amounts it expended in conformance with the agreement.

PROCUREMENT

B-227888 Oct. 20, 1987

**Contractor Qualification 87-2 CPD 376
Responsibility
Contracting Officer Findings
Negative Determination
Prior Contract Performance**

Nonresponsibility determination is reasonable where based on information showing prior unsatisfactory performance, even though there also is some indication of recent improvement in performance.

Regulation requiring agency to give prospective contractor opportunity to "cure" factors leading to nonresponsibility determination does not apply where nonresponsibility determination is based on unsatisfactory overall prior performance, a deficiency that cannot be cured.

PROCUREMENT
Bid Protests
GAO Procedures
Interested Parties

B-228421 Oct. 20, 1987
87-2 CPD 377

A higher bidder has no standing to challenge an agency's refusal to allow the low bidder to withdraw its bid based on the low bidder's claim of mistake, where the low bidder has accepted the award at the price actually bid and it is clear that the bid would remain low under any circumstance.

PROCUREMENT
Special Procurement
Methods/Categories
Multi-year Leases
Use
Communications Systems/Services
Telephones

B-227850 Oct. 21, 1987
87-2 CPD 379

General Accounting Office sees no reason why agency should not evaluate 10 year lease of telephone services, with an option for an additional 5 years, against 15-year systems life of purchased systems. A 10 year lease renewable solely at the discretion of the government would not violate provisions of 40 U.S.C. 481 since government would not be obligated for more than 10 years.

PROCUREMENT
Specifications
Minimum Needs Standards
Competitive Restrictions
Geographic Restrictions
Justification

Requirement for zone-wide management of telephone contract, which excludes telephone companies that can offer for only part of zone, unduly restricts competition where management is site-oriented and record does not establish that number of sites would differ if multiple contractors cover zone or that the requirement otherwise is a legitimate need of agency.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

B-228274 Oct. 21, 1987

87-2 CPD 380

Protest that contracting agency allowed insufficient time for submission of best and final offers after issuance of a significant amendment to the solicitation is dismissed as untimely where protest was not filed before the due date for receipt of best and final offers.

PROCUREMENT

Sealed Bidding

Bid Guarantees

Propriety

Invitations for Bids

Funding Restrictions

B-228393 Oct. 21, 1987

87-2 CPD 381

Notice in a solicitation that funds are not presently available for contract award does not relieve a bidder from submitting a bid bond required by the terms of the solicitation.

PROCUREMENT

Sealed Bidding

Bids

Bid Guarantees

Omission

Responsiveness

Bid guarantee provision in solicitation is a material requirement which must be met at the time of the bid opening. Therefore, a bid which does not include the bid bond is nonresponsive and cannot be made responsive by furnishing the bond after bid opening.

PROCUREMENT B-228717 Oct. 21, 1987
Contractor Qualification 87-2 CPD 382
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

General Accounting Office will not review contracting agency's affirmative determination of a bidder's responsibility absent a showing of possible fraud or bad faith on the part of the agency or an alleged failure to apply definitive criteria contained in the invitation.

PROCUREMENT
Sealed Bidding
Unbalanced Bids
Allegation Substantiation
Evidence Sufficiency

Bid to provide transportation services is not mathematically or materially unbalanced where its base-year price is less than 30 percent greater than its prices for each of 2 option-years to reflect the bidder's actual costs, and the bid will become low during the first of the two options which the government expects to exercise.

PROCUREMENT B-228889 Oct. 21, 1987
Sealed Bidding 87-2 CPD 383
Bids
Responsiveness
Terms
Deviation

A bid that includes preprinted terms and conditions that vary from the terms and conditions in the solicitation is nonresponsive.

PROCUREMENT

B-229011 Oct. 21, 1987

Payment/Discharge
Shipment Costs
Weight Restrictions
Federal Procurement Regulations/Laws
Amendments

General Accounting Office has no objection to a proposal to amend Federal Acquisition Regulation (FAR) 47.305-16 and the contract clause at FAR 52.247-60, which concern guaranteed maximum shipping weights and dimensions.

