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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of 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 concerning 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, Pub. L. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by the file number and date, e.g., B-229329.2, Sept. 29, 1989. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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Appropriations/Financial Management

B-248555, June 3, 1992

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Liability restrictions
- ■ ■ Statutes of limitation

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Physical losses
- ■ ■ Embezzlement

Since the request for relief of Internal Revenue Service accountable officer was received more than three years after IRS had knowledge of the loss, this Office is unable to grant relief. Thus, the accountable officer has no personal liability. 31 U.S.C. § 3526(c).

B-247581, June 4, 1992

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses

Agency collected \$50 each from two cashiers for an unexplained physical loss of \$100 where agency has found that there was fault or negligence on the part of the cashiers in not following the procedures set forth in the Bureau of Land Management's Manual. The record provided to us does not support the agency refunding the collection to one of the cashiers and relieving the cashier from liability.

B-248042, June 5, 1992

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Awards/honoraria

Awards for employee suggestions may be made before such suggestions are implemented. Chapter 451, Federal Personnel Manual, 2-4(e)(2)(1981).

B-241415, June 8, 1992***

Appropriations/Financial Management

Appropriation Availability

- Time availability
- ■ Bona fide needs doctrine
- ■ ■ Multi-year procurement

Contracts that cannot be separated for performance by fiscal year may not be funded on an incremental basis without statutory authority. Such contracts, as "entire" or "nonseverable" under the *bona fide* need rule, are chargeable to the appropriation current at execution rather than funds current at the time goods or services are rendered.

B-247062, June 9, 1992

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Substitute checks

Relief from liability is granted under 31 U.S.C. § 3527(c) (1988) to Department of Navy disbursing officer who exercised reasonable care by following applicable regulations in issuing replacement check to Navy contractor.

B-247348, June 22, 1992

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Antideficiency prohibition
- ■ ■ Violation

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Augmentation
- ■ ■ Interagency details

The nonreimbursable detail of an employee of the Government Printing Office to the Library of Congress pursuant to a settlement agreement is in violation of the provision in 31 U.S.C. § 1301(a) that appropriations be spent only on the objects for which they are appropriated. Therefore, the detail should be terminated. In addition the obligation and expenditure of GPO funds for this detail constitute violations of the Antideficiency Act, 31 U.S.C. § 1341, since Congress has not appropriated funds to GPO for this purpose.

B-244345, June 23, 1992***

Appropriations/Financial Management

Appropriation Availability

- Amount availability
- ■ Augmentation
- ■ ■ User fees

The Customs Service may not assess express air freight carriers its cost of providing daytime clearance services at the carriers' centralized hub facilities. The Customs and Trade Act of 1990,

Pub. L. No. 101-302, envisions that such facilities will only be staffed on a reimbursable basis outside of normal business hours. 19 U.S.C. § 58c(e)(6), (b)(9).

B-249087, June 25, 1992

Appropriations/Financial Management

Appropriation Availability

- Time availability
 - ■ Time restrictions
 - ■ ■ Fiscal-year appropriation
-

Appropriations/Financial Management

Budget Process

- Fiscal-year appropriation
- ■ Determination

The National Commission on Acquired Immune Deficiency Syndrome's appropriation was only available for obligation until September 30, 1991, as provided in the Department of Labor Appropriation Act, 1991, notwithstanding a provision in the National Commission on Acquired Immune Deficiency Syndrome Act that included no-year language.

B-248251, June 30, 1992

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Travel allowances

Relief is granted to finance officers who documented that they had in place at the time of the improper payments adequate systems of procedures and controls to safeguard the funds in their care, and to their subordinates who followed these procedures. The improper payments resulted from criminal activity that even an adequate and effectively supervised system cannot always prevent.

Civilian Personnel

B-246940, June 1, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Overseas personnel

Employee who was transferred to and from an overseas post of duty under the Foreign Service Act of 1980, as amended, 22 U.S.C. § 3901 *et seq.* (1988), may not be reimbursed for real estate expenses incurred in sale of his former residence in California. The applicable statute and regulations, 5 U.S.C. § 5724(g) (1988) and 41 C.F.R. § 302-1.2(b)(1) (1992), specifically exclude employees who are transferred under the Foreign Service Act of 1980. See *William J. Shampine*, 63 Comp. Gen. 195 (1984); *Charles R. Vincent*, B-194741, Feb. 19, 1981.

B-246967, June 2, 1992

Civilian Personnel

Compensation

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

An employee was aware of the regulations regarding the statutory pay limitation on his entitlement to premium pay for Sunday and holiday work. Although he also states that he received oral information which apparently conflicted with the regulation, when he thereafter received premium pay which caused his aggregate pay to exceed that entitlement, he should have known that the excess payments were erroneous and that repayment would be required. Thus, the standards for waiver have not been met and waiver is denied.

B-247190, June 4, 1992

Civilian Personnel

Compensation

- Rates
- ■ Determination
- ■ ■ Highest previous rate rule

An employee, whose position was changed and downgraded to grade GS-9 incident to a reduction in force, was entitled to grade and pay retention under 5 U.S.C. §§ 5362 and 5363. On subsequent promotion to grade GS-11, the employee claims the right to use his pre-promotion rate of retained pay for promotion purposes under 5 U.S.C. § 5334(b). The claim is denied. The provisions of 5 U.S.C. § 5334(b)(A) and (B) specifically provide that retained pay cannot be used in lieu of the basic pay of the downgraded position for the purpose of applying the two step-increase rule under 5 U.S.C. § 5334(b). See *Betty J. Beasley, et al.*, B-197025, Aug. 3, 1981.

B-247426, June 4, 1992

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Eligibility
- ■ ■ ■ Extension

An employee requested an extension of eligibility for temporary quarters subsistence expenses of 60 days beyond the initial 60-day period authorized by the agency. The agency allowed an additional 30 days but denied the remaining 30 days. In light of the agency's discretion to extend the initial 60-day period, the employee has no entitlement to the final 30 days of possible eligibility, and the agency's denial of those days was not arbitrary or an abuse of discretion.

B-247265, June 5, 1992

Civilian Personnel

Compensation

- Rates
- ■ Determination
- ■ ■ Highest previous rate rule

The salary of an employee who, in 1979, had resigned a government position at the grade GS-6, step 6 level, was properly set upon reemployment in 1989 at the grade GS-4, step 4 level, and then upon later promotion at the grade GS-6, step 1 level. The evidence presented does not establish that the agency abused its discretion in applying the highest previous rate rule.

B-247466, June 5, 1992***

Civilian Personnel

Relocation

- Foreign service personnel
- ■ Home service transfer allowances
- ■ ■ Per diem
- ■ ■ ■ Eligibility

A Foreign Service employee who was transferred from Bangkok, Thailand, to Washington, D.C., under involuntary retirement orders, appealed those orders and was granted prescriptive relief by the Foreign Service Grievance Board pending resolution of his appeal. After employee served 13 more months with Washington, D.C., as his permanent duty station and voluntarily retired in September 1990, he claimed eligibility for the home service transfer allowance. His claim for the subsistence expense portion was disallowed because he was transferred under retirement orders and could not certify that he would be able to serve at least 12 months when he transferred. The absence of a signed service agreement is not fatal when an otherwise eligible employee in fact performs the required minimum service. Since the employee here performed the minimum service required under section 251.2c of the Standardized Regulations (Government Civilians, Foreign Areas), after his transfer to Washington, D.C., his claim for the subsistence expense portion of the home service transfer allowance may be allowed.

B-238987.2, June 9, 1992***

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Burden of proof

The statutory and regulatory requirements for overtime pay, in 5 U.S.C. § 5542 (1988) and 5 C.F.R. § 550.111(c) (1991), respectively, are met if an employee is required to perform overtime work. Prior decision denying claim for overtime pay is affirmed on reconsideration where employee, a senior supervisor, has not shown that he was required by his supervisor to perform overtime work.

B-246479, June 9, 1992

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

A transferred employee was authorized 30 days temporary quarters subsistence expenses (TQSE), with two subsequent extensions, but the agency denied his claim for reimbursement for the first 30 days on the basis that he signed a 1-year lease and moved his household goods into his apartment and on-site storage. We conclude that, at the time he moved into the apartment, he only intended to occupy it on a temporary basis. The lease required no deposit and allowed cancellation on 30 days written notice with penalty, over 50 percent of his household goods were not unpacked, he made an intensive effort to locate suitable housing, and he signed a purchase agreement on a house about 5 weeks after his relocation. Moreover, employee's wife was pregnant and he knew apartment was too small for larger family. He is, therefore, entitled to reimbursement for TQSE, and our Claims Group settlement upholding the agency denial is hereby overruled.

B-246554, B-247894, June 9, 1992***

Civilian Personnel

Travel

- Overseas travel
- ■ Temporary duty
- ■ ■ Per diem rates
- ■ ■ ■ Lodging

Several employees, who performed official travel to different cities in foreign countries, incurred excessive lodging costs when the hotels in those cities temporarily and dramatically increased room charges to an amount well in excess of the per diem rate authorized for those cities. The employees are entitled to additional reimbursement on an actual expenses basis, but the total reimbursement may not exceed 150 percent of the maximum per diem rate stated in the Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas). See 41 C.F.R. § 301-8.3(a)(2) (1991). Any lodging costs incurred in excess of that amount must be borne by the employees.

B-246567, June 9, 1992

Civilian Personnel

Compensation

- Overtime
 - ■ Night differentials
 - ■ ■ Eligibility
-

Civilian Personnel

Compensation

- Prevailing rate personnel
- ■ Wage rates
- ■ ■ Determination

Prevailing rate (wage grade) employees are not entitled to night differential pay under 5 U.S.C. § 5343(f) because night work was not performed during the regularly scheduled administrative workweek. Payment of night differential for "regularly scheduled" work is limited to night work performed during the regularly scheduled administrative workweek, since any work performed outside of this administrative workweek would be considered "irregular or occasional." 5 C.F.R. § 550.103(e) and (n) (1990).

Civilian Personnel

Compensation

- Overtime
- ■ Eligibility
- ■ ■ Weekends/holidays

Employees who performed work on Sundays in addition to their basic 40 hour workweeks and who were paid overtime compensation for the additional hours are not entitled to premium pay under 5 U.S.C. § 5544(a), which authorizes such pay only for nonovertime hours worked on Sundays.

B-246498, June 12, 1992

Civilian Personnel

Compensation

- Increase
- ■ Approval
- ■ ■ Procedures
- ■ ■ ■ Effective dates

Within 90 days of the effective date of a merit increase under the Performance Management and Recognition System (PMRS) an employee in a temporary PMRS position was returned on one day to a non-PMRS pay position so that on the next day he could be placed in a permanent PMRS position. The return to the non-PMRS position was administratively necessary only to effect a change in the employee's status from temporary to permanent; he, in effect, served continuously in PMRS positions and did not have a change in pay during the 90-day period before the merit increase. Therefore, he may receive the merit increase to which he otherwise would be entitled.

B-247125, June 12, 1992

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Permanent residences

Transferred employee was divorced from his wife approximately 2-1/2 years prior to his transfer. The judgment of divorce ordered the sale of the marital residence, the wife to remain in possession pending the sale, and the employee to make the mortgage payments and pay property taxes. The employee moved into an apartment and lived there for more than 3 years when notified of his transfer. He is not entitled to reimbursement of real estate expenses incurred in the sale of the property since he was not residing there at the time he was first notified of his transfer in accordance with the FTR, 41 C.F.R. § 302-6.1(d) (1991). Although the residence was not sold until approximately 1 month after his transfer, the sale of the property under the final divorce decree was incident to the employee's divorce, not his transfer.

B-248018, June 12, 1992

Civilian Personnel

Relocation

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

A transferred employee may not be reimbursed at the commuted rate for his household goods shipment on the basis of an amended travel order issued after shipment was completed. There is no indication of error in the original travel order, and the amended order has no legal effect since it purports to limit the amount to be reimbursed under the commuted rate schedule for which there is no statutory or regulatory authority. Since the employee chose to use rental vehicles to move his household goods himself, his reimbursement is limited to his actual expenses.

B-248550, June 12, 1992

Civilian Personnel

Travel

- Rental vehicles
- ■ Expenses
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

Civilian Personnel

Travel

- Temporary duty
- ■ Travel expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

Employee on temporary duty, who combines personal travel with official travel, may not be reimbursed for the cost of car rental for a period in which no official business is performed. However, employee may be reimbursed for his actual expenses for those days when the car was used for official business, not to exceed the constructive cost of the car rental. Since the employee would not have been on official business for the entire month, his constructive cost should be computed on the basis of the weekly or daily rate, whichever rate was available. The Claims Group settle-

ment, which based the calculation of constructive cost on a pro rata monthly rate, is overruled as to this point.

B-245203.2, June 15, 1992

Civilian Personnel

Relocation

- Travel expenses
- ■ Manpower shortages

An individual was appointed to a manpower shortage category position with the agency. He was erroneously advised and issued travel orders authorizing reimbursement for expenses incurred for a househunting trip, occupancy of temporary quarters, and real estate and miscellaneous expenses. The claimant may only be reimbursed for the travel of himself and his immediate family, travel per diem, and transportation of their household goods and personal effects under 5 U.S.C. § 5723 (1988). His claim for the erroneously authorized expenses is denied.

Civilian Personnel

Relocation

- Meritorious claims

Civilian Personnel

Relocation

- Travel expenses
- ■ Manpower shortages

We decline to submit the employee's claim for erroneously authorized relocation expenses to the Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1988). The evidence shows that, although reimbursement of the claimed expenses was a contributing factor, it was not a controlling factor in the employee's decision to accept a position with the agency. The amount of the claim and the extent to which the expectation of reimbursement may have influenced the employee to accept employment with the government are not sufficiently compelling to justify a meritorious claim submission. See *Elaine J. Huber*, B-229395, Nov. 4, 1988.