PROCUREMENT

B-227635 Oct. 22, 1987

Competitive Negotiation 87-2 CPD 384
Competitive Advantage
Non-prejudicial Allegation

Contention that protester was placed at a competitive disadvantage under a solicitation to design, construct and lease a building because the agency waived for a competitor a requirement that exterior walls have a specified insulation value is denied where the requirement had no apparent effect on the competition.

PROCUREMENT

Competitive Negotiation
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Technical Superiority

Contracting agency properly selected a higher-priced proposal to lease a facility where the evaluation criteria provided that award would be based on the technical/cost relationship most advantageous to the government, and the agency reasonably determined the proposal had technical advantages that were consistent with the evaluation factors and worth the extra cost.

PROCUREMENT B-227635 Con't
Competitive Negotiation Oct. 22, 1987
Offers
Evaluation
Information Submission
Contractor Duties

Where agency was evaluating designs for a building to be constructed and leased, the agency properly did not evaluate utility costs to be paid by the agency where offerors failed to submit the necessary data; the data was speculative in any event; and all offerors were evaluated on an equal basis.

PROCUREMENT B-227925 Oct. 22, 1987
Contractor Qualification 87-2 CPD 385
Responsibility
Contracting Officer Findings
Negative Determination
Prior Contract Performance

Contracting officer's nonresponsibility determination based on the protester's prior performance and the lack of a radiometric test range is supportable where record indicates that protester's prior performance was deficient and protester does not show that prior performance deficiencies were beyond its control and the record shows that the protester had incomplete plans for the necessary range.

PROCUREMENT B-227979 Oct. 22, 1987
Contractor Qualification 87-2 CPD 386
Responsibility Criteria
Performance Capabilities

Solicitation requirement that fan assemblies incorporate a component obtained from specified approved sources is not a definitive responsibility criterion. The specification requirement is related to the bidder's general ability to perform the contract, so that the ability to comply is encompassed by the contracting officer's subjective responsibility determination.

PROCUREMENT
Payment/Discharge
Overcharge
Interest

B-226231 Oct. 23, 1987

Army Corps of Engineers (Corps) erroneously overbilled City of Aberdeen for 1983 annual payment under water storage contract. When error was discovered, Corps credited overpayment to 1985 charges. Aberdeen's claim for interest on the overpayment may not be allowed in view of long-established prohibition on recovery of interest from United States except where expressly authorized in relevant statute or contract.

PROCUREMENT
Sealed Bidding
Low Bids
Error Correction
Price Adjustments
Propriety

B-228051 Oct. 23, 1987
87-2 CPD 387

Correction of the low bidder's mistake is appropriate where record clearly establishes the claimed mistake and where the alleged intended bid falls within a narrow range of uncertainty, the upper end of which is still significantly below the next low bid.

PROCUREMENT
Bid Protests
Allegation
Withdrawal
Oral Notification

B-228116.2 Oct. 23, 1987
87-2 CPD 388

General Accounting Office (GAO) declines to reopen file closed in reliance on protester's oral withdrawal where record indicates that any misunderstanding as to which of several pending protests to which the protester referred was on the protester's part, not GAO's, which properly closed file (and so notified contracting agency) on basis of protester's communication.

PROCUREMENT **B-228388 Oct. 23, 1987**
Bid Protests **87-2 CPD 389**
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

A protest against alleged solicitation improprieties is untimely where filed after the closing date for receipt of initial proposals.

PROCUREMENT
Socio-Economic Policies
Labor Standards
Supply Contracts
Manufacturers/Dealers
Determination

The General Accounting Office does not consider whether a bidder qualifies as a manufacturer or regular dealer under the Walsh-Healey Act. By law, such matters are for determination by the contracting agency in the first instance, subject to review by the Small Business Administration if a small business is involved and the Secretary of Labor.

PROCUREMENT **B-228563 Oct. 23, 1987**
Bid Protests **87-2 CPD 390**
Leases
Government Property
GAO Review

Protest against the award of a lease of government-owned space is not for consideration under General Accounting Office's bid protest function since it does not concern a procurement by a federal agency of property or services within the scope of the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. 3551-3556 (Supp. III 1985).