B-245117.2, June 19, 1992

Civilian Personnel

Leaves Of Absence

- Annual leave
- ■ Cancellation
- ■ ■ Restoration

Claimant requests reconsideration of our prior decision, *George H. Mikos*, B-245117, Jan. 21, 1992, in which we held that even though an employee may have submitted a schedule for use of annual leave prior to expiration of the 1986 leave year, his annual leave may not be restored where he canceled the leave requested for reasons other than exigency or sickness. Our settlement of claims is based upon the written record only. The employee has not presented any new material evidence in support of his claim. Therefore, our holding in our prior decision is affirmed.

B-247541, June 19, 1992

Civilian Personnel

Compensation

- Balances
 - ■ Personnel death
 - ■ ■ Payees
 - ■ ■ ■ Determination
-

Civilian Personnel

Compensation

- Personnel death
- ■ Balances
- ■ ■ Payees

A claimant failed to establish that she was the common-law wife of a federal employee at the time of the employee's death, and therefore, she may not receive his unpaid compensation. Issues of marital status are determined by state law, which in this case required proof of cohabitation and reputation of marriage by clear and convincing evidence. The record contains many conflicting documents and statements; therefore, the claimant did not meet her burden of proof.

B-246832, June 22, 1992***

Civilian Personnel

Compensation

- Severance pay
- ■ Eligibility
- ■ ■ Reduction-in-force
- ■ ■ ■ Notification

Employee resigned following a general notice of a proposed reduction-in-force (RIF) but before the agency issued a specific notice of the personnel action to be effected pursuant to the RIF. The employee is eligible for severance pay under 5 U.S.C. § 5595, because implementing regulations allow severance pay if an employee resigns subsequent to a general notice that all positions within the employee's competitive area will be abolished. 5 C.F.R. § 550.706(a)(2). The RIF notice that the employee received before resigning qualified as a general notice under 5 C.F.R. § 550.706(a)(2) because it announced the abolishment of all positions within the employee's competitive area by a date certain.

B-247348, June 22, 1992

Civilian Personnel

Compensation

- Interagency details
- ■ Duties
- ■ ■ Statutory restrictions

An employee of the Government Printing Office (GPO) may not be detailed to the Library of Congress pursuant to a settlement agreement made under Title VII of the Civil Rights Act to occupy a position that does not include printing and binding duties. Such a detail is in violation of 44 U.S.C. § 316, which provides that GPO employees "may not be detailed to duties not pertaining to the work of public printing and binding."

Civilian Personnel

Compensation

- Settlement terms
- ■ Authority

While agencies have broad authority to settle claims arising under Title VII of the Civil Rights Act, such settlements cannot include benefits which the agency does not have authority to provide. Therefore, detailing an employee of the Government Printing Office to the Library of Congress to perform duties other than printing and binding, which is impermissible by statute, cannot be part of a remedy in the settlement of an employee's claim under Title VII.

B-247346, June 24, 1992

Civilian Personnel

Relocation

- Expenses
- ■ Debt collection
- ■ ■ Waiver

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Overpayments
- ■ ■ Debt waiver
- ■ ■ ■ Set-off

The amount of an overpayment received by an employee for house purchase expenses must be considered in determining the amount of reimbursement the employee is entitled to receive for other expenses incurred in connection with a permanent change of station, even though the erroneous payment was waived. While the waiver extinguishes the underlying debt arising from the erroneous payment, the amount of the payment should nevertheless be set off in determining the amount of reimbursement due the employee for other relocation expenses.

B-245316, June 29, 1992

Civilian Personnel

Travel

- Temporary duty
- ■ Interruption
- ■ ■ Travel expenses
- ■ ■ ■ Emergencies

An Army employee, whose permanent duty station was in Warren, Michigan, while on a temporary duty assignment in California was informed that her brother had suffered a stroke and was in critical condition in Baltimore, Maryland. The employee may be reimbursed for certain excess travel costs (transportation and en route per diem) incurred in traveling to Baltimore where the emergency existed, and return to Warren, Michigan, under 5 U.S.C. § 5702(b)(1)(B) and the Federal Travel Regulations, 41 C.F.R. § 301-12.6, provided the appropriate agency official grants the approval required by the statute and regulations.

Military Personnel

B-245028.2, June 4, 1992

Military Personnel

Pay

- **Pay retention**
- ■ **Eligibility**

A captain in the Army Reserve accepted a position as a chief warrant officer. He is not entitled to continue the pay level and allowances of a captain, since 37 U.S.C. § 907 does not protect the pay and allowances of a member who accepts a lower grade.

B-246362, June 4, 1992

Military Personnel

Pay

- **Survivor benefits**
- ■ **Overpayments**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

A retired serviceman's daughter continued to receive annuity payments under a Family Protection Plan after she was no longer eligible for them. Her request for waiver of her obligation to repay the excess amount she received is denied because she knew or should have known that she continued to receive the payments after she ceased to be eligible. Granting a waiver in this case would therefore be inconsistent with the provisions of 10 U.S.C. § 1442 governing such waivers.

B-246871, June 4, 1992

Military Personnel

Pay

- **Retroactive pay**
- ■ **Claim accrual dates**
- ■ ■ **Statutes of limitation**

A Coast Guard member received less than the correct amount of retired pay from his retirement in 1975 until the error was discovered in 1990. He was then paid the additional amount for the 6 years prior to the discovery. His claim for the amount which accrued before that 6-year period is barred by 31 U.S.C. § 3702(b), which allows GAO to settle only claims which are presented within 6 years of accrual.

B-247943, June 4, 1992

Military Personnel

Pay

- **Overpayments**
- ■ **Error detection**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

A former Air Force member was erroneously overpaid for 26 days of leave upon separation from the service. The member is not entitled to waiver of the overpayment because he should have been aware of his approximate leave balance and therefore should have questioned the accuracy of the separation payment.

B-248274, June 10, 1992

Military Personnel

Pay

- **Training expenses**
- ■ **Eligibility**
- ■ ■ **Administrative discretion**
- ■ ■ ■ **Reserve officer candidates**

An officer candidate in the Baccalaureate Degree Completion Program of the Naval Reserve was disenrolled. Under his service agreement he resumed his active duty status as an enlisted member while he awaited reassignment to recruit training. Although he spent several months performing no military duties before he received his orders, he is entitled to pay and allowances from the date of his disenrollment until his entry into recruit training.

B-248558, June 18, 1992

Military Personnel

Pay

- **Family separation allowances**
- ■ **Eligibility**

Military Personnel

Pay

- **Overpayments**
- ■ **Error detection**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

Air Force member received family separation allowance (FSA) beyond the period when he was separated from his family. His request that the debt arising from the erroneous payment be waived is denied, where the payment was reflected as a discrete item on the member's Leave and Earnings Statement (LES), so that he had reason to know of the overpayment and should have questioned it.

B-193856.4, June 19, 1992

Military Personnel

Pay

- **Overpayments**
- ■ **Waiver**
- ■ ■ **Statutes of limitation**

Claim for recovery of funds withheld from retired officer's last active duty pay to settle a charge for excess weight in a shipment of claimant's household goods is barred by 31 U.S.C. § 3702(b)(1), because it was not filed at our Office until 1991, more than 6 years after the 1982 accrual date of the claim. Claimant's 1982 request to the agency that it forward his claim to our Office does not avoid the bar. However, service's claim for remainder of debt is also barred because administrative offset was not initiated within 10 years.

B-246595, June 22, 1992***

Military Personnel

Pay

- **Retirement pay**
- ■ **Computation**
- ■ ■ **Military correction boards**
- ■ ■ ■ **Erroneous actions**

Recomputation of retired pay is not required where Correction Board (a) relies on a statutory provision which is inapplicable and (b) merely states legal conclusion affecting member's retirement multiplier but changes no facts in member's record, and therefore does not satisfy the requirement of Haislip v. United States that, in allowing a recomputation, Correction Board must make a change in facts that gives rise to a right that did not previously exist.

Miscellaneous Topics

B-247969, June 17, 1992

Miscellaneous Topics

Finance Industry

- **Bonds**
 - ■ **Issuance**
 - ■ ■ **Hearings**
-

Miscellaneous Topics

Finance Industry

- **Bonds**
- ■ **Tax exemptions**

Private activity bonds qualify for federal tax exempt treatment if "public approval" is obtained by the governmental unit issuing the bonds. "Public approval" means scheduling and holding a public hearing at which citizens may express their views and followed by approval of the bond issue by the appropriate governmental unit. However, the tax code does not require issuing authorities to abide by the majority view expressed at the hearing when deciding whether to issue bonds. Although more than one governmental unit may be involved in some bond decisions, airport bonds are permitted by law to be issued by the special purpose unit of government that owns or operates the airport, without the participation or approval of other local governmental bodies that may be affected by airport expansion. Internal Revenue Code (26 U.S.C.) section 147(f).

Procurement

B-247417, June 2, 1992

92-1 CPD 483

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Design specifications
- ■ ■ ■ Overstatement

Protest that specifications are overly restrictive because they require the replacement of a portion of a steam heat distribution system with an above-ground shallow concrete trench system without permitting as an option the use of a direct buried underground system is sustained where the agency fails to show it has a reasonable basis for this requirement.

B-247459, June 2, 1992***

92-1 CPD 484

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Protest challenging requirement for submission of a signed Certificate of Procurement Integrity is dismissed as untimely where solicitation clearly advised prospective bidders that the failure to submit the signed certificate with the bid would render the bid nonresponsive.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bidder's alleged lack of knowledge regarding identity of contracting officer does not bar bidder from submitting properly completed and signed Certificate of Procurement Integrity with its bid since this certification only requires the bidder to disclose possible or actual Office of Federal Procurement Policy Act violations to the best of its knowledge and belief.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Prior procurements

Office of Federal Procurement Policy Act and its implementing regulations contemplate submission of a new Certificate of Procurement Integrity for each procurement; accordingly, a Certificate of Procurement Integrity submitted by protester under prior procurement does not correct bidder's failure to provide a signed certificate with its bid under current solicitation.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bid was properly rejected as nonresponsive for failure to submit a signed Certificate of Procurement Integrity because completion of the certificate imposes material legal obligations on the bidder to which it is not otherwise bound.

B-248806, B-248806.2, June 2, 1992

92-1 CPD 485

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Signatures

Bid was properly rejected as nonresponsive where bidder submitted bid without signed portion of Certificate of Procurement Integrity, even though the bidder had completed various provisions of the certificate.

B-247008.2, B-247009.2, June 3, 1992

92-1 CPD 488

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to the costs of filing and pursuing its protests where no corrective action was taken by the agency with regard to one protest and, assuming corrective action was taken with regard to the other clearly meritorious protest, such action was promptly taken, precluding the award of costs.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of protest dismissing issue as untimely is denied where protester did not raise issue within 10 working days after learning of basis for protest.

Procurement

Bid Protests

- GAO procedures
- Protest timeliness
- ■ Apparent solicitation improprieties

Protest filed after closing date for receipt of proposals that agency should have included current regulatory version of clause in solicitation is untimely. Although Federal Acquisition Regulation § 1.602-1(b) requires contracting officers to adhere to applicable regulations and procedures, that provision does not confer on protesters the right to have General Accounting Office consider an untimely protest of an alleged solicitation defect.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Federal procurement regulations/laws
- ■ ■ Omission

Offers must be evaluated in accordance with the terms of the solicitation; there is no "legal entitlement" to have an offer evaluated on the basis of a current regulatory clause that should have been but was not included in the solicitation.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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

Procurement

Socio-Economic Policies

- Small businesses
- ■ Size determination
- ■ ■ GAO review

Protest that Small Business Administration (SBA) improperly determined that proposed awardee is a small business is dismissed where the record shows that SBA considered information cited by

protester and reached a different conclusion; the Small Business Act gives the SBA, not GAO, the conclusive authority to determine matters of small business size status for federal procurements.

B-247433, B-247433.2, June 5, 1992

92-1 CPD 493

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Prices

Where agency evaluates prices for an indefinite quantity contract based on an average of the labor rates in proposals, the evaluation is flawed since there is little relationship between an offeror's average hourly rate and the likely actual cost of the contract to the government.

B-247891, June 5, 1992

92-1 CPD 494

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

An agency's defense of its evaluation of the protester's proposal at a debriefing held after it received an agency-level protest alleging that the evaluation of the protester's proposal was unreasonable constitutes initial adverse agency action on the protest such that any subsequent protest to the General Accounting Office must be filed within 10 working days of the debriefing.

B-248310.2, June 5, 1992

92-1 CPD 495

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to the costs of filing and pursuing its protest where the agency promptly took corrective action within 2 weeks of when the protest was filed.

B-244383.8, June 8, 1992

92-1 CPD 496

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Reconsideration motions

Request that the General Accounting Office modify the remedy to permit an offeror to recover its proposal preparation costs is denied where claimant was not awarded proposal preparation costs in the protest decision and did not request reconsideration of the remedy within 10 working days after the basis of the claimant's request was known.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Reconsideration motions

While the General Accounting Office Bid Protest Regulations provide for consideration of untimely protests when a significant issue is involved or good cause shown, there is no similar exception for requests for reconsideration.

B-247011.2, June 8, 1992

92-1 CPD 497

Procurement

Bid Protests

- Allegation investigation
- ■ GAO review

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester states that protest allegation—that protester's price was wrongfully disclosed—is the subject of an investigation by the Defense Criminal Investigative Service. Should any investigation furnish grounds for reconsideration, protester would then have 10 days from notice of the results within which to file request.