PROCUREMENT B-228745 Oct. 23, 1987
Specifications 87-2 CPD 391
Brand Name/Equal Specifications
Equivalent Products
Salient Characteristics
Descriptive Literature

Bid proposing equal product under brand name or equal invitation for bids is nonresponsive when the descriptive literature submitted with the bid fails to establish that the product will meet all of the salient characteristics specified in the solicitation.

PROCUREMENT B-227080.2; B-227080.3
Bid Protests Oct. 26, 1987
GAO Procedures 87-2 CPD 392
Protest Timeliness
Apparent Solicitation Improprieties

Basis for protest is untimely where protester alleges, after bid opening, that solicitation contained improprieties.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Descriptive Literature
Adequacy

The determination of the technical adequacy of bids, based on submission of descriptive literature, is within agency's discretion, and our Office will not disturb a determination involving technical acceptability absent a clear showing of unreasonableness.

PROCUREMENT

**Sealed Bidding
Bids**

**Responsiveness
Signatures
Omission**

**B-227080.2; B-227080.3 Con't
Oct. 26, 1987**

Bid that does not include proper signature must be rejected as nonresponsive.

PROCUREMENT

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

Challenge to awardee's Walsh-Healey and small business certification should be properly raised with the Small Business Administration or the Department of Labor and will not be considered by this Office.

PROCUREMENT

Bid Protests

**GAO Procedures
GAO Decisions**

Reconsideration

**B-227898.3 Oct. 26, 1987
87-2 CPD 394**

Request for reconsideration that does not show that the prior decision contained any factual or legal errors is denied.

PROCUREMENT B-227995 Oct. 26, 1987
Socio-Economic Policies 87-2 CPD 396
Small Businesses
Competency Certification
Bad Faith
Allegation Substantiation

To establish bad faith, burden is on protester to provide virtually irrefutable proof that government officials acted with specific malicious intent to injure the protester. Protester's disagreement with SBA's assessment of the viability of the firm's credit structure does not establish bad faith on the part of SBA officials.

Contracting officer's providing of allegedly erroneous information to SBA does not demonstrate bad faith since the regulations encourage complete exchange of information between the contracting agency and SBA to resolve any disagreement about a firm's ability to perform.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Competency Certification
Eligibility
Criteria

SBA consideration of protester's credit, where the contracting officer's nonresponsibility determination was based only on capacity, is not a violation of SBA regulations; COC procedure is not limited to consideration of the deficiencies found by the contracting officer and SBA's conduct of an independent evaluation reasonably may result in refusal to issue a COC for a different reason.

PROCUREMENT
Bid Protests
GAO Procedures
Administrative Reports
Comments Timeliness

B-227219.3 Oct. 27, 1987
87-2 CPD 398

The late receipt of an agency report is not a basis to reopen a protest that was dismissed because of the protester's failure to file comments or express continued interest in the protest within 7 working days after receipt of the agency report, because the protester was specifically notified of the necessity of advising the General Accounting Office of its failure to receive the report when due in a written acknowledgement of its protest.

PROCUREMENT
Bid Protests
Non-Prejudicial Allegation
GAO Review

B-227921 Oct. 27, 1987
87-2 CPD 399

Protest that agency did not comply with regulations concerning preaward and postaward notices to unsuccessful offerors is without merit where the protester fails to show that it was prejudiced by the agency's failure to provide the required preaward notice and the record shows that the agency in fact provided the required postaward notice without undue delay.

PROCUREMENT
Bid Protests

B-228035 Oct. 27, 1987
87-2 CPD 400

GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest that the solicitation manhour estimate for supplemental ship repair work is defective is untimely where filed after bid opening.

PROCUREMENT

Bid Protests
Prime Contractors
Subcontracts
GAO Review

General Accounting Office will consider a protest of an award by a firm acting as a general agent for the Maritime Administration, since the firm is acting by or for the government in issuing a solicitation for ship repair.

PROCUREMENT

Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

General Accounting Office does not review an affirmative determination of responsibility absent a showing of possible fraud on the part of procuring officials or the misapplication of definitive responsibility criteria.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Evaluation Criteria
Adequacy

B-228035 Con't
Oct. 27, 1987

Award of a sealed bid contract must be based on the lowest total price if the bid is responsive and the bidder responsible. Statement in invitation for bids that award will not be made solely on the basis of the lowest bid merely informs bidders that responsiveness and responsibility are additional factors to be considered before award will be made.