B-247431, June 8, 1992

92-1 CPD 498

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic sources
- ■ ■ Foreign products
- ■ ■ ■ Price differentials

Markup charged to bidder by a supplier of foreign components is a necessary expense of acquiring foreign components and should be considered part of bidder's foreign component costs in determining whether a domestic source end product is offered for purposes of the Buy American Act.

B-247600, June 8, 1992

92-1 CPD 499

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protest against solicitation cancellation for unreasonable prices is dismissed where protester's bid was nonresponsive to the required delivery schedule, and hence protester is not an interested party to pursue protest.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Small purchases
- ■ ■ Domestic products
- ■ ■ ■ Restrictions

Protest that agency improperly issued small business-small purchase set-aside order to source offering foreign-made product is sustained because such set-asides are limited by regulation to sources supplying domestically-produced products.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest against allegedly unnecessary technical requirement incorporated into solicitation by amendment is untimely where first filed after the quotation closing date set by the amendment.

Procurement

Bid Protest

- GAO authority

General Accounting Office is without jurisdiction to consider a protest of a procurement by the Resolution Trust Corporation (RTC) because RTC is defined by statute as a mixed-ownership corporation and is therefore not a federal agency for bid protest purposes.

Procurement

Bid Protests

- Court decisions
- ■ Merits adjudication
- ■ ■ GAO review

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office will not consider request for reconsideration of a decision based on evidence subsequently learned during court proceedings on the same matter where the court dismissed the protester's complaint with prejudice; a dismissal with prejudice by a court constitutes a final adjudication on the merits of a complaint which is conclusive not only as to the matters which were decided, but also as to all matters that might have been decided.

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to costs of filing and pursuing its protest, dismissed by the General Accounting Office as academic on the basis that the agency terminated awardee's contract, where protest against award was not clearly meritorious.

Procurement

Bid Protests

- Dismissal

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

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Procurement

Specifications

- Performance specifications
- ■ Adequacy

Protest that solicitation specifications are unclear is denied where all specifications to which the protester objects reasonably describe the work to be performed and the information provided is adequate to enable firms to compete intelligently on an equal basis.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reversal
- ■ ■ ■ Additional information

Prior decision sustaining protest because award was made to other than the low-priced technically acceptable offeror on the basis of initial proposals is reversed where uncontradicted information supplied by the agency in its request for reconsideration shows that, following discussions, best and final offers were in fact requested, received and considered prior to award.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Procurement

Contract Management

- Contract performance
- ■ Off-site work

Protester's proposed maintenance plan which required agency to ship transcribing and dictating equipment off-site to obtain repairs within a 12-day period was reasonably judged by agency to be technically inferior to awardee's plan under which equipment was to be repaired on-site within 1 hour.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Prior contract performance

Agency reasonably rated protester's past performance as below average where solicitation required offerors to provide a list of three of their own customers for transcribing and dictating equipment and protester provided a list of firms which were not its own customers.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Where solicitation explicitly provided for price/technical tradeoffs and a comparative assessment of technical proposals, agency reasonably determined that a contract based upon awardee's technically superior proposal justified paying a 16-percent higher price to that firm.

B-246604.2, et. al., June 11, 1992

92-1 CPD 508

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

Protest that agency improperly determined that technical proposals were substantially equal, instead of finding that protester's proposal was superior, is denied where record establishes that agency reasonably evaluated the awardee's and the protester's technical proposals, and supports the agency's determination that protester's proposal was not technically superior; agency therefore properly made award on basis of awardee's lower cost.

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Personnel experience
-

Procurement

Contractor Qualification

- Corporate entities
- ■ Experience
- ■ ■ Affiliates

Where protester's proposal lists experience of affiliated corporation, but such experience is not comparable in size and complexity to work contemplated under solicitation, agency is not required to credit protester with affiliated firm's corporate experience, notwithstanding the fact that the two corporations and their parent corporation share management personnel.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation errors
- ■ ■ ■ Allegation substantiation

Cost realism analysis is not unreasonable where it accepts an overall vacation time average based on an assumption that because some employees will not be entitled to any vacation during the first year, vacation time average need not be increased to account for incumbent employees who are entitled to more than the average vacation period.

Procurement

Competitive Negotiation

- Contract awards
- ■ Award procedures
- ■ ■ Procedural defects

Protester has not been prejudiced by agency's failure to provide preaward notification to unsuccessful offeror in small business set-aside procurement where protester no longer challenges the awardee's compliance with the "50 percent rule," which requires that at least 50 percent of the cost of contract performance be incurred for in-house personnel to perform work.

B-247053.5, June 11, 1992

92-1 CPD 509

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Resolicitation
- ■ ■ ■ Information disclosure

Agency properly canceled request for proposals for phased ship maintenance services where, prior to the date set for receipt of best and final offers, the agency inadvertently disclosed to a competitor unredacted bid protest documents which contained protester's proprietary business information concerning its proposal. Agency reasonably determined that to proceed with the procurement would be prejudicial to the government and to the integrity of the competition.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Allegation that agency improperly based award solely on technical point scores, without regard for price, is without merit where price was least important of seven evaluation factors and record shows agency specifically determined that magnitude of protester's price advantage was insufficient to offset awardee's technical superiority.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Agency's decision not to conduct discussions with protester (or other offerors) concerning areas of proposal (principally personnel and company experience) that were downgraded in the evaluation was proper where protester's proposal was deemed acceptable in all respects and was weak relative to awardee's proposal.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest is denied where the protester's proposal was reasonably evaluated in accordance with the solicitation's stated evaluation criteria.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protest is denied where, despite the fact that the protester and awardee submitted very good technical proposals and the protester's price was 2 percent less than the awardee's price; the agency reasonably awarded a contract for the follow-on requirements to the incumbent contractor which was found in the evaluation to have more extensive experience and a proven, satisfactory performance record in providing the required services to the agency.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Protest allegation that contracting agency, in evaluating proposals, should have attributed experience of proposed key personnel to experience of protester's organization is denied where the solicitation provided for corporate experience and key personnel to be evaluated separately.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency satisfied the requirement for meaningful discussions of agency's concern about protester's lack of similar corporate experience where a discussion question addressed to the protester stated that its proposal indicated no history in family housing management, thereby leading the firm into the area of its proposal found weak and in need of amplification.

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to offeror submitting slightly higher cost, technically superior proposal under request for proposals which gave greater weight to technical merit compared with cost is justified where contracting agency reasonably determined that acceptance of the proposal was worth the higher cost.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

The General Accounting Office denies a request for reconsideration of a decision denying a protest of a solicitation requirement to propose a single percentage factor—to be applied against agency pre-priced line items when determining the contractor's evaluated price and compensation—where the protester merely reiterates arguments previously considered in reaching the decision.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration motions
- ■ ■ ■ Interested parties

Allegation that the General Accounting Office failed to consider comments submitted by firms that did not have a substantial chance for award if the protest were denied and therefore were not interested parties for the purpose of participating in a protest does not form a basis for reconsidering a decision.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Highest priced offeror with same "good" technical rating as four lower priced offerors under a request for proposals is not an interested party under the Bid Protest Regulations eligible to protest the award to the lowest priced "good" offeror, where it neither protests its own evaluation nor the eligibility of the intervening offerors.