PROCUREMENT
Contract Management
Contract Administration
Bonds
Adequacy
GAO Review

B-228138 Oct. 27, 1987
87-2 CPD 401

Question regarding fulfillment of payment and performance bond requirements, which are implemented after contract award is a matter of contract administration not cognizable under General Accounting Office Bid Protest Regulations.

PROCUREMENT B-228245.2 Oct. 27, 1987
Contractor Qualification 87-2 CPD 402
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Bad Faith
Allegation Substantiation

The General Accounting Office will not review a protest against an affirmative determination of responsibility absent a showing of possible fraud or bad faith by government contracting officials or that definitive responsibility criteria contained in a solicitation have not been met. Bad faith on the part of contracting officials is not shown by a mere allegation that the agency accepted nonconforming supplies from the prospective awardee under prior contracts.

PROCUREMENT B-228285.2 Oct. 27, 1987
Bid Protests 87-2 CPD 403
GAO Procedures
Protest Timeliness
10-day Rule
Adverse Agency Actions

Where a firm initially protested to the contracting activity alleging a defect in the solicitation, the agency's opening of initial proposals without taking the requested corrective action constituted initial adverse agency action, and a protest to General Accounting Office 6 weeks later, based on agency's written denial of original agency level protest, is untimely.

PROCUREMENT

B-228504 Oct. 27, 1987

Contractor Qualification 87-2 CPD 406

Responsibility

Contracting Officer Findings

Affirmative Determination

GAO Review

Protester's allegations regarding awardee's technical and financial capacity to perform a contract concern matters of responsibility. This Office will not review an agency's affirmative determination of responsibility absent a showing that such determination may have been made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

PROCUREMENT

Sealed Bidding

Below-cost Bids

Contract Awards

Propriety

Protest against submission of an alleged below-cost offer on the basis that it constitutes a "buy-in" is dismissed since the possibility of a buy-in is not illegal and does not provide a basis upon which an award may be challenged.

PROCUREMENT

B-228695 Oct. 27, 1987

Bid Protests

87-2 CPD 407

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

Protest, filed after protester learned of the contract award and price, that an amendment requesting the submission of best and final offers (BAFOs) based on a change in contract period should not have been issued and that the award should have been made on the basis of the initial offers is untimely since the protest bases were apparent, and should have been protested, prior to the deadline for the submission of BAFOs.

PROCUREMENT

Competitive Negotiation

Below-cost Offers

Contract Awards

Propriety

Submission of below-cost prices does not by itself constitute a basis for challenging an otherwise valid contract award.

PROCUREMENT

Competitive Negotiation

Initial Offers

Price Disclosure

Allegation Substantiation

Contention that protester's initial prices improperly were disclosed to awardee before BAFOs were submitted is without merit where it is based solely on substantial price reduction in awardee's BAFO; contracting agency denies disclosing prices; and there is no other evidence in the record showing that prices were disclosed.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

B-227933 Oct. 28, 1987

87-2 CPD 409

Protest challenging specifications as unduly restrictive and contracting agency's decision to use negotiated procedures instead of sealed bids is untimely where filed after due date for initial proposals.

PROCUREMENT

Competitive Negotiation

Offers

Technical Acceptability

Negative Determination

Propriety

Protester whose proposal for printing presses was dropped from the competitive range because the presses it offered did not meet all solicitation requirements was not treated unfairly when two other offerors whose proposals also contained similar infirmities were kept in the competitive range because the other two offerors agreed during discussions to modify their presses to meet the solicitation requirements.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-228277.2 Oct. 28, 1987
87-2 CPD 412

Protest filed more than 2 months after contracting agency express-mailed letter containing basis for protest is untimely since it was not filed within 10 working days of knowledge of basis for protest.

PROCUREMENT
Sealed Bidding
Bid Guarantees
Responsiveness
Sureties
Liability Restrictions

B-228553 Oct. 28, 1987
87-2 CPD 413

A commercial bid bond form that limits the surety's obligation to the difference between the amount of the offeror's bid and the amount of a reprocurement contract materially differs from the standard form government bid bond and thus renders a bid nonresponsive.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Responsibility
Competency Certification
GAO Review

B-228491 Oct. 29, 1987

The General Accounting Office will consider protests by third parties concerning the Small Business Administration's issuance of a certificate of competency only upon a prima facie showing that government officials acted fraudulently or in bad faith or willfully disregarded vital information bearing on a small business firm's compliance with definitive responsibility criteria.