B-246152.3, June 12, 1992

92-1 CPD 514

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Where agency corrective action did not result from clearly meritorious protest that would have required sustaining protest, protester is not entitled to the costs of filing and pursuing its protest.

B-247825, June 12, 1992

92-1 CPD 515

Procurement

Bid Protests

- Patent infringement
- ■ GAO review

General Accounting Office will not consider the protester's contention that production of an acceptable part will necessitate infringement of its patent, since patent holders have adequate and effective remedies for such infringement, which function to save the government from having its procurements delayed pending litigation of such disputes.

Procurement

Bid Protests

- Allegation substantiation
 - ■ Lacking
 - ■ ■ GAO review
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Where protester presents no evidence in support of its position that awardee's part was technically unacceptable, protest against agency's evaluation is denied.

B-244697.4, June 15, 1992**92-1 CPD 516**

Procurement

Competitive Negotiation

- Contract awards
- ■ Errors
- ■ ■ Corrective actions
- ■ ■ ■ Administrative recommendations

The General Accounting Office (GAO) will not object to corrective action proposed by the agency in response to a GAO decision, sustaining a protest and recommending the reopening of discussions, where the agency limits the information offerors may submit and restricts the scope of revisions offerors may make to their proposals in response to the discussions; such action will rectify the informational deficiency, on which the agency's initial evaluation was found flawed, and will do so without raising the possibility of technical leveling or transfusion.

B-246819.2, June 15, 1992**92-1 CPD 517**

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs
- ■ ■ Administrative remedies

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to the protest, the agency terminated the awardee's contract and awarded the contract to the protester 7 working days after the protest was filed.

B-247604, June 15, 1992**92-1 CPD 518**

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Applicability

Offer from Canadian firm is to be evaluated under Department of Defense Federal Acquisition Regulation Supplement implementing the Buy American Act as a "qualifying country" offer and cannot be considered a "domestic" offer for evaluation purposes in the absence of any specific provision that confers such status on a Canadian offer.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Applicability

While the regulatory implementation of the United States-Canada Free-Trade Agreement Implementation Act provides that where a Canadian offer meets the \$25,000 threshold, the Buy American Act restrictions may not be applied against that offer, the regulation does not restrict application of the Buy American Act to the evaluation of other offers or prohibit awarding a contract to a nondesignated country.

B-247674, June 15, 1992***

92-1 CPD 519

Procurement

Small Purchase Method

- Quotations
- ■ Submission time periods
- ■ ■ Extension

Protest that agency furnished a defective floppy disk required to submit quotations and then refused to extend closing date for the submission of quotations is denied where protester received disk 14 days prior to closing date but did not attempt to verify that floppy disk was good until the evening before closing; by delaying its examination of the disk until the evening before closing, protester failed to avail itself of every reasonable opportunity to obtain the requisite solicitation materials.

B-247863, June 15, 1992

92-1 CPD 520

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Defects
- ■ ■ Allegation substantiation

A solicitation is not defective for failing to definitively specify the various packaging sizes for tool kits to be delivered for customized assembly when the agency reasonably did not have the requested data and the lack of information will not prevent offerors from competing intelligently and on an equal basis.

B-247922, June 15, 1992

92-1 CPD 521

Procurement

Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Where bidder failed, after being given a second opportunity, to furnish documentation required to support the acceptability of bidder's proposed individual surety, the agency reasonably found surety unacceptable and bid was properly rejected.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration which does not show that initial decision contained errors of fact or law or that information not previously available exists that would warrant its reversal or modification is denied.

Procurement

Sealed Bidding

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Protest that agency improperly failed to permit low bidder to correct its bid is sustained where the bidder has provided clear and convincing evidence that as corrected its bid would remain low and the amount of the intended bid falls within a narrow range of uncertainty.

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Competitive system integrity

Protest is denied where contracting officer reasonably determined that conduct likely occurred during the procurement which may have afforded the protester an unfair competitive advantage and that in order to protect the integrity of the competitive procurement system, the contract with the protester should be terminated for the convenience of the government.

Procurement

Competitive Negotiation

- Offers
- ■ Risks
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

In a negotiated best value procurement for a cost reimbursement contract for a level of effort technical services contract, in which the agency's technical evaluators ranked the protester's and awardee's technical proposals as essentially equal, the contracting officer reasonably found that the protester's insufficiently supported offer of a cost decrement and overall cost cap in its second best and final cost proposal presented significant performance risks, such that the awardee's lower risk offer was the best value to the government, given that the protester's offer would only be low cost if the cost caps were accepted.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ American Indians
- ■ ■ Joint ventures

Bureau of Indian Affairs (BIA) area office's determination that a joint venture meets Indian economic enterprise eligibility criteria under a Buy Indian Act procurement is reasonable, notwithstanding a contrary recent finding by another BIA area office, where the determining area office found, based on its independent investigation, that an Indian owned at least 51 percent of the enterprise, was involved in the daily business management of the enterprise, and would receive the majority of the enterprise's earnings.

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety

Agency properly awarded contract to low bidder where bid did not take exception to specifications, bid exceeded minimum requirements at the lowest price, and agency made requisite affirmative determination of responsibility.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where request does not set forth errors of fact or law in prior decision that warrant reversing or otherwise modifying that decision.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest that procuring agency failed to establish a proper evaluation board and improperly utilized a predetermined cut-off score for determining acceptable proposals is dismissed as untimely when filed more than 10 working days after the protester knew or should have known the basis of the protest.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest that solicitation for real estate asset management services provided an unreasonable estimate of properties the successful contractor could be expected to manage is dismissed as untimely when not filed prior to the closing date for the receipt of proposals.

B-245869.3, June 18, 1992**92-1 CPD 529**

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration is denied where protester does not show any error of fact or law, or present information not previously considered, that would warrant reversal or modification of prior decision that agency properly canceled solicitation because of an ambiguity in the specifications.

B-247557.2, June 18, 1992**92-1 CPD 530**

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ GAO review

Protest that agency's cancellation of request for proposals was effected in order to circumvent certificate of competency procedures is denied where the contracting officer reasonably determined that the solicitation should be canceled because of a reallocation of funds, and there is nothing in the record to support the allegation of bad faith.

B-247806.2, June 18, 1992**92-1 CPD 531**

Procurement

Bid Protests

- GAO procedures
- ■ Preparation costs

Protester is not entitled to award of the costs of filing and pursuing its protest where, in response to the protest, the agency took corrective action 3 weeks after the protest was filed.

B-248003, June 18, 1992**92-1 CPD 532**

Procurement

Bid Protests

- GAO procedures
- ■ Pending litigation
- ■ ■ GAO review

Protest that specification in current solicitation is unduly restrictive—because agency continuously and erroneously has rejected protester's bids under prior procurements for nonconformance

with the specification—is dismissed (in accordance with Bid Protest Regulations, 4 C.F.R. § 21.3(m)(11) (1992)), where protester has filed suit in federal court on same grounds under prior procurement, the suit is still pending, and the court has not requested General Accounting Office's decision in the matter.