The Small Business Administration, has statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business firm's responsibility by issuing or refusing to issue a certificate of competency.

PROCUREMENT
Bid Protests
Licensing
GAO Review

B-228647 Oct. 29, 1987
87-2 CPD 416

Where a solicitation contains a general licensing requirement, the contracting officer may make the award without regard to whether the bidder possesses the licenses.

PROCUREMENT
Competitive Negotiation
Competitive Advantage
Incumbent Contractors

Offeror who has another contract with the government but is not a government employee is not subject to regulation prohibiting award of contracts to government employees.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

Decision as to whether a prospective contractor is responsible is within the discretion of the contracting officer, and the General Accounting Office will not review an affirmative determination except in limited circumstances.

PROCUREMENT
Bid Protests
GAO Procedures
GAO Decisions
Reconsideration

B-225747.3 Oct. 30, 1987
87-2 CPD 417 UR

Request for reconsideration is denied where protester reiterates argument from original protest, which was rejected in General Accounting Office's decision, and disagrees with decision, but presents no argument or information establishing that decision was legally or factually erroneous.

PROCUREMENT
Competitive Negotiation
Contract Awards
Fixed-price Contracts
Cost/Technical Tradeoffs
Justification

B-227576 Oct. 30, 1987
87-2 CPD 418

Contrary to protester's position that Forest Service has not justified award of contract to higher-priced offeror for design and construction of pedestrian bridge, record of proposal evaluation contains statements that higher price was justified given proposal's perceived design advantage which does not readily lend itself to detailed narrative description but has been pictorially represented.

PROCUREMENT
Competitive Negotiation
Offers
Designs
Evaluation
Technical Acceptability

Forest Service did not give improper weight to aesthetic concerns in evaluating design proposals for pedestrian bridge in scenic area where request for proposals informed offerors that these concerns would be evaluated. As design proposals of protester and successful offeror essentially conformed to all design requirements, aesthetic concerns properly became of significant importance in selecting successful offeror.

PROCUREMENT B-227954.2 Oct. 30, 1987
Competitive Negotiation 87-2 CPD 419
Requests for Proposals
First-article Testing
Waiver
Administrative Determination

Contracting agency determination to grant a waiver of first article test requirement for awardee did not prejudice the protester where the awardee's offer was low with or without the waiver of first article.

PROCUREMENT B-228060; B-228061
Bid Protests Oct. 30, 1987
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Challenge to alleged defect in invitation for bids first raised in protest to contracting agency before bid opening is untimely where filed with General Accounting Office more than 10 days after agency proceeded with bid opening without taking corrective action in response to the protest.

PROCUREMENT
Contract Management
Contract Administration
Contract Terms
Compliance
GAO Review

B-228322 Oct. 30, 1987
87-2 CPD 421

Once an offeror promises to perform in accordance with a solicitation's requirements, whether contractor performs as contractually required is a matter of contract administration, which is the responsibility of the procuring agency and is not subject to review by the General Accounting Office under its bid protest function.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

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

PROCUREMENT
Contractor Qualification
Responsibility Criteria
Determination

B-228469 Oct. 30, 1987
87-2 CPD 422

Solicitation provision indicating test data is not available for procurement of an item from concerns that have not previously manufactured similar items is not sufficiently specific and objective to be considered a definitive responsibility criterion.

PROCUREMENT

B-228489 Oct. 30, 1987

Sealed Bidding

87-2 CPD 423

Bid Guarantees

Responsiveness

Signatures

Powers of Attorney

Where bidder submits a photocopied bid bond and a photocopied Power of Attorney which indicates on its face that only an original is valid, the bid bond is of questionable enforceability, and the bid is properly rejected as nonresponsive.

PROCUREMENT

B-228862 Oct. 30, 1987

Sealed Bidding

87-2 CPD 424

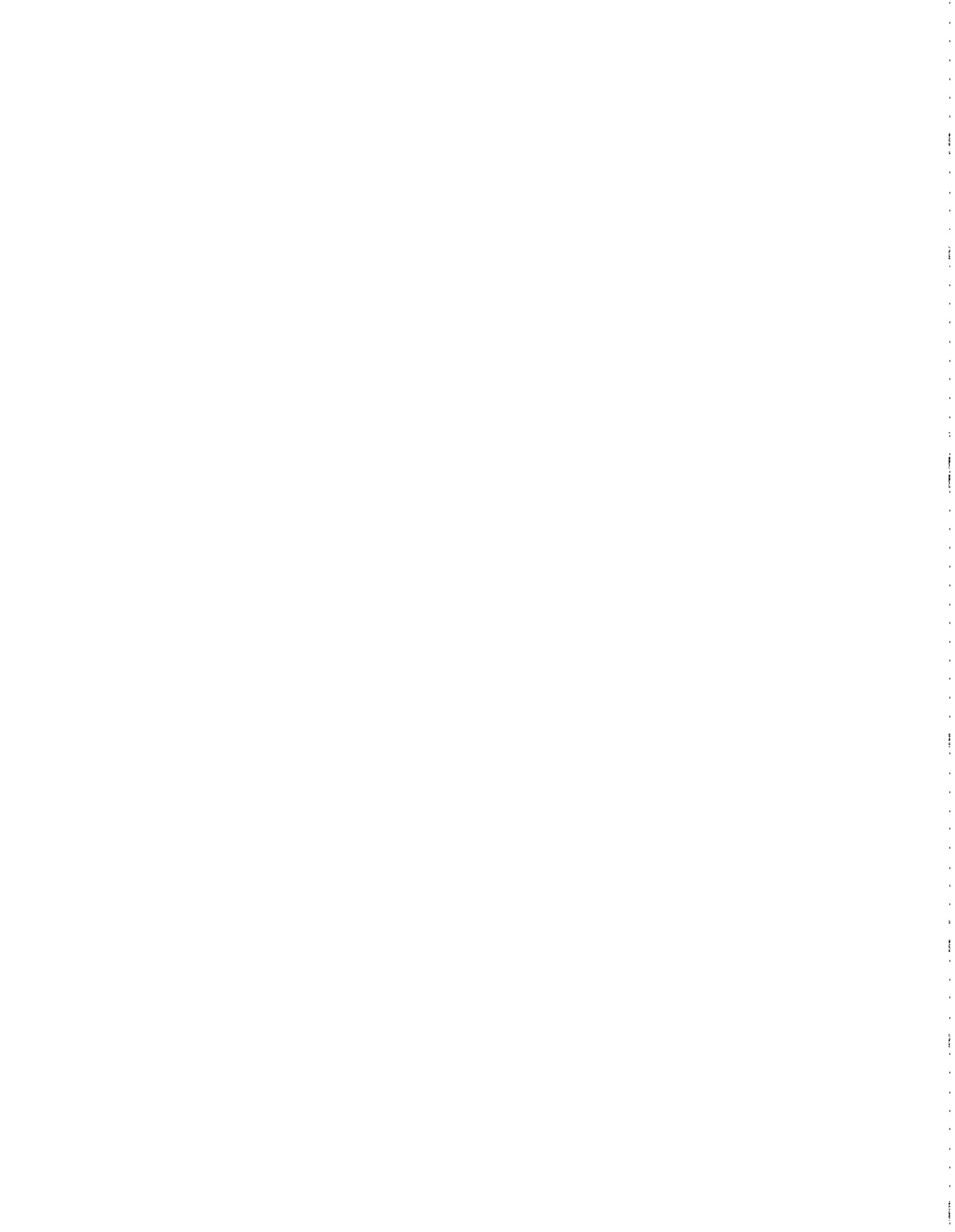
Bids

Clerical Errors

Error Correction

Propriety

Bid for refuse collection services which quoted a unit price per housing unit instead of a monthly unit price as specified in the invitation for bids is correctable as a clerical error apparent on the face of the bid since the correct monthly unit price is determinable by division of the total yearly amount bid and by multiplication of the bidder's unit price by the number of housing units requiring services.



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