B-248216, June 18, 1992

92-1 CPD 533

Procurement

Special Procurement Methods/Categories

- Architect/engineering services
- ■ Contractors
- ■ ■ Price negotiation
- ■ ■ ■ Termination

Contracting agency's decision to terminate negotiations with protester for architect/engineer services under Brooks Act was not arbitrary or unreasonable where the record shows that after 10 months of negotiations, agency and protester could not come to a mutually acceptable agreement.

B-248325, June 18, 1992

92-1 CPD 534

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Evaluation errors

Protest that proposal improperly was eliminated from the competitive range is without merit where record contains evaluation documents showing that proposal was deficient under all evaluation factors, resulting in its being ranked lowest of the 17 proposals received and unacceptable, and protester presents no information or argument establishing that evaluation was unreasonable.

B-247922.2, June 19, 1992

92-1 CPD 535

Procurement

Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Where bidder failed, after being given a second opportunity, to furnish documentation required to support the acceptability of bidder's proposed individual surety, the agency reasonably found surety unacceptable and bid was properly rejected.

Procurement

Bid Protests

- GAO procedures
 - ■ GAO decisions
 - ■ ■ Reconsideration
-

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Request for reconsideration of decision dismissing protest against the rejection of the protester's offer as untimely is denied since the protest was filed with the General Accounting Office (GAO) more than 10 days after protester learned of the agency's denial of its agency-level protest and since the protester's continued pursuit of the protest with the agency after the denial does not toll GAO's timeliness requirements.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protester's contention that reevaluation of proposals for telescopes for rifles and automatic weapons lacks a reasonable basis is sustained where, under the most important technical subfactor, the evaluators concluded that the protester's proposed telescope resolution will exceed the requirements of the specification but the agency's scoring does not reflect the technical merit in that area.

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
 - ■ Use
 - ■ ■ Administrative discretion
-

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Contract expiration

Agency has no obligation to continue acquiring computer repair services from a section 8(a) incumbent contractor after its service term under a delivery order is completed and may solicit offers for the services without restricting the competition.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency failed to conduct meaningful discussions with protester where the agency's discussion questions only concern relatively insignificant aspects of the agency's evaluation and did not inform the protester of the central deficiencies in its "poor" technical approach and unacceptable cost proposal, which failure effectively precluded the protester from having a reasonable chance for award, since it did not address these deficiencies.

B-249022, June 23, 1992

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Whether a low bidder will not be able to perform the contract with the supplier listed on the bid does not concern bid responsiveness, but rather relates to bidder responsibility, which is not subject to General Accounting Office review absent a showing of bad faith or fraud by the agency, or that definitive responsibility criteria may have been misapplied.

B-247656.2, June 24, 1992

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Where offeror protests contract award, based on agency evaluation and awardee's allegedly unreasonably low price, but does not specifically challenge evaluation of other offerors, it is not an interested party under Bid Protest Regulations where it would not be in line for award if its protest were sustained.

B-238982.4, June 25, 1992

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Notification
- ■ ■ ■ Deadlines

Military-Industry Memorandum of Understanding governing claims for loss or damage to household goods directs that form notifying carrier of damages discovered after delivery (Form 1840R) must be dispatched by agency not later than 75 days following delivery. Where Form in 1840R shows that Army claims officer signed and dated form on 75th day after delivery, claims officer has complied with 75-day requirement notwithstanding that Army mailroom stamp shows that form did not leave mailroom until 77th day.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Prior decision dismissing protest is affirmed where protester fails to show that decision contained errors of law or fact.

B-248553, June 25, 1992

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Advertising

Procurement

Noncompetitive Negotiation

- Sole sources
- ■ Notification
- ■ ■ Advertising

Where agency publishes notice in Commerce Business Daily of plans to make sole-source award, the submission of a timely expression of interest is a prerequisite to the filing of a protest against the proposed award, and protest must be filed within 10 days of receiving notice of agency's decision not to consider protester for award.

B-247425, June 26, 1992

Procurement

Payment/Discharge

- Shipment
- ■ Carrier liability
- ■ ■ Burden of proof

Where goods pass through the hands of several bailees, any loss or damage is presumed to have occurred in the hands of the last one.

B-247650, June 26, 1992

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Agency's decision to make single award to another offeror rather than to negotiate with protester for purpose of making a split award at a reasonable price premium was proper where solicitation provided for single award if price premium for split award was considered excessive, and agency reasonably concluded that negotiations would not result in a substantial reduction in the premium.

B-248898, June 26, 1992

Procurement

Payment/Discharge

- Shipment
 - ■ Carrier liability
 - ■ ■ Amount determination
 - ■ ■ ■ GAO review
-

Procurement

Payment/Discharge

- Shipment
- ■ Damages
- ■ ■ Evidence sufficiency

While carrier concedes that after moving a shipment of household goods it delivered a stereo speaker in a damaged condition, it questions the amount of the damages claimed on the basis that the model speaker the shipper brought in for a repair estimate could not fit into the size of the carton noted on the inventory. However, there is substantial evidence that the claimed model of speaker was the one in fact tendered where the record shows that (1) the speaker shipped sustained casing damage that was noted at delivery; (2) the speaker presented to the repair facility had casing damage; and (3) no other speaker that was shipped was damaged.

B-247133.2, June 29, 1992

92-1 CPD 544

Procurement

Sealed Bidding

- Incumbent contractors
- ■ Information disclosure
- ■ ■ Contingent fees
- ■ ■ ■ Prohibition

Agency properly accepted a bid that misrepresented the existence of a contingent fee arrangement, where the contingent fee relationship between the bidder and its agent was not of the type prohibited and the bidder did not intentionally violate the requirement to reveal the relationship's existence.

B-247673, June 29, 1992

92-1 CPD 545

Procurement

Small Purchase Method

- Quotations
- ■ Rejection
- ■ ■ Alternate sources
- ■ ■ ■ Intellectual property

Protester's alternate product was properly rejected as technically unacceptable, where protester's technical data package submitted for source approval contained drawings marked proprietary to original equipment manufacturer, but provided no proof of ownership or license to use drawings, and protester failed to provide this evidence after being notified of the deficiency.

B-247681, June 29, 1992

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ GAO review

Agency properly canceled request for proposals after submission and evaluation of best and final offers where procuring activity reasonably determined that it no longer required the solicited services.

B-243927.4, June 30, 1992

92-1 CPD 546

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Organizational conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Protester's general allegations that proposed awardee's employees had wide-ranging access to procurement sensitive information that should have operated to exclude the awardee from the protested procurement for training services constitute mere suspicion or innuendo and cannot themselves serve to exclude the proposed awardee.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Organizational conflicts of interest
- ■ ■ Allegation substantiation
- ■ ■ ■ Lacking

Information relating to protester's performance under a specific delivery order for aircraft training associated with one fighter aircraft which may have been given to proposed awardee's employee does not give rise to a conflict of interest where the information could not be used to the proposed awardee's competitive advantage under the protested procurement.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Procurement

Contractor Qualification

- Organizational conflicts of interest
- ■ Determination

Where solicitation contains a broad statement of work generally defining the scope of an omnibus support training contract under which specific delivery orders will be placed and where the work statement does not form the basis for competition, the fact that the proposed awardee (as well as the protester) may have provided input to the agency which may form the basis for some of the delivery orders to be issued after the award is made does not constitute an organizational conflict of interest.

B-245388.3, June 30, 1992

Procurement

Sealed Bidding

- Bid guarantees
- ■ Responsiveness
- ■ ■ Liability restrictions

A bid is nonresponsive when a bid bond rider creates reasonable doubt as to whether the bidder and its surety would be liable on the bid bond if the rider was attached to its performance and payment bonds.

B-247695, June 30, 1992

92-1 CPD 547

Procurement

Competitive Negotiation

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Agency's allowance of a 40-day proposal preparation period was sufficient and reasonable, notwithstanding that the solicitation represented a departure from the agency's prior method of procuring the items, where solicitation only requested limited pricing information.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Prices
- ■ ■ ■ Prosthetics

The Department of Veterans Affairs reasonably exercised its discretion in a solicitation predesignating Medicare pricing for the prosthetic devices solicited. Late cases

B-245127, September 18, 1991

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Fraud

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Fraud

Imposter obtained transient/reaccession payment from Marine Corps cashier by using fraudulent military identification card and other supporting documents. Relief is granted under 31 U.S.C. § 3527(c) to supervisory disbursing officer because he maintained adequate system of controls, and to cashier because he complied with established procedures. Loss resulted from skillfully executed criminal activity and not from any bad faith or lack of due care by accountable officers.

B-239134, April 22, 1991

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Liability
- ■ ■ Physical losses
- ■ ■ ■ Embezzlement

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses

Internal Revenue service cashier was convicted of embezzlement and ordered by court to make restitution. Fact that restitution order covered only part of the loss does not affect cashier's civil liability for remainder of loss, although relief may be considered if agency makes administrative determinations required by 31 U.S.C. § 3527.

B-243749, October 22, 1991

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Administrative settlement
- ■ ■ Amounts
- ■ ■ ■ Increase

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Administrative settlement
- ■ ■ Checks

Limitation on physical losses by accountable officers which agencies may resolve administratively without needs to submit relief request to GAO is increased to \$3,000. In addition, authorization for administrative resolution up to \$3,000 limited is extended to two categories of improper payment: (1) losses resulting from mechanical or clerical error in check issuance process, and (2) duplicate check losses (issuance of replacement or substitute check where payee claims nonreceipt of original check).

B-244972, October 22, 1991

Appropriations/Financial Management

Accountable Officers

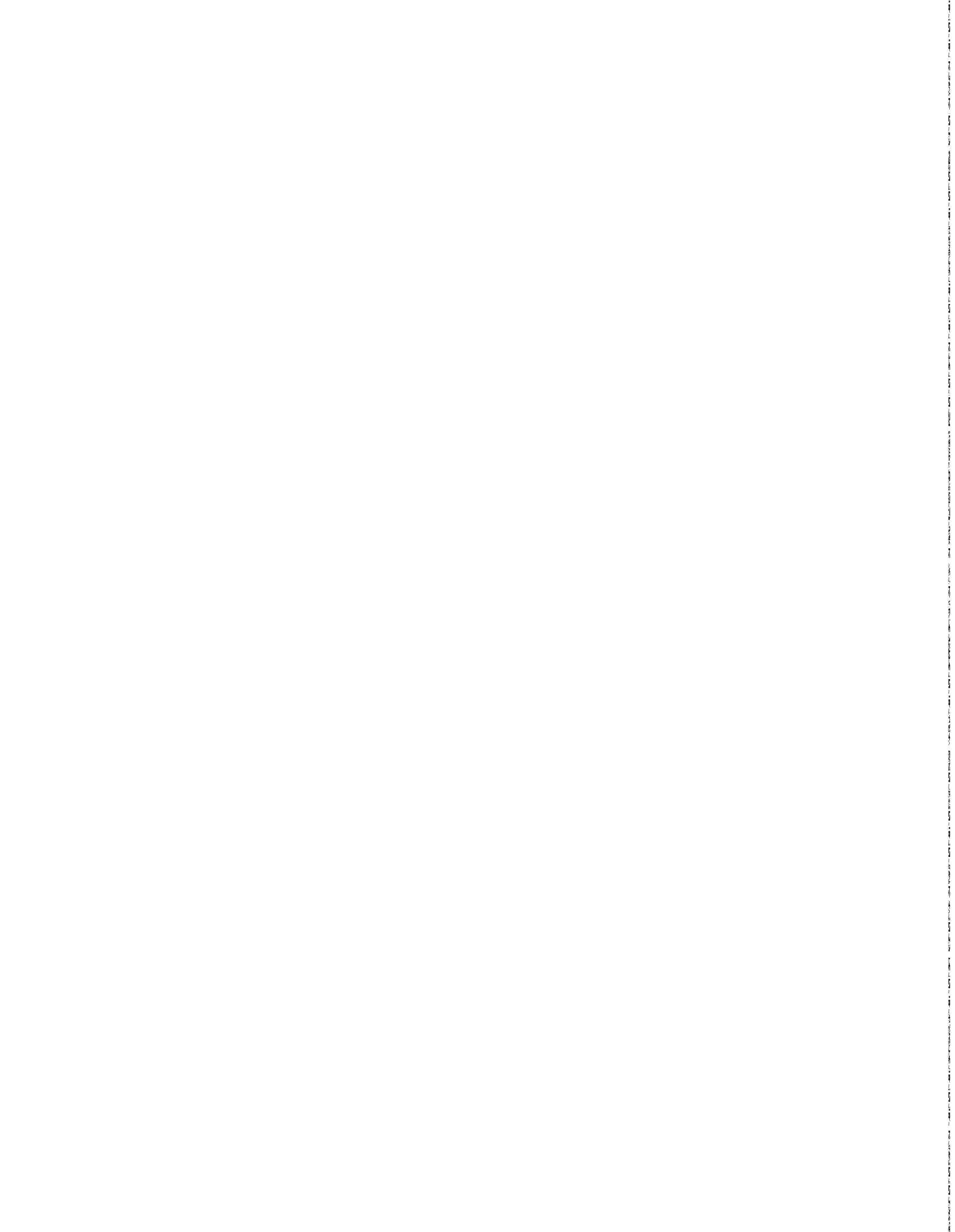
- Relief
- ■ Administrative settlement
- ■ ■ Amounts
- ■ ■ ■ Increase

Appropriations/Financial Management

Accountable Officers

- Relief
- ■ Administrative settlement
- ■ ■ Checks

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